

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JUNE 16, 2009

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairperson
SHANE L. DETTMAN, Vice Chairman
(NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS

STEPHEN VARGA

PAUL GOLDSTEIN

STEPHEN MORDFIN

D.C. DEPARTMENT OF TRANSPORTATION PRESENT:

CHRISTOPHER DELFS

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

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

9:51 p.m.

CHAIRPERSON LOUD: This hearing
will please come to order.

Good morning, ladies and
gentlemen. This is the June 16th public
hearing of the Board of Zoning Adjustment of
the District of Columbia.

My name is Marc Loud, Chairperson.
Joining me today are Vice-Chair Shane Detman
representing the National Capital Planning
Commission, Michael Turnbull representing the
Zoning Commission. To my left, Mr. Clifford
Moy, Secretary of the Board of Zoning
Adjustment and to his left Ms. Beverly Bailey,
zoning specialist here 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
proceeding is being recorded by a court

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1 reporter and is also web cast live.
2 Accordingly, we must ask you to refrain from
3 any disruptive noises or actions in the
4 hearing room.

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

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

20 The order of procedure for special
21 exceptions and variances is: (1) Statement
22 and witnesses of the applicant; (2) Government

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1 reports, including the Office of Planning,
2 Department of Public Works, Department of
3 Transportation, etcetera; (3) report of the
4 Advisory Neighborhood Commission; (4) parties
5 or persons in support; (5) parties or persons
6 in opposition; and finally (6) closing remarks
7 of the applicant.

8 I'm going to skip over the appeal
9 guidelines since we don't have any appeals on
10 this morning's calendar.

11 Pursuant to sections 3117.4 and
12 3117.5, the following time constraints will be
13 maintained. The applicant/appellant, persons
14 and parties, except an ANC in support,
15 including witnesses, 60 minutes collectively.
16 Appellees, persons and parties, except an ANC
17 in opposition, including witnesses, 60 minutes
18 collectively. Individuals, three minutes
19 collectively. We will stick to that this
20 morning because we have a heavy morning
21 calendar with three cases scheduled for
22 essentially 10 to 12 minute block of time

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1 allotted. These time constraints do not
2 include cross examination and/or questions
3 from the Board. Cross examination of
4 witnesses is permitted by the applicant or
5 parties.

6 The ANC within which the property
7 is located is automatically a party in a
8 special exception or variance case. Nothing
9 prohibits the Board from placing reasonable
10 restrictions on cross examination, including
11 time limits, and limitations on the scope of
12 cross examination. And again, we will be
13 sticking to that this morning as we are trying
14 to ambitiously get through this morning's
15 calendar.

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

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1 record is closed no other information will be
2 accepted by the Board.

3 The Sunshine Act requires that the
4 public hearing on each case be held in the
5 open before the public. The Board may,
6 consistent with its Rules of Procedure and the
7 Sunshine Act, enter executive session during
8 or after the public hearing on a case for
9 purposes of reviewing the record or
10 deliberating on the case.

11 The decision of the Board in these
12 contested cases must be based exclusively on
13 the public record. To avoid any appearance to
14 the contrary the Board requests that persons
15 present not engage the Members of the Board in
16 conversation.

17 Please turn off all beepers and
18 cell phones at this time so as not to disrupt
19 these proceedings.

20 The Board will now consider any
21 preliminary matters. Preliminary matters are
22 those which relate to whether a case will or

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1 should be heard today such as requests for
2 postponement, continuance or withdrawal, or
3 whether proper and adequate notice of the
4 hearing has been giving.

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

9 Does the staff have any
10 preliminary matters?

11 MS. BAILEY: Mr. Chairman, Members
12 of the Board, good morning.

13 Yes, Mr. Chairman, and it has to
14 with application 17932, application of M.
15 Sikder. There is information in the file
16 indicating that a postponement may be
17 warranted for this application, Mr. Chairman.

18 Is Mr. Sikder here?

19 CHAIRPERSON LOUD: Thank you, Ms.
20 Bailey.

21 Mr. Sikder, if you could come up,
22 I think we're going to go just a little out of

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1 order this morning to hear, I believe what's
2 going to be a request for postponement. Maybe
3 we can dispose of that and then get into the
4 rest of the morning's calendar.

5 MR. SIKDER: Yes, sir. Good
6 morning, Mr. Chairman and Board Members.

7 CHAIRPERSON LOUD: Good morning.

8 MR. SIKDER: Yes, I stated that I
9 would like a postponement of this case because
10 there was an issue raised by Office of
11 Planning that -- basically they're asking to
12 redesign this -- of this plan, so that would
13 take some times. Because of that I would like
14 to postpone this case.

15 CHAIRPERSON LOUD: Okay. Have you
16 given thought to how much time you're going to
17 need to meet with OP and go over the design
18 and then come back before BZA?

19 MR. SIKDER: I would say maybe
20 about two months.

21 CHAIRPERSON LOUD: About two
22 months? That would take us into the fall, I

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1 believe, because we're not going to meet in
2 August.

3 Board Members, do you have any
4 questions or concerns?

5 Okay. Ms. Bailey?

6 MS. BAILEY: Yes, Mr. Chairman?

7 CHAIRPERSON LOUD: Looking into, I
8 guess, the fall, do you have some dates
9 available? I don't have my calendar in front
10 of me.

11 MS. BAILEY: September 29th would
12 be an appropriate date at this point, Mr.
13 Chairman.

14 CHAIRPERSON LOUD: You're looking
15 in the afternoon?

16 MS. BAILEY: Yes, sir.

17 CHAIRPERSON LOUD: Okay.

18 MS. BAILEY: Or it could be the
19 morning. Morning and afternoon, both are
20 available. That's September 29th.

21 CHAIRPERSON LOUD: I see. Okay.
22 What about on the 22nd?

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1 MR. MOY: Mr. Chairman?

2 CHAIRPERSON LOUD: Yes, sir?

3 MR. MOY: Just a reminder. In
4 September we have five hearings in September.
5 So that last date that Ms. Bailey mentioned,
6 the 29th, could be used for continued cases.
7 So that would be the fifth hearing in
8 September, I believe.

9 CHAIRPERSON LOUD: Okay. Sorry
10 about that. We were sort of looking over the
11 different things on the calendar.

12 We're looking at September 22nd in
13 the afternoon. I think there's only one case
14 currently scheduled that afternoon, a special
15 exception. So what we'd like to do is put
16 your case first in the afternoon.

17 MR. SIKDER: Okay.

18 CHAIRPERSON LOUD: Okay.

19 MR. SIKDER: That works. Thank
20 you.

21 CHAIRPERSON LOUD: So let's do
22 that. Is there anything further in this case,

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1 Ms. Bailey?

2 MS. BAILEY: No, Mr. Chairman.

3 CHAIRPERSON LOUD: Okay. Thank
4 you, Mr. Sikder. We'll see you on September
5 22nd.

6 MR. SIKDER: (Off microphone.)

7 CHAIRPERSON LOUD: I'm sorry?

8 MR. SIKDER: (Off microphone.)

9 CHAIRPERSON LOUD: I think you
10 have to speak into your microphone.

11 MR. SIKDER: I think -- the next
12 case is I think mind.

13 CHAIRPERSON LOUD: So you're going
14 to stick around for the next --

15 MR. SIKDER: Yes.

16 CHAIRPERSON LOUD: Okay. Ms.
17 Bailey, do you want to swear in all the
18 witnesses first?

19 MS. BAILEY: Yes, Mr. Chairman.

20 CHAIRPERSON LOUD: I think she's
21 going to swear in all the witnesses and then
22 we'll call your case.

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1 (Whereupon, the witnesses were
2 sworn.)

3 MS. BAILEY: Ready, Mr. Chairman?

4 CHAIRPERSON LOUD: Yes, ma'am.

5 MS. BAILEY: Application 17931.

6 This is the application of M. Sikder, pursuant
7 to 11 DCMR 3103.2, for a variance from the
8 off-street parking requirements under
9 subsection 2101.1, for the construction of a
10 new one-family detached dwelling in the R-3
11 District at premises 5032 B Street, S.E. the
12 property is also known as Square 5326, Lot 24.

13 CHAIRPERSON LOUD: Thank you, Ms.
14 Bailey.

15 And good morning again, Mr.
16 Sikder. And I won't speak for the full Board,
17 but we've reviewed the file fairly thoroughly
18 and don't think it's necessary for you to go
19 over every nook and cranny of the case, but to
20 establish the variance test that we're talking
21 about. Also there may be some questions from
22 Board Members as well, so prepare for that.

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1 And with that, you can go into
2 your case.

3 MR. SIKDER: Sure. You'd like me
4 to say I'm --

5 CHAIRPERSON LOUD: I think at a
6 minimum you can go through the test for
7 relief, and then we'll turn to Board Members
8 and see if they have any questions.

9 MR. SIKDER: Sure.

10 CHAIRPERSON LOUD: But you can
11 feel free to do that briefly.

12 MR. SIKDER: Good morning, Mr.
13 Chair, again and Board Members. We are
14 planning to build a house on this lot, but
15 currently the -- the elevation of this lot is
16 very high. Is about 15 to, I think, 20 feet.
17 Yes. And we cannot provide the parking
18 requirements and we would like to ask a
19 variance upon that requirements. I mean,
20 that's the basic idea of our variance. And if
21 you have any other question, I could -- I
22 would like to also answer that.

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1 CHAIRPERSON LOUD: I'll tell you
2 what, again, and you can be brief in this, can
3 you speak to the uniqueness of the property
4 and then any practical difficulties that stem
5 from the uniqueness of the property? And then
6 we can take it from there.

7 MR. SIKDER: Yes. There's a
8 practical difficulty is that parking -- I
9 mean, either way there is no back alley of
10 this property. Yes, and in the front side --
11 on the side -- on the side also, we cannot
12 provide any parking, like a driveway because
13 of the elevation of this lot. It's very high.
14 Is about I think about 15 -- over 15 feet
15 height. So that would be definitely is
16 practical difficulty. Yes, and -- and just to
17 having these parking on the street, it would
18 not really be harmful to this community. So,
19 I mean, basically I would say that would be
20 the, I mean, major -- a major issue. I mean,
21 that will -- practical difficulty is that --
22 -- look at it. I mean, it's very high and we

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1 cannot simply provide any kinds of parking,
2 neither on the side, nor in the back of the
3 house.

4 CHAIRPERSON LOUD: Okay. Why
5 don't we do this, because some of it may get
6 teased out as a part of the process of asking
7 questions, but I think also the Office of
8 Planning pulled together a very thorough
9 report.

10 Board Members are there any
11 questions for the applicant?

12 COMMISSIONER TURNBULL: Yes, Mr.
13 Chair. I just got one question. Exhibit No.
14 7 shows a topo, topography of that. I'm
15 looking on this topo that there's only -- and
16 maybe I'm trying to interpret where your lot
17 actually is, but I'm seeing that it only goes
18 from 54 to -- every one looks like about five
19 feet.

20 MR. SIKDER: No. No, that -- that
21 -- this -- I mean, I do not know which --
22 which one you're looking at, but --

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1 COMMISSIONER TURNBULL: It's
2 Exhibit 7.

3 MR. SIKDER: It's seven feet --
4 seven foot from where? Where are you looking
5 from?

6 COMMISSIONER TURNBULL: Well,
7 again, I'm just looking at the slope and even
8 at the one house, 52 to 55, 53 to 58. I'm
9 just trying to understand where you're coming
10 from with the height. On this topo it doesn't
11 really -- unless this is, you know, an
12 inaccurate topo, but it doesn't really seem to
13 show that height difference.

14 MR. SIKDER: Possibly that -- I
15 mean, it may -- most -- most of the cases topo
16 maybe like, but not necessarily all the time
17 correct. Then -- and I don't know Office of
18 Planning visited the area and they can see
19 there is a house somebody built on the corner
20 of 50th Street and Astor. And they had to
21 basically -- they could not make any parking
22 and they had to ditch their -- I think about,

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1 I don't know how many feet. Maybe about at
2 least I'd say 15 feet.

3 COMMISSIONER TURNBULL: Well, I
4 mean, on Exhibit 5, the pictures of the site
5 do show more of a steep rise than what's
6 indicated by this topography. So it would be
7 over only 33 -- does that say meters?

8 MR. SIKDER: Yes, meters.
9 Correct.

10 COMMISSIONER TURNBULL: Okay.
11 Meters? Big difference. Big difference.
12 Okay. I stand corrected. Thank you.

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

15 Mr. Dettman?

16 CHAIRPERSON LOUD: Thank you, Mr
17 Chairman. Just a couple questions and it goes
18 to not necessarily the variance, but notice to
19 the community. So two questions.

20 One, did you reach out to the ANC
21 for this?

22 And secondly, I don't see an

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1 affidavit of posting in the record. So was
2 the property posted appropriately?

3 MR. SIKDER: Yes.

4 VICE-CHAIRPERSON DETTMAN: Fifteen
5 days?

6 MR. SIKDER: Sure.

7 VICE-CHAIRPERSON DETTMAN: And the
8 ANC?

9 MR. SIKDER: ANC, I -- I talked to
10 Rosa -- I talked to ANC member Rosa Hamlet and
11 I explained her what's the situation is. And
12 I told her that is very -- is very simple
13 case. It's not very complicated. Just we're
14 asking for parking variance. And actually the
15 whole situation and I explain her that, I
16 mean, do I need to attend ANC meeting or -- or
17 so. She said well, she was going to talk to
18 these people. If -- if necessary she would
19 let me know. But later on, I got a call, Mr.
20 Clifford Moy, that the other person, her name
21 is -- what's her name? I think -- what her
22 name -- Ms. Jackson or so. That she --

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1 basically she complained that I never attended
2 the meeting or never called her. And so I got
3 the phone number from Mr. Moy and I contacted
4 her. She was very mad. So why you do call me
5 on my cell phone? I said I got -- I mean,
6 just the number I had. Basically she started
7 saying, you know, don't call my cell phone
8 anymore. I mean, so she said -- I mean, what
9 do you need to do? You need me to talk or no
10 talk? She said I don't know, but don't call
11 my cell phone. And that's really -- she hang
12 up. And she said, well, I'll -- I mean, I'll
13 -- I'll talk to whoever. That's -- that's --
14 that's -- I mean, I -- I explained her that I
15 talked to already Ms. Rosa Hamlet and she --
16 she -- she -- she -- she repeated that if
17 there any problem or any necessary to -- to
18 call -- I mean, to be at any of the meeting,
19 I'll let you know. I mean, I -- I -- I feel
20 that -- that I don't need to attend the
21 meeting. As a result I didn't go there.

22 CHAIRPERSON LOUD: Mr. Sikder, I

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1 just want to follow up on some questions that
2 Mr. Dettman had about the posting. We have
3 the affidavit of posting, but it appears that
4 it was 13 days and the rule requires 15 days.
5 Did you want to respond to that?

6 MR. SIKDER: I -- I do not recall
7 exactly that and, I mean, the numbers, but I
8 thought it's 15 days. But if it is the
9 counting 13 days, it might be that. I'm not
10 sure.

11 CHAIRPERSON LOUD: I think we're
12 empowered by our rules to waive the affidavit
13 of posting. In fact there are a different
14 ways that applications are noticed for the
15 community, including the posting that you --
16 in this case you did it, but you didn't submit
17 the affidavit within the time frame. There's
18 also our Exhibit 6, which is the letters to
19 those who live within 200 feet of the property
20 that goes out from the Office of Zoning. And
21 in this case we also have an Exhibit 21, a
22 letter from some of your neighbors who are

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1 opposed to the project. So I don't think
2 there's a concern here that word did not get
3 out. But I do think in the future you've got
4 to really make sure that you're able to get
5 the affidavit it on time so that the issue
6 doesn't even surface.

7 Board Members, I think what we
8 need to do is, if we're going to waive in the
9 affidavit of posting, we should probably take
10 care of that now. And then if there are no
11 further questions for Mr. Sikder, we will move
12 onto the Office of Planning.

13 Is there any opposition from Board
14 Members with respect to waiving the affidavit
15 of posting?

16 Okay. So we'll waive in the
17 affidavit of posting under our Rule 3100.5.

18 And if there are no further
19 questions for Mr. Sikder, we'll move to the
20 Office of Planning.

21 MR. VARGA: Thank you. Good
22 morning, Mr. Chairman and Members of the

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1 Board. Stephen Varga, Office of Planning.

2 The applicant is applying for a
3 request for variance relief from the one
4 parking space requirement for each dwelling
5 under 2101.1. OP recommends approval.
6 Otherwise, we stand on the record and are
7 happy to answer any questions you might have.
8 Thank you.

9 CHAIRPERSON LOUD: Thank you and
10 good morning.

11 I have a quick question about this
12 Exhibit 21 in concert with the lack of an ANC
13 report in the file. Exhibit 21 is of course
14 speaking for the neighbors of the applicant
15 and they're protesting the off-street parking
16 variance because it will essentially result in
17 their parking areas being used up.

18 Analyzing the test as you have,
19 what's your take on that concern?

20 MR. VARGA: Well, based on the
21 applicant's proposal, the Office of Planning
22 did take that into consideration. And because

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1 they don't have any alley access in the rear
2 and due to the hilly terrain, the applicant
3 might be limited in how they develop the site
4 and they would need to establish a curb cut.
5 So there's the consideration that by cutting
6 that curb they would be essentially removing
7 a parking space from B Street anyway. So we
8 took that into consideration and that
9 partially informed our recommendation.

10 CHAIRPERSON LOUD: And did you
11 have any contact or conversations with the
12 ANC?

13 MR. VARGA: No, I never received
14 any information from the ANC.

15 CHAIRPERSON LOUD: All right.
16 Thank you.

17 Board Members, do you have any
18 questions for the Office of Planning?

19 Hearing none, Mr. Sikder, do you
20 have a copy of their report?

21 MR. SIKDER: No, I don't.

22 CHAIRPERSON LOUD: Would you like

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1 the opportunity to review it quickly?

2 MR. SIKDER: No, that's okay.

3 CHAIRPERSON LOUD: Okay. They
4 recommend approval of your application, as you
5 probably are aware.

6 If the ANC, ANC-7E would be the
7 correct ANC, if they're present in the
8 audience, now would be the time to come up.
9 And they are not.

10 If there are parties or persons in
11 support of the application, now would be the
12 time to come up.

13 Seeing none, if there are parties
14 or persons in opposition, now would be the
15 time to come up.

16 Again, seeing none. What we'll do
17 is go to the closing remarks.

18 Mr. Sikder, your closing remarks.

19 MR. SIKDER: Yes, in the closing
20 remark I would like to say, I mean, I wish --
21 I would -- I would ask you to approve my case.

22 CHAIRPERSON LOUD: That's it?

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1 Okay. Did you want to take one last stab at
2 speaking to the concerns of some of your
3 neighbors that they may lose a parking space
4 if we would grant this variance, particularly
5 the Exhibit 21? I think they lived at 5011,
6 5019 and 5029.

7 MR. SIKDER: But, it is very, very
8 aware because in this whole block, entire
9 block, basically unbuildable, these lots. How
10 these people are thinking this will make any
11 condition or anything else. Particularly
12 there's no reason. Neighbor, they simply,
13 they don't want to do anything, I -- in my
14 view. Because in this block, I mean, I -- I'm
15 pretty sure these people who are in there,
16 entire block is empty. Just one -- one person
17 he started a building house maybe three years,
18 it's still sitting here, because nothing can
19 be done because of simply these -- the
20 corners. And I don't understand why too
21 they're objecting, because there is no -- the
22 whole block is empty. I mean, the road is

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1 empty. There is no car -- there is no -- I
2 mean, there's couple of houses on the other
3 side of the block and that doesn't really
4 interfere in this side of the street.

5 CHAIRPERSON LOUD: Thank you.
6 Board Members, any follow-up questions?

7 I think what we're going to do now
8 is make a decision on whether we'll deliberate
9 this morning. I think we are ready to
10 deliberate. I think Mr. Dettman is going to
11 start us off with the deliberations.

12 VICE-CHAIRPERSON DETTMAN: Thank
13 you, Mr Chairman. Very quickly, this is a
14 very straightforward case, a variance request
15 from the off-street parking requirements under
16 2101 for the construction of a new one-
17 family detached dwelling. The parking
18 requirement under Chapter 21 for this project
19 would be one space.

20 With respect to the three prongs
21 in the variance test, and we've seen the
22 record and heard from the applicant, with

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1 respect to an exceptional or extraordinary
2 situation, the property has a significant
3 elevation change. From south to north there's
4 an elevation change of 15 feet. And in
5 addition to that, the property lacks any kind
6 of alley access.

7 And so in terms of the second
8 prong, whether the extraordinary situation
9 gives rise to a practical difficult upon the
10 property owner, the elevation change -- well,
11 starting with the alley access, it makes it
12 difficult to provide to one off-street parking
13 space at the rear of the property given that
14 there's no alley access. And to provide
15 access to the rear of the property would
16 require a curb cut as well as trying to
17 alleviate the elevation change in order to
18 provide access to the rear of the property.
19 And so providing access to the rear of the
20 property from the front of the property would
21 be practically difficult given the elevation
22 change.

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1 Moving onto the third prong of the
2 test, whether or not the variance can be
3 granted without causing substantial detriment
4 to the public good or compromising the
5 integrity or the purpose of the Zone Plan, we
6 heard from the Office of Planning that there
7 appears to be adequate on-street parking. The
8 property is well served by public
9 transportation. In general, it's going to put
10 currently a vacant property to productive use
11 and add to the housing stock.

12 And finally, again, providing a
13 curb cut along B Street would effectively
14 remove one on-street parking space and so that
15 basically equates to no net gain in any kind
16 of parking. It also could cause some conflict
17 with pedestrian circulation.

18 Again, it's a relatively
19 straightforward case. I think the three
20 prongs of the variance test are met. We did
21 receive our Exhibit 21, some opposition from
22 the property owners immediately to the south

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1 of B Street which states that they've had some
2 history of people using their parking lots for
3 their own parking purposes. Given the fact
4 that there seems to be enough on-street
5 parking and that we're only talking about one
6 parking space, I think that the availability
7 of on-street parking is going to alleviate any
8 kind of that concern.

9 And during our discussion, we had
10 established that there really isn't any kind
11 of concern with noise to the neighborhood. We
12 did receive that letter. The applicant did
13 reach out to the ANC and had a discussion with
14 a Ms. Rosa Hamlin or Hamlet. And of course
15 the Office of Zoning sends out adequate
16 notice. The property was posted for 13 days,
17 which the Board waived into the record.

18 So with that, Mr. Chairman, I'm
19 prepared to make a motion for approval of this
20 case given that it seems that the three prongs
21 have been met.

22 CHAIRPERSON LOUD: You want to go

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1 ahead and make your motion?

2 VICE-CHAIRPERSON DETTMAN:

3 Certainly. I move for approval of application
4 No. 17931 of M. Sikder, pursuant to 11 DCMR
5 3103.2 for a variance from the off-street
6 parking requirements under subsection 2101.1,
7 for the construction of a new one-family
8 detached dwelling at 5032 B Street, S.E.

9 CHAIRPERSON LOUD: Motion
10 seconded.

11 Motion's been made and seconded.

12 Is there further deliberation?

13 Hearing none, all those in favor
14 say aye. Aye.

15 VICE-CHAIRPERSON DETTMAN: Aye.

16 COMMISSIONER TURNBULL: Aye.

17 CHAIRPERSON LOUD: Those opposed?

18 All those in abstention?

19 Can you read back the vote, Ms.
20 Bailey?

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

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1 application. Mr. Dettman made the motion, Mr.
2 Loud seconded. Mr. Turnbull supported the
3 motion. There are two board members not
4 sitting on the Board at this time.

5 CHAIRPERSON LOUD: Thank you, Ms.
6 Bailey. And there's no opposition from the
7 ANC in this case, so we can do a summary
8 order.

9 MS. BAILEY: A summary order it
10 is, Mr. Chairman.

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

13 MR. SIKDER: Thanks.

14 CHAIRPERSON LOUD: And is there
15 anything further in this case, Ms. Bailey?

16 MS. BAILEY: No, sir.

17 CHAIRPERSON LOUD: Okay. Then we
18 can call the next case.

19 MS. BAILEY: The next application
20 is No. 17933. It's the application of HSC
21 Foundation and it's pursuant to 11 DCMR
22 3104.1 and 3103.2, for a special exception

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1 from the rear yard requirements under
2 subsection 774.2, and a variance from the
3 parking requirements under subsection 2101.1,
4 to allow the renovation and expansion of a
5 building for office use in the C-3-C District.
6 Premises 2013 H Street, N.W., Square 101, Lot
7 874.

8 Members of the Board, there is a
9 request for party status in this application
10 and it's from the West End Citizen's
11 Association.

12 CHAIRPERSON LOUD: Thank you, Ms.
13 Bailey.

14 Why don't we take on the party
15 status application issue first? So if the
16 representative from the West End Citizen's
17 Association -- good morning -- could step
18 forward? And the parties have to take those
19 parties including as you said -- record.

20 MS. KAHLOW: Okay. I'm Barbara
21 Kahlow. I'm representing the West End
22 Citizen's Association today. And as our April

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1 9th letter stated, we have been a party in the
2 companion -- accepted by the Zoning Commission
3 in a party in the companion case for the HSC
4 Foundation and in many other cases in front of
5 both boards.

6 CHAIRPERSON LOUD: Good morning,
7 Ms. Kahlow. Can you just speak briefly to
8 what the -- and I understand that you've been
9 accepted by the Zoning Commission -- the
10 interests that are unique that you'll be
11 advancing as part of this case, or more
12 significantly distinctly affect your
13 organization or the persons in your
14 organization that you're going to be
15 representing and make that a part of our
16 record?

17 MS. KAHLOW: As our letter stated
18 in detail, our civic association is the
19 principal civic association east of 23rd
20 Street in the Foggy Bottom West End area. And
21 it's our renters and homeowners, condo
22 homeowners that actually have parking -- park

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1 in that immediate park. So they would be
2 influenced by any parking relief that you
3 would grant.

4 Our boundaries are -- our members
5 live from 15th Street on the east, Potomac
6 Park on the south, Rock Creek and Potomac on
7 the west and N Street on the north. So our
8 principal interest is traffic and the use of
9 on-street parking. There are also many
10 quality of life issues. And I'll be
11 discussing those in some detail.

12 CHAIRPERSON LOUD: Thank you.
13 Should the Board grant party status, are you
14 planning to cross examine witnesses?

15 MS. KAHLOW: Yes, I am. That's
16 why we want to be a party.

17 CHAIRPERSON LOUD: Okay.

18 MS. KAHLOW: I have quite a number
19 of questions for both OP and for the
20 applicant.

21 CHAIRPERSON LOUD: Very well.

22 Thank you.

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1 Good morning.

2 MR. QUIN: Good morning, Mr.
3 Chairman and Members of the Board. My name is
4 Wayne Quin with Dennis Hughes of Holland &
5 Knight. We represent the Hospital for Sick
6 Children Foundation, the applicant in this
7 case.

8 CHAIRPERSON LOUD: Good morning.
9 Why don't we finish out the introductions and
10 then we'll come back to you to respond to the
11 party status request?

12 DR. CHAPMAN: Good morning, Mr.
13 Chairman and Members of the Board. my name is
14 Thomas W. Chapman. I'm the president and CEO
15 of the HSC Foundation.

16 CHAIRPERSON LOUD: Good morning,
17 Mr. Chapman.

18 MR. GOETZ: Good morning, Mr.
19 Chairman and Members of the Board. I'm Lewis
20 Goetz, president and CEO of Group Goetz
21 Architects and I'm here with Franco Lewis,
22 also representing Group Goetz Architects.

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1 CHAIRPERSON LOUD: Good morning to
2 both of you.

3 And, Mr. Quin, we'll go back to
4 you with respect to the party status
5 application.

6 MR. QUIN: We have no objection.

7 CHAIRPERSON LOUD: And, Mr. Moy
8 and Ms. Bailey, do we need to vote
9 affirmatively on the party status application?

10 MS. BAILEY: Yes, Mr. Chairman.

11 CHAIRPERSON LOUD: All right.
12 Board Members, do you have any questions for
13 -- okay.

14 I would like to move then that the
15 Board approve the party status application of
16 the West End Citizen's Association, which has
17 designated Ms. Kahlow as its representative
18 for our proceeding, and she shall represent
19 that organization. Is there a second?

20 COMMISSIONER TURNBULL: Second.

21 CHAIRPERSON LOUD: The motion's
22 been made and seconded. All those in favor

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1 say aye. Aye.

2 VICE-CHAIRPERSON DETTMAN: Aye.

3 COMMISSIONER TURNBULL: Aye.

4 CHAIRPERSON LOUD: Those opposed?

5 All those in abstention?

6 Ms. Bailey, can you read back the
7 vote?

8 MS. BAILEY: Mr. Chairman, the
9 vote is 3-0-2 to accept the West End Citizen's
10 Association as a party to the case. Mr. Loud
11 made the motion. Mr. Turnbull seconded. Mr.
12 Dettman supported the motion.

13 CHAIRPERSON LOUD: Thank you, Ms.
14 Bailey.

15 Before we get started, Mr. Quin,
16 I'd just like to see in the audience a show of
17 hands for those that are here for this case
18 and if you're planning on testifying in this
19 case. I just want to get a sense of managing
20 the case this morning. Well, if you're at the
21 table, I'm assuming you're going to be
22 testifying. But if you're in the audience, if

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1 you could just -- don't be shy. Just raise
2 your hands so I get a sense of -- so there are
3 a total of about maybe five witnesses in this
4 case.

5 MS. KAHLOW: They're all theirs.

6 CHAIRPERSON LOUD: Okay. You
7 don't have any witnesses, Ms. Kahlow?

8 MS. KAHLOW: I don't today because
9 our case was moved up in time.

10 CHAIRPERSON LOUD: Okay.

11 MS. KAHLOW: But your rules do not
12 ask me to request a particular time limit. I
13 would like at least 10 minutes for my
14 testimony instead of five, because it will
15 take about 10 minutes.

16 CHAIRPERSON LOUD: When we get to
17 your part of the case, we'll take up that
18 issue. I'm sure we'll exercise flexibility.

19 Mr. Quin?

20 MR. QUIN: Shall I proceed?

21 CHAIRPERSON LOUD: Yes, sir.

22 MR. QUIN: Mr. Chairman, Members

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1 of the Board, this is also an uncomplicated
2 case which seeks two areas of relief. One, to
3 allow a building addition to an 1888 structure
4 semi-detached at 2013 H Street. The site and
5 structure are part of the proposed George
6 Washington University Foggy Bottom Historic
7 District. That's at tab D of our statement.
8 And the two areas of relief as indicated are:
9 (1) a special exception to waive the full rear
10 yard requirement; and (2) a variance from
11 parking requirements of the Zoning
12 Regulations.

13 The basis for both of these
14 requests relate to the contributing nature of
15 the existing buildings to the proposed
16 historic district and the size and
17 configuration of the site, and -- and of
18 course the existing improvements as they're
19 situated now.

20 The applicant and architects, as
21 our statement indicated, have worked with the
22 Historic Preservation Office for over a year

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1 now to get approval of the proposed addition.
2 And the advisory decision of the -- approval
3 by HPRB is attached under tab E. The plans
4 are under tab F, which I'm sure you've seen.
5 They will be described by the architect.
6 As normally the case, the architects are
7 continuing to work with the staff of the
8 Historic Preservation Office for -- to -- to
9 finalize the plans.

10 The site is very narrow, 36 feet
11 in width, extending back 150 feet. It has
12 limited access from a public street through an
13 easement. And of course, we have the existing
14 improvements that are -- that should be
15 retained to respect the historic fabric.

16 Our witnesses will cover these.
17 And simply stated, because of the existing and
18 retention of the historic carriage house at
19 the rear of the lot, there's no way to provide
20 a full rear yard, which you'll see as the
21 testimony will show that there's adequate
22 space back there.

