

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

SEPTEMBER 23, 2008

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 2:00 p.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)
MARY OATES WALKER Board Member

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL Commissioner
FAIA (OAC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Spec.

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

PAUL GOLDSTEIN
STEPHEN MORDFIN
MAXINE BROWN-ROBERTS
ARTHUR JACKSON

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

2 2:00 p.m.

3 CHAIRPERSON MILLER: Okay. Oh,
4 boy. Okay. For all of you who are waiting in
5 the audience, we had a very long and
6 complicated deliberation on the case that we
7 just finished and, therefore, we haven't even
8 begun our morning hearing schedule. Okay.
9 Okay. Okay.

10 So what I was saying is we are
11 behind schedule. Sometimes when that happens
12 we go faster on certain cases to make up time
13 than we might have. But before we even get to
14 that point, if there are people here for the
15 afternoon schedule, you have to know we
16 haven't even started the morning hearing.

17 So we will be taking a one hour
18 break shortly and then pick up with the
19 morning cases. I believe though, Mr. Moy, if
20 there is a case here that, for instance, is
21 only here because they actually want to
22 request a postponement or something like that,

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1 we can handle that kind of a matter right now
2 and not keep you waiting longer.

3 So why don't we deal with that
4 matter? Now, I don't know what matter it is.
5 I don't necessarily have my files in front of
6 me, but maybe we can proceed without that if
7 this is just a postponement. So why don't you
8 come forward? Ms. Bailey, do you know the
9 name of the case that this is or Mr. Moy?

10 MR. MOY: Yeah, this is, Madam
11 Chair, Case No. 17813 of DRM & Associates,
12 which is scheduled as the first cased in the
13 afternoon, and I believe the applicant is
14 sitting at the witness table.

15 CHAIRPERSON MILLER: Okay. Hi.
16 Now, why don't we start with your identifying
17 yourself for the record?

18 MR. MADDEN: I'm Donald Madden. I
19 think the mike was off. Donald R. Madden,
20 president of DRM & Associates and owner of the
21 properties for this case. And I come before
22 you to request postponement until next -- the

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1 next meeting, which is two weeks from now,
2 which I'm scheduled to come back before you on
3 another case. And I'm requesting that -- I
4 also understand that I'm last for that session
5 in the evening and I wanted to combine the
6 two. These are both -- both of these cases
7 are almost identical, so it should go real
8 smooth and not delay anything.

9 I have met with the Office of
10 Planning and we submitted new plans and she is
11 reviewing them now and we're going to meet.
12 And after this, she is going to talk to Mr.
13 Jackson and we're going to set up a meeting to
14 iron out some things that we had discussed.

15 So when we come back before the
16 Board, we will have everything in order.

17 CHAIRPERSON MILLER: Okay. I just
18 want to ask you, did you share your desire to
19 postpone this case with the ANC or with any
20 other parties?

21 MR. MADDEN: The ANC is the one
22 who suggested it when we met with them the

1 last time.

2 CHAIRPERSON MILLER: Okay. So all
3 interested parties are fine with it in two
4 weeks? They know about that date, that's not
5 a problem?

6 MR. MADDEN: My knowledge is
7 there's no problem.

8 CHAIRPERSON MILLER: If we go that
9 rate. I need to just make sure we have time
10 on the schedule. It sounds like a good
11 possibility since today we are already
12 crowded.

13 MR. MADDEN: Right. I understand
14 that.

15 CHAIRPERSON MILLER: Right. Okay.

16 MR. MOY: While you are looking at
17 the schedule, Madam Chair, it would be October
18 7th, the last case in the afternoon. We will
19 note that Mr. Madden's other case is Case No.
20 17814, so this will follow that case.

21 CHAIRPERSON MILLER: Okay. It's
22 the same ANC and --

1 MR. MADDEN: Yes.

2 CHAIRPERSON MILLER: -- all the
3 other interested parties are the same?

4 MR. MADDEN: All the same, yes.

5 CHAIRPERSON MILLER: Okay. I
6 think that might be a good idea. Any
7 objections from Board Members? Okay. Then we
8 will postpone your case until October 7th,
9 last in the afternoon.

10 MR. MADDEN: Thank you and have a
11 nice lunch.

12 CHAIRPERSON MILLER: Thank you.
13 You, too.

14 MS. BAILEY: Madam Chair, we do
15 have another request. The applicant has been
16 waiting and they are not able to stay any
17 longer and so they are requesting a
18 postponement of Application No. 17817,
19 Visitor's Service Center.

20 Would you, please, come to the
21 table?

22 MR. FREEMAN: Good morning,

1 Members of the Board. My name is Kyrus
2 Freeman. I'm an attorney with Holland and
3 Knight here on behalf of the Visitor's Service
4 Center. Unfortunately, due to other
5 commitments for today, if you are taking like
6 an hour lunch, then we can't -- we need to try
7 to get on a different date, if possible.

8 I don't think we will have any
9 issues with respect to notice issues.

10 CHAIRPERSON MILLER: Let me ask
11 you if we took a shorter lunch, would we be
12 able to -- you can't tell how long it's going
13 to take, right?

14 MR. FREEMAN: I can say based on
15 the record of our case --

16 CHAIRPERSON MILLER: Yeah.

17 MR. FREEMAN: -- we were willing
18 to, given the OP's support, the letters in
19 support from the neighbors and everyone else,
20 rest on the record, quite frankly. We thought
21 our presentation would be at most 15 minutes.
22 So if you thought we could --

1 CHAIRPERSON MILLER: It's
2 possible. Let me just confer with Board
3 Members. I mean, what is the time constraint?
4 I mean, are we talking about --

5 MR. FREEMAN: 3:00 meeting in
6 Calverton, Maryland.

7 CHAIRPERSON MILLER: Oh, 3:00.
8 That's pretty pressed. So what time do you
9 have to leave, 2:30 or less?

10 MR. FREEMAN: Or we could come
11 back for whatever your next hearing date is or
12 if --

13 CHAIRPERSON MILLER: Okay. And
14 there is no opposition in that case, is there?
15 I don't have the file in front of me.

16 MR. FREEMAN: No, Madam Chair.

17 CHAIRPERSON MILLER: But I don't
18 recall that. Okay. Could you come back the
19 morning of October 7th?

20 MR. FREEMAN: Yes.

21 CHAIRPERSON MILLER: Okay. Why
22 don't we do that then, instead of rushing

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1 through your case. All right. We were just
2 going to actually take a minute, Mr. Freeman,
3 just to see whether we want to consider just
4 deciding it on the papers.

5 MR. FREEMAN: Okay.

6 CHAIRPERSON MILLER: Just kind of
7 refresh our memory. Yeah, so why -- if you
8 have time for us to take a 5 minute break or
9 10, we can try to get you out of here by 2:30.

10 MR. FREEMAN: Thank you.

11 CHAIRPERSON MILLER: All right.

12 Let's see if we can do that. All right.

13 (Whereupon, at 2:09 p.m. a recess
14 until 2:19 p.m.)_

15 CHAIRPERSON MILLER: This hearing
16 will come to order. I need to just open this
17 up with a few formalities before we go into
18 the first case, which I know we are trying to
19 get to quickly.

20 My name is Ruthanne Miller. I'm
21 the Chair of the Zoning Board. To my right is
22 Mr. Marc Loud, Vice Chair. Next to him is Mr.

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1 Michael Turnbull from the Zoning Commission,
2 Mary Oates Walker and Shane Dettman to my
3 left, Board Members. Cliff Moy and Beverley
4 Bailey from the Office of Zoning.

5 We are being webcast live. Copies
6 of the agenda are available to you located to
7 my left near the wall bin on the door. When
8 you come to speak, come to the table, put on
9 your microphone and turn it off when you are
10 finished speaking, so it doesn't pick up
11 background noise.

12 Anybody who comes to the table
13 should introduce themselves for the record,
14 giving their name and home address.

15 The order of procedure for special
16 exception and variances are: Applicant first,
17 Government reports, ANC, persons in support,
18 persons in opposition, closing remarks by the
19 applicant.

20 Okay. And then the record will be
21 closed at the conclusion of each case, except
22 for any material requested by the Board. I'm

1 going through these quickly, because we do
2 have a case here that time constraints are at
3 issue.

4 So I think that's all I'm going to
5 say for right now, except those who are going
6 to testify today need to rise and Ms. Bailey
7 will administer the oath.

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

10 (Whereupon, the witnesses were
11 sworn.)

12 CHAIRPERSON MILLER: Thank you.
13 Would you call the case No. 17817, Visitor's
14 Service Center, please?

15 MS. BAILEY: As you indicated it
16 is Visitor's Service Center, Inc., pursuant to
17 11 DCMR 3104.1, for a special exception for a
18 community service center under section 334.
19 The property is Zoned R-4. It is located at
20 1422 Massachusetts Avenue, S.E., Square 1059,
21 Lot 98.

22 CHAIRPERSON MILLER: Why don't you

1 come forward, please?

2 MR. FREEMAN: Good morning,
3 Members of the Board. My name is Kyrus
4 Freeman. I'm an attorney with the Law Firm of
5 Holland and Knight. With me today to my
6 immediate right are Ann Keep, Executive
7 Director of the Visitor's Service Center, and
8 John Clark, who is President of the Board of
9 Directors for the Visitor's Service Center.
10 I should also add that I'm a member of the
11 board and happen to be here in that capacity
12 as well.

13 As Ms. Bailey said, we are here
14 today for a special exception pursuant to
15 section 334 of the Zoning Regulations. We
16 have also amended our application a couple
17 months ago to add a parking variance that is
18 in the Certificate of Notice that we mailed as
19 well as every communication we have had in
20 public about the application.

21 I believe a Certificate of Mailing
22 or Notice revising the application is marked

1 as Exhibit 22 of the record of this case. And
2 our parking relief is to go from 3 parking
3 spaces to zero. Our statement that was filed
4 clearly indicates how we meet the required
5 burden of proof for both the variance and the
6 special exception.

7 We have support from each of our
8 adjacent neighbors, the Capitol Hill
9 Restoration Society, ANC-6D, Council Member
10 Tommy Wells, as well as former Council Member
11 Kathy Patterson. The one issue with respect
12 to whether the applicant should provide one
13 parking space in the rear of his property or
14 not, the applicant believes we meet the burden
15 to provide zero parking spaces.

16 I think Ms. Keep can talk in more
17 detail about the fact that 99 percent of the
18 clients that come to this site actually use
19 public transportation or walk, coming from the
20 jail. All of the employees and volunteers
21 live within the neighborhood or walk directly
22 to the jail, which is where the bulk of the

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1 VSC services are provided.

2 In fact, we have here, not to
3 submit new evidence, but Ms. Keep keeps a
4 daily log that shows kind of like how people
5 arrive to the site and I'll circulate this.
6 Most people walk, catch the bus or they are
7 driven and they kind of pick up their
8 property.

9 So I think we clearly meet the
10 test for waiver of the parking requirement.

11 CHAIRPERSON MILLER: Well, let me
12 just ask you with respect to the test. I
13 understand what you are saying is that you
14 want the variance, because there is not a need
15 for it.

16 MR. FREEMAN: That's right.

17 CHAIRPERSON MILLER: Okay. And I
18 think that would go to the first prong, which
19 is the exceptional condition of the property,
20 of the circumstances. You don't need it. But
21 can you address the second prong, that how it
22 would be a practical difficulty to comply with

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1 providing one space?

2 MR. FREEMAN: Well, the subject
3 property is long and narrow and is improved
4 with a row dwelling that was constructed prior
5 to 1958. The court has recognized that the
6 existence of a structure on a property can
7 create an exceptional condition that would
8 meet the variance test.

9 In order to provide three parking
10 spaces on the subject property at grade, you
11 would have to -- to provide three, you would
12 have to remove a portion of the existing --

13 CHAIRPERSON MILLER: I got that
14 and I know you are short on time, so I'm going
15 to interrupt you.

16 MR. FREEMAN: Okay.

17 CHAIRPERSON MILLER: Just I want
18 to know the practical difficulty of providing
19 one parking space.

20 MR. FREEMAN: The practical
21 difficulty of providing one parking space
22 other than the need, quite frankly, is the

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1 cost. The Visitor's Service Center has been
2 at the subject property for 39 years and there
3 has never been a need, quite frankly, for a
4 parking space.

5 Ann can talk a little bit more
6 about the sources of their fund, but they
7 operate on a very limited budget and taking
8 away money from the VSC's kind of mission and
9 focus would create a practical difficulty, in
10 that they don't have money to construct
11 parking spaces that are not needed.

12 And the BZA and Court of Appeals
13 have recognized in other cases, and I could
14 provide those cites, that the standard for a
15 non-profit is slightly different than -- or
16 slightly relaxed than the standard would be
17 for another type of developer, if you will.

18 CHAIRPERSON MILLER: And would it
19 be taking the place of? I mean, what is there
20 where the one space could fit, what's there
21 now? Is it green space?

22 MR. FREEMAN: You have about a 12

1 foot you would have to walk up and it's grass,
2 so you would have to demo. You would have to
3 do some grading work. You would have to
4 probably -- there is a fence that you would
5 have to move to accommodate the size of a
6 vehicle. You would have to pave it.
7 Obviously, you would have to meet the
8 requirements of section 21 in terms of parking
9 space size, stripe, width.

10 CHAIRPERSON MILLER: Would you
11 have to add a curb cut or no?

12 MR. FREEMAN: You would not have
13 to add a curb cut, but the grade is about a
14 foot above the grade of the alley, so you
15 would have to do some grading work.

16 CHAIRPERSON MILLER: Okay. Thank
17 you.

18 VICE CHAIRMAN LOUD: Any sense of
19 what the cost would be?

20 MR. FREEMAN: I think the cost to
21 construct a parking space is -- like an on-
22 grade parking space is, approximately, \$5,000

1 to \$10,000. I think it might be a little at
2 the higher end of the range, given the fact
3 that that grading work is involved.

4 VICE CHAIRMAN LOUD: Okay.

5 MR. FREEMAN: But that's in here.

6 CHAIRPERSON MILLER: Okay. Any
7 other questions? I mean, I think the record
8 is pretty full, unless you want to say more,
9 at this point.

10 MR. FREEMAN: We have Ann and we
11 have John here. They are happy to talk about
12 VSC and how great it is and how important of
13 an asset it is to the community and the
14 District as a whole, but I think that's all
15 set forth in our statement. If you have any
16 questions, we're happy to answer those.

17 CHAIRPERSON MILLER: Thank you. I
18 think if it weren't for the time constraints,
19 we would invite you to tell us more, but, you
20 know, on the one hand I'm thinking you need to
21 leave in five minutes, let's get to the crux
22 of this case.

1 So, Mr. Jackson, good afternoon.

2 MR. JACKSON: Good afternoon. My
3 name is Arthur Jackson. I'm a Development
4 Review Specialist with the District of
5 Columbia Office of Planning. For the sake of
6 time, we will rest on the record or I'm sorry,
7 we will stand on the record. And we do
8 recommend approval of the special exception.
9 We recommend a variance. The only issue is
10 that we also recommend that the variance be to
11 from 3 to 1 spaces to 3 to 0. With that, we
12 will conclude and we are available to answer
13 questions.

14 CHAIRPERSON MILLER: Okay. Let me
15 just ask you why do you believe that the
16 should be required to have 1 space given what
17 Mr. Freeman just stated?

18 MR. JACKSON: Well, we acknowledge
19 the work, the valuable work that the VSC does
20 and then how much they benefit the community.
21 Not only the community, but people who are in
22 the detention center, but also surrounding the

1 community.

2 We acknowledge, of course, that
3 the neighbors over the last 30 years have not
4 complained. We also recognize that a lot of
5 the employees and volunteers that have been
6 with the VRE or have been with the VSC have
7 been there for 25 years and more, that one of
8 the persons that does drive -- from our
9 information, one of the persons that does
10 drive lives in the area, so they are able to
11 park on the street, because they have a
12 permit.

13 Another person that does drive
14 tends to move their car every two or three --
15 every two hours, so they meet the requirements
16 and it doesn't impact the community. We're
17 looking forward over the next 30 years,
18 because we don't see that this application
19 necessarily has -- needs to have a time
20 constraint. This need is going to be there
21 forever, so this is an open ended application.

22 Now, looking forward to the change

1 over in staff as people retire and go away
2 after demands from residents who are detained
3 increase and there is more need for people to
4 provide those services, and that we may not
5 have just volunteers from the area that are
6 walking or professionals are coming in to deal
7 with the multiple needs that are demanded, we
8 think it would be prudent for the VRE -- the
9 VSC to provide on-site parking space, because
10 the space is available and we also note that
11 the neighboring property to the west, which
12 has probably gone to the extreme has paved
13 their entire back yard for parking.

14 But of course, that's a different
15 circumstance all together. So that's really
16 the only thing. We think it is prudent that
17 it be provided and we would refer to the Board
18 to make a determination about whether is a
19 requirement in this case or not. And again,
20 we congratulate the VSC on the work they have
21 done and that they continue to do for the
22 community.

1 CHAIRPERSON MILLER: Thank you.

2 Any other questions by Board Members?

3 COMMISSIONER TURNBULL: Mr.

4 Jackson, thank you. The applicant has said
5 that this would be a practical difficulty from
6 the standpoint that they are a nonprofit. And
7 going through all the hoops of tearing down,
8 regrading and putting in the parking lot, did
9 you take that into account?

10 MR. JACKSON: Yeah, obviously, the
11 Visitor's Service Center for the VRE owns the
12 property and we're thinking that it will be a
13 good investment for the long-term, not only in
14 the long-term viability of the organization,
15 but also the long-term proposition that they
16 would not impact the community over the long-
17 term.

18 So I think it would be a
19 worthwhile investment, if it's possible. Now,
20 they made the case that they -- there is no
21 funds -- that they don't have funds in the
22 current budget to address that and I would

1 have to say that you would have to take that
2 into consideration.

3 COMMISSIONER TURNBULL: Yeah.
4 Thank you.

5 CHAIRPERSON MILLER: Do you have a
6 copy of the Office of Planning report?

7 MR. FREEMAN: Yes, we do.

8 CHAIRPERSON MILLER: Do you have
9 any questions of Office of Planning?

10 MR. FREEMAN: No, thank you.

11 CHAIRPERSON MILLER: Okay. Any
12 Board questions for Office of Planning? Other
13 ones? Okay.

14 VICE CHAIRMAN LOUD: Just a very
15 quick question for the applicant, if you know
16 the answer, if not, don't worry about it.
17 What percentage of your funds are restricted
18 and what percentage are unrestricted?

19 MS. KEEP: The funds that I raise
20 are always raised for a specific purpose. So
21 I don't have any funds that are raised for
22 other than issues that I know of.

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1 VICE CHAIRMAN LOUD: Thank you.
2 Appreciate it.

3 CHAIRPERSON MILLER: Any other
4 questions? Is there anyone here from the ANC
5 in this case? Anybody here who wishes to
6 testify in support or opposition on this
7 application? Okay. Not hearing from anyone,
8 any closing remarks?

9 MR. FREEMAN: We just, first of
10 all, appreciate your taking the time to
11 consider our case in an expedited fashion
12 today. We appreciate the Office of Planning's
13 report, but would just like to point out,
14 obviously, things change in the future, but we
15 do have a track year, 39 year track record of
16 showing that we haven't needed additional
17 parking and we haven't seen any indication
18 that would lead us to project that there would
19 be a need for parking.

20 And if that was, in fact, the
21 need, we would provide parking if we felt
22 there was a need. Other than that, again, we

1 have the support of our community. We have
2 the support of each of our adjacent neighbors.
3 And no one has raised parking as an issue.

4 With that, we respectfully ask for
5 your decision at the most convenient time and
6 appreciate your time today. Thank you.

7 CHAIRPERSON MILLER: Thank you.
8 We are ready to give this deliberation if you
9 have time still?

10 MR. FREEMAN: Absolutely.

11 CHAIRPERSON MILLER: Okay. I'm
12 going to do this under motion and we will be
13 deliberating. I would move approval of
14 Application 17817, Visitor's Service Center,
15 for a special exception for a community
16 service center under section 334 in the R-4
17 District at 1422 Mass Ave., S.E., and for a
18 variance reducing the parking requirement to
19 zero. That would be my motion. But we can
20 amend it if we change, if there isn't
21 agreement on that.

22 Do I have a second?

1 VICE CHAIRMAN LOUD: Second, Madam
2 Chair.

3 CHAIRPERSON MILLER: Okay. This
4 is a nonprofit organization that has been
5 operating at this location since 1969 and it
6 is coming into compliance, I gather, by filing
7 this application. I know that we are short on
8 time and there is no opposition. The Office
9 of Planning has done a full analysis of how it
10 complies with section 334 in all respects.

11 So I would just argue at this
12 point that we adopt that analysis, in
13 particular, that they have been operating for
14 more than 30 years without any adverse impact
15 on their surrounding neighborhood and they
16 have been performing a great community service
17 with respect to inmates and more.

18 I think that the controversial
19 issue is the variance for full relief from the
20 parking, that the Office of Planning agrees
21 that you can't provide all four spaces that
22 are required under the regulations, but you

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1 could -- you do have space for one parking
2 space.

3 And as counsel for applicant
4 stated, the courts have recognized, one, that
5 when we are considering a variance, we don't
6 just consider the property, but we consider
7 what has been constructed on the property.
8 And so there is clearly not enough space for
9 the four spaces.

10 And we can also take into
11 consideration that the applicant is a
12 nonprofit with respect to certain exceptional
13 circumstances. And the exceptional -- three
14 prong test for the variance, the first is
15 exceptional circumstances. In this case,
16 there is the exceptional circumstance that --
17 of the property itself. There isn't room for
18 more than one space.

19 With respect to not providing that
20 one space, the applicant has stated they have
21 been there for more than 30 years and there is
22 not a need for that additional space. And

1 that it is operating that long without a need,
2 plus the fact that it's a nonprofit, I think,
3 gives rise to an exceptional circumstance.

4 Then we get to the second prong of
5 the test, which is practical difficulty. The
6 applicant can put a parking space in there,
7 but it will cost. And it is a practical
8 difficulty as I see it upon the nonprofit to
9 expend money, limited funds in that manner for
10 something that is not necessary.

11 As I heard the applicant state
12 that all funds, I think it was in response to
13 Mr. Loud's question, are in response to --
14 they are all not earmarked, but they are all, m
15 you know, specifically identified for a
16 certain cause. And I think it would be very
17 difficult to raise money for a parking space.
18 I just think that that's a hard thing to do
19 and it takes away from the entity's, nonprofit
20 entity trying to raise money for other more
21 necessary goals.

22 And the third prong is there is no

1 adverse impact on the community if the
2 variance relief is granted, in my view,
3 because they have been living with this
4 situation for over 30 years and there have not
5 been complaints about parking. And if
6 circumstances change, as Mr. Jackson said, you
7 know, they could in the future, we are not
8 precluding them from providing a parking
9 space, which would not be requiring it at this
10 time.

11 Okay. Others?

12 VICE CHAIRMAN LOUD: I agree,
13 Madam Chair, I just wanted to note that the
14 ANC-6B, in addition to a number of others, did
15 submit a report, Exhibit 38. It's entitled to
16 great weight. They recommend approval as well
17 and I just wanted to note their report.

18 CHAIRPERSON MILLER: Others?

19 Yeah, I think also in the record is a letter
20 from Kathy Patterson supporting it and Capitol
21 Hill Restoration Society and Council Member
22 Tommy Wells and I think abutting neighbors as

1 well.

