

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

MAY 22, 2012

+ + + + +

The Public Hearing convened in the
Jerrily R. Kress Memorial Hearing Room 220 South
at 441 4th Street, N.W., Washington, D.C. 20001,
pursuant to notice at 9:47 a.m., Lloyd J. Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD J. JORDAN	Chairperson
NICOLE SORG	Vice Chairperson
RASHIDA MacMURRAY	Board Member
JEFFREY HINKLE	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairperson
MARCIE COHEN, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
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:

STEPHEN MORDFIN
MAXINE BROWN-ROBERTS
ARTHUR JACKSON
PAUL GOLDSTEIN

This transcript constitutes the
minutes from the Public Hearing held on May 22,
2012.

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

2 9:47 a.m.

3 CHAIRPERSON JORDAN: Will the
4 hearing, please, come to order?

5 Good morning, ladies and gentlemen.

6 We are located at the Jerrily K. Kress Memorial
7 Hearing Room at 441 4th Street, N.W. Today's
8 date is May 22, 2012 and we are here for the
9 Public Hearing of the Board of Zoning Adjustment
10 of the District of Columbia.

11 My name is Lloyd Jordan,
12 Chairperson. To the left of me is Nicole Sorg,
13 Vice Chairperson. To her left is Anthony Hood,
14 Chairman of the Zoning Commission. And to my
15 right is Jeffrey Hinkle, Board Member.

16 Please be advised that this
17 proceeding is being recorded by a court reporter
18 and also webcast live. Accordingly, we ask that
19 you refrain from making disruptive noises or
20 taking any actions that would disrupt the
21 hearing.

22 The Board's hearing procedures and

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1 how we will process applications can be found
2 on the table by the back door.

3 Let's begin today's hearing agenda.

4 All individuals who will be testifying today,
5 would you, please, stand and raise your hand
6 and take the oath from the Secretary, please?

7 If you are going to testify, if you think you
8 are going to testify, please, stand.

9 MR. MOY: Okay. Very good. Good
10 morning.

11 (Whereupon, witnesses sworn.)

12 MR. MOY: Ladies and gentlemen, you
13 may consider yourself under oath.

14 CHAIRPERSON JORDAN: Thank you.

15 MR. MOY: Good morning, Mr.
16 Chairman, Members of the Board. There are a
17 few preliminary matters this morning for the
18 morning cases.

19 Number one, the first is that the
20 third case of the morning, Application No.
21 18351, this is the application of Elaias Boulew,
22 the Board has approved or adopted or granted

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1 the applicant's request to postpone the hearing
2 on this application.

3 And, Mr. Chairman, I believe that
4 -- I don't know if the Board wanted to address
5 the rescheduled hearing date or not, but on the
6 docket for June -- well, first of all, the
7 request was to allow the applicant time to meet
8 with the ANC. And the ANC meeting is June 7th,
9 so staff would suggest the Board hear this case
10 on the date of June 19th or June 26th, the
11 afternoon of.

12 CHAIRPERSON JORDAN: When are we
13 going to the rolling docket?

14 MR. MOY: The rolling docket?

15 CHAIRPERSON JORDAN: What's the
16 possibility that we are doing it?

17 MR. MOY: My understanding, Mr.
18 Chairman, is that given the scheduling of cases
19 on dockets, probably some time in July.

20 CHAIRPERSON JORDAN: Some time in
21 July. Okay. Just go ahead and set it for --
22 which date are you suggesting?

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1 MR. MOY: The earliest of June 19th
2 and if that's not the desire of the Board, then
3 I would suggest June 26th.

4 CHAIRPERSON JORDAN: Is that a
5 variance case, Mr. Secretary?

6 MR. MOY: It is a -- yes, sir. It's
7 a use variance.

8 CHAIRPERSON JORDAN: We have three
9 variances in the afternoon on the 26th. Then
10 we have a variance and two --

11 MR. MOY: Well, if you want to do
12 the rolling docket, I would schedule it as the
13 last case in the morning.

14 CHAIRPERSON JORDAN: But we're not
15 going that until July, correct?

16 MR. MOY: Okay.

17 CHAIRPERSON JORDAN: Let's put it
18 for the morning of the 26th, June 26th.

19 MR. MOY: Yes, sir. Very good.
20 Thank you.

21 CHAIRPERSON JORDAN: Thanks.

22 MR. MOY: With that then, the first

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1 application before the Board for hearing is
2 Application 18348. This is the application of
3 Jubilee Housing, Inc., pursuant to 11 DCMR
4 3103.2 and 3104.1, for a variance from the
5 off-street parking requirements under
6 subsection 2101.1, and a special exception to
7 allow a child development center, 150 children
8 and 21 staff/persons, under ' 205, in the R-5-B
9 District at premises 2525 Ontario Road, N.W.,
10 property located in Square 2565, Lot 805.

11 And there is a party status request
12 for this application, Mr. Chairman.

13 CHAIRPERSON JORDAN: Will all those
14 who are going to do a presentation, please, come
15 to the table? The applicant, of course, and
16 if someone leading the opposition party status
17 group would come?

18 No, there, there, yes. Yes, well,
19 opposition for party status. Now, I understand
20 we have -- and that's one thing we need to get
21 straight. We have a party status application
22 from the next door condo, the next door unit,

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1 co-op, excuse me the next door co-op. And who
2 is representing that group?

3 MR. LELAND: My name is Henry.

4 CHAIRPERSON JORDAN: And if you are
5 the leader of the group, would you, please, take
6 -- okay, thank you. But I have John, is it Taht,
7 on the letter for the request for party -- you
8 are Mr. Taht? And you also then made a request.

9 We received a party status letter
10 -- application from you. Then we received a
11 letter in regards to the Beverly Court
12 Cooperative. That was in -- so your party
13 status request by form was in behalf of the
14 cooperative? All right. Thank you. That
15 resolves that particular issue.

16 And, I'm sorry, could you give me
17 your name again?

18 MR. LELAND: My name is Henry
19 Leland, L-E-L-A-N-D.

20 CHAIRPERSON JORDAN: Mr. Leland,
21 you requested party status on behalf of the
22 cooperative. The Beverly Court Cooperative has

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1 asked for party status in this matter. And it
2 really doesn't have a designation, but let's
3 -- we will work our way there.

4 We understand the cooperative is
5 next door to this facility.

6 Now, I want to be sure that you want
7 party status or do you want to have the right
8 to provide your statement on the record or do
9 you want to put on witnesses and testimony and
10 evidence, which is what a party does in the bit
11 of hearings that we have.

12 You have the right without party
13 status, you have three minute opportunity.
14 Individuals or groups have the opportunity to
15 put on three minutes worth of their viewpoint
16 on an application. For party status you would
17 have up to an hour to present evidence,
18 testimony, cross-examination, the whole
19 shebang.

20 And I don't know if that -- a lot
21 of times we get people confused and they think
22 that they -- they want to be on the record and

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1 voice their concern, so that the Board considers
2 it and they confuse it with party status, meaning
3 that they want to do something more intense by
4 going through the whole presenting witnesses,
5 evidence and cross-examination and all that.

6 So I just wanted to be clear where
7 you may want to be.

8 MR. LELAND: Can I have a moment?

9 CHAIRPERSON JORDAN: Sure, please,
10 sir. And you have a number of people who can
11 present their statement in opposition, so you're
12 not limited to any one person.

13 MS. DEVOE: I guess our question
14 would be can --

15 CHAIRPERSON JORDAN: Could you come
16 forward for the record and state your name,
17 please?

18 MS. DEVOE: My name is Margaret
19 Devoe.

20 CHAIRPERSON JORDAN: We need you up
21 at the microphone, because this is being
22 recorded.

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1 MS. DEVOE: I'm sorry.

2 CHAIRPERSON JORDAN: Yes. Is the
3 green light on? I can hear you, but -- okay.

4 MS. DEVOE: My name is Margaret
5 Devoe, D-E-V-O-E, and I live at the Beverly Court
6 Co-op, too, but I guess our question as far as
7 status or --

8 CHAIRPERSON JORDAN: Yes.

9 MS. DEVOE: -- non-status, is are
10 -- would we be able without status to maybe
11 question a statement made by --

12 CHAIRPERSON JORDAN: You wouldn't
13 be able to question. You would be able to make
14 your own statements.

15 MS. DEVOE: Okay. But we can --

16 CHAIRPERSON JORDAN: You can talk
17 about the statement that you want to question
18 in your statement, if you want.

19 MS. DEVOE: Okay.

20 CHAIRPERSON JORDAN: But you
21 wouldn't be able to cross-examine.

22 MS. DEVOE: Okay.

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1 MR. LELAND: I have a question. So
2 I'm completely unfamiliar with these kinds of
3 things.

4 CHAIRPERSON JORDAN: I understand.
5 I understand.

6 MR. LELAND: I mean, do we -- with
7 party status, do we engage in sort of a friendly
8 debate between --

9 CHAIRPERSON JORDAN: You would --

10 MR. LELAND: -- opposing --

11 CHAIRPERSON JORDAN: There is no
12 debate in here. You would ask questions and
13 get a response and you -- just like you would
14 be in court, that's kind of the way it would
15 go.

16 MR. LELAND: Okay, yes, all right.

17 MS. DEVOE: Yes.

18 MR. LELAND: Yes, I think we want
19 party status.

20 CHAIRPERSON JORDAN: All right.
21 Thank you.

22 MR. LELAND: Thank you.

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1 CHAIRPERSON JORDAN: Is there
2 anything other that -- anything else you want
3 to add to why you should be granted party status,
4 other than what is in your letter that has been
5 submitted? I think there is enough there, but
6 I didn't know if you wanted to add anything to
7 it.

8 MR. LELAND: No.

9 MS. DEVOE: No, that states it.

10 CHAIRPERSON JORDAN: Yes, let me
11 ask the applicant. First of all, let me
12 introduce. Let's introduce everyone at the
13 table, because again, I'm kind of confused, at
14 this point. Starting from the left to the
15 right, to my left to the right, yes.

16 MR. BONSTRA: My name is Bill
17 Bonstra with Bonstra Haresign Architects and
18 I'm the architect for Jubilee Housing and
19 Jumpstart. I'm sorry.

20 CHAIRPERSON JORDAN: That's okay.

21 MS. DIERDRE WRIGHT: I'm Dierdre
22 Parker Wright. I'm the Executive Director of

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1 Jubilee Jumpstart.

2 MS. RODDY: I am Christine Roddy and
3 I'm an attorney with Goulston & Storrs
4 representing the applicant.

5 CHAIRPERSON JORDAN: What's your
6 name again?

7 MS. RODDY: Christine Roddy.

8 MR. KNIGHT: And my name is Jim
9 Knight and I'm the Executive Director of Jubilee
10 Housing, the property owner.

11 CHAIRPERSON JORDAN: Ms. Roddy, do
12 you have any viewpoint on the party status
13 request that you want to bring to the Board?

14 MS. RODDY: No.

15 CHAIRPERSON JORDAN: Okay. Board,
16 is there any other thoughts? Anyone has any--
17 yes, Ms. Sorg?

18 VICE CHAIR SORG: Thank you, Mr.
19 Chairman. I think that, my opinion is that,
20 we should grant the request for party status.

21 This is the neighboring building. And I think
22 that they have shown their unique affect on them.

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1 CHAIRPERSON JORDAN: Okay.

2 VICE CHAIR SORG: And that we should
3 approve. Thank you.

4 CHAIRPERSON JORDAN: Anyone else?
5 We will grant the party status to the Beverly
6 Court Cooperative for this particular hearing.

7 Okay. With this, let me go over our
8 process. We first have the applicant's case.

9 Then we have a report from the Office of
10 Planning. Then we will have a report from any
11 other public government agency, a report from
12 the ANC, persons in support, persons in
13 opposition, and then rebuttal. So that's the
14 way we will proceed.

15 We have an hour for each party to
16 put on their particular case.

17 So with that, let's move to hearing
18 this particular case. Let me tell you what is
19 really not necessary.

20 We don't need the whole history of
21 Jubilee and what they have done across the world.

22 We need you to be kind of very specific to the

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1 particular relief that you are doing. I think
2 we are familiar very much with the plans on this.

3 I would like you also to focus in
4 your conversation about how you are going to
5 attempt to mitigate noise. Board, anything
6 else you need? Otherwise, have at it, but
7 particularly hit those points for us and we don't
8 need a dog and pony show. We just need you to
9 get to where you need to be.

10 MR. HOOD: Mr. Chairman, I just want
11 to add also a comment on what DDOT had
12 recommended, some of those specifics. I'm sure
13 they will in their testimony.

14 As the Chairman said, hit those
15 highlights, that's a good idea. Okay.

16 CHAIRPERSON JORDAN: Thank you.
17 You can proceed, please.

18 MS. RODDY: Thanks. We
19 understand. And you have heard the
20 introductions from our team already. And so
21 as a preliminary matter though, I would like
22 to have Mr. Bonstra accepted as an expert in

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1 architecture.

2 CHAIRPERSON JORDAN: Mr.
3 Secretary, I think we have already. Is that--

4 MR. MOY: That's correct.

5 CHAIRPERSON JORDAN: That's
6 correct. We will accept him. Well, let me ask
7 you though, what particular area is he using
8 his expertise for? What's the area of
9 expertise?

10 MS. RODDY: With respect to the
11 variance request. He has taken a look at this
12 property and he can testify most succinctly to
13 the fact that parking really cannot be provided
14 on the site.

15 CHAIRPERSON JORDAN: All right.
16 Thank you. We will accept him. Please,
17 proceed.

18 MS. RODDY: Thank you. And as you
19 know, this application is a straightforward
20 request for a special exception and variance
21 relief.

22 The special exception request is

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1 under ' 205 of the Zoning Regulations to allow
2 for a child development center at 2525 Ontario
3 Road. Jubilee also seeks variance relief from
4 the parking requirements of ' 2101. And you
5 may know some of this history.

6 This application was actually
7 before the Board several years ago and it was
8 approved under Order 17456 and a three-year term
9 was imposed. And so now that we have been in
10 operation or Jumpstart has been in operation
11 for three years, we are back before the Board
12 requesting permanent approval for the child
13 development center.

14 We also have some modifications that
15 we would like to request approval of. And those
16 modifications are whereas the previous approval
17 allowed for a maximum of 50 children at any one
18 time, we would like to increase that to 65
19 children at any one time.

20 We are not proposing to change the
21 previous approval for a maximum enrollment of
22 150 students.

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1 Now, the increase in children would
2 require an additional staff, so we are asking
3 to increase the previous approved 16 staff
4 members to 21 staff members at any one time.

5 And then the final request is
6 whereas the previous application with the 16
7 staff members, we requested a variance for four
8 parking spaces. Now that we are increasing the
9 staff to 21, an additional space is required.

10 So we are seeking a variance from five parking
11 spaces.

12 CHAIRPERSON JORDAN: Let me ask
13 you, with a maximum of 65 at any one time with
14 a total enrollment up to 150, how is that
15 monitored? How does that happen? I mean, does
16 someone stand at the door counting and say oh,
17 we've got 65 that's it? How does that happen?

18 MS. RODDY: They have -- and we can
19 talk about this in our testimony, but there are
20 different hours, basically, for the program.
21 And so their base program that they are doing
22 now, I believe, is from 7:00 to 6:00. And so

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1 in that program, only 65 would-- are permitted.

2 And they have overnight hours that
3 were previously approved as well and they have
4 not, I guess, rolled out those hours, at this
5 point. So additional children would be allowed
6 in the overnight hours, which are for
7 individuals or parents who have alternative
8 working positions.

9 And so that would be an additional
10 number of students that would go toward the 150
11 maximum enrolled. So you would have 65,
12 basically, in each program set of hours, if that
13 makes sense and if I'm speaking correctly.

14 MR. KNIGHT: I think that's
15 accurate. If I could add something? I would
16 just say it's not a drop-in program. It has
17 an enrollment process and slots that are sort
18 of set and limited, so there is no opportunity
19 for there to be an unknown number of kids
20 on-site. They would be the preapproved.

21 CHAIRPERSON JORDAN: Okay, okay.
22 Proceed.

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1 MS. RODDY: Okay. You may be
2 familiar with the site, 2525 Ontario Road, it's
3 just east of the intersection with Columbia.
4 It's a three-story building. It's a
5 residential building. The Jumpstart Program
6 takes place on the ground floor.

7 There are 27 units in the building.
8 The building was constructed in 1922, so before
9 the Zoning Regulations were enacted. And
10 Jubilee Housing, which you know is an affordable
11 housing provider, has operated the building
12 since 1979.

13 The households are available for the
14 -- the majority of the households are available
15 to families with an income no greater than 60
16 percent of the area median income.

17 The property is located in the R-5-B
18 Zone District and it is about 15,000 square feet
19 in size.

20 So, as I mentioned, we are
21 requesting special exception and variance
22 relief and I'm sure you are familiar with the

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1 standards. In order to approve our case for
2 the special exception application, we must
3 satisfy the following requirements:

4 We have to demonstrate that the
5 center will meet all applicable code and
6 licensing requirements;

7 That it is located so that it doesn't
8 create objectionable traffic conditions.

9 CHAIRPERSON JORDAN: We really are
10 familiar with the --

11 MS. RODDY: Okay.

12 CHAIRPERSON JORDAN: -- with what
13 is required.

14 MS. RODDY: There you go. Okay.

15 CHAIRPERSON JORDAN: If you would
16 like want to go and just give us --

17 MS. RODDY: We will --

18 CHAIRPERSON JORDAN: -- the
19 supporting.

20 MS. RODDY: -- go through each of
21 those points in our testimony. And I would just
22 actually like to point out though that for the

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1 variance standard, there is flexibility
2 provided for a public service provider. So the
3 standard is a little more flexible with respect
4 to this applicant than it otherwise is.

5 So with that, I will turn it to Mr.
6 Knight to provide a brief overview of Jubilee.

7 MR. KNIGHT: Good morning and thank
8 you for the opportunity to be here.

9 You have previously discouraged the
10 dog and pony and that's probably my part, so
11 I will limit it greatly.

12 Affordable housing producer since
13 1973, integral to the way that we support
14 families in the housing is providing an array
15 of support services in various properties,
16 things from adult education to after school
17 programming and in the case of this property,
18 an early childhood development center.

19 The center is integral to our model
20 of supporting people, low income people, in
21 their life improvement. And since it is opened,
22 we believe that it has demonstrated itself to

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1 be an extremely important opportunity for the
2 families that it serves.

3 We are aware of some of the
4 challenges that the neighbors have experienced.

5 We have been in substantial dialogue with them
6 for a long time. We will be glad to speak more
7 specifically to that at the appropriate time.

8 I just want to make, I guess, sort
9 of the last statement as we transition to the
10 Executive Director of Jumpstart, who can talk
11 more about the program, that this is a highly
12 structured program with very particular rules
13 that are followed very well. There is a basic
14 question, I guess, in the issue around noise
15 and neighbors as to whether -- what is reasonable
16 and I guess we will talk more about that as we
17 go.

18 It is not an absolutely silent
19 program when the children are outside, but the
20 children are outside for prescribed periods of
21 time with limits and with supervision. And we
22 have made a number of efforts over the life of

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1 the property or the project to accommodate noise
2 reduction measures and have worked hard with
3 Beverly Court residents and the board.

4 We are actually under the impression
5 that we had met a satisfactory solution because
6 we had met quite a bit in the past. Had
7 increased and improved the fence system and had
8 not heard anything negative since the fence went
9 up, so this party status application is the first
10 awareness that we had since the fence has gone
11 up that it hasn't met satisfaction.

12 CHAIRPERSON JORDAN: Okay. Thank
13 you.

14 MS. RODDY: And now, we will turn
15 it to Ms. Wright.

16 MS. DIERDRE WRIGHT: Good morning.
17 Thank you for giving me this opportunity to
18 talk with you. I know you have seen our
19 application and I also hear the instruction not
20 to pull out the dogs and ponies, so no problem.

21 Since we began operating almost
22 three years ago, it has been consistently

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1 reinforced that the need for our services is
2 great and that we are in a highly appropriate
3 position to meet the needs of our neighborhood.

4 We are pleased to have learned and
5 grown over the past three years, just like the
6 children we serve, and we come to the BZA to
7 request approval to continue serving where the
8 need is so great.

9 Just in a nutshell, the mission of
10 our program is to provide high-quality,
11 early-childhood education where the need is --
12 the need and demand is greatest. The need is
13 greatest for children living in low income
14 families because we can make a difference before
15 they start school.

16 It's high-quality education is
17 demanded for middle income families, which our
18 neighborhood sees more and more of.

19 If you -- access to infant and
20 toddler care specifically is incredibly
21 difficult no matter your income in the District.

22 And our current wait list for August is 200

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1 percent of our capacity for children under 2.

2 We do serve primarily low income
3 families with children who are most vulnerable
4 to not being successful in school or in the work
5 force. We provide comprehensive services for
6 children and their families to prevent and
7 interrupt the cycle of poverty. And several
8 measures make us unique.

9 We provide a dual language program
10 to be very responsive to our neighborhood. We
11 support staff and families in meeting their
12 children's emotional development needs. We
13 have a higher ratio of staff to children than
14 your average program.

15 And one thing that is highly unique
16 is being co-located in -- with Jubilee Housing
17 exactly where families need us.

18 And finally, we provide home
19 visiting and family support services knowing
20 that children live in the context of their family
21 and that's where support is needed also.