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1 Secondly, because of the historic
2 fabric that has to be retained and the
3 configuration of the site building, there's no
4 reasonable way to provide off-street parking
5 on the site. So that if our relief is
6 granted, which we hope you will grant, there
7 will be no adverse impact or detriment to the
8 public good because as -- as it relates to the
9 rear yard, there's plenty of space at the rear
10 of the building and with regard to the large
11 amount of off-street parking that is provided
12 in the neighborhood the other -- the variance
13 would not have an adverse impact or be
14 detrimental to the public good. And the
15 testimony will show that there are 70 spaces
16 in the one to two-block range that are
17 available for lease and many more that are
18 available for daily parking. And there are 80
19 on-street parking metered spaces.

20 We are very pleased with the
21 Office of Planning report and we also note
22 that in the record there is a letter from the

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1 Bureau of Indian Missions in support of our
2 case.

3 So unless there are questions, Mr.
4 Chairman, I'd like to proceed with our
5 witnesses who will be as brief as possible.
6 We have submitted under tabs J, K and L the
7 résumés of our architects, our traffic
8 consultant and land planner, and we submit and
9 request that they be admitted as experts.

10 CHAIRPERSON LOUD: Thank you, Mr.
11 Quin. Just a quick question for you. You
12 have as part of your pleadings a report from
13 Wells & Associates.

14 MR. QUIN: Yes.

15 CHAIRPERSON LOUD: But are you
16 going to have a witness here this morning?

17 MR. QUIN: Yes.

18 CHAIRPERSON LOUD: You are? Okay.

19 MR. QUIN: Yes, Jami Milanovich
20 will be here as a witness and she's --

21 CHAIRPERSON LOUD: Okay. All
22 right. Thank you very much.

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1 Board Members, any initial
2 questions?

3 Then why don't we begin with your
4 case.

5 MR. QUIN: I'd like to start with
6 our first witness, Dr. Thomas Chapman.

7 CHAIRPERSON LOUD: Good morning.

8 DR. CHAPMAN: Good morning again.
9 My name is Thomas W. Chapman. I'm the
10 president and CEO of the HSC Foundation.

11 The foundation is a 125-year-old
12 non-profit and it's a supporting organization
13 for the HSC Pediatric Center and Health
14 Services for Children With Special Needs.
15 Collectively, we function as the HSC Health
16 Care System and we focus on children, young
17 adults and families who have special needs and
18 disabilities in the District of Columbia.

19 The HSC Foundation acquired the
20 site in January 2007 as a replacement for its
21 current leased foundation office space at 1808
22 I Street, N.W., Washington, D.C.

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1 In our current location there's
2 only one parking space. We have eight staff.
3 Seven of those staff use Metro, public parking
4 and street parking. A hundred percent of our
5 visitors use public parking and Metro or
6 street parking as well. These practices
7 therefore would continue and would be
8 compatible at the new site.

9 The new location would relocate
10 the foundation's activities from its current
11 limited space and allow it to function with
12 fewer space constraints the meetings and
13 conducting business, and administrative
14 activities to support our health care system
15 is primarily looking to be involved with. We
16 expect to occupy approximately 8,000 square
17 feet initially and then increase usage as
18 needed. Because of the layout, the other
19 space would be leased only to -- for
20 compatible uses. Thank you.

21 MR. QUIN: I assume, Mr. Chairman,
22 you would want to reserve any questions until

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1 we get our complete case on, but however you'd
2 like to proceed is fine with us.

3 CHAIRPERSON LOUD: Let me check
4 with Board Members and just get a sense.

5 Is that fine with Board Members?

6 Yes, we'll do that.

7 DR. CHAPMAN: Thank you. Let me
8 proceed next then with our architects, Lewis
9 Goetz, to just --

10 PARTICIPANT: (Off microphone.)

11 DR. CHAPMAN: -- the building and
12 the relationship to the variance and the
13 special exception that we seek. Thank you.

14 MR. GOETZ: Good morning, Mr.
15 Chairman, Members of the Board. I'll try to
16 be brief.

17 I want to -- I want to review some
18 of the items that Whayne so eloquently already
19 mentioned, sort of an overview of the site.

20 It is a narrow lot. It's about 36
21 feet wide, 150 feet long. We can use the
22 board here if you might want to point out

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1 where we are. It's a mid-block site on H
2 Street, N.W. 2013 H Street is actually the
3 exact address. And it's surrounded by George
4 Washington University. It's currently a row
5 house and carriage house, circa 19 -- 1880s,
6 a masonry brick building, pretty common for
7 row houses in Washington, D.C., although this
8 is one of the last of two on that entire
9 block. And as I mentioned, it is pretty much
10 surrounded by George Washington University and
11 other commercial uses.

12 The property is included what is
13 contemplated to be the GW University Historic
14 District, although at this time it's not an
15 historic district. And as Whayne pointed out,
16 we have been before HPRB, David Maloney
17 specifically, in working through the design
18 with him to make this as compatible as we
19 could with the existing row house.

20 The idea was to create a new
21 headquarters for the historic -- for Hospital
22 for Sick Children Foundation, as Dr. Chapman

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1 mentioned, and provide some very nice
2 conference spaces as well as the office spaces
3 for the -- for the foundation. We wanted to
4 try to maximize the existing town house and
5 carriage house, and this was part of the
6 discussions that we had with Historic
7 Preservation Board, and in fact we have done
8 that. Some views that Franco is showing you
9 right now.

10 The property directly adjacent on
11 the west side is actually owned by GW, but it
12 is a -- a pedestrian passageway to get to 2000
13 Penn which backs up to the building.

14 Our design is actually less than
15 what is allowed under the C-3-C Zoning. We
16 have about 85 feet in height. Maximum allowed
17 is 90 feet. We have about a little over 5.
18 FAR and I think a 6.5 is allowed under that
19 zoning. So we've actually not maximized the
20 site, but maximized it for our uses.
21 Considering the fact that we have to build
22 around the carriage house and the town house,

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1 this was -- this met our requirements. We
2 don't expect to go over 29,000 feet. I think
3 the building is a little less than that right
4 now, but we are still in schematic design.

5 I think we're asking, as Whyne
6 pointed out, two areas of relief. One is the
7 rear yard. And I think there's a -- several
8 reasons for the -- the relief necessary is the
9 fact that we're trying to retain the carriage
10 house. The carriage house currently sits only
11 about two-and-a-half feet back from the
12 property line. Our current design sits about
13 four feet back from the property line, so it's
14 a little further back from the existing
15 carriage house and you can sort of see it in
16 the -- the diagrams there, the renderings, to
17 allow for the carriage house to -- to be more
18 visible.

19 There is an existing easement
20 which Mr. Quin also talked about. So there's
21 relief behind the site in terms of having
22 enough space to the next building. I think it

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1 allows -- the -- the easement is about 20
2 feet, plus our setbacks and so forth and
3 Additional space there is over 30 feet between
4 our building and 2010. I think you can see
5 it. Point that out. Yes.

6 There's no -- they're all
7 commercial buildings around there, so there's
8 no habitable buildings, so we're not concerned
9 about the light or the air, or the sight line
10 or so forth and I think we meet some of this
11 criteria as well.

12 The second area of relief is the
13 parking. Again, because of the very narrow
14 site we're not -- we're not able to provide
15 parking within the site. To get a 19-foot
16 deep parking space in a 20-foot aisle is
17 beyond the width of our property. To do some
18 kind of turnaround within the property, again
19 there's not enough room to do that. We
20 actually also looked at angled parking where
21 we could have sort of a one-direction drive in
22 one way and drive out the other, which could

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1 be done but it only provides actually spaces
2 to do that. By the time you excavate all the
3 property and allow for again the existing town
4 house and existing carriage house, we can't
5 dig -- dig underneath. That only gives us two
6 spaces and one of which would be taken away by
7 the street, because we have to take a curb
8 cut. So there's really not way to practically
9 put underground parking within that site.

10 That's all.

11 MR. QUIN: Then we'll proceed to
12 our next witness.

13 VICE-CHAIRPERSON DETTMAN: Before
14 you do that, Mr. Quin, is Mr. Goetz being
15 offered as an expert as well?

16 MR. QUIN: Yes, and his --

17 CHAIRPERSON LOUD: So why don't we
18 just -- I've seen his qualifications here. I
19 think he --

20 MR. GOETZ: (Off microphone)
21 questions.

22 MR. QUIN: I'm sorry?

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1 CHAIRPERSON LOUD: I think he
2 probably would qualify as an expert, unless --

3 MR. QUIN: Yes, he's qualified.

4 CHAIRPERSON LOUD: Okay. And he's
5 qualified before us here, to make it formal
6 and on the record.

7 Board Members, any concerns about
8 Mr. Goetz as an expert?

9 Okay. Then we will accept your
10 qualifications and your testimony credited as
11 an expert.

12 MR. QUIN: And our next witness is
13 Jami Milanovich of Wells & Associates Traffic
14 Consultant. And she will identify parking
15 available in the area and specifically address
16 the third part of the variance clause as well
17 as the availability of parking.

18 Jami?

19 MS. MILANOVICH: Good morning, Mr.
20 Chairman and Members of the Board. For the
21 record my name is Jami Milanovich. I'm a
22 senior associate with Wells & Associates,

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1 business address at 1420 Springhill Road,
2 McLean, Virginia.

3 Wells & Associates was retained as
4 the traffic and parking consultant for the
5 subject application. In August 2008, Wells &
6 Associates conducted a traffic impact study in
7 conjunction with HSC's plans to rezone the
8 property at 2013 H Street and subsequently in
9 May 2009 conducted a parking evaluation in
10 conjunction with the parking variance before
11 you today.

12 Based on the results of the
13 traffic study, the proposed office building is
14 expected to generate 32 vehicle trips during
15 the A.M. peak hour and 51 vehicle trips during
16 the P.M. peak hour. Traffic generated by the
17 proposed office building would account for
18 less than three percent of all peak hour
19 traffic in the study area and would have no
20 discernible impact on traffic operations in
21 the study area.

22 In December 2008, after review of

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1 the traffic impact study, DDoT issued a report
2 indicating its support of the rezoning
3 application citing the applicant's proposed
4 transportation demand management strategies as
5 "tangible actions to alleviate potential
6 traffic impacts."

7 Those TDM strategies included the
8 following: The HSC Foundation currently has
9 a member of their human resources department
10 who is responsible for coordinating and
11 implementing TDM obligations such as
12 disseminating information regarding public
13 transportation and other alternative modes of
14 transportation. This employee will continue
15 to act in this role and will provide this
16 service to employees of the new office
17 building on H Street. HSC will provide
18 complimentary Smart Trip cards to each
19 employee at initial occupancy. HSC will also
20 provide complimentary Smart Bike memberships
21 to each employee at initial occupancy. A
22 shower and changing facility will be provided

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1 on site for use by employees who utilize the
2 on-site exercise equipment or employees who
3 choose to walk or bike to work.

4 These TDM measures along with the
5 site's proximity to alternative modes of
6 transportation, including the nearby Foggy
7 Bottom-GWU Metro station and the nearby
8 Farragut West Metro station, several Zipcar
9 locations, a Smart Bike station, and numerous
10 Metro and commuter bus routes, help to reduce
11 the number of vehicle trips to and from the
12 site, as well as the number of parking spaces
13 needed for the site.

14 The proposed office building is
15 expected to realize at least a 55 percent
16 reduction in vehicle trips because of those
17 alternative mode choices. I say at least 55
18 percent because transit ridership throughout
19 the country and in the District is trending
20 upward. Between 2000 and 2007 ridership at
21 the Foggy Bottom-GWU Metro station has
22 increased approximately 13 percent. In April

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1 2008, WMATA saw an increase in Metro ridership
2 of four percent over April of 2007.

3 In order to assess the adequacy of
4 parking in the area, Wells & Associates also
5 conducted a parking evaluation. This
6 evaluation entailed taking an inventory of
7 parking garages within a three-block radius of
8 the site, as well as an inventory of on-street
9 parking within a one-and-a-half-block radius
10 of the site.

11 Fifteen garages within the three-
12 block radius were surveyed. Three of those
13 garages currently have at least 83 monthly
14 leases available. Seventy of those leases are
15 located within a one to two-block radius of
16 the site. Thirteen of the 15 garages surveyed
17 also offer hourly parking open to the public.

18 Metered on-street parking also is
19 available in the vicinity of the site. Within
20 approximately one-and-a-half blocks 100 on-
21 street meter parking spaces are present.

22 According to the District Code, 14

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1 parking spaces would be required for the
2 proposed office building. Therefore, there is
3 ample parking available for employees and
4 visitors of the proposed office building.

5 In conclusion, based on the
6 prevalence of alternative modes of
7 transportation in the vicinity of the site,
8 the applicant's proposed transportation demand
9 management strategies and the prevalence of
10 parking in the vicinity of the site, parking
11 for the employees and visitors of the proposed
12 office building would be adequately
13 accommodated, but lack of on-site parking
14 would not have a detrimental impact on the
15 traffic or parking operations within the site
16 vicinity.

17 MR. QUIN: Mr. Chairman, we didn't
18 actually approve the expert status of this
19 witness, but I'd like to do so and request so.
20 You know, her résumé is in tab -- tab G.

21 CHAIRPERSON LOUD: Thank you, Mr.
22 Quin. We've seen Ms. Milanovich here probably

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1 this month.

2 Board Members, any questions about
3 qualifying Ms. Milanovich as an expert?

4 Okay.

5 MR. QUIN: Thank you.

6 CHAIRPERSON LOUD: That being
7 said, we'll formally qualify you as an expert
8 and your testimony given the appropriate
9 credit.

10 Are you through with your
11 testimony?

12 MS. MILANOVICH: Yes.

13 CHAIRPERSON LOUD: Okay.

14 MR. QUIN: And our last witness is
15 Mr. Steven Sher, urban planner.

16 CHAIRPERSON LOUD: It's my great
17 hope that you're not going to try to qualify
18 him as an expert.

19 MR. QUIN: He is a walking self-
20 qualified land planner, having been qualified
21 probably 1,000 times before these boards.

22 CHAIRPERSON LOUD: So let's get

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1 that out of the way first then.

2 Board Members, I'm certain we've
3 all seen Mr. Sher before. Are there any
4 concerns about him qualifying as an expert?

5 None. So we'll make it formal.

6 MR. SHER: Good morning, Mr.
7 Chairman, Members of the Board. For the
8 record, my name is Steven E. Sher, the
9 director of zoning and land use services with
10 the law firm of Holland & Knight.

11 I think you've heard from previous
12 witnesses about where the site is and -- and
13 what the dimensions and width and so forth
14 are, so I'll just go right past that.

15 The photograph of the square shows
16 the -- the location of the building and I have
17 included a map and a -- and aerial photo
18 behind page 2 of the outline that you have
19 before you.

20 As -- as you've heard, what is
21 proposed here is -- is the construction of --
22 of an office building which is actually

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1 technically an addition to the two existing
2 structures on the site, the town house at the
3 front and the carriage house at the rear. The
4 total gross floor area would be about 5.09
5 FAR, as -- as currently designed. And it
6 would be within the -- the height and bulk
7 limitations of the C-3-C District. We have no
8 parking provided on site, which Mr. Goetz has
9 already about.

10 The relief that we are here for
11 is, as you've also heard, two things: (1) a
12 special exception to reduce the required rear
13 yard; and (2) a variance on the parking.

14 Based on the height of the
15 building, the minimum required rear yard would
16 be seventeen-feet-eight-inches. The existing
17 north wall of the carriage house is set back
18 two-feet-five-inches from the north property
19 line. That wall is going to be retained as
20 part of the development, so that -- for that
21 first two stories, that's the width of the
22 side yard on the site. Above that, the new

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1 construction sets back a little bit more, so
2 it's four-feet-four-inches from the property
3 line at the third floor and above. So the
4 relief that we're required is fifteen-feet-
5 three-inches for the first two floors, and
6 thirteen-feet-four-inches at the third and
7 higher floors.

8 I think as you've heard also, the
9 -- the gross floor area of the addition would
10 require 14 parking spaces. We are proposed to
11 provide none, and therefore we would need a
12 variance on the 14 spaces.

13 With respect to the standards
14 under the special exception required for the
15 rear yard, the standards are actually set
16 forth at VI on page 5 of the outline. Our
17 compliance with that is discussed in pages 5
18 and 6. I'll just go through that very
19 briefly.

20 Separation of windows, as -- as
21 Mr. Goetz indicated earlier, there are no
22 habitable rooms in the office building to the

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1 north or -- and there are no habitable rooms
2 in the proposed office building that we
3 propose to build. Behind the property there
4 is a 20-foot wide perpetual easement. And
5 then the south wall of the office building,
6 and you can see that in the aerial photo at
7 this point here. This is the south wall of
8 the office building. This is our -- our
9 property here. The south wall is set back an
10 additional twelve-feet-five-inches from its
11 property line. So the total separation
12 between the north wall of our office building
13 and the south side of the office building to
14 the north is at least thirty-four-feet-ten-
15 inches. And -- and above the second floor,
16 it's thirty-six-feet-nine-inches. So we have
17 that total amount of space separating the two
18 buildings, which we believe provides adequate
19 light and -- and air for both buildings.

20 With respect to service of the
21 loading functions, no loading is required or
22 provided on the site. Delivery functions,

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1 including trash removal, will occur through
2 that access easement. We have no parking on
3 the site, but the presence or absence of a
4 rear yard doesn't affect whether parking can
5 be provided on this site. It is the
6 dimensions and the -- and particularly the
7 width of the site that precludes parking.

8 The last criteria is that the
9 Board review this -- send this to the Office
10 of Planning, and you have the OP report in the
11 file recommending approval of the application.

12 With respect to the variance
13 standards, the Board I -- I think is -- is
14 familiar with the test for a variance. And I
15 have at pages -- mostly on page 7, a little
16 bit on the top of page 8, gone through
17 compliance with those standards.

18 With respect to the exceptional
19 situation, the lot is narrow, 36 feet wide,
20 for the purpose of providing underground
21 parking. If this were a town house, 36 feet
22 wide wouldn't be narrow. But for an office

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1 building in a C-3-C District, and a high rise,
2 with the need to provide parking underground
3 and all the other core and service functions,
4 that's not a wide lot.

5 The existing building and the
6 carriage house have been deemed to be
7 structures that will contribute to a historic
8 district to be designated. That designation
9 has not yet occurred, however, it would be
10 imprudent for the applicant to proceed on the
11 assumption that they could tear those
12 buildings down. I think any attempt to do
13 that would result in almost immediate
14 designation. So we had to proceed as if these
15 properties were designated an historic
16 district.

17 The subject lot is one of the
18 narrowest in the square and one of only a few
19 lots of that width in the general area zoned
20 C-3-C.

21 What's practical difficulty here?
22 The requirement for the width of driveways and

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1 for the size of parking spaces make it
2 impossible to provide a drive aisle and a row
3 of perpendicular parking spaces. A drive
4 aisle has to be 20 feet wide. Parking spaces
5 have to be nine-by-nineteen feet wide. Twenty
6 and nineteen is 39. We only have 36. So we
7 could not get a drive aisle and conforming
8 parking spaces on the lot.

9 The presence of the contributing
10 structures, portions of which are -- are to be
11 retained mean that the location of parking
12 spaces is constrained even further.

13 Construction of parking below grade would have
14 to be built under and around portions of the
15 buildings retained above, and we just can't do
16 it. The lot is just not big enough to allow
17 for parking spaces to be constructed below
18 grade here.

19 Is there any substantial detriment
20 if the Board were to grant the variance? You
21 know, in my view that would not be the case.
22 As we noted before, we're below the maximum

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1 height and density allowed in a C-3-C
2 District. The 14 parking spaces required is
3 a small enough number that not providing that
4 is not going to have a significant or
5 substantial detrimental impact on the
6 neighborhood. The area is well served by
7 public transportation, both Metrorail to the
8 east and west and Metrobus service right there
9 on Pennsylvania Avenue, just a half -- one
10 block to the north. There are existing
11 parking garages in the area which have
12 available capacity for daily or monthly
13 parking. And the applicant has committed to
14 a transportation management plan, which Ms.
15 Milanovich just described to you a few minutes
16 ago.

17 So for all of those reasons and
18 taking all of those things into conclusion --
19 into consideration, sorry, I conclude that the
20 property is small and narrow when it comes to
21 providing a rear yard and the underground
22 parking, that the exceptional conditions

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1 include the location and design of the
2 existing buildings assumed to be contributing
3 structures which would have to be retained,
4 that no parking spaces can be provided on site
5 and that compliance with the requirements is
6 impossible with below-grade parking and that
7 the application should therefore be granted.

8 MR. QUIN: Mr. Chairman, Members
9 of the Board, that completes our direct
10 testimony.

11 CHAIRPERSON LOUD: Thank you, Mr.
12 Sher, and thank you, Mr. Quin.

13 Board Members, are there are any
14 questions for the applicant and the witnesses?

15 COMMISSIONER TURNBULL: Mr. Chair,
16 I've just got one, which is a letter that we
17 just received this morning from GW.

18 Have you seen that, Mr. Quin?

19 MR. QUIN: Yes, I have and I'm
20 prepared to address it.

21 COMMISSIONER TURNBULL: Are you?

22 MR. QUIN: Yes.

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1 COMMISSIONER TURNBULL: Okay.

2 Could you then?

3 MR. QUIN: Yes.

4 COMMISSIONER TURNBULL: And I'm
5 mainly looking at the two bullets that they
6 have.

7 MR. QUIN: Yes. Well, the first
8 one deals with the incorporation of the trans
9 management plan, which of course we agree
10 with. The second one requests that a
11 condition be placed on -- in the BZA order
12 that would require the owner to obtain leases
13 before Certificate of Occupancy of -- of seven
14 spaces. And we believe such a condition
15 should not be imposed for the following
16 reasons:

17 First, we're -- that really
18 relates to the third part of the variance
19 clause, namely does it have an adverse impact
20 on the public good of the Zone Plan. And as
21 we -- testimony is -- is clear that there are
22 70 off-street spaces available for lease

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1 within a one to two-block radius and more
2 spaces on an hourly basis, plus 100 metered
3 spaces in the same distance. That's point
4 one.

5 Second, as we understand the
6 trends, and -- and Jami addressed that, there
7 were be less dependency on the automobile with
8 higher mobile splits or non-automobile usage
9 in the future. So the requirements for
10 parking are not likely -- are likely to go
11 down, not up. This is especially true for
12 this site because of the excellent public
13 transportation access to Metro. We have two
14 Metro stops within a one to -- well, two to
15 three-block radius, and buses as well. There
16 are Zipcars. The applicant has sa TMP that
17 you just heard about, so I won't go into that.
18 But that's for Metro Smart Trip cards, Smart
19 Bike memberships and shower and changing
20 facilities are on the property.

21 And the next point, three, the
22 trend is to reduce or eliminate any regulatory

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1 minimums and in that case we have, as you all
2 may have seen -- I'm just holding up a -- part
3 of a brochure that explains the -- the
4 proposed amendments by the Office of Planning.
5 I realize this is conceptual only, but the
6 first point is no parking minimums for
7 commercial. That expresses a desire, I think,
8 that we all, less reliance on the automobile.
9 And in any event, if that -- if you had a
10 condition in the order, we can't predict
11 what's going to happen in the future in -- in
12 terms of required parking. And I think that
13 the -- that with this much parking available,
14 the funny part about it, it's almost ironic
15 that is -- if you required that, then we're
16 taking away spaces from other people, you
17 know, in -- in essence.

18 The last point is that the
19 available spaces that we've calculated do not
20 include any of the 2,800 spaces required for
21 GW in their master plan. So that our spaces
22 that we've been talking about, these 70

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1 available for lease, configuration plus those
2 that are hourly basis or daily basis, plus the
3 100 metered spaces, none of that interferes or
4 deducts, reduces George Washington
5 University's required parking.

6 So those are the reasons that we
7 think there is no need for a condition in the
8 order for that. We think that right now the
9 trend is let the market do what the market
10 should do. And that's what we would suggest.
11 Thank you.

12 VICE-CHAIRPERSON DETTMAN: Thank
13 you, Mr. Turnbull.

14 Mr. Dettman, did you have any
15 questions?

16 VICE-CHAIRPERSON DETTMAN: Just
17 one very quick one.

18 Mr. Quin, I know that you don't
19 have a loading requirement, but there was a
20 notation in the record about loading taking
21 place solely in the rear of the building and
22 just wondering if that was looked at at all in

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1 terms of how the building's going to be
2 serviced. And in fact, it's only going to
3 take place in the rear.

4 MR. QUIN: Yes, sir. There is a
5 -- the easement goes across and maybe we
6 should file this for the record. It's not
7 anything really that you -- you need, except
8 it shows precisely where the easement is. And
9 I -- I would like to offer that if that would
10 be helpful to the Board, because it shows the
11 -- pass one up to the Board. The loading
12 access is through an easement that goes from
13 20th Street over to the rear of the building.
14 And that's what also furnished the open space
15 at the rear. And so that's the only place it
16 could functionally be. Now there is a right
17 under the easement to -- for relocation,
18 meaning they could shift this to some other
19 spot, but that easement is required.

20 VICE-CHAIRPERSON DETTMAN: Okay.
21 And it exists solely to gain access to this
22 property?

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1 MR. QUIN: That's correct.

2 VICE-CHAIRPERSON DETTMAN: Okay.

3 Thank you.

4 CHAIRPERSON LOUD: Thank you, Mr.
5 Dettman. We have also been joined by Ms. Lori
6 Monroe from the Office of the Attorney General
7 who was not here when we started.

8 I just have a couple quick
9 clarification questions for some of the
10 witnesses.

11 Mr. Chapman, I just wanted to
12 confirm what I thought I heard in terms of
13 your testimony that 100 percent of the
14 visitors to the hospital currently use
15 Metrorail or Metrobus? Did I hear that
16 correctly?

17 DR. CHAPMAN: Use Metrorail,
18 Metrobus, public parking or -- or they come in
19 -- in close proximity, you know, by -- by
20 ambulatory purposes.

21 CHAIRPERSON LOUD: And that is
22 distinct from the patients and their families,

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1 or you are including in that universe?

2 DR. CHAPMAN: This is purely an
3 administrative office. Our patient care
4 activities are established in Northeast
5 Washington, Bunker Hill Road. So this is
6 primarily administrative.

7 CHAIRPERSON LOUD: Thank you for
8 that clarification.

9 And in terms of the usage, the
10 project is about 28,000 square feet, right?
11 And your testimony was that about 8,000 will
12 be used going in and then may be phased
13 additional usage over time, but there would be
14 about 19,000 square feet subleased space.

15 DR. CHAPMAN: Approximately.

16 CHAIRPERSON LOUD: And are you
17 aware of the tenant mix at this point?

18 DR. CHAPMAN: At this time --

19 CHAIRPERSON LOUD: Are you going
20 after certain types of tenants?

21 DR. CHAPMAN: Our desire is to
22 have compatible tenants and we're very

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1 interested on the non-profits who have similar
2 missions.

3 CHAIRPERSON LOUD: Are you at
4 liberty to disclose some of the tenants that
5 you have had discussions with?

6 DR. CHAPMAN: We haven't identify
7 -- we haven't identified them yet to that
8 extent.

9 CHAIRPERSON LOUD: Let me ask Mr.
10 Sher this question, then I've got a couple
11 questions for Ms. Milanovich.

12 Mr. Sher, just listening to and
13 taking in all of your testimony, there was a
14 lot of very good testimony, but on the
15 question of the exceptional situation or
16 uniqueness, is it your testimony that the
17 property is unique and/or exceptional without
18 the historic considerations that we're talking
19 about; that is, the pending historic
20 designation?

21 MR. SHER: I think it would be
22 without, but you obviously can't ignore that.

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1 The width of the lot, given the -- the
2 potential use of the property, is -- is
3 exceptional, because you just can't get the
4 parking in there. When you add to that the
5 complication that comes about because you're
6 retaining a piece at the front and a piece at
7 the back, that further shrinks what's
8 available and it makes it even harder to -- to
9 get to where you need to be.

10 CHAIRPERSON LOUD: And on the
11 whole width issue, the property is about 36
12 feet wide.

13 MR. SHER: Yes, sir.

14 CHAIRPERSON LOUD: You've got a
15 parking requirement that the spaces be about
16 19 feet each. So you couldn't even get two
17 basically here if you set the parking spaces
18 out in accordance with this width. Is that
19 the argument?

20 MR. SHER: Okay. It is
21 conceivable that you could get one parking
22 space at grade at the rear adjacent to that

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1 carriage house. If you just had -- came in on
2 off -- on grade off the easement at the back,
3 there's enough space to be nine feet wide and
4 19 feet deep. Our requirement is 14. So we
5 can have one space that sort of messes up the
6 access out of the building at the rear, but
7 you could do that if you -- if you absolutely
8 had to. It wouldn't be a good solution or a
9 good situation. But there's no way you can
10 get anywhere near the 14 that you need to get.

11 CHAIRPERSON LOUD: Ms. Milanovich,
12 back at the table, with respect to some of
13 your testimony, I didn't, to be candid, get
14 all of it, so I'm going to ask you to repeat
15 some of it with respect to -- you had
16 mentioned that there 15 garages that are
17 within a two-block radius, two or three-block
18 radius of the proposed project?

19 MS. MILANOVICH: We surveyed 15
20 within a three-block radius.

21 CHAIRPERSON LOUD: Surveyed? And
22 following that did you say that 70 percent of

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1 those had vacancies throughout the day?

2 MS. MILANOVICH: Three of those
3 had at least 83 monthly leased spaces
4 currently available. Seventy of those 83
5 spaces are available within a one to two-block
6 radius. Yes, and again, those are spaces that
7 are currently available. And in addition to
8 that, those garages also offer daily and
9 hourly parking to the public.

10 CHAIRPERSON LOUD: And those would
11 be in the universe or garages that your
12 pleadings described as public park garages?

13 MS. MILANOVICH: Yes.

14 CHAIRPERSON LOUD: Okay. And
15 could you repeat your number again, I know
16 it's in your report as well, about the net A.M.
17 and P.M. increase?

18 MS. MILANOVICH: Yes. There's 32
19 vehicle trips expected to be generated during
20 the A.M. peak hour and 51 vehicle trips during
21 the P.M. peak hour.

22 CHAIRPERSON LOUD: And the

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1 transportation management plan conditions that
2 we talked about, these are the four that are
3 listed as part of Exhibit H in your pleadings?
4 It's a report from you to --

5 MS. MILANOVICH: Yes.

6 CHAIRPERSON LOUD: Okay. So
7 that's the universe, the four that are listed
8 here?

9 MS. MILANOVICH: Right.

10 CHAIRPERSON LOUD: That constitute
11 the transportation management plan? Okay.
12 Thank you very much. I don't have any further
13 questions.

14 Board Members, do you have any
15 questions?

16 VICE-CHAIRPERSON DETTMAN: Ms.
17 Milanovich, the TDM strategies, are those
18 going to apply to HSC employees, or future
19 tenants of the building as well?

20 MS. MILANOVICH: It is my
21 understanding that the Smart Trip cards and
22 the Smart Bike memberships would be available

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1 to all employees of the building at initial
2 occupancy only and the (off microphone.)

3 VICE-CHAIRPERSON DETTMAN: Thank
4 you.

5 CHAIRPERSON LOUD: Ms. Kahlow, in
6 fact as aa party you can remain at the table
7 actually. I'm sorry, I should have said that
8 to you earlier. And as you know, as a party
9 you're entitled to cross examine the witnesses
10 and now would be the time to do that. As you
11 know, cross examination is limited in scope to
12 what was brought out on direct and so on and
13 so forth, so if you have cross.

14 MS. KAHLOW: Thank you. Not
15 necessarily in order of the presentations.

16 Mr. Goetz, you said that there was
17 no habitable floors. Are there two habitable
18 floors on the town house across the pedestrian
19 alley from -- directly across from 2013 H
20 Street?

21 MR. GOETZ: I believe there is an
22 apartment available within that town house for

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1 use of the occupant.

2 MS. KAHLOW: Is there not already
3 in the record from the Bureau of Catholic
4 Missions a letter in the Zoning Commission
5 record saying that there are two floors of
6 occupied space, of habitable space?

7 MR. GOETZ: I'm not aware of it.

8 MS. KAHLOW: Thank you. Next is
9 the historic district, and I'm not sure
10 everybody mentioned it. One person said it's
11 proposed, one person said it was not yet.

12 The question I have is who was the
13 applicant and who deemed it a contributing
14 structure since there has been no application?

