

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JANUARY 27, 2009

+ + + + +

The Regular Public Hearing  
convened in Room 220 South, 441 4th street,  
NW., Washington, D.C., 20001, pursuant to  
notice at 9:30 a.m., Ruthanne G. Miller,  
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER, Chairperson  
MARC D. LOUD, Vice Chairperson  
MARY OATES WALKER, Board Member  
SHANE L. DETTMAN, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARLOVA JACKSON  
MATT JESICK  
MAXINE BROWN-ROBERTS

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF  
PRESENT:

JEFF JENNINGS

The transcript constitutes the  
minutes from the Public Hearing Held on  
January 27, 2009.

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

2 10:30 a.m.

3 CHAIRPERSON MILLER: Good morning,  
4 ladies and gentlemen. This is the January  
5 27th, 2009 public hearing of the Board of  
6 Zoning Adjustment of the District of Columbia.

7 My name is Ruthanne Miller. I'm  
8 the chair of the BZA. To my right is Mr. Marc  
9 Loud. He's our vice-chair. Next to him is  
10 Mr. Michael Turnbull from the Zoning  
11 Commission. To my left is Mary Oates Walker  
12 and Shane Dettman, Board Members. Also  
13 joining us on the dais is Ms. Lori Monroe from  
14 the Office of the Attorney General, Ms.  
15 Beverly Bailey from the Office of Zoning, and  
16 Mr. Clifford Moy will be joining us  
17 momentarily.

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

21 Please be advised that this  
22 proceeding is being recorded by a court

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1 reporter and is also web cast live.

2 Accordingly, we must ask you to refrain from  
3 any disruptive noises or actions in the  
4 hearing room.

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

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

20                   The order of procedure for special  
21 exceptions and variances is as follows: (1),  
22 statement and witnesses of the applicant; (2),

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

8 Pursuant to Sections 3117.4 and  
9 3117.5, the following time constraints will be  
10 maintained: The applicant, persons and  
11 parties, except an ANC, in support, including  
12 witnesses, 60 minutes, collectively. Persons  
13 and parties, except an ANC, in opposition,  
14 including witnesses, 60 minutes, collectively.  
15 Individuals, three minutes.

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1 the Board from placing reasonable restrictions  
2 on cross examination including time limits and  
3 limitations on the scope of cross examination.

4 The record will be closed at the  
5 conclusion of each case, except for any  
6 material specifically requested by the Board.  
7 The Board and the staff will specify at the  
8 end of the hearing exactly what is expected  
9 and the date when the persons must submit  
10 their evidence to the Office of Zoning. After  
11 the record is closed, no other information  
12 will be accepted by the Board.

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1 the public record. To avoid any appearance to  
2 the contrary, the Board requests that persons  
3 present not engage the Members of the Board in  
4 conversation.

5                   Please turn off all beepers and  
6 cell phones at this time so as not to disrupt  
7 these proceedings.

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

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

19                  Does the staff have any  
20 preliminary matters?

21                  MS. BAILEY: Madam Chair, Members  
22 of the Board, to everyone, good morning.

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1       There is a request for postponement. Did you  
2       want to take that up now, or after the  
3       witnesses have been sworn in?

4                   CHAIRPERSON MILLER: I would  
5        suggest that the witnesses be sworn in first.  
6        I think that the request for postponement is  
7        in the first case and then you can just call  
8        that case after swearing the witnesses.

9                   MS. BAILEY: Sure.

10                  CHAIRPERSON MILLER: Okay. So at  
11        this point then, would all individuals who  
12        wish to testify today either in favor or in  
13        opposition on any case that's scheduled for  
14        this morning please rise and Ms. Bailey will  
15        administer the oath for you?

16                  MS. BAILEY: Would you please  
17        raise your right hand?

18                  (Whereupon, the witnesses were  
19        sworn.)

20                  MS. BAILEY: Thank you.  
21                  Madam Chair, the request for  
22        postponement has to do with application No.

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1 17872 of Cynthia O. Agbu and is pursuant to 11  
2 DCMR 3103.2 for a variance from the lot area  
3 requirements under Subsection 401.3, to allow  
4 the construction of two new one-family semi-  
5 detached dwellings in the R-2 District at  
6 premises 4537 and 4539 Foote Street, N.E.,  
7 square 5132, lot 96.

8 Is a representative for this case  
9 here today? Is anyone here for this case  
10 today?

11 Would you please have a seat at  
12 the table?

13 CHAIRPERSON MILLER: There might  
14 be delays, you know, due to weather. So let's  
15 see what's happening. That's why we're  
16 delayed a little bit.

17 Good morning, sir.

18 MR. ECHILLALI: Good morning.

19 CHAIRPERSON MILLER: And would you  
20 introduce yourself for the record, please?

21 MR. ECHILLALI: Yes, my name is  
22 Khalique Echillali, ANC 7-C Chair.

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1 CHAIRPERSON MILLER: Okay. What  
2 can you tell us? Well let me just say what we  
3 understand at this point, is that the  
4 applicant is seeking a continuance so that he  
5 can have more time to share the plans with the  
6 ANC.

7 MR. ECHILLALI: We have no  
8 objection to that.

9 CHAIRPERSON MILLER: Do you have  
10 any idea how much time would be needed?

11 MR. ECHILLALI: Any time after  
12 February 12th I think will be fine. But I  
13 have not spoken to the applicant herself, so  
14 I'm not sure what her plans are.

15 CHAIRPERSON MILLER: Okay. And do  
16 you know whether she was planning on being  
17 here today?

18 MR. ECHILLALI: No, I have not  
19 spoken to her at all.

20 CHAIRPERSON MILLER: Okay. Well,  
21 I don't think the Board has any problem  
22 rescheduling the case. And my understanding

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1       is that it's to be rescheduled around being  
2       able to have an adequate time to share the  
3       plans with the ANC.

4                   I believe we may have time on the  
5       afternoon of February 17th. Do you think that  
6       would be enough time? Otherwise we can look  
7       further on.

8                   MR. ECHILLALI: I don't think  
9       February 17 will be a problem, not from the  
10       ANC.

11                  CHAIRPERSON MILLER: Okay. Why  
12       don't we do that, schedule it for the 17th in  
13       the afternoon? If there is a problem, you  
14       know, the parties can request an additional  
15       extension of time, but we are saving that  
16       space for this case, so we should pretty much  
17       plan on that.

18                  MR. ECHILLALI: What time?

19                  CHAIRPERSON MILLER: Well, it will  
20       be certainly after 1:00. We can't give you an  
21       exact time. It will probably be later in the  
22       afternoon, though. You could check with the

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1 office that day. There is right now scheduled  
2 one other case in the afternoon.

3 MR. ECHILLALI: Okay.

4 CHAIRPERSON MILLER: Okay. Thank  
5 you very much.

6 MR. ECHILLALI: Thank you.

7 We're ready for the next case, Ms.  
8 Bailey, when you're ready to call it.

9 MS. BAILEY: Thank you, Madam  
10 Chair.

11 Members of the Board, I will be  
12 reading the case as its advertised, however,  
13 the applicant has requested additional relief,  
14 but that's something I'm assuming that will be  
15 addressed when the applicant presents the  
16 project to the Board. However, the reading is  
17 as advertised.

18 Application No. 17873 of Tanya  
19 Topolewski, pursuant to 11 DCMR 3103.2 for a  
20 variance from the lot area requirements to  
21 convert an existing flat; that's a two-unit  
22 dwelling, to a three-unit apartment building

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1 under Subsection 401.3. The property is zoned  
2 R-4. It's located at 4114 New Hampshire  
3 Avenue, N.W., square 3229, lot 58.

4 CHAIRPERSON MILLER: Good morning.

5 Whenever you're ready, you can introduce  
6 yourselves for the record.

7 Are you on the mike?

8 MR. BROWN: Now I am. I'm sorry.

9 Good morning, Madam Chairman,  
10 Members of the Board. Happy New Year. I'm  
11 glad to be back. My name is Patrick Brown for  
12 Greenstein Delorme & Luchs. With me this  
13 morning, the applicant Tanya Topolewski to my  
14 left and the project architect Lisa Rigazio  
15 all the way down to the farthest left.

16 CHAIRPERSON MILLER: I'm sorry,  
17 what's her name?

18 MS. RIGAZIO: Lisa Rigazio.

19 CHAIRPERSON MILLER: Okay.

20 MR. BROWN: And as Ms. Bailey  
21 mentioned --

22 CHAIRPERSON MILLER: Did you

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1 introduce everybody at the table?

2 MS. TOPOLEWSKI: Actually, I'll  
3 introduce myself. I'm Tanya Topolewski, the  
4 applicant.

5 CHAIRPERSON MILLER: Okay.

6 MS. TOPOLEWSKI: I live at 808  
7 Aspen Street, N.W., D.C.

8 Timothy?

9 MR. TIMOTHY JONES: Yes, good  
10 morning. I am Timothy A. Jones. I am the  
11 Advisory Neighborhood Commissioner for single  
12 member district 4-08-08, a single member  
13 district that encompasses the subject  
14 property.

15 CHAIRPERSON MILLER: Okay.

16 MS. MARTIN: Good morning. My  
17 name is Lucinda Denise Martin and I live at  
18 4116 New Hampshire Avenue, N.W. and I'm not in  
19 agreement with the plan.

20 CHAIRPERSON MILLER: Okay. What  
21 we have at the table right now are the parties  
22 in the case. I'm not sure if it's clear to

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1       you that there are what's called parties in  
2       the case and then there are individuals who  
3       can testify in the case. And the parties have  
4       a more active participation. So, if you are  
5       interested in just testifying in the case; I  
6       don't think you've applied for party status,  
7       I would ask you then to take a seat in the  
8       audience and then I'll call you at the right  
9       time in the procedure.

10                   MS. MARTIN: Thank you.

11                   CHAIRPERSON MILLER: Okay. Thank  
12        you very much. Okay.

13                   MR. BROWN: Okay. Moving forward.  
14        And Ms. Bailey introduced the case as it was  
15        originally filed, which was strictly a  
16        variance from the lot area requirements to  
17        convert the existing two-unit flat to a three-  
18        unit apartment building where the lot area  
19        fell below the 900 square feet per unit  
20        standard. It fell 313 feet below the  
21        standard. So that was the original relief  
22        requested.

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At the time of filing the prehearing statement, the relief was amended to reflect an ongoing process that's been going on probably from before the application was filed and interaction oftentimes very frustrating and unhelpful with the DCRA trying to get their hands around various code and life safety issues that are presented by this property. At the time the prehearing statement was filed, the conversations which have been ongoing had evolved to a point where we presented a preferred option, an option 2, an option 3 to the Board, each of which required additional zoning relief, which I laid out in a table in the hearing statement.

16 And all those were strictly  
17 related to meeting life safety and building  
18 code requirements being imposed, and this is  
19 an important point to make. They were being  
20 imposed regardless of whether this was a two  
21 or three-unit occupancy of the property. They  
22 were being imposed strictly on the basis of a

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1 1917 structure that was woefully inadequate  
2 for code and life safety purposes, again  
3 without any focus on whether it was two or  
4 three units. The requirements that were being  
5 imposed would apply if we weren't seeking a  
6 variance for the conversion.

7 As part of that ongoing process,  
8 and the three options were, the preferred  
9 option and the second option were fairly low  
10 scale as far as incorporating spiral  
11 staircases on either side of the building and  
12 a set of rear stairs that were not in of  
13 themselves required zoning relief. The last  
14 option, which I think the Board would note  
15 option 3, called for a full-blown set of fire  
16 access stairs, which was extraordinarily  
17 burdensome, both from an aesthetic standpoint  
18 as well as requiring quite a bit of additional  
19 zoning relief. Those stairs were large, they  
20 were almost 300 square feet footprint,  
21 intruded into the side yard, the rear yard and  
22 caused all kinds of zoning relief.

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1                   I think our job is easier today as  
2 a result of ongoing discussions. Option 3,  
3 which was the large staircase, appears to,  
4 based on ongoing discussions, have fallen away  
5 as something that would be required for code  
6 purposes. So that we're left with the  
7 underlying application and then the preferred  
8 option and option 2, both of which incorporate  
9 spiral staircases and some rear stairs. In  
10 both cases the rear stairs are not zoning  
11 issues. They don't implicate zoning. So in  
12 both cases the spiral staircases each create  
13 zoning issues that I've laid out in the chart.

14                   Ms. Miller, I think I've confused  
15 you?

16                   CHAIRPERSON MILLER: Well I have  
17 to say that, you know, in almost six years  
18 being on the Board, we don't get presented  
19 with a variety of plans on the basis of DCRA  
20 won't tell you which one will meet code. And  
21 I think, you know, that it's been the practice  
22 of the Board primarily to have the applicant

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1 present a plan and that's what we consider.  
2 So I guess when I'm listening to you, I'm a  
3 little bit; I don't know if confused is the  
4 word, but I'm wondering what's going on and  
5 that, you know, DCRA can tell you no on No. 3,  
6 but we're not going to tell you whether 1 or  
7 2 will fly. And even if you weren't doing a  
8 conversion, if you want to bring the stairs up  
9 to code, you'd be coming in saying, well, I  
10 want to bring it up to code, but we don't know  
11 which one DCRA is going to go with. It just  
12 doesn't make sense to me. We really haven't  
13 seen it.

14 MR. BROWN: Well, and it's a very  
15 difficult position and it's been placed on my  
16 client. Her goals is to renovate the property  
17 and certainly in compliance with code and  
18 safety issues. And the frustration she's had  
19 is the fact that she can't get a straight  
20 answer from DCRA. The process has evolved to  
21 the point where I think we're reasonably  
22 comfortable in eliminating option 3,

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1       recognizing that DCRA has -- you know, there  
2       is some risk there that they may change their  
3       mind, but that the state of the discussions  
4       with DCRA and the fire/life safety people has  
5       gotten down to the preferred option and option  
6       2.

7               If you look at that, it's less  
8       than meets the eye because oftentimes the  
9       Board will look at plans that have different  
10      features and really it comes down to a  
11      question of where we're going to locate the  
12      same set of spiral stairs, either on one side  
13      or the opposite side of the building. The  
14      stairs are physically the same. It's just a  
15      question of -- and this may be an  
16      oversimplification, but where are you going to  
17      put a window in a building? It's really a  
18      design issue where we're going to put that  
19      spiral staircase, either on the north or the  
20      south side of the building. Obviously, I've  
21      laid out the nuances of the zoning relief, but  
22      that's really all we're talking about. I

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1       don't think the Board is interested in the  
2       stairs, the short stairs leading to the rear  
3       of the house or the short stairs leading up to  
4       a walkway on one side of the house, both of  
5       which don't implicate zoning issues.

6                   CHAIRPERSON MILLER: They raise  
7       some zoning issues though because we have to  
8       decide on them on zoning issues.

9                   MR. BROWN: Well, the spiral  
10       staircase, whether you put it on the north or  
11       the south side, raises zoning issues. The  
12       other elements of the preferred option and  
13       option 2 do not, with the exception -- well,  
14       I'll just leave it at that. I think that's a  
15       fair -- and in fact option 2 requires less  
16       zoning relief than option 1, the preferred  
17       option.

18                   I will tell you just to put my  
19       client's dilemma in further context, the  
20       preferred option based on her most recent  
21       discussions with the city is -- from a code  
22       standpoint, it is more problematic to the city

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1 than the option 2. So, I mean, she's caught  
2 in kind of a Catch-22 situation where she  
3 needs to move forward in the best way  
4 possible. And she's going to be -- if we  
5 withdrew the conversion part of the  
6 application from two to three units, she's  
7 still be faced with these issues going forward  
8 to just renovate this property. So that's why  
9 I think it's appropriate to deal with it in  
10 this context.

11 CHAIRPERSON MILLER: Well, that's  
12 what seems so absurd to me, but you're saying  
13 DCRA would be forcing you to come forward with  
14 two plans instead of telling you which one is  
15 acceptable to them.

16 MS. TOPOLEWSKI: Can I speak to  
17 that? I have had a very long and sordid  
18 discussion with the DCRA about this. The  
19 situation that exists on the property is that  
20 is a covered porch that is an existing service  
21 stair. And the existing service stair is in  
22 such a condition that you can get into the

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1 service stair and not been seen. And you can  
2 literally put your hands through windows and  
3 nobody can ever see you. So it's a serious  
4 safety concern for me.

5 And I have gone to the DCRA and  
6 spoken with Zoning and said, look, I have this  
7 problem and I have this serious safety problem  
8 that I would like to have some sort of  
9 resolution on. And they hemmed and hawed.  
10 They put me to different people. They made me  
11 see separate people. And then finally, what  
12 they were saying to me was, you are over the  
13 lot coverage and because you're over the lot  
14 coverage, you need to go to the BZA. I said,  
15 look, you know that this is a safety issue,  
16 you can see this. They're like, yes, we see  
17 that this is a safety issue. We understand.  
18 But our hands are tied because you're over the  
19 lot coverage.

20 And the argument that I was trying  
21 to make with them was, you know, in a  
22 situation where somebody's over the lot

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1 coverage, you are still allowed to have a  
2 separate entrance and that's still within your  
3 purview to say okay to. And that's  
4 essentially all that I'm asking for, is a  
5 separate entrance that serves the second  
6 floor. And they just said no, they said well,  
7 we'll think about it. And then finally one of  
8 the reviewers said, "I will review this  
9 myself. Come back with a plan. I will review  
10 this myself and take it upon myself to take  
11 this on." I said thank you very, very much.  
12 Thank you very much for doing that. And I  
13 could never get it in front of her again.

14 So at that point, I was -- there's  
15 a little bit of a timing issue here. That's  
16 why this didn't end up on the initial  
17 application. And at that point I had been  
18 trying to get in front of the people in the  
19 DCRA and in front of fire to say, okay, does  
20 this pass code?

21 Now I do not have a set of plans  
22 with this in process with them, so they will

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1 not give me a formal review. So when I went  
2 in to speak with them to get a desk review,  
3 essentially, they said, well, maybe. Maybe  
4 this one. Maybe that one, you know. And  
5 because I have already had the experience of  
6 going to them and having somebody say okay and  
7 then getting shot down, I don't know, and I  
8 have no confidence.

9 So I'm asking for two placements  
10 of the spiral stairs so that I can make sure  
11 that one works and if one doesn't work, then  
12 hopefully the other one will work. And the  
13 worst case scenario is the very large set of  
14 stairs, which is the option 3, which is a  
15 totally code-compliant stair that I do not  
16 want to put on there. The zoning people don't  
17 want me to put it on there. The life safety  
18 people don't want it there. But nobody will  
19 tell me yes, you can do the spiral staircase  
20 location in A or B and we think that it will  
21 pass code. I can't get a definitive answer.  
22 I have tried.

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1 CHAIRPERSON MILLER: Okay.

2 MR. BROWN: Unfortunately, Ms.

3 Miller, in your six years and the Board  
4 Members', sometimes DCRA doesn't speak  
5 definitively or clearly and that's a burden we  
6 all have to try to work with.

7 This is where we are, the best  
8 information we have and I don't anticipate,  
9 short of the building permit process, being  
10 able to be more definitive. And that's  
11 requesting some flexibility from the Board.  
12 But that's the best we're able to do at this  
13 point.

14 CHAIRPERSON MILLER: Okay. And  
15 all these options, you're only asking us to  
16 consider two, is that right?

17 MR. BROWN: That's right.

18 CHAIRPERSON MILLER: Okay. Has  
19 the ANC, seeing those two options, do you --

20 MR. TIMOTHY JONES: The ANC has  
21 voted on the plan as initially proposed, but  
22 we have not -- the plan with the options has

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1 not come before the Commission.

2 MS. TOPOLEWSKI: And that's merely  
3 due to a timing issue. And that's one of the  
4 reasons why I think it's unfair for me to ask  
5 the Board to approve the third option given  
6 that I have not spoken with the ANC, with UNTS  
7 and the neighborhood. I would not want to do  
8 that to them. I think that that is something  
9 that if I absolutely had to, I would have to  
10 talk them through it. But the baseline is  
11 that I would need some relief in order to make  
12 this property safe and that's what I'm asking  
13 for with the spiral stairs.

14 You look a little perplexed.

15 CHAIRPERSON MILLER: I'm trying to  
16 recall the original plans. Did they address  
17 any of these safety concerns, or why did they  
18 if they didn't?

19 MS. TOPOLEWSKI: No, because I  
20 thought that I was going to be able to resolve  
21 this with Zoning up front, because eventually  
22 the first reviewer said that she would review

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1       it and say okay and accept the spiral stairs.  
2       So I submitted a set of plans that -- now,  
3       even I have to remember the timing a little  
4       bit, but the timing is such that I ended up  
5       getting a set of permits without correcting  
6       the stair at the time because I wanted to get  
7       her to sign off -- mo, it was progress. I'm  
8       sorry. That stair was in progress. Those  
9       permits were in progress at that time.

10                   CHAIRPERSON MILLER: Okay. And  
11                   so, I mean we have a couple issues here and I  
12                   just want to hear from everybody on that,  
13                   thought. We have, first of all, you know,  
14                   whether or not the Board should consider  
15                   multiple plans. And I've heard your arguments  
16                   about that and it seems like somewhat of an  
17                   unusual situation, and you've narrowed it down  
18                   to two as opposed to three, and so that's  
19                   something that the Board can consider after we  
20                   hear input from ANC and Office of Planning.

21                   But then there's the other issue  
22                   then of new variances that they raised and

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1 plans that haven't been seen by the community.

2 Do you have anything to say about that aspect?

3 MR. BROWN: Well, I think we've  
4 addressed the options being presented and the  
5 basis for doing that, and again, they're very  
6 similar. So I don't see any inherent  
7 difficulty under these circumstances, given  
8 we're really talking about where we're placing  
9 the spiral staircase. And the rest is of no  
10 significance for zoning purposes, other than  
11 the underlying conversion case.

12 The ANC issue, obviously it has  
13 not gone as it's being presented. Option  
14 preferred or option two, or the option 3  
15 hasn't gone before the ANC. So I'm not able  
16 to go beyond that.

17 CHAIRPERSON MILLER: And it has  
18 been shared with any immediate neighbors, has  
19 it?

20 MS. TOPOLEWSKI: I have spoken  
21 with UNTS, who is the neighborhood group,  
22 about it. They gave me a verbal and said, you

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1 know, we don't really care about the  
2 staircase. We understand that you have an  
3 issue there and we don't mind the stair. But  
4 I have not formally put a plan in front of  
5 them, so it's very different to take that  
6 from, okay, we don't care about a stair to  
7 actually seeing it. However, just knowing  
8 them and being in close contact with them,  
9 they would very much balk, as I do, with the  
10 code-compliant stair option and the spiral  
11 stair is likely to satisfy them. And quite  
12 frankly, I want something that is the best,  
13 elegant, least intrusive solution to this  
14 issue and a spiral stair actually does that.  
15 And I'm happy to put it in front of the  
16 community, but I can't get any smaller. If I  
17 could get it smaller, I would.

18 CHAIRPERSON MILLER: Okay. Mr.  
19 Jones, do you have some comments on this?

20 MR. TIMOTHY JONES: Well, all I  
21 could do is speak on to the past action that  
22 the Commission has taken, anything to

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1 prognosticate on future actions of the  
2 Commission would be speculative at best.

3 CHAIRPERSON MILLER: Let me ask  
4 you this: You know, we have a couple of  
5 options. You know, sometimes if the ANC  
6 hasn't had notice on something we could  
7 continue the hearing. Or else we could, if  
8 this is a minor issue that may not be of great  
9 concern to the ANC and the community, if the  
10 main issue is the conversion, which you did  
11 have notice on, we could continue. We could  
12 have the hearing today and then leave the  
13 record open for the ANC to weigh in on the  
14 other issue.

15 MR. TIMOTHY JONES: Yes. Well the  
16 community is the tail that wags the dog and,  
17 you know, for the ANC to take action without,  
18 you know, having the full community input  
19 would not be the best route to follow.

20 MR. TURNBULL: But have you seen  
21 the plans with the circular stair?

22 MR. TIMOTHY JONES: No, I don't

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1 believe I have. No.

2 MS. TOPOLEWSKI: No, I spoke with  
3 Commissioner Jones about this actually just  
4 yesterday. Got him on the phone and said,  
5 "Look, there's going to be this issue that's  
6 upcoming. I want you to be aware and I'm fine  
7 with the saying you have not seen it and  
8 cannot take any action on because you have not  
9 seen it."

10 MR. TURNBULL: Okay.

11 MS. TOPOLEWSKI: It's the best I  
12 could do under the circumstances. I've tried  
13 to get this in front of people. I've tried to  
14 take this in front of the people at UNTS, so  
15 at least they've seen it and which I have not  
16 been able to coordinate and show these plans  
17 to them.

18 CHAIRPERSON MILLER: Does Office  
19 of Planning want to weigh in?

20 MS. JACKSON: Well, I received a  
21 copy of the plans a couple of weeks ago and I  
22 actually met with the applicant.

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1                   CHAIRPERSON MILLER: Why don't you  
2 identify yourself?

3                   MS. JACKSON: I'm sorry. For the  
4 record, my name is Arlova Jackson with the  
5 D.C. Office of Planning.

6                   So I guess of the people here I've  
7 seen all three options and tried to comment on  
8 them in my report.

9                   CHAIRPERSON MILLER: Okay. So  
10 yes, I mean, you're ready to proceed on this?

11                  MS. JACKSON: Yes.

12                  CHAIRPERSON MILLER: Because  
13 you've gotten them. It's now just a question  
14 then of what we do about the fact that the ANC  
15 wasn't served with the plans.

16                  MR. BROWN: Well, Madam Chair,  
17 when I filed the prehearing statement at least  
18 two Commissioners on the ANC were on the  
19 Certificate of Service and received the plans  
20 at that time, the preferred option, option 2  
21 and option 3, which again were at that point  
22 new and incorporated into my prehearing

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1 statement.

2 CHAIRPERSON MILLER: Okay. Within  
3 14 days of the hearing you filed your amended  
4 application, correct?

5 MR. BROWN: Correct.

6 CHAIRPERSON MILLER: And you  
7 served the ANC?

8 MR. BROWN: That's correct.

9 MS. TOPOLEWSKI: And also for the  
10 record, I did take two ANC Commissioners  
11 through the property and we spoke about this  
12 issue. And I told them that it may be an  
13 upcoming issue, and they were aware of it at  
14 the time. And I did say that there likely  
15 would be a spiral stairs as a solution, that  
16 was what I was seeking. So it's not like it's  
17 completely new to the ANC, for what it's  
18 worth.

19 MR. BROWN: Madam Chair, can I  
20 make a suggestion? We're certainly here  
21 prepared to go forward. Mr. Jones is here to  
22 go forward. I think we ought to take that

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1 opportunity today to move forward. Should the  
2 Board decide to leave the record open for the  
3 ANC or any other interested party to comment  
4 on this, to leave the record open for some  
5 reasonable period of time to coincide perhaps  
6 with the next ANC meeting would be a way to  
7 utilize our resources today without the -- at  
8 the expense of anybody being able to comment.

9 MR. TURNBULL: Madam Chair,  
10 I wonder if I could ask, is the greater issue  
11 not so much a zoning issue or a building code  
12 issue? I mean, it sounds like you need an  
13 exit and the question is whether or not a  
14 circular stairs meets the exit requirements?

15 MS. TOPOLEWSKI: I don't think  
16 that there's a greater issue. I would say  
17 that the baseline issue that brought me here  
18 today is that I'm over lot coverage as the lot  
19 is existing.

20 MR. TURNBULL: Right.

21 MS. TOPOLEWSKI: Hence I'm here in  
22 front of you today to ask for relief.

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1                   MR. TURNBULL: But basically you  
2 have an existing non-conforming structure?

3                   MS. TOPOLEWSKI: It conforms  
4 actually.

5                   MR. TURNBULL: It does?

6                   MS. TOPOLEWSKI: The existing  
7 structure conforms, it's just very unsafe.

8 It's very unsafe because it's completely  
9 hidden and you get into it and the first  
10 floor, people have to pass through. If you  
11 live on the second floor of the building, then  
12 the first floor people -- excuse me, if you  
13 live on the second floor of the building;  
14 which is a separate unit, by the way --

15                   MR. TURNBULL: Okay.

16                   MS. TOPOLEWSKI: It's the second  
17 floor. You have to walk down into the  
18 basement level and then walk through the first  
19 floor space to get up to the second floor  
20 level. And you're doing so in a completely  
21 closed in staircase that, (a) you can't be  
22 seen from the outside; (b) has a lot of blind

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1       corners; (c) is highly -- it's dark. It also  
2       has an extensive amount of windows where you  
3       can literally reach right into the existing  
4       other apartments that aren't your property.  
5       So basically, somebody can get in there and do  
6       a lot of mischief.

7                    This is a holdover from when this  
8       property was originally built as a service  
9       property, so this is the service stair to the  
10      kitchens originally.

11                  MR. TURNBULL: Okay.

12                  MS. TOPOLEWSKI: And it's a  
13      holdover. My neighbors who have a very  
14      similar property configuration have enclosed  
15      this porch, and I'm asking to do the same.

16                  MR. TURNBULL: Okay. Thank you.

17                  MR. BROWN: And, Mr. Turnbull,  
18      following up, it does take place that this  
19      code safety issue takes place in the context  
20      of zoning issues. The existing footprint of  
21      the building is 72 percent, which exceeds the  
22      maximum permitted. So under 2001.3, any

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1 addition would require zoning relief, even if  
2 the individual -- let's say you put in some  
3 sort of additional structure on it and that  
4 piece of structure complied with the Zoning  
5 Regulations, it can never comply with lot  
6 occupancy. So you'd be forced to come back to  
7 the Board under 2001.3. So that's the  
8 context, the underlying zoning context.

9 MS. TOPOLEWSKI: And to put it  
10 broadly, because of the tightness of the lot  
11 and the closeness to the lot lines and things  
12 of that nature, I want to keep the stair as  
13 unobtrusive as possible, connected to the  
14 house and that puts me into zoning relief by  
15 its placement. And also because it is so  
16 tight on the lot, it's very difficult for me  
17 to ascertain what will pass fire.

18 CHAIRPERSON MILLER: Any other  
19 questions?

20 VICE-CHAIRPERSON LOUD: One  
21 question, Madam Chair.

22 CHAIRPERSON MILLER: Yes.

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1 VICE-CHAIRPERSON LOUD: Thank you.

2 So as I understand it, even if you  
3 were to do two-units, to do a flat here, but  
4 wanted to do the spiral staircase to address  
5 the safety issues, you would still need BZA  
6 relief?

7 MS. TOPOLEWSKI: That's correct,  
8 for being over the lot coverage.

9 VICE-CHAIRPERSON LOUD: Okay. And  
10 switching gears a little bit, what were the  
11 plans that you did share with the ANC that  
12 garnered their approval? I'm trying to gauge  
13 in my mind the difference between what you  
14 have here today and what they actually voted  
15 approval of.

16 MS. TOPOLEWSKI: They voted  
17 approval on a set of plans that show the  
18 existing condition, which is a set of stairs  
19 within the porch and a separate unit in the  
20 basement. The porch issue and the separate  
21 unit in the basement are not related, if that  
22 makes any sense whatsoever. Irrespective of

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1 me getting relief for three units, I would  
2 still be in front of you asking for relief for  
3 the stairs. I've always needed it. I still  
4 need it. I still want it. I want the  
5 neighborhood to be safe. I want this property  
6 to be safe.

7                   And to take a step back from this,  
8 I purchased this property to live in it and I  
9 lived in this property for well over a year.  
10 And as a single woman living in this property  
11 with my bedroom facing that porch, thinking  
12 that, okay, any moment somebody can come and  
13 actually push in the air-conditioner and like  
14 reach in and grab me. I'm pretty intrepid, I  
15 really am, I've lived in all kinds of crazy  
16 places, but even that made me shake. I was  
17 like, you know, this is not good. And that's  
18 what was the tip-over point for me to say,  
19 look, I really need to take care of this. I  
20 really need this to change. Because it just  
21 doesn't feel safe because you know that  
22 somebody can get in there and hide.

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1 VICE-CHAIRPERSON LOUD: Earlier  
2 Mr. Brown testified that of the two options  
3 that are still on the table; and correct me if  
4 I misunderstood your testimony, that option 2  
5 is problematic with DCRA. Did I mis-  
6 characterize your testimony?

7 MS. TOPOLEWSKI: It's the other  
8 way around. The preferred option --

9 VICE-CHAIRPERSON LOUD: The  
10 preferred option?

11 MS. TOPOLEWSKI: The preferred  
12 option has some challenges with the actual  
13 placement of the spiral stairs drawn. If I  
14 move it back, it might pass. Because the way  
15 the spiral might work, you know, there might  
16 be enough clearance for me to have people walk  
17 by the spiral stair and that's where they're  
18 hemming and hawing a little bit.

19 VICE-CHAIRPERSON LOUD: Well, what  
20 would be the case then for us to review the  
21 preferred option if we know going into it that  
22 that has tremendous problems with DCRA?

