

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 14, 2008

+ + + + +

The Regular Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:54 a.m., RUTHANNE G. MILLER, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner  
(OAC)  
GREGORY JEFFRIES, Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
BEVERLEY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARLOVA JACKSON  
MAXINE BROWN-ROBERTS

The transcript constitutes the minutes  
from the Public Hearing held on October 14,  
2008.

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

2 (10:54 a.m.)

3 CHAIRPERSON MILLER: This hearing  
4 will come to order. Good morning, ladies and  
5 gentlemen.

6 This is the October 14th, 2008  
7 public hearing of the Board of Zoning  
8 Adjustment of the District of Columbia. My  
9 name is Ruthanne Miller. I'm the Chair of  
10 BZA.

11 To my right is our Vice Chair, Mr.  
12 Marc Loud. And next to Mr. Loud is Mr.  
13 Michael Turnbull from the Zoning Commission.

14 And to my left is Mr. Shane  
15 Dettman, Board member. Next to him is Cliff  
16 Moy from the Office of Zoning, Ms. Lori Monroe  
17 from the Office of Attorney General, and Ms.  
18 Beverley Bailey from the Office of Zoning.

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

22 Please be advised that this

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

6 When presenting information to the  
7 Board, please turn on and speak into the  
8 microphone, first stating your name and home  
9 address.

10 When you are finished speaking,  
11 please turn your microphone off so that your  
12 microphone is no longer picking up sound or  
13 background noise.

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

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

22 The order of procedure for special

1 exceptions and variances is one, statement and  
2 witnesses of the applicant; two, government  
3 reports, including Office of Planning,  
4 Department of Public Works, DDOT, et cetera;  
5 three, report of the Advisory Neighborhood  
6 Commission; four, parties or persons in  
7 support; five, parties or persons in  
8 opposition; six, closing remarks by the  
9 applicant.

10 Pursuant to section 3117.4 and  
11 3117.5, the following time constraints will be  
12 maintained. The applicant, persons, and  
13 parties except an ANC in support, including  
14 witnesses, 60 minutes collectively; persons  
15 and parties except an ANC in opposition,  
16 including witnesses, 60 minutes collectively;  
17 individuals, three minutes.

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

1           The ANC within which the property  
2           is located is automatically a party in a  
3           special exception or variance case.

4           Nothing prohibits the Board from  
5           placing reasonable restrictions on cross  
6           examination including limits and limitations  
7           on the scope of cross examination.

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

15          After the record is closed, no  
16          other information will be accepted by the  
17          Board.

18          The Sunshine Act requires that the  
19          public hearing on each case be held in the  
20          open before the public. The Board may,  
21          consistent with its rules of procedure and the  
22          Sunshine Act, enter Executive Session during

1 or after the public hearings on a case for  
2 purposes of reviewing the record or  
3 deliberating on the case.

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

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

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

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

1 time to raise such a matter.

2 Does the staff have any  
3 preliminary matters?

4 MS. BAILEY: Madam Chair, members  
5 of the Board, and to everyone, good morning.

6 There are three cases on the  
7 docket for this morning, Madam Chair. And  
8 each has a preliminary matter associated with  
9 them. Did you want to take those up at this  
10 time?

11 CHAIRPERSON MILLER: I think we  
12 might as well just call each case  
13 individually. And deal with their preliminary  
14 matter. It is almost the same difference.  
15 Correct? Yes.

16 Okay, yes, I think since they all  
17 do have that, we might as well just call the  
18 cases. But I understand that there might be  
19 a time constraint on 17825. So could we call  
20 that one first?

21 PRELIMINARY MATTER:

22 1400 MD AVE LTD EMPIRE LEASING INC.

1                   APPLICATION NO. 17825 - ANC-6A

2                   MS. BAILEY: Okay. There is a  
3 request for postponement of this. And I  
4 believe the applicant is requesting  
5 postponement until January of 2009.  
6 Application No. 17825, 1400 Maryland Avenue  
7 Ltd. Empire Leasing, Inc.

8                   CHAIRPERSON MILLER: Good morning.

9                   MR. AGUGLIA: Good morning.  
10 Richard Aguglia for the applicant.

11                  MR. RONNEBERG: Drew Ronneberg  
12 with the ANC.

13                   REQUEST FOR POSTPONEMENT

14                   APPLICATION NO. 17825

15                  MR. SCHULTHEISS: Bill Schultheiss  
16 with the ANC.

17                  To cut to the chase, the ANC has  
18 requested a continuance pending our hearing  
19 before the Public Space Committee. We at  
20 first objected but now we consent.

21                  The public space -- we intend to  
22 file our amended application next week. They

1 will put us on the docket for December 18th  
2 before the Public Space Committee. We would,  
3 therefore, request that this hearing be  
4 continued to sometime in January.

5 CHAIRPERSON MILLER: Do you have  
6 any idea when a decision would be happen?

7 MR. AGUGLIA: We would anticipate  
8 them making a decision there at the hearing as  
9 is their usual practice.

10 CHAIRPERSON MILLER: Okay.

11 The ANC?

12 MR. RONNEBERG: The ANC concurs  
13 with that.

14 CHAIRPERSON MILLER: Okay. So we  
15 just need to look at our calendar then? Okay.

16 Okay. I mean we are calendared  
17 all the way through -- past March. I mean we  
18 are calendared -- let's see how this goes --  
19 yes, but it looks like we could put you in  
20 February 24th in the afternoon. Will that  
21 work?

22 MR. AGUGLIA: That is the earliest

1 -- earliest date?

2 CHAIRPERSON MILLER: That is  
3 looking like the earliest date. If there is  
4 a time crunch that we should be aware of, then  
5 we start to look at other options. That's the  
6 best as of now. Is that problem?

7 MR. AGUGLIA: I will discuss it  
8 with the client. And then perhaps what I will  
9 do is send in a response agreeing to that date  
10 but asking that if the Board has an earlier  
11 date in January that they would consider  
12 moving it, you know, moving it up.

13 Again, you know, I've got a threat  
14 of condemnation.

15 CHAIRPERSON MILLER: You see  
16 that's the kind of information we need to know  
17 because it --

18 MR. AGUGLIA: I have a threat of  
19 condemnation and we keep postponing the  
20 hearing. The next hearing is October 22nd on  
21 the condemnation because the property has not  
22 been developed and it has been fenced off.

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1 And there are squatters and homeless people  
2 there. That's number one.

3 Number two, the property is  
4 vacant. The city has changed the tax rate to  
5 ten dollars a hundred for vacant property.  
6 The commercial tax rate is \$1.85 to put it in  
7 perspective.

8 The penalty for being vacant used  
9 to be five dollars a hundred. Now it is ten  
10 dollars a hundred. So we will be paying more  
11 than six times the taxes that we would  
12 ordinarily pay while this remains vacant.

13 And, of course, we had a Public  
14 Space Committee hearing scheduled for  
15 September 24th which the ANC was successful in  
16 getting us booted off. So in the scheme of  
17 things, we would have already had the Public  
18 Space Committee hearing before this hearing.

19 And if they had said no, we  
20 wouldn't be here. And if they had said yes,  
21 we would have just moved on in the course of  
22 business.

1           And that's all explained in my  
2           October 6th opposition, my original opposition  
3           the the Board where it shows that the ANC was  
4           successful in postponing the hearing.

5           So every month that goes by, my  
6           clients pay an enormous amount of taxes and  
7           have this threat of condemnation over their  
8           head.

9           CHAIRPERSON MILLER: Okay.

10          MR. RONNEBERG: Madam Chair, the  
11          ANC has no objection to that date. And  
12          Commissioner Schultheiiss would like to  
13          address one of the points Mr. Aguglia --

14          MR. SCHULTHEISS: I would like to  
15          acknowledge the ANC asked for a delay in the  
16          public space hearing. And I would like to  
17          clarify a statement on that. The reason we  
18          asked for a delay is that our primary  
19          consideration is not -- is the fact that they  
20          have asked to permanently pave with asphalt a  
21          large portion of the public space.

22          The applicant at the September

1 public space hearing only asked permission in  
2 their application to construct and erect a  
3 sign on public space. They did not  
4 acknowledge or ask for permission to pave the  
5 public space or to install a curb cut.

6 So it is our position that they  
7 had submitted an incomplete application. This  
8 was backed up by the Office of Planning report  
9 and the DDOT, Department of Transportation  
10 letter.