22 Very quickly, our children, we have

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1 50 of them right now currently enrolled and they
2 are between the ages of 6 weeks and 5 years.
3 We have 16 infants and toddlers, eight 2
4 year-olds, 10 3 year-olds and 16
5 pre-kindergartners.

6 We do currently have 20 staff, seven
7 who work with the infants and toddlers, seven
8 with the 2 and 3 year-olds, three with pre-K
9 and then three administrative staff.

10 As Christine indicated, we are open
11 for 11 hours a day, 7:00 a.m. to 6:00 p.m., to
12 be as responsive as possible to working
13 families.

14 Just a real quick review of a day.
15 11 hours go by really fast sometimes. But just
16 to give you a little peak into what happens
17 there, from 7:00 to 9:00 a.m. is when really
18 basic care and breakfast is being served and
19 children are starting their day. It is when
20 we ramp up to having our full 50 children over
21 the course of those two hours.

22 From 9:00 to noon, we provide a

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1 really structured educational program in the
2 classrooms, but also outdoor play is required
3 by our licensing agency.

4 Classes travel by foot to
5 neighborhood parks and playgrounds and go on
6 field trips, visit neighborhood businesses, all
7 sorts of things, particularly during that
8 morning outdoor time that is required.

9 From noon to 3:00 is when lunch and
10 nap time happens. And then from 3:00 to 6:00,
11 just to finish the day, we have another section
12 of the afternoon educational program. Again,
13 outdoor play is required. Our licensing agency
14 requires two outdoor play times per day.

15 We do currently go on some brief
16 neighborhood walks and we also use our backyard
17 playground. When we are in the backyard, groups
18 cannot exceed 18 children and they are all in
19 a similar age range of no more than about 12
20 to 18 months difference in ages.

21 Usually those groups are actually
22 smaller, between eight and 12 and, of course,

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1 they are fully supervised by the appropriate
2 number of staff. So that's our program.

3 Our proposal, as Christine has
4 indicated before, is that we are asking for a
5 special exception and variance relief to
6 continue our operation, making three new
7 requests.

8 We are requesting to increase the
9 number of children to a maximum of 65 at any
10 one time to be -- just to answer a few of the
11 early questions, our enrollment is controlled
12 by OSSE, our licensing body. We can't have more
13 children than we document and that they allow
14 for us and right now, that's 50.

15 The -- we are requesting to increase
16 the number of staff to a maximum of 21, so that
17 we can continue the high staff to child ratio
18 and as children increase, of course, the number
19 of staff must.

20 We are requesting variance relief
21 for five parking spaces from the original four.

22 And then we would like to maintain the same

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1 number of 150 for the maximum enrollment and
2 the same 24 hour operations approval.

3 To state a little bit about that,
4 that's a program option that was really part
5 of the original dream and vision for Jubilee
6 Jumpstart and to fully meet the needs of families
7 of all income levels and working situations.
8 That's a program option we don't anticipate
9 starting in the near future, but we would like
10 to continue having it as an option, if the need
11 arises in the neighborhood.

12 CHAIRPERSON JORDAN: Let me ask you
13 a question. Counsel said something about
14 overnight.

15 MS. DIERDRE WRIGHT: So 24 hours
16 includes overnight.

17 CHAIRPERSON JORDAN: And so is
18 there outside play?

19 MS. DIERDRE WRIGHT: Absolutely
20 not. We would not be allowed to have children
21 outside after dark.

22 CHAIRPERSON JORDAN: Okay. Thank

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1 you.

2 MS. DIERDRE WRIGHT: To start -- to
3 talk a little bit about the modes of
4 transportation and parking, I want to let you
5 know that of our 50 students, the majority of
6 our children walk to the center, thanks to living
7 in the surrounding neighborhood. So fully half
8 of them do.

9 Almost 20 percent of our children
10 arrive via public transportation and the
11 remainder arrive by car.

12 I would like to highlight that one
13 child arrives by bicycle every day and several
14 others are alternating with this mode of
15 transportation and we are seeing it increase
16 as the weather has changed.

17 Drop-off and pick-up occur over the
18 course of the two and a half hour span, both
19 in the morning and in the afternoon. Parking
20 is generally available for parents, the 15 that
21 use it, on Ontario and surrounding streets and
22 spaces are generally used by parents for 10

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1 minutes or less.

2 For our staff, they split up by --
3 do you want me to wait? I'm sorry.

4 CHAIRPERSON JORDAN: No, just keep
5 going.

6 MS. DIERDRE WRIGHT: Okay.

7 CHAIRPERSON JORDAN: That's fine.

8 MS. DIERDRE WRIGHT: A third of our
9 staff live within walking distance of the center
10 and so walk to work. A third of our staff use
11 public transportation daily. And a third of
12 our staff prefer to drive and park. Jubilee
13 Jumpstart does provide two parking spaces
14 on-the-street, I suppose is the term, that is
15 located about two blocks from the center. And
16 six -- the six staff who drive alternate using
17 that space.

18 On the days that they are not allowed
19 to use the space, such as myself, we use the
20 Metro or public transportation or find other
21 parking options, such as the public garages on
22 18th Street and at Columbia Heights.

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1 So some existing TDM measures that
2 we have got in place is that we do provide a
3 SmarTrip card to employees as they start
4 employment, you know, just \$25 on it, but to
5 really encourage trying to use the Metro and
6 the Circulator. We are located equal distance
7 between Columbia Heights and the Woodley Park
8 Station, so two different lines.

9 We provide Metrorail Bus and
10 Circulator maps at the center along with
11 Internet access, so that folks can plan trips.

12 And we do -- and this is kind of unique. We
13 post a city map in our hallway where families
14 indicate with strings and cards where they live
15 and that has resulted -- because we know that
16 some of our families come from outside of the
17 neighborhood, that has allowed people to connect
18 in their own neighborhoods and support each
19 other with carpooling and emergency pick-ups
20 and stuff.

21 And then we do have plenty of bike
22 parking in front of the center and on the site.

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1 So speaking specifically to the
2 special exception standard, we are aware of the
3 standards and gratefully acknowledge DDOT's
4 recommendation and the Office of Planning's
5 recommendations in their memorandum of support.

6 Jubilee Jumpstart has always and
7 will continue to meet all of the code and
8 licensing requirements to operate a child care
9 center. We have consistently met the
10 requirements of our agent -- of our licensing
11 agency through the Office of the State
12 Superintendent of Education, OSSE.

13 Additionally, we are well into the
14 process of achieving a higher level of
15 recognition for quality through the National
16 Association for the Education of Young Children.

17 As DDOT's memo indicates, no
18 objectionable traffic conditions or unsafe
19 dropping off or picking up conditions occur at
20 our center. We will certainly comply with the
21 recommendation to improve monitoring of the
22 drop-off and pick-up process and increase

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1 communication with parents about the
2 expectations with that.

3 While Jubilee Jumpstart does not
4 provide off-street parking every day for all
5 employees and visitors, we assist anyone coming
6 to the center in planning for easiest access.

7 For example, talking about sharing with them
8 the several bus lines that have stops at Columbia
9 and Ontario.

10 CHAIRPERSON JORDAN: Not to be
11 rude, but let me help you in this presentation.

12 MS. DIERDRE WRIGHT: All right.

13 CHAIRPERSON JORDAN: It's kind of
14 why I was --

15 MS. DIERDRE WRIGHT: Thank you.

16 CHAIRPERSON JORDAN: -- conferring
17 with counsel. The Board has already found that
18 there is an exceptional situation and practical
19 difficulty to give the relief necessary for
20 parking for four spaces.

21 MS. DIERDRE WRIGHT: All right.

22 CHAIRPERSON JORDAN: What we need

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1 to hear from you, one, has the conditions changed
2 from what was granted in the previous order three
3 years ago, the building condition, has the
4 layout of the property changed, has the
5 courtyard moved, all that kind of stuff. And
6 the answer to that, we need to hear that from
7 you.

8 Then we need to know from your
9 testimony, based upon, what is the additional
10 adverse impact that -- from -- what additional
11 adverse impact, if any, will give any relief
12 from five spaces as opposed to four spaces?
13 Do you follow me?

14 And then but completely in regard
15 to in the special exception, we need you to --
16 as you have talked about now, why you should
17 be granted the additional three years. Just
18 to help your presentation, so we can move there.

19 MS. DIERDRE WRIGHT: Okay.

20 CHAIRPERSON JORDAN: And, well, the
21 special exception does include them asking for
22 permanent, but we can -- okay? So let me --

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1 so, yes?

2 MR. KNIGHT: Let me see if I can
3 summarize and meet that request.

4 CHAIRPERSON JORDAN: And give me
5 one other chime. I want to introduce Rashida
6 MacMurray, who is a Board Member, who has joined
7 us. Yes, proceed.

8 MR. KNIGHT: Trying to be
9 responsive to that direction, there have been
10 no significant site changes of any kind since
11 the initial exception was approved.

12 The potential changes, the request
13 for additional relief, the additional parking
14 spot is driven by --

15 CHAIRPERSON JORDAN: The
16 regulations.

17 MR. KNIGHT: -- the desire to
18 increase the enrollment slightly, which
19 requires an additional teacher, which requires
20 an additional parking spot. No changes other
21 than that. And that is purely about the
22 flexibility to offer the best program we can

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1 offer.

2 CHAIRPERSON JORDAN: If I can hear
3 from the architect in regards to if there has
4 been any changes from the original application
5 back three years ago in regards to the property
6 layout and property dimensions, etcetera?

7 MR. BONSTRA: As Christine
8 mentioned, it's a pre-1958 building on a very
9 unique site. There have been no changes to the
10 building and no changes to the site. No greater
11 access since it is a landlocked site. No
12 greater ability to park on this site due to the
13 uniqueness of the property and the grade
14 associated with the building.

15 CHAIRPERSON JORDAN: And we need to
16 hear about the effect in going for an additional
17 between five to four -- four to five in regards
18 to adverse impact, if any.

19 MR. BONSTRA: Well, since it is not
20 really possible to park on the site due to the
21 topography, parking on the site would mean you
22 would have to either take the building down or

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1 significantly alter the building and put parking
2 underground and that would not be possible.

3 So there is a practical difficult
4 there. We just don't have the area to do that,
5 given the size of the building and the limited
6 size of the lot.

7 As far as the -- we say no
8 substantial harm to the public good or to the
9 Zoning Regulations. As DeeDee mentioned, there
10 are limitations on the number of children that
11 can occupy the yards during different times of
12 the day and they are under supervision. There
13 is no nighttime use of those areas. And really
14 the time is limited to between 2 and 2.5 hours
15 maximum during the day.

16 So we did work with Jubilee on a
17 sound fence along the north side of the property.

18 We took -- we did much research on that. We
19 made a fence that actually has a canopy over
20 top. The fence is grown.

21 CHAIRPERSON JORDAN: You say a
22 sound fence?

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1 MR. BONSTRA: Yes. We worked with
2 Jubilee to, you know, create fencing that would
3 contain as much of the noise as possible, so
4 that was installed along the north side of the
5 site and we are quite happy with the fence and
6 we believe that it functions appropriately.

7 MS. RODDY: And to go back to your
8 request for the impact of the additional parking
9 space that we are requesting, Ms. Wright had
10 provided testimony previously about the
11 transportation -- the modal split of the staff.

12 And it was basically one-third walking,
13 one-third public transportation and one-third
14 parking.

15 So with the additional staff
16 members, that's an additional space that is
17 really -- most of that -- the additional staff
18 will be taking public transportation or walking,
19 so there is really one additional person who
20 would be driving to the site.

21 And as Ms. Wright also provided
22 testimony, they currently provide two parking

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1 spaces at the Festival Center and on the days
2 that the parking is not available, then they
3 would either take public transportation or find
4 alternative parking.

5 CHAIRPERSON JORDAN: Now, and I
6 think Mr. Knight might have said it and I could
7 be wrong who said it, but that it was just
8 recently that you learned that there is an issue
9 with your neighbors about noise? We have not
10 had continued dialogue prior to this or
11 dialogue?

12 MR. KNIGHT: Let me try to clarify.
13 We have had contact with neighbors for a long
14 time since the center opened. We worked
15 together, I thought, cooperatively and
16 effectively to modify the fence to try to contain
17 the noise. And so that process took some weeks.
18 It was finally completed. The fence went up.
19 I can't do the architect said -- whatever kind
20 of fence that is that tries to hold the noise
21 in, that went into place.

22 To our knowledge, we had no

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1 complaints since the fence went up. The delta
2 between when the fence went up and this hearing,
3 there was no dialogue.

4 CHAIRPERSON JORDAN: And how long
5 has the fence been up?

6 MR. KNIGHT: A year and a half. So
7 -- and I guess what I was trying to say is that
8 we understand that when kids are outside, there
9 will be noise. It's just not possible for that
10 to be 100 percent silent.

11 We have worked as hard as we know
12 how to cooperate with the neighbors directly
13 affected and it had been our sense that the fence
14 must have helped, because whereas there had been
15 a period of communication and explanation of
16 challenge, that stopped. And so our take-away
17 was it must be better.

18 CHAIRPERSON JORDAN: Okay. Yes?

19 VICE CHAIR SORG: Mr. Chairman,
20 maybe I can ask a follow-up question?

21 CHAIRPERSON JORDAN: Sure, please,
22 yes.

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1 VICE CHAIR SORG: I understand that
2 the Beverly Court Cooperative is directly
3 adjacent to the outside play area, but, in
4 general, this is a, you know, densely populated
5 area. You have got five, at least that I can
6 count, other multi-family buildings in the area.

7 So I'm wondering if you had heard
8 of any adverse impact from any other members
9 of the community in addition to those or had
10 any other conversations with people about the
11 operations of the center with other neighbors
12 or community members in addition to those that
13 are here today?

14 MS. DIERDRE WRIGHT: No. No one
15 has communicated directly with the center. We
16 do have some letters of support from our
17 neighbors behind us.

18 VICE CHAIR SORG: And the letters
19 that were entered, that property is immediately
20 adjacent as well. We got those this morning,
21 I think, in our record. Thanks.

22 MR. KNIGHT: So no impact to the

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1 east or the south, impact only to the north.

2 CHAIRPERSON JORDAN: Any other
3 Board Members have questions of the applicant?

4 Yes, Ms. Sorg?

5 VICE CHAIR SORG: I'll ask one more
6 question of Mr. Bonstra.

7 It sounded from the application that
8 there are some other potential noise attenuating
9 efforts in addition to the fence, the plantings
10 and so forth. Is that something you are --

11 MR. BONSTRA: Well, when we
12 developed the plan initially, we used a flexible
13 paving surface, wood chips and rubber and what
14 have you and that was something that we do on
15 any project like this to limit the amount of
16 foot noise and to help absorb noise. So there
17 is not a lot of hardscape and that was
18 purposefully determined.

19 VICE CHAIR SORG: Okay.

20 MR. BONSTRA: I did -- I thought I
21 mentioned that the fence is planted as well,
22 so there is a natural --

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1 VICE CHAIR SORG: I wanted to
2 clarify that also, yes.

3 MR. BONSTRA: -- buffer.

4 VICE CHAIR SORG: That's right.

5 MR. BONSTRA: And we have used
6 plantings very effectively as sound control as
7 well as visual, you know, pleasing visual
8 aspects of it to the neighbors.

9 VICE CHAIR SORG: Okay. Thank you.

10 MR. KNIGHT: One point of
11 clarification there. The plantings have not
12 thrived to the level that were envisioned and
13 so efforts at plantings and some plantings, I
14 would not say that they have robustly succeeded
15 to date.

16 VICE CHAIR SORG: Are they
17 continuing the effort?

18 MR. KNIGHT: We're trying again.

19 VICE CHAIR SORG: Okay. A
20 question, I guess, for Ms. Wright. In your
21 testimony, you talked about that 18 children
22 were allowed in the outdoor play area at a time.

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1 Actually, I have two questions for you.

2 But that the number of children that
3 were using the outdoor play area at one time
4 was really significantly less than that. What
5 do you feel is your base requirement, let's say,
6 for a number of children that need to be outside
7 at one time, based on your staffing and
8 programming and so forth?

9 CHAIRPERSON JORDAN: And that's the
10 same question I have also.

11 MS. DIERDRE WRIGHT: It would never
12 exceed 18.

13 CHAIRPERSON JORDAN: Well, if you
14 could, have you worked with a mix that's less
15 than 18?

16 MS. DIERDRE WRIGHT: Yes.

17 CHAIRPERSON JORDAN: And is there
18 a base number? Why 18?

19 MS. DIERDRE WRIGHT: That's --

20 VICE CHAIR SORG: What would be the
21 base of number of children based on your staffing
22 and so forth? The fewest number of children

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1 that you could have outside and make your program
2 work, if it's not 18?

3 CHAIRPERSON JORDAN: Well, maybe we
4 can ask it this way, because I think we're
5 looking for the same thing.

6 VICE CHAIR SORG: Okay.

7 CHAIRPERSON JORDAN: Where does the
8 number 18 come from? Why is it 18 versus 10
9 versus 6? What's the magic? What's the
10 formula to do that? And how was that 18
11 determined?

12 MS. DIERDRE WRIGHT: In -- as I
13 mentioned, we only have so many hours between
14 the time children wake up from a nap and the
15 end of the day and we are required to have them
16 spend some time outside.

17 And so in order to move those groups
18 along as effective and also safety as possible,
19 we cannot exceed a certain number of children
20 with staff in the space that is allowed. What
21 we do is we combine two classrooms, the 2 and
22 3 year-olds, 18 is 10 plus 8, which are those

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1 two classrooms.

2 And so other -- and then another
3 number is 16, which is the infants and toddlers
4 together, 8 plus 8, and then our pre-K class
5 is only 16. And so we -- in order to only have
6 three sections of children, so that they can
7 move and be on the playground for less than --
8 for 45 minutes in the hours allowed between,
9 approximately, 3:30 and 6:00.

10 Does that make sense? We only have
11 that much time, but we cannot have all of the
12 children out there at once nor would we want
13 to. And so 18 is just a combination of the two
14 classes that could be out there safely together.

15 CHAIRPERSON JORDAN: Okay.

16 MEMBER HINKLE: Mr. Chair, a
17 follow-up?

18 CHAIRPERSON JORDAN: Yes, please,
19 yes.

20 MEMBER HINKLE: So the 45 minutes
21 that's for each group of children?

22 MS. DIERDRE WRIGHT: Yes.

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1 MEMBER HINKLE: And is that the
2 minimum required?

3 MS. DIERDRE WRIGHT: It's the
4 minimum required.

5 MEMBER HINKLE: Okay.

6 MS. DIERDRE WRIGHT: Yes.

7 MEMBER HINKLE: And that's twice a
8 day?

9 MS. DIERDRE WRIGHT: Yes.

10 MEMBER HINKLE: Okay. Thank you.

11 MS. DIERDRE WRIGHT: Yes.

12 CHAIRPERSON JORDAN: Mr. Hood?

13 MR. HOOD: Yes, I just wanted to
14 follow-up about the fence. The fence obviously
15 was not in the previous order. Like the rubber
16 mat with the tricycle area, all that stuff was
17 done, correct?

18 How did we get to putting the fence?

19 What -- how did we get there? Because of the
20 complaints from the community? I mean, from
21 the adjacent neighbors? Is that how we got
22 there?

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1 MR. KNIGHT: Largely. I mean, I
2 think we have learned over time what has worked
3 well and less well. And previously it was a
4 chain link fence that was neither attractive
5 nor contributing to noise reduction whatsoever.

6 So in part, through dialogue with
7 the neighbors and in part because we thought
8 a different barrier would be better any way.
9 We moved towards the wood fence with the very
10 specific design that would try to baffle the
11 sound.

12 MR. HOOD: But was that in
13 collaboration with the adjacent neighbors?

14 MR. KNIGHT: Yes, absolutely.

15 MR. HOOD: Okay. And you mentioned
16 that you didn't know about the party status
17 application that apparently talks -- what was
18 the rationale behind that? What do you think
19 happened? You just stopped talking to the
20 neighbors or what happened?

21 MR. KNIGHT: I --

22 MR. HOOD: Because it sounds like

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1 you all worked together to get -- to achieve
2 that.

3 MR. KNIGHT: We genuinely believed
4 we had reached a satisfactory solution.
5 Solution may be strong. I don't expect that
6 there will ever be noise-free occupancy of their
7 property during those hours. But I think they
8 -- I thought they recognized good faith effort
9 on our part to reach -- to do the things we could
10 do that were within our control.

11 And I genuinely deduced that it must
12 have made a reasonable improvement, because we
13 no longer got phone calls and emails about noise.

14 So that apparently was not a correct deduction,
15 but that was what I sensed, because previously
16 we had -- we received a number of communications
17 requesting assistance.

18 MR. HOOD: And did that issue --
19 well, I see, obviously, No. 6 of the previous
20 order. The issue of noise, obviously, was an
21 issue and there was a condition put in the order
22 to try to deal with some of the noise.

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1 Okay. That's all I have for now.

2 I was just curious. Thank you, Mr. Chairman.

3 CHAIRPERSON JORDAN: Ms. Sorg, you
4 had another question. I think we cut you off.

5 We apologize for that. You are allowed, Mr.
6 Hood. Anything?

7 VICE CHAIR SORG: Actually, I will
8 ask one more question. Thank you.

9 Another thing that you spoke about,
10 Ms. Wright, was the -- that the students in some
11 of the classes, I'm sure not all of them, or
12 the children in care in some of the classes go
13 to local parks and so forth as well sometimes
14 for their, you know, outdoor play
15 requirements.

16 What's the balance between the use
17 of the outdoor play area on-site and taking the
18 children to off-site play areas?