15 MR. QUIN: I'd object to the
16 question. We've never represented that it is
17 a contributing. We have said that we believe
18 it will be when the application is filed by
19 GW. We -- we're -- that's part of an order of
20 the Zoning Commission, which I'm sure Mr.
21 Turnbull is familiar.

22 MS. KAHLOW: So the deemed

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1 contributing that was stated by your witnesses
2 is not exactly accurate then?

3 MR. QUIN: It -- it's deemed by
4 us, but has not --

5 MS. KAHLOW: Ah, ha.

6 MR. QUIN: -- been deemed by the
7 review board.

8 MS. KAHLOW: Thank you.

9 MR. QUIN: Thank you.

10 MS. KAHLOW: Thank you. I just
11 wanted to be clear about that.

12 Occupants. There's been a series
13 of questions about the number of HSC
14 applicants. How many expected lessee
15 occupants are there going to be?

16 MR. QUIN: To whom are you
17 addressing the question?

18 CHAIRPERSON LOUD: It would be
19 helpful, Ms. Kahlow, if you could address them
20 to a specific person.

21 Now, Mr. Quin, you did have a
22 number of witnesses, some of them overlapped.

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1 MR. QUIN: Yes.

2 CHAIRPERSON LOUD: So if you hear
3 a question that you think is most appropriate
4 for a particular witness, you can probably
5 help Ms. Kahlow and us out by just saying --

6 MR. QUIN: Oh, okay.

7 MS. KAHLOW: The reason I didn't
8 ask a specific person on that one is it was in
9 response to a question from you, Mr. Loud,
10 that they said there are 8,000 square feet for
11 HSC and 18,000 square feet for the lessee.
12 And then the question would be how many people
13 associated with each? And it's in response to
14 your question.

15 CHAIRPERSON LOUD: Well again, on
16 cross you're focusing on what was brought out
17 on direct with the witnesses, not so much the
18 exchange between the Board and a particular
19 witness. Certainly not the Board's questions.
20 But if I understand your question, and I think
21 the right person would probably be Mr.
22 Chapman.

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1 MS. KAHLOW: Well, Mr. Thomas --
2 Dr. Thomas did testify that there were eight
3 HSC staff and that the 8,000 square feet were
4 going to be for the lessee. I didn't know if
5 knew the answer to the question, but he would
6 be the perfect person to answer that question
7 then.

8 CHAIRPERSON LOUD: Okay. It's Dr.
9 Chapman. I believe it's Dr. Chapman.

10 MS. KAHLOW: Thank you.

11 CHAIRPERSON LOUD: If you know the
12 answer, please feel free.

13 DR. CHAPMAN: Well, we do have a
14 current staff. It's possible that we could go
15 up to 12 to 14 in two or two-and-a-half years
16 from now, but the exact number is not known at
17 this time.

18 MS. KAHLOW: Dr. Chapman, do you
19 know for the lease space that is so much
20 larger than the space you're going to be using
21 how many people could be housed in that space?

22 DR. CHAPMAN: No, we don't know

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1 that at this time.

2 MS. KAHLOW: Okay. Now, the next
3 question, again many witnesses talked about
4 the seven parking spaces in response to Mr.
5 Turnbull. GW was told the 13 that is in Mr.
6 Sher's written testimony, the 14 that was in
7 his oral testimony. What is the actual
8 number? Your application has 16. What is the
9 actual number of required for this square
10 footage?

11 MR. QUIN: Mr. Sher, do you want
12 to answer that question, please?

13 MR. SHER: We have calculated that
14 14 parking spaces are required for the
15 addition.

16 MS. KAHLOW: So the 16 in the
17 application covers the non-addition also? Is
18 that what the 16 is for?

19 MR. SHER: I -- I believe
20 originally we calculated the total number of
21 spaces for the building and that included two
22 additional spaces for the square footage and

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1 the existing two to continue square footage.

2 MS. KAHLOW: Okay. So that's very
3 helpful. Thank you.

4 What are the plans to incentivize,
5 and Ms. -- I can't pronounce that -- Jami?
6 Thank you. To incentivize, you said the
7 visitors, that the initial visitors would be
8 -- excuse me, the initial occupants would
9 possibly use Smart Trips. What is the plan
10 for the lessees that are not initial and to
11 make sure that they wouldn't use on-street
12 parking? What's the plan for that?

13 MS. MILANOVICH: Well, the intent
14 for the preventative Smart Trip cards for
15 initial employees is to get people who may not
16 try it otherwise to try public transportation
17 and -- and hopefully incentivize them to -- to
18 try it and to use it. I think just by the
19 nature of the proximity of the site to the
20 Metro station there are already going to be a
21 very large percentage of people that would use
22 transit, whether or not that -- that provision

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1 was provided.

2 MS. KAHLOW: So after the initial
3 employees, how are you going to educate the
4 future employees?

5 MS. MILANOVICH: The -- there is a
6 member of the human resources department whose
7 job it is to disseminate that information and
8 -- and sort of educate if you will employees.

9 MS. KAHLOW: So it's for the HSC
10 Foundation, or it's for the HSC and all of
11 their lessees?

12 MS. MILANOVICH: I mean, that
13 person currently is just working with the HSC
14 employees.

15 MS. KAHLOW: Okay. Now the next
16 question is, how are you going to incentivize
17 visitors, because they won't have the
18 employee, HSC employee or this initial Smart
19 Card business? How are you going to -- since
20 the visitors will be substantial, how are you
21 going to incentivize them to not park on the
22 street?

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1 MS. MILANOVICH: I mean, visitors
2 have the same array of options that employees
3 have in terms of Metrobus, public
4 transportation, that type of thing. There
5 certainly will likely be some visitors who do
6 choose to drive and -- and the intent was that
7 -- to -- to show that there's adequate parking
8 for those visitors who do chose -- choose to
9 drive.

10 MS. KAHLOW: And how will you show
11 the visitors where to park? It'll be on your
12 web site or how will people know where to
13 park? I'm just trying to understand and so
14 does the neighborhood.

15 MS. MILANOVICH: I -- I think that
16 visitors will -- you know, like any visitors
17 to an office building downtown will find a
18 public garage or -- or park on the street.

19 MS. KAHLOW: And your vehicle
20 counts, the 32 in the morning and 51 in the
21 evening, do they include any visitors?

22 MS. MILANOVICH: Yes, that

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1 includes employees and visitors.

2 MS. KAHLOW: My next series of
3 questions is for Mr. Sher. Is he still at the
4 table? Yes, he is.

5 Mr. Sher, I asked the Zoning
6 Commission and now you've had more time, are
7 there any upzoning precedents off the avenue
8 in Foggy Bottom-West End from residential to
9 commercial zoning? Have you found any? You
10 didn't have any before.

11 CHAIRPERSON LOUD: I'm sorry. I
12 didn't understand the question.

13 MS. KAHLOW: This particular --
14 and it's going to feed into the following
15 question. This HSC proposal is taking an R-5
16 -- an R-5 Zoning and changing it to C-3-C.
17 And there were no other precedents and I'm
18 going to explain why as we -- the questions go
19 through it --

20 MR. QUIN: May I object to the
21 question? It relates to zoning. That's gone.
22 We're not C-3-C.

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1 MS. KAHLOW: All right. Well,
2 then --

3 MR. QUIN: We're not R-5. Now C-
4 3-C, not R-5.

5 CHAIRPERSON LOUD: Ms. Kahlow, I'm
6 going to have to agree.

7 MS. KAHLOW: Okay.

8 CHAIRPERSON LOUD: But also,
9 you're going to have a direct case to the
10 extent that some of this, you know, you can
11 tease it out and it's relevant.

12 MS. KAHLOW: That's correct.

13 CHAIRPERSON LOUD: That might be a
14 more appropriate time. This is just cross
15 examination of Mr. Sher.

16 MS. KAHLOW: Okay. Mr. Sher, are
17 there any parking variances precedents in
18 upzoning cases anywhere in Foggy Bottom-West
19 End? Parking variances. That's the key. Not
20 special exceptions. Are there any cases where
21 there would be zero parking? Are there any
22 precedents?

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1 MR. SHER: I didn't look for them,
2 so I don't know.

3 MS. KAHLOW: Do you know of any
4 anywhere else outside of Foggy Bottom-West
5 End? Anywhere in the city where there are
6 variances, not special exceptions, or zero
7 parking in a commercial building?

8 MR. SHER: We had a case -- yes, I
9 know of -- of at least one.

10 MS. KAHLOW: Where is it?

11 MR. SHER: 1442 Pennsylvania
12 Avenue, S.E.

13 MS. KAHLOW: And was it a variance
14 or a special exception?

15 MR. SHER: I believe it was a
16 variance.

17 MS. KAHLOW: And was it a BZA
18 case?

19 MR. SHER: Yes, it was a BZA case.

20 MS. KAHLOW: What was the zoning?

21 MR. SHER: C-2-A.

22 MS. KAHLOW: Was it an upzoning?

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1 MR. SHER: It was zoned C-2-A.

2 MS. KAHLOW: It was not an
3 upzoning case? Okay. Thank you.

4 And the rest of my questions for
5 OP. Thank you for indulging me to ask these
6 questions.

7 CHAIRPERSON LOUD: Thank you, Ms.
8 Kahlow. And thank you, Mr. Quin, for your
9 witnesses. I believe, if you want to redirect
10 or you want to -- we can do that. If not,
11 we'll go to OP.

12 MR. QUIN: No, I have no other
13 questions.

14 CHAIRPERSON LOUD: Okay. Board
15 Members?

16 Then I think it's appropriate that
17 we turn to the Office of Planning.

18 You can remain at the table.

19 MS. KAHLOW: I'm just trying to --
20 I turned it off.

21 CHAIRPERSON LOUD: Okay.

22 MS. KAHLOW: Thank you.

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1 CHAIRPERSON LOUD: And we'll turn
2 to the Office of Planning.

3 MS. BROWN-ROBERTS: Good morning,
4 Mr. Chairman and Members of the Commission.
5 I'm Maxine Brown-Roberts from the Office of
6 Planning.

7 I am going to stand on the record.
8 I think our report fully analyzes the
9 requirements of both the special exception and
10 the variance. And I think the applicant has
11 said many of the things that I would be
12 saying, so in order not to repeat that, I'm
13 just saying that the Office of Planning
14 recommends approval of the requested special
15 exception and the variance. And I'm available
16 for questions. Thank you.

17 CHAIRPERSON LOUD: Thank you.
18 Good morning again.

19 Board Members, are there any
20 questions for the Office of Planning?

21 I just have one follow-up question
22 regarding some of the testimony of Dr.

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1 Chapman.

2 Is it Dr. Chapman or Mr. Chapman?

3 DR. CHAPMAN: Doctor.

4 CHAIRPERSON LOUD: Dr. Chapman.

5 I'm sorry.

6 There's about 18,000-19,000 square
7 feet of office space as to which the tenancies
8 have not been necessarily identified. A the
9 two-fold question, the transportation
10 management plan doesn't necessarily speak to
11 how those tenants will be incorporated into
12 the management plan. Can you respond to that?
13 Can you address that? Does that present a
14 concern or can you reasonably predict that
15 with all of the other information that Wells
16 & Associates has placed on the record that
17 that would not end up becoming detrimental to
18 the public in terms of transportation and
19 traffic?

20 MS. BROWN-ROBERTS: I did not. I
21 think that's a question that's more
22 appropriate for Department of Transportation.

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1 But since they're not here, I will try and
2 address some of it from my analysis of the
3 transportation management plan.

4 It was my understanding that those
5 requirement would be for the whole building,
6 or the tenants in the building and not just
7 the HSC. I mean, I couldn't see, you know,
8 that they would sort of just limit it to --
9 the plan would just limit it to the HSC
10 Foundation alone especially when they may only
11 be occupying half the space. And so I think
12 a way of maybe getting around it, you know,
13 just talking off the top of my head, would be
14 if we have a condition that is included in the
15 order that it be, you know, maybe stated that
16 it applies to the whole building and not just
17 to the HSC Foundation.

18 CHAIRPERSON LOUD: A follow-up
19 question. Do you believe that there would be
20 substantial public detriment if such a
21 condition were not made a part?

22 MS. BROWN-ROBERTS: No, I don't

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1 think that it would be. Quite frankly, I
2 visit that area of town all the time. I take
3 the Metro down there and I also drive
4 occasionally. And I have found that it is not
5 -- there is parking to be found. In a
6 situation like this, I think many visitors may
7 not be coming to spend the day, and so there
8 is parking there that's available and people
9 are taking the Metro. So I don't see that as
10 -- that it would be a detriment if it's not
11 included.

12 CHAIRPERSON LOUD: Thank you.

13 Mr. Quin, so you've read the
14 report?

15 MR. QUIN: Yes.

16 CHAIRPERSON LOUD: Do you have any
17 questions for the Office of Planning?

18 MR. QUIN: No questions.

19 CHAIRPERSON LOUD: Okay. Ms.
20 Kahlow, do you have any questions for the
21 Office of Planning?

22 MS. KAHLOW: Yes, I do. Thank

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1 you.

2 First, you heard me ask Mr. Sher
3 if there are any parking variance precedents
4 in Foggy Bottom-West End for upzoning cases.

5 MS. BROWN-ROBERTS: I don't know.
6 I did not look at that.

7 MS. KAHLOW: Now let me talk about
8 the actual rules since you're the expert. Do
9 you have a copy of the BZA rules in hand,
10 because I may be referring to several
11 sections?

12 MS. BROWN-ROBERTS: No. I know
13 what you're talking about. I don't have my
14 regulations with me.

15 MS. KAHLOW: Okay. Let me see if
16 I can read some of it to you.

17 11 DCMR 2108 says, "The amount of
18 required parking spaces shall not be reduced
19 by more than 25 percent."

20 Why did OP not consider --

21 MR. QUIN: Mr. Chairman, may I
22 object to the question? I think it goes far

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1 beyond her testimony.

2 MS. KAHLOW: Well, it's in the
3 report. It's not the testimony. Are you
4 talking about the report?

5 MR. QUIN: You're talking about a
6 report or her testimony about 25 percent
7 reduction?

8 MS. KAHLOW: The testimony was --

9 CHAIRPERSON LOUD: Ms. Kahlow?

10 MS. KAHLOW: -- in the report has
11 to do with special exceptions.

12 CHAIRPERSON LOUD: Ms. Kahlow?

13 MS. KAHLOW: Yes?

14 CHAIRPERSON LOUD: Okay. He's
15 made an objection that your question goes
16 beyond her specific report where she walks
17 through the variance test, as well as the
18 special exception. I don't think that's your
19 question now on 774. Do you have a response
20 to his objection that --

21 MS. KAHLOW: I do think it was
22 responsive. This is --

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1 CHAIRPERSON LOUD: I'm sorry.
2 Hold on. That your cross should be limited to
3 the witness' report and testimony, that this
4 application meets the variance tests for the
5 reasons that are in her report?

6 MS. KAHLOW: I'd like to discuss
7 them, yes.

8 CHAIRPERSON LOUD: Again, some of
9 what you may be seeking to get out, you might
10 be able to bring out in your direct case.

11 MS. KAHLOW: I am.

12 CHAIRPERSON LOUD: Okay. And some
13 of it might be more appropriate for your
14 direct case than for cross. If there are
15 weaknesses in the variance test that the
16 witness has testified to or her report speaks
17 to, you can really aggressively attack those
18 weaknesses. And part of that is bringing in
19 the parking reduction. You'd have to explain
20 how that --

21 MS. KAHLOW: I have in my
22 testimony. I was just trying to understand

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1 the logic for OP between going for a variance
2 instead of a special exception, but I can deal
3 with that in my own, if you would rather I do
4 that.

5 CHAIRPERSON LOUD: Yes.

6 MS. KAHLOW: That's fine. I was
7 just trying to establish it.

8 Then the rest will be my testimony
9 and then we go from there.

10 CHAIRPERSON LOUD: Okay. So you
11 have no further questions for the Office of
12 Planning?

13 MS. KAHLOW: I do not.

14 CHAIRPERSON LOUD: Okay. I think
15 with that, Board Members, we'll move on to the
16 ANC, if they're here. I don't think they're
17 here. But before we do that, just one final
18 round, do you have any questions?

19 Okay.

20 MS. KAHLOW: May I mention the
21 ANC?

22 CHAIRPERSON LOUD: Sure.

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1 MS. KAHLOW: I'm going to mention
2 it in my testimony. The reason they're not
3 here is they lacked a quorum on May 20th and
4 they have it on the agenda for tomorrow, and
5 they're meeting. And I wondered if we could
6 keep the record open for the BZA resolution
7 which is expected to be passed tomorrow, since
8 they lacked a quorum at the last monthly
9 meeting.

10 CHAIRPERSON LOUD: Okay. I think
11 toward the end when we wrap up this case,
12 we'll decide whether to deliberate today or
13 not and/or leave the record open. And we
14 could discuss that. I think, it's --

15 MS. KAHLOW: Okay. I wanted you
16 to understand why they're not here. They did
17 submit a letter which should be in your record
18 with the resolution on the Zoning Commission
19 case and it referenced the BZA case and their
20 objections. So that should be in your record.

21 CHAIRPERSON LOUD: So noted.

22 MS. KAHLOW: Thank you.

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1 CHAIRPERSON LOUD: Okay. Now we
2 now turn to you for your direct case, Ms.
3 Kahlow. I'm sorry. I'm sorry. Let me take
4 that back.

5 If there are parties or persons
6 who are in support of the application, we now
7 turn to you.

8 Clearly no parties in support, but
9 if there are persons in the audience who want
10 to give testimony, you'd be given three
11 minutes to do so.

12 And seeing none. Now parties or
13 persons in opposition, and that would be you,
14 Ms. Kahlow.

15 MS. BAILEY: Mr. Chairman, at the
16 appropriate time, if Ms. Kahlow does have a
17 letter, a copy of a letter from the ANC, we
18 would like to get a copy of that at the
19 appropriate time.

20 MR. QUIN: I think she's rather
21 saying the Zoning Commission filing by the
22 ANC. To my knowledge there's no filing

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1 whatsoever from the ANC in this case.

2 MS. KAHLOW: When Asher Corsin
3 presented the case, the chairman, then-
4 chairman of the ANC, he presented it to the
5 Office of Zoning and then said please put it
6 in your files. I was there. He asked for it
7 to go into both files. Do I have it? Yes.
8 But can I still give my testimony first and
9 then look for it?

10 CHAIRPERSON LOUD: Yes, I think
11 that's a good idea. If you have something,
12 you can add it to our record afterwards. What
13 we're looking for in this proceeding would be
14 a great weight ANC report, and I think your
15 testimony is that --

16 MS. KAHLOW: That was a great
17 weight. It was a great weight resolution that
18 passed.

19 CHAIRPERSON LOUD: Okay. And I
20 think your testimony is that ANC will take up
21 this case tomorrow.

22 MS. KAHLOW: They're going to have

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1 a supplemental resolution to add to their
2 first one objection tomorrow. More details.

3 CHAIRPERSON LOUD: Okay.

4 MR. QUIN: Mr. Chairman, I would
5 object to Ms. Kahlow's representing the ANC.
6 She doesn't represent the ANC. We have
7 received no notice whatsoever about an ANC
8 meeting tomorrow night. We appeared before
9 them on May the 25th at their presentation and
10 made a presentation, but they did not have a
11 quorum. That's the fact. And I don't believe
12 it's appropriate for Ms. Kahlow to speak on
13 behalf of the ANC unless she has a letter that
14 is saying, "Ms. Kahlow, you may represent the
15 ANC."

16 MS. KAHLOW: I am not representing
17 the ANC. I was trying to -- the Chairman
18 asked was the ANC present. I was trying to
19 explain why they were not here today, that
20 they testified after the first resolution and
21 then they were going to come, and then they
22 didn't have a quorum. So I was just trying to

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1 explain process information, not substance.

2 CHAIRPERSON LOUD: Thank you,
3 both. I think we're all clear that we've
4 moved beyond the part of the proceeding where
5 the ANC would give its report. Our rules
6 allow us to give great weight to an ANC report
7 and we understand that if we don't have one
8 there's no great weight to be given to what is
9 brought on the record.

10 So we can move now to the West End
11 Association's case, and that would be Ms.
12 Kahlow.

13 MS. KAHLOW: May I have 10
14 minutes? It's a two-page statement and that
15 was unclear. You asked me to mention it now
16 instead of earlier.

17 CHAIRPERSON LOUD: Let me check
18 with my colleagues here on the Board in terms
19 of --

20 MS. KAHLOW: I won't take all 10
21 minutes. I just didn't want to be cut off.

22 CHAIRPERSON LOUD: Ms. Kahlow,

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1 we're fine with that.

2 MS. KAHLOW: Thank you. So now I
3 will start in substance.

4 I, Barbara Kahlow, am testifying
5 on behalf of the West End Citizen's
6 Association, the oldest citizen's organization
7 in the Foggy Bottom-West End area. The WECA
8 is primarily interested in maintaining and
9 improving the quality of life for the existing
10 residential community in Foggy Bottom-West
11 End.

12 On December 18th, we received
13 party status for the Zoning Commission
14 companion case, which was a zoning map
15 amendment from R-5-D to C-3-C.

16 On April 9th, we asked for party
17 status in this case and today you granted it.

18 The applicant is seeking a special
19 exception from the rear yard requirements
20 under sub-section 774.2 and a variance from
21 the parking requirements under section 2101.1,
22 which requires one space for every 1,800

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1 square feet above 2,000 square feet of gross
2 floor area, totaling 16 spaces for their
3 existing building, as well as their addition.
4 The WECA takes no position on the rear yard
5 special exception, but opposes the parking
6 variance.

7 The BZA's rules for reduction of
8 parking spaces authority of the Board state,
9 "The Board of Zoning Adjustment is hereby
10 authorized to reduce the amount of parking
11 spaces required for non-residential uses under
12 Section 2101.1 in accordance with the
13 requirements of Section 3104 for special
14 exceptions." And then I give the citation, 11
15 DCMR 2108.1.

16 Let me emphasize what I'm saying
17 here. That the BZA only has authority to
18 grant reduction in parking spaces under a
19 special exception, not under a variance, under
20 your own rules. There is no stated BZA
21 authority in the Zoning Rules to reduce the
22 required parking spaces by variance relief.

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1 The BZA's rules further provide that, "The
2 amount of required parking spaces shall not be
3 reduced by more than 25 percent." And the
4 citation for that is 11 DCMR 2108.2.

5 Inconsistent with this limit the
6 applicant is requesting relief of 100 percent.
7 And as you know, I tried to discuss this with
8 the Office of Planning and they didn't have a
9 copy of the regs at hand. The BZA's rules for
10 granting variances include no mention
11 whatsoever of reduction of parking spaces and
12 require an applicant to meet a stringent
13 three-part test for anything other than
14 parking, including an exceptional condition,
15 practical difficulty or economic hardship and
16 without a substantial detriment to public
17 good.

18 The application fails to meet this
19 three-part test since there is no exceptional
20 condition, practical difficulty or economic
21 hardship and there would be a substantial
22 detriment to the public good.

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1 The HSC Foundation knowingly
2 purchased a three-story row house with a two-
3 story carriage house that was zoned for 100
4 percent residential use and now wants to
5 convert this small property, which is not big
6 enough for a planned unit development, to all
7 commercial use, but to do so without meeting
8 any of the parking requirements for commercial
9 users. If this applicant were to obtain a
10 variance, what would stop all other commercial
11 users from buying small residential properties
12 throughout the city, requesting upzoning and
13 then requesting parking relief? The bottom
14 line is the precedent would be harmful not
15 only to Foggy Bottom-West End, but to the
16 entire city. So this case is very precedent-
17 setting, which is why my questions to Mr. Sher
18 as well as to the Office of Planning. And for
19 us it is a landmark case.

20 As a consequence, the community is
21 united in its opposition to the parking
22 variance. On December 17th, the Foggy Bottom

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1 and West End ANC 2-A passed a resolution in
2 opposition to both the Zoning Commission and
3 BZA proposals, which should be in your record.
4 If not, I'll try to locate it. And also
5 testified December 18th before the Zoning
6 Commission, including the guidance expected,
7 a presentation in front of the BZA.

8 As I said, the ANC lacked a quorum
9 on the May 20th meeting and it is on their
10 agenda for tomorrow. And I would like you to
11 entertain keeping the record open for their
12 longer resolution to be given great weight.

13 On December 17th, George
14 Washington University submitted a letter to
15 the Zoning Commission Chairman Hood stating,
16 "GW remains concerned with the impact of the
17 project as related to parking. The proposed
18 20,000 square foot addition is contemplated to
19 be constructed without any on-site parking,
20 which is a concern to the university. As an
21 adjacent property owner with its own parking
22 requirements and aided by the campus plan, GW

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1 has a vested interest in the applicant's
2 provision of adequate parking for its users."

3 Yesterday, based on incomplete
4 information from the applicant's lawyer about
5 seven versus sixteen required spaces, GW
6 submitted a second letter which Mr. Turnbull
7 questioned about. And time did not permit
8 when I discussed it with GW last night for
9 them to submit a supplemental letter once they
10 realized it was 16 parking places versus seven
11 and it wasn't just HSC employees, but it was
12 also tenants.

13 The applicant's Zoning Commission
14 proposal calls for a zoning map amendment,
15 upzoning in a huge R-5-D area, from 100
16 percent residential use, R-5-D with 3.5 FAR
17 and 75 percent lot occupancy, to 100 percent
18 commercial use, C-3-C with 6.5 FAR and 100
19 percent lot occupancy. And that is an 86
20 percent increase in density. And a seven-
21 story addition to a three-story row house.
22 This increased density will result in

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1 substantially more intensive use by employees,
2 contractors, guests, clients and other users
3 than currently at this location. As 100
4 percent commercial use, the applicant should
5 be required to provide adequate parking on
6 site for its employees and its visitors.
7 Otherwise, these users will be competing with
8 the community for a limited number of on-
9 street parking spaces. I for one can say and
10 testify that I have to go around the block
11 many times to find a parking place on street,
12 on site without having to pay an exorbitant
13 amount in one of the hourly lots.

14 Otherwise, these users will be
15 competing with the community for a limited
16 number of on-street parking spaces. And
17 there's not just residents. We have GW
18 students who are parking in their metered
19 places. So there's quite a bit of competition
20 for the spaces.

21 In addition, users will add to the
22 already objectionable traffic volume in the

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1 immediate vicinity, rush hour and otherwise,
2 but especially during rush hour. The net
3 effect would be a reduction in our quality of
4 life. And I thank you for your consideration
5 of our views and for allowing me a little bit
6 more time than five minutes.

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

9 Mr. Quin?

10 MR. QUIN: I have no questions.

11 CHAIRPERSON LOUD: Okay. Board
12 Members, are there any questions for the
13 witness?

14 I wanted to ask just a question on
15 the whole, I guess, parking issue that you
16 raised. Have you had an opportunity to review
17 the Wells & Associates report?

18 MS. KAHLOW: I have.

19 CHAIRPERSON LOUD: And also hear
20 the testimony of Ms. Milanovich who is here
21 this morning?

22 MS. KAHLOW: I have.

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1 CHAIRPERSON LOUD: And her
2 testimony is that A.M., that would net about
3 32 additional trips. And P.M. I think was 54,
4 or 51, or something like that. And then she
5 went on, the report goes on to talk about all
6 of these parking garages that are within a
7 two-block radius, apart from the Metrorail and
8 the Metrobus. And how I think there are 83
9 monthly leases available. There's daily and
10 hourly parking available.

11 What is your take on that? What
12 is your response to that?

13 MS. KAHLOW: I think that we would
14 look kindly on the HSC Foundation and all of
15 its lessees having guaranteed 100 percent
16 leased -- monthly leases, monthly spaces so
17 that the only people that would be competing
18 for space would be visitors. If they were all
19 -- anybody who wasn't taking Metro, they were
20 going to be in the garages. But as for
21 visitors, they need to make an outreach to 100
22 percent of them to show them where the parking

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1 is so they don't compete with us on street.
2 Maybe to have it on their web site, give it
3 when they clear a visitor for a visit, to tell
4 them that they should not be driving and
5 parking on the street, etcetera. There has to
6 be some more aggressive proposal. Since other
7 commercial users have parking, we would like
8 them to have a much more aggressive proposal.
9 We don't think the transportation management
10 plan is sufficient in any way.

11 CHAIRPERSON LOUD: Well just on
12 that note, you're not opposed to the rear
13 yard?

14 MS. KAHLOW: We have no position.

15 CHAIRPERSON LOUD: You have no
16 position on that? And if the transportation
17 management plan broadened somewhat to include
18 27,000 square feet worth of user on site.

19 MS. KAHLOW: And that we would --

20 CHAIRPERSON LOUD: But would --
21 I'm sorry --

22 MS. KAHLOW: Yes. Yes. Yes.

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1 CHAIRPERSON LOUD: Would that
2 remove your objection to the project?

3 MS. KAHLOW: No, as I said, it has
4 to include I think -- clearly it has to
5 include everybody who's going to be in the
6 building.

7 But second, we want all of the
8 employees that are not taking Metro or biking
9 to be required to have monthly leases so there
10 would be more competition for the on-street
11 parking. We would like that as a requirement
12 that they would agree to do if they have no
13 parking. And then we'd like an aggressive
14 proposal, part of the transportation
15 management plan for all visitors. And right
16 now the plan doesn't address anything that
17 really matters to us and we would like an
18 entirely different plan.

19 CHAIRPERSON LOUD: Thank you for
20 that clarification.

21 Board Members, any questions?

22 Okay. And, Mr. Quin, no

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1 questions?

2 MR. QUIN: No questions.

3 CHAIRPERSON LOUD: All right.

4 What we will do now is that if there are
5 persons that are in opposition to the
6 application, if you're a part of the audience,
7 how would be the time to come up. You'd be
8 given three minutes.

9 Seeing none, this is the
10 opportunity for closing remarks by the
11 applicant.

12 MR. QUIN: Mr. Chairman, let me
13 first address the point that Ms. Kahlow makes,
14 the argument that she makes with regard to 25
15 percent special exception is the limit as to
16 what you could do with parking.

17 You could take judicial notice,
18 quasi-judicial notice of many, many cases that
19 are variance cases. The fact that there's a
20 special exception on a subject doesn't
21 preclude a variance. Your variance -- you
22 could ask for a variance from virtually

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1 anything. It may divide itself between an
2 area variance or a use variance, but still you
3 can ask for anything. So I don't think that's
4 a very strong argument and I think it could
5 just be sort of summarily decided or
6 dismissed.

7 I think about testimony shows very
8 clearly that we meet all three tests of the
9 variance. I think there's no -- the first
10 one's a special exception, so I think we
11 covered all of that. There's no real
12 opposition to that.

13 With regard to parking, there
14 simply is no other way to put parking on the
15 site and Ms. Kahlow certainly didn't do any
16 analysis to show that we could provide parking
17 on site.

18 And I think that the last part of
19 the issue of variance is what is the impact on
20 the community? And I think that we've shown
21 that there would be no impact by virtue of
22 what's available. We don't have a problem if

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1 the Board wishes to condition the case on the
2 chance that the management plan being
3 applicable to the entire building.

4 And secondly, we are certainly
5 willing to include in that a condition that
6 would say that visitors could be advised as to
7 where parking is on the web site.

8 So those are two things that we
9 can offer. The latter I think is an addition
10 to what we've already indicated that we would
11 do.

12 So I think we've met all the
13 tests. The only area of flexibility that we
14 would need, and frankly I don't know that we
15 really need that, is a matter of law as we go
16 through the process with getting the final
17 approval by HPRB and the staff. Then there
18 may be changes in the design, some minor
19 changes or adjustment that's just normal
20 process. So I think as a matter of law some
21 people say historic preservation trumps zoning
22 on design and design alone. So we do not

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1 intend to, nor could we increase the size of
2 the building in any significant way that would
3 change the parking requirements, so I don't
4 think that's germane.

5 So we would to respond to any
6 questions that you have. We would like you to
7 also, if possible, decide the case as soon as
8 you can. This is something that we don't know
9 how long it's going to take to finish the
10 process with HPO. We think we're pretty far
11 along with that. And then we would proceed
12 eventually to build the building as designed.