11 The applicant had an opportunity  
12 in July to submit a complete application which  
13 would have kept this hearing on track. So I  
14 think it was an error on their part to not  
15 submit a complete application to the public  
16 space hearing because had they done that, we  
17 would have had the public space hearing in  
18 September. And today we would have been  
19 discussing this case.

20 CHAIRPERSON MILLER: Okay. Let me  
21 just ask you, have you any idea if this case  
22 goes forward how many hours it would be? Do

1 you have a clue? How many witnesses?

2 Anything like that?

3 MR. AGUGLIA: I have a clue.

4 CHAIRPERSON MILLER: Okay.

5 MR. AGUGLIA: We will take our  
6 full hour. We will have a traffic expert.

7 CHAIRPERSON MILLER: Okay.

8 MR. AGUGLIA: We will have a  
9 representative from Dade Petroleum. They  
10 operate 21 gas stations, 15 of which are in  
11 the District, a short statement from them.

12 And we will have our architect,  
13 Bill Baden, show the proposed -- the existing  
14 site plans with the proposed suggestions for  
15 the Board's review, which will include  
16 landscaping, repaving -- the property is  
17 already paved -- repaving to make it look  
18 nicer, green roof over the canopy and a green  
19 roof over the station. So we will have --

20 CHAIRPERSON MILLER: Okay. I'm  
21 just trying to see if there is another place  
22 to squeeze it. But I don't want to, you know,

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1 have us here until midnight or something  
2 because we underestimated how long, you know.

3 So --

4 MR. RONNEBERG: Madam Chair?

5 CHAIRPERSON MILLER: Yes?

6 MR. RONNEBERG: We also expect to  
7 have a traffic expert testify. ANC also  
8 expects to cross examine witnesses and submit  
9 exhibits.

10 We think we may be able to get it  
11 in our one hour but maybe one or one and a  
12 half hour would be necessary.

13 CHAIRPERSON MILLER: Plus this  
14 cross, right? Okay.

15 Okay, well we are thinking of  
16 putting you in on the 13th in the afternoon.  
17 But it could go late. We're not sure. There  
18 is one case that is kind of iffy there. It  
19 could fall off the calendar. If it falls off  
20 the calendar, it is going to be fine. If it  
21 doesn't fall off the calendar, it could be a  
22 later evening. Okay?

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1           So if time is of the essence, we  
2 will take that chance. Does the ANC have a  
3 concern with that?

4           MR. RONNEBERG: What month are you  
5 --

6           CHAIRPERSON MILLER: January --

7           MR. RONNEBERG: January?

8           CHAIRPERSON MILLER: -- 13th.

9           MR. AGUGLIA: I appreciate that.  
10 Thank you.

11           CHAIRPERSON MILLER: Okay. Any  
12 other questions? So we'll keep our fingers  
13 crossed on that.

14           MR. AGUGLIA: Thank you.

15           CHAIRPERSON MILLER: Okay.

16           Ms. Bailey, I guess we are ready  
17 for the next case. Would that be 17822?

18                           KEVIN GUTFLEISH

19                           APPLICATION NO. 17821 - ANC-6C

20           MS. BAILEY: Madam Chair, prior to  
21 that, I just wanted to put on the record that  
22 17821, Kevin Gutfleish, that application was

1 withdrawn. And no additional action is  
2 required by the Board.

3 CHAIRPERSON MILLER: Okay. Great.  
4 Thank you.

5 MATTHEW S. PICKNER

6 APPLICATION NO. 17822 - ANC-6C

7 MS. BAILEY: And with 17822, Madam  
8 Chair, I will call the case. But that  
9 property was not posted. I'll go ahead and  
10 call that case at this time.

11 Application number 17822 of  
12 Matthew S. Pickner, pursuant to 11 DCMR 3104.1  
13 for a special exception to construct a two-  
14 story addition to an existing one-family row  
15 dwelling under section 223, not meeting the  
16 lot occupancy and rear yard requirements,  
17 that's section 43 and section 44.

18 The property is located in the R-4  
19 District at premises 1165 3rd Street, N.E.,  
20 Square 773, Lot 270.

21 CHAIRPERSON MILLER: Good morning.  
22 And could you introduce yourself for the

1 record please?

2 So, Mr. Pickner, it wasn't posted?

3 COURT REPORTER: Sir, would you  
4 mind turning your mic on please?

5 MR. PICKNER: I was out of town  
6 for eight weeks and just got back into town  
7 this weekend and realized that I had gotten  
8 the sign as required.

9 All the other paperwork has been  
10 fulfilled. All the letters have been sent out  
11 within the required radius. And I have  
12 letters from both of my adjacent neighbors.  
13 And ANC approval.

14 CHAIRPERSON MILLER: Okay. The  
15 posting is somewhat of a basic. The rules  
16 provide various ways to provide notice to the  
17 community and neighbors. So what you are  
18 saying is everything else was done but not  
19 that one.

20 MR. PICKNER: Yes. I was advised  
21 this morning to request that that requirement  
22 be waived seeing that everything else has been

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1 adhered to. And seeing that there is no  
2 opposition to the project.

3 CHAIRPERSON MILLER: We are just  
4 reviewing the file. I mean we've all read the  
5 file and it is a, you know, very well put  
6 together application. But I think there may  
7 be a letter of opposition? Let's see. Do you  
8 have it Mr. Loud?

9 There is a letter from a Carolyn  
10 Preston. Have you seen this?

11 MR. PICKNER: No.

12 CHAIRPERSON MILLER: Property  
13 owner 1158 Abbey Place, N.E. Do you know  
14 where that it?

15 MR. PICKNER: They must be -- they  
16 are down the block. They are behind me and  
17 they are down the block.

18 CHAIRPERSON MILLER: Oh, so she  
19 must be within the 200 feet and got the  
20 letter.

21 MR. PICKNER: Yes.

22 CHAIRPERSON MILLER: Okay.

1 MR. PICKNER: There should be  
2 virtually no impact on that person.

3 CHAIRPERSON MILLER: She was  
4 concerned about the height.

5 MR. PICKNER: Well, there seems to  
6 be some -- I received a call from Beverley  
7 last week.

8 CHAIRPERSON MILLER: Ms. Bailey?

9 MR. PICKNER: Yes. There seemed  
10 to be some misunderstanding which this person  
11 might also have the same misunderstanding  
12 which is this is a rear yard addition.

13 It is an existing two-story house.  
14 It is a proposed two-story addition to the  
15 rear yard. And Beverley's misunderstanding  
16 was that I was going up and not out behind the  
17 building.

18 CHAIRPERSON MILLER: Whose -- I  
19 mean whose misunderstanding? Ms. Bailey?

20 MR. PICKNER: Beverley Bailey.

21 CHAIRPERSON MILLER: Oh.

22 MS. BAILEY: Madam Chair, if I can

1 clarify. There seems to be an addition on top  
2 of the second floor.

3 CHAIRPERSON MILLER: Right.

4 MS. BAILEY: And I wasn't clear if  
5 that was a third story or some other -- what  
6 exactly that was because the photograph is  
7 showing some structure on top of the  
8 buildings.

9 COMMISSIONER TURNBULL: It is in  
10 exhibit 5.

11 MR. PICKNER: There is a roof  
12 deck.

13 MS. BAILEY: And that was the  
14 nature of the call.

15 CHAIRPERSON MILLER: Okay. Hold  
16 on.

17 COMMISSIONER TURNBULL: Is that  
18 coming off?

19 MR. PICKNER: No, that is an  
20 existing roof deck. So that has nothing to do  
21 with the special exception. The special  
22 exception was requesting a two-story rear yard

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1 addition to an existing two-story single-  
2 family residence with a roof deck on top.

3 CHAIRPERSON MILLER: Okay. We  
4 have to make the initial decision whether  
5 we're going to go forward with this case today  
6 or postpone it based on the posting.

7 I think what we want to do is just  
8 take a short break and take a quick look at  
9 the file. And then come back and let you know  
10 that. Or, you know, and then discuss it out  
11 here.

12 But I think that is what we will  
13 do. So if you'll be patient, we will be back  
14 in a short -- okay.

15 (Whereupon, the foregoing matter  
16 went off the record at 11:20 a.m.  
17 and went back on the record at  
18 11:40 a.m.)

