

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JULY 28, 2009

+ + + + +

The Regular Public Hearing
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C., at 11:15 a.m., Marc D.
Loud, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairperson
SHANE L. DETTMAN, Vice Chairperson
(NCPC)
MERIDITH MOLDENHAUER, Member

ZONING COMMISSION MEMBERS PRESENT:

WILLIAM WARREN KEATING, Commissioner
PETER MAY, Commissioner (NPS)
MICHAEL TURNBULL, FAIA, Commissioner
(AOC)

OFFICE OF ZONING STAFF PRESENT:

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

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
MAXINE BROWN-ROBERTS
STEVEN COCHRAN
ARLOVA JACKSON
ARTHUR JACKSON

The transcript constitutes the
minutes from the Public Hearing held on July
28, 2009.

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P R O C E E D I N G S

(11:15 a.m.)

CHAIRPERSON LOUD: Good morning,
and for those of you that have been in our
audience, good morning again. This hearing
will please come to order.

Ladies and gentlemen, this is the
July 28th public hearing of the Board of
Zoning Adjustment of the District of Columbia.
My name is Mark Loud, Chairperson. Joining me
today are Vice Chair Shane Dettman,
representing the National Capital Planning
Commission; Peter May, representing the Zoning
Commission; Ms. Meridith Moldenhauer, of the
BZA to my left; and to her left Mr. Clifford
Moy, Secretary of the BZA; to his left, Ms.
Beverley Bailey, Zoning Specialist in the
Office of Zoning.

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

Please be advised that this

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1 proceeding is being recorded by a court
2 reporter and is also Webcast live.
3 Accordingly, we must ask you to refrain from
4 any disruptive noises or actions in the
5 hearing room.

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

13 All persons planning to testify
14 either in favor or in opposition are to fill
15 out two witness cards. These cards are
16 located to my left on the table near the door
17 and on the witness tables.

18 Upon coming forward to speak to
19 the Board, please give both cards to the
20 reporter sitting to my right.

21 The order of procedure for special
22 exceptions and variances is statement and

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1 witnesses of the Applicant; government
2 reports, including the Office of Planning, the
3 Department of Public Works, et cetera; report
4 of the Advisory Neighborhood Commission;
5 parties or persons in support; parties or
6 persons in opposition; and finally, closing
7 remarks by the Applicant.

8 Pursuant to Sections 3117.4 and
9 3117.5, the following time constraints will be
10 maintained. The Applicant/Appellant/persons
11 and parties except an ANC in support,
12 including witnesses, are given 60 minutes
13 collectively. The appellees, persons and
14 parties except an ANC in opposition, including
15 witnesses, are given 60 minutes collectively
16 as well. And finally, individual witnesses
17 are given three minutes.

18 These time restraints do not
19 include cross-examination and/or questions
20 from the Board. Cross-examination of
21 witnesses is permitted by the Applicant or
22 parties.

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1 The ANC within which the property
2 is located is automatically a party in the
3 special exception or variance case, and
4 nothing prohibits the Board from placing
5 reasonable restrictions on cross examination,
6 including time limits relevance, limitations
7 to the scope of what was brought out on
8 direct, foundation, et cetera.

9 The record will be closed at the
10 conclusion of each case, except for any
11 material specifically requested by the Board.
12 The Board and staff will specify at the end of
13 the hearing exactly what is expected and the
14 date when the persons must submit evidence to
15 the Office of Zoning.

16 After the record is closed, no
17 other information will be accepted by the
18 Board. The Sunshine Act requires that the
19 public hearing on each case be held in the
20 open before the public.

21 The Board may, consistent with its
22 rules of procedure and the Sunshine Act, enter

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1 executive session during or after the public
2 hearing on a case for purposes of reviewing
3 the record or deliberating on the case.

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

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

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

20 If you are not prepared to go
21 forward with the case today or if you believe
22 that the Board should not proceed, now is the

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1 time to raise such a matter.

2 Does the staff have any
3 preliminary matters?

4 MS. BAILEY: Mr. Chairman and
5 members of the Board, to everyone good
6 morning.

7 CHAIRPERSON LOUD: Good morning.

8 MS. BAILEY: There is an
9 application that was withdrawn, Mr. Chairman,
10 Application 17947, 5032 D Street, S.E.,
11 Gregory Bray. Notation is required by the
12 Board. That's just to put it on the record,
13 Mr. Chairman, that that application was
14 withdrawn.

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

17 Then I guess we should go to
18 swearing in the witnesses.

19 MS. BAILEY: Yes, sir.

20 CHAIRPERSON LOUD: So would all
21 individuals who are wishing to testify this
22 morning, please rise and take the oath, and

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1 Ms. Bailey will administer the oath.

2 MS. BAILEY: Please raise your
3 right hand.

4 (Whereupon, the witnesses were
5 duly sworn.)

6 MS. BAILEY: Thank you.

7 Mr. Chairman, did you want me to
8 call 17918 first?

9 CHAIRPERSON LOUD: Yes, please.

10 MS. BAILEY: As indicated, this is
11 the application of Behzad Hosseinkhani, and it
12 is pursuant to 11 DCMR Section 3104.1 for a
13 special exception to allow a change in
14 nonconforming use from a valet shop to a
15 restaurant having 28 seats. The restaurant
16 would be located on the first floor under
17 Subsection 2003.1. The premises is 1551 6th
18 Street, N.W., Square 478, Lot 821. The
19 property is zoned R-4.

20 CHAIRPERSON LOUD: Good morning.
21 How are you doing this morning? Very good.

22 We called the cases out of order

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1 because having reviewed both this case, 17918,
2 and the other case that you have this morning,
3 17934, I think our collective sense of things
4 is that this case was pretty straightforward,
5 and we thought that there -- I know Mr. May
6 may have a couple of questions, but we thought
7 that we could get through this case fairly
8 quickly.

9 So with that being said, I think
10 you can feel free to rest on the record that
11 you've presented before us and entertain
12 questions from the Board or perhaps if there's
13 something really specific that you want to
14 highlight about the case, you can do that.
15 But I think our intention here is that the
16 record is very, very full, and we probably
17 don't need to go through each element of the
18 test for your relief, and we may turn to
19 Office of Planning to walk us through the test
20 and various parts so that you don't have to
21 feel like you need to make that burden of
22 proof.

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1 With that, why don't I do this?
2 Why don't I ask you to introduce yourself for
3 the record and give your address, and then
4 let's see if Board members have any questions
5 right out the gate that might facilitate our
6 hearing this morning and truncate the time
7 necessary so that we can get to the next case?

8 I think you have to push it so
9 that the green light comes on, and then just
10 pull the -- your left hand is touching the
11 light. There you go.

12 MR. HOSSEINKHANI: I'm sorry. My
13 name is Behzad Hosseinkhani. I live at 1551
14 6th Street, N.W., Washington, D.C. 20001.

15 CHAIRPERSON LOUD: Good morning
16 again. Again, having a full record before us,
17 I don't know if we want to just start out with
18 some basic questions that would bridge any
19 gaps in the record. I don't know if you have
20 one, Mr. May, or not.

21 COMMISSIONER MAY: I just had one
22 question, and maybe this is covered in the

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1 record, but I just didn't catch it, which is
2 the current C of O permits the cleaning valet
3 business, and I'm just wondering since that
4 does not appear to be operating right now,
5 when did that use actually stop?

6 MR. HOSSEINKHANI: The last C of O
7 was issued on 1999, and when I purchased the
8 property it was not in operation.

9 COMMISSIONER MAY: And when was
10 that?

11 MR. HOSSEINKHANI: I purchased the
12 property 2000.

13 COMMISSIONER MAY: So since
14 2000 --

15 MR. HOSSEINKHANI: Yes.

16 COMMISSIONER MAY: -- the valet
17 has not been operating.

18 MR. HOSSEINKHANI: Yes, sir.

19 COMMISSIONER MAY: Okay. I think
20 we have a different case then.

21 CHAIRPERSON LOUD: Well, Mr. May,
22 did you, by way of elaboration, are there

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1 things you'd like the Applicant to cover now?

2 COMMISSIONER MAY: I'm not sure
3 what needs to be covered. I mean, as I recall
4 the regulation is that once a nonconforming
5 use lapses for a period of three years or
6 more, you cannot take it up again, and so if
7 the use has lapsed, I don't know that there's
8 -- I mean, this is a completely different
9 case. It would have to be a use variance, I
10 think.

11 Mr. Dettman just whispered to me.
12 I mean, that's essentially what has to happen.

13 CHAIRPERSON LOUD: Well, why don't
14 we do this? Why don't we allow the Applicant
15 to walk through its understanding of that
16 issue and then we're going to turn to the
17 Office of Planning, as well, for its
18 understanding of the issue?

19 Do you have witnesses this
20 morning, Mr. Hosseinkhani?

21 MR. HOSSEINKHANI: No, sir, I
22 don't have any witnesses.

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1 CHAIRPERSON LOUD: Okay, all
2 right. Well, to elaborate on what Mr. May has
3 said, do you understand the distinction that's
4 being made between a property where there's
5 been a nonconforming use that has lapsed for
6 a period in excess of three years versus one
7 that hasn't and in terms of the burden then
8 and the type of relief that you need?

9 MR. HOSSEINKHANI: Yes. My
10 understanding was if the operation of the dry
11 cleaning, which was a business there before,
12 I thought that if that's lapsed three years,
13 then I need to go to the Board of Zoning after
14 three years. That's the only understanding I
15 had.

16 I did not have any understanding
17 of change of use. I thought it would be the
18 same thing as change of use and if I want to
19 get a new C of O for dry cleaning. It would
20 be the same thing.

21 I'm not sure if I made clear.

22 CHAIRPERSON LOUD: Well, you

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1 definitely still have to come to BZA, but the
2 test would be different and it would be a
3 higher test. It would be a use variance as
4 opposed to a special exception. So the
5 elements of what you would have to establish
6 would be different if, in fact, the
7 nonconforming use lapsed for a period in
8 excess of three years, which for our purposes
9 this morning means that we're going to hear
10 from the Office of Planning that you may still
11 want to press your case forward for relief.

12 You may not be prepared this
13 morning to make the test that is going to be
14 required, and if that's the case and it's your
15 desire, we can postpone the case. We can
16 continue to give you an opportunity to make
17 that case.

18 So it's something for you to think
19 about.

20 COMMISSIONER MAY: Mr. Chairman.

21 CHAIRPERSON LOUD: Yes.

22 COMMISSIONER MAY: I would also

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1 note that if, in fact, what is going to be
2 requested is a variance, then I think that the
3 case needs to be readvertised because it's a
4 higher level of relief that would be required.
5 So I think we're destined for a second hearing
6 if the Applicant wishes to pursue this.

7 CHAIRPERSON LOUD: Based on what
8 has come out thus far, it does appear that
9 this is a case that would be ripe for
10 postponement or continuation.

11 I did though just want to hear
12 from the Office of Planning right quick, and
13 after we do that, I think we can go ahead and
14 try to look for a date on the calendar that's
15 going to allow you to readvertise and then
16 come back before us prepared to make the
17 specific case.

18 Good morning.

19 MS. BROWN-ROBERTS: Good morning,
20 Mr. Chairman.

21 CHAIRPERSON LOUD: How are you?

22 MS. BROWN-ROBERTS: Fine, thank

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1 you, and members of the Board. That was
2 actually my first question when I received the
3 application, and I called over to the Zoning
4 Administrator. I did not speak to Mr.
5 LeGrande personally, but I spoke to another
6 staff member there, and the question they
7 asked me was, you know, was it referred by
8 that office, and I said yes, because there is
9 a letter from that office in the record.

10 And I was told, well, you know, if
11 it was referred, then that was what it was
12 for, and that was the case. So basically that
13 was what I was told, and that's the way I took
14 it.

15 CHAIRPERSON LOUD: Yes. I recall
16 having this issue surface before about
17 referrals from the ZA and whether it's self-
18 certified or not, but I think the totality of
19 what we're talking about this morning suggests
20 that either there's been an oversight or we're
21 placing this gentleman at risk of not getting
22 the relief that he needs.

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1 MS. BROWN-ROBERTS: And I agree.
2 I think what I'll do is sort of follow up
3 again with Mr. LeGrande in person and see what
4 he says.

5 CHAIRPERSON LOUD: Okay. With
6 that, let me turn to Board members and see if
7 you want to weigh in on any additional points
8 regarding this, and I think after that we'll
9 turn to Ms. Bailey and see if can get some
10 dates and get the second round of
11 advertisements out, and so on and so forth.

12 VICE CHAIRPERSON DETTMAN: Mr.
13 Chairman, just one comment. I mean, I agree.
14 I think this isn't ripe. I think this could
15 be an entirely different case, and I think Mr.
16 May raises a very, very important issue, and
17 that provision is the discontinuance provision
18 of 2005.1.

19 And it could be an oversight by
20 the ZA. He may be under the impression that
21 the use has not been discontinued.

22 I might just say that 2005.1 sets

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1 out a presumption that's rebuttable. So if on
2 its face it looks like that issue has been
3 discontinued based on when the Applicant
4 purchased the property.

5 But if there's information out
6 there that can, you know, rebut that
7 presumption, this could still go forward as a
8 special exception. So I think that that is
9 another avenue that the Applicant could look
10 at.

11 CHAIRPERSON LOUD: Thank you, Mr.
12 Dettman.

13 Ms. Moldenhauer?

14 MEMBER MOLDENHAUER: No additional
15 comments, Chairman.

16 CHAIRPERSON LOUD: Okay. So what
17 we'll do, and you may consider consulting with
18 counsel or another consultant to walk you
19 through some of what we've shared with you
20 this morning, in particular Mr. May's points
21 about the lapsed use and Mr. Dettman's point
22 about the rebuttable presumption.

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1 I think we had a case here
2 recently where that was the very issue, and
3 I think in that case the Applicant was able to
4 rebut the presumption of the lapsed C of O.

5 So those issues are for your side
6 of the net. I mean, you've got to work those
7 out on your end and then bring them back to us
8 and let us know what you want to do based on
9 what your showing will be.

10 On our side of the net, I think
11 what we need to do is get a date for the
12 hearing, and then -- yeah, just get a date for
13 the hearing.

14 MS. BAILEY: Mr. May will be here
15 on September 22nd, Mr. Chairman, in the
16 morning. That may be an appropriate time to
17 consider the continuation for.

18 CHAIRPERSON LOUD: How is that
19 morning looking? I'm going through my
20 calendar right now just to see.

21 MS. BAILEY: We have three cases
22 on, Mr. Chairman.

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1 CHAIRPERSON LOUD: Three hearing
2 cases between ten and 12 noon or --

3 MS. BAILEY: Between 9:30 and 12
4 noon there are three hearing cases scheduled
5 for the morning.

6 MR. MOY: The only thing I would
7 add, Mr. Chairman, on those three cases --

8 CHAIRPERSON LOUD: yes.

9 MR. MOY: -- one of them we have
10 an interpreter that may be required on that
11 schedule. As you know, when we have an
12 interpreter, it slows things down a little
13 bit.

14 CHAIRPERSON LOUD: If we can put
15 it -- what's wrong with putting it in the
16 afternoon? Are you here that afternoon? Are
17 you here that afternoon, Mr. May?

18 COMMISSIONER MAY: No.

19 CHAIRPERSON LOUD: No, that Mr.
20 Slater.

21 Yeah, I think it's going to be
22 difficult to get through four cases in two and

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1 a half hours, and I think Mr. Dettman is going
2 to be the Chair for the Emory United Methodist
3 Church case that morning. So that will be his
4 maiden voyage as chair. That's my home
5 church.

6 MS. BAILEY: How about October
7 6th, Mr. Chairman, in the afternoon? Mr. May
8 is here October 6th in the afternoon. There
9 is an appeal, the last case of the day, but
10 perhaps this could go the first case in the
11 afternoon.

12 CHAIRPERSON LOUD: That looks a
13 lot better to me. That looks a lot better.
14 Are you available on the afternoon
15 of October the 6th?

16 MR. HOSSEINKHANI: Yes, sir.

17 CHAIRPERSON LOUD: Okay. So why
18 don't we set October 6th then as the
19 continuation date for the hearing?

20 MR. HOSSEINKHANI: Yes.
21 Afternoon?

22 CHAIRPERSON LOUD: In the

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1 afternoon, yes.

2 MR. HOSSEINKHANI: I'm sorry. My
3 understanding is I have to change this as a
4 special exception to use variance? Is that
5 the situation here?

6 CHAIRPERSON LOUD: That's
7 certainly one of the options we discussed. I
8 think Mr. Dettman suggested that you may look
9 at it and find that you think you can rebut
10 the presumption of the lapse, but that is
11 definitely something you would want to confer
12 with the appropriate expertise on.

13 MR. HOSSEINKHANI: Yes, sir.

14 CHAIRPERSON LOUD: I think if you
15 do move forward with the use variance -- I
16 mean not I think -- if you do move forward
17 with it, you're going to have to readvertise,
18 and I think he can work with the Office of
19 Zoning. You can follow up directly with the
20 Office of Zoning staff, and they can sort of
21 talk you through those steps.

22 MR. HOSSEINKHANI: Sure.

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1 CHAIRPERSON LOUD: So you may want
2 to have that conversation with your team of
3 experts before you talk to Ozier or perhaps
4 in talking with OZ you can get a little more
5 direction.

6 MR. HOSSEINKHANI: That's fine.

7 CHAIRPERSON LOUD: Okay?

8 MR. HOSSEINKHANI: Thank you.

9 CHAIRPERSON LOUD: Thank you.

10 Don't go anywhere because I think we have
11 another case for you.

12 MS. BAILEY: Mr. Chairman, are you
13 ready for the next one?

14 CHAIRPERSON LOUD: Yes.

15 MS. BAILEY: Application 17934,
16 Behzad Hosseinkhani -- excuse the
17 pronunciation of your name -- pursuant to 11
18 DCMR Section 3103.2 for a variance from the
19 nonconforming structure provisions under
20 Subsection 2001.3 to allow a third story
21 addition to an existing flat. The property is
22 located at 1721 4th Street, N.W., Square 516,

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1 Lot 54, and it is zoned R-4.

2 CHAIRPERSON LOUD: Good morning
3 again, and if you can identify yourself for
4 the record again, Mr. Hossein -- is pronounced
5 Hosseinkhani?

6 MR. HOSSEINKHANI: Hosseinkhani.

7 CHAIRPERSON LOUD: Okay. If you
8 can just identify yourself again for the
9 record.

10 MR. HOSSEINKHANI: Yes, sir.

11 CHAIRPERSON LOUD: As well as Mr.
12 Bello.

13 MR. HOSSEINKHANI: Behzad
14 Hosseinkhani, live at 1551 6th Street, N.W.,
15 Washington, D.C. 20001.

16 MR. BELLO: Good morning, Mr.
17 Chair, Board members. Toye Bello, 900 2nd
18 Street, N.E.

19 CHAIRPERSON LOUD: Good morning
20 again, and I believe that we're ready to begin
21 the presentation of your case. I think
22 initially the relief advertised was from

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1 Section 2003, but I do believe that with the
2 addition of the deck, you also need additional
3 relief as indicated by the Office of Planning
4 in their report from the rear yard, correct?

5 MR. BELLO: Yes, the area of
6 relief request is under the provisions of the
7 nonconforming structure section, 2001.3.

8 CHAIRPERSON LOUD: But does that
9 also mean that you -- are you saying that to
10 say that when you say 2001.3 that it includes
11 the other sections that you need relief from
12 or don't you need rear yard relief as well?

13 MR. BELLO: Well, we believe that
14 2001.3 in its totality encompasses all of the
15 relief that we need, but to the extent that
16 the Office of Planning believes otherwise,
17 which is at variance with the Zoning
18 Administrator's referral letter, we're
19 prepared to address that issue also.

20 CHAIRPERSON LOUD: Let me just
21 make sure I'm straight. You need an area
22 variance.

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1 MR. BELLO: That's correct, sir,
2 an area variance.

3 CHAIRPERSON LOUD: And you're
4 prepared to make the case for an area variance
5 that would meet the requirements in terms of
6 the lot occupancy and the rear yard.

7 MR. BELLO: That's correct.

8 CHAIRPERSON LOUD: Okay. Then I
9 think we're all on the same page.

10 MR. BELLO: Okay.

11 CHAIRPERSON LOUD: Why don't we
12 then turn it over to you?

13 MR. BELLO: Thank you, sir.

14 CHAIRPERSON LOUD: And you can
15 begin the case.

16 MR. BELLO: Good morning again.
17 My name is Toye Bello. This is the
18 application of Mr. Hosseinkhani for property
19 address at 1721 4th, N.W., Application No.
20 17934.

21 The area of relief requested for
22 this application is from the provisions of the

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1 nonconforming structure of Section 2001.3 and
2 the additional relief that the Office of
3 Planning had identified in their report.

4 Specifically, the application
5 request an area variance, and an application
6 seeking an area variance must establish three
7 elements of the burden of proof. One is the
8 uniqueness of property by virtue of shape,
9 size or some other exceptional situation or
10 condition of property. The uniqueness itself
11 must result in a peculiar practical difficulty
12 to the property, and thirdly, that in granting
13 the relief, that the Board is able to grant
14 the relief without substantial detriment to
15 public good or the substantial impairment of
16 the intent and proffer of the zoned plan.

17 As our submissions will reflect,
18 the applicant has submitted that the property
19 is unique by size and shape of property. The
20 lot is triangular in shape and tapers towards
21 the rear of the property.

22 It also claims uniqueness by size

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1 of property, and the lot area for the existing
2 lot is approximately a little over half of
3 what's required in the underlying zone.

4 The underlying zone requires the
5 property to have 1,800 square feet of lot area
6 minimum. This property has a little over 900
7 square feet, and this conditions predate the
8 adoption of the zoning regulations in May 12,
9 1958.

10 So we believe the application
11 meets the first test by that uniqueness. It
12 is the only property so uniquely affected in
13 a square, and it is the smallest sized
14 property in its square.

15 The peculiar practical difficulty
16 to the owner is that the existing structure
17 including the rear porch occupy 92 percent
18 approximately of the lot in lot occupancy, and
19 that condition predated the zoning
20 regulations.

21 The current practical difficulty
22 of the owner is the inability to make

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1 contemporary special use of the property
2 because of a constriction of the existing
3 structure, which is affected by the unique
4 shape of the property.

5 The plat will reflect that the
6 property, again, is triangular and tapers very
7 narrowly towards the rear of the property. So
8 clearly, the application here which involves
9 the need to renovate the building and to
10 increase the size of the building includes a
11 third story addition, and the condition of the
12 property is really what drives the need to add
13 a third story because there's really nowhere
14 else for the Applicant to build on the
15 property.

16 As to the third test, the property
17 does not seek any other variance that the
18 condition that predates the zoning regulation
19 does not impose on it. It seeks a third story
20 addition in an R-4 zone where three floors are
21 permitted. It seeks to continue a use that is
22 permitted in the underlying zone as a matter

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1 of right, which is a two-family flat.

2 So this application is not
3 designed to increase density whatsoever by
4 increasing the number of units, and it's
5 purely driven by the unique condition of the
6 property.

7 Now, the Applicant has ANC
8 approval. I think July 21 the ANC met and
9 approved a resolution in support of the
10 application. The Office of Planning's report
11 recommends approval of the application.