13 Thank you so much for your
14 attention. And if you have any questions, I'd
15 be delighted to answer them or have our
16 witnesses answer them. Thank you.

17 CHAIRPERSON LOUD: Board Members,
18 any follow-up questions for Mr. Quin?

19 Okay. And I think, let me --

20 MS. KAHLOW: I found my only copy
21 of the ANC stuff. Do you want to look at it?

22 CHAIRPERSON LOUD: If you could

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1 give that to -- first, make sure Mr. Quin has
2 a copy. Give it to Ms. Bailey.

3 MS. KAHLOW: He was given a copy.
4 He was copied on it.

5 CHAIRPERSON LOUD: Okay.

6 MS. BAILEY: He was copied on the
7 letter.

8 CHAIRPERSON LOUD: If you have an
9 extra one, I can give it to --

10 MS. KAHLOW: Well, this is my only
11 copy. We have to --

12 MR. QUIN: This is a zoning map
13 amendment letter.

14 MS. KAHLOW: No. I'm sorry, it
15 talks about -- it includes a resolution figure
16 that Shaw talks about the BZA and the entire
17 resolution, the ANC. This is just the caption
18 on the letter.

19 CHAIRPERSON LOUD: Why don't you
20 let Mr. Quin take a look at it?

21 MS. KAHLOW: Yes, of course. I'm
22 sorry.

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1 MR. QUIN: All it says is whereas
2 they will oppose upzoning and will oppose any
3 variance. Will oppose. There's nothing that
4 says anything more than that. This is a
5 letter with the Zoning Commission.

6 CHAIRPERSON LOUD: Thank you.

7 MS. KAHLOW: Now be there the
8 result for all the reasons we cited below, the
9 Foggy Bottom-West End Advisory Neighborhood
10 Commission 2-A opposes the upzoning proposal
11 and will oppose any proposed variance in the
12 parking space requirements requested that have
13 not yet been requested. But the whereases
14 deal with it. That's the reason why they have
15 not had the submission yet and but they have
16 -- they set it in after the presentation
17 letter of the applicant, that that's what
18 their intention was as soon as they had a case
19 number.

20 CHAIRPERSON LOUD: This is what I
21 would recommend. I think we are probably
22 going to deliberate on the case this morning,

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1 but we want to take a five-minute break. I
2 understand that, you know, the language says
3 will oppose, but I don't see the harm in us
4 getting a copy of what both of you have seen
5 so that we can take a quick look at it and
6 decide --

7 MS. KAHLOW: Okay. Thank you.

8 CHAIRPERSON LOUD: -- the merits
9 of whether it really relates to this case or
10 not.

11 But I think again we'll take a
12 five-minute break. We'll come back and I
13 think we're prepared to --

14 MS. KAHLOW: Thank you very much.

15 CHAIRPERSON LOUD: Okay? Thank
16 you.

17 (Whereupon, at 11:41 a.m. off the
18 record until 12:10 p.m.)

19 VICE-CHAIRPERSON DETTMAN: We're
20 now back in session on this case, HSC
21 Foundation, BZA Case No. 17933, application
22 for special exception from the rear yard and

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1 parking relief, a variance for parking
2 requirements.

3 I believe that the Board is going
4 to deliberate the case this morning. I want
5 to thank the applicants and your witnesses.
6 I want to thank Ms. Kahlow for your
7 presentation. Of course the Office of
8 Planning. It was a very full record and in
9 fact that's part of what allows us to
10 deliberate is that all of the parties have
11 done a good job of bringing all of the needed
12 information before the BZA.

13 I think Mr. Turnbull is going to
14 start us off on the deliberations, so I'll
15 turn to him.

16 COMMISSIONER TURNBULL: Thank you,
17 Mr. Chair. I think we'll hit the special
18 exception first for the rear yard. I think
19 it's fairly obvious what it is. I think the
20 building, the existing structure is there at
21 the rear yard. Without tearing down that
22 structure and doing some other gymnastics, I

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1 think they've meeting with HPO in trying to --
2 with the intent of this becoming in the
3 historic area. My feeling is that with the
4 carriage house being retained, you can't meet
5 the rear yard requirement. So I think they've
6 done their due diligence under Section 774.1
7 and I think we should grant the special
8 exception. I think that there's space behind
9 the building. There is the easement that's
10 behind there. I think light and air are not
11 going to be affected in this situation. So I
12 think my feeling is that there is enough open
13 air at the rear of the structure not to impede
14 light to either building. And the separation
15 is there for circulation. So my feeling is
16 and I think they've met the intent of the
17 special exception.

18 The variance for parking is a bit
19 of a conundrum, I guess. But I guess looking
20 at the arguments that OP and the applicant
21 have made, the exceptional situation that
22 exists, the kind of narrow lot; it's 36 feet

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1 wide. And they've talked about different ways
2 how they could try to -- again, with keeping
3 the carriage house, with keeping the historic
4 town house there, you're kind of stuck in how
5 you get parking in from the street and how you
6 get them down and turning around, the turning
7 space. And so the lot of and in itself is a
8 very tough restriction. When you get into --
9 that leads itself right away to the practical
10 difficulty of if you try to do it, you put a
11 driveway, you have the drive aisles. And as
12 I was conjecturing, they could have put in one
13 of these elevator systems. But even that has
14 a lot of gymnastics to it that would probably
15 not result in a very efficient layout and
16 could cause more problems with the structure.
17 You've got a building that's got a structure
18 that's got to work around the two historic
19 structures. So it could be a very convoluted
20 mess.

21 I think the contributing
22 structures of themselves, again they've got

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1 footings, they've got foundations, they've got
2 a difficulty putting a new building around it.
3 So I think that would be a little degrade in
4 structure than what they would have to do to
5 retain that. It's going to be difficult
6 enough. I don't think they could get more
7 than one level, I think as the applicant has
8 said, because of the grades, the ramps and the
9 whole aspect of laying out a garage. So I
10 think on the first two prongs, the first two
11 prongs are kind of tied together. The
12 exceptional situation and the practical
13 difficulty of then trying to get it to work.

14 The third prong, no substantial
15 detriment. And I struggled with this myself,
16 but I think without causing a covenant or
17 something in the agreement, within the order
18 saying that the applicant has to provide
19 leased spaces somewhere, I think that may be
20 more of a difficulty than is actually
21 practical. And in light of what Ms.
22 Milanovich testified to, with the amount of

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1 spaces on the street, the leased spaces, the
2 garage parking, as well as the area being
3 served well by public transportation, again,
4 as I say, I struggled looking back and forth
5 on this as to whether actually adding
6 something into this to require it, but then I
7 think that becomes tentative at best, because
8 you really don't know many people you're go to
9 have. You may have nobody. And to require an
10 applicant to have so many leased spaces, if
11 they're not going to be used, I think would be
12 handicap in and of itself.

13 So I guess in hindsight, I think
14 that they have met the criteria with the third
15 prong, too, that there is enough options
16 within the area to take care of people coming
17 to the building, whether they be employees or
18 visitors.

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

21 Mr. Dettman?

22 VICE-CHAIRPERSON DETTMAN: Mr.

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1 Chairman, for the sake of brevity, I would
2 just say that I agree with everything that Mr.
3 Turnbull said. I think the provisions of 774
4 have been met in the special exception. I
5 would be in favor of granting.

6 With respect to the parking
7 variance, I think the driver of the practical
8 difficulty is primarily the size of the
9 property and the narrowness of the property.
10 In trying to provide parking either on the
11 surface or underground, there just simply is
12 not enough space there given the other
13 requirements for a drive aisle and regulation
14 size parking spaces. So I think the first two
15 prongs of the variance have been met. It even
16 adds to their difficulty and their decision to
17 retain the structures that could be at one
18 point deemed contributing to the pending
19 historic district and I think that's a good
20 decision.

21 With respect to the third prong of
22 the test, this location is abundantly served

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1 by public transportation. You have Metrobus,
2 you have Metrorail, you have circulator.
3 There's available on-street parking that could
4 -- you know, assuming that this is two-hour
5 parking, there's going to be turnover to
6 accommodate any kind of visitors coming to the
7 site. And the applicant has indicated that
8 they're willing to make provisions such as
9 Smart Bike and Smart Trip in order to
10 encourage visitors and employees at this
11 building to utilize public transportation.
12 And so I think if there is any kind of
13 spillover in terms of parking and congestion,
14 I think that the applicant's willingness to
15 implement an effective TDM strategy would
16 mitigate any of those impacts.

17 So I'm in favor of the
18 application, both forms of the relief.

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

21 I agree with everything that's
22 been said heretofore regarding the variance

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1 test and the special exception for the rear
2 yard relief.

3 With respect to the variance test,
4 I think the applicant met its burden with
5 respect to unique and exceptional situation,
6 also with respect to practical difficulty.
7 And also with respect the absence of
8 substantial detriment to the public good. And
9 I say that for all the reasons that my
10 colleagues have already said it.

11 If there was prong of the test
12 that required me to think a little bit
13 further, it was whether or not there would be
14 substantial detriment to the public good. Ms.
15 Kahlow submitted a written statement, but also
16 heard testimony arguing that there would be a
17 tremendous spillover impact to the
18 neighborhood, and I think she did a very
19 effective job of cross examining some of the
20 witnesses regarding the 18,000 or so square
21 foot of tenant that might not necessarily be
22 included in the transportation management plan

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1 and some of the assumptions being made about
2 the intensity of use and parking needs, and so
3 forth.

4 But that notwithstanding, I
5 specifically asked the Office of Planning
6 whether they thought, after hearing the
7 testimony, not just going on the written
8 pleadings, but hearing testimony today whether
9 they thought that there would be substantial
10 detriment to the public good. The Office of
11 Planning testified that they did not believe
12 that that would be the case.

13 There was very persuasive
14 testimony from the Wells & Associates witness,
15 Ms. Milanovich regarding net new trips being
16 I think 32 or 31 in the morning and 51 in the
17 afternoon, and the availability, as Mr.
18 Dettman said, of both the rapid transit
19 Metrorail, Metrobus; Farragut West, I think,
20 and Foggy Bottom Metro stops are within three
21 blocks, along with these public garages or
22 garages that have spaces available for the

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1 public, including I think some testimony
2 regarding there being about a capacity to take
3 on 83 new monthly leases within I think a two-
4 block radius. So it's something that you
5 always want to think about and give
6 appropriate attention to the community and
7 whether or not it's create a real adverse
8 impact to the community.

9 I just think that in this case the
10 applicant made a very persuasive case that
11 there would be an adverse impact to the
12 community. And it wasn't just the applicant's
13 witnesses, because sometimes you might
14 discount the fact that an expert supports the
15 party that's paying the expert to support the
16 party, but in this case the Office of
17 Planning, which is objective, also said the
18 same thing. And again, it was not effectively
19 rebutted in the case put forward by the party,
20 the applicant, although I think that that was
21 a very well-presented case.

22 With respect to the issue of the

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1 transportation demand management plan, there
2 was some discussion about whether it was clear
3 whether one of the elements of the plan would
4 extend to all employees in the building or
5 just HSC Foundation employees. And when we
6 get to the point where we're talking about
7 conditions, I think it would be -- you know,
8 I'd be in favor of making the transportation
9 demand management plan a part of our
10 conditions in the case. But more
11 specifically, making sure that we're clear
12 that the first element of the transportation
13 demand management plan that speaks to the HR
14 person that's going to be educating members of
15 HSC presumably about parking availability in
16 the area and options, that that requirement
17 would extend to all tenants of the building.
18 And it may be worded right now so that that's
19 the case, but it wasn't clear to me from the
20 very effective cross examination I thought Ms.
21 Kahlow did of Ms. Milanovich. It wasn't clear
22 that that would be the case. So I would be in

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1 favor of making sure that that first provision
2 applies across the board to the tenants of the
3 building.

4 Is there further discussion on the
5 application both in terms of it meeting the
6 burden, also in terms of any conditions that
7 we might want to discuss?

8 Do Board Members have a feel for
9 whether we want to include as conditions the
10 transportation demand management strategies
11 that were offered up by Wells & Associates?

12 Okay. Then why don't we do this?
13 Sounds like we're in agreement that the
14 applicant met its burden. Also we're in
15 agreement that what would be Exhibit H under
16 BZA Exhibit 23 would be incorporated into our
17 final decision, those four points being
18 included as conditions. And I just want to
19 clarify that with respect to condition No. 1
20 that the provision would apply to both HSC and
21 any other tenants that come into the building.
22 And I think with that, barring further

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1 discussion, we can entertain a motion.

2 Is there further discussion?

3 Okay. Then I would like to move
4 approval of BZA application No. 17933 of the
5 HSC Foundation for variance relief from
6 Section 2101.1 and special exception relief
7 from Section 774 as regards the project at
8 2013 H Street, N.W., as conditioned.

9 Is there a second?

10 COMMISSIONER TURNBULL: Second.

11 CHAIRPERSON LOUD: The motion has
12 been made and seconded. Is there further
13 deliberation?

14 Hearing none, all those in favor
15 of the motion say aye. Aye.

16 VICE-CHAIRPERSON DETTMAN: Aye.

17 COMMISSIONER TURNBULL: Aye.

18 CHAIRPERSON LOUD: All those
19 opposed?

20 All those in abstention?

21 Ms. Bailey, if you could read back
22 the vote?

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1 MS. BAILEY: Mr. Chairman, the
2 vote is recorded as 3-0-2 to grant the
3 application. Mr. Loud made the motion. Mr.
4 Turnbull seconded. Mr. Dettman supports the
5 motion. Two additional Board Members are not
6 sitting at this time. And the applicant is
7 approved, as conditioned.

8 And I'm assuming you're doing a
9 full order on this, Mr. Chair?

10 CHAIRPERSON LOUD: That's correct,
11 because we do have a party status opponent in
12 the case.

13 Is there anything further in this
14 case?

15 MS. BAILEY: Not for this case,
16 Mr. Chairman.

17 CHAIRPERSON LOUD: Thank you very
18 much.

19 I want to thank the parties.

20 I also want to say, Ms. Kahlow,
21 obviously the BZA does have authority to grant
22 variances in this type of case and its found

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1 in the enabling statute that created the BZA.

2 I think it's also in our
3 regulations, Section 3100.1, Ms. Monroe?

4 Who's our legal counsel providing
5 me with some of that, so it was a very novel
6 and creative argument, but we do have the
7 authority to do that. Thank you.

8 The morning session is now
9 adjourned.

10 (Whereupon, the hearing was
11 recessed at 12:28 p.m. to reconvene at 1:30
12 p.m. this same day.)

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1

2

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

3

1:34 p.m.

4

CHAIRPERSON LOUD: This hearing

5

will please come to order.

6

Good afternoon, ladies and

7

gentlemen. This is the June 16th public

8

hearing of the Board of Zoning Adjustment of

9

the District of Columbia.

10

My name is Marc Loud, Chairperson.

11

Joining me today are Vice-Chair Shane Detman

12

representing the National Capital Planning

13

Commission and Commissioner Mike Turnbull

14

representing the Zoning Commission. To my

15

left is Ms. Lori Monroe from the Office of the

16

Attorney General, Ms. Beverly Bailey, Zoning

17

Specialist in the Office of Zoning. And I

18

think we'll be joined by Mr. Clifford Moy

19

shortly who's the Secretary of BZA.

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

22 The order of procedure for special

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1 exceptions and variances is: (1) Statement
2 and witnesses of the applicant; (2) Government
3 reports, including the Office of Planning, the
4 Department of Public Works, etcetera; (3) the
5 report of the Advisory Neighborhood
6 Commission; (4) parties or persons in support;
7 (5) parties or persons in opposition; and then
8 finally (6) closing remarks of the applicant.

9 I'm going to skip the directions
10 for the appeal since we don't have any appeals
11 on the calendar this afternoon.

12 Pursuant to Sections 3117.4 and
13 3117.5, the following time constraints will be
14 maintained. The applicant/appellant, persons
15 and parties, except an ANC in support,
16 including witnesses, 60 minutes collectively.
17 The appellees, persons and parties, except an
18 ANC in opposition, including witnesses, also
19 60 minutes collectively. And then finally,
20 individual witnesses are allotted three
21 minutes each. These time constraints do not
22 include cross examination and/or questions

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1 from the Board. Cross examination of
2 witnesses is permitted by the applicant or
3 parties only.

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

11 The record will be closed at the
12 conclusion of each case except for any
13 material specifically requested by the Board.
14 The Board and the staff will specify at the
15 end of the hearing exactly what is expected
16 and the date when the persons must submit
17 evidence to the Office of Zoning. After the
18 record is closed no other information will be
19 accepted by the Board.

20 The Sunshine Act requires that the
21 public hearing on each case be held in the
22 open before the public. The Board may,

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1 consistent with its Rules of Procedure and the
2 Sunshine Act, enter executive session during
3 or after the public hearing on a case for
4 purposes of reviewing the record or
5 deliberating on the case.

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

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

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

21 At this time the Board will
22 consider any preliminary matters. Preliminary

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

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

10 Does the staff have any
11 preliminary matters?

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

14 Yes, Mr. Chairman, and it has to
15 do with a case that was withdrawn and it's the
16 application of Baxter, LLC. The number is
17 17888. Mr. Chairman, that application was
18 withdrawn.

19 CHAIRPERSON LOUD: Thank you, Ms.
20 Bailey.

21 Would all individuals wishing to
22 testify today, please rise to take the oath?

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1 (Whereupon, the witnesses were
2 sworn.)

3 CHAIRPERSON LOUD: Thank you. You
4 may be seated.

5 Ms. Bailey, can you call our first
6 case?

7 MS. BAILEY: Mr. Chairman, that's
8 application 17825, which is the application of
9 1400 Maryland Avenue, Limited, Empire Leasing,
10 Incorporated, pursuant to 11 DCMR Section
11 3104.1, for a special exception to establish
12 a gasoline service station with convenience
13 store under Section 743, (706 and 2302.) The
14 property is located in the C-3-A District at
15 premises 1400 Maryland Avenue, N.E., Square
16 1049, Lot 803.

17 This is a continuance case, Mr.
18 Chairman. The previous hearing dates are
19 October 14th, 2008, January 13th, 2009.

20 And lastly, the Board did receive
21 a request from ANC 6A that the hearing this
22 afternoon be postponed.

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1 CHAIRPERSON LOUD: Thank you, Ms.
2 Bailey. We'll wait for the parties to do what
3 they're doing and then have them introduce
4 themselves for the record.

5 MR. RIES: Mr. Chairman, (off
6 microphone.)

7 CHAIRPERSON LOUD: I'm sorry. Why
8 don't you come on up where you can heard. And
9 just introduce yourself and the nature of your
10 concern.

11 MR. RIES: Thank you. My name is
12 Bernard Ries, Mr. Chairman. I'm a party to a
13 case that was originally scheduled for March
14 the 24th and was put over by the applicant
15 until today. We are still listed as of this
16 morning on the web as the first case to go.
17 That list shows no other cases scheduled for
18 today. We are prepared to proceed. I see
19 that the counsel the other side, the applicant
20 is in the courtroom, in the hearing room. And
21 the case you just called looks to me with a
22 lot of high-powered blue suits to be one that

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1 is going to take quite a while. Then there is
2 a second case that is listed as a continuation
3 that also apparently is going to precede our
4 case. And I really think that we should go
5 ahead with the case that was postponed on
6 March the 24th, especially having been given
7 no notice that two other cases were now
8 slotted in ahead of us.

9 CHAIRPERSON LOUD: You are from
10 the case 17893, Antonio Seleme?

11 MR. RIES: That's correct.

12 CHAIRPERSON LOUD: Okay. We're
13 going to hear that case after we hear this
14 case. I'm not certain what was on or not on
15 the web site. The calendar that we have has
16 the 17825 case listed as well as well as the
17 17893 case. And they're both listed at 1:00
18 p.m. In fact, the calendar I'm looking at has
19 17825 before 17893. But it doesn't matter.
20 Oftentimes we will, if circumstances warrant
21 it, make adjustments in the order of the cases
22 that are called as long as they're called at

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1 the public hearing time that's announced for
2 that case. In other words, we wouldn't call
3 a case that's announced for 9:30 a.m. at 1:00
4 p.m., but those cases that are listed at 9:30
5 a.m. may or may not be called in the order
6 that they're listed on the calendar.

7 So I hope that that is responsive
8 to your concern. I don't think that we're
9 going to run over this afternoon in the two
10 cases that we have. We've only got two cases
11 and I don't think we're going to run over.
12 But our taking a look at both cases, I think
13 our decision is to do 1400 Maryland Avenue
14 first. And again, on our calendar it's listed
15 as first.

16 Ms. Bailey, is it the same on your
17 calendar?

18 MS. BAILEY: Yes, Mr. Chairman, it
19 is listed as the Baxter case and then
20 Maryland, Limited Enterprise. This is the
21 second case. I'm not quite sure if the
22 gentleman may be a little concerned because

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1 neither case -- the last case is not on the
2 hearing docket, so that could cause some
3 confusion as well. But you are correct, Mr.
4 Chairman, that case is listed as second for
5 the afternoon session.

6 CHAIRPERSON LOUD: Okay. And Mr.
7 Dettman made a good point. Are you aware that
8 the Baxter case has been withdrawn?

9 MR. RIES: I think I saw that on
10 the web, but now I see that the schedule that
11 I picked up over at the door has these two
12 cases that are now, it appears, scheduled
13 before our case and our case is not listed
14 there at all.

15 CHAIRPERSON LOUD: Let me assure
16 you again, your case is scheduled for today,
17 so your trip has not been wasted. We're
18 definitely going to hear your case today. If
19 there were two cases listed before your case,
20 which you say was not listed, but one of those
21 has been withdrawn. That's the Baxter, LLC
22 case.

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1 MR. RIES: All right.

2 CHAIRPERSON LOUD: So that's not
3 going to be heard at all this afternoon.

4 MR. RIES: Right.

5 CHAIRPERSON LOUD: So there are
6 only two cases scheduled to be heard this
7 afternoon, your case and the 1400 Maryland
8 Avenue case.

9 MR. RIES: All right. Well, thank
10 you, Mr. Chair. Just a brief suggestion that
11 I think there is a way to update the web site,
12 which I think is a wonderful web site, to let
13 you know where you stand, it would be worth
14 doing.

15 MR. MOY: And again, mister -- if
16 I may add just to --

17 CHAIRPERSON LOUD: Thank you, Mr.
18 Ries. I appreciate that.

19 MR. MOY: -- provide a little more
20 information to the gentleman and our
21 apologies. On our web site, I know that we
22 have difficulty in arranging when we list the

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1 cases on the web site in certain order.
2 That's something we haven't been able to
3 correct just yet. But if your case is listed
4 for either the morning session or in the
5 afternoon session, then that's a distinction
6 there.

7 MR. RIES: Okay.

8 MR. MOY: I also apologize because
9 on public notice, this case should have been
10 advertised. That's something that's gone
11 through the cracks. You are scheduled for
12 this afternoon.

13 MR. RIES: All right. Thank you,
14 Mr. Moy.

15 CHAIRPERSON LOUD: And thank you,
16 Mr. Ries, for bringing that to our attention.
17 As Mr. Moy said, we apologize.

18 Turning now to 17825, this is the
19 1400 Maryland Avenue, Limited case. I think
20 we reviewed the file. Obviously, this case
21 has been continued a number of times for
22 different reasons and the most recent

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1 pleadings from the ANC, as well as the
2 applicant, regarding postponement. And
3 preliminarily at least it would be the
4 suggestion that the record's not completely
5 full and there could be some strong reasons
6 for allowing a more full record before we hear
7 this case that would allow us to with finality
8 make a decision on it and let the parties know
9 what the outcome would be.

10 So I think it may be appropriate
11 to begin with some discussion around the issue
12 of whether the case should be postponed, and
13 I realize it's a bit awkward for the applicant
14 to have to respond to a motion to postpone
15 that was just served in the last several days,
16 but I think even independent of the
17 application that was filed we had initially
18 continued this case assuming that there would
19 be a PSC hearing in May and then the BZA
20 hearing would follow that on today's HN16.
21 That was apparently canceled or rescheduled.
22 It's now scheduled for late June. And so we

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1 find ourselves in a situation where there's a
2 burden that has to be met and questions about
3 whether all of the evidence is in the record
4 that would speak to that burden and whether or
5 not allowance of time might be appropriate in
6 this context.

7 So if that's acceptable to the
8 parties, then of course we can have some
9 dialogue about that, that may be a good pivot
10 point to begin, just discussion around whether
11 this case is really fully before us for
12 resolution today.

13 And Mr. Aguglia, since you're the
14 applicant, why don't we start with you?

15 MR. ANDRES: Thank you, Mr. Loud.
16 I'm Richard Aguglia, counsel for the applicant
17 at 1900 K Street, N.W.

18 With me today is Mr. Monty Berhane
19 who's the general manager for DAG Petroleum
20 and Erwin Andres, our expert witness.

21 I understand your points fully,
22 Mr. Loud, and that we do need to supplement

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1 the record, because based on the DoT's
2 statements we are going to have a change that
3 we need to bring into the record. We don't
4 have the change fully done yet. There's one
5 issue that seems to be the salient issue in
6 the case. Office of Planning's report is
7 relatively in support. DoT's report, if you
8 read it through, at first you think they're
9 going to suggest approval, but at the end they
10 say our evidence is thin on the interior
11 circulation.

12 So we were prepared to present to
13 you today a change in the interior circulation
14 plan because we are going to reduce the size
15 of the fuel truck, which really has made the
16 interior circulation much better and I think
17 would find approval with DoT if we move it to
18 35 feet. Reduce it. Reduce the truck fueling
19 size to 35 feet.

20 We're prepared to accept all of
21 OP's suggestions on page 4 about delivery.
22 They have a list on page 4 in their report,

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1 which is Exhibit No. 48. On page 4, we're
2 prepared to accept all of their bullet point
3 suggestions. My client has bent over
4 backwards to remove everything from public
5 space except we need a curb cut to get to our
6 site, and the landscaping on the public space
7 is optional.

8 So I guess my question is this: If
9 we agree to a continuance because we would not
10 be able to finalize the record today, and I
11 understand that's very important to you, when
12 could we get a hearing? And let me say this,
13 the site has been vacant for a long time. The
14 tenant, DAG Petroleum, is paying rent on it
15 with no income whatsoever. It has to be
16 monitored carefully to make sure there's no
17 vagrancy or garbage disposal on the site. So
18 the client is hurting. As I pointed out, the
19 District also is hurting for gas stations. As
20 you notice from my Exhibit No. 42, former
21 Mayor Williams had prepared an extensive study
22 in which he indicated that the District had

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1 lost 50 percent of its gas stations from 1977
2 to 1992. So I think you have important policy
3 issues before you.

4 So my question is this: If we
5 agree to a continuance so we can have a full
6 record, and also one of my witnesses, Mr.
7 Maten, was taken sick yesterday to the
8 hospital, our architect, when could we get a
9 hearing to move this along? We would prefer
10 a hearing in July. I know your calendar is
11 fairly tight. But towards the end of July we
12 would have everything ready to ramp up and you
13 could make a decision.

14 CHAIRPERSON LOUD: I think we're
15 on the same page in that regard. I don't know
16 specific dates. We'll check with Ms. Bailey
17 on that. I'm sure the ANC wants to be here.
18 But I think our thinking is that if the PSC is
19 going to be late June and have some report as
20 a result of that, then to give them an
21 opportunity to put that in writing and get it
22 to us, as well as if you now change the

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1 interior circulation and, you know, if that's
2 in writing and you give to DDoT, they may then
3 supplement what they have on the record. That
4 would be very helpful.

5 MR. AGUGLIA: That is our intent.

6 CHAIRPERSON LOUD: Okay. We've
7 got a date of July 14, a date of July 21 where
8 we might be able to do this. But before I
9 move too far along, why don't we hear from the
10 ANC in terms of what I think has been a pretty
11 generous proffer by Mr. Aguglia to entertain
12 this idea of a continuance?

13 MR. HOLMES: Mr. Chairman, I'm
14 David Holmes, vice-chair of 6A. Public Space
15 has to act first on this matter. They've been
16 handling both internal and external traffic
17 flows. That's all part of this knot that's
18 all tied together and we do need to hear from
19 them.

20 The internal matter will still be
21 before you and all likelihood. No reasonable
22 person can expect a large car, van, SUV or

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1 larger vehicle to be able to proceed past
2 another refueling vehicle using the current
3 design. It's simply too tight. The size car
4 that's projected in the design is appropriate
5 for the mayor's Smart car, but it's not
6 appropriate for a van. There's no way the
7 cars behind can get past. So Public Space
8 needs to address that issue. It may well be
9 that because of this they will not be able to
10 preserve the building that's currently
11 scheduled to be a mini-mart.

12 CHAIRPERSON LOUD: Well, I think
13 those points may be valid. I'm sure Mr.
14 Aguglia might take issue to some of them, but
15 what we're looking at right now is just if we
16 continue it. And if we're looking at July 14
17 and July 21, would those be dates that would
18 work well for the ANC?

19 MR. HOLMES: If we could have the
20 later of the two days, because the -- we don't
21 have enough time to address it for the first,
22 by the 14th.

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1 CHAIRPERSON LOUD: Okay. So we're
2 looking at July 21 now and we have an opening
3 at 1:00 p.m. in the afternoon. And we can
4 continue it to that date and --

5 MR. AGUGLIA: That's acceptable.

6 CHAIRPERSON LOUD: Okay.

7 MS. BAILEY: Mr. Chairman, I'm
8 sorry for interrupting, but the next date will
9 be the fourth scheduled hearing for this case.
10 So it's really important, Mr. Chairman, with
11 your concurrence I'll say this, if that's a
12 doable date, because there's no point in me
13 scheduling this, because this is the fourth
14 time for this hearing, so hopefully that
15 should be sufficient time for this case to go
16 forward.

17 CHAIRPERSON LOUD: I think Ms.
18 Bailey expresses the angst that probably
19 exists on the part of the applicant, certainly
20 on the BZA members and perhaps ANC as well.
21 We really want some finality to this case.
22 And we're looking at that finality on July 21.

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1 We don't believe that we need to have PSC
2 weigh in for us to make a decision, but we do
3 think it's important at this juncture that we
4 would have a more full record if they did.

5 But I don't think the Board Members are
6 supportive of allowing this to just go on and
7 on and on and on and hanging our hat on the
8 idea that PSC hasn't rendered a decision yet.

9 So Ms. Bailey captured it well. I
10 think that's where we all are. And he's
11 saying the ANC's agreed to July 21, the
12 applicant has agreed to July 21. If we say
13 July 21, I think that the parties can come
14 expecting some finality.

15 Okay. So in terms of moving
16 forward then, we will look to get a revised
17 interior circulation plan from the applicant
18 that would go to the parties. And then we
19 will allow DDoT to supplement its report, if
20 it so chooses and obviously OP as well and
21 look for the report from the Public Space
22 Commission.

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1 Is there anything else that either
2 the applicant or the ANC would like to add?

3 MR. SCHULTHEISS: Excuse me, Mr.
4 Chair. Bill Schultheiss --

5 CHAIRPERSON LOUD: Good afternoon.

6 MR. SCHULTHEISS: -- within my
7 single-member district. I just wanted -- you
8 mentioned that everyone else can modify the
9 report, so I just wanted to make sure that the
10 ANC will have the same opportunity.

11 CHAIRPERSON LOUD: You'll have the
12 same opportunity. We haven't closed the
13 record or anything like that.

14 MR. SCHULTHEISS: Okay.

15 CHAIRPERSON LOUD: But again we're
16 looking for some finality on July 21. And I
17 know that with the ANC, you only meet once a
18 month. And I think there's something that
19 they've designated you to represent them in
20 the matter.

21 MR. SCHULTHEISS: Well --

22 CHAIRPERSON LOUD: So absolutely I

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1 think it's important that you have the
2 opportunity to -- you're going to get
3 everything because you're a party. So
4 everything that's filed, you'd be given a copy
5 of. Okay?

6 All right. Board Members, are
7 there any questions?

8 Okay. Ms. Bailey, is there
9 anything further in this case?

10 MS. BAILEY: No, sir.

11 CHAIRPERSON LOUD: Okay. Then
12 what we'll do is see you guys back on July
13 21st and we look forward to fully hearing the
14 matter at that time.

