

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +
PUBLIC MEETING

+ + + + +
TUESDAY

DECEMBER 4, 2007

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 11:10 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

LORI MONROE, ESQ.

The transcript constitutes the
minutes from the Public Meeting held on
December 4, 2007.

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P R O C E E D I N G S

11:10 a.m.

CHAIR MILLER: This meeting will please come to order. This is the December 4th Public Meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Ruthanne Miller. I'm Chair of the BZA. To my left is Mr. Marc Loud, and Mr. Shane Dettman, also members of the Board of Zoning Adjustment. Next to them are Cliff Moy, Office of Zoning, Sherry Glazer and Lori Monroe, Office of Attorney General, and Ms. Beverley Bailey, Office of Zoning.

Copies of today's meeting agenda are available to you and are located to my left on the wall bin near the door. We do not take any public testimony at our meetings, unless the Board asks someone to come forward.

Please be advised that this proceeding is being recorded by a court reporter and is also webcast live.

Accordingly, we must ask you to

1 refrain from any disruptive noises or actions
2 in the hearing room. Please turn off all
3 beepers and cell phones.

4 I just want to apologize to those
5 of you who have been waiting here patiently
6 since 9:30. We have several cases for
7 decision-making today, and some of them were
8 somewhat complex. The Board needed a little
9 bit more time to go through some of the
10 papers.

11 So that being said, does the staff
12 have any preliminary matters?

13 MR. MOY: Good morning Madam
14 Chair, members of the Board. There are, but
15 I think it would be expeditious handling it
16 case by case.

17 CHAIR MILLER: Okay. Thank you,
18 Mr. Moy. Mr. Moy, I think that we were going
19 to make one change to the schedule, just so
20 that the parties are aware.

21 I think that is that we were going
22 to put what's now scheduled as No. 4, Appeal

1 No. 17657 of 1231 Morse Street, Inc., at end
2 of the agenda.

3 So those who are interested in
4 that case will know that that one is coming a
5 little bit later. Okay. Then why don't we
6 call the first case?

7 Application No. 17692

8 MR. MOY: Yes. The first case for
9 decision-making by the Board this morning is
10 Application No. 17692 of Robert E. Bradley,
11 pursuant to 11 DCMR 3104.1 and 3103.2, for a
12 variance for the floor area ratio requirements
13 under Subsection 771.2, a variance from the
14 off-street parking requirements under
15 Subsection 2101.1, and a special exception
16 allowing a food delivery service, a pizza
17 delivery/carryout under Section 734 in the C-
18 2-A district at premises 914 - 11th Street,
19 S.E. That's in Square 996, Lot 809.

20 For the Board's note, this is the
21 advertisement that was published in the
22 record. I'll also note that at the last

1 hearing, the application was amended, to
2 include tax lots 14810 and 817. Tax Lot 817
3 is separated from the other abutting three
4 lots by a 16-foot wide public alley.

5 On November 27th, 2007, the Board
6 completed public testimony, closed the record
7 and scheduled its decision on December 4th.
8 The Board requested supplemental information.

9 The Applicant complied and made
10 its filing timely, and it's in your case
11 folders noted as Exhibit 31. I think with
12 that Madam Chair, unless there's more from the
13 staff, the staff will conclude its briefing.

14 CHAIR MILLER: Thank you. We did
15 receive an excellent supplemental filing from
16 the Applicant, which addressed all of our
17 concerns that were raised at the hearing last
18 week.

19 I want to touch upon briefly the
20 relief that's required now, based on that
21 supplementation, and note that there is no
22 opposition in this case. The ANC supports the

1 application, as does the Office of Planning,
2 Capitol Hill Restoration Society, and there's
3 no objections by the Historic Preservation
4 Office.

5 Also we received a petition by
6 surrounding neighbors. So what I think is
7 necessary first of all to clarify, based on
8 the supplement, what relief is required, and
9 then I think we can go through this fairly
10 quickly.

11 There was a question about whether
12 or not they needed a variance from FAR if they
13 combined lots, and what was presented to us
14 last week were tax lots. We've said that
15 zoning deals with lots of record, not tax
16 lots.

17 The Applicant then went to clarify
18 whether certain lots could be combined as lots
19 of record and submitted. The response is in
20 Exhibit 31. Basically, the lots that are
21 contiguous can be consolidated into one record
22 lot.

1 Therefore, it was represented that
2 tax lots 809, on which the building sits, and
3 814 and 810, which are both vacant but
4 intended to be used for parking, will be
5 consolidated into one record lot.

6 Therefore, looking at that as one
7 record lot, there will not be relief needed
8 from the FAR requirement, because their FAR
9 will be 1.126, and 1.5 is the maximum
10 permitted in the C-2-A zone, which this is in.

11 This was actually brought to their
12 attention originally by Office of Planning.
13 So therefore, that relief is not required.
14 But they do need relief, variance relief from
15 2117.4, for parking accessibility
16 requirements, because of the narrowness of the
17 lot. They can only do tandem parking for the
18 two parking spots that are required.

19 There was another question of
20 whether or not variance from 734.4 is
21 required, and that goes to the requirement for
22 a dumpster. We took a look at those

1 regulations and determined that the
2 regulations themselves don't require that that
3 be on the same lot. So therefore, we don't
4 see that the relief is required.

5 So what's at issue here is special
6 exception relief for food delivery service
7 under 734, and variance from the parking
8 accessibility requirements under 2117.4, to
9 allow the tandem parking.

10 2117.4 basically requires that
11 parking spots be directly accessible from a
12 street or alley, and that's not possible with
13 tandem parking.

14 I think that because of the time
15 constraints here and the thoroughness of the
16 Office of Planning report, that we might want
17 to adopt Office of Planning's findings.

18 They go through a full analysis
19 showing compliance with the special exception
20 provision of 734, and perhaps not deliberate
21 that point by point unless Board members feel
22 otherwise.

1 Okay, and so I think that we could
2 find that they meet that exception, and that
3 with respect to the variance analysis, I think
4 this is fairly simple, that they've made a
5 case there's a building on the property as is,
6 and picking up a certain amount of space.
7 Then behind it is a narrow property that's too
8 narrow for two adjacent cars.

9 So they have an exceptional
10 circumstance with the building already on the
11 property and the narrowness of the property
12 behind it, and the practical difficulty is
13 they can't provide two parking spaces in
14 accordance with the regs, which would be
15 adjacent, because the property's not wide
16 enough.

17 There's no adverse impact on the
18 public by having the tandem parking that was
19 put in the record and that we can see. So I
20 think that they meet that variance test.

21 They also, the Applicant also
22 offered a condition in response to Office of

1 Planning's proposed condition with respect to
2 the construction of the enclosure for the
3 dumpsters, and the proposed condition reads
4 that it conditioned its approval of the
5 special exception on the construction of
6 three-sided brick enclosure for the dumpsters
7 equal in height to the taller dumpster, but
8 not less than six feet, with opaque opening
9 not facing the residence district, including
10 a requirement that the enclosure run te full
11 length of the east side of Lot 817 (20 feet)
12 as a buffer from the residence district across
13 the alley.

14 This is in accordance with the
15 regulation. It's almost just a clarification
16 that they're complying with the regulation.
17 So I would suggest that we could include that
18 as a condition if we grant this application.
19 Any comments on this?

20 (No response.)

21 CHAIR MILLER: Okay. I'll move
22 it, and then if there's further deliberation,

1 we can do that. I would move approval of
2 Application No. 17692 of Robert E. Bradley,
3 pursuant to 11 DCMR 3104.1 and 3103.2, for a
4 variance from the -- whoops.

5 2117.4, to permit a required
6 parking space not to be directly accessible
7 from an improved alley or street, and a
8 special exception allowing a food delivery
9 service under Section 734 in the C-2-A
10 district at premises 914 - 11th Street, S.E.
11 Do I have a second?

12 MEMBER LOUD: Second, Madam Chair.

13 CHAIR MILLER: Further
14 deliberation?

15 (No response.)

16 CHAIR MILLER: Not hearing any,
17 all those in favor say aye?

18 (Chorus of ayes.)

19 CHAIR MILLER: All those opposed?

20 (No response.)

21 CHAIR MILLER: All those
22 abstaining?

1 (No response.)

2 CHAIR MILLER: And would you call
3 the vote please?

4 MR. MOY: Yes. Staff would record
5 the vote as 3 to 0 to 1. This is on the
6 motion of the chairperson, Ms. Miller, to
7 approve with condition, seconded by Mr. Loud.

8 We also have in support of the
9 motion Mr. Dettman and no other Board member
10 participating. Madam Chair, we also have an
11 absentee ballot from another participant on
12 this application, which was Mr. Hood.

13 His absentee ballot is to approve
14 with such conditions as the Board may impose,
15 and he also writes "I have no problems with
16 page three of the post-hearing submission. I
17 will concur with the Board."

18 So that would give a resulting
19 vote of 4 to 0 to 1.

20 CHAIR MILLER: Thank you, and I
21 would suggest that this could be a summary
22 order, as there's no opposition to this case.

1 MR. MOY: Yes.

2 CHAIR MILLER: Okay, thank you.

3 Application No. 17663

4 MR. MOY: The next case for
5 decision-making is Appeal No. 17663 of the
6 Friends of Babcock-Macomb House, pursuant to
7 11 DCMR 3100 and 3101, from the decision of
8 the Zoning Administrator to approve the
9 construction of a place of worship, a Buddhist
10 Center, in the D/NOPD/R-1-B district at
11 premises 3417 Massachusetts Avenue, N.W.
12 That's in Square 1939, Lot 42.

13 On October 16th, 2007, the Board
14 completed public testimony, closed the record
15 and scheduled its decision on December 4th.
16 The Board requested draft findings of fact and
17 conclusions of law.

18 These drafts were filed by the
19 parties, which are the intervenor, the
20 appellee and the appellant. These are noted
21 in your case folders as Exhibit 25, 26 and
22 Exhibit 30 respectively.

1 Finally, the staff notes that the
2 filing by Mr. Magnus, the Appellant, is
3 untimely filed, being late and should be
4 considered as a preliminary matter. So apart
5 from that, that concludes the staff's
6 briefing.

7 CHAIR MILLER: Thank you very
8 much. I would suggest we first deal with the
9 preliminary matter, as to whether we waive our
10 time limits for the filing of the proposed
11 findings of fact and conclusions of law by the
12 Appellant.

13 I would suggest that we do, as I
14 don't believe that there's any prejudice to an
15 party by doing so, and it's important to our
16 deliberation. Do I have any concerns that
17 respects that?

18 (No response.)

19 CHAIR MILLER: Okay. Now this
20 case involves, you know, a question of
21 religion, which is a sensitive issue, and on
22 the other hand, we have zoning regulations and

1 it is up to us to deal with any questions
2 involving the correct application of the
3 zoning regulations, and that is what's before
4 us in this case.

5 We have here Soka Gakkai
6 International. I'm going to refer to them at
7 SGI, which is the second oldest Buddhist
8 community in the Washington metropolitan area,
9 and the intervenor in this case.

10 They own property and are
11 constructing a building for use as a place of
12 worship, and the Appellant initially alleged
13 that the Zoning Administrator erred in three
14 decisions.