12 I think the only outstanding issue
13 is some concern about the preservation of the
14 architectural facade of the building. While
15 the Applicant was not able to provide to the
16 record the realized elevation, we do have a
17 copy of that revised elevation, and it appears
18 that the single focus of that concern is the
19 preservation of the Mansard roof treatment of
20 a structure, and so a new elevation will be
21 preserving that element of the building, and
22 the Applicant is not adverse to a condition

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1 that's so set for that allows that to occur.

2 As to the additional request for
3 relief under 403 in the rear yard, Applicant
4 submits that the -- and we have photographic
5 evidence to that effect, that the existing two
6 story porch predated the zoning regulations;
7 that as of last year, and I will let Mr.
8 Hosseinkhani testify to that fact, I think we
9 have pictorial evidence of that where the
10 porch was existing.

11 So this is really a replacement in
12 kind no larger than what existed on the lot.
13 So we believe that based on that fact that no
14 additional relief is requested, and all of it
15 is necessary really, and that 2001.3 in its
16 totality encompasses all the relief that we
17 need, and that will be our presentation.

18 Thank you very much.

19 CHAIRPERSON LOUD: Thank you, Mr.
20 Hosseinkhani. Thank you Mr. Bello.

21 Before we turn to the Office of
22 Planning, let's see if Board members have any

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1 questions.

2 COMMISSIONER MAY: The plans that
3 you submitted are not very thorough compared
4 to many that we receive. So I have a few
5 questions that relate to the particulars of
6 how the building is going to be reconstructed,
7 if you will, or renovated.

8 What is the height of the ceiling
9 of the lowest level? I mean, I'm sure Mr.
10 Bello knows the subtlety. Is it a cellar or
11 is it a basement?

12 MR. BELLO: It is a cellar. Part
13 of the proposed work would actually be
14 excavating to provide appropriate headroom to
15 make the cellar habitable.

16 COMMISSIONER MAY: Okay. Now, if
17 it's a cellar, what is the actual height
18 difference between the ceiling of the cellar
19 level and the exterior grade?

20 MR. BELLO: It's less than four
21 feet.

22 COMMISSIONER MAY: Yes, I

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1 understand that but what is it?

2 Normally I would expect to see
3 that actually shown on the plans, and I don't
4 see that.

5 MR. BELLO: We'll be glad to
6 revise the plans to show the appropriate
7 height from the point of measurement. I think
8 your concern here, Mr. May, is whether this is
9 a cellar or basement as to whether --

10 COMMISSIONER MAY: I understand
11 that, but I would like more than just your
12 testimony to that effect. I would like to see
13 that in the drawings.

14 MR. BELLO: We will be glad to
15 supplement the records.

16 COMMISSIONER MAY: Now, toward
17 that end, there's a note on the drawings that
18 indicates that at least one of the windows in
19 both of the bedrooms in the cellar needs to be
20 an exit window, and that has certain physical
21 requirements. It has to be a certain size.

22 There's nothing on the drawings

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1 that indicates how that would actually be
2 configured in the front yard. So it would be
3 helpful to know how that's going to be because
4 that does affect the appearance of it.

5 It also affects what happens on
6 the back side and if your deck is placed the
7 way it seems to be on the plans, I don't see
8 how you can exist out of the back either. So
9 that means the deck might change and we don't
10 -- we like to know exactly what it's going to
11 be if we're going to approve it.

12 Do you have any further
13 information about how the exiting will work?

14 MR. BELLO: Exiting from the
15 cellar?

16 COMMISSIONER MAY: From the
17 cellar, right?

18 MR. BELLO: No, I don't.

19 COMMISSIONER MAY: Okay.

20 MR. BELLO: Again, we'll be glad
21 to supplement the records appropriately.

22 COMMISSIONER MAY: All right.

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1 Because there's just this note saying how big
2 it has to be, and I know how big these things
3 have to be having had to design things like
4 this. So it's bigger than what I can see
5 here. So I know it's going to have an impact
6 on both front yard and back yard. So it will
7 be useful to know that.

8 We received this today. Is this
9 what the elevation is supposed to look like?

10 MR. BELLO: That would be the
11 revised elevation. That's correct.

12 COMMISSIONER MAY: Okay. I don't
13 see any Mansard treatment here.

14 MR. BELLO: That would be the
15 picture, sir.

16 CHAIRPERSON LOUD: Correct.

17 COMMISSIONER MAY: That's not a
18 Mansard. The Mansard, if you look at this
19 elevation, this really technically isn't a
20 Mansard treatment either, but the Mansard
21 treatment is this facade or this mostly
22 vertical roof surface that's covered in slate,

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1 and what I would expect to see if you're going
2 to preserve that is something that runs the
3 roofline up there and then a window in it like
4 that, and then you'd have to raise the peak
5 something like that. That's what would be
6 preserving the Mansard, and so I don't think
7 this is doing what you're saying it's doing.

8 I don't have any further questions
9 at the moment. I'll probably have some
10 questions of Office of Planning.

11 CHAIRPERSON LOUD: Thank you, Mr.
12 May.

13 Board members, are there further
14 questions for the Applicant?

15 (No response.)

16 CHAIRPERSON LOUD: Okay. I have a
17 couple of quick questions. And I've looked at
18 the submission as well and looked at the
19 variance test and I don't have any problems
20 with it, although I'm keeping my ears open for
21 what's coming out from other Board members,
22 but what I don't get from the submission is

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1 the practical difficult, as I understand it is
2 that you're already at lot occupancy so you
3 can't add to the current property without
4 getting some kind of relief, but what's the
5 driver for your getting the relief? Do you
6 know what I mean?

7 In other words, the practical
8 difficulty test is the uniqueness causes some
9 condition that's unnecessarily burdensome.
10 What makes it unnecessarily burdensome to
11 continue the property the way it is?

12 MR. BELLO: What I believe makes
13 it burdensome, sir, is that each floor that
14 houses a unit right now is approximately 784
15 square feet of space. The distribution of the
16 units are basically on the first and second
17 floors at this point, and the size of the
18 structure itself, which is driven by the shape
19 of a property, is what constricts the ability
20 to design a modern floor plan for living space
21 that is conducive to contemporary living, and
22 the only way to achieve that is to actually

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1 request a third story addition because there's
2 nowhere else that this addition can occur, and
3 that is the burden of the Applicant.

4 CHAIRPERSON LOUD: Is that another
5 way of saying that it's not marketable as a
6 flat currently because the overall footprint
7 is too small?

8 MR. BELLO: Well, I think
9 marketable would suggest some kind of economic
10 purpose, but this is a physical issue. The
11 building is difficult at best to be laid out
12 appropriately for a modern two-unit flat, and
13 there's the shape of the lot that predates the
14 zoning regulations that actually drives that.

15 COMMISSIONER MAY: Mr. Chairman,
16 may I ask?

17 Why does it have to be a two-unit
18 flat? Why can't the upstairs unit just be a
19 -- I'm sorry. A two-bedroom flat. Why
20 couldn't the upstairs unit just be a one
21 bedroom and then the bottom one be a two
22 bedroom?

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1 CHAIRPERSON LOUD: Thanks, Mr.
2 May. That's kind of what I was getting to.
3 I think you can make the case for -- I mean,
4 I'm open to you making the case for it. I
5 just didn't know if I overlooked your making
6 the case for it already in the record or if
7 you just hadn't made the case for it yet.

8 Why does it have to be that way,
9 as Mr. May eloquently put it?

10 MR. BELLO: Well, I mean, for the
11 property to have what I will call equal
12 standing in its neighborhood and the Office of
13 Planning's report clearly indicates that it is
14 the smallest size building in this square; the
15 only way it can achieve that parity is for it
16 to have a two-unit flat of comparable size.

17 So if that is defined as being
18 going to marketability, then we're fine with
19 that, but clearly this property is
20 disadvantaged, and it is disadvantaged by
21 virtue of the shape and size of this lot, a
22 condition which predated the zoning

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1 regulations.

2 CHAIRPERSON LOUD: Okay. Let me
3 move on, and then I'll turn back to Board
4 members for another question.

5 You had mentioned in your
6 testimony that you thought that because you
7 were putting the deck back on that had
8 previously been there; that the only relief
9 necessary was 2001.3, but if -- I'm sorry.
10 Did I state it correctly?

11 MR. BELLO: Two, zero, zero, one,
12 point, three, that's correct.

13 CHAIRPERSON LOUD: Okay, but if
14 that deck was completely removed, as I think
15 it was in this case because your current lot
16 occupancy is 82 percent, and then you are now
17 rebuilding the entire deck, wouldn't that be
18 different than what you suggested and wouldn't
19 that require relief from the rear yard?

20 MR. BELLO: Well, I think, first
21 of all, that the loss of the rear porch was by
22 virtue of -- it is by virtue of a collapse

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1 and not wilful removal. But even if it were,
2 the issue is that there's a section of the
3 zoning regulations that permits structural
4 modernization even of an existing
5 nonconforming structure.

6 So to that extent I do not believe
7 that another relief is necessary, even if the
8 property owner had removed wilfully this
9 portion of the nonconforming structure and
10 seeking to rebuild it in kind.

11 CHAIRPERSON LOUD: Just for my own
12 edification, what section of the regs. is
13 that?

14 Mr. Dettman just referenced it for
15 me, 2001.2.

16 MR. BELLO: Thank you very much.

17 CHAIRPERSON LOUD: I don't have
18 any further questions. I don't know if Board
19 members want to follow up.

20 MEMBER MOLDENHAUER: Mr. Chairman,
21 I want to go back to the issue of the burden
22 in regards to a hardship on the owner and the

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1 contemporary use of the property.

2 Mr. Bello, I guess I'm kind of
3 asking some of the similar questions as the
4 Chairman and as Mr. May, but I guess I don't
5 feel as though you've provided sufficient
6 evidence in regards to that. If you add a
7 third floor, you're not actually changing the
8 contemporary layout of each existing floor.
9 You'd just be adding an additional floor. So
10 how would that really provide, I guess,
11 response to the current, I guess, unique shape
12 of the property?

13 MR. BELLO: Well, I mean, the
14 additional space would actually allow the
15 introduction of space that would otherwise be
16 cramped on one floor. I mean, the question
17 was asked why not a one bedroom. I think
18 that's generally not a question before the
19 Board, particularly since the use to be
20 established here is a matter of right use.
21 It's not a nonconforming use. It's not
22 seeking to increase the number of units.

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1 So if you look at the floor plan,
2 and we'll be glad to supplement the records
3 with plans further, but we can show what you
4 can derive from what exists at this point in
5 terms of spatial design and how that is
6 augmented by the addition of this third floor
7 that we are seeking relief from.

8 MEMBER MOLDENHAUER: Thank you.

9 CHAIRPERSON LOUD: Thank you
10 again, Mr. Hosseinkhani and Mr. Bello.

11 We'll now turn to the Office of
12 Planning for its report. Good morning.

13 MR. JACKSON: Good morning, Mr.
14 Chairman and members of the Board. My name is
15 Arthur Jackson, and I'm a development review
16 specialist of the D.C. Office of Planning, and
17 I'm here to summarize the Office of Planning's
18 report, and essentially we're standing on the
19 record because it sounds like the Board has a
20 number of questions about how we made our
21 determinations.

22 Essentially we are supporting a

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1 variance relief where we're stating relief
2 needs to be from 401.1, 403.2, and 2001.3, and
3 we also are recommending the Applicant make
4 some changes to the architecture for the third
5 floor such that we need to retain as much of
6 the character of the addition roofline as they
7 can as part of this project.

8 That concludes a brief summary of
9 our report, and we're available to answer
10 questions.

11 CHAIRPERSON LOUD: Thank you, Mr.
12 Jackson.

13 Let me see if Board members have
14 any questions for you, and then after that
15 we'll turn it over to the Applicant.

16 COMMISSIONER MAY: I guess I just
17 have the basic question of why -- I mean, I
18 understand how the property is constrained.
19 It's small; it's triangular. It's also a very
20 high lot occupancy. I mean, the footprint of
21 that building at seven, 800 square feet,
22 whatever it is, is pretty substantial. You

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1 know, it's twice the size of the first house
2 that I owned, and that was a lot closer to a
3 conforming lot.

4 I guess what I don't understand is
5 where does -- how does the current
6 configuration -- I mean, it seems like this is
7 a self-imposed hardship. I mean, it can be
8 used as housing. It has been used as flats
9 for 100 years.

10 MR. JACKSON: Right.

11 COMMISSIONER MAY: Why is it now a
12 difficulty except that in the fact that the
13 owner aspires to have two two-unit flats?

14 MR. JACKSON: Well, we were
15 convinced by the Applicant's -- after visiting
16 the site, we didn't visit inside the building,
17 but after visiting the site the Applicant made
18 the statement that the existing two -- the two
19 one-level units did not allow enough space for
20 the bathroom, the closets, and the other
21 characteristics of the --

22 CHAIRPERSON LOUD: I'm sorry, Mr.

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1 Jackson. I hate to interrupt you, but I just
2 didn't hear what you said.

3 MR. JACKSON: I'm sorry.

4 CHAIRPERSON LOUD: You said that
5 the existing two?

6 MR. JACKSON: The existing --

7 CHAIRPERSON LOUD: Didn't allow
8 for?

9 MR. JACKSON: Well, let's actually
10 make it clearer. The existing single floor
11 units -- there are two single floor units --
12 did not have suitable space for what they
13 considered to be contemporary living in terms
14 of bathrooms, closets and other spaces.

15 They said they were in the process
16 of renovating. The renovation would turn the
17 ground floor, the basement or the cellar into
18 an additional living space, which hadn't been
19 available before so that they would have one
20 unit that would be two levels, and the desire
21 would be to have two units that were two
22 levels. So it's essentially equivalent units.

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1 The zoning regulations would allow
2 for an additional floor in this instance, but
3 the additional floor wouldn't be allowed
4 because of the existing lot occupancy. The
5 existing lot occupancy is directly related to
6 the shape of the property, and in fact, when
7 we looked at, analyzed the other dwellings on
8 the other buildings on the square, we noticed
9 that this building on this small lot in this
10 current configuration was approximately the
11 same size as other buildings on the lot. So
12 we saw that the existing footprint seems to be
13 directly related to an attempt to make this
14 building comparable with the other buildings
15 on the square.

16 Again, this is conjecture because
17 we weren't there with them when they were
18 built, but we think that given the current
19 renovation that's going on and given the fact
20 that they would be able to create a two level
21 unit of a larger size with using the first
22 floor and basement, given the fact that the

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1 zoning regulations would normally allow a
2 third floor in this zoned district which a lot
3 of them have two two-level units; given their
4 indication that the existing character of the
5 single level space of 700-some square feet
6 would not allow for contemporary living, we
7 thought it would be reasonable to look at this
8 as to take those factors into consideration
9 and we determined that all of these factors
10 taken together do present a bit of a practical
11 difficulty.

12 We also looked at the 2001.2 and
13 saw that if the Applicant -- if the rear deck
14 had not collapsed, the Applicant could
15 essentially have rebuilt it in place because
16 the regulation states that except as provided
17 in a 2001.11 and 2001.12 ordinary repairs,
18 alterations and modernization including
19 structural alterations could be permitted.

20 So essentially they could have
21 done anything they wanted. Of course, you
22 could tell by the photographs that were in the

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1 packet that that deck's days were numbered and
2 the number was up.

3 So we also would note that because
4 of the location and the fact that it's facing
5 an alley across from a commercial enterprise,
6 across from a parking lot and some distance
7 from any other residences that there would be
8 no impact on neighboring buildings by
9 maintaining the status quo with regard to the
10 rear deck and the addition and the major
11 impact of the addition of a third floor would
12 be not only to increase the floor area for
13 both dwellings.

14 I should step back and say that
15 when we look at affordable housing, I believe
16 during our affordable housing analysis one of
17 the numbers that we normally use for doing
18 some general calculations is 1,000 square feet
19 per unit. Now, that's just looking at
20 providing of housing in other situations
21 around the District.

22 So as a general rule of thumb,

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1 this would be less than what we normally
2 would use for calculation purposes, but that's
3 an aside.

4 Back to the issue of the
5 architectural changes, we just think that if
6 you look at the photograph, again, the
7 photograph that's provided by the Applicant
8 that even in its deteriorated states, this
9 dwelling sets a nice character along the
10 street, and if you look at the aerial
11 photograph that was provided by the Office of
12 Planning of the streetscape, it sets the tone
13 for the units that follow it.

14 We also know that there's a
15 missing tooth in that streetfront, and we like
16 to see the character of this dwelling
17 maintained, which would help encourage whoever
18 builds the new units and the vacant lot and
19 renovates, and as expect that the other units
20 would be renovated, too, that they'll also
21 maintain the characteristic of those
22 dwellings.

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1 So there are a lot of factors
2 involved that we were trying to achieve with
3 this, but we basically accept the Applicant's
4 contention that the single level unit in this
5 current configuration was difficult for
6 contemporary living.

7 We asked them, in fact, though if
8 you could -- couldn't you do one, just doing
9 the first floor and basement and keeping the
10 second floor the way it is? But their
11 response was if we think the first floor now
12 is lacking, essentially -- it wasn't the exact
13 words -- but they were saying they wanted at
14 least two equivalent units in the dwelling
15 for the purpose of marketing, I believe.

16 Again, this was just a general
17 discussion we had out in front of the unit.

18 COMMISSIONER MAY: Mr. Chairman,
19 if I could continue, I really was only just
20 asking about the hardship issue, and I'm still
21 struggling with that.

22 First of all, did you actually go

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1 inside the building?

2 MR. JACKSON:

3 COMMISSIONER MAY: I think you
4 said you did not.

5 MR. JACKSON: No.

6 COMMISSIONER MAY: And yet you
7 came to the conclusion that it was not
8 suitable for contemporary living. So maybe I
9 need to understand what contemporary living
10 is. It's not a zoning term.

11 MR. JACKSON: Well, let me explain
12 that. As of right now, we went to the
13 entrance to the dwelling. Essentially all we
14 saw was our observation was that the metal
15 studs, the metal framing for the new layout is
16 already in place. So the dwelling that was
17 there before the renovation began construction
18 is no longer in place. The renovation as was
19 in the report, they're well underway with the
20 ground floor, the basement and the first floor
21 and probably the second floor renovations.

22 So even we had visited the site.

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1 The circumstances that existed when this
2 property was strictly one story before the
3 renovation no longer exists.

4 COMMISSIONER MAY: So they already
5 got a permit for the first floor?

6 MR. JACKSON: Apparently. They
7 are proceeding on their own at risk, I guess.

8 COMMISSIONER MAY: You have a
9 permit, I assume, right?

10 Okay. So I'll give you the not
11 going inside. So what's contemporary living?
12 I mean, to me you could interpret that as, you
13 know, wide open, no walls, and living even in
14 a studio atmosphere, which to me lends itself
15 to a big floorplate like 700 feet --

16 MR. JACKSON: Right.

17 COMMISSIONER MAY: -- that's
18 triangular in shape and has lots of windows.
19 I mean, I don't know what -- I mean, the
20 contemporary living standard is two bedrooms
21 or more?

22 MR. JACKSON: we didn't --

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1 COMMISSIONER MAY: Two bedrooms
2 with walk-in closets?

3 MR. JACKSON: Well, what the
4 Applicant really just described it as the lack
5 of bathrooms and closets. That's essentially
6 what they -- as much of a description as they
7 provided.

8 COMMISSIONER MAY: Well, if you
9 have less bathrooms, you need closets. I
10 mean, the less bedrooms you have need less
11 closets and bathrooms.

12 To me it really just boils down to
13 how big you want to make the units, and 700
14 and some, 780 square feet to me is perfectly
15 livable size for a single unit. It's not
16 where you're going to want to raise a family,
17 but it's a perfectly reasonable unit size.

18 As I said before, my first house
19 had less than a 400 square foot footprint, and
20 it was a two-bedroom house. The whole square
21 footage was 800 feet. Maybe it wasn't
22 contemporary living. Maybe that's the issue.

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1 But it seems to me it's livable.
2 This really does feel like it's self-imposed.

3 As far as the deck goes, putting
4 aside the fact that the deck fell down
5 obviously because it was neglected, you know,
6 I don't think that there's a really big impact
7 from that. So I don't have a really strong
8 argument to make against that. I mean, I
9 think that that's the case for replacing that
10 deck for what was there I think can be
11 reasonably made based on the information that
12 we have. So I don't have a lot of questions
13 about that, but I'm really struggling with the
14 hardship issue.

15 MR. JACKSON: But just one
16 clarification. In order to put the deck back,
17 they need the variance relief for the rear
18 yard and for the lot occupancy. So if they
19 get the lot occupancy for the rear deck, then
20 why can't they add another floor? Because
21 basically you've given the --

22 COMMISSIONER MAY: Because it has

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1 an impact on the public because it's not back
2 along the alley, because it's visible from the
3 street. It changes the architectural
4 character of the block.

5 I mean at the very least I agree
6 with you that if they were to do this
7 addition, it has to be very carefully and
8 tastefully done, and I think extending --
9 going with the Mansard concept is the way to
10 do it.

11 If you look very carefully at a
12 number of buildings or houses around
13 Washington where they did this 50, 60 years
14 ago, they did exactly this sort of thing.
15 They took that existing ridge line where you
16 have the Mansard, and they raised it up and
17 they put windows into the Mansard roof, and
18 they took that sort of peak tower and either
19 raised it up or maybe in some cases lifted it
20 off and created a little balcony there
21 underneath it.

22 You can look at several examples

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1 of this along East Capital Street where you
2 wouldn't even know that these were not built
3 originally as three-story buildings, but this
4 is very clearly adding a story the way it is.

5 So you know, that's not what we
6 have before us unfortunately. If we had that
7 before us, I might be a little bit more
8 sympathetic, but right now what we see before
9 us, I think, is problematic because of that
10 impact on the street and the public.

11 CHAIRPERSON LOUD: Thank you.

12 Are there any further questions
13 from the Board?

14 (No response.)

15 CHAIRPERSON LOUD: Then why don't
16 we turn to the Applicant? Do you have any
17 questions of the Office of Planning?

18 MR. BELLO: Certainly, sir.

19 Thank you, Mr. Jackson.

20 Board Member May appears to imply
21 that the situation here is a self-imposed
22 hardship according to him. Knowing that the

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1 burden of the Applicant is to prove that the
2 strict application of the zoning regulations
3 is burdensome and that it imposes a peculiar
4 difficulty, and knowing that there's consensus
5 that at least the application meets the first
6 burden of proof, do you agree with Mr. May
7 that this is a self-imposed hardship, knowing
8 that a hardship is not a test for an area
9 variance?

10 MR. JACKSON: Well, I think the
11 circumstances he raises are some that we
12 considered. I think we were looking at the
13 uniqueness of the site. We just thought that
14 the key point here is the lot occupancy. The
15 lot occupancy doesn't not allow you to add
16 additional floor. The lot occupancy also
17 would not allow you to build back the rear
18 deck.

19 MR. BELLO: I'm sorry, but those
20 are preexisting conditions.

21 MR. JACKSON: Right. Well,
22 regardless of that, the lot occupancy is the

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1 key point to this whole case. If you give the
2 variance for the lot occupancy to increase it
3 to 92 percent, which is what similarly would
4 be required to put back the deck, then you've
5 addressed the issue that limits your ability
6 to put on a third floor. So it's all tied
7 together.

8 Now, the issue, I think, of
9 contemporary living is all of a sudden we were
10 concerned about, but we have deferred to the
11 Application in that for their vision of what
12 the interior is like and what it could be, we
13 also note that usually in our calculations of
14 housing for the district, I think we usually
15 use a number much higher than what it
16 currently exists.