19 MS. DIERDRE WRIGHT: We use
20 neighborhood parks and playgrounds almost
21 exclusively for our morning play time, because,
22 to be frank, the backyard isn't all that big

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1 or exciting and so to keep children stimulated
2 and interested, we take them to other settings.

3 We use that primarily for the
4 morning. The reason that we very much need to
5 use our backyard for the afternoon is in order
6 to support families picking children up across
7 that two and a half hour span, it really make
8 it far more convenient for the children to be
9 on-site when parents arrive.

10 And so if we are going to
11 neighborhood parks and playgrounds, it's far
12 more complicated to pick children up.

13 VICE CHAIR SORG: I see. So the
14 pick-up happens between 3:00 and 6:00?

15 MS. DIERDRE WRIGHT: Yes, 3:30 and
16 6:00.

17 VICE CHAIR SORG: Whatever, 3:30
18 and 6:00.

19 MS. DIERDRE WRIGHT: Yes.

20 VICE CHAIR SORG: Okay.

21 MS. DIERDRE WRIGHT: Yes.

22 VICE CHAIR SORG: Thanks.

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1 MS. DIERDRE WRIGHT: Yes.

2 CHAIRPERSON JORDAN: Well, I'm
3 confused. I thought they had to go out in the
4 afternoon between 3:30 and 6:00.

5 MS. DIERDRE WRIGHT: They do. Yes.

6 CHAIRPERSON JORDAN: No, no, no.
7 That's not -- these children that you have that
8 are picked up between 3:30 and 6:00, right?

9 MS. DIERDRE WRIGHT: Yes.

10 CHAIRPERSON JORDAN: When do they
11 arrive?

12 MS. DIERDRE WRIGHT: Between 7:00
13 and 9:30 a.m.

14 CHAIRPERSON JORDAN: Okay. So
15 between 3:30 and 6:00 is when they go out for
16 afternoon play or whatever?

17 MS. DIERDRE WRIGHT: It's part of
18 the afternoon educational program, yes.

19 CHAIRPERSON JORDAN: And is that
20 required by OSSE?

21 MS. DIERDRE WRIGHT: Yes.

22 CHAIRPERSON JORDAN: Okay. And so

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1 they go out from 3:30 to 6:00 and sometime when
2 they are outside, their parents -- some
3 children's parents will come and get them?

4 MS. DIERDRE WRIGHT: And when they
5 are no longer in our care, licensing standards
6 don't apply.

7 CHAIRPERSON JORDAN: Yes, I
8 understand that.

9 MS. DIERDRE WRIGHT: Okay.

10 CHAIRPERSON JORDAN: Okay. And
11 how far is the outdoor -- the external play area
12 that is off-site that you normally use?

13 MS. DIERDRE WRIGHT: Oh, they are
14 any -- probably about a half mile radius. We
15 use --

16 CHAIRPERSON JORDAN: The closest
17 one is half a mile?

18 MS. DIERDRE WRIGHT: Well, no, no,
19 no. Up to about a half a mile.

20 CHAIRPERSON JORDAN: What's the
21 closest one?

22 MS. DIERDRE WRIGHT: The closest

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1 one would be probably oh two blocks away, if
2 it's accessible.

3 CHAIRPERSON JORDAN: And what is
4 that?

5 MS. DIERDRE WRIGHT: It's a
6 playground behind another Jubilee Housing
7 building.

8 CHAIRPERSON JORDAN: It's a public
9 playground?

10 MS. DIERDRE WRIGHT: No, it's a
11 Jubilee Housing playground.

12 CHAIRPERSON JORDAN: Okay.

13 MS. DIERDRE WRIGHT: Yes.

14 CHAIRPERSON JORDAN: What about
15 public playgrounds?

16 MS. DIERDRE WRIGHT: Oh, we have the
17 Walter Pierce Park on Adams Mill Road would
18 probably -- or the Kalorama Park would be closest
19 for us.

20 CHAIRPERSON JORDAN: And how far is
21 that?

22 MS. DIERDRE WRIGHT: Those are

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1 probably the half mile.

2 CHAIRPERSON JORDAN: Okay. All
3 right. Thank you.

4 MS. DIERDRE WRIGHT: Yes.

5 MEMBER HINKLE: Mr. Chair?

6 CHAIRPERSON JORDAN: Yes, sir.

7 MEMBER HINKLE: Ms. Wright, so I
8 have to ask, so you don't have children from
9 other Jubilee sites coming to use the play area?

10 MS. DIERDRE WRIGHT: Not on our
11 playground.

12 MEMBER HINKLE: Not on this
13 property.

14 MS. DIERDRE WRIGHT: No.

15 MEMBER HINKLE: Okay. When you
16 have all 18 children out there or the maximum
17 of --

18 MS. DIERDRE WRIGHT: Yes.

19 MEMBER HINKLE: -- 18 children, do
20 they use -- it looks like you have play areas
21 on both the north side and the east side.

22 MS. DIERDRE WRIGHT: Yes.

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1 MEMBER HINKLE: Do they use that
2 entire space or do you just focus all the
3 children in one area?

4 MS. DIERDRE WRIGHT: No. They --
5 our licensing requirement is that -- to have
6 that number of children present on the
7 playground. We need to make all of the space
8 available to them.

9 MEMBER HINKLE: Okay.

10 MS. DIERDRE WRIGHT: We are
11 required to have, I believe, 50 square feet per
12 child.

13 MEMBER HINKLE: Okay. Great.

14 MS. DIERDRE WRIGHT: Yes.

15 MEMBER HINKLE: Thank you.

16 MS. DIERDRE WRIGHT: Yes.

17 CHAIRPERSON JORDAN: Any more
18 questions for the applicant on anything from
19 the Board? Yes, I think we did ask her. But
20 go ahead, ask her.

21 VICE CHAIR SORG: I just noted, I
22 guess, to Ms. Roddy the hours aren't addressed

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1 in the original order and conditions.

2 MS. DIERDRE WRIGHT: I just --

3 VICE CHAIR SORG: Is that something
4 that you want to have addressed as a potential
5 following approval or leave it alone? Because
6 if it's not addressed, then, you know --

7 MS. RODDY: Right. It would -- if
8 you go back to the transcripts, we discussed
9 it and somehow it didn't end up in the language,
10 but it had been approved for a 24 hour period
11 with the base time of 7:00 to 6:00 p.m. And
12 we would like to keep that, the same 24 hour
13 period approval.

14 VICE CHAIR SORG: Well, if it's in
15 just in the transcripts, but not in the order
16 or the conditions, then it's not necessarily
17 approved, but it's not addressed, right? So
18 it is --

19 MS. RODDY: I believe that the
20 motion actually had accepted it.

21 VICE CHAIR SORG: Okay.

22 MS. RODDY: And so there was --

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1 VICE CHAIR SORG: Then that's
2 something that we should look at.

3 CHAIRPERSON JORDAN: Well, it needs
4 to be in the order.

5 VICE CHAIR SORG: Right.

6 CHAIRPERSON JORDAN: And if it's
7 not in the order, then we -- and it's not --
8 if it's -- is it in the C of O? It's in the
9 C of O?

10 MS. RODDY: Yes.

11 VICE CHAIR SORG: So I'm saying in
12 a potential additional order that's something
13 that we would want to address, I think, in the
14 conditions is where we usually do it.

15 CHAIRPERSON JORDAN: If we get
16 there, yes. Ms. MacMurray?

17 MEMBER MacMURRAY: Thank you, Mr.
18 Chairman. I have one quick question. Noticing
19 the size, what happens in the winter hours or
20 the dark hours during those time periods as it
21 starts to get -- you know, we start to lose
22 daylight? What do you do with the children

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1 then?

2 MS. DIERDRE WRIGHT: We have a
3 multi-purpose room that is larger and down the
4 hall from the regular classrooms and we take
5 children there for gross motor play. So they
6 just -- the requirement is that they have an
7 opportunity to, you know, do more physical
8 activities.

9 MEMBER MacMURRAY: So then in the
10 winter do they go out at all?

11 MS. DIERDRE WRIGHT: Oh, yes.

12 MEMBER MacMURRAY: Oh.

13 MS. DIERDRE WRIGHT: They go out to
14 very, you know, low temperatures, yes. In
15 appropriate clothing, yes.

16 MEMBER MacMURRAY: Thank you.

17 MS. DIERDRE WRIGHT: Yes.

18 CHAIRPERSON JORDAN: So does the
19 requirement, is that the physical time or does
20 it require outdoor time?

21 MS. DIERDRE WRIGHT: It is --
22 outdoor time is the --

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1 CHAIRPERSON JORDAN: Standard?

2 MS. DIERDRE WRIGHT: -- standard.

3 Then there are also weather conditions that
4 will supersede. And that includes lightness,
5 yes.

6 CHAIRPERSON JORDAN: Okay.

7 MS. DIERDRE WRIGHT: Yes.

8 CHAIRPERSON JORDAN: Mr. Hood or
9 Ms. Sorg, any other questions? Mr. Hinkle?

10 Let me turn now to the Beverly
11 Cooperative and ask if you want to ask questions
12 of the applicant? This is the ask question
13 point, not make statements. You ask questions.

14 MR. LELAND: Will we have an
15 opportunity to ask questions after we make our
16 statements?

17 CHAIRPERSON JORDAN: No, you will
18 not.

19 MR. LELAND: No.

20 CHAIRPERSON JORDAN: So you want to
21 probably ask questions of the applicant that
22 is something you are trying to show, that you

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1 want us to understand. And I thought earlier
2 there was a question about something that was
3 not what it was or something. You mentioned
4 that.

5 MR. LELAND: I'm not sure if this
6 is a question, but we can certainly ask about
7 this alleged sound fence. It was made -- and
8 also, the business about not getting in touch
9 with the Jubilee over the last year or so after
10 the sound fence was built. Is that --

11 CHAIRPERSON JORDAN: So you are
12 asking? You want to ask a question about that?
13 Is that what I understand?

14 MS. DEVOE: I guess --

15 CHAIRPERSON JORDAN: Yes?

16 MS. DEVOE: -- we want to address
17 that statement, I think.

18 CHAIRPERSON JORDAN: You will have
19 time for presentation.

20 MR. LELAND: Okay.

21 MS. DEVOE: Okay.

22 CHAIRPERSON JORDAN: After --

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1 MR. LELAND: Okay.

2 MS. DEVOE: Okay.

3 CHAIRPERSON JORDAN: See, that's
4 what I was trying to say before when we talked
5 about this. Do you want to make statements,
6 you simply have the right to make a statement.

7 Being a party, you have the right to also ask
8 questions. And I think you raised -- at that
9 time, there was a question that you really
10 thought that you wanted to ask the appellants.

11 And if it's not, that's okay. Don't -- I'm
12 not pressing you on it. I'm just trying to help
13 you here.

14 MR. LELAND: I guess what I was
15 trying to clarify for -- in my mind, was sort
16 of how the thing -- how the hearing proceeds.

17 And so after both sides have made their
18 statements, then is there an opportunity to --

19 CHAIRPERSON JORDAN: No, there is
20 not. After one side makes their presentation,
21 then --

22 MR. LELAND: Okay.

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1 CHAIRPERSON JORDAN: -- you will
2 get -- you are given now the opportunity to
3 cross-examine.

4 MR. LELAND: Okay.

5 CHAIRPERSON JORDAN: Okay. There
6 is nothing then?

7 MR. LELAND: No. Actually, maybe
8 one question of the architect.

9 In what way is this lattice fence
10 doing anything to mitigate sound? It's a
11 lattice fence with some shrubbery on it. It's
12 quite attractive, but it doesn't seem to be too
13 effective in mitigating sound. Can you explain
14 how this fence does that?

15 MR. BONSTRA: Well, the fence
16 itself, the vertical part of it is, I believe,
17 to 7 feet. It's a board and batten fence, so
18 in the way the boards and battens are positioned,
19 it actually has a built-in sound kind of baffling
20 that breaks up sound.

21 I'm not a sound expert, but as an
22 architect, we understand that what we try to

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1 do is break up the sound, so that it doesn't
2 resonate and continue through. It has a canopy
3 as I mentioned, which is a sloping component
4 that we understand does a better job of
5 containing any sound that might be bouncing off
6 the building, you know, up into the atmosphere.

7 And the planting will soften that
8 and break up the sound in the same way as some
9 added feature to this fence. So, you know, we
10 have done a lot of research and we believe that,
11 you know, as Mr. Knight said, we can't contain
12 100 percent of the noise nor would I personally
13 feel that is necessary, because I like the sound
14 of children in a neighborhood and I think that's
15 very important.

16 But nonetheless, we believe that
17 fence has been effective in its design to
18 mitigate sound as much as we can.

19 CHAIRPERSON JORDAN: Let me ask a
20 question on the same line. And it's a good
21 question. I'm glad you raised that. What was
22 the sound/noise level before the fence was put

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1 up and what was it after the fence was put up?

2 MR. BONSTRA: I really can't
3 respond quantitatively in terms of a noise
4 reading. But the fence has been effective in
5 reducing the amount of sound over the original.

6 CHAIRPERSON JORDAN: But how can
7 you say that?

8 MR. BONSTRA: Well --

9 CHAIRPERSON JORDAN: What do you
10 have that proves that?

11 MR. BONSTRA: -- we originally had
12 a chain link fence and so we knew, you know,
13 that the sound was just coming through. There
14 was no protection. So we did the fence
15 initially and then I think the canopy was even
16 added as an extra feature along with the
17 planting.

18 CHAIRPERSON JORDAN: Whose idea was
19 it and who did you consult that said that this
20 type of fencing was going to do what you needed?

21 MR. BONSTRA: Well, we have senior
22 technical people that did a number of research

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1 efforts to find a way to attenuate sound and
2 that was -- that profile was accepted by -- an
3 accepted way to mitigate sound.

4 CHAIRPERSON JORDAN: Was it done by
5 your office?

6 MR. BONSTRA: Yes.

7 CHAIRPERSON JORDAN: And so at your
8 office you have the sound meter readings?

9 MR. BONSTRA: No, we didn't do any
10 meter readings.

11 CHAIRPERSON JORDAN: But the
12 technical people did it?

13 MR. BONSTRA: The technical people
14 did the research into the configuration of the
15 fence under my supervision.

16 CHAIRPERSON JORDAN: Okay.

17 MR. BONSTRA: I --

18 CHAIRPERSON JORDAN: Yes, please.

19 MR. KNIGHT: We have not undertaken
20 efforts, I don't think you have either, to
21 measure the volume of the sound. We have been
22 responding to the neighbors' desire to have it

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1 be lower.

2 CHAIRPERSON JORDAN: So there may
3 be something else out there that will be more
4 effective than what you are doing? Is that a
5 possibility? I mean, if we're doing it, I'm
6 just trying to understand the process, because
7 it sounds like what you are trying to do is try
8 to do something to help mitigate the sound.

9 We had some technical people that
10 made some recommendation how to mitigate the
11 sound, yet, we didn't set a criteria on how we
12 know we achieved any level of that.

13 MR. KNIGHT: So two things. And
14 obviously, Mr. Bonstra can speak more to the
15 technical merits. After his firm surveyed a
16 number of options and presented us with a few,
17 we had a meeting with, I think it was, the board,
18 but a number of residents, and we went through
19 what was the recommended options.

20 And it was the board on board to
21 create the baffling and it was the overhang to
22 try to muffle. And we presented that as the

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1 best solution we could find through research
2 and through the resources available. I mean,
3 I suppose there is a 7 foot limit to how high
4 a fence can be. And I suppose you could build
5 a fence up to the top of both properties and
6 mitigate more sound, but I don't think you can
7 do that feasibly.

8 So through the research, it seemed
9 to be the best option we could bring to the table
10 and it seemed to be accepted by the residents.

11 That was a conversation we had. It was a
12 proposal we made and it was accepted.

13 CHAIRPERSON JORDAN: Okay. Any
14 additional questions?

15 MR. LELAND: Yes. It was made
16 clear to us in these discussions back in 2010
17 that the only thing Jubilee Jumpstart was
18 willing to do was this fence. There were
19 apparently other things that could be done, but
20 they would be too expensive.

21 What I'm wondering or what I would
22 ask is assuming that this -- and it's our

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1 experience that the fence is not all that
2 effective, assuming it's not effective, is there
3 anything else that you would be willing to
4 propose to mitigate sound?

5 MR. KNIGHT: You know, I feel like
6 that's a bit of a loaded question. We did what
7 we thought we collectively wanted to do. We
8 didn't hear any feedback back from the board
9 or any residents in particular noting that there
10 was an ongoing problem.

11 The Single Member ANC Commissioner
12 is a resident of the property. He voted for
13 the ANC approval.

14 CHAIRPERSON JORDAN: Mr. Knight, if
15 you would just respond to his question?

16 MR. KNIGHT: I'm sorry.

17 CHAIRPERSON JORDAN: We don't need
18 an editorial. Just respond to his question.

19 MR. KNIGHT: I'm sorry. I'm new at
20 this, too. I'm trying to do it appropriately.

21 MS. RODDY: Well, I would just point
22 out that we have also provided testimony that

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1 in addition -- obviously, the fence is not
2 satisfying your needs. I haven't heard your
3 testimony yet, but I'm just going to surmise
4 that that's what you will say.

5 But we have limited the number of
6 children who are outside. This is a backyard
7 that could be used 24 hours.

8 CHAIRPERSON JORDAN: Do me a favor
9 first before you get into that dialogue. Just
10 respond to his question.

11 MS. RODDY: Well, I guess, in terms
12 of mitigation, it's not just the actual
13 provision of mitigation. There is other things
14 that they are doing to mitigate is what I'm
15 trying to say.

16 They are limiting the number of
17 children outside. They are limiting the hours
18 that are used. So --

19 CHAIRPERSON JORDAN: Let --

20 MS. RODDY: -- there are other
21 efforts at play.

22 CHAIRPERSON JORDAN: Okay. So are

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1 you and I on the same page? Would you just
2 answer the question, are you willing to look
3 at and do something else is what the question
4 was. And we are on cross-examination. We are
5 not on applicant's testimony, at this point.

6 MR. KNIGHT: If there are any other
7 feasible measures that would improve the
8 situation for the neighbors, we would be open
9 to considering them, as we have been along the
10 whole way.

11 CHAIRPERSON JORDAN: Thank you.
12 Any other questions?

13 MR. LELAND: No.

14 CHAIRPERSON JORDAN: Okay. Any
15 questions from the Board? We will turn now to
16 the Office of Planning.

17 MR. MORDFIN: Good morning, Chair
18 and Members of the Board. I'm Stephen Mordfin
19 with the Office of Planning. And the subject
20 application is in conformance with the criteria
21 for the granting of a special exception to permit
22 a child care center because OSSE would license

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1 the center based on the Certificate of
2 Occupancy.

3 All the children live within the
4 neighborhood and most would be expected to walk,
5 resulting in no unsafe conditions for pick-up
6 and drop-off. Adequate parking would be
7 provided as most teachers would be expected to
8 walk or take public transit.

9 The existing 8 foot fence would be
10 maintained to buffer the noise from the center
11 of -- to the property to the north. From the
12 center to the property to the north. Refuse
13 would continue to be stored in an enclosed
14 structure and suitable services for outdoor play
15 would be provided.

16 And the applicant would make use of
17 off-site play areas accessible by the public
18 -- by a public sidewalk.

19 The application is also in
20 conformance with the criteria for the granting
21 of a variance to reduce the number of on-site
22 parking spaces to zero, because the site was

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1 developed prior to the adoption of the Zoning
2 Regulations with no on-site parking and no
3 accessible space to provide parking.

4 The majority of the students and
5 teachers arrive by means other than private car
6 and the applicant expects that this would
7 continue.

8 And the granting of a variance would
9 not result in harm, substantial harm to the
10 Zoning Regulations as the majority of the
11 children and staff live within the neighborhood.

12 Therefore, the Office of Planning
13 recommends approval of the application subject
14 to the conditions contained within the report.

15 Thank you.

16 CHAIRPERSON JORDAN: Any
17 questions, Board, for the Office of Planning?
18 Questions by the applicant?

19 MS. RODDY: No.

20 CHAIRPERSON JORDAN: The Beverly
21 Cooperative, questions for the Office of
22 Planning?

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1 MR. LELAND: No.

2 CHAIRPERSON JORDAN: Do we have the
3 member of the ANC here? I think we have a letter
4 from the ANC, if I'm not mistaken, in support.

5 I'm trying to find it. Yes, we do have a letter
6 from the ANC, yes, Exhibit 29, that provided
7 by voice vote support for both the variance and
8 the special exception.

9 The Department of Transportation,
10 is there anyone from the Department of
11 Transportation? Okay. I think we have a
12 letter from the Department of Transportation
13 that makes some notations regarding this
14 particular application. And they recommended
15 that the applicant employ an improved child
16 drop-off and pick-up operation to ensure the
17 vehicles impact.

18 Are you familiar with that
19 recommendation? And what, if anything, are we
20 doing in regards to that?

21 MS. RODDY: Jubilee is going to work
22 with the District Department of Transportation

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1 to have a drop-off period or two parking spaces
2 for one hour in the front of the building, that
3 would reserve those spaces for a one hour period
4 for all parents to pull in and drop-off their
5 children.

6 As Ms. Wright had testified earlier,
7 it's approximately a 10 minute process, so the
8 cars would be in and out.

9 CHAIRPERSON JORDAN: Okay. Are
10 there any others in the audience that are in
11 support of this application?

12 MR. GIBSON: Yes.

13 CHAIRPERSON JORDAN: Yes? If you
14 want to come forward? Do you want to say
15 anything or you just wanted to acknowledge that
16 you're in support? Yes, please, come forward,
17 please.