15 The first and the heart of this
16 case, that being the March 2nd, 2007 ruling,
17 that the proposed building qualifies as a
18 church or other place of worship, that can be
19 constructed as a matter of right in the R-1-B
20 zone.

21 They also had challenged as a
22 matter of record specific approval by DCRA of

1 Application No. 5263 on April 10th, 2007,
2 permitting construction. But I think that
3 that issue is enveloped in No. 1, in the
4 ruling where the ZA set forth the reasoning
5 for his decision.

6 It was also an issue about
7 excavation, sheeting and shoring permits, and
8 a permit allowing construction of a covered
9 pedestrian walkway. This Board dismissed
10 those appeals as untimely already.

11 So what's before us is to
12 determine whether the Zoning Administrator
13 erred in determining that the proposed
14 building qualifies as a house of worship or
15 place of worship under the regulations, and
16 thus is afforded matter of right status.

17 I also want to remind the Board
18 and the public that we've denied the
19 intervenor's motion to dismiss the appeal, for
20 failure to state a claim, because we found
21 that there is a claim, that the ZA erred in
22 determining that the building would be used as

1 a place of worship, thus entitling it to a
2 matter of right status.

3 It's possible that a religious
4 organization could use a building for another
5 purpose, that might fall outside what's
6 considered a place of worship. So we did find
7 that there is an issue, and that's what we are
8 addressing today.

9 Also, as a preliminary matter, I
10 want to note that ANC 3C did not participate
11 in the appeal. They did not submit a written
12 report, voted on at a properly-noticed meeting
13 that addressed this specific application.

14 The Applicant did submit an older
15 resolution dated January 25th, 2006, which
16 recommended that the Zoning Administrator
17 review the proposed to ascertain in
18 conformation to that which is a matter of
19 right in an R-1 district.

20 That's all they said with respect
21 to the Zoning Administrator, and then the
22 Zoning Administrator, I think, did do that.

1 The resolution was primarily addressed to
2 HPRB, where an application was pending at that
3 time.

4 So this Board is not required to
5 grant great weight to that resolution, and by
6 that meaning that we don't need to address the
7 issues that are raised in that resolution.

8 I think that we should keep in
9 mind when we are looking at this case, that
10 certainly District of Columbia laws enunciated
11 in our courts and one point in particular and
12 case in particular, I think, is significant.

13 That is the *Western Presbyterian*
14 *Church v. Board of Zoning Adjustment* of the
15 district court in 1994, in which the courts
16 said that zoning boards have no role to play
17 in telling a religious organization how it may
18 practice its religion.

19 A city cannot use its zoning laws
20 to regulate the way a particular religion
21 offers its prayers, or the way a religion
22 celebrates its holidays.

1 In that case, the district court
2 found the feeding of the homeless on church
3 property was religious conduct.

4 So I think that we perhaps, in
5 beginning our deliberations, should look at
6 it, how we normally go about addressing an
7 appeal, and that is we are to look at whether
8 the Zoning Administrator erred in his
9 determination.

10 So I think the first thing we look
11 at is what the Zoning Administrator's decision
12 was based on, and that is set forth primarily
13 and initially in that March 2nd, 2007
14 determination.

15 That is that letter by the Zoning
16 Administrator, in which he -- and this was Mr.
17 Bill Cruz at the time, explains why he finds
18 that this building will be used as a place of
19 worship.

20 In that letter, he sets forth what
21 he looked at in making that determination, and
22 one of it was the layout of the building,

1 which rooms are going to be used for which
2 purposes, the schedule of the activities, and
3 I think information provided by SGI, which
4 explains -- I guess that's in here, their
5 creed. I know that they do that in this case.

6 He found that the layout of the
7 building, with a large main room and smaller
8 room for worship activities, as well as
9 classrooms, fellowship hall and small amount
10 of office space, is typical of churches in
11 other places of worship.

12 Then I also want to say that this
13 is what the decision was based. But then we
14 had a hearing as to whether that was a proper
15 decision.

16 Then we had the new Zoning
17 Administrator, Mr. LeGrant, come and say what
18 he did, and he did an additional analysis of
19 the building plans, and he looked at
20 information that was provided to him about the
21 religion and the creed and the practices of
22 this organization.

1 He looked at the non-profit status
2 of the organization as recognized by the IRS.
3 He basically he looked at the totality of the
4 information that was before him, I think
5 including perhaps the ANC report.

6 So I also wanted to make one other
7 point and then open this up also for
8 deliberation. The Appellant doesn't contest
9 that the organization is a religious
10 organization. They only contest that the way
11 they're using this building is not as a place
12 of worship.

13 So our job, I think, is to look to
14 see whether the Zoning Administrator made a
15 reasonable interpretation of the facts, that
16 this building was going to be used as a house
17 of worship.

18 Worship is not defined in our
19 regulations. So then our regulations say if
20 it's not defined in our regulations at
21 199.2(g), where it's not defined in the
22 sections shall have the meaning in a Webster's

1 unabridged dictionary.

2 So I think we can then go to the
3 definition of worship, in evaluating whether
4 the Zoning Administrator did a proper
5 evaluation.

6 So looking at the definition of
7 worship, there are several definitions. We're
8 supposed to go to the unabridged dictionary,
9 and I think I'm going to read it as follows,
10 as I understand it.

11 One, it's a chiefly British, a
12 person of importance used as a title of
13 various officials, as magistrates and some
14 mayors. Two, reverence offered a divine being
15 or supernatural power, also an act of
16 expressing such reference.

17 Three, a form of religious
18 practice with its creed and ritual. Four,
19 extravagant respect or admiration for, or
20 devotion to an object of self-esteem.

21 So I think we can pick among
22 these, and I think that the most appropriate

1 for us to look at and other Board members, see
2 if you agree, is number three, a form of
3 religious practice with its creed and ritual.

4 Again, I would say that the
5 Appellant did concede at the hearing that
6 they're not contesting that this is a
7 religion.

8 They're only contesting that this
9 organization wouldn't be using the building
10 for worship, because their practices were more
11 like religious assembly or dialogue, engaging
12 in activities that promote peace, culture and
13 education based on Buddhism.

14 I think that there was the
15 argument raised by the Appellant that was not
16 religious activity. I think I'll open this up
17 to other comments at this point.

18 MEMBER LOUD: Thank you, Madam
19 Chair. I think you've done a good job of
20 laying it out. I just want to sort of walk
21 through my analysis very briefly, which was
22 very structural and straightforward.

1 I think you've, as I said, you've
2 laid out adequately and the way I would have
3 done it myself. I just want to reference
4 specifically the drivers that led me to my
5 decision.

6 First of all, we did hear
7 testimony from two witnesses by the appellee,
8 Mr. Matthew LeGrant and I believe Mr. William
9 Akin. In their testimony, both spoke to the
10 very issue that really is the issue here, and
11 that is what is worship and what constitutes
12 worship, particularly as applied to the plans
13 that were reviewed by the Zoning
14 Administrator, and the ideas that Mr. Akin and
15 his organization are attaching to what will be
16 done in the building.

17 What was instructive for me is
18 after Mr. LeGrant's analysis, he concluded
19 that 55.18 percent of the building would be
20 used for worship. He identified four rooms
21 and what would be done in each of those four
22 rooms, that in his mind constituted worship.

1 He talked about the main sanctuary
2 and how there would be first Sunday services
3 there. It would be the sacred gathering of
4 the organization.

5 They would go over their rituals
6 and their creeds, etcetera, and that that,
7 based on his 25 years of experience, certainly
8 constituted worship in the context of the Soka
9 organization.

10 He's talking about the small
11 sanctuary, which would have similar functions
12 as the large sanctuary, except for on a
13 smaller scale, and that those two constituted
14 worship. He talked to the chanting room,
15 where the organization's membership prays.
16 I'm trying not to use words from a different
17 paradigm, but prays or meditates or communes
18 with the Supreme Being.

19 He talked about the fellowship
20 room, and how fellowship was one of the three
21 treasures of the religion, and a very vital
22 part of how they bond with one another. All

1 of those being forms of worship in that
2 religion.

3 Then Mr. Akin followed him with
4 testimony, that not only those four specific
5 rooms, but I think he mentioned a couple of
6 other rooms; a classroom, I think a dialogue
7 room, and how each of those tied into worship
8 as well.

9 So for me, this testimony was
10 very, very, very instrumental in my decision
11 regarding whether or not worship would be
12 taking place in that building.

13 I contrasted that with the rest of
14 the record, and any testimony, any evidence in
15 the record that would suggest that something
16 other than worship would be going on in the
17 building.

18 The record was almost incomplete
19 as to the latter; that is, there was no real
20 clear definitive information in the record,
21 that these acts did not constitute worship.

22 There was some testimony that the

1 Appellant shared, that was gleaned from
2 websites and from cursory reviews, but was
3 largely personal opinion and was not
4 corroborated by anything outside of that
5 personal opinion.

6 In the case of the context of the
7 Appellant, the testimony was corroborated.
8 You had Mr. LeGrant and he had his version of
9 what was going on, and then that was
10 corroborated by the testimony of Mr. Akin.

11 So just sort of a long-winded way
12 of saying everything that you just said. But
13 those were some of the key drivers, in terms
14 of how I looked at the problem.

15 MEMBER DETTMAN: I have a few
16 comments to make, Madam Chair, and in sort of
17 approaching this case, I sort of had to answer
18 a few questions and sort of clarify a couple
19 of things in my head, in terms of some of the
20 things that came up in the testimony.

21 I guess sort of before actually
22 sort of mentally getting into the building and

1 looking at how the building was programmed,
2 the space allocation, how these rooms were
3 going to be used, I had some questions about
4 some of the things that came up in the
5 testimony related to the Appellant's
6 questioning of whether or not SGI is actually
7 a religion.

8 You know again, like you said, the
9 definition of worship, the definition of what
10 a church is. So in doing that, and the lack
11 of definitions in the zoning regulations, I
12 turned to Merriam Webster's.

13 First, sort of to address the
14 question of whether or not SGI is a religion,
15 you know, the definition of religion and in
16 particular the second one, commitment or
17 devotion to religious faith or observance, a
18 personal set or institutionalized set of
19 religious attitudes, beliefs and practices.

20 I also looked up denomination. A
21 lot of times people talk about whether or not
22 this is a recognized denomination. The

1 definition of denomination, part of it is a
2 religious organization whose congregations are
3 united in their adherence to its beliefs and
4 practices.

5 I think based on what we heard,
6 based on the evidence that's in the record,
7 based on the information that's on SGI's
8 website, I think that it's clear that SGI and
9 their practices of the Buddhist faith is a
10 religion, is a recognized denomination.

11 Clearly, the IRS sees them as a
12 religious organization in their granting of a
13 501(3)(c), and I believe that there are two
14 letters in the record.

15 One, these were alluded to by Mr.
16 LeGrant, a letter from the Interfaith Council
17 of Metropolitan Washington, and the other one
18 is the Cluster of Congregations, which talks
19 about their recognition of SGI as a religious
20 organization, a religion or a denomination.

21 So looking at the definition of
22 denomination, it uses the word

1 "congregations," and so I looked that up. A
2 religious community as an organized body of
3 believers in a particular locality.

