

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

MARCH 24, 2009

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 12:30 p.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER	Chairperson
MARC LOUD	Vice Chairman
SHANE L. DETTMAN	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

GREGORY N. JEFFRIES Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARLOVA JACKSON

MATT JESICK

KAREN THOMAS

This transcript constitutes the
minutes from the Public Hearing held on March
24, 2009.

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

2 12:31 p.m.

3 CHAIRPERSON MILLER: All right.

4 We know that you all are here for the morning
5 hearing. We're just going to take a 5 to 10
6 minute break and get our hearing files and
7 regroup and then come back out here.

8 COMMISSIONER JEFFRIES: And we
9 will move quickly when we come back.

10 CHAIRPERSON MILLER: It will
11 probably take 10 minutes to do, yeah.

12 (Whereupon, at 12:31 p.m. a recess
13 until 12:48 p.m.)

14 CHAIRPERSON MILLER: This hearing
15 will, please, come to order. And I think we
16 are just going to have an afternoon session
17 since it's a 12:45, so I will just be reading
18 for the afternoon and not do morning and
19 afternoon, at this point. Okay.

20 So this is the afternoon Public
21 Hearing of the Board of Zoning Adjustment of
22 the District of Columbia. My name is Ruthanne

1 Miller, I'm the Chair of the BZA for a little
2 while longer, and joining me today to my right
3 is our Vice Chair, Mr. Marc Loud and next to
4 him is Mr. Jeffries from the Zoning
5 Commission.

6 To my left is Mr. Shane Dettman,
7 Board Member, and Ms. Beverley Bailey from the
8 Office of Zoning. And I'm sure that Mr. Moy
9 from the Office of Zoning will be joining us
10 shortly.

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

19 When presenting information to the
20 Board, please, turn on and speak into the
21 microphone, first, stating your name and home
22 address. When you are finished speaking,

1 please, turn your microphone off, so that your
2 microphone is no longer picking up sound or
3 background noise.

4 All persons planning to testify
5 either in favor or in opposition are to fill
6 out two witness cards. These cards are
7 located to my left on the table near the door
8 and on the witness tables. Upon coming
9 forward to speak to the Board, please, give
10 both cards to the reporter sitting to my
11 right.

12 The order of procedure for special
13 exceptions and variances is as follows: One,
14 statement and witnesses of the applicant.
15 Two, Government reports, including Office of
16 Planning, Department of Public Works, DDOT,
17 etcetera. Three, report of the Advisory
18 Neighborhood Commission. Four, parties or
19 persons in support. Five, parties or persons
20 in opposition. Six, closing remarks by the
21 applicant.

22 Pursuant to Sections 3117.4 and

1 3117.5, the following time constraints will be
2 maintained: The applicant, persons and
3 parties, except an ANC, in support, including
4 witnesses, 60 minutes collectively. Persons
5 and parties, except an ANC, in opposition,
6 including witnesses, 60 minutes collectively.
7 Individuals 3 minutes.

8 These time restraints do not
9 include cross examination and/or questions
10 from the Board. Cross examination of
11 witnesses is permitted by the applicant or
12 parties. The ANC within which the property is
13 located is automatically a party in a special
14 exception or variance case.

15 Nothing prohibits the Board from
16 placing reasonable restrictions on cross
17 examination, including time limits and
18 limitations on the scope of cross examination.

19 The record will be closed at the
20 conclusion of each case, except for any
21 material specifically requested by the Board.
22 The Board and the staff will specify at the

1 end of the hearing exactly what is expected
2 and the date when the persons must submit the
3 evidence to the Office of Zoning. After the
4 record is closed, no other information will be
5 accepted by the Board.

6 The Sunshine Act requires that the
7 Public Hearing on each case be held in the
8 open before the public. The Board may,
9 consistent with it's Rules of Procedure and
10 the Sunshine Act, enter Executive Session
11 during or after the Public Hearing on a case
12 for purposes of reviewing the record or
13 deliberating on the case.

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

20 Please, turn off all beepers and
21 cell phones, at this time, so as not to
22 disrupt these proceedings.

1 The Board will make every effort
2 to conclude the Public Hearing as near as
3 possible to 6:00 p.m. If the afternoon cases
4 are not completed at 6:00, the Board will
5 assess whether it can complete the pending
6 case or cases remaining on the agenda.

7 At this time, the Board will
8 consider any preliminary matters. Preliminary
9 matters are those that relate to whether a
10 case will or should be heard today, such as
11 requests for postponement, continuance or
12 withdrawal or whether proper and adequate
13 notice of the hearing has been given. If you
14 are not prepared to go forward with a case
15 today or if you believe that the Board should
16 not proceed, now is the time to raise such a
17 matter.

18 Does the staff have any
19 preliminary matters?

20 MS. BAILEY: Madam Chair, Members
21 of the Board, good afternoon. There is, but
22 it's case-specific and it has to do with

1 Application 17898. So, Madam Chair, with your
2 permission when that case is called, I would
3 suggest that we take it up at that time.

4 CHAIRPERSON MILLER: I think
5 that's a good idea. So then at this point,
6 would all individuals wishing to testify
7 today, please, rise to take the oath? And Ms.
8 Bailey will administer it.

9 MS. BAILEY: Please, raise your
10 right hand.

11 (Whereupon, the witnesses were
12 sworn.)

13 MS. BAILEY: Thank you.

14 CHAIRPERSON MILLER: Okay. We are
15 ready for the first case, if you are.

16 MS. BAILEY: Thank you, Madam
17 Chair. Application 17900, this is of Tracy
18 Roman, pursuant to 11 DCMR section 3104.1, for
19 a special exception to construct a two-story
20 rear addition to an existing one-family semi-
21 detached dwelling under section 223, not
22 meeting the lot occupancy, that's section 403,

1 and side yard, section 404, and nonconforming
2 structure provision, subsection 2001.3. The
3 property is Zoned R-4. It is located at 660
4 E Street, S.E., Square 876, Lot 44.

5 Is the applicant here for this
6 case? Please, have a seat at the table.

7 CHAIRPERSON MILLER: Good
8 afternoon. And why don't you start by
9 introducing yourselves for the record with
10 your home address.

11 MS. ROMAN: Tracy A. Roman, 660 E
12 Street, S.E.

13 MR. KAMM: My name is Tom Kamm and
14 I'm the architect for Tracy's project. Thomas
15 A. Kamm, Jr.

16 CHAIRPERSON MILLER: Okay. Thank
17 you for your patience this morning. And I
18 think your case may go fairly quickly. It's
19 a very full record and I think you have
20 addressed all the elements that I can see and
21 there is no opposition. Is that correct?

22 MR. KAMM: That's correct.

1 CHAIRPERSON MILLER: All right.
2 is there anything you would like to add at
3 this point?

4 MR. KAMM: I would like to request
5 if the Board is going to rule on this today to
6 have some minor latitude in the placement of
7 the windows in case we run into structural
8 problems in a horizontal direction. We don't
9 intend there to be any changes to the
10 elevations, but in case during additions and
11 renovations sometimes you run into structural
12 issues that could affect the horizontal
13 placement of the windows within 6 inches or a
14 foot.

15 CHAIRPERSON MILLER: How many
16 sides is that affecting?

17 MR. KAMM: It's -- the renovation
18 affects the east elevation and the north
19 elevation.

20 CHAIRPERSON MILLER: We often give
21 flexibility where it won't affect the zoning
22 relief that is being granted. So just with

1 respect to that question, if we want to jump
2 to this, in a special exception case like
3 this, we would be looking at the impact on
4 neighboring properties of light and air from
5 the addition.

6 So if you want to just bring to
7 our attention why this type of flexibility
8 wouldn't impact that, that would be useful.

9 MR. KAMM: The windows that are
10 being proposed are -- on the first floor are
11 all screened by a 6 foot privacy fence. That
12 means that any relationship to the neighboring
13 properties wouldn't be perceived. On the
14 upper story, we are proposing two windows on
15 the north elevation, which are basically
16 symmetrically placed on the upper story.

17 I don't imagine those would shift
18 at all. The window -- we're removing one
19 window on the east elevation on the second
20 story and putting in a smaller window of
21 similar proportions, which will be in a
22 bathroom on the second story. And that

1 window, depending on the exact placement of
2 the toilet fixtures of the shower, they may
3 have to be moved slightly, but wouldn't affect
4 -- it has obscure glass in it, so it wouldn't
5 affect views from the bathroom into the
6 adjacent yards.

7 And I think that that probably
8 covers all the conditions of the windows that
9 we are talking about.

10 CHAIRPERSON MILLER: Okay. Do
11 Board Members have any questions for the
12 applicant?

13 VICE CHAIR LOUD: What you just
14 referenced in terms of the flexibility, is
15 that depicted in your Exhibit 23 that you
16 supplemented the record with?

17 MR. KAMM: No, it's not.

18 VICE CHAIR LOUD: It's not. Okay.

19 MEMBER DETTMAN: I noticed in the
20 package of letters that were submitted that
21 letters from your immediate neighbors to the
22 east weren't in there. Did you discuss this

1 with them, particularly 433 or 427 through 433
2 7th Street, S.E.?

3 MS. ROMAN: Those are rental
4 properties. I don't know who the owners are,
5 but they are all rental properties with the
6 exception of one, which is 429, S.E., and they
7 were unwilling to give me a letter of support.

8 MEMBER DETTMAN: Okay. Well,
9 those would be the neighbors that would be
10 impacted with respect to privacy and light
11 most, so could you just kind of briefly say,
12 you know, why it wouldn't be adverse?

13 MR. KAMM: Well, the -- we are
14 extending the existing structure 4 feet
15 further north. So the first properties that
16 you referenced on 7th Street, that would be
17 435, 433, 431, would not be impacted at all by
18 the extension north.

19 The one property that would be
20 potentially affected is 429 7th Street and the
21 addition that we are proposing to put on is
22 actually lower than the adjacent addition --

1 the adjacent building to the west of our
2 property. So the higher structure at 658 E
3 Street actually would shadow the property at
4 429 7th Street before this addition would
5 create any additional shadows.

6 In addition, there is the -- we
7 are maintaining the current set-back of
8 slightly over 4 feet from the property line,
9 so there should be no impact on the air that
10 is allowed to those spaces.

11 MS. ROMAN: And just to clarify,
12 we do have a letter of support from the
13 neighbor at 435 7th Street.

14 CHAIRPERSON MILLER: Any other
15 questions? Any other comments you want to
16 make before we move to Office of Planning?

17 MR. KAMM: I don't think so.

18 CHAIRPERSON MILLER: And do you
19 have a copy of Office of Planning's report?

20 MR. KAMM: I do not have one here.
21 There is one in the record.

22 CHAIRPERSON MILLER: You have seen

1 it?

2 MR. KAMM: Yes, I have seen it.

3 CHAIRPERSON MILLER: Oh.

4 MR. KAMM: I reviewed the record,
5 the case record on Friday, so I saw it and
6 they forwarded a copy to us as well. So I
7 know that the Office of Planning is
8 recommending approval of the project. And the
9 ANC has approved the project. We have been
10 before the HPRB and they have approved the
11 concept -- at the concept level and it has
12 been referred to the staff level for approval
13 when the building permit is applied for.

14 And we have also been before the
15 Capitol Hill Restoration Society, who has
16 approved the project as well. And that should
17 all be in your record, I believe.