15 MR. AGUGLIA: Thank you.

16 CHAIRPERSON LOUD: All right.

17 Thank you.

18 Ms. Bailey, when you're ready, I
19 guess you can call the next case.

20 MS. BAILEY: Thank you, sir.

21 Application 17893 is the application of
22 Antonio Seleme. It's pursuant to 11 DCMR

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1 3103.2, for a variance from the height
2 limitations under subsection 2500.4, and a
3 variance from the use provisions under
4 subsection 2500.5, to allow the construction
5 of a three-car accessory garage with second
6 floor artist studio at premises 3830 Legation
7 Street, N.W. The property is zoned R-2. It's
8 located in Square 1857 on Lot 62.

9 CHAIRPERSON LOUD: Good afternoon.

10 MS. BELL: Good afternoon.

11 CHAIRPERSON LOUD: Parties can
12 step forward. Please take your seat and
13 introduce yourselves for the record.

14 Mr. Ries, it's good to see you
15 again. We kind of had a trick up our sleeves.
16 We couldn't say it at the time, but we thought
17 that that case would be pretty quick and that
18 you'd be back.

19 MS. BELL: Good afternoon, Chair
20 and Board.

21 CHAIRPERSON LOUD: Good afternoon.

22 MS. BELL: My name is Lisa Bell.

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1 CHAIRPERSON LOUD: I don't think
2 they're picking you up on the microphone.

3 MS. BELL: Good afternoon, Chair
4 and the Board. My name is Lisa Bell and I
5 represent the applicant.

6 I would actually like to impose
7 upon the Board for a moment. We have a
8 PowerPoint presentation and so I've been told
9 it just take a few minutes. So I request a
10 few minutes so that we can set it up from the
11 Office of Zoning.

12 CHAIRPERSON LOUD: I think that's
13 perfectly well.

14 As that's being done, perhaps the
15 other persons at the table could introduce
16 themselves for the record, and your address.

17 MR. SELEME: Okay. My name is
18 Antonio Seleme. I live at 3830 Legation
19 Street, N.W. in Washington, D.C. I have been
20 a resident in the District for the last 60-
21 some years.

22 CHAIRPERSON LOUD: Good afternoon.

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1 MR. RIES: I am Bernard Ries. My
2 last name is spelled R-I-E-S. I took a look
3 at transcript of the first attempt to have a
4 hearing and I failed to note the spelling, so
5 I'm doing so now. I live at 3828 Legation
6 Street and have lived there for almost 30
7 years. And I have been admitted to this
8 hearing --

9 VICE-CHAIRPERSON DETTMAN: Mr.
10 Ries, I see the court reporter asking for you
11 to step a little bit closer to the microphone.
12 Sorry to interrupt.

13 MR. RIES: All right. You okay?
14 I have been admitted as a party to
15 this proceeding as of March 24th, and so has
16 my wife, who will introduce herself now.

17 MS. RIES: Barbara Ries, 3828
18 Legation Street.

19 CHAIRPERSON LOUD: Good afternoon,
20 Mrs. Ries.

21 Is the applicant ready to move
22 forward?

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1 MS. BELL: Just a moment, please.

2 CHAIRPERSON LOUD: I think as
3 you're doing that, a couple things that we
4 want to sort of -- along the lines of
5 housekeeping on our end, I think that you've
6 requested leave to file a prehearing statement
7 at Exhibit 28?

8 MS. BELL: That's correct.

9 CHAIRPERSON LOUD: Okay.

10 MS. BELL: What happened is we
11 obtained a request from the Board to file an
12 amended prehearing statement. Mr. Seleme had
13 originally filed his statement without the
14 benefit of counsel. We weren't in the case at
15 the time. As a result, we hired another
16 architect and developed another set of plans
17 which have been included with the packet that
18 you have before you, as well as an architect's
19 rendition and some photos. The architect took
20 a little bit longer to get the information
21 together. With the rain and a number of other
22 things, he had to go out to the site a few

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1 different times. So we needed a three-day
2 extension and that is the motion for leave for
3 good cause that we're -- we're presenting as
4 evidence of good cause.

5 CHAIRPERSON LOUD: Okay. I mean,
6 it sounds reasonable, three days late.

7 Did you serve this on the party
8 status?

9 MS. BELL: Yes.

10 CHAIRPERSON LOUD: Okay. Mr.
11 Ries?

12 MS. BAILEY: Yes.

13 CHAIRPERSON LOUD: Okay.

14 MS. BAILEY: As well as the ANC.

15 CHAIRPERSON LOUD: Okay.

16 MS. BAILEY: And actually, we do
17 have a complete set of the packet that you
18 have that we'd like to refer to in our
19 presentation along with a rendition of the
20 site plans.

21 CHAIRPERSON LOUD: Okay.

22 MS. BAILEY: And the elevation

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1 plans?

2 CHAIRPERSON LOUD: Okay. And, Mr.
3 Ries, do you have a copy of their late filed
4 prehearing statement?

5 MR. RIES: Yes, I do have a copy
6 of that statement.

7 CHAIRPERSON LOUD: Okay.

8 MR. RIES: The motion refers to
9 seeking to include in file undated site plans,
10 floor plan and architect's rendition, among
11 other documents which were not completed until
12 June the 5th, 2009. I have the documents that
13 I received. Incidentally, my wife was not
14 served and she is a separate party. But we'll
15 get by that for the moment.

16 I have documents marked which are
17 done by the architect or the engineer marked
18 A1, A2, A3, which seem to be plans. Then C1,
19 C2 and then a bunch of photographs. Am I
20 missing anything? Are there B-somethings that
21 have been included in this offer, which I
22 haven't received?

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1 CHAIRPERSON LOUD: Counsel, I
2 think his question is it goes from A to C and
3 there's no B.

4 MS. BELL: I understand. Mr. Ries
5 received exactly the same packet that the
6 Board received. That's the packet we're
7 providing.

8 CHAIRPERSON LOUD: Okay.

9 MS. BELL: There is no B.

10 CHAIRPERSON LOUD: Thank you.

11 MR. RIES: And are there any other
12 -- you did say other documents, and I don't
13 know what that would be referring to.

14 MS. BELL: I assume the Board
15 would like me to answer. No.

16 CHAIRPERSON LOUD: Okay.

17 MS. BELL: As I said, there are no
18 other documents.

19 CHAIRPERSON LOUD: Do you then
20 have any objection to our waiving our rules to
21 allow this in? I believe it's three days
22 late. Is there any prejudice to the party

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1 status party to allow this in the record?

2 MR. RIES: It is peculiar to me,
3 Mr. Chairman, that the most recent documents
4 that I've received show a date at the bottom
5 in very small letters of May the 8th, 2009.
6 And so why this could not be served promptly
7 on the due date of June the 2nd I don't think
8 it's been adequately explained. But I think
9 I will forego that.

10 CHAIRPERSON LOUD: Okay.

11 MR. RIES: Because even though
12 counsel objected to my being a party in the
13 first hearing rather vigorously, I'm willing
14 to be a little more lenient about these
15 things. So the answer to your question is no
16 objection.

17 CHAIRPERSON LOUD: Thank you, Mr.
18 Ries. We appreciate that. So we'll waive
19 these in under authority of our Section
20 3100.5.

21 And we'll begin with your case --
22 tell me your name, again. Ms. Bell?

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1 MS. BELL: Yes.

2 CHAIRPERSON LOUD: Okay. Ms.
3 Bell. But before we do that, we wanted to
4 clarify, again sort of a housekeeping-type
5 matter, that the posted relief was for
6 variances, both area variance and use
7 variance.

8 MS. BELL: Well, actually that's
9 where we sort of take issue. We understand
10 the Zoning Administrator as well as the Office
11 of Planning has determined that there is a use
12 variance. It's our argument that it's really
13 a area variance.

14 To the extent that we took a look
15 at some of the Board's prior decisions, in
16 particular the two-story garage that the Board
17 took a look at in March. It appeared that
18 with regard to the 15-foot variance you used
19 the area variance test. And then with regard
20 to the use of the second story you used the
21 use variance. So we would obviously argue the
22 lower standard, which would be the area

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1 variance, the practical difficulty standard.
2 And we're prepared, if the Board would like,
3 to provide some case law on that point.

4 CHAIRPERSON LOUD: Would one of
5 those cases be Opper-Weiner?

6 MS. BELL: Yes. Yes.

7 CHAIRPERSON LOUD: Well, I think
8 what you said was what -- the Board had sort
9 of reached the same conclusion. I was getting
10 ready to say that.

11 MS. BELL: Okay.

12 CHAIRPERSON LOUD: That we think
13 that the use variance is not required because
14 the property is in the R-2. And under Section
15 2300.4 that variance would not be required for
16 the arts alley use in the R-2. We do believe
17 though that the area variance is still needed,
18 so this is by way of just sort of framing the
19 context for the proof that will be necessary
20 during the hearing.

21 Is there anything you wanted to
22 add to that, Mr. Dettman, or Board Members?

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1 Okay.

2 MS. BELL: Thank you. I
3 appreciate that.

4 VICE-CHAIRPERSON DETTMAN:
5 Actually just one point, Mr. Chairman. I
6 think what you said is exactly the way we need
7 to look at this. But just to clarify, because
8 also there was mention of in DCOP's report, in
9 Exhibit 29, that OP believes that a use
10 variance from 300.3 is necessary stating it
11 might be appropriate since a dance studio,
12 artist studio is not listed within the
13 permitted uses in the R-2. However, if we
14 look to 204.1 which lists the accessory
15 buildings and uses allowed in the R-1, which
16 carry over to the R-2, it eventually gets you
17 to Chapter 23.

18 MS. BELL: Which gets us to the
19 artist studio. Okay.

20 VICE-CHAIRPERSON DETTMAN: And
21 artist studio is allowed in an accessory
22 building and a resident's district. It

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1 doesn't limit it to any resident. So just
2 thought I'd clarify that.

3 MS. BELL: Thank you.

4 CHAIRPERSON LOUD: Okay. Are we
5 ready to move forward?

6 MS. BELL: I think we're having a
7 technical difficulty.

8 CHAIRPERSON LOUD: Okay. All
9 right. Do you think we need a break for five
10 minutes or so?

11 MS. BELL: Yes, could we get just
12 five minutes, please?

13 CHAIRPERSON LOUD: Okay.

14 MS. BELL: Thank you.

15 CHAIRPERSON LOUD: So we'll break
16 for five minutes and then we'll come back.
17 Okay.

18 (Whereupon, at 2:11 p.m. off the
19 record until 2:22 p.m.)

20 CHAIRPERSON LOUD: We're back in
21 session for the afternoon calendar and Ms.
22 Bailey had already called Case No. 17893.

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1 MS. BELL: Yes, Mr. Chair.
2 Unfortunately, they have explained to me that
3 it does not work, that they have a problem
4 with projection. So I have provided copies of
5 the slide presentation in the handout which is
6 marked as scenes from the project site, along
7 with the case. You should have a copy and
8 actually as the Chair you should probably have
9 a color copies of the photos, but if I can
10 just speak briefly to what the proposed
11 project is and the site.

12 As Mr. Seleme indicated, he live
13 at 3838 Legation Street, N.W. between 38th
14 Street and Connecticut Avenue.

15 MR. RIES: Sorry. You said 3838.

16 MR. SELEME: 3830.

17 MS. BELL: Yes, I'm sorry.

18 MR. RIES: I thought you said
19 3838. I'm sorry. Go ahead.

20 MS. BELL: Thank you, Mr. Ries.

21 As I said, between 38th Street and
22 Connecticut. The back of his home shares a --

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1 MR. RIES: I really hate to that,
2 but there's so much that's going to go into
3 the record that's -- he is not between 30th
4 Street, unless I'm just -- unless my left ear
5 is bad.

6 VICE-CHAIRPERSON DETTMAN: Let me
7 suggest this --

8 MR. RIES: It's between 39th
9 Street and Connecticut Avenue.

10 CHAIRPERSON LOUD: Mr. Ries, let
11 me suggest this, because there may be a lot of
12 things that you disagree with that are going
13 to be said. You'll have an opportunity to
14 tease it out and correct it on either cross
15 examination or in your case. And there are
16 minor things like that, it's best to hold off
17 and just make the correction when you get to
18 your case. Then we'll have a more complete
19 record. But it probably will slow things down
20 to after every misstatement or perceived
21 misstatement to make the correction.

22 MR. RIES: All right, Mr.

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1 Chairman. Thank you.

2 CHAIRPERSON LOUD: Thank you.

3 MS. BELL: He shares an alley with
4 homes that are on Military Road, homes that
5 face Military Road, in which the back of their
6 units face on an alley that runs the entire
7 length of the block, in essence. Mr. Seleme
8 has been, and his family has been at the
9 property for more than 50 years. And actually
10 at the time they purchased the property there
11 were no adjoining lots to it. There are now.

12 He had a single detached one-story
13 gabled-roof garage at the time the property
14 was improved at the time of purchase. Through
15 a storm and some inclement weather, that
16 garage was destroyed and then ultimately he
17 had just the footprint to that garage. He
18 experienced a lot of debris and a lot of soil
19 running down from the alley into his backyard.

20 His particular lot has a unique
21 circumstance. The topography creates what is
22 essentially a bowl shape, a well in some cases

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1 as low as four feet, that prevents him from
2 using that part of the backyard. He also has
3 two very large sort of drainage plantered
4 circles that are about four-and-a-half feet
5 wide. We'll show you photos of those so you
6 can take a look at his backyard. As a result
7 of that, it is not only not level, but it
8 creates a lot of problems during, as I said,
9 the winter months and rain. He experiences a
10 lot of debris and sludge flowing back into the
11 middle of the backyard.

12 As a result, he decided to rebuild
13 the garage. As I said, the garage was taken
14 out during the storm by -- one of the trees
15 from one of the neighbor's fell over and
16 destroyed the yard. He replaced or he got a
17 permit, he hired a contractor to obtain a
18 permit to rebuild the garage and what is
19 ostensibly the same footprint of the existing
20 garage.

21 If I can draw your attention to
22 the plans that were attached to your packet,

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1 you can see on A1 a photo, or a drawing
2 actually of what the existing garage had
3 looked like.

4 MR. RIES: This is -- excuse me.
5 The existing garage --

6 CHAIRPERSON LOUD: Mr. Ries? Mr.
7 Ries?

8 MR. RIES: Oh.

9 CHAIRPERSON LOUD: There's a
10 certain --

11 MR. RIES: No, I'm sorry.

12 CHAIRPERSON LOUD: -- decorum and
13 order --

14 MR. RIES: I'm sorry.

15 CHAIRPERSON LOUD: -- that she's
16 going to have to accord you as a party --

17 MR. RIES: Yes.

18 CHAIRPERSON LOUD: -- and I'm
19 really encouraging you to accord her. She's
20 actually the attorney for the applicant.
21 She's making her opening applicant's
22 statement. And so she wouldn't even really be

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1 open to cross examination. She's stating her
2 case and laying it out, and what her evidence
3 will show. And it's not routine to have
4 interruptions during that part of the case.
5 But you can always take notes and then what
6 you find fault with, you could really
7 obliterate in your direct case or as you cross
8 examine her witnesses, etcetera. But again,
9 it's protocol to allow that entire statement
10 to just come out, for whatever it's worth.

11 MR. RIES: I understand, Mr.
12 Chairman. I was just hoping to expedite the
13 matter so that we don't have to go back to it
14 and instead could correct it on the spot. I
15 will not do that anymore.

16 CHAIRPERSON LOUD: Thank you, Mr.
17 Ries.

18 MS. BELL: As I --

19 CHAIRPERSON LOUD: Sorry, you're
20 going to need a microphone.

21 COMMISSIONER TURNBULL: I think I
22 pointed out from the charts that you have, the

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1 site plans that you have available that the
2 existing garage looked something to what you
3 see here in A1, as well as the footers. And
4 one reason why this is particular important is
5 because there is a lot of evidence in this
6 case with regard to the height. We asked for
7 a variance as to the 15-foot height
8 requirement. But also we wanted to point out
9 that even with a one-story gabled-roof garage
10 and particularly in this alley that many of
11 them already exceed the 15-foot height
12 limitation. So even in this case, which Mr.
13 Seleme has as a matter of right the one-story
14 gabled garage, he would probably most likely
15 be seeking a variance with regard to the
16 height.

17 I don't know how Vanna White does
18 this. Okay. I want to point out to you also
19 in your packet, if you want to take a look at
20 some of the photos, to bear out the point that
21 I was trying to illustrate; thank you, Mr.
22 Seleme, with regard to the height requirement

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1 of the gabled roof. As you can see, No. 1 is
2 a gabled roof that already exists in the
3 garage area of that particular alley.

4 Mr. Seleme received a permit, or
5 actually his contractor received a permit from
6 DCRA. And unbeknownst to Mr. Seleme, he
7 received a permit to build a one-story,
8 whereas Mr. Seleme was under the impression
9 that he would have the two-story. So
10 initially the permit was received,
11 construction began. It was posted and after
12 the few days of construction, DCRA came and
13 issued a stop work order because it was a two-
14 story garage. As a result of that, Mr. Seleme
15 contacted DCRA and the Zoning Administrator's
16 office when he discovered that he did not have
17 the right as a matter of right to build a two-
18 story garage which prompted him to file the
19 application with the Board, which brought us
20 here today.

21 As a result of that, the plans
22 that he provided initially in the packet were

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1 the plans that the contractor put together.
2 The contractor really did not consult with Mr.
3 Seleme and he was not very savvy as to the
4 construction rules or permit rules, although
5 he understands that as the homeowner he is
6 ultimately responsible for the permit.

7 So as a result, when he obtained
8 legal counsel, what we did is we redrafted the
9 plans. There is a two-story structure on the
10 site right now. It is not complete. It is
11 the height and dimensions that are indicated
12 in the second set, the set of site plans that
13 we've provided with this packet, not in the
14 earlier packet that he provided initially.
15 DCRA has not had an opportunity to review or
16 the Zoning Administrator has not had an
17 opportunity to review any of the site plans,
18 the new ones. The ANC, as well as the Office
19 of Planning, provided their report contingent
20 on the older packet and what they understood
21 the project to be. I point that out because
22 there are a number of facts that are both

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1 contained in the ANC report and contained in
2 the OP report that are not entirely accurate.

3 If you can take a look at A1, it
4 shows what the site plan is for the garage as
5 it stands, as well as A2, which is essentially
6 what the garage looks like if it were
7 completed. Right now it does not have a door
8 and there is some other work that needs to be
9 completed, but it is two stories right now.
10 And it stands at the height, as I said, that's
11 been indicated by the second architect.

12 Now, one of the things that I
13 wanted to mention to the Board and discuss
14 with the Board is this issue of the
15 topography. If you take a look at the
16 elevation changes that are evident on A3,
17 they'll give you some idea of what we're
18 referring to. As I said, he has a bowl-shaped
19 backyard. And as a result of the bowl-shaped
20 backyard, he not able to use that surface.
21 It's neither flat nor long enough or large
22 enough of a flat surface for him to have any

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1 recreational or professional use for it.

2 As a result, he seeks the variance
3 for the second story to use as a dance studio.
4 The dance studio he intends to have one-on-one
5 tutorials. It will not have a bathroom or
6 just limited on electricity. It actually has
7 no electricity right now, but he would like to
8 have electricity in that particular, both
9 upstairs and downstairs so that he can use the
10 garage door closer. Right now he has no
11 ability to close the garage door. But the
12 purpose of that for the second story would be
13 to have light.

14 Now the issue about whether or not
15 the proposed use would be consistent with the
16 character and integrity of the neighborhood,
17 we have provided some photos which I would
18 like Mr. Seleme to speak to to explain what
19 the character looks like. Also, we have an
20 artist's rendition, which is on C2 of your
21 plans, to take a look at how the proposed
22 project as it stands right now fits into the

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1 neighborhood.

2 I have a few comments with regard
3 to the Office of Planning report, but I'd like
4 Mr. Seleme first to talk about the
5 neighborhood character and the use of other
6 garage space in the alley.

7 MR. SELEME: Yes, originally, like
8 she said, my house my built back in 1950 and
9 there were no adjacent lots built in those
10 days, and there was just a lagoon on both
11 sides of my house. And the garage was already
12 there when -- when we bought the house. And
13 many years later the -- the two houses that
14 are next to me now, they were built. And one
15 -- one day a storm came and destroyed my -- my
16 garage completely. And ever since then the
17 water has been pouring through my backyard,
18 flooding my basement, flooding my neighbor's
19 basement, too. And on account of that I was
20 forced to build -- rebuild the garage where it
21 was originally. And my idea was to build a
22 garage with a second story so I can utilize it

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1 as -- as a dance space.

2 And that was what I originally
3 told the constructor. He told me there would
4 be no problem because he knew everybody in the
5 District. And I said, "Well, if you can get
6 me a permit to build what I want," and he
7 said, "No, no. No problem at all. I'll get
8 it." So I trusted him. And sure enough, he
9 -- he got the permit and he started building
10 it. Then about a week or so later, my
11 neighbor complained saying that the house was
12 being -- I mean, the garage was being built
13 not according to plan because the -- the
14 constructor evidently just to get his money,
15 he had put in a permit with a gabled roof, but
16 he was building according to the way I wanted
17 with a second story. So basically, that's
18 where the problem was.

19 And whether it's a gabled roof or
20 whether it's the way it stands now, it's going
21 to be the same height. So one of my problems
22 that I have now is that I cannot communicate

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1 with my neighbors because they're all
2 belligerent. I -- I told my neighbor about a
3 year before I was going to build the garage,
4 and he knew about my plans, that I was
5 planning on building the garage. And I told
6 him also about six months before the garage
7 was being built and no problem.

8 But then when I start building, he
9 started complaining that we're cutting his
10 trees. He's more -- he's more concerned about
11 his trees, which he grows very abusively. He
12 grows his trees 50 yards into my -- in my
13 house. I cannot even see my garage from my
14 house. I have pictures here to show you that
15 the garage is built, but I cannot see my
16 garage because of his trees. And I have never
17 complain about, because I just want to be a
18 good neighbor. He has his fence built in
19 about a foot into my property, which I haven't
20 complain either. I try to be a good neighbor.
21 My neighbor that is complaining I'm blocking
22 her French windows. She says I'm blocking her

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1 view, but yet she has a jungle between her
2 house and my garage. You cannot see anything.
3 I have pictures here to show you. I can't
4 even open the door in my garage. I got his
5 trees coming into my garage. So the whole
6 garage is -- it's -- it's being destroyed by
7 his trees.

8 And all I wanted to do was build a
9 -- a second story so I can be able to practice
10 my dancing. I'm a professional dance
11 instructor. That's all I wanted to do. I
12 didn't want to commit any crime,
13 unfortunately. That's all I have to say.

14 MS. BELL: As we mentioned
15 earlier, we think the area variance test
16 obviously is practical difficulties. Mr.
17 Seleme is arguing that the practical
18 difficulties as to why use of the second story
19 as a dance studio is appropriate in an R-2
20 Zone would be based on the fact that his
21 topography makes it very difficult for him to
22 use his backyard for a

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1 recreational/professional use in light of the
2 unique nature of it. Because of the elevation
3 changes and the drainages, that there would be
4 great expense to him to have that graded out,
5 not to mention it's not clear whether there is
6 enough space between the home and the garage
7 to grade out in the sloping manner that's
8 consistent with the BOCA Code.

9 Now he has consulted with the
10 contractor. We can provide some information,
11 if the Board would like, with regard to this
12 issue of the escalating sloping pursuant to
13 the BOCA Code. Because as you know, there's
14 a one to 12 percent that's required with
15 regard to beyond grade sloping.

16 CHAIRPERSON LOUD: Are you ready
17 to entertain questions, if there are any
18 questions?

19 MS. BELL: Oh, yes. I'm sorry.

20 CHAIRPERSON LOUD: Okay. Let me
21 see if Board Members have any questions first
22 and then we'll turn to Mr. Ries.

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1 COMMISSIONER TURNBULL: I have one
2 question. In the Office of Planning's report
3 as far as looking at the history of the
4 project that the permit was issued on
5 September 27th, 2007? And DCRA came out not
6 even a month later and found that it had
7 changed to a two-story structure?

8 MS. BELL: Yes, as I said, that
9 goes back to Mr. Seleme's presentation. He
10 had hired the contractor -- in his mind, he
11 had hired a contractor to put up a two-story
12 building. What the contractor did obviously
13 was to get only a permit for a one-story
14 garage, because that Mr. Seleme could have as
15 a matter of right. So when DCRA came out and
16 observed the site, at that time Mr. Seleme was
17 not aware that he had done anything that
18 violated the Zoning regs.

19 COMMISSIONER TURNBULL: Well, then
20 were there two sets of plans? One plan that
21 showed DCRA a gabled roof and then another
22 plan which he was really building from?

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1 MS. BELL: No. Well, yes,
2 probably in essence. But Mr. Seleme had no
3 idea. What was provided to DCRA was provided
4 by his contractor. It was not provided to
5 him, and he didn't review that packet.

6 COMMISSIONER TURNBULL: So there
7 was no gable roof? Mr. Seleme did not stop
8 the contractor and tell him it had to be two
9 stories?

10 MS. BELL: No.

11 COMMISSIONER TURNBULL: So he was
12 building a two-story garage --

13 MS. BELL: From the beginning.

14 COMMISSIONER TURNBULL: -- from
15 the beginning?

16 MS. BELL: Yes.

17 COMMISSIONER TURNBULL: Okay.

18 Thank you.

19 VICE-CHAIRPERSON DETTMAN: And,
20 Ms. Bell, you don't know for sure if the
21 earlier plans that you provided the Board were
22 actually the plans that went to DCRA?

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1 MS. BELL: Well, yes, we didn't
2 provide them and Mr. Seleme can testify
3 obviously because he's the fact witness, but
4 the plans that he provided to -- or the plans
5 that his contractor provided to DCRA are plans
6 that we provided to the Board. The plans that
7 we are providing, as the lawyers, are the
8 plans that you're looking to today.

9 VICE-CHAIRPERSON DETTMAN: Okay.
10 So the earlier plans that we received, which
11 is our Exhibit 9, which show a 15-foot high
12 two-story garage with a flat roof, are these
13 the ones that went to DCRA?

14 MS. BELL: Are we talking about
15 the plans that I provided in June?

16 VICE-CHAIRPERSON DETTMAN: Yes.

17 MS. BELL: No. Nothing has gone
18 to DCRA.

19 VICE-CHAIRPERSON DETTMAN: Okay.

20 MS. BELL: Because when we came
21 into the case the Zoning Administrator had
22 already issued a determination letter

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1 indicating that he needed to seek approval
2 from the BZA.

3 VICE-CHAIRPERSON DETTMAN: Okay.
4 Okay.

5 MS. MONROE: Exhibit 9 was from
6 September, not June. Mr. Dettman, you're
7 talking about Exhibit 9? That wasn't the
8 plans from June. That was stamped September
9 in the Office of Zoning. So these are the
10 earlier plans, if you want to refer to them
11 that way.

12 COMMISSIONER TURNBULL: How long
13 had the old garage been down? When did the
14 old garage get destroyed?

15 MR. SELEME: The old garage was
16 destroyed probably about 12-15 years ago.

17 COMMISSIONER TURNBULL: Twelve-
18 fifteen years ago?

19 MR. SELEME: There was a -- a -- a
20 hurricane that came through D.C. and it
21 destroyed a lot of houses, and one was my
22 garage.

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1 COMMISSIONER TURNBULL: And so the
2 only thing left was the slab?

3 MR. SELEME: Yes, and the slab was
4 being destroyed. The water was going
5 underneath and causing a lot of holes and
6 eventually it was disintegrating completely
7 and I had no place to park. It was just a lot
8 of holes.

9 COMMISSIONER TURNBULL: Okay.
10 Thank you.

11 MR. SELEME: You're welcome.

12 CHAIRPERSON LOUD: Thank you Mr.
13 Turnbull and Mr. Dettman.

14 If there are no further questions,
15 Mr. Ries, do you have any cross examination?

16 And, Ms. Monroe, just clarify for
17 me for a moment, the parties cannot cross the
18 lawyer, right?

19 MS. MONROE: Right. That's
20 usually correct, because usually the lawyer
21 isn't testifying to facts, only argument.

22 CHAIRPERSON LOUD: Okay.

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1 MS. MONROE: And just questions
2 about that.

3 CHAIRPERSON LOUD: Okay. Thank
4 you.

5 So, Mr. Ries, in terms of the
6 cross, it would be directed to testimony of
7 Mr. Seleme. And of course then facts or
8 arguments that bolster your case, you'd want
9 to wait until we're in your case and you can
10 present those directly as opposed to through
11 cross examination.

12 MR. RIES: All right, Mr.
13 Chairman.

14 I think you've got to cut on the
15 microphone.

16 MR. RIES: Yes, I do. All right.
17 Thank you, Mr. Chairman.

18 First, may I just address the
19 Board for one question? And that is a
20 reference to a case called Opper-Weiner. I'm
21 not familiar with that case. Could I be
22 educated about that? Or do you have a

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1 citation or something?

2 CHAIRPERSON LOUD: I know we have
3 the citation up here, because I saw it a
4 little earlier. But I think we were speaking
5 about the case in the context of clarifying
6 that a use -- the case is application No.
7 17897 of Ellen Opper-Weiner, and it was
8 decided on March 17th, 2009. And we were
9 speaking about it in the context of
10 establishing at the outset that the test for
11 today's case would be an area variance test
12 and not a use variance test in that the artist
13 studio use in the alley is a use that is
14 permitted as a matter of right in the R-2. I
15 think there was some question about it being
16 permitted as a matter of right in the R-1, but
17 since this is the R-2, it's permitted as a
18 matter of right. And so although the case was
19 advertised I think as a use variance, that
20 that would not be the standard that we would
21 be looking for the applicant to meet today.

22 MR. RIES: I see. All right.

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1 Thank you.

2 Again, Mr. Chairman, I would like
3 to ask questions that were not really touched
4 on by Mr. Seleme, but were nonetheless stated
5 as facts, such as a reference to drainage
6 planter circles. He didn't talk about it, but
7 it was stated as a fact. And so how do I
8 address that, if I may ask?

9 CHAIRPERSON LOUD: You mean they
10 were stated factually by his counsel?

11 MR. RIES: Yes, that's right.

12 CHAIRPERSON LOUD: Yes, that is a
13 good question. I was listening to her as well
14 in terms of crossing that line between
15 statement of her case, what she was going to
16 prove versus calling the witnesses up that
17 would actually prove the different things
18 being said.

19 Counsel, you want to respond?

20 MS. BELL: Yes, it's one of the
21 exhibits that shows the backyard, but Mr.
22 Seleme can certainly describe his backyard for

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1 the Board.

2 MR. SELEME: So, what do you want
3 me to talk about?

4 MS. BELL: You need to describe
5 it.

6 MR. SELEME: Okay. There's two
7 wells in the backyard. They're in the
8 photograph as seen here. And that -- that
9 shows the -- the slope that is in the
10 backyard. It's a tremendous deep hole from
11 the back of the garage. Do you need the
12 picture?

13 MS. MONROE: What picture are you
14 looking at? Can you -- so at least the
15 opposite party knows and --

16 MR. SELEME: He got a copy, but
17 it's in black and white.

18 MS. MONROE: Is there a number, an
19 exhibit number or anything on it at all?

20 MR. SELEME: Yes, it's -- it's --
21 it's one of those pictures.

22 MS. MONROE: Oh, no, not me.

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1 MR. SELEME: Okay. But he's
2 looking at the picture. It's in black and
3 white.

4 MR. RIES: Again, Mr. Chairman, if
5 I may, I don't want to tax your patience, but
6 there have been references here to exhibit
7 numbers and we don't have a packet of exhibits
8 with numbers on them. How do we get those?

9 MR. SELEME: That's No. 13, right
10 there. You're looking at it.

11 MR. RIES: No. Yes, but I --

12 CHAIRPERSON LOUD: Yes.

13 MR. RIES: All I have is this
14 document. It has no exhibit number on it or
15 sub-exhibit numbers. Can I ask what these --
16 like I think Mr. Dettman referred to an
17 Exhibit 9. I don't know what that is.