2 So, okay, if there is no further
3 deliberation, all those in favor of the motion
4 that has been put before us say aye.

5 ALL: Aye.

6 CHAIRPERSON MILLER: Opposed?
7 Abstaining? And would you call the vote,
8 please?

9 MS. BAILEY: The vote is recorded
10 as 5-0-0 to grant the application as amended
11 adding relief from the parking space
12 requirements of section 2101. The motion was
13 made by Mrs. Miller, seconded by Mr. Loud,
14 Mrs. Walker, Mr. Dettman, Mr. Turnbull support
15 the motion. And a summary order, Madam Chair?

16 CHAIRPERSON MILLER: Yes, there
17 are no parties in opposition, this can be a
18 summary order.

19 MS. BAILEY: Okay.

20 MR. FREEMAN: Thank you, Madam
21 Chair, Members of the Board.

22 CHAIRPERSON MILLER: Thank you.

1 Okay. We were just making an assessment. The
2 Board has been going since this morning. So,
3 however, we just took care of two cases, so it
4 looks like the afternoon session is going to
5 be a little bit more manageable.

6 We're thinking that we will take a
7 break until 3:15. So I'll see you then.

8 (Whereupon, the Public Hearing was
9 recessed at 2:41 p.m. to reconvene at 3:27
10 p.m. this same day.)

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

3:27 p.m.

CHAIRPERSON MILLER: Okay. We are back on the record. Whenever you are ready, Ms. Bailey, could you call the first case on the hearing agenda?

MS. BAILEY: Madam Chair, good afternoon and the case is No. 17815. This is the application of James Chandler, pursuant to 11 DCMR 3103.2, for a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, a variance from the court requirements under section 406, variances from the nonconforming structure requirements under sections 2000.2 and 2001.2, variances from the private garage provisions under section 2300.2 and 2300.7, variances from the accessory building provisions under sections 2500.3 and 2500.4, and a variance from the open space requirements under section 2503.1, to allow additions to a proposed one-family dwelling in

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1 the R-4 District at premises 1201 T Street,
2 N.W., Square 274, Lot 821.

3 CHAIRPERSON MILLER: Thank you.
4 Good afternoon.

5 MR. CHANDLER: good afternoon,
6 Madam Chair. I'm James Chandler, the
7 applicant, and this is Kevin Lorei, my
8 architect, and we would like to present our
9 proposal for a property at 1201 T Street with
10 some variances that will make this back into
11 a single-family dwelling on the corner of 12th
12 and T.

13 I'm going to let Kevin walk you
14 through the variances that we are looking for
15 today and the explanation on why we need those
16 variances.

17 CHAIRPERSON MILLER: Okay. And
18 could you introduce yourself for the record,
19 please, a name and home address?

20 MR. LOREI: Kevin Lorei of
21 Washington, D.C. Will you be able to hear me
22 if I talk?

1 CHAIRPERSON MILLER: We can hear
2 you, but I'm not sure the Court Reporter can.
3 He can't. Okay.

4 MR. LOREI: Hello?

5 CHAIRPERSON MILLER: Could I ask
6 you just as a preliminary question, you know,
7 there are a lot of variances that are listed
8 here. And Office of Planning's report, which
9 I assume you have a copy of, is of the
10 position that you don't need all of those
11 variances. So but the ones that you think you
12 need are the ones you are going to be
13 addressing now. Is that correct?

14 MR. LOREI: Right.

15 CHAIRPERSON MILLER: Okay.

16 MR. LOREI: I think we defer to
17 the Office of Planning and their -- they have
18 reduced it to four basic variances which we
19 need and we accept and agree that those are
20 the only ones we really need. At the time, we
21 had wanted to cover all our bases, but
22 apparently we're well covered.

1 CHAIRPERSON MILLER: Thank you.

2 MR. LOREI: Very quickly, this is
3 a property at the corner of 12th and T
4 Streets, N.W., in U Street/Cardoza or Shaw
5 Neighborhood. I guess there is a debate about
6 where we are. But we are a two-story row
7 house circa 1880 with, and you can see here a
8 little better in this picture, a chapel
9 building built in the 1930s on the back.

10 These two buildings are now
11 separate buildings. The chapel building is of
12 limited use right now and, obviously, the
13 building at the front sort of functions as a
14 single-family dwelling.

15 Our request for variance today
16 concerns trying to make use of this building
17 and trying to provide the property with on-
18 site parking. This chapel building is an
19 historic structure. We are under extreme
20 limitations for how we can -- what we can do
21 with it. Originally, we wanted to tear it
22 down and make two on-site surface parking

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1 spaces.

2 We are, of course, limited by
3 historic. They said we have to keep the
4 building. So we are trying to come up with a
5 proposal to turn this into a two-car garage.
6 The building is only 16 feet wide. A parking
7 space is 19 feet deep. We need to gain extra
8 depth on the building.

9 The building, of course, is right
10 up against the alley, so the only way we can
11 go to make our larger parking space or our
12 parking garage is to come inward into the
13 property line in the remaining -- there is an
14 11 foot court space that separates the two
15 buildings.

16 Our proposal is to fill that in
17 with additional space required for parking and
18 because we have a grade change from the first
19 floor level to the alley level, we also need
20 to make a set of steps inside that remaining
21 11 foot space as well as stairs up to the
22 second floor of the current building.

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1 The second part of the variance
2 request concerns a -- we have an existing
3 porch here on the side of the building. You
4 can see it right here in this photo. We would
5 like to extend the existing kitchen. We are
6 very limited for space in this house. We only
7 have about 1,700 square feet. And it being a
8 row house, most of that space is -- a lot of
9 that space is devoted to circulation.

10 So we feel very maxed out as we
11 are. So we are taking over and converting
12 existing porch space into a new breakfast
13 room.

14 CHAIRPERSON MILLER: Anything
15 else?

16 MR. LOREI: No, I think that's it.
17 We will answer questions.

18 CHAIRPERSON MILLER: Okay. Well,
19 let me just ask you then, because I didn't
20 hear this part yet. You showed us, you know,
21 pictorially what you are doing. And can you
22 address the variance test with respect to, you

1 know, what's the exceptional circumstances?
2 What's your practical difficulty in complying
3 with the regulations, if you don't get this
4 relief, and why there is no adverse impact on
5 the community or the Zone Plan?

6 MR. LOREI: The building is --
7 it's primarily the space on the back, the
8 chapel building that fills the back of the
9 property. We have been -- we are looking for
10 on-site parking and it's very difficult in a
11 neighborhood like this where parking is so
12 limited to find that.

13 You know, we are -- this house is
14 limited to having -- right now, it only has
15 on-street parking. And the chapel building on
16 the back has no real utility for us. It is
17 something that it functioned as various things
18 over its life: a dentist office, a chapel, as
19 you see, a food bank and right now, we are
20 just sort of stuck with it, because of the
21 historic designation. We can't make use of
22 this building.

1 MR. CHANDLER: The four real
2 variances that come into play are lot
3 occupancy, where we are just increasing by 5
4 percent because of coverage, existing coverage
5 and moving the encroachment will add 5 more
6 percent to the lot coverage. That's one of
7 the variances.

8 The other is rear yard, because an
9 existing structure is there, we are
10 grandfathered in and we have no ability to
11 have a rear yard. The open court if we are
12 allowed to close in this in the one building,
13 then we no longer have an open court
14 requirement.

15 And the enlargement and additions
16 to the nonconforming uses is the change from
17 this building that what it is now into a
18 garage providing two off-street parking
19 spaces.

20 CHAIRPERSON MILLER: Do others
21 have questions?

22 MEMBER DETTMAN: Just a couple

1 quick questions, Madam Chair. I noticed on
2 your east elevation you are raising the door
3 that's on the chapel. Are you going to have
4 access to the ground from there or are you
5 just -- right now, it looks like a door to
6 nowhere.

7 MR. CHANDLER: No, we will -- it
8 will -- we will have the ability to --

9 MEMBER DETTMAN: Oh, okay.

10 MR. CHANDLER: -- get to the
11 ground from the outside door on the east side
12 of the chapel. Yes, sir.

13 CHAIRPERSON MILLER: Could you
14 just refresh my memory? The buildings as they
15 were used before were used as a food bank
16 and --

17 MR. CHANDLER: The 12th Street
18 Christian Church acquired this building back
19 in the early '70s and used it for very --
20 several different purposes. One was a food
21 bank and outreach for the church and the
22 community, because they are just down the

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1 street next to the YMCA that is down there.

2 And so they had used it for the food bank.

3 They had also allowed some not --
4 well, bachelors to -- people that needed some
5 temporary housing, so they -- it wasn't really
6 a boarding house, but at some point in time,
7 it did take on that kind of persona of having
8 a couple of non-married people live in the
9 house. One is a care taker and maybe somebody
10 else that was between residences of some sort.
11 And those things have happened at various
12 times in the 30 years that they owned it.

13 And so now, we are wanting to put
14 it back into a single-family dwelling where
15 people actually live in the house. The
16 neighbors are all excited to have real people
17 live in it and taking care of it.

18 And the things that we would like
19 to do to it, because it is an in-lot, we are
20 trying to make it look nice on the side that
21 is normally next to another building. When
22 you are on the end, that's what happens

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1 sometimes that these open spaces, the
2 courtyards, the utility space that runs down
3 the sides of the houses, now we are trying to
4 dress this up and that's -- I'm very fortunate
5 to have the east side, so in the morning I get
6 sunshine and that's where my kitchen bumpout
7 would be in this little space that would
8 normally just be a ventilation porch and the
9 other houses that are in mid-block.

10 CHAIRPERSON MILLER: So the
11 residential use is a matter-of-right use,
12 right?

13 MR. CHANDLER: Excuse me?

14 CHAIRPERSON MILLER: The
15 residential use is a matter-of-right use?

16 MR. CHANDLER: Yes.

17 CHAIRPERSON MILLER: What's the
18 nonconforming use that you were referring to
19 or is that off the table?

20 MR. CHANDLER: I think that's off
21 the table.

22 CHAIRPERSON MILLER: No, here it

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1 is. I have -- well, then Office of Planning
2 they still say 2001.3(a), (b), enlargements
3 and additions to nonconforming uses. Do you
4 know what that refers to?

5 MR. CHANDLER: Maxine might be
6 able to answer.

7 CHAIRPERSON MILLER: Well, yeah, I
8 can -- we can turn to Office of Planning.

9 MR. CHANDLER: Originally, this
10 building was, as Kevin said, a dentist office
11 by Dr. Ambrose, one of the first black oral
12 surgeons in the District. And it was not
13 intended to be a garage. And so we are kind
14 of converting it over to take advantage of
15 that space and it provides extra living area
16 in the house that wasn't there originally.

17 CHAIRPERSON MILLER: But you have
18 two buildings and one is the chapel, right,
19 and one is the house part. And the house part
20 was used as a food bank, correct?

21 MR. CHANDLER: Right.

22 CHAIRPERSON MILLER: But that

1 probably was a nonconforming use, but you are
2 going to bring it back to a conforming use as
3 a residence, right?

4 MR. CHANDLER: That's the -- maybe
5 that's the intent or how the variance would be
6 covered there.

7 CHAIRPERSON MILLER: I don't know.
8 I don't think you need a variance to bring it
9 back to the conforming use.

10 MR. CHANDLER: It's original use.

11 CHAIRPERSON MILLER: Yeah. But
12 the chapel now, that's another structure. Was
13 that a nonconforming use or you don't know?

14 MR. LOREI: Well, there was no
15 separate Certificate of Occupancy for that, to
16 our knowledge.

17 CHAIRPERSON MILLER: Okay.

18 MR. LOREI: We have, you know --
19 there is only one Certificate of Occupancy to
20 cover the lot and that was for the row
21 dwelling.

22 CHAIRPERSON MILLER: Okay. And

1 you want to use it. Number one, you want to
2 use it as a garage, but, number two, you want
3 to attach it to the house. Is that correct?
4 So it's really just going to be one building,
5 as if it were a private residence with a
6 garage?

7 MR. CHANDLER: When this house was
8 built --

9 CHAIRPERSON MILLER: Okay.

10 MR. CHANDLER: -- there was no
11 storage. There is no basement in this house.
12 And it had two very small closets for one blue
13 gingham dress and one not -- you know, two
14 dresses is about it. That was the closet
15 space. And in fact, when it was originally
16 built, it had no inside plumbing.

17 And so somewhere along the line,
18 they added a bathroom inside and cut up some
19 of this area. So we are trying to bring it
20 into the 21st Century situation where you have
21 a normal size kitchen with some closets and
22 some bathrooms to accommodate 21st Century

1 living and keeping its 1860s, 1880s style on
2 the outside.

3 CHAIRPERSON MILLER: Okay. Any
4 other questions? Yes, Mr. Turnbull?

5 COMMISSIONER TURNBULL: Thank you,
6 Madam Chair. This is in an Historic District
7 and it went before them on September 25th and
8 it was considered, but I don't know, was there
9 any information or feedback?

10 MR. CHANDLER: That was a little--
11 I think that was -- it's misleading. The
12 historic consideration is on the 25th. Today
13 is the 23rd, so in two days they will look at
14 it. So yes, but they will consider it then.
15 But it has been looked at by -- over in the
16 Office of Planning, the historic people have
17 looked at it and have just said you guys work
18 with us on the right kind of windows and all
19 that, we don't have a problem with what you're
20 trying to do here.

21 MR. SPALDING: Madam Chair?

22 CHAIRPERSON MILLER: Mr. Spalding,

1 yes?

2 MR. SPALDING: Phil Spalding, 1929
3 13th Street, and I'm here representing ANC-1B,
4 and to Mr. Turnbull's question, it is on the
5 Thursday agenda, but on the consent calendar.

6 COMMISSIONER TURNBULL: Okay.
7 When you say in your plans you are matching
8 existing brick, now, there is two colors of
9 bricks over there.

10 MR. LOREI: That's correct. We --
11 very likely because of the condition of the --
12 obviously, the chapel being built 50 years
13 later has a different brick on the face, as
14 well as a different brick on the remaining
15 three sides. So probably three to four
16 different bricks on this property.

17 It's very likely that in order to
18 make this a little more cohesive, we're going
19 to paint everything --

20 COMMISSIONER TURNBULL: I see,
21 okay.

22 MR. LOREI: -- basic restoration.

1 COMMISSIONER TURNBULL: Okay.

2 Thank you.

3 CHAIRPERSON MILLER: I just wanted
4 to ask you another question. I think you did
5 answer this before, but now I'm following the
6 chart that is in the Office of Planning
7 report. With respect to lot occupancy that 60
8 percent is what the regulation requires, but
9 you are already at 85 percent, which means,
10 you know, you are already nonconforming.

11 And then you said the proposal
12 will add 5 percent more deviation. What's
13 that a result of, the 5 percent?

14 MR. CHANDLER: It's funny to find
15 the 5 percent, but actually the -- when you
16 count lot occupancy, anything with a covered
17 roof or an overhead cover above 4 feet is
18 counted in the lot occupancy. The only space
19 that was not covered is hidden from these
20 pictures, but it is actually part of the deck.

21 There was an opportunity to get to
22 the second area of this deck. Kevin, did you

1 point that out? Yeah, right in there there
2 was a space that was not covered and that's
3 the piece that we're taking that 5 percent
4 that is right there.

5 CHAIRPERSON MILLER: Well, you are
6 doing a connection between the main house and
7 the chapel, right?

8 MR. CHANDLER: Right, correct.

9 CHAIRPERSON MILLER: Is that the
10 extra 5 percent?

11 MR. CHANDLER: Right.

12 CHAIRPERSON MILLER: Is that what
13 you are talking about?

14 MR. CHANDLER: There was a little
15 piece that was not already covered and then so
16 we're taking --

17 CHAIRPERSON MILLER: Oh, the top.

18 MR. CHANDLER: -- that and that's
19 the 5 percent.

20 CHAIRPERSON MILLER: Okay.

21 VICE CHAIRMAN LOUD: Just to
22 follow onto that question of the Chair, is

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1 that, the little piece that you are talking
2 about, the piece that gives you the extra 3
3 feet that meets the parking requirement of 19
4 feet?

5 MR. CHANDLER: It was actually in
6 the footprint that we would have to encroach
7 into to get the --

8 VICE CHAIRMAN LOUD: Okay.

9 MR. CHANDLER: -- extra 19.5 feet
10 actually.

11 VICE CHAIRMAN LOUD: Okay. Thank
12 you.

13 CHAIRPERSON MILLER: Other Board
14 questions? Does the ANC have any questions?

15 MR. SPALDING: Not of the
16 applicant, no.

17 CHAIRPERSON MILLER: Okay. Thank
18 you. Okay. Then if you don't have anything
19 else to add, at this time, we can go to Office
20 of Planning. Do you?

21 MR. CHANDLER: We have nothing
22 else.

1 CHAIRPERSON MILLER: Okay, okay.

2 MS. BROWN-ROBERTS: Good
3 afternoon, Madam Chairman and Members of the
4 Commission -- Board. I'm sorry. I'm Maxine
5 Brown-Roberts from the Office of Planning. In
6 our review, we, as you stated before and the
7 applicant has stated that, there were a number
8 of variances in the application that we did
9 not think that the applicant needed.

10 And so we -- the rationale for
11 taking them out, we have discussed in the
12 report. And therefore, we are left with the
13 lot occupancy, the rear yard open court and
14 for nonconforming structures devoted to
15 conforming uses, which is section 2001.3(a)
16 and (b).

17 And I think in our summary
18 recommendation, I had the enlargement in
19 addition to nonconforming uses. So that
20 should read nonconforming structure devoted to
21 conforming uses, because what it is doing is
22 converting the current use back to a

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1 conforming use, but he is also enlarging in
2 the nonconforming structure.

3 Regarding the Historic
4 Preservation, the office -- the property is
5 within the Greater U Street Historic District
6 and our preservation staff in our office has
7 taken a preliminary look at the proposal and
8 recommended that they get a concept approval
9 from HPRB and that will go to them on
10 September 25th.

11 Generally, they said that they
12 thought they were going in the right direction
13 for the improvements that they are proposing.

14 Regarding the variances for the
15 lot occupancy, there is a 5 percent increase.
16 I think the original application had 80
17 percent, but after reviewing the application
18 further, we, both the applicant and I,
19 concluded that the existing lot occupancy is
20 actually at 85 percent. And the increase of
21 the small open area would be up to 90 percent.
22 Therefore, they are just asking for a 5

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1 percent over what is existing today.

2 There is a requirement for a 20
3 foot rear-yard. Again, because of the
4 building, the church building that is there
5 that sits on the property line, they are not
6 able to provide that rear yard, which is an
7 existing condition, and they are not able to
8 take it down, because of the -- it's a
9 contributing building to the Historic
10 District.

11 There is also a court that is
12 created when they enclose that porch on the
13 left side and I think it is sort of called out
14 on page 7 of the report. And that requires a
15 width of at least not less than 6 feet and
16 with enclosure, the width of the court would
17 be, approximately, 5 feet.

18 In order to make that 6 feet, they
19 would have to -- again they would maybe have
20 to take off a portion of that porch to the
21 side and again, that is something that HPRB
22 doesn't want them to do. In addition, it

1 would lessen the amount of space that they are
2 trying to get on the -- with enclosing the
3 porch.

4 Regarding the variance test, the
5 lot is unique because of its topography. It
6 slopes from the front of the site along T
7 Street and gets low as it moves towards the
8 alley. And therefore, the building at the
9 rear does not sit at the same elevation with
10 the main house. And in order to enclose that,
11 there has to be some adjustment made.

12 In addition to that, the building
13 is not your typical rear accessory building
14 that we usually see. Usually it is a garage
15 or something else. It's very rare that we see
16 a two-story church as an accessory building.
17 And so I think that is something that is
18 unique to this property. And it's not on any
19 other property within that block or within
20 that area.

21 And then again, the building is
22 historic, so they are limited as to what sort

1 of or any demolition at all, in fact, can be
2 done in order to make this into a conforming
3 structure. Again, regarding the lot
4 occupancy, again, it's created because what
5 they are trying to do, the rear building in
6 trying to meet their parking requirement, the
7 existing building does not meet what is
8 required for a parking space.

9 And so they need the additional
10 space, so they have to pull the building in
11 further, which means an addition. In addition
12 to that, they need to get from the garage
13 whether to go outside or to go into another
14 portion of the building, which requires a
15 door, again, that requires steps to be made
16 because of the topography of the site.

17 And so all those things together
18 create a hardship where the lot occupancy has
19 to increase.

20 Regarding the rear yard again,
21 that's an existing condition and because of
22 the historic nature of the area, they aren't

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1 able to make that conforming.

2 Again, regarding the court, it is
3 an enclosure due to the -- it is created
4 because of the porch and they cannot make the
5 size of the porch any smaller.

6 The variance will not cause any
7 substantial detriment to the public good and,
8 in fact, we think that it will enhance the
9 public good, since it is returning this
10 building, which has for some time not been a
11 conforming use. And it will get this building
12 back into residential use, which is compatible
13 to the surrounding uses and the surrounding
14 buildings.

15 The slight increase in the lot
16 occupancy and the rear yard, we do not think
17 will cause any detriment to the community or
18 to the Zoning Regulations either.

19 Then regarding the variance from
20 the nonconforming structure devoted to
21 conforming use, again, that goes back to the
22 increase in the lot occupancy and there

1 creating the court would be a new
2 nonconforming part of this addition.

3 And therefore, we think that the--
4 and recommend approval of all four variances.
5 Thank you, Madam Chairman.

6 CHAIRPERSON MILLER: Thank you.
7 Any questions from Board Members?

8 VICE CHAIRMAN LOUD: Thank you,
9 Madam Chair. Just taking a look at the
10 application and your report, it's a very good
11 report, it doesn't sound like there is much of
12 a connection between the chapel in the rear
13 and the need for the bay kitchen. In other
14 words, they sort of sound like two -- there
15 are two different drivers for both and the
16 uniqueness sounds -- hum? I'm sorry.

17 MS. BROWN-ROBERTS: Well, the
18 kitchen expansion that he talks about would
19 go, I think, to the court.

20 VICE CHAIRMAN LOUD: The court
21 that is being enclosed in between the main
22 house and the chapel?

1 MS. BROWN-ROBERTS: No, no, the
2 court and the side.

3 VICE CHAIRMAN LOUD: Okay.

4 MS. BROWN-ROBERTS: The porch is
5 on the --

6 VICE CHAIRMAN LOUD: That's --

7 MS. BROWN-ROBERTS: -- side.

8 VICE CHAIRMAN LOUD: And that kind
9 of gets me to my question. It doesn't appear
10 to be related to any of the attributes which
11 make the rear of the property unique. That is
12 the rear of the property is where you have the
13 separate building, that is the chapel, where
14 the elevation is different, where it is
15 historic and can't be demolished and so on and
16 so forth.

17 But the enclosure that will create
18 the kitchen space doesn't seem to be related
19 to that or am I missing something?

20 MS. BROWN-ROBERTS: Yes.

21 VICE CHAIRMAN LOUD: Okay.

22 MS. BROWN-ROBERTS: The enclosure

1 of the kitchen space is not a problem, because
2 that's already calculated in. It's a covered
3 porch.

