

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

NOVEMBER 13, 2012

+ + + + +

The Regular Public Hearing convened
in the Jerrily R. Kress Memorial Hearing Room
220 South at 441 4th Street, N.W., Washington,
D.C. 20001, pursuant to notice at 9:48 a.m.,
Lloyd J. Jordan, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

PAUL GOLDSTEIN
ARTHUR JACKSON
STEPHEN MORDFIN
KAREN THOMAS
ELISA VITALE
STEPHEN GYOR

This transcript constitutes the minutes from the Regular Public Hearing held on November 13, 2012.

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

2 9:48 a.m.

3 CHAIRMAN JORDAN: Good morning.

4 Would the hearing please come to order?

5 We are located in the Jerrily R.
6 Kress Memorial Hearing Room at 441 4th Street,
7 N.W.

8 Today's date is November 13, 2012.

9 We are here for the Public Hearing of the Board
10 of Zoning Adjustment of the District of
11 Columbia.

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

17 Please be advised that this
18 proceeding is being recorded by a court reporter
19 and also being webcast live. Therefore, I'm
20 going to ask that you refrain from any disruptive
21 noises in the hearing room.

22 The Board's hearing procedures are

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1 in a pamphlet by the door. Please familiarize
2 yourself with our process.

3 All those who are here to testify
4 in a case today, please, stand and take the oath
5 or affirmation by the Board's secretary.

6 (Whereupon, witnesses were sworn.)

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

9 CHAIRMAN JORDAN: Mr. Moy, do we
10 have any preliminary matters?

11 MR. MOY: Nothing major as of the
12 moment, but if we do, we should entertain those
13 as I call the case, Mr. Chairman.

14 CHAIRMAN JORDAN: Okay. Well,
15 it's on you.

16 MR. MOY: Good morning, Mr.
17 Chairman, Members of the Board. The first
18 application before the Board of Zoning
19 Adjustment is Application No. 18444. This is
20 the application of Michael and Jennifer
21 Schaeffer Miller, pursuant to 11 DCMR 3104.1.

22 This is for a special exception for

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1 a rear addition to an existing one-family
2 detached dwelling under ' 223, not meeting the
3 lot occupancy requirements under ' 403, rear
4 yard ' 404, and nonconforming structure
5 requirements under subsection 2001.3. This is
6 in the R-1-B District at premises 5041 Glenbrook
7 Terrace, N.W., property located in Square 1432,
8 Lot 38.

9 CHAIRMAN JORDAN: Would the party
10 and persons involved with 18444, please, come
11 to the witness table, please? Good morning.
12 Would you identify yourselves, please?

13 Do me a favor, I need you to scoot
14 up and make sure that that green button is on
15 bright green and talk into the microphone.
16 How's that -- you're not -- is it pushed?

17 MS. MILLER: Now, it's on.

18 CHAIRMAN JORDAN: Okay. There you
19 go.

20 MS. MILLER: Excuse me. I'm sorry.
21 Hello. I'm Jennifer Miller. I'm the
22 homeowner.

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1 MR. HARPOLE: And I'm Jerry
2 Harpole. I'm the architect.

3 CHAIRMAN JORDAN: Okay. Did you
4 provide or did you complete two witness cards
5 and give them to the court reporter? I need
6 you to complete two witness cards after we
7 proceed. Let's do that and give them to the
8 court reporter.

9 Anyone who is going to testify,
10 please, complete two witness cards and I need
11 you to -- each person needs to complete two
12 witness cards. Anyone who is going to testify
13 and, please, hand those to the court reporter
14 prior to testifying.

15 Okay. We have here a special
16 exception for a rear addition. It appears that
17 the record and file is very complete and that
18 the Board believes that there is enough here
19 to grant the relief.

20 However, I need to ask a question
21 prior to proceeding.

22 In the ANC support letter it

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1 requested you to get signatures from some
2 neighbors. Did you have the occasion to do
3 that?

4 MS. MILLER: Yes.

5 CHAIRMAN JORDAN: And did you get
6 the signatures?

7 MS. MILLER: Yes.

8 CHAIRMAN JORDAN: And how many do
9 you have?

10 MS. MILLER: I have the list here.

11 MR. HARPOLE: Three, four, five,
12 six, seven, eight.

13 CHAIRMAN JORDAN: What kind of list
14 do you have? Because we don't have that in our
15 record.

16 MR. HARPOLE: It was delivered.

17 CHAIRMAN JORDAN: Do you have it
18 stamped? A file stamp copy? When you say
19 delivered, it was delivered to whom?

20 MR. HARPOLE: It went to the ANC and
21 then the ANC -- we got a letter from them that
22 they confirmed that they gave it to BZA.

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1 CHAIRMAN JORDAN: It's not their
2 responsibility to give that to the BZA. It's
3 your responsibility to file it with us. And
4 we do have that? Okay.

5 MR. HARPOLE: We checked. They
6 said it was in the file.

7 CHAIRMAN JORDAN: Very good. All
8 right. I do see it. But with that, you have
9 the opportunity to do a presentation to the Board
10 in support of your application. We don't
11 believe that it is necessary, at this point.
12 We believe that your file is very complete.

13 MR. HARPOLE: Good.

14 CHAIRMAN JORDAN: Again, you have
15 a right to do a presentation. As I always warn
16 people, sometimes you talk yourself into
17 trouble.

18 MR. HARPOLE: We accept.

19 CHAIRMAN JORDAN: Okay. So you
20 have the right to waive this particular portion
21 of the testimony. And then I would then turn
22 to Office of Planning to see if there is anything

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1 in addition that they need to supplement their
2 report with.

3 MS. VITALE: Good morning, Mr.
4 Chair and Members of the Board. For the record,
5 Elisa Vitale with the Office of Planning.

6 Office of Planning recommends
7 approval of the 223 relief requested. We will
8 rest on the record. Thank you very much.

9 CHAIRMAN JORDAN: Thank you. Does
10 the Board have any questions for Office of
11 Planning?

12 Does the applicant have any
13 questions for Office of Planning?

14 MR. HARPOLE: Nothing.

15 CHAIRMAN JORDAN: Do we have a DOT
16 report? And is DOT here? Yes, they recommend
17 they have no objection, yes. Well, we can't
18 ask them questions. They are not here, but we
19 don't have any questions for them anyway.

20 Is there anyone here from ANC-3D?
21 We do have a letter of support, which we will
22 give great weight to where the ANC voted 6-2-0

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1 in support of the application.

2 Is there anyone in the audience who
3 is here to testify in support of this
4 application?

5 Is there anyone here in the audience
6 who wishes to testify in opposition to the
7 application?

8 Good. Then, at this point, we
9 normally turn back to the applicant for rebuttal
10 or closing, but I think there is nothing for
11 you to rebut, so then we would close this
12 hearing, based upon what is on the record. It's
13 already filed with us and the Board is ready
14 to deliberate.

15 I would move that we grant the
16 special exception relief requested for the rear
17 addition under this application.

18 VICE CHAIR SORG: Second.

19 CHAIRMAN JORDAN: Motion made and
20 seconded. Any unreadiness?

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

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1 ALL: Aye.

2 CHAIRMAN JORDAN: Those opposed
3 nay? The motion carries. Mr. Moy?

4 MR. MOY: Staff would record the
5 vote as 4-0-1. This is on the motion of Chairman
6 Jordan to approve the application for a special
7 exception relief not meeting the -- for special
8 exception 223 not meeting the lot occupancy,
9 rear yard, nonconforming structure provisions.
10 Seconding the motion Vice Chairperson Sorg.
11 Also in support of the motion Mr. Hood and Mr.
12 Hinkle. No other Board Members participating.

13 So again, the final vote is 4-0-1.
14 The motion carries, Mr. Chairman.

15 CHAIRMAN JORDAN: Okay. Thank
16 you, Mr. Moy. Then we can have a summary order.

17 MR. MOY: Thank you, sir.

18 CHAIRMAN JORDAN: Thank you.

19 MS. MILLER: Thank you.

20 MR. HARPOLE: Thank you.

21 MR. MOY: The next application
22 before the Board is Application No. 18440. And

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1 as advertised, this is the application of Daniel
2 N. Howard, Jr., pursuant to 11 DCMR 3104.1, for
3 a special exception to allow a dental office
4 as a home occupation with three employees
5 occupying the first floor under subsection
6 202.2(c) in the R-3 District at premises 641
7 G Street, N.W. or rather S.W., property located
8 in Square 467, Lot 212.

9 CHAIRMAN JORDAN: Very good. Good
10 morning.

11 DR. HOWARD: Morning.

12 CHAIRMAN JORDAN: Would you,
13 please, identify yourself, first, please?

14 DR. HOWARD: I'm Dr. Daniel Howard.

15 CHAIRMAN JORDAN: Thank you.
16 There has been a couple of different ways to
17 handle the relief that is necessary for your
18 application. I think, initially, you applied
19 under 202, which required a variance and I think
20 we have the Zoning Administrator's referral
21 letter requesting a variance for it.

22 The other thing is that you do

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1 qualify, potentially qualify, under 203.4. But
2 we believe that the record is full regarding
3 the necessity to complete and approve a variance
4 under 202.

5 Let me do this. I don't know if
6 Office of Planning has had a chance to weigh
7 in. I would rather do that before I come back
8 to you to see if there are any issues that Office
9 of Planning is having before we go forward.

10 MR. GOLDSTEIN: Sure. Good
11 morning, Mr. Chairman, Members of the Board.
12 The case was originally referred by the Zoning
13 Administrator as a special exception under the
14 accessory use provisions of 202.

15 That unfortunately did not seem to
16 be accurate. It would need a variance. And
17 that has been updated in just a recent referral
18 letter from the Zoning Administrator.

19 We also looked at 203 as you
20 referenced home occupation provisions. There
21 are some overlapping requirements. This type
22 of use could be evaluated under either section.

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1 It was our interpretation that that might
2 actually require more zoning relief, rather than
3 less, a variance and special exception possibly.

4 That might be -- it's kind of an
5 in-the-weeds interpretative issue, but I'm
6 happy to go into that interpretation if the Board
7 would like.

8 CHAIRMAN JORDAN: Okay. Good. So
9 is OP in support, at this point?

10 MR. GOLDSTEIN: We are in support
11 of the relief as it is requested, which is the
12 variance relief under the accessory use.

13 CHAIRMAN JORDAN: Okay. Then we
14 are all on the same page then.

15 We believe that the record in this
16 case is pretty full and that it would lead us
17 to grant the request that you have made for
18 variance relief under 202.

19 You have the opportunity -- does the
20 Board have any questions that they need to ask
21 of this applicant?

22 Then you have the opportunity to do

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1 a presentation to the Board, but we don't believe
2 it is necessary. So you could just waive that
3 portion, as you may have heard me earlier say
4 people sometimes talk themselves into trouble.

5 But it's up to you whether or not
6 you want to make a presentation or stand on the
7 record.

8 DR. HOWARD: No, I'm fine.

9 CHAIRMAN JORDAN: Okay.

10 DR. HOWARD: I don't need to if it's
11 not, you know, necessary.

12 CHAIRMAN JORDAN: Okay. And we
13 just had Office of Planning, we're okay with
14 your recommendation. There is nothing else you
15 need to add, I assume?

16 MR. GOLDSTEIN: No, there is
17 nothing else I need to add. Thank you.

18 CHAIRMAN JORDAN: And we do have--
19 is there anyone here from the Department of
20 Transportation? We do have a letter of no
21 objection to the requested relief from the
22 Department of Transportation.

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1 And we do have a letter in the file
2 from ANC-6D in support of your application.
3 Is there anyone here from ANC-6D? We do have
4 a letter that supports your application from
5 ANC-6D.

6 Is there anyone in the audience who
7 wishes to testify in support of this
8 application? Anyone who wants to testify in
9 support?

10 Anyone here to testify in opposition
11 to the application?

12 Seeing that, we would turn back to
13 you to do a rebuttal and closing, but I think
14 we could save you that effort and we will just
15 close this hearing on the record filed.

16 And I would move that the Board grant
17 the relief requested under 202 variance.

18 MR. HOOD: Second.

19 CHAIRMAN JORDAN: Motion made and
20 seconded. Any unreadiness?

21 All those in favor signify by saying
22 aye.

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1 ALL: Aye.

2 CHAIRMAN JORDAN: Those opposed
3 nay? The motion carries. Mr. Moy?

4 MR. MOY: Staff would record the
5 vote as 4-0-1. This is on the motion of
6 Chairperson Jordan to approve the application
7 from variance relief under ' 202. Seconding
8 the motion Mr. Hood. Also in support of the
9 motion Ms. Sorg, Vice Chairperson Sorg, and Mr.
10 Hinkle. No other Board Members participating.

11 So again, the final vote is 4-0-1.
12 The motion carries, Mr. Chairman.

13 CHAIRMAN JORDAN: Mr. Moy, just to
14 add to the record that I approve the acceptance
15 of late filings for the case, for all the late
16 filings. Thank you.

17 MR. MOY: Yes, sir.

18 CHAIRMAN JORDAN: All right.
19 Thank you very much.

20 DR. HOWARD: Thank you.

21 MR. MOY: The next application
22 before the Board is Application No. 18441. This

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1 is the application of SeVerne, LLC, pursuant
2 to 11 DCMR 3104.1, for a special exception under
3 subsection 2116.5 to allow a portion of the
4 required off-street parking spaces for the
5 property located in the C-2-A/ C -- let me repeat
6 that. C-2-A/C-2-C District at premises 1001
7 1st Street, N.W., 88 through 98 L Street, N.W.,
8 property in Square 621, Lot 861, to be located
9 to the immediate south of the subject property
10 at premises 43 K Street, N.W., property located
11 in Square 621, Lot 862.

12 CHAIRMAN JORDAN: Good morning.

13 MR. FREEMAN: Good morning.

14 CHAIRMAN JORDAN: Would you,
15 please, identify yourself for us, please.

16 MR. FREEMAN: My name is Kyrus
17 Freeman. I'm an attorney with the Law Firm of
18 Holland & Knight here on behalf of the applicant.

19 MS. ASKEW: My name is Elizabeth
20 Askew. I'm a development manager with Mission
21 First Housing Development Corporation and we
22 are a development partner of Golden Rule

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1 Apartments, Inc.

2 CHAIRMAN JORDAN: And did you
3 complete a witness card?

4 MS. ASKEW: Yes.

5 CHAIRMAN JORDAN: Thank you. And
6 did all the swearing in and all that stuff?

7 MS. ASKEW: Yes, I was here.

8 CHAIRMAN JORDAN: Thank you. I
9 believe we have some preliminary matters that
10 we need to discuss before we go forward, Mr.
11 Freeman.

12 We don't have a request for special
13 exception for the parking lot owner, for the
14 off-site parking lot owner.

15 Have you -- are you aware of that
16 or do you have a view that you think it is needed
17 or not needed?

18 MR. FREEMAN: So I have done a
19 couple of these cases, the special exceptions,
20 to allow a portion of the required parking
21 spaces to be located on a different lot.

22 I have never, and I have some of

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1 those orders here, had -- the lot, be if you
2 will, has never had to get any type of relief.

3 And I have a couple of those cases there that
4 I have done. The most recent one of which was
5 June of 2001, so that would be --

6 CHAIRMAN JORDAN: That's for a
7 special exception?

8 MR. FREEMAN: -- a new -- yes. It
9 is under the section that we are under, 2116.5.
10 So that would be --

11 CHAIRMAN JORDAN: Can you give me
12 the case number, please?

13 MR. FREEMAN: I have copies of them.

14 CHAIRMAN JORDAN: Okay.

15 MR. FREEMAN: 18224, Curtis
16 Properties, a similar situation. That's a case
17 in which we were getting a special exception
18 to reduce our required -- to locate some of our
19 required parking spaces on another lot.

20 And then we have 17668, which is a
21 Latin American Youth Center. The same thing,
22 we were moving some of our required parking

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1 spaces to another lot. So we have -- I have--
2 we have never had to have the other lot ask for
3 special exception relief.

4 And I can submit these.

5 CHAIRMAN JORDAN: Yes, would you,
6 please?

7 MR. FREEMAN: So that's number one.

8 Secondly, the owner of the second lot or the
9 second lot, we have a letter of support from
10 them. And I can submit these as well. The
11 owner of that lot's legal name is Golden Rule
12 Apartments, Inc.

13 CHAIRMAN JORDAN: That's Lot B?

14 MR. FREEMAN: Lot B, if you will,
15 yes. I have a letter of support from the owner
16 of Lot B. And if necessary, we can -- we are
17 happy to add them as a co-applicant, such that
18 the applicant in this case would be SeVerne,
19 LLC and Golden Rule Apartments.

20 CHAIRMAN JORDAN: An authorization
21 letter that you have from them from Golden Rule
22 is --

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1 MR. FREEMAN: I can give that to
2 you. So one is -- in terms of precedent and
3 prior cases, I think the way that the case has
4 been filed and captioned is accurate. But to
5 the extent there is any reluctance, we have the
6 support of owner B and their authorization to
7 be included in the application.

8 CHAIRMAN JORDAN: Let's make sure
9 that we are consistent. You know, one of the
10 things I have been trying to do since being Chair
11 is make sure that we are consistent in our
12 application of the regulations.

13 So to build some type of ability for
14 those who need to get various relief in doing
15 -- where we are, what we are thinking and what
16 the precedents very well may be, I think this
17 is the issue where we are kind of six in one
18 hand and half a dozen on the other and we have
19 not been as consistent as we probably should
20 have.

21 And I think there is some legal
22 arguments both ways. But let's move forward

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1 in this way. I would offer this to the Board.

2 Is that we will not require the other -- the
3 receiving lot, Lot B, to be required to the
4 special exception, as long as the applicant has
5 a letter of authorization or agreement or
6 approval from Lot B that they will be -- that
7 they are okay with this.

8 And I think that will move us
9 forward. And I think that's some of -- like
10 I said, we have cases that we have handled in
11 that same light.

12 So let's move forward, Mr. Freeman,
13 as is. We accept your letter of the permission,
14 accept it for the record.

15 And then let's move forward to
16 reviewing this case for the special exception
17 to allow a portion of the required off-street
18 parking spaces, 10 of the 30 spaces, to be
19 located on another lot.

20 I believe the record in this case
21 is pretty full, that would lead to you receiving
22 the relief requested.

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1 I'm going to turn to the Board and
2 see if they have any questions about this
3 application.

4 I'm seeing heads shaking, I think
5 that means no.

6 So again, you are familiar with our
7 procedures, Mr. Freeman, seeing that you are
8 here every day. And you have the right to do
9 a presentation and/or to waive.

10 MR. FREEMAN: We are happy to rest
11 on the record. Thank you.

12 CHAIRMAN JORDAN: Then we will turn
13 to Office of Planning to see if there is anything
14 in addition they need to add to their report.

15 MR. MORDFIN: Good morning, Chair,
16 Members of the Board. I'm Stephen Mordfin.
17 And the Office of Planning rests on the record.

18 CHAIRMAN JORDAN: Thank you.
19 Anyone here from the Department of
20 Transportation? We do have a letter of no
21 objection from the Department of
22 Transportation, which in Department of

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1 Transportation speak is they support the
2 application.

3 Is there anyone here from ANC-6C?

4 We do have a letter that we give great weight
5 to from ANC-6C, which recommends approval of
6 this application.

7 Is there anyone in the audience in
8 support of this application wishing to testify?

9 Is there anyone in support wishing to testify?

10 Anyone in opposition wishing to
11 testify? Anyone in opposition?

12 Then we would normally turn back to
13 you, Mr. Freeman, but I know you don't have
14 anything to say.

15 And so then we will close the record
16 in this case.

17 Then I would move that we grant the
18 special exception relief requested by the
19 applicant.

20 VICE CHAIR SORG: Second.

21 CHAIRMAN JORDAN: Motion made and
22 seconded.

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1 All those in favor signify by saying
2 aye.