18 MS. BAILEY: Mr. Chairman, we can
19 give that document an exhibit number. It's
20 the handout from Ms. Bell this afternoon. We
21 can give it Exhibit 30. That's Exhibit 30.
22 And I think the applicant referred to page 13

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1 of that exhibit.

2 CHAIRPERSON LOUD: When the party
3 is served, there's no exhibit number on the
4 service, is there? I think I understand what
5 he's saying.

6 MS. MONROE: No.

7 CHAIRPERSON LOUD: So they're
8 numbered after they're received.

9 MS. MONROE: The exhibit numbers
10 are in the Office of Zoning file.

11 CHAIRPERSON LOUD: Right.

12 MS. MONROE: You don't get it in
13 the service. You would have to come in and
14 look at the official file and then all the
15 exhibits are in order. And as we receive
16 things, we put exhibit numbers on them, which
17 is why Ms. Bailey says she can now put an
18 exhibit number on this one, because we got it
19 today.

20 MR. RIES: Right.

21 MS. MONROE: So it's the latest
22 exhibit, so it's No. 30. That's the only

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1 reason. I was just trying to clear up what
2 pictures they were looking at, because you
3 have to know what pictures he's looking at in
4 order to ask him questions from it. That's
5 the only reason I was --

6 MR. RIES: Well, that's true. But
7 it would be helpful at this point if I knew
8 that there were 30 exhibits. Is it 30, Ms.
9 Bailey?

10 MS. MONROE: You have to come to
11 the Office of Zoning and look at the file.

12 MS. BAILEY: Yes, sir. This will
13 make the number 30. There were 29 and the
14 exhibit from today will make it 30. Thirty
15 exhibits in our file.

16 MR. RIES: So I really don't know
17 what -- okay.

18 CHAIRPERSON LOUD: Well, a couple
19 of thoughts on that. There was an opportunity
20 for both the parties to come in and review the
21 file just to make sure that you had everything
22 before the hearing. But I understand your

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1 concern about these things are not numbered
2 until after you've already gotten service. So
3 you when a specific number is referenced, you
4 can't correlate that number to a document. So
5 I think to help things out, if we reference an
6 exhibit number today, let's go ahead and just
7 give the date of the document as well so that
8 you can look at it in your file.

9 As a party, you should have all of
10 these things anyway. You should have thirty-
11 plus documents. You just don't have numbers
12 on yours. So you should have a full record
13 because you've been served as a party. But
14 we'll try to help out by being really specific
15 on a case-by-case basis when a document is
16 referenced. I don't think we have to go
17 global and try to identify all 30 exhibits if
18 you don't have a specific question about a
19 specific exhibit.

20 MR. RIES: Well, excuse me. It's
21 just that there may be exhibits that no
22 question will be raised about and I won't even

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1 know that it's in the file. And when this
2 hearing closes, I may go and make a copy of
3 it, but I won't have had a chance to raise
4 questions about that exhibit.

5 CHAIRPERSON LOUD: Have you been
6 served throughout the course of the case?

7 MR. RIES: As far as I know.

8 CHAIRPERSON LOUD: Okay.

9 MR. RIES: We have received the
10 motion for prehearing statement and the motion
11 to grant and extension of the prehearing
12 statement, and then these documents with the
13 site drawings, and then a lot of pictures.

14 MS. BELL: If I can interject
15 here, actually as counsel to Mr. Seleme we've
16 only filed the application packet which you
17 have here, as well as the photos that we
18 intended to use as the PowerPoint
19 presentation. All of the other documents were
20 in the file and I believe Mr. Ries has had an
21 opportunity to look at it certainly. Since
22 I've reviewed the file, he has provided

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1 information and statements that are in the
2 file. So I think the Board can feel fairly
3 confident that he's had an opportunity to at
4 least have all the information that we
5 provided.

6 CHAIRPERSON LOUD: I'm inclined to
7 agree with Ms. Bell. I think that as a party
8 you should have been served with all of the
9 documents and obviously you had a chance to
10 review those that you have. And so you may
11 have some questions about those that you've
12 already reviewed. If there's a document that
13 we're discussing today that you don't have,
14 then we'll make it a point to make sure that
15 you get the exhibit number and get the date of
16 that document. And then what I hear you
17 saying is that there's this outside
18 possibility that you don't have a document, it
19 won't be discussed today and it will somehow
20 form the basis of a decision that we
21 ultimately render. You'll be deprived of an
22 opportunity to cross examine or speak to it.

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1 And that's not going to happen. The evidence
2 that we're looking at is based on what's in
3 the exhibit file, and you certainly have had
4 an opportunity to come down and take a look at
5 that. And if anything knew comes in here
6 today, you'll be with us as it comes in so
7 you'll be privy to that. I don't think that
8 there are any third category of documents that
9 would be decisive in a decision that are not
10 discussed here today or part of our record
11 already.

12 But again, that's why I'm saying,
13 instead of going global with, you know, I've
14 got see everything in the record, if there is
15 something specific that you hear being talked
16 about that's just not clear as to whether
17 you've ever seen it before today, we'll
18 indicate the date of it so that you can be
19 clear to pull from your file what we're
20 talking about.

21 MR. RIES: All right, Mr.
22 Chairman. Thank you very much.

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1 Now I have a question about one of
2 the exhibits. That would be the one that I
3 have marked -- the floor plans that I have
4 marked as A1 on the plan itself, but I don't
5 have an exhibit number for that. And -- do
6 you have that?

7 MR. SELEME: It's the same one
8 you're looking at.

9 MR. RIES: No, I'm not asking.
10 I'm just identifying for the record what I am
11 looking at and I'm just asking counsel if she
12 understands what I'm -- that would be your
13 plans.

14 MS. BELL: Yes, Mr. Ries, Mr.
15 Seleme has a copy of it in front of him.

16 MR. RIES: All right. Well, I'll
17 ask him then.

18 Where it says existing garage, and
19 then it shows where the roof is, is it my
20 understanding that this is supposed to be a
21 picture of the existing roof on an existing
22 garage? The first diagram on the floor plans

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1 exhibit.

2 Is it a question that I can ask to
3 somebody? I need clarification.

4 CHAIRPERSON LOUD: I think that's
5 a fair question. He's looking at the plans
6 that were -- this was part of what was
7 submitted by current counsel. And I think
8 you've given it to your client, correct?

9 MS. BELL: Yes.

10 CHAIRPERSON LOUD: Okay.

11 MS. BELL: Yes.

12 CHAIRPERSON LOUD: So if you can
13 answer the question, Mr. Seleme, the question
14 is presented to you.

15 And, Mr. Ries, maybe you'll repeat
16 the question for him again. If he has an
17 answer, he's obligated to answer. If he
18 doesn't have an answer, he can so state and
19 you can move onto the next question.

20 MR. RIES: Do you need the
21 question?

22 MR. SELEME: What's the question

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1 again?

2 MR. RIES: The question is, it
3 says existing garage. Does this diagram
4 purport to show the roof line on the existing
5 garage? And if not, why it is called existing
6 garage?

7 MR. SELEME: That's the way it was
8 originally described by the architect. But
9 it's showing on the second side of the page,
10 it's -- it's showing you the way it is now,
11 the second floor and the first floor.

12 MR. RIES: But this does not show
13 us what the existing garage -- the garage in
14 place does not look like that, does it?

15 MR. SELEME: No, it -- it -- it's
16 -- it's showing you the way it looks on the
17 second part of the diagram. It's showing you
18 the studio and the third car garage picture
19 right there.

20 MR. RIES: No, but this is a side
21 picture of the building. The building does
22 not look like that. If I stand in front of

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1 that building, it doesn't look like that at
2 the top there, does it? Do you have an answer
3 to that?

4 VICE-CHAIRPERSON DETTMAN: Excuse
5 me.

6 MR. SELEME: Right here --

7 VICE-CHAIRPERSON DETTMAN: Excuse
8 me. I think what Mr. Ries is wondering is
9 this diagram here that's labeled "existing
10 garage," is this intended to show what it
11 currently exists today, or what used to exist
12 in the past?

13 MR. SELEME: That's the way it
14 used to be.

15 VICE-CHAIRPERSON DETTMAN: Okay.

16 MR. SELEME: Yes.

17 VICE-CHAIRPERSON DETTMAN: And the
18 second page is intended to show what currently
19 exists today?

20 MR. SELEME: Yes.

21 VICE-CHAIRPERSON DETTMAN: Okay.

22 MR. RIES: Well, if this was what

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1 used to be --

2 MS. BELL: If it's helpful, I can
3 show it on the -- as opposed to the --

4 MR. RIES: No, I just got one more
5 question to that. If this is what it used to
6 be, was it also a sixteen-foot-sixteen-inch
7 garage?

8 MR. SELEME: Yes, that's what it
9 shows there.

10 MR. RIES: Is that true? The
11 garage that was destroyed was a sixteen-foot-
12 six-inch garage?

13 MR. SELEME: Yes.

14 MR. RIES: Okay. So it was
15 actually as tall as the existing garage, the
16 old garage?

17 MR. SELEME: Yes.

18 MR. RIES: The one that was
19 destroyed? The two-car garage?

20 MR. SELEME: (No audible
21 response.)

22 MR. RIES: Is that a yes?

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1 MR. SELEME: Yes. Yes.

2 MR. RIES: All right. Now, Mr.
3 Seleme, you testified that Mr. Denson,
4 unbeknownst to you, submitted a fraudulent
5 permit to the building permit people
6 purporting to build only a one-story garage
7 and didn't tell you about that, and he was
8 intending and he had told you that he can
9 build a two-story garage and get away with
10 that?

11 MS. BELL: I'd like to object.
12 I'm a little confused. Who is Mr. Denson?

13 MR. SELEME: That was the original
14 contractor.

15 MR. RIES: That was the contractor
16 who built this two-story garage.

17 MS. BELL: We didn't provide any
18 information into the record as to the original
19 contractor, his name or anything else. So I'm
20 a little confused. What I would like to ask,
21 if you could limit your questions to the cross
22 examination of Mr. Seleme's original

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1 testimony.

2 CHAIRPERSON LOUD: Let me weigh
3 in. I think he is doing that. On direct Mr.
4 Seleme testified to I guess a contractor that
5 told him that he was good at getting permits
6 basically and that he'd be able to get the
7 permit for him at DCRA. And then apparently
8 this contractor did a switch and bait; those
9 are my words, not the witness' words, and
10 submitted some plans, got the permit for the
11 plans, but the plans were not for what Mr.
12 Seleme asked the contractor to do. And I
13 think --

14 MS. BELL: That's correct.

15 CHAIRPERSON LOUD: -- Mr. Ries on
16 cross is just -- first he's just confirming
17 that that was the testimony on direct and I
18 think he was going to follow up with a
19 question.

20 MS. BELL: Okay.

21 CHAIRPERSON LOUD: What was the
22 objection, that he used the name of the

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1 contractor?

2 MS. BELL: Well, and the other
3 thing is, at the time, I think Mr. Seleme's
4 point is, he didn't know it was fraudulent
5 until Mr. Ries called DCRA and DCRA showed up.

6 CHAIRPERSON LOUD: All right. I
7 got you. I didn't read Mr. Ries' question to
8 imply that Mr. Seleme knew, but I'm glad that
9 you brought that out so that everyone is clear
10 on that point.

11 Mr. Ries, I think you can
12 continue.

13 MR. RIES: All right. So, Mr.
14 Seleme, you're telling us that Mr. Denson got
15 this one-story permit intending to deceive you
16 by telling you that that was good for a two-
17 story building and you just accepted that? Is
18 that correct?

19 MR. SELEME: He didn't -- he did
20 not tell me anything. I -- I described to him
21 what I wanted. It was a two-story garage.

22 MR. RIES: Okay.

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1 MR. SELEME: And he told me that
2 he was going to get the permit for that. He
3 did get the permit, posted the permit and then
4 the only time I realized that he was building
5 different from what I had told him is when you
6 came and mentioned it to the zoning
7 authorities.

8 MR. RIES: Mr. Denson has now,
9 according to you, defrauded you, hasn't he?
10 He's building a building that --

11 COMMISSIONER TURNBULL: Do you
12 have a question for Mr. Seleme?

13 MR. RIES: Yes, that's a
14 preliminary question.

15 CHAIRPERSON LOUD: Okay.

16 MR. RIES: He has defrauded you,
17 has he not?

18 MR. SELEME: Evidently.

19 MR. RIES: And have you sued Mr.
20 Denson?

21 MR. SELEME: I -- I have even
22 tried to call him. He won't answer the calls.

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1 MR. RIES: Well how do you know he
2 wouldn't answer the call if you haven't tried
3 to call him?

4 MR. SELEME: I have called him.

5 MS. BELL: And I'm going to object
6 to this line of questioning because it really
7 veers off the path of what the variance test
8 us and what we're here to discuss today.

9 CHAIRPERSON LOUD: Yes, I would
10 agree with Ms. Bell that it goes rather far
11 afield in terms of what actions Mr. Seleme
12 took or didn't take with respect to the
13 contractor.

14 MR. RIES: If I may, Mr. Chairman,
15 he made a point of talking about how this
16 contractor, unbeknownst to him, he said, did
17 this thing which he thought that the
18 contractor could do. I have no way of
19 producing Mr. Denson. Mr. Denson is available
20 to testify. At least he was up until March of
21 this year. Because he's continued to do work
22 through DCRA. He gets building permits. But

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1 I am sure I cannot get Mr. Denson into this
2 courtroom. But if Mr. Seleme wants to make a
3 point about being deceived and cheated into
4 building this two-story garage, I think I have
5 a right to get into that somewhat.

6 CHAIRPERSON LOUD: But you asked
7 him did he sue. He said no. And the reason
8 I think I'm agreeing with Ms. Bell is that you
9 want to go further afield and ask him why he
10 didn't sue. You know, you've got it
11 established that the witness claims he was
12 defrauded and it was a pretty major defraud,
13 if it was true, that he didn't take any
14 follow-up action with regard to that, and
15 that's established. But now further questions
16 about why he did or why didn't, I don't think
17 is consistent with what he testified to on
18 direct or what the issues that are relevant in
19 this case. You can certainly make a lot of
20 that when you do your statement, if you want
21 to draw argumentation and inferences from
22 that. But why he did or did not sue, I'm not

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1 certain what that establishes.

2 MR. RIES: Really, I just wanted
3 to establish that he hasn't made an effort to
4 sue Mr. Denson.

5 CHAIRPERSON LOUD: I think he had
6 already --

7 MR. RIES: He said he --

8 CHAIRPERSON LOUD: -- answered
9 that question. But go ahead.

10 MS. BELL: And I would also object
11 to that, because it's really not clear. Not
12 only is not the scope of his testimony, but
13 it's not clear what action he's taken. So
14 just so that the record is clear on that
15 point.

16 MR. RIES: Well, he said he can't
17 get hold of him and he hasn't tried to get
18 hold of him. I mean, that's -- you know, I'm
19 testing his credibility on a point that he
20 made on direct, but I will at this point move
21 on.

22 CHAIRPERSON LOUD: Yes, just move

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1 forward and see if there are other areas of
2 his testimony you want to cross him on.

3 MR. RIES: On what I have marked
4 as the second document supplied to me by Ms.
5 Bell, which the architect labeled A2, have you
6 got that?

7 MR. SELEME: Yes.

8 MR. RIES: Okay. The roof, as
9 designated on these elevations, is a flat
10 roof. And is that what you intend to build if
11 it comes to that? I'm not an expert in
12 reading these plans, but it appears to me to
13 be a flat roof. As I read other parts of your
14 counsel's submission, it appears to me that
15 you intend to build a garage with a gabled
16 roof.

17 MS. BELL: Perhaps I can just
18 reaffirm that the appellant offered -- that A2
19 is how the garage appears today.

20 MR. RIES: Well, so when it says
21 "new roof" at the top of these figures, that
22 doesn't mean that this is going to be the new

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1 roof, is that correct? I mean, why is it
2 called "new roof?"

3 CHAIRPERSON LOUD: Let me back up
4 so I can make sure that I'm following where
5 you are, Mr. Ries.

6 MR. RIES: All right.

7 CHAIRPERSON LOUD: You are on the
8 set of plans that include pages A1, A2, A3,
9 then jumps to C1?

10 MR. RIES: That's correct.

11 CHAIRPERSON LOUD: And you are on
12 which page of that?

13 MR. RIES: On A2.

14 CHAIRPERSON LOUD: On A2? And
15 where does it say "new?"

16 MR. RIES: At the top above each
17 roof line.

18 CHAIRPERSON LOUD: Got you. Okay.

19 MR. RIES: It says "new roof."

20 CHAIRPERSON LOUD: All right. I
21 got you. Okay.

22 And I think the question for the

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1 witness was whether they're intending to build
2 this? Is that the question?

3 MR. RIES: Yes. I mean, if that
4 is to be the roof that's going to be built, it
5 will look the same as the present roof, as I
6 would logically infer.

7 VICE-CHAIRPERSON DETTMAN: Mr.
8 Ries, unless I am incorrect, and the applicant
9 can correct me, I don't think any new
10 construction is being contemplated here except
11 for maybe finishing out what was intended,
12 maybe electrical or something like that. But
13 I think the way the Board's approaching this
14 is kind of in our minds is to think that maybe
15 nothing's been constructed yet and we're
16 looking at this for the first time. But in
17 actuality, it's been constructed. And I don't
18 think any new construction is being
19 contemplated going forward.

20 MR. RIES: Well, I'm looking at
21 page 3, Mr. Dettman, of the submission, the
22 prehearing statement of the applicant. And if

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1 you can get to that, at the end of the last
2 sentence of the first full paragraph, the last
3 couple of sentences states -- do you have
4 that? It says, "The use for which applicant
5 seeks is the addition of a second-story garage
6 for an artist studio instead of domestic
7 residence as required under Section 2500.5.
8 The exception for the height of garage (from
9 Section 2500.4), applicant notes, would be
10 required for a one-story gabled-roof which is
11 permissible as a matter of right."

12 Now, I find that all these
13 submissions are a little vague and amorphous,
14 but that seems to say to me that there's an
15 intention to build a gabled roof. Do you
16 disagree?

17 VICE-CHAIRPERSON DETTMAN: No, I
18 think what -- and the applicant made this
19 point while referring to the diagrams, the
20 larger diagrams that are hanging before us
21 now. I think their point was that even if the
22 applicant came in to construct a one-story

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1 gabled-roof garage, they would be required to
2 get a variance from the 15-foot height
3 limitation, which the Board can agree or
4 disagree on. I mean, what the reg says is
5 that you cannot exceed one story or 15-feet.
6 So you need to be in compliance with both.

7 MR. RIES: Yes, I understand that.
8 But the fact that there's a reference here to
9 a gabled roof which is permissible as a matter
10 of right suggested to me that they were
11 intending to build a gabled roof.

12 VICE-CHAIRPERSON DETTMAN: No, I
13 think their point was is that even if you did
14 a gabled roof, you'd still need relief. So it
15 was a point that they were making.

16 MR. RIES: Yes. Okay. I'm glad
17 you clarified that because it wasn't clear to
18 me what all these pictures were about, except,
19 you know, they seemed to me to just replicate
20 what's already there.

21 So my question, Mr. Seleme, is
22 what is going to be the difference in what you

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1 build or change with the two-story garage from
2 the way it is now?

3 MR. SELEME: There's going to be
4 no change. It's going to stay the way it is.
5 The only thing I'm going to do probably will
6 be enhance the outlook of the garage by
7 putting maybe siding, but it's something I
8 haven't been able to do ever since they put a
9 stop order. And every time I try to do
10 anything, there's a stop order.

11 MR. RIES: All right. So the
12 building will remain essentially the same
13 except for some cosmetic --

14 MR. SELEME: Yes.

15 MR. RIES: All right. So, you
16 see, all these floor plans confuse me because
17 they look like they're preparing to produce
18 something. And in fact they're going to leave
19 the same building there.

20 Thank you, Mr. Dettman.

21 Mr. Seleme, you stated, I believe,
22 that the building was not complete at present.

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1 What's left to do on it?

2 MR. SELEME: The thing is left to
3 do is to put gutters. The gutter -- the rain
4 is ruining the garage because there is no
5 gutter. There's only one gutter in the front
6 and I -- you have stopped me from putting
7 gutters in the garage. And also the siding so
8 that the wood won't get damaged. That's all.
9 There's no -- nothing else planned to -- on
10 the structure except that. I would -- I just
11 want to put siding and maybe gutters. That's
12 it.

13 MR. RIES: Okay. Let me see.

14 MR. SELEME: And I need the -- the
15 electric work so I can have my electricity in
16 the garage.

17 MR. RIES: And plumbing?

18 MR. SELEME: No, just electricity.

19 MR. RIES: Didn't you file for a
20 plumbing permit for that garage?

21 MR. SELEME: No.

22 MR. RIES: You sure of that?

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1 MR. SELEME: Yes, because all I
2 need is electricity.

3 MS. BELL: I'm going to object
4 again to the extent that it's outside of the
5 scope of Mr. Seleme's testimony.

6 MR. RIES: Well, he testified what
7 he's going to do and I'm asking him didn't he
8 file a plumbing permit.

9 CHAIRPERSON LOUD: But even if it
10 were in the scope, he's already answered the
11 question.

12 MR. RIES: All right. And I
13 didn't ask anybody to object.

14 CHAIRPERSON LOUD: It would be
15 helpful, once he answers, to move onto
16 something else.

17 MR. RIES: Well, he did. There
18 was an objection after he answered. I didn't
19 ask him another question, I don't believe.

20 CHAIRPERSON LOUD: Okay.

21 MR. RIES: But allow me to move
22 on.

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1 Mr. Seleme, you said that you told
2 me about this garage six months before you
3 built it.

4 MR. SELEME: I told you that one
5 year before I start construction that I had
6 idea of planning the -- the garage, that your
7 trees were on the way. I told you one year
8 before that.

9 MR. RIES: No, you didn't answer
10 that question.

11 MR. SELEME: I did. I told you
12 one year and then six months later before the
13 -- the construction of the garage started.

14 MR. RIES: You have been telling
15 me for years that you intended to build
16 another garage.

17 MR. SELEME: That's right.

18 MR. RIES: Maybe every couple of
19 years you would mention it.

20 MR. SELEME: That's right.

21 MR. RIES: Isn't that true?

22 MR. SELEME: Yes.

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1 MR. RIES: Did you tell me that
2 you were going to build a two-story garage on
3 any such occasion?

4 MR. SELEME: That time I had no
5 idea, but I just wanted a garage, period. I
6 had no idea what I was planning on doing. But
7 I wanted to build a garage, yes.

8 MR. RIES: You didn't know that
9 you intended to build a place where you could
10 teach dancing on the second floor six months
11 before you undertook to do it?

12 MR. SELEME: I didn't have to tell
13 you anything. I just wanted to let you know
14 that there was going to be a garage rebuilt
15 where it was before.

16 MR. RIES: All right. And I
17 didn't object to your building another garage,
18 did I?

19 MR. SELEME: Yes, you did.

20 MR. RIES: What did I say?

21 MR. SELEME: You complain about
22 your trees, that I'm cutting your trees, the

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1 limbs.

2 MR. RIES: You were free to cut
3 those trees.

4 MR. SELEME: That's not according
5 to what you just wrote in -- in a letter to
6 me.

7 MR. RIES: Well, that's quite
8 different because you were --

9 CHAIRPERSON LOUD: Again, Mr.
10 Ries --

11 MR. RIES: Yes, all right.

12 CHAIRPERSON LOUD: -- on you
13 direct you'll have every opportunity to go
14 into that in further detail.

15 MR. RIES: Okay. Right.

16 CHAIRPERSON LOUD: You're just
17 questioning him, very specific pointed
18 questions for him.

19 MR. RIES: All right. Thank you,
20 Mr. Chairman.

21 The information about grading and
22 trying to do something to fix the grading in

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1 your backyard, can you tell us what you have
2 done in that respect other than build a
3 garage?

4 MR. SELEME: I haven't been able
5 to lift a stone since you put a stop order.
6 Nothing has been done for months because you
7 put a stop order. And every time I try to do
8 something --

9 MR. RIES: No, no, I'm sorry. I'm
10 sorry. Before you decided to build a two-
11 story garage, what efforts did you make to fix
12 the grading, the drainage in your backyard?
13 Before you started building the garage.

14 MR. SELEME: I tried to build some
15 kind of drainage because you know the water
16 was going into my backyard and flooding my
17 basement and flooding your garage -- I mean,
18 flooding your basement, too. You knew that we
19 had problems with the -- the water coming from
20 the -- from the alley. And I tried to do --
21 I tried to do whatever I could to avoid the
22 water being --

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1 MR. RIES: What efforts did you
2 make? That's my question.

3 MR. SELEME: Well, the -- the
4 efforts I tried to do they propose to me a lot
5 of money to put gravel or to -- to build some
6 kind of foundation in the backyard. It was
7 going to cost like \$15,000 to do that. I
8 didn't have the money for that. It was just
9 too costly.

10 MR. RIES: But somebody offered to
11 do it, right?

12 MR. SELEME: I --

13 MR. RIES: For \$15,000 dollars?

14 MR. SELEME: I spoke with
15 somebody. They had mentioned that it would be
16 around \$15,000 to do it. But I didn't have
17 the money at that time. That was many years
18 ago.

19 MR. RIES: Do you recall perhaps
20 three years ago when you spoke to me about
21 building a berm on the alleys to prevent the
22 water from coming into your property? Do you

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1 remember that?

2 MS. BELL: Chair, I'm also going
3 to object to these line of questions because
4 what's happening, obviously because of the
5 nature of the relationship, and that's sort of
6 what I was raising earlier, is that Mr. Ries
7 is bringing in a lot of information and facts
8 that aren't a part of our case and haven't
9 otherwise -- in particular; let me just back
10 up, in particular, I haven't even had an
11 opportunity to take a look at it and explore.
12 This question relates to facts that are not in
13 evidence. I had no idea this conversation
14 took place and have had no opportunity to
15 advise my client or to weigh in on it, yet
16 he's using it as a cross examination. So I
17 can appreciate that he'd like to explore some
18 subject matter areas, but to the extent that
19 they're unique to the two of them, that
20 creates a problem. And I don't think it's
21 appropriate actually for the Board's review.

22 CHAIRPERSON LOUD: Thank you, Ms.

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1 Bell. But I see the questions; this is just
2 me, as relating to testimony that Mr. Seleme
3 had given which created the implication that
4 Mr. Ries supported the project, which goes to
5 the third prong of the variance test.

6 Now, the fact that you and your
7 client may not have had the opportunity to
8 talk about different aspects of it, wouldn't
9 of itself prevent -- previously to come into
10 the hearing wouldn't of itself preclude -- as
11 you know, wouldn't preclude cross examination
12 on that issue. That's just all a part of your
13 internal preparation for the case.

14 But, Mr. Ries, I mean, to her
15 larger point about sticking to the variance
16 test, sticking to direct examination, asking
17 the questions that relate specifically to
18 something that he brought out on direct and
19 making your point and then, you know, moving
20 forward, cross examination moves. It doesn't
21 get static. You ask your question, you get
22 your answer, you embarrass the witness, you

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1 move onto another topic before the witness has
2 a chance to recover. So again, I'm just
3 suggesting that the questions be very focused
4 and very targeted to what was brought out on
5 direct and what relates to the standard for
6 the area variance. I mean, if the main idea
7 is that you want to really establish that
8 there's still going to be some public
9 detriment notwithstanding his effort to
10 portray it differently, I think you've done
11 that. But if you want to explore it
12 further --

13 MR. RIES: I just have a few more
14 questions of the witness, Mr. Chairman.

15 Now the old garage actually was
16 destroyed in 1990, right?

17 MR. SELEME: I think so.

18 MR. RIES: Yes. And until you
19 built the garage, you lived with this water
20 problem, which I agree there was --
21 occasionally in a bad rain some water would
22 collect in your backyard and then it would

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1 dissipate.

2 MR. SELEME: It used to flood my
3 basement.

4 MR. RIES: But you lived with that
5 for almost 20 years, right?

6 MR. SELEME: Yes.

7 MR. RIES: And then you built the
8 garage to help the drainage problem?

9 MR. SELEME: Not necessarily to
10 help the -- that was part of the idea of -- of
11 stopping the flow of the water from the alley
12 coming into my backyard and destroying
13 everything else. But the garage was a good
14 idea to build it right there so the water will
15 -- won't come into my backyard.

16 MR. RIES: You testified that once
17 the old garage was destroyed, there was no
18 place to park? Is that correct?

19 MR. SELEME: There was -- there
20 were holes on the slab. The water was
21 damaging everything. There was place to park
22 but I had to put gravel, I had to be -- do

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1 some -- something to avoid the -- the -- the
2 potholes that were building in the -- in the
3 slab. And you knew about that.

4 CHAIRPERSON LOUD: Did you have
5 further, Mr. Ries?

6 MR. RIES: I did. I thought
7 someone was speaking to Mr. Dettman. I just
8 wanted to allow him to participate.

9 CHAIRPERSON LOUD: Okay.

10 MR. RIES: You testified, Mr.
11 Seleme, that there was no place to park. In
12 fact, you parked two cars there for 20 years
13 without even having a garage, right?

14 MR. SELEME: Yes, because unlike
15 you, I don't have grow -- trees growing on the
16 back of my yard, all over my backyard. I had
17 some space to park, but there was no cover for
18 my cars.

19 MR. RIES: Okay. All right. I
20 have nothing further of this witness. Thank
21 you.

22 CHAIRPERSON LOUD: Thank you, Mr.

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1 Ries. And if Board Members don't have any
2 questions for Mr. Ries, we can go to the
3 Office of Planning.

4 Good afternoon.

5 MR. MORDFIN: Good afternoon. I'm
6 Stephen Mordfin with the Office of Planning.

7 And the subject application is not
8 in conformance with the criteria for the
9 granting of an area variance because the site
10 is not unique in a manner that results in the
11 need for a second floor above an accessory
12 detached garage. The subject lot does not
13 prevent the owner from developing this site in
14 a manner consistent with the revisions of the
15 Zoning Regulations. It is improved by the
16 two-story single-family detached dwelling with
17 a detached garage on the alley. With the
18 exception of the second story above the
19 garage, the development of the property is
20 consistent with the provisions of the R-2
21 District. Features of the lot have not
22 prevented its development as a single-family

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1 residential property.

2 As the site is not unique in a
3 manner that results in a practical difficulty
4 such as the ability to develop the lot in a
5 manner consistent with the provisions of the
6 R-2 District, the Office of Planning finds no
7 resulting practical difficulty. An approval
8 of the area variance could substantially
9 impair the intent, purpose and integrity of
10 the Zone Plan in that it would permit a use
11 inconsistent with the provisions of the R-2
12 District.

13 And we also find the subject
14 application to be not in conformance with the
15 criteria for the granting of a use variance
16 because the lot is not unique in such a manner
17 to prevent it from being used in a manner
18 consistent with the provisions of the R-2.

19 And as the site exhibits no uniqueness, there
20 is no exceptional or undue hardship to the
21 owner and the approval of the use variance
22 could also substantially then impair the

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1 intent, purpose and integrity of the Zone Plan
2 in that it would permit a use inconsistent
3 with the provisions of the R-2. And the
4 property is and can be used in a manner
5 consistent with the provisions of the R-2
6 Zoning District. Thank you.

7 CHAIRPERSON LOUD: Thank you. We
8 appreciate your report. And let me see if
9 Board Members have any questions.

10 COMMISSIONER TURNBULL: Mr.
11 Mordfin, did you see anything with the site?
12 The applicant has been stating that he's got
13 a big swale in the backyard and he can't
14 really add onto his existing structure. Did
15 you notice any of that?

16 MR. MORDFIN: Yes, the topography
17 of the lot I did notice, yes. It does -- as
18 it was described, yes, it's kind of bowl-
19 shaped. There's a depression in the center of
20 the property. However, at either end of the
21 property where you would build, you know, the
22 residence and the accessory garage, the lot is

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1 able to sustain those because those structures
2 are there. And so therefore we saw that the
3 lot is developed in a manner consistent with
4 the R-2 with the house at the front at the
5 street and the garage on the alley.