19 CHAIRPERSON MILLER: Back on the  
20 record.

21 Mr. Pickner, do you want to come  
22 forward again? Where we left off was whether

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1 the Board would waive the requirement under  
2 3113.14 which states that the applicant shall  
3 give additional notice of the public hearing  
4 by posting the property with notice of the  
5 hearing at least 15 days in advance of the  
6 hearing.

7 And in this case, it wasn't posted  
8 at all. Under 3113.13, the other methods of  
9 notice to the public were made, as far as we  
10 know, notice in the DC Register, mailing of  
11 notices to property owners within 200 feet of  
12 the property, notice to the ANC, posting of  
13 calendared cases by the Board and the Office  
14 of Zoning.

15 Anyway, I have a question for you.  
16 We do waive this when we feel that there won't  
17 be prejudice to a party. And when there is  
18 good cause. And you had said that you were  
19 out of the country. And that was your good  
20 cause --

21 MR. PICKNER: Out of town.

22 CHAIRPERSON MILLER: Out of town -

1 - for eight weeks or something?

2 MR. PICKNER: Eight weeks.

3 CHAIRPERSON MILLER: And did you  
4 say that the adjacent neighbors had written a  
5 letter each?

6 MR. PICKNER: I have a letter from  
7 my neighbors on both sides.

8 CHAIRPERSON MILLER: Ms. Bailey,  
9 do you want to pick up that? Do you have that  
10 for us? Okay. Okay.

11 Because that is very important  
12 because most often in these kinds of special  
13 exception applications, it is the neighbors  
14 that would be most directly impacted. So --

15 MR. PICKNER: Can I say one thing?

16 CHAIRPERSON MILLER: Sure.  
17 Absolutely.

18 MR. PICKNER: And I reviewed the  
19 letter of the neighbor in opposition and as  
20 far as I can tell, I think they did  
21 misunderstand because they said I expect the  
22 height restriction to be enforced in this

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1 matter, which is, again, I am applying for  
2 four additional feet, extending the rear yard  
3 to ten feet.

4 And the other thing is there are  
5 concerned about nonconformity and there is, as  
6 I have one sheet that is included that talks  
7 about precedent for the additions on the  
8 block, which identical in size to the  
9 footprint proposed at my address, 1165, at  
10 these addresses: 1175, 1169, 1161, and 1143  
11 3rd Street. They are all the identical  
12 footprints to what I am proposing.

13 CHAIRPERSON MILLER: We have now  
14 the letters from two neighbors of yours in  
15 support. One at 1163 3rd Street and one at  
16 1167 3rd Street. Are there any other  
17 neighbors directly near you?

18 MR. PICKNER: I have no other  
19 letters.

20 CHAIRPERSON MILLER: Okay.

21 MR. PICKNER: Those are my direct  
22 adjacent neighbors.

1 CHAIRPERSON MILLER: Okay. All  
2 right. So we have then in considering whether  
3 others got notice, we have -- we certainly  
4 have the letters from the two neighbors.

5 We have the letter from Ms.  
6 Preston, who you did not solicit in any way  
7 who I can assume that, I guess, she had notice  
8 some way either by the 200-foot mailing or by  
9 the notice to the ANC or some other way.

10 We have the ANC that is in  
11 unanimous support.

12 So I would be inclined to waive  
13 the posting requirement. It is one of the  
14 rules that we are allowed to waive.

15 MR. PICKNER: If I can say one  
16 more thing, too --

17 CHAIRPERSON MILLER: Yes.

18 MR. PICKNER: -- in support, the  
19 neighbor in opposition is -- I'm almost -- I'm  
20 north to them so I don't impact sun at all.

21 CHAIRPERSON MILLER: Now which  
22 neighbor is this?

1                   MR. PICKNER: The neighbor of  
2                   opposition.

3                   CHAIRPERSON MILLER: Oh, okay.  
4                   Okay. And I just want to read our waiving  
5                   rule, which is 3100.5. It says except for  
6                   sections 3100 through 3105, 3121.5, and  
7                   3125.4, the Board may, for good cause shown,  
8                   waive any of the provisions of this chapter  
9                   if, in the judgment of the Board the waiver  
10                  will not prejudice the rights of any party and  
11                  it is not otherwise prohibited by law.

12                  So I think that any other party in  
13                  this case, the ANC would be a party. And they  
14                  are on notice. They got the notice  
15                  individually. So I don't see any party whose  
16                  rights are being prejudiced.

17                  And then I think that the spirit  
18                  of the notice is met because we have the  
19                  adjacent neighbors having notice plus another  
20                  one who was in opposition. And the ANC.

21                  How do others feel? Is there any  
22                  objection on the Board to waiving this notice?

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1           Okay. Then I understand that the  
2 applicant has made a motion that we consider  
3 to waive it. And it is the consensus of the  
4 Board to waive it in this instance, finding  
5 that the other forms of notice were made. And  
6 there seems to be adequate notice and no  
7 parties' rights have been prejudiced. And it  
8 is not prohibited by law.

9           Okay. So now we can get into the  
10 merits of the case.

11           MR. PICKNER: Thank you.

12           CHAIRPERSON MILLER: Just from the  
13 pictures that we have in exhibit 5, there was  
14 a comment before we went to our break about  
15 the railing on the top. And that is not a  
16 part of this application.

17           But could that be something that  
18 Ms. Preston was concerned about with respect  
19 to height? Is that something new? Or is that  
20 something that has been there for a while?

21           MR. PICKNER: It is something that  
22 was there before I purchased the residence.

1 CHAIRPERSON MILLER: And when was  
2 that?

3 MR. PICKNER: In 2003.

4 CHAIRPERSON MILLER: Okay. So I  
5 think that your application is pretty  
6 straightforward. You are doing a rear  
7 addition here. Do you want to just summarize  
8 it briefly? Or highlight anything you want  
9 to?

10 MR. PICKNER: No, again, I'm  
11 requesting ten feet versus six feet. With the  
12 six feet, it severely compromises my ability  
13 to create rooms, a kitchen on the ground  
14 floor, and a bedroom above.

15 And, again, the ten-foot addition,  
16 there is a neighbor two doors down that has a  
17 ten-foot addition and it would be virtually  
18 identical in size and volume.

19 CHAIRPERSON MILLER: You are  
20 saying if you did -- what would the six feet  
21 represent?

22 MR. PICKNER: The six feet would

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1 represent the standard size without the  
2 special exception. With the special  
3 exception, which allows me to go -- I'm  
4 requesting to go 69 percent lot coverage and  
5 the special exception allows me to go up to  
6 70.

7 CHAIRPERSON MILLER: Are you  
8 saying if it was six foot deep you wouldn't  
9 need a special exception?

10 MR. PICKNER: Correct.

11 CHAIRPERSON MILLER: Okay.

12 MR. PICKNER: But the room sizes  
13 wouldn't be adequate. These are very tiny  
14 lots. So they are very tiny houses.

15 CHAIRPERSON MILLER: And are there  
16 questions from Board members?

17 COMMISSIONER TURNBULL: Madam  
18 Chair, in exhibit 5, the pictures that show  
19 the rear of the house, in the top right  
20 picture, you show a neighbor's two-story  
21 addition.

22 MR. PICKNER: Correct.

1                   COMMISSIONER   TURNBULL:   Which  
2   house are you?

3                   MR. PICKNER:   I'm the house -- I'm  
4   --

5                   COMMISSIONER   TURNBULL:   You are  
6   not on the top picture?

7                   MR. PICKNER:   I'm two -- if it is  
8   the picture I think you are speaking about,  
9   I'm the house in the -- next to the red house.  
10   So I'm two doors down from the addition that's  
11   -- the ten-foot addition.

12                  COMMISSIONER   TURNBULL:   So the red  
13   house will be sort of sandwiched in between  
14   the two --

15                  MR. PICKNER:   Correct.

16                  COMMISSIONER   TURNBULL:   --  
17   extensions?   Okay.

18                  CHAIRPERSON   MILLER:   And the red  
19   house is which address?   Which person -- do we  
20   have a letter from them?

21                  MR. PICKNER:   Oh, 1167, yes, you  
22   have a letter from Mary O'Neal.

1 CHAIRPERSON MILLER: Just looking  
2 at that picture, one might think that the red  
3 house might have an objection to being  
4 enclosed in like that. But do you know why  
5 they don't?