3 ALL: Aye.

4 CHAIRMAN JORDAN: Those opposed
5 nay? The motion carries. Mr. Moy?

6 MR. MOY: Yes, sir. The staff
7 would record the vote as 4-0-1. This is on the
8 motion of Chairman Jordan to approve the
9 application for special exception relief.
10 Seconding the motion is Vice Chair Sorg. Also
11 in support of the motion Mr. Hood and Mr. Hinkle.
12 No other Board Members participating.

13 So again, the final vote is 4-0-1.
14 The motion carries, Mr. Chairman.

15 CHAIRMAN JORDAN: Summary order.
16 I know that's what you are looking for.

17 MR. FREEMAN: Yes, thank you.

18 CHAIRMAN JORDAN: You just kind of
19 looked at me like what is he doing? Give me
20 the summary order. A summary order, please.

21 MR. MOY: Thank you, sir.

22 CHAIRMAN JORDAN: Thank you, Mr.

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1 Freeman. And we appreciate the application and
2 how you put these things together for us. It
3 makes our job easier.

4 MR. FREEMAN: I try. Thank you.

5 CHAIRMAN JORDAN: You tried to
6 throw us a little bit for the loop, but we
7 appreciate it.

8 MR. MOY: The next application
9 before the Board is Application No. 18445. This
10 is the application of Ana Maria Lora-Garcia,
11 pursuant to 11 DCMR 3104.1. This is for a
12 special exception for a child development
13 center. This is 12 children and two teachers
14 under ' 205. This is in the R-1-B District at
15 premises 1353 Tuckerman Street, N.W. The
16 property is located in Square 2786, Lot 106.

17 CHAIRMAN JORDAN: Let's play ball.
18 Case 18445. First, let me ask, was everyone
19 here for taking the oath and raised your hand
20 and all that? And did we complete two witness
21 cards and give them to the court reporter?

22 I'm seeing -- okay. Then those who

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1 have not been sworn in, please, stand and be
2 sworn in. And anyone who is going to testify
3 in this case in support or in opposition be sure
4 that you -- if you didn't do it earlier, please,
5 stand and take the oath or affirmation from the
6 Board's secretary and then complete two witness
7 cards and give them to the court reporter to
8 my right.

9 (Whereupon, witnesses were sworn.)

10 MR. MOY: Thank you. You may be
11 seated.

12 CHAIRMAN JORDAN: Will you, please,
13 identify yourselves, please? Please, be sure
14 that your microphone is turned on.

15 MR. ZEIGLER: Sorry. Jason
16 Zeigler for the applicants, Ana Maria
17 Lora-Garcia, Jose Antezana and --

18 CHAIRMAN JORDAN: And let me ask
19 you, Mr. Zeigler, you are what in regards to
20 this application?

21 MR. ZEIGLER: Pro bono counsel.

22 CHAIRMAN JORDAN: Pro bono counsel.

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1 And you are licensed here in the District of
2 Columbia?

3 MR. ZEIGLER: Yes.

4 CHAIRMAN JORDAN: And I don't have
5 an authorization letter from the applicant from
6 you in this matter.

7 MR. ZEIGLER: Okay. I believe one
8 was submitted with the application.

9 MR. ANTEZANA: I am the owner of the
10 house.

11 CHAIRMAN JORDAN: Please, make sure
12 your microphone is on. Please, identify
13 yourself.

14 MR. ANTEZANA: Okay. My name is
15 Jose Antezana. And I am the owner of the house.
16 Ms. Lora is the director of the Little Green
17 Nest. And we didn't make the authorization
18 letter, but we are authorizing Mr. Jason Zeigler
19 to represent us.

20 CHAIRMAN JORDAN: Okay. For the
21 file, I want you to follow-up and submit an
22 authorization letter.

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1 MR. ZEIGLER: We will.

2 CHAIRMAN JORDAN: And we will
3 accept. Mr. Antezana, you're the owner of the
4 property?

5 MR. ANTEZANA: Yes.

6 CHAIRMAN JORDAN: Okay. All
7 right. Please continue identification.

8 MR. ZEIGLER: And Cory Mengual is
9 a witness and he --

10 CHAIRMAN JORDAN: Mengual?

11 MR. MENGUAL: Yes, Mengual,
12 M-E-N-G-U-A-L.

13 CHAIRMAN JORDAN: Okay. And I'm
14 sorry, you said something else about Mr.
15 Mengual?

16 MR. MENGUAL: Well, I'm a witness
17 in this case, but I'm also -- I work for Mary
18 Center with the Child Care Licensing Programs.
19 We provide --

20 CHAIRMAN JORDAN: We will get to
21 that.

22 MR. MENGUAL: Okay. Okay.

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1 CHAIRMAN JORDAN: Yes. And next we
2 have?

3 MS. LORA-GARCIA: My name is Ana
4 Maria Lora. I'm a daily person with Little
5 Green Nest.

6 CHAIRMAN JORDAN: Are you the
7 applicant?

8 MS. LORA-GARCIA: Yes.

9 CHAIRMAN JORDAN: Okay.

10 MR. ZEIGLER: Cory will also help
11 to translate.

12 CHAIRMAN JORDAN: Okay. Thank
13 you. Do we have an ANC letter? Did you present
14 to the ANC?

15 MR. ZEIGLER: We did. It was sent
16 by electronic mail this morning while we were
17 here, so we weren't able to print it out.

18 CHAIRMAN JORDAN: By electronic
19 mail? Mr. Moy, do we have anything from the
20 ANC? Additionally, there is no filing of
21 Affidavit of Posting in the file.

22 MR. ZEIGLER: The posting was made

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1 Friday. We submitted an application for a
2 waiver of posting.

3 CHAIRMAN JORDAN: Oh, that's right.
4 You have made a waiver because you did a
5 hand-posting notice. Okay. I did read that.
6 And we will accept that and grant you a waiver
7 as to not posting the traditional sign, but there
8 was a posting, the file does indicate, and so
9 we will accept that as wavered.

10 MR. MOY: Mr. Chairman, while there
11 is a pause, if they did submit an ANC letter
12 electronically this morning, I'll have to check
13 the front office, because it's not filed or
14 exhibited in the case record.

15 CHAIRMAN JORDAN: Let me ask you,
16 what did the ANC say?

17 MR. ZEIGLER: They recommended
18 approval of the special exception.

19 CHAIRMAN JORDAN: Did they indicate
20 -- is that the letter, Mr. Moy?

21 MR. ZEIGLER: And we do have a
22 representative of ANC-4A here, Mr. Stephen

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1 Whatley.

2 CHAIRMAN JORDAN: Is he running
3 copies of that? No, you just brought it hot
4 off the press. Okay. Yes, let's proceed and
5 then get copies. It's not a simple letter, but
6 it's pretty detailed. Yes, we need copies as
7 well. She will give it up.

8 VICE CHAIR SORG: Oh, I'm sorry.

9 CHAIRMAN JORDAN: When we get to
10 that point, because we need to -- all right.
11 Is it Zeigler is your name?

12 MR. ZEIGLER: Yes.

13 CHAIRMAN JORDAN: Okay. Then you
14 can proceed with the presentation, if you would,
15 please.

16 MR. ZEIGLER: We are requesting a
17 special exception to expand the day care from
18 six children to 12 children. Currently, there
19 are five children in the home. Two children
20 are under the age of 2. We have a waiting list
21 of two parents who are hoping to add children,
22 two additional children, who are under the age

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1 of 2 to the home.

2 CHAIRMAN JORDAN: The present age
3 of the children, the five children, what are
4 their ages?

5 MR. ANTEZANA: Yes. We have two--
6 one infant and three from 1 year to 3, four 1.

7 CHAIRMAN JORDAN: All right.
8 Okay.

9 MR. ANTEZANA: 1 year to 3.

10 MR. ZEIGLER: The day care has been
11 successfully operating for over a year. We have
12 obtained and presented to the ANC several
13 letters of support from the neighbors in the
14 neighborhood and from the parents.

15 We --

16 CHAIRMAN JORDAN: Does our file
17 have any letters of support? I don't believe
18 I have any letters in our file.

19 MR. ZEIGLER: Should we submit and
20 add to the file or would you like to see the
21 letters now?

22 CHAIRMAN JORDAN: Always letters of

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1 support need to get to the BZA and be filed.

2 MR. ZEIGLER: Okay.

3 CHAIRMAN JORDAN: We would
4 definitely need to see any letters of support.

5 MR. ZEIGLER: Okay.

6 CHAIRMAN JORDAN: Do you have
7 those?

8 MR. ZEIGLER: We do.

9 CHAIRMAN JORDAN: Yes. When Mr.
10 Moy comes -- well, I would like to see those.

11 MR. ZEIGLER: Okay. We attended a
12 Brightwood Community Association meeting and
13 ran into no opposition. We subsequently
14 attended an ANC meeting.

15 CHAIRMAN JORDAN: Which
16 neighborhood association did you go to with no
17 opposition?

18 MR. ZEIGLER: Brightwood Community
19 Association.

20 CHAIRMAN JORDAN: Brightwood,
21 Brightwood. Okay. Is there several different
22 Brightwood neighborhood associations?

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1 MR. ZEIGLER: Not that I'm aware of,
2 but I don't know the answer to that.

3 CHAIRMAN JORDAN: Do you have some
4 letters of people from Brightwood Neighborhood
5 Association who have submitted letters in
6 opposition?

7 MR. ZEIGLER: Yes. We are --

8 CHAIRMAN JORDAN: That's the same
9 association?

10 MR. ZEIGLER: It is.

11 CHAIRMAN JORDAN: And Brightwood
12 Association, did they take a vote in regards
13 to your application?

14 MR. ZEIGLER: Yes, on two separate
15 occasions.

16 CHAIRMAN JORDAN: And we have
17 nothing in our file in support of your
18 application from Brightwood Neighborhood
19 Association.

20 MR. ZEIGLER: Okay. The
21 Brightwood Community Association submitted a
22 letter supporting the application to the ANC.

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1 And then at the ANC meeting, where the
2 Brightwood letter was discussed, some
3 opposition was raised by certain neighbors, at
4 which point the ANC recommended that we go back
5 to Brightwood and have -- and address the issue
6 there again.

7 There was a second vote taken where
8 certain neighbors at that meeting voted in
9 opposition of the application. We went --
10 subsequent to that meeting, it was recommended
11 by the ANC that we have a meeting between the
12 applicants and the neighbors who expressed
13 opposition to the application to attempt to
14 address the concerns raised by the neighbors.

15 We did have that meeting last
16 Monday. At that meeting, we attempted to reach
17 agreement with the neighbors with respect to
18 the issues that were raised. The issues were
19 primarily parking, traffic-related issues,
20 noise, similar -- those sorts of issues.

21 We proposed several solutions,
22 which the neighbors rejected. The neighbors

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1 expressed an unwillingness to compromise with
2 the applicants or to enter into any sort of
3 agreement that would address the issues.

4 We -- in order to address the issues,
5 notwithstanding the fact that the neighbors
6 weren't willing to enter into an agreement, we
7 entered into an agreement with the parents
8 requiring the parents to adhere to all traffic
9 rules, parking regulations, certain
10 restrictions with respect to drop-off and
11 pick-up times.

12 We submitted that to the ANC. The
13 ANC proposed as a condition to their approval
14 that we enter into a similar agreement, so that
15 the ANC had the opportunity to monitor and
16 enforce those restrictions and ensure that the
17 expansion of the day care would have no negative
18 impacts on the community. And the applicants
19 agreed to do so.

20 CHAIRMAN JORDAN: Do you have that?
21 Is there an agreement that has been executed
22 with the ANC?

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1 MR. ZEIGLER: Yes.

2 MR. ANTEZANA: Yes.

3 CHAIRMAN JORDAN: Let me say, these
4 things that you are talking about ought to be
5 in this file. The decision is made by his Board.
6 And so what you have -- if you have things in
7 support of this application, they need to be
8 in this file.

9 So I would ask that you give a copy
10 to Mr. Moy. Where is Mr. Moy? They have some
11 letters of support that we don't have in our
12 file. So we are going to need copies if you
13 can get someone maybe to assist you or to help
14 doing that.

15 But, please, give the letters of
16 support and the ANC agreement to Mr. Moy.

17 MR. HOOD: Mr. Chairman, I'm kind
18 of confused about how all this is transpiring,
19 because when I look at this list from the
20 president-elect who is well-known, especially
21 -- well, she ran the federation. I'm just
22 confused. I see all these lists of people who

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1 are in opposition, but I'm hearing from him about
2 support.

3 CHAIRMAN JORDAN: Right.

4 MR. HOOD: And as you stated, I
5 don't see it in the file. So I'm sorry.

6 CHAIRMAN JORDAN: That's my point,
7 yes.

8 MR. HOOD: Right.

9 CHAIRMAN JORDAN: Exactly.

10 MR. HOOD: And it's starting to
11 really -- I'm trying to figure out and trying
12 to follow what he is saying, but I don't see
13 what he is saying.

14 CHAIRMAN JORDAN: Right. That's
15 exactly --

16 MR. HOOD: I hear it, but I don't
17 see it.

18 CHAIRMAN JORDAN: -- right. Mr.
19 Zeigler, what we have to have in this file is
20 what you would have in court to supplement
21 support. Your oral testimony, your oral
22 statement means -- we take that for what we hear,

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1 but we need the backup and the support of those
2 things that you have identified.

3 You have identified letters of
4 support. You have identified an agreement with
5 the ANC and etcetera, etcetera, etcetera.

6 The important file is this file.
7 And otherwise -- we make our decision based upon
8 what is in the record. So --

9 MR. ZEIGLER: So can I make a
10 request for a continuance or a postponement of
11 the decision today, so that we can supplement
12 the file with the information that we have gotten
13 from the parents and from the ANC, including
14 the agreements?

15 CHAIRMAN JORDAN: Well, I think
16 what we could do, because I think there are
17 people here who are willing to testify -- are
18 there people here to testify in this case? Just
19 by a show of hands, let me see. Then we may
20 proceed with this hearing and may keep the record
21 open to supplement the file and hold our decision
22 to a different date.

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1 However, I will not -- I don't want
2 to inconvenience people to have to come back
3 if they are here now and they could provide us
4 their testimony.

5 MR. ZEIGLER: That would be fine
6 with the applicants.

7 CHAIRMAN JORDAN: Okay. So, Mr.
8 Moy, you have now some letters of support that
9 you are trying to copy and you have an ANC
10 agreement that you are trying to copy? Is that
11 correct?

12 MR. MOY: That's correct. That is
13 in the process now as you speak.

14 CHAIRMAN JORDAN: Is there any
15 other documents that you have that I need that
16 should be given to Mr. Moy, that you are going
17 to make reference to in your presentation?

18 MR. ZEIGLER: I don't believe so.

19 CHAIRMAN JORDAN: Okay. All
20 right. All right. This is it. Okay. So you
21 have said -- so you met -- we have an ANC
22 agreement. You have got an agreement with the

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1 parents. What about the agreement with the
2 parents? Do we have that in our record?

3 MR. ZEIGLER: Which agreement did
4 you just give me?

5 MR. ANTEZANA: This is the
6 agreement with the parents.

7 MR. ZEIGLER: Okay. This is the
8 agreement with the parents. Do you have the
9 ANC agreement?

10 MR. ANTEZANA: No. The ANC --

11 CHAIRMAN JORDAN: Oh, so we don't
12 have the ANC agreement. We have the parent --
13 the agreement with the parents? Is that what
14 I'm understanding?

15 MR. ZEIGLER: That's correct.

16 CHAIRMAN JORDAN: Be sure Board.
17 If you have some questions?

18 MR. ZEIGLER: I'm sorry. This --
19 the agreement we just submitted is the agreement
20 with the parents, not the agreement with the
21 ANC. There is a similar agreement with the ANC
22 that will be submitted to supplement the record.

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1 VICE CHAIR SORG: And just as a
2 note, Mr. Chairman, in the ANC letter it
3 indicates that Mr. Whatley, who I think is here,
4 is going to present the agreement at the hearing.

5 CHAIRMAN JORDAN: Okay. But as you
6 know, we still --

7 VICE CHAIR SORG: Yes, I'm just
8 saying.

9 CHAIRMAN JORDAN: Okay. All
10 right. So okay, is there anything else you need
11 to present to the Board or you want to tell the
12 Board in support of your application?

13 MR. ZEIGLER: No.

14 CHAIRMAN JORDAN: Okay. Does the
15 Board have any questions of the applicant? Mr.
16 Hood?

17 MR. HOOD: I may have some, but I
18 just need -- I'm still trying to put it all
19 together. Maybe after I hear from the ANC and
20 the citizens, I may have some questions for the
21 lawyer and all.

22 CHAIRMAN JORDAN: Well, as you

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1 know, there is some opposition. There is a lot
2 of opposition to this application.

3 One is the -- and what gives me some
4 pause is the fact that this is located right
5 next to neighbors and it's a very close-knit
6 kind of neighborhood and property situated right
7 next door to other property.

8 Do you have the support letters from
9 the next door neighbors on either side of the
10 property?

11 MS. LORA-GARCIA: Yes, yes, we
12 have.

13 CHAIRMAN JORDAN: From either side
14 of the property?

15 MS. LORA-GARCIA: The closest
16 neighbor, yes. It's this one.

17 CHAIRMAN JORDAN: What's the
18 address?

19 MS. LORA-GARCIA: Yes, this is the
20 one.

21 CHAIRMAN JORDAN: Do we have a copy
22 of that letter?

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1 MS. LORA-GARCIA: Yes.

2 CHAIRMAN JORDAN: And what's the
3 neighbor's name and the address?

4 MR. ZEIGLER: Byron Davis, 1357
5 Tuckerman Street.

6 CHAIRMAN JORDAN: 1357, okay.

7 MS. LORA-GARCIA: 1357.

8 CHAIRMAN JORDAN: Okay.

9 MS. LORA-GARCIA: That's the
10 closest neighbor we have.

11 CHAIRMAN JORDAN: All right.
12 Well, that's in the stack. We will take a look
13 at that.

14 The other thing that gives pause--
15 and, Board, please, if you have questions,
16 please be sure to ask them.

17 A concern that rises with me is the
18 fact that the potential noise area, the noise
19 for this surrounding community and part of the
20 test that you have to meet is that it's -- the
21 effect upon the neighborhood and the community.

22 So tell me how you are going to

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1 mitigate that situation.

2 MR. ZEIGLER: To address the noise,
3 the solution we proposed to the neighbors was
4 to the extent that the children are playing
5 outside, that we could request the applicants
6 to take the children to a park that is two blocks
7 away.

8 With respect to --

9 CHAIRMAN JORDAN: Is that in your
10 agreement with the ANC?

11 MR. ZEIGLER: No, because the
12 issues that were raised by the neighbors at the
13 meeting were primarily traffic and parking.
14 And so the --

15 CHAIRMAN JORDAN: Let me ask. Is
16 there a representative here from ANC-4A? And
17 you have a copy of the agreement?

18 MR. WHATLEY: It's still in draft,
19 but it's not a signed agreement.

20 CHAIRMAN JORDAN: So we don't have
21 an agreement? We are discussing? You're
22 discussing an agreement. Gotcha. Okay. I

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1 was going to ask that we just -- so we can get
2 copies before you testified, but okay. Go
3 ahead.

4 MR. ZEIGLER: Okay. So going back
5 to the impact on the neighborhood, initially,
6 several of the opponents indicated that they
7 weren't aware there was a day care. There is
8 nothing, you know, commercial about the home.

9 It looks like a normal home when you drive past.

10 There is nothing that would suggest that there
11 is a day care or anything out of the ordinary
12 there.

13 In terms of the impact on parking,
14 it's drop-off, pick-up, so there is no long-term
15 parking impact.

16 Traffic. There is a very limited
17 number of children, so it's not a significant
18 increase in traffic on the street.

19 In terms of the noise, there are
20 children playing outside. So occasionally
21 there are going to be the sounds of children
22 outside. To the extent that that was an issue

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1 for the neighbors, we suggested going to the
2 park as opposed to having them play in the play
3 area out back, at which point that issue sort
4 of went away and we moved on to a few other
5 issues, which were primarily again, traffic and
6 parking.