17 So we were weighing a number of
18 additional elements, but we would also
19 emphasize just as Mr. May did that the impact
20 of building a third floor that does not retain
21 the character of this dwelling we think has
22 long-term implications for the maintenance of

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1 not only this side of the street, but we
2 develop the entire neighborhood.

3 So we really were saying -- we
4 said it on site, and we spent time talking
5 with the Applicant about the importance of
6 really putting forth a reasonable extension of
7 the existing building's character to the
8 second floor, and to this date we still have
9 not received any plans that showed what they
10 planned to do.

11 MR. BELLO: Okay. In the context
12 of Section 2001.2, which if I understood you
13 correctly you agree that replacement of the
14 existing back porch would be allowed as a
15 matter of right, would you then suggest that
16 this application seeks to increase the pre-'58
17 lot occupancy of this property?

18 MR. JACKSON: well, I don't quite
19 see that that's -- those are related. Those
20 are separate questions in that the porch is no
21 longer there. This talks about ordinary
22 repairs, alterations, modernization of

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1 structural alterations. There has to be
2 something there to modify. It's not longer
3 there.

4 If it's no longer there, you have
5 to build it back. If you're building it back,
6 you're subject to current regulations. I
7 think it's unfortunate the way the
8 circumstances have happened, but even when we
9 were on the site, there was no porch there, no
10 deck there. We're talkinga bout the deck.

11 The Applicant indicated to us that
12 the porch, the rear porch, was less than four
13 feet above grade. So we're only talking about
14 the deck above that.

15 The deck above that having
16 collapsed is no longer there. So you
17 basically are faced with the current zoning
18 regulations. So for the sake of safety, to
19 eliminate problems by going back to the Zoning
20 Administrator and having to apply, submit new
21 plans and meet the current regulations, we
22 thought it prudent to include that relief so

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1 that this is not a problem in the future,
2 assuming the Board approves this variance
3 relief that's being requested.

4 MR. BELLO: Thank you for your
5 response.

6 If you read Sections 2001.4 and
7 2001.5, I think that the conclusion is that if
8 a property, a nonconforming structure is
9 damaged through collapse, and that it would
10 require up to 75 percent of the value of that
11 property, that the entirety of a nonconforming
12 structure could be rebuilt so that it's a
13 nonconforming state. You would agree that the
14 collapse of the rear porch does not meet this
15 threshold.

16 So there are several circumstances
17 under the zoning regulations where you could
18 replace in totality a nonconforming structure,
19 if you read 2001.5, which allows the total
20 replacement of a nonconforming structure if
21 the casualty is to the extent not to exceed 75
22 percent of the value of the existing property.

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1 So there are circumstances in the
2 zoning regulations that a property that is
3 nonconforming with respect to percentage of
4 lot occupancy can be replaced in totality to
5 its previously nonconforming condition.

6 CHAIRPERSON LOUD: Before you
7 answer, Mr. Jackson, I just wanted to in the
8 interest of time ask if we can move -- you
9 know, he's going to answer that question. If
10 we can move the case forward, I think his
11 report kind of speaks for itself. He didn't
12 necessarily buy into the whole 2001 argument
13 that you don't need the additional relief.
14 It's in his report that you it's their opinion
15 that you need rear yard relief, and that is
16 something that you can probably take up with
17 us, the Board, in your closing statement.

18 But as I said, in the interest of
19 time.

20 MR. BELLO: Thank you very much.

21 CHAIRPERSON LOUD: Okay. Mr.
22 Jackson?

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1 MR. JACKSON: If, in fact, the
2 elimination or the removal of the deck was a
3 causal act of God, then it appears that the
4 2001.5 and .6 might apply in this case.

5 MR. BELLO: Thank you, Mr.
6 Jackson.

7 CHAIRPERSON LOUD: Thank you, Mr.
8 Bello.

9 Are there any additional questions
10 from Board members for the Office of planning,
11 and if there aren't, then what we'll do is go
12 to the ANC. Is the ANC here in the audience?

13 No, they're not here. I'm not
14 certain if we had a report from the ANC in
15 this case. It would be ANC-5C, I believe. My
16 review doesn't reflect the presence of an ANC
17 report. If it did, it came in pretty late.

18 MR. BELLO: It probably did. We
19 do have a copy of it here.

20 CHAIRPERSON LOUD: You have a
21 copy. Okay. That's fine.

22 MR. BELLO: -- provide it to the

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1 Board.

2 CHAIRPERSON LOUD: Is this the
3 report -- I may have looked at it -- is this
4 the report where the single member district
5 ANC wrote the report as opposed to the entire
6 ANC?

7 MR. BELLO: That's correct.

8 CHAIRPERSON LOUD: All right.
9 Then so what we'll do is we'll take note of
10 the fact that there is an ANC report. Do you
11 have an exhibit number on yours?

12 MR. BELLO: I do not, sir.

13 CHAIRPERSON LOUD: Okay. We'll
14 figure that out, but we'll take note of the
15 fact that there is a report from the single
16 member district ANC, that that report is in
17 favor of the Applicant, but that it does not
18 -- it's not entitled to great weight in
19 accordance with the rules that would allow
20 great weight because, as I understand it, that
21 report was not the report of the entire ANC.

22 Okay?

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1 MR. BELLO: Thank you.

2 CHAIRPERSON LOUD: All right. We
3 would now go to any persons that are in
4 support of the application. Now would be a
5 time to come up and give your testimony. You
6 would be given three minutes.

7 And seeing none, if there are
8 persons in opposition to the application,
9 thank you for your patience. Now, would be
10 the time to come up and just take a seat at
11 the microphone there and cut on the microphone
12 and introduce yourself for the record and
13 state your address, and you will be given
14 three minutes for your testimony.

15 Good afternoon.

16 MS. MAXWELL: Good afternoon.

17 My name is M. Marie Maxwell. I
18 live at 1618 4th Street, N.W.

19 I am here also on behalf of a
20 friend who is at 1706 4th Street, N.W. His
21 name is John Grumbine. He, I believe,
22 submitted a letter of opposition. I don't

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1 know if it got in in time.

2 It did? Okay.

3 And also, I think he submitted a
4 quick thing that I threw together regarding
5 1721 4th Street about the history of it. It
6 is an original Wardman house, which is why the
7 roof is sort of important. That block of 4th
8 and R Street was built by Harry Wardman in
9 1903, and so it had been a two-unit apartment
10 building, at least that I can document, until
11 the 1970s with occupants inside. So it is
12 somewhat modern if you consider 1970 modern.

13 And we submitted his letter and my
14 report, and I'm just here to answer any
15 questions that anyone might have about why we
16 want to maintain at least the facade and are
17 concerned about a great concentration of floor
18 space being shoe-horned into a small space.

19 CHAIRPERSON LOUD: Thank you.

20 Does that conclude your testimony?

21 MS. MAXWELL: Pretty much.

22 CHAIRPERSON LOUD: Okay. Then why

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1 don't we see if there's any follow-up? Let's
2 see if Board members have any questions for
3 you and then we can turn to the Applicant.

4 MEMBER MOLDENHAUER: Thank you,
5 Mr. Chairman.

6 Ms. Maxwell, I read a question
7 about the comments made in Mr. Grumbine's
8 letter regarding the ANC meeting and the issue
9 of not having sufficient notice. Can you
10 address that and provide more information as
11 to your knowledge?

12 MS. MAXWELL: Well, I get my
13 information about the 5(c) ANC meetings from
14 a neighborhood listserve, and it's the Scott
15 Roberts, Bloomingdale E-mail list, and I
16 looked at the agenda for the meeting, and I
17 did not see this property listed as something
18 to be approached.

19 MEMBER MOLDENHAUER: Did you
20 attend any of the ANC meetings where this was
21 presented or discussed?

22 MS. MAXWELL: No, I did not attend

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1 that ANC meeting. I attend the local civic
2 association meeting because the ANC meetings
3 tend to move around.

4 MEMBER MOLDENHAUER: Thank you.

5 CHAIRPERSON LOUD: Let me ask a
6 quick follow-up question. To your knowledge
7 is that the only way that the ANC notices the
8 meetings, through the local listserve?

9 MS. MAXWELL: It's the way I tend
10 to get it. Sometimes it will appear on other
11 listserves, but there are other civil
12 association meetings and five police 5D
13 meetings that they'll get announced on the
14 various listserves, and when looking back
15 trying to find whether or not the application
16 was presented to a past ANC meeting, I was
17 looking through agendas trying to figure out
18 where it was, and the only agenda I could look
19 back and find was an old E-mail from the Scott
20 Roberts list, and I did not see it.

21 There were other projects,
22 McMillan, but not this property mentioned.

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1 CHAIRPERSON LOUD: So then if I
2 understand, you retrieved all of the old E-
3 mails that had been sent regarding that
4 particular meeting, went through the agendas
5 and did not see this as an item.

6 MS. MAXWELL: I did not see it as
7 an item when I looked back at the one E-mail
8 where I could find the agenda listed.

9 CHAIRPERSON LOUD: So you were
10 only able to find one E-mail for this
11 particular meeting, this I guess it's July 21
12 meeting?

13 MS. MAXWELL: yes. If I wanted
14 to, I could have searched the police 5
15 District and the Eckington listserve, but
16 trusting that -- these announcements tend to
17 get sent out to the same people, and they just
18 copy and past. So I didn't think there would
19 be any great anomaly.

20 CHAIRPERSON LOUD: Are you
21 confident in suggesting that your review of
22 that one E-mail positions you to conclude that

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1 that was the only notification avenue taken by
2 the Applicant?

3 MS. MAXWELL: Yes.

4 CHAIRPERSON LOUD: Do they
5 normally do it on their Website? Do they have
6 a Website?

7 MS. MAXWELL: The Website is sadly
8 outdated. I looked at the agenda that was
9 last listed and it dates to 2008.

10 CHAIRPERSON LOUD: Okay. Well,
11 why don't we hear from the Applicant both in
12 terms of they have an opportunity to cross
13 examine you if they would like, but first let
14 me see if Board members have any additional
15 questions.

16 Okay. Mr. Bello.

17 MR. BELLO: No questions.

18 CHAIRPERSON LOUD: thank you for
19 your testimony this afternoon. It will be
20 considered a part of our record and made a
21 part of our evaluation of the application in
22 the case.

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1 I want to make a correction to
2 something I said earlier brought to my
3 attention by Mr. May and Mr. Dettman. There
4 is a report from the ANC and it is dated July
5 -- it looks like it's dated July 21, 2009.
6 It's a full ANC report, and it is signed by
7 Anita Bonds, Chair and Single Member District
8 5C-01 Commissioner, but it's signed -- it
9 looks to be in her capacity as chair, I guess
10 of the entire ANC.

11 It does note that there was a
12 quorum present and that seven members
13 constitute a quorum. Either Commissioners
14 were present and voted unanimously to support
15 the project. I'm not clear where it says that
16 there was notice with respect to this
17 particular meeting, and we normally require
18 just as a pro forma matter that the actual ANC
19 resolution indicate that there was both notice
20 and a quorum.

21 So if this does not meet that
22 format, and I'm just now getting my hands on

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1 it, it will not be given great weight. I
2 think of it does meet that format, the Board
3 members will as part of our discussion
4 evaluate both this submission, as well as your
5 testimony that you did not receive notice, and
6 make a determination as to whether this meets
7 the requirements of Section 3115 for great
8 weight.

9 Do Board members wish to weigh in
10 on that?

11 (No response.)

12 CHAIRPERSON LOUD: Al right. Why
13 don't we move along then? We're at the point
14 in the proceeding where the Applicant gets to
15 make closing remarks. So we turn it back to
16 you, Mr. Bello.

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

18 We believe by a preponderance of
19 the submissions to the record and testimony
20 here today that the application does meet the
21 three elements of the burden of proof for an
22 area variance.

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1 The first would go, again, to the
2 uniqueness of property. I think it is without
3 dispute that the property is uniquely affected
4 by its shape and its size, and that the shape
5 and the size of the property, which predates
6 the zoning regulations is what results in the
7 burden of the applicant complying with the
8 strict application of the zoning regulations.

9 There's been a suggestion that the
10 application for a third floor addition is a
11 self-imposed hardship. However, the Applicant
12 respectfully disagrees with that because the
13 need for creating a space to accommodate what
14 would be a reasonable unit that would house a
15 family which can be any number of people who
16 are related by blood or by up to six
17 individuals who are not so related cannot be,
18 as suggested, housed in a 700 square feet
19 unit.

20 A flat, which encompasses two
21 units, is traditionally designed to house a
22 family, one family unit. So I think the

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1 property owner is particularly burdened here
2 if by the sheer size of the existent structure
3 they are, therefore, limited to conditions
4 that were imposed on the property, those
5 conditions predating the zoning regulations.

6 Now, on July 21, we were at an ANC
7 meeting. We're not aware how notice was
8 provided by the ANC, but there was several
9 items on the ANC agenda, including one which
10 one would assume would attract the interest of
11 the community at large, but we'll be glad to
12 revisit the ANC issue if it becomes a
13 contention in this application.

14 The preponderance of what I have
15 here is perhaps we have not provided what is
16 architecturally pleasing to this application,
17 and the Applicant is prepared to submit
18 revised drawings to the Board. The Board
19 would retain the case folder open for
20 consideration, also to the Office of Planning
21 for perhaps a design that the Board may find
22 more acceptable.

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1 But the Applicant strongly
2 believes that the condition that's driving the
3 request here is one that inures in the
4 property in a shape and in its uniqueness and
5 that such conditions predated the zoning
6 regulations.

7 CHAIRPERSON LOUD: Thank you, Mr.
8 Bello, and thank you and your client, the
9 Applicant, Mr. Hosseinkhani, for your work
10 pulling tog ether your application and the
11 presentation. You can tell a lot of thought
12 went into it, and I think pending filling some
13 gaps here for information, we'll be in a
14 better position to actually deliberate on the
15 case.

16 I think Mr. May mentioned a couple
17 of things that he thought would be helpful to
18 rounding out the record a little bit, and I
19 didn't know if you wanted to go back over
20 those and I could just read what my notes
21 captures. It doesn't matter.

22 You wanted the plans and the

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1 drawings resubmitted with the grade and height
2 shown of the cellar, and --

3 COMMISSIONER MAY: Yeah, it's a
4 single drawing, either section or elevation,
5 that indicates those measurements.

6 CHAIRPERSON LOUD: Okay, and then
7 you also alluded to showing the window that
8 was discussed on the front.

9 COMMISSIONER MAY: Right. The
10 plans do not show where the exit windows would
11 be or how that might affect either the
12 elevations or the site plan.

13 CHAIRPERSON LOUD: Okay.

14 COMMISSIONER MAY: Because there's
15 no real site plan to start with.

16 CHAIRPERSON LOUD: All right, and
17 so then that would have related -- your last
18 point was related to showing how the exiting
19 would occur from the basement.

20 COMMISSIONER MAY: Right.

21 CHAIRPERSON LOUD: Okay. So those
22 were the items of information, I think, that

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1 Mr. May wanted, and I think it would be
2 helpful for all of us.

3 I don't know if other Board
4 members have any additional information.

5 COMMISSIONER MAY: Mr. Chairman, I
6 would also suggest that they need to revise
7 the front elevation of the building. I mean,
8 they describe it as being a Mandard type
9 addition, and that's clearly not what's shown,
10 and frankly, the quality of what we have in
11 the drawing is not very good either.

12 And I think there's a pretty high
13 burden that has to be met in terms of making
14 this something that's acceptable within the
15 context of this neighborhood. I think that
16 architecturally it has to look very good, and
17 there needs to be some real effort put into
18 that design, I think.

19 CHAIRPERSON LOUD: Well, let me
20 respond. I think the common denominator for
21 all of us is the area variance test, and the
22 area variance test does not have as high a

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1 burden certainly with respect to undue
2 hardship as the use variance.

3 And I know we've kind of gone back
4 and forth a little bit, but I think the
5 Applicant has to show that it's unnecessarily
6 burdensome, that the uniqueness that it's
7 proffering makes it unnecessarily burdensome
8 to use the property in accordance with the
9 zoning.

10 So I'm a little leery using the
11 language that you used and tying that to the
12 request for the follow-up information because
13 I'm not certain where that falls in the area
14 variance test.

15 COMMISSIONER MAY: Sure. You
16 know, I think that to strictly comply with the
17 additional information that the Board may need
18 to make a decision, they can submit a clearer
19 elevation drawing.

20 However, there are aspects of the
21 evaluation of that drawing, specifically the
22 impact of this addition on the public good; in

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1 other words, what does this do to the
2 streetscape, that I think can only be
3 evaluated with a very thoughtful design.

4 And I'm just encouraging the
5 Applicant to submit a very thoughtful design
6 that is well rendered so that we can evaluate
7 really well what the impact on the public good
8 would be because I don't think that -- what
9 has been submitted so far is not very
10 persuasive in that regard.

11 And this goes specifically to the
12 elevation. I think that the impact of the
13 back decks, the potential of that impacting
14 the public good is much smaller. So even
15 though they're part of the same test
16 initially, they sort of break off when it
17 comes to the impact on the public good.

18 And so there I think what's been
19 submitted on the deck, once we clarify how the
20 exiting is going to work from the basement I
21 think is probably sufficient, but it's that
22 elevation that needs to be properly designed.

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1 CHAIRPERSON LOUD: Okay. Let's
2 hear other Board members who would like to
3 weigh in.

4 VICE CHAIRPERSON DETTMAN: Mr.
5 Chairman, I just want to make a few comments.
6 I agree 100 percent with all of the
7 architecture/design related comments that have
8 been made thus far. I don't think that this
9 is a very well executed addition to this
10 existing structure, but nonetheless, I'm not
11 certain. I mean, we're looking at a relief as
12 it pertains to the addition, the additional
13 story.

14 We are applying the variance test
15 for relief from lot occupancy. You know, if
16 this was a conforming lot, the Applicant could
17 build whatever they want on top of this
18 building without expanding the lot occupancy.
19 So really these design comments and the way
20 the additional story is designed, in my
21 opinion, doesn't really factor into the third
22 prong.

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1 I mean, the question there is can
2 the lot occupancy relief be granted without
3 causing substantial detriment from the public
4 good when, in fact, the lot occupancy isn't
5 changing. It's just the reason why they need
6 lot occupancy is because the existing
7 structure is nonconforming.

8 But nonetheless, again, I agree
9 with the comments about the architecture and
10 design, and to the degree that we can
11 influence the design, I'm all for it. You
12 know, what we have in front of us, this
13 revised facade, is again a poor execution. I
14 mean, it looks like you've just extruded the
15 front bay, and you've left everything the
16 same.

17 I can't go so far to make a
18 recommendation, but there is an architect that
19 operates in the city that does these types of
20 things very, very effectively in historic
21 districts. You're setting the addition back
22 behind the Mansard roof so that you don't see

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1 it. You know, it looks like you have a 14
2 foot, two inch ceiling on the additional
3 floor. To me that seems a little bit
4 excessive. There might be some flexibility
5 there.

6 So I think a new set of plans that
7 would probably require going back to the ANC
8 with proper notice, and I haven't seen the ANC
9 report, but with the proper application of the
10 variance test, which is one of our
11 requirements for an ANC report, I think that
12 that's absolutely necessary.

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

15 Ms. Moldenhauer, did you want to
16 weigh in as well?

17 MEMBER MOLDENHAUER: Chairman, I
18 just want to concur with Mr. Dettman, and I
19 think that obviously if you do take under
20 advisement some of these suggestions, then
21 obviously you're going to need to strongly go
22 back to the ANC to make sure that whatever

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1 notices and put that burden on yourselves to
2 make sure you have fully been aware that all
3 notices have gone out to the different members
4 of the ANC on different listserves.

5 That way you can feel comfortable
6 with your presentation at the ANC that
7 everyone is there that may be interested, and
8 you can make sure that you have had the
9 opportunity to talk with the community members
10 and hear their feedback so that when you come
11 forward you can then represent to us that you
12 have done above and beyond any of the
13 requirements. I think that would be strongly
14 recommended.

15 Thank you.

16 CHAIRPERSON LOUD: Thank you, Ms.
17 Moldenhauer.

18 The only thing I would add, you
19 know, just sort of listening, I think
20 tremendous direction is being given by
21 individual Board members which collectively
22 points to a north star that the Applicant can

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1 draw guidance from.

2 Some of this perhaps can't be
3 compelled on the Applicant, but I think if the
4 Applicant is looking to draw guidance in terms
5 of meeting the test, it would be prudent to
6 listen to what's being shared on the record
7 right now.

8 I was a little intrigued by then
9 discussion about unnecessarily burdensome and
10 the whole contemporary living argument and the
11 testimony from the Office of Planning about
12 how for affordable units there is now a
13 standard as I understood the testimony for
14 1,000 square feet, give or take a little bit,
15 and the whole idea of closet space and
16 bathrooms. That's interesting to me. I don't
17 think it would meet a test for undue hardship,
18 but for unnecessarily burdensome, perhaps, you
19 know, one could have an open mind about that.

20 But I would like some additional
21 information on that issue as well. If you're
22 talking about the contemporary living issue

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1 being larger closets, larger bathrooms, having
2 the plans reflect what that would be, you
3 know, what's the problem now; what's the
4 constraint now with whatever size bathrooms
5 are available, closets are available, and then
6 how that would change with respect to what's
7 being proposed.

8 I know that's a challenge that
9 many of us face in Washington, D.C. in terms
10 of small closets and bathrooms, especially
11 small closets.

12 So does that amount to being
13 unnecessarily burdensome? I don't know.
14 We'll just have to see with what is submitted
15 and how the deliberations go, but if you could
16 provide that information it would be helpful.

17 With that said, I think what we
18 need to do is set a date then for the
19 submission of your elevations that you're
20 going to be done and the additional
21 information we have requested, and then
22 providing the ANC with a copy of that

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1 information, and then coming back, setting it
2 for decision. We certainly don't need another
3 hearing on this. But once we get that
4 information, I think, being able to set this
5 for a hearing.

6 And we ought to work backwards, I
7 guess, from the decision date. So, Ms.
8 Bailey, let me turn to you and ask you what
9 does it look like for setting this for a
10 decision probably toward -- because you're
11 going to need a little time to get this to the
12 ANC, correct?

13 MR. BELLO: That's correct.

14 CHAIRPERSON LOUD: So probably
15 some time in October.

16 MR. BELLO: That will work.

17 CHAIRPERSON LOUD: Okay. So we're
18 looking in October.

19 MS. BAILEY: The first meeting
20 date in October is October 6th, Mr. Chairman.

21 CHAIRPERSON LOUD: And we don't
22 have any decisions on the 6th, right?

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1 MS. BAILEY: Not as yet.

2 CHAIRPERSON LOUD: Okay. Well,
3 why don't we then set this for decision on
4 October 6th? And then working our way
5 backwards from that date, perhaps if you could
6 have the elevations submitted to us. Do you
7 think you can do it about 30 days before that?

8 MR. BELLO: We certainly can, but
9 I just need a bit of clarification.

10 CHAIRPERSON LOUD: Yes.

11 MR. BELLO: Clearly, it appears
12 that we need a new architect. So are we
13 allowed under this request to revisit our
14 design to provide an addition that is more
15 architecturally compatible at least for the
16 Board's consideration?