18 And I'm trying to remember, did you
19 get sworn in? Okay. Yes, say your name for
20 the record, please.

21 MR. GIBSON: Okay. My name is Josh
22 Gibson. I'm a resident at 1791 Lanier Place,

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1 N.W.

2 CHAIRPERSON JORDAN: Yes.

3 MR. GIBSON: Just first a bit about
4 my sort of bona fides, I'm a former three term
5 ANC Commissioner, ANC-1C07. During a portion
6 of that time, I chaired the ANC's Planning,
7 Zoning and Transportation Committee.

8 I founded the Neighborhood Business
9 Improvement District. I co-founded the
10 neighborhood Listserve, founded the
11 neighborhood Heritage Trail, literally,
12 co-authored the book Adams Morgan: Then and Now.

13 I know Adams Morgan.

14 More importantly, I met my wife in
15 this physical site, in its previous incarnation
16 when it was the Sitar Art Center. I met my wife
17 in this facility, in this space. And my
18 daughter currently attends and I'm very proud
19 that she attends Jubilee Jumpstart.

20 I'm here, obviously, to speak in
21 support of this application. I think it is an
22 extremely minor thing to ask in exchange for

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1 having a neighborhood resource of this
2 importance. This is a true gem, a true resource
3 to our community.

4 I think the minor variances and
5 exceptions that are requested, in exchange for
6 those, you are getting a dynamic educational
7 space where children of different races and
8 different incomes come together, play together,
9 learn together. You have children recreating
10 together, fighting the health problems that
11 afflict our community.

12 I have to say, in all candor, I'm
13 speaking as an individual, as a parent and not
14 on behalf of the center, a decade of civic
15 activism in Adams Morgan has taught me one thing,
16 I oppose opponents. Anyone who brings
17 something positive to our community, who creates
18 something new and tries to bring positive
19 change, no one is ever going to agree with every
20 element of how this is done.

21 And a decade of civil service has
22 taught me that I don't care if it's a bar with

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1 a bad liquor license. Someone is creating
2 something in our community and there is always
3 going to be someone who is going to want to
4 micromanage the logistics of how a positive
5 change comes about.

6 And I am a little bit frustrated that
7 we are here in the first place needing to defend
8 this magnificent neighborhood asset on what
9 seemed, to me, a number of micromanaged details.

10 I feel to a certain degree that folks
11 that are opposed to the center's continued --
12 let's just be clear. The things that the center
13 is asking for, the center needs, the center
14 requires. Working around some of the sound and
15 parking issues would be extremely costly.

16 Any of my tuition dollars, I'm one
17 of the parents that pays full rate at the center,
18 any dollar of my education spending that is --
19 goes to deal with transportation alternatives
20 or sound muffling is a dollar that is not going
21 to my daughter's education. And I think that
22 is a shame.

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1 I just think that this is such a
2 magnificent resource, this is the least the city
3 can do to support the center. And folks that
4 are opposed to these minor changes, really these
5 are folks that if the streets were paved with
6 gold, they would complain about the glare and
7 that it is slippery.

8 So I just really can't say strongly
9 enough how much I think that the Board should
10 support these changes and indulge these minor
11 requests.

12 CHAIRPERSON JORDAN: Thank you.

13 MR. GIBSON: Thank you.

14 CHAIRPERSON JORDAN: Thank you.
15 Appreciate your comments. And your name,
16 please?

17 MR. MARRET: My name is Jean-Luc
18 Marret and I swore with my friend here, I live
19 2512 Ontario Road, just in front of the school
20 main entrance and I failed to mention that my
21 daughter is in the school.

22 We could have afford to live in the

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1 neighbor, in the outside of a city and to --
2 we could afford the Montessori School or one
3 of these ritzy schools in the neighborhood, but
4 we wanted to see my daughter living in the local
5 area, playing with local kids. And for that
6 reason, we found this school and we are very
7 happy with that school.

8 But the noise problem, I think the
9 alternative is not living in a cemetery or living
10 in a very noisy place. I think -- I see this
11 school as the only family spot we have in the
12 neighborhood.

13 The main noise problem we might have
14 here are Friday evening and Saturday evening,
15 because, as you know, Adams Morgan can be a very
16 funky place, right? That's the way it is.

17 And even the parents coming to take
18 the kids with the cars, that could be worse.
19 I don't see that as a noise problem. Most of
20 the time, I walk from my home. And so I see
21 all of these guys taking their children and they
22 have -- they don't have NASCAR or sport cars,

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1 number one.

2 Number two, they drive very slowly
3 and safely, because they take their daughter
4 or their kids, you know, and are very
5 responsible. And so they are not very noisy.

6 And since the kids are going out from the
7 school, not collectively, but one-by-one,
8 that's less noisy than what we have, for
9 instance, in my country in France where the older
10 kids are going at the same time.

11 So all in all, I think we should
12 support this organization and this school,
13 because that's socially useful, number one.

14 And, number two, that's the --
15 again, that's the only family spot we have in
16 the neighborhood. Thank you.

17 CHAIRPERSON JORDAN: Very good.
18 Thank you.

19 MR. GIBSON: And I'm sorry, I wanted
20 to make one additional point of clarification
21 on comparison of on-site recreation and off-site
22 --

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1 CHAIRPERSON JORDAN: I'm sorry,
2 excuse me, we have -- you have already extended
3 your time.

4 MR. GIBSON: Oh, I apologize.

5 CHAIRPERSON JORDAN: Okay. No,
6 thank you. We heard everything you said.
7 Appreciate it. Any questions from anybody?
8 Let's now turn to the Beverly Cooperative to
9 have their testimony, please.

10 MR. LELAND: Thank you. My name is
11 Henry Leland. I am currently the treasurer of
12 the Beverly Court Cooperative, which is a
13 nonprofit, non-stock membership cooperative.
14 It was founded by the tenants of the previous
15 rental building back in 1980 and we are
16 self-governing and it's a one member, one vote,
17 regardless of the size of the apartment.

18 With regard to the zoning case, the
19 -- I want to make it real clear that we are not
20 objecting to the establishment of the center
21 or the continued existence of the center. In
22 fact, we support that.

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1 Our problem is simply with the
2 noise. Okay. If there is some way that the
3 noise -- they can -- I don't see there is any
4 way, at least currently, that the noise can be
5 controlled in the place that it is.

6 And so what we are asking is that
7 the playground component of the facility be
8 closed, basically. The primary issue for us
9 is the high volume of noise that occurs almost
10 daily in the outdoor play area, which our
11 residents who live on the site -- we are directly
12 north, a few feet from the building and the
13 playground. And you can't avoid the noise.

14 The noise problem that currently
15 exists because of the day care center is an
16 unreasonable and unfair infringement on the
17 daytime lives of the residents of Beverly Court
18 and as such should not continue to be permitted
19 by the District.

20 Many of these residents are either
21 retired or they work from home and so it's a
22 little uncomfortable with the level of noise.

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1 Over the course of 2010, the board
2 of directors of the Beverly Court and some other
3 residents did meet with Jubilee Jumpstart, Joe
4 Collier and with Jim Knight, by phone, email
5 and face-to-face meetings. Jubilee Jumpstart
6 finally proposed the sound fence that we talked
7 about.

8 It was supposed to dampen the noise.

9 The fence has not been effective at all in
10 cutting down on the noise. And Jumpstart also
11 promised to plant a thick layer of vegetation
12 on their side of the fence to help further noise
13 abatement and, as Mr. Knight said here, that
14 hasn't worked out yet and they are still working
15 on it.

16 We ask that the Zoning Board not
17 grant this exemption from the law, because the
18 zoning laws were instituted to allow the city
19 to grow reasonably, to allow its citizens to
20 live with the expectation of a reasonable
21 environment.

22 We ask the Board to act in a fair

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1 manner and not give preferential treatment to
2 one group that significantly causes significant
3 harm to the groups of neighbors.

4 If the Board of Zoning Adjustment
5 does decide to grant the exemption, we ask that
6 it make Jumpstart sign an agreement to take the
7 children to neighborhood parks for their outdoor
8 play, rather than letting them use the narrow
9 space adjacent to the day care center. Thank
10 you.

11 CHAIRPERSON JORDAN: Yes, sorry,
12 Ms. Sorg?

13 VICE CHAIR SORG: Thank you, Mr.
14 Chairman. Before we get into your arguments
15 and your feelings about the adverse impacts that
16 you feel from the center, can you tell me how
17 many units are in the Beverly Court Cooperative?

18 MR. LELAND: 38.

19 VICE CHAIR SORG: 38. Okay. And
20 did the cooperative vote to bring this
21 opposition to the center? And have the number
22 of people on this letter represent them? Was

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1 there a vote taken?

2 MR. LELAND: The board of -- I think
3 the board --

4 VICE CHAIR SORG: I have lived in
5 cooperatives before and you've got to vote on
6 a lot of stuff.

7 MS. DEVOE: Both the boards of
8 directors at the -- both of these times did vote
9 to --

10 VICE CHAIR SORG: What do you mean?
11 I don't understand what you mean exactly by
12 both of these times.

13 MS. DEVOE: Well, we objected the
14 first time or we tried to object the first
15 go-round.

16 VICE CHAIR SORG: Yes. Oh, in
17 2006?

18 MS. DEVOE: Yes, yes.

19 VICE CHAIR SORG: Okay.

20 MS. DEVOE: And this time as well.
21 And many of the people who live on the north
22 side or south side of our building have been

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1 involved in these discussions for the past two,
2 three years.

3 VICE CHAIR SORG: So did the
4 cooperative vote to bring this opposition to
5 this case?

6 MR. LELAND: The cooperative in its
7 entirety --

8 MS. DEVOE: No, did not.

9 MR. LELAND: -- did not vote. But
10 the board of directors did.

11 VICE CHAIR SORG: And that's in
12 terms of your rules and procedures. Is that
13 how you do business in this type of way? I just
14 want to make --

15 MR. LELAND: Yes, yes.

16 VICE CHAIR SORG: -- make sure that
17 we have the correct standing.

18 MR. LELAND: Except on the budget.
19 On the budget, everybody votes.

20 VICE CHAIR SORG: Okay.

21 CHAIRPERSON JORDAN: Yes, the board
22 is responsible for the management of the

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1 cooperative.

2 MR. LELAND: Yes, yes.

3 CHAIRPERSON JORDAN: In the
4 interest of the overall cooperative.

5 MR. LELAND: It's a tenant-managed
6 cooperative or resident-managed cooperative.
7 I'm sorry.

8 CHAIRPERSON JORDAN: Any other
9 questions? Well, let me ask. What suggestions
10 -- or let me go back. Have you had anyone
11 examine the noise issue and try to make
12 recommendations to you to make to Jubilee?

13 MR. LELAND: No.

14 CHAIRPERSON JORDAN: Okay. Have
15 you taken any measurements to know what kind
16 of noise and sound is coming out yourselves?

17 MR. LELAND: Not technical --

18 MS. DEVOE: No. Not technically,
19 no.

20 MR. LELAND: -- measurements, no.

21 CHAIRPERSON JORDAN: Since the time
22 that they fencing and the canopy has been put

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1 up, have you discerned any difference in the
2 noise level?

3 MS. DEVOE: None, no.

4 CHAIRPERSON JORDAN: And prior to
5 today or prior to this application being
6 submitted, and after the canopy and fence went
7 up, had you had any dialogue with Jubilee
8 regarding the noise issue continuing?

9 MR. LELAND: No. And again, the
10 reason that we haven't had that dialogue is
11 because it was made very clear to us that, again
12 back in 2010 when we were talking, that was all
13 they were going to do. And so it just didn't
14 make any sense to say gee, it's not working,
15 because what was going to happen? They would
16 say oh, okay, gee, it's not working.

17 CHAIRPERSON JORDAN: Okay.

18 MR. LELAND: It wasn't because we
19 were satisfied that we didn't object.

20 CHAIRPERSON JORDAN: Okay. Any
21 other questions?

22 MS. DEVOE: Also, nobody from

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1 Jubilee came back to us and said hey, how do
2 you love that fence? And also, as we have said
3 before, the vegetation never materialized. We
4 just felt like they had done what they were going
5 to do and washed their hands of our complaints.

6 CHAIRPERSON JORDAN: Okay. Any
7 other questions? Mr. Hood?

8 MR. HOOD: Chairman, I just wanted
9 to ask, you mentioned in your testimony that
10 your recommendation was to close it and let the
11 kids to go an area playground. I'm so glad when
12 I was that age nobody closed the playground on
13 me.

14 But let me just ask, is there a way
15 -- to you still think there is a way that you
16 can maybe revisit and work with Jubilee Housing
17 to see if there is some kind of measurement
18 besides the fence and what other else you can
19 do to try to help minimize the noise?

20 I think Ms. Roddy was going there
21 in her testimony. Well, when she was talking
22 to the Chairman about some of the other

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1 measurements that are going in place, like less
2 children come out at a certain time. Do you
3 think some of those mitigations can also help
4 offset some of the noise as opposed to close
5 the playground and let them go up the street
6 to the playground?

7 Which may come into a whole other
8 avenue, which is probably not within our
9 jurisdiction. Can you recommend something else
10 besides just close it?

11 MR. LELAND: I don't know if we have
12 the technical capacity to make those kinds of
13 recommendations. So I think the answer is --

14 MR. HOOD: I guess --

15 MR. LELAND: -- no.

16 MR. HOOD: -- I'm not asking you to
17 make a recommendation. What I'm saying is this
18 still could be a work in progress. Because just
19 to close it and send them up the street, that
20 could be harsh. There are other things, the
21 way I see it, where this Commissioner, I mean,
22 this Board Member sees it, other recommendations

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1 that may be detrimental, adverse impact to those
2 young folks, too.

3 CHAIRPERSON JORDAN: Okay.

4 MS. DEVOE: No, I suppose you might
5 be right about continuing to work, but I think
6 our previous experience with working with
7 Jubilee sort of made us leery to agree to
8 continue to work, because I think we were pretty
9 much -- I mean, it took months and months and
10 months for them to come up with this soundproof
11 fence that I can't imagine any -- and then they,
12 you know, built it and there was no, you know,
13 positive effect from it.

14 When we initially started meeting
15 with the then director of Jumpstart, he
16 basically told us, you know, if I was living
17 some place that generated that much noise that
18 I was so unhappy with, I would move. Well,
19 that's also not an alternative for any of us.

20 Many of us are getting old and retired and have
21 fixed incomes, etcetera, and we have been there
22 for 30, 40, 50 years.

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1 MR. LELAND: And can I go? And in
2 terms of being willing to engage in dialogue,
3 we are always willing to engage in dialogue if
4 there is a dialogue. The problem is the
5 dialogue wasn't a dialogue. The dialogue was
6 this is, from Jubilee, what we are going to do
7 and that's it. That's not a dialogue.

8 CHAIRPERSON JORDAN: Yes.

9 MR. HOOD: All right. Thank you,
10 Mr. Chairman.

11 CHAIRPERSON JORDAN: Ms. Sorg?

12 VICE CHAIR SORG: Okay. Thank you,
13 Mr. Chairman. I have to say from the outset,
14 this is really kind of disappointing that these
15 two neighbors have come to this point where it
16 seems like a sidebar conversation could have
17 been had about having the kids play.

18 From my understanding from the
19 record, we are talking about a time between 3:00
20 and 6:00 p.m. when the kids may be outside or
21 they are being picked up and they are playing
22 and laughing or whatever it is that little kids

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1 do.

2 And think about a way instead of
3 having this -- the opposition for the Board to
4 come between a relationship that the Board
5 really can't manage that. And it sounds like
6 you guys need a little bit more effort on both
7 parts to think about how you can work together
8 that it will be better for the residents' living
9 condition as well as having these children here.

10 So I think one of the things that
11 Board Member Hood was trying to say, not
12 necessarily that you have to make
13 recommendations, but continue a dialogue.
14 Whether you set up a weekly or a biweekly time
15 where you meet and you sit down and you revisit
16 to continue, because it seems like it would be
17 a shame to have the kids not have any play time.

18 CHAIRPERSON JORDAN: And let me ask
19 a question. Is there any particular time when
20 the noise is greater? The morning session or
21 the afternoon session?

22 MS. DEVOE: Well, it's been in the

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1 afternoon, that's when the children go out.

2 CHAIRPERSON JORDAN: I thought they
3 went out in the morning also?

4 MS. DIERDRE WRIGHT: No, they
5 don't.

6 CHAIRPERSON JORDAN: They go to the
7 park in the morning? Okay. And the gentleman
8 behind you has been trying to -- are you going
9 to --

10 PARTICIPANT: Well, I just -- a
11 microphone if I may?

12 CHAIRPERSON JORDAN: Well --

13 VICE CHAIR SORG: You cannot talk
14 when you are not --

15 PARTICIPANT: Thank you.

16 CHAIRPERSON JORDAN: That's --

17 PARTICIPANT: I just had --

18 CHAIRPERSON JORDAN: What are you
19 -- the cooperative is already being represented,
20 so --

21 MS. DEVOE: What do you want to talk
22 about?

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1 CHAIRPERSON JORDAN: Yes, but we
2 asked for that, didn't we? Why don't you wait
3 until we ask for parties in opposition. Do
4 that. You can call him as a witness.

5 MS. DEVOE: He just --

6 CHAIRPERSON JORDAN: Well, he can
7 make a statement. Do you want to make a
8 statement? You can make a statement when we
9 ask for parties in opposition. Okay? Thanks.

10 Any other questions by the Board?
11 The applicant want to ask any cross-examination
12 of the cooperative?

13 MS. RODDY: No, thank you.

14 MR. KNIGHT: In the hope that this
15 will be a productive question. We didn't want
16 to? Oh, counsel, wants to hear my question
17 first.

18 CHAIRPERSON JORDAN: It must be a
19 good one. Okay.

20 MR. KNIGHT: No questions.

21 CHAIRPERSON JORDAN: Okay. Where
22 are we? Okay. So now, let's have any persons

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1 in opposition who want to make a statement.
2 Yes, now, it's your turn.

3 MR. McKEVITT: Okay. Thank you.
4 I'm sorry.

5 MS. DEVOE: Here. God, help us.

6 MR. McKEVITT: Thank you very much.
7 The one thing that I --

8 CHAIRPERSON JORDAN: First,
9 introduce yourself for the record, please.

10 MR. McKEVITT: Oh, I'm sorry, yes.
11 I'm Stephen, S-T-E-P-H-E-N, McKevitt,
12 M-C-K-E-V-I-T-T, and at 1736 Columbia Road,
13 Beverly Court.

14 And the one thing that I don't think
15 has been discussed here that was discussed
16 earlier is the actual location of the playground
17 in the rear. You have a plan of it, but, in
18 any case, the playground literally is 8 feet
19 from bedroom windows of Beverly Court and other
20 windows of Beverly Court.

21 And it is really the location more
22 than anything else. A day care center is a

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1 wonderful concept, great for the neighborhood.

2 But it was brought in to a space that was never
3 designed initially as a playground area. It
4 was basically light court space between two
5 buildings.

6 So the side yard of Beverly Court
7 is 8 feet. 2525 Ontario Road is less than 8
8 feet that they are using as a playground on the
9 side. So it's a very, very confined space,
10 that's really the main issue.

11 So we are open to any ideas that,
12 you know, are possible. But as was pointed out,
13 unless we build a 60 foot fence, you know, it's
14 a difficult situation because it was brought
15 in, you know. And I don't know of any solution.

16 I'm open to any, but we have had dialogue,
17 dialogue, dialogue.

18 Now, the last thing, the one other
19 thing I wanted to bring up is that when this
20 initially came up, Jubilee did not come to
21 Beverly Court at all to discuss the situation.

22 We had to find out about it and then go to

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1 Jubilee.

2 And again, that happened this time
3 with the renewal. There was no dialogue. And
4 if I may say personally, after the fence went
5 up, I didn't push for any more discussion,
6 because I didn't know where it would go. You
7 know, we -- the fence is an open lattice fence.

8 I mean, it was done for air circulation as much
9 as anything else. And so it really is hard to
10 say that it's a sound barrier fence.

11 But anyway, I, again, wish the
12 concept -- the concept is wonderful for the
13 neighborhood, but as good District citizens on
14 the other side, we have a difficult situation.

15 So thank you.

16 CHAIRPERSON JORDAN: Thank you very
17 much. Any other persons in opposition? We
18 will turn it now back to the applicant to do
19 a wrap-up for us.

20 MS. RODDY: Thank you. I did want
21 to bring Mr. Knight back just for a quick
22 rebuttal question, if that's appropriate, at

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1 this time.

2 CHAIRPERSON JORDAN: A rebuttal
3 question. I guess it's rebuttal.

4 MS. RODDY: As part of our rebuttal,
5 yes.

6 CHAIRPERSON JORDAN: Go ahead.

7 MS. RODDY: Mr. Knight, how many
8 residential units are in the Jubilee Housing
9 at 2525 Ontario?

10 MR. KNIGHT: The property has 27
11 apartments.

12 MS. RODDY: And if the child
13 development center did not exist and is not
14 operated on the ground floor of that building,
15 would the residents have access to the rear yard,
16 to use of the rear yard?

17 MR. KNIGHT: The rear yard was
18 previously available to general resident use
19 during daylight hours.

20 MS. RODDY: Was there any limit on
21 the number of people who could be out at any
22 one time or the length of period during the

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1 daylight hours that they could use the rear yard?