7 So from the operation of the day care
8 to date and given that the request relates only
9 to a few more children, we don't think there
10 is going to be a significant impact,
11 particularly a negative impact on the
12 neighborhood.

13 CHAIRMAN JORDAN: Tell us about the
14 traffic pattern and how the traffic issues have
15 been mitigated.

16 MR. ZEIGLER: The issues that were
17 raised with respect to traffic were primarily
18 parking on the wrong side of the street and speed
19 of -- you know, we are not certain how-- whether
20 or not there was identification of the parents
21 of the children at the day care as, you know,
22 particular traffic offenders, but to

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1 proactively address that, part of the agreement
2 with the parents is compliance with all traffic
3 laws, including speed, including parking.

4 No U-turns in the middle of the
5 street, whether permitted or not. Basically,
6 the effort was to address any sort of potential
7 negative impact that we could foresee being an
8 issue.

9 CHAIRMAN JORDAN: And how would you
10 enforce the agreement that you have with the
11 parents?

12 MR. ZEIGLER: The agreement
13 requires that the center have a staff member
14 outside from -- for a 30 minute period prior
15 to the opening of the day care and at the end
16 of the day to make sure that the parents are
17 in compliance. Any violation by the parents
18 results in a fine. And there is also the right
19 for the ANC to enforce the restrictions.

20 CHAIRMAN JORDAN: Does the Board
21 have any other questions?

22 MR. HOOD: Mr. Chairman, we just

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1 received -- now, these are the letters of support
2 of whom? Residents or just the parents of the
3 students?

4 MR. ZEIGLER: Both.

5 MR. HOOD: Okay.

6 MR. ANTEZANA: We have some --

7 MR. HOOD: One thing I find unique
8 about this, it doesn't have an address. And
9 maybe I might have missed it from looking at
10 it, no address is on here. So that's something
11 that we will put in the parking lot and hopefully
12 these can have addresses, because I can write
13 a letter of support and live clear across town.

14 MS. LORA-GARCIA: Some of the
15 persons didn't want to put their address. They
16 don't want any compromise, just they sign and
17 --

18 MR. HOOD: They didn't want to put
19 their address? Well --

20 CHAIRMAN JORDAN: But it doesn't
21 help us.

22 MS. LORA-GARCIA: But some of them

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1 put the address.

2 MR. HOOD: But I want to get -- we're
3 trying to give you -- I'm trying to balance this
4 thing. And this, to me, not having addresses,
5 I'm sorry, doesn't do it for me. I don't know
6 about my colleagues.

7 CHAIRMAN JORDAN: Yes.

8 MR. HOOD: But I'll wait to see what
9 happens.

10 CHAIRMAN JORDAN: And it's a form
11 letter at that. And there is no addresses, but
12 that's something that you can remedy, because
13 we will keep the -- we have already said we're
14 going to keep this record open, but we would
15 want to have different or letters that
16 definitely at least identify -- some of these
17 I can't even read some of the names on here
18 either.

19 MR. HOOD: Some of your students,
20 are they from the neighborhood? Do they live
21 in the neighborhood? You are operating now with
22 what, six?

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1 MS. LORA-GARCIA: The children live
2 around the house, around in the same area.

3 MR. HOOD: They live in the
4 neighborhood?

5 MS. LORA-GARCIA: The Brightwood
6 area.

7 MR. HOOD: They live in Brightwood?

8 MS. LORA-GARCIA: Yes.

9 MR. HOOD: Okay. Okay. And right
10 now, you are operating with six, right? How
11 are you operating now? Five?

12 MS. LORA-GARCIA: We have now five.

13 MR. HOOD: Oh, okay. You have five
14 now and you want to go to 12? Not to exceed
15 12.

16 MR. ZEIGLER: Right.

17 CHAIRMAN JORDAN: Vice Chair Sorg?

18 VICE CHAIR SORG: Thank you, Mr.
19 Chairman.

20 So your child care home has been in
21 operation for a year now, correct?

22 MS. LORA-GARCIA: More than a year.

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1 VICE CHAIR SORG: More than a year.

2 MS. LORA-GARCIA: Almost two years.

3 Two years.

4 VICE CHAIR SORG: So in the time
5 that it has been operational, can you describe
6 any complaints or issues that were brought up
7 related to any of the complaints about, you know,
8 traffic and parking and noise or any of those
9 items?

10 MS. LORA-GARCIA: We didn't have
11 any just recently when we got the meeting, they
12 raise it, but never before.

13 MR. ZEIGLER: Yes, there haven't
14 been any complaints. The issues were raised
15 at the request for -- at the ANC meeting when
16 we notified the neighbors of the request for
17 the special exception.

18 And as I said, you know, a lot of
19 the neighbors indicated that they weren't aware
20 there was a day care there at all.

21 VICE CHAIR SORG: Yes. And you
22 indicated at the beginning of your testimony

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1 that you are certified for six students now,
2 but have five children in day care and a waiting
3 list of two, correct?

4 MR. ANTEZANA: Yes. Can I explain
5 that?

6 VICE CHAIR SORG: Sure.

7 MR. ANTEZANA: We have six children
8 allowed to serve.

9 VICE CHAIR SORG: Yes.

10 MR. ANTEZANA: But from those six
11 children, two have to be infants.

12 VICE CHAIR SORG: Yes.

13 MR. ANTEZANA: So what we are now
14 looking for is that we will need just to have
15 two more infants, because all the children after
16 3 years, the parents take them to the school.

17 VICE CHAIR SORG: Yes.

18 MR. ANTEZANA: So we don't have
19 children. And we have forced to applicate for
20 an expansion, because the expansion is only for
21 six children. Just looking for the two more
22 infants that are within the six children.

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1 So I think if we get these expansion
2 application approved, we will have only the six
3 that we are already allowed to have and two more
4 babies. We are committed to just serve eight
5 children. We don't need for more, because it's
6 very difficult to have toddlers, because they
7 go --

8 CHAIRMAN JORDAN: So you would
9 agree to eight? Excuse me, Ms. Sorg, sorry.
10 So eight children?

11 MR. ZEIGLER: Yes.

12 MR. ANTEZANA: Yes.

13 MR. ZEIGLER: And just to clarify
14 a bit. With this -- of the six children, only
15 two are permitted to be under age 2.

16 VICE CHAIR SORG: So that was my--

17 MR. ZEIGLER: And so --

18 VICE CHAIR SORG: -- question.

19 MR. ZEIGLER: Yes. So even if they
20 only had three children, if they wanted two
21 additional children under the age of 2, the would
22 have to apply for the special exception

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1 regardless.

2 VICE CHAIR SORG: So the catalyst
3 for applying for the expansion is primarily
4 related to the number of infants --

5 MR. ZEIGLER: Correct.

6 VICE CHAIR SORG: -- that you can
7 care for? Okay. That's very enlightening.
8 Thank you.

9 CHAIRMAN JORDAN: So those are two
10 infants?

11 MS. LORA-GARCIA: Yes, that's what
12 I need.

13 CHAIRMAN JORDAN: So they wouldn't
14 be outside. Does the Board have any other
15 questions of the applicant? Okay.

16 Then let's turn now to Office of
17 Planning. Oh, excuse me, just before we do
18 that, let me. Office of Planning had made some
19 recommendations regarding conditions. Have
20 you reviewed those conditions that the Office
21 of Planning has submitted?

22 MR. ZEIGLER: We have.

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1 CHAIRMAN JORDAN: And are you in
2 agreement with those potential conditions?

3 MR. ZEIGLER: We are.

4 CHAIRMAN JORDAN: Okay. Now, I'll
5 let Ms. Sorg go.

6 VICE CHAIR SORG: I'm sorry. You
7 just reminded me, Mr. Chairman, I had one other
8 question.

9 Going back to the questioning that
10 the Chairman was following regarding the outdoor
11 play, that's not addressed in the proposed
12 conditions from the Office of Planning. And
13 in your testimony you indicated that the
14 applicant would be willing to utilize an
15 off-site play area instead of the on-site area.

16 But I also noticed in your
17 prehearing application a mention of potentially
18 staggering the children outdoor play. And so
19 I want to understand as we move forward with
20 regard to the operation of the child care center,
21 you know, which of those options is preferable,
22 you know, to the applicant?

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1 MR. ZEIGLER: I think the -- and
2 I'll let Jose and Ana Maria speak to that as
3 well, but I think the answer from our perspective
4 is whatever makes the neighbors most
5 comfortable. If there is -- you know,
6 throughout the process, we have been willing
7 to do whatever we can to address concerns raised
8 by the neighbors.

9 This is just an issue that was not
10 -- you know, it's an issue that we sort of
11 proactively considered, but it's not an issue
12 that has been mentioned as a consistent concern
13 by the parents. So we will do whatever -- by
14 the neighbors, I'm sorry. So, you know, if it's
15 more amenable to the neighbors to have the
16 children off-site, then we will certainly work
17 to accommodate that.

18 And if it is -- if staggering them
19 works, then we would be willing to do that as
20 well.

21 VICE CHAIR SORG: Okay. Thank you.
22 That's all my questions.

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1 CHAIRMAN JORDAN: Thank you.
2 Office of Planning, please.

3 MS. THOMAS: Good morning, Mr.
4 Chairman, Members of the Board. Karen Thomas
5 with the Office of Planning. I'm sitting in
6 partially for Arthur Jackson this morning.

7 CHAIRMAN JORDAN: Where is the
8 officer? No.

9 MS. THOMAS: Well, I don't know what
10 happened, but we are recommending approval of
11 the application, subject to the conditions in
12 the report.

13 And we will stand on the rest of the
14 record. Thank you.

15 CHAIRMAN JORDAN: Thank you. Does
16 the Board have any questions for Office of
17 Planning, understanding that Mr. Jackson is
18 being substituted and it's actually his report?

19 Does the applicant have any
20 questions for the Office of Planning?

21 MR. ZEIGLER: We do not.

22 CHAIRMAN JORDAN: Okay. Then is

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1 there any other Government Agency that is here?

2 We do have a letter of no objection from the
3 Department of Transportation.

4 Additionally, is anyone here from
5 the Office of -- State Office of Education?
6 We do have a letter of support from OSSE.

7 Okay. Is there anyone -- yes, there
8 is someone here from ANC-4A, right? Please,
9 come forward. Good morning.

10 MR. WHATLEY: Good morning.

11 CHAIRMAN JORDAN: Would you,
12 please, identify yourself for the record,
13 please?

14 MR. WHATLEY: My name is Stephen
15 Whatley. I'm ANC-4A03.

16 CHAIRMAN JORDAN: And we do have a
17 letter from ANC-4A in support. I don't know
18 if they designated you as the spokesperson, but
19 that's okay.

20 MR. WHATLEY: Okay. I have -- it
21 was in transit. It probably came to my office
22 as I was leaving, so I have not had a chance

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1 to see the letter yet.

2 CHAIRMAN JORDAN: Oh, that's okay.

3 MR. WHATLEY: Okay.

4 CHAIRMAN JORDAN: Go ahead.

5 MR. WHATLEY: Can I ask you
6 something before starting --

7 CHAIRMAN JORDAN: Yes.

8 MR. WHATLEY: -- about what
9 happened, how we came about having a group of
10 parents -- a group of neighbors for and a group
11 of neighbors against and possibly two different
12 letters?

13 The BCA, Brightwood Community
14 Association, handed -- took a vote on this action
15 earlier and voted to approve it. Subsequent
16 to that vote, there was a change in the
17 leadership at the BCA and the new leadership
18 took another vote and decided to vote against
19 it.

20 So that's why you have potentially
21 two different letters, because you have one
22 president sending a letter saying they voted

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1 to approve it and a second letter should have
2 come behind that saying no to this. That's why
3 you potentially will see two different letters
4 or potentially a divided community association.
5 So that's why that came about.

6 CHAIRMAN JORDAN: Is there a
7 difference in name? Community Association or
8 Neighborhood Association?

9 MR. WHATLEY: It is the Brightwood
10 Community Association.

11 CHAIRMAN JORDAN: Thanks. All
12 right. Thank you. Now, you were telling us
13 about the ANC is at a negotiating point getting
14 close?

15 MR. WHATLEY: Yes.

16 CHAIRMAN JORDAN: I don't want to
17 put words in your mouth, but --

18 MR. WHATLEY: Okay.

19 CHAIRMAN JORDAN: -- you are
20 working on an agreement?

21 MR. WHATLEY: Yes. What has
22 happened is we requested that the two sides get

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1 together and hold a meeting to see if they could
2 resolve some of these issues in advance, as we
3 did with the Washington Ethical Society's Day
4 Care Center and others, and Law School and so
5 forth. And it appears that that didn't work.

6 So what the ANC decided to do is that
7 we would negotiate to work out the -- an
8 agreement for all parties involved and between
9 the ANC and the school.

10 CHAIRMAN JORDAN: Yes.

11 MR. WHATLEY: The day care center.
12 And we drafted one and we're still working out
13 -- there are some ideas that came across that
14 were entered that we cannot do.

15 For example, we cannot say that any
16 fines they may collect from parents cannot be
17 donated to the ANC. We legally can't do that.

18 So we are recommending -- we are going to change
19 that to the Brightwood Community Association,
20 that's where the donations would go.

21 But all of the issues that were
22 raised are covered in the voluntary agreement

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1 with the day care center, including the drafting
2 of the letter for the parents to sign to -- that
3 sets forth the fines involved if they violate
4 the agreement.

5 CHAIRMAN JORDAN: Okay.

6 MR. WHATLEY: We covered -- I drove
7 by and took a look at the house. It's a fairly
8 small house, but it's free-standing. It's
9 detached. And so there is space on all sides,
10 from what I could tell, from what I could see
11 of the house.

12 And I did see the tricycles and
13 things in the back and they just mentioned about
14 the moving to off-site, that -- we didn't --
15 that has not -- we didn't even consider that.

16 That was not one of our -- that wasn't on the
17 table when we were talking.

18 CHAIRMAN JORDAN: Okay. Okay.

19 MR. WHATLEY: Now, I have a copy of
20 the -- if you would like to see a copy of the
21 draft agreement, but it's marked up. It's not
22 final, so I couldn't --

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1 CHAIRMAN JORDAN: No, let's wait
2 until you --

3 MR. WHATLEY: Okay.

4 CHAIRMAN JORDAN: -- unless the
5 Board wants to see a copy of the draft. No,
6 let's wait until -- okay. Is there anything
7 else you wish to present to testify to?

8 MR. WHATLEY: Yes. We did vote at
9 our meeting on November 7th to recommend approval
10 of the application contingent upon their
11 reaching the voluntary agreement with the ANC.

12 CHAIRMAN JORDAN: Okay.

13 MR. WHATLEY: And that's of
14 importance, because that's the same type of
15 thing we worked out with the Washington Ethical
16 Society's Day Care Center, George Primary Day
17 School and so forth.

18 CHAIRMAN JORDAN: Okay. Okay. Is
19 there any questions for Mr. Whatley? Ms. Sorg?

20 VICE CHAIR SORG: Thank you, Mr.
21 Chairman.

22 Mr. Whatley, I noticed in your

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1 letter that was submitted today from the ANC
2 that it indicates that during the meeting,
3 several neighbors and supporters of the project
4 spoke favorably on behalf of the project and
5 no person in attendance spoke in opposition.

6 MR. WHATLEY: Which meeting? Are
7 you talking about the ANC meeting?

8 VICE CHAIR SORG: Yes. It says
9 November 7th meeting.

10 MR. WHATLEY: No, there was
11 opposition.

12 VICE CHAIR SORG: Okay. So maybe
13 -- that's why I wanted to ask, because in our
14 record it looks a little bit more --

15 MR. WHATLEY: See, I remember --
16 well, I had stepped out for -- to take a phone
17 call, but if I recall, there were people who
18 were --

19 VICE CHAIR SORG: So maybe then you
20 can describe your recollection? I mean, well
21 first, I'll ask you another question. It
22 indicates in the letter that the ANC voted

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1 unanimously.

2 MR. WHATLEY: We did.

3 VICE CHAIR SORG: Is that correct?

4 MR. WHATLEY: Yes.

5 VICE CHAIR SORG: Okay.

6 MR. WHATLEY: That is correct. We
7 did vote unanimously.

8 VICE CHAIR SORG: So if you can
9 describe a little bit of the occurrence at the
10 meeting, then that would be helpful. And that's
11 why I was wondering that it said no persons spoke
12 in opposition.

13 MR. WHATLEY: To the best of my
14 recollection, there was some voices that -- the
15 new president of Brightwood Community
16 Association was there and I think she raised
17 some issues. I don't know if the chair -- I
18 have to -- I'm thinking back to whether or not
19 the chair took any formal discussion, that's
20 what he might mean. There may have been no
21 formal discussion about this by opposition.

22 VICE CHAIR SORG: Okay.

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1 MR. WHATLEY: Because the item had
2 already been discussed at an earlier ANC
3 meeting, so he may not have taken any formal
4 comment on the application, which he is
5 authorized to do under Roberts Rules of Order.

6 CHAIRMAN JORDAN: Any other
7 questions?

8 MR. HOOD: Yes.

9 CHAIRMAN JORDAN: Mr. Hood?

10 MR. HOOD: Commissioner Whatley,
11 whose Single Member District is this?

12 MR. WHATLEY: That's Marian
13 Bennett.

14 MR. HOOD: Was Commissioner Bennett
15 at the meeting?

16 MR. WHATLEY: Yes. And she was --
17 unfortunately, she had another -- in her other
18 job, she had another meeting today, so she asked
19 me to attend.

20 MR. HOOD: Because I'm still -- I'm
21 hearing what the ANC did and I'm still looking
22 at what the constituents -- I'm just-- anyway

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1 --

2 MR. WHATLEY: Well, one of the
3 things you have -- that has to be kept in mind
4 is when you look at the ANC Oath, the oath is
5 that you consider the well-being of the city,
6 not necessarily just your Single Member
7 District. You listen to the neighbors, but at
8 the end of the day, your vote is supposed to
9 be based on what you feel is the best for the
10 city.

11 So with the split in the community,
12 you know, and using our judgment, we, the ANC,
13 believes that it was in the best interest of
14 the city to do this.

15 MR. HOOD: No, no, I think you
16 misunderstood. Let me just inform him. I'm
17 well-aware of --

18 MR. WHATLEY: Yes.

19 MR. HOOD: -- how that works.

20 MR. WHATLEY: Okay.

21 MR. HOOD: I'm well-aware of how
22 ANCs work. I've worked with ANCs over the years

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1 and I'm a former president of a civic association
2 myself. And I have worked with some of the best
3 and I'll say that.

4 But I understand that. But I'm just
5 saying, the comments that I'm hearing and what
6 I'm hearing, to me, is not showing a balance.

7 I'm hearing you say this and I haven't heard
8 the other point.

9 Yes, we are working on an agreement.

10 I mean, that's -- the agreement is fine. It's
11 just unfortunate that we can't see the
12 agreement.

13 I just don't see a balance in at
14 least the material facts that I have in front
15 of me. That's just kind of where I am. And
16 when I say that, I'm looking at I got two pages,
17 but I'm hearing a question of whether or not
18 people were at the meeting in support or not.

19 And you had to take a phone call. This person
20 is not available. I understand all that.

21 But I just don't see the balance in
22 the material facts that I have here in front

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1 of me. I don't see both interests as being
2 represented.

3 Now, I hear about an agreement
4 that's on the way.

5 MR. WHATLEY: Yes.

6 MR. HOOD: But you understand what
7 I'm saying?

8 MR. WHATLEY: Yes, I understand.

9 MR. HOOD: I'm trying to balance the
10 situation. Just like you all are trying to do.

11 MR. WHATLEY: I think the -- your
12 concern stems from the fact that there is two
13 different votes. The first, Brightwood
14 Community Association vote was yes, we want
15 this, approve it.

16 The second vote was no, we don't want
17 it. And I think that's where the confusion
18 stems, that there was a split. So you have --
19 you know, someone has to make a decision, so
20 they --

21 MR. HOOD: Well, I understand that
22 too well. Let me just say this, Commissioner.

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1 Being on this Board, there is
2 administration change. We get one thing saying
3 approve it and in January we've got someone say
4 disapprove. So I understand that.