18 CHAIRPERSON MILLER: Yes, it is.
19 Okay. And is anybody here from the ANC?
20 Okay. Yes, we do have in our record a letter
21 from ANC-6B dated February 11th in which they
22 voted 7-1 to support the application finding

1 that you met the burden for the special
2 exception.

3 Okay. Then if there aren't any
4 other questions for the applicant, let's turn
5 to the Office of Planning.

6 MS. JACKSON: Good afternoon,
7 Chair, Members of the Board. For the record,
8 my name is Arlova Jackson. I'm with the D.C.
9 Office of Planning. I'll stand on the record
10 and state that the Office of Planning
11 recommends support of the request, finds that
12 it meets the standards for special exception
13 approval as described in detail in our staff
14 report. And I will take any questions that
15 you have, at this time.

16 CHAIRPERSON MILLER: It's an
17 excellent report.

18 MS. JACKSON: Thanks.

19 CHAIRPERSON MILLER: Let me see if
20 we have a question for you or not.

21 MEMBER DETTMAN: Good afternoon,
22 Ms. Jackson. Just -- this doesn't change the

1 analysis or the relief or anything, but I just
2 wanted to ask on page 2 of your report under
3 lot occupancy and side yard, you state that
4 for this particular project, 60 percent lot
5 occupancy is the requirement and 5 feet is for
6 the side yard.

7 MS. JACKSON: It should be 50, 50
8 percent. That's an error.

9 MEMBER DETTMAN: Or is it 40?

10 MR. KAMM: I believe if I could
11 add, it's 40 percent.

12 MS. JACKSON: Oh, I'm sorry.

13 MR. KAMM: Yeah, for a semi-
14 detached dwelling.

15 MS. JACKSON: For the max, yes.

16 MEMBER DETTMAN: And again, this
17 doesn't change what is allowed under 223.

18 MS. JACKSON: Right.

19 CHAIRPERSON MILLER: We were just
20 wondering if the side yard calculation is
21 correct at 5 feet. That's also set forth on
22 page 2 of your report in the chart. We were

1 wondering if that shouldn't read 8 feet.

2 MS. JACKSON: I thought the -- in
3 the application they referenced for pre-1958
4 structures that was 5 feet, but --

5 CHAIRPERSON MILLER: Oh, you are
6 referring to 405.8?

7 MS. JACKSON: 405.8, right.

8 CHAIRPERSON MILLER: Oh, okay.
9 This is the first time I have seen it that
10 way.

11 MR. KAMM: We did reference that
12 in our application for structures before 1958
13 that the yard width is 5 feet rather than 8.

14 CHAIRPERSON MILLER: Okay. That
15 explains it. Thank you.

16 MR. KAMM: I think it's asterisked
17 as part of our table of lot occupancy and side
18 yard requirements.

19 CHAIRPERSON MILLER: Okay. Thank
20 you.

21 MS. JACKSON: Okay, um-hum.

22 CHAIRPERSON MILLER: Okay. I

1 don't have any further questions. That
2 explains it. It's really the first time I
3 have seen it in that use, in that context that
4 way. Okay. Any other questions?

5 Okay. Does the applicant have any
6 questions for the Office of Planning?

7 MR. KAMM: Tracy?

8 MS. ROMAN: I do not.

9 CHAIRPERSON MILLER: Okay. Is
10 anybody here from the ANC? I asked that
11 before, but you never know someone might have
12 come in. Okay. No. Is there anybody here to
13 testify in support of this application?
14 Anybody here to testify in opposition to this
15 application?

16 Okay. I'm going to ask the
17 applicant -- we also have a -- we do have a
18 letter from the Capitol Hill Restoration
19 Society dated March 16, 2009, it is our
20 Exhibit No. 22, in which they indicate that
21 they voted unanimously to support the
22 application. And the committee found that the

1 addition would not have an effect on the light
2 and air or privacy of use and enjoyment of
3 neighboring properties.

4 Okay. And then, of course, we
5 have letters of support in the record as well
6 and no letters in opposition.

7 Okay. That brings us to any
8 closing remarks that the applicant might want
9 to make.

10 MR. KAMM: I don't think we have
11 any closing remarks to offer.

12 CHAIRPERSON MILLER: Okay. That's
13 fine.

14 MR. KAMM: Thank you for hearing
15 our case.

16 CHAIRPERSON MILLER: You did very
17 well even before you walked in the door with
18 this file, so okay. If there are no further--
19 are there any further questions from Board
20 Members?

21 VICE CHAIR LOUD: Madam Chair, not
22 a question. I think there is just one matter

1 of an exhibit that came in beyond our advance
2 day rule. It's Exhibit 23, their revised
3 drawings that supplemented the original plans
4 of the applicant. And I think it came in
5 March 23rd. Let me just check and see, March
6 17th, actually, so we would need to waive our
7 rules and officially admit those in. But
8 apart from that, no issues at all.

9 CHAIRPERSON MILLER: All right.
10 Shall we do that by consensus waive our rules
11 to admit Exhibit No. 23, the revised drawings?
12 Okay. All right. Then that's done. And now
13 we can deal with the merits. And I'm going to
14 turn to Mr. Loud to start the discussion on
15 that.

16 VICE CHAIR LOUD: Madam Chair, I'm
17 going to be very brief in as much as the
18 record is very full and unless Board Members
19 and Commission Member want to recite the
20 facts, I'm not even going to do that. I'm
21 just going to say that I think the relief
22 could be granted on the record submitted

1 before us, which would include the pleadings
2 as well as the testimony that did come out
3 today.

4 If one takes a look at the record,
5 the applicant meets the burden for special
6 exception relief, particularly addition to a
7 single-family dwelling under 223. The
8 applicant meets the burden through Exhibits 8
9 and 23, which are his plans, Exhibit 3, which
10 is his applicant statement and the testimony
11 given today, Exhibit 24, which is the Office
12 of Planning report and Exhibit 20, which is
13 the ANC report that supports the applicant, in
14 addition to which it is addressed by Exhibit
15 21, which is the 10 neighbors that support,
16 including the west adjacent neighbor.

17 And although the east adjacent
18 neighbors don't support, there was testimony
19 today that they are primarily renters and that
20 there are no shadows cast on their properties
21 because of the size of the addition. In
22 addition to that, Exhibit 22, the Capitol Hill

1 Restoration Society.

2 So all of that in addition to the
3 testimony that came out today establishes that
4 this applicant is entitled to side yard, lot
5 occupancy and minimum lot area relief.

6 Now, if you want me to go into it
7 further, I would be happy to do it, but apart
8 from that --

9 CHAIRPERSON MILLER: No. I just
10 want to add that the applicant made reference
11 to the Historic Preservation Review Board
12 staff report and recommendation, which was for
13 approval and that is attached to the Office of
14 Planning.

15 VICE CHAIR LOUD: Okay. I would
16 like to move for approval of Application No.
17 17900 of Tracy Roman for special exception
18 relief under section 223 for an addition to a
19 single-family dwelling.

20 CHAIRPERSON MILLER: Could I add
21 also with flexibility with respect to the
22 horizontal placement of windows?

1 VICE CHAIR LOUD: Yes.

2 CHAIRPERSON MILLER: Okay. Then I
3 would second that. Is there further
4 deliberation?

5 Not hearing any, all those in
6 favor say aye.

7 ALL: Aye.

8 CHAIRPERSON MILLER: All those
9 opposed? All those abstaining? Would you
10 call the vote, please?

11 MS. BAILEY: Madam Chair, the vote
12 is recorded as 4-0-1 to grant the application.
13 Mr. Loud made the motion, Mrs. Miller
14 seconded, Mr. Jeffries, Mr. Dettman support
15 the motion. And the fifth BZA Member is not
16 present at this time. 4-0-1 granted with a
17 summary order. Whoops.

18 CHAIRPERSON MILLER: Yes, summary
19 order, Ms. Bailey. There is no party in
20 opposition.

21 MS. BAILEY: Thank you.

22 CHAIRPERSON MILLER: So you should

1 have that shortly. Okay.

2 MS. ROMAN: Thank you.

3 CHAIRPERSON MILLER: Thank you.

4 Okay. We are ready for the next case when you
5 are, Ms. Bailey.

6 MS. BAILEY: Application No. 17905
7 of James Iker and Hayes Nuss, pursuant to 11
8 DCMR 3104.1, for a special exception to allow
9 an addition to an existing one-family row
10 dwelling under section 223, not meeting the
11 lot occupancy requirements, that's section
12 403, the court requirements, section 406, and
13 the nonconforming structure provisions,
14 subsection 2001.3(b)(2) and a special
15 exception from the roof structure requirements
16 under section 411. The property is Zoned R-4.
17 It is located at 1329 R Street, N.W., Square
18 239, Lot 802.

19 CHAIRPERSON MILLER: Okay. Good
20 afternoon.

21 MS. PRINCE: Hello. How are you?

22 CHAIRPERSON MILLER: Fine. How

1 are you?

2 MS. PRINCE: Good.

3 CHAIRPERSON MILLER: So why don't
4 we start with introductions?

5 MR. NUSS: I'm Hayes Nuss an
6 occupant at 1329 R Street.

7 MS. PRINCE: Allison Prince from
8 Pillsbury.

9 CHAIRPERSON MILLER: Okay. I just
10 have a preliminary question and that goes to
11 the relief that we will be considering today.
12 I think that you sought relief related to roof
13 structure under 411, but Office of Planning
14 does not think that is required. So I'm
15 wondering what your position is now.

16 MS. PRINCE: I'm prepared to
17 address that. This is your call. It's the
18 question that resurfaces periodically about
19 whether a wall bounding a court constitutes an
20 exterior wall. We made the argument that we
21 satisfy the burden of proof for a special
22 exception for roof structure relief should you

1 find it necessary.

2 In the past, the Board has found
3 in some cases that it has been necessary to
4 set-back a roof structure from a wall bounding
5 in a court. Yet, in other cases, there have
6 been determinations that walls bounding courts
7 are not exterior walls. I just wanted to make
8 sure we were covered either way.

9 CHAIRPERSON MILLER: All right.
10 Let's turn to Office of Planning. Ms. Thomas,
11 do you want to address that?

12 MS. THOMAS: Yes, good morning,
13 Madam Chair. Good afternoon, Madam Chair,
14 Members of the Board. My name is Karen Thomas
15 with the Office of Planning. We also looked
16 at that situation and we relied on some of the
17 past cases and we determined in this case that
18 it was not an exterior wall, the court wall.

19 This is a closed court and there
20 is no impact, absolutely no impact with
21 respect to anything being affected with
22 respect to the neighbor's property. It's a

1 high wall, no windows. And the only reason
2 that the court is being created is to provide
3 windows for light and air to the subject
4 property.

5 So beyond that, there is
6 precedence or there is past case which
7 determine that even though they say exterior
8 wall, I'm going to quote from the Appeal
9 17109, which was the Belmont case and I think
10 that's what Ms. Prince, Mrs. Prince has relied
11 on, the applicant relied on that it include a
12 wall set-back from the property line which
13 abuts a yard or a court.

14 But in review, it is typically
15 open courts situation and not for a closed
16 court. And in this case it's a closed court.
17 So we relied on our interpretation in past
18 cases.

19 CHAIRPERSON MILLER: Okay. I was
20 looking at Kalorama also. I have that right
21 in front of me.

22 MS. THOMAS: Um-hum.

1 CHAIRPERSON MILLER: So Kalorama
2 though is what Ms. Prince is relying on,
3 because we talk about how the Zoning
4 Regulations include that, right? Well, the
5 term exterior walls has been interpreted more
6 broadly under the Zoning Regulations to
7 include a wall set-back from the property line
8 that abuts a yard or a court as opposed to a
9 street or an alley.