6 MR. PICKNER: I can't speak for  
7 the neighbor.

8 CHAIRPERSON MILLER: Okay.

9 MR. PICKNER: I can speculate.  
10 One of the problems with that alley is that  
11 there is too much exposure, that everybody  
12 looks on to everyone else. So I think -- I do  
13 know -- again, I can't speak for anyone else  
14 but I do know the neighbor on the other side  
15 that also have a support letter has said that  
16 they like the idea of the addition because it  
17 gives them more privacy. So perhaps that is  
18 what Mary's -- Mary supports the project also.

19 CHAIRPERSON MILLER: Okay. And  
20 how about sun-wise, is their sun effected at  
21 all?

22 MR. PICKNER: Sun, not on the 1163

1 side. On 1167, there is a little bit of  
2 morning light but she actually benefits from  
3 the neighbor's addition. She gets a lot of  
4 reflected light currently from her neighbor's  
5 side facade.

6 CHAIRPERSON MILLER: And what is  
7 your side facade going to be like?

8 MR. PICKNER: It will be almost  
9 identical to the neighbor's ten-foot addition.

10 CHAIRPERSON MILLER: And are you  
11 still going to have room for parking?

12 MR. PICKNER: No, there's not --  
13 what I also see as one of the problems on that  
14 alley is that -- that because the lots are so  
15 small, you are virtually parking your car in  
16 your entire backyard.

17 So I propose a landscaped rear  
18 yard brick patio with a planted tree in the  
19 middle with landscaping on the perimeter. So  
20 I see that far more amenable.

21 Also, the metro is a half a block  
22 away so street parking is fine for me for --

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1 I would take mass transit generally anyway.

2 CHAIRPERSON MILLER: Okay. Now  
3 that we have opened that door, do you have a  
4 car?

5 MR. PICKNER: I do but there is  
6 not a lot of cars that park on my side of the  
7 block. The houses across the alley are  
8 slightly different. They have a semi-  
9 basement. So there is a certain amount of  
10 people that park their cars in their back --  
11 in a concrete area.

12 But on our side of the block,  
13 there is not actually a lot of people that  
14 park because our houses are smaller and there  
15 is a premium for outdoor space.

16 There is also a grade change. And  
17 based on my yard -- my rear yard is higher  
18 than the alley level. So I would have to do  
19 some excavation anyway.

20 CHAIRPERSON MILLER: So do you  
21 have parking now?

22 MR. PICKNER: We just have street

1 parking.

2 CHAIRPERSON MILLER: You don't  
3 have a parking space now?

4 MR. PICKNER: No.

5 CHAIRPERSON MILLER: Oh, so you  
6 are not making any change with respect to  
7 that.

8 MR. PICKNER: Correct.

9 CHAIRPERSON MILLER: Okay.

10 COMMISSIONER TURNBULL: I was  
11 noticing in the pictures, and you confirmed it  
12 by just saying that your yard is higher,  
13 because on these rear pictures on exhibit 5,  
14 it shows like there is either a block wall or  
15 a concrete wall --

16 MR. PICKNER: Correct.

17 COMMISSIONER TURNBULL: -- with a  
18 fence on top of it. And then I guess there is  
19 a step or two as you go through that gate --

20 MR. PICKNER: Correct.

21 COMMISSIONER TURNBULL: -- to get  
22 up? So all of the -- you've got this -- on

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1 your rear elevations, you've got kind of an  
2 interesting roof line where you go up in one  
3 corner. And it comes back down. And you are  
4 sort of diverting the water toward the red  
5 brick house side. And the gutter is coming --  
6 you have a down spout coming right down there.

7 Any chance that this water --  
8 since you are higher, escaping down into their  
9 property?

10 MR. PICKNER: No, there is -- the  
11 standard condition for those houses is to have  
12 the down spout on one corner -- or one of the  
13 two rear corners of the house. So I have it  
14 on the red house side, which it would go down  
15 the down spout and then have a plastic culvert  
16 that would direct it to the alley.

17 COMMISSIONER TURNBULL: Does the  
18 block wall or the concrete wall along that  
19 side extend up above the grade there?

20 MR. PICKNER: No. It's level.  
21 The top of the concrete wall is at grade.

22 COMMISSIONER TURNBULL: It is. So

1 you will need to make some kind of an effort  
2 to make sure it is diverted inward to your  
3 property.

4 MR. PICKNER: Yes.

5 COMMISSIONER TURNBULL: Okay. Are  
6 you putting any lighting back here on this?  
7 I don't see any lights shown.

8 MR. PICKNER: There will be a rear  
9 yard light, yes.

10 COMMISSIONER TURNBULL: Do you  
11 know where -- whereabouts?

12 MR. PICKNER: Probably near the  
13 back door.

14 COMMISSIONER TURNBULL: So in that  
15 little niche that you've created for the back  
16 door? Somewhere in there? Or on the side?

17 MR. PICKNER: It will be on the  
18 rear face of the building.

19 COMMISSIONER TURNBULL: Focused  
20 downward?

21 MR. PICKNER: Yes.

22 COMMISSIONER TURNBULL: Okay.

1 CHAIRPERSON MILLER: Can you tell  
2 me when the house was built?

3 MR. PICKNER: I believe it was  
4 1923.

5 CHAIRPERSON MILLER: Okay. Thank  
6 you. Any other Board questions? Okay. Why  
7 don't we go to the Office of Planning. And  
8 let me ask you, Mr. Pickner, do you have a  
9 copy of the Office of Planning's report?

10 MR. PICKNER: Yes, I do.

11 CHAIRPERSON MILLER: Okay.

12 MS. JACKSON: Good morning, Chair,  
13 and members of the Board. For the record, my  
14 name is Arlova Jackson. I'm a development  
15 review specialist with the D.C. Office of  
16 Planning.

17 The Office of Planning has  
18 recommended support of the proposed 223  
19 special exception and finds that the applicant  
20 meets the criteria for approval.

21 I'm actually filling in for staff  
22 member Steve Mordfin. But I'd be happy to

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1 stand on the record and answer any questions  
2 that you have.

3 CHAIRPERSON MILLER: I don't hear  
4 any questions. I think it was a very good  
5 report. It addresses all the elements pretty  
6 thoroughly. I don't know -- I've explored  
7 some of my questions with the applicant. And  
8 don't have different ones for you.

9 Does the applicant have any  
10 questions of the Office of Planning?

11 MR. PICKNER: No, thank you.

12 COMMISSIONER TURNBULL: Madam  
13 Chair, there was only one issue. And I think  
14 it is a fine point. The Office of Planning  
15 report says that there are no windows on  
16 either side of the addition on either side of  
17 the property.

18 But there is one in the niche by  
19 the kitchen. But it is recessed in. And I  
20 don't think you can actually -- there is a  
21 two-foot cabinet, base cabinet there so I  
22 don't know if anybody -- it's not like you

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1 could look out and be seeing anything.

2 So I think it is a minor point.  
3 But it is -- I don't think it is invading the  
4 privacy of the neighbor in any way.

5 CHAIRPERSON MILLER: So what was  
6 there -- what is there before and there now,  
7 is just pavement? Is that it? A rough  
8 pavement?

9 MR. PICKNER: Just dirt.

10 CHAIRPERSON MILLER: Dirt, okay.

11 MR. PICKNER: With a small  
12 sidewalk.

13 CHAIRPERSON MILLER: Okay. Okay.  
14 I don't see anybody else here in the audience  
15 to testify either in support or opposition of  
16 the application, including the ANC.

17 But I want to reference for the  
18 record that the ANC submitted a report, which  
19 we have marked as exhibit 20, dated July 14th,  
20 2008, which said that they had a duly noticed,  
21 regularly scheduled monthly meeting on July  
22 9th, 2008, with a quorum of nine out of nine

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1 Commissioners and the public present.

2 And they heard a presentation by  
3 the applicant with opportunity for  
4 Commissioners and the public to ask questions.

5 And the Commissioners heard no  
6 opposition and voted nine to zero to zero to  
7 support the application.

8 And this letter meets the great  
9 weight requirements so we will move forward  
10 with that. They don't raise any issues for us  
11 to address. They just support it.

12 And then we mentioned earlier,  
13 just for the record again, we have two letters  
14 in support from adjacent neighbors. And then  
15 we had one letter in opposition from a  
16 property owner at 1158 Abbey Place.

17 And the applicant had a chance to  
18 look at that letter today in the hearing. She  
19 was concerned with the height and I was  
20 wondering if, as one point, whether the  
21 height, she may have been looking at the  
22 railing, which had nothing to do with the

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1 application.