6 COMMISSIONER TURNBULL: Okay.

7 Thank you.

8 CHAIRPERSON LOUD: Mr. Dettman,
9 questions?

10 Okay. Ms. Bell, I'm sorry, for
11 the Office of Planning?

12 MS. BELL: Yes, I do. Good
13 afternoon.

14 Two things I'd like to point out
15 in your report. First of all, the use
16 variance, you now understand the use variance
17 test is no longer applicable for this
18 particular application, is that correct?

19 MR. MORDFIN: Well, the reason
20 that we went into the use variance had to do
21 with the letter from the Zoning Administrator
22 instructing that you needed the relief because

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1 it wasn't going to be a dwelling for domestic
2 help. And so we put that in there because we
3 thought that should the BZA approve this
4 application, and when it went back to the
5 Zoning Administrator and he would see, well,
6 he saw that it needed a use variance that that
7 wasn't considered by the BZA and then they
8 might kick you back here and say, hey, this
9 issue that you brought up. So that was why we
10 reviewed it, but we reviewed it under Section
11 300 instead because those are the use tables,
12 because we saw that that is more applicable
13 than the residence for domestic employees in
14 the R-1, since the site is zoned R-2.

15 MS. BELL: Okay. Well that being
16 said though, I understand that the standard is
17 practical difficulties. And the reason why I
18 point that out is because there are a few
19 things that it appears to me that the Office
20 of Planning has conceded. One is that the
21 topography is unusual, is it not? And unique
22 to that particular lot, correct?

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1 MR. MORDFIN: Yes.

2 MS. BELL: And so that there would
3 be some expense for the applicant to be able
4 to use the backyard area in a manner
5 consistent to the use that he wants to use the
6 second story of the garage?

7 MR. MORDFIN: Well, it's unique in
8 that you want -- I don't see where the two are
9 related. It's not the only lot in that square
10 that suffers from the depressions. Because
11 when you stand on the alley, you see that some
12 of other houses within the square -- so it's
13 not the only one. It's not unique to that
14 neighborhood to have the swale in the backyard
15 consistent with what Mr. Seleme's rear yard
16 has. So it's not the only one that has that.

17 MS. BELL: Well then is it my
18 understanding that the Office of Planning does
19 have some information about other neighbors
20 that would have an elevation change that is
21 similar to Mr. Seleme's and also drainage in
22 the area?

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1 MR. MORDFIN: I don't have any
2 information on drainage in the area other than
3 what Mr. Seleme has presented.

4 MS. BELL: Okay. My other
5 question has to do with the noise. You
6 indicated on page 3 in your Zone Plan that the
7 commercial use of the property could result in
8 noise and traffic impact. What is that based
9 on?

10 MR. MORDFIN: Well, that is based
11 on the application indicated that Mr. Seleme
12 had proposed operating a dance studio with up
13 to eight students. And it -- in his
14 submission from the -- not the submission that
15 you submitted, but from the original
16 submission it indicated that. And that is
17 what that is based on.

18 MS. BELL: Would your analysis
19 change now that Mr. Seleme has indicated that
20 he intends to have one-on-one tutorial for
21 that space?

22 MR. MORDFIN: Well, that would

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1 lessen the impact because you wouldn't have
2 eight people coming perhaps to that studio on
3 an alley lot.

4 MS. BELL: Okay. So that
5 statement with regard to noise and traffic
6 impact would change, correct?

7 MR. MORDFIN: I -- well, we would
8 have to look at that some more and find out --
9 you know, flesh out exactly what it is that
10 Mr. Seleme is going to do and we'd have to go
11 back and review that. So, I don't know
12 exactly what he is planning for the second
13 floor of this garage exactly.

14 MS. BELL: I'm --

15 MR. MORDFIN: Okay. You -- you
16 stated that he's going to have -- he will have
17 fewer students than he originally proposed.

18 MS. BELL: I think that he
19 indicated one-to-one tutorials.

20 MR. MORDFIN: He did the second
21 one-to-one.

22 MS. BELL: Yes. Okay. Thank you.

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1 The other issue I wanted to raise
2 is on page 3 with regard to the relief
3 requested. You indicated that the structure
4 in and of itself is not likely to have a
5 significant neighborhood impact. Is that in
6 relation to the fact that there's so many
7 different buildings on that alley, the two-
8 story fences, as well as other high garages
9 and other tall structures?

10 MR. MORDFIN: Well, it's -- I
11 think it also has to do with that he's asking
12 for a foot-and-a-half in addition.

13 MS. BELL: Yes.

14 MR. MORDFIN: So, that in and of
15 itself may not have an impact however, but
16 it's got to relate to the uniqueness of the
17 lot, that the lot somehow requires that he has
18 to have this extra foot-and-a-half. Not that
19 the foot-and-a-half is necessarily perceptible
20 to anyone walking down the alley that you
21 could see the difference between fifteen and
22 sixteen-and-a-half, but that to get that foot-

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1 and-a-half you have to have something unique
2 about the lot that requires that. The only
3 way to do anything is you have to have an
4 extra foot-and-a-half and that's related to
5 the lot. And I don't see that there's a
6 connection between uniqueness of the lot and
7 this additional foot-and-a-half.

8 MS. BELL: I'm sorry. I
9 understood from this statement that it related
10 to the integrity of the Zoning Plan as to the
11 neighborhood.

12 MR. MORDFIN: Right, but before
13 you get there you have to meet the first part,
14 which is the uniqueness. And the uniqueness
15 has to justify -- cause the practical
16 difficulty. And then from the practical
17 difficulty, move onto how it may or may not
18 impact the Zone Plan. But since -- I don't
19 see -- there's no nexus between -- I don't see
20 how the uniqueness of the lot results in a
21 practical difficulty to the applicant that he
22 needs the additional foot-and-a-half and

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1 that's how we then get to the Zone Plan.

2 MS. BELL: Well, if it's conceded
3 that the backyard is unique, I guess my
4 question is, is the proposed project, in your
5 mind, significantly impact the neighborhood?

6 MR. MORDFIN: But I haven't
7 conceded that the rear yard is unique.

8 MS. BELL: I'm asking you for the
9 purposes of my question to concede that.

10 MR. MORDFIN: I --

11 MS. BELL: Assuming.

12 MR. MORDFIN: That's -- that's --
13 it --

14 MR. RIES: Objection. That's
15 speculative.

16 MR. MORDFIN: Yes, that's the
17 word. I can't speculate on what if, if it's
18 not. That is not the situation. From the
19 Office of Planning's perspective that is not
20 the situation out there. So I can't --

21 MS. BELL: The reason why I ask,
22 Mr. Mordfin, is because I'd like to draw your

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1 attention, if I could, to the application of
2 Ms. Oppen-Heimer, 17897, where the Office of
3 Planning, although they --

4 MR. MORDFIN: Oppen-Weiner.

5 MS. BELL: -- did not find that
6 the applicant met the standard with regard to
7 practical difficulties or a hardship, they did
8 indicate that it did not have a significant
9 impact on the neighborhood. So I was trying
10 to discern why it is that you came to the same
11 legal conclusion, but you had different -- you
12 apparently came to a different conclusion with
13 regard to the impact to the neighborhood.

14 CHAIRPERSON LOUD: Before you
15 answer that question, are you asking him on
16 cross about a previous case that's not a part
17 of his report or testimony?

18 MS. BELL: Well, as I --

19 CHAIRPERSON LOUD: Is that the way
20 you want to word the question?

21 MS. BELL: Well, I am asking him
22 about this and actually I think he is, and I

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1 can ask, are you familiar with the BZA case
2 with regard to 223 10th Street, S.E.,
3 application 17897 of Ms. Oppen-Heimer?

4 CHAIRPERSON LOUD: Well, let me
5 just ask. I'm not trying to stop your cross.
6 I just want to understand it so that it
7 doesn't go too far afield. Your general
8 question is the consistency of position of the
9 office?

10 MS. BELL: That's correct.

11 CHAIRPERSON LOUD: Okay.

12 MS. BELL: Because it's in effect
13 the same project. It's a two-story garage.
14 Ms. Oppen-Heimer asked to have a second story
15 to use for a -- and I apologize, a Pilates
16 studio.

17 CHAIRPERSON LOUD: Okay.

18 MS. BELL: And her argument was
19 based on the fact that her front yard was an
20 open court, she couldn't use it. She couldn't
21 use her backyard area and the only area that
22 was available to her to use was above the

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1 garage. And she had a medical reason. It's
2 a different circumstance than ours, because
3 ours is obviously the topography. And so the
4 Office of Planning issued a report in that
5 particular case. And so I'm sort of quizzing
6 him as to what the difference is in the Office
7 of Planning's mind as to why they take
8 different positions with regard to --

9 MS. MONROE: Mr. Chair, I have to
10 interrupt.

11 CHAIRPERSON LOUD: Yes, please?

12 MS. MONROE: This is a little bit
13 almost unfair. I don't know how OP feels
14 about this, but this case is not before us at
15 the moment.

16 Are you talking about Opper-
17 Weiner, the one that we --

18 MS. BELL: Yes, Opper-Weiner. And
19 I've actually spoke to the Office of Planning
20 about this.

21 MS. MONROE: I know, but that's
22 not in this record, as far as I know and OP --

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1 MS. BELL: Well, that's why I was
2 asking him if he's familiar.

3 MS. BELL: -- can feel free to
4 answer, but I don't see this is helping the
5 Board particularly, because OP makes its
6 decision independently on every case, just as
7 the Board does. And what it thought about
8 that case is irrelevant to what it thinks
9 about this case. I just wanted to make that
10 clear.

11 MS. BELL: Well, I guess there are
12 two issues. I understand your point. I
13 guess, two issues would be that they made
14 their decision before they got a chance to see
15 his second prehearing statement and so some of
16 the facts they relied on are not appropriate
17 or current.

18 And then also to the extent
19 there's consistency. Because I do think for
20 the purposes of both this Board and for the
21 Office of Planning that the public, as well as
22 homeowners, should be able to rely on some

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1 consistency as a public policy issue with
2 regard to how government agencies view certain
3 projects and use their authority with regard
4 to the view of those projects.

5 CHAIRPERSON LOUD: Well again, let
6 me just say that if the witness -- I
7 understand the question to be about
8 consistency of the office with respect to
9 variance cases over time. And if the witness
10 can -- I don't even know you were on that
11 particular case.

12 We're not talking about the
13 decision, right? You're talking about a --
14 you've read a recommendation that the Office
15 of Planning made in that case.

16 MS. BELL: Yes.

17 CHAIRPERSON LOUD: You've
18 determined that to be inconsistent in your
19 mind with what's being presented here.

20 Again, the reason I ask the
21 questions, and I don't want to go too far
22 afield with this, I think the -- as I

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1 understand the Office of Planning's testimony,
2 it's that they've not heard the nexus between
3 the practical difficulty and the unique
4 situation, the exceptional situation. I think
5 they've conceded in the report and in the
6 testimony that the topography is a bit unique
7 and exceptional, but they're having a
8 difficulty establishing how that causes a
9 practical difficulty for meeting the height
10 requirement.

11 MS. BELL: Yes, I think the issue
12 is the increased cost, which is what we're
13 arguing, because of the topography
14 differences, that the grading and costs and
15 all of that doesn't meet, I think for their
16 purposes, the standard of practical
17 difficulty.

18 CHAIRPERSON LOUD: Okay. And so
19 again, if your question relating to this --
20 you know, if you have a very narrow
21 question --

22 MS. BELL: I can withdraw that

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1 question with regard to Ms. Opper-Heimer.

2 CHAIRPERSON LOUD: Okay. It just
3 seemed --

4 MS. BELL: It appears we're going
5 far afield. Okay.

6 CHAIRPERSON LOUD: Okay. All
7 right. Did you have further questions for --

8 MS. BELL: For the Office of
9 Planning? No.

10 CHAIRPERSON LOUD: Yes, well you
11 had mentioned something, and I don't want to
12 explore it, about your prehearing statement
13 and it having some plans that they may not
14 have had a chance to review that?

15 MS. BELL: Well, those were the
16 two things, though it wasn't sort of clear
17 from his presentation, that for one they
18 thought that his use would be a commercial use
19 with lots of people.

20 CHAIRPERSON LOUD: Okay.

21 MS. BELL: And that would indeed
22 affect the noise in the neighborhood and

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1 traffic, when indeed it's only one student.
2 So I'm not clear from his testimony, but it
3 appeared that that made no difference in their
4 analysis.

5 The other issue is that they used
6 an area test as well as a use variance. And
7 so I tried to explore with him whether or not
8 his assessment changed. It doesn't.

9 And then the issue of the cost
10 related to grading the sloping grading. And
11 what I've heard from the Office of Planning is
12 that essentially there's nothing that Mr.
13 Seleme or the applicant can provide that would
14 change their report with regard to their
15 decision, as I understand it.

16 CHAIRPERSON LOUD: Okay. Well,
17 with that, if you have no further questions
18 for him, we can move onto Mr. Ries to see if
19 he has any questions.

20 Okay. Mr. Ries, do you have any
21 questions of the Office of Planning?

22 MR. RIES: No.

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1 CHAIRPERSON LOUD: Okay. Then I
2 believe we're at that point in the proceedings
3 where if the ANC is here we would have a
4 report from the ANC. I don't think that the
5 ANC is represented here. So, okay.

6 MR. RIES: No, it is not.

7 CHAIRPERSON LOUD: All right. So,
8 if there are any parties or persons in
9 support, now would be the time to come
10 forward. I don't think we have any of those.

11 So we'd now move to the party in
12 opposition, and that would be you, Mr. Ries.
13 You get the opportunity to present your case.
14 This is where you can call witnesses. You're
15 also given an opportunity to give a statement.

16 MS. BELL: And could I ask for a
17 short break, if we could?

18 CHAIRPERSON LOUD: Sure. How long
19 would you like?

20 MS. BELL: I would say 10 minutes.

21 CHAIRPERSON LOUD: Board Members,
22 is that okay with you?

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1 Okay. Mr. Ries, is that fine with
2 you?

3 MR. RIES: That's fine.

4 CHAIRPERSON LOUD: So why don't we
5 take a 10-minute break and come back about
6 3:50. Okay?

7 MS. BELL: Okay. Thank you.

8 CHAIRPERSON LOUD: All right.

9 (Whereupon, at 3:42 p.m. off the
10 record until 3:55 p.m.)

11 CHAIRPERSON LOUD: We are back in
12 session.

13 Ms. Bell, are you ready to resume?

14 MS. BELL: Oh, yes. Thank you.

15 CHAIRPERSON LOUD: Okay. Great.

16 We were about to go into the party
17 status opponent's case. However, before we do
18 I think there was at least one question I know
19 from a Board Member before we close our your
20 case.

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

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1 As I'm kind of tracking, you know,
2 the applicant's case and filling in the three
3 prongs of the variance test, I heard an
4 argument about cost. And that in order to
5 regrade the backyard at one time you had
6 gotten an estimate of \$15,000. Is that
7 correct.

8 MR. SELEME: Yes.

9 VICE-CHAIRPERSON DETTMAN: Okay.
10 And that was to regrade the entire backyard?

11 MR. SELEME: Just portion of
12 the --

13 PARTICIPANT: Mr. Seleme, could
14 you turn your microphone on?

15 MR. SELEME: Just portion of the
16 backyard.

17 VICE-CHAIRPERSON DETTMAN: Okay.
18 And your argument is that at that time the
19 \$15,000 that was going to be required to
20 regrade a portion of the backyard in order to
21 alleviate the drainage problem from the alley
22 was a practical difficulty, was cost-

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1 prohibitive?

2 MR. SELEME: It would be too
3 expensive and I didn't have the money.

4 VICE-CHAIRPERSON DETTMAN: Okay.
5 Okay. And my last question is, what do you
6 have invested in the garage as it exists
7 today?

8 MR. SELEME: Around \$50,000.

9 VICE-CHAIRPERSON DETTMAN: Fifty?

10 MR. SELEME: Fifty.

11 VICE-CHAIRPERSON DETTMAN: Thank
12 you.

13 MR. SELEME: You're welcome.

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

16 We're going to move to Mr. Ries'
17 case, unless there are anymore questions for
18 the applicant.

19 MS. BELL: But I would like to, if
20 I could be heard on that point, with regard to
21 cost. I think I had offered earlier some
22 information with regard to cost to put a

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1 retaining wall and to grade and do all those,
2 take the draining and all those things out,
3 and if that's something that the Board is
4 interested in. The cost that he's talking
5 about is something that happened, you know,
6 considerably a long time ago and certainly
7 doesn't relate to the situation right now, and
8 is different than the estimate that the
9 architect had provided to us. But the reason
10 why we point that out is because we note that
11 in the Office of Planning report that there is
12 some discussion about the fact that the
13 applicant hadn't provided sufficient evidence
14 with regard to the cost, the increased expense
15 for him to level it out so that he can use it
16 for his professional purposes. I think they
17 noted it on page --

18 MR. RIES: Excuse me. I'm sorry.
19 I just didn't -- had not provided?

20 CHAIRPERSON LOUD: I don't think
21 you're on the microphone, Mr. Ries.

22 MR. RIES: Sorry. The statement

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1 was not provided sufficient evidence, is that
2 correct?

3 MS. BELL: I'm reading from the
4 Office of Planning report. I think that was
5 one of the questions that I inquired of them
6 on page 3 with this issue about the
7 topography. Yes, the uniqueness of the
8 topography and the cost of on-sloping and
9 grading the backyard.

10 CHAIRPERSON LOUD: I don't know if
11 that's information Mr. Dettman will need.
12 I'll defer to him on that. Yes, I'll defer to
13 him on that. I don't think that I would
14 necessarily need it.

15 VICE-CHAIRPERSON DETTMAN: If it's
16 something the applicant has with her right
17 now, we can look at it. But I don't
18 necessarily need it at this point in the
19 procedure.

20 CHAIRPERSON LOUD: Let's move on
21 to your case, Mr. Ries. And let me just sort
22 of to get a lay of the land, do you intend to

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1 call witnesses?

2 MR. RIES: No, I do not.

3 CHAIRPERSON LOUD: You do not?

4 Okay. But you have a statement yourself?

5 MR. RIES: I have a statement and
6 some factual matters.

7 CHAIRPERSON LOUD: Okay.

8 MR. RIES: And an argument.

9 CHAIRPERSON LOUD: Okay. Okay.

10 And does Mrs. Ries have a separate statement?

11 MS. RIES: No, I don't.

12 CHAIRPERSON LOUD: Okay. Okay.

13 All right. Well, thank you. And you can
14 proceed, Mr. Ries.

15 MR. RIES: All right. Easier said
16 than done, Mr. Chairman. Sorry.

17 I thank you, Mr. Chairman. I
18 would like to make one statement, because it's
19 been alluded to several times by Mr. Seleme
20 that I was responsible for calling the
21 authorities to complain about his building
22 this building. And that is untrue. Neither

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1 my wife nor I were responsible for that. And
2 I don't know who did it, except I assume that
3 it was some neighbor. I will say, however,
4 that once that call was made and the stop work
5 order was posted I did get involved in trying
6 to follow up on that and see it through to a
7 successful conclusion because I was very much
8 opposed to this building. But I had reasons
9 for not wanting to be the person who called
10 the authorities. So let that be clear.

11 I'd like to also address the
12 matter of topography. I have some exhibits
13 which show that despite what counsel's
14 prehearing statement says, and which she has
15 reiterated here, that his backyard problem is
16 not unique. In fact, our yard is very much
17 like his yard. You can see from the exhibits
18 which I will introduce, if I can find them,
19 that there is an upper slope and a lower slope
20 on our adjoining properties. There are not
21 any in the other immediate lots near us. It
22 appears that someone long ago built an upper

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1 slope on our two pieces of property. The
2 water comes down. It falls from the upper
3 slope down into the lower slope and we are in
4 a sort of bowl.

5 We have put many plantings in in
6 an effort to control that problem. We have,
7 I think, good drainage back there. And it's
8 something you can deal with. We did not
9 choose to build a two-story garage or even a
10 one-story garage on that upper slope. He has
11 chosen to do so. But there is another
12 approach. And it's the way to go in this kind
13 of matter.

14 Now, I don't see from my own
15 experience with his backyard -- I do see that
16 water collects from time to time after a heavy
17 rain and it looks to me, and I'm not an expert
18 in these matters, that you can do something
19 about that. You don't have to go out and
20 build a building that requires a variance so
21 you can have a commercial enterprise on a
22 neighborhood street like this. I think that's

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1 very important to understand.

2 I would like to submit these
3 documents. How will that exhibit be marked,
4 Ms. Bailey?

5 MS. BAILEY: Exhibit 31.

6 MR. RIES: Thirty-one? And now I
7 would like to submit what would be Exhibit 32.

8 CHAIRPERSON LOUD: Mr. Ries, do
9 you have any additional exhibits that you
10 think you'll be introducing?

11 MR. RIES: I don't believe so.

12 CHAIRPERSON LOUD: Okay. I was
13 just going to suggest that she's making
14 copies. Now would probably be a great time to
15 get all the copies made.

16 MR. RIES: No, I think that's it.

17 CHAIRPERSON LOUD: Okay.

18 MR. RIES: This exhibit shows the
19 building from our rear yard and it shows the
20 way the fence goes down from the upper slope
21 to the lower slope. So there's no question
22 that there is nothing unique about the

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1 topography of my neighbor's yard except he has
2 made no effort, as far as I can tell, to fix
3 the draining problem, and we have managed to
4 avoid it.

5 If you'll just bear with me for a
6 moment, Mr. Chairman.

7 All right. Thank you for your
8 forbearance, gentlemen.

9 I would like to address page 2 of
10 the prehearing statement, the statement that
11 the footprint of the applicant's project
12 mirrors the footprint of the original garage
13 and the original garage, I assume, is the one
14 that was destroyed 20 years ago. In fact,
15 this is a much larger building than the one 20
16 years ago. That building was a two-car garage
17 well over 100 square feet smaller than this
18 one. This new building is a three-car garage
19 in which two cars are parked generally. As it
20 says further reading into that paragraph,
21 there is no down sweep of soil and debris
22 which pushes from the south side of the alley.

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1 It is water. Water comes onto the property
2 and it still comes on with the garage there.
3 And still the garage does not seem to make a
4 difference in the drainage, even though it
5 said that the building was rebuilt, and I
6 quote the prehearing statement, "to address
7 the drainage problem, provide storage and
8 create an unobstructed and level space for
9 recreational use." It's a bigger building
10 than the original garage. I assume there's
11 more storage in it, but nothing is happened,
12 as far as I can tell, after 20 months of this
13 building standing there to change the
14 drainage.

15 Now if the drainage has been
16 improved, then I say remove the second story,
17 but you don't need -- one story should do it
18 just fine. If the drainage hasn't approved
19 after 20 months, might as well remove the
20 second story. You know, that second story is
21 pointless either way. That is my feeling of
22 that.

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1 I am of the belief that the --
2 unlike the other conclusions drawn by the
3 Office of Planning that this really results in
4 a significant neighborhood impact. It's a
5 large building. It seems out of proportion.
6 It doesn't fit in with the area. The larger
7 structures that have been pointed out by the
8 applicant with the pictures only tells us
9 about Military Road, which stands very high
10 above the alley. And there's a significant
11 slope down and retaining walls have been built
12 to keep the water from coming down on the
13 alley between Military Road and Legation
14 Street.

15 So it's not as if people have been
16 constructing large towering garages throughout
17 the area. There are a couple of garages that
18 I would say are bigger than normal, bigger
19 than you would expect. They're all in places
20 where people don't really see them. They're
21 at the bottom of inclines and they have
22 nothing to do -- if you look out your window

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1 from up on Military Road where these two
2 ladies behind me live, you don't see any of
3 these gigantic buildings. They're just tucked
4 away all along throughout the alley, and there
5 are not many of them like that. But the slope
6 from Military Road to the alley is significant
7 and they have to build walls to retain the
8 water that falls on that area.

9 And I'm about to come to
10 conclusion, Mr. Chairman, if I can just find
11 this document which my assistant has kindly
12 handed me.

13 I have looked at much of the law
14 surrounding zoning as I have been able to and
15 it's a new area to me. But I am then struck
16 by something, and I hear I'm sort of
17 preaching to the choir, because I can't fully
18 instruct you people about something you know
19 so well, and that is the standards which you
20 must apply according to the rules. But the
21 language is, I find, striking in its
22 explicitness and its effort to emphasize how

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1 important the reasons must be before you can
2 grant a deviation from rules that have been
3 carefully constructed to do what people want
4 in these neighborhoods.

5 They want scale, they want
6 perspective, they want proportion and they
7 want privacy. And they don't want big
8 towering buildings and that, I think, the
9 framers of these rules understand that and was
10 motivated by those objectives. So they have
11 used language that I find to be extraordinary,
12 you know, by reason of exceptional to
13 topographical conditions or other
14 extraordinary or exceptional situation, or
15 condition with a specific piece of property.
16 If they would result in peculiar and
17 exceptional practical difficulties, or
18 exceptional and undue hardship upon the owner
19 of the property, the Board can -- has the
20 power to authorize the variance to relieve the
21 difficulties or hardships, provided that the
22 relief can be granted without substantial

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1 detriment to the public good and without
2 substantially impairing the intent, purpose,
3 and integrity of the Zone Plan as embodied in
4 the Zoning Regulations and Map.

5 I say that's a very heavy burden
6 for an applicant to carry in this case and any
7 other case like it. I would say he really
8 wants three spaces. He wants a backyard, he
9 wants the two-story building, he wants to have
10 a three-car garage. You have to make choices
11 in life. You know, if you try the drainage.
12 If that doesn't work, well maybe you come back
13 and see what you can work out. But just to
14 say I want all these things and I'm going to
15 do them hoping that somebody will grant me a
16 variance, I think is not the right approach.

17 The problems that are there do not
18 seem to change any as a result of these
19 cosmetic changes that he might make in the
20 building. They will be there. The violation
21 of the rules will be there. And it's very
22 hard to attach an idea of substance to the

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1 claim. You know, this cannot be what the
2 people who wrote that very precise, very
3 emphatic language had been thinking about.

4 And I might also add that allowing
5 this variance I think will effectively change
6 the rules regarding this sort of building.
7 Because if we see that this large building is
8 allowed to stand, I think BZA's going to have
9 to complain to a lot of people, or explain to
10 a lot of people why, well, we can't do that
11 everywhere, you know? The people will come.
12 There will be people who want to build these
13 things. And this would set a precedent that
14 seems to us to be really extraordinary and
15 dangerous. And I think that is something, as
16 a matter of public policy, that you must as
17 well consider.

18 We also feel that this building
19 will affect our own financial position and
20 those of everybody in the neighborhood. That
21 has been a concern that people will come and
22 see that thing standing there and think

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1 there's something wrong with that. You know,
2 it's not in proportion. I don't like to have
3 that standing there looking at me. And I
4 believe that it's quite possible that property
5 values in the area will take a decided
6 substantial drop.

7 So, at our meeting on February
8 25th, Ms. Bell said, "There seems to be a lot
9 of unhappiness on Legation Street." But I
10 don't think as she says in her prehearing
11 statement, "The vocal residents have personal
12 and strident feelings about the applicant."
13 I must say that in a sense that's true, but it
14 wasn't true before he did what he did. And I
15 have never, prior to this unfortunate
16 situation -- I don't remember having a cross
17 word with Mr. Seleme. Not a cross word.

18 He's been talking about trees.
19 Well, there's a problem with the tree. We
20 have seven trees that overhang his fence.
21 They're very nice trees. They've been there
22 for at least 20 years. He has never

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1 previously, until this, said anything about
2 those trees. He hangs a motion sensor from
3 one of them so that when somebody pulls into
4 the garage space at night, the lights will go
5 on, and it's kind of a friendly thing that
6 he's done. He's never complained about it.
7 And up until two years ago, we always keep
8 those trees pruned, either professionally --
9 my wife does a lot of it. She's gone into his
10 yard, cut the limbs down, the branches down.
11 There has never been a complaint about that.

12 Unfortunately, because of the
13 tensions that have existed since the building
14 was built, we have not cut the branches. And
15 I agree, they have extended too far. But that
16 is because of the tension that has existed.
17 We have not talked to each other since that
18 building went up.

19 CHAIRPERSON LOUD: Mr. Ries, I
20 know that both of you have been there on that
21 block for a long, long time and I hope that as
22 this case is resolved that you work to rebuild

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1 the relationship.

2 But I want to encourage you in
3 your testimony, as part of your direct case,
4 to focus in on what you started out doing, the
5 variance test. Whether his property is
6 exceptional or unique, whether that creates a
7 practical difficulty for him, whether there is
8 a substantial detriment to the public good
9 from granting the relief. And try to remain
10 in that lane as you go through your testimony.
11 Some of the testimony about his reaction to
12 the trees doesn't necessarily fit into the
13 test. And so that's what we're looking at in
14 terms of trying to reach an outcome in the
15 case. So I just wanted to encourage you to --
16 you've been doing that -- just encourage you
17 to keep on doing that.

18 MR. RIES: Well, I really have
19 come to the end of -- I was sort of
20 amalgamating a closing statement with some
21 statements of fact, and correcting things that
22 I've heard. But I am essentially through. I

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1 hope that he can find some less-obtrusive
2 place to coach dancing, on a second floor
3 anywhere else, but not when he's surrounded by
4 neighbors who are interested in peace,
5 sanctuary and quiet.

6 Thank you very much. And I have
7 nothing further to offer.

8 CHAIRPERSON LOUD: Thank you, Mr.
9 Ries. And let's see if Board Members have any
10 questions for you.

11 Okay. Ms. Bell, do you have any
12 cross for the witness?

13 MS. BELL: Just a few questions.

14 Mr. Ries, if I could ask you to
15 take a moment please to take a look at the
16 PowerPoint presentation that didn't happen,
17 the scenes from the project site.

18 MR. RIES: All right.

19 MS. BELL: You testified that you
20 thought that Mr. Seleme's garage was in effect
21 an eyesore and inconsistent with the
22 landscape.

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1 If I could ask you to take a look
2 at the second photo, the left side of the
3 alley.

4 MR. RIES: Yes.

5 MS. BELL: Okay. Could you please
6 identify for the Board what you're looking at?

7 MR. RIES: I really am not sure.
8 It's headed looking down the alley from
9 Connecticut Avenue toward 38th Street.

10 MS. BELL: Sir, actually I'm
11 talking about the second photo.

12 MR. RIES: Oh, I beg your pardon.

13 MS. BELL: Do you recognize that?

14 MR. RIES: Well, it's -- it's --
15 again, it's looking east toward 38th Street.
16 And I don't know -- 38th Street is not near my
17 immediate neighborhood.

18 MS. BELL: Okay. All right, sir.
19 Could you please take a look at the photo?

20 MR. RIES: Yes.

21 MS. BELL: Can you identify the
22 photo? Have you ever -- does that view appear

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1 familiar to you, sir?

2 MR. RIES: I -- I -- I really
3 don't know if I -- where -- I mean, is --
4 should that be 39th Street?

5 MS. BELL: Yes.

6 MR. RIES: Oh. Well, that helps.
7 I think this is -- yes, I think this is right
8 near Connecticut Avenue, is it not?

9 MS. BELL: So you do recognize
10 that scene?

11 MR. RIES: I think it is. I think
12 I do, yes.

13 MS. RIES: The scene?

14 MS. BELL: The scene that's
15 depicted in the photograph. The scene.
16 Scene, like S-C-E-N-E, not seen as in --

17 MR. RIES: I think that building
18 is familiar to me, yes.

19 MS. BELL: Okay. Great.

20 MR. RIES: Yes, it's a -- it's a
21 garage.

22 MS. BELL: Okay. Great. My

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1 question is, sir, from that view can you see
2 Mr. Seleme's garage?

3 MR. RIES: I don't think so.

4 MS. BELL: Okay. The next page,
5 sir, if you could just look at quickly. Do
6 you recognize that garage?

7 MR. RIES: 3313 Military Road?

8 No, that's --

9 MS. BELL: Does this garage appear
10 on the alley?

11 MR. RIES: That's -- that's --
12 3313 would be six blocks away from the
13 Military Road that I'm near.

14 MS. BELL: Okay.

15 MR. RIES: I'm sorry. It doesn't
16 -- I do not -- I'm not near a 3313 Military
17 Road.

18 MS. BELL: Okay. Mr. Ries,
19 perhaps it might be easier if you could just
20 take a look at the photos instead of the
21 headings. And if you could just focus on my
22 question, does that garage appear familiar to

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1 you, sir?