4 As Mr. Loud said, Mr. Akin's
5 testimony really depended upon a lot about one
6 of the three treasures of Buddhism is the
7 community. So this gets me to my last
8 definition of what's a church, because if
9 you're going to have a congregation, you need
10 a place to congregate.

11 The definition of a church, the
12 first one is a building for public, and then
13 it goes on to say, "and especially Christian
14 worship." But nonetheless, it's a building.

15 There was question by the
16 Appellant on whether or not this building
17 being termed a cultural center, and actually
18 Mr. Akin went on to categorize their
19 facilities as depending upon their size and
20 use, cultural centers, community centers,
21 sometimes activity centers for the smaller
22 ones.

1 You know, there are a lot of
2 different faiths and faiths congregate in
3 different places. If you're Christian, you
4 congregate in a church, sometimes a cathedral.

5 If you practice Judaism, you
6 congregate in a temple. It seems that SGI and
7 Buddhists, they congregate in centers. So
8 it's clear in my mind that this building being
9 proposed can be considered a place of worship,
10 but I guess you can even consider it as a
11 church, because it's a place, it's a building
12 for public worship.

13 So sort of those are the questions
14 that I answered in my head in order to
15 actually get into the building, and Mr. Loud
16 alluded to being long-winded, but certainly
17 I've exceeded his time.

18 That allowed me to mentally get
19 inside the building and start to analyze and
20 critique the analysis, based on space
21 allocation, that the Zoning Administrator
22 looked at.

1 CHAIR MILLER: I just want to
2 respond to a few points, and one goes to the
3 space allocation, because I mean I think that
4 was very reasonable of the Zoning
5 Administrator to do that.

6 But then when we were talking at
7 the hearing, we were saying "Well, what about
8 religious organizations that don't practice in
9 traditional ways? Do they have to like meet
10 those kind of general space allocations?"

11 We brought up the Quaker religion
12 in that context. So then the Zoning
13 Administrator said that's why they look at the
14 totality of the circumstances, which I thought
15 was good. He just didn't look at just the
16 space.

17 I think we did address at the
18 hearing also Appellant's claim that this
19 should be a community center, which is defined
20 in our regulations at 209.2, and that is
21 defined as organized exclusively for the
22 promotion of social welfare of the

1 neighborhood.

2 If the ZA had done that, I would
3 say that would be an error, because that's not
4 what this organization is about. It's not
5 serving the neighborhood.

6 It's about its own congregants,
7 which serve, you know, a larger purpose, I
8 think, of peace and education and culture
9 that's set forth, I think, you know, in the
10 materials that were presented to the Zoning
11 Administrator.

12 So I think to me, since the
13 Appellant had already conceded that it was a
14 religion, all that was left for me to look at
15 was well, are they practicing in accordance
16 with their creed?

17 I think all the evidence shows
18 clearly that they are, and it was just that
19 the Appellant didn't consider that type of
20 practice worship, and I don't think that is a
21 judgment for us to make, other than are they
22 practicing in accordance with their creed,

1 according to when I look at the definition.

2 As opposed to, you know, were they
3 having or using this building for profit, for
4 gambling, for things like that. No. They
5 were using it for their religious purposes.
6 So their way of worship I don't think is up to
7 us to critique beyond that.

8 As the *Western Presbyterian Church*
9 case says, zoning boards have no role to play
10 in telling a religious organization how it may
11 practice its religion.

12 I think all that is required of us
13 here is to determine that it is using that it
14 is using this building to practice its
15 religion and worship in accordance with its
16 religion, and that it doesn't necessarily fall
17 into always the need Judeo-Christian-Muslim
18 categories. They practice according to their
19 own religion.

20 So I that covers it for me. Any
21 other comments?

22 (No response.)

1 CHAIR MILLER: It was an
2 interesting case, and you know, religion
3 raises a lot of emotions.

4 But I think when it comes down to
5 it before us, we have a narrow question,
6 whether the Zoning Administrator erred in this
7 case in determining that the building would be
8 used as a place of worship.

9 I would suggest that the Zoning
10 Administrator did not err. So I would move to
11 deny Appeal No. 17663, Friends of Babcock-
12 Macomb House. Do I have a second?

13 MEMBER LOUD: Second.

14 CHAIR MILLER: Any further
15 deliberations?

16 (No response.)

17 CHAIR MILLER: All those in favor
18 say aye?

19 (Chorus of ayes.)

20 CHAIR MILLER: All those opposed?

21 (No response.)

22 CHAIR MILLER: All those

1 abstaining?

2 (No response.)

3 CHAIR MILLER: Would you call the
4 vote please?

5 MR. MOY: Yes ma'am. Staff
6 records the vote as 3 to 0 to 1. This a
7 motion of the Chair, Ms. Miller, to deny the
8 appeal, seconded by Mr. Loud. For the motion
9 Mr. Dettman and we have no zoning commissioner
10 participating on this appeal.

11 Madam Chair, we also have an
12 absentee ballot from another participant, who
13 is Mr. Etherly, and his absentee ballot is to
14 deny the appeal.

15 If I may read, his comment is "I
16 find that the Zoning Administrator's decision
17 and underlying rationale in this matter to be
18 unassailable in both their logic and clarity.

19 "The Zoning Administrator's
20 determination and issuance of the final
21 building permit were proper and fully
22 supported by the facts."

1 So that would give the final
2 resulting vote as 4 to 0 to 1.

3 CHAIR MILLER: Thank you.

4 Application No. 17672

5 MR. MOY: The next application for
6 decision-making, Madam Chair, is Application
7 No. 17672 of LHO Washington Hotel Four, LLC,
8 pursuant to 11 DCMR 3103.2, for a variance
9 from their prohibition of expanding the gross
10 floor of the hotel by increasing the function
11 or meeting space with the construction of an
12 addition to a hotel, existing on or before May
13 16th, 1981.

14 Under Subsection 350.4(d) in the
15 R-5-E district at premises 1430 Rhode Island
16 Avenue, N.W. That's in Square 211, Lot 858.
17 On October 23rd, 2007, the Board completed
18 public testimony, closed the record and
19 scheduled its decision on December 4th.

20 The Board requested draft findings
21 of fact and conclusions of law on the
22 Applicant and parties, as well as allowing the

1 record to remain open for the filing of an ANC
2 report.

3 The ANC did file, and their report
4 is identified in your case folders as Exhibit
5 36. We also have filings of draft findings of
6 fact and conclusions of law from the
7 opposition party and the Applicant, and that
8 is identified as Exhibit 33 and 34,
9 respectively.

10 Staff finally notes that the
11 filing from the opposition party, Exhibit 33,
12 that there may be a preliminary matter on that
13 document. Staff will conclude its briefing,
14 Madam Chair.

15 CHAIR MILLER: Thank you. Let me
16 pick up with a preliminary matter. The
17 parties in opposition filed a document
18 entitled "Additional Facts," and this was
19 filed after the record was closed in the case,
20 except for the ANC report and draft findings
21 of fact and conclusions of law from the
22 Applicant and parties.

1 It may be that this party, not
2 being a seasoned litigant before the Board,
3 perhaps didn't understand what was meant by
4 proposed findings of fact and conclusions of
5 law. I'm not sure. I thought we usually try
6 to explain that, especially for community
7 members.

8 But in any event, these additional
9 facts don't also reflect that they were served
10 on other parties, which is also required by
11 our rules, and in particular the Applicant.
12 Therefore, I have concerns about accepting
13 this into the record, and would suggest that
14 we not accept it into the record.

15 The reason is, is that it attaches
16 photos and other documents that would be
17 evidence in the record, and there's no
18 opportunity for the other parties to address
19 this.

20 That's why we closed the record,
21 so that the record is closed when all parties
22 have had an opportunity to address each

1 other's evidence.

2 For that reason, I think there
3 could be prejudice to the other parties, which
4 is one of the reasons not to waive our rules.

5 We haven't heard from the other
6 party about this, perhaps because they haven't
7 even been served with it. So for those
8 reasons -- well, let me just also add. I
9 think there was a full opportunity to air all
10 the issues in this case prior to the closing
11 of the record.

12 So for that reason, I would
13 suggest we don't accept this into the record.
14 Others?

15 (No response.)

16 CHAIR MILLER: Okay. I gather
17 there is a consensus of the Board that we will
18 not take this document numbered Exhibit 33
19 into the record for purposes of our
20 deliberations. Okay. Does someone want to
21 start the deliberations now in the merits of
22 this application?

1 MEMBER LOUD: I'd be happy to
2 start us off, Madam Chair. This essentially
3 is an application on the part of LHO, which is
4 driven by some economic considerations. It's
5 a 179-room hotel with about a total floor area
6 right now of 109,164 square feet.

7 However, in what they call their
8 competitive set, the target customer base for
9 individuals should be about 55 percent and
10 they're currently at 80 percent, and they want
11 to get down to 55 percent.

12 So they've determined that the
13 only way they can do that is increase the
14 hotel meeting.

15 In order to increase the meeting
16 space, they're going to need a variance under
17 our Section 350.4, because number one, it will
18 increase the gross floor area of the property
19 from 105,169 to 109,169 plus the meeting
20 space, which is about 2,189.

21 Secondly, because our rules
22 require that any increase in the floor area in

1 the hotel that is dedicated to function or
2 exhibit space also requires a variance.

3 In this context, they brought a
4 number of witnesses forward to walk us through
5 the variance analysis, the uniqueness,
6 practical difficulty in harmony with the
7 zoning regulations and lack of a substantial
8 detriment.

9 I think Mr. Nettler testified that
10 the property has a very small lot size.
11 There's some challenges with the heights,
12 ceiling heights as well. I can walk us
13 through that a little more specifically. I'm
14 just sort of giving the big overview.

15 That there would be little public
16 detriment, although I think there was
17 testimony clearly that there was some
18 detriment involved. For example, there's
19 testimony that there would be loss of a tree,
20 there'd be some blocked parking, some noise,
21 etcetera.

22 But even that testimony, when one

1 probed further, was that their only three
2 times, I think, in the past 45 months were the
3 parking spaces actually blocked.

4 There was some testimony on the
5 part of one of the witnesses of LHO, of Mr.
6 Redmond, that the only way to get the meeting
7 space that the organization seeks and to get
8 it per industry standards is the addition,
9 because the floor plans for this particular
10 property, which was originally a rental
11 property, impeded column-free rooms, which is
12 what the industry requires for hotels, making
13 it a practical difficulty to get this
14 additional 2,100 square feet any other way.

15 I'm going to defer to my
16 colleagues. I think that generally sets us up
17 in terms of what the case was all about, and
18 I'm going to reflect a little bit further on
19 some of the specifics of the variance tests
20 that we were taken through.

21 Mr. Nettler said that the lot has
22 an odd size. It's an oddly-shaped lot as

1 well, and of course that the floor heights
2 were about eight and a half feet, and that
3 related to the whole column problem that he
4 talked about with respect to adding additional
5 meeting space.

6 In terms of practical difficulty,
7 he went on to talk about how it doesn't meet
8 the industry standard for unimpeded floor plan
9 space, that there was about 2,000 square feet
10 of meeting space that couldn't be acquired
11 without expanding the site, as it were, and I
12 think I mentioned that.