2 And then she was concerned about  
3 nonconformity and depreciation of property  
4 value. And I think that the applicant  
5 addressed this with respect to other  
6 nonconforming properties doing similar  
7 additions.

8 But if you want to make any other  
9 further comments, feel free.

10 MR. PICKNER: Thank you.

11 CHAIRPERSON MILLER: And then, of  
12 course, we have the Office of Planning report  
13 which fully addresses all of the elements of  
14 section 223 with respect to this application  
15 and recommends approval of the application.

16 Any further questions Board  
17 members?

18 Any closing remarks?

19 MR. PICKNER: No, thank you.

20 CHAIRPERSON MILLER: Okay. Okay.

21 Further comments from Board  
22 members?

1                   Then at this time, I would move  
2 approval of application number 17822 of  
3 Matthew S. Pickner, pursuant to 11 DCMR  
4 section 3104.1 for a special exception to  
5 construct a two-story addition to an existing  
6 one-family row dwelling under section 223, not  
7 meeting the lot occupancy, section 403, and  
8 rear yard, section 404, requirements of  
9 premises 1165 3rd Street, N.E.

10                   Do I have a second?

11                   COMMISSIONER TURNBULL: Second.

12                   CHAIRPERSON MILLER: Okay. I  
13 think that the Office of Planning very  
14 systematically goes through this application,  
15 finding that it meets all the elements. And  
16 I will just highlight some of them.

17                   An addition to this type of  
18 property is allowed provided that it meets the  
19 requirements of section 223. And 223.2 says  
20 that the addition or accessory structure shall  
21 not have a substantially adverse effect on the  
22 use or enjoyment of any abutting or adjacent

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1 dwelling or property, in particular on the  
2 light and air of neighboring properties.

3 We explored this at the hearing  
4 and that one of the neighbors seemed to be,  
5 you know, sandwiched in, as Commissioner  
6 Turnbull stated it. And we explored that and  
7 determined that the applicant stated that the  
8 neighbor actually was getting privacy that  
9 way.

10 And that the light isn't being  
11 unduly effected because she has light being  
12 reflected off the facade of the side of the  
13 addition on her other side. And that he  
14 stated to his facade would be similar.

15 And Office of Planning found that  
16 the light would not be unduly effected. And  
17 the neighbor supports the application. So I  
18 don't think that we have a concern with that.

19 B goes to privacy and we talked  
20 about the privacy of the neighbors actually  
21 being increased. And the building is not  
22 going to have any additions on the side except

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1 for one small little area in the kitchen,  
2 which does not seem to effect privacy.

3 The addition or accessory  
4 structure, together with the original  
5 building, as viewed from the street, alley,  
6 and other public ways shall not substantially  
7 visually intrude upon the character, scale,  
8 and pattern of houses along the subject street  
9 frontage.

10 It is in the rear so it is not  
11 effecting the front. And it is similar to  
12 other additions that have been made in the  
13 rear of that block. And, therefore, it is  
14 within the character, scale, and pattern of  
15 those houses.

16 You submitted photos and drawings  
17 to demonstrate what was going to be done. The  
18 lot occupancy is 69 percent, which comes in  
19 under the maximum 70 percent permitted.

20 Office of Planning makes no  
21 recommendations for special treatment.

22 And the applications for the use

1 of a subject property, it is rear dwelling and  
2 doesn't result in the introduction or  
3 expansion of a nonconforming use. The use is  
4 staying the same.

5 And the ANC has supported the  
6 application.

7 So I think that that covers it for  
8 me. Do others want to add anything to the  
9 deliberations?

10 Okay. Not hearing from anyone,  
11 then I would call the vote. All those in  
12 favor say aye.

13 (Chorus of ayes.)

14 CHAIRPERSON MILLER: All those  
15 opposed? All those abstaining?

16 And would you call the vote  
17 please?

18 MS. BAILEY: Madam Chair, the vote  
19 is recorded as four - zero - one to grant the  
20 application. Ms. Miller made the motion. Mr.  
21 Turnbull seconded it. Mr. Dettman and Mr.  
22 Loud supported the motion. Ms. Walker is not

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1 present today.

2 CHAIRPERSON MILLER: Okay. And  
3 this will be a summary order because there is  
4 no party in opposition. So you should be  
5 getting a copy of that fairly soon.

6 MR. PICKNER: Thank you very much.

7 CHAIRPERSON MILLER: Okay. Good  
8 luck. Okay.

9 Ms. Bailey, do we have anything  
10 else on the agenda?

11 MS. BAILEY: not for this morning,  
12 Madam Chair.

13 CHAIRPERSON MILLER: Okay. Then  
14 this hearing is adjourned.

15 (Whereupon, the foregoing matter  
16 went off the record at 12:08 p.m.  
17 to be reconvened in the  
18 afternoon.)

19

20

21

22



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

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

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

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

19              The order of procedure for special  
20      exceptions and variances is as follows: one,  
21      statement and witnesses of the applicant; two,  
22      government reports, including Office of

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1 Planning, Department of Public Works, DDOT, et  
2 cetera; three, report of the Advisory  
3 Neighborhood Commission; four, parties or  
4 persons in support; five, parties or persons  
5 in opposition; six, closing remarks by the  
6 applicant.

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

15 These time restraints do not  
16 include cross examination and/or questions  
17 from the Board. Cross examination of  
18 witnesses is permitted by the applicant or  
19 parties.

20 The ANC within which the property  
21 is located is automatically a party in a  
22 special exception or variance case.

1                   Nothing prohibits the Board from  
2 placing reasonable restrictions on cross  
3 examination including time limits and  
4 limitations on the scope of cross examination.

5                   The record will be closed at the  
6 conclusion of each case except for any  
7 materials specifically requested by the Board.  
8 The Board and the staff will specify at the  
9 end of the hearing exactly what is expected  
10 and the date when the persons must submit the  
11 evidence to the Office of Zoning.

12                   After the record is closed, no  
13 other information will be accepted by the  
14 Board.

15                   The Sunshine Act requires that the  
16 public hearing on each case be held in the  
17 open before the public. The Board may,  
18 consistent with its rules of procedure and the  
19 Sunshine Act, enter Executive Session during  
20 or after the public hearing on a case for  
21 purposes of reviewing the record or  
22 deliberating on the case.

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

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

10          The Board will make every effort  
11          to conclude the public hearing as near as  
12          possible to six o'clock p.m. If the afternoon  
13          cases are not completed as six, the Board will  
14          assess whether it can complete the pending  
15          cases remaining on the agenda.

16          That this time, the Board will  
17          consider any preliminary matters. Preliminary  
18          matters are those which relate to whether a  
19          case will or should be heard today such as  
20          requests for postponement, continuance, or  
21          withdrawal, or whether proper and adequate  
22          notice of the hearing has been given.

1                   If you are not prepared to go  
2 forward with a case today or if you believe  
3 that the Board should not proceed, now is the  
4 time to raise such a matter.

5                   Does the staff have any  
6 preliminary matters?

7                   MS. BAILEY: Madam Chair, good  
8 afternoon. Yes, we do. There are two cases  
9 that were withdrawn. And there is one request  
10 for a postponement.

11                  CHAIRPERSON MILLER: Okay. Why  
12 don't we have those rise to take the oath who  
13 are going to testify today. And then begin  
14 with the preliminary matters.

15                  MS. BAILEY: Thank you.

16                  CHAIRPERSON MILLER: So whoever is  
17 going to testify today, either in support or  
18 in opposition to an application, please rise  
19 now and Ms. Bailey will administer the oath.

20                  MS. BAILEY: Would you please  
21 raise your right hand? Do you solemnly swear  
22 or affirm that the testimony that you will be

1 giving today will be the truth, the whole  
2 truth, and nothing but the truth? Thank you.

3 Madam Chair?

4 CHAIRPERSON MILLER: Yes?

5 APPEAL OF MILTON E. HALL

6 APPLICATION NO. 17730 - ANC-5B

7 and

8 LT PROPCO LLC

9 APPLICATION NO. 17818 - ANC-3E

10 MS. BAILEY: The cases that were  
11 withdrawn are application number 17730. This  
12 is an appeal of Milton Hall.

13 And then the second case is 17818,  
14 Popco LLC. Both of those cases were withdrawn  
15 previously.

16 CHAIRPERSON MILLER: Thank you.  
17 And there is no action required on the part of  
18 the Board, correct?

19 MS. BAILEY: No, Madam Chair, none  
20 is required.

21 CHAIRPERSON MILLER: Okay. Then  
22 why don't you next call then the case that has

1 a preliminary matter in it.