17 CHAIRPERSON LOUD: I think that's
18 very strongly what I've been hearing, is that,
19 you know, without compelling design choices,
20 that there's a strong desire to have issues
21 like the Mansard revisited, perhaps the height
22 of the third story revisited, and I don't see

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1 any kind of notice problems with what we're
2 talking about as long as it goes back through
3 the ANC and it doesn't change the nature of
4 the relief that's already been advertised that
5 we talked about.

6 MR. BELLO: Thank you.

7 So 30 days prior is good.

8 CHAIRPERSON LOUD: Okay. That
9 would be great. So you would submit it to us.
10 Can you submit it to the ANC at the same time?

11 MR. BELLO: Certainly will.

12 CHAIRPERSON LOUD: Fantastic, and
13 then what we'll do is give the ANC up until --
14 I think it would be find to give them up until
15 that Friday before the hearing. So if the
16 hearing is on the 6th, that Friday is October
17 1. Give the ANC deadline of October 1 to
18 submit any comments to the BZA per suggestions
19 of Ms. Moldenhauer.

20 VICE CHAIRPERSON DETTMAN: Mr.
21 Chairman, can I just ask the Applicant?

22 Do you intend on going back to the

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1 ANC or simply serving the ANC with a new
2 design, if you have one?

3 MR. BELLO: We'll be glad to go
4 back to the ANC.

5 VICE CHAIRPERSON DETTMAN: I think
6 that's a good idea.

7 CHAIRPERSON LOUD: Thank you, Mr.
8 Dettman.

9 Is there anything further in this
10 case?

11 MS. BAILEY: Mr. Chairman, if I
12 could just clarify the dates. Are we saying
13 approximately September 8th for the
14 Applicant's submission to the Board and the
15 ANC?

16 CHAIRPERSON LOUD: Yes.

17 MS. BAILEY: And then the ANC is
18 to respond by October the 2nd?

19 CHAIRPERSON LOUD: Yes.

20 MS. BAILEY: That's on a Friday.

21 CHAIRPERSON LOUD: That's on a
22 Friday, yes.

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1 MS. BAILEY: And then at that time
2 you had asked for the Office of Planning to
3 respond to your concern about contemporary
4 living. Is that date appropriate also for the
5 Office of Planning?

6 CHAIRPERSON LOUD: No, I'm sorry.
7 Not the Office of Planning; the Applicant.

8 MS. BAILEY: The Applicant. Okay.

9 CHAIRPERSON LOUD: Correct.

10 MS. BAILEY: Sorry.

11 CHAIRPERSON LOUD: And that would
12 be part of their September 8th submission.

13 MS. BAILEY: Okay. Thank you, Mr.
14 Chairman.

15 CHAIRPERSON LOUD: Thank you.

16 So if there's nothing further with
17 this case, I believe we're going to adjourn
18 for the morning session, and we'll be back out
19 here promptly at, say, about 1:10.

20 Okay. We'll be back out here by
21 1:10 for the afternoon cases.

22 PARTICIPANTS: Thank you.

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1 CHAIRPERSON LOUD: Thank you.

2 (Whereupon, at 12:44 p.m., the
3 public hearing was recessed for lunch, to
4 reconvene at 1:10 p.m., the same day.)
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1 AFTERNOON SESSION

2 (1:29 p.m.)

3 CHAIRPERSON LOUD: This hearing
4 will please come to order.

5 Good afternoon, ladies and
6 gentlemen. This is the July 28th public
7 hearing of the Board of Zoning Adjustment of
8 the District of Columbia.

9 My name is Marc Loud, Chairperson,
10 and joining me today are Vice Chair Shane
11 Dettman, representing the National Capital
12 Planning Commission; Commissioner William
13 Keating, representing the Zoning Commission
14 to Mr. Dettman's right; and then to my left,
15 Ms. Meridith Moldenhauer, of the BZA; Mr.
16 Clifford Moy, Secretary of the BZA; Ms. Lori
17 Monroe of the Office of Attorney General, and
18 we'll be joined shortly by Beverley Bailey,
19 Zoning Specialist in the Office of Zoning.

20 Copies of today's hearing agenda
21 are available to you and are located to my
22 left in the wall bin near the door.

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

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

14 All persons planning to testify
15 either in favor or in opposition are to fill
16 out two witness cards. These cards are
17 located to my left on the table near the door
18 and on the witness tables.

19 Upon coming forward to speak to
20 the Board, please give both cards to the
21 reporter sitting to my right.

22 The order of procedure for special

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1 exceptions and variances is statement and
2 witnesses of the Applicant; government
3 reports, including the Office of Planning, the
4 Department of Public Works, et cetera; the
5 report of the Advisory Neighborhood
6 Commission; parties or persons in support;
7 parties or persons in opposition; and finally,
8 closing remarks by the Applicant.

9 Pursuant to Sections 3117.4 and
10 3117.5, the following time constraints will be
11 maintained this afternoon. First, the
12 Applicant/Appellant/persons and parties except
13 an ANC in support, including witnesses, will
14 given 60 minutes collectively with respect to
15 your case, except as modified, and I'll
16 explain that later.

17 Appellees, persons and parties
18 except an ANC in opposition, including
19 witnesses, shall be given 60 minutes
20 collectively as well. And individuals shall
21 be given three minutes.

22 These time restraints do not

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1 include cross-examination and/or questions
2 from the Board. Cross-examination of
3 witnesses is permitted by the Applicant or
4 parties.

5 The ANC within which the property
6 is located is automatically a party in the
7 special exception or variance case. Nothing
8 prohibits the Board from placing reasonable
9 restrictions on cross examination, including
10 time limits and limitations on the scope of
11 cross examination.

12 The record will be closed at the
13 conclusion of each case, except for any
14 material specifically requested by the Board.
15 The Board and the staff will specify at the
16 end of the hearing exactly what is expected
17 and the date when the persons must submit the
18 evidence to the Office of Zoning.

19 After the record is closed, no
20 other information will be accepted by the
21 Board.

22 The Sunshine Act requires that the

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1 public hearing on each case be held in the
2 open before the public. The Board may,
3 consistent with its rules of procedure and the
4 Sunshine Act, enter executive session during
5 or after the public hearing on a case for
6 purposes of reviewing the record or
7 deliberating on the case.

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

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

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

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1 And in that connection, we ask for
2 parties who are bringing witnesses forward
3 this afternoon to please make sure that your
4 witnesses do not have overlapping testimony or
5 duplicative testimony and where there are
6 opportunities to consolidate witnesses that
7 will be sharing the same identical information
8 to take advantage of the opportunity to
9 consolidate them.

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

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

21 Does the staff have any
22 preliminary matters?

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1 MS. BAILEY: Mr. Chairman, good
2 afternoon.

3 CHAIRPERSON LOUD: Good afternoon,
4 Ms. Bailey.

5 MS. BAILEY: To the members of the
6 Board and to everyone, no, Mr. Chairman, staff
7 does not have any preliminary matters.

8 CHAIRPERSON LOUD: Thank you. I
9 think we can then proceed with our agenda and
10 with all individuals who are going to be
11 testifying this afternoon, please stand up and
12 Ms. Bailey will administer the oath to you.

13 (Whereupon, the witnesses were
14 duly sworn.)

15 CHAIRPERSON LOUD: Thank you, Ms.
16 Bailey, and I see that we have a total of
17 about ten witnesses that stood up, and so
18 again, I want to encourage the Applicants in
19 all of the cases if you see an opportunity to
20 consolidate witnesses, prevent duplication of
21 testimony, et cetera, please take advantage of
22 that opportunity.

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1 I think, Ms. Bailey, if we could,
2 having looked over the calendar for the
3 afternoon, go a little bit out of order in
4 that we'd like to call the Case No. 17952,
5 Lincoln -- and I hope I'm pronouncing it
6 correctly -- Leibner case first, and then
7 we'll go to 1332 Vermont Avenue.

8 We want to call that case first
9 because having looked at the record, we think
10 the record is pretty fully, and that is
11 probably won't take very long to review that
12 case.

13 So if the parties for that case
14 are here and can step forward.

15 MS. BAILEY: Application 17952,
16 this is the application of Lincoln Leibner,
17 and it is pursuant to 11 DCMR 3104.1 and
18 3103.2, for a special exception to construct
19 an accessory garage serving an existing one-
20 family row dwelling under Section 223, and the
21 variance from the alley setback requirements
22 under Subsection 2300.2. The property is

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1 zoned R-4. It's located at 1332 T Street,
2 N.W., Square 238, Lot 79.

3 CHAIRPERSON LOUD: Thank you.

4 Good afternoon. How are you?

5 Good. Why don't you state your name and
6 address for the record, and as I said, we
7 called the case first because the record is
8 really full. You guys did a great job of
9 briefing the record and laying out the
10 elements for the relief, and the Office of
11 Planning also did a great job.

12 So we don't necessarily think that
13 you need to repeat on the record what's a part
14 of your submission already, but if there's
15 something really specific in brief that you
16 want to highlight, certainly we encourage you
17 to do that, and of course, we would like to
18 meet the Applicant as well, but I think there
19 may be one or two comments from the Board, but
20 apart from that, I think it's fairly
21 straightforward.

22 So why don't you go ahead and

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1 state your name and address for the record?

2 MS. FOWLER: Hi. I'm Jennifer
3 Fowler of Fowler Architects, 1819 D Street,
4 S.E. in Washington, D.C.

5 MR. LEIBNER: Lincoln Leibner,
6 1332 T Street, N.W.

7 CHAIRPERSON LOUD: Good afternoon.

8 MS. FOWLER: Good afternoon.
9 Thank you for your time today.

10 As you said, the record is pretty
11 full. So we'll rest on the record. The only
12 changes that have come about recently on the
13 case, we reduced the size of the garage
14 because we looked more closely at the tree,
15 and the roots of some of the tree and wanting
16 to preserve it.

17 There's a mature tree in the
18 backyard that the homeowner planted himself 15
19 years ago. So the idea was to push it back
20 even more, and we also modified the door
21 opening.

22 There's a double door opening onto

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1 the yard. Instead of having an eight foot
2 tall door, we're going to go for a shorter
3 door with a fixed transom above so that we
4 don't interfere with any of the branches.

5 So those were really the things
6 that have been revised in the last week or so
7 based on our dealings with Paul Goldstein with
8 the Office of Planning.

9 CHAIRPERSON LOUD: Thank you.

10 Are those changes reflected in the
11 most recent drawings that we have?

12 MS. FOWLER: Yes, sir.

13 CHAIRPERSON LOUD: Okay.

14 Fantastic.

15 Then Board members, do you have
16 any questions for the Applicants?

17 (No response.)

18 CHAIRPERSON LOUD: Okay. Why
19 don't we then turn to the Office of Planning
20 for your report, again, bearing in mind that
21 the record is pretty full in the case.

22 MR. COCHRAN: My report will be

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1 short.

2 My name is Steve Cochran from the
3 Office of Planning. I was not the project
4 manager for it. Paul Goldstein was, but OP
5 does recommend that the relief be approved by
6 the Board subject to the Applicant's
7 retaining an arborist to monitor the health of
8 the tree during construction.

9 CHAIRPERSON LOUD: Thank you, Mr.
10 Cochran.

11 To the Applicant, what were your
12 thoughts on that requirement for retaining an
13 arborist to maintain the health of the tree?

14 MR. LEIBNER: Obviously very
15 acceptable.

16 CHAIRPERSON LOUD: That is
17 something that you'd do as a condition of your
18 relief or not?

19 MS. FOWLER: That's right. We
20 knew that. I actually worked that out with
21 Mr. Goldstein in the past week or two. We
22 decided we were going to do that.

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1 CHAIRPERSON LOUD: I see. Okay.

2 Board members, are there any
3 questions for the Office of Planning?

4 (No response.)

5 CHAIRPERSON LOUD: Okay. Then I
6 think what we'll do now is go to the ANC for
7 its report, and is there anyone from the ANC
8 present this afternoon?

9 Okay. I don't see anyone. I do
10 believe we had an ANC report in this case. I
11 think it came in just perhaps over lunch. It
12 came in, I think, but I know it came in, and
13 it was in support of the application. So did
14 you have a copy of that?

15 MS. FOWLER: We did. We brought
16 some copies in yesterday, I believe.

17 CHAIRPERSON LOUD: Okay. Very
18 good.

19 MS. FOWLER: Sorry for the poor
20 quality.

21 CHAIRPERSON LOUD: That's quite
22 all right. I think what's important is that,

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1 you know, the community support ist and you
2 got that support on the record. In fact, I
3 think it's so new we don't have an exhibit
4 number for it.

5 Do we have an exhibit number for
6 the ANC report?

7 MS. BAILEY: No, Mr. Chairman.
8 That is it.

9 CHAIRPERSON LOUD: Okay. So we
10 can't reference it by exhibit number, but it
11 is a part of the record. They do support you.
12 They do indicate that there was proper notice
13 and a quorum. It was a regularly scheduled
14 June 4 meeting, and they, again, voted to
15 support the application. So it is a part of
16 our record, and it will be given great weight.

17 Are there any questions from
18 anyone regarding the ANC's report?

19 (No response.)

20 CHAIRPERSON LOUD: Okay. If there
21 are persons in support of this application,
22 now would be the opportunity to step forward

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1 and indicate your support.

2 If there are persons in
3 opposition, now would be the time to step
4 forward and indicate your opposition.

5 And there being none, closing
6 remarks by the Applicant.

7 MS. FOWLER: Well, I would just
8 like to thank you for your time and thank Mr.
9 Goldstein. He did a very good job on this
10 one. We did a lot of back and forth trying to
11 make sure it was an appropriate application.
12 So I appreciate that as well.

13 CHAIRPERSON LOUD: Thank you.

14 Mr. Goldstein tends to do great
15 work, and so we appreciate all that he does as
16 well.

17 I think we're probably ready to
18 deliberate this case today, and as I said, the
19 record being full, and I think I'm going to
20 turn to Ms. Moldenhauer to get us started off.

21 MEMBER MOLDENHAUER: Okay. This
22 is a special exception under Section 223 and

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1 a variance under 2300.2, and as stated, the
2 record is full, and we will rely on the OP's
3 report.

4 The only issue for discussion
5 would be a recommendation that the Applicant,
6 as I've already stated, will take strongly the
7 recommendation of OP to work with an arborist,
8 and it seems that that's already been put on
9 the record.

10 So are there any other points or
11 issues?

12 CHAIRPERSON LOUD: I don't see
13 anyone suggesting that there are any points.
14 Again, just to reiterate, the ANC did support
15 it, and the Office of Planning report walks
16 through in detailed fashion the steps
17 necessary for both the special exception and
18 variance relief, and so I join with my
19 colleague in saying that it can be adopted by
20 reference and made a part of our deliberation
21 record.

22 That being the case, is there a

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1 motion?

2 MEMBER MOLDENHAUER: Yes. A
3 motion to approve the Case No. 17952 for the
4 special exception and the variance. Do I have
5 a second?

6 COMMISSIONER KEATING: Second.

7 CHAIRPERSON LOUD: The motion has
8 been made and seconded. Is there further
9 deliberation?

10 (No response.)

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

13 (Chorus of ayes.)

14 CHAIRPERSON LOUD: All those
15 opposed?

16 (No response.)

17 CHAIRPERSON LOUD: Are there any
18 abstentions?

19 (No response.)

20 CHAIRPERSON LOUD: Ms. Bailey, can
21 you read back the vote?

22 MS. BAILEY: Mr. Chairman, prior

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1 to calling the vote, the condition recommended
2 by OP, did the Board adopt that condition or
3 did you just want it to be mentioned in the
4 body of the order?

5 CHAIRPERSON LOUD: Excellent
6 point, Ms. Bailey. No, we did not adopt that
7 condition. I think in lieu of that, what we
8 heard was the Applicant state on the record
9 under oath that they're going to follow up and
10 do that even without the conditions. So I
11 think that satisfies the Board in terms of how
12 that issue will be handled, and we appreciate
13 the Applicant doing that.

14 MS. BAILEY: Thank you, sir.

15 CHAIRPERSON LOUD: Thank you.

16 MS. BAILEY: The vote is four,
17 zero, one to grant the application. Ms.
18 Moldenhauer made the motion. Mr. Keating
19 seconded, and Mr. Dettman and Mr. Loud support
20 the motion.

21 And are we doing a summary order
22 on this, Mr. Chairman?

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1 CHAIRPERSON LOUD: Yes, ma'am, we
2 are.

3 MS. BAILEY: Thank you.

4 CHAIRPERSON LOUD: Thank you.

5 Thank you for your time. We
6 appreciate it.

7 I think that we're now ready to
8 move to the 1332 Vermont case.

9 MS. BAILEY: As you know, members
10 of the Board, this is a continuation from the
11 July 14th public hearing. It's a limited
12 public hearing, and it concerns Application
13 17941 of 1332 Vermont Avenue Partnership, and
14 it's pursuant to 11 DCMR Section 3103.2 for a
15 variance from the floor area ratio
16 requirements under Section 402; a variance in
17 lot occupancy requirements under Section 403;
18 a variance from the rear yard requirements
19 under Section 404; a variance from the court
20 requirements under Section 406; and a variance
21 from the nonconforming structural provisions
22 under Subsection 2001.3 to allow additions

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1 including an enclosed parking structure to an
2 existing five-unit apartment house at 1332
3 Vermont Avenue, N.W. The property is Square
4 242, Lot 89, and it is zoned R-5-B.

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

7 We've been joined by Commissioner
8 Turnbull from the Zoning Commission who is a
9 part of our panel for this particular case.

10 I think, as I understood it, this
11 is a limited hearing following the original
12 hearing, and it is premised upon there being
13 some supplemental filings that the Board kind
14 of sua sponte accepted into our record that
15 were filed by the Applicant and Applicant's
16 counsel.

17 So I think our goal today is to
18 allow the Applicant to supplement what's been
19 presented without testimony, again, within the
20 context of it being a limited hearing. So
21 whereas normally we would set aside, you know,
22 an hour per the requirements for the

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1 presentations, I think we're going to set
2 aside 30 minutes in this case because they
3 have probably already been a good hour
4 already.

5 And do you think you're going to
6 need more than 30 minutes? Okay. So I don't
7 need to put the clock on. Okay.

8 So the we'll have a limited
9 hearing for 30 minutes by the Applicant. If
10 the Office of Planning -- I know you're here,
11 Mr. Cochran -- wants to weigh in, there will
12 be an opportunity for you to do that. You
13 certainly don't have to if you don't want to,
14 but clearly there's an opportunity for you to
15 do that just as you would at the regular
16 hearing.

17 Okay, and when you're ready to
18 come forward, please come forward, and you can
19 have your witnesses introduce themselves for
20 the record again.

21 MS. PRINCE: Good afternoon, Board
22 members. My name is Allison Prince with

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1 Pillsbury Winthrop Shaw Pittman, and with me
2 today again is Gil Entzminger and Bernie
3 Robinson, both of whom you probably remember
4 from our hearing on June 30th.

5 We greatly appreciate the Board's
6 reopening of the record in this case, and we
7 will be very sensitive about time and about
8 limiting our testimony to the items that were
9 submitted. We understand the limited scope of
10 the hearing, and we will be discussing only
11 our proposal to include a true green roof on
12 the addition and the practical difficulties in
13 providing an internal staircase to connect the
14 cellar and the first floors.

15 So at this point I'm going to turn
16 it over to Bernie Robinson -- actually to Gil
17 Entzminger. I'm sorry -- Bernie Robinson, the
18 owner, who will speak directly about the
19 proposal.

20 MR. ROBINSON: Good afternoon,
21 Board members. If it helps, I was in the Air
22 Force for 11 years.

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1 As Allison said, we would like to
2 thank you for allowing the additional evidence
3 into the record. I think that because we're
4 so familiar with this project and worked so
5 hard on it, we didn't do a very good job of
6 laying it out the first time you all saw it.

7 The project is the result of over
8 a year of analysis and careful consideration,
9 plus my 30 years' experience living in the
10 building. We didn't come up with this
11 approach for this addition overnight.
12 Instead, we considered the history of the
13 house, the historic value, our needs for the
14 house in order to live as a couple into the
15 future, and we spoke with each of our
16 immediate neighbors to be sure that there were
17 no problems or negative impacts on them.

18 I truly believe what we are
19 proposing meets our needs, our neighbors'
20 needs, respects the integrity of the historic
21 house and honors the intent of the zoning
22 regulations.

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1 The new evidence we filed
2 highlights the inconveniences and difficulties
3 my wife and I will face without an internal
4 connection. It also provides additional
5 information regarding the practical difficulty
6 in providing green space without the garage
7 and the added benefits of the garage that will
8 be provided to the neighborhood, the District,
9 and my wife and me.

10 By providing access between both
11 floors of our unit external to the historic
12 structure, we will be able to preserve the
13 original floor plan of the house. The other
14 alternatives that we studied would have
15 resulted in a dysfunctional kitchen or would
16 have cut up the dining room. However, this
17 approach allows us to keep both rooms intact,
18 much as they were in the early days of the
19 house.

20 Including the stairs in the
21 addition will also allow a practical floor
22 plan for the cellar where the master bedroom

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1 and bath will be located. As our materials
2 outlined, providing internal stairs would cut
3 into either our bedroom or bathroom in the
4 cellar, neither of which are desirable,
5 particularly when welcoming guests into the
6 house.

7 There are a number of reasons for
8 why the stairs would have to be located here,
9 and I'll let Gil get into the specifics, but
10 essentially, we have a very long, narrow house
11 that is oddly and uniquely configured on our
12 lot. None of the neighboring properties have
13 houses quite like ours, and because of that,
14 we are having a hard time providing access and
15 green space without relief.

16 In addition to providing access,
17 the addition will provide a deck with a green
18 roof. The deck will provide the desired green
19 space which could not otherwise be achieved.
20 As we pointed out in our post hearing
21 submission, this green space could not be
22 achieved now because of the extensive paving

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1 in the rear yard.

2 A substantial amount of excavation
3 would need to be undertaken in order to
4 establish a permeable surface in the rear
5 yard, a site that has long been paved.

6 The green roof, by contrast, will
7 provide green space for my family, improve the
8 aesthetics for the neighbors, and improve
9 storm water runoff management from the site to
10 the benefit of the District.

11 I truly appreciate the time the
12 Board has committed to this case, and Marge
13 and I believe that this proposal is a win-win-
14 win, for us, for the community, and for the
15 District.

16 We hope that you will approve the
17 addition as we look forward to spending many
18 more years in this house.

19 Gil will now go into the technical
20 details a little bit to refresh your members.

21 CHAIRPERSON LOUD: Thank you.

22 May I ask a very quick question as

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1 the next witness prepares? So if I understand
2 it correctly, part of the green space case
3 that's being presented and advanced with
4 respect to the variance test is that the
5 impervious surface in the rear is part of the
6 confluence of exceptional circumstances
7 because you cannot do anything with it to make
8 it compatible for recreational space, and
9 that's either for you or for Ms. Prince to
10 answer.

11 But that's one of the factors that
12 you want us to consider in the exceptional
13 situation route. Okay. Thank you.

14 Board members, were there any
15 additional questions before we move to the
16 next witness?

17 (No response.)

18 CHAIRPERSON LOUD: Okay.

19 MR. ENTZMINGER: Thank you.

20 Again, my name is Gil Entzminger
21 with Enteros Design Architects, and if there's
22 a wireless microphone, I'd like to use that.

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1 Thank you. Again, thank you very
2 much for taking the time to hear these
3 additional issues that we have to bring
4 forward to you.