2 MR. KNIGHT: There really weren't
3 any stated rules that governed the use of the
4 space, but theoretically, any number of
5 residents that would fit.

6 MS. RODDY: Thank you. I'm happy
7 to proceed with our closing.

8 CHAIRPERSON JORDAN: Ms. Sorg had
9 a question.

10 VICE CHAIR SORG: Yes, I just had
11 a quick question for the applicant.

12 I want to understand more about how
13 the outside play area is used. It does look
14 in the plan like it's going around most of the
15 exterior of the north side and the rear of the
16 building.

17 MS. DIERDRE WRIGHT: Yes.

18 VICE CHAIR SORG: And as well as the
19 south side. So from a programming standpoint,
20 sort of where, in which areas, are the children
21 hanging out or recreating? I mean, they are
22 not standing in a line all the way around the

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1 building, I assume.

2 MS. DIERDRE WRIGHT: I'll describe
3 for you that on the, is that, east, the other
4 section is on the east.

5 MR. LELAND: This is on the east.

6 MS. DIERDRE WRIGHT: Yes. On the
7 east portion, that's the larger portion. It
8 is probably two-thirds of the space is over
9 there. That's -- so naturally, that's where
10 more activity happens and more children
11 congregate. It is also where there are some
12 different pavement, the paper blocks and some
13 green space. And so that is where some -- a
14 lot of activity happens.

15 All along the north side is wood
16 chips and mulch, so that it's a soft and very
17 sound absorption material. And it is more for
18 smaller children, because it's got very small
19 climbing and sliding kinds of structures.
20 There are really small things that you would
21 find in a residential backyard.

22 VICE CHAIR SORG: On the north side?

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1 MS. DIERDRE WRIGHT: On the north
2 side.

3 VICE CHAIR SORG: Okay.

4 MS. DIERDRE WRIGHT: And those are
5 placed strategically in kind of almost like an,
6 what's that, obstacle course fashion to prevent
7 running. So children -- there is no straight
8 shot in that section. It's -- they are kind
9 of -- it slows down traffic.

10 CHAIRPERSON JORDAN: But -- are you
11 going?

12 VICE CHAIR SORG: So what happens
13 on the south side?

14 MS. DIERDRE WRIGHT: It's just a
15 sidewalk.

16 VICE CHAIR SORG: Okay.

17 MS. DIERDRE WRIGHT: It's not part
18 of the playground.

19 VICE CHAIR SORG: Okay.

20 MS. DIERDRE WRIGHT: There's a ramp
21 and a sidewalk and some plantings.

22 MR. BONSTRA: It's really egress.

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1 MS. DIERDRE WRIGHT: Thank you.

2 VICE CHAIR SORG: Okay.

3 CHAIRPERSON JORDAN: Let me ask a
4 question. Ms. Sorg, are you going to --

5 VICE CHAIR SORG: Go ahead.

6 CHAIRPERSON JORDAN: Regarding the
7 court, why can't we have play inside the building
8 in the court area?

9 MS. DIERDRE WRIGHT: The court --

10 CHAIRPERSON JORDAN: What is it,
11 yes?

12 MS. DIERDRE WRIGHT: The courtyard
13 is outside.

14 CHAIRPERSON JORDAN: Yes, but
15 inside the -- in the court area.

16 MS. DIERDRE WRIGHT: It's not
17 enclosed.

18 CHAIRPERSON JORDAN: What is --

19 MS. DIERDRE WRIGHT: It's raised
20 and it is not enclosed and it's just not part
21 of the space I pay rent on.

22 CHAIRPERSON JORDAN: It's not

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1 enclosed? It's a court.

2 MR. KNIGHT: It's not contiguous to
3 the Jubilee Jumpstart area.

4 CHAIRPERSON JORDAN: Okay.

5 MR. KNIGHT: And would be difficult
6 to occupy for that reason.

7 CHAIRPERSON JORDAN: Got it.

8 MR. KNIGHT: I think. And one of
9 the internal compromises to the project is
10 residents of the property who aren't in the
11 center, can't use the exterior playground.

12 CHAIRPERSON JORDAN: Got it.

13 MR. KNIGHT: And the internal court
14 is more where that general play can take place.

15 CHAIRPERSON JORDAN: So it's not
16 part of your lease, okay. Good. Can we have
17 -- turn to Beverly Court to give you the
18 opportunity to cross-examine on the rebuttal.

19 To ask a question, if anything, of what Mr.
20 Knight just testified to, but only that. Do
21 you have a question maybe on that?

22 No, you don't have to ask a question.

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1 I'm going to take it that you don't of what
2 he just spoke about.

3 MS. DEVOE: Well, I mean, I do have
4 a question. I think it is a good question that
5 they can't use the court, their court for
6 playground.

7 CHAIRPERSON JORDAN: Are you asking
8 him why they can't use --

9 MS. DEVOE: Yes, why.

10 CHAIRPERSON JORDAN: -- it?

11 MS. DEVOE: Yes. I mean, I heard
12 what he said, but, you know, that's a nicer,
13 squarer space than that little strip of yard.

14 MR. KNIGHT: I think there are two
15 primary elements to that answer. One I spoke
16 to earlier. There is a -- there has been a
17 separation of the two areas so that property
18 residents have somewhere to be and program kids
19 have some where to be.

20 The other is the program and if
21 DeeDee prefers to say this differently, she runs
22 the program, they need control. And so it is

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1 a fenced space. It has much more sort of
2 containment to it and the courtyard could not
3 be managed in the same way.

4 And I'm also being reminded that the
5 courtyard, being that it is two levels up, has
6 different levels of access and is not accessible
7 from the space. They go out of their program
8 area to the playground. In this case, they have
9 a different exercise.

10 CHAIRPERSON JORDAN: Is this a
11 Jubilee owned-building or a managed-building?

12 MR. KNIGHT: Both.

13 CHAIRPERSON JORDAN: Okay. Any
14 other questions? Then we will turn to closing.

15 MS. RODDY: Thank you. We
16 appreciate your attention and your time this
17 morning in hearing this application. And we
18 do appreciate the neighboring property owners'
19 concerns.

20 We don't believe though that there
21 is an expectation of silence in this
22 neighborhood or really anywhere in the District,

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1 but -- at this location. And Jubilee has made
2 a good faith effort to work with its neighboring
3 property in trying to address their concerns
4 with the noise.

5 They testified today that they don't
6 think that it can be resolved with having the
7 program use the outdoor space. And, you know,
8 nevertheless, Jubilee is happy to meet with them
9 on a quarterly basis, if the Board found that
10 appropriate, to maintain a dialogue with the
11 neighbors, so that if any ideas came forward.

12 In the past, the reality is there
13 haven't been any ideas on how to address this.

14 Children are going to go outside. They are
15 going to play and they are going to make some
16 noise.

17 Jubilee has tried to address it by
18 limiting the number of children out at any one
19 time and the hours that they spend outdoors in
20 an effort to reduce any impact on the neighbors.

21 Another reality is that Jubilee is
22 a nonprofit and there are economic factors to

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1 consider in addressing some of these. So there
2 isn't -- there aren't limitless funds to address
3 the noise concerns.

4 But nevertheless, they did make the
5 effort to put the fence in. As far as they were
6 concerned, it had addressed the noise issue that
7 we are, obviously, hearing, but that is not the
8 case. So as I said, they would have to keep
9 a dialogue going with the neighbors going
10 forward.

11 I would just also like to reiterate
12 the Office of Planning, the District Department
13 of Transportation, the Office of the State
14 Superintendent of Education, as well as the ANC,
15 have all supported and recommended approval of
16 this application.

17 You have heard from neighbors say
18 that it is a very appreciated service that
19 Jubilee is providing in the neighborhood. And
20 they would appreciate the continue -- to
21 continue providing this service.

22 So we ask that the Board approve the

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1 application. We believe that the record is
2 replete with the satisfaction of the special
3 exception as well as the variance standards.

4 CHAIRPERSON JORDAN: Okay. Thank
5 you. Let me ask one other questions of Beverly
6 Court.

7 Is this noise constant or it's just
8 periodic, sporadic, how does it happen?

9 MS. DEVOE: Well, it happens in the
10 afternoons for several hours.

11 CHAIRPERSON JORDAN: Okay. All
12 right. In the afternoon. We will close this
13 record on the testimony and the evidence already
14 submitted. I'm going to turn now to the Board
15 to see how we want to deliberate, now or later.

16 VICE CHAIR SORG: Mr. Chairman, I
17 would suggest that in light of the comments which
18 I would echo of Commissioner Hood and Ms.
19 MacMurray, that we would place this on a
20 decision, whatever the next one is, and give
21 these neighbors and community residents time
22 to potentially talk to each other a little bit

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1 more.

2 MEMBER HINKLE: I could agree with
3 Ms. Sorg's suggestion. I think they might be
4 able to talk just a little longer. There might
5 be some solution that comes from that. And I
6 believe Mr. Hood and Ms. MacMurray already
7 weighed in on that.

8 CHAIRPERSON JORDAN: Let's put this
9 on a decision calendar, Mr. Secretary.

10 MR. MOY: Yes, sir, that would be
11 Tuesday, June the 12th.

12 CHAIRPERSON JORDAN: June the 12th?

13 MR. MOY: That's correct.

14 CHAIRPERSON JORDAN: Let's give
15 them some time to work on this before we actually
16 render our decision. They might have -- you
17 know, to give them the opportunity to probably
18 maybe try to work some things out before we make
19 a decision for them.

20 MR. MOY: Okay. Well, the
21 following decision after June 12th would be July
22 10th, sir.

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1 CHAIRPERSON JORDAN: Yes, please.

2 MS. RODDY: I'm sorry. We are
3 currently operating under a temporary
4 Certificate of Occupancy that expires on June
5 30th.

6 CHAIRPERSON JORDAN: On June 30th?

7 MS. RODDY: Yes.

8 CHAIRPERSON JORDAN: Okay. What
9 about June 26th? Okay. Okay. So the 26th?

10 MR. MOY: Yes.

11 CHAIRPERSON JORDAN: Can we do
12 that?

13 MR. MOY: We can make that. The
14 Board can schedule that as a Special Public
15 Meeting, sir.

16 CHAIRPERSON JORDAN: Yes, because
17 we have hearings, yes. Okay. Let's do it the
18 26th. And you are taking Schlater's place, Mr.
19 Hood. You're taking Konrad Schlater's place.

20 MR. HOOD: Yes, sir, Mr. Chairman.

21 CHAIRPERSON JORDAN: Thank you.
22 We will make this June 26th for a Special Public

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1 Meeting to render the decision on this.

2 And let me recommend that the
3 parties have a discussion about maybe coming
4 to something that we could work on and then let
5 us know where you are, because on the 26th, we
6 will make a decision one way or the other where
7 we are and what we are going to do.

8 MR. KNIGHT: Okay. Thanks.

9 CHAIRPERSON JORDAN: Thank you.

10 MR. MOY: Mr. Chairman?

11 CHAIRPERSON JORDAN: Yes?

12 MR. MOY: Before you close this
13 case, if the applicant and parties do file
14 additional information or revisions, is there
15 a deadline where the Board would like these
16 submissions?

17 CHAIRPERSON JORDAN: But I want to
18 make sure there is -- I guess we -- revisions
19 should be submitted -- well, we don't have --
20 can we do it by 14 days? That puts us at what
21 from the 26th? It's the 12th? Seven days, let's
22 do seven days before the meeting, which would

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1 be the 19th, June 19th.

2 Okay. Good for you? Okay. With
3 this, we will close this particular hearing.
4 Thank you. Thank you for coming. Thanks
5 everyone.

6 MR. MOY: The next and final
7 application before the Board in its morning
8 session is Application No. 18350. This is the
9 application of Benson D. Medley, pursuant to
10 11 DCMR 3103.2. This is for a variance from
11 the lot area requirements under ' 401.11, to
12 increase the number of dwelling units in an
13 existing apartment house from three units to
14 four units in the R-4 District at premises 1865
15 Newton Street, N.W., property located in Square
16 2616, Lot 100.

17 CHAIRPERSON JORDAN: Okay. If you
18 would introduce yourself for the record, please?

19 MR. FORD: Vincent Ford
20 representing the owner of the property. I'm
21 with Ford & Associates.

22 CHAIRPERSON JORDAN: Mr. Ford, I

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1 think we pretty much looked at the record in
2 this case. However, you can do a full
3 presentation if you want, but the Board does
4 have some questions that we need to address from
5 that that is absent, in our belief, from my
6 belief, let's say, from your application.

7 MR. FORD: Yes.

8 CHAIRPERSON JORDAN: One, we want
9 you to address where this particular property
10 is and has an exceptional situation or
11 circumstance and the level of practical
12 difficulty. You have seen the Office of
13 Planning's report?

14 MR. FORD: Yes.

15 CHAIRPERSON JORDAN: And to present
16 to us your response to those things. And I don't
17 know if there is anything else that the Board
18 needs other than some of the questions about
19 this particular property. Anyone? So you be
20 sure when you are doing your presentation. Yes,
21 please.

22 VICE CHAIR SORG: Just to make a

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1 little further clarification on your
2 recommendation and tell me if you think this
3 is incorrect, but to understand that and I
4 absolutely agree with the Chair that, you know,
5 the variance test is not really addressed in
6 the original filings and that, you know,
7 obviously that's what we want to hear about.

8 But that, you know, the exceptional
9 situation must be established and it must be
10 related to the practical difficulty.

11 MR. FORD: Yes, right, yes.

12 VICE CHAIR SORG: That's all. I
13 just wanted to further say it.

14 CHAIRPERSON JORDAN: It's absent--

15 VICE CHAIR SORG: Thanks.

16 CHAIRPERSON JORDAN: -- from your
17 application and, right, right, we need to know
18 that which we have addressed that is not in your
19 application.

20 MR. FORD: Right.

21 CHAIRPERSON JORDAN: Just giving
22 you a heads up.

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1 MR. FORD: I'll start off stating
2 that I don't refute anything that the Board --
3 that the Planning Office came up with. I had
4 a great conversation with the staff there and
5 I don't refute anything that they say.

6 Where I'm coming from on this one
7 is that the fact that the -- there are three
8 units in the building currently. The basement
9 area can be setup for an additional unit as an
10 efficiency or a bachelor suite down there.

11 There is off-street parking for
12 full-size vehicles in the rear, so there would
13 be no negative impact on parking.

14 Also, having the unit be a suite with
15 -- not without a bedroom, but a sleeping area,
16 I would see the occupant load at the most being
17 maybe two individuals there. As opposed to
18 having -- the owner of the building does have
19 the ability to connect that space to the space
20 that is on the first floor that is a unit that
21 has a one bedroom, that then you would increase
22 that to a three bedroom possible unit, because

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1 the sleeping area that is defined or shown in
2 the plan is one area and the area that would
3 become the kitchen would then become another
4 sleeping area, because it would meet the
5 requirements for emergency egress and so on and
6 so forth.

7 So that then your load in the
8 building would go from a possible additional
9 two to a possible additional six. And this a
10 person can do by matter-of-right up there. But
11 the owner of the building would rather be able
12 to exercise better control by actually just
13 putting in another unit, thus only allowing a
14 maximum of two down there.

15 We have no opposition from any
16 neighbors nor do we have in support. I think
17 we are just kind of sitting on the side and I
18 have no problems with that.

19 The ANC sees that there is no impact.

20 I think you have a copy. You may have a copy
21 of their statement, their approval. But it is
22 a building that was rehabed some years ago after

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1 sitting for a period of time vacant and the new
2 owner came in and rehabed the building and the
3 space is available without having to make any
4 changes to the exterior to gain entry.

5 There is a separate entrance to that
6 space, front and rear, so there would be no
7 change to the exterior of the building. And
8 there would be no increased parking, as we see
9 it, if we go in with this additional unit.

10 CHAIRPERSON JORDAN: Anything else
11 you want to present to the Board?

12 MR. FORD: That's it.

13 CHAIRPERSON JORDAN: Any
14 questions, Board, to the applicant? Mr.
15 Hinkle?

16 MEMBER HINKLE: Yes, thank you. So
17 the current owner actually renovated the
18 building or was it a previous owner?

19 MR. FORD: No, the current owner,
20 which is the son of the previous owner.

21 MEMBER HINKLE: Okay.

22 MR. FORD: Once the father was

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1 deceased, I think the son ended up with the
2 building and so he came and actually did
3 renovations on the building.

4 MEMBER HINKLE: Is the basement
5 built-out already?

6 MR. FORD: It has been improved, but
7 it's not totally built-out yet, no.

8 MEMBER HINKLE: Thank you.

9 CHAIRPERSON JORDAN: Any other
10 questions? Anyone? I hesitate, Mr. Ford,
11 because I just kind of gave you some -- and I
12 think between Ms. Sorg and I, we talked about
13 where we thought there were some issues with
14 this application.

15 MR. FORD: Yes.

16 CHAIRPERSON JORDAN: And so like I
17 said, we had more to ask to try to get you where
18 you need to be. But let's turn to Office of
19 Planning and then maybe come back to you.

20 MS. BROWN-ROBERTS: Good morning,
21 Mr. Chairman and Members of the Board. I'm
22 Maxine Brown-Roberts representing the Office

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1 of Planning.

2 As you can see from our
3 recommendation in our report, we recommended
4 denial of the application, because the applicant
5 did not meet the uniqueness test, number one,
6 and then the third test also. I have spoken
7 to the applicant on a number of occasions
8 regarding trying to come up with a feasible
9 argument for the uniqueness and we have not --
10 actually, they haven't given me anything.

11 And I haven't heard anything here
12 today, that Mr. Ford has just spoken about, that
13 would change my mind. And therefore, we
14 continue to recommend denial of the application.

15 Thank you.

16 CHAIRPERSON JORDAN: Any questions
17 of the Office of Planning? Anyone? Anyone?
18 Ms. Sorg, did you -- no. Yes, no? Anyone?
19 Thank you for your report.

20 Let me go to the applicant and ask
21 do they have any questions of the Office of
22 Planning?

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1 MR. FORD: No, not really. I think
2 she and I had a great conversation in the past.
3 And I knew what her position would be coming
4 in. And so I have no problems.

5 CHAIRPERSON JORDAN: Okay. Is
6 there any -- the ANC, we received a letter from
7 the ANC, I believe, in this application. And
8 I believe the ANC voted in support to approve
9 this particular variance.

10 Report from Department of
11 Transportation, anyone? Do we have anything
12 from DOT? I don't think so. Yes, we have DDOT
13 and I think they said no objection to the
14 variance request.

15 Are there any persons in attendance
16 that wish to or are in support of the
17 application? Persons in opposition? Mr.
18 Hood, I think that you wanted to ask a question.
19 I saw you reaching. No? Yes, no?

20 MR. HOOD: I was going to comment
21 on DDOT, but I see now. I'm good. Thank you.

22 CHAIRPERSON JORDAN: Okay. Let me

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1 turn it back to the applicant for his closing,
2 but to tell the applicant maybe suggest that
3 you might want to take another look at this or
4 you want to go ahead and close? We're going
5 to give you that opportunity, but we don't think
6 we have reached the standards at this point,
7 so you could either close or you want to continue
8 this?

9 MR. FORD: I will go ahead and
10 close.

11 CHAIRPERSON JORDAN: Okay.

12 MR. FORD: Because I don't think it
13 is -- the site won't change and the conditions
14 up there won't change other than if, indeed,
15 he has -- he only has the right to go in and
16 develop that unit as a second level to the first
17 floor unit. And thus, place in two additional
18 bedrooms, which will then have four additional
19 occupants, which is not necessarily people of
20 age that will not be able to drive.

21 So that will be additional vehicles
22 possibly on the block where opposed to on the

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1 current condition that we are seeking at the
2 motion and may have two additional for which
3 you already have more than enough parking as
4 required for that building.

5 But the site condition won't change,
6 the environment of the building won't change,
7 so that's why I could not say --

8 CHAIRPERSON JORDAN: You're saying
9 it is what it is?

10 MR. FORD: It is what it is. Okay.

11

12 CHAIRPERSON JORDAN: Thank you.
13 Last call for questions. Seeing none, we will
14 close the record. I'm going to now ask the Board
15 for its wishes. Anyone? Do we want to
16 deliberate now?

17 Does anyone have anything to say
18 about this application? Ms. Sorg?

19 VICE CHAIR SORG: I can make a
20 comment here. I think as residents and home
21 owners and business people in the city, I think
22 that we can be sensitive to a lot of the things

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1 that you have testified to, Mr. Ford, I think,
2 our perfectly sensible. Right?

3 I think that some of the
4 eventualities that you are describing with
5 regard to how the building may be used in terms
6 of, you know, in complying with the Zoning
7 Regulations and we can understand some of the
8 negative eventualities that are possible there.

9 Unfortunately, from my opinion here
10 -- so, you know, I think as members of the
11 community, which is totally understandable to
12 those things, and sensitive, but our job here
13 as Board Members is to, you know, make judgments
14 based on the Zoning Regulations.

15 And per my opinion, you know, it's
16 a high standard the variance relief that you
17 are requesting, even though it's not a lot of
18 square feet. It's a high test and I just haven't
19 seen anything in this application that could
20 establish a uniqueness that leads to the
21 practical difficulty that is required.

22 And so I would not be in favor of

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1 granting the application.

