

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

DECEMBER 11, 2012

+ + + + +

The Regular Public Hearing  
convened in the Jerrily R. Kress Memorial  
Hearing Room, Room 220 South, 441 4<sup>th</sup> Street,  
N.W., Washington, D.C., 20001, pursuant to  
notice at 9:40 a.m., Lloyd Jordan, Chairperson,  
presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson  
NICOLE SORG, Vice-Chairperson  
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN GYOR  
STEPHEN MORDFIN  
MAXINE BROWN-ROBERTS  
ARTHUR JACKSON  
PAUL GOLDSTEIN

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF  
PRESENT:

ANNA CHAMBERLIN

The transcript constitutes the  
minutes from the Public Hearing held on  
December 11, 2012.

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

9:40 a.m.

CHAIRPERSON JORDAN: Good morning.

Will the hearing please come to order?

We're here at the Jerrily R. Kress  
Memorial Hearing Room at 441 4th Street, N.W.

Today's date is December 11, 2012.

We're here for the public hearing  
of the Board of Zoning Adjustment of the District  
of Columbia. My name is Lloyd Jordan,  
Chairperson. To my right is Jeffrey Hinkle,  
member of the Board. To my left is Nicole Sorg,  
Vice Chairperson. To her left is Michael  
Turnbull, member of the Zoning Commission.

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

The Board's hearing procedures and  
processes are contained in a pamphlet which is

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1 located by the door. So please feel free to  
2 get that.

3 Those who intend to testify in any  
4 of the hearing today, I'm going to ask you to  
5 stand and take the oath or affirmation from the  
6 Board's Secretary. And I'm also going to ask  
7 that you complete two witness cards for each  
8 person who is going to testify and give them  
9 to the court reporter prior to testifying.

10 With that, anyone who is planning  
11 to testify in any of the proceedings today,  
12 please stand and take the oath or affirmation?

13 (Witnesses sworn or affirmed.)

14 CHAIRPERSON JORDAN: Thank you.  
15 Whenever you're ready, Mr. Moy?

16 SECRETARY MOY: Yes, sir. Good  
17 morning, Mr. Chairman, members of the Board.  
18 The first application before the Board in this  
19 morning's session is Application No. 18459.  
20 This is the application as advertised, publicly  
21 noticed application of Quiton Cooper, pursuant

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1 to 11 DCMR 3104.1. This is for a special  
2 exception to allow additions, a cellar, third  
3 floor, and roof penthouse/deck, to an existing  
4 one-family semi-detached dwelling under section  
5 223, not meeting the lot occupancy requirements  
6 under section 403, rear yard requirements under  
7 section 404, side yard requirements under 405,  
8 and court requirements under section 406 in the  
9 R-4 District at premises 513 U Street, N.W.,  
10 property located in Square 3079, Lot 28.

11 CHAIRPERSON JORDAN: Good. Would  
12 the person or persons for Case No. 18459 please  
13 come forward.

14 Yes, would you identify yourself  
15 first, please?

16 Let me first make sure that you have  
17 turned the microphone on. You should have a  
18 bright, glowing green light. Come closer to  
19 the microphone. There you go. And did you  
20 provide the witness cards to the court reporter?

21 MR. BUSSE: Yes, sir.

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1 CHAIRPERSON JORDAN: Your name,  
2 please?

3 MR. BUSSE: My name is Jeremy Busse.

4 CHAIRPERSON JORDAN: Mr. Busse, in  
5 relation to this application, you are?

6 MR. BUSSE: I am the architect.

7 CHAIRPERSON JORDAN: The  
8 architect. Do we have in this file the  
9 authorization -- is it Busse?

10 MR. BUSSE: Busse, yes.

11 CHAIRPERSON JORDAN: All right,  
12 before we begin this particular hearing, I'm  
13 kind of confused regarding what relief is  
14 necessary. So let's get that straight before  
15 we proceed.

16 Have you seen the Office of  
17 Planning's report?

18 MR. BUSSE: I did see it, yes.

19 CHAIRPERSON JORDAN: Have you had  
20 discussion with them?

21 MR. BUSSE: A brief discussion.

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1 CHAIRPERSON JORDAN: Okay, in this  
2 regard, what is the height requirement? What  
3 is the height of this project? I couldn't tell  
4 from the elevations.