13 Also talked a little bit about
14 practical difficulty relating to the need to
15 maintain competitiveness in their industry,
16 and that there was no way to provide the
17 contiguous space, either inside or outside of
18 the property.

19 In terms of adverse impact, it
20 talked about the condo working with some of
21 the neighbors in the area, to shore up a
22 retaining wall that was going to be done at no

1 cost to the neighbors, and that there was a
2 pre-rodging that was going to be removed at no
3 cost to some of the neighbors, again testimony
4 that went to the element of minimizing any
5 adverse impact.

6 There was testimony also that the
7 Logan Circle Association supported it, as well
8 as some of the neighbors. I believe, as was
9 alluded to, the ANC report unanimously weighs
10 in in support of the zoning variance, which
11 has been marked as our Exhibit No. 36 and is
12 entitled to great weight. So with that, I'll
13 defer to my colleagues on further
14 deliberation.

15 CHAIR MILLER: Okay. I just want
16 to clarify, that this is a variance just from
17 350.4(d), which doesn't allow a hotel to
18 increase the area devoted to function rooms,
19 exhibit space and commercial adjuncts
20 specifically.

21 So that no matter how they would
22 have increased the space of the meeting room,

1 even if they did it within the hotel itself
2 without increasing its footprint, they would
3 have been required to seek variance relief.

4 I think that you covered a lot of
5 territory with respect to the variance test,
6 without specifically necessarily identifying
7 what's unique or exceptional, what the
8 practical difficulty is.

9 But you touched upon those areas.
10 I think one point about the uniqueness of this
11 particular hotel is also, I don't know if you
12 said this, but it was previously a residence,
13 and therefore it has characteristics that are
14 not common to most hotels, such as low
15 ceilings and columns that were made of cast in
16 place reinforced concrete, with certain column
17 widths.

18 The testimony was that they ranged
19 from 10.8 feet from the center to 14 feet from
20 the center. So that gave rise to a specific
21 practical difficulty of creating a meeting
22 space, with sight lines that were in

1 accordance with the industry standards.

2 I think that you also said that
3 there were certain economic reasons with
4 respect to their not being as competitive,
5 that created a practical difficulty that the
6 meeting rooms would address.

7 There was a lot of testimony about
8 meeting rooms bringing in certain groups, and
9 that was better economically for the hotels.
10 Then when we looked at the adverse impacts
11 that actually groups instead of transients,
12 there was testimony that that would result in
13 less traffic and parking problems, and guests
14 staying more within the hotel.

15 Then I'll let Mr. Dettman get his
16 words in here too. Also with respect to the
17 adverse impacts, we did hear testimony from
18 opponents in this case about concerns with
19 idling buses and deliveries blocking spaces,
20 and noise.

21 But none of this was particularly
22 related to the application that we're

1 considering, that the expansion would create
2 more of that problem.

3 In fact, we heard evidence that it
4 would decrease that problem. Other impacts
5 from this application. We heard testimony
6 that there would be a green roof put on the
7 addition.

8 That would be an improvement for
9 condominium owners who look at it, as well as
10 hotel guests, and that there would be improved
11 landscape.

12 So I think that the problems that
13 we heard were not really related to the
14 expansion at all, but just to regular
15 neighborly relations, I think, and that the
16 meeting space could only help them and not
17 hurt them. Mr. Dettman, what do you think?

18 MEMBER DETTMAN: I think Mr. Loud
19 and yourself covered it pretty well. Your
20 sort of first comment related to the
21 structural make-up of the building and the
22 spacing of the columns, that's the one thing

1 that I think is the real driver behind this,
2 the real exceptional situation.

3 With respect to the second prong,
4 whether or not this exceptional situation, the
5 structural layout of the building gives rise
6 to a practical difficulty, I think that was
7 covered pretty well.

8 You know, the Applicant testified
9 that, you know, currently they're heavily
10 based on transient clientele. They really
11 want to market this more group-based clientele
12 because it's easier to market, less labor
13 intensive, it's more efficient and, like you
14 said, potentially reduces traffic.

15 The only other comment I had, in
16 terms of the second prong, in Exhibit No. 34,
17 which was the, I think it's the post-hearing
18 submission from the Applicant, and I believe
19 it was finding -- it lists off the hotels that
20 were included in the applicant's competitive
21 set.

22 I know there were some questions

1 related to what makes up a competitive set and
2 why these particular hotels. I know I had
3 asked that some of -- the answer was that it's
4 primarily based on geographic location. The
5 hotels that are sort of located in close
6 proximity to the Hotel Helix.

7 The Applicant provides the list of
8 hotels that are in the competitive set, the
9 number of guest rooms and meeting space. I
10 guess if you wanted to, you could use those
11 numbers to identify how many square feet of
12 meeting space could be allocated to each guest
13 room.

14 If you use those numbers, it comes
15 out to be about 30 square feet per guest room.
16 If you apply that number to the number of
17 rooms that Hotel Helix has, you come up with
18 something in excess of 5,000 square feet.

19 With this addition, if
20 constructed, it would just basically come out
21 to be about 4,000 square feet. So they're
22 still sort of a little bit behind, in terms of

1 their competitive set, in terms of the amount
2 of space that they can offer to their
3 clientele.

4 I guess the main idea behind me
5 bringing that up is that -- the addition is
6 sort of de minimus. It's not overwhelming.
7 They're not trying to pull in big conventions.
8 I think DCOP in the report pointed out that
9 this addition is primarily going be used to
10 serve their guests, and not market it out to
11 larger groups that are not staying at the
12 hotel.

13 CHAIR MILLER: Okay. Yes, I think
14 the purpose of the regulation is to prevent
15 negative impacts on the surrounding
16 neighborhoods, and this is fairly a de minimus
17 expansion.

18 The way they described is that
19 they aren't going to be busing people in to
20 use this meeting room, that it's really going
21 to be just serve its own guests, and that
22 that's been the practice at these other

1 hotels.

2 MEMBER DETTMAN: I did want to
3 address one thing with regard to potential
4 impacts to the public or adverse impacts.

5 That had to deal with the amount
6 of parking that the hotel has. It was stated
7 by I think the hotel manager that they're
8 currently not filling t heir parking garage.

9 However, they don't make it
10 available to patrons of the hotel and bar,
11 because logistically that would be difficult.
12 I believe the hotel manager said that it
13 wouldn't be made available to people who were
14 coming to the hotel for a meeting function as
15 well.

16 I think that this addition -- with
17 that in mind, and this probably would not
18 result in an order or a condition in the
19 order. However, I see some opportunity where
20 maybe the hotel could potentially make it
21 available to people who are arriving at the
22 hotel to stay, as well as people who are

1 arriving at the hotel for some sort of meeting
2 function, especially if the garage is under-
3 utilized.

4 I think it was demonstrated during
5 the testimony that there are some traffic
6 issues that arise occasionally along Rhode
7 Island Avenue in front of the hotel, with
8 regard to loading, tour bus loading and
9 unloading.

10 So I think that there's
11 opportunity that the hotel could actually
12 utilize their parking garage a little bit more
13 effectively.

14 CHAIR MILLER: I mean I think with
15 any kind of institution or whatever in a
16 neighborhood, that there's always opportunity
17 to look at possible solutions to problems and
18 improve impacts on the neighborhood.

19 I think that is not specifically
20 related to this application, in that I think
21 that the issues that I recall hearing were
22 like -- the biggest problems were like

1 delivery trucks blocking. I don't remember a
2 lot about cars, and the conditions would go to
3 --

4 And you said it's not necessarily
5 a condition. It doesn't necessarily rise to
6 a condition, which a condition should
7 specifically address, mitigate a specific
8 adverse impact that was identified in the
9 record clearly.

10 I don't think we got any proposed
11 conditions. So I think it's basically a good
12 observation, and I think it would be a good
13 idea for them to make use of spaces that are
14 under-utilized. But I don't think we need to
15 address it in the order.

16 MEMBER LOUD: Since we're in the
17 good observations category but not conditions,
18 I just wanted to put on the record that Mr.
19 Serkin testified, and one of the things he
20 talked about was that his personal garage had
21 been blocked. Not a lot of times. I think it
22 was only three to four times in four to five

1 months.

2 But also that there was a spillout
3 of patrons from excessive drinking and
4 partying on certain nights. I'm just hopeful
5 that Helix heard that testimony and in moving
6 forward with what appears to be a really great
7 group of neighbors, that they're willing to
8 work through some of those issues.

9 MEMBER DETTMAN: Another
10 observation is that the driveway, Mr. Serkin's
11 driveway being blocked occasionally as another
12 point of concern that I had. I don't think
13 that anyone's driveway should be blocked, that
14 prevents them from coming and going from their
15 house.

16 I was surprised to see that given
17 that the hotel has two curb cuts, and they
18 have a U-shaped driveway, and they don't have
19 any loading, a loading berth or anything, that
20 they don't have that space between the curb
21 cuts allocated during business hours for
22 loading and unloading.

1 I know that the building that I
2 work in has that. So again, if the Applicant
3 is listening, I think that it might be a good
4 idea to maybe work with DDOT, to see what's
5 the feasibility of having that space allocated
6 to loading and unloading, just during normal
7 business hours.

8 CHAIR MILLER: Good point.
9 Anything else?

10 (No response.)

11 CHAIR MILLER: I want to just note
12 for the record, I think it's already been
13 said, but some of this, that Office of
14 Planning is in support of this application.

15 We did receive the report of the
16 Advisory Neighborhood Commission to us, which
17 does meet the great weight requirements, and
18 they are also in support of the application.

19 We have also letters in support
20 from neighbors at Exhibit 29. We have letters
21 from Justin and Michelle Kalinski, Richard
22 Albright, James Cain, Shannon Hebert, Monica

1 O'Connell and Joann Teal, and of course we do
2 have a party in opposition. Any other
3 comments?

4 (No response.)

5 CHAIR MILLER: Okay. Then I move
6 approval of Application No. 17672 of LHO
7 Washington Hotel Four, LLC, pursuant to 11
8 DCMR Section 3103.2, for a variance from the
9 prohibition of expanding the gross floor area
10 of a hotel by increasing the function or
11 meeting space, with the construction of an
12 addition to a hotel existing on before May
13 16th, 1981, under Subsection 350.4(d) in the
14 R-5-E district at premises 1430 Rhode Island
15 Avenue, N.W. Do I have a second?

16 MEMBER DETTMAN: Second.

17 CHAIR MILLER: Further
18 deliberation?

19 (No response.)

20 CHAIR MILLER: All those in favor
21 say aye?

22 (Chorus of ayes.)

1 CHAIR MILLER: All those opposed?

2 (No response.)

3 CHAIR MILLER: All those
4 abstaining?

5 (No response.)

6 CHAIR MILLER: And would you call
7 the vote please? Yes, Madam Chair. The vote
8 is 3 to 0 to 1 on the motion of the Chair, Ms.
9 Miller, to approve the application, seconded
10 by Mr. Dettman. For the motion, Mr. Loud.

11 Madam Chair, we also have an
12 absentee ballot from another participating
13 member, who is Mr. Etherly, and his absentee
14 ballot is to approve the application with such
15 conditions as the Board may impose.

16 So that would give a resulting
17 vote of 4 to 0 to 1, and the one of course
18 being no other Board members participating.