2 CHAIRPERSON JORDAN: Any other
3 Board Members? Ms. MacMurray?

4 MEMBER MacMURRAY: Mr. Chairman, I
5 would second Vice Chairman Sorg's motion.

6 CHAIRPERSON JORDAN: Well, she
7 didn't make a motion.

8 MEMBER MacMURRAY: Oh, it's --

9 CHAIRPERSON JORDAN: But we just
10 ditto it. Anyone else? Well, let me add to
11 the record. In examining the record as
12 submitted by the applicant and the opinion of
13 the Office of Planning, taken and giving them
14 great weight in light of also the -- I believe
15 the ANC did weigh in on this one.

16 Yes, giving them great weight, but
17 deferring also to the expertise of the Office
18 of Planning and what we have seen here in
19 testimony that this application is deficient
20 in showing that there is an exceptional
21 situation.

22 The applicant has, in fact, agreed

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1 with the Office of Planning's report that what
2 was contained in there was not objectionable
3 and, in fact, agreed with it. And so we would
4 -- on its fact have seen nothing that we can
5 support in regards to this property that says
6 it's an exceptional situation.

7 The property is of same and similar
8 size as other property in lots in the area.
9 There is nothing particularly unique that has
10 been presented to us. We do understand that
11 the applicant would like to use the basement
12 space, but that still requires it to be proper
13 within the zoning laws and that request then
14 was made by variance.

15 The Office of Planning also is the
16 expert here and as we have seen what the
17 regulations require, it would make this type
18 of variance or this type of use of the property
19 would impair the intent of the Zoning
20 Regulations.

21 And for those reasons, this
22 application would not meet the requirements for

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1 a variance to allow for the 900 square feet
2 variance request for the units.

3 And so in light of the conversation
4 and comments of other Board Members, I would
5 move that we deny this application. You can
6 second now if you want.

7 MEMBER MacMURRAY: Because I was a
8 little premature. Now, I second the motion.

9 CHAIRPERSON JORDAN: Motion made
10 and seconded that we deny this application for
11 the reasons stated. Any additional
12 conversations that we did not have already?

13 All those in favor of denial signify
14 by saying aye.

15 ALL: Aye.

16 CHAIRPERSON JORDAN: Those opposed
17 nay? The motion carries. This is denied.

18 MR. MOY: Staff would record the
19 vote as 5-0-0. This is on the motion of the
20 Chairman Jordan to deny the application
21 requesting variance relief. Seconding the
22 motion is Ms. MacMurray. Also in support of

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1 the motion Mr. Hood, Ms. Sorg, Vice Chair Sorg
2 and Mr. Hinkle. So again, the final vote is
3 5-0-0 to deny.

4 CHAIRPERSON JORDAN: Thank you.
5 We will conclude this hearing.

6 MR. FORD: Thank you very much.

7 CHAIRPERSON JORDAN: Thank you, Mr.
8 Ford.

9 MR. FORD: Yes.

10 VICE CHAIR SORG: Best of luck.

11 CHAIRPERSON JORDAN: Is there any
12 other business that needs to come before the
13 Board for this morning session?

14 MR. MOY: No, sir.

15 CHAIRPERSON JORDAN: Then we stand
16 in recess until 1:00. Thank you.

17 (Whereupon, the Public Hearing was
18 recessed at 11:47 a.m. to reconvene at 1:25 p.m.
19 this same day.)
20
21
22

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

2 1:25 p.m.

3 CHAIRPERSON JORDAN: Since we
4 closed our Public Meeting, now we are going to
5 open our Public Hearing. And so I'll call the
6 Public Hearing to order.

7 We are now starting our Public
8 Hearing here in the Jerrily R. Kress Memorial
9 Hearing Room at 441 4th Street.

10 My name is Lloyd Jordan,
11 Chairperson. To the left of me, all the way
12 to the left, is Marcie Cohen. And to her right
13 is Vice Chair Nicole Sorg. And to my right is
14 Rashida MacMurray, Board Member. And to her
15 right is Jeffrey Hinkle, Board Member.

16 Please be advised that this
17 proceeding is being recorded by a court reporter
18 and broadcast live, webcast live, so we are going
19 to ask that you refrain from any disruptive
20 noises or actions in the hearing room.

21 The Board's hearing procedures are
22 available at the back of the room by the door.

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1 And with that, we will -- I'm going to turn
2 to Mr. Secretary to ask that anyone who is going
3 to testify here today in any of the cases,
4 please, stand and raise your right hand to be
5 sworn or affirmed by the Secretary.

6 (Whereupon, witnesses were sworn.)

7 MR. MOY: Ladies and gentlemen, you
8 may consider yourself under oath.

9 CHAIRPERSON JORDAN: Mr.
10 Secretary, would you call the first case,
11 please?

12 MR. MOY: Yes. Good afternoon
13 again, Mr. Chairman, Members of the Board. That
14 first case before the Board for hearing is
15 Application No. 18329. This is the application
16 of Louis Bell and Florence Jaumotte, pursuant
17 to 11 DCMR 3103.2, for a variance to exceed the
18 limitation on the number of stories under
19 subsection 400.1, to allow the construction of
20 a two-story addition on an existing detached
21 dwelling in the R-1-B District at premises 1415
22 Otis Street, N.E., property located in Square

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1 4004, Lot 25.

2 CHAIRPERSON JORDAN: All right.
3 Would you introduce yourself, please, for the
4 record?

5 MR. BELLO: Mr. Chair, good
6 afternoon. My name is Toye Bello. I'm
7 representing the applicant in this case.

8 MR. BELL: Louis Bell.

9 CHAIRPERSON JORDAN: I'm sorry?

10 MR. BELL: I am Louis Bell. I'm the
11 applicant.

12 MR. CHRETIEN: Hi, I'm Paul
13 Chretien, agent. Hello, I'm Paul Chretien,
14 agent for the applicant.

15 CHAIRPERSON JORDAN: Would you
16 spell your last name for me, please?

17 MR. CHRETIEN: Well, the contractor
18 for the applicant.

19 CHAIRPERSON JORDAN: Would you
20 spell your last name?

21 MR. CHRETIEN: Sorry?

22 CHAIRPERSON JORDAN: Spell your

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1 last name, please.

2 MR. CHRETIEN: C-H-R-E-T-I-E-N.

3 CHAIRPERSON JORDAN: Thank you.

4 All right. I believe that our record is pretty
5 full in this matter. I don't know if the Board
6 has any special needs for a presentation.

7 But before we begin, let me ask
8 Office of Planning, has the Office of Planning
9 taken an additional look or had any thought of
10 changing its recommendation in regards to this
11 property?

12 MR. JACKSON: Good afternoon, Mr.
13 Chairman and Members of the Board, it's Arthur
14 Jackson, D.C. Office of Planning.

15 We reviewed the information that was
16 provided by the applicant.

17 CHAIRPERSON JORDAN: Mr. Jackson,
18 could you pull the microphone closer?

19 MR. JACKSON: I'm sorry. Yes.

20 CHAIRPERSON JORDAN: Because I'm
21 having --

22 MR. JACKSON: Yes. We reviewed the

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1 additional information provided by the
2 applicant. And we acknowledged that his --
3 based on the assumptions made on the work that
4 would be involved in extending the property
5 toward the property line, to the edge of the
6 property line, we think that they have shown
7 that the proposed expansion would be a
8 significant -- have a significant impact on the
9 property with regard to runoff and improvement
10 impacts on the existing site.

11 And as such, we concur that that
12 would present a practical difficulty. What we
13 had asked in our report was that they look at
14 the option of moving -- instead of going
15 perpendicular to the street into the square,
16 going horizontal to the square.

17 And then this is based on the
18 observations made in the reports that were
19 provided by the applicant.

20 CHAIRPERSON JORDAN: Okay. Go
21 ahead.

22 VICE CHAIR SORG: So does that mean

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1 you would change your recommendation?

2 MR. JACKSON: Well, the facts of the
3 case are that we have a two-story building and
4 we have the option of going to a three-story
5 building, which would be consistent with the
6 Zoning Regulations. However, their desire is
7 for additional floor area that would not be
8 available from a three-story building, so as
9 a practical matter, there is a practical
10 difficulty for them going to a larger building
11 on the site beyond the three stories.

12 So we accept that a practical
13 difficulty has been presented in this case.

14 CHAIRPERSON JORDAN: Let me ask.
15 Is there anyone in the audience that opposes
16 this application? Anybody, any opposition to
17 the application? And I believe we don't have
18 any in the record. Any Board Members have any
19 questions about this application or need to hear
20 anything further from the applicant? Yes, Ms.
21 Sorg?

22 Mr. Bello, we don't have an

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1 Affidavit of Posting in the record, is my
2 understanding.

3 MR. BELLO: I believe that the
4 application was posted originally. I didn't
5 think that it needed to be reposted, but I'm
6 glad to look into that and supplement the record
7 if that's the case.

8 CHAIRPERSON JORDAN: What do you
9 mean it was posted originally?

10 MR. BELLO: This is the second
11 hearing for this application. It was postponed
12 originally from its original date of hearing.

13 CHAIRPERSON JORDAN: Did we have in
14 the record before, Mr. Secretary, a Notice of
15 Posting?

16 MR. MOY: Well, from our records,
17 sir, there is no official record either for the
18 current or from before, but my -- our OAG is
19 double checking my work, so I'll know in a few
20 seconds.

21 CHAIRPERSON JORDAN: Mr. Bello, let
22 me ask you, if you would make representation

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1 to the Board whether or not this was posted as
2 required by the regulations?

3 MR. BELLO: Since I can't, because
4 I came into the application post the original
5 filing, notwithstanding, I would like to suggest
6 that the application is common public knowledge
7 because the ANC did hear the case and approved
8 unanimously.

9 So anybody subject to notice also
10 had notice in the course of the ANC consideration
11 of the application.

12 CHAIRPERSON JORDAN: And let me ask
13 the, is it, Mr. Bell, is it?

14 MR. BELL: Yes, Bell.

15 CHAIRPERSON JORDAN: Was notice
16 posted for this relief?

17 MR. BELL: I don't quite understand
18 the question. I mean, I don't understand what
19 you said, posted?

20 MR. CHRETIEN: In the window,
21 public notice in the window. You posted the
22 sign.

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1 MR. BELL: Oh, we had the hearing.
2 We went around the neighbors. We collect
3 letter from the neighbors telling that they were
4 okay with the project and we had a meeting in
5 the neighborhood.

6 CHAIRPERSON JORDAN: So let's do
7 this, Mr. Bello, I will take it as your request
8 to waive the requirements that this is posted.
9 It's your knowledge that it was posted. Did
10 you see it posted, Mr. --

11 MR. CHRETIEN: I thought I saw you
12 had the sign posted in your --

13 MR. BELL: Yes, there was a sign
14 posted.

15 CHAIRPERSON JORDAN: Oh, okay.
16 There you go.

17 MR. BELL: Yes.

18 CHAIRPERSON JORDAN: Okay. Then
19 we will accept that it's posted and we have
20 nothing in opposition. This has been in front
21 of the ANC. This matter has been continued over
22 a couple of times, so that we believe that there

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1 has been proper notification. We will take that
2 from the record, but subsequently, we need you
3 to submit the Affidavit --

4 MR. BELLO: Thank you, sir.

5 CHAIRPERSON JORDAN: -- of Posting.

6 Does the Board have anything that they -- yes?

7 VICE CHAIR SORG: Sure. Thank you,
8 Mr. Chairman. So you heard the further comments
9 of the Office of Planning. I think that the
10 -- oh, first, I should note I was not present
11 at the first hearing, but I have read the record
12 in this case.

13 That being said, the submissions
14 that came in prior to this hearing from the,
15 who was it, civil engineer, Global Green Group
16 as well as your organization, I thought did a
17 pretty good job in filling out the record and
18 answering some of the questions with regard to
19 the variance relief.

20 You heard OP's comments. I think
21 if you could address the necessity or the project
22 with regard to the fourth story and how that

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1 meets the test, I think that would be a place
2 where I still have questions.

3 MR. BELLO: Okay. I mean, clearly,
4 based on the supplemental information provided,
5 the topographical condition of this property
6 is what is directly related to the prohibitive
7 cost of doing a horizontal addition, given what
8 it would take to achieve that.

9 The engineer spoke to the soil type
10 in this neighborhood. And the fact that the
11 soil types do not support good foundations and
12 then it could be a situation where the existing
13 building is affected, if significant excavation
14 takes place.

15 And if you look at the project plans,
16 the front entrance to the building is actually
17 to the west of the property where the addition
18 is suggested. The topographical condition of
19 the property is actually what dictates that the
20 first floor be -- the front entrance of the
21 property be at the west elevation, because the
22 first floor is completely subterranean from the

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1 rear and submerged into the hillside.

2 So the practical difficulty is not
3 only the prohibited cost of the suggested
4 addition, but also the environmental and
5 sensitivity of that proposal.

6 VICE CHAIR SORG: Right. So as I
7 mentioned, I got that part. But you are still
8 asking for further vertical relief than I think
9 what OP is still comfortable with. So they are
10 saying, okay, we understand based on those
11 submissions and I also understand that, if we
12 can't go horizontally, you don't want to, you
13 know, mess around with the soil and put in some
14 more fill, X, Y, Z. We understand that.

15 But you are still asking for another
16 story in the way that it's defined. And so I
17 was hoping you might address that part of the
18 application.

19 MR. BELLO: Well, if you look at the
20 before and after floor plan, the existing
21 building was a two-story, two bedroom house.
22 The fact that the topography rendered the first

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1 floor inhabitable because it doesn't meet the
2 Building Code requirements for that floor to
3 be habitable, that floor is completely devoted
4 to utility and accessory functions.

5 So, in essence, what you have is the
6 near 10,000 square foot lot is no different than
7 a small apartment with two bedrooms. What this
8 addition and the fourth story allows the owner
9 to have is an appreciable floor layout with a
10 guest bedroom and what is essentially an attic.

11 The only reason that the attic is
12 made habitable is because there is a head room
13 requirement. There is a minimum head room
14 requirement under the Construction Code, which
15 necessitates the dormer that is designed.

16 So, yes, in the true sense it does
17 meet the definition for a story, but practically
18 what you have is an attic space that is being
19 made habitable because of the other Construction
20 Code considerations.

21 CHAIRPERSON JORDAN: I was going to
22 ask, Mr. Jackson, let me ask you again to make

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1 sure we are clear. Are you in agreement with
2 the request for relief or you still have an issue
3 with the relief that is requested?

4 MR. JACKSON: Well, what I was
5 explaining was the applicant was stating that
6 they wanted an amount of floor area, like one
7 and a half -- an additional floor and a half
8 for the addition.

9 And what we asked them to do was to
10 consider doing a horizontal addition to the
11 building.

12 CHAIRPERSON JORDAN: Right.

13 MR. JACKSON: They have indicated
14 that they can't do that horizontal addition to
15 the building, which results in both
16 environmental and physical difficulties on the
17 site.

18 CHAIRPERSON JORDAN: Yes.

19 MR. JACKSON: So we accept that
20 there is a practical difficulty for doing a floor
21 and a half that they want, that the applicant
22 is requesting. However, we still note that the

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1 applicant has the option of doing a single floor,
2 which is additional -- which is an option.

3 They want more than that, so they
4 -- we acknowledged that there is a practical
5 difficulty for them getting more than a floor,
6 additional floor under the current regulations.

7 So in other words, we would rather
8 they stay within the Zoning Regulations.
9 However, if they wanted to do more than that,
10 the option of doing something that would be
11 allowed under the Zoning Regulations, which is
12 to extend the building toward the -- into the
13 remaining side yard that is not required.

14 It does present a practical
15 difficulty for their plan.

16 CHAIRPERSON JORDAN: Gotcha.

17 MS. COHEN: Can I ask a question?

18 Mr. Jones, then --

19 CHAIRPERSON JORDAN: Mr. Jackson.

20 MS. COHEN: -- this particular
21 request though is compatible with other houses
22 on the street. Is that correct?

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1 MR. JACKSON: I don't know of any
2 other four-story houses on the street.

3 MS. COHEN: Not the -- as opposed
4 to four -- don't talk about it in four stories.
5 I'm talking about it --

6 MR. JACKSON: The height does seem
7 to be consistent with the height of the other
8 dwellings on the street. Strictly talking
9 about -- I'm just addressing the number of
10 stories.

11 MS. COHEN: Okay. Thank you.

12 CHAIRPERSON JORDAN: Any
13 questions? Any other questions for the
14 applicant, anyone? Well, go ahead.

15 VICE CHAIR SORG: I guess maybe Mr.
16 Bello can tell me. What is it that defines this,
17 why can't you define this as a dormer and not
18 as an additional floor?

19 MR. BELLO: Well, under the Zoning
20 Regulations an attic is not a floor by
21 definition.

22 VICE CHAIR SORG: Right. That's

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1 what I'm asking.

2 MR. BELLO: And what we are saying
3 is that in order for a space to be habitable,
4 the Construction Codes requires a minimum floor
5 to ceiling head room. And the way that is
6 achieved here is through a dormer, which is
7 proposed to the west of the property.

8 The first floor is completely
9 inhabitable, other than for utility space,
10 because of the topographical condition of the
11 property.

12 CHAIRPERSON JORDAN: Ms. Sorg, do
13 you have a follow-up?

14 VICE CHAIR SORG: No.

15 CHAIRPERSON JORDAN: Okay. Any
16 other questions of the applicant? Okay.
17 Office of Planning, anything else you want to
18 add to your report or we can stand on the record?

19 MR. JACKSON: I'll stand on the
20 remainder of the record.

21 CHAIRPERSON JORDAN: Any other
22 public agency? DDOT? No. ANC, please? Good

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1 afternoon and welcome back. Thank you for being
2 so diligent.

3 MR. EDWARDS: Thank you, thank you.

4 CHAIRPERSON JORDAN: Is your mike
5 on? Yes. Is your button on? The green
6 button/

7 MR. EDWARDS: There we go.

8 CHAIRPERSON JORDAN: There we go.

9 MR. EDWARDS: Okay. Yes. The
10 only problem the 5A would have if it goes another
11 height, if you notice in the letter we sent for
12 the recommendation, the ANC voted to support
13 this, but not another inch due to the fact of
14 a series of homes in that area request one thing
15 and end up doing something else and it falls
16 back on the neighbors.

17 The neighbor -- we had to meet and
18 the neighbors agreed to support it, but as they
19 sit home now or at work, they are thinking one
20 thing is going on and if there is another thing
21 going on, then we need to let them know about
22 this.

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1 I myself would definitely like to
2 let them know, because, as you know, this is
3 a year where we are up for reelection and I don't
4 want to lose out because I told them one thing
5 and another thing happened.

6 So we want to be perfectly clear when
7 we leave here today that when we had that meeting
8 is March it's still happening now. So if it
9 needs to be to have another meeting to let the
10 neighbors know exactly about the addition, they
11 are owed that because they live there, they pay
12 their taxes and they should know what's going
13 on. Thank you.

14 CHAIRPERSON JORDAN: So you are
15 comfortable with the relief that they are
16 requesting, as it is, but they can't go another
17 inch?

18 MR. EDWARDS: Well, that's what the
19 -- at the monthly meeting, that's what they voted
20 on.

21 CHAIRPERSON JORDAN: Yes, I
22 understand.

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1 MR. EDWARDS: Our Commissioners,
2 yes.

3 CHAIRPERSON JORDAN: Anyone have
4 any questions of the ANC representative?
5 Anyone? Okay. Any persons in support in
6 attendance who would like to speak? Anyone in
7 opposition? Going once, going twice. Mr.
8 Bello, would you either present rebuttal or
9 closing for us, please?

10 MR. BELLO: Thank you, Mr. Chair.

11 I think we have provided in the record ample
12 evidence of the practical difficulty and the
13 burden on the owner of the property to embark
14 on a matter-of-right project, because it would
15 involve the cutting down of trees and the
16 prohibitive cost of building retaining walls
17 to achieve that objective.

18 There is no opposition to the
19 application. The proposal is -- enjoys
20 approval from the majority of neighbors. And
21 I respectfully request that the Board grant the
22 application. Thank you.

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1 CHAIRPERSON JORDAN: You have a
2 question?

3 MS. COHEN: Mr. Chairman, I believe
4 the record demonstrates that there is a hardship
5 on, you know, building horizontally, so I would
6 move that we approve Zoning Case No. 18329, a
7 variance from number of stories limitation under
8 ' 400, for addition to one-family dwelling in
9 the R-1-B Zone at 1415 Otis Street, N.E.

10 CHAIRPERSON JORDAN: Okay. Well,
11 let me take it this way. Let me close the
12 hearing --

13 MS. COHEN: All right.

14 CHAIRPERSON JORDAN: -- the record.
15 But, no, that's okay, we are right there. And
16 there has been a motion that we approve the
17 relief requested. Is there a second? I'll
18 second it.

19 A motion made and seconded. Any
20 additional discussion?

21 Seeing none, all those in favor
22 signify by saying aye.

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1 ALL: Aye.

2 CHAIRPERSON JORDAN: Those opposed
3 nay? The motion carries.

4 MR. MOY: Staff would record the
5 vote as 5-0-0. This is on the motion of Ms.
6 Cohen to approve the application per the relief
7 being requested, which is the variance under
8 ' 400.1. Seconding the motion Chairman Jordan.
9 Also in support of the motion, Vice Chair Sorg,
10 Ms. MacMurray and Mr. Hinkle. Again, the final
11 vote is 5-0-0 to approve. Motion carries, sir.