2 PRELIMINARY MATTER:

3 JOBS PARTNERSHIP OF GREATER WASHINGTON

4 APPLICATION NO. 17827 - ANC-

5 MS. BAILEY: The case that has a  
6 preliminary matter is number 17827 and it is  
7 the application of Jobs Partnership of Greater  
8 Washington. I think the applicant's attorney  
9 is present at this time.

10 MR. KADLECEK: Good afternoon.

11 CHAIRPERSON MILLER: Good  
12 afternoon.

13 MR. KADLECEK: My name is Cary  
14 Kadlecek from the Law Firm of Pillsbury  
15 Winthrop Shaw Pittman. I'm here on behalf of  
16 the applicant.

17 You may remember from our  
18 September 9th hearing I was here before to  
19 request a postponement. And I'm here to  
20 request another postponement.

21 We had requested the initial  
22 postponement to try to reach an agreement to

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1 purchase the adjacent property that we were  
2 including in the application.

3 At this time, we have been unable  
4 to reach an agreement with the adjacent owner,  
5 largely due to the problems with the credit  
6 market right now and being able to secure  
7 financing in time.

8 Also we haven't quite reached an  
9 agreement on a closing date yet largely due to  
10 the financing.

11 We've resolved most of the other  
12 issues but we really some time to work that  
13 out. So what I'm requesting is a three-month  
14 postponement of the hearing, which would put  
15 us into January, I believe.

16 CHAIRPERSON MILLER: Okay. It  
17 looks like it is going forward? It is just  
18 going to take a while because of the financial  
19 situation?

20 MR. KADLECEK: Yes, it has turned  
21 out to be kind of a hairy situation to work  
22 out the financing and come to terms with an

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1 agreeable closing date between the two  
2 parties.

3 CHAIRPERSON MILLER: Okay. We  
4 were looking at the calendar this morning to  
5 postpone another case. And one of the dates  
6 I believe we came up with was in February,  
7 like -- I think it was February 24th. Would  
8 that be a problem?

9 MR. KADLECEK: No, I don't think  
10 that would be a problem.

11 CHAIRPERSON MILLER: Okay. Okay,  
12 I'm just taking a look to see whether -- try  
13 to guesstimate whether there is more time  
14 available in the morning or the afternoon.

15 MR. KADLECEK: Either one is  
16 acceptable with us.

17 CHAIRPERSON MILLER: Okay.  
18 Afternoon we're going to put you.

19 MR. KADLECEK: So the 24th in the  
20 afternoon -- February 24th.

21 CHAIRPERSON MILLER: Did you talk  
22 to the ANC with respect to the postponement or

1 anybody else?

2 MR. KADLECEK: No, we haven't  
3 talked to them with respect to the  
4 postponement.

5 CHAIRPERSON MILLER: Okay.

6 MR. KADLECEK: But because we did  
7 post initially we thought that was sufficient  
8 public notice. And, you know, we had talked  
9 to them a long time ago, of course, and gotten  
10 their support.

11 CHAIRPERSON MILLER: Okay. Yes.  
12 So the ANC is -- oh, right. We have a letter  
13 -- a resolution that just came in actually  
14 from the ANC -- if I'm not mistaken -- in  
15 support of your application. I don't know if  
16 you've seen it.

17 MR. KADLECEK: Yes, it is probably  
18 from when we spoke to them. I believe that  
19 was back in July.

20 CHAIRPERSON MILLER: Right. Okay.  
21 Yes, the cover letter is dated July 18th.

22 MR. KADLECEK: Yes, that seems

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1 right.

2 CHAIRPERSON MILLER: We just got  
3 it.

4 MR. KADLECEK: Oh, okay.

5 CHAIRPERSON MILLER: I don't know.  
6 I'm sorry. Maybe it was brought to our  
7 attention today. But anyway, it is in our  
8 files.

9 MR. KADLECEK: Yes.

10 CHAIRPERSON MILLER: Okay. Any  
11 other questions or comments?

12 MR. KADLECEK: Nothing else.  
13 Thank you.

14 CHAIRPERSON MILLER: Okay. So  
15 February 24th in the afternoon and then if  
16 there is something new to file, you would file  
17 it 14 days ahead of time.

18 MR. KADLECEK: Yes.

19 CHAIRPERSON MILLER: Okay. Good.

20 MR. KADLECEK: Great. Thank you.

21 CHAIRPERSON MILLER: All right.

22 Thank you.

1                   So we're ready for the next case  
2 when you are, Ms. Bailey.

3                   KC ENTERPRISE C/O KEVIN B. MOODY

4                   APPLICATION NO. 17823 - ANC-7C

5                   MS. BAILEY: Madam Chair, the only  
6 case this afternoon is application number  
7 17823 of KC Enterprise c/o Kevin B. Moody,  
8 pursuant to 11 DCMR 3103.2, for a variance  
9 from the lot area and lot width requirements  
10 under section 401, a variance from the side  
11 yard requirements under subsection 405.9, to  
12 construct a new detached one-family dwelling  
13 in the R-2 District at premises 4938 Eads  
14 Place, N.E., Square 5184, Lot 6.

15                   CHAIRPERSON       MILLER: Good  
16 afternoon.

17                   MR. MOODY: Good afternoon. For  
18 the record, my name is Kevin Moody. I reside  
19 at 6713 Burch Hill Road, Brandywine, Maryland  
20 20613.

21                   CHAIRPERSON MILLER: Okay. Why  
22 don't you just -- perhaps just briefly

1 summarize why you are here.

2 MR. MOODY: Thank you. And good  
3 afternoon to the rest of the Board members.

4 I'm here today as the contract  
5 purchaser for property known as 4938 Eads  
6 Place. The property is currently 25 feet wide  
7 by 90 feet long. It also has an existing 15-  
8 foot public alley in the rear of the property.

9 I'm here to propose to build a 17  
10 foot by nine inch wide by 39 feet eight inch  
11 house on this existing property. The property  
12 is presently owned -- excuse me -- presently  
13 zoned R-2.

14 On that block there is an array of  
15 different properties, semi-detached, detached,  
16 as well as some garden apartment units.

17 This property was zoned pre-1958  
18 and on the one side of the property there is  
19 a duplex. And on the other side of the  
20 property there is an existing single-family  
21 home.

22 Prior to putting in a contract on

1 this property, I met with both of the adjacent  
2 property owners to be able to get their  
3 feeling and take on if someone were ever to  
4 come in to build on this vacant lot what would  
5 they like.

6 With it being R-2 zoned and the  
7 size, it would limit itself to be able to do  
8 a semi-detached application. However, it  
9 would never, ever be able to get attached on  
10 an existing house because on one side, again,  
11 there is a single-family home and on the other  
12 side there is the duplex.

13 So the two adjacent owners as well  
14 as myself thought that the best way, based  
15 upon existing conditions, was to be able to  
16 put the house dab smack in the middle of the  
17 lot and provide a three-foot-seven and a half  
18 inch side yard on either side, coupled with  
19 the existing eight foot that they have on  
20 their property would lend itself, if you will,  
21 for almost 11-foot-eight setback between each  
22 one of the existing units.

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1           And based upon the size of the lot  
2 without getting the area variance for the lot  
3 area and the lot width requirements and the  
4 side yard setback I, nor any other person in  
5 the future, would be unable to build it. So  
6 that is why I'm here in front of you today.

7           CHAIRPERSON MILLER: Okay.

8           MR. MOODY: Oh, and by the way, to  
9 mention when I first met with the neighbors,  
10 I had forwarded a letter to the ANC asking to  
11 be able to get on the agenda, if they had any  
12 questions or any problems. I have yet, to  
13 date, to hear back from them inviting me to a  
14 meeting.

15           And then approximately three weeks  
16 ago, I also spoke to the person that answers  
17 the telephone for the ANC. So I have reached  
18 out to them on multiple occasions with no  
19 success in being able to get on the agenda.

20           CHAIRPERSON MILLER: Okay. Thank  
21 you. Am I correct that basically it's not --  
22 the property is nonconforming as to area and

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1 width?