5 Just to briefly recap the design,
6 we're providing access to the first floor of
7 the property from the rear of the rear yard by
8 wrapping a stair enclosure around the
9 perimeter of the existing building to provide
10 the direct access into the kitchen of the
11 building.

12 This is the original plan that we
13 presented to you at our last presentation.
14 The revision to that presentation is the
15 incorporation of the green roof component to
16 the project. Previously this was just a deck
17 off of the kitchen, but in response to a
18 comment from the last presentation, we feel
19 that it is appropriate to design that as a
20 true green roof feature of the house that
21 would respond to, I think some of the
22 concerns.

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1 As a green roof, I wanted to point
2 out some of the benefits and features of that
3 not only to the improvement of green space for
4 the resident, but also the benefit of the
5 community and the District of Columbia.

6 The product that we're using is a
7 product produced by LiveRoof, and it's a
8 recognized green roof product that we're
9 proposing is recognized by the United States
10 Green Building Council as a way to increase
11 open space and green space within urban
12 environments. The green roof component is
13 over 50 percent. It's about 53 percent green
14 roof with the remaining portions being a
15 pervious deck tile that would allow water to
16 flow down and then be collected in a cistern.

17 So we do feel like we're
18 increasing the green space and open space in
19 the community by proposing this green roof.
20 In addition, the green roof reduces the heat
21 island effect and that is another major
22 consideration with the United States Green

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1 Building Council by providing the green roof
2 and putting the parking below the green roof.
3 We reduce the impervious characteristics of
4 the site. As Bernie mentioned, we would have
5 to excavate a significant amount of soil to
6 really make a pervious surface on that rear
7 yard, and by constructing this roof, the
8 majority of rain water would be absorbed by
9 that green roof and then evaporate through by
10 transpiration.

11 Then the excess water would be
12 collected by a cistern and used for irrigation
13 and landscaping on the site. So we feel
14 that's a major improvement to the property,
15 and then this design does resolve the
16 practical difficulties that we presented
17 previously for the direct access from the
18 ground floor to the first floor of the house,
19 the increased green space on the property, and
20 providing secure access and security for the
21 property.

22 In your package that you have, you

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1 have some literature on the green roof
2 product. This is an example, an image of this
3 particular product, the LiveRoof product used
4 on a green roof application, and this would be
5 similar type of planting that we would propose
6 on this roof.

7 And then the deck tile product
8 that we would propose to use also is an
9 environmentally friendly product.

10 Another concern during our last
11 presentation was the configuration of the
12 stair and whether we had proved other
13 opportunities for integration of that stair,
14 the practical difficulty of those
15 opportunities. So, again, in our design we're
16 wrapping around the exterior of this existing
17 house.

18 We have looked at three other
19 options in this presentation that do show the
20 practical difficulty of configuring the stair
21 on the interior of the house. This Option B
22 integrates the stair into what we had proposed

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1 as the kitchen to the property. If we were to
2 do this arrangement from the rear yard and
3 from the parking area, the resident and any
4 guest he may have come to the house would have
5 to enter the basement, enter the residence
6 through the master bathroom to enter that
7 stair, and that would be very undesirable from
8 the standpoint of an entry to the primary
9 residence.

10 We have located the bathroom in
11 this location to have access to a primary
12 plumbing line that exits the house and to
13 relocate that bathroom would present a
14 practical difficulty from the standpoint of
15 significantly more plumbing work and removal
16 of concrete, trenching of concrete slabs for
17 the plumbing.

18 It would also increase the number
19 of risers that someone would have to travel
20 through to enter the first floor of the house.
21 You'd actually go down five risers to the
22 basement and then go back up several risers to

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1 the first floor.

2 There's also a major issue with
3 structural stability. We included in our
4 supplemental documentation an analysis from
5 the structural engineer. The engineer visited
6 the property, investigated the existing
7 conditions, and wrote the report associated
8 with removal of existing floor structure in
9 the house and the structural integrity of the
10 house and how it would be weakened by doing
11 that.

12 The current building code, the
13 current IBC building code would require
14 significant upgrades to the structure for
15 lateral support and lateral stability if we
16 were to modify the existing structure on the
17 interior, and that would represent a practical
18 difficulty to the owner of the house.

19 And also, you may be able to see
20 easier in the package that you have, but the
21 kitchen space that would be left after
22 incorporating that stair would be tiny and

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1 very inadequate in a dysfunctional kitchen
2 from the standpoint of the owner's use of that
3 kitchen.

4 So we would find that this option,
5 locating it in the proposed kitchen area would
6 be a practical difficulty for the owner.

7 The second option, Option C,
8 again, the Applicant would have to access the
9 unit, and he and any visitors he might have
10 from the parking area would have to come in
11 through that master bathroom and enter the
12 property by passing through a stair that takes
13 space away from the master bedroom. That
14 stair would then pass up through the dining
15 room on the top of the image and then enter
16 the residence and broad access to the kitchen
17 area.

18 So, again, the issues of practical
19 difficulty with the plumbing, the additional
20 risers that someone would have to travel
21 through to enter the house, having to pass
22 through the master bathroom and master bedroom

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1 to access the apartment or the dwelling unit
2 would be undesirable.

3 And then the circuitous path that
4 someone would have to travel to access the
5 property seems to be very unreasonable. It
6 would take a path which could be a matter of
7 just about 28 feet to access the rear parking
8 lot through our proposed stair around the
9 exterior of the property to about 92 feet of
10 travel to access that area.

11 We also have the structural
12 stability concern with this solution as well.
13 The floor joists in this plan run in this
14 direction, and so we would remove significant
15 amount of floor joists in this area and
16 provide additional structural headers, beams
17 and support to do that, and then we'd have to
18 deal with the lateral bracing of this wall as
19 the floor joists currently do provide the
20 lateral bracing on that wall.

21 We also have clearance issues. If
22 we were to incorporate the stair into this

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1 area, we would reduce the size of the master
2 bedroom considerably and make the use of that
3 bedroom much, much less usable and be a much
4 less usable bedroom.

5 And then the final option which we
6 wanted to explore to see if it was even
7 possible was to locate a stair in one of the
8 parlors, and that just physically will not
9 fit. We do not have the space to have enough
10 risers to pass through that space and down
11 into the basement level. Not only does it not
12 fit, but it also would make this parlor space
13 on the front of the house, part of the
14 original construction, unusable.

15 And I mentioned the structural
16 engineer's report. You have a copy of that in
17 your package, and it does indicate the
18 extensive engineering calculations and
19 additional structure that would be required if
20 we were to modify the existing floor structure
21 to integrate the stair into the existing
22 house.

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1 And with that I'll conclude my
2 presentation and answer any questions you
3 might have.

4 CHAIRPERSON LOUD: Thank you.

5 Let me see if Board members have
6 any questions for you.

7 (No response.)

8 CHAIRPERSON LOUD: Okay. No
9 questions at this point in time. Do you have
10 additional witnesses?

11 MS. PRINCE: That completes our
12 presentation. We have no more witnesses.

13 CHAIRPERSON LOUD: Okay. Then why
14 don't we turn, of course the Board reserving
15 the right to ask questions as they pop up in
16 our heads, but let's turn to Mr. Cochran from
17 the Office of Planning.

18 MR. COCHRAN: Thank you, Mr.
19 Chair.

20 With the submission of the
21 additional material, OP thinks that the
22 Applicant has now met the three-prong test for

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1 the addition of the staircase, and we would
2 recommend that you approve the relief that has
3 been requested that is germane to the
4 staircase.

5 However, we have not changed our
6 position on the garage, although as I
7 testified last time, OP does not believe that
8 the garage would have a negative impact on the
9 neighbors.

10 The scale of the garage, the fact
11 that it would take a lot occupancy to almost
12 98 of the lot. It goes against the intent of
13 Section 2001.3, which is to bring
14 nonconforming structures into conformity.
15 This goes considerably farther away from
16 bringing it into conformity.

17 And added to that there was the
18 rezoning from R-5, the earlier rezoning that
19 decreased the permitted intensity of
20 development on the site. So between the two,
21 we feel that it's simply going in the wrong
22 direction.

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1 So we are still not able to
2 recommend approval on the garage.

3 CHAIRPERSON LOUD: Let's see if
4 Board members have any questions and then
5 we'll turn to the Applicant.

6 COMMISSIONER TURNBULL: Mr. Chair.

7 Mr. Cochran, in your original
8 report you had mentioned you would not be
9 opposed to side wall extension with a roll-up
10 door on the alley.

11 MR. COCHRAN: That's correct, and
12 with respect to the roll-up, I did not mean to
13 say just roll-up. It could be a swing door
14 that would be less noisy than a roll-up, et
15 cetera.

16 COMMISSIONER TURNBULL: Okay. So
17 that's still out there as an option.

18 MR. COCHRAN: Yes.

19 COMMISSIONER TURNBULL: Thank you.

20 CHAIRPERSON LOUD: Mr. Dettman,
21 did you have any questions at this time?

22 I just wanted to ask a follow-up

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1 question on the stairwell. What is it about
2 the -- and I know the witness just walked us
3 through it -- but what is it about the change,
4 I guess, in their application that allows you
5 to conclude that they meet the uniqueness
6 prong, the practical difficulty prong, and the
7 public detriment prong just on the stairwell
8 issue?

9 MR. COCHRAN: With respect to the
10 uniqueness, it is the structural implications
11 of cutting the staircase into the historic
12 house that the Applicant has now demonstrated
13 that we feel do make it unique. In terms of
14 practical difficulty, the Applicant has gone
15 through three scenarios, at least two of which
16 would require cutting into the fabric of the
17 house and has demonstrated that there would be
18 practical difficulty in saving the features of
19 the house that make it so historic, and with
20 respect to the impact on the zoning
21 regulations or on the public welfare, we
22 believe that, as we said the last time, the

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1 public welfare certainly would not be
2 negatively impacted by this.

3 And given that it would result in
4 a relatively small increase only for
5 functional purposes, not for optional
6 purposes, such as recreation, we don't think
7 that it goes against the intent of Section
8 2001.3.

9 CHAIRPERSON LOUD: So that's what
10 distinguishes this part of the relief from the
11 green space part of the relief.

12 MR. COCHRAN: Correct.

13 CHAIRPERSON LOUD: Both
14 functionality and the degree of the relief
15 needed.

16 MR. COCHRAN: That's correct.

17 CHAIRPERSON LOUD: Okay, and on
18 the issue of the green space, do you believe,
19 does OP believe that an impervious surface
20 created by what they describe as decades and
21 decades of parked vehicles on it is an
22 exceptional situation?

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1 MR. COCHRAN: No, we don't.

2 CHAIRPERSON LOUD: Okay. All
3 right. I don't have any further questions.
4 I think now I'll turn it over to the Applicant
5 to see if they have any cross examination.

6 MS. PRINCE: No cross examination.

7 CHAIRPERSON LOUD: Okay. Thank
8 you.

9 Thank you, Mr. Cochran.

10 MS. PRINCE: One clarification,
11 Mr. Cochran. The lot occupancy associated
12 with the proposal, you cited it as?

13 MR. COCHRAN: I believe from the
14 last time with the garage in it would be 90 --
15 well, I'd have to look at my notes again. I
16 think it was well in the 90s.

17 MS. PRINCE: We just wanted to
18 clarify that it's 83 percent. The lot
19 occupancy is 83 percent.

20 CHAIRPERSON LOUD: Thank you, Ms.
21 Prince.

22 MR. COCHRAN: That's correct.

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1 Sorry.

2 CHAIRPERSON LOUD: Does that in
3 any way alter your opinion?

4 MR. COCHRAN: No.

5 CHAIRPERSON LOUD: Okay.

6 MR. COCHRAN: It's still 130
7 percent of what's permitted.

8 CHAIRPERSON LOUD: And just going
9 back to the stairwell, what's the degree of --
10 what's the difference between the degree of
11 relief sought there and the degree of relief
12 sought with respect to the decked garage?

13 MR. COCHRAN: I'd have to ask the
14 architect to do those calculations. It's
15 relatively small.

16 CHAIRPERSON LOUD: Okay. Thank
17 you.

18 With that said, Board members, if
19 there are any questions for either the
20 witnesses, Ms. Prince or Mr. Cochran, we can
21 get back to that before we conclude the
22 hearing.

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1 We convened the hearing for the
2 limited purpose of the testimony regarding the
3 anterior stairwell and the green space
4 information. I think we had earlier grown
5 through the ANC report information and parties
6 or persons in support and/or opposition. So
7 we won't do that again today. But if there
8 are closing remarks by the Applicant, I think
9 we can move to that.

10 MS. PRINCE: Thank you.

11 Just some brief closing remarks.
12 I'll try not to go through the three-part test
13 in any kind of great detail.

14 Just to remind everyone that
15 probably the most unique aspect of this
16 property which goes to both the garage and the
17 interior stair is the original kitchen
18 addition. It's not an addition. It's part of
19 the original footprint, the appendage at the
20 rear of the house that encroaches on the rear
21 yard.

22 Were it not for that one story

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1 piece, that kitchen area, we would be able to
2 accommodate green space in the rear yard and
3 the existing parking. It's that aspect of the
4 footprint that's probably most compelling in
5 terms of the tie between uniqueness and the
6 practical difficulties. It's not merely the
7 fact that the rear yard is walled and it's
8 difficult to introduce green space there
9 that's the issue. It's the fact that we're
10 legally obligated to continue to provide the
11 parking that's there, and to continue to
12 provide the parking that's there with the
13 footprint configured as it is makes it
14 extraordinarily difficult to have green space.

15 And that's why, as I've said all
16 along in this case we have to consider the
17 interplay, the tie between the uniqueness and
18 the practical difficulties because I believe
19 we have that here. It's not a situation where
20 we're simply citing a bunch of unique features
21 of the property that have nothing to do with
22 the practical difficulties. They're very much

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1 tied together.

2 This is an extremely important
3 project to the property owner, a 30-year
4 resident of the building. He has no interest
5 in doing anything that would have any harm on
6 the neighborhood. He's very receptive to the
7 concept of the green roof over the garage
8 because he views that as a win-win, as a way
9 to continue to provide the parking he's
10 legally obligated to provide, yet have green
11 space, and I think we've laid out the
12 practical difficulties of having a stair
13 anywhere but on the exterior of the building.

14 We greatly appreciate your further
15 consideration of this application. We are
16 really pleased that you took some additional
17 items into the record because I know you
18 struggled through the first hearing as we did.

19 We hope we've made it a little
20 easier for you, and we thank you for your
21 time.

22 And unless Bernie has any final

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1 comments, I'll close with that.

2 CHAIRPERSON LOUD: Thank you, Ms.
3 Prince.

4 I had a follow-up question for the
5 Office of Planning, I think, in light of Ms.
6 Prince's closing statement, which if you don't
7 mind I'd like to ask them, and there's an
8 opportunity for cross and if you want to
9 cross, certainly we'll make it available to
10 you.

11 But do you see the extension of
12 the kitchen into the rear yard as something
13 that makes the property unique?

14 MR. COCHRAN: No.

15 CHAIRPERSON LOUD: Okay. Okay.
16 You have the opportunity if you want to cross
17 him or explore that further. I just wanted to
18 ask him that question.

19 MS. PRINCE: Just one question for
20 Mr. Cochran.

21 Have you surveyed the alley? Are
22 you familiar with any one story kitchen

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1 appendages coming off the rear of any of the
2 other houses?

3 MR. COCHRAN: I've walked the
4 alley. I'm not aware of any other situation
5 like yours, nor though am I aware of how that
6 situation relates to a practical difficulty
7 affecting staircase or garage.

8 MS. PRINCE: You don't believe
9 that the actual building footprint in that
10 rear yard area impinges on our ability to have
11 green space?

12 MR. COCHRAN: There is nothing in
13 the zoning regulations that guarantees a right
14 to green space. It's certainly possible to
15 have recreation space on a impervious surface.
16 I think that the Applicant has done a lot to
17 mitigate the impact of proposed construction
18 with the addition of the green roof.

19 But that's not, for better or
20 worse, germane to the zoning regulations.

21 CHAIRPERSON LOUD: And just one
22 follow-up question so I'm clear as well. I

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1 think I understood you to say in the closing
2 statement that you have a legal requirement
3 for parking spaces.

4 MS. PRINCE: The property is a
5 historic property, and therefore, there's no
6 requirement to provide additional parking.
7 However, for historic properties, to the
8 extent that parking was provided, it can't be
9 eliminated, and that's what I was suggesting
10 when I said legally entitled.

11 CHAIRPERSON LOUD: Okay.

12 MS. PRINCE: So we can't eliminate
13 spaces that have always been there.

14 CHAIRPERSON LOUD: Okay. Thank
15 you very much.

16 Let me see if Board members have
17 any follow-up or additional questions
18 regarding that or any of what we've heard for
19 either the counsel or the witnesses or Mr.
20 Cochran.

21 (No response.)

22 CHAIRPERSON LOUD: Okay. Then I

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1 think we have some options available ot us in
2 terms of next steps. The record appears to be
3 fairly full. We can deliberate the case, and
4 let me turn to my colleagues and see and get
5 your thoughts, rather, on that.

6 VICE CHAIRPERSON DETTMAN: Mr.
7 Chairman, I think the record is full enough,
8 and I think that we're ready to go forward
9 today.

10 CHAIRPERSON LOUD: Mr. Turnbull,
11 did you have further thoughts on that?

12 COMMISSIONER TURNBULL: I concur.

13 CHAIRPERSON LOUD: Okay. Then why
14 don't we begin our deliberations on the case,
15 and, Mr. Dettman, I will turn back to you to
16 get us started.

17 VICE CHAIRPERSON DETTMAN: Thank
18 you, Mr. Chairman.

19 I won't review the areas of the
20 relief that's being sought here. I think that
21 we are adequately familiar with what's being
22 sought.

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1 This is an application where the
2 Applicant is requesting this relief in order
3 to do a number of things. What I was able to
4 gather from the pre-hearing statement is that
5 the Applicant is looking to provide security
6 for his family, as well as the tenants in the
7 building, provide direct access from the rear
8 yard to the main building, provide some
9 recreation space, provide an internal access
10 between the first floor and the basement
11 level, which is actually a unit that the owner
12 is going to live in, as well as incorporate
13 several sustainability elements, and we
14 received some testimony and a presentation on
15 the changes that the Applicant had made with
16 respect to those sustainability elements.
17 We're looking at a true green roof right now.

18 And so getting into the variance
19 test, essentially we need to kind of keep that
20 in mind, what the applicant is trying to
21 achieve, and decide whether or not the strict
22 application of the zoning regulation makes it

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1 practically difficult for the property owner
2 to do those things, to resolve some of those
3 issues that they're looking to accomplish.

4 With respect to the first and
5 second prongs, I'll deal with those together.
6 Looking at the evidence that's in the record
7 and the testimony that's been provided in
8 deciding whether or not this specific piece of
9 property is affected by an exceptional or
10 extraordinary situation or condition, and that
11 whether or not those -- whether there's a
12 condition or a series of conditions that give
13 rise to a practical difficulty upon the
14 property owner, the Applicant in their
15 testimony and in their filings, they argue a
16 confluence of factors some of which go to the
17 physical properties of the land, physical
18 characteristics of the land, and others do
19 not. They go to past Board actions, and they
20 go to the improvements upon the property as
21 well as recent occurrences in the alley. I
22 think there was mention that there was a

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1 murder in the alley recently.

2 And specifically, the Applicant
3 offers about 11 different circumstances that
4 could qualify under the first prong, and I'll
5 list those very quickly.

6 They were the prior BZA history of
7 the case in Application No. 12981, which I
8 believe was about maybe 30 years ago. The
9 Applicant had been approved for the
10 construction of an accessory garage. The
11 building is currently nonconforming. It
12 extends further into the rear yard than the
13 neighboring properties not by way of any
14 addition that had been put onto the original
15 structure, but that this kitchen appendage is
16 part of the original structure.

17 The square and the alley system
18 have an unusual shape which creates a unique
19 angled rear property line, which sets up a
20 very unique relationship between the building
21 and the rear property line. There is very
22 little usable recreation space on the

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1 property. There is no direct access from the
2 rear of the building to the parking area.

3 I had mentioned crime and safety
4 in the alley already. We heard today that the
5 Applicant believes that the amount of
6 impervious surface and the length of time that
7 it has been in existence in the rear yard is
8 a unique circumstance.

9 And to kind of round this out,
10 there was mention that the mix of uses within
11 the square. This square has frontage on the
12 14th Street corridor, which is a commercial
13 corridor, and in fact, this square is split
14 zoned. So the frontage along 14th is a
15 commercial zone, and what the Applicant has
16 argued is that the commercial uses along the
17 square create unique circumstances in terms of
18 rodents and trash and whatnot, and activities
19 in the alley.

20 And finally, the fact that there's
21 no private connection between the first floor
22 and the ground floor, and so those were the

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1 unique factors that were proffered by the
2 Applicant.

3 I guess in my opinion, some of
4 these actually do not qualify as a unique
5 situation at all. What I do think constitutes
6 a unique situation or circumstance is the fact
7 that there's no private connection between the
8 first floor and the ground floor. I think
9 there was some testimony during the hearing
10 that, you know, this is the Applicant's choice
11 to live on the basement floor and the first
12 floor. They could decide to live in a two-
13 floor unit somewhere else in the building.

14 But I also think that there was
15 some testimony that the Applicant has put in
16 some financial resources to improve the
17 property, the upper level apartment. So I
18 think that to require them to move the two
19 story unit somewhere else in the building
20 could be practically difficult for them, given
21 the amount of investment that they have in the
22 property in the other apartments.

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1 I think that the fact that there's
2 very little usable recreation space in the
3 property is unique. It's not a unique
4 circumstance that in and of itself in my mind
5 would create the practical difficult that
6 would warrant the variance.

7 However, the Board had considered
8 recreation space and the lack thereof as a
9 unique circumstance, and I think that it's
10 unique that in order for the Applicant to
11 provide recreation space in the rear of the
12 building, it's going to require the Applicant
13 to park two or three cars on the streets. I
14 think that has significance. In my mind at
15 least it does because it could exacerbate a
16 parking issue in a neighborhood that's very
17 dense and has parking issues.

18 So I consider the very little
19 usable recreation space as a unique
20 circumstance.

21 Finally, I think looking
22 collectively at the building currently being

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1 nonconforming and that it extends further into
2 the rear yard, that the property has a unique
3 rear property line. It's angled, and that
4 there's this unique relationship between this
5 kitchen appendage extending further than most
6 of the buildings or maybe all of the buildings
7 in the square into the rear property line.

8 I think looked at collectively, I
9 think that that equates to a unique
10 circumstances. I know in the past the BZA has
11 stated, and this is actually coming from
12 17188, and I think it was the Deborah Miles
13 case, that said ownership of a nonconforming
14 structure on a nonconforming lot cannot
15 constitute the necessary uniqueness for
16 variance purposes. Such nonconformities
17 rather than being unique to any particular
18 structure or lot are features common to any
19 properties within the District.

20 But I think looked at
21 collectively, those features, I think it does
22 create some practical difficulties upon the

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1 property owner.

2 With respect to the other ones,
3 the crime in the alley, I think, and the BZA
4 has addressed crime and safety issues in the
5 alley, that it's not a unique circumstance to
6 a specific piece of property. It goes to the
7 other properties along that alley or within
8 that square, no direct access from the rear of
9 the building to the parking area. I think if
10 you look at the plans and in the testimony,
11 there is access.