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1                   MS. TOPOLEWSKI: I wouldn't  
2 characterize it as tremendous problems. I  
3 would characterize it as something that I  
4 would have to replace and show them how the  
5 clearance would work from the pole to the  
6 fence line.

7                   MS. RIGAZIO: I think if -- if I  
8 may jump in here?

9                   MS. TOPOLEWSKI: Please, please.

10                  VICE-CHAIRPERSON LOUD: Sure.

11                  MS. RIGAZIO: I think one of the  
12 issues is because DCRA --

13                  VICE-CHAIRPERSON LOUD: Is your  
14 mike on?

15                  MS. RIGAZIO: Little green light's  
16 on. Maybe I'm not close enough. Excuse me.

17                  Since we were unable to get really  
18 a full review, we weren't able to put that  
19 spiral stair in front of them with as much  
20 information and we weren't given the  
21 opportunity to make it very clear that we can  
22 make that work in that space. And that's why

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1       we're showing option 2, because we're a little  
2       afraid that we're going to say it absolutely  
3       works and then they're going to look at it and  
4       interpret it differently and say, nah. And  
5       then we're stuck.

6                   While the second option, although  
7       not in any way our preferred option, I think  
8       they take less exception to that one. That  
9       one I think is easier for them to accept. And  
10      as Ms. Topolewski was saying, it's a matter  
11      of clearance issues. You know, does the stair  
12      in the preferred option, does it block exit  
13      egress from the basement? Our answer is no.  
14      It does work. We have plenty of clearance  
15      from the center of the spiral stair to the  
16      property line to safely egress out of that  
17      basement. We don't have a question about it.

18                   VICE-CHAIRPERSON LOUD: Thank you.

19                   MEMBER DETTMAN: I have one  
20      question. It seems to me that lot occupancy  
21      is only triggered because you're essentially  
22      retaining the area that's now the internal

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1                   stair, but you're enclosing it and making it  
2                   livable space. So, why not eliminate the  
3                   existing stair and put your spiral stair where  
4                   you've proposed it and essentially the lot  
5                   occupancy could stay the same?

6                   MS. TOPOLEWSKI: The struggle with  
7                   that is a cost issue, and there are two issues  
8                   actually. One is you end up with a set of  
9                   stairs still in an enclosed porch and you  
10                   don't solve the safety issues. That's the  
11                   main reason. Because still the way that this  
12                   property is configured, you walk down a half  
13                   a flight of stairs to get to the basement  
14                   level and then you walk up whatever stairs  
15                   happen to be there to get to the first and  
16                   second floor level. And it's enclosed  
17                   basically by a structure on the outside. So  
18                   even if you were to replace the stair that's  
19                   existing in there, you still are going to be  
20                   in an enclosed space that you can't see into  
21                   and you would have to do very major surgery on  
22                   the inside of that porch to actually get it to

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1 the point of being structurally sound with a  
2 different set of stairs.

3                   If you looked at those stairs  
4 right now, they are not code-compliant. So  
5 basically, the only way to get them to be  
6 code-compliant is likely to put in a spiral  
7 stair. If I have to put a spiral stair there,  
8 then it is a structural nightmare for me to  
9 get a spiral stair into an enclosed space.  
10 And it's cost-prohibitive and it just  
11 doesn't --

12                   MS. RIGAZIO: And functionally we  
13 still have problems.

14                   MS. TOPOLEWSKI: And we still have  
15 the safety issues. You're not netting  
16 anything.

17                   MEMBER DETTMAN: Well, I'm not  
18 suggesting that you replace the existing stair  
19 which is close to the windows, the bedroom  
20 windows with the spiral stair.

21                   MS. TOPOLEWSKI: Yes.

22                   MEMBER DETTMAN: I'm suggesting

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1 that the area that's encompassed, the lot area  
2 that's covered by that stair, it just simply  
3 be removed. And it frees up some lot  
4 occupancy which would be consumed by your new  
5 spiral stair further back into your property.

6 MR. BROWN: Can I respond? I  
7 think we're moving that porch area -- one,  
8 we're not bringing the property below the  
9 maximum lot occupancy. So we're still looking  
10 at a variance to put anything to replace it.  
11 Also, in the context of the spiral staircase,  
12 we need to remember that -- and they're both  
13 essentially the same on either side, the  
14 footprint there is 19.6 feet, which in the  
15 context of this lot, which is 2,700 feet in  
16 the context of the building that's there, is  
17 really very minor. It's very minor. So that  
18 your lot occupancy goes up .7 on the preferred  
19 option. It doesn't go up on option 2 because  
20 lot occupancy in the court on the other side  
21 is already included. So, I mean, we're  
22 talking about the head of a pin there in the

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1       context of, you know, the cost of removing  
2       what's there and also the fact that that still  
3       wouldn't bring us below 60 percent.

4                    MEMBER DETTMAN: But unfortunately  
5       the head of this pin is triggering a new  
6       variance which has been the subject of this  
7       debate. And the idea that you're going to  
8       need a variance anyway is not true, because if  
9       you're going to do an apartment conversion in  
10      an R-4, the lot occupancy requirement says  
11      either the existing or 60 percent, whichever  
12      is the greater. So if there's an option that  
13      you could retain your 72 percent lot occupancy  
14      by removing one stair and replacing it with  
15      another, there's no variance.

16                    MS. TOPOLEWSKI: But that doesn't  
17      solve my basic problem, which is that it's  
18      unsafe. And that's still the issue for me.  
19      That still is -- always at the core of this,  
20      that's what this is all about, is that the  
21      existing condition is unsafe and I can't think  
22      of a way to make a safe condition there

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1 without bringing it outside so that it's an  
2 exposed stair, so people can actually see  
3 who's coming in and out. I can't make it  
4 happen.

5 VICE-CHAIRPERSON LOUD: Okay.

6 CHAIRPERSON MILLER: Okay. Well,  
7 why don't I make this decision and we're going  
8 to proceed with hearing the case.

9 If Board Members don't disagree, I  
10 would suggest that we do continue with the  
11 hearing today. I think the ANC did get notice  
12 of the amended plans, at least through the  
13 prehearing statement. So the ANC Commission  
14 is here, but I understand that the ANC has not  
15 had a chance to vote on it or take a position  
16 on it, so I think we should consider leaving  
17 the record open for the ANC to do that after  
18 we have the hearing. But I don't see any  
19 reason not to go forward, especially  
20 considering that one of the primary issues is  
21 the conversion issue and the ANC did vote on  
22 that. But if others feel differently, let me

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1 know. It is hard to get a hearing, you're all  
2 here. Okay. So I think that that is a good  
3 solution. We will leave the record open and  
4 we can decide that at the end of the case, but  
5 most likely we would do that.

6 And then the other issue about the  
7 options, I guess I would suggest that we at  
8 least hear the whole thing. Maybe we don't  
9 have to decide at this point whether we're  
10 going to deliberate on both. We'll take all  
11 the evidence and let that play out.

12 Okay. So there's no disagreement?  
13 Okay. Let's go forward then with the  
14 applicant.

15 MS. TOPOLEWSKI: Thank you very  
16 much.

17 CHAIRPERSON MILLER: Okay.

18 MR. BROWN: And very briefly  
19 before I turn it over to the applicant, again  
20 underlying the whole stair issue is the  
21 conversion. And I think as it will become  
22 apparent, the building is unique, it's a

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unique condition, unique design. It needs unique things to make it usable and those unique factors, perhaps not any single one is dispositive, but taken together establish a set of circumstances that I think really raise practical -- and in the context, practical and design and physical and economic issues that warrant the approval of this variance.

9 And again in the context of what  
10 we're talking about, in the R-4 these  
11 conversions are permitted and it's really just  
12 a question of a very small shortage, about  
13 one-third of the lot area for an individual  
14 unit that's lacking in a building where we  
15 have the largest building in the vicinity that  
16 makes that -- you've got a larger building  
17 than most on a lot that's essentially the same  
18 size, that really doesn't create the kind of  
19 outlier in the context of the neighborhood or  
20 the Zoning Regulations as to run afoul of the  
21 third test.

With that, I'd like to have Ms.

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1 Topolewski and her architect to kind of walk  
2 you through the building, what's there now and  
3 the challenges faced by that.

4 MS. TOPOLEWSKI: Well, at that  
5 point what I'd like to do is completely  
6 backtrack and introduce myself. My name is  
7 Tanya Topolewski and I am the owner of 4114  
8 New Hampshire.

9 As with many properties, this  
10 property has a history with me and with the  
11 things that I do professionally. My  
12 background professionally actually is that I  
13 work in commercial real estate development and  
14 have in the past worked for some very large  
15 developers that have done very extensive  
16 projects, multi-million-square-foot-types of  
17 projects. And I left that world and one of  
18 the reasons that I left that world was because  
19 I wanted to be able to do my own projects on  
20 a scale that made some sense to me, and also  
21 because I believe that there's a need to push  
22 the envelope with respect to green building

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1 performance.

2 I bought this property to live in  
3 it and also for it to be a way for me to push  
4 the boundaries of what it is to be a green  
5 building in the District of Columbia. I  
6 bought it to renovate it, without a doubt. I  
7 bought it because it was a great property in  
8 a great location, but also because it was in  
9 a state of disrepair that needed a lot of TLC.

10 And my intent with this property  
11 when I purchased it was to do an ultra-green  
12 renovation. For me, an ultra-green renovation  
13 means to see if I could actually hit a net  
14 zero energy use building with doing an  
15 extensive row house renovation within the  
16 District of Columbia. And that would be to  
17 use it as a model for other people to look and  
18 to see what can be actually done within the  
19 context of a row house renovation.

20 When I bought this property, like  
21 I said I lived in it, so I lived it for well  
22 over a year-and-a-half until I got it ready to

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1 start construction. This property is very  
2 unique. It has some individual  
3 characteristics that put it into a very rare  
4 class of building, if at all, within the  
5 District of Columbia. It is originally built  
6 in 1917 and it is built as two units, and it  
7 is built as two units with the second floor  
8 being a separate unit from the first and the  
9 basement. That configuration with the second  
10 floor being separate from the first and  
11 basement has triggered all of these  
12 discussions that we're having right now and  
13 also many issues within the context of the  
14 building that make it difficult for it to  
15 actually operate safely as a two-unit  
16 structure.

17 Let I'm going to give you an  
18 example. If this property were divided as it  
19 normally would in the District of Columbia  
20 with the basement being a separate area that  
21 could be rented and the first and the second  
22 floor being common living space together,

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1 meaning you walk in the front door and you go  
2 up to the second floor into the bedroom areas,  
3 which is very typical, in that situation you  
4 are allowed an exterior stair no matter if  
5 you're over the lot coverage or not. In that  
6 configuration, I would not be here asking you  
7 for a set of spiral stairs to the second  
8 floor. It would not be an issue. And that's  
9 the baseline for why it is that this whole  
10 stair issue has come up, because I need a  
11 second floor access to that unit, which is  
12 separate and Zoning doesn't allow it because  
13 they only allow for what is very typical. And  
14 what is typical is a row house with a second  
15 and first floor being connected together and  
16 the basement being separate. So right off the  
17 bat I'm here because of that unique  
18 configuration with the second floor being a  
19 separate unit and the first and basement being  
20 together.

21 I have told people on a -- I feel  
22 a question coming on.

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1                   VICE-CHAIRPERSON LOUD: Well, and  
2 you can answer it now or you can --

3                   MS. TOPOLEWSKI: Go ahead.

4                   CHAIRPERSON MILLER: -- fit it  
5 into the flow of your responses. But what  
6 makes the second floor a separate unit?

7                   MS. TOPOLEWSKI: I'm very glad you  
8 asked. You know, I think it's a good time  
9 actually for my architect to walk you through  
10 the plans of this property. It's a property  
11 where people find it difficult to  
12 conceptualize that a second floor unit could  
13 be separate and distinct from the first and  
14 the basement, and it's worth it for her to  
15 walk you through.

16                   Lisa, please?

17                   MEMBER DETTMAN: Just a quick  
18 question though about what you described as  
19 the unusual configuration.

20                   MS. TOPOLEWSKI: Yes.

21                   MEMBER DETTMAN: The typical  
22 configuration you described, that's typical of

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1 a single-family row house, right, not of a  
2 flat?

3 MS. TOPOLEWSKI: Correct. But  
4 many times, as you know, you end up with a  
5 configuration with row houses that there's a  
6 first and floor together and if there's a  
7 basement, it's somewhat separate and people  
8 choose, can choose in many situations to rent  
9 it out, you know?

10 MEMBER DETTMAN: Right. But it's  
11 not technically a flat.

12 MS. TOPOLEWSKI: Not technically.

13 MEMBER DETTMAN: It might be a  
14 single-family with an accessory.

15 MS. TOPOLEWSKI: Exactly.

16 MEMBER DETTMAN: Okay.

17 MS. TOPOLEWSKI: Or a room share,  
18 or a roomer situation which is highly typical  
19 in the District, where it's not truly divided  
20 as a two-unit. So point well taken.

21 MEMBER DETTMAN: Okay. Thank you.

22 MS. TOPOLEWSKI: Lisa?

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1 MS. RIGAZIO: I'm Lisa Rigazio.

2 I'm the architect.

3 I'll walk you through actually the  
4 existing conditions, which in your packet --

5 MR. BROWN: Would it be helpful if  
6 you hold a hand-held mike and --

7 MS. RIGAZIO: Unfortunately I  
8 don't even have the existing conditions up  
9 there.

10 MR. BROWN: Okay.

11 MS. RIGAZIO: It's possible, yes.

12 CHAIRPERSON MILLER: It would be  
13 useful to tell us where it is in our package,  
14 too.

15 MS. TOPOLEWSKI: It's with the  
16 sheet. You'll have the demo sheet.

17 MS. RIGAZIO: Oh, this.

18 MS. TOPOLEWSKI: Yes.

19 MS. RIGAZIO? Is this on? Thank  
20 you.

21 MR. BROWN: Madam Chairman, in  
22 your prehearing statement I think the basic

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1       plans are Exhibit A to my prehearing  
2       statement.

3                   MS. RIGAZIO: All right. If we  
4       look at the demo sheet, which in your packet  
5       I think is Exhibit A, probably the second  
6       page --

7                   MR. BROWN: And that's drawing D-  
8       1.

9                   MS. RIGAZIO: -- D-1.

10                  MR. BROWN: D-1 in Exhibit A.

11                  MS. RIGAZIO: So what we have is  
12       two stories, a first floor, a second floor and  
13       a basement. As we said, we've got the first  
14       floor and the basement are actually connected  
15       as one unit and the second floor is a separate  
16       unit. The basement has its own front access  
17       under the main stair, it has its own two rear  
18       accesses also out of the property, and then it  
19       has the stair that connects it up to the first  
20       floor.

21                  To access the first floor, we  
22       actually enter the building with one single

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1 door which enters a vestibule with stairs that  
2 go up to the second floor or a door that goes  
3 into this first floor. And this first floor  
4 apartment is a typical plan and is a repeat  
5 second floor where we have two bedrooms, bath,  
6 living room, dining room, kitchen, sun room  
7 and that screen porch. So then if we were to  
8 travel up the stairs from the vestibule to the  
9 second floor, like I said, it's the same plan  
10 as the first floor and is a completely  
11 separate flat. It has its own separate door.  
12 When you get up that common stair, it has a  
13 separate door, you know, to that separate  
14 apartment.

15                   Does anybody have questions about  
16 that?

17                   CHAIRPERSON MILLER: So where's  
18 the access to the second floor now? Outside?  
19 Is there outside access?

20                   MS. RIGAZIO: For the second  
21 floor?

22                   CHAIRPERSON MILLER: Yes.

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1                   MS. RIGAZIO: You come in through  
2 the common stair on the front. And then on  
3 the rear, we have that screen porch which is  
4 that service entrance/exit through that  
5 screened porch. So if we look here to access  
6 the basement, right now it has its own  
7 entrance under these main stairs. To access  
8 the first and second floors, it's through this  
9 main door which has a vestibule on the main  
10 stair.

11                  This is the rear of the property,  
12 which the basement has its own exit all the  
13 way out, while the first and second floors,  
14 here's that screened-in porch and enclosed in  
15 there is this service stair that brings you  
16 through the other private space of both the  
17 first floor, as well as the basement in order  
18 to exit to grade.

19                  This is the existing parking  
20 structure. This is the existing stair that  
21 brings you down to the basement. And that's  
22 it from this side as well.

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1                   Does anybody have questions on the  
2 existing conditions?

3                   And the current configuration of  
4 that basement is -- it already has three  
5 entrances and exits, one in the front and two  
6 in the rear.

7                   I'll continue on to the proposed  
8 preferred option, if I may.

9                   So in the proposed plans, it's  
10 really all interior renovation. In the  
11 basement, that existing front door would be  
12 the main entrance, the two existing rear doors  
13 would be the exits, and then we have just  
14 interior renovation to achieve two bedrooms,  
15 living room, bathroom and then kitchen.

16                   The first floor we would actually  
17 add a separate door on the front to access the  
18 first floor as opposed to entering the  
19 vestibule on the stair. This way we can keep  
20 that stair as part of the second floor space.

21                   So on the first floor we still  
22 have two bedrooms, a living room. We're

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1 slightly moving the kitchen. We're flipping  
2 the kitchen and the dining room. Aside from  
3 that, the layouts are actually very similar to  
4 the existing.

5                   And on the second floor, very  
6 similar to the first floor. One of the  
7 differences as I mentioned that that stair  
8 then becomes part of the second floor so we  
9 can eliminate the walls around that stair and  
10 make it more of an open plan. And again we're  
11 retaining the two bedrooms. Bathroom in the  
12 same location. We're just flipping the  
13 kitchen and the dining room.

14                   And in this preferred option you  
15 can see the placement. Our preferred option  
16 for the placement of those spiral stairs and  
17 the spiral stair will be to exit the second  
18 floor through the sun room, as well as get  
19 access to the roof space. And then the first  
20 floor exit access from the rear would be  
21 through this side deck on the north side, and  
22 then stairs down to grade. And then exit for

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1 the basement is as it is currently existing.

2                   Does anybody have any questions?

3                   MS. TOPOLEWSKI: I'd like to just  
4 summarize a few of the main points about the  
5 changes to the access of the building.

6                   I'm very sensitive as an owner and  
7 as someone who lives in this community to keep  
8 the community character as it is, and this is  
9 something that's very important to the  
10 community, especially the street as well. I  
11 wanted to do minimal changes to the front of  
12 the property and I also did not wish to extend  
13 the property whatsoever. That means I never  
14 considered going up, I never really considered  
15 going back, I never gave them any serious  
16 thought. This is a large property. Each of  
17 the square footages on each floor is over  
18 1,000 square feet per floor, and the basement  
19 is 850 square feet. I didn't have to do any  
20 major changes to the actual envelope of the  
21 building. It's all interior renovation.

22                   The major changes to the egress is

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1 a change of a front door on the front of the  
2 property from a window to a door. And then  
3 the change in the back would be the changes to  
4 the spiral stair. So essentially the property  
5 remains essentially the same and it does not  
6 change the character at all. The front  
7 street, minorly, except for some additional  
8 very well-needed landscaping as well and a  
9 change to a door.

10                   The interior stair deserves  
11 mention. This is the stair that connects the  
12 basement to the first floor. That stair as  
13 existing is not to code, not by a long shot.  
14 It is only 24 inches wide. It's very narrow.  
15 It also is only about five-foot-ten-inches  
16 tall from the stair height to head height  
17 clearance, which makes it completely non-  
18 conforming.

19                   When people go down that stair,  
20 they say, "Whoa, this is really dangerous.  
21 This is really steep. This is really  
22 claustrophobic. This is like, whoa." And

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1 literally, when people come into the building,  
2 they say, "It is easier to get into this  
3 apartment from the outside." That is exactly  
4 what my neighbor said and also one of the ANC  
5 Commissioners said the same thing.

6 What I have told people about this  
7 property and continue to say is that it really  
8 wants to be three units. When people come  
9 into this property, they actually say to me on  
10 a regular basis, "Oh, so you're going to rent  
11 out the first floor and the second floor and  
12 the basement all separate, right? It's a  
13 three-unit building." People honestly assume  
14 that it's a three-unit building. And that is  
15 because of the way it is configured with the  
16 second floor as a separate unit with its own  
17 separate stair going straight up to the second  
18 floor unit and then the first floor being  
19 essentially its own separate unit with its  
20 stair tucked away in the middle of the house  
21 that's not really engaged in part of the house  
22 and a very porous basement that is very large.

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1       It's 850 square feet in the basement, clear.  
2       So people view this house when they get into  
3       it as, "Oh, yes. I can definitely see where  
4       you're going to end up having three units. It  
5       should be three units and I can see where you  
6       would want it to be three units." It's not a  
7       stretch to anybody's imagination.

8                   Changes to the property in order  
9       to make it actually conform to be three units  
10      from a code standpoint, all I have to do is  
11      take that stair out, basically. That's it.  
12      It's got three doors. It's got three or four  
13      windows. Most of it's code-compliant. I have  
14      to drop the height of the windows a little  
15      bit, but the windows to the basement are  
16      large. It's very, very close to being three  
17      units.

18                   MR. BROWN: Describe what you  
19       would have to do, kind of the domino effect of  
20       replacing that existing interior stair.

21                   MS. TOPOLEWSKI: Replacing the  
22       interior stair, I've been asked about that and

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1       in order to replace that interior stair which  
2       is not code-compliant, two things need to  
3       happen. One, I need to adjust the steepness  
4       of the stair and the second is that I need to  
5       make sure there has clear head height, and  
6       that kind of goes hand-in-hand. So basically,  
7       I need to elongate the stair. So instead of  
8       it being like this, it needs to be like this.  
9       Then that change from this to this means that  
10      everything on the first floor that surrounds  
11      that stair needs to go away and be moved. I  
12      need to move two or three walls. I need to  
13      remove a door. I need to completely remove a  
14      linen closet. I need to reconfigure a part of  
15      the ceiling. I need to fix part of the floor.  
16      I need to coordinate with all of the  
17      electrical plans. I need to do an enormous  
18      amount of work, in addition to rebuilding all  
19      of the walls for the stair and in addition to  
20      rebuilding and reconfiguring some of the  
21      existing walls that are in the living room as  
22      well, because the stair would have to be

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1 widened significantly. Because currently it  
2 is a 24-inch-wide stair. It needs to go all  
3 the way up to a 36-inch-wide stair. That's 12  
4 inches of just the stair width, plus the  
5 stringers which is an additional two to four  
6 inches, all of which would go into the living  
7 room side and the living room already is very  
8 narrow.

9                   It's not only cost-intensive. My  
10 estimates that I've received vary anywhere  
11 just for the stair relocation and  
12 reconfiguration would be between \$15,000 and  
13 \$25,000. It also dramatically impacts the  
14 front living room, which is already narrow to  
15 begin with. It just makes it much more  
16 unlivable in that space, which is narrow. And  
17 it's just not a good solution from a just  
18 livability standpoint, irrespective of the  
19 cost. You phrased in the statement as it's  
20 major surgery and it truly, truly is, because  
21 I have to move everything over in order to get  
22 the right stair tread and steepest

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1 configuration to get the head height, because  
2 I have to go all the way up to a seven-foot  
3 clearance from five-foot-ten.

4 CHAIRPERSON MILLER: Okay. Let me  
5 ask you a couple of questions.

6 MS. TOPOLEWSKI: Good afternoon.

7 CHAIRPERSON MILLER: First of all,  
8 how long has the property been vacant?

9 MS. TOPOLEWSKI: I purchased this  
10 property in 2006, and like I said, I lived  
11 there. Prior to that it had been vacant for  
12 -- I can't quite comment on exactly how long  
13 the entire property has been vacant. It was  
14 an estate sale when I purchased the property.  
15 The upper unit, however, I can speak to that.  
16 When I requested the bills from Pepco and from  
17 Washington Gas to get a sense of what the  
18 energy usage in the building would be, they  
19 had no record of it. That has not been  
20 occupied for a number of years. But the first  
21 floor and basement probably was occupied and  
22 I couldn't tell you the last date from when it

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1       actually started to be vacant to when it was  
2       sold. That was probably several months, maybe  
3       a year. I don't know. I don't know.

4                   CHAIRPERSON MILLER: Okay. I  
5       guess one of my basic questions is at one  
6       point or over the years it had been  
7       functioning as two units and now you're making  
8       the case that there's a practical difficulty,  
9       at least in making it function as two units  
10      from now on because of the economics of  
11      renovating it. Was that the argument?

12                  MS. TOPOLEWSKI: There's a couple  
13      of things that are difficult about the  
14      configuration with having the second floor be  
15      its own separate unit. The first is that it's  
16      a safety issue for an owner, and by extension  
17      the neighborhood. And what I mean by that is,  
18      if you are living in -- I'm an owner. I live  
19      on the second floor. I rent the basement and  
20      the first floor unit out to somebody and they  
21      say, "Okay, fine. I'm going to pay you X  
22      amount of rent for it. Fine." They get into

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1 a little bit of financial difficulty and they  
2 say, "Well, you know what I'm going to do?  
3 I'm going to just rent a room in the  
4 basement." And then they do that. And they  
5 don't ask me. And I say clearly in the lease  
6 you cannot sublet, you can't do all this. So  
7 let's say then they break the terms of the  
8 lease. The way that the property is  
9 configured, it's not a stretch to say that  
10 somebody can actually live in that basement  
11 and even with being an occupier on the second  
12 floor, that I wouldn't know that that basement  
13 is occupied by somebody that I don't know,  
14 because they don't have to go through the  
15 first floor. They just go directly into the  
16 basement, which is a very different situation  
17 than saying, okay. If you're in a town house  
18 configuration, if somebody wants to do that,  
19 that person will go through their space and  
20 they will share space with them.

21 So for example, I rent the town  
22 house that's a typical D.C. configuration with

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1 a first and second floor together. Somebody  
2 gets into trouble and they say, "All right.  
3 I want to rent the bedroom." That person's  
4 going to go through their space and have to  
5 share that space and that bedroom. And me as  
6 an owner, even if somebody decides to sublet  
7 that space, then they're at least sharing that  
8 space and they're actually, you know,  
9 monitoring who's in the building. The way  
10 that this place is configured because the  
11 basement is so separate, they could literally  
12 rent out the basement on its own and then I as  
13 an owner will not know who's in the building.

14 For another example, I'm not in  
15 the building. I'm an owner. I don't occupy  
16 the building. It's a two-unit building. Very  
17 standard situation. I rent the basement and  
18 the first floor unit out to somebody and they  
19 get into hard times, they can rent that  
20 basement out without me ever knowing it and  
21 they can rent that basement out to people that  
22 they don't even necessarily know because they

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1       don't have to share space with them. And  
2       because of that, I as an owner end up with a  
3       building that's occupied by people that I  
4       don't know. And if I don't know the people,  
5       then I can't have any calm assurance that this  
6       building is going to be occupied by people  
7       that I would actually approve of. And that's  
8       the fundamental difficulty with this building  
9       that is really completely keyed upon the fact  
10      that the second floor is separate from the  
11      first and the basement.

12               When I brought my neighbors  
13      through and showed them this, because they --  
14      you know, they're skeptical. These are people  
15      that have been in this neighborhood a long  
16      time. When I told them that scenario, they  
17      all said, "Yes, I can see that. Yes, I  
18      understand. Yes, I can see that happening.  
19      Yes, it's people who would assume that this is  
20      a separate rentable unit." And I said, "Look,  
21      as an owner I don't want that to happen  
22      because I don't want there to be people in

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1 here that I don't know." And they didn't  
2 particularly care for the scenario. But I  
3 said, "Look, this is not a scenario that is  
4 typical here. This is not a scenario that can  
5 be extrapolated to other people and other  
6 properties because of its unique  
7 configuration. It just doesn't happen."

8 CHAIRPERSON MILLER: Okay. Let me  
9 just see if we can just focus here and then  
10 move on.

11 Basically, your argument needs to  
12 fit within this variance three-prong test and  
13 the first two prongs are pretty key here that  
14 if there's something exceptional about the  
15 property that gives rise to a practical  
16 difficulty in complying with the regulations  
17 and that's why you need the variance. And so  
18 what I'm hearing you're saying is that it's  
19 the configuration of this property is  
20 different from most row houses with the second  
21 and first floor being connected this way and  
22 that you have a safety issue with respect to

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1                   the basement as a result, or something to that  
2                   effect.

3                   MS. TOPOLEWSKI: That's point one.

4                   CHAIRPERSON MILLER: Okay. What  
5                   else do you want us to know with respect to  
6                   those two prongs?

7                   MS. TOPOLEWSKI: Okay.

8                   Renovations cost money.

9                   CHAIRPERSON MILLER: And how does  
10                  that fit into -- there's nothing exceptional  
11                  here about your stairway and why does it cost  
12                  so much money, more than a normal situation?

13                  MS. TOPOLEWSKI: The problem  
14                  becomes when I go -- the problem has a couple  
15                  of issues. I want to try to make this short.  
16                  If I go to the bank, try to finance it as two  
17                  units, I can't finance it, period. They look  
18                  for comps in the neighborhood and they say  
19                  show me a comp for a first and basement  
20                  configuration together, and I can't do it,  
21                  period. And they won't finance me. That's  
22                  the long and the short of it.

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1                   And when I argue with them and  
2 say, look, what I would comp this to is the  
3 lowest-end town house scenario that has four  
4 bedrooms, you know, two baths and it would be  
5 in this lower-end number, they say, oh, it's  
6 going to be in that lower-end number? Well,  
7 you still don't make it for financing, period.

8                   So (a) they're looking for comps;  
9 I can't provide the comps. When I do make a  
10 scenario that might work, it's at too low of  
11 a number for them to finance.

12                  CHAIRPERSON MILLER: Do you have  
13 that in writing or anything, or that's just  
14 verbal?

15                  MS. TOPOLEWSKI: I got two  
16 verbals, no, three on that.

17                  CHAIRPERSON MILLER: Verbal?  
18 Okay.

19                  MS. TOPOLEWSKI: The second issue  
20 is that in its current configuration I would  
21 argue that it's not marketable in its current  
22 configuration. In general, people who want to

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1 have space in a town house are looking for --  
2 you know, they're looking for space. And it's  
3 going to compete against a town house that has  
4 a lot more windows, light, air, access, even  
5 though it might be the same size, which means  
6 I'd have to drop the price. So let's say that  
7 a town house in that area starts at -- a  
8 rental for a town house without the basement  
9 starts at say, you know, \$2,000 a month, or  
10 \$2,200 a month. This would rent, my  
11 guesstimation would be that this would rent  
12 lower than that, given that half of its in  
13 underground. Most people won't want that.  
14 And so I can't get the rent that I would need  
15 to justify financing. And that gets back to  
16 the same argument about the bank saying, okay,  
17 let's see some comps and I can't show them.  
18 And then when I give them something that I  
19 think might fit, then they say it's too low.

20 Furthermore, if I were to have the  
21 three-unit split, then it becomes very easy  
22 for me to take to a bank. I say here's one

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1 unit on the first floor. This is what it  
2 would rent for. Here's one unit in the  
3 basement. There's a ton of comps out there  
4 for a basement rental. I can show them very  
5 clearly what it is that it's going to rent  
6 for. And they're extremely happy. And my  
7 hands are effectively tied by that financing  
8 and I can't get around it.

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1 neighborhood, to say it mildly. I want to get  
2 this property to the point where this is an  
3 asset to the neighborhood. I can do that with  
4 three units. I can't do it with two because  
5 I can't finance it. And that is a practical  
6 difficulty that is directly related to its  
7 unique configuration of the second floor up  
8 and the first and basement lower. It wouldn't  
9 be an issue if it was a first and second floor  
10 connected and the basement, because I wouldn't  
11 be here, frankly. I wouldn't be coming here  
12 and asking you for the third unit. I don't  
13 believe in conversions like this as a general  
14 rule. I side with the community. I don't  
15 think that they're necessarily the best way to  
16 go and only because of this property's unique  
17 configuration I'm asking for it.

18 CHAIRPERSON MILLER: Okay. And  
19 other Board Members may have questions, but  
20 how about the variances for the staircase or  
21 whatever? I mean, what's the exceptional  
22 conditions and practical difficulties that

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1 require the variances for those plans, when  
2 you're ready to do that?

3 MS. TOPOLEWSKI: I'm sorry.

4 CHAIRPERSON MILLER: I don't know  
5 if you have more to say on that issue, but I  
6 was saying that, you know, for purposes of our  
7 analysis we have this basic three-prong test  
8 and I'm not even going to the substantial  
9 detriment at this point, but just to  
10 understand, I was wondering if the architect  
11 wanted to touch upon, you know, the  
12 exceptional conditions that give rise to  
13 practical difficulties requiring variances  
14 with respect to the stairs. I mean, that's  
15 before us as well, not just the conversion.

16 MS. TOPOLEWSKI: Oh, okay.

17 CHAIRPERSON MILLER: So I just  
18 want to make sure that, you know, that was  
19 laid out for the Board. And that's probably  
20 more the architect's area, I would think.

21 MS. RIGAZIO: Well, I think that's  
22 one of the things we were talking about

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1                   earlier.

2                   CHAIRPERSON MILLER: This is just  
3                   summarizing. I'm sure you covered it pretty  
4                   much.