4 VICE CHAIRMAN LOUD: Okay.

5 MS. BROWN-ROBERTS: So that's
6 already calculated in lot occupancy. What is
7 happening is that in enclosing that porch,
8 they create a court, a nonconforming court.

9 VICE CHAIRMAN LOUD: Um-hum.

10 MS. BROWN-ROBERTS: And so that's
11 a separate variance from say the connection of
12 the chapel.

13 VICE CHAIRMAN LOUD: Again, just
14 bear with me. I'm sorry.

15 MS. BROWN-ROBERTS: Um-hum.

16 VICE CHAIRMAN LOUD: The breakfast
17 room addition.

18 MS. BROWN-ROBERTS: Um-hum.

19 VICE CHAIRMAN LOUD: Is that going
20 to be where the existing porch space is?

21 MS. BROWN-ROBERTS: That's
22 correct.

1 VICE CHAIRMAN LOUD: That's going
2 to be --

3 MS. BROWN-ROBERTS: Yes.

4 VICE CHAIRMAN LOUD: -- enclosed.
5 Okay.

6 MS. BROWN-ROBERTS: All they are
7 doing is extending it. It is currently one-
8 story and they are extending it to a second
9 story.

10 VICE CHAIRMAN LOUD: Second story.

11 MS. BROWN-ROBERTS: That does not
12 create any new variances.

13 VICE CHAIRMAN LOUD: Okay. All
14 right. Okay. And so -- okay, thank you.

15 MEMBER DETTMAN: Ms. Brown-
16 Roberts, I had a question and it goes along
17 with what Mr. Loud was asking about. I guess
18 I'm just having a little trouble seeing of the
19 unique circumstances that we have listed,
20 topography, the building predates 1958, and
21 maybe the other one, which one is applied to
22 this court?

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1 MS. BROWN-ROBERTS: I think the
2 one that would go to this is that it's within
3 the Historic District and in order to comply
4 with the court requirement, you would have to
5 say take off a portion of the porch. You
6 would have to make the porch smaller. Right
7 now, they are not able to do that, because of
8 the historic nature of the house. And so they
9 are not able to make the porch smaller in
10 order to meet the court requirement.

11 MEMBER DETTMAN: Okay. So it's a
12 historic feature?

13 MS. BROWN-ROBERTS: Right.

14 MEMBER DETTMAN: Okay. And the
15 second question was is -- why -- the existing
16 condition, why wouldn't it be considered a
17 court now?

18 MS. BROWN-ROBERTS: Because --

19 MEMBER DETTMAN: I think the
20 definition of a court says two walls and a
21 property line.

22 MS. BROWN-ROBERTS: Let's see.

1 COMMISSIONER TURNBULL: You are
2 basically saying it's an existing
3 nonconforming court now.

4 MS. BROWN-ROBERTS: I think I was
5 reading it as three walls.

6 CHAIRPERSON MILLER: If we look to
7 the definition of court in our regs under 199,
8 it says "An unoccupied space not a court niche
9 open to the sky in the same lot with a
10 building, which is bounded on two or more
11 sides by the exterior walls of the building or
12 by two or more exterior walls, lot lines or
13 yards."

14 MS. BROWN-ROBERTS: So it has
15 three walls, but it doesn't meet the width
16 requirements, so that's why.

17 CHAIRPERSON MILLER: Just looking
18 at the variance test, one of the practical
19 difficulties I think that you identified was
20 that they weren't able to provide parking on-
21 site for the single-family dwelling.

22 MS. BROWN-ROBERTS: Um-hum.

1 CHAIRPERSON MILLER: I see that
2 the chapel is too narrow to provide the
3 parking --

4 MS. BROWN-ROBERTS: Um-hum.

5 CHAIRPERSON MILLER: -- in the
6 chapel structure.

7 MS. BROWN-ROBERTS: Um-um.

8 CHAIRPERSON MILLER: There is not
9 other space on the property for parking?

10 MS. BROWN-ROBERTS: No.

11 CHAIRPERSON MILLER: Okay.

12 MS. BROWN-ROBERTS: No. The
13 building is -- but the building, the main
14 building and the chapel actually sits on the
15 property line, so there is no way to add.

16 CHAIRPERSON MILLER: So you could
17 say that all the construction is related to
18 their inability to comply with parking
19 otherwise?

20 MS. BROWN-ROBERTS: For the
21 parking? That's correct.

22 CHAIRPERSON MILLER: Okay. The

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1 other, another option would have been to apply
2 for a variance from the parking requirements.

3 MS. BROWN-ROBERTS: That's another
4 option.

5 CHAIRPERSON MILLER: Okay.

6 MS. BROWN-ROBERTS: Yes.

7 CHAIRPERSON MILLER: And then
8 though we need to consider that, well, I don't
9 know, making a reasonable use of the chapel
10 structure, right?

11 MS. BROWN-ROBERTS: Um, I think
12 that as the applicant said, that, you know,
13 they do have some parking problems in the
14 neighborhood, so, you know, if there is any
15 way that they can take the parking off the
16 street, it would help. In addition to that,
17 I think, it does give the chapel a viable use.

18 I think it's one of those things
19 that is on the property and it's hard to use
20 a special -- since it's detached from the
21 other part of the house, and so I think that
22 the extension of the trap in order to

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1 accommodate the parking is more laudable than
2 trying to go the route of the variance for
3 exempting them from the parking.

4 CHAIRPERSON MILLER: Okay. And I
5 have one other question. It might be more
6 appropriate for the applicant, but let's see.
7 And that is do you know why this property has
8 been vacant? I don't know how long it has
9 been vacant.

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

11 CHAIRPERSON MILLER: Well, okay.

12 MR. CHANDLER: It really hasn't
13 been vacant. The church had a care taker that
14 lived there. And Earl had been there quite a
15 few years. And well, a couple of years, I
16 think, he had said he had. And but he
17 basically took care of the property, so that
18 it wouldn't be vandalized. But there was some
19 drug activity in the neighborhood that would
20 take place on the back, because Earl wasn't
21 always there.

22 And we are hoping that maybe with

1 real people living there, that this will help
2 the neighborhood get rid of the drug problem
3 as well.

4 CHAIRPERSON MILLER: Okay. And
5 you would be changing it from a nonconforming
6 use to a conforming use.

7 MR. CHANDLER: Right. Because
8 actually, I don't think that -- they had a
9 short-term permit to use it as a community
10 outreach and a food bank and that had expired.
11 And so I think they were probably using it as
12 a boarding house. But I don't know if they
13 were really charging anything, so I don't know
14 if it was really counting as a boarding house.
15 But the people who owned it, didn't live
16 there.

17 CHAIRPERSON MILLER: Okay. Any
18 other questions from Board Members? Does the
19 applicant have a copy of the Office of
20 Planning report?

21 MR. CHANDLER: Do I have a copy?

22 CHAIRPERSON MILLER: A copy of

1 their report?

2 MR. LOREI: Yes.

3 MR. CHANDLER: From the planning--
4 yes, I do.

5 CHAIRPERSON MILLER: And do you
6 have any questions for the Office of Planning?

7 MR. CHANDLER: No, I completely
8 agree with everything that she said. We had
9 had a nice meeting and we were in complete
10 agreement with what she came up with.

11 CHAIRPERSON MILLER: Okay. Mr.
12 Spalding?

13 MR. SPALDING: Yes, I have a copy
14 and I have no questions.

15 CHAIRPERSON MILLER: Okay. Thank
16 you. Then I think, at this point, do you have
17 some testimony you would like to present?

18 MR. SPALDING: Very briefly,
19 considering the hour. I will stand on the
20 letter that we submitted, which was unanimous
21 vote in support. I will note for the Board
22 that I didn't see the Office of Planning's

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1 report, so I did actually attempt all 12 of
2 the variances. You can ignore all of those
3 that the Office of Planning did.

4 CHAIRPERSON MILLER: Okay. Thank
5 you. I mean, and the bottom line is you see
6 this as an improvement of the neighborhood.

7 MR. SPALDING: It is definitely
8 improvement to the community and the community
9 does wholeheartedly support this change.

10 CHAIRPERSON MILLER: Okay. Great.
11 Any questions for the ANC? All right. Thank
12 you. And is there anybody here who wishes to
13 testify in support or opposition to this
14 application? Okay. Not hearing from anyone,
15 does the applicant have any closing remarks?

16 MR. CHANDLER: I would like to
17 thank the Board for its consideration and the
18 support of the ANC and all the -- our
19 neighborhood, our neighbors.

20 CHAIRPERSON MILLER: Okay. I
21 think that the Board is probably like to be
22 ready to deliberate on your application today.

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1 All right. I think we have a full record and
2 now a full understanding, I think, of the
3 application.

4 Do we have a motion?

5 VICE CHAIRMAN LOUD: Madam Chair,
6 I would like to move approval of Application
7 No. 17815, for variance relief, pursuant to
8 section 3104, in particular, relief from
9 section 403 lot occupancy, section 404.1 rear
10 yard, section 406.1 open court, and section
11 2001.3 enlargements and additions to
12 nonconforming uses.

13 CHAIRPERSON MILLER: I just want
14 to correct. It is 2001.3, but it's, as Maxine
15 Brown-Roberts corrected, enlargement to
16 nonconforming structures devoted to conforming
17 uses.

18 VICE CHAIRMAN LOUD: Thank you.

19 CHAIRPERSON MILLER: Okay. And I
20 would second that.

21 VICE CHAIRMAN LOUD: I would be
22 happy to start us off, Madam Chair, assuming

1 the Board Members will come to the rescue on,
2 in particular, the open court and the
3 enlargement issues.

4 This is an application for
5 variance relief pertaining to an 1880 two-
6 story Shaw row house, basically, with an
7 historic chapel in the rear that was created
8 in the 1930s. As indicated, the chapel in the
9 rear is historic, as such, it cannot be
10 demolished.

11 The applicant wants to provide two
12 parking spaces and the rear chapel is 16 feet
13 in depth and it needs to be, I think, 19.5
14 feet in order to meet the minimum requirements
15 for parking. So the applicant needs an
16 extension of space to add it to the chapel to
17 satisfy that.

18 The applicant proposes to do that
19 by adding 3 feet onto an existing courtyard,
20 which does a number of things. It creates not
21 a violation, but it brings them out of
22 compliance with lot occupancy. He is

1 currently at about 85 percent. This will take
2 them to 90 percent. The Zone R-4 allows 60
3 percent.

4 It also would not necessarily
5 increase any nonconforming with rear yard. He
6 is already at zero and 20 percent -- 20 foot
7 rear yard is required. So the addition is
8 such that -- the improvement rather than
9 addition is such that it won't comply with
10 404.1.

11 The -- I'm going to defer to my
12 colleagues to talk about the open court and
13 section 2001.3.

14 The property is unique in that we
15 have heard the testimony and the record has
16 been pretty full that the topography is very
17 different in the rear than it is in the front.
18 They are not on the same elevation, the rear
19 property and the front property and the main
20 house.

21 In addition, as I have indicated,
22 two-story chapel is the only one that is on

1 the block according to OP and the only one
2 that is in the area that OP has any knowledge
3 and/or awareness of. As indicated, it is
4 historic and it cannot be demolished. So that
5 the applicant needs to modify that structure
6 to get the two parking spaces that it needs.

7 There is a practical difficulty
8 for the applicant, because he cannot get
9 parking on the site as a result of the
10 historic designation. And there is testimony
11 in the record that there are parking problems
12 in the area. The applicant also has a
13 requirement to provide parking, which cannot
14 be satisfied with that existing condition on
15 the property.

16 There is no substantial detriment
17 to the public, in the sense that, and this was
18 a part of the record and the testimony from
19 OP, this will actually relieve some of the on-
20 street parking congestion and make the
21 property more usable by tying the rear chapel
22 into the main house. And no substantial

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1 impairment of the Zoning Plan or Regs, at
2 least no record that supports that in this
3 case.

4 I'll defer to colleagues for some
5 feedback and for some discussion on the open
6 court and section 2001.3 components of the
7 application.

8 COMMISSIONER TURNBULL: Madam
9 Chair, I would just like to clarify one item.
10 In the OP report by Ms. Brown-Roberts, the
11 buildings are not historic, but they are
12 contributing buildings to the Historic
13 District. And my only -- my comment on the
14 open court is an existing open court to the
15 porch as it is right now.

16 So the enclosing of that porch
17 does not increase or decrease the fact that it
18 is already a nonconforming open court.

19 CHAIRPERSON MILLER: I would like
20 to ask a question of the Board and also
21 possibly consider going out of deliberation to
22 ask Office of Planning a question, unless you

1 all note this. We were talking about parking
2 being required and I just was looking at the
3 Office of Planning report and there is a zero
4 in the column of parking required.

5 And so before we use that as one
6 of our reasons in our deliberation, I would
7 like to get a clarification if that would be
8 okay with the Board. Anybody have an
9 objection? Okay.

10 Could you address that?

11 MS. BROWN-ROBERTS: Yeah. I think
12 that was done again because of the Historic
13 District, the historic nature of the house,
14 and they didn't have a parking requirement
15 before, and so actually it's not required.

16 CHAIRPERSON MILLER: Okay. It
17 could be grandfathered?

18 MS. BROWN-ROBERTS: Right. Yes,
19 exactly.

20 CHAIRPERSON MILLER: But then the
21 norm would be if it weren't grandfathered that
22 one space would be required?

1 MS. BROWN-ROBERTS: Right, that's
2 correct.

3 CHAIRPERSON MILLER: Okay. Thank
4 you. I'm sorry, where were we? I got a
5 little distraction there. I think I would add
6 to the variance test, in general, some of the
7 issues that Office of Planning identified in
8 that we do have an exceptional condition here.
9 We have nonconforming structures that were
10 devoted to nonconforming uses.

11 And this is an instance in which
12 they are being brought into compliance with
13 respect to use, which is beneficial to the
14 neighborhood as the ANC has indicated. So I
15 think that that is exceptional. There are
16 also buildings that are on the property now
17 that can't be demolished to be brought into
18 compliance or portions of them, because they
19 do have historic significance.

20 And then I think the applicant
21 made a good showing and Office of Planning
22 confirmed that there was a practical

1 difficulty of providing parking, even though
2 it may not be technically required under the
3 law, because of the grandfathering. It is
4 preferable certainly in this neighborhood and
5 we have a structure, being the chapel, that is
6 being devoted, that is hard to figure how to
7 put it to good use. And this is the best use,
8 according to Office of Planning, that it could
9 be put to.

10 And there is no adverse impact
11 that has been identified on the Zone Plan or
12 on the community from -- for granting these
13 variances. In fact, it's advantageous to the
14 community.

15 And some of the variance are
16 actually even due to the fact that it's
17 already in noncompliance, such as the rear
18 yard and lot occupancy. They are only
19 increasing that 5 percent. So any other
20 comments?

21 Okay. We have a motion to grant
22 the application that has been seconded. If

1 there is no further deliberation, all those in
2 favor say aye.

3 ALL: Aye.

4 CHAIRPERSON MILLER: All those
5 opposed? All those abstaining? And would you
6 call the vote, please?

7 MS. BAILEY: Madam Chair, the vote
8 is recorded as 5-0-0 to grant the application
9 as amended. Mr. Loud made the motion, Mrs.
10 Miller seconded the motion, Mr. Dettman, Mr.
11 Turnbull and Mrs. Walker support the motion.

12 CHAIRPERSON MILLER: And this can
13 be a summary order as there is no party in
14 opposition.

15 MS. BAILEY: Madam Chair, just two
16 very quick housekeeping chores. The applicant
17 has a graphic on the easel and we would
18 appreciate having a copy of that for our
19 records. We don't have, I think, one of the
20 photographs.

21 And then secondly, the surveyor's
22 plat, we didn't have a surveyor's signature on

1 the plat and if it's possible to get a signed
2 copy, so we can have an official version of
3 the surveyor's plat, it would be appreciated.

4 CHAIRPERSON MILLER: Okay. Any
5 problem with that?

6 MR. CHANDLER: No, we can provide
7 one.

8 CHAIRPERSON MILLER: Okay. Then I
9 guess I could say that the order will issue
10 after those documents come into the record.

11 MR. CHANDLER: Okay.

12 CHAIRPERSON MILLER: Okay. Is
13 that a problem? Okay. Thank you very much.

14 MR. LOREI: Thank you.

15 MR. CHANDLER: Thank you.

16 CHAIRPERSON MILLER: Okay. We're
17 ready for the next case, Ms. Bailey, when you
18 are ready to call it.

19 MS. BAILEY: Thank you, Madam
20 Chair. Application No. 17816 of Michael D.
21 Sendar, pursuant to 11 DCMR 3103.2, for a
22 variance from the use provisions for general

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1 retail business under subsection 330.5. The
2 property is Zoned R-4. It is located at 816
3 and 818 Rhode Island Avenue, N.W. and 819 and
4 821 Q Street, N.W. The property is also known
5 as Square 396, Lots 28, 805 and 806.

6 CHAIRPERSON MILLER: Okay. I
7 guess maybe we didn't have to get that picked
8 up on the record, but you need to speak into
9 the microphone in general. But what he was
10 saying is, Ms. Bailey, that his witness --
11 neither he nor his witnesses were sworn in.
12 And if there is anybody else here who wishes
13 to testify today either in support or
14 opposition of an application, you should rise
15 as well and Ms. Bailey will administer the
16 oath to all of you.

17 MS. BAILEY: Please, raise your
18 right hand.

19 (Whereupon, the witnesses were
20 sworn.)

21 MR. SENDAR: Madam Chair?

22 CHAIRPERSON MILLER: You have to

1 press that button on the microphone and the
2 red light will come on. There you go. Okay.

3 MR. SENDAR: I would like to read
4 a brief statement.

5 CHAIRPERSON MILLER: Okay. And
6 you are the -- introduce yourself first.

7 MR. SENDAR: My name is Michael D.
8 Sendar. I am the owner of 816 Rhode Island
9 Avenue, 818 Rhode Island Avenue and 819-821 Q
10 Street, N.W., which together comprise the
11 southeast corner of 9th and Rhode Island
12 Avenue.

13 These properties are the subject
14 of my application for a use variance.
15 Pictures of the property, which are already in
16 the record, are displayed on the easel. And
17 on the easel to the right is a floor plan
18 prepared by my architect three years ago
19 describing how two retail locations on the
20 ground floor would look. I don't believe that
21 is in the record. I can submit that.

22 Specifically, I seek a variance

1 from the use provision of section 330.5 for R-
2 4 Zone properties to commit -- to permit
3 commercial use of the ground floors of the
4 properties.

5 I am aware of the provisions of
6 section 3103.2 of the Zoning Regulations
7 requiring that there be special circumstances
8 resulting in hardship or practical difficulty
9 to the owner if the Zoning Regulations were
10 strictly enforced before such relief may be
11 granted.

12 I submit that these circumstances
13 do exist and that there would be no adverse
14 impact to the neighborhood or to the Zoning
15 Plan if my application were granted.

16 As appears from my burden of proof
17 statement and the report of the Office of
18 Planning, the occupancy permit history for the
19 properties demonstrates that the ground floors
20 have been used for commercial purposes for
21 most of the past 50 years and probably before
22 that.

1 The ground floor is configured for
2 commercial use. The buildings were originally
3 built with show windows on all sides and the
4 entrances are at ground level, common to
5 retail entrances. There are no kitchen or
6 bedroom facilities in the ground floor. 9th
7 and Rhode Island is a heavily traffic street
8 corner where crowds tend to gather. The first
9 floor is ill-suited for residential use.

10 Modern zoning does not reflect the
11 commercial character of these prominent corner
12 lots at the tip of the 9th Street corridor
13 leading to the convention center. 7th Street
14 and 11th Street to either side are zoned
15 commercial. Other than my corner and the 1500
16 Block to the south, the rest of 9th Street is
17 zoned commercial.

18 It appears that the City Planners
19 went against the grain and against logic when
20 they designated my properties as R-4. The R-4
21 Zoning has stymied my efforts to develop or
22 sell the properties, with the result that they

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1 have been vacant for the past several years.

2 In 2005, I formulated a plan for a
3 mixed-use development which was preliminarily
4 rejected by the Office of Planning, because of
5 the zoning nonconformity. More recently, I
6 have listed the property for sale with Marcus
7 and Millichap. Present in the courtroom is
8 John Mullen of that firm, who has submitted a
9 statement and will testify consistent with
10 that statement that there is no interest in
11 the property for R-4 uses and that the only
12 interest manifested is for commercial use on
13 the ground floor.

14 That was my impression as well
15 during the properties listed for sale by
16 owner, during the period that I listed it for
17 sale by owner. I suggested not only will the
18 granting of my application cause no
19 substantial detriment to the neighborhood, but
20 that the presence of a visible healthy retail
21 operation or operations at the top of 9th
22 Street is likely to spur development along 9th

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1 Street south to the Convention Center.

2 As appears from my submissions,
3 this view is shared by Councilman Jack Evans,
4 the Shaw Main Street Coalition and members of
5 ANC-2C. The Office of Planning has also
6 indicated its support.

7 I seek permission only for the
8 retail and/or service uses described in
9 section 701.1 and 701.4 of the Zoning
10 Regulations, not including bar or cocktail
11 lounge or off-premise alcohol sales.

12 It is contemplated that the
13 immediate neighborhood -- that the stores will
14 service the immediate neighborhood and will
15 not result in an increase of traffic or noise.
16 I had hoped to come here with a specific
17 commercial use in mind, but not having a
18 contract in hand, that is not now possible.

19 Should the Board feel that it
20 needs to identify the intended use before
21 issuing its stamp of approval, perhaps you can
22 issue a conditional approval for a commercial

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1 use subject to a final review after the
2 ultimate user is identified.

3 Nor will the Zoning Plan be
4 compromised if relief is provided. The
5 property cannot reasonably be used as zoned
6 and the Comprehensive Plan calls for the
7 improvement of retail conditions along 9th
8 Street. My application is consistent with
9 that objective. Thank you.

10 CHAIRPERSON MILLER: Thank you.
11 Let me ask if anyone from ANC-2C is here?
12 Could you come forward as ANC-2C is an
13 automatic party to the case. And could you
14 identify yourself in the record and just
15 refresh my memory if we have a letter
16 indicating who is authorized to represent the
17 ANC?

18 MR. PADRO: Certainly, Chairperson
19 Miller. I am Alexander M. Padro. I'm
20 Advisory Neighborhood Commissioner for Single
21 Member District 2C01 in which the subject
22 premise property is located. ANC-2C has not

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1 taken up this matter. We did not meet in
2 August, as is our practice, and Mr. Sendar,
3 the applicant, was unable to attend our
4 September 3rd meeting.

5 I have submitted a letter
6 explaining that and also providing my support
7 as the Single Member District Commissioner.
8 I know that Commissioner Kevin Chapel of ANC-
9 2C02 has done so and, you know, that is the
10 extent of ANC documentation that is available
11 for your perusal today.