12 CHAIRPERSON JORDAN: Thank you, Mr.
13 Moy. And I believe we can have a summary order
14 in this, please. Thanks.

15 MR. BELLO: Thank you.

16 CHAIRPERSON JORDAN: We'll close
17 this particular hearing.

18 MR. BELLO: Thank you.

19 CHAIRPERSON JORDAN: What do we
20 have next?

21 MR. MOY: The next application
22 before the Board is Application No. 18352. This

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1 is the application of C.W.C., Inc. and Mahmoud
2 Abd-alla, Trustee, pursuant to 11 DCMR 3103.2.

3 This is for a variance from the use provisions
4 under subsection 330.5, to allow outdoor display
5 and sale of seasonal merchandise and storage
6 in the rear R-4 Zone portion of a retail hardware
7 store in the CHC/C-2-A and R-4 Districts at
8 premises 1113-1117 Pennsylvania Avenue, S.E.,
9 and 1123 Pennsylvania Avenue, S.E., property
10 located in Square 994, Lots 44 and 838.

11 CHAIRPERSON JORDAN: Can we have
12 the applicant and any other party come to the
13 witness table, please, and identify themselves?

14 MS. OLSON: Good afternoon, Members
15 of the Board and Commissioner Hood, my name is
16 Kate Olson. I'm with the Law Firm of Greenstein
17 Delorme and Luchs and I'm representing the
18 applicant today.

19 MR. WEINTRAUB: Good afternoon.
20 I'm the applicant. My name is John Weintraub
21 and I'm the owner of Frager's Hardware, 1115
22 Pennsylvania Avenue, S.E.

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1 MR. GARRISON: Mr. Chairman, I'm
2 David Garrison from ANC-6B representing the
3 Commission here today on this case.

4 CHAIRPERSON JORDAN: Thank you.
5 What we have here is a request for a variance,
6 a use variance for the use of -- to allow an
7 outdoor display and sell seasonal merchandise
8 and storage in the rear of an R-4 Zone portion
9 of a retail hardware store, that's kind of split
10 zoned with the CHC/C-2-A at the premises of
11 1113-1117 Pennsylvania Avenue.

12 We believe that the -- I believe that
13 the record is pretty full with information as
14 provided in your application and subsequent
15 exhibits presented.

16 I'm going to ask the Board is there
17 anything in particular that we would like the
18 applicant to address prior to us hearing their
19 presentation, if necessary?

20 Ms. Olson, we believe the record is
21 pretty full. If there is something that you
22 want to present to us that is different than

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1 what you have presented in the record already,
2 then you can.

3 We don't necessarily believe it's
4 necessary. I guess from the overview from the
5 Board that you probably put forth a sufficient
6 amount to reach your burden. So I want to give
7 you that opportunity whether or not you want
8 to say something or not.

9 MS. OLSON: Okay. Thank you. I
10 just wanted to reiterate, I know the ANC feels
11 very strongly and we wanted to make sure that
12 the Board knew that the applicant agrees with
13 the ANC that the approval should be contingent
14 specifically on the store's use for display,
15 storage and sale of seasonal merchandise.

16 CHAIRPERSON JORDAN: Is there any
17 questions of the applicant? Anyone? And let
18 me for the record, we have got -- yes, we want
19 you to tell us the names of all the people who
20 have submitted their name in support. No.
21 Which is probably well over 1,000. Enough is
22 enough. We're just getting some more -- no,

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1 enough is enough.

2 Let's turn to Office of Planning.

3 If there is anything that you need to add in
4 regards to what you have already -- different
5 than what you have already have in your record.

6 MR. GOLDSTEIN: Good afternoon, Mr.
7 Chairman. For the record, my name is Paul
8 Goldstein with the Office of Planning. We do
9 not have anything in addition to what has already
10 been submitted, just to restate that we are
11 supportive of the application. And with that,
12 I can take any questions that the Board might
13 have.

14 CHAIRPERSON JORDAN: Any questions
15 for the Office of Planning? Does the applicant
16 have any questions for the Office of Planning?

17 MS. OLSON: No, we do not.

18 CHAIRPERSON JORDAN: Okay. Is
19 Department of Transportation here? I think
20 they already weighed in that they had no
21 objection, I believe. Do we have a
22 representative from the ANC, please?

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1 MR. GARRISON: Thank you, Mr.
2 Chairman. I'm David Garrison, the Commissioner
3 for ANC-6B01. I'm here this afternoon
4 representing ANC-6B to present the Commission's
5 recommendation on this case. You have a copy
6 of my statement in front of you.

7 At its regularly monthly meeting on
8 Tuesday, May 8th, ANC-6B voted 8-0 with one
9 abstention to recommend that the BZA approve
10 the applicant's request for this use variance.

11 In doing so, the ANC formally
12 requested that the Board of Zoning Adjustment
13 condition its order so that the permitted use
14 is explicitly limited to outdoor display and
15 sale of seasonal merchandise and storage
16 accessory to a retail hardware store.

17 And I appreciate the applicant's
18 willingness to accept that condition.

19 The interior of this block is a
20 complicated one with abutting retail and
21 residential uses. And in this instance, a
22 landlocked lot that backs up on several

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1 residential properties.

2 ANC-6B wants to be sure that at some
3 future time if Frager's Hardware were to be no
4 more, perish the thought, that the requested
5 variance in this case could not be converted
6 into some other use that would be inappropriate
7 to the mixed-use circumstances in this block.

8 It would be remiss of me not to
9 reinforce the point likely already made in the
10 buckets of testimonials that Frager's is a
11 highly valued resource around the Capitol Hill
12 community. The owners of Frager's have been
13 and continue to be stalwart supporters of a wide
14 variety of neighborhood causes and activities.

15 In the interest of full disclosure,
16 I should also say that my wife and I are regular
17 and satisfied customers.

18 ANC also notes that all of the
19 abutting neighbors to the back lot, activities
20 of Frager's, signed a letter of support for the
21 request for this use variance, including the
22 owners of the two properties immediately

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1 adjacent to the interior parcel in question in
2 this case.

3 For all of those reasons, on behalf
4 of ANC-6B, I urge the BZA to approve the
5 requested use variance and to condition your
6 order in the manner I have just described.
7 Thank you for the opportunity to appear this
8 afternoon.

9 CHAIRPERSON JORDAN: Thank you.
10 Does the Board have any questions for the
11 representative of ANC? Does the applicant have
12 any questions of the ANC?

13 MS. OLSON: No.

14 CHAIRPERSON JORDAN: Are there any
15 parties here -- oh, I want to be careful of that.
16 Is there anybody in opposition? Anybody --
17 let me go back. Any parties here in support
18 who wish to testify, other than what they have
19 already expressed maybe by letter? Yes,
20 please? And did we swear people in for this
21 hearing? Did you get sworn in? I want to make
22 sure we -- did we? If you would, please.

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1 (Whereupon, witness was sworn.)

2 MR. MOY: Thank you.

3 CHAIRPERSON JORDAN: Thank you.

4 And would you, please, state your name? Make
5 sure your green light is on. Is it lit green?

6 Yes. And would you state your name, please?

7 MR. SINDRAM: Good afternoon, Mr.
8 Chair, all those within the sound of my voice,
9 Michael Sindram, disabled veteran. I served
10 our country more than most. Where is
11 Commissioner Cohen from the Housing Authority?

12 CHAIRPERSON JORDAN: She is not
13 sitting on these hearings. She was here for
14 a very special limited purpose for a case that
15 was continued over.

16 MR. SINDRAM: I see. I see.

17 MR. HOOD: If I had know, Mr.
18 Chairman, that he wanted Commissioner Cohen,
19 I would have sat in the audience until he got
20 through this case, but he didn't make that
21 request earlier.

22 CHAIRPERSON JORDAN: Well, she is

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1 much prettier, you must agree.

2 MR. HOOD: I agree with you, Mr.
3 Sindram.

4 CHAIRPERSON JORDAN: And she has
5 more hair. More reasonable, more intelligent,
6 no. Go ahead. Proceed, please.

7 MR. SINDRAM: Thank you, sir.

8 CHAIRPERSON JORDAN: You have three
9 minutes.

10 MR. SINDRAM: I just became aware
11 of this matter in the Hill Rag, May 2002. And
12 the article is captioned "Frager's deserves
13 zoning relief."

14 I had occasion -- I have occasion
15 to do voluntary work at Potomac Gardens, a rough
16 part of town. And there is a resident there,
17 married, who left their stove on and needed heat.

18 Because of that, the fire department busted
19 her door down. Management refused to replace
20 the door. She lives up in an again rough part
21 of town.

22 So she has no door. She gets no

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1 sleep because she has got to stay up to protect
2 her property, all right? And she has three
3 young daughters in grade school. So Mary has
4 nowhere to turn and I then went to Frager's.

5 And Frager's on a Sunday afternoon,
6 raining and all, took time out from their busy
7 schedule to come and look at Mary's door and
8 took measurements. I mean, I was touched
9 because they could have just said, you know,
10 we will give you a discount, come back, we're
11 busy. No. I mean, they made it a top priority.

12 So the gentleman's name escapes me.

13 I attempted to reach out to the property
14 management. That housing, it's managed by DC
15 Housing Authority and it is a little different
16 animal, because it has a private management
17 firm.

18 So that didn't work. And what
19 Frager did was it was a custom door, they special
20 ordered it and they installed it for her. So
21 I rearranged my scheduled to be here today to
22 put forth what happened. Frager does

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1 outstanding work.

2 And in this instance, I mean, I'm
3 just blown away. So I don't know what else to
4 say, but let me put it this way. You have a
5 house, Mr. Chair, half of it you can live in
6 and half of it is for business. What sense does
7 that make? You know, it's Government at its
8 worst in this instance. Mutual harmonious
9 frustration.

10 So I would beckon the angels of the
11 better half of this Honorable Board to grant
12 hands down the reasonable request that has been
13 made. And even though Mary is not here
14 physically nor her daughters, in spirit she
15 certainly is and her gratitude is. Thank you,
16 thank you.

17 CHAIRPERSON JORDAN: We appreciate
18 it and thank you so much for rearranging your
19 schedule and coming down. That is --

20 MR. SINDRAM: You're welcome.

21 CHAIRPERSON JORDAN: Thank you.
22 Appreciate it.

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1 MR. SINDRAM: And if I may, Mr.
2 Chair, in light that the article really says
3 in a nutshell what I and, obviously, countless
4 of others have said, I would like to pass it
5 up and it be made part of the record.

6 CHAIRPERSON JORDAN: If you would
7 give it to the Secretary, that would be great,
8 please.

9 MR. SINDRAM: Will do. Thank you
10 for the opportunity to speak. And good to see
11 you, Commissioner Hood.

12 CHAIRPERSON JORDAN: Thank you very
13 much. We really appreciate it. Oh, before you
14 leave, any questions from the Board to Mr.
15 Sindram? Sindram is it?

16 MR. SINDRAM: Sindram.

17 CHAIRPERSON JORDAN: Does the
18 applicant have any questions?

19 MS. OLSON: No.

20 CHAIRPERSON JORDAN: All right.
21 Thank you. We're good. We appreciate it.
22 Thank you.

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1 MR. SINDRAM: Thank you.

2 CHAIRPERSON JORDAN: Yes.

3 MR. SINDRAM: And, Mr. Chair, I
4 would conclude this is in a pursuit of right
5 reason and fairness, justice. I didn't say
6 justice. Thank you, sir.

7 CHAIRPERSON JORDAN: Thank you.
8 Are there any persons in the audience in
9 opposition to this application? Then we will
10 move back to the applicant to close if there
11 is something you think is necessary to be said.

12 MS. OLSON: Thank you. Given that
13 there is no opposition, the clear set of
14 conditions that are unique to the property, the
15 undue hardship to the applicant and the fact
16 that the requested relief does not harm the
17 public, I respectfully request a Bench decision
18 and summary order. Thank you.

19 CHAIRPERSON JORDAN: All right.
20 Thank you. I'm going to turn to the Board one
21 more time and ask them if there is anything that
22 the Board needs to present? Does the Board have

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1 a question, if they need to ask anything any
2 more?

3 With that, then we will close the
4 record on this hearing and let's find out if
5 the Board is ready for any level of deliberation.

6 I believe we are.

7 I believe based upon the record, the
8 applicant has satisfied the burden proving that
9 the elements necessary for a use variance from
10 330.5 has been made to allow for an outdoor
11 display and sale of seasonable merchandise and
12 storage area in the rear portion of the property.

13 The Board giving great weight to the
14 Office of Planning and great weight for -- to
15 the ANC as they have filed reports in the record.

16 It's substantial about the applicant meeting
17 the criteria and the Board has reviewed this
18 record. And, therefore, the Board would
19 conclude that the applicant has met his burden
20 of proof that there exists an exceptional
21 situation or condition related to the property
22 that creates an undue hardship for the applicant

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1 to use the property in compliance with the Zoning
2 Regulations.

3 And after relief will not grant
4 substantial -- will not provide a substantial
5 detriment to the public good and not impair the
6 Zoning Regulation or zoning intent.

7 With that, I would move that the
8 Board approve the use variance requested by the
9 applicant with the special condition that it
10 is for the outdoor display and sale of seasonal
11 merchandise and storage in the rear portion of
12 that property.

13 VICE CHAIR SORG: Second.

14 CHAIRPERSON JORDAN: Motion made
15 and seconded. Are there any questions, any
16 discussion?

17 Seeing none, all those in favor
18 signify by saying aye.

19 ALL: Aye.

20 CHAIRPERSON JORDAN: Those opposed
21 nay? The motion carries. Mr. Secretary?

22 MR. MOY: Yes, sir. Staff would

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1 record the vote as 5-0-0. This is on the motion
2 of Chairman Jordan to approve the application
3 from the use variance under 330.5. Seconding
4 the motion Vice Chair Sorg. Also in support
5 of the motion Mr. -- Chairman Hood, Ms. MacMurray
6 and Mr. Hinkle. Again, the final vote is 5-0-0.
7 The motion carries.

8 CHAIRPERSON JORDAN: And, Mr.
9 Secretary, we can do a summary order with this,
10 but I want to be sure we emphasize the fact of
11 the use that was approved. The use.

12 MR. MOY: Yes, sir, yes, sir.

13 CHAIRPERSON JORDAN: Highlight it.

14 MR. MOY: Yes, indeed. Thank you.

15 CHAIRPERSON JORDAN: Thank you.
16 Then we -- thank you very much for coming in.
17 That's good. We will close your hearing.

18 MR. MOY: The next application
19 before the Board for Public Hearing is
20 Application No. 18354. This is the application
21 of Maria Naranjo, pursuant to 11 DCMR 3104.1,
22 for a special exception to allow a child

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1 development center. This is for 12 children
2 and five staff persons under ' 205 in the R-3
3 District at premises 2909 North Capitol Street,
4 N.E., property located in Square 3500, Lot 37.

5 CHAIRPERSON JORDAN: Welcome.
6 Thank you. Didn't we see you before? No.
7 18354. Would you, please, introduce
8 yourselves?

9 MS. SHIKER: Yes. Good afternoon,
10 Board. My name is Christine Shiker with the
11 Law Firm of Holland & Knight. I'm joined to
12 my left by Kate Bagwell, also of Holland &
13 Knight. And I'll have my clients introduce
14 themselves.

15 MS. NARANJO: Hi, I'm Maria
16 Naranjo, applicant.

17 CHAIRPERSON JORDAN: Ms. Ranco?
18 Say your last name again.

19 MR. GALLEG0: Naranjo, N-A- --

20 CHAIRPERSON JORDAN: Oh, Naranjo.
21 Okay. Spell it for me.

22 MR. GALLEG0: N-A-R-A-N-J-O.

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1 CHAIRPERSON JORDAN: One more time
2 spell it. N-A-?

3 MR. GALLEGGO: N-A-R-A-N-J-O.

4 CHAIRPERSON JORDAN: Got it. All
5 right.

6 MR. GALLEGGO: And I'm Luis Gallego,
7 G-A-L-L-E-G-O. I'm Maria's son and her
8 assistant.

9 CHAIRPERSON JORDAN: Very good.
10 Thank you. Let me catch up with myself here.
11 Yes? So this wasn't the right one?

12 Let me ask, the ANC letter is what
13 we are discussing. Is it ANC-5C?

14 MS. SHIKER: That is correct.

15 CHAIRPERSON JORDAN: Then I had one
16 from May 8th?

17 MS. SHIKER: They -- Chairman, they
18 had their meeting on May 8th, but I believe they
19 submitted their letter on just the 21st of May
20 and it is not a letter. It is the summary
21 report.

22 CHAIRPERSON JORDAN: The form, the

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1 form.

2 MS. SHIKER: The form. That is
3 correct.

4 CHAIRPERSON JORDAN: The 18th. I--

5 MS. SHIKER: The 18th.

6 CHAIRPERSON JORDAN: -- didn't
7 write my note properly being selective. Yes,
8 we have it, so it is in the record.

9 MS. SHIKER: Okay. Thanks.

10 CHAIRPERSON JORDAN: Yes.

11 MS. SHIKER: Thank you.

12 CHAIRPERSON JORDAN: Yes. I'm
13 catching up with myself. All right. All
14 right. So this is a request for a special
15 exception to allow a child development center.

16 There is a procedural issue that I
17 think we need to put on the record is that the
18 -- there was no self-certification in the file,
19 unless you have it, because we didn't have it
20 in our file. And am I correct, Mr. Secretary?

21 MR. MOY: I'm checking, sir.

22 CHAIRPERSON JORDAN: And then there

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1 was a ZA letter that was asking -- said you needed
2 another type of relief, but I believe that your
3 request in your application for special
4 exception is the proper relief. So I just want
5 to -- let's find out first whether or not there
6 was a self-served. If not, I think we can get
7 around it and just accept the ZA's letter, but
8 just disagree with the type of relief that he
9 is requesting.

10 MS. SHIKER: Mr. Chairman, we did
11 not submit a self-certification for Mr. -- for
12 the Secretary.

13 MR. MOY: Yes. I would confirm
14 that.

15 MS. SHIKER: We submitted the
16 letter from the Zoning Administrator as the
17 evidence that relief was necessary for this
18 case. This is the first of several child
19 development center cases that the Board will
20 see.

21 The DC Bar has initiated a program
22 to assist providers of more affordable child

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1 care in different parts of the city and getting
2 pro bono counsel to help them walk through the
3 process. And that process will include the
4 letter from the Zoning Administrator, since
5 there is not typically an architect to certify
6 on these types of cases.

7 We would request, if there is an
8 issue, for the Board to waive the requirement
9 for a self-certification and place the Zoning
10 Administrator's determination that relief is
11 needed. And I do believe that special exception
12 relief under ' 205 is the appropriate relief,
13 not a variance.

14 CHAIRPERSON JORDAN: But as you
15 know, counsel, an attorney can also file the
16 self-certification, so whoever takes those
17 cases can do it.

18 MS. SHIKER: And if that's needed
19 for the record, it's something that we could
20 supplement.

21 CHAIRPERSON JORDAN: I think we can
22 accept the ZA's letter and we would just disagree

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1 with the relief that he has sought. And we have
2 concluded that the special exception is what's
3 needed versus a variance. We have been advised
4 to that.

5 MS. SHIKER: Thank you.

6 CHAIRPERSON JORDAN: Okay. So
7 we'll just accept that. Okay. Well, he's the
8 Zoning Administrator, he doesn't now, you know.
9 Good. For me, the record is pretty clear.
10 I don't know if any of the Board Members have
11 a desire or need to hear full presentation or
12 is there something particularly that any Board
13 Member needs to hear or that they find an absence
14 of something in the record that they needed to
15 be explained? Anyone, Board? Yes, please.

16 VICE CHAIR SORG: I'll just ask one
17 question. I'm sure that I have missed this
18 maybe in my filing. How long have you been
19 operating the child development home?

20 MS. SHIKER: The child development
21 center at this location has been operating for
22 almost two years. Ms. Naranjo previously

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1 co-operated a child development center with her
2 sister in Adams Morgan and it was known as The
3 David's, so that was for more than 10 years.
4 And she decided to go off on her own and start
5 her child development home, which she has been
6 operating for two years and now is seeking to
7 expand it to become a child development center.

8 VICE CHAIR SORG: I see. Okay.

9 CHAIRPERSON JORDAN: Because she
10 resides in the building, correct?

11 MS. SHIKER: That is correct. And
12 the child development home only allows up to
13 six students and she would like to increase that
14 to 12, given the strong use in the neighborhood,
15 especially by neighbors and people in the
16 neighborhood.

17 CHAIRPERSON JORDAN: Any
18 questions? If you could resolve, the Office
19 of Planning has recommended that this be granted
20 for five years. And I believe you asked for
21 it to be granted for an extended period of time.
22 Can you reconcile that and what's the issue?

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1 MS. SHIKER: Yes. Yes, thank you
2 very much. We would -- we do appreciate the
3 strong support and work we have had with the
4 Office of Planning, but we would request that
5 the Board consider a longer period than five
6 years.

7 As you know, it is a somewhat
8 difficult process to go through the Board of
9 Zoning Adjustment and the special exception and
10 in this case, it has been wonderful that we are
11 the first project coming through this DC Bar
12 Program and four years and two months when the
13 center would have to come back through, I'm not
14 sure if there would be a program.

15 Certainly, you know, Holland &
16 Knight would be willing to help, but it would
17 be nice given her excellent support from the
18 participants, the strong support from the civic
19 association, the ANC, the abutting neighbors
20 and her track record for being a strong day care
21 provider and an operator for over -- or
22 co-operator for over 10 years and at this

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1 location for almost two, we would request that
2 the Board consider something longer, given that
3 support. Thank you.