5                   MS. RIGAZIO: Yes, one of the  
6                   practical difficulties is safety of the  
7                   existing stair. So once you realize that the  
8                   existing stair does not work practically for  
9                   safety reasons, because of its configuration,  
10                   because of its location, as well as because  
11                   you're passing through other people's private  
12                   spaces, once you realize that that stair does  
13                   not work for safety reasons, then you need to  
14                   move it outside.

15                   CHAIRPERSON MILLER: What is  
16                   that's unique about the property that gives  
17                   rise to, you know, your having to put the  
18                   stair there?

19                   MS. RIGAZIO: Because the second  
20                   floor is a separate apartment, it requires a  
21                   second means of egress. So we need a stair.

22                   CHAIRPERSON MILLER: What's wrong

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1 with the -- you have an egress right now,  
2 right?

3 MS. RIGAZIO: And that second  
4 means of egress right now is not safe. It's  
5 requiring that you pass through other people's  
6 private spaces. It is marginally up to code;  
7 I that's questionable at this point. So once  
8 we realized that that stair doesn't work as it  
9 is, we need to put it somewhere else.

10 CHAIRPERSON MILLER: I can see why  
11 you would want to do that. Just for our  
12 analysis though, there was an egress there to  
13 get to the second floor. You're saying it's  
14 not safe.

15 MS. RIGAZIO: It's not safe.

16 CHAIRPERSON MILLER: Because you  
17 have to go through other people's areas.

18 MS. RIGAZIO: And you have to  
19 go --

20 CHAIRPERSON MILLER: But was it  
21 was safe 10 years ago? I mean, what makes it  
22 not safe now?

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1                   MS. TOPOLEWSKI: I would argue  
2                   that it has never -- that it always has been  
3                   something that could have always been an  
4                   issue.

5                   CHAIRPERSON MILLER: Okay.

6                   MS. TOPOLEWSKI: And, you know,  
7                   somebody who chose to live in it has it has  
8                   been, but that that was not me. And I can see  
9                   if -- it wouldn't take much of a beef for  
10                  somebody to just say, oh, I can get in that  
11                  stair and really do some harm. And so the  
12                  exceptional condition here is a safety  
13                  condition.

14                  CHAIRPERSON MILLER: Would you say  
15                  it's also less marketable because there's a  
16                  stairway going through somebody's living  
17                  space?

18                  MS. TOPOLEWSKI: I think that the  
19                  safety issue does make it less marketable. I  
20                  think that if anybody would come in and be a  
21                  single woman and say, okay, somebody can  
22                  actually come and like reach their hands into

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1 my bedroom window, yes, I think that makes it  
2 less marketable. Absolutely.

3 MS. RIGAZIO: But also the  
4 practicality and the usability of those spaces  
5 is certainly less when you have a stair  
6 running through it. I mean, how do you use  
7 this as a private porch? I mean, nobody could  
8 ever use it as a private porch.

9 MEMBER OATES WALKER: Well, let me  
10 interrupt you there, because I'm struggling  
11 with this characterization of this being  
12 private space. I mean, this is not a condo  
13 conversion. These are apartments, right?  
14 You're renting the space? So why is this  
15 screen porch characterized as private space?  
16 Is it just that you desire for it to be  
17 private space?

18 MS. TOPOLEWSKI: You know, I  
19 wouldn't characterize it necessarily as  
20 private space myself. I just want it to be  
21 safe. I just don't want somebody to have the  
22 ability to get in there and hide, period.

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1                   MEMBER DETTMAN: So what's  
2 becoming of the space that's now occupied by  
3 that unsafe stair? Because in the demo plans  
4 it's characterized as a screened porch and it  
5 says "remove stair." In the option 1 it just  
6 says "existing screen porch."

7                   MS. TOPOLEWSKI: You know, it  
8 could become any number of things. It could  
9 be an existing -- I could leave the porch. It  
10 could become a bedroom. It could become, you  
11 know, a den. I haven't really decided because  
12 quite honestly I just want the situation  
13 resolved before I do another set of drawings.

14                  MEMBER DETTMAN: Okay.

15                  MS. TOPOLEWSKI: I'm inclined to  
16 do something that would allow the maximum  
17 amount of fenestration in order to allow light  
18 into the interior of the property. This is a  
19 row house and it does suffer from lack of  
20 interior light space. So anything that will  
21 maximize that window wall is likely what I  
22 would do with that porch.

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1 MEMBER DETTMAN: Okay. And I  
2 don't want to go back to the question I asked  
3 early on, but that space that's now occupied  
4 by that stair, why couldn't it just be  
5 removed? And to your point about sunlight, by  
6 removing that stairwell, you now gain two  
7 walls that you can get sunlight into, which  
8 would be the sun room as well as the maybe the  
9 bedroom. I'm not sure. I'd have to look at  
10 the plans, but why couldn't it be removed?

11 MS. TOPOLEWSKI: It could be  
12 removed, but that would certainly be a  
13 downgrade in the property value, certainly,  
14 without a doubt. If I already have something  
15 in the footprint, I would like to keep it. My  
16 neighbors have kept it. I think I should be  
17 able to keep it, too.

18 MEMBER DETTMAN: I just wanted to  
19 go back to when you were describing the  
20 uniqueness with respect to the configuration  
21 and your inability to get financing. I  
22 followed your argument all the way up until

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1           the last point you made when you said if it  
2           was configured differently, if it was the  
3           first and second floor that were connected and  
4           a stand-alone basement you wouldn't be here.

5                   MS. TOPOLEWSKI: Yes, I wouldn't  
6           be asking for a variance for three units. I  
7           just wouldn't.

8                   MEMBER DETTMAN: Okay. So with  
9           that configuration you wouldn't have a desire  
10           to do three units?

11                  MS. TOPOLEWSKI: No.

12                  MEMBER DETTMAN: Okay.

13                  MS. TOPOLEWSKI: No, I think  
14           that's bad for the neighborhood. And I will  
15           say that people have asked on occasion whether  
16           or not this could be -- they've raised it this  
17           way: Convert it back to a single-family home.  
18           I just want to be clear that this has (a)  
19           never been a single-family home. It's always  
20           been two units. And for me to convert it to  
21           a single-family home use would be extremely  
22           awkward because basically you open a door and

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1       you walk right up a flight of stairs. So the  
2       first floor and the second floor are  
3       discreetly disconnected. There is no going up  
4       the stairs and having it be part of the house,  
5       a flow plan like through and around the  
6       stairs. It just doesn't happen here. It's  
7       basically a four-square where there's a  
8       central stair, a room on the right hand side  
9       that you walk into and then a bedroom on the  
10       left which is completely disconnected. It  
11       wasn't mean to be a single-family home and  
12       really without major surgery again, it cannot  
13       be made to operate as a single-family home.

14                   CHAIRPERSON MILLER: Let me just  
15       ask you this: Since you're in real estate,  
16       you know, and you say this is a unique  
17       configuration, can you characterize how unique  
18       it is? I mean, have you seen others like  
19       this?

20                   MS. TOPOLEWSKI: I am a licensed  
21       realtor in the District of Columbia, Maryland  
22       and Virginia and I have shown literally

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1       hundreds of properties within the District of  
2       Columbia, in particular. I cannot recall a  
3       case where I've seen a property like this  
4       where it has a second floor separate from the  
5       first floor as its original configuration.  
6       You do see these kinds of properties now that  
7       are being built as new construction or newer  
8       construction, but I've never seen an original  
9       property like this. It is very unique in my  
10      estimation.

11            MEMBER DETTMAN: Any other  
12      questions right now?

13            MR. TURNBULL: Madam Chair?

14            CHAIRPERSON MILLER: Yes?

15            MR. TURNBULL: The circular  
16      stairs, I'm assuming as you read the Code,  
17      it's acceptable as a second means of egress?

18            MS. RIGAZIO: That's correct.

19            MR. TURNBULL: Is there any reason  
20      why push comes to shove you can't move that  
21      stair another foot-and-a-half into the yard?  
22      You talked about a problem with the basement

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1 entrance and whether that's clear enough.

2 MS. RIGAZIO: Right. Right. Let  
3 me just pull that up so we can -- we're  
4 saying, you know, could we shove it out in  
5 this direction --

6 MR. TURNBULL: Right.

7 MS. RIGAZIO: -- to make sure that  
8 we've got enough clearance? I think that is  
9 a possibility, yes.

10 MS. TOPOLEWSKI: And I would say  
11 so too, and that's what I would discuss with  
12 the people down at the DCRA. That's why I  
13 think it's a very real possibility that it can  
14 be made to conform with that configuration.  
15 It just needs some tweaking.

16 MEMBER DETTMAN: Okay.

17 MS. RIGAZIO: Yes.

18 MR. TURNBULL: The other issue,  
19 and you had said earlier about the living room  
20 getting narrower.

21 MS. TOPOLEWSKI: Correct.

22 MR. TURNBULL: But isn't it really

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1       the stairway to the second floor that sets the  
2       limits for the first floor size, not the  
3       basement?

4                    MS. TOPOLEWSKI: Yes, you are  
5       right. But the way that the second floor is  
6       kind of set over the first floor --

7                    MR. TURNBULL: Yes.

8                    MS. TOPOLEWSKI: -- I would still  
9       need to reconfigure that wall on the first  
10       floor level and encroach. They don't  
11       necessarily stack right on top of each other.

12                  MR. TURNBULL: Okay.

13                  MS. TOPOLEWSKI: And it's not very  
14       clear to see that from the drawing.

15                  MR. TURNBULL: Yes. Okay. Thank  
16       you.

17                  CHAIRPERSON MILLER: Okay. If  
18       there's nothing from the Board, then I would  
19       ask if the ANC has any questions for the  
20       applicant?

21                  MR. TIMOTHY JONES: No, no  
22       question. As I mentioned before, the plan has

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1       been approved to the community, by the  
2       Commission and initially we felt it would add  
3       value to the community and this what has been  
4       added as far as an options, it's something  
5       that hadn't been vetted with the Commission.  
6       So I think that that should be -- obviously  
7       that should be done before this process goes  
8       further. So just in case there's any -- that  
9       way everybody will have their say.

10                   CHAIRPERSON MILLER: Okay. All  
11       right. I've heard what you had to say and I  
12       guess you heard what I had to say earlier, and  
13       then we'll address keeping the record open for  
14       comments on the additional options.

15                   All right. Why don't we turn to  
16       the Office of Planning then?

17                   MS. JACKSON: Good morning, Chair,  
18       fellow Members of the Board. For the record,  
19       again my name is Arlova Jackson. I'm a  
20       development review specialist with the D.C.  
21       Office of Planning.

22                   I just want to briefly summarize

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1 the relief being requested. The applicant  
2 requests an area variance from Section 401.3  
3 for minimum lot area required for a conversion  
4 to an apartment building. Twenty-seven-  
5 hundred square feet are required and 2,387  
6 square feet are provided.

7 As we talked about at length,  
8 applicant has requested several different  
9 options under different design alternatives.  
10 It seems we are not going to discuss option 3,  
11 however both options 1 and 2 require varying  
12 types of zoning relief. Option 1 requires an  
13 area variance from lot occupancy, 2 allows  
14 72.7 percent. Option 1 also requires relief  
15 from Section 406 for the open court  
16 requirements, and I believe that's it. The  
17 other two were for option 3.

18 The property is located in Ward 4,  
19 is within the R-4 Zone, is non-conforming with  
20 regard to lot occupancy and court with an  
21 area. It contains a two-story building with  
22 two dwelling units, one with the first and

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1                   basement floor combined and the second unit on  
2                   the second level. As mentioned, the proposal  
3                   is to create three apartments, one for each  
4                   level.

5                   As you know, variances are subject  
6                   to a three-part test for which staff has  
7                   provided a detailed analysis in the submitted  
8                   report. But to summarize, the Office of  
9                   Planning feels the project does not meet the  
10                  three-part variance test.

11                  If you like, I can go over it or I  
12                  can stand on the record. It's up to you.

13                  CHAIRPERSON MILLER: Well, I think  
14                  it would be useful to have you address the  
15                  three-prong test but not necessarily, you  
16                  know, just read from your report.

17                  MS. JACKSON: Okay.

18                  CHAIRPERSON MILLER: I'm wondering  
19                  based on the testimony today for instance with  
20                  respect to the applicant's characterization of  
21                  the configuration of this particular row house  
22                  as being very unique. I would be interested

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1       in your opinion on that.

2                   MS. JACKSON: Well, the property  
3       is rectangular in shape. It's the largest lot  
4       in the square and has the largest building.  
5       There are no exceptional topographical  
6       conditions. So physically we didn't find  
7       there was anything unique about the property.

8                   With regard to its configuration,  
9       the applicant didn't provide any evidence of  
10      why this particular configuration is unique as  
11      compared to any other. There was a statement,  
12      but there was no additional information  
13      explaining how or why this situation is unique  
14      compared to any other flat. So we didn't  
15      really have anything to go on either way.

16                  The presence of the non-compliant  
17      building features, you know, in a building  
18      that was built in 1917, we didn't find that to  
19      be particularly unique either. And the safety  
20      issue seems to me to be a common  
21      characteristic of an apartment building,  
22      particularly if you have a non-resident owner

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1 where you wouldn't necessarily know and see  
2 each person coming in and out of the building.  
3 So that in our opinion wasn't a unique  
4 circumstance either.

5 CHAIRPERSON MILLER: Well, how  
6 about based on what you heard today as opposed  
7 to just what information you had before? I  
8 mean, the applicant spent a long time talking  
9 about the uniqueness of the configuration and  
10 in her testimony as a realtor she said she's  
11 not aware of any others in Maryland, D.C.,  
12 Virginia, of being configured this way in  
13 their original state, I believe was the  
14 testimony. Are you aware of others like this,  
15 or does that weigh in your evaluation at this  
16 point?

17 MS. JACKSON: I guess it doesn't  
18 change our opinion. You know, it's still a  
19 flat, it's still a two-unit building, the  
20 configuration, from our view. That doesn't  
21 change our approach.

22 CHAIRPERSON MILLER: Okay. Let me

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1 ask you, as far as the amount of space that's  
2 at issue, do you feel that it is a small  
3 amount of space that's responsible for their  
4 not meeting the requirement to do the  
5 conversion? Would you characterize it based  
6 on your knowledge of --

7 MS. JACKSON: I guess  
8 comparatively one could say that. The Office  
9 of Planning in general has taken a very firm  
10 stance regarding apartment conversions. And  
11 so it's not a situation where if it was only  
12 100 square feet versus 300. It's, you know,  
13 do you have the lot area? And given the fact  
14 that we didn't find the existing  
15 characteristics to warrant the requested  
16 variance, it's hard for me to characterize it  
17 as large or small.

18 CHAIRPERSON MILLER: Okay. I  
19 guess my other question is I know that the  
20 Office of Planning does take a firm position  
21 on this particular regulation, but I'm  
22 wondering if you could address what the

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1       substantial detriment would be in this case if  
2       variance relief were granted.

3                   MS. JACKSON: Well, the detriment  
4       is to the Zone Plan and to the recent efforts  
5       that have been undertaken by the Zoning  
6       Commission to address apartment conversions in  
7       the R-4 and to protect the character of a low-  
8       density residential district. It was just  
9       amended in 2007 to prevent conversions of this  
10      type. So the major substantial detriment is  
11      to the R-4 and the zone, the integrity of the  
12      District.

13                  CHAIRPERSON MILLER: Okay. I  
14      mean, and it seems that in that case then any  
15      variance would be a detriment to the Zone Plan  
16      under Office of Planning's position regardless  
17      of whether the three-prong test were met?

18                  MS. JACKSON: Well --

19                  CHAIRPERSON MILLER: In your case  
20      it wouldn't be met because you couldn't meet  
21      the third prong ever? Maybe you don't want to  
22      speculate.

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1 MS. JACKSON: That's it.

2 CHAIRPERSON MILLER: There's not a  
3 specific harm to neighboring properties or  
4 whatever in your view, just in a harm to the  
5 Zone Plan because it allows this conversion?

6 MS. JACKSON: Well, in this case  
7 it's difficult to give a definitive answer  
8 because you have different proposals at stake.  
9 I mean, I think, you know, we discussed maybe  
10 option 3 in detail. That certainly had the  
11 potential for having a much more detrimental  
12 impact on the neighboring properties because  
13 of the size of the addition and the stair and  
14 the encroachment into the rear yard. So it  
15 was hard to talk about the impact besides, you  
16 know, the obvious one on the R-4 when looking  
17 at three potential options.

18 CHAIRPERSON MILLER: And does the  
19 Office of Planning need more time to assess  
20 the new variances presented by the two options  
21 that came with the amended prehearing  
22 statement?

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1                   MS. JACKSON: Yes, I mean, I was  
2                   able to review those, you know, a few days  
3                   before.

4                   CHAIRPERSON MILLER: Okay. So are  
5                   there any though for those first two that are  
6                   at issue now, the preferred option and then  
7                   option 2? Are there any adverse impacts on  
8                   neighboring properties or anything like that  
9                   that we should be aware of other than OP's  
10                  concerns about conversion?

11                  MS. JACKSON: I'd say that's the  
12                  one that we feel more strongly about.

13                  CHAIRPERSON MILLER: Okay. Other  
14                  questions?

15                  MR. TURNBULL: Madam Chairman, I  
16                  wonder if I might comment? Since representing  
17                  the Zoning Commission, Ms. Jackson is right.  
18                  We were very concerned about rampant changes  
19                  in the R-4 District when we made the text  
20                  amendment change to the Regulations.  
21                  Notwithstanding that, we still look at each  
22                  property on a case-by-base basis for

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1 uniqueness of the property. So I think it's  
2 not etched in stone that you can't -- we won't  
3 make a change. I think there still is the  
4 variance opportunity available to an  
5 applicant. But we were very concerned about  
6 rampant changes that had seemed to be  
7 progressing with these kinds of properties.  
8 But that's notwithstanding the fact that  
9 there can be still uniqueness to properties.

10 CHAIRPERSON MILLER: Thank you.

11 Others?

12 Does the applicant have a copy of  
13 the Office of Planning report, and do you have  
14 any questions for the Office of Planning?

15 MR. BROWN: No, thank you.

16 CHAIRPERSON MILLER: Okay. Does  
17 the ANC have a copy of the Office of Planning  
18 report?

19 MR. TIMOTHY JONES: No, I do not.

20 CHAIRPERSON MILLER: Oh, well, you  
21 ought to get one, or we ought to get you one.  
22 You know, it's in the file, basically. I

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1       guess you don't get served with that,  
2       unfortunately. By the current process Office  
3       of Planning is not obligated to serve the ANC,  
4       right. But we do have it in our files here.  
5       But we will get you one.

6                    MR. BROWN: I can provide Mr.  
7                    Jones with a copy.

8                    CHAIRPERSON MILLER: Okay.

9                    MR. BROWN: I'd be happy to do  
10                   that.

11                   CHAIRPERSON MILLER: Do you have  
12                   any questions for the Office of Planning?

13                   MR. TIMOTHY JONES: No, I have no  
14                   questions for the Office of Planning at this  
15                   time without having seen their report. And I  
16                   think I would be thinking I would be asking  
17                   questions just based on what I've read. If  
18                   it's something I haven't had a chance to fully  
19                   digest.

20                   CHAIRPERSON MILLER: Okay. All  
21                   right. If there are no other questions, then  
22                   we do have a copy of the ANC-4C's report,

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1 which was based on the original application  
2 and the original plans. It's dated December  
3 16th, 2008. It's Exhibit 25. It represents  
4 that the ANC unanimously supported a variance  
5 from the lot area requirement to convert an  
6 existing flat (two-unit dwelling) to a three-  
7 unit apartment building under Subsection 401.3  
8 in the R-4 District at premises 4114 New  
9 Hampshire Avenue, N.W.

10                   Anyway, do you want to comment  
11 more on this, Mr. Jones? Or I can just  
12 reference this letter further, if you'd like.

13                   MR. TIMOTHY JONES: You can  
14 reference the letter further.

15                   CHAIRPERSON MILLER: Okay. The  
16 second paragraph says, "Based on the material  
17 presented by the applicant, the Commission  
18 noted that the original design and character  
19 of the flat would not be altered by inclusion  
20 of the third unit in the lower level of the  
21 unit basement. The existing flat has off-  
22 street parking for two vehicles. It was noted

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1       that the inclusion of the third unit in the  
2       existing structure had no adverse impact on  
3       the surrounding R-4 row dwellings. The  
4       Commission took particular interest in the  
5       project's proposal to provide a close to 'near  
6       zero' energy use structure (LEED platinum).  
7       Based on the foregoing, the ANC-4C supports  
8       the variance from the lot area requirements to  
9       convert as set forth in the petition."

10                   There's a petition also? I'm not  
11                   sure what petition is being referred to,  
12                   but --

13                   MR. TIMOTHY JONES: I think that  
14                   was it. The applicant had submitted a  
15                   petition within the, I believe, the neighbors  
16                   in the surrounding area, which should have  
17                   been submitted with that, as well some  
18                   residents also had submitted letters in  
19                   support of her application as well.

20                   CHAIRPERSON MILLER: Okay. Thank  
21                   you. So that's the petition that's being  
22                   referred to. And that is in our record, I

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1 assume.

2 MR. TURNBULL: Madam Chair, I  
3 wonder if I could just clarify? We've got  
4 several sets of drawings. There's one set of  
5 drawings that has a deck on the back. Is that  
6 the one that went to the ANC, or no?

7 MR. BROWN: I believe at that  
8 point, yes. And in my prehearing statement,  
9 and I neglected to mention this because we had  
10 perhaps more pressing issues with the spiral  
11 staircase. Originally as applied for there  
12 was a rear deck on the back of the property.  
13 The Office of Planning and I had a difference  
14 of opinion about whether that was relevant for  
15 zoning purposes, but that became moot because  
16 we removed the deck from the plan and I  
17 reference that in --

18 MR. TURNBULL: I guess what I'm  
19 just trying to -- from the ANC standpoint,  
20 they've seen a set of drawing that would  
21 impact the property more so.

22 MS. TOPOLEWSKI: This gets back to

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1 a little bit of a timing issue. By the time  
2 I got to present to the ANC, the plans I  
3 showed them did not show a deck. They did not  
4 see a plan with a deck.

5 MR. TURNBULL: But did it show the  
6 circular stairs?

7 MS. TOPOLEWSKI: No.

8 MR. TURNBULL: It did not show the  
9 circular stairs?

10 MS. TOPOLEWSKI: No stairs. No  
11 changes to the rear of the property.

12 MR. TURNBULL: Oh, okay. Thank  
13 you.

14 MS. TOPOLEWSKI: I wanted to keep  
15 things as clear as possible, even though  
16 internally within my organization I was going  
17 through multiple, you know, scenarios. But  
18 from what everybody has seen, I've tried to  
19 keep it as consistent as possible. Even  
20 though there have been changes, they did not  
21 see a deck and I did not address it with them.

22 MR. TURNBULL: And there was no

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1           circular stair then --

2           MS. TOPOLEWSKI: There was no --

3           MR. TURNBULL: -- as a second  
4           exit?

5           MS. TOPOLEWSKI: Correct. I did  
6           not address that with them at the time and  
7           they did not see it.

8           MR. TURNBULL: Okay. Okay.

9           CHAIRPERSON MILLER: Just for  
10          clarification, Mr. Brown, Mr. Jones referenced  
11          the petition as one that you provided to the  
12          ANC. Is it in our record? I'm just trying to  
13          locate that if it is.

14          MR. BROWN: I have not seen it. I  
15          didn't prepare it.

16          MS. TOPOLEWSKI: I think they're  
17          referring to the actual application, instead  
18          of there being a separate petition. Does that  
19          make sense?

20          CHAIRPERSON MILLER: Oh, okay.  
21          There wasn't like a petition signed by  
22          residents?

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1 MS. TOPOLEWSKI: No.

2 CHAIRPERSON MILLER: Mr. Jones, is

3 that --

4 MR. TIMOTHY JONES: No, there was  
5 a letter though, because when the Commission  
6 voted on it, the resident has supplied a  
7 letter in support of that. So I can't --

8 CHAIRPERSON MILLER: Oh, okay.

9 That included a letter by a resident? Okay.

10 MR. BROWN: Madam Chair, I would  
11 reference on -- just taking that. There are  
12 several letters in the file from neighbors in  
13 support. I count at least four, maybe five.  
14 The fifth might not have actually gotten in  
15 the record yet.

16 CHAIRPERSON MILLER: Okay. Yes,  
17 we do have several letters of support in our  
18 record. I just wanted to be clear what the  
19 ANC was referring to when they said  
20 "petition."

21 Okay. Are there any questions for  
22 the ANC?

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1                   Okay. Now is there anyone here  
2 who wishes to testify in support of this  
3 application in the audience?

4                   Anybody wishes to testify in  
5 opposition?

6                   Okay. Now is the chance to come  
7 forward.

8                   MS. MARTIN: Good afternoon. My  
9 name is Lucinda Denise Martin and I live at  
10 4116 New Hampshire Avenue, N.W. for over 35  
11 years.

12                  CHAIRPERSON MILLER: Okay.

13                  MS. MARTIN: This house has been  
14 occupied by a deceased, the Frank Dee Glover,  
15 this unit has. And at the time Frank passed,  
16 his sister Mary Jones moved into the home.  
17 She expired in 2003, I want to say.

18                  The apartment was used as a two-  
19 unit, sometimes three-unit apartment building.  
20 Upstairs lived some young tenants that are no  
21 longer -- well, they're all moved out and that  
22 was the second unit. The first unit was the

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1       unit that Mary Jones lived in, she and her  
2       fiancé lived in that two-unit. The basement  
3       was the unit that her daughter lived in with  
4       her two kids. Upon Mary's death the oldest  
5       daughter evicted the daughter and the fiancé  
6       that was living in the home. That's when it  
7       became part of an estate sale which Tanya  
8       purchase.

9                   I have been in and out of that  
10      house throughout the entire years I've lived  
11      on that block and it has always been the way  
12      it is shaped at this present time.

13                  There's also another house on New  
14      Hampshire Avenue that is exactly the same way  
15      that the Franklin sisters live in. Whereas,  
16      when you come up the first six flights of  
17      steps, you come to another existing six  
18      flights or steps, which is the porch. You  
19      open a door. Directly in front of you are  
20      stairwells that goes upstairs to the second  
21      unit. And this is in the Franklin home. To  
22      the right of you on the first foyer is the

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1 house of the other sister. So upstairs two  
2 sisters live and one sister lives downstairs.  
3 The basement is used for primary the washing  
4 machine storage area.

5 I live at 4116, which is a single-  
6 family home which I share with my family.  
7 When Tanya came onto the block, I'm going to  
8 say in the year 2004, the house was vacant,  
9 empty, and no one had lived in for quite some  
10 time. She moved -- well, I'm not going to say  
11 she moved in. I seen her come in and out of  
12 the home. Eventually, she started removing  
13 things and taking things down and putting them  
14 in the back yard. Due to the metropolitan  
15 area with rat and rodent control, I went to  
16 her and said that I have someone that will  
17 remove the debris from the back yard to cut  
18 down on the rodents running back and forth,  
19 which was my fiancé, which she hired to remove  
20 this property and we took it to the trash  
21 dumpster.

22 Now my thing is is that this house

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1 has always been used as a two-unit apartment  
2 building. Now she wants to turn it into a  
3 three-unit apartment building. This area in  
4 which we live in the 400 block is nothing but  
5 senior citizens. That's basically all that  
6 live there. The youngest on this block right  
7 now is my mother. The oldest just passed was  
8 97 years old. So we're speaking of age limit  
9 from individuals from 68 up until their 90s.

10 Now Tanya wants to turn this into  
11 an apartment building, which is we're talking  
12 about traffic coming in and out. We have  
13 trouble now with parking in that area, whereas  
14 the majority of the house, the grandkids have  
15 moved in with their grandparents to help take  
16 care of them. So now you're speaking of more  
17 cars on the lot to be parking. And we have  
18 what is called resident parking whereby it's  
19 16 houses on the side that I live on. So  
20 you're talking about two cars to every  
21 household, sometimes three, depending on how  
22 many grandkids are living in the home.

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1                   I don't feel that it's fair that  
2                   an individual can come in and change the  
3                   structure of these homes that have been there  
4                   since the 1900s. I mean, yes it is a  
5                   beautiful home and it can be used as a two-  
6                   unit apartment. But from what I'm hearing  
7                   today, it's more of a financial gain versus  
8                   she wanted -- she doesn't want to stay there.  
9                   She never has lived in that home, because the  
10                   house is full of rats, mice and roaches. And  
11                   I'm quite sure no one of that standard would  
12                   want to live in a home in that character,  
13                   because the mouses run from everybody's house.

14                   My thing is is that she stated  
15                   that Pepco and the gas had no record of it  
16                   downtown and the reason why is because that  
17                   gas bill and electric bill ran to the actual  
18                   one house, which was the second unit where  
19                   Mary Jones lived. So the tenants upstairs  
20                   split it, the electric bill.

21                   Now, it's not fair for her to want  
22                   to come in and to replace and change the

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1 structure. There's a house exactly on the  
2 corner across the street from us where they  
3 wanted to put a third floor, which they have  
4 stopped the work order on. That way no one is  
5 allowed to build that home, to put actually  
6 another floor on top of it. Now Tanya may not  
7 want to put another floor, but she's trying to  
8 put in another unit, so what's the different?  
9 That means she got to have a tenant in the  
10 basement, a tenant on the first floor and a  
11 tenant on the third floor.

12 The spiral case. There's enough  
13 space whereas she can put the spiral case if  
14 she want to add on or she can take down what  
15 she already has. There's another unit that's  
16 next door to her identically, has a spiral  
17 case but it doesn't turn, it comes straight  
18 down the steps.

19 And also, she's saying it's  
20 unsafe. Well, I live in my house for 40-some  
21 years. No one has broken in my home. The  
22 people that lived in that house there for 40-

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1 some years, no one ever broke into their home.  
2 They have a security system that you can put  
3 on the windows to keep intruders out of your  
4 home. So let's not let that be an excuse here  
5 today that it's a security issue or you felt  
6 unsafe because when you moved into the area,  
7 you have to think that it was safe for you to  
8 purchase that home within the area.

9 CHAIRPERSON MILLER: Okay. Thank  
10 you very much.

11 MS. MARTIN: Yes.

12 CHAIRPERSON MILLER: Are there any  
13 Board questions?

14 MR. TURNBULL: Yes, Madam Chair.

15 CHAIRPERSON MILLER: Yes.

16 MR. TURNBULL: Ms. Martin, let me  
17 just ask you something.

18 MS. MARTIN: Yes?

19 MR. TURNBULL: There was a part  
20 you had a little bit of conflicting testimony.  
21 When you were first describing the unit and  
22 the people and the families that had lived

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1       there, you had said it had always been used as  
2       a two-unit, three-unit.

3                    MS. MARTIN: Well, what I --

4                    MR. TURNBULL: But then you came  
5       back and said two-unit. So --

6                    MS. MARTIN: Well actually, the  
7       house was built for two units. When I first  
8       moved in that area, there was the people by  
9       the name of the Howards that lived upstairs,  
10      when they lived in there with Frank Dee  
11      Glover, who's actually the original owner of  
12      that property. Okay. He moved to Virginia.  
13      He let the house sit there for years without  
14      anybody living in it. Then he died in  
15      Virginia. His sister Mary Jones moved into  
16      the house with her boyfriend and fiancé and  
17      she rented out the upstairs, which was the  
18      second level, to some tenants. The basement  
19      is where her daughter lived and slept. She  
20      didn't rent it out to her. The daughter just  
21      lived in the basement.

22                    MR. TURNBULL: Okay.

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1                   MS. MARTIN: So it was set up  
2 whereas the daughter was down there and she  
3 was on the second floor, because Mary was a  
4 sickly woman who had a quadruple heart bypass  
5 throughout her time there in that home. But  
6 it was never used as a third unit apartment.  
7 Because the way you come in is you come in up  
8 the first six flights of steps and you go  
9 downstairs to the basement.

10                  MR. TURNBULL: All right.

11                  MS. MARTIN: And then if you  
12 wanted to go upstairs, you come up the next  
13 six flights of steps and there's a porch and  
14 a door. You go in and those stairwells go  
15 upstairs. But it's cut up the first two  
16 levels as apartment units, but the basement is  
17 just a strictly opened up basement.

18                  MR. TURNBULL: Okay. Thank you.

19                  MS. MARTIN: Yes.

20                  MR. TURNBULL: You got this great  
21 oral history of the neighborhood.

22                  MS. MARTIN: Yes, I've been living

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1 there. I've been in that house several times.

2 MR. TURNBULL: Okay. Thank you.

3 MS. MARTIN: Yes.

4 CHAIRPERSON MILLER: Okay. Any  
5 other Board questions?

6 MEMBER DETTMAN: One question,  
7 Madam Chair.

8 Ms. Martin, in terms of the number  
9 of people going in and out of this house, do  
10 you see a big difference between the way this  
11 property has historically been used and how  
12 the basement was occupied versus what's being  
13 proposed?