10 But then you are saying that there
11 have been other cases that distinguish between
12 a closed court and an open court?

13 MS. THOMAS: I'm sorry, it didn't
14 distinguish between a closed court and an open
15 court, but this situation referred to either
16 a closed court or open court. It didn't make
17 that distinction, but --

18 CHAIRPERSON MILLER: Okay. And do
19 you know those case or anything?

20 MS. THOMAS: I can't remember off
21 the top of my head which one, but I know that
22 there was one with a hotel in the Foggy Bottom

1 area. I don't want to quote what case number
2 that was.

3 COMMISSIONER JEFFRIES: Is this
4 court -- this court is open from above. I
5 mean, there is not a skylight?

6 MS. THOMAS: Yes, it's open from
7 above.

8 COMMISSIONER JEFFRIES: Yeah.
9 There is not a skylight.

10 MS. THOMAS: No.

11 COMMISSIONER JEFFRIES: So it's
12 just effectively a light well.

13 MS. THOMAS: It is a light well,
14 yes.

15 COMMISSIONER JEFFRIES: Yeah.

16 MEMBER DETTMAN: Madam Chair, just
17 a couple points. I think that maybe the
18 safest route to go is to go forward with the
19 relief as advertised. The most recent case I
20 can think of is, is it the Hotel Washington on
21 15th Street and Pennsylvania Avenue?

22 CHAIRPERSON MILLER: Um-hum.

1 MEMBER DETTMAN: We had a case it
2 is currently undergoing renovation and they
3 were seeking set-back from an interior court,
4 similar to this one, a closed court that was
5 formed by three walls of the hotel and then
6 the Willard next door and they couldn't
7 properly set-back. And we just went forward
8 with a 411.11 special exception.

9 And I think that's also the safer
10 route to go, because I think of the guidance
11 that is given in the Kalorama Citizens' Appeal
12 as well as there could be certain situations
13 where you have a closed court that fronts on
14 a street and you would want to maybe consider
15 that as an exterior wall.

16 CHAIRPERSON MILLER: Okay. I
17 think that, unless I hear differently from
18 others, I would agree, because all I have is
19 Kalorama in front of me. And I do remember
20 that Washington Hotel case. And so anyway, it
21 doesn't hurt. Okay.

22 MS. PRINCE: Would you like us to

1 proceed with our presentation? We can keep it
2 brief or do you not want a presentation at all
3 now that we have worked through the court
4 issue?

5 CHAIRPERSON MILLER: Wait. I
6 think really summary brief, because you also
7 have a very full record and I know you have
8 been waiting all morning. And the case does
9 not look problematic in any way, right?

10 COMMISSIONER JEFFRIES: And it's a
11 stunning house, so we've got to give that --
12 give props there.

13 CHAIRPERSON MILLER: Okay. Why
14 don't you just touch the highlights?

15 MS. PRINCE: I'll touch the
16 highlights.

17 CHAIRPERSON MILLER: Yeah.

18 MS. PRINCE: I'm Allison Prince
19 with Pillsbury. I'm here on behalf of James
20 Iker and Hayes Nuss, co-applicants for the
21 requested special exception.

22 Basically, the co-applicants are

1 seeking to extend an existing third-story of
2 this lovely grand house and grand it is. I
3 have been there. It is just an incredible
4 house. In so doing, they need very slight
5 amounts of relief under 223, nothing drastic.

6 There was a matter-of-right scheme
7 that was detailed in great -- at great length
8 in our submissions that show you that a very
9 comparable kind of addition could have been
10 done as a matter-of-right and we, in fact,
11 could create a project with few impacts by
12 seeking 223 relief.

13 The basic test, no significant
14 impact on light and air, privacy, no
15 substantial intrusion on the character of the
16 street. We meet all those tests hands down.
17 Also, for the penthouse set-back, ironically
18 were there not a court at all, the penthouse
19 could be located even closer to the neighbor's
20 property.

21 So I can't see any issue there
22 whatsoever. My clients have done tremendous

1 outreach. We have spent a lot of time with
2 the ANC and got the support of the ANC. No
3 easy feat, I might add, for ANC-2F. And they
4 also have really knocked on doors and talked
5 to their neighbors in a very, very important
6 and impressive way.

7 They have met with the next door
8 neighbor who, in fact, was here and had to
9 leave to go back to work, with just neighbors
10 in every direction and are not aware of any
11 opposition whatsoever.

12 So Mr. Nuss has quite a detailed
13 presentation, but it is in the materials and,
14 I mean, I think he just did a great job in
15 laying out matter-of-right versus special
16 exception and what the process allows for
17 here. And so if you don't have any questions,
18 we would be willing to stand on the record.

19 CHAIRPERSON MILLER: Okay. I
20 think that's what you will do, because, you
21 know, I'm sorry, you know, to disappoint you
22 if you wanted to do a whole presentation, but

1 it's just --

2 MR. NUSS: No, I'm perfectly happy
3 with that.

4 CHAIRPERSON MILLER: All right.
5 It's just a reflection of what an excellent
6 filing you have made. So okay. Why don't we
7 go to Office of Planning then?

8 MS. THOMAS: Madam Chair, Karen
9 Thomas again with the Office of Planning.
10 Beyond what I earlier alluded to with respect
11 to the court, I have nothing else to add
12 except to say that we will stand on the record
13 and recommend approval of this case. And I'll
14 be happy to take any questions.

15 CHAIRPERSON MILLER: Okay. I just
16 want to say that it is an excellent report and
17 I don't have any questions. Do others have
18 questions?

19 VICE CHAIR LOUD: I just want to
20 echo you, Madam Chair, that it is an excellent
21 report. I do have one question that doesn't
22 affect the outcome for me, but it was

1 something I was unclear on. You have analyzed
2 that OP has analyzed the closed court as a
3 flat, right? Because the court width that you
4 apply to the case is what applied to a flat,
5 not a single-family dwelling. I was just
6 curious as to why you did that or if I'm not
7 understanding correctly what you did.

8 I'm looking at 406.1 Zone District
9 R-4, the second row where it talks about all
10 other structures. And that's where you come
11 up with the not less than 15 feet in width for
12 a closed court. But if this is a single-
13 family dwelling, and we're talking about the
14 criterion on the first row, not less than 5
15 feet, I think this exceeds 5 feet.

16 So again, help me understand where
17 either I'm faulty in my analysis or if, in
18 fact, you have analyzed it as a flat. I think
19 there is something in the record about
20 eventually this could be a flat, etcetera,
21 etcetera.

22 MS. THOMAS: Exactly.

1 VICE CHAIR LOUD: Okay. And so
2 perhaps that was the reason why counsel wasn't
3 concerned about it.

4 MS. THOMAS: Right.

5 VICE CHAIR LOUD: Because at some
6 point you are going to try to turn this into
7 a flat. Okay. So is that the reason for it?

8 MS. THOMAS: Yes.

9 VICE CHAIR LOUD: Okay.

10 MS. THOMAS: Yeah, because they
11 represented it as such.

12 VICE CHAIR LOUD: As a flat.
13 Okay.

14 MS. THOMAS: Could be.

15 VICE CHAIR LOUD: All right. That
16 makes sense then. I don't have any further
17 questions, Madam Chair.

18 CHAIRPERSON MILLER: Does the
19 applicant have any questions?

20 MS. PRINCE: No questions.

21 CHAIRPERSON MILLER: Do you have a
22 copy of the Office of Planning report?

1 MS. PRINCE: We do.

2 CHAIRPERSON MILLER: Okay. Is
3 anybody here from the ANC in this case? Did
4 you -- you say you have the support of the
5 ANC?

6 MS. PRINCE: We do. We have an
7 electronic version of a letter that was sent
8 to the ANC a few days ago. I don't know if it
9 didn't make its way into the file, but I'm
10 happy to provide Cliff with an electronic copy
11 of the letter.

12 CHAIRPERSON MILLER: You mean an
13 email was sent to Office of Zoning?

14 MS. PRINCE: We have a PDF of the
15 letter that was sent to you.

16 CHAIRPERSON MILLER: Okay. I
17 don't think -- it didn't make it into our
18 files. So they voted at a publicly noted
19 meeting?

20 MS. PRINCE: Oh, yes. We went to
21 the Planning and Zoning Committee and then to
22 the full -- it was on the consent agenda for

1 the full ANC, because we had the support of
2 the entire committee.

3 CHAIRPERSON MILLER: So it was
4 unanimous?

5 MS. PRINCE: Unanimous, um-hum.

6 CHAIRPERSON MILLER: Okay. All
7 right. Is anybody here to testify in support
8 of this application? Anybody in opposition?
9 Okay. Any further questions from Board
10 Members?

11 MEMBER DETTMAN: Ms. Prince, could
12 you -- would you mind just very, very briefly
13 pursuant to 411.11 just state why you are
14 unable to meet the set-back requirements? Why
15 it's impracticable because of operating
16 difficulties, size of building lot? I didn't
17 see that in your prehearing.

18 MS. PRINCE: Well, the point at
19 which the penthouse is located on the roof is
20 a narrow part of the roof. So to set-back
21 from the court at that location, the required
22 distance would force the penthouse to be quite

1 constrained. Again, if we had no -- we could
2 put a skylight over the court, thereby,
3 turning it into covered space, not a court any
4 more, and we could have the penthouse in
5 exactly the same location.

6 CHAIRPERSON MILLER: Okay. Any
7 other Board questions? Any closing remarks?

8 MS. PRINCE: We just greatly
9 appreciate your action today and a summary
10 order if that would be possible, so they can
11 move ahead.

12 CHAIRPERSON MILLER: I would also
13 note for the record that we have some letters
14 of support in this application. One from
15 Kerry and Kim Kathan, 1325 R Street, N.W., as
16 Exhibit 22, and Dominique Dello and Gigi
17 Johnson at Exhibit 26. I see an additional
18 one and I may -- some additional ones that I
19 think just came in even more recently, Robert
20 Barry, 1330 R Street, N.W.

21 Okay. I don't see any in
22 opposition. Okay. I think that the Board is

1 ready for deliberation on this application.
2 And I'm going to turn to Mr. Loud to start the
3 deliberation.

4 VICE CHAIR LOUD: Thank you, Madam
5 Chair. I'll be brief again. I think this is
6 a relatively straightforward case and is full
7 in both the record and the testimony. I'm
8 going to go over the facts in this one, unlike
9 the last one, because I think it's an
10 interesting case and it has some wrinkles
11 about what we discussed about the court.

12 So in this case, the applicant
13 proposes an extension to the third floor of "a
14 lovely and grand house," so that it matches
15 the depth of the first two floors. The
16 extension will add about 150 square feet on
17 the first floor, mostly for an expanded
18 kitchen. The same on the second floor as part
19 of a new family room and about 775 square feet
20 on the third floor. And then there is going
21 to be an elevator to increase mobility among
22 the different floors.

1 Overall the net for the applicant
2 of the project, I think, is two bedrooms, two
3 new baths on the third floor and then the
4 aforementioned elevator.

5 The elevator is enclosed in a 10
6 foot elevator rooftop penthouse that meets
7 set-back requirements on the north and south
8 exterior walls, but not as to the east
9 exterior wall, which I think we have agreed to
10 refer to as an exterior wall under Kalorama in
11 the discussion we had earlier.