2 MR. MOODY: You are absolutely  
3 correct.

4 CHAIRPERSON MILLER: Okay. So  
5 that is a variance someone would need no  
6 matter what.

7 MR. MOODY: Absolutely.

8 CHAIRPERSON MILLER: Okay. So the  
9 side yard variance you need because you are  
10 putting the property in the middle between the  
11 two houses.

12 MR. MOODY: Yes.

13 CHAIRPERSON MILLER: And neither  
14 side meets the required side yard requirement.

15 MR. MOODY: Correct.

16 CHAIRPERSON MILLER: Okay. But --  
17 and could you just clarify for me that you  
18 could not -- you can not build without doing  
19 -- putting it in the middle that way? You  
20 cannot attach to either of the buildings on  
21 the side of you?

22 MR. MOODY: That is a yes and a no

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1 question.

2 CHAIRPERSON MILLER: Okay, yes.

3 MR. MOODY: I tried my best to be  
4 able to -- assuming if I were unable to get a  
5 variance for the lot area requirements, I  
6 could, if I got that, I could put it on one of  
7 the property lines. But then that would only  
8 lend itself to a very, very narrow house that  
9 the floor plan just wouldn't end up working.

10 So it made all sense then to not  
11 only ask for the lot area but also the side.  
12 Is that clear?

13 CHAIRPERSON MILLER: Yes. So that  
14 does it. So you need the side yard in order  
15 to have a wide enough house to live in.

16 MR. MOODY: Correct.

17 CHAIRPERSON MILLER: Okay. You  
18 could put a building there but it wouldn't be  
19 wide enough.

20 MR. MOODY: It wouldn't be much of  
21 a building.

22 CHAIRPERSON MILLER: Okay. And

1 with respect to the pictures that are on  
2 exhibit 7 --

3 MR. MOODY: Exhibit 7?

4 CHAIRPERSON MILLER: Well, it is  
5 our exhibit 7, I believe.

6 MR. MOODY: Okay.

7 CHAIRPERSON MILLER: This is the  
8 picture.

9 MR. MOODY: Yes.

10 CHAIRPERSON MILLER: Okay. If we  
11 are looking at number one here --

12 MR. MOODY: Yes.

13 CHAIRPERSON MILLER: -- is your  
14 property in between these two houses?

15 MR. MOODY: No, my property --

16 CHAIRPERSON MILLER: Okay.

17 MR. MOODY: -- is to -- if you  
18 look at exhibit -- well, number three, if you  
19 will, that is the lot where you see the Long  
20 and Foster real estate sign on it.

21 CHAIRPERSON MILLER: So what was  
22 number -- picture number one supposed to

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1 depict?

2 MR. MOODY: Picture number one, I  
3 tried my best to give you a pictorial view of  
4 the adjacent properties, the lot that is in  
5 question, and then the other adjacent  
6 properties to the right of it.

7 So if you will, if you looked at  
8 number one, that is the farthest-most left.  
9 Then number two and then number three and then  
10 number four. So if you kind of looked at them  
11 one, two, three, four, if you would kind of  
12 take a pictorial view of that side of the  
13 block.

14 CHAIRPERSON MILLER: So number  
15 four where the Long and Foster sign is is  
16 where your lot is?

17 MR. MOODY: That is dead smack --  
18 that is a front view of the vacant lot.

19 CHAIRPERSON MILLER: Okay.

20 Any other questions of Board  
21 members?

22 MEMBER DETTMAN: One quick

1 question, Madam Chair.

2 CHAIRPERSON MILLER: Yes.

3 MEMBER DETTMAN: Good afternoon.

4 MR. MOODY: Good afternoon.

5 MEMBER DETTMAN: I'm looking at  
6 the plans that you submitted into the record.

7 MR. MOODY: Yes?

8 MEMBER DETTMAN: And that would be  
9 our exhibit number 12.

10 MR. MOODY: Okay.

11 MEMBER DETTMAN: The second page  
12 on the elevations. Could you just explain  
13 where the house is going to sit in terms of  
14 the first floor? I know there was something  
15 in the record that mentioned just uncertainty  
16 on groundwater and underground conditions,  
17 where that was going to sit.

18 MR. MOODY: Correct. Well, we  
19 have since received the soils work and we are  
20 anticipating that it will be a nine foot  
21 basement with approximately four feet of that  
22 nine-foot basement out of the ground.

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1                   MEMBER DETTMAN: Okay. So four  
2 feet above grade?

3                   MR. MOODY: Yes, sir.

4                   MEMBER DETTMAN: Okay. And I  
5 notice that you have an optional door. Are  
6 you going to have a staircase that goes down  
7 from grade into the basement?

8                   MR. MOODY: Well, we were  
9 originally intending that but, again, that was  
10 based upon the soils conditions. But the way  
11 that we are envisioning that now, that will  
12 probably not have an optional door.

13                  MEMBER DETTMAN: Okay.

14                  MR. MOODY: But will probably be a  
15 completely in-ground basement, if you will.

16                  MEMBER DETTMAN: Okay.

17                  MR. MOODY: And we will just have  
18 windows that will be large enough there for  
19 ingress/egress in case a fire were to ever to  
20 occur.

21                  MEMBER DETTMAN: Okay. So now  
22 that you know where this is going to sit on

1 the lot, what is actually going to be the  
2 height of the building? On your plans you  
3 show 38 feet. But that is measured from the  
4 basement floor.

5 MR. MOODY: Correct. So if you  
6 have been looking at a nine-foot basement and  
7 four feet is out of the ground --

8 MEMBER DETTMAN: Okay.

9 MR. MOODY: -- you basically take  
10 five feet off of that so we are looking at  
11 approximately 33 feet from finished grade to  
12 the topmost portion of the roof ridge.

13 MEMBER DETTMAN: Great. Thank  
14 you.

15 MR. MOODY: Yes.

16 CHAIRPERSON MILLER: Any other  
17 questions at this time?

18 Do you have a copy of the Office  
19 of Planning's report?

20 MR. MOODY: I do.

21 CHAIRPERSON MILLER: Okay. We are  
22 going to go to Office of Planning next. And

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1 I just wanted to make sure you had it for  
2 reference.

3 MR. MOODY: Thank you.

4 CHAIRPERSON MILLER: Okay.

5 MS. BROWN-ROBERTS: Hello?

6 CHAIRPERSON MILLER: You got it.

7 MS. BROWN-ROBERTS: Okay, great.

8 Good afternoon, Madam Chairman and  
9 members of the Board. I'm Maxine Brown-  
10 Roberts from the Office of Planning.

11 I think we outlined -- fully  
12 outlined the case in our report. And,  
13 therefore, I will stand on the record that  
14 recommends approval of the requested variances  
15 from the lot area and lot width. And from the  
16 side yard requirements. And I'm available for  
17 any questions.

18 Thank you, Madam Chairman.

19 CHAIRPERSON MILLER: Thank you.

20 I have a very basic question for  
21 you. Could you tell me how a duplex is  
22 defined? It is just one of those words we

1 don't usually see. It's not in our zoning  
2 regs or anything. So --

3 MS. BROWN-ROBERTS: It is usually  
4 two units. It is usually like one building  
5 but it has two units.

6 But they are independent lots.  
7 They can create independent lots but they are  
8 joined. So they only have one side yard.  
9 Each building only has one side yard.

10 CHAIRPERSON MILLER: Okay. So  
11 they can either be on one or two lots, is that  
12 what you are saying?

13 MS. BROWN-ROBERTS: Yes, yes.

14 CHAIRPERSON MILLER: Okay.

15 MS. BROWN-ROBERTS: But actually  
16 they can only be on one lot.

17 CHAIRPERSON MILLER: One lot? How  
18 is it different from a flat then that has --

19 MS. BROWN-ROBERTS: Pardon me?

20 CHAIRPERSON MILLER: How is it  
21 different from a flat?

22 MS. BROWN-ROBERTS: Well, usually

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1 the flat has two units in one building. And  
2 that is on one lot. For duplexes, each  
3 building, although they have a common wall,  
4 they are on independent lots.

5 MR. MOODY: If I could interject -  
6 -

7 CHAIRPERSON MILLER: Sure.

8 MR. MOODY: -- I'm not exactly  
9 sure what exhibit your number is but it is my  
10 exhibit number D as in dog.

11 CHAIRPERSON MILLER: This one with  
12 the photographs?

13 MR. MOODY: Yes.

14 CHAIRPERSON MILLER: Okay.

15 MR. MOODY: If you look to the  
16 bottom right is my exhibit D. But if you look  
17 at picture number 15, maybe that might bring  
18 some clarity what that "duplex" that Maxine  
19 was referring to.