12 CHAIRPERSON MILLER: Okay. And
13 would you identify yourself for the record,
14 please?

15 MR. MILEFSKY: My name is Ray
16 Milefsky. I live at 817 Q Street. I have
17 been a resident there for 23 years.

18 CHAIRPERSON MILLER: Are you on
19 the ANC?

20 MR. MILEFSKY: I live in 2C03.

21 CHAIRPERSON MILLER: Okay. Are
22 you a member of the Advisory Neighborhood

1 Commission?

2 MR. MILEFSKY: No, I am not.

3 CHAIRPERSON MILLER: Okay. Then
4 we will call you later. I just --

5 MR. MILEFSKY: Okay.

6 CHAIRPERSON MILLER: Actually, the
7 ANC is a party, but you are not. Mr. Padro is
8 not even a party.

9 MR. PADRO: We haven't consulted
10 yet.

11 CHAIRPERSON MILLER: Right.
12 Because there wasn't a resolution and somebody
13 authorized to represent the ANC as a whole.
14 Okay. I do want to just bring to everyone's
15 attention a letter that just came across the
16 Board. It has an Advisory Neighborhood 2C
17 Commission heading on it and it is from a Mr.
18 Thorpe. And he indicates that he is asking
19 the Office of Zoning to postpone the case
20 until Mr. Sendar attends a public ANC-2C
21 Commission meeting.

22 Have you seen this letter?

1 MR. SENDAR: I have not. I was in
2 contact with Chairperson Doris Brooks last
3 week and I told her that I had obtained
4 letters from Mr. Padro and Mr. Chapel and that
5 the third member Barbara Curtis had told me
6 she would sign a support letter and she said
7 well if that's the case, I'll have Mr. Thorpe
8 prepare a support letter.

9 And when I tried to confirm that
10 with her, I was unable to reach her and I
11 guess this is what she had done instead.

12 CHAIRPERSON MILLER: Have you seen
13 the letter, Mr. Padro?

14 MR. PADRO: I have not seen the
15 letter and Mr. Thorpe is not a member of the
16 Commission. If he has signed the letter, then
17 I don't know that the BZA has any
18 responsibility to abide by the request,
19 because, obviously, the Commission has not
20 taken any action to request that the case be
21 postponed.

22 CHAIRPERSON MILLER: Okay. Not

1 that we have a responsibility to abide by the
2 request, but we would consider the request.
3 Yes, sir, you know something about this?

4 MR. MILEFSKY: Mr. Thorpe is the--
5 was the -- chosen as the parliamentarian for--
6 to represent the -- two of the Commissioners
7 on the board. It's a position that he created
8 for himself. I would like to have it go down
9 on the record. Thank you.

10 CHAIRPERSON MILLER: Okay. So Mr.
11 Thorpe isn't here to present this. And this
12 letter will be in our file. I think that I
13 will read it, because it's going to be in the
14 file and it might be something that the Board
15 Members would consider to any extent. And so
16 you should be aware of it, in case you want to
17 respond to it.

18 And it says "I am the ANC-2C
19 Executive Assistant to Chair Doris Brooks and
20 the ANC-2C Commission Parliamentarian. I
21 regretfully write you today to inform you of
22 an alleged fraud scam by Commissioners Alex M.

1 Padro of ANC-2C01 and Commissioner Kevin
2 Chapel of ANC-2C02 to pass the procedure of
3 BZA Case No. 17816, Michael D. Sendar.

4 Mr. Sendar allegedly spoke with
5 Commissioners Alex Padro and Kevin Chapel to
6 obtain letters of support for his BZA
7 Application No. 17816 to avoid attending the
8 required, by D.C. Law, ANC-2C public
9 Commission meeting to present this project and
10 get a quorum vote.

11 ANC-2C Chair Doris L. Brooks and
12 Vice Chair Barbara Curtis was outraged to
13 receive a standard letter from Mr. Sendar in
14 the mail to support this project with the
15 public ANC Commission meeting and have asked
16 the Office of Zoning to set this meeting at a
17 further date until Mr. Michael Sendar attends
18 the public ANC-2C Commission meeting." Signed
19 by Mr. Thorpe.

20 I mean, I would say for myself
21 that I'm not the least bit inclined to
22 postpone the meeting based on a letter that

1 comes in without the person here to even
2 advocate it. And there isn't a requirement by
3 law, that I know of, to bring a BZA
4 application to the ANC. It's just usually
5 quite helpful that the ANC is automatically a
6 party in our case and it's usually very
7 helpful if you have the ANC support, such as
8 in the previous case and, you know, the
9 community's support.

10 MR. SENDAR: If I may respond just
11 briefly --

12 CHAIRPERSON MILLER: Sure.

13 MR. SENDAR: -- to the letter? I
14 was on a family vacation on September 3rd
15 taking my daughter to college. There was no
16 way I could attend that meeting. I made every
17 effort to meet with Doris Brooks and Barbara
18 Curtis and they were simply non-responsive.
19 I didn't mail a letter to anybody. I had an
20 appointment to meet Barbara Curtis at her
21 residence to talk it over. She wasn't there
22 at the appointed time and I left the letter

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1 under her door.

2 And I have invited Chairperson
3 Brooks to come to the hearing. I certainly
4 brought it to her attention. She did tell me
5 that she had not read my application for a use
6 variance and she added that she doesn't read
7 all her mail.

8 On my end, I made every effort to
9 sit down with these people. Being unable to
10 attend the hearing, I wanted to sit down and
11 lay it out. And Mr. Padro and Mr. Chapel were
12 certainly willing to hear me out, but I have
13 made no progress with Doris Brooks or Barbara
14 Curtis.

15 VICE CHAIRMAN LOUD: Madam Chair,
16 I have a couple of thoughts on this. First is
17 that I'm definitely not inclined to support
18 continuation of the hearing. I think Mr.
19 Sendar is here. Mr. Padro is here. OP is
20 here. And we ought to proceed on the merits.

21 Secondly, one of the reasons our
22 hearings tend to go on longer than we would

1 like on some occasions is that the parties
2 bring issues into the hearing that are not
3 germane to the hearing, to the resolution of
4 the matter before us. I have read this
5 exhibit that just came in of Mr. Thorpe and
6 some of the other pieces and these are
7 internal ANC issues. These are not BZA
8 issues.

9 There is no ANC report here today
10 that we can give great weight. And Mr. Padro
11 was very clear in his exhibit that he does not
12 represent the ANC. He is representing
13 himself. So there is not going to be a review
14 of an ANC report as to which we will give
15 great weight in this matter. And I would like
16 for us to stay focused on what is before us.

17 Thirdly, while I am not supportive
18 of continuing it, I don't see any harm in, of
19 course, it depends on how the record unfolds,
20 leaving the record open and not making a
21 decision today, so that the Chair of the ANC
22 will have an opportunity to get something in

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1 on the record before we deliberate. But
2 that's a personal opinion. It's not something
3 that I'm necessarily throwing out for the full
4 Board.

5 But some of this is just clearly
6 internal ANC stuff that needs to be worked out
7 outside of BZA.

8 CHAIRPERSON MILLER: I would just
9 like to say I agree with you up to the point
10 of continuing the hearing. I mean, keeping
11 the record open for some report by the Chair
12 and that the Chair hasn't requested that, that
13 this letter has come from an individual who is
14 not even on the ANC.

15 And sometimes, you know, if we
16 were to leave -- if we find that we're going
17 to leave the record open anyway, I would say
18 okay, we'll leave the record open, you know,
19 for that to come in. But we will see. I
20 think if we are all ready to decide the case,
21 I don't have a good feeling about keeping the
22 record open, based on this kind of a letter.

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1 But we can cross that bridge when we come to
2 it. Any other comments?

3 Okay. So then if I understand,
4 it's a consensus of the Board not to continue
5 this matter until a later date and we will
6 continue to proceed now on the case. And Mr.
7 Sendar, I know you made a statement about your
8 case and then we got sidetracked about this.
9 But I thought it was important to get it on
10 the record and get your response on the
11 record.

12 Do you want to -- is there more
13 that you would like to say to address your
14 application or have you said what you intended
15 to say?

16 MR. SENDAR: Well, I think I would
17 be repeating myself if I --

18 CHAIRPERSON MILLER: Okay.

19 MR. SENDAR: -- added to it. My
20 burden of proof statement and my statement, I
21 think, covers it.

22 CHAIRPERSON MILLER: Okay.

1 MR. SENDAR: I certainly think
2 that Mr. Goldstein has written a very
3 comprehensive report for Office of Planning.

4 CHAIRPERSON MILLER: I agree.
5 Okay. Okay. So we don't have the ANC here as
6 a party. So we're going to turn to the Office
7 of Planning now.

8 MR. GOLDSTEIN: Good afternoon,
9 Madam Chair and Members of the Board. My name
10 is Paul Goldstein and I'm a Development Review
11 Specialist with the Office of Planning. The
12 Office of Planning supports the applicant's
13 request for a use variance under section 330.5
14 for ground floor commercial use in a
15 Residential Zone subject to certain
16 conditions.

17 The subject property consists of
18 Lots 28, 805 and 806 in Square 396, which are
19 all Zoned R-4. The property contains four
20 vacant existing two-story buildings that are
21 interconnected. The buildings which are
22 historically contributing to the Shaw Historic

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1 District have addresses of 1816 and 1818 Rhode
2 Island Avenue and 1819 and 1821 Q Street,
3 N.W., no addition to the buildings is being
4 proposed.

5 Commercial uses are not permitted
6 as a matter-of-right in R-4 Zones. As such,
7 the applicant seeks relief from the R-4 use
8 requirement, so that the buildings can have
9 ground floor commercial use while the second
10 floors would remain residential as currently
11 zoned.

12 As more explicitly provided in our
13 report, OP believes that the proposal
14 satisfies the requirements for a use variance.
15 First the property exhibits a specific
16 uniqueness. The buildings have historically
17 housed commercial uses. And the ground floor,
18 which is reflected in Certificates of
19 Occupancy, in the record and can be seen in
20 the now boarded up store front windows near
21 grade front entrances and the lack of any
22 apparent ground floor kitchen facilities, the

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1 property is prominently located at a busy
2 intersection at 9th and Rhode Island Avenue
3 and is currently being taxed at a commercial
4 rate.

5 Due to the property's uniqueness,
6 the applicant cannot make a reasonable use of
7 the ground floor of the buildings in a manner
8 consistent with the Zoning Regulations.
9 Adapting the building to solely residential
10 use would be unduly challenging. The
11 buildings lack of ground floor amenities and
12 infrastructure, their historic status, the
13 absence of off-street parking spaces and the
14 busy locations hampers the ability to be used
15 entirely for residential use.

16 Through discussions with a
17 representative from Marcus and Millichap and
18 with the applicant, they have attested to me
19 the difficulty of marketing the property as a
20 solely residential use. Given the extreme
21 dilapidated condition of the buildings and the
22 location, it seems less likely that the

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1 buildings would continue to sit vacant -- it
2 seems likely that the buildings would continue
3 to sit vacant without some relief.

4 Further, the ground floor
5 commercial use should not result in any
6 nuisance to the community, but rather generate
7 some vibrant activity at this location and
8 have the potential to revitalize some vacant
9 buildings and reinvigorate development along
10 the 9th Street corridor.

11 But of note the applicant's
12 request does not identify specific commercial
13 tenants, but OP believes that the applicant
14 presents an exceptional case for some
15 flexibility in determining the use of the
16 ground floor space within certain parameters
17 in order to reinvigorate what is a problematic
18 property.

19 The applicant anticipates, as he
20 mentioned that perhaps two retail uses could
21 occupy the ground floor of the building,
22 meaning that just give the applicants more

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1 flexibility to get this building going. In
2 order to provide a measure of predictability,
3 the Office of Planning recommended that the
4 uses be limited to C-1 uses, which are
5 neighborhood serving retail uses, which we
6 consider the lease impactful type of uses.

7 We carved out that we didn't want
8 there to be any alcohol-related use, but that
9 we wanted to give the applicant some
10 flexibility in order to get this problematic
11 property going. Since the time of the
12 submission of the Office of Planning report,
13 I have now seen in the record a number of
14 letters in support and now I have also now
15 some letters in opposition.

16 To conclude, the Office of
17 Planning supports granting the use variance,
18 subject to conditions on that. And that
19 concludes my presentation. And I'm available
20 for any questions.

21 CHAIRPERSON MILLER: Thank you.
22 Board Members have questions? Okay. I have

1 a few.

2 MR. GOLDSTEIN: Sure.

3 CHAIRPERSON MILLER: While they
4 are thinking. Did you say that -- did you
5 consult with Marcus and Millichap?

6 MR. GOLDSTEIN: I did speak to one
7 of their representatives, who I guess is here
8 today, Mr. Mullen.

9 CHAIRPERSON MILLER: Okay.

10 MR. GOLDSTEIN: And I took a tour
11 of the property with Mr. Mullen and Mr.
12 Sendar, which produced some of those internal
13 pictures that are in my report.

14 CHAIRPERSON MILLER: And his
15 conclusion was it was not marketable as a
16 residential property?

17 MR. GOLDSTEIN: That's what he
18 told me is that they had listed it for -- to
19 be fully residential. Pardon me. They had
20 listed it and that it was not marketable as a
21 fully residential property. That tenants who
22 were looking at the property wanted --

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1 expected there to be commercial on the first
2 floor and that that was a hinderance to
3 marketing the property.

4 CHAIRPERSON MILLER: Oh, it was a
5 hinderance to marketing the top floor that
6 there wasn't commercial on the bottom floor?
7 Is that what you're saying? It's not just
8 that the bottom floor couldn't be marketed as
9 residential, but also the top floor?

10 MR. GOLDSTEIN: My understanding
11 is that it's that an entirely residential
12 property was not marketable.

13 CHAIRPERSON MILLER: Okay.

14 MR. GOLDSTEIN: That if there was
15 commercial on the ground floor, it would make
16 it more marketable at that location.

17 CHAIRPERSON MILLER: Does it
18 matter whether or not the lots are separate or
19 combined?

20 MR. GOLDSTEIN: Well, that's an
21 interesting question. I think I defer to DCRA
22 on that one. They apparently have not been

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1 combined over the years, although there have
2 been some types of shared uses there in the
3 past. I don't know what the implications for
4 DCRA would be if there was a tenant that
5 straddled record lots. There is no physical
6 expansion of the building going on. It's more
7 of a reconfiguring. Whether DCRA would have,
8 I just -- I'm not sure.

9 CHAIRPERSON MILLER: Okay. I
10 don't think it's necessary for our purposes to
11 decide on this application, but I was just
12 wondering also.

13 MR. GOLDSTEIN: Sure.

14 CHAIRPERSON MILLER: And also,
15 with respect to the condition you are
16 proposing, I can see why you are looking to
17 matter of right uses in C-1. And could you
18 articulate why, in particular, you are
19 excluding bar or cocktail lounge or off-
20 premises alcohol beverage sales?

21 MR. GOLDSTEIN: Sure. Let me
22 start by saying that the applicant in his

1 application did request that exception. And
2 I believe that the idea behind it was to give
3 some type of predictability to the type of
4 uses to eliminate something that could be
5 perceived as a problematic use, given in
6 particular that there is no specifically
7 identified use on the property, that this
8 would at least give the neighbors some comfort
9 that certain types of uses that may have the
10 potential to arouse some opposition are
11 excluded right off the bat.

12 CHAIRPERSON MILLER: Okay. And as
13 far as you know, there weren't any other uses
14 that the neighborhood was concerned about?

15 MR. GOLDSTEIN: As far as I knew,
16 I did not know of any other uses that the
17 neighborhood was concerned about. Obviously,
18 I think it would have been helpful to have had
19 them to go the ANC. I received some letters
20 from individual Commissioners that were
21 supportive of it, but I did not hear any
22 feedback from the community about it.

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1 CHAIRPERSON MILLER: Okay. Thank
2 you. I do note that and we will get to these
3 later, but as you mentioned, we got a couple
4 of letters here last minute and, I mean, I'm
5 just glancing at one, at least one of these is
6 in opposition. So we can see if there are any
7 other concerns. Any other questions of Office
8 of Planning?

9 VICE CHAIRMAN LOUD: Thank you,
10 Madam Chair. I just wanted to follow-up with
11 Madam Chair's line of questioning. You may
12 not be prepared for this, because I don't
13 believe you have these exhibits, 30, 31 and
14 29, which we just received. But in sum, they
15 are letters of opposition and kind of reflect
16 the comments that you just made about
17 approving the relief requested for retail and
18 not really knowing what the retail is going to
19 be.

20 And so even without reviewing
21 them, do you have a take on how that impacts
22 your analysis in terms of you said that

1 there's no substantial detriment to the public
2 interest and so on?

3 MR. GOLDSTEIN: Yeah, I have not.
4 I have just received them at the same time
5 that you have. It's -- I don't think it's an
6 irrelevant question whether the type of use,
7 the uncertainty over the type of use should
8 cause pause. The way I look at it is that
9 this has been a problematic property that
10 needs to have a use reinvigorated.

11 It is on a block or two of largely
12 -- I shouldn't say largely, of a number of
13 vacant properties. Neighborhood-serving
14 retail is the least intensive that we have for
15 commercial use, so I wasn't as troubled with
16 not knowing the specific identity of the
17 tenant if it was within a certain parameter of
18 neighborhood-serving uses.

19 VICE CHAIRMAN LOUD: Thanks. And
20 in fact, when you look at section 701, there
21 aren't a lot of scary uses. And the scariest
22 one might be what has been identified as not

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1 being eligible for use at this site. I mean,
2 for example, you couldn't do exotic dancing or
3 something like that that the neighbors might
4 be concerned about.

5 But I just wanted to get your take
6 on it, since that is, I think, as you
7 indicated, a legitimate issue and one that
8 seems to resonate in all of the opposition
9 letters.

10 MR. GOLDSTEIN: Yeah. We wanted
11 to keep it to the permitted by-right uses in
12 C-1, except for the ones we carved out, which
13 would be under 701, as you have identified.

14 MEMBER DETTMAN: Mr. Goldstein,
15 the two exclusions from 701 seem to be
16 alcohol-related either the on-site consumption
17 or off-site consumption. Would you apply that
18 to both the principal and accessory use of the
19 future tenant of that building?

20 MR. GOLDSTEIN: It's actually a
21 good question. The issue of whether a
22 restaurant, for instance, that wanted to have

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1 some alcohol, but not make it the primary use
2 of it actually has come up. I have contacted
3 DCRA to find out a bit more about what is
4 considered bar/lounge, where the dividing line
5 is between, for instance, a restaurant that
6 serves alcohol and a bar/lounge is.

7 Unfortunately, I posed the
8 question to them rather late. I know I
9 directed Mr. Mullen to perhaps be able to
10 contact DCRA about that. I don't know if he
11 had any success getting an answer to that, but
12 I think that's my sense. Personally, what I
13 would say -- I shouldn't say personally. What
14 I would say is I don't -- my analysis doesn't
15 have a problem with a restaurant that wants to
16 serve some alcohol.

17 It really goes to a principal use
18 of the property being alcohol or off-premises
19 alcohol sales.

20 MEMBER DETTMAN: How about a small
21 neighborhood grocery that wants to sell
22 alcohol?

1 MR. GOLDSTEIN: Yeah, I -- that's
2 a good question. I would have to think about
3 that one some more. I understand the grocery
4 -- the issue of the grocery store is
5 relatively fresh. I assume that off-premises
6 alcohol sales, I guess, is the idea that that
7 would only go to a principal use for alcohol
8 sales and not accessory.

9 I guess I would be supportive of
10 not permitting accessory off-premises alcohol
11 sales. Well, let me think about that some
12 more. Okay. I shouldn't say it off the cuff.

13 CHAIRPERSON MILLER: Go ahead.

14 MEMBER WALKER: Mr. Goldstein, I
15 need to back up for just a second here. I
16 mean, I'm looking at Exhibit 25, the
17 correspondence from Marcus and Millichap. And
18 I certainly understand how individuals
19 inquiring about the property would be looking
20 at it for mixed-use purposes, but I'm still
21 not convinced that this site wouldn't be
22 suitable for residential, all residential use,

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1 given its dilapidated condition and the fact
2 that it has got to be completely gutted and
3 built out anyway.

4 So I'm just -- you know, setting
5 aside the inquiries that they have received
6 from potential investors, you know, when you
7 looked at this property, I mean, what is it
8 about it that would prevent it from being a
9 residential, you know, apartment building or
10 condominiums?

11 MR. GOLDSTEIN: Sure. Well, I
12 guess, I looked in a few places. Thank you
13 for your question. One is historically it has
14 had commercial use in that location. Second,
15 it is at a pretty busy intersection of Rhode
16 Island and 9th Street. 9th Street is largely
17 coming up toward Rhode Island, the commercial
18 stretch. Now, south of it, there is a block
19 or two of residential with some nonconforming
20 commercial, but it is a largely commercial
21 stretch coming from the south.

22 So I thought based on the

1 location, based on some historic use and then
2 even such features as the low grade entryway,
3 I mean, it looks like it is for retail
4 purpose. A lot of the homes around there do
5 have sort of the elevated stairway leading to
6 the front door. There is physically something
7 different.

8 I wouldn't say that 100 percent of
9 residences all have the stairs going up, but
10 I think it is indicative that there was likely
11 last past commercial use on that site. It
12 didn't have -- I mean going through it, of
13 course, there need to be substantial
14 renovation for whatever use there is, but it
15 seemed to me that given historic use, given
16 the location, it seemed more appropriate for
17 commercial use.

18 And from what I understand from
19 the neighbors from some of the letters in
20 opposition, I don't want to speak for them,
21 but it's not -- I don't think that there is a
22 general opposition to their being commercial

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1 use on the site, not from what I can glean
2 from their opposition.

3 And you add that as well to the
4 idea that the property has had difficulty
5 being marketed for residential use and I
6 thought that the totality factors there
7 pointed to it being sort of uniquely suited
8 for having a commercial use on that ground
9 floor.

10 MEMBER WALKER: Thank you.

11 CHAIRPERSON MILLER: I have had an
12 opportunity to look at some of the letters and
13 to see what some neighbors were concerned
14 about. And I just want to confirm with you
15 whether some of their concerns are addressed
16 by the condition, limiting it to what type of
17 commercial establishments can go there, you
18 know, those under 701, except for what you
19 have identified related to bars and cocktail
20 lounges and off-premise sales.

21 Okay. One is fast food take-out
22 establishment. Can that go here?

1 MR. GOLDSTEIN: I believe it
2 cannot. I believe it can only go by special
3 exception. It's 701.4(q), a restaurant, but
4 not including a fast food restaurant, drive-in
5 restaurant or a food delivery service.

6 CHAIRPERSON MILLER: Right, okay.
7 And liquor store, that's out. What they call
8 a religious cult book store.

9 MR. GOLDSTEIN: I mean, I guess a
10 book store would be permitted as a matter-of-
11 right. I understand that there was a
12 problematic tenant that was there in the past,
13 which this is referencing. I guess I don't
14 know that I can say a cult-based book store
15 would be excluded. And I don't mean to -- I
16 can understand there were some concerns with
17 the previous tenants. I don't want to
18 minimize those, but I guess probably yes, a
19 book store would be permitted.

20 I don't know as far as -- I can't
21 imagine the issue of the cult issue would come
22 up from a zoning standpoint.

1 CHAIRPERSON MILLER: Okay. Right.
2 It's not like -- I don't see the Board
3 stepping in to sensor what kind of books would
4 be in the book store. I mean, it seems to me,
5 from my experience, that usually when we do
6 grant variances of this sort or whatever, we
7 don't know the specific stores that might be
8 going in. We only know the specific
9 categories that the regulations put forth.

10 Okay. Other questions? I mean, I
11 think at the appropriate time, Mr. Sendar, I
12 don't know if there is anything else more you
13 might want to say? If you know what the
14 concerns are with this, you know, religious
15 concerns cult, whatever. I don't think they
16 are -- they are not really before us, except
17 for the fact that they have been expressed in
18 letters about wanting to know what stores you
19 are going to put in, because they are afraid
20 of -- it's a fear thing.