4 CHAIRPERSON JORDAN: Now, the
5 children will be up to age 15? Is that right
6 or less?

7 MS. SHIKER: The child development
8 center provides for children up to 15 years.
9 This center focuses on children under 3
10 years-old and then those children typically go
11 to preschool after having been in this facility.

12 And so right now, the children are all between
13 2 to 3 years and younger and it is anticipated
14 that there would be no change in that more
15 younger child focus in the day care.

16 CHAIRPERSON JORDAN: Yes. Okay.
17 Anyone else? Any additional questions? Now,
18 the play area, where would the children play?

19 MS. SHIKER: There is a play area
20 in the rear of the home at this time. Given
21 the requirement for a parking space, that space
22 will be somewhat reduced, but there is a facility

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1 that is currently used and will continue to be
2 used called The Edgewood Playground.

3 It is, approximately, a five or six
4 minute walk. The children are taken in
5 strollers there. Both the Office of Planning
6 and DDOT reviewed the location of that
7 playground and found that there was no concerns
8 with getting the children there. It is
9 primarily back on back roads. You go Girard
10 Street and around and it's a nice playground
11 that they go to several times a week.

12 Ms. Sorg?

13 VICE CHAIR SORG: So for 205.7, the
14 applicant does intend to use off-site play
15 areas?

16 MS. SHIKER: That is correct. And
17 that was reflected in the Office of Planning
18 report, although it was not specifically stated
19 in our prehearing submission.

20 VICE CHAIR SORG: Okay.

21 CHAIRPERSON JORDAN: And you had
22 several letters in support from neighbors or

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1 people in the area, so I'm sure you have had
2 dialogue with them, because they submitted the
3 letter. And I raise that because of concern
4 from some of the child centers and the neighbors
5 and the noise.

6 Anyone else? Any questions that we
7 need to ask the applicant? Anyone? Is there
8 anything additional that you feel that you think
9 we need to hear?

10 MS. SHIKER: No, I don't. Thank
11 you.

12 CHAIRPERSON JORDAN: Then let's
13 turn to the Office of Planning and see if Mr.
14 Jackson has something other than what he has
15 in his report that he wants to report to us.

16 MR. JACKSON: Mr. Chairman and
17 Members of the Board, again, it's Arthur
18 Jackson, DC Office of Planning.

19 Our concern is primarily that this
20 is a step up. We are moving from being a small
21 day care home to a more of a function center.
22 And given the range of ages that could be

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1 allowed on the site, we think that it is prudent
2 that they have -- that we proposed the five year
3 range, which is what we had -- which we normally
4 do with child care centers.

5 Now, an additional thought, if the
6 applicant does intend to keep with the younger
7 ages, which would be under 5, in that range,
8 we would consider a longer term in that it is
9 predict -- you know, that's a predictable number
10 of age range of children.

11 Of course, if we are talking about
12 15 year-olds, 12 or 15 year-olds on the site,
13 that's a more significant impact potentially
14 than 12 5 year-olds. And if that -- if the
15 applicant wanted to clarify the extent of the
16 age range that is going to be on-site, we could
17 support a longer term.

18 CHAIRPERSON JORDAN: Okay. Any
19 questions for the Office of Planning, anyone?
20 Does the applicant have any questions for
21 Office of Planning?

22 MS. SHIKER: No, we don't. Thank

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1 you.

2 CHAIRPERSON JORDAN: The report
3 from the Department of Transportation, I think,
4 is in here. They have expressed no concern.

5 We also have a letter from ANC-5C
6 that voted in support of this application and,
7 therefore, great weight would be given.

8 Anyone in the audience in support
9 of this application? Anyone in the audience
10 opposed to this application? Well, everybody
11 jump up at the same time. No.

12 Is there anything you want to say
13 in rebuttal? I mean, excuse me, in closing?

14 MS. SHIKER: Only that if there was
15 a desire to limit the time frame, the applicant
16 would be willing to consider a reduced age range,
17 given the primary person or the primary children
18 that it does serve. Although, you know, we
19 would prefer having the free range within the
20 child development center for, for example, the
21 10 years, but I do think the time frame is a
22 bigger concern for the applicant than the age

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1 range given the historical use of the center.

2 CHAIRPERSON JORDAN: Okay. Thank
3 you. Any other questions of the applicant or
4 anyone, Board? Mr. Hinkle?

5 MEMBER HINKLE: Yes. Is there a
6 specific age that you would be interested in?
7 8, 10?

8 MR. GALLEG0: Less than 5.

9 MEMBER HINKLE: 5 and less? Less
10 than 5?

11 MR. GALLEG0: Less than 5, yes.

12 MS. SHIKER: If I could, I would
13 recommend we would do something, for example,
14 6 and under, given that 6 year-olds typically
15 are the ones that go to kindergarten and may
16 not need a day care service as much, but that
17 would still be the younger age. Just thinking
18 of a date.

19 CHAIRPERSON JORDAN: Okay. Any
20 other questions, anyone? Seeing none, I
21 believe we can close the record on this hearing
22 and see if the Board is ready to deliberate in

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1 this matter. Okay.

2 Since we are moving into
3 deliberations, I would say for the record, I
4 believe that we need to put a five year cap on
5 it regardless of the age is what I would think.

6 This is now going from one phase to
7 another phase and we know that there are
8 neighbors and people around and we just need
9 to see how it goes and just do a test. Maybe
10 the next time up, we can do something extended,
11 but I think we need to have that road bump to
12 make sure that we don't get ahead of ourselves
13 for an extended period of time.

14 This is my opinion only. Anyone
15 else?

16 VICE CHAIR SORG: Mr. Chairman, I
17 agree. I think customarily the Board in this
18 type of rising use and change, it's really
19 customary for us to put these kinds of
20 limitations and then, of course, when an
21 applicant comes back and has been successful
22 and has not seen any adverse impacts, then, you

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1 know, as you mentioned, we would certainly look
2 favorably on that in a following hearing.

3 So I would agree and I would also
4 be in favor of the 5 year term, regardless of
5 the age.

6 CHAIRPERSON JORDAN: Anyone else?
7 Mr. Hinkle?

8 MEMBER HINKLE: Well, I was just
9 going to note that this has been in operation
10 for a couple years, granted with not that many
11 children. And I understand that it is a step
12 up, but we have a lot of support from the
13 neighbors. We have ANC support. We haven't
14 heard any opposition as of yet with this site
15 being in operation as a home for two years, so
16 I just wanted to add that in there to our
17 discussion.

18 CHAIRPERSON JORDAN: Yes, yes.
19 Anyone else want to weigh in? Also, I would
20 be in support of adopting the conditions as set
21 forth by Office of Planning. Does anyone have
22 any issue with that? No? Okay.

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1 Well, then I would move that we grant
2 the applicant's request for a special exception
3 for a child development center. And with the
4 following conditions:

5 That the approval is granted for
6 five years from the final date of the order;

7 That the enrollment shall not exceed
8 12 children, age 15 or less;

9 The center is to have a maximum of
10 five staff;

11 The day and hours of operation,
12 Monday through Friday, 7:00 a.m. to 6:00 p.m.;

13 And drop-off hours from 7:00 a.m.
14 to 9:00 a.m. and pick-up hours 3:00 p.m. to 6:00
15 p.m.;

16 One parking space shall be reserved
17 on-site to use for center staff;

18 And that the trash collection be
19 scheduled at least once a week.

20 I so move.

21 MR. HOOD: Second.

22 CHAIRPERSON JORDAN: Motion made

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1 and seconded that the motion be approved as I
2 have stated it. Any further discussion,
3 anyone?

4 All those in favor signify by saying
5 aye.

6 ALL: Aye.

7 CHAIRPERSON JORDAN: Those opposed
8 nay? The motion carries.

9 MR. MOY: Staff would record the
10 vote as 5-0-0. This is on the motion of Chairman
11 Jordan to approve the application under ' 205.
12 Seconding the motion Mr. Hood, Chairman Hood.
13 Also in support of the motion Vice Chair Sorg,
14 Ms. MacMurray and Mr. Hinkle.

15 CHAIRPERSON JORDAN: Thank you.
16 And I think we can have a summary order in this
17 matter with these conditions.

18 MR. MOY: Yes, thank you, Mr.
19 Chairman.

20 CHAIRPERSON JORDAN: Thank you very
21 much.

22 MS. SHIKER: Thank you very much.

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1 CHAIRPERSON JORDAN: Thank you.
2 Commissioner Hood woke up and participated in
3 this hearing.

4 MR. HOOD: Some remarks you just
5 ignore. I have learned to do that.

6 CHAIRPERSON JORDAN: No, I'm just
7 joking with him. I appreciate him being here
8 because actually I learned something from you
9 today and I do appreciate that, Commissioner.

10 MR. HOOD: That's the last time I'm
11 going to make a comment.

12 CHAIRPERSON JORDAN: No, I
13 understand.

14 MR. MOY: The next application
15 before the Board for Public Hearing is
16 Application No. 18336. This is the application
17 of Grace Evangelical Lutheran Church c/o Amazing
18 Life Games Preschool, pursuant to 11 DCMR
19 3104.1, for a special exception to allow a child
20 development center, this is 35 children and five
21 staff, under ' 205 in the R-1-B District at
22 premises 4300 16th Street, N.W., property

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1 located in Square 2646, Lot 807.

2 CHAIRPERSON JORDAN: Sometimes I
3 read these cases so far in advance and have to
4 go back to my notes to catch up. And I know
5 there is a preliminary issue. But if you would
6 make sure your mike is on, the green button is
7 pushed on. The green button, as long as it
8 shows. No, try again. Just tap it and let it
9 go. Say something. Now, one more time. Okay.
10 I got you turned off, because I, you know, okay.
11 Now, you can do it.

12 MS. MISTRETT: There we go.

13 CHAIRPERSON JORDAN: Ah, see it was
14 my fault. Okay. Would you introduce yourself,
15 please?

16 MS. MISTRETT: Yes. My name is
17 Marcy Mistrett. Do you need me to spell it?

18 CHAIRPERSON JORDAN: Yes, please.

19 MS. MISTRETT: M-A-R-C-Y. The
20 last name is Mistrett, M-I-S-T-R-E-T-T. I'm
21 the Director of Amazing Life Games Preschool.

22 CHAIRPERSON JORDAN: Very good.

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1 Now, I have here that we have a preliminary
2 issue.

3 MS. MISTRETT: I didn't get proper
4 -- I didn't get the Notice to Post for the
5 hearing. And then I have since posted and
6 gotten to ANC and written letters.

7 CHAIRPERSON JORDAN: Okay. So you
8 -- have you filed the Affidavit of Posting?

9 MS. MISTRETT: I did. I have a
10 copy.

11 CHAIRPERSON JORDAN: And it had
12 been posted for the period of time required?
13 When was the posting?

14 MS. MISTRETT: It was posted April
15 19th until -- it might actually still be up on
16 the church front.

17 CHAIRPERSON JORDAN: If you will
18 give that to Mr. Moy, please?

19 MS. MISTRETT: Yes.

20 CHAIRPERSON JORDAN: Do we have it?
21 We have a copy of it? Okay. So we already
22 have it in our record. We have it. I'm sorry,

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1 we have it in our record.

2 Now, there was another issue, I'm
3 looking at my notes, from the Office of the
4 Attorney General, the number of children as
5 requested by applicant and OP recommends 35
6 children and five staff or both. Oh, I think
7 that's the issue. I understand.

8 Are you asking for 35 children and
9 five staff or are you asking for 70 children?

10 MS. MISTRETT: No.

11 CHAIRPERSON JORDAN: And 10 staff?

12 MS. MISTRETT: No, no, no. 35
13 children and five staff.

14 CHAIRPERSON JORDAN: Okay. All
15 right. Yes, well, are you asking for -- well,
16 maybe that's it. You are asking for 35 children
17 at one time or a total of 70 in a period of time?

18 MS. MISTRETT: No. 35 children max
19 at any time.

20 CHAIRPERSON JORDAN: Okay.
21 Gotcha.

22 MS. MISTRETT: Pardon me?

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1 VICE CHAIR SORG: Total enrollment
2 of students, children --

3 MS. MISTRETT: Yes.

4 VICE CHAIR SORG: -- would be 35?

5 MS. MISTRETT: Correct.

6 VICE CHAIR SORG: Okay.

7 MS. MISTRETT: Not to exceed 35.
8 I don't really even want 35.

9 VICE CHAIR SORG: Yes, gotcha.

10 CHAIRPERSON JORDAN: Yes, I think
11 there was some ambiguity in between the two
12 different reports that we kind of looked at and
13 it was like well, what's going on here?

14 MS. MISTRETT: Yes, the last time
15 I was here, you were asking because the after
16 care program was kind of an add -- it reads as
17 an add-on in the current C of O. And we were
18 asking that and I think it looked like it was
19 35 new children instead of the 35. It would
20 be the same children.

21 CHAIRPERSON JORDAN: Yes. And I
22 stand corrected. It was Office of Planning's

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1 issue and not Office of the Attorney General,
2 because it was written 35 for the day and the
3 after care was 35 and the total came to 70, so
4 that was kind of --

5 MS. MISTRETT: Right.

6 CHAIRPERSON JORDAN: -- what we
7 thought.

8 MS. MISTRETT: No, it's the same
9 children.

10 CHAIRPERSON JORDAN: Okay. All
11 righty. Just going back through your record,
12 because we had this set before, I know.

13 MS. MISTRETT: I hadn't posted
14 correctly, that's why.

15 CHAIRPERSON JORDAN: Yes, that's
16 what it was. Yes, we did have the -- well, it
17 says the hearing was postponed, but I thought
18 we did have a hearing, but our note indicates
19 hearing was postponed, but I thought we did go
20 through this, because I'm looking at my notes
21 from that time we were here.

22 Wait a second. Yes, and, in fact,

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1 my records are pretty clear. My records are
2 clear. I do remember this case. Yes, my notes
3 are clear. Okay.

4 Anyone else have -- does anyone have
5 any particular need that the applicant needs
6 to address or concerns? I think we have been
7 through this process and had some form of a
8 hearing before and the record is pretty -- very
9 clear in regards to what your request is. And
10 then how you meet the requirements for the
11 special exception, I think, our record is full.

12 I mean, there is enough in our record
13 to meet the burden that is required. Anyone?

14 So you can do a presentation if you want or
15 you just --

16 MS. MISTRETT: Well, the only other
17 thing I wanted to offer to present was there
18 was a condition that the parking lot get
19 restriped and it has been striped and I took
20 pictures. So that should probably -- bring this
21 to Mr. Moy?

22 CHAIRPERSON JORDAN: Yes, we can do

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1 that, if you would, please.

2 MEMBER HINKLE: Can I ask, Mr.
3 Chair, of the applicant why that was a condition
4 in the first place? It was a condition in --

5 MS. MISTRETT: Seven years ago when
6 we started there, I'm not exactly sure. It was
7 before my time. I don't know if the parking
8 lot was not striped adequately, but it was a
9 condition. And then it had faded again. They
10 had done it when that was required to meet it.

11 MEMBER HINKLE: Okay.

12 MS. MISTRETT: At the time it had
13 faded, so was it Officer Jackson? Mr. Jackson?
14 Okay. Mr. Jackson came and it was faded again
15 and so we just had it repainted.

16 MEMBER HINKLE: Great. Thank you.

17 MS. MISTRETT: Yes.

18 CHAIRPERSON JORDAN: Okay. All
19 right. Thank you. We will turn now to Officer
20 Jackson and see if there is anything he wants
21 to say.

22 MR. JACKSON: Thank you, Mr.

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1 Chairman and the applicant for the promotion.

2 I appreciate that.

3 Our only concern that we expressed
4 at the time in our Office of Planning report
5 and as a caveat, the Board did not hold a hearing,
6 at the time, because of the posting. Okay.
7 The hearing was deferred, as I recall.

8 MS. MISTRETT: That's correct.

9 MR. JACKSON: But in any case, the
10 applicant, in the meantime we had a
11 conversation, she proceeded to contact the
12 neighborhood property owners. She did go back
13 to the ANC and actually got something out of
14 the ANC that she didn't have before, which was
15 something that the Board was concerned about.

16 She also worked with the church to
17 establish to get contracts on getting the
18 painting and -- the painting done because if
19 you notice from the Office of Planning's report,
20 the original report, there was an area of
21 pavement that had -- the striping was gone in
22 the area of pavement where the -- that were

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1 damaged.

2 And what we discussed was that a
3 picture was worth a thousand words, so she
4 brought 10 pictures showing all the changes that
5 would address the OP's concerns and wah-lah,
6 this is what I was looking for.

7 So you see the area where the
8 pavement has been patched and the striping,
9 which is -- of course, when the Office of
10 Planning has recommended approval subject to
11 conditions, we like to see those conditions that
12 are carried through and the applicant has done
13 that.

14 And so we support, heartily support
15 the increase in size and capacity of the center.

16 We wanted to highlight the after care program,
17 because it does seem to be -- to operate on a
18 different schedule than the use. And the
19 applicant had not indicated that she wanted to
20 do 70, but that there would be day care program
21 in the morning and then the after care in the
22 afternoon and the numbers would never exceed

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1 35.

2 In fact, I think our conversation
3 was that the number of children in the after
4 care program was quite low, but we thought it
5 would be prudent to maintain the number at the
6 same -- the same relative number, because over
7 time what they are expecting is that the children
8 that graduate from the lower care program would
9 come back in the after care, so that there would
10 be the same children coming back just at
11 different ages.

12 We also -- with the basis amount of
13 support that is coming in on the application,
14 we have no problem with them not having a term
15 limit on this use, because it is
16 well-established and with these conditions, we
17 think it will be -- it will also provide the
18 support and the security for the community for
19 years to come.

20 And that's a brief summary of the
21 Office of Planning's findings on this report.

22 CHAIRPERSON JORDAN: Okay. Thank

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1 you. Does any Board Member have a question of
2 Mr. Jackson? I don't need to promote him, but,
3 for Mr. Jackson? Anyone?

4 Does the applicant have any
5 questions of Mr. Jackson?

6 MS. MISTRETT: No. The only thing
7 I had read in Mr. Jackson's report was that the
8 fence around the outdoor side yard and the report
9 has stated it's 6 feet and it's actually 4 feet
10 tall.

11 CHAIRPERSON JORDAN: Okay.

12 MS. MISTRETT: That was the only--

13 CHAIRPERSON JORDAN: All righty
14 then. DOT? They are not here. Do we have a
15 DOT report? Yes, we do. They express no
16 concern with the proposal.

17 And we have from the ANC, the Single
18 Member District, a letter in support. That
19 doesn't meet our requirements for great weight.

20 Yes, we don't need it. Okay.
21 Anyone in the audience in support of this
22 application? Anyone -- could the two of them

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1 come take the microphone?

2 Anyone in opposition? Good.

3 All right. Then we will move back
4 to the applicant to -- if you want to say anything
5 in closing for us, if you feel it's necessary.

6 MS. MISTRETT: Thank you for
7 considering this and for your patience with my
8 child care issues.

9 CHAIRPERSON JORDAN: Good. We
10 will close the record for this hearing and move
11 into deliberations.

12 I'm going to ask the Board for anyone
13 who wants to say anything about this
14 application? Anyone, anyone? Going once,
15 going twice? Mr. Hinkle?

16 MEMBER HINKLE: Yes. Thank you,
17 Mr. Chair. I just wanted to note I'm looking
18 at the Office of Planning recommendation and
19 the Condition No. 4, which states that "The
20 parking lot shall be striped and maintained in
21 a neat and orderly manner."

22 I could certainly support this

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1 application, but I think we can strike the
2 striped out of that No. 4.

3 CHAIRPERSON JORDAN: Okay.

4 MEMBER HINKLE: And just have it
5 read as "The parking lot shall be maintained
6 in a neat and orderly manner."

7 CHAIRPERSON JORDAN: Okay. With
8 that then, I'll move that the Board approve the
9 special request application, including the
10 Office of Planning's conditions as written, with
11 the exception of the striped, that the parking
12 lot needs to be striped, just that it needs to
13 be maintained in a neat and orderly manner.
14 That's my motion.

15 MEMBER HINKLE: I'll second it.

16 CHAIRPERSON JORDAN: Motion made
17 and seconded that the motion gets approved as
18 I read it. Any unreadiness?

19 All those in favor signify by saying
20 aye.

21 ALL: Aye.

22 CHAIRPERSON JORDAN: Those opposed

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1 nay? The motion carries.

2 MR. MOY: Staff would record the
3 vote as 5-0-0. This is on the motion of Chairman
4 Jordan to approve the application with the four
5 conditions as stated in the OP report with the
6 modification proposed in the motion. Seconding
7 the motion Mr. Hinkle. Also in support Chairman
8 Hood, Vice Chair Sorg and Ms. MacMurray.

9 CHAIRPERSON JORDAN: Thank you.
10 And this will be proper for a summary order,
11 please.

12 MR. MOY: Yes, thank you, sir.

13 CHAIRPERSON JORDAN: Thank you.
14 Thank you for coming.

15 MS. MISTRETT: Thank you very much.
16 Have a nice afternoon.

17 CHAIRPERSON JORDAN: Thank you back
18 there. Thanks.

19 All right. With that, are there any
20 other business that needs to come before this
21 Board, at this time?

22 MR. MOY: No, sir.

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1 CHAIRPERSON JORDAN: Thank you, Mr.
2 Jackson. Officer Jackson. Thanks a lot. We
3 appreciate it.

4 With that, we will then close
5 today's Public Hearing.

6 (Whereupon, the Public Hearing was
7 concluded at 2:34 p.m.)

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