14 MS. MARTIN: Well, yes I will see  
15 a lot of traffic going in and out if it's  
16 changed the way that Tanya wants to do it now.  
17 But the way it was then, there wasn't any  
18 traffic going in and out. Just the people  
19 that lived upstairs. The lady that was in the  
20 basement, her daughter, she hardly ever came  
21 outside at all. She basically just stayed in  
22 the basement because she had some issues

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1 herself, so she hardly ever came out.

2 MS. TOPOLEWSKI: Am I allowed to  
3 comment?

4 CHAIRPERSON MILLER: You'll get to  
5 have rebuttal and closing. Do you have any  
6 question though?

7 MS. TOPOLEWSKI: No.

8 CHAIRPERSON MILLER: Okay. All  
9 right. Thank you very much.

10 And I think that brings us to your  
11 rebuttal and closing.

12 MS. TOPOLEWSKI: I just want to  
13 say two things to keep it short, because time  
14 is always -- this is running long.

15 One is that I know that this kind  
16 of request is a very difficult one for the  
17 community in general. And I have done what I  
18 thought was the right thing by talking to  
19 people in the community, inviting people to  
20 come into the property and see for themselves  
21 and make an informed decision about whether or  
22 not they would support what I was asking for.

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1       And I was lucky. I knew from community  
2       advocacy work that I've done, I knew  
3       personally two ANC Commissioners. I brought  
4       them through. I contacted the local UNTS,  
5       which is a local block group, and invited the  
6       leadership there to come through and anybody  
7       else who wanted to come through who was on the  
8       block, and they came through. And then they  
9       invited me to come and present at their block  
10      group meeting about the project, which I did.

11           This is not something that I ask  
12       for lightly, this kind of change. What tipped  
13       most people over is when I said that what is  
14       existing in the house is when I bought it that  
15       on the second floor, two-bedroom, one bath,  
16       kitchen; first floor, two-bedroom, one bath,  
17       kitchen. In the basement it was one bedroom,  
18       a kitchenette and an existing bath, and a  
19       large rec room and some other sundry items.  
20           And what I was proposing was two bedrooms, one  
21       bath, two bedrooms, one bath, a one/two-  
22       bedroom, one bath with a kitchen in the

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1                   basement. Essentially the net change on this  
2                   property from an occupancy standpoint would be  
3                   one bedroom.

4                   And when they understood that,  
5                   they said we see. You're not changing things  
6                   that much. And they would ask me questions  
7                   about whether or not I was changing the  
8                   outside of the property and I would say no, I  
9                   have no intention of doing that. No, I don't  
10                  want to go up. No, I don't want to go out the  
11                  back. I just want to make this as a property  
12                  that's easily operable and manageable and safe  
13                  for the community, because I do think that  
14                  there's a real risk for somebody coming in,  
15                  renting the basement and splitting off the  
16                  basement -- renting the first floor unit with  
17                  the basement, then splitting off the basement.  
18                  I think that's unsafe for the community.

19                  When I could bring people through,  
20                  they understood. And that's really what was  
21                  the tipping point for the ANC I think as well,  
22                  if I could speak for them broadly. But when

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1 I was able to show that I'm not changing much  
2 and I'm not asking for much to change in the  
3 neighbor, and that I already have on-site  
4 parking that I'm trying to bring on line, it  
5 went a long way with the community. And they  
6 appeared to be satisfied and a lot of people  
7 wrote letters in support.

8 In addition, many people were very  
9 excited about the idea that this would be an  
10 exceptionally green project within the  
11 community of Petworth. Very excited to be a  
12 cutting edge project. It has preliminarily  
13 achieved a LEED platinum rating, which is  
14 unique across the United States, quite  
15 frankly. There are only at this point, the  
16 last time I checked on the USGBC web site,  
17 only 97 buildings in the entire United States  
18 that will have a LEED platinum rating. So the  
19 bar is set extremely high.

20 And with that, I think I have  
21 exhausted my time. Thank you.

22 CHAIRPERSON MILLER: I just want

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1 to go out of order just for one second. I  
2 didn't ask the Office of Planning whether they  
3 had any comment about the fact that this  
4 applicant was trying to make this building  
5 LEED platinum, whether that had any impact on  
6 their analysis.

7 MS. JACKSON: I think the Office  
8 of Planning is very positive about  
9 improvements that are aimed at sustaining  
10 energy and green renovations. Unfortunately,  
11 it's not relevant to the relief that they're  
12 requesting.

13 CHAIRPERSON MILLER: Okay. Sorry.  
14 I just wanted to get Office of Planning on the  
15 record on that issue.

16 Is there a closing, Mr. Brown?

17 MR. BROWN: Well, and starting  
18 with that point and I think I differ --

19 CHAIRPERSON MILLER: Mike?

20 MR. BROWN: I differ with the  
21 Office of Planning and have in previous cases.  
22 As part of this confluence of factors,

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1       certainly we had a variance case, 1439 W  
2       Street, and not nearly as aggressive green  
3       features, but nevertheless significant. And  
4       the practical matter is and my client  
5       undersells this perhaps a little, but there is  
6       a premium cost for that and doing that level  
7       of LEED platinum is a premium cost which goes  
8       into the whole mix of economic issues that I  
9       think Tanya did a very good job explaining  
10       that, one, to do something you have to be able  
11       to finance it, and you also have to be selling  
12       renting a product to people willing to pay an  
13       appropriate price for. You add on top of that  
14       the LEED costs, which are not insignificant.  
15       On top of the costs that are the real changes  
16       that are needed in this property, even to use  
17       it as a two-unit flat.

18                    We didn't touch upon a point, but  
19       following on on what Tanya said about  
20       converting this back to a single-family  
21       dwelling, that's not viable economically or  
22       physically. Changing this from its existing

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1 configuration with a lower-level first unit  
2 and a second floor unit, changing it to  
3 something that would be more typical where you  
4 change the grouping of the units so that you  
5 had a lower level, this basement separate from  
6 a first/second unit, that's not physically or  
7 financially viable as well. So you're looking  
8 at the options that are narrowed physically  
9 and how when we're discussing just the stairs  
10 here the expense and the domino effect of  
11 making this place code-compliant just for a  
12 simple interior staircase, and the magnitude  
13 of \$25,000 just for a staircase. And you  
14 multiply that through all these other factors  
15 and you have the economic factors in utilizing  
16 the existing structure, and then you have the  
17 economic factors in producing something that  
18 nobody wants to pay for or finance, or in a  
19 first floor lower level unit, are not willing  
20 to pay a commensurate rental rate for that  
21 number of square feet. Eighteen-hundred-and-  
22 fifty square feet is quite a bit of space, but

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1 if you've got to discount that space because  
2 of its configuration, again these economic  
3 factors on top of the physical factors, on top  
4 of trying to achieve the LEED platinum  
5 standard, just don't work.

6                   And I think the important thing  
7 and I think the neighborhood, they don't want  
8 this building to stay vacant and its  
9 condition, but that's not going to happen  
10 magically and it's got to happen in a way  
11 where somebody's willing to pay for it to do  
12 it and somebody's willing to pay for it to  
13 live in it. And I think that's in keeping  
14 with the Zone Plan and the variance relief  
15 here on the conversion is very minor and  
16 achieves the Zone Plan objectives without any  
17 harm. And with that, I think I'll stop.

18                   CHAIRPERSON MILLER: Okay. If  
19 there aren't further questions, then I think  
20 that we'll talk about the procedure from now  
21 on. And I referenced in the case that we  
22 might leave the record open for the ANC to

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1 have an opportunity to respond to the two  
2 options that they didn't consider when they  
3 voted on the application.

4                   Anybody have concern about that?

5                   Okay. But before I get to the  
6 schedule, I just also want to see whether  
7 Board Members want to leave the record open  
8 for anything else. And I want to make these  
9 comments and see what others think, but a lot  
10 of this case turns on economics and a lot of  
11 the economics turns on just the testimony that  
12 we heard today. And so, you know when the  
13 Board is evaluating this kind of variance that  
14 turns on economics, you know, they weight the  
15 evidence. And so sometimes I've heard members  
16 say, well, you know, we really should have  
17 more proof that. You know, maybe we should  
18 have evidence that you really were turned  
19 down, that you wouldn't get financing if you  
20 had the building configured a different way or  
21 it's just not economically feasible because  
22 this is the cost of doing certain things, even

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1 if it's ballpark. I don't know. And I'm not  
2 saying that this is what we're asking for. I  
3 mean, it's your case. Just if Board Members  
4 are comfortable with that I would suggest that  
5 we might want to leave the record open just  
6 for more buttressing of the economics.

7                   Does the applicant have a comment?

8                   MS. TOPOLEWSKI: I have a prepared  
9 exhibit that actually addresses this, if I can  
10 share it with you. It may alleviate some of  
11 your concerns about the finances. Can I give  
12 you a copy?

13                  CHAIRPERSON MILLER: Sure, and you  
14 would then need to give it to the ANC as well.  
15 Is there some proprietary information in it  
16 that you're concerned about?

17                  MS. TOPOLEWSKI: No, it's just  
18 general. I mean, frankly, if you're still  
19 going to push it back, then I don't know if  
20 it's helpful for me to share it. If you're  
21 still not going to make a decision. Would it  
22 help you to make a decision right now?

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1 CHAIRPERSON MILLER: I don't think  
2 we're going to make the decision right now,  
3 unless Board Members feel differently, because  
4 we're going to leave the record open for the  
5 ANC to address --

6 MS. TOPOLEWSKI: I was hoping  
7 you'd be able to at least make a decision on  
8 a third unit, given that they've been  
9 notified. Is that a possibility? I'm totally  
10 willing to go back to the ANC on the stair.

11 CHAIRPERSON MILLER: No, we  
12 usually do it with a plan, so we approve  
13 something with plans. So, you know, we  
14 approve an application with whatever plans  
15 we're approving and at this point we don't  
16 know what plans we're approving because we're  
17 allowing the ANC, if were to approve, you  
18 know, the opportunity to comment on those  
19 options.

20 MS. TOPOLEWSKI: Yes, I hear you,  
21 but you already essentially have a set of  
22 plans for the basement decoupling, so can you

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1 make a half decision? Please, put me out of  
2 my misery.

3 CHAIRPERSON MILLER: That doesn't  
4 do you any good anyway because you need a full  
5 order to go forward.

6 MS. TOPOLEWSKI: Sure. Fair  
7 enough.

8 CHAIRPERSON MILLER: I understand  
9 that you might be anxious, but --

10 MR. PATRICK JONES: Madam Chair, I  
11 think you're talking about wrapping this up  
12 quickly.

13 CHAIRPERSON MILLER: When's the  
14 next ANC meeting, because we'll schedule our  
15 decision for after they have their meeting and  
16 have an opportunity if they want to submit  
17 something else for our consideration?

18 MR. TIMOTHY JONES: The next ANC  
19 meeting should be the second Tuesday in  
20 February, assuming that's not a holiday.

21 MR. PATRICK JONES: That would be  
22 February 10th. I think that there was space

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1 open on February 17th earlier, wasn't there?

2 You only had one case? Or were you just going  
3 to set this for a public meeting?

4 CHAIRPERSON MILLER: Yes, I don't  
5 believe we're going to have another hearing on  
6 this. We're just going to set it for a  
7 meeting.

8 Our next public meeting would be  
9 March 3rd. Any problems with that?

10 MR. PATRICK JONES: No problems  
11 per se with that. Sooner would be preferable,  
12 but I think the normal February meeting would  
13 be before then. Is there any indication the  
14 Board might be having a special public  
15 meeting?

16 CHAIRPERSON MILLER: Mr. Jones,  
17 when did you say the ANC meets, February 10th?

18 MR. TIMOTHY JONES: The second  
19 Tuesday in February. I do not have a  
20 calendar.

21 CHAIRPERSON MILLER: Okay. That's  
22 February 10th. So we're talking about two

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1 weeks between February 10th and March 3rd. Is  
2 there some kind of an urgency that we need to  
3 be aware of?

4 MR. BROWN: Isn't it three weeks?

5 CHAIRPERSON MILLER: Oh, okay.

6 MR. BROWN: But, yes, I mean,  
7 there's always a sense of urgency, I mean, to  
8 move forward and this has been a lengthy  
9 process, even before filing the BZA  
10 application.

11 CHAIRPERSON MILLER: All right. I  
12 think we're going to leave it for the 3rd.  
13 You know, we're already running late for  
14 instance today, and whenever we add something  
15 unusual to our calendar, that almost  
16 guarantees that we run late.

17 MR. BROWN: And picking up on  
18 that, can we leave the record open, obviously  
19 for the ANC should they want to submit  
20 something, but the economic information that  
21 my client mentioned, I'd like to submit it,  
22 but I'd like to do it in a brief filing and

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1 have an opportunity to make sure it's  
2 appropriate. So could we do that any time  
3 prior? Leave the record open until what date  
4 for the ANC?

5 CHAIRPERSON MILLER: Well, let's  
6 do it so that the ANC has it as well, so that  
7 they have everything they need before they  
8 have their meeting and then they can file  
9 their submission and you can file your  
10 submission. So we just need a date for those  
11 submissions, correct?

12 MR. BROWN: I will file it a week  
13 before their meeting, so that would be  
14 February 3rd.

15 CHAIRPERSON MILLER: Okay. Good.

16 MR. BROWN: They're meeting on the  
17 10th.

18 MEMBER DETTMAN: Madam Chair?

19 CHAIRPERSON MILLER: Yes?

20 MEMBER DETTMAN: Because I think  
21 that the economic conditions tied to the  
22 configuration of this building is really going

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1 to make or break the first prong, I want to  
2 make sure that the Board gets the information  
3 that they need in order to really look at the  
4 economics. So I was wondering if it would  
5 possible to very briefly describe what you  
6 have prepared right now? And we don't need  
7 it, but I just want to make sure that the  
8 numbers that are going to come in are going to  
9 kind of tell the story. And if possible, you  
10 could just describe the bottom line.

11 MS. TOPOLEWSKI: I ran two  
12 scenarios. One is I ran an apartment scenario  
13 and I ran a condominium scenario, just you  
14 know, using this house as a model. So it's  
15 not exactly accurate. And I'll just run  
16 through the apartment scenario, but this is  
17 basically how it runs out.

18 If I acquire this property for  
19 about \$400,000, which is, you know, in the  
20 ballpark, construction costs and architectural  
21 costs are in the tune of \$400,000. So that  
22 means the total cost for this property is in

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1 the \$800,000 range, which means if I have to  
2 do a 70 percent loan value, monthly payment  
3 comes out to be \$5,000. So I got to pay  
4 \$5,000 for the bank.

5                   In the two-unit scenario, my  
6 estimates about it would actually net for a  
7 two-unit building is \$4,700 a month, which is  
8 a \$300 loss. So it makes the project  
9 completely not viable. As a three-unit  
10 scenario the monthly becomes \$5,400 a month  
11 and the monthly gross becomes \$350 a month.  
12 And that's the difference. And that's what  
13 you would see.

14                   MEMBER DETTMAN: And both of those  
15 scenarios are based on three units?

16                   MS. TOPOLEWSKI: The first  
17 scenario, the loss scenario was based on a  
18 two-unit configuration, based on my best guess  
19 estimates of what the first and basement would  
20 rent for. And the three-unit scenario is much  
21 easier to prove. There are 1,000 square foot  
22 units in Petworth that are very comparable

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1 that are easy to pull comps up. So I would  
2 submit to you, this sheet running through  
3 those two different scenarios and relevant  
4 comps off of craigslist that you can pull very  
5 easily. Like I said at the beginning, it's  
6 just very difficult to comp that basement and  
7 first unit configuration; it just doesn't  
8 exist, so I'm guessing.

9 MEMBER DETTMAN: And those comps  
10 are being pulled from craigslist only?

11 MS. TOPOLEWSKI: Yes, I would just  
12 do it from craigslist. That's very relevant  
13 to Petworth. Any given day you can pull up  
14 comps in Petworth from craigslist. I could do  
15 it off of MRS too, if you'd like. But  
16 actually more people use craigslist. It's  
17 much easier for people.

18 MR. TURNBULL: Do those costs  
19 include the replacement of the stair going  
20 down to the basement then?

21 MS. TOPOLEWSKI: Roughly, give or  
22 take. I mean, I did a rough guess of

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1 estimate.

2 MR. TURNBULL: Right, because I'm  
3 just curious, because you know, if it's 24  
4 inches and you're going to, you know, 32-36,  
5 looking at the plans, it looks like the stair  
6 doesn't line up with the beam, that there's a  
7 separate set of stringers, and maybe the  
8 architect knows. So I'm just wondering how  
9 much of the floor you've got to get into in  
10 support. And it's hard to tell, but I mean,  
11 it looks like you got a little bit of work to  
12 do there.

13 MS. RIGAZIO: To make a code-  
14 compliant stair?

15 MR. TURNBULL: Right.

16 MS. RIGAZIO: Yes, there's  
17 definitely quite a bit of work. Yes, there's  
18 a width issue, but there's also a length  
19 issue.

20 MR. TURNBULL: Right, you'd have  
21 to move back on the first floor, I understand.  
22 Yes.

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1 MS. RIGAZIO: Back quite a bit.

2 Even where the last tread is right now is too  
3 close to the front of the building. We'd have  
4 to actually move the entire stair back so you  
5 have a code-compliant landing.

6 MR. TURNBULL: Yes.

7 MS. RIGAZIO: There's also the  
8 front door that's right there. We'd have to  
9 move everything back.

10 MR. TURNBULL: Right.

11 MS. RIGAZIO: Significant.

12 MR. TURNBULL: Okay. Yes, I was  
13 just curious, because looking at the basement  
14 plan I see the two existing steel columns.

15 MS. RIGAZIO: Yes.

16 MR. TURNBULL: But the stair is  
17 sort of removed from that.

18 MS. RIGAZIO: Yes, it's off. I  
19 don't believe that it will affect the steel.

20 MR. TURNBULL: Yes, but I'm  
21 wondering, obviously but you've got floor beam  
22 joists to replace.

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1 MS. RIGAZIO: Yes, absolutely.

2 Absolutely.

3 MR. TURNBULL: Okay.

4 MS. RIGAZIO: There's a lot of  
5 piecemeal work. Yes, delicate surgery, as we  
6 call it.

7 MR. TURNBULL: Okay.

8 MS. RIGAZIO: Yes.

9 MR. TURNBULL: Thank you.

10 VICE-CHAIRPERSON LOUD: Madam  
11 Chair, along the same line of discussion, it's  
12 been pretty much presented as a given that the  
13 second floor configuration is what makes the  
14 property unique. And I came into the hearing  
15 not really convinced on that issue one way or  
16 the other, but in light of some of testimony  
17 anyway, it seems like a plausible case is  
18 being built for that. But I'd like to see a  
19 picture. There are pictures in the file, in  
20 the record of pretty much everything, the  
21 basement, the stairs coming from the basement  
22 to the first floor, the rear with the service

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1       stairs, etcetera, but no pictures of the  
2       entrance to the second floor unit, nothing  
3       that really gives you a visual that captures  
4       why that is steadfastly a separate unit from  
5       the first floor. And again, the testimony is  
6       fairly strong that it is, but it would just  
7       help me to have a visual, and that shouldn't  
8       be difficult to pull together.

9 CHAIRPERSON MILLER: Okay. Any  
10 other requests from Board Members?

11 MEMBER OATES WALKER: I have just  
12 a quick question. The \$400,000 renovation  
13 costs that you mentioned, does that include  
14 the energy efficient strategies that you  
15 described?

16 MS. TOPOLEWSKI: Yes.

17 MEMBER OATES WALKER: And are they  
18 reflected in the plans?

19 MS. TOPOLEWSKI: The architectural  
20 plans don't go into as much detail as you  
21 would need to actually get into the guts of  
22 all the details about what makes this very

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1       energy efficient. You can look at the  
2       insulation details and such to get into that.  
3       Typically not something we'd all be --

4                    MEMBER OATES WALKER: And  
5       mechanical plan, electrical plan.

6                    MS. TOPOLEWSKI: And there would  
7       be the associated mechanical, electrical.

8                    MEMBER OATES WALKER: Which we're  
9       not showing here?

10                  MS. TOPOLEWSKI: Yes.

11                  MEMBER OATES WALKER: Do they  
12       exist?

13                  MS. TOPOLEWSKI: Oh, yes.

14       Absolutely. We can submit them. Happy to.

15                  MEMBER OATES WALKER: That would  
16       be great. And please, if I'm giving you  
17       numbers, this is a baseline. I mean, if you  
18       really pick through the numbers, I'm not going  
19       to be able to say, you know, hey, what's  
20       included, what's not. I go on a gross square  
21       foot basis and if you really wanted to pick it  
22       apart, you know, I'm going to say this is my

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1 estimate based on what it's going to be. I  
2 don't have hard bids on everything, so I can't  
3 really definitively say what it is and what it  
4 wouldn't be. And it would certainly change  
5 whether or not I was doing the stair to the  
6 downstairs versus the back, and that changes  
7 what the carpenter will do, you know. Please,  
8 don't nail me to the wall.

9 MEMBER DETTMAN: Okay. And I  
10 understand that. That's why Mr. Brown wants  
11 to submit something explaining the numbers  
12 that you'd be submitting, and you could be  
13 able to do that.

14 Okay. So we're going to leave the  
15 record open for any other supporting  
16 information you want to provide that goes to  
17 the economics, you know, with respect to  
18 whatever it might rent out, for lease out, to  
19 structural costs, any costs that go to your  
20 argument of the practical difficulty here.

21 MS. TOPOLEWSKI: Okay.

22 CHAIRPERSON MILLER: And then also

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1 pictures and then also other mechanical and  
2 electrical plans that was asked for by Board  
3 Members.

4 Anything else that you want us to  
5 leave the record open for at this point? The  
6 schedule will be that you will serve the Board  
7 with those documents by February 3rd, as well  
8 as the ANC and I suppose the Office of  
9 Planning as well.

10 And ANC will meet on the 10th.

11 And we'll leave the record open for a  
12 resolution from the ANC with respect to  
13 options 1 and 2 that you hadn't seen and with  
14 respect to the new information being provided  
15 by the applicant.

16 How much time do you think you  
17 need to respond to that, a week or 10 days?

18 MR. TIMOTHY JONES: Probably a  
19 week, but it may not be that long.

20 CHAIRPERSON MILLER: It may not be  
21 that long? Why don't we just say a week, to  
22 be easy?

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1 February 3rd, applicant's filing.

2 February 10th, ANC meeting. February 17th,  
3 filing by the ANC. You'd serve the applicant  
4 and the Board.

7       Okay. Office of Planning, what do you  
8       suggest? The 24th? Okay.

16 CHAIRPERSON MILLER: I don't have  
17 a problem with that. That's usually helpful,  
18 if you'd like to phrase it that way, submit  
19 that.

20 Board Members have any concerns  
21 with that? Okay.

22 | Applicant?

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1                   It's just a tool that the  
2 applicant, you know, frames all the  
3 information, obviously in their favor, and  
4 then that's given to the Board for its  
5 consideration as well. Okay?

6                   MR. BROWN: And you'd like that by  
7 the --

8                   CHAIRPERSON MILLER: Wait a  
9 second. My attorney may have a concern with  
10 it.

11                  MR. BROWN: By the 24th for that?

12                  CHAIRPERSON MILLER: Well, I don't  
13 know if you're going to be raising any new  
14 arguments in that though that you would want  
15 the Board to consider. And then is it going  
16 to be based on --

17                  MR. BROWN: I mean, I don't think  
18 I'm going to have the ability to supplement  
19 the record.

20                  CHAIRPERSON MILLER: Okay. That's  
21 fine.

22                  MR. BROWN: I mean, it's a

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1 findings of fact and conclusions of law based  
2 on the record as it --

3 CHAIRPERSON MILLER: Okay. That's  
4 fine.

5 Does the ANC have any concern with  
6 that?

7 MR. TIMOTHY JONES: And I'm just  
8 -- truth being, that familiar with the  
9 process. I would have some questions to get  
10 a better understanding to make a definitive  
11 answer.

12 CHAIRPERSON MILLER: Okay. It  
13 seems that what the applicant is saying he's  
14 just going to be using what evidence is in the  
15 record, what would have been provided by the  
16 testimony here and your ANC report, and Office  
17 of Planning and putting it in a format of a  
18 proposed finding and conclusion of law. It  
19 just would be a reference point for the Board,  
20 but it's not really anything new.

21 Is that right?

22 MR. BROWN: That's correct.

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1 CHAIRPERSON MILLER: Okay.

2 MR. BROWN: File that by Friday.

3 That would be the 27th of February. Whatever  
4 response the Office of Planning, I can  
5 incorporate that in.

6 MR. MOY: Madam Chair, while  
7 there's just a brief pause, for the staff's on  
8 edification is it the staff's understanding  
9 that what's on the table are two options, two  
10 sets of drawings?

11 MR. MOY: That's right.

12 MR. MOY: Related relief for each  
13 of the two, whatever that's being requested?

14 CHAIRPERSON MILLER: Right. And  
15 we'll make a decision at the meeting,  
16 actually, whether we'll be approving more than  
17 one option.

18 Okay. Okay. All right. I think  
19 that's fine then.

20 Ms. Bailey, do you want to review  
21 the schedule?

22 MS. BAILEY: The applicant is to

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1 file the requested information and serving the  
2 ANC and the Office of Planning by February  
3 3rd. The ANC is scheduled to meet February  
4 10th. ANC's response is due February 17th.  
5 OP is to respond by February 24th. The  
6 applicant will file the findings of fact and  
7 conclusions of law by February 27th. And the  
8 Board is to consider a decision on March 3rd.

9 CHAIRPERSON MILLER: Any comments?  
10 Okay.

11 MR. BROWN: Thank you.

12 CHAIRPERSON MILLER: Thank you.

13 MS. TOPOLEWSKI: Thank you.

14 CHAIRPERSON MILLER: We're going  
15 to take a five-minute break, so everybody else  
16 can take a five-minute break.

17 This case went particularly long.  
18 I don't expect the other two cases to go  
19 nearly as long.

20 (Whereupon, at 12:46 p.m. off the  
21 record until 1:00 p.m.)

22 CHAIRPERSON MILLER: Okay. Go

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1 ahead.

2 MS. BAILEY: Application No. 17874  
3 of Yebeltal Kebede, pursuant to 11 DCMR 3103.2  
4 for a variance from the use provisions to  
5 establish a retail grocery store; that's a  
6 basement and first floor, under Subsection  
7 330.5. The property is zoned R-4. It's  
8 located at 1403 6th Street, N.W. Square 479,  
9 lot 28.

10 CHAIRPERSON MILLER: Good  
11 afternoon.

12 MR. DIETZ: Good afternoon. I'm  
13 Bernard C. Dietz.

14 CHAIRPERSON MILLER: Is your mike  
15 on, sir? Is your mike on? Your microphone.

16 MR. DIETZ: Yes, it is.

17 CHAIRPERSON MILLER: Okay. Good.

18 MR. DIETZ: The green light,  
19 right?

20 MR. DIETZ:

21 CHAIRPERSON MILLER: That's right.

22 MR. DIETZ: My name is Bernard C.

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1 Dietz. I'm an attorney. I represent Mr.  
2 Kebede who's sitting to my left.

3 CHAIRPERSON MILLER: Could you  
4 give your home address for the record also?

5 MR. KEBEDE: My name is Yebeltal  
6 Kebede. Address 1403 6th Street, N.W.,  
7 Washington, D.C., 20001.

8 CHAIRPERSON MILLER: Okay. And is  
9 the ANC here in this case?

10 All right. Not seeing anybody.

11 So this is a case for a variance  
12 as well, and I assume you were sitting here  
13 through the first case. And we talked about  
14 three prongs, except in your case I think  
15 yours is for a use variance. You familiar  
16 with the difference between a use variance and  
17 an area variance?

18 MR. DIETZ: Yes. If it please the  
19 Board, Mr. Kebede is a tenant and at 1401 6th  
20 Street, N.W., which is a neighborhood grocery  
21 store, corner grocery store. It's ABC Market.  
22 He's owned and operated that market for the

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1 past 13 years.

2 MR. KEBEDE: Seventeen.

3 MR. DIETZ: As you can see in the  
4 record, a letter from his landlord attests to  
5 the fact that he's going to lose his lease  
6 this spring and that the business will no  
7 longer be able to operate at that location.

8 As things worked out, Mr. Kebede owns the  
9 building immediately next door to it at 1403  
10 6th Street. And what he's asking the Board  
11 for is a non-conforming use in an R-4 Zone so  
12 that he can move his grocery store next door.

13 The application has the  
14 overwhelming support of the community. There  
15 are eight letters of support from people in  
16 the immediate neighborhood. There's a  
17 petition with approximately 60 names on it of  
18 people in the neighborhood. A major church is  
19 on the same block and the church weighed in  
20 favor with support. There's also a letter  
21 from the ANC that states that this application  
22 was taken up at a regularly-scheduled meeting

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1 and the ANC voted four-zero in favor of the  
2 application.

3                   The file will show that there is  
4 one letter of opposition from a gentleman who  
5 is next door, and the basis of his opposition  
6 is that the business has a retailer class B  
7 ABC license and that that neighbor's concern  
8 about the activities of the ABC establishment.  
9 I had asked the staff at ABRA to come down  
10 today to testify to that issue and I was  
11 informed on Friday that they won't. But if I  
12 can approach the staff, yesterday I was  
13 provided with an email which is a certificate  
14 from ABRA stating that this ABC establishment  
15 has absolutely no violations and no protests  
16 on its record, ever, which I believe would  
17 satisfy that concern. Because as we stated  
18 right of the bat, Mr. Kebede has been  
19 operating there for quite some time.

20                   But turning to the three-prong  
21 test, the first question is a difficult one,  
22 because this is a two-family flat. It's a

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1 town house that was constructed as part of a  
2 town house row they way they did it at the  
3 turn of the century a century ago, and it's on  
4 a rectangular lot. What makes it unique  
5 though is that it is the only building  
6 available in that area that would allow the  
7 continuation of a neighborhood grocery store  
8 and market. And I have with me today four  
9 residents of the immediate neighborhood who  
10 are prepared to testify as why it is  
11 absolutely essential to them that the  
12 neighborhood market remain in the  
13 neighborhood. And it's for that reason that  
14 we're here.

15 It's not a situation where they  
16 can go one block in the other direction and  
17 buy their groceries elsewhere. This is a  
18 neighbor market where they can walk to the  
19 store, pick up what they need and walk back.  
20 Okay? The only other significant food  
21 facility in that area is a Giant store nearby  
22 and our neighbors here will address why that's

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1 not always a good alternative when you're  
2 getting up in years.

10                       Okay. Now if I can address the  
11                       concerns that came up that I've been asked to  
12                       address, the first one regards the hours of  
13                       operation.

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1 propose installing handicap access because the  
2 doorway will be, I believe, three steps down.  
3 And as you can see from the photograph, that  
4 handicap access will be on the -- looking at  
5 the photograph, on your right side, okay, so  
6 that it would be next to and in conjunction  
7 with the step, with the front steps. So that  
8 that entrance would have no impact on the  
9 residents next door, or any other residences  
10 on that block, because people who would come  
11 and go to the store would be using a facility  
12 that is actually screened by that staircase  
13 that you see in the photograph.

14                   The retail section would be on the  
15 lowest level and then the second level would  
16 be used for storage of long-life inventory and  
17 he would maintain his little office there that  
18 actually runs the building. And any security  
19 would be installed so it would be facilitated  
20 there. The second story above grade would be  
21 maintained as residence. So basically, it  
22 would look like a C-2-A facility as opposed to

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1 an R-4.

2 That's it in a nutshell.

3 CHAIRPERSON MILLER: Okay. Can  
4 you tell me why is the applicant losing his  
5 lease to have the grocery store where it is?

6 MR. DIETZ: Pardon?

7 CHAIRPERSON MILLER: The grocery  
8 store is now operating next door. And you  
9 were saying that this building at issue in  
10 this case is the only place that could house  
11 the grocery store in then neighborhood. And  
12 so my question is what happened next door  
13 where it is? Why is it no longer being able  
14 to operate next door?

15 MR. KEBEDE: Yes, the reason  
16 because, I don't know why, maybe they can use  
17 it their own purpose or the building is very  
18 old and there is a structural crack down  
19 between -- under the ground and at the front  
20 door. There is -- the bricks are coming  
21 towards the street. That's why. They afraid  
22 of that thing, maybe. And if they give me, it

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1       won't be pass the inspection. And I have no  
2       -- that much money to repair that building, or  
3       -- and at the same time, when they give the  
4       lease, the price would be doubled, so I can't  
5       afford to pay all that things. That is the  
6       reason.