12 The addition is mostly in the
13 rear. It is not visible from the street
14 frontage at all and it encloses a
15 nonconforming open court on the east creating
16 a closed court.

17 Under 406, the rules at the
18 minimum width for a closed court must be 4
19 inches for every foot of height and the
20 applicant does not meet that requirement. In
21 addition to which the lot occupancy maximum of
22 60 percent here in the R-4, this project is

1 66.4 percent, according to the applicant.

2 OP says it is about 65.8 percent,
3 but nonetheless, it would exceed the 60
4 percent, in addition to which, as I mentioned,
5 the east exterior wall does not meet the 10
6 foot set-back requirement of 411.11.

7 With respect to the special
8 exception analysis, there is no -- there are
9 no impacts to light and air. There is only a
10 slight shadow that is created, according to
11 the applicant's Exhibit 4. The neighborhood
12 is already dense and the penthouse itself that
13 houses the elevator is very small. And so it
14 doesn't create an impact to light and air.

15 In terms of privacy of use and
16 enjoyment, closing the open court according to
17 the applicant actually creates greater privacy
18 for the neighbors and that was not
19 contradicted by all the -- by either OP or any
20 of the other evidence that came forward. In
21 addition to which there are trees in the rear
22 that protect privacy across the alley and

1 there is an existing fence.

2 In terms of visual intrusion upon
3 the scale and character of surrounding
4 properties, again, it doesn't front the
5 street. It is a rear addition. A third floor
6 addition is not visible from R Street at all.
7 Two neighbors support, in addition to which
8 there were some additional letters that came
9 in, I guess, over the weekend, so that would
10 actually be increased from two neighbors to
11 two plus whatever exhibits you have. I didn't
12 actually get those copies.

13 The ANC report at least supports
14 the project. I didn't see anything in the
15 record from the ANC, but the testimony or at
16 least the statement from counsel was that
17 there is a PDF available which would
18 substantiate that. OP also represents that
19 the ANC supports it, so it's not just the
20 applicant.

21 So in light of those facts, I
22 think the applicant meets the burden for

1 section 223 relief and I'm prepared to support
2 it. And I open it for further dialogue.

3 CHAIRPERSON MILLER: That was
4 excellent, very thorough. I don't have any
5 other comments. Does anybody else have
6 comments? Okay. Then do we have a motion?

7 VICE CHAIR LOUD: Madam Chair, I
8 would like to move approval of Application No.
9 17905 for a special exception relief under
10 section 223 and section 411.11.

11 COMMISSIONER JEFFRIES: Second.

12 CHAIRPERSON MILLER: Further
13 deliberation?

14 Not hearing any, all those in
15 favor say aye.

16 ALL: Aye.

17 CHAIRPERSON MILLER: All those
18 opposed? All those abstaining? And would you
19 call the vote, please?

20 MS. BAILEY: The vote is recorded
21 as 4-0-1 to grant the application. Mr. Loud
22 made the motion, Mr. Jeffries seconded, Mr.

1 Dettman and Mrs. Miller support the motion.

2 CHAIRPERSON MILLER: And this will
3 be a summary order as there is no party in
4 opposition.

5 MS. PRINCE: Thank you.

6 CHAIRPERSON MILLER: Okay. Thank
7 you very much.

8 MS. BAILEY: Madam Chair, prior to
9 calling the next case that is scheduled on the
10 docket, we are in the afternoon session and
11 there is a request for a postponement for one
12 of the afternoon cases. And I don't know if
13 that person is represented at this time.
14 Application 17893, Antonio Seleme? Okay. I'm
15 sorry, Madam Chair, I just thought if that
16 person was present, then the Board could
17 consider the matter, but evidently that person
18 hasn't shown up as yet.

19 CHAIRPERSON MILLER: Okay. No, I
20 understand that if it was going to be quick,
21 so they wouldn't have to wait through the
22 merits of the case. But in that they are not

1 here, we are then going to proceed with
2 District-Properties.

3 MS. BAILEY: District-Properties.
4 You can -- thanks.

5 COMMISSIONER JEFFRIES: I'm sorry,
6 I didn't mean to tell you to leave. I was
7 just telling you just like it doesn't concern
8 you, don't worry about it. Sorry. Where is
9 he going?

10 MS. BAILEY: Application 17898,
11 District-Properties.com LLC, pursuant to 11
12 DCMR section 310 -- relief from section
13 3103.2, for a variance from the lot width and
14 lot area requirements under section 401, and
15 a variance from the side yard requirements
16 under section 405, to construct a new one-
17 family detached dwelling. The property is
18 Zoned R-2. It is located at 311 58th Street,
19 N.E., Square 5264, Lot 15.

20 Members of the Board, there are
21 two preliminary matters that I am aware of
22 that is associated with this application. One

1 has to deal with a housekeeping matter. The
2 applicant was sent a letter indicating that
3 some additional filing fees were to be paid.
4 I'm not sure if he received that
5 correspondence, but we don't have a record
6 that that was taken care of. That's in
7 Exhibit 11 of our record.

8 And then secondly, there is a
9 request from ANC-7C that the application be
10 postponed. We have a written request, well,
11 actually, two written requests. There is a
12 letter that's filed as Exhibit 22 from ANC-7C
13 and then additionally there was an ANC
14 Commissioner present this morning and she left
15 correspondence with us as well, she was unable
16 to stay and I'll pass that out at this time,
17 requesting that the hearing be continued,
18 that's Commissioner for ANC-7C05. And again,
19 I'll pass that out now.

20 CHAIRPERSON MILLER: Thank you.
21 And why don't you introduce yourself for the
22 record?

1 MR. SIKDER: Good afternoon, Madam
2 Chair and Board Members. My name is Mohammad
3 Sikder and my address is 6660 Tennyson Drive,
4 McLean, Virginia 22101. Last name, S-I-K-D-E-
5 R, first name M-O-H-A-M-M-A-D.

6 CHAIRPERSON MILLER: Okay. Let's
7 just start with the preliminary matters. And
8 Ms. Bailey made reference to zoning records,
9 Office of Zoning records indicating that you
10 owe an outstanding filing fee? Do you have a
11 response to that?

12 MR. SIKDER: I was -- I mean, I
13 was told that some time ago and we file it.
14 And my representative, Tahir, he talked to Mr.
15 Nero and I thought it had been taken care of.
16 I didn't know since everything -- any issues
17 are pending.

18 MS. BAILEY: We don't have a
19 receipt, Madam Chair. That's for --

20 MR. SIKDER: But in either case,
21 if it -- I mean, we definitely willing to pay,
22 that's not a problem. But I mean, I was not

1 aware of any sum or not.

2 COMMISSIONER JEFFRIES: Did you
3 not know of this before?

4 MR. SIKDER: No.

5 COMMISSIONER JEFFRIES: So you are
6 just hearing about this on record?

7 MR. SIKDER: That's right.

8 COMMISSIONER JEFFRIES: Okay.

9 CHAIRPERSON MILLER: There is a
10 letter to Mr. Sikder, Exhibit No. 11.

11 COMMISSIONER JEFFRIES: Okay. I'm
12 asking did the applicant know about this.

13 CHAIRPERSON MILLER: I know, but
14 I'm saying there is a letter in the file to
15 him. Did you get this letter?

16 COMMISSIONER JEFFRIES: I
17 recognize there is a letter. I'm --

18 CHAIRPERSON MILLER: Okay.

19 COMMISSIONER JEFFRIES: I mean he
20 seems to be somewhat confused about all this.
21 This is the first time he has heard about it.
22 Is that not the case? Have you? You did --

1 MR. SIKDER: Right.

2 COMMISSIONER JEFFRIES: Yeah.

3 MR. SIKDER: That's right, yeah.

4 COMMISSIONER JEFFRIES: That's
5 all.

6 MS. BAILEY: Mr. Sikder is your
7 address 6500 Chillum Place, N.W.?

8 MR. SIKDER: Ah, that's correct.

9 MS. BAILEY: That's your address?

10 MR. SIKDER: That's office
11 address, correct.

12 COMMISSIONER JEFFRIES: Turn your
13 mike off.

14 MR. SIKDER: Sorry. You want me
15 explain?

16 CHAIRPERSON MILLER: Sure.

17 MR. SIKDER: This -- we -- I have
18 a letter here on October 20th and it says that
19 they are charging twice, \$800/\$800. And he
20 spoke to Mr. Nero, my representative, Mr.
21 Tahir. And as far as I know, this been
22 resolved at that time. And I hear the first

1 time that this has been not paid or is not
2 resolved.

3 CHAIRPERSON MILLER: Are you
4 saying an agent of yours spoke to Mr. Nero
5 after this letter and you think it was paid?

6 MR. SIKDER: No, this letter -- I
7 mean, the second letter I see, I never saw
8 this.

9 CHAIRPERSON MILLER: You never saw
10 that letter?

11 MR. SIKDER: Correct. And partly
12 the reason we -- my -- and --

13 CHAIRPERSON MILLER: You know, if
14 you think you paid --

15 MR. SIKDER: No, no, I --

16 CHAIRPERSON MILLER: You don't
17 think you paid? Okay. I was going to say we
18 could check or they could check the records.

19 MR. SIKDER: Actually, I didn't
20 say. We paid \$800. And the reason was, I
21 mean, this normally the way it was, we are
22 paying so far like per case basis is \$800.

1 But for this, especially for this one, they
2 are charging twice for each variance. And I
3 guess Tahir was asking there is no error. It
4 says we have to pay for a variance, but per --
5 as an application.

6 I mean, that was the conversation,
7 last conversation I had with Tahir.

8 COMMISSIONER JEFFRIES: Is this --
9 I mean, listen you have been before this BZA
10 many times. I mean, you know, I mean even the
11 times I'm here.

12 MR. SIKDER: The --

13 COMMISSIONER JEFFRIES: So is this
14 -- how is this different? I know that wasn't
15 a great experience, but is this any different?

16 MR. SIKDER: Yes, it's different,
17 because we are paying for every case at \$800.
18 And this is the first time they send a bill
19 for \$1,600. And my representative talked to
20 Mr. Nero and that was in October. I mean, I--
21 this letter I found today, this is the second
22 letter it says there is \$800 due. I mean, the

1 bill I never saw it.

2 We paid \$800. I have the canceled
3 check.

4 COMMISSIONER JEFFRIES: No, we
5 have --

6 MS. BAILEY: Madam Chair, I don't
7 think the issue is \$800. It's \$1,600 for the
8 processing of the application, each variance
9 is \$800. We have receipt that you paid one
10 \$800, but we don't have a receipt that you
11 paid the second \$800. The total for the
12 processing of your application, sir, is
13 \$1,600.

14 MR. SIKDER: That's -- I -- the
15 first letter it says there, I mean, there is
16 the two variances. But let me say other way.
17 If -- I mean, if we need to pay, it's no issue
18 here that we are not going to pay. That's
19 fine. That's what I think would be better
20 than now making the argument, you know, what
21 was the scenario.

22 But I was trying to explain to you

1 that so far we paid our application basis,
2 \$800, so when this bill we got, Tahir, my
3 representative, he was asking some kinds of
4 like condition, because we never saw that we
5 have to pay per variance. And that way I
6 thought it was resolved at that time.

7 And as far as the second letter,
8 this is the first time I see. If I saw it, I
9 -- definitely I would contact Mr. Nero and
10 find it out if that's a valid charge, then we
11 would have paid it. But for right now, I
12 mean, if we have to pay, no problem. We are
13 going to pay.