5 MR. WHATLEY: Yes.

6 MR. HOOD: I'm just saying the
7 presentation, maybe it will come when I hear
8 the other side.

9 MR. WHATLEY: Yes.

10 MR. HOOD: And it's just
11 unfortunate that the -- let me ask this. How
12 long is it going to take for the agreement to
13 be signed?

14 MR. WHATLEY: It should be within
15 the next week, because we are close on the
16 agreement.

17 MR. HOOD: And --

18 MR. WHATLEY: One of the questions
19 was just getting -- when the agreement was
20 presented at the ANC meeting, two of the
21 attorneys on the Commission stated that there
22 were some legal things that we had to make sure

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1 were correct, accurate in the agreement. So
2 we have to work out those types of things.

3 MR. HOOD: And typically, I don't
4 know, the Board usually doesn't get into it.
5 Just point to the agreement, I believe, right?
6 Who is going to enforce it?

7 MR. WHATLEY: The ANC.

8 MR. HOOD: Oh, the ANC is going to
9 enforce it?

10 MR. WHATLEY: Yes. This is going
11 to be a voluntary agreement between the
12 applicant and the ANC.

13 MR. HOOD: So like when the
14 violation -- but I'm saying, so you all are going
15 to enforce it, too?

16 MR. WHATLEY: Yes.

17 MR. HOOD: So when the violations
18 happen --

19 MR. WHATLEY: They will -- the steps
20 for the reported violation, they will report
21 the violations to the -- actually, let me back
22 up a second.

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1 In the agreement, we are trying to
2 establish a five person appeal committee to
3 handle this. There will be two ANCs, a
4 representative from the Brightwood Community
5 Association plus one citizen that they, the
6 Brightwood Community Association, picks and one
7 member from the applicant's firm to handle the
8 enforcement. That's what we are going -- that's
9 what we are going to end up proposing.

10 MR. HOOD: Okay. I'm going to stop
11 my questions now.

12 CHAIRMAN JORDAN: But let's do
13 this. Let's continue, because we are not going
14 to render a decision here. There is a lot of
15 things that has to be in the record. The ANC
16 agreement is going to be important as to what
17 we would do.

18 But let's move on, because, as I said
19 earlier, I want to be sure to take some testimony
20 from people that are here, so they don't have
21 to come back and forth to this particular
22 hearing. I think this file is still one that

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1 is fluent and we need to, you know, get our arms
2 around something that is just sturdy and it's
3 just not there yet.

4 Any other questions? Does the
5 applicant have any questions for -- is it Mr.
6 Whatley?

7 MR. WHATLEY: Whatley.

8 CHAIRMAN JORDAN: Do you have any
9 questions of Mr. Whatley?

10 MR. ZEIGLER: A follow-up to the
11 question that was asked regarding
12 representation for both sides. And I think Mr.
13 Whatley can probably speak to this.

14 I think the proposal by the ANC to
15 have the neighbors meet with the applicants was
16 to reach an agreement that would reflect the
17 interests of both sides. And I think you can
18 probably speak to this on behalf of, you know,
19 Commissioner Bennett.

20 But our understanding was that the
21 agreement is not reflective of that because of
22 the unwillingness of the neighbors to --

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1 CHAIRMAN JORDAN: Is that a
2 question you are trying to ask or are you trying
3 to testify and hopefully he is going to nod his
4 head?

5 MR. ZEIGLER: Probably a little of
6 both.

7 CHAIRMAN JORDAN: Well --

8 MR. ZEIGLER: But I -- given that
9 you have had conversations with Commissioner
10 Bennett, I thought that you might be able to--

11 CHAIRMAN JORDAN: What's the
12 question, so I can understand it?

13 MR. ZEIGLER: The question is did
14 you have conversations with Commissioner
15 Bennett regarding the ability to work towards
16 an agreement that was actually reflective of
17 both --

18 CHAIRMAN JORDAN: Are you asking?
19 Does it appear that the applicant is working
20 with the ANC to reach an agreement? Is that
21 what you are saying?

22 MR. ZEIGLER: No, no, no.

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1 CHAIRMAN JORDAN: Because I don't
2 know if you understood the question. Did you?

3 MR. WHATLEY: Well, I think I
4 understand where he is trying to go with this.
5 There are two different questions here.

6 The first question is were all sides
7 willing to sit down and actually negotiate a
8 voluntary agreement or if one side was just
9 against the day care center period.

10 Now, I think --

11 CHAIRMAN JORDAN: Well, I'm clear
12 on that. That came out in their earlier
13 testimony. Okay.

14 MR. WHATLEY: But I'm going to lead
15 into that. Then what happened was, I think,
16 part of the problem stemmed from the fact that
17 some of the opposition believed that the Zoning
18 Board, that you all would have to rule before
19 they could enter into a voluntary agreement with
20 the applicant, which is not the case.

21 So that's why when it came back to
22 the ANC, the discussion was well, why wasn't

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1 the voluntary agreement between all sides worked
2 out prior to coming back to the ANC?

3 But you have one group believing
4 that you didn't have to do it until after BZA
5 ruled and as our chair mentioned, she said no,
6 that should have been done prior to. And I think
7 that's why I started down the road early on that
8 the sides get together that evening to hold a
9 meeting to work it out.

10 But one side was believing no, we
11 don't have to do that until after. So that's
12 why that happened. But I do believe all sides
13 in good faith could reach an agreement, a fair
14 agreement. Because we were told when
15 Washington Ethical Society wanted to open its,
16 the neighbors said we don't want it. We hate
17 it. Don't want to have anything to do with it.

18 We worked it out. Not -- and I still
19 believe that all the sides can work it out.
20 And if need be, the ANC will reach a voluntary
21 agreement with the applicant. But I'm willing
22 to let the opposition weigh in on it. I mean,

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1 I don't see why we couldn't do that.

2 CHAIRMAN JORDAN: Mr. Hood?

3 MR. HOOD: Yes, I just want to ask.

4 So go back to a change again, under
5 redistricting did any of that change?

6 MR. WHATLEY: No.

7 MR. HOOD: Commissioners want to
8 change?

9 MR. WHATLEY: No. This will remain
10 in Commissioner Bennett's Single Member
11 District. And it will remain in Ward 4.

12 MR. HOOD: So there's no change.
13 Yes, so there's no chances of anything changing.

14 Then we have another administration change in
15 ANC.

16 MR. WHATLEY: Well, unless
17 Commissioner Bennett leaves.

18 MR. HOOD: Okay. Well, we would
19 have known that by now.

20 MR. WHATLEY: Yes.

21 MR. HOOD: So obviously she won
22 reelection.

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1 MR. WHATLEY: Yes.

2 MR. HOOD: Okay. Thank you.

3 CHAIRMAN JORDAN: Okay. Any
4 additional question that you would like to ask?

5 MR. ZEIGLER: No, thank you.

6 CHAIRMAN JORDAN: Okay. Is the
7 Board okay? Any other questions of ANC? No.

8 Is there anyone in the audience
9 wishing to testify in support?

10 Thank you very much.

11 MR. WHATLEY: You're welcome.

12 CHAIRMAN JORDAN: Wishing to
13 testify in support of this application?

14 Is there anyone in the audience
15 wishing to testify in opposition to this
16 application? I see one, two, three, four, five
17 hands. Please, come to the witness table,
18 please.

19 MS. ADAMS-SIMMONS: Sir, my name is
20 Gerri Adams-Simmons. My name is on that letter
21 and I didn't get sworn in today.

22 CHAIRMAN JORDAN: Oh, you didn't

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1 get sworn in? Okay. All right. Please.

2 MS. ADAMS-SIMMONS: Sorry.

3 (Whereupon, witnesses were sworn.)

4 MR. MOY: Thank you.

5 CHAIRMAN JORDAN: We are going to
6 take a brief five minute recess and then we will
7 start. So please gather yourself. Make sure
8 that you have completed the witness cards, two
9 for each person, and hand them to the court
10 reporter, please.

11 MS. ADAMS-SIMMONS: I have
12 submitted.

13 Okay. Good.

14 MS. ADAMS-SIMMONS: Thank you.

15 (Whereupon, at 11:04 a.m. a recess
16 until 11:08 a.m.)

17 CHAIRMAN JORDAN: Okay. Let's go
18 back on the record and we will continue with
19 this hearing.

20 We have five people who wish to
21 testify in opposition. Starting with you, sir,
22 would you identify yourself? Would you,

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1 please, make sure that the microphone's bright
2 green light is on.

3 MR. HORTON: Ronald Horton.

4 CHAIRMAN JORDAN: Ronald Horton?

5 MR. HORTON: Yes.

6 CHAIRMAN JORDAN: And what's your
7 address, please?

8 MR. HORTON: 1369 Tuckerman Street,
9 N.W.

10 CHAIRMAN JORDAN: 1369?

11 MR. HORTON: Yes.

12 CHAIRMAN JORDAN: Tuckerman?

13 MR. HORTON: Yes.

14 CHAIRMAN JORDAN: Yes? Would you,
15 please? Right now, follow me, okay? Stay with
16 me.

17 MS. ADAMS-SIMMONS: Yes, sir.

18 CHAIRMAN JORDAN: And I'm asking
19 you to go down the line to identify yourselves.

20 MS. ADAMS-SIMMONS: Okay.

21 CHAIRMAN JORDAN: And then we can
22 choose who will go first.

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1 MS. ADAMS-SIMMONS: Yes.

2 CHAIRMAN JORDAN: Okay? Good. Go
3 ahead. Thank you. Please, identify yourself.

4 MS. ADAMS-SIMMONS: My name is
5 Gerri Adams-Simmons. I am the present
6 President of the Brightwood Community
7 Association. My address is 6409 13th Street,
8 N.W. I am three houses from the corner of
9 Tuckerman, 13th and Tuckerman.

10 CHAIRMAN JORDAN: Thank you.

11 MS. SINGLETON: Good morning. My
12 name is Patience Singleton and I reside at 1316
13 Tuckerman Street, N.W.

14 CHAIRMAN JORDAN: 1316?

15 MS. SINGLETON: Yes.

16 CHAIRMAN JORDAN: Okay. Yes?

17 MS. RUSH: Good morning. Veronica
18 Rush. I reside at 1358 Tuckerman Street, N.W.

19 CHAIRMAN JORDAN: Yes?

20 MS. MAJOR: Pam Major, 1308
21 Somerset Place, N.W.

22 CHAIRMAN JORDAN: Okay. I'm going

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1 to assume, it's Ms. Sims, right? Sims or
2 Simmons?

3 MS. ADAMS-SIMMONS: Simmons.

4 CHAIRMAN JORDAN: Ms. Simmons, I'm
5 sorry. And are you representing Brightwood
6 Community? Is it Brightwood --

7 MS. ADAMS-SIMMONS: Brightwood
8 Community Association.

9 CHAIRMAN JORDAN: -- Community
10 Association? And all the others that are
11 sitting at the table, are you members of the
12 association? You're all members of the
13 association except for you, Ms. Rush? You're
14 not?

15 MS. RUSH: No, I am. I'm also the
16 recording secretary.

17 CHAIRMAN JORDAN: Okay. Then --
18 and I take it, Ms. Simmons, you are going to
19 be making testimony in regards to the
20 association?

21 MS. ADAMS-SIMMONS: Yes.

22 CHAIRMAN JORDAN: That you have

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1 certain issues. And so let me turn to the other
2 persons sitting at the table.

3 Does Ms. Simmons' statement include
4 all your issues?

5 MS. SINGLETON: No.

6 CHAIRMAN JORDAN: You have
7 different issues other than what is going to
8 be raised by Ms. Simmons?

9 MS. SINGLETON: Yes.

10 CHAIRMAN JORDAN: Okay. Please,
11 begin please. You have five minutes as an
12 association representative.

13 MS. ADAMS-SIMMONS: Well, thank
14 you. I simply wanted to make an introductory
15 statement and to clarify, also to clarify, a
16 couple of issues.

17 Number one, the former president
18 presided over both of the votes that were
19 regarding the application.

20 The first time that they voted,
21 there were probably about 14 or 15 people there
22 and as it turned out, most of the neighbors had

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1 not been notified. And I live three doors from
2 where the association holders meet. I had not
3 been notified.

4 So once the people found out, we had
5 to make Xerox copies and let people know what
6 was happening and to go into the ANC meeting.

7 So, therefore, I did not preside over either
8 of those votes.

9 Secondly, our issue has to do with
10 the expansion.

11 And, thirdly, we did not say that
12 we did not want to come to any type of agreement
13 or compromise. What we said was that we were
14 here, we were in opposition to the expansion.

15 No one was opposing that they have that day
16 care.

17 We are simply opposed to the
18 expansion of the day care and we made that very
19 clear.

20 What happened at the second vote
21 when all the members were there, there were 60,
22 most of the -- 61 who had signed this petition.

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1 Our ANC Member before we could even do any
2 discussion, she got up and she said that whatever
3 happens or whatever the feeling of the group
4 is going to be, I am in favor of it, because
5 of something that she remembers from when she
6 was a child and her own personal experiences.

7 And secondly, she does not live --
8 she lives about four blocks over and plus her
9 responsibility has to do with the community and
10 the city not her. If it's simply going to be
11 that well, okay, this is how I want it, then
12 you don't need us. You don't need the
13 community. You can just have your own whatever
14 you want to call it.

15 And in terms of the fines, we have
16 not seen that last paper that he said they did,
17 the ANC, the agreement. We have not seen it.

18 We have not said that we are going to collect
19 any fines and we will not collect any fines.
20 That is not within our mission whatsoever.

21 CHAIRMAN JORDAN: Let me make sure.

22 There is not an agreement. They are

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1 negotiating an agreement. It's not final. And
2 what he said was that based upon the individual,
3 the parents' letter in agreement with the child
4 care center, that if they have to pay in
5 violation, because they violated one of the
6 rules or regulations thereof, then the money
7 that they would pay over to the school would
8 actually become a contribution or a donation
9 to the Brightwood Community Association.

10 Not that Brightwood Community
11 Association would receive or collect or be the
12 policing body for it. It's just that they would
13 make a donation. I just wanted to make sure
14 that you were clear.

15 MS. ADAMS-SIMMONS: The
16 chairperson of ANC stated that, at the meeting,
17 he decided that on his own we are not accepting
18 any donation from any of those commercial
19 buildings, someone who is trying to invade our
20 neighborhood.

21 We did not agree to that. That was
22 something he sat up there and said without

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1 discussing with us. So it's clearly that our
2 position was not considered. And the members,
3 the people who live in the community are just
4 very, very concerned and we have an awful lot
5 of senior people who invest in that community
6 financially and with their energy to make it
7 that type of neighborhood that people want to
8 move in.

9 If -- we would be willing to talk
10 about some issues, but not relevant to the
11 expansion. We are against the expansion. Just
12 very clearly, that's all. And we said that to
13 them and they decided they didn't care.

14 Ms. Marian Bennett, who is our ANC,
15 she said to us at our meeting when some of the
16 members raised the issue that she should be
17 considering what the community feels. At the
18 first vote, they had about 14 people. And at
19 the second vote, there were probably about 40
20 or 50, because people didn't know before.

21 But she said she was not concerned
22 at all about how we felt, that was very clear.

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1 And you can get all of the members who were
2 there who heard it. And people were just
3 appalled. And some of them raised the issue
4 about she supposed -- should be representing
5 the community.

6 So she said well, she can do whatever
7 she chooses. And that what she chooses to do
8 is she chooses to approve them. I mean, she
9 clearly said that she was not concerned about
10 our position. And then she said well, you know,
11 it has to do with the -- you know, and also even
12 she said in spite of that, in addition to that,
13 there is the issue about consideration for the
14 community and what's best for the city.

15 Well, my understanding was best for
16 the city would be the city need to come in and
17 take on part of our block somewhere down there,
18 because they need to do some kind of work and
19 they need to -- you know, how they do. They
20 come in and do easements. I forgot exactly what
21 you call them. The city will come in and take
22 part of a property. Imminent domain. So

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1 that's very different.

2 This issue has to do with our
3 community. That has nothing to do with the
4 city. This is a home that's in the middle of
5 a residential area.

6 So I simply wanted to clarify those
7 errors. And one of the reasons that we had some
8 reluctance to talk about some issues before,
9 the issues settled about the expansion, is
10 because they had not been fair with us. They
11 had not been open. They -- people had to --
12 someone stuck a notice in my door that this was
13 happening. And we have to rush around and talk
14 to people and ask them have they heard about
15 it.

16 So if some person has not operated
17 openly and fairly, why would you start doing
18 some kind of agreement, putting the cart before
19 the horse? And that was our feeling. So they
20 totally misrepresented what we had said in each
21 of those incidents.

22 And that's all I have to say, sir.

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1 CHAIRMAN JORDAN: I think we have
2 -- does the Board have any questions of Ms.
3 Simmons?

4 MR. HOOD: I just want to ask Ms.
5 Simmons one or two quick questions.

6 I want to make a comment. I'm glad
7 you clarified and I appreciate your
8 clarification on who oversaw the votes, both
9 of the votes, so I'm clear on that now.

10 And I do know the work of Chairman
11 Toliver and I do know your work. And I know
12 you all have two civic leaders in the city who
13 have done a lot and major accomplishments to
14 the residents of the city.

15 MS. ADAMS-SIMMONS: Thank you.

16 MR. HOOD: And I'm just curious, I'm
17 just curious, knowing, Mr. Toliver and knowing
18 your work, especially with the federation, I'm
19 just curious if you two probably could have a
20 conversation to try to address this. Because
21 when I hear the applicant saying that they want
22 two infants, and I understand the neighborhood

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1 expansion.

2 First of all, right now, they are
3 operating. Let me ask you this way. Right now,
4 they are operating now. They are operating now,
5 right?

6 MS. ADAMS-SIMMONS: Yes.

7 MR. HOOD: Are they causing a
8 problem now? Is it changing the character of
9 the neighborhood now? Is I guess my question.

10 MS. ADAMS-SIMMONS: Okay. The
11 members who live on that street say that. I
12 live around the corner.

13 MR. HOOD: Okay. So the members
14 that live on the street say that they have been
15 impacted for the year they have been operating?

16 MS. ADAMS-SIMMONS: Absolutely.

17 MR. HOOD: Okay.

18 MS. ADAMS-SIMMONS: But they did
19 not object to them being there. They just
20 objected to the expansion.

21 MR. HOOD: The expansion. And
22 pretty much the expansion, the way I see it from

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1 what I heard today, was two infants for the most
2 part.

3 MS. ADAMS-SIMMONS: No. Well, my
4 -- our understanding is that if you get an
5 expansion, that the expansion goes to number
6 12. And then saying that well, okay, we will
7 get number 12, but we only want for two. So
8 you get the expansion for 12. Next month,
9 you're going to say okay, well, I need to use
10 these two. I'm going to be --

11 MR. HOOD: The other two more.

12 MS. ADAMS-SIMMONS: -- up to nine.

13 MR. HOOD: I understand the
14 uncertainty. I'm not sure, I would have to
15 check on what my other colleagues would do.
16 But if it was just those two that they are asking
17 for, some might say give them four, but if it
18 was just those two, do you think you would still
19 have the same concern or the same issues about
20 the expansion?

21 CHAIRMAN JORDAN: Two infants.

22 MR. HOOD: Two infants. I'm sorry.

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1 MS. ADAMS-SIMMONS: The --

2 MR. HOOD: And you don't even -- you
3 know what, you don't even have to answer that
4 now. That's just something to consider. Well,
5 answer it.

6 MS. ADAMS-SIMMONS: Well, I can
7 answer.

8 MR. HOOD: Okay.

9 MS. ADAMS-SIMMONS: And -- because
10 of what the residents have told me, which some
11 of them are here. They object. They do not
12 want to go over that, because you don't trust
13 people when they have not been fair with you.
14 And you live right there and you don't go next
15 door. You don't go across the street and talk
16 to these people.