5 MR. BUSSE: Well, we were actually  
6 considering what the Office of Planning was  
7 calling a four story, we were actually  
8 considering as a penthouse which would not be  
9 included in the measurement for the height of  
10 the building. The intention for the penthouse  
11 is for mechanical equipment, in addition,  
12 maintenance to the building, and a roof garden.

13 So it wasn't intended to be a fourth story.  
14 So we're looking at a --

15 CHAIRPERSON JORDAN: Are you  
16 changing the drawings on this because I thought  
17 I saw on the drawings an aspect of that for it  
18 being habitable space.

19 MR. BUSSE: Well, I guess I'm not  
20 sure what would qualify as habitable space.  
21 It does include a mechanical closet. It does

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1 include a small powder room and then a work area.

2 So -- but again, the intent of this penthouse  
3 was not as habitable space, but really as work  
4 space for rooftop garden and for mechanical  
5 equipment.

6 MEMBER TURNBULL: Just continuing,  
7 I was just saying, just continue with your --  
8 if you've got a powder room up there and a sink,  
9 whatever that is, food preparation or whatever,  
10 a kitchen of some sort, that's a habitable room.

11 People can be up there and you could put a cot  
12 up there and chair up there. That's a habitable  
13 space.

14 MR. BUSSE: Okay, well, we would --  
15 it's not critical to the project. It was simply  
16 what we thought was an amenity, to be able to  
17 use the rooftop as a garden area, so we would  
18 be willing to eliminate the habitable space  
19 portion of the penthouse and really stick with  
20 mechanical space which is the primary intent  
21 of that level.

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1                   CHAIRPERSON JORDAN:       But your  
2 drawings that you submitted to us have that  
3 there.

4                   MR. BUSSE: Understood.

5                   CHAIRPERSON JORDAN: Additionally,  
6 as an issue of lot occupancy on this, we were  
7 -- from our understanding, do you want to tell  
8 us about the lot occupancy issue?

9                   MR. BUSSE: I believe that we are  
10 -- through the process, applying for 70 percent  
11 lot occupancy which is what the drawings  
12 indicate. So I'm not sure. It's above and  
13 beyond what the maximum is accepted in special  
14 exception where I believe you can go to 70  
15 percent.

16                  CHAIRPERSON JORDAN: It appears and  
17 again, if you reference the OP report, and  
18 especially in light of what our conversation  
19 we just had that you have an 89 percent  
20 occupancy.

21                  MR. BUSSE: I'm not sure where in

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1 the OP report it says 89 percent.

2 MEMBER TURNBULL: This was a recent  
3 submittal, supplemental report. It's dated  
4 December 11th. Do you have that?

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

6 CHAIRPERSON JORDAN: We still have  
7 a height issue here. Clearly a height issue.  
8 And you've got this -- this docket, it's set  
9 on the docket as a 223 for 223 relief and this  
10 is not qualifying for 223 relief based upon what  
11 you submitted in the plans and based upon your  
12 statements here today. So if you want to go  
13 forward with this hearing, really, you've got  
14 drawings that need to be amended and submitted  
15 to the Board.

16 I'm inclined to reschedule this for  
17 another date and give you the opportunity to  
18 one, meet with Planning, and making sure you've  
19 gotten all the i's dotted and t's crossed. One,  
20 that we have amended plans -- or have amended  
21 plans to reflect that which you've communicated

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1 here to the Board today.

2 Does the Board have anything --  
3 other thoughts on this matter?

4 VICE CHAIR SORG: Thank you, Mr.  
5 Chairman.

6 I think you have a really heavy lift  
7 here. You came in applying for three or four  
8 special exceptions. We think you need two  
9 special exceptions and three variances. The  
10 plans that you submitted are -- should have,  
11 in my opinion, sort of semi-labeled. You didn't  
12 have them label the floors. Some of the things  
13 are little bit unclear here.

14 So I think -- and also, you decided  
15 -- you're in a Historic District. You decided  
16 to come here before you're going to Historic  
17 Preservation. That's your right. But I think  
18 you have to be very careful about what you are  
19 requesting, based upon what they're precedence  
20 is.