19 CHAIR MILLER: Thank you.

20 Application No. 17680

21 MR. MOY: The next application is
22 Application No. 17680 of First FSK, LP,

1 pursuant to 11 DCMR 3104.1, for a special
2 exception to continue the use of a parking
3 lot. This was last approved by Order No.
4 16912, which was issued on October 15th, 2002.

5 This is under Section 213 in the
6 R-1-B district at premises 4817 U Street,
7 N.W., in Square 1389, Lot 816.

8 On November 13th, 2007, the Board
9 completed a public testimony, closed the
10 record and scheduled its decision on December
11 4th. Before closing the record, the Board
12 tabled its motion to approve the application
13 with conditions.

14 Ruthanne Miller made the motion.
15 Shane Dettman seconded. The rescheduling of
16 the Board's decision would allow sufficient
17 time for the Board to fully review appropriate
18 language in the proposed list of conditions.

19 Although the Board did not request
20 any additional information, however, the
21 Applicant did receive a list of conditions
22 with revised language on November 26th, 2007.

1 That's noted as Exhibit 32, and
2 the Board should act on this filing as a
3 preliminary matter, since this was not
4 requested.

5 Other than that, that completes
6 the status briefing, Madam Chair.

7 CHAIR MILLER: Okay. Thank you
8 very much. I just also want to reiterate, in
9 case someone was not listening earlier before,
10 we did decide to skip Appeal No. 17657, which
11 was originally scheduled to be deliberated as
12 our number four item on the agenda, to last on
13 the agenda. Okay. That's what happened to
14 that one.

15 So with respect to Application No.
16 17680 in this preliminary matter of proposed
17 conditions, I guess it came in after the
18 record was closed. It's not clear to me that
19 -- Mr. Moy, do we have evidence that this was
20 served on the ANC or anything to that effect?

21 MR. MOY: I don't believe so,
22 Madam Chair. I would note though, I think

1 that, apart from any revised language, that
2 the proposed conditions and what was submitted
3 as the Applicant's, what do you call it, the
4 Applicant's proposed operational restrictions
5 on the parking lot, as revised, were for the
6 most part similar to what was before the Board
7 on November the 13th.

8 CHAIR MILLER: Okay, thank you.
9 Well, this is what I would say to my
10 colleagues.

11 What I did after the hearing,
12 basically what happened at the hearing that we
13 did decide, I believe, to approve the parking
14 lot and we started to go through conditions,
15 looking at the conditions of the previous
16 order, looking at proposed conditions.

17 As we started to do that, it just
18 became a little more complicated that we
19 thought in trying to get rid of redundancies,
20 in terms of trying to make the conditions not
21 too specific so they weren't flexible enough
22 to work out over a long period of time or to

1 interfere with business operation, whatever.

2 So in any event, based on what was
3 in the record at that point, I did draft and
4 consolidated a lot of the regulations, and I
5 did not look at these proposed conditions.

6 I don't think that they -- I don't
7 know if you all looked at them or not, but I
8 don't think that they are necessary to the
9 deliberation. If there's any doubt that the
10 ANC didn't get a chance to look at them, then
11 there could be some prejudice.

12 So I would suggest that we don't
13 accept it. But other comments?

14 (No response.)

15 CHAIR MILLER: Okay. So our
16 deliberation is not based on that document,
17 Mr. Moy, and I believe the consensus is that
18 it not be accepted into the record.

19 Okay. I think that we can do this
20 fairly quickly, because we really did
21 deliberate on this case at the last hearing,
22 and we just got stopped with respect to

1 putting down conditions that were very clear
2 and enforceable, and not redundant.

3 I want to just state that the
4 standard for conditions is to mitigate against
5 adverse conditions that were identified to the
6 Board. That's what these conditions should
7 do.

8 The adverse conditions that I
9 recollect from the hearing and the papers were
10 that this was a problem with commuter parking
11 and a problem with proper maintenance of the
12 lot.

13 So that being said, what I want to
14 do is just go through the conditions that were
15 primarily pulled from what was before us but
16 not exclusively, and go through them one by
17 one. But I don't think we need to take too
18 long.

19 The first one goes to the term,
20 and it says -- I believe -- does everybody
21 have -- do you have a copy of the proposed
22 conditions that I'm reading? Okay.

1 "Approval shall be from five years
2 from the final date of the order." I'm pretty
3 sure we deliberated this the last time, but
4 just in case, Office of Planning had
5 recommended five years and I believe the
6 Applicant had as well, and the ANC recommended
7 three.

8 I believe it was the consensus of
9 this Board that three was too short a period
10 of time to get established this parking
11 program that the owner had in mind, and that
12 we feel that with these conditions, we're not
13 concerned that we're going to need to look at
14 this in three years.

15 The second one reads "All areas
16 devoted to driveways, access lanes and parking
17 areas shall be surfaced and maintained with an
18 all-weather impervious or acceptable all-
19 weather pervious surface.

20 "In addition to traditional
21 impervious surfaces, allowable all-weather
22 surfaces include porous or pervious concrete,

1 porous asphalt and/or mechanically reinforced
2 grass, excluding grass or gravel."

3 This is taken from our regulations
4 now, and the previous condition was written
5 based on the regulations before they had been
6 amended by the Zoning Commission in Order 04-
7 34, to allow for pervious surfaces.

8 So basically, it just updates the
9 condition, to make it in accordance with the
10 regulations.

11 I think the following ones that
12 I'm going to read also are in accordance with
13 the regulations, and pretty much from the
14 previous order. So I'm going to go through
15 them pretty quickly, and stop me if you have
16 any concerns.

17 "3. The parking lot shall be
18 designed so that no vehicles or any part of a
19 vehicle projects over any lot line or building
20 line.

21 "4. No other use shall be
22 conducted from or upon the premises, and no

1 structure other than an attendant's shelter
2 shall be erected or used upon the premises
3 unless the use of structure is otherwise
4 permitted in the district in which the parking
5 lot is located.

6 "5. No vehicular entrance or exit
7 shall be within 40 feet of a street
8 intersection, as measured from the
9 intersection of the curb lines extended.

10 "6. Any lighting used to
11 eliminate parking spaces shall be arranged, so
12 that all direct rays are confined to the
13 surface of the parking lot.

14 "7. The parking lot shall be
15 landscaped with trees and shrubs, covering a
16 minimum of five percent of the total area of
17 the lot. The landscaping shall be maintained
18 in a healthy growing condition, and in a neat
19 and orderly appearance.

20 Eight. Okay, now getting into
21 eight, this is where we had addressed the new
22 parking situation that was presented to the

1 Board, to deal with the commuter parking.

2 This is where we have to balance
3 not being too specific with being specific
4 enough, to ensure that the Applicant actually
5 has a good program to deal with the commuter
6 parking problem. This is what I proposed.
7 Okay.

8 "8. A commercial parking lot
9 management company will be engaged to manage
10 the lot and maintain its appearance and
11 condition.

12 "9. The commercial parking lot
13 management company shall institute a parking
14 lot system designed to discourage commuter
15 parking.

16 "10. The parking restrictions
17 will apply during the hours of 8:00 a.m. to
18 6:00 p.m.

19 "11. An agent of the parking lot
20 management company will patrol the lot during
21 normal business hours, to enforce the parking
22 restrictions.

1 "12. The parking lot management
2 company will be responsible for daily
3 maintenance of the lot, keeping it free of
4 refuse and debris, and for power sweeping the
5 lot four times per year and providing snow
6 removal services when necessary.

7 "13. The parking lot shall be
8 cleaned every three days, and the landscape
9 maintained every ten days during the growing
10 season.

11 "14. The Applicant shall maintain
12 signage on the light posts on the interior of
13 the lot, stating that CVS is responsible for
14 maintenance of the lot and providing a
15 telephone number to call if the lot needs to
16 be cleaned.

17 "15. The Applicant shall report
18 to the ANC on a quarterly basis in writing,
19 regarding the condition of the lot and any
20 other concerns raised by the community."

21 So those are all of the conditions
22 that I recommend. Now what we didn't do was

1 specifically say that there would be this pay
2 and display system. It leaves the commercial
3 parking lot company to design a program.

4 I guess part of my concern was
5 well, maybe this pay and display won't be the
6 best thing, and they might want to do
7 something a little bit different.

8 I think it's important that they
9 be obligated to have a program, and that they
10 are answering to the ANC, but not that we have
11 to necessarily tie them to that specific
12 business operation.

13 MEMBER DETTMAN: I'd agree with
14 that last statement, Madam Chair, just as long
15 as -- I'm in favor of a condition that talks
16 about a structure or whatever, parking
17 program.

18 Just as long as it's worded in a
19 way that does not allow the Applicant to
20 simply just put up a bigger sign that says
21 "not for commuters," and that this is sort of
22 an active program that's going to actively

1 address, deter commuters from using that
2 parking lot for commuter purposes.

3 The way it's worded, I'm not
4 really worried about it.

5 CHAIR MILLER: I think that's
6 what's tricky here. You know, since they're
7 required to do it and if they're not doing it,
8 if they're not deterring the commuters, then
9 they're not going to be in accordance with it.

10 So I think it's enforceable.
11 Also, I put in the hours that they had said,
12 because I think that's important to know, when
13 this should be going on and when the lot is
14 free, basically, for neighbors or anyone else
15 to use.

16 And also that they're doing some
17 kind of enforcing, that they have to do some
18 type of enforcement. So, okay.

19 MEMBER TURNBULL: Madam Chair, I
20 would agree. I think the testimony of the
21 Applicant that we that we heard last time with
22 the system that they were looking to

1 implement, is a very positive aspect.

2 Whether or not you have to
3 specifically list that system, I don't think
4 you need to. But I think there's evidence on
5 record from the Applicant that they're trying
6 to be as positive as they can, and to work
7 with the neighborhood, to create an
8 enforceable system.

9 I think you're right. I don't
10 think you have to be specific and get into the
11 weeds of this.

12 CHAIR MILLER: Well, I think you
13 raise a good point, though, in that I think we
14 can reference in the order, perhaps you know,
15 what they are doing and stuff.

16 MEMBER TURNBULL: You could, you
17 could. At least it will be in there what type
18 of system they are looking to implement.

19 CHAIR MILLER: Right, right. I
20 guess it just gives them a little more
21 flexibility by not making a condition so
22 tightly tied to, you know, that specific.

1 We had a lot of questions about
2 how it was going to work and stuff, and it
3 seemed like it wasn't all like worked through.
4 Okay. Anything else? All right.

5 Then I would move approval of
6 Application No. 17680 of First FSK, LP,
7 pursuant to 11 DCMR Section 3104.1, as
8 conditioned, for a special exception to
9 continue the use of a parking lot under
10 Section 213 in the R-1-B district at premises
11 4817 U Street, N.W. Do I have a second?

12 MEMBER TURNBULL: Second.

13 CHAIR MILLER: Further
14 deliberation?

15 (No response.)

16 CHAIR MILLER: Okay. All those in
17 favor say aye?

18 (Chorus of ayes.)

19 CHAIR MILLER: All those opposed?

20 (No response.)

21 CHAIR MILLER: All those
22 abstaining?

1 (No response.)