17 And then you get some people out of
18 the sky to sign a paper that there is no address,
19 no anything, the trust, there is no trust there,
20 because of how they have acted. So their answer
21 is no.

22 MR. HOOD: Okay. All right.

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1 Thank you. Thank you, Mr. Chairman.

2 CHAIRMAN JORDAN: Yes. Any other
3 questions from the Board? Okay. Then thank
4 you, Ms. Simmons.

5 Mr. Horton?

6 MR. HORTON: Yes. We have 34
7 houses on the 1300 Block of Tuckerman Street.
8 Two of which are vacant. The house next door
9 to the applicant is vacant. The one that he
10 has a letter for is vacant.

11 MS. ADAMS-SIMMONS: Yes.

12 MR. HORTON: And another up the
13 street is vacant. You have -- we have over 19
14 signatures of people on Tuckerman Street, on
15 the 1300 Block of Tuckerman Street who is opposed
16 to this expansion. That represents over 60 --
17 almost 60 percent of the people on Tuckerman
18 Street who is opposed to this.

19 We are adamantly opposed to this
20 expansion in any shape or form. The next door
21 neighbors, to tell you those stories about this,
22 is two sisters. Both of them are seniors. One

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1 is close to 90 and one is in their 80s. They
2 wake up in the morning when they hear those
3 children come and the noise that is starting.

4 They can't rest during the course
5 of the day, because of all the noise that the
6 kids are making, inside the house and outside.

7 So we are adamantly opposed to this expansion.
8 Thank you.

9 CHAIRMAN JORDAN: All right.
10 Thank you. Does anyone have any questions of
11 Mr. Horton?

12 VICE CHAIR SORG: Sure. Thank you,
13 Mr. Chairman. Hi, Mr. Horton. I just wanted
14 to get a clarification. The two women senior
15 citizens that you mentioned who are the adjacent
16 neighbors, is that -- do you know the address?

17 It would probably either be 1355 or 13 --

18 MS. RUSH: 49.

19 VICE CHAIR SORG: 49?

20 MS. RUSH: Gladys Freeman.

21 VICE CHAIR SORG: Okay. And were
22 they part of the petition that was signed?

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1 MR. ZEIGLER: Yes.

2 MS. RUSH: They are on the petition.

3 VICE CHAIR SORG: Okay. Okay.

4 And Mr. Horton, you are also on the block,
5 correct?

6 MR. HORTON: Yes, that is correct.

7 VICE CHAIR SORG: And can you
8 describe where your home is in relationship to
9 Ms. Garcia?

10 MR. HORTON: I'm about six houses,
11 at best.

12 VICE CHAIR SORG: And you're on the
13 same side of the street, right?

14 MR. HORTON: Same side of the
15 street.

16 VICE CHAIR SORG: And --

17 MR. HORTON: I do see the kids out
18 there playing in the back yard.

19 VICE CHAIR SORG: Yes.

20 MR. HORTON: In addition to that,
21 you know, the neighbors who live across the alley
22 from the play area, they even -- you know, I

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1 haven't talked to them and they even signed the
2 petition against this proposal for the increase.

3 VICE CHAIR SORG: Okay. And one
4 question I had in general and I think maybe you
5 can answer it is did Mr. Garcia and Ms. Lora
6 move in a year ago?

7 MR. HORTON: Approximately so.

8 VICE CHAIR SORG: Okay. So at the
9 same time and that your understanding or your
10 recollection or knowledge is that they became
11 residents at the same time as the child
12 development home was established?

13 MR. HORTON: Well, they did some
14 home improvement work --

15 VICE CHAIR SORG: Yes.

16 MR. HORTON: -- on the home --

17 VICE CHAIR SORG: Yes.

18 MR. HORTON: -- before I saw
19 children in the back yard.

20 VICE CHAIR SORG: Okay.

21 MR. HORTON: And I have been living
22 there for over 30 years.

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1 VICE CHAIR SORG: Okay. And the
2 last question I wanted to ask you was a lot of
3 the letters that we received in opposition, and
4 I'm sure we're going to hear testimony on this,
5 had to do with parking and traffic.

6 Is that something that you
7 personally have felt affected by?

8 MR. HORTON: Yes.

9 VICE CHAIR SORG: Because you
10 didn't mention it that much in your testimony.

11 MR. HORTON: Oh, well, parking is
12 always a problem on Tuckerman. And it's such
13 a narrow street.

14 VICE CHAIR SORG: Okay.

15 MR. HORTON: And that presents a
16 problem when you double park.

17 VICE CHAIR SORG: Yes.

18 MR. HORTON: Or when you have no--
19 you know, an example, if the parking spaces are
20 taken at that time of morning, what are the
21 parents going to do to drop-off their kids?
22 They are not going to circle the block. They

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1 are not going to go around the back. They will
2 have to double park. So what can they do?

3 VICE CHAIR SORG: Okay. Great.
4 Thank you.

5 CHAIRMAN JORDAN: Mr. Horton, do
6 you hear --

7 MR. HORTON: Yes.

8 CHAIRMAN JORDAN: -- the kids at
9 your house now?

10 MR. HORTON: No, not any more.

11 CHAIRMAN JORDAN: Any more? You
12 did, but something --

13 MR. HORTON: Yes.

14 CHAIRMAN JORDAN: -- happened?
15 And why don't you?

16 MR. HORTON: How old they are.
17 They have college graduates now and they are
18 gone.

19 CHAIRMAN JORDAN: No, no. Do you
20 hear the children at the --

21 MR. HORTON: Oh, yes.

22 CHAIRMAN JORDAN: -- day care?

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1 MR. HORTON: Oh, you said do I have
2 -- I thought you said do I have any children.

3 CHAIRMAN JORDAN: No.

4 MR. HORTON: No. Please, be more
5 specific for me, because maybe my hearing is
6 off.

7 CHAIRMAN JORDAN: Okay.

8 MR. HORTON: The only time I hear
9 the kids is when -- you know, out back I just
10 hear them occasionally. And in addition to
11 that, you know, we have apartments on the corner
12 of 14th and Tuckerman. And that presents
13 parking problems for the people on Tuckerman
14 Street who are residents of that area. I mean,
15 who are homeowners.

16 So -- and not only on -- it's not
17 only on Tuckerman, but you have it on 13th Street.

18 I mean, excuse me, 14th Street, across -- the
19 1400 Block of Tuckerman is apartment-filled and
20 people come from there to park on -- in front
21 of the 1300 Block of Tuckerman. So parking is
22 a problem.

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1 CHAIRMAN JORDAN: Okay. Thank
2 you. Any other questions from the Board? And
3 I was remiss, two things I need to go back to
4 do.

5 First, I'm going to ask the
6 applicant's counsel if he has any questions for
7 Mr. Horton? Any cross-examination questions
8 for Mr. Horton?

9 MR. ZEIGLER: No. Thank you.

10 CHAIRMAN JORDAN: Then I need to ask
11 you also, give you the right and the opportunity
12 to ask any cross-examination questions of Mrs.
13 Simmons.

14 MR. ZEIGLER: Yes, we would like to.

15 CHAIRMAN JORDAN: Okay. Ms.
16 Simmons, he has questions he has a right to ask
17 you.

18 MR. ZEIGLER: Oh, and I'm sorry, I
19 actually do have one question for Mr. Horton
20 as well.

21 CHAIRMAN JORDAN: Okay.

22 CROSS-EXAMINATION

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1 MR. ZEIGLER: The question for Mr.
2 Horton is do you know when the applicants moved
3 into their house?

4 MR. HORTON: I would -- I don't know
5 the exact date, but it was about a year ago.
6 And it was about a year ago.

7 MS. ADAMS-SIMMONS: Longer than
8 that.

9 MR. ZEIGLER: We just want to
10 clarify for the record that they --

11 CHAIRMAN JORDAN: No. You are
12 asking questions.

13 MR. ZEIGLER: Okay. I'm sorry.

14 CHAIRMAN JORDAN: That's to Ms.
15 Simmons, correct?

16 MR. ZEIGLER: Okay. The question
17 for Ms. Simmons is at the meeting on last Monday
18 between the neighbors and the applicants, were
19 the neighbors asked if there were any conditions
20 whatsoever if every single issue was addressed,
21 was there any way that the neighbors would
22 support the application?

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1 MS. ADAMS-SIMMONS: No. What we
2 said was that those are two separate issues,
3 the expansion is different than those issues
4 that were raised and that's what we told our
5 Commissioner, who had already said she had
6 already made up her mind anyway, but we came
7 to the meeting and that's what we told her.

8 The issues are separate from the
9 expansion and that's what we said.

10 CHAIRMAN JORDAN: Let me repeat
11 what I think Ms. Simmons that you said, so I
12 think we are clear in our record. Is that the
13 only discussions you are willing to have is about
14 the present operation of the child care center
15 without any addition or expansion.

16 When it comes to expansion or any
17 additional children, there is no room for
18 discussion. Is that correct?

19 MS. ADAMS-SIMMONS: We are
20 objecting to the expansion.

21 CHAIRMAN JORDAN: Yes, I understand
22 that. But the question was are you willing to

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1 sit down and talk? Are there any possibilities
2 that they can reach a term that is acceptable
3 to you to allow them to do an expansion, that
4 you would agree for them to do an expansion?

5 MS. ADAMS-SIMMONS: Well, their
6 position, basically, is no, because they don't
7 trust them.

8 CHAIRMAN JORDAN: Okay. So the
9 answer is --

10 MS. ADAMS-SIMMONS: So --

11 CHAIRMAN JORDAN: No. Let me be
12 clear, because this is very --

13 MS. ADAMS-SIMMONS: Yes.

14 CHAIRMAN JORDAN: -- very important
15 for us. Is there any conditions that the
16 Brightwood Community Association could place
17 upon the applicant that if they agreed to those
18 terms and did those things, those conditions,
19 that you would support their application for
20 expansion?

21 MS. ADAMS-SIMMONS: Are you saying
22 for two more people? Is that what you are saying

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1 or just an expansion period?

2 CHAIRMAN JORDAN: Yes, let's say
3 for two more people.

4 MS. ADAMS-SIMMONS: There is the
5 neighbors who live there. They wholeheartedly
6 object to any expansion, because they live it
7 every day. What we did say we would be willing
8 to talk about the issues that were being raised
9 at the meeting after we deal with the expansion.

10 CHAIRMAN JORDAN: After we deal
11 with the expansion.

12 MS. ADAMS-SIMMONS: Because we --

13 CHAIRMAN JORDAN: No. My question
14 -- maybe I'm not being --

15 MS. ADAMS-SIMMONS: I missed your
16 question. I'm sorry.

17 CHAIRMAN JORDAN: -- very clear.
18 On the expansion solely is what we are talking
19 about.

20 MS. ADAMS-SIMMONS: Yes.

21 CHAIRMAN JORDAN: Is there any
22 possibility that the community association

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1 would agree to expansion, and I'm hearing now
2 it's for two children, in any condition? Can
3 you come up with some way that would make it
4 palatable for you to accept them expanding to
5 agree to two children, to having two children
6 expansion?

7 MS. ADAMS-SIMMONS: The
8 neighborhood has said no.

9 CHAIRMAN JORDAN: Okay. That's --

10 MS. ADAMS-SIMMONS: However, may I
11 make a --

12 CHAIRMAN JORDAN: No. Because
13 it's real clear. And we keep going back and
14 forth is what I'm hearing. And we need to be
15 set. And I guess I have asked it about four
16 different ways.

17 MS. ADAMS-SIMMONS: Yes.

18 CHAIRMAN JORDAN: And I think I'm
19 getting the same no that you would not accept
20 the expansion for two children based upon any
21 condition.

22 MS. ADAMS-SIMMONS: Okay. That's

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1 correct. However, I would like to say that we
2 -- I think that we are justified in what we are
3 feeling, because every --

4 CHAIRMAN JORDAN: No. I'm not
5 asking you that. Please, stay with me. I
6 understand where your feelings are. I
7 understand the issues that your community
8 association is having.

9 MS. ADAMS-SIMMONS: We have had --

10 CHAIRMAN JORDAN: But it's
11 important for us to understand whether or not
12 there is any room for agreement. And I'm
13 understanding your testimony, there is no room
14 for agreement regarding the expansion.

15 MS. ADAMS-SIMMONS: We have a
16 meeting tonight, a regular meeting, where we
17 will be discussing this. But they have not
18 given me any --

19 CHAIRMAN JORDAN: That's fair.

20 MS. ADAMS-SIMMONS: -- difference
21 at the time.

22 CHAIRMAN JORDAN: Gotcha.

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1 MS. ADAMS-SIMMONS: And I think you
2 need, clearly need, to understand why we are
3 so hard-faced because --

4 CHAIRMAN JORDAN: No, no, Ms.
5 Simmons?

6 MS. ADAMS-SIMMONS: -- every year
7 and a half --

8 CHAIRMAN JORDAN: Ms. Simmons,
9 please, please, please.

10 MS. ADAMS-SIMMONS: -- somebody
11 tries to --

12 CHAIRMAN JORDAN: I understand --

13 MS. ADAMS-SIMMONS: -- negate
14 our --

15 CHAIRMAN JORDAN: -- where you are.

16 MS. ADAMS-SIMMONS: Okay.

17 CHAIRMAN JORDAN: I understand.

18 MS. ADAMS-SIMMONS: Okay.

19 CHAIRMAN JORDAN: I understand.

20 MS. ADAMS-SIMMONS: Okay.

21 CHAIRMAN JORDAN: And we do this all
22 the time. We have these hearings. We deal with

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1 community issues. We know. We can even feel
2 where you are coming from. We know. I mean,
3 we all live in neighborhoods and communities.
4 We know. We gotcha. But I just needed to get
5 that clear cut answer.

6 Not yet, please, Ms. Singleton?

7 MS. SINGLETON: Yes.

8 CHAIRMAN JORDAN: Any other
9 question that you need to ask?

10 MR. ZEIGLER: No. Thank you.

11 CHAIRMAN JORDAN: All right.
12 Good. Ms. Singleton, you have a presentation.
13 You can -- you have three minutes.

14 MS. SINGLETON: Okay. Great.
15 Just to go back with respect to what was said
16 earlier, there are concerns about enforcement,
17 given previous experiences and history with
18 them. So I'll start.

19 Again, my name is Patience Singleton
20 and I reside at 1316 Tuckerman Street. I'm
21 testifying today in opposition o this
22 application submitted on behalf of Ms. Ana Maria

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1 Lora-Garcia.

2 I oppose this application on
3 procedural as well as substantive grounds. In
4 short, she has not provided sufficient notice
5 to her neighbors throughout this process and
6 that the current operation facility has had
7 objectionable impacts on adjacent properties,
8 which is likely to grow if the number of the
9 facilities children -- number of children the
10 facility increases, these objectionable
11 circumstances should disqualify the zoning
12 adjustment.

13 Just quickly with respect to the
14 procedural issues and I think you all -- they
15 did not post the notice. I'm not quite sure
16 what they said that she sent around. We
17 received some --

18 CHAIRMAN JORDAN: Sorry, I saw that
19 in your statement.

20 MS. SINGLETON: Yes. We --

21 CHAIRMAN JORDAN: And I'm going to
22 have some questions about that.

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1 MS. SINGLETON: Yes. We received
2 something, I think, from the ANC Commissioner
3 with respect to the initial BZA -- the initial
4 Brightwood Community Association meeting.
5 There are a number of elderly people who live
6 on our block who had no idea that this meeting
7 was occurring or that there would be a vote.

8 CHAIRMAN JORDAN: Hold on. Excuse
9 me. Where are we picking up static? We're
10 okay?

11 MS. SINGLETON: I'm sorry. Is that
12 better?

13 CHAIRMAN JORDAN: Yes, but it
14 sounded like somebody was rustling something.
15 But go ahead, please.

16 MS. SINGLETON: I'm sorry. Is that
17 better?

18 CHAIRMAN JORDAN: Yes, go ahead,
19 please.

20 MS. SINGLETON: Yes. So I think
21 just to sort of again clarify what happened
22 initially, we had Brightwood Community

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1 Association meetings on a regular basis. When
2 there is going to be a big vote or something,
3 the word gets out. They send out something on
4 the listserv which a lot of elderly people did
5 not receive and were not present.

6 There was not one person who lived
7 on Tuckerman Street present at the first meeting
8 where there was a vote with 14 people not even
9 quorum present. So and subsequently, there was
10 another meeting.

11 But again, concerns about the
12 posting. They did post something on, I think,
13 Thursday. They posted it Friday. They took
14 it down Saturday for whatever reason. And they
15 put it back up, I don't know, recently on Sunday,
16 so they really hadn't provided the notice, I
17 thought, that was sort of required under the
18 procedures for making sure that their neighbors
19 would know what is happening and would have an
20 opportunity for neighbors to comment.

21 Again, briefly, since I only have
22 three minutes, I also strongly oppose the

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1 facility given that the neighbors are already
2 experiencing or have experienced objectionable
3 and unsafe traffic conditions due to their
4 home-based child care center.

5 Neighbors who live closer to her
6 have witnessed her clients, as was discussed
7 earlier, parking on the wrong side in direction
8 of the street on numerous occasions. In
9 addition, a neighbor who lives sort of across
10 the street from them saw one of the parents
11 violating the law and endangering special needs
12 children on the block by driving their car around
13 a stopped D.C. Bus for Disabled Children.

14 Lastly, my next door neighbor who
15 would not be here today complained that a parent,
16 because it's such a narrow street, left her car
17 in the middle of the road during -- after a snow
18 storm last year and blocked traffic flow for
19 more than 10 minutes as she picked up her child
20 with no regard to other people on the street.

21 So and there are just no assurances
22 that these objectionable practices related to

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1 the day care will end and there is no real means
2 for us to enforce her promises if the special
3 exception is granted.

4 And lastly, I just want to say
5 despite what was said earlier that there is
6 plenty of parking, there is very little
7 available parking on that street first thing
8 in the morning and between 5:30 and 6:30.

9 In fact, prior to us knowing
10 anything about her application, neighbors
11 circulated a petition seeking to get added
12 permit parking on the street just so people would
13 have places to park when they got home from work,
14 because there was some issues and you can
15 probably talk to that a bit more.

16 So again, I strongly oppose the
17 application. She has operated the facility in
18 a manner that has impacted parking, safety and
19 traffic on a number of occasions. I think it
20 would set bad precedent for BZA to reward Ms.
21 Lora-Garcia with a special exception to expand
22 her facility under these circumstances.

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1 And we hope that, you know, you all
2 have the responsibility to uphold the integrity
3 of the residential character of the Brightwood
4 neighborhood as you do throughout the city.

5 And on behalf of my neighbors who
6 couldn't be here and myself, I urge you to reject
7 the Zoning Adjustment for this day care
8 expansion on Tuckerman Street because there is
9 no way to really enforce it.

10 CHAIRMAN JORDAN: All right.
11 Thank you.

12 MS. SINGLETON: Thank you.

13 CHAIRMAN JORDAN: Questions of Ms.
14 Singleton? I understand from the pictures that
15 you submitted, that was taken -- your camera
16 reflects the date that you took it?

17 MS. SINGLETON: Yes.

18 CHAIRMAN JORDAN: Your microphone,
19 please.

20 MS. SINGLETON: That was Saturday.
21 There were no -- nothing posted Saturday
22 morning or Saturday afternoon when that picture

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1 was taken. They may have put something up later
2 that day, but the entire morning and early
3 afternoon, there were no signs up.