14 CHAIRPERSON MILLER: Okay. We
15 don't usually deal with fees.

16 MR. SIKDER: Absolutely.

17 CHAIRPERSON MILLER: Okay. And
18 3180 is the section of the regulations that
19 deal with fees. And that's where you will see
20 that there is a fee for each variance. But
21 you have a recourse if you feel that that's
22 wrong and you can appeal that. But it looks

1 to me like you need to pay and then ask for a
2 refund if you think it's wrong.

3 But if you go through 3180, you
4 will see where the authority is for charging
5 per variance.

6 MR. SIKDER: Sure. We will take
7 it up.

8 COMMISSIONER JEFFRIES: And just
9 hope that no one looks at any of your past
10 applications.

11 MR. MOY: We have two options, I
12 would think. We either proceed and depending
13 on how the Board rules, we would not issue an
14 order until we receive full payment or to
15 reschedule the application entirely. Those
16 would be the two options I would present to
17 the Board.

18 CHAIRPERSON MILLER: Are you
19 prepared to pay now? Do you have your
20 checkbook?

21 MR. SIKDER: No, I don't have the
22 checkbook. I mean, the only thing I can say

1 is you not issue the order until I paid.

2 CHAIRPERSON MILLER: No, well, I
3 don't know. It says proceed with an appeal.
4 I mean, proceed -- we also have a request for
5 a postponement in this case and,
6 unfortunately, that's the second item on the
7 agenda. So this -- there may be reason to
8 postpone in general.

9 Unfortunately, the ANC person who
10 is requesting the postponement had to leave.

11 MR. SIKDER: No, but the payment,
12 if you really insisting, yes, I can call my
13 office and they can come here to -- they will
14 do the check. It will lessen the problem.

15 MR. MOY: Well, that's
16 interesting. That would be a third option if
17 they brought the check while the Board is
18 still in session.

19 MR. SIKDER: Well, I --

20 MR. MOY: Otherwise, then
21 postpone.

22 MR. SIKDER: -- you take that and

1 that's no problem, but I mean, the
2 postponement as the ANC is asking, there is no
3 actual valid reason, because whatever their
4 question that they raised, we give all the
5 information. So I don't know why they are
6 asking postponement. I have no idea.

7 CHAIRPERSON MILLER: Okay. It
8 seems that we probably should -- this probably
9 shouldn't have been on the agenda for today
10 without the fee having been paid, but it got
11 here. And I guess my concern is twofold. One
12 is that we have this wrinkle here that, you
13 know, we're not supposed to hear applications
14 unless they have been paid for.

15 And two, we have the ANC who wants
16 a postponement and it's not clear why they
17 want a postponement. And, you know, when I
18 looked at the record, I thought well, I read
19 the ANC report and I don't see why they need
20 a postponement. I hope somebody is there who
21 can explain it and then as it turns out, there
22 was somebody here, but she had to go because

1 our morning session in our meeting went long
2 and late and whatever, so we didn't get to
3 her.

4 So at this point, I'm inclined to
5 suggest that it be rescheduled, but I'm --
6 what do you all -- what are you thinking,
7 other Board Members?

8 VICE CHAIR LOUD: I'm inclined to
9 agree with you, Madam Chair. Reluctantly, I
10 read the ANC's report as well and the reasons
11 that they articulated in the report for
12 seeking a continuance were not compelling to
13 me, because they were asking that the
14 applicant brief the Single Member District ANC
15 Commissioner, but I think that we have a
16 process and it's important that all parties,
17 ANCs, applicants, OP be able to rely on that
18 process.

19 I think he went to the ANC
20 meeting. I think they had notice. I think
21 they had a quorum. But they decided not to
22 vote requesting that he make a second trip to

1 the Single Member District's meeting, so that
2 the persons most directly affected could weigh
3 in.

4 But again, he went to the regular
5 ANC meeting. We sent the 200 foot radius
6 notices out to everyone. There are no letters
7 of opposition. But all that being said, I
8 would find it very difficult to support moving
9 forward and support the application when he
10 hasn't paid the money and the ANC is asking
11 for a continuance.

12 It would be different, I think, if
13 he had paid, I would still be prepared to move
14 forward, but those two things combined with
15 one another, I would much rather just continue
16 it.

17 COMMISSIONER JEFFRIES: Excuse me,
18 the applicant, you are in no position to pay
19 this fee like now?

20 MR. SIKDER: I can pay by visa
21 card. I mean, I --

22 CHAIRPERSON MILLER: And I'm

1 somewhat in agreement with Mr. Loud. If it
2 was just one of those things, then maybe I
3 wouldn't say postpone it, but it's the
4 combination of the two. And I think Mr. Moy
5 was just showing me the calendar and if you
6 are free, Mr. Sikder, we could put you on for
7 the next BZA Tuesday, which is April 7th in
8 the afternoon.

9 And it would actually be helpful
10 to your case probably if you did meet with the
11 ANC and they apparently just want to
12 understand it better. And if you have their
13 support, I think all things being equal, that
14 the two weeks delay would solve all these
15 problems.

16 MR. SIKDER: So that would be
17 April 7th? That's fine.

18 CHAIRPERSON MILLER: It would be
19 April 7, third in the afternoon. Well, not
20 necessarily. April 7th in the afternoon. Do
21 you have anything? Is that okay with you?

22 MR. SIKDER: Yes.

1 CHAIRPERSON MILLER: Okay. Then
2 we can straighten everything out and not have
3 any questions hanging over your application.
4 Okay. Ms. Bailey, this case is going to be
5 continued until April 7th in the afternoon.

6 MS. BAILEY: Thank you.

7 CHAIRPERSON MILLER: Thank you.

8 MS. BAILEY: Madam Chair, I think
9 the parties are here for the case that we had
10 spoken about earlier that was requesting --
11 that is requesting a postponement, Antonio
12 Seleme, Application 17893. Did the Board want
13 to take that up at this point, Madam Chair?

14 VICE CHAIR LOUD: Yes, we might as
15 well.

16 CHAIRPERSON MILLER: Sure. Do we
17 have a question of party status in this case
18 also, Ms. Bailey?

19 MS. BAILEY: Yes, we do, Madam
20 Chair.

21 CHAIRPERSON MILLER: And is
22 anybody here on this case in addition to the

1 applicant? And are you the ones who are
2 applying for party status? Okay. So we may
3 consider that as well. If you want to come
4 forward to the table, you can. Is anybody
5 here from the ANC? Oh, why don't you have a
6 seat at the table? And why don't we start
7 with introductions, starting with the
8 applicant?

9 MS. BELL: Good afternoon, Madam
10 Chair. My name is Lisa Bell and I'm here on
11 behalf of Antonio Seleme, the applicant in
12 this matter.

13 CHAIRPERSON MILLER: And you can
14 introduce yourselves as well, please.

15 MR. REESE: I'm Bernard Reese,
16 3828 Legation Street, an immediate neighbor of
17 the applicant. I'm here on my own behalf and
18 not officially, but representing other
19 neighbors.

20 MS. REESE: And I'm Barbara Reese.

21 CHAIRPERSON MILLER: Well, I think
22 perhaps we should deal with the question of

1 party status first, unless Ms. Bell gives me
2 a reason to the contrary, because then if
3 you're granted party status, you would have a
4 say on the request for a continuance.

5 So give me a second, give all of
6 us a second and we will pull that request. I
7 think you filed your request for party status,
8 correct?

9 MR. REESE: Yes, we did.

10 CHAIRPERSON MILLER: Okay. Okay.
11 Just as a preliminary matter, I just want to
12 ask you if you know the difference between
13 participating as a party and participating
14 just as individuals?

15 MR. REESE: I think I get served
16 as a party. I think probably --

17 COURT REPORTER: Do you have your
18 microphone on?

19 MR. REESE: Thank you. All right.
20 I believe I get served as a party. I believe
21 that in any future action, I would have some
22 status as a party should it go beyond this

1 stage of hearing.

2 CHAIRPERSON MILLER: Okay. And
3 you want to -- do you want to participate in
4 the manner in which you would be able to
5 present witnesses or cross examine as opposed
6 to as an individual you can testify.

7 MR. REESE: Yes.

8 CHAIRPERSON MILLER: Okay. And
9 you are impacted differently from the general
10 public because?

11 MR. REESE: Because we live within
12 inches of this structure that has been built.
13 It is in our -- it is right next to our
14 backyard. It is -- so that makes us really
15 unique, although there are other neighbors who
16 see it and are distressed about it, but I
17 think we are probably as distressed as anyone.
18 And that, I think, alone is enough to qualify
19 us as parties.

20 CHAIRPERSON MILLER: That sounds
21 like you might be more impacted than others,
22 because you are right next to it. Is that

1 right?

2 MR. REESE: Well, that's true,
3 yes.

4 CHAIRPERSON MILLER: Okay. And
5 any questions by Board Members? Ms. Bell, do
6 you have any objection to granting party
7 status?

8 MS. BELL: Yes, actually, Mr.
9 Seleme does have an objection.

10 CHAIRPERSON MILLER: Okay.

11 MS. BELL: First of all, Mr. Reyes
12 was --

13 MR. REESE: Reese.

14 MS. BELL: Reese.

15 MR. REESE: Yes.

16 MS. BELL: -- very involved with
17 the ANC meeting. The ANC in effect represents
18 his vision of the opposition to this
19 application. In fact, many of the findings of
20 fact include those facts that he presented.
21 He also was involved in the petition that was
22 circulated among a few of the neighbors.

1 So his interest as well as his
2 thoughts with regard to the opposition is
3 contained in the ANC statement that was
4 provided for this -- with this filing. And as
5 well as with the petition, that has also been
6 included by, I think, four neighbors.

7 So there is really no reason for
8 him to have party status here, but to further
9 forward his opposition in a more personal way.
10 As to whether or not he is directly impacted,
11 it is true that he is a next door neighbor.
12 There is another next door neighbor who also
13 signed the petition with regard to the site
14 and in line of sight and other issues that we
15 can deal with when we get to the application.

16 So I don't think he is uniquely
17 situated. I don't think he has clearly
18 demonstrated that he is uniquely situated.
19 And quite frankly, as I said, all of his
20 objections and many of the findings of fact
21 that he raised were included in the ANC
22 report, which, by the way I might add, Mr.

1 Seleme was not even present at that ANC
2 meeting.

3 CHAIRPERSON MILLER: Okay. Do you
4 have a response to that?

5 MR. REESE: The fact that Mr.
6 Seleme was not present at the ANC meeting sort
7 of vitiates any claim that the facts were not
8 true. I mean, it's just rather incredible.

9 CHAIRPERSON MILLER: Okay. Let me
10 just ask you the main point. Her main point
11 is, as I hear it, that the ANC can represent
12 your interests fully and, therefore, we
13 shouldn't grant you party status.

14 MR. REESE: Well, the -- I don't
15 believe the ANC is present here. I have not
16 seen anyone, any member of the ANC.

17 CHAIRPERSON MILLER: Is the ANC
18 here in this case? No? Yeah, that's a point
19 well-taken. Let me say this --

20 MS. BELL: Well, we requested a
21 postponement, which, in fact, I contacted the
22 ANC. They were aware that we were requesting

1 a postponement as well as the Office of
2 Zoning. So that might be one reason why they
3 are not here, because they expected the
4 meeting not to proceed today.