2 CHAIR MILLER: And would you call
3 the vote please?

4 MR. MOY: Yes. Staff would record
5 the vote as 3 to 0 to 2. This is on the
6 motion of the Chair, Ms. Miller, to approve
7 the application as conditioned, seconded by
8 Mr. Turnbull. Also in support of the motion
9 Mr. Dettman, and we had two other Board
10 members not participating. Again, 3 to 0 to
11 2.

12 (Pause.)

13 CHAIR MILLER: I guess I would
14 just ask this of Ms. Monroe, I believe, what
15 this would be a summary order? Okay. The ANC
16 is basically in support of the application.
17 We didn't go with their term recommendation,
18 but okay. We certainly have addressed it
19 here.

20 Okay. Let's leave it at that
21 then. Okay. If we want to add anything else
22 in this summary order with respect to what the

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1 Applicant may have represented that they're
2 doing, we would be free to do it.

3 But this would be a fairly speedy
4 order, then, that would be coming. Okay.
5 Thank you.

6 (Pause.)

7 Application No. 17637

8 MR. MOY: The next application is
9 No. 17637 of Simon and Robyn Hinson-Jones,
10 pursuant to 11 DCMR 3103.2, for a variance
11 from the lot occupancy requirements under
12 Section 403, a variance from the rear yard
13 requirements under Section 404, a variance
14 from the court requirements under Section 406,
15 and a variance from the non-conforming
16 structure provisions under Section 2001.3, to
17 allow an addition to an existing single-family
18 row dwelling in the CAP/R-4 district, at
19 premises 320 South Carolina Avenue, S.E.
20 That's in Square 794, Lot 13.

21 On November 13th, 2007, the Board
22 completed public testimony, closed the record,

1 and scheduled its decision on December 4th.
2 The Board allowed the record to be open for
3 possible revised drawings from the Applicant
4 and if that were to occur, a response from the
5 opposition party.

6 The Applicant filed revised
7 drawings, and that's in your case folders,
8 identified as Exhibit 37. There was a
9 subsequent filing to that, because two sheets
10 were missing. That's identified as Exhibit
11 No. 39. The opposition party responded, and
12 their filing is identified as Exhibit 38.

13 Finally in conclusion, Madam
14 Chair, the staff would like to note for the --
15 or bring to the table for the Board a recent
16 filing this morning, that arrived this morning
17 from a person who had requested party status
18 back on July 17th, for the Board's review and
19 consideration.

20 Staff will conclude its briefing,
21 Madam Chair.

22 CHAIR MILLER: Thank you. I would

1 suggest that we deal with the preliminary
2 issue first, and that being a letter dated
3 December 3rd, 2007, that was sent by a Miss
4 Tanya Dmytraczenko.

5 The letter is untimely in that the
6 record was closed, and also Ms. Dmytraczenko
7 is not a party in this case, as we did deny
8 her party status.

9 I would like to suggest, though,
10 that we take in this letter, just for the
11 limited purpose of addressing her concern as
12 to why she was denied party status and what's
13 happened with her filings, because there just
14 seems to be a concern reflected here and a
15 confusion over that, that I think we could
16 address and not get into the substance of
17 what's in the letter, because I also don't
18 believe that it was served on the other
19 parties. Again, that would be a prejudice to
20 the other parties.

21 So do I have consensus to address
22 just the party status application issue?

1 Okay. So that's the consensus of the Board.

2 What happened in this case, as I
3 recollect, is that we originally had this case
4 scheduled for July 17th, I believe, and she
5 was at the hearing. She had filed her
6 application for party status late.

7 The question arose at that hearing
8 whether we ought to consider her party status
9 at that time or wait until this hearing was to
10 be conducted later.

11 Actually, we were considering
12 postponement of the hearing because a party
13 was going to be going before HPRB, if I recall
14 correctly, and there might be changes to the
15 application.

16 So what was said at that hearing
17 was that she then would wait, and her party
18 status application would then be timely, and
19 she would be able to address the application
20 as it may be modified, and that if she could
21 not be here, that she could have an attorney
22 or another representative represent her.

1 So she was told about that, and I
2 think she was also -- I think the parties were
3 also informed to, as we often do, keep those
4 party status applicants apprised of
5 developments in the case and serve on them
6 anything that they would be serving.

7 In any event, this letter says
8 that she had authorized a Mr. Jeffrey to
9 represent her, and I think she means Mr.
10 Jeffrey Marks, who was granted party status in
11 this case.

12 What happened at the hearing was
13 that Mr. Marks said that he didn't necessarily
14 feel comfortable representing her interests.
15 So he didn't necessarily do that. She was on
16 notice that -- of the date of this hearing,
17 and it was her obligation really to get a
18 representative if she wanted one there.

19 So that's what happened with that.
20 I think we ended up denying party status,
21 because she couldn't participate in the
22 hearing. She wasn't there. She didn't submit

1 anything else in writing.

2 What we often do and what we did
3 do in this case was we have taken her written
4 material that she attached to her party status
5 application into the record as evidence, and
6 therefore we have considered her concerns as
7 set forth in her party status application.

8 Anybody have any other comments on
9 that?

10 (No response.)

11 CHAIR MILLER: Okay. So I think
12 she may still be out of the country, but I
13 understand that we are webcast all over the
14 world. So that if she's listening, that is
15 what happened to her application.

16 She was, you know, she could have
17 participated even in writing or whatever, but
18 she didn't submit anything in writing. So
19 what we have in writing from her originally,
20 before the closing of the record, has been
21 considered.

22 Okay. So then I think we can now

1 go to the merits of this application. Would
2 someone like to start discussion on that?

3 MEMBER DETTMAN: I'd be happy to
4 do that, Madam Chair. Just to sort of lay the
5 groundwork for sort of how we're to look at
6 this case, it is a request for variances, and
7 the variances that are being requested in this
8 case are all area variances.

9 Then under 3103.2, area variances
10 are to be held to the standard of a practical
11 difficulty. The proposal is for a third story
12 rear addition.

13 The third story addition has a 22-
14 foot six inch setback from the front of the
15 property, and as requested in HPRB's review of
16 the application, they also requested a six
17 foot setback from the rear of the property.

18 With respect to the first prong of
19 the variance test, which deals with
20 determining if the property possesses any
21 characteristics such as exceptional
22 narrowness, shallowness or shape, or contains

1 some other extraordinary exceptional situation
2 or condition --

3 Actually, before I go there, I'd
4 like to address the variances being requested
5 from 2001.3, which deals with additions to
6 non-conforming structures devoted to
7 conforming uses.

8 2001.3 states that enlargements or
9 additions may be made to the structure,
10 provided that (a) the structure shall conform
11 to the percentage of lot occupancy
12 requirements, except as provided in 2001.13."

13 Currently, the existing structure,
14 as situated on the lot, occupies 70.5 percent
15 of the lot, and so it exceeds the permitted 40
16 percent maximum lot occupancy allowed under
17 403.

18 The second part of 2001.3, which
19 is not really applicable to this application,
20 but it does note that it shall neither
21 increase nor extend any existing non-
22 conforming aspect of the structure, not create

1 any new non-conformity of structure, and in
2 addition the combine the proposed addition.

3 The third story addition in this
4 application will not increase any existing
5 non-conformity that exists on the lot
6 currently. The proposal will also not create
7 any new non-conformity.

8 I believe the two other area
9 requirements laid out in Chapter 4 deal with
10 the maximum allowable height of the building,
11 as well as the FAR.

12 Even with the proposed addition,
13 the structure and addition will remain under
14 the maximum allowable height, as well as the
15 maximum allowable FAR.

16 So getting into the three prongs
17 of the variance tests, the first one, again
18 dealing with this idea of exceptional
19 narrowness, shallowness, shape of lot or other
20 extraordinary exceptional situation, according
21 to the Applicant's testimony and sort of
22 reiterated in DCOP's report, the site was

1 developed somewhere between 1892 and 1907.
2 That's well before the 1958 zoning
3 regulations.

4 Specifically, the size of the lot.
5 The size of the lot is such that when the
6 zoning regulations were adopted, the subject
7 property became automatically non-conforming
8 as to the lot area, minimum lot width, lot
9 occupancy and rear yard.

10 The existing structure at the time
11 of the adoption of the zoning regulations was
12 also made non-conforming as to the open court
13 requirements in Chapter 4.

14 Other observations in regards to
15 the sort of physical characteristics of the
16 block of the property, most of the lots along
17 this lot, including the subject lot, appear to
18 have very small rear yards, which possibly
19 could be caused by the wide right of way of
20 South Carolina Avenue.

21 The right of way creates a 40 foot
22 deep setback in the front yard, which property

1 owners are not allowed to expand into. So
2 that sort of makes the Applicant's ability to
3 expand their property that much more
4 difficult.

5 Finally, with respect to the first
6 prong in the variance test, unlike many other
7 row houses along this block of South Carolina
8 Avenue, the subject property only has two
9 levels of living space, and does not have the
10 luxury of an English basement.

11 I believe that the idea of
12 excavating for an English basement and
13 underpinning the existing structure was
14 brought up in the testimony, and I believe the
15 Applicant's architect mentioned how difficult
16 financially, as well as structurally, that
17 would be.

18 So that the proposal to go
19 vertical and put on a partial third floor
20 addition was the better route to take.

21 Getting into the second prong,
22 dealing with whether or not these exceptional

1 characteristics of the property or the
2 structure give rise to a practical difficulty,
3 the characteristics of the property, as well
4 as the existing structure, do give rise to a
5 practical difficulty, in my view I guess.

6 The practical difficulty is for
7 the homeowners to achieve the full FAR of
8 their property as allowed by the zoning
9 regulations.

10 By no act of the property owners
11 did this property or structure become non-
12 conforming. It was simply by the adoption of
13 the 1958 zoning regulations.

14 These non-conformities were
15 created again, not by any action of the
16 current owner. In addition, the exceptional
17 situation created by the wide right of way of
18 South Carolina Avenue further limits the
19 owner's ability to expand their house.

20 So you have two things. It was
21 the adoption of the zoning regulations that
22 created these non-conformities, as well as the

1 wide right of way of South Carolina Avenue,
2 and the deep front yard setback that that
3 creates.

4 Getting into the final prong of
5 the variance test, dealing with whether or not
6 the relief can be granted without substantial
7 detriment to the public good, and without
8 substantially impairing the purpose and
9 integrity of the zone plan, the request is to
10 construct a modest vertical addition that will
11 not increase any existing non-conformity, nor
12 create any new non-conformity.

13 The approved addition, along with
14 the existing structure, will still be below
15 the maximum allowable height and FAR, as
16 allowed in Chapter 4.

17 The plan also includes, as I
18 noted, a 22.5 foot setback from the front of
19 the property, to prevent the visibility of the
20 addition from the front from South Carolina
21 Avenue.

22 After HPRB review, they also

1 requested a six foot setback from the rear
2 wall, to help preserve the character of the
3 existing historic structure.

4 I have a quote here that was
5 actually put into the record by the Applicant
6 from the HPRB project, and I'll just read that
7 quickly for the record.

8 It states "The architect and the
9 owners have made every effort to ensure
10 invisibility of the addition for the front,
11 and have increased the setback of the third
12 floor at the rear from three to six feet.