7                   CHAIRPERSON MILLER: I mean, you  
8       have a very creative argument about  
9       uniqueness, but I mean, basically, you know,  
10      the Board looks at the property at issue,  
11      which is residential. And in this case would  
12      look to do the analysis, what's unusual about  
13      the property that would create a practical  
14      difficulty in it being used as a residential  
15      property for which it's zoned. And I don't  
16      think you've made that case. That's really  
17      the argument. You know, I'm trying to give  
18      you my view on this at this point. I  
19      understand that communities want a small  
20      grocery store,, you know, that it is supported  
21      by the community and it's something that's  
22      popular. But you know the Board has to decide

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1       this on the basis of variance law. And so I'm  
2       not sure that I see something unique about  
3       this property that gives rise to a -- no,  
4       undue hardship. Yes, it's a use variance.  
5       Because it creates an undue hardship upon the  
6       owner of the property to use it in a manner  
7       that is allowed under the law, which would be  
8       residential. I mean, I assume that this  
9       property has been used residentially  
10      throughout the years.

11                    MR. DIETZ: The hardship falls on  
12      the community.

13                    CHAIRPERSON MILLER: Right, but  
14      the hardship under the law is supposed to fall  
15      onto the owner, if you look at the wording of  
16      the variance. I understand what you're  
17      saying. I understand that there may be a  
18      hardship on the community. I'm not sure  
19      though, or I don't think that that's the  
20      standard that we look to.

21                    But do others have some comments  
22      they want to make? Do you want to say

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1 anything else?

2 MR. KEBEDE: Yes.

3 CHAIRPERSON MILLER: Yes.

4 MR. KEBEDE: And the hardship is  
5 that if I go -- you know, if I lose this  
6 thing, I don't have any other job to do. This  
7 is the only job since I came in this country  
8 I did. And I have two children that is eight  
9 years old and nine years old that I can raise  
10 them by supporting for -- you know, coming  
11 from this store, income from this store. That  
12 is my reason. I don't have any others or any  
13 other job that I can do. That is the only.  
14 If I lose this job, I might lose my mortgage  
15 too. I don't have anything to pay for the  
16 mortgage. At this time there is no any other  
17 job is in the country at this time for me.  
18 That's my hardship right now, that I'm very  
19 worried about that. That's why I ask the  
20 Board to see all these things into  
21 consideration and, you know, decide in the  
22 favor of me. That's my hardship. I don't

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1 have any other intent. If I had another  
2 income, I wouldn't be here at all. This is  
3 the only job I can do.

4 CHAIRPERSON MILLER: Okay. I  
5 mean, I hear what you're saying. You're the  
6 owner of the property and there's a hardship  
7 on you if you can't use it this way because  
8 you're losing your lease next door.

9 MR. KEBEDE: Yes. Yes. Yes.

10 CHAIRPERSON MILLER: Okay. I  
11 understand that.

12 MR. KEBEDE: Yes.

13 CHAIRPERSON MILLER: I think that  
14 what's perhaps difficult is maybe the first  
15 prong, you know, the grounds for a variance.  
16 I don't know. I want to hear if other Board  
17 Members, you know, have any other comments  
18 about this. We'll hear this through.  
19 Certainly from what I hear, it sounds like,  
20 you know, I think you should be able to keep  
21 operating your grocery store where it is, you  
22 know?

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1 MR. KEBEDE: Yes.

2 CHAIRPERSON MILLER: But that's  
3 not before us. We can't decide that, you  
4 know? And the fact that you can't, it's just  
5 we're constrained by our regulations and we  
6 have to make sure that if we give relief it  
7 fits within our regulations.

8 MR. DIETZ: But again, I draw the  
9 Board's attention to Ms. Ayele's letter,  
10 that's the landlord, where she states that she  
11 supports his moving the grocery store. She  
12 not only states that his lease will be  
13 terminated, but she supports his application  
14 to move the store. So I mean, obviously  
15 there's no possibility of his extending his  
16 lease on the corner. If he could, he would  
17 have.

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1 live in the neighborhood are getting on. And  
2 the ability for him to rent any portion of  
3 that two-family flat as a flat is diminished  
4 if there is no neighborhood grocery facility  
5 in the neighborhood. So I mean, there will be  
6 a definite hardship on his part. This is a  
7 neighborhood that depends on a store. And at  
8 this point I'm prepared to have members of the  
9 community speak in support of the application.

10 CHAIRPERSON MILLER: Okay. This  
11 is our process. There is a choice then. If  
12 they're your witnesses, they can come forward  
13 and testify now. If they're just going to be  
14 individuals talking as community members, then  
15 we'll go to the Office of Planning and then  
16 get back to them. So are they your witnesses  
17 or are they just --

18 MR. DIETZ: No.

19 CHAIRPERSON MILLER: Okay. All  
20 right. Well are there other questions from  
21 Board Members at this point?

22 VICE-CHAIRPERSON LOUD: Just very

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1 briefly. Good morning and I wanted to commend  
2 you on a very organized presentation and  
3 organization of the community in terms of  
4 supporting the application.

5 My question goes to the whole  
6 uniqueness test and your statements regarding  
7 depriving the community of the use of a  
8 neighborhood retail. Have you had any  
9 occasion to research uniqueness and  
10 potentially find some cases that would support  
11 what you're advancing, or other sort of  
12 creative uses of that word?

13 MR. DIETZ: Unfortunately no.

14 VICE-CHAIRPERSON LOUD: No you  
15 haven't had a chance to research, or no you  
16 haven't found any?

17 MR. DIETZ: The cases I found  
18 basically follow what Madam Chair has stated  
19 where it was actually built as a corner  
20 grocery store and just happen to fall in an R-  
21 4. But no, I did not, unfortunately.

22 VICE-CHAIRPERSON LOUD: But you

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1 said you did find some cases where a  
2 particular property was built as an R-4 and  
3 then --

4 MR. DIETZ: Back in the 1920s and  
5 1930s there were a number of properties that  
6 were constructed with the store downstairs and  
7 an apartment upstairs, which is basically what  
8 1401 is, okay, but they fall in R-4 Zones.  
9 And I don't have to tell you that. It's all  
10 over town. It's like a checkerboard. In fact  
11 on Georgia Avenue you never which building is  
12 an R-4 and which is a C-2-A. But if I could  
13 have found a case on all fours I'd be smiling  
14 right now. I did not, no.

15 VICE-CHAIRPERSON LOUD: And the  
16 scenario you're describing right now, is that  
17 a result of just your observation, or are  
18 there actual cases that talk about these  
19 properties that were built in the 20s and 30s  
20 and --

21 MR. DIETZ: That's based on  
22 information I've gathered over the years.

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1                   VICE-CHAIRPERSON LOUD: Okay.

2                   MR. DIETZ: I've represented small  
3 businesses now for 42 years.

4                   VICE-CHAIRPERSON LOUD: If you  
5 were to try to identify the strongest case  
6 that would support what you've argued here  
7 this morning, would you be able to share it on  
8 the record?

9                   MR. DIETZ: In this neighborhood?  
10                  Big Bear Market, let's see, A&L Market over on  
11                  1st Street. Thee's one across the street from  
12                  that. Okay. These were all residential  
13                  properties that operate on non-conforming  
14                  uses, that were actually built out from a  
15                  residential building. Over on 9th Street many  
16                  buildings. In fact, there's a building  
17                  occupied at 1905 9th Street which looks  
18                  exactly like 1403 6th Street. It has a liquor  
19                  store on the first floor and a restaurant on  
20                  the second floor. It's not unusual.

21                  VICE-CHAIRPERSON LOUD: Okay.  
22                  Thank you.

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1 CHAIRPERSON MILLER: Can you  
2 elaborate on your argument that it's the only  
3 building available to allow the continuation  
4 of a neighborhood grocery store?

5 MR. DIETZ: The ABC Board and DCRA

6 will allow a business of this type to move  
7 within 200 feet of an existing location as a  
8 matter of right. This building is in  
9 proximity of a playground, Kennedy Playground,  
10 which would prevent a new application, a new  
11 applicant from obtaining those types of  
12 building licenses in the neighborhood. As the  
13 residents in support of the people will tell  
14 you, the whole basis of this application is  
15 that they can get their groceries, they can  
16 deal with arthritis and other problems and  
17 still get their own groceries and live  
18 independently. So if this business were to  
19 move say three blocks away, it would no longer  
20 the purpose it's serving and it would no  
21 longer have the positive impact on the  
22 neighborhood that it has right now.

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1                   CHAIRPERSON MILLER: Okay. to  
2 have the same effect on the neighborhood what  
3 radius would we be talking about? Two blocks?

4                   MR. DIETZ: Pardon?

5                   CHAIRPERSON MILLER: If we were  
6 talking about the area in which it could move  
7 to serve the neighborhood.

8                   MR. DIETZ: The present location  
9 of this store would be in the 1400 block of  
10 6th street on either end of the block. Mr.  
11 Kebede's building is the only one that's  
12 available for this purpose.

13                  Okay. Mr. Kebede, you can  
14 describe what the other buildings are being  
15 used for.

16                  CHAIRPERSON MILLER: You mean it's  
17 not available because they're already leased  
18 to other business?

19                  MR. KEBEDE: No. No.

20                  CHAIRPERSON MILLER: Oh.

21                  MR. KEBEDE: There is no business  
22 in that area. There is no business down to

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1 1300, 1200. If you go to -- up to the north  
2 there is no any business on the 1500 block of  
3 6th Street. If you go to O Street, you can't  
4 get any business in that area, because there  
5 is no places to open in that area. The only  
6 thing is my store, 1401 6th Street. There is  
7 no place to establish businesses in that  
8 block. South, north, east and west there is  
9 no. The only Giant is two blocks between 9  
10 and 8 on O Street. That's the Giant is far  
11 away. And it's not convenient store for the  
12 public to get quick items to pick up, you  
13 know? And the community is -- I'm supported  
14 by just that community for many years. I have  
15 been there for almost 15-16 years, since 1992.  
16 And I don't have any complaint with this  
17 business against me or against me business.  
18 There is not anything. I don't have any  
19 record. I'm clean. Paying taxes, paying  
20 everything that I owe for the government. I  
21 don't have anything. And the people knows me  
22 very well in that area, you know? If they

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1       don't have anything, you know, I serve them by  
2       personally my own, you know, because the  
3       people in that area, they're some older age  
4       people living in my store. And they come,  
5       exactly come and pick it out what they want.

6                    MR. DIETZ: So basically, if he  
7        were to find another building, we'd be here  
8        with the same request.

9                    CHAIRPERSON MILLER: Basically  
10       you're saying any other place he'd locate to  
11       would require a variance? Is that what you're  
12       saying?

13                   MR. DIETZ: Yes.

14                   CHAIRPERSON MILLER: Yes.

15                   MR. DIETZ: In other words, it's  
16       all residential.

17                   CHAIRPERSON MILLER: Yes. Okay.

18                   MR. DIETZ: Okay. A-1 Groceries  
19       -- ABC Grocery is the only player in that  
20       neighborhood.

21                   CHAIRPERSON MILLER: Okay. Why  
22       don't we turn to the Office of Planning?

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1 MR. JESICK: Thank you, Madam  
2 Chair, Members of the Board. My name is Matt  
3 Jesick.

4 Like any application for a  
5 variance, we analyze the application using the  
6 three-part variance test. In this case we do  
7 not find there is any unique circumstance  
8 about the property or any extraordinary  
9 conditions regarding either the land or the  
10 structure. There's no unusual shape or  
11 topography regarding the size of the property.  
12 It seems to be similar to other properties on  
13 the square. Regarding the structure, it seems  
14 to very similar to other row houses in the  
15 neighborhood.

16 Because the second part of the  
17 test is linked directly to the first part, we  
18 find that the second part of the test is also  
19 not met, that there is no undue hardship to  
20 the property owner. The property is currently  
21 being used as a flat, which is a matter of  
22 right use in the R-4 District, and there's no

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1 condition associated with the property that  
2 would make continuance of that use impossible.

3                   Regarding the third part of the  
4 test, we feel that the applicant has addressed  
5 some of the questions raised in our report  
6 regarding impacts of the trash, for example,  
7 or hours of operations. We do feel however  
8 that granting relief would impair the intent  
9 of the Zoning Regulations. The Zoning  
10 Regulations are intended in part to protect  
11 residential areas from encroachment by non-  
12 residential uses. So certainly this variance  
13 relief, if granted, would go against that  
14 intent.

15                   So while we sympathize with the  
16 applicant, we unfortunately cannot recommend  
17 approval of the application. But I'd be happy  
18 to take any questions.

19                   MR. TURNBULL: Mr. Jesick, the  
20 existing store is actually non-conforming,  
21 unless it was granted a variance at some point  
22 obviously.

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1                   MR. JESICK: I'm not aware of a  
2 variance, but at least it would be an existing  
3 non-conforming use, so it could continue.

4                   MR. TURNBULL: Right. But I mean  
5 typically in the R-4 you wouldn't even have  
6 that corner grocery store.

7                   MR. JESICK: Correct.

8                   MR. TURNBULL: So like as you  
9 said, unless it's existing non-conforming or  
10 at some point they got a variance for it?

11                  MR. JESICK: That's right.

12                  MR. TURNBULL: Okay. Thank you.

13                  CHAIRPERSON MILLER: Do you have  
14 an opinion whether this grocery store is  
15 serving a unique particular community service?  
16 I mean, you know, that the fact that this is  
17 a small grocery store within walking distance  
18 I guess of certain residences is an important  
19 community service in that neighborhood?

20                  MR. JESICK: I would say it is an  
21 important service. If I recall, the  
22 Convention Center Area Plan, correctly that

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1 plan specifically called out the neighborhood  
2 corner stores, of which this store was one,  
3 and said that these are features of the  
4 community that are valued by the residents.  
5 So yes, I would say it's a valued commodity.

6 CHAIRPERSON MILLER: And do you  
7 think that there would be particular adverse  
8 impacts from the operation of this type of  
9 grocery store in this building, separate from  
10 the whole concept of encroachment of  
11 commercial uses and residential properties?

12 MR. JESICK: We were concerned  
13 about things like hours of operation,  
14 deliveries and especially trash and trash  
15 removal. We feel that the applicant has  
16 addressed those items. The trash will be  
17 stored in the rear of the property and will be  
18 removed three times a week, according to the  
19 applicant. I guess we questioned whether that  
20 was enough -- frequent, yes, pick up for a  
21 grocery store. In my conversations with the  
22 applicant, they said that there's no organic

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1 matter that goes into that trash. I don't  
2 know whether that's true or not. They said it  
3 would just be cardboard or boxes, things like  
4 that. So I guess I'll rely on their  
5 professional experience about whether that's  
6 enough times for a weekly trash pick up.

7                   So I guess we feel that the  
8 impacts would not be too great on the  
9 community, just based on the operations of the  
10 store.

11                   CHAIRPERSON MILLER: Do you think  
12 10:00 is late at all, you know, if the Board  
13 were to entertain approving this, 10:00 p.m.  
14 seven days a week in a residential street?

15                   MR. JESICK: Well, I guess I would  
16 preface that by saying we don't think that a  
17 grocery store should be there in the first  
18 place.

19                   CHAIRPERSON MILLER: Right.  
20 Right. But just in case.

21                   MR. JESICK: So I really have no  
22 basis to judge that on.

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1 CHAIRPERSON MILLER: Okay.

2 MR. JESICK: You know, the  
3 neighbors seem to be in favor of it, so you  
4 know, I guess they do not see a problem with  
5 that hour of operation.

6 CHAIRPERSON MILLER: Okay.

7 Others?

8 VICE-CHAIRPERSON LOUD: Thank you,  
9 Madam Chair.

10 Mr. Jesick, Mr. Dietz made a very  
11 creative argument regarding the uniqueness of  
12 the property, but which was not addressed in  
13 his prehearing submissions, and so this is  
14 probably your first time having a chance to  
15 respond do it. It was something along the  
16 lines of this is one of a precious few  
17 properties that because it's within 200 feet  
18 of the existing grocery store, as a matter of  
19 right the existing grocery store, I guess  
20 class B, this property could be a receptacle  
21 for it as a matter of right.

22 Can you specifically respond to

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1 that in the context of uniqueness?

2 MR. JESICK: Sure. I guess let me  
3 say first, I understood that to mean that the  
4 liquor license could be transferred as a  
5 matter of right, which you know, would not  
6 impact the zoning decision one way or the  
7 other. As far as whether the subject property  
8 is unique somehow in its ability to house a  
9 grocery store, I mean, I also heard the  
10 applicant say that any other location would  
11 also require a use variance, which I think  
12 kind of contradicts the first statement that  
13 other properties are similar in their  
14 configuration and zoning, that they would also  
15 require the same relief that the applicant is  
16 seeking presently. So I don't find that a  
17 compelling argument.

18 CHAIRPERSON MILLER: I think he  
19 was talking about uniqueness with respect to  
20 availability as opposed to configuration. Are  
21 you aware about the neighboring vicinity, that  
22 this would be the only place that this could

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1                   locate?

2                   MR. JESICK: I'm not --

3                   CHAIRPERSON MILLER: Apart from  
4                   the, you know, liquor license, I think that  
5                   isn't really something that the Board needs to  
6                   consider.

7                   MR. JESICK: I'm not aware of any  
8                   other vacancies in the community. If there  
9                   are vacant spots within other row houses that,  
10                   you know, could theoretically be used for a  
11                   store, I'm not aware of. So yes, I don't know  
12                   of any.

13                   CHAIRPERSON MILLER: Well,  
14                   wouldn't it also be preferable though for this  
15                   type of a non-conforming use to be located on  
16                   a corner as opposed to within the row of row  
17                   houses, or does it not matter?

18                   MR. JESICK: Generally throughout  
19                   the District when we see a C-1 Zone, it's at  
20                   the corner and that is often where corner  
21                   stores have been located historically. You  
22                   know, why over the course of time this area

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1       was not zoned C-1, I'm not sure, that corner.

2       But typically we see them on the corners and

3       not in the middle of the row of row houses.

4                   CHAIRPERSON MILLER: Other

5       questions for Office of Planning?

6                   Does the applicant have a copy of

7       the Office of Planning report?

8                   MR. DIETZ: Pardon?

9                   MR. JESICK: Yes, I did.

10                  CHAIRPERSON MILLER: Okay. And do

11       you have any questions for the Office of

12       Planning?

13                  MR. DIETZ: No, but I do have one

14       point, okay, and that is --

15                  CHAIRPERSON MILLER: No, we'll get

16       back to you on your points. Okay? Hold it

17       though, okay?

18                  MR. DIETZ: Okay.

19                  CHAIRPERSON MILLER: Because we're

20       going to try to stick to this process.

21                  All right. Is there anybody here

22       from the ANC?

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1                   Did you go to the ANC by any  
2 chance?

3                   MR. DIETZ: Pardon?

4                   CHAIRPERSON MILLER: Did you go to  
5 the ANC?

6                   MR. DIETZ: Mr. Kebede did. He  
7 attended the meeting.

8                   MR. KEBEDE: Yes. Yes.

9                   CHAIRPERSON MILLER: Oh, okay. I  
10 see we have a letter from the ANC.

11                  MR. KEBEDE: Yes, always had.

12                  CHAIRPERSON MILLER: In support of  
13 the application unanimously by a vote of four  
14 to zero. Okay. They don't go into any  
15 reasons though, really.

16                  Okay. Is there anybody here who  
17 wishes to testify in support of this  
18 application? Now would be the time to come  
19 forward and present your testimony.

20                  Take a seat at the table.

21                  The rest of you want to testify  
22 can come up. If there's a seat available,

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1 just come on up and take it now.

2                   And we can start with you, sir.

3                   If you want to give your name and address for  
4 the record, please?

5                   MR. RICE: My name is Cleophus  
6 Rice and I live at 1408 5th Street, N.W. and  
7 my zip code is 20001. And I've been a  
8 resident of that address for almost 40 years.

9                   I'm here today because of this  
10 young man. I know that the store that he's in  
11 now is in bad shape. I can agree with that.  
12 And he runs -- his store is neat, clean all  
13 the time, no trash around it nowhere. Walk in  
14 his store you get respect. And if he can do  
15 you a favor, he'll do it. And his store is  
16 very important in our community. We used to  
17 have a store on N Street. It was 6th and N.  
18 It's closed. And that's the only store we  
19 have, other than the Giant. And you got to  
20 remember that a lot of people around our  
21 community are people that are on fixed incomes  
22 and lot of them are sick and can't walk far.

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1       And that's important. If his store goes, then  
2       a great asset in our community is thrown out  
3       the window. So I do hope and pray that this  
4       man can continually -- a vital service and I  
5       hope that you people will reach down into your  
6       hearts and realize what's going on and approve  
7       his application because he's serving a very  
8       important service in our community. And I was  
9       glad to see him -- I remember when he come.  
10       It was actually nothing but a den of rats  
11       around there. Now it's gone. There's no rats  
12       around there no more. And the community is  
13       improved and we're just grateful for it, just  
14       grateful for it. And I thank you.

15                   CHAIRPERSON MILLER: Thank you.

16                   Is your mike on?

17                   MS. BROWN: My name is Gracie R.  
18                   Brown. I live at 1301 7th Street, N.W. I've  
19                   been there 26 years. I remember when Mr.  
20                   Kebede store open. And to me it's a blessing  
21                   for the community.

22                   Then I was younger. Now I'm a

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1 senior citizen, so I appreciate his store.  
2 Walking out my back door to go down and get  
3 different things. I think I go there seven  
4 days a week. They're hard working people, he  
5 and his staff. Very hardworking, caring  
6 people. If you don't have enough for whatever  
7 you go to get, they allow you to get it, come  
8 back and pay them later, ad I appreciate that.  
9 The Giant food store will not do that. So I  
10 think whoever's making decision, I'm hoping  
11 and praying that they will let him stay  
12 wherever he has to be so that he can help the  
13 young, the old, the disabled, the able bodies  
14 to come and help him, because that is his  
15 livelihood and the people that work. They  
16 very loyal for working from sun up to sun  
17 down, which some people don't and won't do.  
18 So I'm praying that you all in your heart can  
19 see fit to let him remain wherever he has to  
20 be so that he can live and so we can live  
21 also. And thank you very much and God bless  
22 everyone.

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1 CHAIRPERSON MILLER: Thank you.  
2 Is your mike on?  
3 MS. BRIGHT: My name is Dorothy  
4 Bright and I've been still living there -- I  
5 live at 1337 5th Street and I've been there  
6 since this store came into the area. And it's  
7 a great asset to -- especially some of the  
8 seniors around the area, because we don't have  
9 to walk all the way up to Giant, which is two  
10 long blocks. And we just walk to the store.  
11 And they have pretty nice people and they're  
12 clean. He tries hard to keep it up and I  
13 notice that. So if he's trying to better his  
14 surrounding in any kind of way, you know, I  
15 mean, I like that and I appreciate it. But I  
16 hope that they'll be able to remain in this  
17 community, in the area because not only just  
18 for me, I'm speaking for the other seniors as  
19 well. I know I love walking from my house to  
20 that store. And I have no problem with the  
21 attitudes or nothing, which is other, you  
22 know, workers there. So I hope that you all

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1       would -- you know, whatever it takes for him  
2       to do better, make it better, you know, for  
3       us, you know, to come into his store, you do  
4       so. But I appreciate very much him to stay  
5       there on that corner. Well, he doesn't -- you  
6       know, I mean, if he can move, whatever, and  
7       make it better for us, we appreciate it,  
8       because like I say, it's a old building and a  
9       lot of things is, you know, going on. So I'm  
10      hoping and praying that he'd be able to stay  
11      in the community, in that area for seniors  
12      like me. And thank you.

13                   CHAIRPERSON MILLER: Thank you.

14                   Sir?

15                   MR. PHILLIPS: My name is Albert  
16        Phillips. I live at 1315 5th Street,  
17        Apartment 103, Northwest Washington, D.C. and  
18        I've been there for like 26 years. I moved  
19        there like in 1982 and I'm a resident of the  
20        community and also a member of Springfield  
21        Baptist Church right there on the corner from  
22        the store. And it's one thing for sure

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1 whenever I can speak on behalf of someone, I  
2 do that. And I wouldn't have never came out  
3 of my house in the snow and parked on a  
4 emergency street if it didn't mean something  
5 to me, not only to me, but to the whole  
6 Springfield Church and to all the people that  
7 live on the 2nd Street Coop. The whole  
8 apartment complex knows who this man is and  
9 what he's about. And, you know, I appreciate  
10 him and when he asked me to come and support  
11 him and it was placed on my heart to do that.  
12 Because when a person work hard and don't try  
13 to go out and take nothing from somebody else,  
14 I don't mind standing behind him, because this  
15 is what we need. We need to support people  
16 that are trying to do things to live a better  
17 life for themselves and help somebody else.

18                   And I certainly hope that it be  
19 place on everyone heart that sitting behind  
20 those desks there today that they will make  
21 some kind of adjustment on behalf of my  
22 brother. We all are brothers, so you know,

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1 I'm here to support him and I believe that  
2 everyone that came today really love him and  
3 his family. I love all of his employees and  
4 they treat me like a human being. I thank God  
5 for them. Thank you very much.

6 CHAIRPERSON MILLER: Thank you.

7 Any questions?

8 I have a question just, you know,  
9 any of you can answer. But is this basically  
10 the neighbors near the grocery store? Are  
11 they mainly senior citizens, or is it mixed?

12 MR. PHILLIPS: Now, there's a lot  
13 of senior citizen go to my church and that's  
14 where they leave -- when they leave church  
15 service, they go and pick up what they need to  
16 pick up, you know, soda, juice or whatever,  
17 bread, and they are very supportive of him.  
18 I can speak for the whole church and everybody  
19 that's in there. I'm sure that if they could  
20 have came today, they would be here sitting at  
21 this table saying the same thing. And he's  
22 very supportive to the church members around

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1       there. And, I mean, I can speak for them  
2       because there's a lot of senior citizen in  
3       that church and that's why they have a few  
4       feet to walk to his building to purchase what  
5       they need to purchase and go on home and watch  
6       the game, or whatever they need to do.

7                   CHAIRPERSON MILLER: And just for  
8       clarification, the members of the church, are  
9       most of them from the neighborhood, or not  
10      necessarily?

11                  MR. PHILLIPS: Not necessary.  
12        There's a whole lot of them that is from the  
13       neighborhood and there are some that's, you  
14       know, out in Maryland, Virginia. They drive  
15       into the city, you know, because Springfield  
16       Baptist Church is a very important church  
17       there. You know, a very known name church for  
18       many, many years. So, we have different, you  
19       know, age of peoples come.

20                  CHAIRPERSON MILLER: And let me  
21       just ask the applicant, how many years have  
22       you been operating in that neighborhood?

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1                   MR. KEBEDE: Since 1992. Here's a  
2 letter from church.

3                   CHAIRPERSON MILLER: You're not on  
4 mike. I don't think. I can't hear you on the  
5 mike.

6                   MR. KEBEDE: Yes, this is a letter  
7 from church. They have about 2,000 members.  
8 And they wrote me a letter that they need the  
9 store. I think you got this letter from  
10 Spring Baptist Church.

11                  CHAIRPERSON MILLER: Okay. You  
12 think that's in our file?

13                  MR. DIETZ: It is in there.

14                  MR. KEBEDE: Yes.

15                  CHAIRPERSON MILLER: Okay. We'll  
16 look for that. Okay.

17                  Okay. Any other questions?

18                  Okay. And no one is here from the  
19 ANC, I don't believe.

20                  Okay. Thank you very much.

21                  So now final remarks.

22                  MR. DIETZ: Very quickly. And the

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1 point I want to make is that this is not an  
2 application to degrade the residential  
3 character of the neighborhood, because it's  
4 not adding another commercial use to the  
5 neighborhood; it's simply moving an existing  
6 commercial use. The applicant is asking for  
7 nothing to change other than the relocation of  
8 the existing business. And so I believe that  
9 the application has no adverse effect at all  
10 on the Zoning Plan because we're not adding to  
11 the commercial use. We're just moving it.

12                   And as I stated earlier, the  
13 existing location at 1401 is a non-conforming  
14 use and it could not be used for anything  
15 other than a grocery store. As you all well  
16 know, once a non-conforming ceases, then that  
17 permission ceases with it. Once you close the  
18 store, you start back at square one.

19                   CHAIRPERSON MILLER: There's a  
20 little window of time there though.

21                   MR. DIETZ: Pardon?

22                   CHAIRPERSON MILLER: In my

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1 understanding, there's a window of time there.

2 I believe that another grocery store could

3 open, you know, next year or something.

4 They'd still be allowed open.

5 MR. DIETZ: Only if they applied

6 for a variance. If you're closed for more

7 than a year, you lose non-conforming use.

8 I mean, I --

9 CHAIRPERSON MILLER: Well, my --

10 MR. DIETZ: -- Certificates of

11 Occupancy all the time and that comes up

12 constantly, is the building in continuous use.

13 If it's not, then you have a zoning problem.

14 But the point is this, is that the

15 testimony is clear that the building at 1401

16 can no longer service the grocery store and it

17 requires construction. So what we're saying

18 is that there will not be an added use, simply

19 a substituted location for an existing use.

20 Thank you.

21 VICE-CHAIRPERSON LOUD: Okay. And

22 I don't want to argue with you. I just want

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1 us to have all the facts to evaluate properly  
2 and we may need more information. But my  
3 understanding of it, and I don't have a law to  
4 cite right this minute, the regulations,  
5 there's a three-year period before you lose  
6 your non-conforming status. So I think that  
7 the question here is, you know, are we  
8 allowing an additional commercial use here, at  
9 least temporarily, and is there any other  
10 information you have about that corner  
11 property that would indicate that it would no  
12 longer be used commercially? I mean, we have  
13 very little information about that, just that  
14 the applicant can't lease his grocery store  
15 there anymore.

16 MR. DIETZ: Well, up until a year  
17 ago the plan in the area would have been that  
18 that would have been a tear-down. And they  
19 probably would have put in two to three  
20 condominium units. Okay? The market, the  
21 bottom fell out of the market and all those  
22 plans are pretty much gone. I really don't

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1 see where there's any money for that available  
2 right now. But my conversation with the  
3 landlady is that she wants the store to be  
4 vacant. She wants the building to be vacant.  
5 So he's probably planning on selling it to a  
6 developer, is the long-term plan.

7 CHAIRPERSON MILLER: Okay. And  
8 how long has it been vacant, or how long has  
9 it been since you moved out of the store?  
10 Have you moved out?

11 MR. KEBEDE: Not yet.

12 CHAIRPERSON MILLER: Oh, you  
13 haven't move out yet?

14 MR. KEBEDE: Not yet.

15 CHAIRPERSON MILLER: Oh, okay.

16 MR. DIETZ: The lease ends in May  
17 of June.

18 MR. KEBEDE: Yes.

19 MR. DIETZ: And which basically  
20 and with a favorable ruling for this store,  
21 basically would allow Mr. Kebede time to make  
22 the move without a break in service to the

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1                   community.

2                   CHAIRPERSON MILLER: Do we have in  
3                   our file the letter from the landlord saying  
4                   that the lease will not be renewed?

5                   MR. DIETZ: Yes, it's in the file.

6                   MR. KEBEDE: Here.

7                   MR. DIETZ: It says his lease will  
8                   expire soon. It's a letter date -- I can show  
9                   you my file copy. But it's in the file.

10                  CHAIRPERSON MILLER: No, my  
11                  colleague is showing it to me.

12                  MR. DIETZ: The landlord's name is  
13                  Elfinesh Ayele.

14                  CHAIRPERSON MILLER: I see the  
15                  letter. But obviously you wouldn't be here if  
16                  you thought otherwise, but even though the  
17                  market has dropped for condominiums, etcetera,  
18                  the owner of that property on the corner still  
19                  is indicating a desire to terminate the lease?

20                  MR. DIETZ: Right.

21                  CHAIRPERSON MILLER: Okay.

22                  MR. TURNBULL: Mr. Dietz, in your

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1 email to Mr. Jesick on January 14th you talk  
2 about adding a handicapped access ramp.

3 MR. DIETZ: If you look to the  
4 photograph of the front of the building, you  
5 will see that the first level is below grade  
6 and a handicap ramp will be constructed to  
7 enable the customers to access that doorway.

8 MR. TURNBULL: Do you know how big  
9 that handicap ramp has to be?

10 MR. DIETZ: Whatever it is, it  
11 will be built to code.

12 MR. TURNBULL: Well, I'm just  
13 throwing this out that if you're at least  
14 three risers down, three steps down, figuring  
15 that a step is about seven inches, that's 21  
16 inches. The handicap code is somewhere like  
17 one to twelve, you're going to need a 21-foot  
18 ramp.

19 MR. KEBEDE: Twenty-one foot? No,  
20 it's not --

21 MR. TURNBULL: One inch her foot.

22 MR. KEBEDE: It's not that much

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1 down. It's about two steps right now.

2 MR. TURNBULL: Two steps? Well,  
3 you're still going to need about a 14-foot  
4 ramp.

5 MR. KEBEDE: What do 14-foot ramp  
6 mean?

7 MR. TURNBULL: At least. I mean,  
8 you're going to have to do the analysis  
9 yourself, but --

10 MR. KEBEDE: No.

11 MR. TURNBULL: -- you're going to  
12 have a significant ramp to meet handicap code.

13 MR. KEBEDE: So we can rule that  
14 way -- rule according to the zoning -- I mean,  
15 the --

16 MR. TURNBULL: It's not a zoning  
17 issue. It's a building code. I'm just  
18 looking at the practical difficulty of getting  
19 access with a ramp down to where you want to  
20 do it. I mean, have you thought about that?