5 CHAIRPERSON MILLER: I would say
6 this that if we were to grant you party
7 status, then the ANC is automatically a party,
8 so they are already a party in this case.

9 MR. REESE: Right.

10 CHAIRPERSON MILLER: I think then
11 that the Board would just be careful that your
12 presentation or cross examination not be
13 redundant and that you -- to the ANC and that
14 you would work with the ANC, because the Board
15 has a discretion to limit, you know, cross or
16 whatever for redundancy, which, you know, is
17 our main point.

18 MR. REESE: Yeah. If I should
19 hear that even cross examination is necessary
20 in this case, I would be surprised. I think
21 the facts are undisputed. I will be anxious
22 to hear in what sense, in what way they might

1 be disputed.

2 CHAIRPERSON MILLER: Any questions
3 from Board Members?

4 VICE CHAIR LOUD: I just want to
5 echo you, Madam Chair. And I'm saying that
6 because Exhibit 25 has several attachments to
7 it, a number of different neighbors saying
8 that they are uniquely adversely impacted.
9 Just being really clear that the party status
10 is for this applicant, Mr. Reese, and that the
11 cross examination that you talked about would
12 not be on behalf of all of the people who are
13 attached to this, but would really be his
14 unique special interest.

15 MS. BELL: Well, if I could
16 interject, as I mentioned Mr. -- he signed the
17 petition, he was the first person to sign the
18 petition as well as his statement was attached
19 to the ANC report. So can we expect something
20 different in the application process or --

21 VICE CHAIR LOUD: But I don't
22 think that's the rule. If you take a look at

1 section 3106 regarding party status
2 applicants, it gives this potential party --
3 the standards are set forth there. And the
4 fact that you have other people that are going
5 to be impacted does not preclude this person
6 from having a very unique situation relative
7 to the applicant.

8 And his testimony is that he is
9 inches away. So I think he could meet the
10 qualifications of section 3106, but I would be
11 more concerned like Madam Chair says, that it
12 is just not a lot of redundant cross
13 examination and piling on of witnesses and
14 duplication of testimony. I think that can be
15 controlled at the hearing.

16 MR. REESE: I have no intention of
17 presenting any witness other than myself.
18 Conceivably, my wife on other points, but I
19 think that would be the extent of my
20 presentation and testimony, if necessary.

21 CHAIRPERSON MILLER: That's why I
22 asked you if you wanted to just testify or

1 whether you wanted to participate as a party.

2 MR. REESE: At this point, I would
3 just like to have the presentation that we
4 made in writing to the BZA stand as my
5 testimony.

6 CHAIRPERSON MILLER: Okay. Let me
7 venture to say this. If all you want is to
8 provide testimony, you don't need to be
9 granted party status. But if you are
10 concerned about protecting your appeal rights,
11 which it sounded like you were, what I want to
12 say, and I may have the authority with me, is
13 that you don't need to be a party to appeal a
14 BZA case to the Court of Appeals.

15 You need just to be an impacted
16 individual. And I can double check the
17 statute for you. So I just want to make sure
18 that if you decide you're not going to be a
19 party, because all you want to do is present
20 testimony, that you understand that you are
21 not losing that opportunity.

22 But you know, the other end is you

1 could be granted party status and just present
2 testimony, I mean.

3 MR. REESE: Yeah, I would prefer
4 that.

5 CHAIRPERSON MILLER: Okay. All
6 right. So I think that it looks to me like
7 you are more impacted than anyone in the
8 general public. So therefore -- and I think
9 Mr. Loud was saying that under the rules you
10 should be granted party status.

11 I understand what Ms. Bell is
12 saying also though that, you know, if all your
13 arguments are going to be presented by the
14 ANC, then, you know, you shouldn't be allowed
15 to be redundant. And our rules allow us to
16 limit redundant testimony and cross
17 examination. So that can be handled, as Mr.
18 Loud said at the hearing.

19 So, you know, there may be some
20 things that are particular to your property,
21 since you are so close that is different from
22 other people.

1 MR. REESE: There are.

2 CHAIRPERSON MILLER: Okay. Is
3 that the consensus of the Board then to grant
4 party status to the Reeses? Okay. To both of
5 you, correct?

6 MR. REESE: Yes.

7 CHAIRPERSON MILLER: Mr. and Mrs?

8 MR. REESE: Yes.

9 CHAIRPERSON MILLER: Okay. It
10 does give you this opportunity though as a
11 party to take a position on any motions that
12 are made.

13 MR. REESE: All right.

14 CHAIRPERSON MILLER: And the
15 applicant is making a motion, I believe, to
16 postpone this hearing. So we're going to
17 listen to the grounds for that and then you
18 will have an opportunity to weigh in.

19 MR. REESE: Thank you, Madam
20 Chair.

21 CHAIRPERSON MILLER: All right.
22 Okay. All right. So let's move to the

1 request for postponement. Oh, wait. Are you
2 here on this case?

3 MS. BAGGS: I am, Chair Miller. I
4 live on --

5 CHAIRPERSON MILLER: Oh, come
6 forward. Come to the microphone.

7 MS. BAGGS: Oh. I --

8 CHAIRPERSON MILLER: And wait.

9 MS. BAGGS: My name is Teresa
10 Baggs. My husband Robert and I -- is this on?
11 Oh, okay. My name is Teresa Baggs. My
12 husband and I, Robert and I, live at 3833
13 Military. We are catty-cornered backyards to
14 Mr. Seleme. And I'm here -- primarily, it is
15 an impact for us personally, but primarily to
16 support the Reeses.

17 CHAIRPERSON MILLER: Okay. So
18 you're not seeking party status?

19 MS. BAGGS: I don't think so.

20 CHAIRPERSON MILLER: Okay.

21 MS. BAGGS: I don't think so.

22 CHAIRPERSON MILLER: Okay. Then

1 you are not. Okay. So all right. Well, then
2 we have just granted them party status.

3 Okay. And we are now going to
4 hear the request for the postponement.

5 MS. BELL: Mr. Seleme would like a
6 postponement for the reasons that were set out
7 in the letter to the Board. He would like to
8 supplement the record with some additional
9 information that he did not provide when he
10 submitted his application initially.

11 CHAIRPERSON MILLER: And you are
12 right, Mr. Reese, that as a party, you will
13 get served with all the filings.

14 MR. REESE: Very good.

15 CHAIRPERSON MILLER: So do you
16 have a copy of the applicant's request for
17 this postponement?

18 MR. REESE: No, I have not heard
19 about that until today.

20 CHAIRPERSON MILLER: Ms. Bell, can
21 you just show him a copy of the letter, if you
22 have one there? The 26th? Do you have a copy

1 for them?

2 MR. REESE: Proposed construction.
3 Thank you. May I ask, Madam Chairman, if
4 there was any reply to this letter of February
5 25th by the Office of Zoning?

6 CHAIRPERSON MILLER: Office of
7 Zoning doesn't reply actually.

8 MR. REESE: I'm sorry.

9 CHAIRPERSON MILLER: No, it's all
10 right.

11 MR. REESE: The Office of
12 Planning. It mentions there that they
13 indicated they had not concluded their report
14 and welcomed any additional materials the
15 applicant may want to provide. Was there --

16 CHAIRPERSON MILLER: Oh.

17 MR. REESE: -- a response by the
18 Office of Planning?

19 CHAIRPERSON MILLER: Is the Office
20 of Planning here in this case? No? He just
21 left? Okay. No, we don't have an Office of
22 Planning report and I can see that is

1 indicated here. It appears that the Office of
2 Planning would like more information on this
3 case before it goes to hearing.

4 I just would ask Ms. Bell why is
5 it that the applicant wasn't prepared today
6 with this information?

7 MS. BELL: He filed individually
8 and he hired us later. And when we got into
9 the case, we got a chance to take a look at
10 the file and they -- we decided that there
11 were a few things. Actually, the ANC meeting
12 was sort of our first introduction into the
13 case and we decided we needed to take a look
14 at the file and make some changes and add some
15 submissions.

16 CHAIRPERSON MILLER: I see, okay.
17 So he wasn't represented by counsel before.
18 And counsel has come on board and seen how
19 this application needs to be improved.

20 MS. BELL: Yes. For instance,
21 there isn't a variance test. There isn't a
22 statement with regard --

1 CHAIRPERSON MILLER: Okay.

2 MS. BELL: -- to the burden of
3 proof.

4 CHAIRPERSON MILLER: Okay.

5 MS. BELL: Which obviously is very
6 important here. And adds to the -- and that
7 was one of the concerns I had with the whole
8 ANC. There are some facts that obviously need
9 to be highlighted and presented.

10 CHAIRPERSON MILLER: Okay. So
11 after you address all these issues, which is
12 what you would like to do, will you then be
13 going back to the ANC?

14 MS. BELL: Well, that's an
15 interesting question and let me explain. Let
16 me explain my understanding. There seems to
17 be a lot of unhappiness on Legation Street.
18 I asked the ANC to postpone their vote until
19 Mr. Seleme had an opportunity to appear and to
20 provide some additional information, including
21 an architect's report and they declined.

22 At that time, as I had mentioned,

1 they had already, obviously, discussed it and
2 had a petition and so forth. So I would like
3 to go back to the ANC, but, obviously, since
4 they have reported out and I'm not sure what
5 assistance they would be, but Mr. Seleme has
6 been in that neighborhood and his family has
7 owned that house for more than 50 years.

8 In fact, at the time that he
9 purchased the house, there -- no neighbors, no
10 houses existed on either side, including this
11 homeowner. So he is vested in this
12 neighborhood. And it is important that they
13 have a comfortable relationship. And clearly
14 right now, there isn't one.

15 I'm not suggesting that we are
16 going to go back and try to get the ANC to
17 change their decision. We would like to do
18 that, but we do have a plan at least, at some
19 point, to try to go back and give some more
20 information, I think would be helpful.

21 CHAIRPERSON MILLER: And how much
22 time are you seeking?

1 MS. BELL: Well, originally, I
2 think the letter we were looking at about two
3 months to about three months. That should
4 give another -- the new architect an
5 opportunity to go in and take a look at it and
6 for us to put together a statement and get
7 some things together, some photos and that
8 sort of thing to present to you all.

9 CHAIRPERSON MILLER: Okay. Mr.
10 Reese, do you have any response?

11 MR. REESE: Yes, I do.

12 CHAIRPERSON MILLER: Okay, okay.

13 MR. REESE: The ANC meeting was
14 held on February the 9th of this year. They
15 voted that evening 6 to nothing to support our
16 position. Mr. Seleme did not appear at that
17 meeting to raise any questions about the, at
18 least presumptively, illegal nature of this
19 building that he built. And I haven't heard
20 yet why he did not appear at that meeting.

21 This letter from Ms. Bell is dated
22 February the 25th, which is more than two

1 weeks later, at which time I would have
2 supposed she could get the information that
3 she is now referring to and certainly have it
4 ready for this meeting on March the 24th to
5 proceed with evidence.

6 I cannot understand. I think it
7 is an insult to this organization -- to your
8 Board to say well, I could have -- you know,
9 I've got these things to do and I would like
10 to get a few months to do them and I've been
11 a busy person.