13 "The additional setback allows the
14 house to continue to read as a two-story
15 structure, and reduces the perceived increase
16 in height and bulk of the house from the
17 alley."

18 Finally it says "With this change,
19 the proposal is considered a compatible
20 alteration to this historic house." So HPRB
21 has given conceptual approval to this
22 application.

1 The application did have one party
2 in opposition, whose concerns really went to
3 the potential impacts of light, air and
4 privacy. The party in opposition was the
5 resident immediately next door.

6 With respect to light and air, it
7 doesn't appear that this addition will have an
8 undue impact to the availability of light and
9 air on the neighboring properties.

10 The addition is vertical and will
11 not result in an increase to lot occupancy,
12 and contains substantial setbacks from the
13 front and the rear of the property.

14 With respect to privacy, the party
15 in opposition expressed concerns related to
16 privacy of his back yard, as well as views
17 into his rear windows. It appeared in the
18 photograph submitted by DCOP in the report.

19 Given the development pattern of
20 that block, the tightness of the alley, the
21 existing houses that have third story addition
22 as well as two-story levels with windows that

1 have views into the neighbor's back yard, it
2 doesn't appear as if the addition would have
3 an undue impact, an increased impact to
4 privacy to the back yard.

5 During the hearing, we spent
6 substantial time addressing this issue of what
7 sort of modifications could be done to the
8 proposed balcony on the rear of the property,
9 in order to sort of mitigate the privacy
10 issues communicated by the party in
11 opposition, with respect to views into his
12 second floor bedroom and bathroom, I believe
13 that was.

14 Subsequent to the hearing, the
15 Applicant did submit revised plans, and that
16 is exhibit -- I'm not sure what exhibit number
17 that was. 37. Exhibit 37. And what the
18 Applicant has sort of done is the proposal
19 actually had a balcony on the rear of the
20 property, whose railings sort of extended to
21 the edge of the roof line, to the sort of
22 property line that divided the Applicant's

1 property with the opposing party's property.

2 What the remedy to this situation
3 was was that the Applicant actually pulled the
4 railing back away from the roof line. It
5 looks like a distance of six feet, eight
6 inches.

7 So they pulled the railing and
8 actually angled the railing to prevent anyone
9 from actually walking out to the roof line of
10 the property and looking down into the
11 neighboring property's windows.

12 In addition, by freeing up the
13 space, the space that was freed up by pulling
14 the railing back, they propose a small storage
15 container, a permanent storage container with
16 a sloped roof that would sit on that section
17 of the roof that was freed up from pulling
18 that railing back.

19 It seems that this solution does
20 mitigate the privacy issues with respect to
21 views into the second floor windows of the
22 neighboring property.

1 I'll note in terms of community
2 coordination or community support, as I
3 mentioned, HPRB has approved the conceptual
4 design of this proposal. The report dated
5 October 30th, the Office of Planning indicates
6 they are not opposed to the request.

7 Finally, before turning it over
8 back to you, DCOP also indicated in the report
9 that ANC 6B at its June 12th meeting voted in
10 support of this proposal.

11 Unless I haven't seen it yet, it
12 appears that ANC has not filed an official
13 report into the record, but that may have been
14 filed subsequent to the end of the hearing.

15 I don't believe the ANC has
16 actually submitted an official report.
17 However, as I stated, OP in the report states
18 that at their June 12th meeting, the ANC voted
19 in support of this proposal.

20 With that, Madam Chair, I'll turn
21 it back to you or Mr. Turnbull for additional
22 comments.

1 CHAIR MILLER: I seem to have a
2 copy of the ANC report, Exhibit No. 21. ANC
3 6B voted 7-0-1 to support the Applicant's
4 request for the variance relief. The letter
5 was dated June 14th, 2007.

6 Okay. Mr. Turnbull, did you have
7 some remarks?

8 MEMBER TURNBULL: Madam Chair, I
9 think Mr. Dettman did an excellent job of
10 summarizing all the attributes of this case.

11 I guess what's a little bit, and I
12 would agree with him. I mean I think from the
13 standpoint of what we have heard, I thought
14 this was going to be straightforward, really
15 that they had met all the conditions.

16 What just troubles me is that when
17 we concluded at our hearing, we had talked
18 about dealing with either a privacy issue of
19 the fence or cutting back the railing, such
20 that the angle would --

21 And they've done that, but I guess
22 the sort of thing that wasn't expected is this

1 storage container that would be placed on the
2 deck, which I don't know if that has to go
3 back to HPRB.

4 I don't know if that's an issue
5 that -- I mean from our standpoint, it was
6 simply a matter of trying to protect the
7 window on the adjacent neighbor's house from
8 a view from the deck, and I thought we had
9 agreed with the Applicant on --

10 He had proposed several ideas that
11 they could do that. I think yes, they've done
12 it, but I think they've done it in a way that
13 at least I wasn't anticipating the solution to
14 be quite as architectural as another feature
15 on it.

16 I don't know what that does to our
17 -- I don't know if this is something that HPRB
18 has to weigh into or not. I mean it's a
19 feature -- although the storage container is
20 supposedly below the height of the railing, so
21 it's not visible above the railing, it's a
22 feature that hasn't been presented before.

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1 So I don't know. I'm torn. I
2 really don't think that, from the standpoint
3 of the actual addition, that's not an issue.
4 I think the issue that was in my mind was
5 simply dealing with the deck and the railing.

6 You know, I can go either way on
7 this. I'm just -- it's just something that
8 this little feature that just cropped up, that
9 we hadn't been -- that had not been talked
10 about before.

11 CHAIR MILLER: Okay. What I
12 recollect at the hearing was that the
13 Applicant, I thought said well, if they have
14 to make some changes, they would have to run
15 it by HPRB's staff. So I would think that
16 they would have. But I don't think that that
17 should stop us in our analysis. That would be
18 like their problem if they didn't. They would
19 have to go back to HPRB maybe. If this is in
20 the back, it may not be an issue for HPRB as
21 well.

22 MEMBER TURNBULL: Maybe not, maybe

1 not.

2 CHAIR MILLER: The other thing I
3 was just looking at was to make sure that they
4 did cc the party in opposition, and they did.
5 So that the record was open for them -- oh
6 here.

7 If you look at the cc, actually
8 they cc'd Mr. Marks, the party in opposition.
9 They cc'd the ANC. They cc'd the Office of
10 Planning, and they cc'd the Historic
11 Preservation Office.

12 We did not get any filings from
13 them in response.

14 MEMBER TURNBULL: You're right,
15 uh-huh.

16 CHAIR MILLER: I think that's
17 dated November 26, 2007, and it looks like
18 they did it by e-mail. So there was an
19 opportunity to respond if anybody had any
20 concerns.

21 MEMBER DETTMAN: Madam Chair, as
22 you stated, the party in opposition was served

1 with the revised plans, and he did in fact
2 respond.

3 CHAIR MILLER: He did respond.

4 MEMBER DETTMAN: In Exhibit No.
5 38, which was received by the Office of Zoning
6 on November 30th. I'll just read sort of the
7 -- he lists off the objections that he has to
8 that, and they're basically that he had at the
9 hearing.

10 In the last sentence he says "I
11 thank you for the opportunity. You allowed me
12 to respond to the revised drawings. Please
13 know that I remain in absolute opposition to
14 Application 17637."

15 MEMBER TURNBULL: Mr. Dettman, I
16 don't have No. 38. What are his objections?

17 MEMBER DETTMAN: He lists off four
18 of them. The first one again dealing with the
19 balcony as related to privacy issues that he
20 says he raised at the hearing.

21 Number two, the revised drawings
22 do not reflect either the options, either

1 reducing the width of the balcony or building
2 a privacy wall at the side of the balcony that
3 were discussed at our hearing.

4 Number three, the balcony as
5 illustrated in the revised drawings still
6 covers virtually the entire width of the
7 house, and that there's no guarantee that the
8 current owners or any future owner would keep
9 the permanent storage container where it is
10 now drawn. Number four, he just restates his
11 opposition to this case.

12 (Pause.)

13 CHAIR MILLER: Mr. Dettman, do you
14 see any problems with the storage container
15 per se?

16 MEMBER DETTMAN: I would agree
17 with Mr. Turnbull's comments regarding the
18 storage container. I think it's a new
19 feature. It's something that was never
20 brought up at the hearing.

21 In my opinion, it sort of changes
22 the rear elevation of the property. I know

1 that HPRB was very much concerned with this
2 sort of rear elevation of the property, which
3 prompted them to require that six foot
4 setback.

5 Yes, it is an element that sort of
6 interests me. Reading the HPRB report that we
7 have in the record, it says that HPRB grants
8 conceptual approval, delegates the final
9 approval authority to staff.

10 However, any approval should not
11 be construed as approval for necessary zoning
12 relief. I know that the Board has limited
13 authority in terms of recommending design
14 changes or anything like that.

15 Possibly, if we feel strongly
16 enough that the issue regarding privacy has
17 been mitigated by pulling the railing back.
18 However, the inclusion of the storage
19 container is something that we don't agree
20 with. I'll refer to you in terms of our
21 authority to say yes or no on that.

22 MEMBER TURNBULL: You know what?

1 I can go either way on this. It's just that
2 it's actually Mr. Marks, his remarks in --
3 he's a right-on, that these --

4 It was something that we hadn't
5 talked about, that he was expecting the
6 privacy wall or a cutback of the deck, and I
7 thought it was a fairly simple solution one
8 way or the other. It was fairly basic what we
9 were looking at here, and this was a no-
10 brainer.

11 It's just kind of an annoying
12 little feature that's cropped up. Again, it's
13 not in one sense. But it's just -- I don't
14 know why it appeared.

15 Again, I'm not totally opposed to
16 the idea. I mean I think they still protect
17 the view. It's just something the neighbor
18 hadn't expected.

19 I mean he's concerned about they
20 sell the house, someone comes in and can
21 remove the box, and then of course they can go
22 right up to the fence and look in the window

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1 again. So I don't know what kind of, in the
2 order how that restricts anybody changing
3 anything like that in the future.

4 So it's -- I mean in theory, it's
5 a permanent box, so it's going to take
6 something to remove it. I mean this thing is
7 not simply that you go in and take it out.

8 You've got to -- it's going to be
9 nailed down. You're going to rip it up, but
10 I don't know. It's just I was expecting a
11 fairly simple solution to the screening and
12 the deck.

13 This just seems to have encumbered
14 it a bit. Again, I'm not totally opposed to
15 it; I just it's a little wrinkle.

16 CHAIR MILLER: It is a little
17 wrinkle. I think we have to figure out how we
18 deal with this, because the plans were revised
19 in order to address the privacy concerns of
20 the neighbor, and it seems to me we'd be
21 creating other problems and not satisfying the
22 concerns of Mr. Marks.

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1 (Pause.)

2 CHAIR MILLER: Okay. I want to
3 say on the record that this letter from Mr.
4 Marks, I just noticed that, which addresses
5 the concerns.

6 So I think that the Board -- this
7 is a peculiar situation, in that, you know,
8 this is a new kind of structure put on this
9 balcony, in an attempt to address privacy
10 concerns. It may be creating other problems
11 that the Applicant never had before in the
12 original application.