21 MR. DIETZ: But if you look to the  
22 photograph, the entrance is underneath the

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1 steps which gives you the full frontage of the  
2 building to construct that ramp.

3 MR. TURNBULL: Okay. I'm just  
4 saying can you do that without going into the  
5 public way? Are you going to ask for a public  
6 way --

7 MR. DIETZ: No, that's private  
8 space underneath the stairwell.

9 MR. TURNBULL: Okay. I'm just  
10 pointing it out. I'm just pointing it out,  
11 the practical difficulties of getting a ramp  
12 to meet code down there.

13 MR. DIETZ: We have that covered.

14 MR. TURNBULL: Okay.

15 CHAIRPERSON MILLER: I actually  
16 have a question for any of the community  
17 members who might want to address it about the  
18 hours. If we were to approve this, the hours  
19 are now I think 9:00 to 10:00 seven days a  
20 week. Do any of you have any concerns about  
21 that with respect to it being, you know, in a  
22 row of town houses? Do any of you live in

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1                   this row of town houses?

2                   MR. RICE: I'm a owner of property

3 and --

4                   CHAIRPERSON MILLER: Is your mike  
5 on, sir?

6                   MR. RICE: I'm a owner of property  
7 in that area and I live around there. No,  
8 there's no problem. Sometime it's good. See,  
9 when you get my age, you forget about time,  
10 see? And sometime you might at 9:00, you  
11 might need a loaf of bread, you might need  
12 something. So it's good in a way.

13                  CHAIRPERSON MILLER: Okay. Thank  
14 you.

15                  Any other questions?

16                  Any other final remarks?

17                  MR. DIETZ: No.

18                  CHAIRPERSON MILLER: Okay. Hold  
19 on a second then, and we'll just decide how  
20 we're going to proceed.

21                  Okay. Sometimes we decide at the  
22 end of the hearing, and sometimes we put the

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1 decision off for a decision making. So I was  
2 just trying to get a feel from colleagues  
3 which way they wanted to go, whether we felt  
4 we had enough information, processed it  
5 enough, etcetera. And we're not clear at this  
6 point, so I think what we're going to do is  
7 just take another 10-minute break or so and  
8 then come back and let you know.

9 MR. DIETZ: Thank you.

10 MR. KEBEDE: Okay. Thank you.

11 CHAIRPERSON MILLER: Let me just  
12 ask the last case of the morning, Georgetown  
13 Day School; I'll talk about this with my  
14 colleagues as well. I think we might be  
15 willing to, you know, keep on going. Would  
16 that your preference as opposed to a lunch  
17 break? Okay. So but everybody should take a  
18 10-minute break if you want right now.

19 Thanks.

20 (Whereupon, the hearing was  
21 recessed at 2:03 p.m. to reconvene at 2:45  
22 p.m. this same day.)

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1

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

3

2:48 p.m.

4 CHAIRPERSON MILLER: Okay. We're  
5 back on the record. I apologize. That took  
6 a little bit longer than we expected. This  
7 case is a difficult one. We've decided that  
8 we actually will do our deliberations on the  
9 case February 3rd at our public meeting, that  
10 we're not going to decide today. But we're  
11 going to leave the record open for the  
12 applicant to add anything that might address  
13 a couple issues that we see here.

14 We're certainly sympathetic that  
15 this grocery store is popular among the  
16 neighbors and seems to be providing a service  
17 to the neighborhood, however, that doesn't  
18 make the variance test. So I think that I  
19 noted earlier that the applicant seemed to  
20 make a creative argument that the property is  
21 unique because it's the only building  
22 available to provide this public service to

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1 the community. And I think that we would like  
2 the applicant to have the opportunity to  
3 buttress that argument, both legally and  
4 factually. The applicant wants to provide  
5 some case law that would support a finding,  
6 number one, that a type of mom and pop grocery  
7 store in a neighborhood rises to the level of  
8 some type of public service that's recognized  
9 for a little bit more liberal treatment under  
10 variance law. I am certainly aware and the  
11 Board is aware that there's case law that goes  
12 to non-profits being given a little bit more  
13 leeway because of the public service they  
14 provide. I can't say that we have seen it  
15 extended to a grocery store. And second,  
16 extended in the manner that the property  
17 itself doesn't seem to exhibit any unusual  
18 characteristics, but the applicant is arguing  
19 that because of these circumstances the  
20 building is unique.

21 So, we're going to give you the  
22 opportunity to fill that out a little bit

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1           legally and then factually with respect to any  
2           other additional information you want to  
3           provide in the record about that this is the  
4           only available property. We do have a letter  
5           from the landlord of the property next door  
6           where the applicant currently rents space for  
7           the grocery store and all that letter says is  
8           that the lease will expire soon.

9                        Okay. I'm going to let other  
10              Board Members articulate any other specific  
11              information they think they might be  
12              interested in hearing from the applicant. Or  
13              did I cover it?

14                        VICE-CHAIRPERSON LOUD: Thank you,  
15              Madam Chair. I just wanted to amplify  
16              something you said, I believe I heard you say,  
17              regarding illustrative case law. Because I  
18              think that's so very important in case like  
19              this where a novel argument is being advanced  
20              and where the law is written sort of -- gives  
21              some flexibility to the BZA to make decisions  
22              based on the circumstances of individual

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1 cases. And that's one of the things that was  
2 not available necessarily at today's hearing  
3 was some case law support for the novel theory  
4 being advanced. So I can recall when I was in  
5 private practice and had a number of cases  
6 which were like no hope cases and a lot of no  
7 hope issues. And I can remember searching  
8 every single state in the country, every  
9 single region, and just trying to find that  
10 one case that sort of matched up with the  
11 novel theory that I was trying to advance and  
12 remember having some success doing that. I  
13 think it's a very interesting theory and I'd  
14 love to hear it fleshed out. And just  
15 wondering if there are some cases somewhere  
16 that are very, very similar to what's being  
17 advanced here. So just wanted to echo Madam  
18 Chair in that regard.

19 CHAIRPERSON MILLER: Anything  
20 else? Yes, go ahead.

21 MEMBER OATES WALKER: Just a  
22 little bit more on the issue of this being the

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1 only available place in the immediate area for  
2 the business to move. To the extent that  
3 there have been discussions with the landlord  
4 about the purchase of the property or  
5 extending the lease, or just what the  
6 circumstances have been around those  
7 negotiations, that would probably be useful to  
8 the Board.

9                   Also, to the extent that the  
10 applicant has sought to lease or to identify  
11 space to lease in the immediate area, it would  
12 just be helpful for us to know a little bit  
13 more about what is indeed available, or not.

14                   CHAIRPERSON MILLER: Anything  
15 else? Yes, Mr. Turnbull?

16                   MR. TURNBULL: Thank you, Madam  
17 Chair. I'd also just like to stress to the  
18 applicant that representing the Zoning  
19 Commission I agree with the Office of Planning  
20 and that whatever arguments the applicant is  
21 going to make, he has to make them very clear  
22 and precise. Right now the case that you've

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1 made is not good and I think that if you are  
2 going to make a case for a variance you have  
3 to meet the three-prong test in however means  
4 you're going to do that. And it has to be  
5 very clear or I will be voting against it. I  
6 cannot accept a variance to change to increase  
7 commercial activity in the R-4 District and  
8 although Mr. Dietz said we're not increasing  
9 it, we're substituting it, you are in  
10 increasing it. Because until the three-year  
11 lapse has gone by, you are still eligible to  
12 have a commercial property on that corner.  
13 And so I'm very reluctant to grant anything  
14 like this very easily.

15 CHAIRPERSON MILLER: So I think it  
16 would be a good idea to look very carefully at  
17 the variance regulation and the case law. And  
18 I did throw out that February 3rd date. If  
19 that's too soon, let me know.

20 MR. DIETZ: When would you like  
21 this?

22 CHAIRPERSON MILLER: Well, we have

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1 a public meeting in which we deliberate on  
2 cases that we carry over from the hearings.  
3 And the next one is February 3rd, which would  
4 be next week.

5 MR. DIETZ: Next Tuesday?

6 CHAIRPERSON MILLER: Yes, that's  
7 correct. And you would have to file it by  
8 when, Mr. Moy, for next Tuesday?

9 MR. MOY: Traditionally it would  
10 be by Thursday, which would be this Thursday,  
11 Friday at the latest.

12 CHAIRPERSON MILLER: So we can put  
13 it off to a later date, yes.

14 MR. DIETZ: If you could, because  
15 there's supposed to be an ice storm tomorrow  
16 and I doubt very much I'm going to be in the  
17 library tomorrow.

18 CHAIRPERSON MILLER: Okay. How  
19 about if we put our decision off until March?  
20 We have regular decision meetings the first  
21 Tuesday of every month, so we can put this on  
22 March 3rd.

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1 MR. DIETZ: Good.

2 CHAIRPERSON MILLER: Okay. And  
3 how much time would you like to then take to  
4 do this?

5 MR. DIETZ: Two weeks.

6 CHAIRPERSON MILLER: Two weeks is  
7 fine. That's fine? Okay.

8 MR. DIETZ: And I file that in the  
9 office?

10 CHAIRPERSON MILLER: You file it  
11 the same way that you filed your application  
12 in the office, and then serve the ANC and I  
13 guess Office of Planning as well. Okay.

14 So that would be February 10th.  
15 February 10th, is that a good date for you?

16 MR. DIETZ: That's fine. Yes,  
17 that's very good.

18 CHAIRPERSON MILLER: All right.  
19 And then we could leave open the option if  
20 Office of Planning wants to weigh again by  
21 February 17th. Is that all right? I'm not  
22 sure that you want to weigh in again, but what

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1 do you want to do?

2 MR. JESICK: We'll keep that date  
3 in mind as a deadline for our submission if we  
4 need to respond.

5 CHAIRPERSON MILLER: Okay. The  
6 17th? Okay.

7 All right. Ms. Bailey, do you  
8 want to reiterate those?

9 MS. BAILEY: Madam Chair, the  
10 applicant is to file by February 10th,  
11 optional for OP to file by February 17th and  
12 the Board will consider a decision on March  
13 3rd.

14 CHAIRPERSON MILLER: Okay. If you  
15 have any questions after today, you can  
16 contact Mr. Moy.

17 MR. DIETZ: Thank you very much.

18 CHAIRPERSON MILLER: Okay.

19 MR. KEBEDE: Thank you.

20 CHAIRPERSON MILLER: Thank you.

21 So, I think we're ready for the  
22 next case when you are, Ms. Bailey.

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1                   MS. BAILEY: Application No. 17868  
2                   of the Georgetown Day School, pursuant to 11  
3                   DCMR 3104.1 for a special exception to allow  
4                   an increase in the student enrollment cap from  
5                   465 to 500, and to increase the number of  
6                   faculty and staff from 95 to 100 for an  
7                   existing private school under Section 206.

8                   The property is located at 4200 Davenport  
9                   Street, N.W. It's square 1673, lot 824 and it  
10                  is zoned R-2.

11                  CHAIRPERSON MILLER: Good  
12                  afternoon. Sorry to keep you waiting.

13                  MR. FEOLA: Good afternoon.

14                  CHAIRPERSON MILLER: And when  
15                  you're ready, you can introduce yourselves for  
16                  the record, please.

17                  MR. FEOLA: Thank you, Madam  
18                  Chair. For the record, my name is Phil Feola  
19                  with the law firm of Pillsbury Winthrop Shaw  
20                  Pittman. With me is Cary Kadlecak of our  
21                  firm. We're here on behalf of the Georgetown  
22                  Day School.

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1                   With us today is Kevin Barr who's  
2 principal of the Georgetown Day School High  
3 School, Kate Lindsay who is the chief  
4 financial officer of GDS. Peter Branch, who  
5 is the head of school, unfortunately has a  
6 critical 4:00 meeting and he just left just a  
7 couple of minutes ago. He had to get back to  
8 school, something that he could stay for and  
9 I offer his apologies for that.

10                  CHAIRPERSON MILLER: Okay. Let me  
11 just say, in the future, since I know you'll  
12 be back here, I think, you know, if certain  
13 witnesses have problems, you can talk to Mr.  
14 Moy and we can sometimes rearrange the  
15 schedule if the witness was going to be  
16 critical. I don't know if he was going to be  
17 critical, but feel free to do that in the  
18 future.

19                  MR. FEOLA: I think Mr. Barr can  
20 cover the issues that Mr. Branch was going to  
21 cover.

22                  CHAIRPERSON MILLER: Okay. Okay.

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1 Good.

2 MR. FEOLA: The school is here for  
3 a special exception, no variances, thank  
4 goodness, to increase the enrollment. It's an  
5 enrollment cap from 465 to 500 students and a  
6 faculty and staff cap from 95 to 100 for its  
7 high school, which is located 4200 Davenport  
8 Street, N.W. on a property that's about on a  
9 little less than five acres located at the  
10 intersection of 47th and Davenport Street.

11 It's just west of Wisconsin Avenue and it's  
12 bounded on the southwest by River Road, on the  
13 north by a Safeway and a commercial parking  
14 lot and single-family detached homes on the  
15 south and to the northwest.

16 The site has been occupied by GDS,  
17 Georgetown Day School, since it was approved  
18 as a location for a high school by this Board  
19 in 1985. The school has been back to this  
20 Board twice since then, in 2002. The current  
21 enrollment cap was established by application  
22 by this Board which allowed the school to

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1 increase from its original 410 students to  
2 465. And in 2004, the school came back to  
3 seek a special exception from this Board which  
4 was granted to increase some of the physical  
5 plan on the site, including a parking  
6 structure of a couple hundred spaces to  
7 accommodate some of the concerns that were  
8 expressed in the community at that time.  
9 The school is currently underneath the caps  
10 that it has been authorized to have by this  
11 Board. It currently has 463 students and 93  
12 faculty and staff, as we speak.

13 So why we're here today is after  
14 the seven years or so that the school has been  
15 living under the existing cap, we're seeking  
16 to increase that slightly, as you'll hear in  
17 a second, to accommodate some of the  
18 programmatic changes that have been occurring  
19 in the school and in secondary education  
20 throughout the country, actually.

21 And so we're here to show that  
22 this increase is not going to create an

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1       objectionable condition because of noise,  
2       traffic or other similar conditions in that we  
3       have ample parking, quite in excess actually  
4       as the Department of Transportation points out  
5       of the Zoning Regulations.

6                   And I think with that, I'll let  
7       Mr. Barr --

8                   CHAIRPERSON MILLER: Can I just  
9       ask for the record right now though so that we  
10      know the universe that's before us, did the  
11      ANC submit a report? Because I have in my  
12      files a request, you know, to submit it today  
13      and I don't have it in my file.

14                  MR. FEOLA: I have a --

15                  CHAIRPERSON MILLER: You have a  
16      copy?

17                  MR. FEOLA: Yes, I have.

18                  CHAIRPERSON MILLER: Do other  
19      Board Members have their copies?

20                  MR. FEOLA: I don't --

21                  CHAIRPERSON MILLER: No, the Board  
22      Members don't.

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1                   MR. FEOLA: I don't know if it  
2 made it to the Board. I got mine early this  
3 morning by email.

4                   CHAIRPERSON MILLER: Okay. If you  
5 could give it to Ms. Bailey and she'll make  
6 copies, because I'd just be interested to know  
7 if there are any issues from the community.  
8 Because as far as I see in the file, there  
9 aren't.

10                  MR. FEOLA: No, I'm happy to  
11 report, as you'll see, that the ANC voted last  
12 night three to zero with two abstentions to  
13 not oppose the application.

14                  While we're getting our files  
15 complete, also I was under the impression that  
16 Ddot might be submitting a report. You might  
17 have missed that because you were talking  
18 while I was talking, but that's okay. I was  
19 just saying I was trying to get our files  
20 complete so we knew the universe of comments  
21 that we were supposed to have in our files.  
22 And I was under the impression that DDoT might

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1       be filing a report as well today. And is  
2       there a written report or are we just going to  
3       hear testimony from DDoT?

4                   And you should introduce yourself  
5       for the record. Okay.

6                   MR. JENNINGS: Good afternoon,  
7       Madam Chair. My name is Jeff Jennings. I  
8       work for the District Department of  
9       Transportation.

10                  We sent our report on January 13  
11       to staff members Cliff Moy and Rich Nero, and  
12       I believe Tracy Rose.

13                  CHAIRPERSON MILLER: Okay. We'll  
14       follow up on that because I don't think it  
15       made it into our files.

16                  MR. JENNINGS: And I have a copy  
17       here with me today.

18                  CHAIRPERSON MILLER: You have a  
19       copy?

20                  MR. JENNINGS: Yes.

21                  CHAIRPERSON MILLER: Mr. Moy, I  
22       was just asking about the DDoT report. Mr.

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1 Jennings says that he sent one January 13th.

2 I don't think it's in our files, but he has a  
3 copy that could be made for us today.

4 MR. MOY: Okay. Let me take care  
5 of that now then.

6 CHAIRPERSON MILLER: Okay. Thank  
7 you.

8 Okay. And I don't mean to  
9 interfere with your presentation, but I mean,  
10 I think that one of the basic questions coming  
11 into this hearing is, you know, since the  
12 order with all those conditions have there  
13 been adverse impacts on the neighboring  
14 property? And then I guess you would show why  
15 these additions to the faculty and student  
16 body aren't likely to create any others.

17 Okay. There have been no  
18 complaints? It's been working well? Okay.

19 MR. FEOLA: Oh, yes.

20 CHAIRPERSON MILLER: Well, you can  
21 address it in the order you plan to, but okay.

22 MR. BARR: Yes, Madam Chairman,

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1                   there have been no complaints.

2                   CHAIRPERSON MILLER: That's pretty  
3                   good, no complaints. Okay.

4                   MR. FEOLA: Mr. Barr, would you  
5                   kindly tell the Board your rationale for the  
6                   increase?

7                   MR. BARR: Sure. Thank you, Madam  
8                   Chairman and Members of the Board, for waiting  
9                   so long for us. We appreciate that. My name  
10                  is Kevin Barr. I'm principal of the high  
11                  school and I have at Georgetown Day School for  
12                  32 years now in a variety of capacities, and  
13                  I was there when we moved to this new  
14                  location.

15                  For those of you who don't perhaps  
16                  know something about the school's founding, we  
17                  were founded in 1945 for the purpose of being  
18                  an integrated schools when other schools in  
19                  the city were either by law or de facto  
20                  segregated. And with seven families, two  
21                  Jewish families, two African-American families  
22                  and three white families we opened with 12

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1 children in 1945 and have now grown to  
2 approximately 1,065, 463 at the high school.  
3 The high school opened up in 1972. Originally  
4 we were just an elementary school,  
5 kindergarten through eighth grade. But from  
6 the very beginning of the school's founding we  
7 always had a strong interest obviously in  
8 developing a diverse and inclusive school  
9 community and took special pride in our  
10 relationship with the District of Columbia and  
11 the neighborhoods wherever we were holding  
12 forth.

13 As Mr. Feola has said, we expanded  
14 the building in our current location a number  
15 of years ago. This is now the third year in  
16 which we have been in the fully expanded and  
17 renovated building. It has worked out very  
18 well and has certainly proved to be a real  
19 boon to us, both in terms of our ability to  
20 maintain the intimate relationships that we  
21 have at the school. The relationship between  
22 faculty and students and parents has always

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1       been central to our mission and the design of  
2       the facility has allowed that to be  
3       maintained.

4                   In addition, the facility really  
5       has, now that we've been in for three years,  
6       made us realize just how well it supports the  
7       current program and its flexibility allows us  
8       to anticipate a few other changes, which is  
9       really why we're here today.

10                  Five years may not seem like a  
11       long time, and in fact it's seven years since  
12       we first came forward to petition to have the  
13       cap at 465, but seven years in education is  
14       actually a pretty long time, especially with  
15       the changes that are taking place and what we  
16       know about the way students learn and what we  
17       know about changes in technology. And there  
18       are a couple of programs that we have a  
19       particular interest in that in fact would  
20       benefit enormously by the increase of just  
21       those 35 students.

22                  We have always, as I've said, seen

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1 ourselves as cognizant of our place in the  
2 District of Columbia and really cognizant of  
3 our place in the United States leading the way  
4 in terms of creating an inclusive, diverse and  
5 multicultural atmosphere. Of late we also  
6 realized, and I suppose all educational  
7 institutions do recognize the need for  
8 teaching its children not only to be good  
9 American citizens, but really good citizens of  
10 the world. And one of the ways that we have  
11 done that is to develop a series of overseas  
12 programs. For the last five years we have had  
13 a joint program with Ethiopia where we have  
14 helped build a school and every year we send  
15 children there for about three weeks in the  
16 summer. That's an ongoing project. We are  
17 developing a relationship with a school in  
18 China and as part of that we have expanded the  
19 language offerings in the high school. We now  
20 have, as we have traditionally, Latin, French  
21 and Spanish, but the two years we instituted  
22 Chinese, which has been very successful and at

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1 the same time we opened an Arabic program in  
2 our middle school, which next year we hope to  
3 bring up to the high school.

4                   Truth is, we feel pretty strongly  
5 that it is important to give the students a  
6 range of options in those particular  
7 languages. Chinese and Arabic seem very  
8 important as we look out to the future. But  
9 in order to sustain them, it would be very  
10 helpful for us to have those 35 more students.  
11                  As you might imagine, there's a particular  
12 point where you would like to have 12-15 kids  
13 in a classroom. Sometimes our classes now are  
14 much smaller than that and it doesn't make  
15 much sense academically or in fact  
16 economically to do that.

17                  As well, we have always had a very  
18 rich and active performing arts and studio  
19 arts program. I mean, we really feel as if  
20 it's vital to educate the whole child so that  
21 the academics, the arts and athletics are all  
22 equally important to us. And this increase of

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1       35 students would also allow us to sustain and  
2       maintain the robustness of the performing arts  
3       and studio arts programs that we currently  
4       offer. Again, while we value small classes,  
5       there's a point where classes are too small to  
6       be either academically sound or economically  
7       sensible.

8                   Certainly those 35 students would  
9       help our sports teams. I'm glad my athletic  
10      director is not here. We are not an athletic  
11      powerhouse. We do field competitive teams  
12      that we are proud of, but those are voluntary.  
13      So a child can choose to be on the team or  
14      choose not to be on the team, as his her  
15      choice. And so even the addition of 35 more  
16      students might strengthen that.

17                  I think those are our primary  
18      reasons academically why this increase of 35  
19      students would be very helpful to us.

20                  And I suppose I would be remiss  
21      not to acknowledge that there would be some  
22      advantages economically in this particular

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1 climate to have an addition of 35 more  
2 students. Currently 18 percent of our  
3 students are on financial aid. The Board has  
4 committed to increasing the percentage of our  
5 operating budget, which is currently 12.7  
6 percent of our operating budget. Next year we  
7 are increasing it to 13.2. It would be our  
8 goal to move that to 15 percent of the  
9 operating budget financial aid. We are  
10 largely a tuition-based, tuition-driven  
11 school. We have a not very large endowment  
12 and 92 percent of our operating budget  
13 actually comes from our tuition. And yet we  
14 feel very strongly that in addition to other  
15 kinds of diversity we very much want to have  
16 and have had from the very beginning of the  
17 school a very strong social-economic  
18 diversity. And so the increased tuition would  
19 allow us to put more monies as well towards  
20 financial aid.

21 MR. FEOLA: Questions for Mr.  
22 Barr?

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1 CHAIRPERSON MILLER: Thank you.

2 MR. BARR: Thank you.

3 MR. FEOLA: Our next witness is  
4 Iain Banks of all O.R. George & Associates, a  
5 traffic engineer.

6 Mr. Banks?

7 In the interest of time, maybe  
8 I'll just ask Mr. Banks a couple of questions  
9 about the report.

10 Mr. Banks, were you responsible  
11 for the report that's part of the applicant's  
12 prehearing submission on the traffic impact  
13 assessment?

14 MR. BANKS: Yes, I am. Yes.

15 MR. FEOLA: And could you briefly  
16 state your conclusions with regard to the  
17 traffic impact that may or may not be caused  
18 by the addition of the enrollment?

19 MR. BANKS: Essentially, the  
20 conclusion of the study was that the proposed  
21 increase in student and faculty would have no  
22 adverse impacts in terms of traffic operations

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1       within the surrounding roadway network of the  
2       school.

3                    MR. FEOLA: And parking?

4                    MR. BANKS: Parking will be a  
5       similar impact. There will be no adverse  
6       impact on the surrounding streets. We  
7       undertook surveys of the existing school  
8       parking supply and we found that in general  
9       the school is even over supplying in terms of  
10      demands, we found that on an average school  
11      day there's at least 40 to 50 spaces free.

12                  MR. FEOLA: Have you had an  
13      opportunity to look at the Department of  
14      Transportation report that we received?

15                  MR. BANKS: Yes, we received that  
16      today. And from looking at that report, as  
17      well as the enhanced Transportation Management  
18      Plan which the school has reviewed and  
19      configured for submission into the record  
20      today, we believe that the school and DDOT can  
21      work together on a comprehensive TMP.

22                  MR. FEOLA: Madam Chair, if it

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1       pleases the Board, I'd like to submit a  
2       revised Transportation Management Plan that  
3       hopefully accomplishes some of what the  
4       Department of Transportation had asked for.  
5       But in furtherance, the school I think feels  
6       strongly about the goals of DDoT in this case  
7       and the school are coterminous. They go  
8       together. And the school would love to have  
9       the opportunity to flesh out more of the  
10       carbon footprint issues that the Department of  
11       Transportation is concerned about as we go  
12       forward, if this project is approved.

13                   CHAIRPERSON MILLER: Okay. Is  
14       this the enhanced TMP that's referenced, I  
15       guess, where was this, on page 13 of the  
16       report that was going to be submitted?

17                   MR. BANKS: Yes, within the  
18       traffic report we included the existing  
19       Transportation Management Plan of the school  
20       with acknowledgement that it would be renewed  
21       and enhanced as the process went forward.

22                   CHAIRPERSON MILLER: Okay.

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1                   MR. BANKS: So this TMP being  
2 presented to you today is the enhanced  
3 version.

4                   CHAIRPERSON MILLER: Okay. And  
5 this was done in consideration of DDoT's  
6 comments, or not?

7                   MR. FEOLA: No, we had done this  
8 before we got the Department of Transportation  
9 report. For some reason there was a  
10 disconnect between the file, as Mr. Jennings  
11 pointed out in the report. So we got it today  
12 and there are things I think we could add to  
13 this Transportation Management Plan that would  
14 go further towards where DDoT's going.

15                  CHAIRPERSON MILLER: And who  
16 writes this plan? Is this solely GDS' plan so  
17 that if you wanted to add to it right now you  
18 can, or is it done in conjunction with the  
19 community or anything like that?

20                  MR. FEOLA: This is solely GDS'  
21 plan. The community did see this.

22                  CHAIRPERSON MILLER: Yes.

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1                   MR. FEOLA: Or the ANC saw it.

2                   CHAIRPERSON MILLER: They saw the  
3 enhanced? This one?

4                   MR. FEOLA: Yes.

5                   CHAIRPERSON MILLER: Okay.

6                   MR. FEOLA: I don't imagine they  
7 would have more problems with reduced car  
8 traffic.

9                   CHAIRPERSON MILLER: Okay.

10                  MR. FEOLA: Mr. Banks, is there  
11 anything you'd like to add about the TMP or --

12                  MR. BANKS: Not specifically, just  
13 to clarify the Transportation Management Plan  
14 presented by the school is an enhancement of  
15 what they already have and it is noted that  
16 the school already does have significant non-  
17 vehicular modes of transport coming to the  
18 school. They have a number of regulations and  
19 management and schemes which address student  
20 parking, as well as encouraging other forms of  
21 transport to the school such as bus, carpools,  
22 pedestrian, the Metrochek system, metro

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1                   subsidies for both students and faculty.

2                   MR. FEOLA: Maybe for the Board  
3                   you can give some of those facts.

4                   MR. BANKS: Yes, just for  
5                   instance, the school currently provides 90  
6                   parking permits for students, of which 30 of  
7                   those are carpools. Obviously students have  
8                   to abide by the relevant laws of the District  
9                   in terms of teen driving restrictions, which  
10                  obviously does limit the amount of student  
11                  carpools that the school could possibly have.  
12                  But the carpools do receive parking priority  
13                  at the school. Those which can provide  
14                  carpools are given preference in terms of 90  
15                  location or space actually in terms of  
16                  obtaining the space over those people that  
17                  can't provide a carpool. And students  
18                  currently pay \$50 per month to actually park  
19                  on campus. And so that serves as a  
20                  restriction within itself in terms of trying  
21                  to encourage public transportation and other  
22                  non-vehicle modes of transport.

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1 In terms on Metro ridership,  
2 currently there's approximately 100 students  
3 and faculty that use Metro ridership. Twenty-  
4 two of those are receiving subsidies which  
5 essentially is trying to provide to those  
6 students outside of the District a subsidy  
7 which brings their transit ridership back down  
8 into what D.C. residents pay for ridership.

Obviously depending upon the season, probably not on days like today, but there are approximately 25 people that ride their bikes to school and there's bike racks and secure and undercover bike racks within the student. And there's also shower facilities that they can use to do that.

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1 student carpools, there's obviously a  
2 relatively large percentage of parent  
3 carpools, which I'm sure the school, as stated  
4 within the enhanced TMP, the school is  
5 certainly going to try and increase of some  
6 kind of on line carpool system.

7 CHAIRPERSON MILLER: Have you been  
8 using the same TMP since the last BZA order?  
9 Or has it been modified over the years?

10 MR. BANKS: As far as I'm aware  
11 the TMP has remained the same since the  
12 previous 2002 and 2004 BZA applications.

13 CHAIRPERSON MILLER: So did you  
14 enhance it now just because of the focus on  
15 the new application, or because of the changes  
16 that you are asking for?

17 MR. FEOLA: It's probably more to  
18 do with the policies of the District of  
19 Columbia and the encouragement from the  
20 Department of Transportation and the Office of  
21 Planning to become more sustainable. It is  
22 also a product of the school, as a member of

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1 the Green School Alliance and some of the  
2 efforts that it has undertaken to be part of  
3 that effort. And if you'd like, I could have  
4 Ms. Lindsay talk about that, in particular,  
5 the Green School Alliance and some of the  
6 things that the school is doing as part of  
7 that.

8 So it's a combination of city  
9 policy, school policy and kind of taking a  
10 look at the TMP which is now four or five  
11 years old and enhancing it.

12 And just one correction to what  
13 Mr. Banks said. The school does have an on  
14 line carpool system. It's not on the school's  
15 web site, but it's internal to the school. So  
16 if you're a parent, you can figure out who  
17 lives in your neighborhood and, you know, what  
18 times they have to come and go.

19 CHAIRPERSON MILLER: But that's  
20 not in the TMP? You have that?

21 MR. FEOLA: Yes, it's one of the  
22 methods the school uses to encourage carpools

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1 is to make it known in its community what's  
2 available and who's available.

3 CHAIRPERSON MILLER: And same with  
4 the fact that you're in the Green School  
5 Alliance, is that what it's called? Is that  
6 reflected anywhere in -- not in the TMP?

7 MR. FEOLA: It's not in the TMP.

8 CHAIRPERSON MILLER: No. Is it in  
9 this voluntary agreement that's attached to  
10 the ANC resolution or something? No?

11 MR. FEOLA: I do not believe so,  
12 no.

13 CHAIRPERSON MILLER: Okay. All  
14 right.

15 MR. FEOLA: It's just something  
16 the school has taken upon as school policy.

17 CHAIRPERSON MILLER: Okay. Any  
18 questions at this point?

19 MEMBER DETTMAN: A couple  
20 questions, Madam Chairman.

21 CHAIRPERSON MILLER: Yes.

22 MEMBER DETTMAN: Mr. Feola, I have

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1 a couple questions that go to your parking  
2 calculation. And I'll start off by asking the  
3 100 faculty and staff that you're proposing,  
4 that's actually an FTE number, is that  
5 correct?

6 MR. FEOLA: No, as the parking  
7 regulations say, it is the maximum number in  
8 the school at any particular time of a day.  
9 So it's a maximum number.

10 MEMBER DETTMAN: Okay. Well, I  
11 guess I'll rephrase it. The 100 faculty and  
12 staff that you're proposing, is that the  
13 number that you used to calculate your parking  
14 requirement that would be attributable to  
15 faculty and staff, or did you actually use --

16 MR. FEOLA: That's correct.

17 MEMBER DETTMAN: Okay. What does  
18 the 100 translate into number of individuals?  
19 Would you happen to know that?

20 MR. FEOLA: I don't know. We'd  
21 have to get that. I don't know off the top of  
22 my head. I don't think anybody probably does.

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1                   MEMBER DETTMAN: Okay. Because I  
2 think if you look at 2118.3, it doesn't really  
3 speak to FTEs. It talks to, as you say,  
4 number of individuals employed at any one  
5 time. And OAG was kind enough to provide me  
6 with the order from the St. Patrick's  
7 Episcopal Day School that speaks directly to  
8 the FTEs used for parking calculation. And it  
9 says that it really should be number of  
10 individuals.