12 You know, that is simply not the
13 way I understand administrative organizations
14 and judicial organizations to work. She has
15 given no good reason --

16 CHAIRPERSON MILLER: Okay.

17 MR. REESE: -- for this delay from
18 February the 9th when she knew what the ANC
19 had reported.

20 CHAIRPERSON MILLER: Mr. Reese,
21 are you prejudiced in some way by the delay?

22 MR. REESE: Am I prejudiced? By

1 granting an extension? Yes, we have been
2 looking at this structure for 18 months now.
3 Every time we go out in the backyard it is
4 there. It casts a large shadow, as I said in
5 my submission, on our property. And it is
6 time that they got rid of that second floor.

7 I am not -- we are not protesting
8 the use of the garage. It is there. He is
9 entitled to a garage, despite all of the
10 laxity in filing building permits and not
11 revising them. But we have had a great deal
12 of distress about this building and we think
13 that we are prejudiced for every moment that
14 goes by.

15 CHAIRPERSON MILLER: Okay. Okay.
16 Any questions by Board Members? Okay. It's
17 not totally uncommon for us to grant a delay
18 to an applicant that wants to work further in
19 preparing their case and also working with the
20 neighbors and the community.

21 So I understand Mr. Reese's
22 concern about the stress from the structure,

1 but I guess in weighing them all, we almost
2 always certainly proceed with the report from
3 the Office of Planning and we don't have that
4 in our file and we don't have the Office of
5 Planning representative here to even give us
6 more information.

7 So I think that the appropriate
8 thing to do would be to do a one time
9 extension, so that we have a -- so that this
10 Board has a full record to go forward with.
11 And maybe there will be some improved dialogue
12 on the application, but who knows.

13 Okay. Would it be the consensus
14 of the Board to continue? Okay. Then I think
15 we need to look at our calendar.

16 MR. REESE: Chairman? Madam
17 Chairman, may I ask one question of the
18 counsel for Mr. Seleme? And that is what
19 specific items that are mentioned in this
20 request for a postponement?

21 CHAIRPERSON MILLER: Okay. I
22 would prefer if you could just look at the

1 letter, which you will get, rather than take
2 the Board's time up.

3 MR. REESE: Fine. No, I have this
4 letter. I would like to be on the record what
5 it is that they plan --

6 CHAIRPERSON MILLER: Well, the
7 record --

8 MR. REESE: -- to produce.

9 CHAIRPERSON MILLER: Are you
10 planning to produce anything other? Am I
11 correct, you can answer this, but we have your
12 letter saying all the --

13 MS. BELL: Right.

14 CHAIRPERSON MILLER: -- things
15 that you want to do in the meantime. So
16 that's in the record. This is the record. It
17 doesn't have to be stated on the transcript.

18 MR. REESE: Yes, but I need to
19 know in order eventually to see this come
20 through to a close. What is meant by the
21 phrase "site plans for the proposed
22 construction?" There is a building, a two-

1 story building there. What proposed
2 construction is referred to?

3 CHAIRPERSON MILLER: I don't know,
4 but I would just -- unless, you know, if Board
5 Members want to go through this, I don't know,
6 but you should talk and you can talk after the
7 hearing. This is what she says they are going
8 to do. Then the Board will evaluate what it
9 has in the record at that time.

10 If you want to understand better,
11 I would encourage you to talk outside of this
12 hearing as well.

13 MR. REESE: Well, I am -- I would
14 -- if I -- and I hate to prolong this, but I
15 would like to know that they aren't throwing
16 a lot of words at us that don't mean anything.
17 The building is built. It is not a proposed
18 construction.

19 CHAIRPERSON MILLER: I understand
20 that. But at this point, they are only asking
21 for an extension of time. The Board is
22 granting an extension of time. One of the

1 biggest reasons is that we don't have an
2 Office of Planning report, regardless of what
3 she is saying she is going to do in that
4 letter.

5 I would encourage you to talk
6 outside of the hearing to make sure that you
7 understand, but even as a party, that doesn't
8 mean that we take up, you know, time in
9 answering every question that a neighbor might
10 not understand, because the Board doesn't have
11 that time necessarily to do that.

12 Okay. Why don't we look at dates
13 within two to three months?

14 MR. REESE: These came from this
15 lady here.

16 MS. REESE: You have that one.

17 MR. REESE: Okay.

18 CHAIRPERSON MILLER: Ms. Bell, are
19 you available on June 23rd in the morning?

20 MS. BELL: Yes. Yes, in the
21 morning session, yes.

22 CHAIRPERSON MILLER: Okay. Mr.

1 Reese, do you have a problem with that date?

2 MR. REESE: I don't know. What
3 day of the week is it?

4 CHAIRPERSON MILLER: Tuesday,
5 always Tuesday here.

6 MR. REESE: Always Tuesday?

7 CHAIRPERSON MILLER: Always
8 Tuesday.

9 MR. REESE: June 23rd? Well, let's
10 assume that it is acceptable.

11 CHAIRPERSON MILLER: Wait a
12 minute, we may need to do a different date.

13 MR. REESE: Three months.

14 CHAIRPERSON MILLER: Okay. How
15 about June 16th in the afternoon?

16 MS. BELL: Okay.

17 CHAIRPERSON MILLER: Okay. Mr.
18 Reese?

19 MR. REESE: All right.

20 CHAIRPERSON MILLER: Okay. Good.

21 MS. BELL: I just wanted to --
22 just one more matter. We did post for this

1 meeting and I just wanted to provide the Board
2 again a copy of his affidavit and photos
3 showing that he did post for this meeting.

4 CHAIRPERSON MILLER: Okay. And
5 you'll be doing a prehearing statement for the
6 next meeting?

7 MS. BELL: Yes.

8 CHAIRPERSON MILLER: Okay.

9 MS. BELL: Yes. Oh, you mean more
10 than what he has, yes.

11 CHAIRPERSON MILLER: Yeah, right.
12 Because you will be doing all the
13 supplementing.

14 MS. BELL: Right.

15 CHAIRPERSON MILLER: Okay. And so
16 Mr. Reese will be served as well as the ANC?

17 MS. BELL: Yes.

18 CHAIRPERSON MILLER: Great.

19 MS. BELL: Thank you.

20 CHAIRPERSON MILLER: Okay. Thank
21 you very much. Okay. I know we have one
22 other party in the audience. I think what the

1 Board and the Court Reporter might want to do
2 is just take a 10 minute break. Wait a
3 second, huh?

4 Ms. Bailey, if you all are still
5 here, maybe we can just get an idea as to
6 whether this case is going to take a short
7 time or a long time. And that will determine
8 whether we take a short break maybe or a long
9 break.

10 MR. DECARO: Understandable, thank
11 you.

12 CHAIRPERSON MILLER: Do you want
13 to call this case, Ms. Bailey, please?

14 MS. BAILEY: Madam Chair, this is
15 Application 17870 of Koo Yuen, pursuant to 11
16 DCMR section 3104.1, for a special exception
17 to establish a gasoline service station under
18 section 726, I'm sorry, under sections 726 and
19 706 at premises 3710 Minnesota Avenue, N.E.,
20 Square 5046, Lot 810. The property is Zoned
21 C-2-A. It is a continuation, Madam Chair and
22 Members of the Board, from the December 9,

1 2008 Public Hearing.

2 MR. DECARO: Thank you. Members
3 of panel, my name is Thomas Decaro and I'm
4 here with Koo Yuen, the applicant. I guess
5 the representative of the applicant. And
6 basically, we had been through quite a bit on
7 this case and we got with Mr. Jesick of the
8 Office of Planning. We provided him a
9 tremendous amount of information.

10 He prepared a report. The report
11 was lacking the traffic study. We had had a
12 considerable amount of difficulty interfacing
13 with the District of Columbia traffic people
14 to get them to tell us what kind of scope of
15 traffic study would be appropriate.

16 We finally did that and on an
17 expedited basis, we did manage to get a
18 traffic study out late last week and we have
19 copies of it here today. And as I understand
20 it, with a few minor exceptions, that is
21 basically the -- you know, that is where we
22 would be today.

1 We would be, you know, prepared to
2 -- you know, for you folks to make a decision.
3 And of course, Mr. Jesick may have some
4 comments about this matter as well.

5 CHAIRPERSON MILLER: Do we have a
6 copy of that traffic report?

7 MR. DECARO: I have copies of it,
8 yes.

9 CHAIRPERSON MILLER: Did you file
10 a copy with the Board?

11 MR. DECARO: The bound version was
12 just received this morning, so --

13 CHAIRPERSON MILLER: Oh, okay.
14 You need to say that on record, if you want it
15 to be on the record.

16 MR. DECARO: Okay. The bound
17 version was just received this morning. I
18 have nine copies of it right here. We can,
19 you know, hand them up for you to take a look
20 at. I don't know, the traffic report comes to
21 the conclusion that there is no adverse
22 traffic impact as a result of the proposed gas

1 station use on the site.

2 CHAIRPERSON MILLER: Okay. Let's
3 go to the Office of Planning. Go ahead, why
4 don't you introduce yourself for the record,
5 please?

6 MR. JESICK: Good morning, Madam
7 Chair and Members of the Board. My name is
8 Matt Jesick.

9 CHAIRPERSON MILLER: I guess my
10 question is do you need time to evaluate this
11 traffic report before making a recommendation?

12 MR. JESICK: I've had just a few
13 minutes to look at it. It seems to address
14 most of the questions that we had. I would
15 feel much more comfortable if the Department
16 of Transportation had a chance to analyze it,
17 as OP is not really qualified to evaluate it.

18 CHAIRPERSON MILLER: And is there
19 anybody from the ANC in this case?

20 MR. DECARO: No one is here for
21 the ANC.

22 CHAIRPERSON MILLER: Okay. Has

1 the ANC gotten a copy of the traffic report?

2 MR. DECARO: I -- since we just
3 received the bound copy this morning, I mean,
4 I had an email copy of it.

5 CHAIRPERSON MILLER: Okay.

6 MR. DECARO: But I didn't forward
7 it.

8 CHAIRPERSON MILLER: So no. Okay.
9 I'm just wondering whether this hearing should
10 be continued until DDOT has a chance to look
11 at it, the ANC has a chance to look at it and
12 the Office of Planning has a chance to address
13 it in a supplemental report. What do others
14 think?

15 COMMISSIONER JEFFRIES:
16 Particularly given the subject matter, I mean,
17 gas station, I mean, yeah.

18 CHAIRPERSON MILLER: Mr. Jesick,
19 what do you think? Oh, you already said you
20 would like DDOT to take a look at it, correct?

21 MR. JESICK: Yeah. No, we would
22 appreciate that.

1 CHAIRPERSON MILLER: Okay. Does
2 the applicant want to make any comments about
3 that?

4 MR. DECARO: For the record, we
5 would like to go forward, although I fully
6 understand the Board's position. The problem
7 is, and I would just like to put this on the
8 record, we had -- you know, this was a
9 settlement of an, I guess, administrative
10 proceeding where we are claiming, you know,
11 the right -- use of the space is right.

12 We were promised, so to speak,
13 that we would have a, I guess, responsiveness
14 from the D.C. officials as to the scope of the
15 traffic study and everything like that. We
16 made, I guess, clamorous attempts to get their
17 attention. And apparently, someone had been
18 either -- had left the employ of the District
19 of Columbia or something like that.

20 It was only, I guess, about maybe
21 less than 4 weeks ago that they finally got
22 with my traffic analyzer and, of course, he

1 wanted a period of time. He wanted like 60
2 days in which to do the analysis. We told him
3 we needed it for today and so forth.