20 And if you look, the entrance to  
21 either one of those units is on the side. You  
22 can see the steps to the left and the other

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1 steps to the right. That is basically the  
2 duplex.

3 And if you look where the middle  
4 of those units would be, that would be the  
5 common property line if that helps any.

6 CHAIRPERSON MILLER: Okay. I just  
7 hadn't seen that.

8 MS. BROWN-ROBERTS: It is  
9 basically what we -- I'm sorry -- what we call  
10 a single-family attached house, yes.

11 CHAIRPERSON MILLER: Semi-  
12 detached?

13 MS. BROWN-ROBERTS: Semi-detached,  
14 I'm sorry.

15 CHAIRPERSON MILLER: Okay. Good.

16 And I just want to note that Mr.  
17 Jeffries has joined us from the Zoning  
18 Commission. Okay.

19 Semi-detached -- okay.

20 Any other questions of Board  
21 members?

22 Does the applicant have any

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1 questions for the Office of Planning?

2 MR. MOODY: No. I think their  
3 report was very accurate.

4 CHAIRPERSON MILLER: I don't  
5 believe there is anybody in the audience here  
6 who is going to testify on this case. But for  
7 the record, is there anybody here from the  
8 ANC?

9 Not seeing anybody, anybody here  
10 who wishes to testify in support or in  
11 opposition to this application?

12 Not seeing anybody, at this point  
13 then, we are ready for any final questions  
14 from Board members.

15 COMMISSIONER JEFFRIES: No  
16 questions. And given I have missed a few  
17 minutes, I have reviewed the entire file. And  
18 I'm fine with the case.

19 CHAIRPERSON MILLER: Okay. No  
20 further questions from Board members.

21 So at this time, if the applicant  
22 has any final closing remarks?

1 MR. MOODY: No further comments.

2 CHAIRPERSON MILLER: Okay, in  
3 which case, if the Board is ready, we can  
4 proceed with our deliberation on this case.  
5 I just want to make sure that I reference some  
6 of the filings we have in our record and we  
7 don't have.

8 I think we don't have anything  
9 from the ANC as far as I know. We have a  
10 letter from a Ronnie Nelson who is an adjacent  
11 property owner in support. And also from  
12 Daisy Carr who also is an adjacent property  
13 owner on the other side. So they are both in  
14 support. And they are both happy that the --  
15 especially with respect to the side yard, that  
16 this house will be in the middle with a 3.5 --  
17 is it a 3.5?

18 MR. MOODY: Three feet seven and a  
19 half inches.

20 CHAIRPERSON MILLER: Three feet  
21 seven inches?

22 MR. MOODY: Yes.

1 CHAIRPERSON MILLER: Side yards.

2 Thank you.

3 Okay, so we have those. And  
4 Office of Planning is clearly in support. One  
5 second.

6 I also found in our files another  
7 letter from a Jennifer Thompson on 49th Place,  
8 N.E., supporting the application. And she  
9 lives in a house about 800 feet or 1.5 blocks  
10 away and says that it should blend in well  
11 with the houses in and around the community.

12 Okay. Anything else anyone wants  
13 to add before we deliberate?

14 Okay then, I would move approval  
15 of application number 17823 of KC Enterprise  
16 c/o Kevin B. Moody pursuant to 11 DCMR section  
17 3103.2, for a variance from the lot area and  
18 lot width requirements under section 401, a  
19 variance from the side yard requirements under  
20 subsection 405.9, to construct a new detached  
21 one-family dwelling at premises 4938 Eads.

22 VICE CHAIRMAN LOUD: Second, Madam

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1 Chair.

2 CHAIRPERSON MILLER: Okay. As the  
3 applicant is seeking variances, I just want to  
4 state that the framework in which we analyze  
5 this is a three-prong test.

6 We need to find that the property  
7 has an exceptional, unique condition and  
8 because of that, there is a practical  
9 difficulty for the applicant to comply with  
10 the zoning regulations. And that if we grant  
11 the relief, there will not be an adverse  
12 impact on adjacent neighbors.

13 I think this case is pretty  
14 straightforward. And basically it is a lot  
15 that was created before 1958. It is a  
16 nonconforming lot with respect to area and  
17 width. And, therefore, to build anything on  
18 this property would require a variance.

19 That is exceptional in and of  
20 itself because they couldn't comply with the  
21 regulations because you can't change the size  
22 of the lot. That is the way it is.

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1           So there is, at least, a practical  
2 difficulty in building a house that meets the  
3 lot area. And the property cannot meet the  
4 lot area and lot width.

5           It is also a very narrow house and  
6 so, therefore, the applicant has also asked  
7 for a variance for side yard relief. While,  
8 as we discussed it, a building could be built  
9 on that property without the side yard relief,  
10 it would be too narrow to make it a liveable  
11 home. It would be very long and narrow and  
12 not a liveable home.

13           And basically, there is no adverse  
14 impact on the neighboring properties. They  
15 support the application. Office of Planning  
16 found no adverse impacts. It is actually --  
17 it is a good in-fill. So I think that kind of  
18 touches the reasons why this meets the  
19 variance test.

20           Do others want to add to that?

21           COMMISSIONER JEFFRIES: Well,  
22 Madam Chair, I'm not going to add to that. I

1 just had a question, if you don't mind, to Mr.  
2 Moody.

3 Is this -- I'm trying to pin down  
4 the location of this. I know it is Lincoln  
5 Heights. What is across the street? Is there  
6 a --

7 MR. MOODY: I'm not exactly sure  
8 where you are.

9 COMMISSIONER JEFFRIES: Do you  
10 have your -- I'm looking at the Office of  
11 Planning report.

12 MR. MOODY: It is the Kelly Miller  
13 School.

14 COMMISSIONER JEFFRIES: Oh.

15 MR. MOODY: If you were to sit on  
16 the front porch and you looked across Eads  
17 Street, you would be looking towards the field  
18 of Kelly Miller School.

19 COMMISSIONER JEFFRIES: Okay.

20 MR. MOODY: Does that help you?

21 COMMISSIONER JEFFRIES: Yes. Is  
22 there -- are you close to the Maryland line?

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1 Is there like a cemetery? Because I know --  
2 this is Fotte Place?

3 MR. MOODY: Eads Place, I mean we  
4 are close to the Maryland line but the  
5 Maryland line, depending upon which direction  
6 you went, would be several blocks away.

7 COMMISSIONER JEFFRIES: Oh, okay,  
8 okay. I'm just trying to, you know, picture  
9 the area because I'm familiar with -- I  
10 believe that is Fotte -- F-O-T-T-E.

11 MR. MOODY: Well, that's one  
12 street down.

13 COMMISSIONER JEFFRIES: Yes.

14 MR. MOODY: But you could call it  
15 100 block.

16 COMMISSIONER JEFFRIES: Yes, okay.  
17 Okay, great. Thank you.

18 CHAIRPERSON MILLER: Okay. And I  
19 just would also add that the Office of  
20 Planning found that the house that will be  
21 built pursuant to these plans would be  
22 consistent with others in the area.

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1                   Okay. Anything else?

2                   Not hearing anything, all those in  
3 favor say aye.

4                   (Chorus of ayes.)

5                   CHAIRPERSON MILLER: All those  
6 opposed? All those abstaining?

7                   And would you call the vote  
8 please?

9                   MS. BAILEY: Madam Chair, the vote  
10 is recorded as four, zero, one to go on the  
11 application. Ms. Miller made the motion. Mr.  
12 Loud seconded it. Mr. Dettman and Mr.  
13 Jeffries support the motion. Ms. Walker is  
14 not present today.

15                   CHAIRPERSON MILLER: Thank you.

16                   And as there is no party in  
17 opposition, this can be a summary order.

18                   MR. MOODY: Thank you all and have  
19 a great day.

20                   CHAIRPERSON MILLER: Thank you,  
21 you, too.

22                   Ms. Bailey, is there anything else

1 on the agenda for this afternoon?

2 MS. BAILEY: No, Madam Chair.

3 That's it.

4 CHAIRPERSON MILLER: Okay. Then  
5 this hearing is adjourned.

6 (Whereupon, the above-entitled  
7 hearing was concluded at 2:04 p.m.)

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