11                   So I'm must wondering how you  
12 calculated that you were in compliance with  
13 the required number of parking spaces if you  
14 used FTEs instead of actual number of  
15 individuals.

16                   MR. BARR: Sir, if I could speak  
17 just briefly to that. We actually employ very  
18 few part-time teachers. I mean, out of the --  
19 by about 86 faculty and staff, those are full-  
20 time people. And then we have a number of  
21 administrators who travel between the two  
22 campuses and they're also being included in

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1       that figure. We actually -- one, two, three  
2       -- I could probably count on one hand the  
3       number of part-time teachers we employ and  
4       that's partly because, well, they're not there  
5       for the kids and part of our philosophy is  
6       you're not there just to come and go as a  
7       teacher. So we actually have very few.

8                    MEMBER DETTMAN: So collectively,  
9        your full-time and part-time people may be  
10       even below the 100 that you're seeking?

11                  MR. BARR: Right.

12                  MEMBER DETTMAN: Okay. And  
13        there's a second part to the parking  
14        calculation which deals with the number of  
15        students or your largest auditorium. I didn't  
16        see that in the record and I was just  
17        wondering if you've calculated that.

18                  MR. FEOLA: Mr. Dettman, I pulled  
19        it from the 2004 application and the numbers  
20        are for 465 students, which was the number in  
21        2004. If you did the two calculations, one  
22        per 20 classroom spaces, that equals 23

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1                   spaces.

2                   MEMBER DETTMAN: Right.

3                   MR. FEOLA: And one for 10 seats  
4                   in the largest auditorium or assembly area.

5                   The architects from that case said the largest  
6                   assembly space was 520, which gets you 52. So  
7                   if you add those together, plus the 63 faculty  
8                   and staff, you have a requirement of 138.

9                   MEMBER DETTMAN: Okay. It's  
10                   minimal.

11                   MR. FEOLA: Projecting that into  
12                   the new one, we have 25 on one, 20 classrooms  
13                   each, 52 for the largest assembly, because  
14                   it's not changing and 67 faculty and staff, so  
15                   it's 144.

16                   MEMBER DETTMAN: Okay.

17                   MR. FEOLA: So there's six parking  
18                   slide.

19                   MEMBER DETTMAN: Okay. And you  
20                   have roughly 203 spaces on site? Yes, okay.

21                   Well, thank you for clarifying  
22                   that. I appreciate it.

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1 CHAIRPERSON MILLER: Mr. Dettman,  
2 could you just clarify for my purposes, are  
3 you saying that we're not using 2118.3 for  
4 determining the number of faculty and staff?

5 MEMBER DETTMAN: Well, no, 2118.3

6 specifically says the number of persons to be  
7 employed at any one time period during the day  
8 or night. And, you know, I've been on the  
9 Board for about a-year-and-a-half and I've had  
10 a collection of private school cases where  
11 FTEs were used to calculate the required  
12 faculty and staff parking. Where if you used  
13 the number, say in this case of 100, that  
14 could actually be 300 individuals. And it  
15 seems to me that the 300 should be used  
16 instead of the 100.

17 CHAIRPERSON MILLER: But 2118.3  
18 says otherwise, it seems to me. That's why  
19 we're using it.

20 MEMBER DETTMAN: I know. Well --

21 CHAIRPERSON MILLER: Because they  
22 have to provide enough parking for the number

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1 of faculty and staff that are going to be on  
2 campus at one time.

3 MEMBER DETTMAN: Right, but the  
4 number of people on site at any one time isn't  
5 the same thing as saying an FTE. You know,  
6 you could have a 100 FTEs and employ a total  
7 of 300 people and then say, well, 200 people  
8 would only be on site at any one time.  
9 Perhaps the 200 number is the number that  
10 should be used, but definitely it shouldn't be  
11 just the 100 FTEs.

12 CHAIRPERSON MILLER: Okay. So  
13 what I would be interested in knowing is what  
14 number responds to 2118.3. What number of  
15 faculty or staff are on site maximum at one  
16 time for one period, the way the regulation  
17 reads, correct? Because that's how we're  
18 judging sufficient parking.

19 MR. FEOLA: Ninety-three is the  
20 number the chief financial officer is  
21 whispering in my ear.

22 MEMBER DETTMAN: Yes.

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1 MR. FEOLA: Ninety-three.

2 CHAIRPERSON MILLER: Okay. Okay.

3 Okay.

11 || CHAIRPERSON MILLER: All right.

12 Well, I just want to look at our standards  
13 again. This seems pretty straightforward to  
14 a certain extent. The Board certainly  
15 examined the school very closely with respect  
16 to parking and traffic in the last order. And  
17 this is a fairly small change, so I think that  
18 what we are looking for, and I kind of  
19 mentioned this before and heard that there  
20 haven't been any adverse impacts, we don't  
21 have anybody here I guess from the ANC today  
22 to testify, or I don't see anybody else from

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1 the community about adverse impacts. So we  
2 don't have any evidence right now that there  
3 have been any adverse impacts. Except we did  
4 just get today, and I don't know if the  
5 Board's had much of a chance to go through it,  
6 The ANC resolution which makes reference to  
7 some type of burden on the community. The  
8 ingress. It says whereas the GDS renovation  
9 associated agreements (the 2004 voluntary  
10 agreement) ameliorated many of the issues that  
11 had caused hardship to the community. That  
12 was 2004, which have been addressed. Okay.  
13 Nevertheless, the presence in ingress and  
14 egress for 465 students and 95 faculty and  
15 staff do cause a burden to the community.

16 Now, I don't see in this  
17 resolution, but maybe if others can, you know,  
18 look at this as well, what that burden is that  
19 they're saying has been caused to the  
20 community.

21 Then they say whereas the  
22 incremental burden likely to occur if the

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1 application is granted is small, though not  
2 trivial.

3 Since there's no ANC rep here  
4 anywhere, I might as well reference some of  
5 this.

6 And whereas GDS has entered into a  
7 supplemental voluntary agreement under which  
8 it has agreed to provide certain benefits to  
9 the community in partial consequence for the  
10 burden the increased enrollment would impose  
11 on the community.

12 Okay. I don't know what the  
13 burden is, you know? Do you want to --

14 MR. FEOLA: I might, Madam Chair.  
15 I think what the ANC is saying, and we've been  
16 there a couple times and had a lot of  
17 negotiations over the voluntary agreement, is  
18 that the mere presence of this independent  
19 school in a residential community brings with  
20 it some burdens. There are kids walking  
21 through the neighborhood, there might be, you  
22 know, a car double-parked, whatever they are.

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1       And as Mr. Barr has testified, there have been  
2       really no specific incidents in the last  
3       couple of years. There is a perception by the  
4       community that we're there as a special  
5       exception and that because of that the school  
6       should continue to give back to the community  
7       as it has in the past and per the 2004  
8       voluntary agreement.

9               If I might ask Mr. Barr kind of a  
10      direct question maybe to get some evidence in  
11      the record about that.

12               Mr. Barr, were you at the October  
13      2008 ANC meeting?

14               MR. BARR: Yes, sir, I was.

15               MR. FEOLA: And this application  
16      was presented?

17               MR. BARR: Yes.

18               MR. FEOLA: Was there anyone in  
19      the audience that raised a concern?

20               MR. BARR: No, there was not.

21               MR. FEOLA: And approximately how  
22      many people in the audience?

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1                   MR. BARR: There were probably 60  
2 or 70 in the audience.

3                   MR. FEOLA: And were you at the  
4 ANC meeting earlier this month when this  
5 application was re-presented?

6                   MR. TURNBULL: Yes, I was.

7                   MR. FEOLA: Were there any  
8 comments from or concerns raised from the  
9 community?

10                  MR. BARR: No.

11                  MR. FEOLA: And approximately how  
12 many people were in the audience?

13                  MR. BARR: There were probably  
14 close to 30 or 40 then. I think the burden is  
15 the mere presence of adolescents, which any of  
16 us who have them would appreciate.

17                  CHAIRPERSON MILLER: Okay. Yes,  
18 we've heard that before. All right.

19                  How about this voluntary  
20 agreement? It seems to me that the ANC is not  
21 asking, unless I'm missing something, asking  
22 the Board to condition this order, but in fact

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1 just attaching a voluntary agreement which  
2 seems to indicate that their concerns are  
3 being addressed in that agreement.

4                   Do you have a voluntary agreement  
5 now or is this something new, just to start  
6 off with?

7                   MR. FEOLA: There is an agreement  
8 with the ANC coming out of the 2004  
9 application which is still in effect, unless  
10 this one supersedes it. You know, that one  
11 had a lot to do with construction and  
12 construction management, many things that this  
13 Board doesn't take jurisdiction over. And  
14 likewise, this agreement I think is outside  
15 the scope of the Board's jurisdiction, but the  
16 school, again trying to be a good neighbor and  
17 working with this community knowing that we'll  
18 be back there for something in the future,  
19 feels a commitment to do. So I don't believe  
20 it was intended. Again, I can't speak for the  
21 ANC to be part of a condition of a BZA order,  
22 but it's something the school has agreed to

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1 abide by.

2 CHAIRPERSON MILLER: Okay. And  
3 then there haven't been any problems in the  
4 past with respect to enforcement of these  
5 voluntary agreements, I assume. Otherwise, I  
6 think they would be here to let us know.

7 MR. BARR: I would say that's  
8 correct. The primary voluntary agreement had  
9 to do with students coming and going once they  
10 were on site and in fact the kids have obeyed  
11 that, which means once they've parked, they  
12 have to keep their cars on site unless it's a  
13 doctor's appointment or something like that.  
14 And that was really the primary concern of the  
15 neighborhood, if there was a parking garage on  
16 site, they didn't want kids coming and going,  
17 which is certainly understandable and the kids  
18 have abided by that. So, I think that was the  
19 only real concern and that was ameliorated.

20 CHAIRPERSON MILLER: Have there  
21 been issues about the landscaping? I notice  
22 that landscaping is one of the conditions

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1 here. Have there been complaints?

2 MR. BARR: No, the request, which  
3 we're willing to do because we have a pretty  
4 robust community service program and the kids  
5 are out in the neighborhood all the time  
6 anyway doing community service, they simply  
7 thought that perhaps it would be a kind  
8 gesture if we prettified the area around  
9 Safeway. They're not asking us to landscape  
10 our own property. They're asking us to  
11 landscape the neighborhood.

12 CHAIRPERSON MILLER: No, I don't  
13 think so.

14 MR. JENNINGS: Madam Chair, if I  
15 could just add my two cents about the Safeway  
16 landscaping, too. It should be said that  
17 Safeway has submitted plans to redevelop that  
18 store. I wouldn't want someone to go and  
19 dispose of resources and then kind of just  
20 find out later that it's been thrown away.

21 MR. BARR: We would agree with you  
22 wholeheartedly. Our suggestion was that

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1       perhaps Safeway should be involved in our  
2       decorating.

3                   CHAIRPERSON MILLER: Okay. But I  
4       understand the point now. These are bonuses  
5       that don't even -- they're community service.  
6       They don't really relate to mitigating any  
7       kind of adverse impacts on your property or  
8       from your property onto other property.

9                   MR. BARR: That is correct.

10                  CHAIRPERSON MILLER: Okay. Okay.  
11       Other questions?

12                  Okay. And, Mr. Feola, do you  
13       think you're going to be addressing DDot's  
14       concerns after DDot makes their presentation,  
15       or before?

16                  MR. FEOLA: Yes.

17                  CHAIRPERSON MILLER: Afterwards?  
18       Okay. All right.

19                  And does DDot have more  
20       information -- have you given them more  
21       information since they filed their report? Or  
22       just today, or --

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1                   MR. FEOLA: Yesterday --

2                   CHAIRPERSON MILLER: Yesterday?

3                   MR. FEOLA: -- with just some  
4 factual information that they look for.

5                   CHAIRPERSON MILLER: Okay. So Mr.  
6 Jennings has some more information? Okay.

7                   MR. FEOLA: I don't know if he's  
8 had an opportunity to digest it though.

9                   CHAIRPERSON MILLER: Okay. So, I  
10 guess we'll go to Office of Planning, unless  
11 there are other Board questions for the  
12 applicant? All right.

13                  MS. BROWN-ROBERTS: Good  
14 afternoon, Madam Chairman and Members of the  
15 Board. I'm Maxine Brown-Roberts from the  
16 Office of Planning. And I think we'll just do  
17 a quick summary of our report. I think that  
18 the applicant has answered a lot of the  
19 questions. In addition, you know, we've gone  
20 through a lot of details in our report.

21                  Regarding the elements of Section  
22 2006, we think that in the last order that

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1       there were conditions that were put on the  
2       school that are still relevant today or does  
3       address some of the things that need to be  
4       addressed. For example regarding noise, we  
5       don't think that the additional 35 students  
6       and 10 faculty members would great increase  
7       the noise from the school. And there are a  
8       number of conditions that the school has to  
9       abide by that relates to landscaping, open  
10      space, limited the hours of activity on the  
11      school, limits on the bell system, the  
12      location of the atria system. And all those  
13      are ways of limiting the impact of noise on  
14      the community.

15                   There have also been no complaints  
16                   to our knowledge about noise, both to the  
17                   school or to the ANC.

18                   Regarding the traffic, there are a  
19                   number of conditions relating to the traffic  
20                   that are currently being enforced, as stated  
21                   by the applicant and all the traffic issues  
22                   will be addressed by DDoT.

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The number of students. The 35 students and 10 staff or faculty will be introduced incrementally over three to four years. The existing facility can accommodate the additional students without any expansion.

6 Other objectionable circumstances.  
7 In addition to limiting the noise, traffic and  
8 the number of students, there are also  
9 conditions relating to pick up and drop off,  
10 access parking and lighting. Section 2006.3  
11 relating to parking, I think that was  
12 addressed and I think DDOT may have some  
13 additional comments on that.

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1           applicant may want to keep them -- either way,  
2           it's fine with us.

3                           The Office of Planning therefore  
4           recommends approval subject to the applicant  
5           addressing the issues raised by DDoT.

6                           Thank you, Madam Chair. And I'm  
7           available for questions.

8                           CHAIRPERSON MILLER: Well, I guess  
9           I would be interested in which conditions you  
10           don't think are necessary anymore. Or we can  
11           do this later when we go down the conditions.

12                          MS. BROWN-ROBERTS: Yes, I think  
13           there was some of the landscaping stuff that  
14           already in place.

15                          CHAIRPERSON MILLER: Okay. That  
16           kind of thing?

17                          MS. BROWN-ROBERTS: Yes.

18                          CHAIRPERSON MILLER: All right.

19                          MS. BROWN-ROBERTS: There was  
20           something that talks about the buffering of  
21           the -- the location of air-conditioners and  
22           that sort of thing. Those are already in

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1 place, so you know, those maybe could be taken  
2 off.

3 CHAIRPERSON MILLER: Okay. Things  
4 that were related to what was going to be  
5 built and --

6 MS. BROWN-ROBERTS: Right. That's  
7 correct, yes.

8 CHAIRPERSON MILLER: Do you have  
9 an opinion with respect to DDot's  
10 recommendations, whether they go to mitigating  
11 any adverse impacts on neighboring properties?

12 MS. BROWN-ROBERTS: I think that  
13 the current; and he's here, so I don't really  
14 want to speak on his behalf, but my  
15 understanding, I think it's also the  
16 understanding of the Office of Planning, is  
17 that some of the conditions on the TMP that  
18 was approved are a good first step. However,  
19 we have come some ways since the last approval  
20 and that we think that there are other ways of  
21 wherein the applicant can go further in  
22 helping to reduce the impact of traffic coming

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1 to the site.

2                   One of the things that sort of  
3 concerned me, and I think DDOT also, was that  
4 we didn't have a record of say here are how  
5 many students we have right now that carpool,  
6 here are how many train passes we give out,  
7 that sort of information. We didn't have to  
8 sort of do an evaluation of say yes, we think  
9 that this is working. So when I spoke to DDOT  
10 and I agree with them that this is some  
11 additional information that we need to have to  
12 sort of complete the record.

13                   CHAIRPERSON MILLER: Okay. Thank  
14 you.

15                   Other questions?

16                   Okay. I think I'll reserve my  
17 DDOT-related further questions DDOT.

18                   MS. BROWN-ROBERTS: Okay.

19                   CHAIRPERSON MILLER: Mr. Jennings,  
20 do you have some testimony?

21                   MR. JENNINGS: Good afternoon,  
22 Madam Chair. Again, my name is Jeff Jennings.

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1                   And other than what we submitted  
2 on January 13, whereby it wasn't completely  
3 clear to us what was happening at this  
4 particular location, no numbers as far as  
5 other schools that we've discussed before at  
6 this particular Board whereby not encouraging  
7 use of mass transit and encouraging use of  
8 carpool was all that helpful to us in trying  
9 to diagnose what was happening here, but  
10 rather we sought hard facts, some numbers,  
11 some data. And so just yesterday I did  
12 receive some breakdown as far as where  
13 students reside, which was helpful. They're  
14 mere percentages of the three jurisdictions of  
15 where students reside that arrive to the  
16 school daily. Fifty percent from the District  
17 of Columbia, 45 percent from Maryland and five  
18 percent from Virginia. Once again, a little  
19 bit ambiguous with respect to where do these  
20 particular students come from as far as zip  
21 codes could have been a little more helpful  
22 for us, and we did ask that, and I did state

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1       that in the comments that we submitted earlier  
2       this month.

3                   The 275 trips that you see or has  
4       been stated, I should say, by the applicant,  
5       the 275 students driven by parents, that's a  
6       number that we would honestly like to see  
7       decreased. And if the carpooling efforts can  
8       be a little more of, I guess, a combined  
9       effort, it doesn't appear as though to us that  
10      that is really doing much in the way of  
11      improving the traffic conditions around the  
12      site.

13                  And then once again, discussing  
14      SmartBenefits. Trying to get away from the  
15      word "Metrocheks." I don't think WMATA even  
16      uses Metrocheks any more; it's now  
17      SmartBenefits, whereby you're getting a  
18      SmartTrip card, things that obviously we would  
19      like to see more in the way of the school,  
20      faculty as well as students. My guess is the  
21      45 percent of the students arriving from the  
22      State of Maryland may very well live right

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1 along the Red Line somewhere. May very well.  
2 I don't know that for a fact, but it seems  
3 that with the proximity of the location to the  
4 Tenleytown Metro station, it just makes much  
5 more sense to us. Why aren't more people  
6 maybe using that Red Line Metro station.

7 So again, just receiving this  
8 information yesterday, it is helpful, but you  
9 know, some of these numbers to us, they're not  
10 making much sense as far as us trying to help  
11 with future projections with TMP efforts. You  
12 know, of course SmartTrip Benefits are very,  
13 very important to us. We'd like to understand  
14 how much do they have in the way of bicycle  
15 parking. I see on this breakdown that I  
16 received yesterday, number of student or  
17 faculty bike users approximately 25, depending  
18 on the season. Well, how many bike parking  
19 spaces are there at the facility?

20 I gained a sense from visiting the  
21 site a couple of occasions, a couple of times  
22 that the main driveway, because it's insulated

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1 and shares a street with another commercial  
2 establishment, you don't get the impact here  
3 maybe as much as you do with other private  
4 school facilities that we've discussed before.  
5 So, you know, if anything, that could be a  
6 good thing in this particular scenario. But  
7 the intersections around the area could very  
8 well be seeing a decreased level of service  
9 because we see so many car trips to the  
10 particular site.

11 CHAIRPERSON MILLER: So is it your  
12 opinion that there are too many car trips, or  
13 that you don't know, there just might be?

14 MR. JENNINGS: Might be.

15 CHAIRPERSON MILLER: Might be?  
16 And is it your opinion that the location of  
17 the school with respect to the parking and TMP  
18 that's in place at this point; or actually  
19 that's an enhanced TMP has been put before us,  
20 that there would be an objectional impact upon  
21 nearby property?

22 MR. JENNINGS: Yes, I would say

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1 that's accurate.

2 CHAIRPERSON MILLER: And what

3 would that be?

4 MR. JENNINGS: I think the most  
5 important thing is level of service at  
6 surrounding intersections. Of course we want  
7 to take a look at the entrance into the  
8 Safeway, since they do share that particular  
9 street as far as their main driveway is  
10 concerned. What is the morning period like  
11 when drop-off does occur or when you have the  
12 arrival in the morning? Are there competing  
13 interests for getting into the Safeway versus  
14 those who are getting into this particular  
15 school?

16 CHAIRPERSON MILLER: Have you  
17 observed that there is?

18 MR. JENNINGS: Unfortunately, I  
19 haven't had the opportunity to go out there  
20 and observe it.

21 CHAIRPERSON MILLER: Okay. So you  
22 don't know that there's an adverse impact?

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1                   MR. JENNINGS: I don't.

2                   CHAIRPERSON MILLER: But you're  
3 concerned that there might be because of the  
4 number of vehicle trips?

5                   MR. JENNINGS: Yes, that's  
6 accurate.

7                   CHAIRPERSON MILLER: Okay.

8                   All right. Other questions?

9                   Mr. Feola, do you have any  
10 questions for the Office of Planning or DDOT?

11                  MR. FEOLA: No, ma'am.

12                  CHAIRPERSON MILLER: Okay. I  
13 don't see anybody else here, be it the ANC or  
14 any individuals who wish to testify in support  
15 or opposition, if I'm not mistaken.

16                  Okay. Then I would ask, Mr.  
17 Feola, do you want to respond to the concerns  
18 raised by DDOT?

19                  MR. FEOLA: Well, I'd like Mr.  
20 Banks to at least talk about the possible  
21 problem with the Safeway driveway and the  
22 queuing. But on balance, I think as I said

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1       earlier, the school and DDOT share a goal and  
2       to the extent if this Board were to approve  
3       this application with the school's TMP with  
4       some caveat to allow us to continue work with  
5       DDOT on an ongoing basis. We suggested  
6       reporting to them every year about what's  
7       working, what's not working and pick up  
8       nuances or things that we could do better.  
9       We'd be happy to. The school wants to be a  
10      better environmental neighbor and wants to do  
11      more things that will make it that way.

12                   So I guess what I would ask Mr.  
13      Banks just to address that one question about  
14      impact, but the school is very anxious to be  
15      as good an environmental neighbor as it can  
16      be. And to the extent that DDOT comes up with  
17      good ideas and we can implement them, we want  
18      to do it. And Mr. Jennings is right. I mean,  
19      the school is right on the Red Line and we  
20      have 100 kids riding the Metro. Maybe we can  
21      get it to 150 or 175. Whatever the number is,  
22      it would be better for everybody.

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1                   CHAIRPERSON MILLER: So how would  
2 you do it?

3                   MR. FEOLA: Well, that I don't  
4 know.

5                   CHAIRPERSON MILLER: Do you have  
6 any ideas? I mean, I don't know. I mean,  
7 I've heard from other schools, you know, that  
8 they're part of the Green School Alliance and  
9 that there are certainly, you know, specific  
10 ideas, like, you know, put on your web site or  
11 make it -- I don't know. Are there are  
12 incentives into the school?

13                  MR. FEOLA: I'll let --

14                  CHAIRPERSON MILLER: Do you have a  
15 realistic goal? I mean, I guess it's a little  
16 bit general to say, you know, we want to be a  
17 good neighbor, we want to do -- you know.

18                  MS. LINDSAY: Good afternoon.

19                  CHAIRPERSON MILLER: Hello. Do  
20 you want to introduce yourself for the record,  
21 please?

22                  MS. LINDSAY: Is it on?

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1 CHAIRPERSON MILLER: I don't know.

2 Is your green light on?

3 MS. LINDSAY: Now it is.

4 CHAIRPERSON MILLER: Good. Okay.

5 MS. LINDSAY: I'm Kate Lindsay.

6 I'm the CFO at Georgetown Day School and I'm  
7 the liaison with both parents and the faculty  
8 on the Green School Alliance. And I would say  
9 that we have made a number of steps, even in  
10 the last 18 months. We're one of the founding  
11 schools in this program, which was instigated  
12 out of a group of schools in the Manhattan  
13 area of New York City. And what we've done  
14 are we implemented a variety of different  
15 carpool strategies to encourage parents,  
16 especially those parents who have kids at both  
17 campuses, to consolidate with other kids and  
18 trade off the high school age children with  
19 the middle school age kids and have them  
20 combine so that one car is going to each  
21 campus as opposed to both cars going to each  
22 campus.

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1                   We've also implemented a new  
2 program, I guess about three months ago, of  
3 low and no idling. Because what we've noticed  
4 about parents in carpool lines is that they  
5 come early in order to queue and they sit and  
6 read books in order to wait for their kids.

7                   We're now promoting very heavily, even on  
8 private property, the no idling because we  
9 know the District of Columbia laws, the three-  
10 minute idling plan. So we've started to  
11 really promote more carpooling than we've had.

12                  We do have approximately 100 kids that could  
13 take the Metro. We subsidize them down to the  
14 D.C. student rate, which is considerable.

15                  We've encouraged our faculty.  
16 Interestingly enough, we also have a very  
17 active faculty committee for environmental  
18 purposes, which is why we're starting to see  
19 more and more faculty for both health and  
20 wellness, as well as environmental purposes,  
21 riding their bikes and walking to work, if  
22 they're within a reasonable proximity, and

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1 that's as far as two miles away. So we're  
2 starting to see a reduction.

3                   When we built the parking garage  
4 it was designed on the premise that we would  
5 want to adequately provide parking spaces for  
6 all our students and faculty so we didn't  
7 encumber the neighborhood. And the byproduct  
8 of that is as we've become more  
9 environmentally aware, we probably do have  
10 more parking spaces than we actually require,  
11 which is a benefit, so that we're off the  
12 streets when we do have events at the school.  
13 But it when it goes to the 275 kids who come  
14 to school by car with their parents, that does  
15 not mean 275 cars. It means about 125 cars,  
16 because we have a number of siblings and we  
17 have a number of carpools represented by those  
18 275 kids who travel back and forth. So it's  
19 somewhat misleading to say we have them all  
20 coming by their parents.

21                   The fundamental obstacle that  
22 schools have by and large is that we have kids

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1 who participate in a variety of after school  
2 activities that prevent their parents from  
3 feeling safe about the Metro. If you're  
4 leaving at 8:00 or 9:00 at night, it's a far  
5 different experience than if you're leaving at  
6 3:30 or 4:00. So those kids who tend to leave  
7 after school on time tend to take mass  
8 transit. Those who tend to stay late for  
9 activities, whether it's the theater or  
10 athletic events, tend to come in by car. But  
11 we're happy to work with DDOT in designing  
12 some strategies, any strategies that we could  
13 advance not only for GDS, but other schools in  
14 the alliance we'd be happy to see occur.

15 CHAIRPERSON MILLER: Okay. Thank  
16 you. And some of this is reflected in the  
17 TMP.

18 MS. LINDSAY: Right.

19 CHAIRPERSON MILLER: Okay.

20 Okay. Any questions?

21 Mr. Jennings, do you have any  
22 comments or concerns with what was just

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1                   testified to that's not being sufficient to  
2                   meet your concerns, or is that sufficient?

3                   MR. JENNINGS: No, but again I  
4                   didn't necessarily hear any kind of goals,  
5                   which, you know, I hope the Board can kind of  
6                   set into place with respect to actual student  
7                   population that will be participating in  
8                   SmartBenefits or those that will be  
9                   participating in a carpool program.

10                  CHAIRPERSON MILLER: I don't know  
11                  if it applies to this school, but I've heard  
12                  carpools are kind of tricky, at least for us,  
13                  to kind of mandate because there are a lot of  
14                  different issues with that.

15                  But I don't know if you have any  
16                  particular goals. With respect to the Metro,  
17                  you have the incentive in that you subsidize.

18                  MS. LINDSAY: Pretty heavily,  
19                  actually.

20                  CHAIRPERSON MILLER: Is there  
21                  anything else specific that you want to let  
22                  the Board know that you'll be doing? I mean,

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1 I've seen the Green School Alliance come up I  
2 think in another school case and I don't know  
3 whether it's like once a year you maybe  
4 formulate goals or you do something. I mean,  
5 is there something, you know, concrete? I  
6 think that's what Mr. Jennings was kind of  
7 looking for.

8 MS. LINDSAY: I think what we do  
9 is we examine shared resources and strategies  
10 across. There are currently approximately 45  
11 schools nationwide, many of whom, just like  
12 GDS, are in urban areas. And so I think our  
13 goal is to try and identify strategies on a  
14 whole host of environmental issues. Clearly,  
15 carpooling is one of the things that we have  
16 always promoted and we do have a lot of them  
17 at both campuses. The biggest thing is for  
18 most parents the time in the car is the only  
19 time their children are corralled and they can  
20 actually have conversations with them. So I  
21 think that that's the obstacle of trying to  
22 establish a goal. We'd like to see a 10

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1 percent reduction in the number of cars coming  
2 to the campus in any given year, but we can't  
3 predict how the parents are going to respond,  
4 since that's their private time with their  
5 kids. That's why we're reluctant to create  
6 mandates.

7 CHAIRPERSON MILLER: Okay. I  
8 guess I would just comment that I think all  
9 these goals are really laudable and they  
10 certainly go to, you know, improving the  
11 environment for neighboring properties. But  
12 with respect to the Board's role in zoning, I  
13 haven't heard any significant adverse impacts  
14 that would compel certain conditions to  
15 mitigate them, specifically here. I don't  
16 know. I just throw that out for comment too  
17 now as we proceed. I mean, we have this TMP,  
18 and I'm not sure -- Mr. Feola, maybe you can  
19 refresh my memory, or Ms. Monroe, but they're  
20 not Board conditions. And I don't remember  
21 whether they were attached to the Board's  
22 order. We don't usually do that, actually.

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1                   They probably were not, correct?

2                   MR. FEOLA: No, they were.

3                   CHAIRPERSON MILLER: They were  
4 attached to the order? Because we had a lot  
5 of conditions in that order.

6                   MR. FEOLA: Actually the  
7 Transportation Management Plan in BZA 17170,  
8 which was the 2004, is condition 10 and they  
9 were actually listed.

10                  CHAIRPERSON MILLER: Oh, we  
11 embodied them. Okay. I see. Okay.

12                  Now would you be proposing that  
13 these elements of the TMP be embodied in the  
14 order?

15                  MR. FEOLA: Yes.

16                  CHAIRPERSON MILLER: Okay. And  
17 the reason I ask, and then we just got this  
18 today, so I want to take a careful look at  
19 this also, but you know, when they're in the  
20 order, they don't change. And when they're  
21 outside of the order, they have a little bit  
22 more flexibility. But these are intended not

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1 to change, is that right?

2 MR. FEOLA: That's correct.

3 CHAIRPERSON MILLER: Okay. You  
4 could always add other things, I guess.

5 MR. FEOLA: Yes, I think the last  
6 condition we propose is that similar to what  
7 the Board required of Maret, that we would do  
8 an annual report with the ANC and DDoT. And  
9 I think what GDS anticipates that we will get  
10 some feedback on those goals and maybe some  
11 ideas to make things better. So that was the  
12 concept that we had. And if we needed to  
13 change, you know, we would work with the DDoT,  
14 ANC, and if necessary to come back to the BZA  
15 and say this one's not working. Let us try  
16 condition Y.

17 CHAIRPERSON MILLER: All right.

18 Are there any other questions related to the  
19 application before we take a look at the  
20 conditions? Anybody? Okay.

21 Well just dealing with this  
22 Transportation Management Plan, this would be

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1 to replace No. 10 in the previous order, is  
2 that correct?

3 MR. FEOLA: That was our  
4 suggestion, yes.

5 CHAIRPERSON MILLER: Okay.

6 Okay. While we look at this, you  
7 know, a couple of things, significant  
8 documents just came into us today while we  
9 were on the bench. This was something that  
10 the ANC voted on as well?

11 MR. FEOLA: Right.

12 CHAIRPERSON MILLER: Okay. You  
13 know, this kind of goes to my question I had  
14 before, and I don't want to nitpick at this  
15 necessarily because it was approved by the ANC  
16 as well, but you know, how are you going to  
17 encourage use of mass transit? It says  
18 faculty and staff will be encouraged to use  
19 mass transit. How are you going to do that?  
20 You have any ideas? Have you been doing that  
21 somehow? How do you encourage them?

22 MS. LINDSAY: It's interesting

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1 because it's done by the administration  
2 talking to the faculty, but it's also peer-to-  
3 peer pressure. And I think the fact that the  
4 school's been prepared to underwrite a subsidy  
5 to encourage people to take mass transit, and  
6 it was certainly in the fall when gasoline  
7 prices went up significantly that we started  
8 to see an enhanced number of riders, because  
9 it was getting cheaper to take mass transit.  
10 That hasn't tapered off and I suspect that  
11 over time as people become more comfortable  
12 with taking mass transit to school instead of  
13 driving to school, they're going to do it.  
14 And the more they talk to one another, the  
15 more likely that is to happen. So it's both  
16 funding them financially as well as the  
17 environmental faculty committee encouraging it  
18 from their peers.

19 CHAIRPERSON MILLER: You don't say  
20 in here that you're going to subsidize though,  
21 do you?

22 MS. LINDSAY: Yes.

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1 CHAIRPERSON MILLER: You do?