4 And so that is why -- this project
5 has been delayed since the certificate -- I'm
6 sorry, the permit was issued in October of
7 2006 in this case. And then it was -- there
8 was a stop work order issued, I guess it was
9 March of 2007. So you know, there have been
10 a lot of delays in this case and, you know,
11 where it is not this Board's fault or I mean,
12 you really can't ascribe fault to any of these
13 delays, you know, it has been -- you know, we
14 would have been, I think, ready to go forward
15 if we had been able to, you know, have the
16 traffic study information from the District
17 Government.

18 And you know, obviously, you know,
19 it is very costly. Rent is being paid on the
20 place and it is being insured and maintained
21 and all that sort of thing. So -- and there
22 is no revenue coming in whatsoever. So I

1 would -- you know, and, you know, we fully
2 understand the necessity to proceed in an
3 orderly fashion in a case like this.

4 And so, you know, if you do decide
5 to continue the matter, we would ask for the
6 most -- the next available date, you know, as
7 soon as possible if you please. Giving Mr.
8 Jesick enough time, obviously, to, you know,
9 do what he needs to do.

10 CHAIRPERSON MILLER: I would just
11 say also the Board could use some time to
12 study the traffic report as well. You know,
13 it's a very important document.

14 MR. DECARO: Very important, yes,
15 indeed.

16 CHAIRPERSON MILLER: All right.
17 Our next available date is April 28th in the
18 afternoon. Okay.

19 MR. DECARO: April 28th in the
20 afternoon?

21 CHAIRPERSON MILLER: That's
22 correct.

1 MR. DECARO: Okay. I have a trial
2 at 9:30. I can very likely be over -- if it
3 starts at 9:30, I'll be over here at 1:00,
4 because it's a bench trial based on memoranda
5 of law, but could we set it for later? Not
6 exactly at 1:00? I guess all hearings start
7 at 1:00, but if you could put this hearing
8 towards the bottom of the list, that would be
9 helpful for me on that particular date.

10 CHAIRPERSON MILLER: Sure. And I
11 think, you know, the schedule kind of
12 fluctuates a little bit, other cases could be
13 added to that day perhaps and your's would
14 just -- we'll just make a note to make your's
15 as late as possible. And then if you want to
16 stay in touch with Mr. Moy, like leave him
17 your number?

18 MR. DECARO: Okay.

19 CHAIRPERSON MILLER: Take his
20 number, so that you can --

21 MR. DECARO: Sounds good, yes,
22 indeed.

1 CHAIRPERSON MILLER: -- be aware
2 of how we are proceeding, that would be fine.
3 Okay. I think that is it for this case, Ms.
4 Bailey, then. This case --

5 MEMBER DETTMAN: Madam Chair?

6 CHAIRPERSON MILLER: Oh --

7 MEMBER DETTMAN: Could I just make
8 one --

9 CHAIRPERSON MILLER: -- I'm sorry.

10 MEMBER DETTMAN: No, no, it's
11 okay. I think this will help our proceedings
12 in April. I'm looking at OP's report and they
13 make a point about the height of the canopy,
14 that that has to be adjusted to come within
15 the regs as well as something about the two
16 curb cuts on Minnesota Avenue and being too
17 close to the intersection.

18 So between now and then maybe the
19 applicant can address those two issues and --

20 MR. DECARO: Of course. We were
21 prepared to address those issues.

22 MEMBER DETTMAN: Okay.

1 MR. DECARO: Thank you --

2 MEMBER DETTMAN: Okay.

3 MR. DECARO: -- for pointing that
4 out. We will comply with whatever OP's
5 recommendation -- in fact, if OP has not
6 received --

7 COMMISSIONER JEFFRIES: Turn your
8 mike on. Can you turn your mike on? I mean,
9 if you don't want to talk, that's fine.

10 MR. DECARO: Okay. We'll start --
11 I'll move to strike that last comment.

12 COMMISSIONER JEFFRIES: Okay.

13 MEMBER DETTMAN: Well, I did hear
14 what the applicant said, but if you intend on
15 complying with DCOP's recommendation with
16 respect to the height of the canopy, you need
17 to amend your plans, because we don't have
18 plans in the record that show that.

19 MR. DECARO: I understand. Thank
20 you.

21 MR. YUEN: That has already been
22 communicated to Mr. Jesick and we are fully

1 aware of it and we are going to do
2 accordingly. Okay. So that won't be -- in
3 other words, will be no issue, okay, between
4 OP and us. Okay.

5 CHAIRPERSON MILLER: Okay. Just
6 to be clear though, since there is a
7 continuation between now and then, Mr. Dettman
8 is saying that if you are going to do it, do
9 it before the hearing, so that those will be
10 the plans that the Board will be considering.

11 MR. DECARO: I understand. And we
12 won't run in at the last minute. Thank you.
13 Thank you very much. The architect is right
14 here behind me, so we should be good. Thank
15 you very much.

16 CHAIRPERSON MILLER: Thank you.
17 Oh, gosh. Okay. That's good. Okay. All
18 right. I think that concludes our Public
19 Hearing. I don't think we have any other
20 cases on the agenda. Is that correct, Ms.
21 Bailey?

22 MS. BAILEY: That's it for the

1 schedule, Madam Chair.

2 COMMISSIONER JEFFRIES: Wait,
3 wait. So we're done for the day?

4 CHAIRPERSON MILLER: We're done
5 with our hearings. Oh, let me -- well, we are
6 done with the cases on the agenda for the
7 hearing.

8 COMMISSIONER JEFFRIES: Oh, you do
9 elections, okay.

10 CHAIRPERSON MILLER: Okay. That
11 concludes our official business with cases on
12 the agenda. And we just have a little more
13 business that we're going to do before we
14 adjourn.

15 And we started off earlier in the
16 day saying that this is my last day on the
17 Board at a hearing or a meeting and I just
18 want to reiterate for the record what an honor
19 and privilege it has been. And actually, it
20 was kind of fun earlier. We had a big
21 audience and so I don't think I need to say
22 too many things, except, you know, I really --

1 you know, Ms. Bailey, it's kind of hard to get
2 out of that habit every Tuesday of saying, you
3 know, ready for this case and anything else on
4 the agenda, etcetera.

5 But there are good memories and,
6 Mr. Moy, you did a fabulous job assisting the
7 Board during my whole tenure and --

8 COMMISSIONER JEFFRIES: And that
9 tenure was not 5 years, but --

10 CHAIRPERSON MILLER: No, 6.

11 COMMISSIONER JEFFRIES: -- 6,
12 yeah.

13 CHAIRPERSON MILLER: Right. I
14 don't want to, you know, redo this morning,
15 because I think this morning was really very
16 special and I was very surprised and I'm very
17 appreciative of everything that everybody
18 said.

19 And so what I want to do now
20 though, since today is my last day here on the
21 dias, is turn it over to the next Chair. And
22 I would like to -- I guess we do this by

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1 motion, but move to nominate our Vice Chair,
2 Mr. Loud, to be the next Chair of the BZA.

3 And I just want to say a couple of
4 things and that is that I think that Mr. Loud
5 has really an incredible judicial temperament
6 and I think he is going to be excellent in
7 this position. And a lot of this position
8 deals with interacting with the community and
9 the parties and seeing the cases moving
10 forward.

11 And I think that -- and also
12 dealing with Board Members and explaining
13 issues and making sure everyone understands
14 and I think that that temperament will really
15 serve the Board well and make it pleasant for
16 everyone on the Board.

17 And he also has a great way of
18 dealing with Board Members and including
19 everybody in the process. So, you know, we
20 all change over a period, we all grow. And I
21 really have seen you grow incredibly. I did,
22 too, from day one. And I think that you are

1 definitely ready to take the reins and,
2 therefore, I wish you good luck.

3 And of course, the Board has to
4 vote for you, but I nominate you as Chair.

5 COMMISSIONER JEFFRIES: I second
6 it.

7 CHAIRPERSON MILLER: Perhaps we
8 can go to Vice Chair, too, and then we could
9 do a motion for both?

10 COMMISSIONER JEFFRIES: Sure.

11 CHAIRPERSON MILLER: How's that?
12 Do we have -- does anyone want to speak to the
13 nomination for Vice Chair?

14 VICE CHAIR LOUD: Thank you, Madam
15 Chair, and thank you for the kind words and
16 there are big shoes to be filled and over time
17 I hope to be able to fill those shoes.

18 That said, I would like to
19 nominate Shane Dettman as the Vice Chair of
20 the BZA.

21 COMMISSIONER JEFFRIES: Second.

22 CHAIRPERSON MILLER: I think I

1 would like to make a few comments about Mr.
2 Dettman. I think he is an incredible resource
3 on this Board really. He has an incredible
4 memory and mind for all of our cases and
5 regulations and that is so helpful really to
6 be able to -- because I mean, our decision is
7 really built on previous decisions.

8 And also, you know, our
9 regulations, they are extensive and to be able
10 to grasp for them, reach for them when you
11 need them is really very, very valuable. And
12 I mean, it's not just that he knows where they
13 are, but he really understands them.

14 Also, this is the first time,
15 certainly in my tenure, that we have had
16 someone from NCPC be our Vice Chair. And we
17 have had really excellent NCPC reps while I
18 have been on this Board. And like them, Mr.
19 Dettman also lives in the city, so people
20 should, you know, not worry that he doesn't
21 know the city very well or care about the
22 city, not that the other feds don't.

1 But I think that that's very
2 valuable. So I think the Board is going to be
3 in very good hands between Mr. Loud and Mr.
4 Dettman.

5 So any other comments? Okay.
6 Then I guess I'll be happy to make a motion
7 for both. Oh, I don't know. Oh, you want to
8 move on them separately then or both motions?
9 Why don't we vote on both motions?

10 Okay. So what we have before is
11 there is a motion to nominate Mr. Loud as
12 Chair and then we have a motion to nominate
13 Mr. Dettman as Vice Chair. So we are going to
14 be considering both motions and they both have
15 been seconded. Anybody have any further
16 deliberation?

17 Not hearing any, all those in
18 favor say aye.

19 ALL: Aye.

20 CHAIRPERSON MILLER: All those
21 opposed? All those abstaining?

22 MR. MOY: Madam Chair?

1 CHAIRPERSON MILLER: Okay. Let me
2 say this, we have a qualification on this
3 motion. And this motion will take effect
4 March 31st, as my holdover date is through
5 March 30th and I may be finishing up some
6 business through that date.

7 So the motion would be for Mr.
8 Loud as Chair, Mr. Dettman as Vice Chair to
9 take effect on March 31, 2009.

10 So that represents what we voted
11 on is it? We're not going to vote again.
12 Okay. Would you call the vote, please?

13 MR. MOY: Yes. Staff would record
14 the vote as 4-0-0 and that's with Mr. Loud as
15 the new Chairman and Mr. Dettman as the new
16 Vice Chairman. I also have an absentee ballot
17 from Mary Oates Walker and she has cast her
18 ballot with the reservation that if Mr. Loud
19 was nominated as Chair and Mr. Dettman as Vice
20 Chairman, she would cast her vote for these
21 two gentlemen.

22 In other words, Mr. Loud as Chair

1 and Mr. Dettman as Vice Chair. So that would
2 give a resulting vote of 5-0-0, effective date
3 as well.

4 CHAIRPERSON MILLER: Okay. Good.
5 Wow, well, I think we are finished with all of
6 our business. Shall I do this for the final
7 time? Okay. This hearing is adjourned.

8 (Whereupon, the Public Hearing was
9 concluded at 2:50 p.m.)
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