21 MR. SENDAR: I know where it comes
22 from. I inherited this tenant when I bought

1 the property. The tenant was labeling himself
2 the Nubian Islamic Hebrew Mission and they
3 were messy tenants, debris was allowed to
4 accumulate.

5 They made life difficult for Mr.
6 Milefsky. I think the concerns that he raised
7 about what happened are legitimate, but there
8 is no prospect of that happening in the
9 future. It's not in my interest to do that.

10 MEMBER WALKER: Mr. Sendar, is it
11 your plan to develop the property yourself or
12 are you planning to --

13 MR. SENDAR: No, no. I explored
14 that in 2005 and I'm not a developer. I'm
15 looking to sell the property to someone who
16 will install healthy vibrant retail business
17 or businesses. And I'm prepared to elicit
18 community support before I go final with
19 anybody, specifically, Mr. Padro who is the
20 Executive Director of Shaw Main Streets
21 Coalition.

22 I want to put a business in there

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1 which will contribute to the community and
2 make sense, but I'm not going to develop it.

3 CHAIRPERSON MILLER: And do you
4 have any questions for the Office of Planning?

5 MR. SENDAR: No, I don't.

6 CHAIRPERSON MILLER: And --

7 MR. SENDAR: I would note that Mr.
8 Mullen is in the hearing room to testify to
9 what he set forth in his letter about
10 marketability.

11 CHAIRPERSON MILLER: He is your
12 witness?

13 MR. SENDAR: He is a witness and
14 he is available. What -- his testimony may be
15 duplicated with his letter.

16 CHAIRPERSON MILLER: Oh, I see,
17 okay.

18 MR. SENDAR: Should the Board want
19 to hear it, he is available.

20 CHAIRPERSON MILLER: Okay. You
21 don't have any other witnesses?

22 MR. SENDAR: No, I don't.

1 CHAIRPERSON MILLER: Okay. Would
2 Board Members like the opportunity to as, Mr.
3 Mullen, is that his name, yeah, Mr. Mullen,
4 who did the marketing study any questions or
5 do you feel satisfied with the letter that is
6 in the record and then Mr. Goldstein's
7 commentary on that?

8 COMMISSIONER TURNBULL: I have a
9 question for Mr. Mullen.

10 CHAIRPERSON MILLER: Okay. We
11 would like you to come forward for a minute,
12 if you could.

13 COMMISSIONER TURNBULL: Thank you,
14 Madam Chair. It sounds as if Mr. Sendar is
15 basically trying to position this property or
16 put this in a position that he can sell this
17 property to someone who can develop it. And
18 is it your sense that for this property to be
19 marketable, developable it needs to have
20 commercial on the first floor?

21 MR. MULLEN: Yes, sir.

22 COMMISSIONER TURNBULL: Is there--

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1 do you believe that there are ready people out
2 there to buy this property to do this?

3 MR. MULLEN: Given market
4 conditions, it may be an issue of timing, but,
5 yes.

6 COMMISSIONER TURNBULL: Okay. How
7 many apartments could be put up on the second
8 floor?

9 MR. MULLEN: We would have to
10 really verify what the lot area is.

11 COMMISSIONER TURNBULL: Okay.

12 MR. MULLEN: Given the lot area --

13 COMMISSIONER TURNBULL: Right.

14 MR. MULLEN: -- only two, at this
15 point, because given record over the three
16 lots is roughly 2,656 square footage. And so
17 for R-4, that would only allow for -- you
18 would need 900 square feet per apartment for
19 2,700, so that would allow three.

20 COMMISSIONER TURNBULL: Right.

21 MR. MULLEN: So given if there is
22 no further square footage, then it would be

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1 two, at this point.

2 COMMISSIONER TURNBULL: Okay.
3 What type of retail do you see could work on
4 the first floor?

5 MR. MULLEN: It's more of a matter
6 or a function of what you can get for rent,
7 which makes it functionable or economically
8 viable for any type of development, rather
9 than a particular usage. But the
10 neighborhood-serving usages are fine.

11 COMMISSIONER TURNBULL: Okay.

12 MR. MULLEN: Would work well.

13 COMMISSIONER TURNBULL: Thank you.

14 CHAIRPERSON MILLER: Could you
15 just tell us how long you have been a broker
16 in the Washington, D.C. area?

17 MR. MULLEN: For -- since February
18 23rd with the firm, but I have been with the
19 firm for over a year now.

20 CHAIRPERSON MILLER: And any
21 experience before that?

22 MR. MULLEN: No, ma'am.

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1 CHAIRPERSON MILLER: Okay.

2 VICE CHAIRMAN LOUD: So the 11
3 offers referenced in your report have all been
4 since February?

5 MR. MULLEN: I'm sorry?

6 VICE CHAIRMAN LOUD: Since
7 February?

8 MR. MULLEN: Oh, no, sir.

9 VICE CHAIRMAN LOUD: I'm sorry?

10 MR. MULLEN: The --

11 VICE CHAIRMAN LOUD: April, okay.

12 MR. MULLEN: Um-hum.

13 VICE CHAIRMAN LOUD: I'm sorry.
14 Thank you.

15 CHAIRPERSON MILLER: Okay. Any
16 other questions?

17 VICE CHAIRMAN LOUD: I have a
18 question for Mr. Sendar.

19 CHAIRPERSON MILLER: Go ahead.

20 VICE CHAIRMAN LOUD: But not for
21 the broker. Is now the appropriate time?

22 CHAIRPERSON MILLER: Sure.

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1 VICE CHAIRMAN LOUD: Okay.

2 CHAIRPERSON MILLER: Sure.

3 VICE CHAIRMAN LOUD: Mr. Sendar,
4 you heard Mr. Dettman's exchange of questions
5 and viewpoints regarding the accessory use.
6 And I take from OP's testimony that the
7 limiting condition originated from you. It's
8 not something that they put in --

9 MR. SENDAR: Yes.

10 VICE CHAIRMAN LOUD: -- to the
11 equation.

12 MR. SENDAR: Myself and the
13 neighborhood, we didn't want an alcohol-based
14 business, but I also anticipate a restaurant.

15 VICE CHAIRMAN LOUD: Okay.

16 MR. SENDAR: With alcohol use
17 incidental as being a potential tenant. And
18 I would not want to exclude that possibility
19 where the alcohol use was incidental.

20 VICE CHAIRMAN LOUD: All right.
21 So your line of thinking, a restaurant would
22 be permissible if we were to grant -- a

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1 restaurant that served a certain percentage,
2 I guess, of its sales of alcohol would be
3 permissible if we granted the relief.

4 What about a grocery store, corner
5 grocery market that sells beer and wine?

6 MR. SENDAR: Well, I hadn't
7 thought about that until the last 10 minutes.
8 And I think a grocery store would be a viable
9 use. If they are selling beer in the
10 refrigerator, I would like to be able to view
11 them as potential tenants.

12 VICE CHAIRMAN LOUD: This
13 condition or limiting language came from
14 somewhere, right? It came from your
15 conversations?

16 MR. SENDAR: It came from me.

17 VICE CHAIRMAN LOUD: Did you have
18 conversations in the community with different
19 stakeholders that sort of led to it coming to
20 you or did it just come to you?

21 MR. SENDAR: Well, I've known Mr.
22 Padro for a few years. And I also have a

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1 sense of what the community wanted just from
2 attending -- three years ago I tried to
3 develop this and I went to meetings and it was
4 my sense that nobody wanted a primarily
5 alcoholic use at that corner.

6 VICE CHAIRMAN LOUD: Did it get
7 any more refined than that with respect to the
8 question of the grocery store that sells beer
9 and wine?

10 MR. SENDAR: No, I have not really
11 addressed that.

12 VICE CHAIRMAN LOUD: Okay.

13 MR. SENDAR: In my mind.

14 VICE CHAIRMAN LOUD: Okay.

15 MR. SENDAR: But as I think of it
16 now, I see grocery store as a live possibility
17 and I know that if they were unable to sell
18 beer in the cooler, that that might be a
19 disincentive.

20 VICE CHAIRMAN LOUD: Okay. And
21 when I think grocery store, I think Yes!
22 Organic Market. I think Whole Foods or I

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1 think the neighborhood grocery store that
2 sells beer and wine and that ends up selling
3 a whole lot more beer and wine than groceries,
4 say unlike a Whole Foods or Yes! Organic
5 Market.

6 The way you are envisioning this
7 relief that you are asking for, have you
8 parsed down to that level?

9 MR. SENDAR: My notion was that
10 any alcohol sales would be incidental to the
11 primary use. So if it were a situation you
12 are hypothesizing where alcohol was more than
13 incidental, I would be willing to exclude
14 that.

15 (Whereupon, at 5:00 p.m. the
16 Public Hearing continued into the evening
17 session.)

18
19
20
21
22

1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 5:00 p.m.

3 CHAIRPERSON MILLER: Okay. I just
4 want to note that we will be calling on
5 individuals to testify in support or
6 opposition. We're not quite there yet, but we
7 are almost there.

8 But I think that the applicant has
9 volunteered specific principal uses of alcohol
10 to be excluded from the application, but not
11 incidental ones. And that would be certainly
12 consistent with our decision on the grocery
13 stores that even if alcoholic beverages might
14 not be allowed in a certain District as a
15 principal use, that it is different as an
16 incidental use.

17 VICE CHAIRMAN LOUD: Madam Chair?

18 CHAIRPERSON MILLER: Yes?

19 VICE CHAIRMAN LOUD: I think that
20 is correct, but I also think that by -- if we
21 were to grant this approval with many
22 neighbors not knowing what the ultimate use

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1 would be, that that would be a legitimate
2 concern on the part of some neighbors exactly
3 what we are granting approval to.

4 There is a difference between
5 Geranium Market, which is a grocery store and
6 sells a lot of beer and wine, and a Harris
7 Teeter, for example, something like that. And
8 to the neighbor that doesn't know what we are
9 granting approval for today, that's the
10 concern, I think, or at least that's one of
11 the concerns.

12 I think Mr. Padro is well-known in
13 the city for his advocacy for neighborhood
14 revitalization and his leadership in that
15 arena. So it's good that he is here as a
16 spokesperson for that neighborhood. But
17 that's an issue across the city is
18 neighborhood Class B Licenses that are covers
19 for liquor sales and alcohol sales.

20 MR. SENDAR: Well, wouldn't the
21 limitation be incidental, the use of that
22 word, protect against what you have described?

1 VICE CHAIRMAN LOUD: You know, we
2 had a case like that earlier in the year, I
3 think, where --

4 CHAIRPERSON MILLER: We did.

5 VICE CHAIRMAN LOUD: -- we went
6 around and around and around to see if it did.
7 We even had Mr. LeGrant who had done this in
8 California and subsequently is doing it out
9 here now and it was kind of difficult to
10 really quantify what incidental means in
11 certain circumstances.

12 MR. SENDAR: But if a percentage
13 was applied to it?

14 CHAIRPERSON MILLER: Well, there
15 is a percentage under the law for grocery
16 stores. I don't recall exactly, it may be 15
17 percent. It's in the D.C. Law/Statute. So
18 there is a cap there. I also would caution
19 that we look and see, you know, what's the
20 evidence in the record.

21 So far I saw a letter that talked
22 about a liquor store and so that's different.

1 I'm like the case that was before us before,
2 I don't see an outpouring here about concerns
3 about sale of alcoholic beverages. I think
4 where you are coming from in part is though,
5 but didn't go before the ANC, so we don't
6 know. Is that right, that there might be a
7 concern?

8 But based on the evidence in the
9 record, I don't see one specifically targeted
10 at that. And I don't know why our regulations
11 shouldn't be adequate for this block, if
12 Office of Planning thinks that they are
13 appropriate, C-1. Plus they have made it
14 stricter by excluding bar/cocktail lounge and
15 liquor stores.

16 VICE CHAIRMAN LOUD: I guess my
17 concerns stem from the fact that we have
18 nothing from the Chair of the ANC. I have a
19 comfort level that Commissioner Padro is very
20 in touch with that community. But
21 specifically, we have an exhibit where one of
22 the -- where the signatory on the exhibit says

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1 I'm concerned that I don't know what could go
2 in there and whether or not we have really
3 closed the barn door just by limiting it to
4 what the language of our limit is, cocktail
5 lounges, off-premises alcoholic beverage
6 sales.

7 CHAIRPERSON MILLER: Okay. I
8 mean, I'll say one thing and then I think
9 maybe we will hear more from persons who are
10 here to testify. You know, as we were saying,
11 we don't know what kind of book store is going
12 to go in there, but that doesn't mean we
13 should regulate what kind of book store,
14 except it's not going to be an adult book
15 store. I don't think that's allowed in this
16 District, I don't think.

17 But someone can correct me if I'm
18 wrong. But do you know what I mean? I mean,
19 they may not know exactly what they are
20 getting, but we never do. I mean, we have got
21 these regulations that allow for businesses as
22 long as they fit in the category, you know.

1 VICE CHAIRMAN LOUD: I understand
2 you, I do, but we're not talking about the
3 community knowing whether it is Borders or,
4 you know, some other brand. We are talking
5 about the community knowing the use that is
6 going to go in there, whether it is Borders or
7 Karibu Books or any of a dozen book stores.
8 We're talking about the community being
9 informed of the use.

10 Here there is this, you know,
11 attempt to close the barn door significantly.
12 And just the question in my mind as to whether
13 it has been closed all the way. And it's not
14 a question we have to resolve, you know, right
15 this very second, but I'm just putting it out
16 there on the record.

17 And I think Commissioner Padro was
18 going to testify shortly as a witness. I'm
19 not certain, but if he does, I'll get the
20 opportunity to ask him some questions.

21 CHAIRPERSON MILLER: Okay. I was
22 just going to say if, you know, we want to

1 limit any of these categories, such as a
2 grocery store to condition it further to
3 disallow the incidental sale of alcoholic
4 beverages, I think we would need to have a
5 reason based on the evidence to draw it from.

6 So okay, anything else right now?
7 All right. Why don't we hear from persons
8 here in support of the application?

9 MR. SENDAR: I would summon Mr.
10 Padro.

11 CHAIRPERSON MILLER: Mr. Padro.
12 You don't need to summon him. Welcome, Mr.
13 Padro. Okay.

14 MR. PADRO: Thank you very much,
15 Madam Chair, and again for the record, I'm
16 Alexander M. Padro, the Advisory Neighborhood
17 Commissioner for Single Member District 2C01.
18 And I am also Executive Director of Shaw Main
19 Streets, the Commercial Revitalization
20 Organization serving 7th and 9th Streets and
21 Central Shaw.

22 And I am here to reiterate the

1 support that has been provided in writing,
2 both from my own perspective, as the elected
3 representative for the 2000 people that live
4 in close proximity to this site, as well as a
5 seasoned commercial revitalization
6 professional who has conducted several years
7 worth of surveys in the community trying to
8 determine what are the types of businesses
9 that neighborhood residences would like to see
10 and also tying in historic preservation into
11 this process, which is the National Main
12 Street model.

13 And it is interesting that this
14 evening at 6:30 we will actually -- Shaw Main
15 Streets will be having an annual meeting where
16 we talk about the latest surveys of the types
17 of businesses that people have said that they
18 want to see in the neighborhood. And I can
19 give you a preview that among the top five
20 types of businesses that people want to see
21 continue to be eating establishments, book
22 stores, opticians, coffee shops and

1 newsstands/book stores, crossing the line of
2 those two categories.

3 And then we go on, you know, much
4 longer in terms of the detail and we provide
5 that to property owners as well as developers,
6 so that they can have an understanding of what
7 type of neighborhood-serving retail the
8 community supports. And very often we have
9 had success in having those types of
10 categories filled through that process.

11 I have lived around the corner
12 from this particular property since 1997. I
13 have seen it go from having some of the not
14 idea activities taking place there that Mr.
15 Sendar was talking about, which caused
16 significant concern for community members, to
17 having it be vacant and abandoned and
18 moldering and, you know, a significant blight
19 on the neighborhood.

20 I have gotten inquiries long
21 before we even thought about having a main
22 street operation in the neighborhood about,

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1 you know, what people would like to see happen
2 in that corner. And bakeries and coffee shops
3 were among the top categories of businesses
4 that people said that they would love to be
5 able to patronize there.

6 Types of businesses that would not
7 have an impact in terms of parking, would not
8 have an impact in terms of noise, would not
9 have an impact in terms of any of the
10 traditional types of concerns that community
11 residents raised.

12 We have been frustrated as a
13 community that this very important corner has
14 not been able to be filled. You know, we have
15 gotten major tenants, mostly African-American,
16 you know, independent operators going into all
17 of our important corners and unfortunately,
18 because of the circumstances of the zoning,
19 which I believe was, you know, an oversight or
20 an error back in 1957, you know, we haven't
21 been able to close the loop on this.

22 As I said in my correspondence, as

1 an ANC Commissioner to you, this is an
2 opportunity for the BZA to, you know, correct
3 that wrong and allow us to once again have
4 retail on that important corner.

5 The C of Os that were provided to
6 the applicant were actually gathered by our
7 office and I think it is very, you know,
8 telling and very clear support to the fact
9 that, you know, those buildings were intended
10 to have ground floor uses.

11 I'm also an historian and have
12 looked through the city directories going back
13 over more than a century and every single
14 edition mentions a wide range of different
15 types of businesses there. Interestingly
16 enough, I haven't been able to find any
17 evidence of alcohol being the principal use
18 there.

19 In a conversation that I had with
20 Mr. Sendar in the presence of Ward 2 Council
21 Member Jack Evans and the Office of Planning
22 Director Harriet Tregoning a number of months

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1 ago before the applicant submitted his
2 application, we did discuss the issue of
3 specifically excluding liquor stores and bars,
4 but we certainly did not have any intention of
5 preventing a restaurant that sold alcohol from
6 being able to operate there.

7 The reality is that most
8 restaurants, you know, have 60 percent of
9 their sales coming from alcohol and most types
10 of food-based businesses would fail if they
11 didn't have alcohol there.

12 So in the interest of time, you
13 know, I would invite you to ask any questions
14 that you might have either from my testimony
15 today or the correspondence that you have
16 before you. And I can tell you that the vast
17 majority of my constituents are extremely
18 enthusiastic about once again seeing a
19 business in that corner that they would be
20 able to patronize.

21 And I am confident that Mr. Sendar
22 is not going to try to pull one over on the

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1 community, especially with the conditions that
2 are being contemplated for the zoning relief
3 that we are talking about here today.

4 CHAIRPERSON MILLER: Thank you.
5 That was very helpful. I have a couple of
6 questions for you.

7 MR. PADRO: Certainly.

8 CHAIRPERSON MILLER: Is this
9 property within your Single Member District?

10 MR. PADRO: Yes, it is.

11 CHAIRPERSON MILLER: Okay. So you
12 are the Commissioner on the ANC who is most in
13 touch with the residents who live nearby?

14 MR. PADRO: Yes.

15 CHAIRPERSON MILLER: Okay. Why
16 wasn't this voted on at an ANC meeting? I
17 heard Mr. Sendar say he couldn't attend the
18 meeting. Was there any consideration of
19 taking a vote on the application anyway?

20 MR. PADRO: I actually contacted
21 Mr. Sendar a few days before the meeting to
22 try to find out if he was going to be in

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1 attendance and then learned that he was not in
2 the state. And as a result, I asked do you
3 want us to go ahead and take this up without
4 you being able to answer questions and I
5 personally wouldn't have felt comfortable with
6 that and he did not either.

7 CHAIRPERSON MILLER: Okay. And
8 finally, I mean, I think we all live in
9 neighborhoods that, you know, may have areas
10 that have vacant store fronts or whatever and
11 we have desires as to what we would really
12 like to go there. For instance, you know, a
13 book store, a bakery, I mean, but do you -- I
14 mean, would you conclude that our regulations
15 would allow us to or it would be a good idea
16 to narrow the types of businesses that could
17 go in this area to, you know, just the top
18 five most desirables?

19 MR. PADRO: No. I certainly
20 wouldn't be that prescriptive, but I think
21 that the solution that has been proposed here
22 actually does address the types of businesses

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1 that could have potential negative impacts.

2 I mean, all those other types of
3 businesses would be seen as wins for the
4 community and even the immediately adjacent
5 neighbors would agree that that would be
6 favorable and more desirable than having the
7 buildings continue to be vacant and
8 potentially, you know, demolished by neglect
9 until the point that they are no longer
10 contributing to the fabric of the Historic
11 District.

12 CHAIRPERSON MILLER: Okay. So
13 even if, for instance, say Mr. Sendar decided
14 or his developer brought in a music store and
15 actually the community really wanted a bakery,
16 the music store -- you still couldn't conclude
17 necessarily that's going to have an adverse
18 impact on the neighborhood?

19 MR. PADRO: No, certainly not.
20 And the reality is that as we are trying to
21 promote all of the vacant store fronts in the
22 neighborhood to potential tenants, you know,

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1 we're certainly glad to have, you know, any
2 law abiding and neighborhood-serving business
3 that would come along as part of that
4 community.

5 CHAIRPERSON MILLER: Okay. And I
6 guess my last question is with respect to your
7 being in touch with your community, did you
8 have any meetings with your community about
9 this application?

10 MR. PADRO: I have talked to --

11 CHAIRPERSON MILLER: Or any
12 correspondence?

13 MR. PADRO: I send out emails. I
14 have talked to hundreds of people over recent
15 years trying to get a sense of what people
16 would like to see happen there. And they
17 specifically said that the only way that we
18 are ever going to get any kind of businesses
19 there and have anything positive happen to
20 that building is if we, you know, are able to
21 provide some zoning relief there.

22 And every single person that I

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1 have talked to about it, with the exception of
2 the folks that you have gotten some letters
3 from, had said go for it, that's what we need
4 to do.

5 CHAIRPERSON MILLER: Okay. One
6 more question I guess. So based on your
7 experience with the community and your
8 communication with Mr. Sendar, so was the idea
9 of limiting the use so that it couldn't have
10 bar or a cocktail lounge or liquor store, did
11 that come from you somewhat?

12 MR. PADRO: That was the consensus
13 that Director Tregoning, Council Member Evans
14 and I came to in consultation with Mr. Sendar.

15 CHAIRPERSON MILLER: Okay. And it
16 only went that far, not to incidental sales in
17 a grocery store or a restaurant?

18 MR. PADRO: We did not deal with
19 incidental sales.

20 CHAIRPERSON MILLER: Okay. All
21 right. Other questions?

22 VICE CHAIRMAN LOUD: Just two

1 questions. Do you have a position on
2 incidental sales?

3 MR. PADRO: I believe that the
4 value of the property, at this point, is not
5 going to allow a usage such as has been raised
6 a couple of times here, the grocery store that
7 sells a significant amount of alcohol. We now
8 have a singles ban in Ward 2, so that is also
9 a factor that would make it unlikely that that
10 would be a significant part of the sales of
11 such an establishment.

12 And you know, I would feel
13 comfortable with a prescription against, you
14 know, off-premises sales as well. And I think
15 that, you know, if there are folks that are
16 still concerned about the possibility of a
17 grocery store morphing into a liquor store,
18 then that will be one way of addressing it.
19 But again, you have a Giant Food store that
20 sells alcohol a block away. You have a
21 convenience store around the corner that sells
22 alcohol.