2 MR. RIES: I -- I actually do not
3 recognize this garage.

4 MS. BELL: So you don't recognize
5 that garage as existing on the alley that
6 exists between both yours and Mr. Seleme's
7 property and the Military Road houses that --

8 MR. RIES: I -- I don't -- I -- I
9 don't actually see that.

10 MS. BELL: Okay.

11 MR. RIES: But it's possible.

12 MS. BELL: All right. If we could
13 move on, sir, to two more photos.

14 MR. RIES: Yes.

15 MS. BELL: The next photo, please,
16 sir.

17 MR. RIES: The -- the one that's
18 called the back side of 3313 Military --

19 MS. BELL: No, the Military Road
20 neighbors.

21 MR. RIES: Military Road
22 neighbors? Yes.

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1 MS. BELL: Does that garage look
2 familiar to you, sir?

3 MR. RIES: Yes. Yes, it does.

4 MS. BELL: Okay. Do you see in
5 the foreground, sir, the trees?

6 MR. RIES: Yes.

7 MS. BELL: Okay. Could you give
8 us an estimate, if you could, about how tall
9 the trees are that line the alley?

10 MR. RIES: No, I -- I can't. I
11 don't know.

12 MS. BELL: Are they taller than
13 the homes, would you say?

14 MR. RIES: I would say so, yes.

15 MS. BELL: Okay. Would you say
16 maybe they're taller than 50 feet?

17 MR. RIES: Possibly.

18 MS. BELL: Okay. On the next
19 scene, please, the next photograph?

20 MR. RIES: Yes.

21 MS. BELL: You're looking at a
22 one-story garage with gable roof, is that

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1 correct?

2 MR. RIES: I -- I suppose so.

3 MS. BELL: With a mezzanine level,
4 the area on the top with a window?

5 MR. RIES: There -- it -- it has
6 -- yes, I -- it looks like there's something
7 up above it.

8 MS. BELL: Does that garage look
9 familiar to you, sir?

10 MR. RIES: 3309 Military Road? I
11 -- I don't -- I -- I don't get to 3309
12 Military Road.

13 MS. BELL: Does the garage look
14 familiar, sir?

15 MR. RIES: It looks like a garage.

16 MS. BELL: Okay. Well, as you
17 probably can discern, these are photos of the
18 garages that line the alley that you share
19 with Mr. Seleme. So my question is, do you
20 recognize them? Your testimony --

21 MR. RIES: It may be. It may be.
22 I haven't looked at -- I haven't studied the

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1 garages on that alley.

2 MS. BELL: Okay. But your
3 testimony before the Board here today is that
4 his garage is inconsistent with the other
5 garages and other fencing, and just other
6 backyard areas of homes that either line
7 Legation or line Military Road. And so what
8 I'm trying to do, sir, is explore with you
9 some examples of those structures.

10 MR. RIES: Well again, I was
11 talking about the 3800 block of Military Road.
12 You're talking about the 3300 block of
13 Military Road. There may be something like
14 this. But if there -- if there is, as I said,
15 Military Road drops down from a -- a height
16 and the garages that are down there are all --
17 they're all at the bottom of a -- of a steep
18 incline. So this would be not something that
19 anybody would see from their home. And if
20 this -- this has a gabled roof and the -- the
21 one that you're trying to protect has -- is a
22 flat roof.

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1 MS. BELL: Well, I guess I'm a
2 little confused. Is this a garage that you
3 recognize or not?

4 MR. RIES: I -- I don't -- I
5 really don't know whether it is. I have -- we
6 don't -- we do not drive the -- the road, the
7 -- the alley between -- between Military Road
8 and Legation Street.

9 MS. BELL: Okay. If I could ask
10 you, sir, to take a look at the next page, the
11 two-story fencing.

12 MR. RIES: Yes.

13 MS. BELL: Is that familiar to
14 you, sir?

15 MR. RIES: Yes, this is. Yes.

16 MS. BELL: Okay. Do you have any
17 idea how tall that fencing is, sir?

18 MR. RIES: No.

19 MS. BELL: Okay. But it's your
20 testimony that this fencing would be
21 inconsistent or consistent with the
22 neighborhood?

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1 MR. RIES: Yes. The -- what
2 you're referring to is a fence on top of the
3 -- the -- the retaining wall?

4 MS. BELL: Yes.

5 MR. RIES: That's not a fence.
6 It's like a shed or a --

7 MS. BELL: No, that's exactly
8 correct.

9 MR. RIES: Right, it is.

10 MS. BELL: It is habitable space,
11 but I guess my question actually went to
12 whether or not in your mind or based on your
13 testimony if it was consistent with the
14 neighborhood structures or inconsistent.

15 MR. RIES: It is inconsistent with
16 it.

17 MS. BELL: Okay.

18 MR. RIES: It's a -- it's a one-
19 story building.

20 MS. BELL: Okay.

21 MR. RIES: It's a one-story
22 building on top of a retaining wall.

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1 MS. BELL: Okay. And if I could
2 ask you to turn three pages to what's been
3 marked as 3821 Military Road.

4 MR. RIES: Yes.

5 MS. BELL: And could you tell us
6 what you're looking at, with the photo --

7 MR. RIES: I'm looking at a one-
8 story garage.

9 MS. BELL: And what's above the
10 one-story garage?

11 MR. RIES: Okay.

12 MS. BELL: Is there a home that
13 faces Military Road above that?

14 MR. RIES: Yes.

15 MS. BELL: Okay. How tall would
16 you suggest -- if you could, how tall would
17 you say that building is?

18 MR. RIES: The -- the home?

19 MS. BELL: That's correct. You
20 testified that --

21 MR. RIES: I don't know why -- I
22 don't --

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1 MS. BELL: You testified that Mr.
2 Seleme's garage was towering and that there
3 were no other towering buildings in that area.

4 MR. RIES: Yes, well you -- you
5 see, you're -- sometimes building, home
6 buildings tower. Garages are not supposed to
7 tower. So I have no idea what the height of
8 that building is, but it's -- it's up on top
9 of a hill and it's -- and it's got a -- a
10 fence here probably for -- for cosmetic
11 purposes, maybe for retaining, and it's a one-
12 story garage that's in the alley.

13 MS. BELL: From your home, sir, do
14 you look up to that home, would you say?

15 MR. RIES: To -- to this home?

16 MS. BELL: Yes.

17 MR. RIES: Do --

18 MS. RIES: No.

19 MR. RIES: I don't think we do.
20 No, we really -- I don't believe we can see
21 Ms. Mikkelson's house from our house.

22 MS. BELL: Okay.

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1 CHAIRPERSON LOUD: Counsel, I just
2 to ask for clarification, are you planning to
3 go through each picture that's in --

4 MS. BELL: No.

5 CHAIRPERSON LOUD: Okay. Thank
6 you.

7 MS. BELL: Now, if I could ask
8 that you could flip through the photos, the
9 view of the project site and next door
10 neighbor. Does that look familiar to you,
11 sir?

12 MR. RIES: I'm sorry. View of
13 project site?

14 MS. BELL: Yes.

15 MR. RIES: Okay. View from second
16 story of project site for neighbor?

17 MS. BELL: No.

18 MR. RIES: Oh, I'm sorry. View --
19 after that. View of project site and the next
20 door neighbor at 3828 Legation Street.

21 MS. BELL: Yes. Is that photo an
22 accurate depiction of the garage and a partial

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1 of your fence and tree?

2 MR. RIES: Yes, it is.

3 MS. BELL: Okay. And so that's
4 your tree that covers the garage?

5 MR. RIES: Well, it's -- it -- it
6 extends out in front of the garage, yes.

7 MS. BELL: Okay. And the last
8 photo.

9 MR. RIES: Neighborhood -- oh, I'm
10 sorry. View of the alley looking east toward
11 Connecticut Avenue?

12 MS. BELL: Yes. Do you recognize
13 that view at all, sir?

14 MR. RIES: Looking east. I think
15 I do.

16 MS. BELL: Okay.

17 MR. RIES: Yes.

18 MS. BELL: Can you tell us where
19 Mr. Seleme's building is?

20 MR. RIES: From the alley?

21 MS. BELL: Yes, that's a view of
22 the alley.

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1 MR. RIES: Yes, it's -- it's off
2 the photograph to the left.

3 MS. BELL: Okay. All right.
4 Actually, I just want to ask you a few more
5 questions. Thank you for going through that
6 for us.

7 You testified that Mr. Seleme
8 indicated to you that he was going to rebuild
9 the garage, is that correct?

10 MR. RIES: And -- well, a number
11 of times he did over the years.

12 MS. BELL: Okay. And when would
13 you say the earliest time that he informed you
14 that he intended to do so?

15 MR. RIES: That -- that would be
16 hard to say, but probably four or five years
17 after it was demolished.

18 MS. BELL: Okay. And at that time
19 you were in favor of it?

20 MR. RIES: I would have no
21 objection to his having a two or even as he
22 has now a three-car garage there in one story.

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1 MS. BELL: Okay.

2 MR. RIES: No -- no problem with
3 that.

4 MS. BELL: Okay. You also
5 indicated that the topography issue relates to
6 your property and his property and that is
7 unique as to the rest of the block, is that
8 correct?

9 MR. RIES: As -- as far as I know,
10 there -- because that's I think over to other
11 yards, I -- in -- in our immediate vicinity,
12 I can't think of anybody who has the kind of
13 high upper slope and lower slope that we have.

14 MS. BELL: Okay.

15 MR. RIES: But we have had people
16 who have had drainage problems with -- with
17 well-settled land. So, you know, it all
18 depends. It -- it's just -- it's different.
19 People have drainage problems.

20 MS. BELL: Okay.

21 MR. RIES: They -- they go to
22 drainage remediating and they don't build

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1 buildings.

2 MS. BELL: Okay. But, Mr. Ries,
3 you understand that it's sort of a two-pronged
4 issue that Mr. Seleme has the one-story garage
5 that he can have as a matter of right. And
6 then the second story is to accommodate
7 another issue, which is the use of it as an
8 artist studio, in his case for dancing,
9 because of the problems with the background
10 area. So it's not just the drainage. It's
11 also a use issue.

12 MR. RIES: It's -- it's -- if he
13 -- if he fixed the drainage or tried to fix
14 the drainage, he might not need a second story
15 on that garage. That's the way I see it.

16 MS. BELL: So your argument is
17 that if he pays to take care of the backyard,
18 he can have a one-story, in your mind?

19 MR. RIES: I don't -- I've never
20 objected. I -- I said to the BZA at the
21 beginning, we -- I am not going to object to
22 his having built this thing on plans that were

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1 not correct. I said if you, you know, take
2 the top off, I have no objection to it.

3 MS. BELL: Okay. Okay. You
4 indicated that there is some animosity between
5 you and Mr. Seleme, but --

6 MR. RIES: I did not.

7 MS. BELL: I'm sorry. Perhaps he
8 described it as tension?

9 MR. RIES: Tension is the word I
10 used.

11 MS. BELL: Okay. And would you
12 say that that tension results from just this
13 garage, or from other relationship problems
14 that you have with Mr. Seleme?

15 MR. RIES: I -- as I said, I --
16 I've never had a cross word with Mr. Seleme
17 and he's never directed a cross word to me.

18 MS. BELL: Okay.

19 MR. RIES: Until this affair.

20 MS. BELL: All right. Okay.

21 CHAIRPERSON LOUD: Thank you, Ms.
22 Bell, and thank you, Mr. Ries.

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1 We are now at the point in the
2 proceedings where if there are any persons in
3 the audience that wish to testify, you'd be
4 given three minutes each to testify. And if
5 that's the case, you can come on up and state
6 your name for the record.

7 Is there a seat for you there?

8 MS. BAX: I can stay (off
9 microphone) if that's okay.

10 CHAIRPERSON LOUD: All right. If
11 you're comfortable, that's fine.

12 MS. BAX: Hi, my name's Theresa
13 Bax. My husband and I live at 3833 Military
14 Road. We are the alley house which is two
15 towards 39th from our neighbors.

16 We are three doors catty-corner
17 from the alley. We've only lived in our house
18 for three years. And my husband has a natural
19 resources background and has been astounded
20 that Legation was ever allowed to be built
21 because it seems to be a natural drainage
22 area. From the alley every single house from

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1 the alley going towards Connecticut east has
2 a deep recession. We have on the alley side,
3 that house immediately behind us does have a
4 garage on the top corner of the alley. Their
5 yard immediately drops off and is very deep;
6 they're building a deck on the back of their
7 house right now to make their space more
8 usable, that continues and gradually becomes
9 less so the entire terrain from the alley
10 point and 39th, which is pretty much on the
11 same grade I would guess, slopes down.

12 My -- my dog and I walk this alley
13 probably three times a day every day. So I
14 could identify every one of those photos very
15 easily. The ones that were depicted with the
16 gabled roofs, which he said had the mezzanine
17 level, first of all, all the numbers are
18 wrong, but that's at the very -- Connecticut
19 end of the alley where the slope has decreased
20 considerably.

21 I do have a two-story house,
22 actually three stories from the alley side,

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1 and I can see all of the houses, none of the
2 garages, except my neighbor's. And then Mr.
3 -- I'm sorry, I can't pronounce your name
4 right -- Seleme's top second story of his
5 garage building is very visible even from your
6 deck level, which is the first floor of our
7 house. So I -- we were -- we were surprised
8 that this was an addition that came to the
9 neighborhood and it does not fit with the rest
10 of the environment there. That's all I want
11 to say.

12 CHAIRPERSON LOUD: Thank you for
13 your testimony. Thank you for your patience
14 this afternoon.

15 Let me see if Board Members have
16 any questions.

17 There are no questions.

18 Is there anyone else in the
19 audience wishing to testify as a person in
20 opposition?

21 Seeing none -- I'm sorry, you're
22 going to step forward? Okay.

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1 MS. MIKKELSON: My name is
2 Linda --

3 CHAIRPERSON LOUD: I think it may
4 have cut off at --

5 MS. MIKKELSON: I'm Linda
6 Mikkelson. I live at 3821 Military Road. One
7 of the pictures that counsel brought up was --
8 was my tall house on Military Road, which fits
9 in with the rest of the tall houses on
10 Military Road. It's no taller than anything
11 else. But my backyard slopes considerably to
12 the -- to the alley. And I have an eight-foot
13 retaining wall next to -- no, it's not an
14 eight-foot retaining wall -- well, maybe it is
15 -- next to my garage about at the same height.
16 And then I have a six-foot fence over that,
17 which was I -- I think again one of her
18 pictures. But even from my backyard this --
19 this is a -- but from my backyard and my deck
20 this garage of Mr. Seleme's still sits about
21 four feet into my view.

22 CHAIRPERSON LOUD: Why don't you

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1 give that to Ms. Bailey?

2 Ms. Bailey, can I ask also that
3 the clock run for the witness?

4 Oh, I'm sorry, Ms. Monroe. All
5 right. Thank you.

6 MS. MIKKELSON: That's really all
7 I have.

8 CHAIRPERSON LOUD: Okay. Thank
9 you. We appreciate both your patience waiting
10 for pretty much the end of the day and your
11 testimony

12 MS. BELL: I actually have a
13 question.

14 CHAIRPERSON LOUD: Okay. Let me
15 see if Board Members have one first and then
16 we'll -- you have a question for --

17 MS. BELL: Yes.

18 CHAIRPERSON LOUD: Okay. No
19 questions here. So go right ahead.

20 MS. BELL: Thank you.

21 You indicated that Mr. Seleme's
22 second-story garage blocks your view. If the

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1 second story wasn't on the garage, what view
2 would you have? The back of his house?

3 MS. MIKKELSON: You can see --
4 yes.

5 MS. BELL: Okay.

6 MS. MIKKELSON: Which is
7 another --

8 MS. BELL: So, it's blocking --

9 MS. MIKKELSON: -- so many feet
10 away.

11 MS. BELL: Okay. So the second --

12 MS. MIKKELSON: Which I have no
13 objection to. I like his house.

14 MS. BELL: Well, he probably would
15 like some privacy. But I guess my question
16 is, the second story that you're saying blocks
17 the view, the view that's indeed blocking is
18 the back of Mr. Seleme's house, is that
19 correct?

20 MS. MIKKELSON: If you look -- if
21 you're looking straight at it, yes. But it's
22 also all across my backyard. It looks like a

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1 freight train parked in my backyard.

2 MS. BELL: And one other question
3 I have to ask: The size of the trees on your
4 property, and I guess you indicated in your
5 testimony that your house is very, very tall.
6 Do you have any idea how tall it is, the roof
7 line?

8 MS. MIKKELSON: It's a three-story
9 house.

10 MS. BELL: But would you say 50
11 feet?

12 MS. MIKKELSON: No.

13 MS. BELL: Okay. Do you have any
14 idea how tall the trees are in your backyard?

15 MS. MIKKELSON: I have one big
16 beech tree and one that's probably hundreds of
17 years old.

18 MS. BELL: I think my --

19 MS. MIKKELSON: Yes, it's at least
20 -- so it's at least 30-40 feet from it.

21 MS. BELL: So in addition to the
22 flat level roof, you have your fence above

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1 that and you have some trees that exceed
2 almost the height of your house, is that
3 correct?

4 MS. MIKKELSON: Yes.

5 MS. BELL: Okay. Thank you.

6 CHAIRPERSON LOUD: Thank you, Ms.
7 Bell.

8 MR. RIES: You want to offer that
9 photograph into evidence?

10 MS. MIKKELSON: I did. Yes.

11 CHAIRPERSON LOUD: I believe we
12 are at the point where we'll have closing
13 remarks by the applicant and that will
14 conclude the presentation of the case this
15 afternoon.

16 Ms. Bell, we're ready when you
17 are. Not to rush you at all.

18 MS. BELL: I think Mr. Seleme
19 wanted to say a few words.

20 CHAIRPERSON LOUD: Okay. Is that
21 in lieu of your closing remarks?

22 MS. BELL: No, I guess that's --

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1 CHAIRPERSON LOUD: Well, you know,
2 what I would like not to do is to go through
3 another round of cross examination, and there
4 is a party he's entitled to cross examination.
5 Is this by way of testimony?

6 MR. SELEME: No, I really don't
7 want to say anything. There's nothing for me
8 to say.

9 CHAIRPERSON LOUD: I don't want to
10 discourage you, but again just sort or putting
11 it all out there in terms of where we are in
12 the proceeding.

13 MR. SELEME: It's just whatever
14 remarks they made, you know, it's just
15 ridiculous really. My views are not blocking
16 anybody's views. So I just have nothing to
17 say.

18 CHAIRPERSON LOUD: I think that's
19 a perfect segue because typically that kind of
20 pulling together all of the evidence and
21 making, you know, drawing whatever conclusions
22 from it would be done by the attorney as part

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1 of the closing statement.

2 So why don't we turn to Ms. Bell
3 for closing remarks?

4 MS. BELL: Thank you. In closing
5 I wanted to point out just a few facts that I
6 think are important.

7 I think both the Office of
8 Planning as well as the neighbor did concede
9 that there is something rather unique with
10 regard to Mr. Seleme's property in that not
11 only in the elevation changes but his ability
12 to use the yard in a way that he would like to
13 use it, either professionally or recreational.

14 As a matter of, as you know, in
15 the R-2 he can't have a one-story gabled roof.
16 And the reason why I indicated gabled roof,
17 because there are several on that alleyway,
18 although there seems to be some testimony that
19 suggested there isn't. But I think it's fair
20 to say that the alley does have a number of
21 different structures, different architectural
22 styles and different heights, whether the

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1 heights result from the elevation change as a
2 result of Military Road or because an
3 individual homeowner preferred to put up
4 something different. There is no uniformity
5 as to that alleyway and there isn't any
6 uniformity with regard to the height.

7 So that being said, I think that
8 it is difficult to argue that Mr. Seleme's
9 proposed project is either inconsistent with
10 the architectural plan, because there isn't
11 one, or that it's an eyesore. Because I think
12 if you take a look at both the exhibits and
13 even some of the exhibits that have been
14 provided by the neighbors that it is
15 inconsistent and it's sort of based on an
16 individual's personal aesthetic value.

17 So that leaves us with the
18 variance test as to the practical
19 difficulties, whether or not he has met his
20 burden and whether or not he has shown that
21 his use of the property would be consistent
22 with the Zoning Regulations, and I think that

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1 he has. Whether or not it is incredibly
2 expensive or cost-prohibitive I think is not
3 the appropriate analysis. I say that to say
4 that Mr. Ries indicated that it would have to
5 be incredibly costly for him to grade or if he
6 was able to grade, then he should do that
7 instead of making another choice. I don't
8 think that that's what the regs speak to and
9 I don't think that that's what the case law
10 speaks to. It says if there is a practical
11 difficulty, if it's unnecessarily burdensome,
12 I think is the standard that often you see in
13 the case law, for the homeowner to make those
14 changes, then they're not going to be
15 required.

16 I also would like when the Board
17 to consider it to take a look at some other
18 factors that I think weigh in his favor.
19 Those factors in addition to the cost would be
20 the inconvenience to him, the severity of the
21 variance that's required, and as I said, the
22 effect of the -- with related to the overall

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1 plan.

2 I'd be glad to add to our
3 prehearing and supplemental pleading, if
4 required, some additional case law, if the
5 Board would like to look at that, on other
6 valuative factors that you should consider, or
7 we would like you to consider when you're
8 taking a look at the variance test. But I say
9 that to say that I do think that he has met
10 the practical difficulties test because there
11 has been some testimony about the cost, at
12 least several years ago about what it would
13 cost to grade. As I said, there was a BOCA
14 code that requires the grading and sloping to
15 be done in a certain way, which would be an
16 increased value to him and it would be greatly
17 inconvenient for him to do so. And even if
18 that were done, it's not clear that he could
19 use that backyard area for the dance studio
20 that he would like to use it for, which is the
21 plan.

22 Finally, I think that there's been

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1 a lot of evidence with regard to the
2 relationship between the neighbors. You know,
3 Mr. Seleme and his family have lived there for
4 50 years. It is unfortunate, but it is true
5 that there are some neighbors who object to
6 the two-story, but I think if you look at the
7 totality of the circumstances it is not the
8 oppressive eyesore that it's been suggested.

9 CHAIRPERSON LOUD: Thank you, Ms.
10 Bell. Thank you, Mr. Ries. Thank you, Mr.
11 Seleme. And of course, Mrs. Ries and our
12 witnesses today.

13 We have a full record before us,
14 both in terms of the pleadings submitted and
15 the testimony today, and I think we're going
16 to deliberate the case. But I do think we're
17 going to need about a five-minute break and
18 then we'll come back out and make a
19 determination.

20 MS. BELL: Okay. Thank you.

21 CHAIRPERSON LOUD: But thank you,
22 all.

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1 (Whereupon, at 4:54 p.m. off the
2 record until 5:16 p.m.)

3 CHAIRPERSON LOUD: We're back in
4 session with your last case of the afternoon,
5 which is the Antonio Seleme case, BZA
6 application No. 17893. And I think we were
7 saying that we have a full record before us
8 and we're prepared to deliberate on the case
9 today. And I want to thank the applicant and
10 the party opponent and all the witnesses for
11 your testimony and your exhibits today.

12 I think Mr. Dettman is going to
13 start us off with respect to the deliberation.

14 VICE-CHAIRPERSON DETTMAN: Thank
15 you, Mr Chair.

16 What we have before us today is a
17 request to construct a two-story, sixteen-
18 foot-six-inch accessory private garage located
19 at 3838 Legation Street, N.W. Though the
20 original advertisement was also for a use
21 variance for an artist studio, the Board found
22 that that request was not necessary and

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1 therefore is just looking at the area variance
2 here from the height limitations under 2500.4.

3 In order to grant the requested
4 area variance the Board needs to analyze this
5 case according to the three-prong variance
6 test and look at this from the standpoint of
7 practical difficulty.

8 In the filings and the testimony
9 provided by the applicant with respect to the
10 first prong, I believe they argued that there
11 were essentially three unique circumstances
12 that affected this property. One being that
13 there's in the absence of a garage that was --
14 the original garage was destroyed some time
15 ago, in the absence of a garage there was this
16 situation where rain runoff from the alley was
17 flowing into the backyard.

18 And added to that was that the
19 backyard actually has a unique topography and
20 that it's kind of bowl-shaped. The house as
21 well as the garage are higher than the middle
22 part of the backyard. It's forming this bowl

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1 where the water coming in from the alley is
2 pooling and then creating a situation where
3 the backyard occasionally floods.

4 I believe there was a third
5 element that was added into the first prong of
6 the variance test by the applicant and it's
7 that there's a presence of two rather large
8 planter circles or drains, concrete drains in
9 the backyard which also they argued was a
10 unique situation that added to the practical
11 difficulty.

12 With respect to the second prong
13 of the variance test, as to whether the
14 exceptional or extraordinary situation or
15 condition gives rise to a practical difficulty
16 on the property owner, I'm actually not seeing
17 practical difficulty here. I'm not seeing
18 where the strict application of the
19 regulations creates a practical difficulty
20 upon the property owner as a result of the
21 unique situations. I do think that the first
22 prong of the variance test is met. I do think

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1 that this property exhibits some unique
2 situations, but to the question of whether or
3 not they give rise to a practical difficulty
4 upon the property owner in meeting the Zoning
5 Regulations in providing a one-story garage at
6 a height of 15 feet, I don't see a practical
7 difficulty here.

8 I think that we have a footprint
9 right now that accommodates three cars and we
10 also heard in the testimony from Mr. Ries that
11 a 15-foot one-story garage, he was not
12 against. And I also see that the strict
13 application of the Zoning Regulations also do
14 not prevent the property owner from achieving
15 what he really wants. He wants to provide a
16 space where he can conduct dance instruction
17 in a professional and personal manner. I see
18 opportunity for additional square footage to
19 the footprint of the building so that he could
20 meet his parking requirement, if he in fact
21 does have one. He could provide one parking
22 and utilize the rest of the one-story garage

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1 for a dance studio. So that being said, I
2 don't think the second prong of the variance
3 test is actually met.

4 But just to finish out the
5 analysis with respect to the third prong of
6 the variance test and whether the granting of
7 the variance will not cause a substantial
8 detriment to the public good, or substantially
9 impair the intent, purpose and integrity of
10 the Zone Plan, I was a little bit on the fence
11 with this one. To grant the variance in the
12 absence of a practical difficulty in and of
13 itself I think would be detrimental to the
14 Zone Plan. I think it's worth noting that the
15 only place in the city that a two-story garage
16 is allowed is a matter of right is in an R-1-A
17 and R-1-B District, and even that is only
18 allowed if it's going to be used for I believe
19 domestic quarters for employees of the
20 principal residents. And so I think across
21 the entire city two-story garages are frowned
22 upon and are not permitted. And to grant this

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1 application would detrimental to the Zone
2 Plan.

3 With respect to the impacts on the
4 public good, we received testimony as well as
5 a picture from a person in opposition to the
6 application, and the picture I'm referring to
7 -- I don't think we have an exhibit number,
8 but it's the view from the Military Road side
9 looking towards the subject property. And I
10 think that that's indicative of an adverse
11 impact compared to, if constructed according
12 to the Zoning Regulations, what would be
13 there. We also have testimony from the Office
14 of Planning in that they don't that the three-
15 prong variance is met. We have a resolution
16 from ANC that's our Exhibit 23 expressing
17 opposition to the application and focusing a
18 bit on the impacts to the public good and the
19 Zone Plan.

20 So, Mr. Chairman, I think that's
21 all I have in terms of my analysis of the
22 variance test and I'll turn it back to you.

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

3 Mr. Turnbull, did you wish to --

4 COMMISSIONER TURNBULL: I just
5 have a couple of comments. I think I would
6 concur with Mr. Dettman's excellent analysis
7 of the property.

8 I think that notwithstanding the
9 issues of water, I think there are other ways
10 of handling that rather than buoying it upon
11 the design of a garage to prevent water from
12 going into the backyard. To me that's a weak
13 link for me. You don't use another building
14 to stop water going into another building.
15 You deal with the issue. So I'm not totally
16 convinced that using that argument sits well
17 with me.

18 I would also agree with Mr.
19 Dettman that as a member of the Zoning
20 Commission, I'm very aware of the Zone Plan
21 and I'd like to see that kept totally intact.
22 And I think the picture shows it very well,

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1 that it would be an impact to have this remain
2 in the neighborhood. And I don't think it
3 helps us in other cases later on where this
4 could be used as a precedent-setting move.

5 That's all I have, Mr. Chair.

6 CHAIRPERSON LOUD: Thank you, Mr.
7 Turnbull, and thank you, Mr. Dettman.

8 I thought the analysis that Mr.
9 Dettman did was outstanding and as echoed by
10 Mr. Turnbull.

11 I don't have much to add to that.
12 I just wanted to say that taking a look at the
13 three elements that are required to establish
14 the variance, that each element is required to
15 be proven on its own merit. So you have to
16 prove all three elements. And the second
17 element, practical difficulty, is casually
18 related to the first element; that is, that
19 the practical difficulty has to be proximately
20 caused by the uniqueness or exceptional
21 situation. And like my colleagues, I didn't
22 hear the evidence or read from the record

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1 evidence suggesting that what was proffered as
2 unique and exceptional about the property
3 actually caused this need to have a sixteen-
4 and-a-half or two-story structure.

5 And I think the Office of Planning
6 put it very eloquently in their report on page
7 3. That's our Exhibit 29 on page 3, where
8 they talked about there being evidence of some
9 uniqueness. And then I'll just quote them
10 briefly. "However, the applicant has not
11 submitted documentation indicating how the
12 topography or the location of the outdoor
13 drains require that the garage be improved
14 with a second floor or be over height."

15 And for me that's kind of the
16 whole case in terms of the variance request.
17 There's nothing in both the documentation and
18 the testimony today that would persuade me
19 that there was a practical difficulty in
20 having a structure that was 15 feet and one
21 story, or that if there was a practical
22 difficulty in having it 15 feet and one story,

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1 how that practical difficulty was eliminated
2 by creating a sixteen-and-a-half-foot
3 structure that was more than one story.

4 So for that reason, and I think my
5 colleagues talked about the Zone Plan. And
6 with respect to the Zone Plan I think Mr. Ries
7 testified that he thought that this would
8 trigger a rash of applications for variance-
9 related and I think that's consistent with
10 what our Board Members up here are saying as
11 well regarding the Zone Plan.

12 So I don't believe that the
13 applicant met his burden for a variance. It's
14 a very high standard of relief as compared to
15 a special exception. And so I think that I
16 would agree with you, Mr. Dettman, and, Mr.
17 Turnbull.

18 Is there any further deliberation?

19 Then if not, is there a motion?

20 VICE-CHAIRPERSON DETTMAN: Mr.
21 Chairman, I would move to deny application No.
22 17893, pursuant to 11 DCMR 3103.2 for a

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1 variance from the height limitations under
2 subsection 2500.4, to allow the construction
3 of a three-car accessory garage with a second
4 floor artist studio at premise 3838 Legation
5 Street, N.W.

6 CHAIRPERSON LOUD: Second.

7 The motion has been made and
8 seconded. Is there further deliberation?

9 Hearing none, all those in favor
10 of the motion say aye. Aye.

11 VICE-CHAIRPERSON DETTMAN: Aye.

12 COMMISSIONER TURNBULL: Aye.

13 CHAIRPERSON LOUD: All those
14 opposed?

15 Are there any abstentions?

16 Ms. Bailey, if you could read back
17 the vote, please?

18 MS. BAILEY: Mr. Chairman, the
19 vote is recorded as 3-0-2 to deny the
20 application. Mr. Dettman made the motion.
21 Mr. Loud seconded. Mr. Turnbull supported the
22 motion and two other Board Members were not

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1 sitting at the time.

2 CHAIRPERSON LOUD: Thank you, Ms.
3 Bailey. Is there anything further in this
4 case?

5 MS. BAILEY: No, Mr. Chairman.

6 CHAIRPERSON LOUD: Well in that
7 case, is there anything further at all? If
8 not, then we're adjourned.

9 (Whereupon, the hearing was
10 concluded at 5:27 p.m.)

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