13 So I think that the Board just
14 wants to take a few minutes and just let this
15 settle, and determine how we want to proceed.
16 So instead of doing that out here, I think
17 that we're just going to take a few minutes
18 and take a break, and then come back.

19 (Whereupon, a short recess was
20 taken.)

21 CHAIR MILLER: Okay. We're back
22 on the record. We just paused for a moment to

1 consider how to address the fact that the
2 Applicant added this storage container to the
3 design, in order to address the concerns of
4 privacy.

5 But in fact, it seems to have
6 raised other concerns among the Board members,
7 and it's not -- certainly not a necessary
8 element of the application. I think that the
9 Board yet is not inclined towards that
10 element, and I think I'm going to let Mr.
11 Dettman and Mr. Turnbull address the concerns
12 about that, and then how we'll proceed.

13 MEMBER TURNBULL: Thank you, Madam
14 Chair. You know, I think what's -- although
15 the solution in one sense addresses the
16 privacy issue that was raised, I think as you
17 were talking, it introduces an element that up
18 until that point, which was unforeseen, which
19 I think raises other issues about the deck and
20 what the deck's being used for that I think we
21 weren't expecting to have to deal with.

22 I would, I guess, refer it back to

1 the Applicant for possible changes, or getting
2 back to our original discussions on the deck
3 previously from the hearing, to address some
4 of the issues that we had talked about at that
5 time.

6 I guess, I mean, it is a solution.
7 It is a solution to the privacy no doubt, I
8 think. But I think it just introduced an
9 aspect that this Board had not been subject to
10 previously, and I just think there's aesthetic
11 things that may go beyond our jurisdiction.
12 I don't know if they want to get into that or
13 not.

14 But I would refer it back to the
15 Applicant and have them get back to the
16 original, what we had talked about at the
17 hearing, and have them maybe present some
18 revised drawings that better reflect what we
19 were all thinking about at the time.

20 Maybe I'll leave it to Mr. Dettman
21 to add his comments on that.

22 CHAIR MILLER: Okay. Then I would

1 suggest that we provide the Applicant the
2 opportunity to revise the plans one more time
3 in response to what the Board has said today,
4 and that that -- and in those plans, should he
5 do that, it would be served on the parties.

6 Then I believe we would be able to
7 do this quickly enough to deliberate before
8 the end of the year, which would be December
9 18th. So Ms. Bailey, do you think you could
10 set a schedule for that?

11 MS. BAILEY: If the Applicant is
12 able to get those plans back to us, I imagine
13 about a week or a week and a half. I'm
14 looking at the Applicant, hoping he would look
15 at me and nod.

16 The Board could have those, let's
17 see. If we have the plans by December 13th,
18 we could get it to the Board for the 18th, for
19 the Board's hearing on the 18th, Madam Chair.

20 CHAIR MILLER: Ms. Bailey, I think
21 we need to move that up, because we want
22 responses and the ANC to have an opportunity

1 to respond.

2 MS. BAILEY: Absolutely, that's
3 right. So the 10th, December 10th, and the
4 parties could respond by the 13th or the 14th
5 perhaps. That gives the Applicant almost a
6 week to file the revised plans.

7 MR. MOY: Madam Chair, I'd like
8 given the tendency of the parties, I would
9 like to give the parties as much opportunity
10 to respond as possible.

11 I would, if it's agreeable with
12 the Board, I would like to give the responses
13 from the party up to Monday the 17th, if the
14 Board's agreeable to that, and staff will see
15 to it that any filings will be delivered to
16 the Board before the end of the day on Monday,
17 assuming we get all responses in by three
18 o'clock on Monday the 17th.

19 CHAIR MILLER: Okay. I think
20 that's a good idea. I think that they should
21 have at least a week, and I think the Board
22 would have enough time to look at it on

1 Monday.

2 MS. BAILEY: So those dates again
3 are December the 10th for the Applicant to
4 file the revised plans; the parties are to
5 respond by December 17th; and the Board will
6 consider a decision at a special public
7 meeting on December 18th.

8 CHAIR MILLER: Thank you, Ms.
9 Bailey. So at that time we will consider
10 whatever plans will be before us at that time,
11 and Board members can make any further
12 comments on this case at that time. Any other
13 comments?

14 MEMBER TURNBULL: Madam Chair, I
15 would just like to say that this is really a
16 fine point in the overall application, that as
17 Mr. Dettman so brilliantly examined the case
18 and discussed all the points, that there is
19 obviously a lot of merits to this variance,
20 and that we're really dealing with a very
21 small aspect of something that happened at the
22 end of our hearing.

1 So again, it's in the Applicant's
2 best interest to really deal with this as best
3 to the advantage of himself and everyone as
4 quickly as possible.

5 CHAIR MILLER: I agree. It was
6 basically that new element that caused the
7 problem. So okay. Anything else?

8 (No response.)

9 CHAIR MILLER: Okay. So we have
10 one more case on the agenda for our decision
11 meeting, and it's now almost 1:30. I think
12 what the Board would like to do, this is
13 fairly complicated case coming up. So what t
14 he Board would like to do is break for lunch,
15 and come back and deliberate that case fresh.
16 So I think the Board is going to come back at
17 around 2:30 and deliberate the last case on
18 the meeting agenda.

19 We have a little flexibility this
20 afternoon, in that our appeal case has been
21 withdrawn. So that this shouldn't cause any
22 problem with respect to getting through the

1 cases on the hearing agenda this afternoon.

2 So with that, this meeting is
3 adjourned.

4 (Whereupon, at 1:27 p.m., a
5 luncheon recess was taken.)
6

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

2 2:58 p.m.

3 CHAIR MILLER: We're back on the
4 record for our public meeting of December 4th,
5 2007. Mr. Moy, would you call the last case
6 on the meeting agenda please? Ms. Bailey, are
7 you going to call it? Oh, Mr. Moy is here.
8 Thank you.

9 Sorry, I didn't notice that you
10 were not here and I was asking if you might
11 call the last case.

12 MR. MOY: My apologies. I forgot
13 to grab my pen.

14 CHAIR MILLER: Okay.

15 Appeal No. 17657

16 MR. MOY: The pen's mightier than
17 the sword, I guess they say.

18 Anyhow, the last case for decision
19 by the Board is Appeal No. 17657 of 1231 Morse
20 Street, Inc., pursuant to 11 DCMR 3100 and
21 3101 from the decision of the Zoning
22 Administrator, to deny a building permit

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1 application for revisions to an existing
2 building permit allowing for the
3 reconstruction of collapsed walls, for a
4 single family dwelling, with an addition and
5 a conversion to an 11-unit apartment building
6 in the R-4 district, at premises 1233 Morse
7 Street, N.E. That's in Square 4069, Lot 130.

8 On October 30th, 2007, the Board
9 completed public testimony, closed the record
10 and scheduled its decision on December the
11 4th. The Board requested additional
12 information, actually a number of post-hearing
13 documents, including draft findings of fact
14 and conclusions of law.

15 Staff will say for brevity that
16 the parties filed draft findings of fact and
17 conclusions of law from the appellee and the
18 appellant, which are noted in your case
19 folders as Exhibit 38 and 39, respectively.

20 I think with that, staff will
21 conclude its briefing.

22 CHAIR MILLER: Thank you, Mr. Moy.

1 Today we originally rearranged our schedule to
2 consider this case last, because it is one of
3 our more complicated cases, and there are
4 numerous pleadings and a great deal of
5 evidence in this case.

6 In considering this case, the
7 Board has actually determined that we would
8 like a little bit more briefing on one of the
9 issues, in order to decide.

10 That issue is of the equitable
11 doctrines of estoppel and laches that was
12 raised in Appellant's pre-hearing Statement
13 and motion for summary judgment, but not
14 really addressed by the parties in the
15 proposed findings and conclusions of law.

16 As Appellant's statement was
17 written before the hearing, we feel there was
18 a lot of evidence that came out in the hearing
19 that might be addressed to the elements of
20 those doctrines, and that we would like to
21 hear from the parties on those issues prior to
22 doing a deliberation on the application.

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1 So what I would like to suggest is
2 that both parties, I think there are two
3 parties, the Appellant and DCRA, file one more
4 post-hearing document, which probably would be
5 in the nature of a brief, addressing the
6 estoppel and laches arguments, and identifying
7 the evidence in the record that goes to the
8 elements of each of those doctrines.

9 I would suggest that these briefs
10 be filed by December 17th, if that's possible,
11 with a deliberation date now set for January
12 8th, which is our next public meeting.

13 I believe that representatives of
14 the parties are here today, so that if there
15 is a concern with that, I think we can open up
16 this meeting now to hear if there's any
17 concern with those dates, or any questions
18 regarding that. I see Mr. Brown is here and
19 DCRA.

20 Unless the Appellant is abandoning
21 that argument. Okay. Is there a problem with
22 those dates, or do you have any questions?

1 Why don't you introduce yourself for the
2 record?

3 MS. PARKER-WOOLRIDGE: Good
4 afternoon Madam Chair and Board members. My
5 name is Doris Day Parker-Woolridge, Agency
6 counsel.

7 MR. GREEN: Good afternoon Madam
8 Chair, members of the Board. My name is
9 Matthew J. Greene, Jr. I'm an assistant
10 attorney general representing the Department
11 of Consumer and Regulatory Affairs.

12 MS. BOLLING: Good afternoon Madam
13 Chair and the Board. Melinda Bolling, Agency
14 counsel for DCRA.

15 MR. BROWN: Patrick Brown,
16 Greenstein DeLorme Luchs, for the Appellant.

17 CHAIR MILLER: Okay. Are there
18 any concerns with the dates?

19 MR. BROWN: Was there some
20 significance to December 17th as a filing
21 date?

22 CHAIR MILLER: Okay. To be

1 perfectly honest, there is a significance.
2 The 18th is the last day of this year that the
3 Board will be together for hearing, and to
4 discuss any of the matters that are before it,
5 before we come back on the 8th.

6 So we thought it was preferable
7 for our purposes to have your documents by
8 then, in the event that we wanted to look at
9 them together before the 8th, if you can make
10 that deadline.

11 MR. BROWN: That's fine, and then
12 this decision on the 8th of January. This
13 other thing, so that we can both respond as
14 efficiently and effectively as possible,
15 perhaps if the Board had any more specifics as
16 far as what you're looking for in part of the
17 briefing, or just to marry the estoppel and
18 laches arguments in law to the record? Is
19 that what the Board --

20 CHAIR MILLER: Yes. That's what
21 we're looking for.

22 MR. GREEN: We'll accept this

1 date, Madam Chairman.

2 MR. BROWN: 3:00 p.m. on the 17th
3 for the filing, December 17th?

4 CHAIR MILLER: Yes.

5 MR. BROWN: Okay.

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

8 MR. BROWN: Okay, thank you.

9 CHAIR MILLER: So I believe that
10 that concludes our agenda for our meeting for
11 December 4th; is that correct, Ms. Bailey?

12 MR. MOY: Yes, Madam Chairman.

13 CHAIR MILLER: Mr. Moy, okay. So
14 in that case, I'm going to adjourn our meeting
15 and we will be back briefly to convene for our
16 hearing this afternoon.

17 (Whereupon, at 3:05 p.m., the
18 public meeting was concluded.)

19

20

21

22