2 MS. LINDSAY: I think it is in  
3 there.

4 Right? Isn't it, Phil?

5 I think it is.

6 CHAIRPERSON MILLER: Oh, living  
7 beyond 15 miles. Okay. Okay. So it's peer  
8 pressure and subsidy?

9 MS. LINDSAY: Right.

10 CHAIRPERSON MILLER: Okay. Good.

11 Board Members have any other  
12 questions on this TMP before we move to other  
13 conditions?

14 I have a question with respect to  
15 -- Mr. Jennings brought up the point about  
16 bicycle racks.

17 MS. LINDSAY: For 50.

18 CHAIRPERSON MILLER: You have  
19 them?

20 MS. LINDSAY: Yes, for 50.

21 CHAIRPERSON MILLER: For 50?

22 MS. LINDSAY: Fifty bikes.

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1                   CHAIRPERSON MILLER: And how well  
2 used are they, do you know? Not today, I  
3 know.

4                   MS. LINDSAY: No, interestingly  
5 enough, when it's light out in the evening,  
6 students will also ride to school. When it  
7 gets dark, you know, earlier in the afternoon,  
8 the students don't ride, but the faculty still  
9 rides. So we've made accommodations in the  
10 parking garage for 50 different bike slots.

11                  CHAIRPERSON MILLER: And is that  
12 one of the figures you have, or you don't have  
13 yet, as to how many bike to school?

14                  MS. LINDSAY: We don't.

15                  CHAIRPERSON MILLER: Students and  
16 faculty.

17                  MS. LINDSAY: Statistically it  
18 varies from season-to-season, so it was hard  
19 for us to say, okay, exactly how many. In the  
20 dead of winter we still have about a dozen  
21 folks that are diehards that ride miles.

22                  CHAIRPERSON MILLER: And how do

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1                   you keep a record of it? Do you?

2                   MS. LINDSAY: Only by making the  
3                   racks available. And the fact of the matter  
4                   is in the morning you'll see, going to Iain's  
5                   point about the number of spaces that are  
6                   vacant that have been assigned to faculty and  
7                   students. You know, we have 40 to 50 spaces  
8                   that have been assigned that aren't being  
9                   used, so they're coming from some other method  
10                  to the school.

11                  CHAIRPERSON MILLER: Okay. And so  
12                  when you say that you'll be, you know, working  
13                  with DDoT, so if DDoT were to say, well, could  
14                  you tell us how many students and faculty  
15                  actually bike, you'd be willing to do that?

16                  MS. LINDSAY: Sure.

17                  CHAIRPERSON MILLER: Okay.

18                  MR. FEOLA: Yes, I don't think the  
19                  school has kept that kind of data and I think  
20                  part of the new reporting system would be to  
21                  keep that kind of data so it isn't as  
22                  haphazard or --

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1 MS. LINDSAY: Anecdotal?

2 MR. FEOLA: -- scientific as it  
3 may have been.

4 CHAIRPERSON MILLER: Okay. So  
5 that's not overly burdensome for the school to  
6 do. Okay.

7 MR. JENNINGS: Madam Chair, if it  
8 helps, one of the items that DDOT helps try  
9 and perform for work places in general, not  
10 necessarily this particular institution, but  
11 we have a contractor who actually goes in and  
12 they conduct a paper survey, and I think it's  
13 moving on line. But for the most part, you  
14 capture that internal number that I think that  
15 you're seeking. That's the type of thing that  
16 could be very helpful to us, too. Whereby if  
17 the institution is willing to conduct  
18 something similar to give us, you know, is 50  
19 bike spaces enough, I can honestly tell you  
20 with the amount of parking the institution has  
21 that they should perhaps have somewhere in the  
22 ballpark of 15 to 20 more bike parking spaces

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1 when you look at the number of vehicle parking  
2 spaces they currently have. Hope that helps.

3 CHAIRPERSON MILLER: I mean, it  
4 does, but I mean I think basically in our  
5 position it's kind of like, you know, where  
6 are we in this process and I guess I don't see  
7 that there are some severe -- well, there are  
8 adverse impacts right now related to the cars,  
9 whatever, that we have to impose, say for  
10 instance a certain goal upon them. Because  
11 what I see is that they seem to be  
12 environmentally conscience in working with  
13 this Green School Alliance and wanting to work  
14 with you so that they can set realistic goals  
15 and try to meet them. I don't if you're  
16 asking the Board to set goals right now, or  
17 you know, push them to give us a goal, because  
18 I'm not sure that they would be ready to do  
19 that.

20 Would you? I mean, for  
21 improvement. I think we're talking about  
22 improvement, basically. I'm not sure we're

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1 talking about like adverse impacts that we got  
2 to mitigate in this proceeding.

3 MR. FEOLA: I think our position  
4 is that this application, neither the existing  
5 school or population, nor the increase would  
6 have an adverse impact. What we perceive is  
7 making it better for not only for the  
8 intersections, but for the northwest part of  
9 Washington and the region. So I think that's  
10 how the school would characterize it.

11 CHAIRPERSON MILLER: And so that  
12 I'm clear, you know, what's on the table, they  
13 have a provision here, but you know, they have  
14 their TMP. One provision includes filing a  
15 report with DDOT every other year. Okay.

16 I just want to make sure, Mr.  
17 Jennings, if there's something that you want  
18 us to actually consider as a condition.

19 MR. JENNINGS: No, I think what's  
20 being discussed is very helpful right now and,  
21 you know, I'm merely just trying to provide,  
22 I think, food for thought as far as you going

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1 forward with whatever you may put in with the  
2 order.

3 CHAIRPERSON MILLER: Okay. All  
4 right. Let's go to -- and then we'll see  
5 what's left. Conditions. So I think that  
6 we're using the previous order's condition for  
7 the conditions that are going to be included,  
8 because it sounds like most of them, or many  
9 of them you all are suggesting be maintained.  
10 And so shall we identify though those that if  
11 any should not be carried over into this  
12 order? And I guess Office of Planning thought  
13 some. I don't know, Mr. Feola, though she was  
14 going to I think maybe defer to you first, if  
15 there was some related to construction.

16 MR. FEOLA: I mean, besides  
17 changing the numbers of the population cap,  
18 obviously and the faculty cap, the Board has  
19 recently been reluctant to receive reports  
20 about enrollment. Condition No. 5 of the 2004  
21 order requires the school to make a report to  
22 the BZA, and I know from other cases the Board

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1 has asked that to stop. The school has no  
2 problem making the report and we can make it  
3 to the Zoning Administrator or the ANC, or to  
4 whomever you want. But you may need to take  
5 a look at that.

6 CHAIRPERSON MILLER: Right. The  
7 Board does not want to receive those reports.  
8 But if the ANC does, they certainly should be  
9 served on the ANC.

10 MR. FEOLA: And we can continue to  
11 do that with just the ANC.

12 CHAIRPERSON MILLER: Okay. I  
13 don't think the Zoning Administrator has any  
14 reason to receive them as well. I don't know  
15 if you've heard otherwise.

16 MR. FEOLA: He doesn't want that.

17 CHAIRPERSON MILLER: Okay. Right.  
18 I mean, there's no purpose unless there's an  
19 issue brought before them. Okay. So that one  
20 will be changed to just serving on the ANC.  
21 But I don't see what they would be responding  
22 to. Is this not just a report that you would

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1       be serving on the ANC? There's no response  
2       that would be required.

3                    MR. FEOLA: Well, I think that  
4       because this was going also to the BZA that  
5       the BZA then gave the ANC an opportunity to  
6       weigh in.

7                    CHAIRPERSON MILLER: Okay.

8                    MR. FEOLA: But if you take the  
9       BZA out of the equation, they wouldn't be  
10      responding to it anyway.

11                  CHAIRPERSON MILLER: And is this  
12      something that's not redundant of anything in  
13      the voluntary agreement?

14                  MR. FEOLA: I don't remember.

15                  CHAIRPERSON MILLER: Okay. I  
16      don't know. I mean, I only ask it because the  
17      ANC is going to be receiving reports, right?

18                  MR. FEOLA: Right. Yes.

19                  CHAIRPERSON MILLER: Let's look at  
20      that.

21                  MR. FEOLA: So just going down, 6,  
22      7 and 8 are all still fine from the school's

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1 perspective. No. 9 is also acceptable. In  
2 fact, the neighbors that live on that side of  
3 the school want to make sure that that's still  
4 a requirement. No. 10 is the management plan  
5 we've talked about.

6 CHAIRPERSON MILLER: Okay. Just  
7 while we're there, No. 13 of the TMP talks  
8 about filing a report to the ANC and DDoT  
9 every other year on enrollment and staffing,  
10 and the school's performance related to the  
11 TMP. And so I'm just looking back at No. 5,  
12 which talks about enrollment. I guess it's a  
13 little bit more specific, compliance with the  
14 order.

15 MR. FEOLA: They added DDoT to the  
16 mix.

17 CHAIRPERSON MILLER: Would DDoT be  
18 appropriate here?

19 MR. FEOLA: I think for the --

20 CHAIRPERSON MILLER: This is every  
21 year, also.

22 MR. BARR: Madam Chair, we

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1 currently report to the ANC each fall and we  
2 provide them a copy of our directory so they  
3 can verify how many students and faculty we  
4 have on site.

5 CHAIRPERSON MILLER: Okay.

6 MR. BARR: Actually we do that  
7 every fall.

8 CHAIRPERSON MILLER: In accordance  
9 with No. 5?

10 MR. BARR: Yes, ma'am.

11 CHAIRPERSON MILLER: Okay. All  
12 right. I'm not sure that DDOT needs that.  
13 DDOT is getting No. 13 of the TMP.

14 Mr. Jennings, what do you say?

15 MR. JENNINGS: I think No. 13 is  
16 okay.

17 CHAIRPERSON MILLER: Fine? Okay.

18 Okay. It is a little bit redundant though.  
19 I know it's kind of late in the afternoon, but  
20 if we look at No. 5, it says at the beginning  
21 of each school year, which is what the school  
22 currently does, but in no event later than

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1       October 15th, the school shall provide --  
2       okay. We're going to nix out "Board" and  
3       "Zoning Administrator." We're just going to  
4       say provide to the ANC documentary evidence to  
5       demonstrate its enrollment figures in  
6       compliance with the terms and conditions of  
7       this order.

8                         Now it then goes on to say,  
9        "including the TMP."

10                        MR. FEOLA: Well, if you took the  
11        TMP out of there and just left it in No. 13  
12        with DDoT, so there would be a review of the  
13        TMP by DDoT and the ANC sort of separate from  
14        the enrollment, the TMP --

15                        CHAIRPERSON MILLER: Now if I  
16        recall in the Maret case that they didn't  
17        think it was a good idea to do it every year,  
18        that they really needed to do it every other  
19        year for it to be -- and that's why you have  
20        this every other year.

21                        MR. FEOLA: That's why we  
22        suggested every other year. And No. 13 of the

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1                   TMP.

2                   CHAIRPERSON MILLER: But what have  
3                   you been doing it with respect to GDS, though?  
4                   Have you been doing the TMP every year?

5                   MR. BARR: We do it every year  
6                   with the ANC.

7                   CHAIRPERSON MILLER: Okay.

8                   MR. BARR: I mean, either way is  
9                   fine with us.

10                  CHAIRPERSON MILLER: So you can do  
11                  it every year?

12                  MR. JENNINGS: We produce a  
13                  directory every year, so we're happy to make  
14                  the report anyway.

15                  CHAIRPERSON MILLER: Okay. Okay.  
16                  So then it would be very year that you'd get  
17                  -- DDoT might as well get it then, if you're  
18                  doing ANC, right? Any problems with that?

19                  MR. BARR: No.

20                  CHAIRPERSON MILLER: Okay. All  
21                  right. So we'll make it to the ANC and DDoT.  
22                  Okay.

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1                   Okay. So I think you would have  
2 to change the TMP also, okay? Because it's  
3 going to be incorporated in the order. Okay.

4                   What else? Where were we?

5                   MR. FEOLA: Eleven, I believe.

6                   CHAIRPERSON MILLER: Eleven,  
7 right.

8                   MR. FEOLA: Eleven and 12 are how  
9 the school operates now, so it's fine.

10                  CHAIRPERSON MILLER: Okay.

11                  MR. FEOLA: Thirteen the school  
12 does now, so it can continue. Likewise, 14  
13 and 15 are fine. Sixteen and 17, likewise,  
14 there's no lights on the field and the bell  
15 system is quiet. As Mr. Barr testified, No.  
16 18 is working. If it's not broke, let's not  
17 mess with it. No. 19 I think might be one  
18 that Ms. Brown-Roberts thought is no longer  
19 needed. The equipment's in place. It's not  
20 moving.

21                  CHAIRPERSON MILLER: Okay. So you  
22 don't anticipate any new mechanical units?

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1                   MR. FEOLA: We hope not.

2                   CHAIRPERSON MILLER: Okay. Well,

3 I would say --

4                   MR. FEOLA: They won't be  
5 relocated anyway. If they have to replaced,  
6 they're going to be replaced where they are  
7 now.

8                   CHAIRPERSON MILLER: Okay.

9                   MR. FEOLA: Which is away from the  
10 neighbors.

11                  CHAIRPERSON MILLER: Okay.

12                  MR. FEOLA: No. 20 is fine. I'm  
13 not sure what 21 does. I think 21 was a worry  
14 that the community had about the parking  
15 garage not being sufficient. And as you heard  
16 testified today, there really is more parking  
17 reservoir than is really needed.

18                  CHAIRPERSON MILLER: Okay. But  
19 there's not a reason to take it out of this  
20 next order.

21                  Okay. Let's just get the numbers  
22 issues resolved also. No. 1 would be the

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1 same. We've kind of skipped the first three.

2 No. 2, the enrollment is changing to 500?

3 MR. FEOLA: That would be our  
4 request.

5 CHAIRPERSON MILLER: Right. Okay.

6 And I just want to be clear about No. 3.

7 Mr. Dettman, were we looking at  
8 the parking regulation in order to assure  
9 compliance, or are we looking at that in order  
10 to put in a different number? They're asking  
11 for a maximum of 95 full-time equivalent  
12 faculty and staff members? No, I'm sorry.  
13 They're asking for 100?

14 MEMBER DETTMAN: Yes.

15 CHAIRPERSON MILLER: And then you  
16 and I were looking at 2118.3 about number of  
17 faculty and staff on site at a certain time.  
18 And I just want to make sure, does that come  
19 into this?

20 MEMBER DETTMAN: I don't think No.  
21 3 needs to be changed other than changing 95  
22 to 100.

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1 CHAIRPERSON MILLER: Okay.

2 MEMBER DETTMAN: As long as the  
3 100 wasn't used to calculate the number of  
4 parking provided, which we heard in the  
5 testimony that it wasn't. I think just  
6 changing that to 100 would be fine.

7 CHAIRPERSON MILLER: And if we  
8 just use this number, is there any way that  
9 they wouldn't have enough parking for the  
10 number of 100 FTEs?

11 MEMBER DETTMAN: Well, that's kind  
12 of the danger in couching it in terms of FTEs,  
13 because the regs really don't speak to FTEs at  
14 all. But No. 3 could say 100 FTEs. Whether  
15 or not that translates to 100 individuals or  
16 300 individuals, it doesn't really matter in  
17 terms of how that No. 3 is worded. We heard  
18 testimony that the number of individuals that  
19 that 100 FTEs translates into, I actually  
20 think we may have heard 90-some people, 93  
21 people. So they actually employ 93  
22 individuals, some full time, some part time.

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1       Using that number they have enough parking on  
2       site.

3                   CHAIRPERSON MILLER: Okay. Is  
4       there a number for the number of faculty and  
5       staff on site at one time, you know, assigned  
6       for a certain period at one time? Because  
7       that is the number this goes to.

8                   MS. LINDSAY: (Off microphone.)

9                   CHAIRPERSON MILLER: Yes, we want  
10      to get on the mike for this, get on record.

11                  MS. LINDSAY: I think that it is  
12       not likely that we would exceed 100 at the  
13       campus at any given point in time. Right now  
14       we have 85 or 86 who are full time, so even if  
15       we had 15 part-time, which is over double what  
16       we have, we would never have more than 100  
17       that would be, you know, employees of the high  
18       school at the campus at any one point in time.

19                  That's a tight ratio when you  
20       think of 500. It's five to one. So, I just  
21       don't see it going any differently.

22                  CHAIRPERSON MILLER: You have a

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1                   certain amount of parking spaces?

2                   MS. LINDSAY: Right, about 204,  
3 205, including the loading dock. Two-oh-three  
4 are fixed.

5                   CHAIRPERSON MILLER: I'm pretty  
6 sure that there's a formula by which you can  
7 determine how many faculty and staff can be on  
8 site at one time, and you're probably under  
9 it.

10                  MS. LINDSAY: Way under.

11                  CHAIRPERSON MILLER: Do you know  
12 what that equation is? We've done it for the  
13 other schools, because I think that's what the  
14 reg is trying to protect, you know. So, you  
15 know, you can break down part time into many  
16 different parts.

17                  MS. LINDSAY: Right.

18                  CHAIRPERSON MILLER: But as long  
19 as there are only a certain amount that are  
20 scheduled and can come to teach or whatever on  
21 site at one time, then you've got enough  
22 parking and that's all that the regs really

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1 care about.

2 MR. FEOLA: I think what you could  
3 do with condition No. 3 is just say 100  
4 faculty and staff as defined in Section 2118  
5 of the Zoning Regulations. And then it's up  
6 to the school to manage to that number. You  
7 know, if we have 25 part-time people, we're  
8 going to have to space them out and some in  
9 the morning, some at night, or whatever.

10 MEMBER DETTMAN: Madam Chair, I  
11 think that's a very good recommendation to  
12 change the wording of that, actually slightly  
13 different than what Mr. Feola recommended. It  
14 could change to say that the high school shall  
15 have a maximum of 100 faculty and staff on  
16 site at any one time. It's more in compliance  
17 with 2118. It gets away from referring to  
18 FTEs. The school can employ 600 people, but  
19 100 only on site at one time.

20 CHAIRPERSON MILLER: Okay. And  
21 that's fine with me. Is this 100 number, you  
22 know, fine with the school? It's fine with

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1 the equation here.

2 MR. FEOLA: Say yes.

3 CHAIRPERSON MILLER: I didn't do  
4 the math yet.

5 MR. FEOLA: Yes, Madam Chair.

6 MS. LINDSAY: Yes.

7 CHAIRPERSON MILLER: Okay.

8 Actually I need to -- Mr. Dettman, you did  
9 the math here.

10 MR. TURNBULL: I think that's more  
11 in the spirit of what we're trying to  
12 accomplish.

13 CHAIRPERSON MILLER: Right, that's  
14 what they mean.

15 MR. TURNBULL: Right.

16 CHAIRPERSON MILLER: Exactly. I  
17 just want to make sure that the 100 is a fine  
18 number.

19 MR. TURNBULL: I mean, unless they  
20 were a totally unscrupulous body --

21 MR. FEOLA: Oh, yes. With a  
22 student body of --

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1                   MR. TURNBULL: -- five part-time,  
2 you know?

3                   MEMBER DETTMAN: Yes, they exceed  
4 what they need.

5                   MEMBER OATES WALKER: I mean, just  
6 make sure though, I mean, because we don't  
7 want to create a situation here where you  
8 can't have all of your employees on site, you  
9 know, for certain --

10                  PARTICIPANT: (Off microphone.)

11                  MEMBER OATES WALKER: Exactly. So  
12 just think for a second about how many people  
13 you're going to have total at any one time,  
14 including your part-time people, your  
15 administrators and your full-time staff.

16                  MR. FEOLA: No, but you're talking  
17 about bringing in the lower school? I mean,  
18 that would be an event that's not -- they're  
19 not employed by the high school.

20                  CHAIRPERSON MILLER: It's means  
21 who's employed, yes.

22                  MS. LINDSAY: We have a total of

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1       215 employees of which 93 are at the high  
2       school. So from time-to-time we do in fact  
3       have all-school meetings where we bring the  
4       whole faculty and staff together because we  
5       want to go over some information. So, you  
6       know, I think what you hear me kind of doing  
7       over here is saying I think we are very  
8       comfortable living with 100 faculty employed  
9       and working at the high school. I'm very  
10      reluctant to have it at any given point in  
11      time no more than 100 GDS employees, because  
12      we do have these five or six occasions over  
13      the course of the year and we don't want to be  
14      out of compliance going to your point, Ms.  
15      Walker, about, you know, having an all-school  
16      meeting and have somebody say you're out of  
17      compliance with your zoning order. So however  
18      it's phrased, it's just that they are working  
19      and conducting business for the high school at  
20      any given point in time.

21                    MR. TURNBULL: Madam Chair, I  
22      think, you know, 1, 2 and 3 specifically

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1 mention the high school. I mean they  
2 specifically mention the high school, so I  
3 don't think we're jeopardizing the rest of the  
4 school from coming.

5 CHAIRPERSON MILLER: No, I don't  
6 think we're jeopardizing at all. I think  
7 we're talking about the high school. We're  
8 talking about who is hired to be teaching  
9 during certain periods, or who is hired to be,  
10 you know, staffing the kitchen at that period.  
11 But all I'm saying is that the one thing I  
12 think we're missing is -- and I think it's  
13 because you have an over abundance of parking  
14 anyway, I think there's a specific formula  
15 whereby we divide the number of parking spaces  
16 available by the number of people you can  
17 have. And what I hear you saying is though  
18 just say 100. I mean, we could. Or we could  
19 come up with what's the exact number that you  
20 could have. And the only thing is, I mean,  
21 you said you have 93, so a 100 is probably  
22 fine. But, you know, positions can break down

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1 into, you know, two part timers for one  
2 person. And so, you know, what if it came to  
3 101 and you actually had enough parking for,  
4 you know, that amount of people and we  
5 restrict you to 100? You're then in  
6 violation.

7 MEMBER DETTMAN: Well, Madam  
8 Chair, I think the best thing to do is to tie  
9 it as closely as we possibly can to 2118.3.  
10 And although I recommended saying on site at  
11 any one time, instead of that let's tie it to  
12 the word "employed." And so maybe something  
13 like, "The high school shall not employ more  
14 than 100 persons at any one time period during  
15 the day or night, inclusive of full-time and  
16 part-time people." I mean, to tie it as  
17 closely as possible to that and, you know,  
18 keeping condition No. 1 saying that these  
19 conditions apply to only the high school, it  
20 gets us around the infrequent occasion where  
21 you actually have your lower and middle school  
22 people on site for a meeting. Because 2118

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1                   speaks to the number of people employed.

2                   MEMBER OATES WALKER: And the only  
3                   reason that, you know, I paused was at some  
4                   point Mr. Barr made reference to  
5                   administrators, part-time faculty, full-time  
6                   faculty. I just want to make sure that you're  
7                   not forgetting your custodians, you're not  
8                   forgetting, you know, everybody that the  
9                   school employs. So as long as you're  
10                  comfortable --

11                  PARTICIPANT: (Off microphone.)

12                  MEMBER OATES WALKER: Oh, okay.

13                  MR. TURNBULL: Well, what about if  
14                  they hire a contractor to do painting? I  
15                  mean, let's not get ourselves into a bind here  
16                  over some words.

17                  CHAIRPERSON MILLER: Yes, this is  
18                  my impression, is that --

19                  MR. TURNBULL: Well, as long as  
20                  it's clear about your faculty and staff.

21                  CHAIRPERSON MILLER: Well, there's  
22                  a number that correlates with this regulation

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1       based on the number of parking spaces you  
2       have, right?

3                    MR. FEOLA: It's two spaces for  
4       every three faculty and staff.

5                    CHAIRPERSON MILLER: So, how many  
6       faculty and staff can you have based on that  
7       formula?

8                    MR. FEOLA: In that case, you  
9       know, for 100 we need 63 or whatever the  
10      number is, faculty. So if you went to 200, we  
11      would need 120 parking spaces, which I think  
12      we could accommodate. But we were trying to  
13      balance the program with -- we have so much  
14      parking that we could literally make a case  
15      that we could have a staff of 200 and park  
16      them under the Zoning Regulations, you know,  
17      quite frankly. Because we have a 203-space  
18      parking reservoir. So the school was just  
19      trying to get to a point where if they are  
20      able to add these 35 kids, they can get the  
21      kinds of teachers, the Chinese teacher and the  
22      whatever teachers they need to make up the gap

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1       in people. That's all.

2                   CHAIRPERSON MILLER: Okay. That's  
3       a big number, too.

4                   Okay. So, I mean, what we have  
5       done also in the past is we have come up with  
6       an FTE number and then we have put in a  
7       footnote something like what Mr. Feola is  
8       saying, that pursuant to this regulation that  
9       could not exceed whatever the number is. It's  
10      200 and whatever under the regulation.

11                  MR. FEOLA: Well actually, right  
12       now according to Mr. Banks' report, there are  
13       -- or to Kate's, there are 90 faculty/staff  
14       parking spaces. That would equate with that  
15       number of spaces to 134 faculty and staff.  
16       But again, that's way in excess of what the  
17       school really anticipates. I mean, that's  
18       what we could park. So the unusual dilemma is  
19       that we have a lot of parking, but we don't  
20       need that many parking spaces.

21                  CHAIRPERSON MILLER: All right.  
22       So the application was seeking 100 FTE faculty

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1 and staff. We could use that same figure  
2 which did go to the ANC and then footnote that  
3 in no event could that number exceed --  
4 because it can be broken down into different  
5 parts, the number -- I guess it would be 134;  
6 we can double check that though, that that  
7 complies with 2118.3. Rather than picking an  
8 arbitrary number of, you know, 100 on site,  
9 when why are we doing that if the regulations  
10 allow more?

11 MEMBER DETTMAN: I think that  
12 sticking with the 100 persons is a good way to  
13 go about it. I think that actually you could  
14 just have condition No. 3 be worded saying,  
15 "The high school shall not employ more than  
16 100 persons, including full and part time at  
17 any one period." And then use that number  
18 also to calculate your faculty and staff  
19 numbers.

20 CHAIRPERSON MILLER: Well, I  
21 wouldn't be in favor of that. I mean, I think  
22 that that disallows division of positions

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1 into part time, which why would we do that?  
2 If we limit it to 100 persons instead of --  
3 that's the whole point of the FTE  
4 characterization. I think it allows for, you  
5 know, job sharing and things like that. I  
6 mean, I'm proposing to put in that 100 number,  
7 because that's what they're asking for, but  
8 its in FTE form, which means it can be  
9 divisible, but then to limit the divisibility  
10 of it by calculating the number that's allowed  
11 by 2118.3, unless we have reason to restrict  
12 it further. I don't see why we would really  
13 -- I mean, it sounds like a big number, but so  
14 you might not reach it. You probably will  
15 never reach it. But you have a lot of  
16 parking. If the regulations allowed you to  
17 have, you know, more job sharing.

18 Do you have a concern with that?

19 MEMBER DETTMAN: No, I do  
20 understand what you're saying. What I read  
21 makes it sound like they can only employ 100  
22 people as opposed to 100 FTEs, that they could

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1 have multiple part-time people. Which is why  
2 I originally suggested that we couch it in  
3 terms of number of people on site at any one  
4 time. The problem is is that when they  
5 combine their staffs for meetings, that's when  
6 we run into the problem. We could go back to  
7 my original suggestion, 100 people at any one  
8 time, but make a note about this infrequent  
9 occasion where they have to combine staffs.

10 CHAIRPERSON MILLER: So let me ask  
11 them. When you have to combine staffs, you  
12 don't exceed your parking? Do you have more  
13 than 134 faculty and staff?

14 MR. BARR: We have 203 parking  
15 spaces. Combined faculty is under that  
16 number.

17 What's our combined? It's like a  
18 hundred-and --

19 MS. LINDSAY: Total faculty that  
20 get together is about 167, so we're under.  
21 The total employees are 215, and frankly many  
22 of them will carpool up together or we run a

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1 shuttle up with a bus.

2 MR. FEOLA: I think Mr. Turnbull  
3 had the answer, is if you restrict this to  
4 high school faculty and staff, you're not  
5 incorporating the lower school people that may  
6 come here for a meeting.

7 CHAIRPERSON MILLER: Oh, right.  
8 They're like visitors?

9 MR. FEOLA: Right, they'd be like  
10 visitors.

11 CHAIRPERSON MILLER: Yes. Okay.  
12 Right. Okay. Okay. Good.

13 All right. I think we're gone  
14 through the conditions, unless are there any  
15 other proposed conditions? Okay.

16 Is that clear?

17 MR. FEOLA: I think so.

18 CHAIRPERSON MILLER: I think we've  
19 ended up with what you have proposed but with  
20 a footnote that I suggested to comply with the  
21 regulations so that it's not an ad infinitum  
22 division of FTEs. Okay.

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1                   And then the other thing that we  
2 did was amend that TMP provision to make  
3 reports on the TMP every year to go along with  
4 the provision that was in the previous order  
5 and which the school has been abiding by.

6                   Okay.

7                   Any other concerns or  
8 clarifications? All right.

9                   I think then we might be ready to  
10 deliberate on this.

11                  Okay. I would move approval of  
12 application No. 17868 of Georgetown Day School  
13 pursuant to 11 DCMR Section 3104.1 for a  
14 special exception to allow an increase in the  
15 student enrollment cap from 465 to 500, and to  
16 increase the number of faculty and staff FTEs  
17 from 95 to 100, for an existing private school  
18 under Section 206 at premises 4200 Davenport  
19 Street, N.W., as conditioned.

20                  Do I have a second?

21                  VICE-CHAIRPERSON LOUD: Second,  
22 Madam Chair.

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1 CHAIRPERSON MILLER: Okay. One

2 second. Okay. And I don't think we need to  
3 belabor this too much, but this comes in under  
4 Section 206 and we're looking to see whether  
5 or not this increase in faculty and staff and  
6 student enrollment is not likely to become  
7 objectionable to adjoining and nearby property  
8 because of noise, traffic, number of students  
9 or otherwise objectionable conditions. And  
10 whether there is ample parking space, but not  
11 less than that required in Chapter 21 of this  
12 Title to accommodate students, teachers and  
13 visitors likely to come to the site by  
14 automobile.

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1 ANC is in support. There have been no  
2 complaints with respect to any adverse impacts  
3 from the operation of the school. DDoT  
4 presented some concerns with respect to I'd  
5 say -- well, the impact and improving the  
6 impact of environmental considerations on the  
7 neighboring property. And the applicant did  
8 make some changes in its TMP to address those  
9 concerns, to increase Metro ridership among  
10 the faculty and staff and students, and to  
11 encourage carpooling. And it has agreed to  
12 work with DDoT and submit reports to DDoT and  
13 the ANC every year with respect to progress on  
14 that front. And it is also a member of the  
15 Green School Alliance which encourages and  
16 works with schools to implement in  
17 environmentally positive sound measures.

18 So, in my view this school does  
19 meet the criteria of 206. There aren't  
20 adverse impacts associated with this increase,  
21 they have way more parking than is required  
22 and the increases are fairly marginal.

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1 || So, others?

2 VICE-CHAIRPERSON LOUD: Madam

3 Chair, thank you. I think that was an  
4 excellent summary of the evidence and the  
5 testimony today.

I just have one really brief postscript. I support the application fully, the conditions that we discussed without reservation. Just from this Board Member's individual perspective, I wanted to be really clear that when we talked about condition No. 5/13 about the enrollment figures, at least I as an individual Board Member, and this is only a postscript, am not contemplating a requirement from the BZA to provide actual directories every year. I understand the reason for doing it, but particularly given that a lot of minors are identified in the directory, that the decision about what to provide annually I think the school is making. We're simply saying that enrollment figures should be provided and the school is saying in

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1 the past they've done that through  
2 directories. And I think it makes sense from  
3 an efficiency standpoint to do that, but I  
4 don't think the Government ought to be saying  
5 anyone should interpret it as us saying that  
6 directories should be provided with address  
7 information, name information and the like.

8 CHAIRPERSON MILLER: Thank you.

9 Any other comments? Okay.

10 Then there's a motion that's been  
11 motioned, and the application that's been  
12 conditioned. and it's been seconded.

13 All those in favor, say aye.

14 ALL: Aye.

15 CHAIRPERSON MILLER: Those  
16 opposed?

17 All those abstaining?

18 And would you call the vote,  
19 please?

20 MS. BAILEY: Madam Chair, the vote  
21 is recorded as 5-0-0 to grant the application.  
22 Mrs. Miller made the motion; Mr. Loud

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1           seconded. Mr. Turnbull, Mrs. Walker and Mr.  
2           Dettman support the motion and it's granted  
3           with conditions as identified.

4                   And summary order?

5                   CHAIRPERSON MILLER: Yes, there's  
6           no party in opposition. This will be a  
7           summary order.

8                   MS. BAILEY: Thank you.

9                   CHAIRPERSON MILLER: Okay. Thank  
10           you very much.

11                  MS. LINDSAY: Thank you.

12                  MR. BARR: Thank you very much.

13                  (Whereupon, the hearing was  
14           concluded at 4:50 p.m.)

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