4 CHAIRMAN JORDAN: You didn't see
5 pictures until the -- you did not see a notice
6 until the 9th? Is that correct?

7 MS. SINGLETON: I saw the -- what's
8 that?

9 CHAIRMAN JORDAN: Thursday?

10 MS. SINGLETON: Thursday, they put
11 it up Thursday. It was up, I think, Thursday
12 afternoon. It was up Friday. It wasn't up
13 Saturday. And she said it's not up to now.
14 So I --

15 CHAIRMAN JORDAN: Okay.

16 MS. SINGLETON: -- that's it.

17 CHAIRMAN JORDAN: All right.
18 Thank you.

19 MS. SINGLETON: And I'm sorry, can
20 I add one last thing? Like I said, the house
21 next door -- I'm sorry. The house next door
22 is empty. It's for sale and I'm not sure, there

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1 was an open house on Sunday, so again, there
2 is --

3 CHAIRMAN JORDAN: Gotcha.

4 MS. SINGLETON: -- not a posting up.

5 CHAIRMAN JORDAN: Thank you. Any
6 questions, Board? Question of Ms. Singleton?

7 VICE CHAIR SORG: Thank you, Mr.
8 Chairman.

9 CHAIRMAN JORDAN: Ms. Sorg?

10 VICE CHAIR SORG: Just one
11 question. Can you describe, you said you are
12 at 1316, right?

13 MS. SINGLETON: I'm further down
14 the block.

15 VICE CHAIR SORG: I think your mike
16 is not on.

17 MS. SINGLETON: Oh, I'm sorry.
18 Yes, I'm further down the block.

19 VICE CHAIR SORG: Okay.

20 MS. SINGLETON: Closer to --

21 VICE CHAIR SORG: So --

22 MS. SINGLETON: -- 13th Street.

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1 VICE CHAIR SORG: And so have you,
2 yourself, experienced any of the negative
3 impacts that you are describing or is that from
4 your conversations with your neighbors?

5 MS. SINGLETON: Well, yes, it's
6 from my conversations with neighbors. A lot
7 of them elderly who couldn't be here and who
8 had a number of problems.

9 VICE CHAIR SORG: Okay.

10 MR. HOOD: But you have not?

11 VICE CHAIR SORG: She said not
12 personally.

13 MS. SINGLETON: I have not, because
14 I'm about 10 blocks -- I mean, 10 houses down
15 or so.

16 VICE CHAIR SORG: Okay.

17 MS. SINGLETON: I wasn't -- I'm not
18 within that 400 --

19 CHAIRMAN JORDAN: 200.

20 VICE CHAIR SORG: 200 feet.

21 MS. SINGLETON: I'm sorry, 200
22 feet. So I didn't get the paper notice.

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1 VICE CHAIR SORG: Okay. You spoke
2 about your concerns about the procedural --
3 following the procedure. And then you also
4 spoke about some negative impacts that are
5 similar to what Mr. Horton spoke to, double
6 parking, parking on the wrong side, you know,
7 just sort of those types of traffic conditions.

8 And it sounds -- and I sort of want
9 you to correct me if I'm wrong, okay? It sounds
10 like you are framing your opposition based on
11 your view that an agreement or conditions under
12 -- you know, that are imposed upon the operation
13 of this child care center are unenforceable.
14 Is that correct?

15 MS. SINGLETON: Well, it's
16 partially that, but it's -- sometimes when you
17 sort of look at the paperwork we have to fill
18 out and we think that this expansion is going
19 to harm the neighborhood.

20 VICE CHAIR SORG: Yes.

21 MS. SINGLETON: That's sort of
22 forward thinking. We already know that they

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1 are currently harming the neighborhood. And
2 when they -- when there was a current problem
3 in the operation of a particular business, day
4 care center, dry cleaners or whatever, it's --
5 you don't want to reward that type of behavior
6 with an expansion and then say now, we are going
7 to try to enforce it without a true enforcement
8 mechanism.

9 It's not that we are somehow
10 speculating on whether or not this expansion
11 will cause problems to the neighborhood. The
12 current setup has caused problems and because
13 of the way zoning works in D.C. with day care
14 centers, neighbors had no say so in them being
15 able to have the initial six children.

16 And they have taken that initial
17 approval outside of our ability to respond to
18 it and they have not been great neighbors to
19 people. They have not spoken to people. I
20 think they may have had a conversation with one
21 couple who they said -- who no longer live there.

22 Their house is for sale. The sign is not up

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1 there, you know, when there is an open house
2 letting people know who may move in next door
3 that this is a facility that will be your next
4 door neighbor.

5 The sign wasn't there Sunday when
6 -- I mean, I don't know, but the sign hasn't
7 been up there.

8 VICE CHAIR SORG: Perhaps it was.

9 MS. SINGLETON: Perhaps, perhaps.
10 Because people have been looking at the home.
11 There is -- I don't -- and I would like to see
12 who in the neighborhood actually supported it,
13 because no one who lives next door --

14 VICE CHAIR SORG: Okay.

15 MS. SINGLETON: -- or around.

16 VICE CHAIR SORG: And then my last
17 question which is in the 1300 Block of Tuckerman
18 Street, are there any other nonresidential uses
19 that you know about? I know that there is a
20 larger apartment building on one corner. And
21 is everything else single-family homes?

22 MS. SINGLETON: That's my

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1 understanding.

2 VICE CHAIR SORG: I think your mike
3 is off again.

4 MS. SINGLETON: Sorry.

5 VICE CHAIR SORG: It's okay.

6 MS. SINGLETON: That's my
7 understanding, yes.

8 VICE CHAIR SORG: Okay.

9 MS. SINGLETON: That's my
10 understanding.

11 VICE CHAIR SORG: Thank you.

12 CHAIRMAN JORDAN: Yes, Mr. Hinkle?
13 All right. Then let's go to Ms. Rush, please.

14 MR. ZEIGLER: Mr. Chairman? I'm
15 sorry.

16 CHAIRMAN JORDAN: Sorry, yes.

17 MR. ZEIGLER: Do I get an
18 opportunity?

19 CHAIRMAN JORDAN: Yes, you do. I'm
20 sorry.

21 MR. ZEIGLER: You said you didn't
22 personally witness the infractions you talked

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1 about. Was there any evidence shown to you or
2 presented to you that would actually indicate
3 that the infractions, for instance the person
4 driving by the school bus, was actually a parent
5 at the day care? I mean --

6 MS. SINGLETON: That's precisely
7 the problem we are having with enforcing this.
8 How do we find -- how do we know if -- I mean,
9 do we have to have someone out there standing
10 with a camera? That's precisely why we have
11 issues with enforcement.

12 The people who live across the
13 street with the special needs kid, they know
14 who comes in and out of the, most likely, day
15 care center. And they know the car went around
16 their kids' bus and stopped or picked up their
17 kid.

18 So I think what you are asking me,
19 not to be difficult, but that's precisely why
20 we have issues with enforcement. Are we going
21 to get the name plates every time someone comes
22 in? How do you enforce it when there is traffic

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1 that goes up and down Tuckerman? Because it
2 connects 14th Street with 13th Street that way,
3 but, again, it's going to be very difficult to
4 enforce it if we have just, you know, your
5 clients agreement with their particular -- with
6 their parents.

7 It's hard to enforce something like
8 that and that's why we have a problem with it.

9 MR. ZEIGLER: I want to phrase that
10 in a --

11 MS. SINGLETON: The question is --
12 is your question whether or not people are
13 telling the truth about the infractions now,
14 when there have been complaints and saying that
15 there are no complaints is not necessarily true.

16 CHAIRMAN JORDAN: Oh, we are not
17 going to -- we are just not going to debate the
18 point. If you would just give a response. Your
19 next question, please?

20 MR. ZEIGLER: Okay. Along the
21 lines of the difficulty of enforcement. How
22 are you -- if you can't enforce this because

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1 it's hard to identify the people violating, how
2 can you be sure that those issues that you are
3 raising are caused by the operation of the day
4 care as opposed to just general issues in the
5 neighborhood?

6 MS. SINGLETON: People have seen
7 the cars stop. The neighbor saw as she was
8 waiting 10 minutes, because she couldn't pass,
9 the woman go in, get her kid and come out. So
10 I think that's quite clear that it's a
11 neighborhood. People see people double park
12 or park in the back and they hop out, they go
13 in the house, get their kid and they come back.

14 I mean, are we going to have to start
15 taking pictures to prove that people are
16 violating the agreement that you want to enter
17 into with the parents? You are actually making
18 my point that you can't really enforce it,
19 because I'm giving you concrete evidence of
20 people who have had a number of problems. And
21 you are saying that we can't prove that the day
22 care center has been problematic to our

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1 communities. That's a problem.

2 CHAIRMAN JORDAN: All right. Any
3 other questions? Okay. Ms. Rush?

4 MS. RUSH: Hi, Veronica Rush. I
5 live at 1358 Tuckerman. I live directly across
6 from the Little Green Nest and I have witnessed
7 pretty much every incident that we are speaking
8 about.

9 I spoke with the parent -- the mother
10 of the autistic child who lives two doors down
11 and this was not a one time situation. It
12 happened several times where she got into an
13 altercation with the people who frequent the
14 Little Green Nest.

15 So we are aware of who they are. They
16 park in front of my house on a regular basis
17 on the opposite side of the street. They will
18 turn around in the middle of the street. All
19 the things that have been addressed.

20 Byron Davis who lives at 1357, I'm
21 sure it has been said, he has moved to Texas.
22 He is only hanging around to sell his house

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1 to get paid for that. His family has already
2 gone.

3 Mildred Chappelle and Gladys
4 Freeman are two retired -- one is a retired
5 teacher and one is a retired school counselor.

6 They have an issue with the crying and the kids
7 all day. I can hear the crying from my house
8 even with the door closed. So it is an issue
9 with the noise, the traffic.

10 And I just want to make one other
11 point. We weren't informed of anything in
12 reference to the Little Green Nest. They see
13 me on a regular basis every day. They have never
14 acknowledged me. They never acknowledged
15 anyone to the right, the left or across the
16 street.

17 And the reason that we are so in
18 opposition of this is because had they extended
19 themselves, although we don't want it, they
20 would have done the right thing morally. But
21 to go behind our backs and try to get this
22 extension, the signatures that they have, they

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1 don't match up with the signatures from
2 Somerset, Tewkesbury, Tuckerman, Rittenhouse.

3 They don't match up.

4 They don't have any addresses or
5 phone numbers. It seems like there has been
6 a lot of underhanded things that have gone on
7 in order to get this passed. And we have a
8 concern with it. We don't want it for not only
9 the reasons that we want to keep this a
10 residential block, but we don't want it because
11 they went about it the wrong way also.

12 You know, they didn't include to
13 have -- we agreed or disagreed, at least they
14 would have did -- I mean, doing the right thing,
15 I would think would have -- we could have looked
16 at it in their favor maybe. At least to say
17 well, they did present it and no, we don't want
18 it, but at least they did let us know and they
19 didn't.

20 CHAIRMAN JORDAN: Thank you.
21 Board, any questions of Ms. Rush?

22 VICE CHAIR SORG: Thank you. Ms.

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1 Rush?

2 MS. RUSH: Yes.

3 VICE CHAIR SORG: So you are at
4 1358, you're across the street. Did you receive
5 the notice letter from the Office of Zoning?

6 MS. RUSH: I did.

7 VICE CHAIR SORG: You did. Okay.
8 Thank you.

9 CHAIRMAN JORDAN: And you heard
10 earlier some testimony from Ms. Singleton that
11 the notice was not placed until last Thursday
12 and Friday. Is that correct?

13 MS. RUSH: The notice at the home?

14 CHAIRMAN JORDAN: Did you see the
15 notice prior to --

16 MS. RUSH: No. The notice was not
17 placed. And actually, the notice is not on the
18 door today, because when I walk out, again, they
19 are directly across the street, the notice isn't
20 there. The notice wasn't there yesterday
21 evening either.

22 CHAIRMAN JORDAN: All right.

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1 Thank you. Board, any other questions? Then
2 if the applicant has any cross-examination?

3 MR. ZEIGLER: No. Thank you.

4 CHAIRMAN JORDAN: Then I'm going to
5 go to is it Ms. Major?

6 MS. MAJOR: Yes.

7 CHAIRMAN JORDAN: Okay. Please,
8 you have three minutes.

9 MS. MAJOR: Thank you. My name is
10 Pam Major and I'm at 1308 Somerset Place. What
11 affects Tuckerman ultimately will affect me.

12 I am here representing other
13 neighbors on my block. And our opposition is
14 to any nonresidential changes in the
15 neighborhood. It is a very quiet neighborhood.
16 It's a very close-knit neighborhood.

17 I venture to say that if proper
18 procedures had been followed from day one, we
19 would not be here today.

20 And then now, I'll just go all over
21 the place, because the things that people say
22 here, they just say it because they think that's

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1 what you want to hear.

2 The one thing is going back to the
3 agreement. Who will enforce it? Well, in one
4 ANC meeting, it was said that the neighbors would
5 enforce it. They would be the ones expected
6 to be out there and make notations.

7 Then what do you do with that
8 information? You go back to the ANC. Oh, you
9 all are just being silly. You know, who is going
10 to collect the money from the parents? What
11 if they don't pay? We're going to get a lawyer?

12 The whole thing just makes me
13 nervous in that you can have six children in
14 your home and nobody objects. And by the way,
15 it's not six, it is eight. It's eight already,
16 because in another meeting it came out that when
17 schools are closed, some of the siblings don't
18 have anywhere to go. So they go to the day care
19 center. So we are already at eight, if anybody
20 was interested.

21 So the other thing is, you know, the
22 house next door is for sale. Well, let's see

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1 how long it takes to sell that with three double
2 strollers on the front porch. Any number of
3 riding toys in the back yard and day-to-day
4 confusion next door.

5 Again, we strive for peaceful quiet,
6 let's get along in the neighborhood. Six at
7 a day care center is fine. When you want 12,
8 take your profits and go rent somewhere. Don't
9 keep it in our neighborhood.

10 I'm retired. I'm home all day.
11 Yes, I'm not going to be a part of the traffic
12 problem necessarily, unless they make the loop
13 and zoom down Somerset to 14th Street. 14th
14 Street, what a wonderful place to park close
15 to, because they have a wonderful bus system
16 right there to get you to and from work, get
17 you to and from Metro. So that's another
18 problem that I may or may not experience. I
19 don't know.

20 I don't want to take the chance,
21 quite frankly. And I think that was just about
22 it, other than the collection of fines, I

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1 mentioned that. So that's all I have.

2 CHAIRMAN JORDAN: Thank you, Ms.
3 Major.

4 MS. MAJOR: Yes.

5 CHAIRMAN JORDAN: Let me ask you,
6 do you hear noise at your house?

7 MS. MAJOR: No.

8 CHAIRMAN JORDAN: Or any
9 disruption, because you're like a couple of
10 blocks, maybe a block and a half or so away.

11 MS. MAJOR: A block and a half.

12 CHAIRMAN JORDAN: Correct?

13 MS. MAJOR: Maybe.

14 CHAIRMAN JORDAN: Do you frequent
15 this block or this neighborhood?

16 MS. MAJOR: We walk it, yes.

17 CHAIRMAN JORDAN: Any questions
18 from the Board to Ms. Major?

19 Then I'm going to ask the applicant
20 if he has any cross-examination of Ms. Major?

21 MR. ZEIGLER: Just one. Have you
22 ever seen eight children in the house?

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1 MS. MAJOR: Any children in the
2 house?

3 MR. ZEIGLER: Eight children.
4 More than six children being cared for or not?

5 MS. MAJOR: No. I merely told you
6 what I heard in another meeting.

7 VICE CHAIR SORG: I'm sorry, I just
8 want to jump in between the two of you, because
9 I'm sorry, Ms. Major, I take exception to
10 imputing any family members. This is a
11 single-family home.

12 MR. ZEIGLER: Right.

13 VICE CHAIR SORG: Family members
14 are not what is in question here. Day care --

15 MS. MAJOR: No, no, no, not their
16 family.

17 VICE CHAIR SORG: -- excuse me.
18 Day care --

19 MS. MAJOR: Not their family.

20 VICE CHAIR SORG: Excuse me. Day
21 care students are what we are talking about.
22 So I just want to make sure that we are talking

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1 about the exception for day care and not what
2 a family does in their house.

3 CHAIRMAN JORDAN: Were you asking
4 a question?

5 VICE CHAIR SORG: No, but I
6 don't --

7 CHAIRMAN JORDAN: Okay. Well,
8 let's make sure we are -- where we are in control
9 of this hearing.

10 Your question again? And let's
11 talk about the day care center.

12 MR. ZEIGLER: My question was just
13 whether you had seen more than six children being
14 card for at the day care center at any point?

15 MS. MAJOR: Nope.

16 MR. ZEIGLER: Okay.

17 MS. MAJOR: That's not what I was
18 talking about.

19 CHAIRMAN JORDAN: All right. Any
20 other questions?

21 MR. ZEIGLER: No. Thank you.

22 CHAIRMAN JORDAN: Okay. Then you

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1 have the opportunity to present any rebuttal
2 evidence, but from the things you have heard
3 here today.

4 But let me ask a question. What
5 were the dates of the posting of the notice?

6 MS. LORA-GARCIA: Thursday,
7 Friday, Saturday, Sunday.

8 CHAIRMAN JORDAN: So you started
9 posting last Thursday?

10 MS. LORA-GARCIA: Yes.

11 MR. ANTEZANA: Yes. The official
12 notice.

13 CHAIRMAN JORDAN: Well, prior to
14 the official notice, what about the handwritten
15 notice?

16 MS. LORA-GARCIA: Oh, it was
17 before. It was before.

18 MR. ZEIGLER: That was October 25th.

19 MS. LORA-GARCIA: The pictures are
20 of the document.

21 CHAIRMAN JORDAN: Yes, that's okay.
22 Okay. Thank you. All right. Any other

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1 questions you have? Yes, please.

2 VICE CHAIR SORG: Thank you, Mr.
3 Chairman. I just have one question, which I
4 asked one of the other witnesses.

5 Can you just tell me how long has
6 the applicant lived in this neighborhood?

7 MR. ZEIGLER: Five years.

8 VICE CHAIR SORG: Five years.
9 Okay. Thank you.

10 CHAIRMAN JORDAN: And the day care
11 center has been there in operation how long?

12 MR. ZEIGLER: A little less than two
13 years.

14 CHAIRMAN JORDAN: Okay. Anyone
15 else?

16 MR. HOOD: I'm just -- I know we're
17 talking about the notice, but we have one picture
18 that shows the notice wasn't even up on the,
19 was it the, 10th? What happened between the 9th
20 and the 10th? Did we take it down because we
21 had open house?

22 MR. ZEIGLER: No, the poster was--

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1 I want to be careful about how I say this.

2 MR. HOOD: Just tell the truth.
3 Don't be careful.

4 MR. ZEIGLER: Okay. Good. Our
5 client told us that one of the neighbors came
6 and took the poster down and then they took
7 pictures and then --

8 MR. HOOD: Okay. Well, you know
9 what, that's fine.

10 MR. ZEIGLER: -- put it back.

11 MR. HOOD: Okay.

12 MR. ZEIGLER: So --

13 MR. HOOD: See the thing about this,
14 let me just say this and like the Chair, I don't
15 want -- because I don't like for my hearings
16 to get out of order and so I'm not going to be
17 a cause of his hearing getting out of order.

18 CHAIRMAN JORDAN: And you're not,
19 Mr. Hood. Thank you so much, Mr. Hood.

20 MR. HOOD: But let me just say,
21 there are a lot of games that are going on around
22 here due to those things. And I'm not saying

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1 they did it or they didn't. I just wanted to
2 know, respectfully, what was the impression of
3 what may have happened.

4 You know, I'm not saying I buy it
5 or don't buy it. So and that's for everyone.

6 Thank you.

7 CHAIRMAN JORDAN: All right. Any
8 other thing you have in rebuttal that you believe
9 you want -- any other witnesses or rebuttal
10 testimony?

11 MR. ZEIGLER: No. Thank you.

12 CHAIRMAN JORDAN: Then you have the
13 opportunity to close, to present a closing
14 statement, if you wish.

15 MR. ZEIGLER: The neighbors have
16 expressed a frustration that their opinions and
17 concerns haven't been taken into account. And
18 throughout this process, we have attempted to
19 identify and resolve those concerns. And the
20 neighbors have expressed an absolute and
21 unequivocal unwillingness to work with the
22 applicants to resolve the concerns.

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1 They have said here at this hearing
2 that there are no conditions under which they
3 would be willing to discuss an expansion. In
4 spite of that, we have tried to hear whatever
5 those concerns are. We have tried to address
6 them proactively.