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1 You have another liquor store a
2 block away that sells, you know, beer and wine
3 and liquor. An operator that is going to
4 invest the kind of money that would be
5 necessary to renovate this property, you know,
6 would not put that kind of an operation where
7 there was that kind of competition. It would
8 be financial suicide.

9 VICE CHAIRMAN LOUD: And yet we
10 see it in D.C. every week.

11 MR. PADRO: But you don't see
12 folks opening those types of businesses in
13 areas that have the kinds of, you know,
14 property taxes, rents and property values
15 associated with them, because it doesn't make
16 financial sense. There are, yes,
17 neighborhoods still in the city that have not
18 reached that level of real estate appreciation
19 and there are long standing businesses that
20 whose business model, in many cases, if they
21 own the property allows that to happen. It
22 can't happen under these circumstances.

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1 VICE CHAIRMAN LOUD: We could
2 probably debate that for a couple of weeks.
3 But let me turn to another area of
4 questioning. Is there a harm to bringing this
5 proposal before the ANC? It sounds like the
6 scheduling was not ideal. I mean, September
7 3rd was it right after Labor Day or --

8 MR. PADRO: Yes.

9 VICE CHAIRMAN LOUD: It's very
10 close. I mean, it's just a bad day to
11 schedule something like that. But is there a
12 harm to the ANC having a shot at doing exactly
13 what you did, having an opportunity to hear
14 the proposal, interact with the applicant? I
15 think where you have come out is very
16 reasoned. It's supported empirically, because
17 you've got the surveys and all of that.

18 But what would the harm be for the
19 whole community having that same opportunity?

20 MR. PADRO: There wouldn't be any
21 harm. I do have to say though that we are a
22 four member Commission and we very commonly

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1 deadlock. I would say that over 75 percent of
2 our votes are deadlocks. So therefore, we end
3 up having no position to present to the
4 District of Columbia bodies that are
5 interested in hearing from us.

6 COMMISSIONER TURNBULL: I have one
7 question. What about a pharmacy? A pharmacy
8 often sells incidental food stuff and
9 beverages in its freezers. Is there a problem
10 with that?

11 MR. PADRO: No, but the size of
12 the property really would preclude a
13 pharmacy --

14 COMMISSIONER TURNBULL: It's very
15 small?

16 MR. PADRO: -- going into that
17 location. And we have again the Giant Food
18 store that provides those types of products.
19 We have a CVS a few blocks away. So it would
20 not be very lucrative or very practical for
21 someone to make the investment that we are
22 talking about in terms of renovating this

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1 property to put that type of business in
2 there.

3 COMMISSIONER TURNBULL: What about
4 a dry cleaning facility?

5 MR. PADRO: A dry cleaning
6 facility would be something that would be
7 supported, you know, by the community. We do
8 have a few in the area, but, you know, you can
9 never have too many good dry cleaners. I
10 would say that most folks that are supportive
11 of new dry cleaners are looking for
12 environmentally sensitive, you know,
13 operations. And those could be accommodated
14 there without any negative impacts.

15 CHAIRPERSON MILLER: Any other
16 questions? Thank you. Is there anybody here,
17 anyone else here to testify in support of this
18 application? Anybody here to testify in
19 opposition to this application? Yes, sir,
20 come on forward. Have a seat at the table and
21 introduce yourself for the record, please. I
22 know you have been waiting all day for this,

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1 so thank you for waiting.

2 MR. MILEFSKY: My name is Ray
3 Milefsky. I live at 817 Q Street. I have
4 been there 23 years. Let me start up top.
5 I'm not going to -- you have already iterated
6 that you have read, you know, my two pages, so
7 I'm not going to go on in great detail on
8 that.

9 I do not oppose a business use of
10 those properties. And I would add to it a
11 bike shop. I would add to it a gun shop. We
12 need a gun shop in the District. I would --
13 dry cleaning would be great, so long as the
14 venting doesn't go into the small backyard
15 that we all share. Venting is a big issue.

16 A grocery store is problematic.
17 When you look at the Certificates of Occupancy
18 on 9th Street, there were a lot of food and
19 tobacco products and variety goods
20 Certificates of Occupancy pulled. A good many
21 of them were, basically, fronts to sell drugs.
22 This is a historic neighborhood that is known

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1 for cocaine and reefer.

2 It is still available. Just two
3 blocks up on 9th Street, they were selling
4 Khat in the Ethiopian store. It is still an
5 area that is kind of very grey in terms of the
6 city being able to maintain certain standards
7 that are expected, you know, further west in
8 the city.

9 So, yes, we do have concerns about
10 the kind of business that come into the
11 neighborhood. Obviously, a greasy spoon, a
12 carry-out and that sort of thing, that's
13 consoling to hear that, you know, there are
14 ways to get around that.

15 Alcohol is not the big issue in
16 the sense that, you know, as long as you are
17 not selling alcohol in the paper bags. I
18 mean, right now in Mr. Sendar's property and
19 in the stairwell it is filled with trash and
20 most of it is paper bags and single
21 containers.

22 I think it is disingenuous to say,

1 however, that the R-4 makes the property
2 unsellable. A good number of years, I would
3 say maybe eight years or so ago, Abdo was very
4 interested in the property and approached Mr.
5 Sendar. He wanted to make it into four condos
6 and actually add a mansard and put, you know,
7 six condos in it.

8 The -- I understand there are
9 historical preservation issues with adding a
10 mansard, but I mean, basically, as a next door
11 neighbor, I welcome that. I thought that
12 would be great, because he does good work and
13 honest work. And that's my big concern is
14 honesty.

15 Because as you read in my
16 testimony here, the 10 years of living with
17 the Nubian Islamic Hebrews was hell. Absolute
18 hell. There was no recourse from the city.
19 There was no recourse from Mr. Sendar. There
20 was no recourse or way of getting away from
21 this screaming loudspeaker until a neighbor
22 shot it out finally.

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1 I am -- I just -- you know, Alex
2 mentions, you know, pulling over a fast one.
3 Basically, I do not trust Mr. Sendar. I
4 cannot trust him after having lived for 10
5 years with the Nubian Islamic Hebrews and 10
6 years of neglect.

7 Right now, the backyard is totally
8 overgrown. There is a tree growing over from
9 the -- it's a concrete backyard. But there is
10 a tree growing out from the foundation of Mr.
11 Sendar's property into my yard. Is that
12 abated? No. Are the rats abated? No. Is
13 the city doing anything about it or can they
14 do anything about it? Oh, well, we have to do
15 a report and we'll get around to it. No, the
16 city doesn't help.

17 So that's why I am very concerned.
18 And I think I have a legitimate reason to be
19 concerned, me and my neighbors. When the
20 Nubians moved out, the crack whores moved in.
21 I went in with sticks and beat everything up
22 and dragged all the -- and kicked the girls

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1 out.

2 My AANCP lawyer neighbor on the
3 opposite side on the Rhode Island side tried
4 to levy a lawsuit against Mr. Sendar for
5 endangering her children and the
6 neighborhood's children with these really,
7 really sick crack whores. I mean they were
8 diseased with pus and everything. I mean,
9 it's -- I don't trust the man.

10 And that's why keeping it R-4 for
11 me is a necessity until we get a clear idea of
12 what kind of business is going to go into that
13 property, so that we, as a neighborhood, as
14 Alex mentioned, our ANC is dysfunctional. It
15 is very dysfunctional. We have a
16 parliamentarian who basically tells the chair
17 and the vice who to vote and what to say.

18 It is totally dysfunctional and it
19 is gridlocked, as Alex says. So we don't
20 expect any support from our ANC on this. And
21 if it is, you know, there is always -- it's
22 going to be some sort of machination that is

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1 not in our favor as neighbors. Get rid of the
2 ANC from my view. They are totally worthless.

3 But we have -- we want a business
4 there. We want a real business and a viable
5 business. Stop laughing at me, okay?

6 Because --

7 CHAIRPERSON MILLER: We're not
8 laughing.

9 MR. MILEFSKY: -- we want a
10 viable --

11 CHAIRPERSON MILLER: We're not
12 laughing at you.

13 MR. MILEFSKY: -- business there.
14 And we don't want to -- but we don't want to
15 have something jammed up our asses that the
16 Zoning, Planning and Historic Preservation
17 forces upon us or that our ANC or that Shaw
18 Main Street tells us that we are allowed to
19 have.

20 We are the neighbors and that's
21 why R-4 is nice, because we still have a
22 voice, because when they come before us, we,

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1 as residents, can say well, you know, we can
2 actually talk about it and say okay, that
3 looks like a great idea. Let's go for it.
4 Let's give you a variance.

5 I think we need to be -- what
6 needs -- all right. Keeping R-4 allows us to
7 remain democratic in the process, because
8 automatically giving Mr. Sendar a business
9 variance or general retail business variance
10 means he is open to anything and he can jam
11 anything down our throats and I don't want to
12 see that. Story said.

13 CHAIRPERSON MILLER: Thank you.
14 Does anybody have questions? Okay.

15 VICE CHAIRMAN LOUD: Mr. Milefsky,
16 is that how it's pronounced? Did you have the
17 opportunity to speak with the applicant prior
18 to today?

19 MR. MILEFSKY: I spoke to him
20 before, you know, this morning.

21 VICE CHAIRMAN LOUD: Was there any
22 point in time in which the application --

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1 which you knew about the application coming
2 forward before BZA?

3 MR. MILEFSKY: Sure, I pulled it.

4 VICE CHAIRMAN LOUD: And then you
5 saw it --

6 MR. MILEFSKY: I pulled it and
7 copied it out about a month ago and had been
8 following, I mean, coming in and checking the
9 record. I'm very, very concerned about this
10 issue, because Mr. Padro wants to convert all
11 of 1500 and 1600 Blocks of 9th Street into
12 commercial if he can, because that helps his--
13 aggrandizes his Shaw Main Streets.

14 VICE CHAIRMAN LOUD: This is not
15 Mr. Padro's application.

16 MR. MILEFSKY: And I don't want to
17 see that.

18 VICE CHAIRMAN LOUD: It's not Mr.
19 Padro's application.

20 MR. MILEFSKY: I know it's not his
21 application, but he is the one supporting Mr.
22 Sendar.

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1 VICE CHAIRMAN LOUD: Part of what
2 I think I hear you saying is that there is a
3 trust issue that goes directly to this sort of
4 carte blanche grant of a retail privilege.

5 MR. MILEFSKY: That's right too,
6 carte blanche.

7 VICE CHAIRMAN LOUD: And the trust
8 issue stems from the historical relationship
9 with the applicant?

10 MR. MILEFSKY: Yes.

11 VICE CHAIRMAN LOUD: All right.
12 If the applicant -- and part of what you see
13 is perhaps resolving that as what, the
14 opportunity to interact with the applicant
15 directly in an ANC meeting context? It sounds
16 like that's a bit dysfunctional.

17 MR. MILEFSKY: Certainly. May I
18 interject?

19 VICE CHAIRMAN LOUD: Sure.

20 MR. MILEFSKY: Wanting to interact
21 is a nice thing. But when you are having --
22 when decisions are made for you behind your

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1 back by your ANC, by your -- by Shaw Main
2 Streets and others and we become extremely
3 suspicious, and these two -- that whole 9th
4 Street corridor is dead, because you've got
5 Shiloh's vacant properties that have been
6 there for a good 50 years just sitting there
7 and you've got Mr. Sendar's property.

8 Now, we would like to see a
9 business as a keystone property. All cars
10 coming out Rhode Island and coming down 9th
11 will see something there. All they see now
12 are a bunch of crappy murals on it.

13 We would love to see, but the
14 confidence isn't there that he will be acting
15 on the neighborhood's behalf.

16 VICE CHAIRMAN LOUD: And again,
17 I'm just trying to clarify my understanding of
18 your position, not trying to debate you on it
19 at all. But your position is that the
20 applicant would need to have a specific retail
21 use identified, not necessarily a tenant, but
22 a specific type of retail use identified?

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1 MR. MILEFSKY: We can get a
2 variety of things.

3 VICE CHAIRMAN LOUD: And then --

4 MR. MILEFSKY: -- with viable --

5 VICE CHAIRMAN LOUD: -- approach.

6 MR. MILEFSKY: See Shiloh comes to
7 us every five years.

8 VICE CHAIRMAN LOUD: No, no, no,
9 no., no.

10 MR. MILEFSKY: No, they come to us
11 every five years with I'm asking --

12 VICE CHAIRMAN LOUD: We're not
13 talking about Shiloh.

14 MR. MILEFSKY: -- I've got a
15 steamer, we're going to do this, we're going
16 to do that, we're going to do that. And we
17 have been hit with that now for 50 years.

18 VICE CHAIRMAN LOUD: With respect
19 to -- just with respect to this applicant and
20 this application. You would be more
21 comfortable with this application if you knew
22 precisely what use the applicant would

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1 propose --

2 MR. MILEFSKY: Exactly.

3 VICE CHAIRMAN LOUD: -- before
4 giving the applicant the green light for the
5 variance?

6 MR. MILEFSKY: Variance, exactly.

7 VICE CHAIRMAN LOUD: Okay. All
8 right. And given that the ANC is a bit, in
9 your words, dysfunctional, how --

10 MR. MILEFSKY: Yes, very
11 dysfunctional.

12 VICE CHAIRMAN LOUD: -- would that
13 -- how would you -- what do you see as a
14 process that would allow that to happen?

15 MR. MILEFSKY: Calling a meeting
16 of the neighbors in the vicinity, because most
17 of my neighbors, I know most of my neighbors.
18 I have been there 23 years. We are a little
19 bit of everybody. And all of us, you know,
20 are extremely suspicious about what is
21 happening to the Sendar properties.

22 VICE CHAIRMAN LOUD: Well, thank

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1 you. No further questions.

2 MR. MILEFSKY: We've got a library
3 where we can meet. We've got other venues.

4 CHAIRPERSON MILLER: Okay. Let me
5 say a couple of things. One is this is the
6 Board that is making the decision. The ANC
7 didn't make any decision. The applicant is
8 seeking relief from us. We are making it not
9 behind closed doors. We are discussing it
10 here. We are receiving your input as well as
11 anybody else's input.

12 So I just wanted to put that on
13 the record. I don't know if that means much
14 to you, but that's really what is happening
15 here.

16 MR. MILEFSKY: But only Mr.
17 Goldstein has seen that property. Only Mr.
18 Goldstein has smelled the filth that the
19 Nubians have still -- you still smell them
20 there.

21 CHAIRPERSON MILLER: Okay. And it
22 sounds like and even the applicant admitted

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1 and I don't know why it went on so long, but
2 that there was a terrible experience that you
3 lived through for 10 years with them as your
4 neighbor. Okay. And that's why you are upset
5 and you are concerned about what is going to
6 happen next to this property.

7 MR. MILEFSKY: Okay.

8 CHAIRPERSON MILLER: And you don't
9 want to rely on blanket trust of the
10 applicant. Okay. So what I'm saying here in
11 this process, if we grant the relief, it's not
12 going to be on blanket trust, go do whatever
13 you want, whatever businesses you want to put
14 in there.

15 It's going to be we're going to
16 consider whether it will be, as recommended by
17 Mr. Goldstein, subject to specific types of
18 businesses that are allowed in commercially-
19 serving neighborhood areas. Whatever,
20 neighborhood commercial zones and their uses
21 that are fairly -- that are benign as a
22 category, you know, a gift shop, a hardware

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1 store, a bike store.

2 The applicant will not be able to
3 do whatever he wants. He will have to limit
4 the retail to those categories. So those are
5 protections that this Board is considering.
6 So it's not just a blanket do whatever you
7 want. You know, based on your testimony and
8 everything else in the record, we can consider
9 if we're going to grant the relief, which to
10 a large extent a good argument has been made
11 that this property -- good use of this
12 property would be for commercial.

13 It wasn't good use of it for the
14 tenants before for that residential. Okay.
15 So and you are saying you're not against
16 retail. If there are any other conditions you
17 want us to consider, such as a type of meeting
18 that you would like with the neighbors to give
19 your input to the developer as to what kind of
20 businesses you all would like, something of
21 that sort, that might be something we could
22 consider. Yeah?

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1 MR. MILEFSKY: If I'm -- may I say
2 in response, essentially, you are rewarding
3 Mr. Sendar for keeping the properties vacant.
4 He bought them. They have been R-4 since
5 1959, okay? He bought them when they were R-
6 4. He knew they were R-4. And now, you are
7 trying to reward him, because he has iterated
8 already that he wishes to sell them.

9 So yeah, he can sell them at a
10 nice fat commercial price. And all the great
11 decision that you make here on the base will
12 be naught for the new owner and will have to
13 go through more of the same crap of having to
14 -- having a liquor store, having stores,
15 things that we don't want.

16 CHAIRPERSON MILLER: No. Whatever
17 we do today will go with the land. The new
18 owner will not come before us for --

19 MR. MILEFSKY: My house was a
20 beauty shop and it was a labor union
21 headquarters and because the Certificates of
22 Occupancy demonstrated it and, in fact, I know

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1 the Brotherhood of Sleeping Car Porters
2 people. But they did it with an R-4, too.
3 And basically, I don't see how you can -- how
4 you are -- you are giving him a nice fat
5 paycheck for keeping a property dangerous and
6 decrepit.

7 You know, you are rewarding him
8 for -- by giving him an R-4 or a C-1. C-1 is
9 what you are going to give, by giving him a
10 commercial rate.

11 CHAIRPERSON MILLER: Okay. This
12 is the last thing.

13 MR. MILEFSKY: And I --

14 CHAIRPERSON MILLER: Let me just
15 say something.

16 MR. MILEFSKY: -- there is an
17 anger. There is avengence --

18 CHAIRPERSON MILLER: Okay.

19 MR. MILEFSKY: -- about this.

20 CHAIRPERSON MILLER: I see that.

21 Okay.

22 MR. MILEFSKY: So you can

1 understand.

2 CHAIRPERSON MILLER: Okay. But
3 what we would be doing is saying that the
4 residential use isn't working, isn't going to
5 work for that property and, therefore, we
6 would be allowing another use that is allowed
7 in C-1, but we are not changing the zoning of
8 R-4, only Zoning Commission changes to zoning.
9 We are just allowing them to use, would allow
10 them if we grant the relief, to allow retail
11 use, which they could not do otherwise.

12 COMMISSIONER TURNBULL: On the
13 first floor.

14 CHAIRPERSON MILLER: On the first
15 floor, yeah. Okay. Well, it's 5:35 and we
16 have others waiting. I think that we have
17 heard you. Thank you very much. Anybody else
18 here to testify on this case? Okay. Are
19 there closing remarks?

20 MR. SENDAR: Thank you. At the --
21 in order to avoid duplicating much of what has
22 been said, I'll keep my comments brief. I

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1 understand Mr. Milefsky's anger, but he has
2 wrongly characterized me and my actions and my
3 behavior. Some of the facts which he has
4 asserted are simply incorrect. Nobody has
5 ever sued me.

6 In fact, I made an effort to
7 contact Ray in advance of this hearing. He
8 was out of the country, but I tried to contact
9 him multiple times in the last few weeks. At
10 no time in the last eight years has he
11 expressed any complaint to me about
12 overgrowing tree or anything.

13 I'm an honorable person. I'm
14 scrupulously honest in my dealings and have
15 been in years of being in business and as a
16 lawyer. I understand his anger, but he has
17 wrongly characterized me and my mode of
18 operation. My word is my bond and always has
19 been.

20 CHAIRPERSON MILLER: Okay. Thank
21 you. Okay. Primarily, as it is getting late,
22 we have decided that we're going to deliberate

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1 on another day. Our next normal decision
2 meeting is October 7th, that's a possibility,
3 that's only a few weeks away.

4 Mr. Loud, did you have -- did you
5 want to make some remarks about whether or not
6 to leave the record open for the ANC?

7 VICE CHAIRMAN LOUD: Thank you,
8 Madam Chair. Thank you, Madam Chair. I
9 would -- when we started out, I had indicated
10 that depending on how the record unfolded I
11 might come out this way. And I think after
12 hearing some of the testimony and some of the
13 testimony from some of the opposing
14 perspective, some of the exhibits that came in
15 at the last minute, that just as a matter of
16 protocol and procedure to give the ANC an
17 opportunity to submit something on the record
18 for our consideration, I give tremendous
19 deference to the Single Member District
20 Commissioner.

21 In addition to which, I know his
22 reputation. I know his work. I know how hard

1 he works. And it's not an easy job. And I
2 think it's a good project. But I think more
3 people in the community, particularly the ANC,
4 should have that same opportunity to weigh in,
5 to engage the applicant and to give some
6 feedback. Not that it would necessarily sway
7 me one way or the other, it's just a process
8 and protocol kind of issue. And it was crazy
9 to schedule that meeting right -- the day
10 after Labor Day like that.

11 So I would be for giving that
12 opportunity, whether they take advantage of it
13 or not is on them, but providing that
14 opportunity and then deliberating after we
15 have -- that window has been closed.

16 MR. SENDAR: Mr. Loud, you are
17 suggesting I get on the next ANC agenda for
18 their next meeting?

19 VICE CHAIRMAN LOUD: No. I was
20 not even taking it that far. I think that we
21 have heard from the Single Member District
22 Commissioner. We have not heard from the

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1 Chair of that ANC. So I would be for allowing
2 the record to remain open, so that the Chair
3 has a voice in this.

4 MR. SENDAR: All right.

5 VICE CHAIRMAN LOUD: I wouldn't
6 necessarily be for the ANC trying to call
7 another meeting and getting a quorum and
8 notices going out and all of that. But just
9 having the benefit --

10 MR. SENDAR: To allow them.

11 VICE CHAIRMAN LOUD: -- as we do--

12 MR. PADRO: The next meet is on
13 October the 1st, next Wednesday, so that
14 certainly would fit with the scheduling that
15 you're considering.

16 VICE CHAIRMAN LOUD: That does
17 change things. I thought that perhaps we
18 would be unnecessarily delaying it by trying
19 to get an ANC meeting together. If you feel,
20 Commissioner, that the Commission could notice
21 the meeting properly.

22 MR. PADRO: Notices need to go out

1 tomorrow.

2 VICE CHAIRMAN LOUD: Okay. Again,
3 that's not where I was coming from in terms of
4 burdening this process any more than
5 necessary. But if it is something that the
6 Commission can do and get the notices out
7 properly, it would put to rest this whole idea
8 of, which I don't buy into at all, a tiny
9 cabal of people making decisions on a very
10 important issue for the community.

11 Did that answer the question?
12 Yeah, again, if you feel, you are a member of
13 that Commission, that the Commission can get
14 the notices out for the October 1 meeting,
15 that would make it a legitimate notice --
16 legitimately noticed meeting, then I'm for
17 that. But if it's going to be more than the
18 Commission can turn around, I'm simply saying
19 that the Chair should have the same
20 opportunity to have something on the record,
21 the way that some others have had.

22 CHAIRPERSON MILLER: Why wouldn't

1 the Chair have had the opportunity to put
2 something on the record? I mean, I read it as
3 the Chair didn't file something or the ANC
4 didn't file something. They had notice of the
5 application.