12 It may be that what currently
13 exists by way of access going down the side
14 yard or the nonconforming court and into a
15 well, it's not ideal, but I don't think in my
16 mind it raises to a level of being a unique
17 circumstance.

18 The mix of uses, again, I think
19 that there is a mix of uses, but I think that
20 you're going to find that in any city that's
21 actually split zoned and has frontage along a
22 commercial corridor, and certainly the rest of

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1 the properties on that square, the residential
2 properties in that square share that
3 situation.

4 And the prior BZA history of the
5 case, perhaps if the Board saw characteristics
6 of the property that they found to be unique,
7 we should probably acknowledge that. I mean,
8 I think we are, but I think the fact that it
9 has been previously approved by the Board, I
10 don't think that's unique.

11 I also think that the fact that
12 within the past 30 years the property has been
13 down zoned, that even if the Applicant brought
14 forth this same exact project as they were
15 approved for 30 years ago, the whole nature
16 and the extent of the relief has changed
17 because of the down zoning.

18 So looking at those three
19 characteristics that I personally think
20 qualify under the first prong, the recreation
21 space, the no private connection, as well as
22 the relationship between the building and the

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1 rear property line, I actually don't see the
2 practical difficulties.

3 I think that there are practical
4 difficulties. I agree with the Office of
5 Planning that especially with respect to
6 providing an internal stair, I think that that
7 presents some very strong practical
8 difficulties for the property owner, and that
9 only could be resolved by putting in a stair
10 on the outside of the building to the rear of
11 the building.

12 But the practical difficulties
13 that have been demonstrated by the Applicant
14 I don't see actually matching the actual scale
15 of the relief that's being requested here, and
16 I think that that's necessary.

17 Looking at a Zoning Commission
18 order from 2002, which is 02-37, it speaks to
19 the need to demonstrate practical difficulties
20 that have a relationship to the magnitude of
21 the relief that's being requested, and just to
22 read a couple of lines there, it says that the

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1 Applicant claims practical difficulties must
2 not only result from the exceptional situation
3 or condition of its property, but its proof
4 must also bear some reasonable relationship to
5 the magnitude of the relief being granted.

6 The quantum of proof for practical
7 difficulties claimed varies with the magnitude
8 of the variance being sought.

9 That's where I don't think that
10 the variance test has been met. I think that
11 there are practical difficulties that could
12 warrant some relief, and in fact any addition
13 to this property is going to require some sort
14 of relief, even putting on just that rear
15 stair, but not the extent of the relief that's
16 being sought here.

17 I go a little bit further than the
18 Office of Planning. I could see having, in
19 addition to the side walls and the door and
20 the external stair, I could see an opportunity
21 for the Applicant to gain some recreation
22 space by putting on a deck, but not to the

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1 extent of actually moving a rear deck out to
2 87 percent of lot occupancy because as the
3 Office of Planning has stated, it's 138
4 percent of what's permitted. I think that's
5 a bit excessive.

6 So I don't get to the third prong,
7 but if I was to address the third prong, I
8 think that as the Office of Planning has
9 stated, the relief probably could be granted
10 without causing substantial detriment to the
11 public good, and that the fact that the
12 project is endorsed by the neighbors -- we had
13 Mr. Bigelow show up at the hearing -- as well
14 as the ANC indicates that the proposal is
15 popular, that it's welcome in the community,
16 and that probably it would not have any harm,
17 perceived harm. If any harm is caused, I
18 should say, it would be perceived as being
19 minimal.

20 But I think that the third prong
21 wouldn't be met based on the impairment and
22 the intent of the zoning regulations,

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1 especially with the fact that within the past
2 ten years, I believe, the property has been
3 downzoned, and the purpose of that downzoning
4 as to retain the character of that historic
5 neighborhood.

6 There was mentioned something
7 about a reference to Dupont Circle or
8 something like that in the OP report as the
9 purpose of that down zoning.

10 So I think that's all I have, Mr.
11 Chairman. I am absolutely sympathetic to what
12 the Applicant wants to do with their property.
13 I think that they should be able to establish
14 that connection and that egress between the
15 basement floor and the first floor, and I
16 actually think that recreation space is very,
17 very important.

18 But at the end of the day I side
19 more with the Office of Planning that it's a
20 tradeoff between parking and recreation space,
21 and I think that there's an opportunity to
22 have both here but not to the extent at which

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1 the variances that are being requested here
2 today.

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

5 Before I ask Mr. Turnbull, I just
6 wanted to, I guess, note and then ask a
7 question regarding the testimony we heard
8 today from the Applicant regarding the
9 interior stairwell part of the overall
10 application, which as I understand is also the
11 part of the application that the Office of
12 Planning kind of reversed itself on and said
13 that they felt like of the three scenarios
14 presented, two of them would require that the
15 basic fabric of the house and some of the
16 historic features in it would be destroyed by
17 if the Applicant were not granted the variance
18 and allowed to do the enclosure the way the
19 Applicant saw it.

20 I guess what is your response to
21 that? Do you have a feel for whether you
22 think the Applicant has made the case just

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1 with the stairwell as opposed to the green
2 space?

3 I know my question is probably not
4 that clear. It's not clear enough probably.

5 VICE CHAIRPERSON DETTMAN: I'll
6 answer it based on how I understand your
7 question. I think that I agree with the
8 Office of Planning. I think that supplemental
9 filing or Exhibit 30 presented some very
10 compelling arguments as to why it would be
11 practically difficult for the property owner
12 to incorporate an internal stair between the
13 basement floor and the first floor in a manner
14 that respects the historic character and floor
15 plan of the building, and not to mention there
16 was mention of a sewer line and what that's
17 going to do to the floor plan and what that's
18 going to do to the layout of their home.

19 So I think that that's a unique
20 situation that gives rise to a practical
21 difficulty, but whether that practical
22 difficulty has any relation to the amount of

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1 relief and the type of relief that's being
2 requested here, that's where I don't see it.

3 I think that the external stair in
4 the rear of the property would relieve that
5 practical difficulty, and could be
6 accomplished by a much, much lesser degree of
7 relief.

8 CHAIRPERSON LOUD: And is that the
9 same thing as saying that if the garage and
10 the deck were not part of the application that
11 the other parts of the application that's
12 proposed would be contoured properly to the
13 relief needed, or are you saying even just
14 within the relief sought for the stairwell
15 that it's a bit excessive in terms of the
16 practical difficulty?

17 VICE CHAIRPERSON DETTMAN: Well, I
18 don't know. I don't really want to get into
19 the design and pull it apart into its
20 individual pieces and find out what relief
21 goes to what and what goes to another. I know
22 that if we were looking at a design that only

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1 had that loggia, I think we'd probably be
2 talking about perhaps a little bit of lot
3 occupancy and perhaps maybe a little bit of
4 rear yard and FAR perhaps.

5 But again, I don't want to kind of
6 surmise what the extent of the relief would be
7 with just this and not this. I think looking
8 at the proposal as a whole, I think a variance
9 test isn't met.

10 I do agree with the Office of
11 Planning that I would be in favor of something
12 that was mentioned by Mr. Cochran in terms of
13 just the external stair, and I go a little bit
14 further than that. I think that the lack of
15 recreation space is a unique circumstance, and
16 I think that there's an opportunity there to
17 have both and at the same time be a much, much
18 lesser degree of variance relief.

19 CHAIRPERSON LOUD: Okay. Thank
20 you.

21 Mr. Turnbull, did you want to
22 weigh in?

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1 COMMISSIONER TURNBULL: Thank you,
2 Mr. Chairman.

3 I would agree with Mr. Dettman's
4 analysis as he went through it. I think if
5 you were, again, without pulling it apart, and
6 as Mr. Cochran also said, that if you simply
7 looked at the stair part now, given the
8 evidence, the new information that was
9 supplied by the Applicant, we could grant
10 relief for that stair, but looking at the
11 overall application, you know, we have this
12 wonderful L'Enfant plan in D.C. Unfortunately
13 the L'Enfant plan has all of these angles
14 streets which creates these lots that are like
15 this.

16 So in that case it's not unique to
17 this city. Wherever you're going to have
18 angled streets, you're going to have lots like
19 this. So that's not a unique set of
20 circumstances in this city. You have them.
21 You're going to have them long and narrow and
22 you're going to have them short and cut off.

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1 So I think that is an existing
2 condition that exists within this city. I
3 guess looking at this, we're in an urban area.
4 The amount of open space that they would like
5 to have, I would agree with Mr. Dettman that
6 overall they have not really gone to the --
7 they haven't really hit the other prong. They
8 haven't really made it substantial enough to
9 go back and say, "Yes, we can grant this."

10 You can change that surface back
11 there. You can put an impervious parking
12 area. You can do more green things back
13 there. I just think that from a zoning
14 standpoint and as Mr. Cochran referred to
15 earlier as the zone plan, I worry about
16 precedents and setting. If the neighbor wants
17 one, then the next neighbor is going to want
18 one.

19 I mean, unless the Zoning
20 Commissioner rewrites the regulations as to
21 allowing what's to be changed by lot
22 occupancy, we're going to be having requests

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1 for special exceptions and variances from here
2 to on down to add these little structures at
3 the back.

4 And maybe that's something that
5 has to be dealt with, but I think right now
6 with the regs the way they are, I really can't
7 acquiesce and go along with the overall
8 requirements or the overall requests that this
9 Applicant is asking for.

10 The stair, I believe, is something
11 which I don't have a problem with.

12 CHAIRPERSON LOUD: Thank you, Mr.
13 Turnbull.

14 I'm in agreement with both of my
15 colleagues. I think for me the sort of
16 linchpin was the amount of relief that's being
17 requested. I think Mr. Cochran testified that
18 with the relief being sought, and this is a
19 package design. You're right. As both of you
20 guys have said, you can't pick it apart and
21 say this part fits and this part doesn't fit.
22 It would go up to about 138 percent of

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1 allowable lot occupancy, and this is even
2 after the rezoning that Mr. Cochran testified
3 to, the down zoning for the property, and I
4 just think in that scenario that the case for
5 the application as a whole, inclusive of the
6 green space and sort of tying in the dearth of
7 recreation space, it wasn't compelling enough
8 for me to feel like the Applicant made that
9 case.

10 If we were only looking at the
11 stairwell issue, I think the testimony was
12 very strong, particularly today, regarding
13 some of the uniqueness and particularly
14 practical difficulties of the stairwell issue,
15 and we are dealing with an area variance. So
16 the standard is a lesser standard. It's not
17 the undue hardship. It's unnecessarily
18 burdensome.

19 But the application as a whole and
20 the need to do the garage and the deck, I'm in
21 agreement with my colleagues that I think it
22 just stretches well beyond the actual

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1 uniqueness and exceptional situations that
2 were identified on the property.

3 So is there further discussion?

4 VICE CHAIRPERSON DETTMAN: Mr.
5 Chairman, I just wanted to make one final
6 point, and it goes to a reference to a prior
7 BZA case. During the hearing we heard in the
8 Applicant's testimony a reference to BZA Case
9 17695, which is located at 1515 Vermont
10 Avenue, which made me go back and actually
11 review the transcript just to get my head
12 around what the Board approved in that case.

13 there was very similar relief, and
14 there was an argument that, you know,
15 applicants rely upon previous Board decisions
16 and look for consistency in an application of
17 the variance test and everything.

18 By looking through the testimony
19 in that case, as well as looking at the plans
20 that were approved, I think that I can draw a
21 distinction between those two cases. You
22 know, we look at every single case on its own

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1 merits and look for its own uniqueness and its
2 own practical difficulties.

3 You know, in that case we were
4 dealing with a smaller lot. It's a little
5 over 200 square feet, smaller than this one.
6 It was a narrower lot. That one was about 14
7 feet. This one, I don't have it right in
8 front of me, but I think it's larger than 14
9 feet, and not to mention there were some
10 unique characteristics in terms of the
11 improvements on the adjacent property. They
12 had a two or three story brick wall on one
13 side. There was a garage on another, and it
14 was creating these mold and moisture and
15 mosquito issues, and so those were kind of a
16 unique element that I saw, went to that case
17 that differentiated and allow me to draw a
18 distinction between the Board's decision in
19 that case and perhaps the Board's decision in
20 this case.

21 CHAIRPERSON LOUD: Thank you, Mr.
22 Dettman. Thank you, Mr. Turnbull.

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1 I think barring any further
2 deliberation if there is a motion to be made,
3 this would an appropriate time.

4 MS. PRINCE: Chairman Loud, may I
5 just interject? I know --

6 CHAIRPERSON LOUD: Typically we do
7 not entertain any additional comment or
8 feedback once we're in deliberation.

9 MS. PRINCE: I think there's a
10 relatively easy solution, and I just rather
11 than require the Applicant to go through the
12 entire process again, I just wanted to suggest
13 an easier solution than a denial of the full
14 application.

15 CHAIRPERSON LOUD: Hold that off
16 for one second.

17 Board members, we're in
18 deliberation. I think we were at the point of
19 a motion being made and an extraordinary
20 request to keep the door open Are you
21 amenable to hearing what counsel has to say?

22 I'll tell you what. I'm sorry.

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1 Go ahead.

2 VICE CHAIRPERSON DETTMAN: I'm
3 amenable to that. I understand that if even
4 the Board were to deny this case, as counsel
5 obviously sees that the Board is leaning that
6 way, it does not prevent the Applicant from
7 turning around and coming back with a
8 different case and new facts and a different
9 design. It's a totally different application.

10 They're not barred. I know the
11 regulations require a one-year turnaround time
12 or a one-year delay, but nothing is stopping
13 them from turning around and reapplying, but
14 I do know that the BZA has, you know, a fairly
15 prolonged schedule to get on the hearing
16 schedule and hear ourself.

17 For that reason in terms of
18 efficiency, I think that it's appropriate.

19 CHAIRPERSON LOUD: Mr. Turnbull,
20 any thoughts on that?

21 COMMISSIONER TURNBULL: I guess it
22 depends upon the magnitude of the change.

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1 Would they have to readvertise or how do you
2 have to -- I'm looking at OAG, and they're
3 saying no.

4 CHAIRPERSON LOUD: Everybody is
5 reading their mind as to what the change is.
6 I'm pretty sure we have an idea of what what's
7 going to be, but it sounds to me like I'm
8 hearing everyone say, well, let's allow Ms.
9 Prince to go ahead and interject her thoughts
10 here before we actually call for a vote.

11 And then once she does and we have
12 a sense of what the changes will be, then I
13 think we can make some judgments on whether it
14 needs to be readvertised and that kind of
15 thing. Okay? All right.

16 MS. PRINCE: I really appreciate
17 your letting me interject. I haven't done
18 that before. That's a new one.

19 I think what I'm hearing
20 overwhelmingly is that there's tremendous
21 reticence about the garage, but not
22 necessarily reticence about the stair

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1 connection. It may not be easily severable to
2 you by looking at the plans, but it's easily
3 severable to us.

4 We can submit a plan very quickly
5 that shows the stair connection only, and that
6 would save us the six months of refiling an
7 amended application that's very consistent
8 with the dialogue that you've had today.

9 So I would simply ask for the
10 opportunity to submit a stair plan that would
11 involve substantially less relief, a dramatic
12 reduction in the extent of the relief that
13 we're requiring, and would involve no new
14 areas of relief. So there's no advertisement
15 issue, and that saves us from having to refile
16 a whole new application and wait four months
17 for another hearing.

18 CHAIRPERSON LOUD: Colleagues,
19 that sounds very reasonable to me in terms of,
20 I think, where OP was coming out with respect
21 to its position on the case, and just my own
22 personal thoughts about the case.

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1 I'm hearing from the Office of
2 Attorney General that it would not present any
3 legal problems because essentially all the
4 Applicant is doing is withdrawing a part of
5 the relief that they've already advertised,
6 which they can do that in other cases as well.

7 And the relief being sought was
8 kind of distinct relief. It was very
9 specific, garage, deck, recreation related
10 stuff, and then distinct from that the whole
11 interior stairwell issue.

12 So I would not be opposed to that.
13 I think it would promote efficiency of
14 administration and handling of this case, but
15 what are your thoughts on it?

16 COMMISSIONER TURNBULL: I could go
17 along with that.

18 VICE CHAIRPERSON DETTMAN: I
19 agree, Mr. Chairman, but I hope that the
20 Applicant doesn't just put on the staircase
21 and at least explore the idea of some kind of
22 rear deck with the Office of Planning to see

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1 if they could support it because I think that
2 the Applicant deserves a little bit of
3 recreation space here, at least some place
4 where they can sit and enjoy the outdoors.

5 I mean, it's the Applicant's
6 decision, whatever they want to do with the
7 design, but I'm hopeful they might at least
8 explore the idea.

9 CHAIRPERSON LOUD: I think they're
10 deathly afraid of that possibility at this
11 point, but I do think that it has been stated
12 on the record for consideration about
13 different options regarding recreations basing
14 the follow-up with the Office of Planning.

15 So one can take that for what it's
16 worth. I think what we need to do now then is
17 come out of deliberation. I don't know if
18 there's any particular formality that allows
19 us to do that, and then postpone our decision
20 making to a date in the fall and get some
21 dates for supplemental filings.

22 Do we need to formally reopen the

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1 record? Do we need to sua sponte do that?

2 Okay. So I think pursuant to our
3 authority, I think it's 3124. We're going to
4 sua sponte if Board members don't have any
5 objections, reopen the record specifically and
6 only for the purpose of the supplemental
7 filing with the reduced request for relief.

8 Okay, and we can then, I believe,
9 set this for a decision. We don't need an
10 additional hearing. We can set this for
11 decision some time in, I believe, October
12 would fit into our calendar well, and then
13 work backward from that date in terms of
14 supplemental filings.

15 Ms. Bailey, can I turn to you and
16 ask for some help with a date in October?

17 MS. BAILEY: Mr. Chairman, did you
18 want to take it up October 6th? That's your
19 regular schedule public meeting.

20 CHAIRPERSON LOUD: Didn't we put
21 something on for October 6th this morning?

22 MS. BAILEY: Yes. One thing is on

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1 for the meeting and then this would be your
2 second item for the public meeting.

3 CHAIRPERSON LOUD: Okay. All
4 right. So why don't we do that then? October
5 6, does that give the Applicant enough time to
6 rework the submission?

7 MS. PRINCE: Yes, it does.

8 CHAIRPERSON LOUD: Okay, and how
9 much time working backwards from that, when do
10 you think you could submit the revised request
11 for relief and drawings to BZA?

12 MS. PRINCE: I think we need about
13 three weeks for the drawings, but we also want
14 to have a chance to confer with OP. So why
15 not a month?

16 CHAIRPERSON LOUD: A month
17 backward from October 6th. So around
18 September 8?

19 MS. PRINCE: yes.

20 CHAIRPERSON LOUD: Okay, and
21 that's something that would also go to the
22 ANC.

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1 MS. PRINCE: The ANC.

2 CHAIRPERSON LOUD: The ANC
3 supported it in this case.

4 MS. PRINCE: In the first place.
5 So I would think that this would not be an
6 issue.

7 CHAIRPERSON LOUD: Absolutely. So
8 why don't we do that then? So September, I
9 think it's September 8th is the day we went
10 with this morning, which is what day of the
11 week?

12 MS. BAILEY: That's on a Tuesday,
13 Mr. Chairman.

14 CHAIRPERSON LOUD: Okay. So
15 September 8th for the filing with the BZA and
16 the OP and the ANC, and then you'll be back
17 before us on October 6th.

18 MS. PRINCE: Thank you.

19 CHAIRPERSON LOUD: Okay. All
20 right. Thank you.

21 Board members, do we have anything
22 further in this case that we want to request?

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1 I'm sorry. Nothing further?

2 COMMISSIONER TURNBULL: Nothing
3 further.

4 PARTICIPANT: Excuse us, Mr.
5 Chairman.

6 CHAIRPERSON LOUD: No, it's okay.
7 It's okay.

8 All right. So if there's nothing
9 further in this case then, we'll see you guys
10 again. Well, we may or may not see you on
11 October 6th, but we'll schedule it for
12 decision on October 6th and look forward to
13 getting the supplemental filings.

14 Thank you.

15 (Pause in proceedings.)

16 CHAIRPERSON LOUD: Sorry. Ms.
17 Bailey, can you call our next case for the
18 afternoon?

19 MS. BAILEY: Sure, Mr. Chairman.
20 Application 17951 is an application of
21 Jonathan and Laurie Lyons, and it's pursuant
22 to 11 DCMR 3104.1 for a special exception to

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1 allow a two-story rear addition to an existing
2 one-family row dwelling under Section 223, not
3 meeting the lot occupancy requirements.

4 That's Section 403. The property is zoned R-
5 4. It's located at 4109 7th Street, N.W.,
6 Square 3229, Lot 33.

7 CHAIRPERSON LOUD: Thank you, Ms.
8 Bailey.

9 I think we're going to be joined
10 by Mr. Keating for this case, I do believe.
11 Well, I was going to say before the parties
12 come up we'll wait for Mr. Keating, but since
13 you're up, if you can just hold off for a few
14 moments, we'll see if Mr. Keating is going to
15 join us.

16 If he's not, I know he's in the
17 building. I know he's close by. We can
18 probably go ahead.

19 Okay. Here's Mr. Keating right
20 here.

21 Good afternoon again. I'm sorry.
22 Give us a little time to adjust in between

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1 cases. Typically a Zoning Commission member
2 will sit with us for particular cases, and so
3 for the first case Mr. Keating was out here,
4 but then we had a continuation of a different
5 case with 1332 Vermont, and that was Mr.
6 Turnbull's, and now we go back to the regular
7 schedule, and that's Mr. Keating again. So I
8 think we're ready to get started.

9 Why don't you introduce yourselves
10 for the record?

11 MS. FOWLER: I'm Jennifer Fowler,
12 1819 D Street, S.E., in D.C.

13 MR. JONES: Timothy A. Jones,
14 Advisory Neighborhood Commissioner for the
15 Single Member District 4C-08.

16 MR. LYONS: Jonathan Lyons, 4109
17 7th Street.

18 MS. LYONS: Laurie Lyons, 4109 7th
19 Street.

20 CHAIRPERSON LOUD: Good afternoon
21 to each of you, and when you're ready to begin
22 you can begin.

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1 MS. FOWLER: So what we have here
2 is a proposal for a special exception for lot
3 coverage for a two-story rear addition. It's
4 a petty modest addition. It goes back five
5 and a half feet from the existing house.
6 Currently there's a very narrow back porch
7 that's been enclosed that's pretty much
8 useless because it's so narrow. It's about
9 three or four feet wide.

10 So we're proposing to expand
11 another five and a half feet and on the second
12 floor we'll have an open court of six feet
13 towards the north side, which will allow a
14 spiral stair for access to a roof deck.

15 But we have support from the ANC.
16 We've also gotten support from the block
17 group, which is UNTS, and they're fine with
18 the project. We also reviewed the plans with
19 the neighbors that are adjacent, and that's
20 one thing we don't have in our record is
21 letters from the adjacent neighbors, and I can
22 let the homeowners address that a little bit

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1 in more depth, and that's really about it.

2 I'll hand it over to them.

3 MS. LYONS: We did sit down with
4 the plans with the neighbors on both sides and
5 showed them to them. Our neighbor to the
6 north is an elderly widow, and she just didn't
7 feel comfortable signing any paper work. Our
8 neighbors to the south actually took the
9 place. The wife works with an architect and
10 she showed him and he reviewed them.