7 We have done it -- we have worked
8 to address them with the parents. We are
9 working to address them with the ANC. You know,
10 we are still, at this point, willing to hear
11 whatever the neighbors have to say and work to
12 try to make this work with the neighbors.

13 You know, we don't want this to be
14 contentious. We don't want it to be a situation
15 that causes anyone concern.

16 So in closing, you know, we, the day
17 care, want to be a good neighbor. They want
18 to function in a way that is going to benefit
19 the community, not cause conflict with the
20 neighbors.

21 CHAIRMAN JORDAN: Okay. Good.
22 Then I'm going to conclude this hearing and leave

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1 the record open for certain items we need.

2 We need the addresses, the name and
3 addresses of the letters. I would like probably
4 better to see a supplemental list of support
5 letters, not the form, but at least on the form
6 I need to have something that is going to
7 indicate the names and addresses here.

8 Additionally, we are going to keep
9 the record open for the ANC agreement.

10 And for you to amend your
11 application for an additional two, so you would
12 have up to eight and not 12. Even with the age
13 group range, you can put that there.

14 MR. ZEIGLER: Okay.

15 CHAIRMAN JORDAN: Why don't you say
16 what you care to say?

17 VICE CHAIR SORG: Thank you, Mr.
18 Chairman. Just I'll say on the record, you
19 know, I think it is important for us to be clear
20 that an expansion is for the number of children
21 that the BZA approves it for. So it's 12, it's
22 2, it's 3, it's 6, it's 36.

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1 So, you know, in speaking with the
2 Chair, I think a suggestion and certainly the
3 Chair and the Board, in general, is always a
4 proponent of neighbors and communities working
5 together outside of this room and speaking to
6 one another.

7 Certainly, it sounds like there have
8 been some efforts in this case, but if there
9 is a possibility for this group of people in
10 this room, plus the neighborhood association,
11 I'm sorry, community association, ANC to
12 understand whether there is a balance in a number
13 of children that is workable for the applicant,
14 is workable for the neighbors, would be
15 something that would be a good thing to strive
16 for with that.

17 CHAIRMAN JORDAN: I agree. Okay.

18 So --

19 MS. ADAMS-SIMMONS: Mr. Chairman?

20 CHAIRMAN JORDAN: -- the amended
21 application, I think, we talked about. We want
22 the supplemental list of letters in support that

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1 is identified. And the ANC agreement.

2 We are going to continue this for
3 our decision to January 15, 2013.

4 MS. ADAMS-SIMMONS: Mr. Chairman?

5 CHAIRMAN JORDAN: Yes?

6 MS. ADAMS-SIMMONS: May I make a
7 closing also?

8 CHAIRMAN JORDAN: No, you do not.
9 You don't have a right to do so.

10 MS. ADAMS-SIMMONS: Closing?

11 CHAIRMAN JORDAN: But thank you for
12 being here. We thank all of you for being here.

13 January 15th, we will put this on
14 for decision date. I need all of the
15 information I requested in the file by January
16 7th.

17 And again, to emphasize what Ms.
18 Sorg said, if you can work this out, work it
19 out. It is better if you work it out than for
20 us to have to make a decision one way or the
21 other.

22 These are issues that people are

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1 living in communities, next door to each other,
2 across the street and it's incumbent upon
3 everybody to try to work together.

4 Now, you don't have to, then we make
5 those decisions. Okay.

6 Then we would conclude this hearing
7 as so described. And we would be -- any other
8 -- then we will be in recess until 1:00.

9 MR. ZEIGLER: Thank you.

10 CHAIRMAN JORDAN: Thank you.
11 Thank you.

12 (Whereupon, the Public Hearing was
13 recessed at 12:01 p.m. to reconvene at 1:14 p.m.
14 this same day.)
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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:14 p.m.

3 CHAIRMAN JORDAN: Let's begin our
4 afternoon docket. We are back from our lunch
5 recess.

6 All those who are going to testify
7 in any cases on this afternoon's docket, please,
8 stand and take the oath or affirmation.

9 (Whereupon, witnesses were sworn.)

10 MR. MOY: You may consider yourself
11 under oath. Thank you.

12 CHAIRMAN JORDAN: Mr. Moy?

13 MR. MOY: Yes, good afternoon, Mr.
14 Chairman, Members of the Board.

15 The first application in the Board's
16 afternoon session is Application No. 18442.
17 This is the application of 1400 Spring Road,
18 LLC, and as advertised reads as follows:

19 Pursuant to 11 DCMR 3104.2, for a
20 variance from the lot occupancy requirements
21 under ' 772, variance from the rear yard
22 requirements under ' 774, and a variance from

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1 the nonconforming structure requirements under
2 subsection 2001.3.

3 This is to allow the conversion of
4 a two-story church building into an apartment
5 house in the C-2-A District at premises 1400
6 Spring Road, N.W., property located in Square
7 2689, Lot 859.

8 CHAIRMAN JORDAN: All right.
9 Would the parties for this Application 18442--
10 I know you from somewhere. You just look so
11 familiar to me. I have seen you before.

12 MS. MOLDENHAUER: Good afternoon,
13 Board Members. My name is Meridith Moldenhauer
14 from Griffin & Murphy. I am here today on behalf
15 of 1400 Spring Road, LLC.

16 Today I have with me Ryan Samuel,
17 on behalf of the developer, and Hugo Roell, the
18 architect for the project.

19 CHAIRMAN JORDAN: Okay. Let me
20 first pull back here a second. Is there an ANC
21 letter? Do we have ANC support?

22 MS. MOLDENHAUER: Yes, we have that

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1 and that was submitted in the supplemental as
2 Exhibit E.

3 CHAIRMAN JORDAN: Is Exhibit E in
4 the supplemental. I think maybe I caught it
5 later. Let me check. Okay. Yes, there it is.
6 There it is. Okay. Yes, I have it. Thank
7 you.

8 All right. Okay. Based upon the
9 record in this case file to date, it appears
10 that the applicant has submitted enough for us
11 to already render our thought that the requested
12 relief can be granted.

13 The record is pretty full. We
14 understand exactly what you are looking for.
15 We believe that the criteria set forth to grant
16 the variances are substantial enough with the
17 record already.

18 You have the right to certainly do
19 a presentation, if you wish, but you know better
20 than anybody else in this room that sometimes
21 people get themselves in trouble by talking.

22 But so anyway, you can do whatever

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1 you certainly would like to do.

2 MS. MOLDENHAUER: I appreciate that
3 and I think that the record is full in our regard
4 in regards to the supplemental and the
5 prehearing statement, so we will rest on the
6 record as submitted.

7 CHAIRMAN JORDAN: Thank you.
8 Well, let's turn to the Office of Planning to
9 see if there is anything in addition that they
10 would like to talk about.

11 MS. THOMAS: No, Mr. Chair. Karen
12 Thomas for the record. I just have one slight
13 correction to make for the record on page 1 of
14 my report.

15 It says on the area variance relief,
16 lot occupancy I said 75 percent committed, but
17 it's 60 percent as reflected in other parts of
18 the report.

19 CHAIRMAN JORDAN: Okay. Thank
20 you.

21 MS. THOMAS: Thank you.

22 CHAIRMAN JORDAN: Appreciate it.

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1 Does the Board have any questions for Office
2 of Planning? Does the applicant have any
3 questions for Office of Planning?

4 MS. MOLDENHAUER: No. Thank you.

5 CHAIRMAN JORDAN: Is there any
6 other -- is the Department of Transportation
7 here? I think not.

8 We do have a letter in their form
9 of support under the words "No objection to the
10 application."

11 Is there anyone here from ANC-1A?

12 We do have a letter of support from ANC-1A.
13 They voted 8-0 with a quorum present, so,
14 therefore, we would give great weight to their
15 recommendation of support for approval of this
16 application.

17 Is there anyone here in opposition?

18 Excuse me, in support of this application?
19 The room is full, right? Anyone here in
20 support? Anyone in opposition? Good.

21 Then we will turn back to the
22 applicant. If there is not much to do in

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1 closing, we can just close the hearing and then
2 move to deliberation, if you would like?

3 MS. MOLDENHAUER: Thank you very
4 much. And we appreciate the Board's time and
5 we believe that the case is ripe for a Bench
6 decision and that the application is full for
7 support of the application. Thank you.

8 CHAIRMAN JORDAN: All right.
9 Good. Then we will close the hearing based upon
10 the record that we have.

11 I would move that we grant the area
12 variances as requested in the application.
13 Going once?

14 MR. HOOD: I'll second.

15 CHAIRMAN JORDAN: Oh, okay.
16 Seconded by Mr. Hood by deference being given
17 by Vice Chair Sorg. The motion made and
18 seconded that we approve the request for relief.

19 All those in favor signify by saying
20 aye.

21 ALL: Aye.

22 CHAIRMAN JORDAN: Those opposed

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1 nay? The motion carries. Mr. Moy?

2 MR. MOY: Yes, sir. Staff would
3 record the vote as 4-0-1. This is on the motion
4 of Chairperson Jordan to approve the application
5 for the variances requested. Seconded this
6 time by Chairman Anthony Hood, seconded by Vice
7 Chair Sorg and Mr. Hinkle.

8 CHAIRMAN JORDAN: No, it was
9 seconded by Mr. Hood.

10 VICE CHAIR SORG: Seconded by Mr.
11 Hood.

12 MR. MOY: Yes, seconded by Mr. Hood,
13 that's what I did. That's right.

14 VICE CHAIR SORG: Also in favor Mr.
15 Hinkle and Ms. Sorg.

16 MR. MOY: Did I say Mr. Hood on that?

17 CHAIRMAN JORDAN: Well, we know.
18 The record should show that Mr. Hood seconded.

19 MR. MOY: Okay. Very good.

20 CHAIRMAN JORDAN: Only because Ms.
21 Sorg allowed him to do it.

22 MR. HOOD: Allowed me to do it this

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1 time. Thank you. Thank you, Ms. Sorg.

2 MR. MOY: Clearly, that threw me
3 off. So also in support Ms. Sorg and Mr. Hinkle.
4 No other Board Members participating. So
5 again, the motion carries 4-0-1.

6 CHAIRMAN JORDAN: Thank you. And
7 may we have a Bench decision -- I mean, a summary
8 order, please?

9 MR. MOY: Yes, sir.

10 CHAIRMAN JORDAN: Thank you.

11 MR. MOY: The next application
12 before the Board is Application No. 18443, and
13 as advertised, the caption reads:

14 Application of 3616 14th Street,
15 LLC, pursuant to 11 DCMR 3103.2, this is for
16 a variance from the floor area ratio
17 requirements under ' 771, variance from the lot
18 occupancy requirements under ' 772, variance
19 from the rear yard requirements under ' 774,
20 variance from the nonconforming structure
21 requirements under ' 2001.3, and a variance from
22 the off-street parking requirements under

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1 subsection 2101.1.

2 This is to allow the conversion of
3 a one-family dwelling into a four unit apartment
4 house in the C-2-A District at premises 3616
5 14th Street, N.W., the property located in Square
6 2689, Lot 860.

7 CHAIRMAN JORDAN: Okay. Again,
8 would you introduce?

9 MS. MOLDENHAUER: Good afternoon.
10 My name is Meridith Moldenhauer from Griffin
11 & Murphy representing 3616 14th Street, LLC.
12 Here with us today is Ryan Samuel on behalf of
13 the developer and also Hugo Roell on behalf of
14 the architectural firm for this application.

15 CHAIRMAN JORDAN: I think the
16 record is -- we understand what you are looking
17 for and I think there are some questions that
18 the Board has that it will be easier probably
19 if you can address them for us.

20 I'm going to defer to the question
21 of if you would discuss the FAR relief and then
22 the need for the third floor in that regard.

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1 Anything else that you see? Okay.

2 MS. MOLDENHAUER: Yes. And we will
3 be providing a supplemental profit and loss
4 analysis to Mr. Moy, which includes an
5 additional scenario which is the six units as
6 well, so I'll wait a moment for you all to receive
7 a copy of that.

8 CHAIRMAN JORDAN: Is there anything
9 else that the Board needs to hear? And you are
10 aware of the Office of Planning's report, if
11 you want to address that particular issue, the
12 issue raised? I think if you talk about these
13 things, we would hit that.

14 MS. MOLDENHAUER: I'll give you a
15 moment to take a look at that and then what I'll
16 do is I'll turn to Mr. Samuel and he can address
17 those specific issues in regards to the
18 financial feasibility for building a partial
19 third floor and complying with FAR in that
20 regard.

21 And then we can also, if you would
22 like, jump and provide a small, you know, diagram

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1 in regards to the architectural aspect of that
2 as well, but it's just a question of, you know,
3 if the Board has some additional questions.

4 But at this point in time, I'll turn
5 it over to Mr. Samuel to address that specific
6 issue.

7 MR. SAMUEL: Sure. Good
8 afternoon. So my understanding of the question
9 that the Office of Planning raised was in regard
10 to the additional .33 in FAR that we have
11 requested.

12 And after looking at that closely
13 with Hugo, we determined that if we are not able
14 to have the additional .33 FAR, we will only
15 be able to build two additional units on the
16 third floor and that would not be economically
17 feasible for us, because we would incur so --
18 a very high percentage of the cost in reinforcing
19 the structure of the property. That to spend
20 that much money to go up to the third floor and
21 only get two units out of it, is not a financially
22 feasible project for us.

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1 MEMBER HINKLE: So I'm sorry, is
2 that the six units that we are looking at in
3 the --

4 MR. SAMUEL: That's correct. So--

5 MEMBER HINKLE: -- profit and loss
6 analysis?

7 MR. SAMUEL: -- our plan and our
8 general business is to build, what I'll call,
9 mid-level rental apartments around D.C. We
10 have got 14 buildings in Columbia Heights and
11 Capitol Hill primarily. And we would like to
12 -- we keep them as rentals, unlike most
13 developers who come in and build high-end
14 condos, we keep ours as rentals and really invest
15 the time in the community.

16 The first thing we did when we bought
17 the property was to, you know, have a meeting
18 with the community to see what they thought.
19 We had a good turnout, 10 letters of support
20 from the community.

21 Followed up with the ANC. The ANC
22 unanimously supported this project. And over

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1 that time, we got to know the owners and
2 operators of the ground floor retail, La Tienda
3 3 for 10. It's a ground -- if you all are
4 familiar with this store, it's a really cool
5 store. It has been there for over 20 years and
6 we would like to keep it there.

7 And we would like -- but in order
8 to make the project feasible to fix up the
9 building, restore that display window, we do
10 need to be able to build eight units. And in
11 order to build eight units we need to have the
12 additional .33 FAR.

13 CHAIRMAN JORDAN: So the profit and
14 loss analysis, I think in Scenario 3, provides
15 what would happen with six units?

16 MR. SAMUEL: Yes, sir. Yes. The
17 one on the far left is if we keep the building
18 as is, two units or two levels rather with the
19 retail on the bottom and four one-bedroom
20 apartments on the second floor. The one in the
21 middle is -- what we would like to do is build
22 an extra story to have four units on the second

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1 floor and another four units on the third floor
2 and that is an economically feasible project
3 for us.

4 And then the third one on the far
5 right is if we are only able to build two units
6 on the third floor and that one is not
7 economically feasible.

8 MS. MOLDENHAUER: And what I can do
9 now is I put up on the PowerPoint and if Hugo
10 can kind of walk through this, this is the second
11 floor and then we can walk through what would
12 occur if FAR was complied with on the third
13 floor.

14 So, Hugo, if you can turn on your
15 microphone?

16 MR. ROELL: Hello. My name is Hugo
17 Roell. I work for Roell Architects. I'm happy
18 to be working with Ryan on his building and I'm
19 excited to see this building come back to life
20 and be renovated.

21 The second floor plan shows the
22 location of the stair. We are -- if using the

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1 existing stair that comes up from the first
2 floor, and we are arranging in the existing
3 building -- this is the second floor envelope.

4 We are arranging four one-bedroom
5 units. They are about 440 to 540 square feet,
6 so they are small one-bedroom apartments.

7 In the back, we had to pull the rear
8 wall away from the existing back wall, because
9 that is the property line and D.C. Codes would
10 not allow us to have window openings. So by
11 pulling it back, approximately, a little over
12 5 feet, we are able to have 25 percent window
13 openings in that wall and, thus, provide light
14 and air to those, the two units in the back.

15 MS. MOLDENHAUER: Go to the third
16 floor. And then that's --

17 MR. ROELL: Oh, this is the third
18 floor, which is, essentially, an addition over
19 the top of the existing second floor. We are,
20 basically, bringing the second floor plan up
21 to the third floor. Again, it is four
22 one-bedroom apartments, which again are of

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1 similar size.

2 We have got the stair in the middle.

3 It's a single stair building. It's three
4 stories tall. We have also pulled
5 back --

6 MS. MOLDENHAUER: Can you identify
7 with the red line as to how that complies with
8 FAR?

9 MR. ROELL: Yes. We have also
10 pulled back the back wall to allow for the window
11 openings.

12 Now, we have added a line there which
13 shows the FAR at the 2.5 level. And as you can
14 see, what we would end up with would be two units
15 on this floor. We would not be able to do four.

16 Also, I would add that, you know,
17 considering the costs of bringing up the party
18 wall and the -- also the engineer is requiring
19 us to reinforce the existing steel structure
20 on the first floor, that this would be quite--
21 the cost of doing this would maybe be too great
22 for just the gain in the two units. Thank you.

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1 CHAIRMAN JORDAN: Yes. Any
2 questions so far? Ms. Sorg?

3 VICE CHAIR SORG: Thank you, Mr.
4 Chairman. Do you know how much FAR the retail
5 attendant takes? That's the whole ground
6 floor, right?

7 MS. MOLDENHAUER: The entire ground
8 floor, yes.

9 VICE CHAIR SORG: And do you know
10 what that is in terms of FAR?

11 MS. MOLDENHAUER: It is 1 FAR.

12 VICE CHAIR SORG: 1, okay. And the
13 whole -- okay. Duh. Okay.

14 MS. MOLDENHAUER: As we indicated
15 in our supplemental and prehearing statement,
16 currently the property is non-compliant as a
17 nonresidential FAR.

18 VICE CHAIR SORG: Yes, no, that's
19 sort of where I'm going.

20 MR. SAMUEL: We kind of balanced it
21 out.

22 VICE CHAIR SORG: Exactly. So --

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1 MS. MOLDENHAUER: Exactly. The
2 balance between bringing that into compliance
3 with regards to taking away the office space,
4 we then -- the client would need the additional
5 -- all eight units in order to make the project
6 financially feasible.

7 VICE CHAIR SORG: Well, I think in
8 addition from what your -- from what we are
9 seeing on the plans here, including how the
10 second and third stories want to be, you know,
11 pushed back for light and air.

12 I think that's not an opportunity
13 on the ground floor.

14 MS. MOLDENHAUER: No.

15 VICE CHAIR SORG: So to bring the
16 nonresidential FAR, maybe you can talk about
17 what the effort would be to bring the
18 nonresidential FAR down and to be able to be
19 in compliance along with the residential FAR
20 that you are trying -- that the project, for
21 its financial feasibility, needs to have. Does
22 that make sense?

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1 MS. MOLDENHAUER: I am not
2 completely understanding the question. I'm
3 sorry.

4 CHAIRMAN JORDAN: I think if you are
5 going to make it -- to bring it into compliance,
6 you know, I think you have made your argument,
7 the practical difficulty argument in your
8 statement about what is necessary for you.

9 What would have to happen to the
10 building or what work would you have to do to
11 make it compliant and bring it within a
12 conforming-type of use for FAR?

13 MS. MOLDENHAUER: FAR?

14 CHAIRMAN JORDAN: Yes, on FAR.

15 MS. MOLDENHAUER: I think that in
16 regard -- my client can address this
17 specifically, but if you were to bring the
18 building into conformity with just having 1.5
19 nonresidential FAR and any additional FAR be
20 residential, that would potentially provide for
21 a mix of nonresidential FAR or some sort of
22 retail or office use for a partial portion of

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1 the additional floor, the second floor.