6 VICE CHAIRMAN LOUD: Well --

7 MR. SENDAR: I invited Doris
8 Brooks, the Chair, to participate in at least
9 two conversations last week.

10 CHAIRPERSON MILLER: So I guess I
11 think that --

12 VICE CHAIRMAN LOUD: I'm reading
13 from this exhibit here.

14 CHAIRPERSON MILLER: I don't think
15 that there was anything wrong with the
16 procedure, but I think that if, Mr. Loud, if
17 you feel like we are not going to decide this
18 until October 7th anyway, and you would like
19 the community to have another chance to have
20 this aired and see if the ANC would like to
21 submit a resolution, that would be given great
22 weight, I guess, if they got the majority.

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1 But that's fine. I just want to
2 say that I don't think there was anything
3 wrong with the system, because I think that
4 they were notified and we haven't had any good
5 reason from them as to why they didn't file
6 anything.

7 VICE CHAIRMAN LOUD: Well, I think
8 they didn't file anything, because the
9 applicant didn't show up at the meeting.

10 CHAIRPERSON MILLER: But that
11 doesn't matter. I mean, that usually would
12 just hurt the applicant, but the ANC could
13 have filed something saying we had this
14 meeting and the applicant wasn't here and we
15 reviewed the file and these are our concerns,
16 you know. I mean, they didn't do anything.

17 VICE CHAIRMAN LOUD: Well, we may
18 agree to disagree on that.

19 CHAIRPERSON MILLER: Okay.

20 VICE CHAIRMAN LOUD: But I think
21 that they probably would have wanted the
22 benefit of the opportunity to discuss with the

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1 applicant, ask questions, find out a little
2 bit more about the thinking on that. And at
3 the 11th hour, admittedly, they did try to get
4 this letter in requesting that we continue
5 this, which none of us were supportive of.
6 But there is something that came from
7 apparently this representative of the ANC
8 Chair, this self-identified representative.

9 CHAIRPERSON MILLER: Okay.

10 VICE CHAIRMAN LOUD: Of the ANC
11 Chair --

12 CHAIRPERSON MILLER: Right.

13 VICE CHAIRMAN LOUD: -- saying we
14 need a little more time. And I'm looking at
15 that exhibit as a part of informing my --

16 CHAIRPERSON MILLER: Okay. That's
17 true.

18 VICE CHAIRMAN LOUD: -- decision
19 on this.

20 CHAIRPERSON MILLER: And that is
21 kind of confusing with that representative.
22 But I would just say that given our schedule,

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1 if we're going to hear this on the 7th and the
2 ANC is meeting on October 2nd, that there is
3 certainly no harm to -- for the applicant to
4 appear before that meeting, though we are not
5 ordering you to appear, that's not within our
6 jurisdiction, and give the ANC an opportunity
7 to file something with the record, file a
8 resolution.

9 Now, I just want to make sure, Mr.
10 Loud, as far as your interest goes here, what
11 I'm saying goes to the ANC as a whole to file
12 something, a resolution or whatever after they
13 have their meeting. Does that meet your
14 concerns or do you want to allow individuals,
15 such as the Chair, to file something separate?

16 VICE CHAIRMAN LOUD: No, the
17 former. If we do the former, that takes care
18 of all of that.

19 CHAIRPERSON MILLER: I think that
20 makes sense.

21 VICE CHAIRMAN LOUD: Okay.

22 CHAIRPERSON MILLER: I think that

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1 makes sense.

2 VICE CHAIRMAN LOUD: Yeah.

3 CHAIRPERSON MILLER: Okay.

4 VICE CHAIRMAN LOUD: And I might
5 also add that this Exhibit 30, which purports
6 to be, I mean, who knows, it just came in here
7 20 minutes before this hearing, from the Vice
8 President of the Mount Vernon Square
9 Neighborhood Association also speaks in
10 opposition to this.

11 So I just think it's a much
12 cleaner record for everybody moving forward if
13 we can not necessarily hush all of the buzz,
14 but say that there was a fair process, a clear
15 opportunity for everyone and the decision that
16 was made was made based on a full record.

17 CHAIRPERSON MILLER: Okay. And
18 even if the ANC were to file something that,
19 you know, we couldn't come to agreement, we
20 were deadlocked. So okay. So the meeting is
21 October 2nd and --

22 MR. PADRO: The 1st.

1 CHAIRPERSON MILLER: October 1st.

2 MR. PADRO: Yeah.

3 CHAIRPERSON MILLER: Good. Okay.

4 And our decision meeting then will be October
5 7th. And so, Mr. Moy, what's the Thursday or
6 Friday before? What day of the week do you
7 meet?

8 MR. PADRO: Wednesday.

9 CHAIRPERSON MILLER: Wednesday,
10 okay.

11 MR. MOY: I prefer the Thursday,
12 but since they ANC, assuming that they meet on
13 the 1st, the staff can have until Friday,
14 October 3rd to forward the document to the
15 Board.

16 CHAIRPERSON MILLER: Right. It
17 shouldn't be that lengthy. Just a resolution,
18 right?

19 MR. PADRO: Deadlocked.

20 CHAIRPERSON MILLER: Okay. And
21 then the record would be closed for anything
22 else, unless Board Members have something else

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1 that they think they want to leave the record
2 open for? Okay. Ms. Bailey, do you want to
3 read those dates again?

4 MS. BAILEY: The decision is
5 scheduled for October 7th. The ANC is
6 scheduled to meet on October 1st and the
7 applicant's submission is due on October the
8 3rd.

9 MR. SENDAR: It's not our
10 submission.

11 MS. BAILEY: I'm sorry.

12 CHAIRPERSON MILLER: What did you
13 say?

14 MS. BAILEY: Let me -- the
15 decision is scheduled for October the 7th.
16 The ANC is scheduled to meet on October the
17 1st. And the submissions are due from the ANC
18 on October the 3rd.

19 CHAIRPERSON MILLER: Okay. We are
20 looking for one submission, their resolution.
21 Okay. All right. Any questions?

22 MR. SENDAR: No, thank you. And

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1 I'll be on the agenda for that ANC meeting.

2 CHAIRPERSON MILLER: Okay. Good
3 luck. Thank you very much. Thank you very
4 much. To the individuals who are waiting for
5 the next two cases, we just are going to take
6 a 10 minute break and then we will come back
7 and pick up with your cases.

8 (Whereupon, at 5:51 p.m. a recess
9 until 6:04 p.m.)

10 CHAIRPERSON MILLER: Okay. We are
11 back on the record. Mr. Turnbull had to leave
12 us, but we have a quorum. And we thank you
13 all for your patience. We had a very long and
14 complicated deliberation on a case this
15 morning that moved the schedule up this late.

16 Okay. But hopefully we won't have
17 too long on these cases. They seem pretty
18 straightforward. I don't see Ms. Bailey here
19 to call the case. Mr. Moy, do you want to
20 call the case?

21 MR. MOY: Yes, I can do that,
22 Madam Chair.

1 CHAIRPERSON MILLER: The first
2 one. Okay.

3 MR. MOY: The next application is
4 Application No. 17839 of D.C. Public Library,
5 pursuant to 11 DCMR 3104.1 and 3103.2, for a
6 variance from the lot occupancy requirements
7 under section 403, and a variance from the
8 parking requirements under subsection 2101.1,
9 and a special exception from the parking
10 requirements under subsection 2104.2, to
11 construct a public library, which is the, I
12 believe it's pronounced, Watha T. Daniel
13 Neighborhood Branch, in the R-5-B and C-2-B
14 Districts at premises 1701 8th Street, N.W.
15 The property is in Square 420N, Lot 801.

16 CHAIRPERSON MILLER: Why don't we
17 start with introductions?

18 MR. MARTIN: Madam Chair, Elchino
19 Martin with Nixon Peabody representing the
20 D.C. Public Library. And I also have with me
21 Ellen McCarthy, also of our firm, the Director
22 of Planning and Land Use with Nixon Peabody.

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1 We also have Ginnie Cooper, the Chief
2 Librarian at the D.C. Public Library and
3 Christiane DeJong with Brody -- Davis Brody
4 and Bond, the architects for the project.

5 As a preliminary matter, Madam
6 Chair, I just note that we are requesting a
7 waiver of time for the submission of the
8 Affidavit of Posting and Revised Plans. I
9 believe we have filed the paperwork. We
10 apologize for not filing that affidavit
11 timely, but I believe the submission that you
12 have indicates that we now have the affidavit
13 as well as evidence that we did, in fact, post
14 the site appropriately. So we would ask for
15 that waiver.

16 CHAIRPERSON MILLER: Any concerns
17 with that? Okay. No concerns, so the waiver
18 is granted.

19 MR. MARTIN: All right. Madam
20 Chair, again, we recognize your stamina and
21 the Board's stamina today, so we will try to
22 keep our comments brief. Again, as was

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1 mentioned, we are requesting a variance from
2 the parking requirements in section 2101.1, as
3 well as a variance from the lot occupancy
4 requirements in the R-5-B portion of the lot,
5 pursuant to section 403.2.

6 Again, because of the lateness of
7 the hour, we do believe that the record is
8 complete and if it is the Board's wish to rule
9 on the record, we would agree with that. We
10 would have no objection to the Board ruling on
11 the record.

12 In the alternative, if you would
13 like to hear some testimony from our
14 witnesses, we again will try to be as succinct
15 and as brief as possible. But really, it's at
16 the pleasure of the Board, at this point.

17 CHAIRPERSON MILLER: I just want
18 to get a clarification on the relief that is
19 being sought, because I'm comparing I guess
20 the relief sought as advertised and then the
21 relief as captured by the Office of Planning
22 and it also sounded like what you were saying

1 that you are seeking a variance 403.2
2 regarding lot occupancy for an increase from
3 60 to 74 percent and a variance under 2101.1
4 to reduce minimum off-street parking from 14
5 to zero.

6 MR. MARTIN: That is correct.

7 CHAIRPERSON MILLER: Okay. But am
8 I -- was the relief advertised a little bit
9 differently, because I think what I'm looking
10 at, they also cite 2104.2, special exception
11 under 2104.2?

12 MS. COOPER: It sounds like the
13 relief might have been confused with the
14 relief that we were asking for on Benning.

15 CHAIRPERSON MILLER: Oh, okay.

16 MS. COOPER: But I know what we
17 filed for was relief under 2101.

18 CHAIRPERSON MILLER: Okay. All
19 right, fine. So we are looking at those two
20 variances. Thank you.

21 Now, your next question was
22 whether to stand on the record. Do Board

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1 Members have any comments on that question?
2 I think I would say, you know, it's late, it's
3 not complicated. On the other hand, if you
4 could just refresh our memory, I think it's
5 pretty simple just to, you know, hit the
6 variance. What's the exceptional situation
7 here that is giving rise to the practical
8 difficulty? And really go, you know,
9 straightforward.

10 MS. COOPER: Why don't I just take
11 a crack at that, because that was my
12 testimony. Essentially, looking at the
13 uniqueness of the site and the corresponding
14 practical difficulty for each of those aspects
15 of uniqueness, as you can see, the chart on
16 the left shows the site. It is a pretty
17 unusual shaped site.

18 It's an isosceles triangle. You
19 have two corners which are acute angles, which
20 makes a very inefficient floor plate, requires
21 more square footage just to get usable space.
22 It is the sole occupant of the lot, which is

1 pretty unusual, and the setbacks that are
2 required on each side, as you can see from the
3 diagram, those are all building restriction
4 lines.

5 We are occupying just, I mean, 74
6 percent of the lot, so having those wide
7 setbacks doesn't leave us much space, but it
8 also means that in terms of any adverse
9 impacts, there is no neighbor whose light and
10 air and privacy we could be encroaching upon.

11 The site is just a little bit more
12 than 9,800 square feet of land and D.C. Public
13 Library needs around 2,000 to 2,300 square
14 feet in order to accommodate their basic
15 programs. So that means with a site that
16 small and inefficient, we already have to be
17 at three levels just to provide the basic
18 requirements of the library.

19 And so if we were to make our
20 program only 60 percent of the lot, we would
21 have to add another floor, which is a
22 substantial expense to the library. And if we

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1 had to accommodate surface parking within --
2 by making the lot smaller, we would have -- we
3 would aggravate that problem.

4 If we had to put a level of
5 underground parking in, we would also
6 aggravate the problem of increasing the
7 expense of the structure considerably, because
8 then we would have to have four levels or five
9 levels depending. And in addition, because of
10 the configuration of the site, if we tried to
11 do underground parking, just to get the ramp
12 at an acceptable slope, our architect
13 estimated in her testimony, it's about 85 feet
14 down, which would consume most of the
15 underground space.

16 Then you want to show where the
17 lot -- where the Metro Zone of Influence is,
18 Christiane? We are right across the street
19 from the Metro Station and the tunnel goes
20 right by us where Christiane is indicating.

21 CHAIRPERSON MILLER: I'm sorry,
22 you --

1 MS. COOPER: You need a
2 microphone.

3 CHAIRPERSON MILLER: -- need a
4 microphone to be on the record.

5 MS. DeJONG: The hatched area in
6 the drawing indicates the area on the level
7 that could be developed for use as parking or
8 whatever due to the influence of the Metro and
9 the restrictions on building within the
10 proximity to the Metro structure.

11 MS. COOPER: So that would -- all
12 of those would make it extremely inefficient
13 and extremely costly to provide the lot
14 occupancy and the parking. In addition, in
15 terms of unique difficulty, that it is just
16 the eastern corner of the site that is Zoned
17 C-2-B where we could have 80 percent lot
18 occupancy. Most of the site -- it is split
19 zoned. Most of the site is R-5-B with a 60
20 percent lot occupancy.

21 So the building has 74 percent.
22 If the site were configured differently and

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1 the wider part of the site was the C-2-B
2 section, we also wouldn't have a problem, but
3 we just don't have enough space within the
4 acute angle there to include the sufficient
5 building to meet the library's needs.

6 And then lastly because this is a
7 D.C. Government building and the Green
8 Buildings Act of 2006 requires that it meet
9 LEED Silver Standards, one of the actions that
10 the library is taking in order to do that is
11 to simply reuse the foundation and the slab
12 that was there.

13 So what that means is it would be
14 impossible to meet the lot occupancy, because
15 using that foundation restricts us to the
16 foundation of the library that was there. It
17 also then segues then pretty easy into the
18 lack of adverse impact, because what we are
19 basically doing is replicating the footprint
20 that was already there. We are replicating
21 the number of parking spaces that were already
22 there and there was no detectable adverse

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1 impact from either of those on the Zone Plan,
2 on the neighborhood or anything else.

3 So given that the library is
4 intended to serve the neighborhood, expects
5 most of its patrons to arrive on foot, is
6 right across from the Metro and served by
7 major bus lines, so those that don't arrive by
8 foot have ample transit access as well, and on
9 top of that, if there were a need for parking,
10 both along the western side, along 8th Street,
11 and along the northern side, along R Street,
12 there is on-street parking permitted.

13 And for any large events that
14 would be taking place in the community rooms,
15 if there were insufficient street parking
16 available, there is just two blocks away is
17 Shaw Junior High on the north side of Rhode
18 Island Avenue and Seaton Elementary on the
19 south side, each of those have parking lots
20 that would be available during non-school
21 hours, which is when one would expect any
22 major use of the library would be occurring.

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1 And basically, in terms of any
2 harm to the public good, it really would be a
3 harm to the public good to force the library
4 to accommodate to the lot occupancy or the
5 off-street parking, because it would just mean
6 less money would be available for the
7 equipment, the furnishings and the books,
8 which is what the community really wants to
9 see enhanced in that site.

10 So I think, basically, it is
11 pretty clear in this case that there are
12 unique aspects to the site that correlate with
13 practical difficulties for meeting the strict
14 interpretation of the Zoning Regs and that
15 relief can be granted for those two provisions
16 with no adverse impact on the Zone Plan, the
17 Comp Plan or the public good.

18 So I would rest on that and be
19 happy to answer any questions.

20 CHAIRPERSON MILLER: Thank you.
21 That was excellent. My question is it's
22 replacing the library that was there on the

1 same footprint, right?

2 MS. COOPER: Right.

3 CHAIRPERSON MILLER: But is it
4 providing one more floor underground or is
5 it --

6 MR. MARTIN: It is not.

7 CHAIRPERSON MILLER: It's not.
8 It's the same? How many floors are we talking
9 about then, two floors? Oh, one story on
10 grade and two above. Okay. And the previous
11 slide had that? So is it really the same?
12 It's the same in lot occupancy situation as
13 what we there before, right?

14 MR. MARTIN: Right.

15 CHAIRPERSON MILLER: Same parking
16 situation as what was there before?

17 MR. MARTIN: That's correct.

18 CHAIRPERSON MILLER: Okay. And
19 the same foundation is there?

20 MR. MARTIN: Correct.

21 CHAIRPERSON MILLER: Okay. Thank
22 you. Other questions?

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1 VICE CHAIRMAN LOUD: Just a quick
2 question just for my own edification about
3 something that you said. I think it's a great
4 project and congratulations on it. Did you
5 say that you couldn't go underground for
6 parking, because the acceptable slope for the
7 ramp would require that you consume all of the
8 available space or that you couldn't do it
9 because it would cost too much?

10 MS. COOPER: It would consume 85--
11 the length of the ramp would have to be 85
12 feet.

13 VICE CHAIRMAN LOUD: Um-hum.

14 MS. COOPER: Which is -- right, 25
15 feet wide to meet the aisle width
16 requirements. So that would take up so much
17 of the parking space that you could get 6 or
18 7 spaces, which --

19 VICE CHAIRMAN LOUD: Okay.

20 MS. COOPER: -- I believe Ms.
21 DeJong estimated would probably cost close to
22 \$60 -- more than \$60,000 a space.

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1 MS. DeJONG: It's close to \$20,000
2 to \$24,000.

3 CHAIRPERSON MILLER: Could you put
4 that on? You need to talk into the record --
5 I mean, talk into the microphone so it gets on
6 the record.

7 MS. DeJONG: \$24,000 a parking
8 space for below grade parking is an average
9 for the District. And based on the number of
10 spots versus the area of construction, we
11 calculated that this would cost the District
12 roughly anywhere from \$55,000 to \$60,000 per
13 space, which is outrageously high, especially
14 given that these are not spaces that would
15 generate revenue for the library.

16 VICE CHAIRMAN LOUD: Thanks.
17 Okay.

18 MS. DeJONG: Which would also mean
19 that since that would be occupying the
20 underground space, you would then have to take
21 the community spaces, which are now
22 underground and put them up at another level,

1 so you would have three levels of the library,
2 plus underground parking. I mean, you know,
3 each time you have to do another level, it's
4 another uptick in expense.

5 VICE CHAIRMAN LOUD: So the
6 industry standard is that these underground
7 parking spaces cost between \$20 to \$24,000 for
8 each space? And in this project, it would
9 take about \$60,000. Okay. Thank you.

10 CHAIRPERSON MILLER: Could I just
11 follow-up? I'm just a little bit confused
12 about I thought you made reference to
13 underground something, community spaces
14 underground? What are you talking about
15 there? I thought before when I asked the
16 question you said it was no, we were talking
17 at grade and then two stories above. You said
18 below grade?

19 MS. DeJONG: It is a three-story
20 structure.

21 CHAIRPERSON MILLER: Right.

22 MS. DeJONG: And one of the

1 stories is below grade and two of the stories
2 are above grade. The spaces that are on the
3 lower level are largely community use spaces
4 and also back of house building infrastructure
5 spaces like mechanical, electrical, that sort
6 of thing.

7 The spaces on the lower level are
8 not full-time usage and so we felt for that
9 reason that it was appropriate to place them
10 on the lower level versus stack space which
11 really -- and open reading space which really
12 is requiring a lot of daylight has been put on
13 the upper two stories above grade.

14 CHAIRPERSON MILLER: Okay. And
15 then one other question. If you weren't
16 granted variance relief for lot occupancy, you
17 would need to add an additional floor to meet
18 your programmatic needs? Did we have a cost
19 of that?

20 MS. DeJONG: We don't have a cost
21 for that, but I can tell you that the
22 assemblage for an exterior wall construction

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1 is running an average of \$100 a square foot.
2 So if you add an entire extra story, I mean,
3 I would have to run some numbers in order to
4 give you that, but I can tell you it would
5 definitely be a very difficult situation for
6 the library financially.

7 CHAIRPERSON MILLER: And also, did
8 you say that it would be basically the same
9 result if you were required to have surface
10 parking, because you would be losing space
11 laterally as well?

12 MS. DeJONG: Yes.

13 CHAIRPERSON MILLER: Okay.

14 MS. DeJONG: That would be a cost
15 issue, but it would also be a functional
16 issue, too, for the library. The library has
17 certain adjacencies that are required for
18 program and the smaller your footprint is
19 getting, the more stacked you are in your use
20 of the building and then you lose those
21 critical adjacencies. So it would be a
22 functional hardship also.

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1 CHAIRPERSON MILLER: Thank you.
2 Other questions? Okay. Why don't we turn to
3 the Office of Planning? Oh, wait, let me just
4 see, is anybody here from the ANC on this
5 case?

6 MS. COOPER: Mr. Padro did bring a
7 copy of a letter, because he learned today
8 that the ANC while it had been duly noticed
9 and had actually passed a letter of support,
10 it did not -- it never was submitted. So he
11 brought his own personal letter, which he left
12 with me, because he couldn't stay for this and
13 Ms. Bailey has it.

14 So we were in the lucky 30 percent
15 of times that the ANC did agree.

16 CHAIRPERSON MILLER: Okay. But
17 from what I understand, do you have a copy of
18 this letter?

19 MS. COOPER: Yes.

20 CHAIRPERSON MILLER: Okay. It's
21 not a letter from the ANC as a whole though.
22 It's from Mr. Padro?

1 MS. COOPER: Right. When Mr.

2 Padro --

3 CHAIRPERSON MILLER: Yes.

4 MS. COOPER: -- discovered that
5 the letter had not been sent, he wrote this
6 personally to convey to the Board that, in
7 fact, the ANC had voted to support it 3-1, but
8 he understood that it could not get the same
9 great weight as if you had an official letter
10 from the ANC.

11 CHAIRPERSON MILLER: Okay. Thank
12 you. Okay. Why don't we go to the Office of
13 Planning then?

14 MR. MORDFIN: Good evening. I'm
15 Stephen Mordfin with the Office of Planning.
16 And in this case, the Office of Planning is
17 willing to stand on the record, but I am
18 available for any questions.

19 CHAIRPERSON MILLER: Any
20 questions? Okay. I don't think we have any
21 questions. You did a very thorough report and
22 I think it is in line with what Ms. McCarthy

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1 just described also. So does the applicant
2 have any questions for the Office of Planning?

3 MR. MARTIN: No, we do not.

4 CHAIRPERSON MILLER: Do you have a
5 copy of the report?

6 MR. MARTIN: Yes, we do.

7 CHAIRPERSON MILLER: Okay. So no
8 one is here from the ANC. Is there anybody
9 here who wishes to testify in support or
10 opposition to this application? Not seeing
11 anyone, does the applicant have any closing
12 remarks?

13 MR. MARTIN: Again, we would just
14 like to thank the Board for their
15 consideration and we would, at this time, ask
16 if you are prepared to offer a Bench decision
17 with a summary order, we would appreciate
18 that.

19 CHAIRPERSON MILLER: Okay. The
20 Board is ready to deliberate on this
21 application. And I think we can do it under
22 motion and that motion would be to approve

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1 Application No. 17839 for two area variances,
2 for the construction of a new Watha T. Daniel
3 Shaw Neighborhood Public Library at 1701 8th
4 Street, N.W., a D.C. Public Library.