11 And she came back and said they
12 didn't have any problem with it at all, but
13 she didn't want to sign any paper work as
14 well.

15 MS. FOWLER: That's really the
16 extent of it. I think the record is pretty
17 full on this, and we feel like it's a pretty
18 modest proposal and happy to answer any
19 questions you have.

20 Thank you.

21 CHAIRPERSON LOUD: Thank you.

22 Let me see if Board members have

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1 any questions. I don't have any questions at
2 this time, but will reserve for later if I do.

3 (No response.)

4 CHAIRPERSON LOUD: I don't see
5 anyone responding. So let's move on to the
6 Office of Planning. Good afternoon.

7 MS. JACKSON: Good afternoon,
8 Chair and fellow members of the Board. For
9 the record, my name is Arlova Jackson, and I'm
10 a development review specialist with the D.C.
11 Office of Planning.

12 The Office of Planning recommends
13 support for the application pursuant to
14 Section 223 to permit a rear two-story
15 addition on a row house building requiring
16 special exception relief from Section 403 to
17 allow a lot occupancy of 69 percent.

18 OP finds that the project meets
19 the standards for special exception approval,
20 and I'll briefly go through those. First, the
21 addition is set back at the second floor to
22 accommodate a spiral staircase and open

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1 balcony, minimizing the potential impact on
2 light and air on the property to the north,
3 and the depth of the proposed addition extends
4 roughly from four and a half to five and half
5 feet further than the existing rear exterior
6 walls of the adjacent buildings, and we feel
7 this should not negatively impact the
8 provision of light and air to either adjacent
9 structure.

10 Second, the rear addition is
11 approximately 207.4 square feet. The proposed
12 work also includes installation of a privacy
13 fence along the south lot line, enhancing
14 privacy for the property to the south. There
15 are no windows on the north or south exterior
16 walls of the building, and again, the roof
17 deck is set back six feet from the north
18 property line, providing additional privacy
19 for the adjacent property to the north.

20 So we find the proposed
21 construction should not unduly compromise the
22 enjoyment of privacy of the neighboring

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1 properties.

2 The addition would be 20 feet from
3 the rear property line and 20.5 feet in
4 height, similar to the height of the adjacent
5 structures and others on the block. It would
6 not be visible from 7th Street, but would be
7 seen from the alley, but has been designed to
8 maintain the existing scale of buildings as
9 viewed from the alley and should not visually
10 intrude upon the pattern of houses along the
11 street.

12 The Applicant has provided
13 sufficient information as detailed in Section
14 D, site plan floor plans, side and rear
15 elevations and photographs, and the proposed
16 lot occupancy is 69 percent.

17 As stated both ANC-4C and the UNTS
18 Neighborhood Association gave favorable
19 recommendations for the request. So, in
20 short, the Office of Planning recommends
21 support and would take any questions you have
22 at this time.

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1 CHAIRPERSON LOUD: Thank you, Ms.
2 Jackson. Let's see if Board members have
3 questions.

4 (No response.)

5 CHAIRPERSON LOUD: There are none.
6 Does the Applicant have any questions for OP?

7 MS. FOWLER: I just wanted to
8 thank Ms. Jackson for her thorough report and
9 her time on the project.

10 Thank you.

11 MS. JACKSON: Thanks.

12 CHAIRPERSON LOUD: So the project
13 is 69 percent and can go to 70 percent with
14 the special exception relief.

15 Okay. I think now we would turn
16 to the Advisory Neighborhood Commission, I
17 believe. Let me just double check and make
18 sure. Yes, and Mr. Martin is here
19 representing the ANC?

20 MR. JONES: No, it's Timothy A.
21 Jones. I'm representing --

22 CHAIRPERSON LOUD: Mr. Jones. I'm

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1 sorry.

2 MR. JONES: -- the ANC
3 Commissioner. The project was within my
4 single member district.

5 CHAIRPERSON LOUD: All right.
6 Thank you for the correction, and you've been
7 designated to represent the entire ANC?

8 MR. JONES: Although there is not
9 a letter of representation in the file, I was
10 the one that picked the ball up and brought it
11 in.

12 CHAIRPERSON LOUD: Okay. All
13 right. Well, would you like to give the ANC's
14 report?

15 We have it. I believe we just got
16 it, and it doesn't have an exhibit yet.

17 MS. FOWLER: They're actually the
18 minutes from the meeting.

19 CHAIRPERSON LOUD: Okay. And
20 again, would you like to just give the report
21 of the ANC?

22 Were you at the meeting?

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1 MR. JONES: Yes, I was. At May
2 12th, 2009 public meeting with a quorum
3 present, the Advisory Neighborhood Commission
4 voted to support the Lyons' project, and we
5 were of the opinion that the project as a
6 whole would be something that would add value
7 to the community.

8 Thank you.

9 CHAIRPERSON LOUD: Thank you, and
10 as far as you know, was there notice of the
11 meeting?

12 MR. JONES: That is correct.

13 CHAIRPERSON LOUD: Okay, and you
14 said there was a quorum, and the vote, what
15 was the final vote?

16 MR. JONES: I believe the vote was
17 unanimous.

18 CHAIRPERSON LOUD: The vote was
19 unanimous. Okay, and are you familiar with
20 the neighbors on either side of the Applicant?

21 MR. JONES: Yes, I am. I am one
22 of the few agencies that plays postman when I

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1 pass out notice of meetings. So I'm very much
2 familiar with the neighborhood.

3 CHAIRPERSON LOUD: Okay.
4 Excellent. I think the Applicant testified
5 earlier that they had met with the -- you
6 testified both neighbors? Both neighbors and
7 there was not any objection to the project.
8 Would that be consistent with your
9 understanding?

10 MR. JONES: To my knowledge, yes.

11 CHAIRPERSON LOUD: Okay. Let me
12 see if there are any questions from the Board
13 for the ANC. Does the Applicant have any
14 questions for the ANC?

15 MS. FOWLER: No, sir.

16 CHAIRPERSON LOUD: Okay. Thank
17 you for your report, and we appreciate it and
18 it is going to be given great weight under our
19 rules, and so as a part of our deliberation on
20 the case, the evaluation, we'll make sure that
21 this report is considered properly.

22 Now if there are parties or

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1 persons in our audience who are in support of
2 the application, now would be the time to step
3 forward.

4 (No response.)

5 CHAIRPERSON LOUD: And seeing
6 none, if there are persons who are in
7 opposition, now would be the time to step
8 forward.

9 (No response.)

10 CHAIRPERSON LOUD: And there being
11 none as well, we go back to the Applicant for
12 closing remarks.

13 MS. FOWLER: I would just like to
14 thank you for your time and consideration on
15 this application.

16 Thank you.

17 VICE CHAIRPERSON DETTMAN: Ms.
18 Fowler, can you describe the living wall?

19 MS. FOWLER: Yes. There is a
20 system that's a module that can be attached to
21 the exterior of the house. So you waterproof
22 it, and you can even put siding, and then you

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1 can attach these modules that actually hold
2 dirt and you can grow plants.

3 And they have decent exposure. So
4 we should be able to put a good selection of
5 plants in there.

6 COMMISSIONER KEATING: You
7 mentioned earlier that there was going to be
8 a privacy fence put in on the north side. I
9 assume that's between 4107 and between 4109.
10 Is that the north side? That's south side.
11 So it's on the other side.

12 MS. FOWLER: It's on the south
13 side.

14 COMMISSIONER KEATING: So it's the
15 other side. Great.

16 MS. FOWLER: Yeah, the fence on
17 the north side will remain as it is, and then
18 we're going to create a parking space at the
19 rear and a little bit of green space on the
20 south side of the property with a new fence.

21 COMMISSIONER KEATING: So is the
22 fence between 4109 and the screened structure

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1 here?

2 MS. FOWLER: Right.

3 COMMISSIONER KEATING: Okay. With
4 the cars jutting into your yard.

5 MS. FOWLER: Yeah, the car will go
6 on the other side. Right now you have a
7 parking pad.

8 COMMISSIONER KEATING: I
9 understand the need for a fence looking at
10 this picture, but I just wanted to make sure.

11 MS. FOWLER: Yeah. The parking
12 pad is on the opposite side than it will be
13 because we're going to switch it to the other
14 side where you have more space because of the
15 shape of the lot.

16 COMMISSIONER KEATING: Okay. So I
17 see a stairwell going down into the basement
18 there. So it will abut up to that.

19 MS. FOWLER: Yeah, those are
20 actually rotating the stairs so that they'll
21 go parallel to the back of the addition.

22 COMMISSIONER KEATING: Okay, okay.

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1 Yeah, okay, good. I see that.

2 VICE CHAIRPERSON DETTMAN: The
3 privacy fence, is that a result of your
4 conversation with your neighbor on that side?

5 MR. LYONS: No. It's mainly just
6 to make a -- just to create a little sort of
7 recreation area there, and it's intended to be
8 a short fence, not a tall fence, but just sort
9 of a barrier there.

10 CHAIRPERSON LOUD: Are there any
11 additional questions?

12 (No response.)

13 CHAIRPERSON LOUD: Okay. I think
14 we're ready to deliberate the case today, and
15 I think we're going to turn to Ms. Moldenhauer
16 to get us started. Everyone else can weigh in
17 as appropriate.

18 MEMBER MOLDENHAUER: We're here
19 today for a case for special exception under
20 223 in regards to construction of a rear
21 addition to an existing single family home.
22 Ms. Jackson out of the Planning Office

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1 provided a thorough review of these standards
2 for a special exception and outlined all of
3 those, and I'd like to incorporate that now.

4 In addition to that, we had
5 testimony from Mr. Jones from the ANC who
6 stated that there was a meeting, which notice
7 was submitted, a quorum was present, and it
8 was unanimously supported. So we'll give that
9 great weight.

10 And there were no witnesses in
11 support or opposition to this case, and the
12 Applicant stated specifically that she spoke
13 with both of her neighbors, and Mr. Jones
14 confirmed that to his knowledge.

15 Based on those factors, I would
16 submit that I would recommend to approve this,
17 and I'd like to open up the floor to any
18 discussions.

19 CHAIRPERSON LOUD: I just wanted
20 to say I thought that was an excellent summary
21 of the case, summarizing what needed to be
22 summarized, highlighting what needed to be

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1 highlighted, and I thought you did a really
2 great job.

3 I don't have any additional
4 comments.

5 Okay. Is there a motion?

6 MEMBER MOLDENHAUER: I would
7 submit a motion to approve the special
8 exception under 223.

9 COMMISSIONER KEATING: Second.

10 CHAIRPERSON LOUD: Okay. Let me
11 just add a little to it.

12 MEMBER MOLDENHAUER: Thank you.

13 CHAIRPERSON LOUD: The motion to
14 approve the request for special exception
15 relief in Case No. 17951, which we're in
16 anyway, but I think we always do it by that
17 formality, and the motion has been made and
18 seconded. Is there further deliberation?

19 (No response.)

20 CHAIRPERSON LOUD: Hearing none,
21 all those in favor say aye.

22 (Chorus of ayes.)

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1 CHAIRPERSON LOUD: All those
2 opposed?

3 (No response.)

4 CHAIRPERSON LOUD: Are there any
5 abstentions?

6 (No response.)

7 CHAIRPERSON LOUD: Could you read
8 back the vote, Ms. Bailey?

9 MS. BAILEY: Mr. Chairman, the
10 vote is recorded as four, zero, one to grant
11 the application. Ms. Moldenhauer made the
12 motion. Mr. Keating seconded. Mr. Dettman
13 and Mr. Loud supported the motion. The fifth
14 Board member is not present at this time.

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

17 If there is nothing further in
18 this case, and I believe there's no opposition
19 to it, so it can be a summary decision.

20 Thank you. Have a great summer,
21 and I think we have one more case, but there's
22 nobody here. Well, OP is here.

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1 (Pause in proceedings.)

2 CHAIRPERSON LOUD: Good afternoon.
3 We were able to get thought the case a little
4 earlier than we thought, and I think you guys
5 had stepped out. So we were waiting for you
6 guys to come back, and now that you're back,
7 we're ready, I believe, to call the next case.

8 MS. BAILEY: Mr. Chairman, the
9 last case today is Application 17950. It's
10 the application of Geneva Ivey Day School, and
11 it's pursuant to 11 DCMR, Section 3104.1, for
12 a special exception to establish a child
13 development center. That's for 60 children
14 and 12 staff under Section 205 at 2420 Rhode
15 Island Avenue, N.E., Square 4290, Lot 803.
16 The property is zoned R-1-B, and, Mr.
17 Chairman, the file indicates that additional
18 relief is needed from 2101.1, that is, the
19 parking requirements.

20 CHAIRPERSON LOUD: Thank you, Ms.
21 Bailey.

22 Were you sworn in as witnesses?

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1 Okay, and were you sworn in as a witness?

2 Okay. Well, why don't you go ahead and stand
3 up and Ms. Bailey will administer the oath to
4 you?

5 (Whereupon, the witnesses were
6 duly sworn.)

7 CHAIRPERSON LOUD: Good afternoon,
8 again. I think as Ms. Bailey indicated, the
9 original and advertised relief was for the
10 special exception under our Rule 205 for child
11 development center, and I believe that there
12 is also a need for parking relief. I believe
13 you need three spaces, require three spaces
14 for the site, and the church also owns a
15 parking lot.

16 So I think as a matter of
17 formality, and correct me if I'm wrong, Ms.
18 Nagelhout, do they have to amend their
19 application now on the record? And is there
20 need to readvertise this?

21 MS. NAGELHOUT: I think they have
22 put in a request to amend the application

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1 already. That's in the file.

2 CHAIRPERSON LOUD: Okay.

3 MS. NAGELHOUT: It's a special
4 exception under 2116. I think they have the
5 parking spaces. It's just not on the same
6 site. So I don't really see a need to
7 readvertise.

8 CHAIRPERSON LOUD: Okay. Thank
9 you.

10 And Ms. Nagelhout is referring to
11 Exhibit 24, which is the written request for
12 the off-site parking relief.

13 So with that being said and there
14 being a clear understanding, and I'm glad you
15 got this in in time, we can move forward and
16 address all of the needed relief that you'll
17 need to make a child development center
18 functional in your community.

19 Why don't we then begin with you
20 stating your name and address for the record.

21 MR. LOVE: Good afternoon, my name
22 is Kenneth Love. I reside at 6204 Panther

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1 Court in Waldorf, Maryland.

2 CHAIRPERSON LOUD: And to your
3 left is?

4 MS. GRANT: Good afternoon. My
5 name is Janae Grant. I'm the Advisory
6 Neighborhood Commissioner in 5A-11 where this
7 resides.

8 CHAIRPERSON LOUD: Good afternoon,
9 and thank you for your attendance. It's
10 always good to see ANC Commissioners present
11 at the hearing and appreciate your patience in
12 waiting for the case to be called.

13 Why don't we turn back to you, Mr.
14 Love, and you can tell us about your
15 application and walk us through the
16 requirements?

17 I don't know if your microphone
18 is --

19 MR. LOVE: Is on?

20 CHAIRPERSON LOUD: Yeah, yeah,
21 definitely keep it on because it's got to pick
22 you up over there at the court reporter.

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1 MR. LOVE: Okay. Again, good
2 afternoon. My application is for -- to
3 establish a child development center in the
4 Brookland area on 2420 Rhode Island Avenue.
5 It will be a year round facility operating
6 Monday through Friday from 6:00 a.m. to 6:30
7 p.m.

8 And it will be able to provide the
9 needs of the children in the area, in the
10 surrounding area.

11 And the request was, again, was
12 for the child development center to be located
13 in a residential area, as well as the
14 additional parking and the use of the church
15 parking lot on Hoover Street.

16 CHAIRPERSON LOUD: Okay. Are you
17 generally familiar with Section 205, that
18 establishes authority for child development
19 centers?

20 MR. LOVE: Yes. I read over the
21 report.

22 CHAIRPERSON LOUD: Okay. Did you

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1 want to just very summarily just sort of walk
2 through the requirements of 205?

3 I know that the Office of Planning
4 has done it, but we have a little time this
5 afternoon, and just to make sure we have a
6 full record.

7 MR. LOVE: Okay. Again, I do
8 apologize. This is my first time doing this.

9 CHAIRPERSON LOUD: It's okay.

10 MR. LOVE: So --

11 CHAIRPERSON LOUD: You're doing a
12 great job.

13 MR. LOVE: Okay. Again, the
14 center will meet all license requirements set
15 forth by the Office of Early Childhood
16 Development, as well as not infringing upon
17 the neighbors in the area.

18 The building is located on Rhode
19 Island Avenue and stretches to Lawrence
20 Street, the following street over. And there
21 are two residential homes on there.

22 I met both -- I met with both of

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1 the owners, and, again, they are very
2 comfortable with us having a center there. It
3 is a small center, of course. And we have a
4 designated play area where the noise volume as
5 well as the distraction of the safety of the
6 children will be contained within the
7 playground area that is fenced. It is located
8 directly across the street from the center.

9 And there will be no improvements
10 put on the building. The building is a
11 beautiful historical building itself. So it
12 speaks for itself. We did do a little
13 landscaping out front just to make the
14 building show its true nature and its true
15 beauty.

16 And as far as staffing is
17 concerned, we are looking for 12 staff
18 members. Most of them will be utilizing
19 public transportation. But we do need the
20 three spaces for the staff that will work for
21 the facility.

22 Also, for the parents, to make

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1 sure that Rhode Island is kind of busy, we are
2 requesting our parents to use the Lawrence
3 Street --

4 CHAIRPERSON LOUD: I think you
5 came off the microphone again.

6 MR. LOVE: Hello? Okay.

7 We're asking that the parents
8 utilize the Lawrence Street entrance and that
9 would not put a burden on the already traffic
10 on Rhode Island Avenue.

11 As well as, as I stated earlier,
12 directly across the street is a 30 space
13 parking lot that can be utilized for parents
14 who would like to come in and visit the
15 facility or spend some time with their
16 children and it won't infringe upon any
17 parking spaces on Lawrence Street.

18 CHAIRPERSON LOUD: And did you
19 discuss the off site play area?

20 MR. LOVE: Yes. Again, the off
21 site play area is located on Lawrence Street.
22 It's directly across the street from the

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1 facility. It's a little over 27,000 square
2 feet that is all fenced in and it does have
3 safe play equipment that exists on the
4 playground.

5 CHAIRPERSON LOUD: Okay, and I
6 know that there's another child development
7 center within 200 feet, I think, of your child
8 development center. Are you familiar with
9 that?

10 MR. LOVE: Yes. Actually, that's
11 Hughes Child Development Center and they are
12 no longer in business.

13 CHAIRPERSON LOUD: Okay.

14 MR. LOVE: They closed down last
15 year.

16 CHAIRPERSON LOUD: Okay. I think
17 that may have been mentioned in the ANC's
18 report. Yeah, okay.

19 Okay, I don't have any additional
20 questions. Let's see if Board members have
21 any questions for you.

22 (No response.)

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1 CHAIRPERSON LOUD: Okay. None
2 right now. They may have some later, but why
3 don't we, in the interim, turn to the Office
4 of Planning. Good afternoon. How are you?

5 MS. THOMAS: Good afternoon, Mr.
6 Chairman, members of the Board. I am Karen
7 Thomas with the Office of Planning.

8 And OP believes that the
9 requirements for Section 205 were met for this
10 application. We recommended approval, subject
11 to the conditions indicated at the conclusion
12 of our report.

13 This site is an established
14 educational facility. It has functioned as
15 such for over 30 years.

16 We requested the Applicant address
17 on site parking through Section 2116.5 and we
18 had no problems with that. We don't
19 anticipate any problems with drop-off in
20 pickup off of Lawrence Street. It's really
21 the situation on Rhode Island Avenue.

22 And we have no anticipation of

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1 noise from the playground or from the school
2 itself.

3 So, basically, we stand on record
4 with respect to this application and I'd be
5 happy to take any questions.

6 CHAIRPERSON LOUD: Thank you.

7 Let's see if Board members have
8 any questions.

9 (No response.)

10 CHAIRPERSON LOUD: I noticed that
11 there was no term recommendation. Was that --

12 MS. THOMAS: I think that we --

13 CHAIRPERSON LOUD: Have you given
14 thought to it?

15 MS. THOMAS: Yeah. I looked at
16 the past uses on the site and some of them
17 didn't -- I think one of them didn't have or
18 two of them didn't have, and I didn't see any
19 -- because either they were continue operating
20 or if they needed to change something they
21 would have to, in any case, come before the
22 Board.

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1 So I didn't see a need for putting
2 a term limit on them, especially since this
3 structure has been used as that type -- had
4 that type of use in the past.

5 CHAIRPERSON LOUD: Okay. So you'd
6 be for an unlimited term, notwithstanding --
7 okay. I withdraw that question I was getting
8 ready to ask.

9 Does the Applicant have any
10 questions for the Office of Planning?

11 MR. LOVE: I actually, I guess I
12 have a question for the Board regarding the
13 number of students serviced on the
14 application. The numbers were derived from
15 the previous owners who were the Washington
16 Science and Technology Academy, and they had
17 a Certificate of Occupancy for 60 students.

18 When looking at the student
19 population they served, it's quite different
20 from what I'm serving. My students are early
21 childhood education that's from two to five
22 years old, where they served children from two

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1 to five and from first grade to seventh grade.

2 In finding this out, I contacted
3 Collett Associates, where they did
4 architectural drawings for me and did a proper
5 measurement so that I can make sure that I
6 meet all the requirements.

7 During my first inspection with
8 the Office of the State Superintendent, the
9 licensing monitor came out and also did a
10 measurement of the building. And with the
11 children that I'm serving, my maximum was 75,
12 which is quite different from what they have
13 as 60.

14 And I wanted to know would there
15 be -- would mine be able to be revised to meet
16 that number, as well as on the application it
17 has two and a half, and we wanted to service
18 children from two to five years old.

19 I also spoke with the fire
20 inspector to make sure that I was in code and
21 he gave me the okay. And that's why I bring
22 it before you today.

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1 CHAIRPERSON LOUD: I'm sorry. I
2 got the first part of it, but sort of in a
3 nutshell, hit the second part for me. I got
4 the part you want ages two to five instead of
5 two and a half to five.

6 MR. LOVE: Right.

7 CHAIRPERSON LOUD: And?

8 MR. LOVE: And the first part was
9 that the number of children actually being
10 served was derived from the previous owners
11 that had a different population than I did.
12 Theirs was at 60.

13 When I finally got -- I was able
14 to get proper measurements by an architect as
15 well as the license and monitor from the
16 Office of the State Superintendent of
17 Education. They both came to the number of
18 75 that the space can handle.

19 CHAIRPERSON LOUD: Okay. That
20 changes it a little bit because the various
21 recommendations in the record, for example,
22 from the Office of Planning and I think from

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1 the ANC in support were premised upon there
2 being 60, and I believe a cap of 12 staff.

3 Would going up to 70 students
4 would that -- how would that effect the staff?
5 Would that also go up?

6 MR. LOVE: No, because they're
7 shift staff.

8 CHAIRPERSON LOUD: Okay.

9 MR. LOVE: There will always be 12
10 on hand, and one will leave early during the
11 middle of the shift. One will leave and
12 another will come on. So there will be 12 on
13 site at all times.