2 Actually, you can provide 1.5
3 nonresidential FAR on this property, but the
4 proposed project is actually only providing one
5 nonresidential FAR, because in order to provide
6 anything over that, such as half of a portion
7 of a floor for nonresidential FAR on the second
8 floor, you would have to provide separate, you
9 know, stairs and separate access.

10 So the best use of the property would
11 be to maintain the ground floor as 1 FAR for
12 retail, nonresidential FAR, and then provide
13 the additional floors as all residential, so
14 that you are not having to provide multiple forms
15 of common staircases for those additional
16 stories.

17 CHAIRMAN JORDAN: Okay. Anyone
18 else have any other questions? Okay. Is there
19 anything else that you feel that you need to
20 present to us?

21 MS. MOLDENHAUER: No. But
22 obviously, I think, we will reserve the right

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1 to potentially provide any additional closing
2 arguments following the discussion and
3 conversations after Office of Planning's
4 report.

5 CHAIRMAN JORDAN: Thank you.

6 MS. MOLDENHAUER: Thank you.

7 CHAIRMAN JORDAN: Then let's turn
8 to Office of Planning for their report.

9 MR. GYOR: Good afternoon, Mr.
10 Chairman, Members of the Board. I'm Stephen
11 Gyor with the Office of Planning.

12 The Office of Planning cannot
13 support the applicant's request for relief.
14 In our view, the applicant has not met the first
15 part of the variance test, which is an
16 exceptional situation resulting in a practical
17 difficulty. The existing lot and the
18 structure, well, they are not exceptional.

19 In regard to the relief required,
20 exceeding the lot occupancy permitted leads to
21 an excessive FAR. And FAR relief is a
22 particularly high hurdle for OP, because it

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1 would entail building to a density not intended
2 by the Zone Plan.

3 And we do note that the project could
4 be built to the permitted FAR. OP also notes
5 the financial arguments put forth by the
6 applicant and we would leave it to the Board
7 to evaluate their merit, but typically, there
8 would need to be some element of the structure
9 which is unique, which would necessitate the
10 additional FAR.

11 And in our view, the stairwell and
12 hallway are not unique characteristics.

13 We also note that in many ways, this
14 is a project that includes many elements that
15 we would typically support, such as in-fill
16 development, the activation of storefronts and
17 the mix of uses.

18 If the Board finds that the
19 applicant has met the test for the other forms
20 of relief, OP would not object to the applicant's
21 request for parking relief. Thank you.

22 CHAIRMAN JORDAN: Any questions

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1 from the Board of the Office of Planning? Does
2 the applicant have any questions of the Office
3 of Planning?

4 MS. MOLDENHAUER: Yes. I just have
5 some questions to kind of clarify the record.

6 In your report, you indicate that
7 in your conclusion on page 6 --

8 MR. GYOR: Yes.

9 MS. MOLDENHAUER: -- you indicate
10 that the addition would extend the existing
11 nonconforming lot occupancy. And I just want
12 to make sure that you understand that it's
13 already 100 percent lot occupancy and the
14 applicant proposed 100 percent lot occupancy,
15 so the lot occupancy in regards to that factor
16 is not being expanded.

17 MR. GYOR: Typically, we look at
18 expansion of nonconforming lot occupancy
19 vertically as an expansion of the nonconformity.

20 I think in this particular instance, the FAR
21 is a particularly high hurdle for us.

22 MS. MOLDENHAUER: I just want to

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1 make sure, because I don't think that lot
2 occupancy actually goes -- is a vertical
3 equation. It's really based on the ground
4 floor.

5 MR. GYOR: Okay.

6 MS. MOLDENHAUER: And FAR is the
7 comparable analysis in density that actually
8 does address the vertical aspect of density.

9 MR. GYOR: We have interpreted the
10 100 percent lot occupancy to mean that any
11 additional expansion of the structure would not
12 be -- would require additional relief. That's
13 how we have interpreted it.

14 MS. MOLDENHAUER: And so the other
15 question is in regards to the width of the lot.

16 In looking at the -- your diagram of the subject
17 property on page 3, is it true that this is
18 actually the widest lot on 14th Street in regards
19 to street frontage in this area?

20 MR. GYOR: In the immediate
21 vicinity it is a wide -- it is a wide lot, that's
22 correct. And I just wanted to emphasize unique

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1 -- a unique lot characteristic is something
2 that, I think, we interpret as an
3 irregularly-shaped lot or a lot with some
4 topographical element that is unique to that
5 particular lot.

6 This lot is rectangular. It is
7 relatively larger than the other additional --
8 than the other neighboring lots.

9 MS. MOLDENHAUER: I think OP has
10 found that if the property is unique as to shape,
11 it doesn't have to be triangular or regular,
12 but it can be in regards to exceptionally narrow,
13 exceptionally large, exceptionally wide in this
14 instance.

15 MR. GYOR: Exceptionally narrow
16 could be an exceptional situation. I think in
17 this case, you know, this is a rectangular lot
18 with 100 percent -- currently it has 100 percent
19 lot occupancy and I think, if I'm understanding
20 the argument, that because you cover 100 percent
21 of a lot addition -- you know, excessive lot
22 occupancy is the current condition that

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1 additional lot occupancy is therefore required.

2 And we typically wouldn't view that
3 as the -- as a condition requiring additional
4 lot occupancy.

5 MS. MOLDENHAUER: Well, no. There
6 is no additional lot occupancy. It's an
7 additional FAR that we are requesting.

8 MR. GYOR: Correct, right. Well,
9 as I just said, as I stated, we wouldn't -- we
10 would look at it as an extension of the existing
11 nonconforming lot occupancy.

12 MS. MOLDENHAUER: And you were
13 talking -- one of the things that you just
14 indicated was one of your concerns about
15 density. But if the applicant, if it was
16 financially feasible, which it isn't, complied
17 with the 60 percent lot occupancy, isn't it true
18 they could actually build up four stories, which
19 would then also not be compliant with the current
20 character of 14th Street?

21 MR. GYOR: The applicant would be
22 permitted to build up to 50 feet, that is, you

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1 know -- how should I phrase this? It's viewed
2 as a -- it's not -- it's by-right. They could
3 build up to 50 feet, correct. That is correct.

4 MS. MOLDENHAUER: Thank you.
5 That's all. I appreciate it. No other
6 questions of the Office of Planning from the
7 applicant.

8 CHAIRMAN JORDAN: But you state in
9 your report --

10 MR. GYOR: I should --

11 CHAIRMAN JORDAN: -- that the
12 property is a bit wider and a bit shorter, but
13 you said that's not unique?

14 MR. GYOR: I would interpret it
15 unique to mean some irregular -- other irregular
16 characteristic. And I should mention with --
17 if I could just mention the height issue,
18 although, you know, 50 feet is permitted, the
19 property would still need to be -- we would still
20 consider that the property is in character with
21 the surrounding neighborhood.

22 CHAIRMAN JORDAN: But isn't wider

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1 and shorter part of the characteristics of the
2 property?

3 MR. GYOR: It is part of the
4 characteristics. That's correct.

5 CHAIRMAN JORDAN: Okay. All
6 right. Yes, right, but so, yes. All right.
7 I just want to make sure, because you are saying
8 it's not unique, but you just identified that
9 it was. Any other questions of Office of
10 Planning?

11 VICE CHAIR SORG: I'll ask a
12 question. Have you considered the applicant
13 in her filings gave a letter from an
14 architectural conservationist, I don't know if
15 that's different from an architectural
16 historian, but -- no, a materials
17 conservationist, so that's what it was.

18 Regardless, had you thought about
19 the preservation and restoration of the building
20 facade and any of those considerations? I mean,
21 you can see -- I mean, obviously, you went to
22 the property. You can see the sort of years

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1 of sort of accretions and additions that have
2 really seemed to have depleted or destroyed the
3 facade in many ways.

4 And in my understanding, that kind
5 of facade is something that is important in the
6 development of 14th Street in that Commercial
7 District. Is that something that weighed into
8 your thinking?

9 MR. GYOR: It is definitely a -- you
10 know, the revitalization of this property is
11 definitely something that is a positive result
12 of this project. You know, OP definitely favors
13 this sort of in-fill development and any sort
14 of facade restoration is definitely a positive
15 aspect.

16 You know, we, you know, as the
17 applicant notes in his application, do support
18 the revitalization of the 14th Street Corridor.

19 I would note that, you know, if the
20 third floor -- with regard to the third floor,
21 if there is no setback provided, that the --
22 we would prefer that the materials and treatment

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1 of that facade be consistent with the first two
2 floors. I think if there is a setback provided,
3 then, you know, metal cladding or some other
4 treatment to differentiate it completely from
5 the first two floors would be more appropriate.

6 CHAIRMAN JORDAN: Any other
7 questions? Mr. Hood?

8 MR. HOOD: I'm sorry, I forgot your
9 name. Office of Planning, I'm sorry.

10 MR. GYOR: I'm Stephen Gyor with the
11 Office of Planning.

12 MR. HOOD: Mr. Gyor, yes. In your
13 discussion, I want to revisit what the
14 Chairperson was mentioning to you about the lot.

15 You agree with what the Chairman
16 just said, right, about the lot being different
17 from other lots in that area on that side, right?

18 So I'm just trying to see how do we get from
19 the first point and we get to practical
20 difficulty. I'm just trying to figure out how
21 do we get through that first prong? Because
22 you agreed to it, right?

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1 MR. GYOR: I do agree that that --
2 that the short and wide nature of this lot is
3 a characteristic of this lot. As was mentioned,
4 we look at a unique characteristic as something
5 like a topographical condition or some other
6 -- like a flag lot or some other sort of condition
7 of a lot which creates a difficulty in
8 development.

9 MR. HOOD: Okay. But in the
10 regulations, does it expand or start naming
11 specific types of uniqueness?

12 MR. GYOR: Certainly it's open to
13 some interpretation.

14 MR. HOOD: Interpretation --

15 MR. GYOR: Right.

16 MR. HOOD: -- of individuals. So
17 somebody from another part of Office of Planning
18 may come down and tell us something different.
19 I'm just asking. I'm just trying to peruse
20 this whole conversation.

21 MR. GYOR: Of course, we strive for
22 consistency.

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1 MR. HOOD: Well, that's good to
2 hear. Okay. All right. Thank you.

3 CHAIRMAN JORDAN: But, Mr. Hood,
4 and understanding that and I'm sure Planning
5 understands that, that determination is made
6 by us. They have their opinion.

7 MR. GYOR: Absolutely.

8 CHAIRMAN JORDAN: And we just take
9 that in and process it. So that's what I think
10 you were getting at.

11 MR. HOOD: Well, I kind of agree
12 along the lines of you, Mr. Chairman. I just
13 wanted to have that discussion with Office of
14 Planning.

15 CHAIRMAN JORDAN: Anyone else of
16 Office of Planning? Then let's move to the
17 Department of Transportation. Anyone here from
18 the Department of Transportation? And no one
19 is here for Department of Transportation.
20 However, we do have from the Department of
21 Transportation a recommendation of no
22 objection.

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1 Anyone here -- any other agency?
2 No. Anyone here from ANC-1A? We do have a
3 letter that we would grant great weight to from
4 ANC-1A, which voted in support of this
5 application.

6 Is there anyone in the audience
7 wishing to speak in support of the application?

8 Is there anyone in the audience
9 willing to speak in opposition?

10 Then let's turn back to the
11 applicant for rebuttal or closing.

12 Do you have a question?

13 VICE CHAIR SORG: I do.

14 CHAIRMAN JORDAN: Yes, Ms. Sorg?

15 VICE CHAIR SORG: Thank you, Mr.
16 Chairman. You know, to follow-up on one point
17 that Mr. Gyor made, in the plans that you
18 submitted, and it may be our digital rendition
19 of them, but. it is difficult to read on the
20 elevations what materials are being specified
21 for the third floor addition on the front facade.

22 So if you have a copy, it would be

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1 helpful to be able to read that. Just the, you
2 know --

3 MS. MOLDENHAUER: Because we are
4 providing a larger clearer version, which we
5 had, yes.

6 VICE CHAIR SORG: I guess while they
7 are passing that out, I could ask another
8 question about that.

9 Had you looked at any cost estimates
10 or gotten into that at all with regard to the
11 preservation or rehabilitation of the facade
12 in the building in addition to the interior
13 renovations?

14 MS. MOLDENHAUER: I believe that
15 the applicant has already submitted their cost
16 estimates include the work that is going to be
17 done to the facade. It's a lump sum.

18 VICE CHAIR SORG: On in the
19 analysis?

20 MS. MOLDENHAUER: In -- yes,
21 exactly.

22 VICE CHAIR SORG: Okay.

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1 MS. MOLDENHAUER: Yes.

2 VICE CHAIR SORG: Okay.

3 CHAIRMAN JORDAN: Is there any
4 other questions?

5 MR. HOOD: I think you mentioned
6 this and this is for my own -- I'm just curious.

7 A picture is worth a thousand words. You said
8 2 for 10 or is it 2 for 12?

9 MR. SAMUEL: 3 for 10.

10 MR. HOOD: Oh, 3 for 10. Oh, so it
11 has changed.

12 MR. SAMUEL: Yes, La Tienda 3 for
13 10 is the name of the store.

14 MR. HOOD: 3 for 10? It's not 2 for
15 12, is it? I thought I saw -- maybe these
16 glasses isn't working. I'm sorry. That's
17 okay. I saw one of the pictures.

18 MR. SAMUEL: 3 for 10, but it's
19 actually -- if you go to the store, you don't
20 necessarily --

21 MS. MOLDENHAUER: It says 3 for 10
22 on the sign, but maybe they have changed their

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1 policies.

2 MR. SAMUEL: Well, they've got a
3 dollar kids table that is pretty -- that's like
4 10 for 10.

5 MR. HOOD: I must have looked at
6 this -- okay. I looked at it wrong. Don't get
7 all upset. I just wanted to ask that question.

8 MR. SAMUEL: No, no, we are just
9 asking.

10 MR. HOOD: I thought it was 2 for
11 12.

12 CHAIRMAN JORDAN: We think it's a
13 unique name, so the question was --

14 MR. HOOD: I thought it was 2 for
15 12.

16 CHAIRMAN JORDAN: -- what does the
17 name mean?

18 MR. SAMUEL: Oh, so it's a thrift
19 store and originally back 15 or 20 years ago
20 when they opened, you could get three items for
21 \$10.

22 MR. HOOD: Oh.

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1 MR. SAMUEL: But be careful because
2 some of the jeans are like \$7.50. But if you
3 hit the dollar kids table, it's 10 for \$10.

4 CHAIRMAN JORDAN: Gotcha.

5 MR. SAMUEL: So you are going to
6 want to check the prices before you commit.

7 CHAIRMAN JORDAN: Okay. So you
8 were going to, Ms. Moldenhauer, do a rebuttal
9 and/or wrap-up for us?

10 MS. MOLDENHAUER: Yes. Thank you
11 very much, Chairman Jordan.

12 I think that in regards to the
13 submissions we provided, the initial
14 application, supplemental and the prehearing
15 statement and the additional testimony we
16 provided today, the applicant satisfies all
17 three prongs of the variance test.

18 In regard to the first prong, it is
19 a confluence of factors, not just one aspect,
20 but a confluence of factors, which create and
21 lead to an exceptional condition here on the
22 property.

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1 There is one, the aspects of the
2 existing nonconformities, such as 100 percent
3 lot occupancy, the existing lack of no rear yard,
4 the fact that the property, as we have had
5 discussions, is short. It does not go the full
6 length of the property, as the other properties
7 on 14th Street do all the way back to the alley,
8 but rather it is pretty much like a half a lot.

9 It is also the widest. It has the
10 most street frontage on 14th Street. There is
11 also the existing nonconforming residential FAR
12 and the cost associated with the fact that the
13 property -- prior property owner had been an
14 absentee landlord and failed to maintain a lot
15 of the facade and a lot of the small changes
16 that had gone on in regards to the facade over
17 a period of time and the requirement to modify
18 that and bring that up to code.

19 Based on these confluence of factors
20 and exceptional circumstances, the applicant
21 has proven that there is a practical difficulty
22 in complying with the zoning requirements.

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1 We have presented to you not a
2 generalization, but rather a clear illustration
3 that four apartments or six apartments will not
4 provide a profit, but would rather actually
5 create a loss for the applicant, creating a
6 hardship.

7 And that only by the Board approving
8 eight apartments and providing FAR, lot
9 occupancy, rear yard and parking relief will
10 this property or project be viable. And the
11 ability to revitalize this Greek revival--
12 facade and this contributing property in regards
13 to the facade on 14th Street.

14 The applicant is asking for .33
15 percent FAR relief, which Office of Planning
16 has indicated is additional density. However,
17 there is other ways for the applicant to
18 potentially bring this property back into
19 compliance without requesting that additional
20 relief.

21 The applicant has worked tirelessly
22 with the neighbors and has obtained ANC support

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1 and has multiple letters of support from the
2 community and we believe that based on all of
3 these aspects, the applicant is intending to
4 revitalize a dilapidated building and bring
5 residential use back to this property.

6 We believe the case is ripe for a
7 Bench decision and request the Board vote to
8 approve the project. And that concludes our
9 presentation and our submission of evidence on
10 this case.

11 CHAIRMAN JORDAN: Okay. Thank
12 you. Then we will conclude this hearing and
13 I'm going to see if the Board is ready to
14 deliberate. Okay. The Board is ready to
15 deliberate.

16 In my view, the case has been made
17 for the applicant's request for relief for the
18 variance for FAR, lot occupancy and rear yard
19 nonconforming and the off-street parking. I
20 think we have seen by the record and the evidence
21 deduced here that the property is unique, based
22 upon a confluence of different characteristics

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1 of the lot.

2 The nonconforming lot occupancy as
3 it is, the no rear yard, and it is wider and
4 shorter than the other parts of the building.

5 I think we have seen clearly that, based upon
6 the applicant's submission, either you're going
7 to have to hack off part of the building or some
8 other things to bring it into compliance to try
9 to do these things.

10 And more important, it's just not
11 practical to do any other aspect for relief also
12 in conjunction with the historic expert in
13 regards to the frontage of the building and then
14 the economic feasibility, I think you have
15 really shown. And I'm just shocked at the
16 amount of profit or thereof that you are making,
17 which to me is minimum, so that the relief that
18 you are requesting, to me, should be granted.

19 And I would -- is there anybody else
20 that has any other thoughts on this project?

21 Then I would move that we grant the
22 applicant's request for relief.

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1 VICE CHAIR SORG: Second.

2 CHAIRMAN JORDAN: Motion made and
3 seconded that the application for relief be
4 granted. Any unreadiness?

5 All those in favor signify by saying
6 aye.

7 ALL: Aye.

8 CHAIRMAN JORDAN: Those opposed
9 nay? The motion carries. Mr. Moy?

10 MR. MOY: Yes, sir. Staff would
11 record the vote as 4-0-1. This is on the motion
12 of Chairman Jordan to approve the application
13 for the multiple variances requested.
14 Seconding the motion Vice Chairperson Sorg.
15 Also in support Mr. Hood and Mr. Hinkle. No
16 other Board Members participating.

17 So again, the motion carries on a
18 vote of 4-0-1.

19 CHAIRMAN JORDAN: Thank you. And
20 may we have a summary order, please?

21 MR. MOY: Yes, sir.

22 CHAIRMAN JORDAN: Okay.

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1 MS. MOLDENHAUER: Thank you very
2 much.

3 CHAIRMAN JORDAN: Then this
4 concludes this case.

5 Is there any other business that
6 needs to come before the Board today?

7 MR. MOY: Not from the staff.

8 CHAIRMAN JORDAN: Are you sure?

9 MR. MOY: Next time, next time.

10 CHAIRMAN JORDAN: Next time. You
11 know, we can sit here and think about it for
12 a couple of hours.

13 No. Anybody? Any Board Members
14 have anything?

15 Then we will adjourn for the day.
16 Thank you.

17 (Whereupon, the Public Hearing was
18 concluded at 1:54 p.m.)

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