5 The first variance would be to
6 403.2 maximum percentage of lot occupancy for
7 an increase from 60 to 40 percent.

8 MEMBER WALKER: 74.

9 CHAIRPERSON MILLER: 74 percent.

10 Thank you. 60 percent is what's allowed, 74
11 percent is what they are seeking. And a
12 variance to 2101.1 to reduce the minimum
13 parking requirement from 14 spaces to zero.
14 Do I have a second?

15 MEMBER DETTMAN: Second.

16 CHAIRPERSON MILLER: Does anybody
17 want to start the deliberation?

18 MEMBER DETTMAN: Madam Chair, I
19 can take the Board through the variance test
20 for the two areas of relief, that is lot
21 occupancy as well as the parking requirements
22 under subsection 2101.

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1 With respect to the first prong of
2 the variance test, whether or not the property
3 is affected by an exceptional or extraordinary
4 situation or condition, we heard in the
5 testimony that the property has an irregular
6 shape and, in fact, it is characterized as
7 being an isosceles triangle, make sure that's
8 in the record.

9 It certainly has a small shape or
10 a small size. It's split zoned. It was
11 mentioned that, I think, roughly a quarter of
12 the property is within a Metro Zone of
13 Influence, which would complicate construction
14 and certainly increase construction. And I
15 hate to characterize it as sort of an
16 exceptional or unfortunate condition, but the
17 DC Green Buildings Act certainly puts
18 additional pressures and regulations,
19 requirements on this property.

20 So I think there is certainly a
21 confluence of factors there that contribute to
22 the first prong. With respect to the second

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1 prong, the exceptional or extraordinary
2 situation or condition giving rise to a
3 practical difficulty, we heard that the
4 reduction of the building footprint would
5 require an additional floor, thereby
6 increasing costs and certainly potentially
7 reducing the efficiency in terms of its LEED
8 rating. Reducing the footprint would also
9 seriously alter the library's programming.

10 With respect to the on-site
11 parking, providing the on-site parking below
12 grade we heard that the necessary ramp grades
13 would take up a substantial portion of the
14 site, thereby reducing the amount of space
15 that the library can dedicate to programming.

16 And again, the Metro Zone of
17 Influence would, essentially, take the cost of
18 constructing each below grade parking space
19 from \$24,000 to around \$55 to \$60,000.

20 And finally, the third prong of
21 the variance test whether or not granting the
22 variance will cause substantial detriment to

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1 the public good or substantially impair the
2 intent, purpose and integrity of the Zone
3 Plan. With respect to the lot occupancy
4 relief, I don't believe it is going to have --
5 it doesn't appear to have any adverse impacts
6 to the public good.

7 And with respect to the parking
8 requirements, the site is right across the
9 street from the Metro Station, the Shaw/Howard
10 University Metro Station, as well as it is
11 adequately serviced by several Metro bus
12 lines.

13 So it appears with respect to the
14 third prong of the test, the extent of the two
15 variances that are being requested will not
16 give rise to any sort of adverse impact to the
17 public good.

18 Oh, and finally, although we don't
19 have an official report from ANC-2C, we do
20 have a letter from Alexander Padro, who is the
21 Single Member District for 2C01, indicating
22 that, what is the date here, on September 3,

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1 2008, the ANC did take up the matter and voted
2 3-1 in favor of the application.

3 CHAIRPERSON MILLER: Thank you. I
4 think you covered that really thoroughly. One
5 other point that I think you didn't mention
6 only was that they had stated that they are
7 the sole occupant on the property and so with
8 respect to the lot occupancy, even though
9 there is an increase in lot occupancy, they
10 are not affecting any neighboring property's
11 light or air.

12 So I think that that was very
13 comprehensive. I don't have anything more to
14 add to that. Does anybody else? Okay.

15 Then there is a motion on the
16 table that has been seconded, I believe. All
17 those in favor say aye.

18 ALL: Aye.

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

22 MS. BAILEY: The vote is recorded

1 as 4-0-1 to grant the application, as amended.
2 Mrs. Miller made the motion, Mr. Dettman
3 seconded, Mr. Loud and Mrs. Walker support the
4 motion. And there is not a Zoning Commission
5 Member present at this time.

6 CHAIRPERSON MILLER: Okay. And
7 that can be a summary order, as there is no
8 party in opposition. One more to go. Okay.
9 Same parties at the table. Is that right?

10 MR. MARTIN: Right.

11 CHAIRPERSON MILLER: Okay. Good.
12 I think for the record, you probably should
13 introduce yourselves again on this case. Oh,
14 wait. Let Ms. Bailey call it also.

15 MS. BAILEY: Okay. Application
16 No. 17840 of D.C. Public Library, pursuant to
17 11 DCMR 3103.2, for a variance from the
18 parking requirements under subsection 2104.2,
19 to construct a public library, that's the
20 Benning Neighborhood Branch Library, at
21 premises 3935 Benning Road, N.E. I believe
22 the site is Zoned C-3-A, not C-2-A. And also,

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1 it is located in Parcel 171/135. And we do
2 have an Affidavit of Posting in this case,
3 Madam Chair.

4 CHAIRPERSON MILLER: Ms. Bailey,
5 that was one of the items that you had flagged
6 for us, the posting, so that's in order which
7 is what you are just saying now? Is that
8 correct? We have an Affidavit of Posting?

9 MS. BAILEY: Yes, Madam Chair. As
10 you know, it is required to be filed prior to
11 the hearing and we did not receive it until
12 today.

13 CHAIRPERSON MILLER: So it's not
14 that late.

15 MS. BAILEY: But we do have it in
16 hand.

17 CHAIRPERSON MILLER: Okay. So we
18 would need to waive the filing requirements?

19 MS. BAILEY: Yes, ma'am.

20 CHAIRPERSON MILLER: Okay. Any
21 problems with that? Okay. No problems with
22 that. That will be waived.

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1 Ms. Bailey, is there an issue with
2 respect to a signature on the Zoning Self-
3 Certification form?

4 MS. BAILEY: Yes. Did the
5 applicant -- let me just go to it very
6 quickly. Did the property owner sign the
7 self-certification form? I know, Ms.
8 McCarthy, you did, but is there a signature
9 from the property owner?

10 MS. MCCARTHY: We had submitted a
11 letter from the property owner authorizing us
12 as their agents. So -- but the property -- I
13 -- let's see, I can find the application here
14 and see whether -- I don't believe the
15 property owner actually signed the self-
16 certification.

17 MS. BAILEY: That's a housekeeping
18 matter, Madam Chair, that we could take care
19 of later after the hearing and prior to the
20 issuance of the order.

21 CHAIRPERSON MILLER: Okay. Any
22 other preliminary matters?

1 MS. COOPER: Mr. Vonvechio, who
2 signed the authorization letter, is here, so
3 I'm sure he would be happy to sign the self-
4 certification.

5 CHAIRPERSON MILLER: Great. Okay.
6 I think that takes care of our preliminary
7 issues. You can get that signed here today
8 and housekeeping will be in order. Okay.

9 I guess I would suggest if you
10 could just refresh our memories about this
11 library, similar to how you proceeded with the
12 previous case.

13 MS. COOPER: I would be happy to.

14 CHAIRPERSON MILLER: Thanks.

15 MS. COOPER: The library board is
16 to your right. It is located at 3935 Benning
17 Road. It is just a short distance from
18 Minnesota Avenue where Minnesota Avenue and
19 Benning intersect. Essentially, the 2104.2,
20 let me borrow your microphone, of the Zoning
21 Regulations permits us to reduce parking
22 spaces up to half if we are within a half mile

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1 of the Metro station and we are even less than
2 half a mile from the Metro Station, about
3 1,800 feet.

4 So I believe in terms of the test
5 of being in harmony with the intent and
6 purpose of the Zoning Regulations and Map, we
7 are very consistent with the provisions of the
8 special exception. And in addition to that,
9 I would note that the Comprehensive Plan Land
10 Use Policy Map calls for this area which is
11 also known as downtown Ward 7 to be a regional
12 center, which is one of only two in the city
13 along with Friendship Heights and Georgetown.

14 And regional centers are defined
15 as areas that have less density than downtown,
16 but more than other neighborhood centers in
17 the city. So that designation would
18 definitely actively encourage pedestrian and
19 transit activity, so reducing the parking
20 would be very consistent with the
21 Comprehensive Plan as well.

22 Then in terms of having no adverse

1 impact on the use of neighboring property, the
2 other test for the special exception, this
3 library is intended to serve the neighborhood.
4 I believe what Ms. Bailey just distributed to
5 you is a statement from the former branch
6 manager, Norberta Winborne, who unfortunately
7 was having surgery this week and couldn't be
8 with us to testify.

9 But she indicated that almost --
10 about 70 percent of the patrons in the library
11 come on foot and that the -- and that would be
12 consistent with the census data that we
13 reviewed which showed that almost 40 percent
14 of the households in Ward 7 do not own a car.
15 And that there are two libraries each within
16 a mile of this library. So we are talking
17 about a library which is very much based on
18 the neighborhood and looks to serve the
19 neighborhood.

20 And for those who are unable to
21 access by foot, there is not only the Metro
22 Station close by, there is a bus line that

1 drops people right in front of this library
2 that serves the Metro Station and there are
3 several bus lines as well that go down
4 Minnesota Avenue. So there is excellent
5 transit service to there.

6 And each of the -- in terms of any
7 adverse impact for parking spill-over, each of
8 the other uses next to this, next to the
9 library site, the parking -- I'm sorry, the
10 shopping center, the funeral home and the
11 Marshall Heights Community Development
12 Corporation Headquarters, they each have their
13 own parking lots.

14 Once again, the amount of parking
15 that we are providing is very comparable to
16 the amount of parking that was on the site
17 before. I think there were 15 parking spaces
18 before all those. Several of them were in the
19 back, which was in a very inconvenient
20 location. It slopes about 15 feet from
21 Benning Road to the back of the library and
22 then there is a retaining wall between that

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1 and the parking lot.

2 And although there were 15 spaces,
3 there were not the required ADA accessible
4 spaces, so that would have cut it down to 13
5 or 14 spaces at the most and we're at 12. So
6 we are pretty comparable to what was there
7 before. Ms. Winsome in her testimony
8 indicates there were not complaints from the
9 shopping center before, that patrons to the
10 library had been utilizing their lot.

11 In addition, there is parking on
12 Benning Road during the non-rush hour periods
13 and you can see from her testimony she talks
14 about busy times being after -- immediately
15 after school and on Mondays before 6:00, which
16 are times that, well, before 4:30, you could
17 use the parking spaces out on the street if
18 there were insufficient parking spaces next
19 door.

20 And then once again, because of
21 the site configuration, we were able -- this
22 is a larger site, so the library was able to

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1 accommodate its needs in two levels. One
2 which is right at grade at Benning and then
3 one that slopes down. As the property slopes,
4 so most of it is daylighted out the back
5 portion of the site.

6 But if we had to take more of the
7 land, you can see the parking spaces over on
8 the right there, for parking, then we would
9 have to add another level to the library,
10 which would only have a deleterious impact on
11 the public good, again, because it would take
12 money away from the budget for furnishings and
13 equipment and books.

14 So I think in this case, the
15 library pretty clearly meets the test for the
16 special exception and we hope that the Board
17 agrees.

18 CHAIRPERSON MILLER: Thank you.
19 That was very thorough and helpful. Let me
20 ask you this, because I think this is the
21 first time that I'm looking at that provision.
22 I think it is a fairly new provision, 2104.2,

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1 well, maybe not all that new. Actually new to
2 us looking at it.

3 It doesn't really give any
4 standards. It just says we can grant a
5 reduction and I assume that that just means
6 applying the general special exception
7 standard, which would be no adverse impact to
8 neighboring properties.

9 MS. COOPER: That's right.

10 CHAIRPERSON MILLER: Basically,
11 right? Provided it --

12 MS. COOPER: It is a new
13 provision, because previously the Zoning
14 Regulations -- you know, until several years
15 ago, there was no zoning required for D.C.
16 Government facilities. So that was instituted
17 in the last few years with full knowledge of
18 the program that the library had in mind and
19 a recognition that several of the sites were
20 close to Metro Stations and so there was a
21 presumption that the parking could be reduced
22 there without an adverse impact.

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1 CHAIRPERSON MILLER: Okay. So
2 this one is even simpler than the earlier
3 case. I mean, it's just a question of, you
4 know, are they near this Metro Station? Yes,
5 you know. And is the reduction 50 percent or
6 less? Yes. Okay. And then are there any
7 adverse impacts? And so I think that is what
8 is on the table. Would you agree? Let me ask
9 the Office of Planning. Would you agree with
10 that assessment?

11 MR. MORDFIN: I would agree with
12 that assessment. There are two criteria that
13 we put in when we wrote that provision.
14 Libraries were added to the Zoning Regulations
15 and we kind of mimicked a little bit about
16 what was above it where you could reduce
17 parking and just expanded it for libraries.

18 So one was that you be within half
19 a mile of a Metro Station, because we thought
20 that that way -- if it would reduce the demand
21 on parking, more people would be able to get
22 there by transit.

1 And the second was we maxed it at
2 50 percent that after that you would have to
3 go for a variance as in the previous case. So
4 this case meets those two. They are pretty
5 cut and dry whether you -- either you meet
6 them or you don't.

7 CHAIRPERSON MILLER: And is there
8 anything else you wanted to add? Because I
9 think, at this point, we're ready to go to you
10 anyway.

11 MR. MORDFIN: The only thing I
12 would add is that it does conform to the
13 requirements of section 2104.2 and, therefore,
14 the Office of Planning recommends that they
15 reduce the number of parking spaces from 20 to
16 12, which is a 40 percent reduction.

17 CHAIRPERSON MILLER: Okay. Any
18 questions? Any questions from the applicant?
19 You do have a copy of the Office of Planning
20 report, right?

21 MR. MARTIN: Yes, we do. No
22 questions.

1 CHAIRPERSON MILLER: Okay.
2 Anybody here from the ANC? Not seeing
3 anybody, did we have something from the ANC?
4 Yes, we do. We have not exactly from the ANC,
5 we have something from Alex Padro, who is an
6 ANC Commissioner in this ANC.

7 MR. MARTIN: No, wrong.

8 CHAIRPERSON MILLER: Wrong?
9 Sorry. That letter was in the previous case?

10 MR. MARTIN: Yes.

11 CHAIRPERSON MILLER: I'm sorry.

12 MR. MARTIN: Yes.

13 CHAIRPERSON MILLER: Do we have
14 anything from the ANC in this case?

15 MR. MARTIN: The hour is late.

16 CHAIRPERSON MILLER: Huh?

17 MR. MARTIN: The hour is late, we
18 understand.

19 CHAIRPERSON MILLER: It is.
20 Fortunately, this is the last case. Okay.
21 Okay. I don't believe we have anything in the
22 record from the ANC. Did you have any

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1 communications with the ANC?

2 MR. MARTIN: I don't believe so.

3 CHAIRPERSON MILLER: Okay.

4 MS. COOPER: No, we didn't. Oh.

5 Right, the library has had several meetings
6 out in the community. Mr. Williams, the head
7 of Intergovernmental Affairs for the Library
8 is here if you would like to question him
9 directly, but I know that he has tried several
10 times to communicate with the ANC and to ask
11 if they had any interest in the library making
12 a presentation or appearing and they did not.

13 CHAIRPERSON MILLER: Okay. Do
14 Board Members want to ask any other questions
15 on that? No, okay. Anybody else here in the
16 audience who wishes to testify in support or
17 opposition of this application? Okay. Not
18 hearing from anyone, any final questions? Any
19 closing remarks?

20 MR. MARTIN: I don't believe so.

21 I'll just give Ms. Cooper, if you would like
22 to add anything? If not, then we again would

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1 ask the Board for a Bench decision and a
2 summary order in this case, favorable
3 decision.

4 CHAIRPERSON MILLER: Okay. Thank
5 you. And I think the Board would be ready to
6 deliberate on this.

7 VICE CHAIRMAN LOUD: Madam Chair?

8 CHAIRPERSON MILLER: Yes?

9 VICE CHAIRMAN LOUD: Is this our
10 last case of the day?

11 CHAIRPERSON MILLER: Yes.

12 VICE CHAIRMAN LOUD: Okay. I want
13 to take a point of privilege.

14 CHAIRPERSON MILLER: Okay.

15 VICE CHAIRMAN LOUD: And just,
16 this will take 90 seconds, I think, ask Ms.
17 McCarthy if she could give me a 90 second
18 primer on LEED-certification and how the whole
19 point system works?

20 MS. COOPER: Well, actually --

21 VICE CHAIRMAN LOUD: If it cannot
22 be done in 90 seconds, don't worry about it.

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1 MS. COOPER: Well, I know that Ms.
2 DeJong is an expert and is actually the LEED-
3 certified professional.

4 VICE CHAIRMAN LOUD: Okay.

5 MS. COOPER: So she -- and whether
6 she can do it in 90 minutes --

7 MS. DeJONG: It's actually --

8 VICE CHAIRMAN LOUD: 90 seconds.

9 MS. COOPER: 90 seconds.

10 VICE CHAIRMAN LOUD: No, no, not
11 90 minutes. The Board Members would kill me.

12 MS. DeJONG: The US Green Building
13 Council is a D.C.-based nonprofit and they are
14 the ones who initiated the LEED process. LEED
15 stands for Leadership and Energy Efficient
16 Design. And essentially, it is a point rated
17 system to evaluate, objectively evaluate
18 performance of a building, both during
19 construction and then during the operational
20 life span of the building itself.

21 And it is -- there are five
22 categories that it is rated on and it has to

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1 do with sustainable site approach, water and
2 energy usage, also materials and resources,
3 meaning that you are looking for, you know,
4 renewable materials and local materials, which
5 is also an effort to support the local
6 economy. And also some innovation categories,
7 which actually we hope to go for with the
8 libraries in the way of that the library
9 itself might be a teaching tool.

10 So it goes far beyond that and I
11 won't bore you, but, essentially, that's the
12 gist of it.

13 VICE CHAIRMAN LOUD: And so you
14 get some points for each of these categories
15 depending on how --

16 MS. DeJONG: And there are
17 prerequisites, too.

18 VICE CHAIRMAN LOUD: Well, and
19 which one of these categories does parking
20 fall into?

21 MS. DeJONG: Parking actually
22 falls under the sustainable site category. It

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1 is --

2 VICE CHAIRMAN LOUD: Okay.

3 MS. DeJONG: -- you do receive a
4 credit for minimizing the number of spots that
5 you make available and also of those spots
6 that you make available, if you make them
7 available too van pools for staff, for
8 vehicles that are, you know, low fuel or
9 hybrids or shared, you know, exactly, so it's
10 actually encouraged.

11 And I should also add that several
12 of the LEED requirements are prerequisites, so
13 you have -- you start off with certain
14 assumptions in the building that are -- you
15 know, sort of cause some financial addition to
16 the cost of construction also.

17 VICE CHAIRMAN LOUD: Okay. Last
18 question. The five categories are water,
19 energy, materials, sustainability and?

20 MS. DeJONG: It's indoor air
21 quality. It's sort of reduction of the
22 volatile organic compounds, the smell and the

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1 odor of the chemicals that are released both
2 during construction and during the use of the
3 building, too.

4 VICE CHAIRMAN LOUD: Thank you.
5 Appreciate it.

6 MS. DeJONG: Sure.

7 CHAIRPERSON MILLER: Anything
8 else? Okay. Thank you very much. I think
9 that the Board is prepared to deliberate this
10 application, at this time. So I would move
11 approval of special exception relief for
12 Application No. 17840, pursuant to 2104.2, to
13 reduce the number of off-street parking spaces
14 required for the D.C. Public Library at 3935
15 Benning Road, N.E., from 20 spaces to 12
16 spaces. And do I have a second?

17 MEMBER DETTMAN: Second, Madam
18 Chair.

19 CHAIRPERSON MILLER: Okay. This
20 application seeks relief pursuant to 2104.2,
21 which authorizes the Board to reduce the
22 number of parking spaces for a public library

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1 located within a one half mile radius of a
2 Metro Rail Station by 50 percent. If the
3 Metro Rail Station is currently in operation
4 or is one for which a construction contract
5 has been awarded.

6 So in this case, they are asking
7 for a reduction of parking from 20 spaces to
8 12 and that's 40 percent, which is less than
9 the 50 percent that we are authorized to grant
10 under this provision. And they are less than
11 a half a mile from a Metro Station, so they
12 qualify and they are a public library, D.C.
13 Public Library, so they qualify under this
14 provision provided that we find, pursuant to
15 the basic special exception standards, that
16 they are in harmony with the purpose and
17 intent of the Zoning Regulations and Map and
18 that there is no adverse impact on the use of
19 neighboring property.

20 I think the applicant made a very
21 thorough argument on both of these points and
22 I would just highlight a few. One is that

1 this library is replacing a library that was
2 there that didn't have many more parking
3 spaces. I think it had 13 or 14 spaces, and
4 that didn't include ADA compliant spaces.

5 And there hasn't been a parking
6 problem for all the time that the previous
7 library was there. We have heard testimony
8 that 70 percent of the patrons walk to the
9 library, that is is a library that will be
10 serving the neighborhood. And that this
11 neighborhood -- well for Ward 7, we have been
12 given the statistic that almost 40 percent of
13 households don't own a car. So there is a
14 reduced demand of parking in the area.

15 There is a Metro Station nearby
16 which this regulation reflects a lower demand
17 as a result of a nearby Metro Station, plus
18 they said that there is also several bus lines
19 nearby. And that there are parking spaces on
20 Benning Road and some other parking lots. It
21 is in accordance with the intent of this
22 Zoning Regulation for sure in harmony with the

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1 Comprehensive Plan, which has mapped this as
2 the Minnesota/Benning area as a regional
3 center where pedestrian and transit activity
4 are encouraged.

5 I think that covers this case
6 pretty much. As I was saying, I think the
7 regulation, you know, was drafted specifically
8 for this type of situation and they fall right
9 within it. Any other comments on this? Okay.

10 Then al those in favor say aye.

11 ALL: Aye.

12 CHAIRPERSON MILLER: All those
13 opposed? All those abstaining? And would you
14 call the vote, please?

15 MS. BAILEY: Madam Chair, the vote
16 is recorded as 4-0-1 to grant the application.
17 Mrs. Miller made the motion, Mr. Loud
18 seconded, Mr. Dettman and Mrs. Walker support
19 the motion.

20 CHAIRPERSON MILLER: Thank you.
21 And this will also be a summary order as there
22 are not parties in opposition.

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1 MS. BAILEY: Thank you.

2 CHAIRPERSON MILLER: And we just
3 need to get that signature on the certificate.

4 MS. BAILEY: Yes.

5 CHAIRPERSON MILLER: The Zoning
6 Self-Certification form. Okay.

7 MS. BAILEY: Exactly.

8 CHAIRPERSON MILLER: Thank you
9 very much. Thank you very much for your
10 patience and waiting all day and good luck
11 with the library. Okay.

12 MS. COOPER: Thank you very much.

13 CHAIRPERSON MILLER: Thank you.
14 Ms. Bailey, we don't have anything else on
15 today's agenda, do we?

16 MS. BAILEY: No, Madam Chair. We
17 will see you in two weeks.

18 CHAIRPERSON MILLER: Okay. Thank
19 you very much. Yes, this hearing is
20 adjourned.

21 (Whereupon, the Public Hearing was
22 concluded at 6:50 p.m.)