14 CHAIRPERSON LOUD: So the request
15 then would be to go up to 75 students and
16 still have a cap of 12 staff?

17 MR. LOVE: Yes.

18 CHAIRPERSON LOUD: Faculty and
19 staff.

20 Let me just ask a quick question
21 from the OAG to whether this presents any kind
22 of notice issue. The ANC is here of course,

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1 but with respect to other --

2 MS. NAGELHOUT: I would point out
3 though that he's saying that the 12 staff is
4 on staff -- I mean on site at any one time.
5 So you don't know the maximum number of staff
6 total, which would be relevant to the parking
7 requirement.

8 I would ask OP and the ANC if that
9 would change their analysis. Fifteen extra
10 kids?

11 CHAIRPERSON LOUD: Okay.

12 MS. NAGELHOUT: I don't really see
13 a notice issue, but it might affect their
14 analysis.

15 CHAIRPERSON LOUD: Okay. Then why
16 don't we do that and then turn to the Board
17 members as well?

18 But in terms of your review, I
19 think it was premised on 60, and now the
20 request is for 75.

21 MS. THOMAS: Yeah, I guess I would
22 just echo the concern with respect to the way

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1 he presented it in terms of the staffing.
2 When I looked at it I thought it was 12 staff,
3 but the way he's presenting it now as 12 staff
4 at a time.

5 So the total number of staff could
6 vary. So, yeah, we would have to look at the
7 parking. If he could, today or right now, set
8 this staffing perhaps, there's more than
9 enough parking spaces at the 30 space site to
10 accommodate up to at least I would say 15
11 staff members.

12 And again, with respect to
13 sharing, could you answer the question whether
14 other -- the church occupies any part of the
15 parking lot during the daytime?

16 MR. LOVE: No. The parking lot is
17 actually an extension for their services on
18 Sunday, and I have been there on many Sundays
19 and it's about four cars that are there. It's
20 a small congregation.

21 So the parking lot stays locked
22 during the week, Monday through Saturday.

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1 MS. THOMAS: Okay.

2 MR. LOVE: So I will be the
3 only --

4 MS. THOMAS: User of the lot?

5 MR. LOVE: I'm the only user of
6 the lot during that time.

7 MS. THOMAS: Yeah. Okay.

8 CHAIRPERSON LOUD: Do you know how
9 many staff you're talking about total for the
10 population?

11 MR. LOVE: It will be a total of
12 12 staff. Oh, I see what you mean. It will
13 be a total of 17 that I will have on hand.
14 And it will be 12 at one given time. A total
15 of 17 staff members. Twelve will be on hand
16 at the site. That's in compliance with ratio
17 with the children. But I will have a total of
18 17.

19 CHAIRPERSON LOUD: On payroll in
20 effect. All right.

21 MS. THOMAS: That would be like
22 about four spaces. I guess it will probably

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1 go up by one more space.

2 CHAIRPERSON LOUD: It was one for
3 four, right? One for every four?

4 MS. THOMAS: One for four, yeah.

5 CHAIRPERSON LOUD: So it's almost
6 four.

7 MS. THOMAS: No. Five.

8 CHAIRPERSON LOUD: It's one
9 additional. It's four. So it would be one
10 additional space on the Hoover Street lot. I
11 think that's pretty minor.

12 MS. THOMAS: Pretty Minor, yeah.

13 CHAIRPERSON LOUD: But I mean,
14 we're certain we're going to fix that number
15 at 17?

16 MR. LOVE: Okay.

17 CHAIRPERSON LOUD: Because
18 whatever number we fix it at that's --

19 MS. THOMAS: That's it.

20 CHAIRPERSON LOUD: -- what it
21 remains.

22 MR. LOVE: Definitely, yes, sir.

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1 CHAIRPERSON LOUD: And going above
2 that number would render you out of compliance
3 with our order. You'd have to come back here
4 to get approval to go beyond that.

5 MR. LOVE: Yes.

6 CHAIRPERSON LOUD: Yes, sir, Mr.
7 Keating?

8 COMMISSIONER KEATING: I just
9 wanted to clarify something. Is the 17 at the
10 60 or at the 75?

11 MR. LOVE: That would be 17 at the
12 75.

13 COMMISSIONER KEATING: And at the
14 60 it would be?

15 MR. LOVE: It would still be --
16 I'm sorry. I do apologize. I understand what
17 you're saying. It would always remain at the
18 12. Again, it's depending on during the
19 program. At six in the morning you don't need
20 as many staff members on.

21 So they gradually come during the
22 day and they gradually tail off during the

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1 evening time as we close down. When you
2 approach about four o'clock that's when you
3 have staff members leaving and you start
4 condensing your classrooms.

5 COMMISSIONER KEATING: Right. My
6 question was just that the application came in
7 for 60 students and 12 staff. If you go to 75
8 students, in order to maintain your ratios,
9 right, you need more staff?

10 MR. LOVE: No, actually.

11 COMMISSIONER KEATING: Or no?

12 MR. LOVE: No. Actually, with the
13 numbers, after I met with the licensing and
14 also with getting my architectural drawing,
15 with the number of staff members, that is, the
16 12 will suffice for the 75 because your have
17 to the think the ratio of the ages of the
18 children.

19 When you go up in age, five, you
20 have a one-to-ten ratio. When you go down to
21 two, it's a four-to-one. So in different
22 classrooms we'll have different staff ratios.

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1 COMMISSIONER KEATING: Right,
2 okay. So you need 17 then for the 60
3 students; is that right? Seventeen on the
4 payroll for 60 students?

5 MR. LOVE: Yeah, well, you have
6 part-time and full-time employees, and because
7 your hours are extended --

8 COMMISSIONER KEATING: Right.

9 MR. LOVE: -- you need that
10 flexibility for the shifts.

11 COMMISSIONER KEATING: So 17 staff
12 with the 60 students and it's 17 staff with
13 the 75 students as well.

14 MR. LOVE: Yes. Nothing would
15 have changed.

16 COMMISSIONER KEATING: Okay. So
17 the numbers are 60 and 17 or 75 and 17.

18 CHAIRPERSON LOUD: All right.
19 Anything further from the Office of Planning?

20 MS. THOMAS: No. Well, I wish we
21 would have known that earlier.

22 CHAIRPERSON LOUD: Right.

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1 MS. THOMAS: But so our record
2 could reflect that, but I can amend it on the
3 record.

4 CHAIRPERSON LOUD: And literally
5 through 205 and 2116, the revised numbers give
6 you no pause for reevaluation of your support.

7 MS. THOMAS: No, it causes no
8 alarm.

9 CHAIRPERSON LOUD: Okay. Why
10 don't we then turn to the ANC. We're taking
11 it a little bit out of order, I think, as the
12 ANC, but just to respond, to react to the
13 revision in the application because I know
14 that your ANC met premised upon there being 60
15 students.

16 MS. GRANT: Right. Again, Janae
17 Grant. Good afternoon, Board of Zoning
18 Adjustment.

19 As the Commissioner and also the
20 Vice Chair of 5A, we took this matter quite
21 seriously and rightfully so. We were
22 anticipating some new growth because of the

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1 youngsters being in the area. The area
2 specifically is quite dormant right now.

3 And we had our -- well, my
4 specific single member district meeting on the
5 12th of May, and the first concern was the
6 Hughes Development Center, which is, I guess,
7 two blocks away, because of the corridor which
8 is Rhode Island and South Dakota, roughly
9 three minutes away.

10 But to find out that it was
11 closed, no level of conflict, and that was
12 good. And, again, we wanted to support the
13 fact that this was for two to five year olds,
14 which means younger families, hopefully more
15 sustainability within the neighborhoods, and
16 we'd see a new life, so to speak.

17 So the questions then garnered
18 around the parking, specifically around
19 Hoover, around Monroe, and then if there would
20 be any interference right there on Rhode
21 Island Avenue.

22 We were pleased to find out that

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1 they would utilize the church's parking lot,
2 and that they practically had a good
3 relationship with the church, and so
4 therefore, keeping Hoover Road as clear as
5 possible, even though that would be the way of
6 in and out seemed to be relatively understood,
7 and because of the parking lot facility
8 itself, the community was fine with the fact
9 that that would be where the traffic would be
10 for the most part.

11 As for the 60 children, I don't
12 think the matter of the amount came into play.
13 For the most part two year olds, even three
14 year olds, sometimes they get sick. So we
15 kind of had an understanding of not
16 consistent, all the time, but of course,
17 throughout the school year, you know, we knew
18 that, but again, we are dealing with that
19 group, that age group. You know, that there's
20 going to be quite a few sicknesses in there.

21 And then, of course, we all enjoy
22 the holidays. So you know, that's when school

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1 would be out.

2 So I don't think the -- that
3 played well in terms of the community's
4 concerns.

5 Loading or parking in terms of
6 vendoring, because they mentioned that food
7 would be brought into the school, that came
8 about and, again, they would park right there
9 on Lawrence Street. So again, most of the
10 main traffic is off of Rhode Island, and
11 pretty much Lawrence Street is a pretty quiet
12 street. So that's fine in and of itself. It
13 was already used as that way for the church
14 anyway.

15 So, again, keeping Rhode Island
16 pretty much clear, that was the bigger focal
17 point. So the community was fine and
18 consented to that.

19 After hearing some of this
20 discussion, I did think about the church's
21 activity throughout the week, and yes, the
22 church is relatively quiet, I guess I would

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1 say, but I thought I saw a couple more cars,
2 but that could just be me.

3 So I guess if I have the
4 opportunity to ask some questions, I will just
5 say from a formality standpoint, we gave the
6 support. The community, my specific SMD gave
7 the support the day of the 12th, and then we
8 followed up with our Commission on the 27th of
9 May, which is our normal monthly meeting.

10 Commission 5A unanimously gave
11 their support, again knowing the history of
12 the school and specifically of the location.
13 That spoke for itself, and again, knowing that
14 Hughes was no longer in commission, again,
15 keeping the vitality and the youthfulness in
16 the area which we want to generate was
17 definitely well spoken of.

18 So the question just then comes
19 into -- I was really under the impression that
20 there are 30 spaces on the lot. So you would
21 utilize all 30. So you're not even going to
22 utilized all 30.

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1 MR. LOVE: Oh, no.

2 MS. GRANT: Oh, okay. Well, then
3 that even further clears the concern for the
4 community. We really were under the
5 impression that you had the full 30 and you
6 were going to use the full 30, so to speak,
7 because we're figuring parents are coming in
8 and out.

9 We are aware that once a month you
10 have your respite going on, and you know, we
11 spoke a little bit about that, but again,
12 because of the parking lot we said, okay,
13 well, they'll utilize the parking lot fully,
14 to the max with that one.

15 Other than that, again, you know,
16 if they do get a van, you know, for, I guess,
17 outside field trips or what have you, we knew
18 that since the parking lot was in existence,
19 that would be the location for parking going
20 forward.

21 The types of classes that they
22 have and in terms of the diversity that they

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1 were focusing on was very exciting and, again,
2 well spoken of in terms of generating a lot of
3 interest in the community. So henceforth,
4 they gave their support, and I just stand here
5 to let that be known.

6 CHAIRPERSON LOUD: Thank you.

7 I suspect you don't have any
8 additional follow-up questions specifically
9 for the Applicant.

10 MS. GRANT: We're not dealing with
11 30 spaces.

12 CHAIRPERSON LOUD: Right.

13 MS. GRANT: I really was thinking,
14 because that's how it came into the language,
15 that the parking lot had 30 spaces. So we
16 thought it was that, and then again, because
17 the original documentation was just for the
18 special exception for this, not so much for
19 the parking relief, we just thought 30 spaces,
20 that the whole issue in terms of three spots
21 wasn't into play until just now.

22 CHAIRPERSON LOUD: Okay, and,

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1 well, you are very clear now that it also
2 involves the parking relief.

3 MS. GRANT: Of four spots, yes.

4 CHAIRPERSON LOUD: Yes, clear that
5 it's only four spaces. Okay. I think that's
6 a perfect segue because we would have gone to
7 your report anyway at this point in the
8 hearing.

9 I had a couple of questions about
10 your report. What I have, which is our
11 Exhibit 26, is your single member district
12 report, which talks about your monthly
13 meeting, and the Applicant, I think, coming
14 and making the presentation. Then you
15 testified that there was a subsequent full
16 Commission meeting, and it's in your
17 submission as well.

18 But do you know if that report
19 ever came in? You've seen a copy of that
20 report. I don't know if I have it. Do you
21 have it, Mr. Dettman?

22 MS. GRANT: When you say the

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1 report came in --

2 CHAIRPERSON LOUD: Yes.

3 MS. GRANT: -- are you talking
4 about like our 5A minutes? Is that what
5 you're trying to specify to?

6 CHAIRPERSON LOUD: Yes. We've
7 gotten minutes in some cases in lieu of a
8 formal report from the full ANC, but the rules
9 make a distinction between the single member
10 district Commissioner and the full ANC
11 Commission, the May 27 meeting that you talk
12 about in your submission, and normally the
13 report that we get is from the full Commission
14 indicating that there was notice, there was a
15 quorum, that there was a vote, it was
16 unanimously voted up or voted down, and I mean
17 either way, your testimony will be very
18 helpful to us and we'll utilize that as part
19 of our decision

20 MS. GRANT: Let me see if I have
21 this. That would be May's meeting.

22 CHAIRPERSON LOUD: If you don't,

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1 it is not a problem. I think we can still
2 proceed forward with the information that we
3 have in the record.

4 MS. GRANT: It's on our Website,
5 but all this paper.

6 CHAIRPERSON LOUD: And not that it
7 would need any corroboration, but the OP
8 report corroborates as well that there was
9 such a meeting and the vote was unanimously in
10 favor of it.

11 MS. GRANT: Okay. Well, not to
12 hold you up, but I can always E-mail. I can
13 always what is it, fax it or send it over?

14 CHAIRPERSON LOUD: Well, you may
15 want to hold that thought because this is our
16 last meeting before summer recess.

17 MS. GRANT: Okay.

18 CHAIRPERSON LOUD: And I saw
19 something in the pleadings where the C of O
20 expires August 29. Am I correct?

21 So we may end up deciding this
22 case today, and we don't actually need the

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1 full ANC report to fill out our record. So
2 we'll make that decision later, but it's good
3 to know that there's not any opposition from
4 the ANC.

5 Okay. Now I think what we will do
6 if there are no questions for the ANC, we'll
7 see if there aren't any persons in the
8 audience to be either in favor of or against,
9 and so we would turn now to the Applicant for
10 closing remarks.

11 But before we do that, I just
12 wanted to one last time see if Board members
13 had any questions.

14 Why don't you hand that to Ms.
15 Bailey all the way on the far left, your far
16 right?

17 (Pause in proceedings.)

18 CHAIRPERSON LOUD: Excuse me.
19 We're just taking a few moments to look at the
20 minutes from the meeting that we just were
21 handed. We're going to pass it around since
22 we don't have enough copies. So it may take

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1 a few minutes, but I think it may be worth it.

2 (Pause in proceedings.)

3 CHAIRPERSON LOUD: Okay. I think
4 we're fully back on the record, and we've all
5 had a chance to review the minutes from the
6 meeting, and thank you, Ms. Grant, for
7 providing those. Those helped to further
8 corroborate that, in fact, the full ANC
9 supports the application.

10 I think there's a technical
11 problem with the minutes not mentioning that
12 there was proper notice for the meeting. They
13 mention that there was a quorum and that there
14 was a vote in support of it, but that's not
15 fatal to the application before us. I think
16 we can still move forward on the application
17 and get the outcome that the ANC supported.

18 MS. GRANT: Thank you.

19 CHAIRPERSON LOUD: So now why
20 don't we turn back to you, Mr. Love, for your
21 closing remarks?

22 MR. LOVE: Well, again, I would

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1 like to thank the Board, Ms. Thomas and Ms.
2 Grant for giving me this opportunity.

3 I would like to close out by
4 saying that I'm very truly excited to be
5 coming a part of the Brookland community. As
6 a vice principal for Prince George's County
7 Public Schools, I know there's a true need for
8 early childhood education, and it is my true
9 intent that I will be able to bring such
10 services to the children and properly prepare
11 them for their educational journey.

12 So, again, I would like to give my
13 sincerest thanks.

14 CHAIRPERSON LOUD: Thank you.

15 I think that the Board is probably
16 ready to deliberate today on this case, and so
17 I think I'll start us off.

18 This is an application for a child
19 development center under our Section 205, and
20 as amended the application is for children
21 ages two to five; a cap of 70 such young
22 people, with a staff cap of 17 -- 75. I'm

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1 sorry -- cap of 75 with a staff cap of 17.

2 The application would require that
3 there be four parking spaces for the staff,
4 and these parking spaces are going to be
5 satisfied off site. So there is the need for
6 relief from Section 2116.5.

7 With respect to the requirements
8 of Section 205, the Office of Planning report
9 lays them out in very clear detail and applies
10 the facts of your situation to each of those
11 standards, and I think you and I did an
12 exchange at the beginning where I sort of drew
13 some of it out from you as well. So I think
14 the testimony is on the record in support of
15 the 205 relief.

16 It's also on the record in support
17 of the relief under 2116.5. That was
18 supplemented today by OP going back and saying
19 that even at 75 students and a cap of 17
20 faculty, they were supportive of it. They
21 wished they had known beforehand, but they
22 were nonetheless supportive. It didn't really

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1 increase the parking requirement that much.
2 I think one additional space, and the Hoover
3 Street parking lot that you had gotten
4 permission to use has ample parking
5 availability for that.

6 In addition to that, the ANC
7 single member district Commissioner was here
8 this afternoon and did an excellent job
9 indicating that you came before her group and
10 gave a presentation. They supported it, and
11 that was followed by a full Commission meeting
12 wherein a quorum of members present also voted
13 to support the application.

14 Again, that was at 60 with a cap
15 of 12 faculty, but the single member district
16 Commissioner in whose district the project
17 will be has been made aware of the fact that
18 it's 75 and 17, and is fully supportive of it,
19 especially since there is no adverse parking
20 impact.

21 So I'm in favor of it. I'd like
22 to perhaps open it up to other Board members,

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1 and then maybe there are some conditions that
2 OP recommended, as well as some additional
3 ones that I'd like to place before the Board
4 for consideration, but let me see if Board
5 members have any thoughts.

6 MEMBER MOLDENHAUER: Mr. Chair,
7 the one comment that I would have would be
8 even though OP didn't recommend a term and the
9 last case, I guess, back in 2001 also did not
10 specify a term, back in '69 there was a three-
11 year term, and I would just throw out a
12 recommendation for either a five or a ten-year
13 term on this approval.

14 CHAIRPERSON LOUD: Thank you.

15 I think that's a good segue into a
16 discussion about conditions. Sounds to me
17 like most of the Board is supportive of the
18 application itself.

19 Take a look at what the Office of
20 Planning recommended, and I'll just go through
21 both their conditions, what you just
22 mentioned, Board Member Moldenhauer, and then

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1 some suggested ones as well from my
2 standpoint.

3 The first condition I'd like to
4 propose is that the enrollment of the child
5 development center is limited to 75 students
6 and 17 staff.

7 The second condition is that drop-
8 off and pickup would be through the Lawrence
9 Street entrance which as I understand it is
10 the rear of the property away from the Rhode
11 Island traffic.

12 The third condition is that the
13 hours of operation be from 6:00 a.m. to 6:00
14 p.m., Monday through Friday -- I'm sorry --
15 6:30 a.m.?

16 MR. LOVE: Six a.m. to 6:30 p.m.

17 CHAIRPERSON LOUD: I'm sorry. Six
18 a.m. -- thank you -- to 6:30 p.m., and just by
19 way of let's fix some of this and write it in
20 stone so that it doesn't float around and
21 cause any opportunities for misunderstandings.

22 The fourth would be the provision

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1 of four parking spaces off site at the Hoover
2 Street lot.

3 The fifth is something you
4 requested, I think, Mr. Love, which is that
5 the age of the children be from two to five as
6 opposed to two and a half to five.

7 And then the sixth would be what
8 Board Member Moldenhauer has suggested, which
9 is a term, and I would be for a term of ten
10 years. I think given that the numbers went up
11 a little from what was initially proposed, it
12 may not be a bad idea to term it so that if it
13 is creating any serious concern in the
14 community, then it would be an opportunity for
15 you to come back and the community could weigh
16 in on any issues that they may have.

17 I wouldn't necessarily be for a
18 lower period of time because I think that it
19 has overwhelming support in the community.
20 Apparently there's an historic use on the site
21 of the same kind of facility without major
22 objections.

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1 So that being said, let me open it
2 back up again to Board members.

3 (No response.)

4 CHAIRPERSON LOUD: So I think, and
5 I just want to make doubly sure that we're
6 relying on incorporating into our deliberation
7 rationale the report of the Office of
8 Planning, both the 205 discussion and the 2116
9 discussion, and we're supplementing that with
10 the back-and-forth about the additional
11 parking space relief needed.

12 So I'm not going to go through a
13 step-by-step analysis. I think it will just
14 waste some time.

15 So that being said then, is there
16 further deliberation?

17 (No response.)

18 CHAIRPERSON LOUD: Okay. Then I
19 would like to move approval of Application
20 No. 17950, a request for special exception
21 relief under Section 205, for parking relief
22 under Section 2116.6, as amended, for 75

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1 students and 17 staff, as conditioned. Is
2 there a second?

3 MEMBER MOLDENHAUER: I second.

4 CHAIRPERSON LOUD: Further
5 deliberation?

6 (No response.)

7 CHAIRPERSON LOUD: All right. The
8 motion has been made and seconded, as
9 conditioned, and all those in favor please say
10 aye.

11 (Chorus of ayes.)

12 CHAIRPERSON LOUD: All those who
13 oppose?

14 (No response.)

15 CHAIRPERSON LOUD: Are there any
16 abstentions?

17 (No response.)

18 CHAIRPERSON LOUD: Ms. Bailey, can
19 you please read the vote?

20 MS. BAILEY: Mr. Chairman, the
21 vote is recorded as four, zero, one to grant
22 the application. Mr. Loud made the motion.

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1 Ms. Moldenhauer seconded. Mr. Keating and Mr.
2 Dettman support the motion.

3 CHAIRPERSON LOUD: Thank you, Ms.
4 Bailey.

5 And congratulations. Thank you,
6 Applicants. Thank you, Commissioner.

7 MS. GRANT: Thank you.

8 One other thing. I would be
9 remiss if I let you get away with that error.
10 It is Woodridge, not Brookland.

11 (Laughter.)

12 MS. GRANT: You said it twice.
13 The first time I just laughed, but it is
14 Woodridge.

15 Thank you.

16 CHAIRPERSON LOUD: Mr. Dettman
17 reminded me that you're lucky that
18 Commissioner Hood is not here. Do you know
19 Commissioner Hood? Who lives in Woodridge,
20 not Brookland.

21 So thank you.

22 MS. BAILEY: Mr. Chairman, this is

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1 summary order, is it not?

2 CHAIRPERSON LOUD: This is a
3 summary order because there's no great weight
4 report at all from the ANC.

5 Is there anything further on
6 today's calendar?

7 MS. BAILEY: No, Mr. Chairman.
8 Enjoy the rest of your summer.

9 CHAIRPERSON LOUD: Thank you very
10 much, and thank you and BZA staff, Mr. Moy and
11 everybody, for all you guys have done, and we
12 hope that you guys have a great, great, great
13 summer without us. We'll be thinking about
14 you every Tuesday from 9:00 a.m. to 4:00 p.m.

15 This meeting is adjourned.

16 (Whereupon, at 3:50 p.m., the
17 public hearing was concluded.)
18
19
20
21

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