21 It would be prudent to -- I'm trying

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1 to say, to make sure that you're requesting  
2 things that are reasonable and that you may not  
3 have to come back here twice. I mean we try  
4 to help the public here, but I think there's  
5 a lot of additional information and the  
6 reasoning that's going to have to come from this  
7 application. That's my opinion as well.

8 CHAIRPERSON JORDAN: Additionally,  
9 I didn't see an ANC letter. Have you presented  
10 to the ANC?

11 MR. BUSSE: I contacted them a  
12 number of times and did not get a response,  
13 either by email or telephone message.

14 CHAIRPERSON JORDAN: And what about  
15 HPRB?

16 MR. BUSSE: We started the dialogue  
17 with them, but haven't presented any documents  
18 to them at this point.

19 CHAIRPERSON JORDAN: You do realize  
20 your plans might be changed substantially?

21 MR. BUSSE: Yes, I understand that,

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1 but we sort of felt as though it would be an  
2 iterative process with both Boards and therefore  
3 it would maybe benefit us just to move forward  
4 and go back and forth once we have everybody  
5 sort of on the same page.

6 CHAIRPERSON JORDAN: Well, that's  
7 not the way the try to proceed with this Board.

8 There's other people seeking relief and taking  
9 the time going back and forth, plus it may be  
10 a waste of your time and money to do so.

11 As I said, I'm inclined to roll this.

12 What about -- I didn't see any letters of  
13 support from neighbors?

14 MR. BUSSE: We did not present any  
15 letters of support.

16 CHAIRPERSON JORDAN: Did you  
17 contact the neighbors and ask them for support?

18 MR. BUSSE: No.

19 CHAIRPERSON JORDAN: I'm more  
20 inclined now than ever to roll this. I think  
21 I have within 30 days we can -- the chair can

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1 roll this within 30 days without consent or we  
2 can, if you wish, you can let us move this to  
3 another date for you to give you enough time  
4 to work with it, to get this thing moving. I  
5 don't think this is ready for us. In fact, I'm  
6 not comfortable going forward.

7 Is anyone on the Board comfortable  
8 in going forward with this?

9 MEMBER TURNBULL: I would concur  
10 with you, Mr. Chair, 100 percent.

11 MR. BUSSE: Could I -- this letter  
12 here dated December 11th which I've just seen,  
13 is it possible to get clarification from you  
14 as to how it's now at 89 percent? I mean this  
15 was something that came --

16 VICE CHAIR SORG: So while the chair  
17 is chatting over here, which is fine, I think  
18 that's one of the things that I think is very  
19 much necessary which is for you to work more  
20 closely and openly with OP to understand what  
21 that is.

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1                   We also just received that filing,  
2                   so you will have the opportunity to meet with  
3                   them to further discuss whether or not you're  
4                   in agreement with that calculation.     But  
5                   basically, if you've got less than two and a  
6                   half foot side yards, which looks like you may,  
7                   then that's sort of the story.

8                   MR. BUSSE:     Even though you're  
9                   requesting special exception to the side yard,  
10                  that part of the original code still applies.

11                  VICE CHAIR SORG:   That's something  
12                  that you would work on with OP in advance of  
13                  your hearing date which is being postponed.  
14                  And on the count of not working with neighbors,  
15                  I think you should understand that you would  
16                  be well advised to try -- understand that you  
17                  reached out to the ANC, but to try to get input  
18                  from the surrounding community.     It is  
19                  something that is important and even in the  
20                  regulations has certain weight with the Board's  
21                  decision and judgment.

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1 MR. BUSSE: Okay.

2 MEMBER TURNBULL: And I'm wondering  
3 when you submit revised drawings, could you  
4 submit maybe ledger size drawings to make it  
5 a little clearer, 11 by 17?

6 MR. BUSSE: Sure, absolutely.

7 MEMBER TURNBULL: I think for me the  
8 8.5 by 11 are kind of tiny. We often do get  
9 ledger size sheets which make it a little bit  
10 easier to read, except for some of my colleagues  
11 who put it on their laptop and they can blow  
12 it up.

13 CHAIRPERSON JORDAN: Now let's talk  
14 about -- we can schedule this for January 15th,  
15 but I don't think that's going to give you enough  
16 time to meet with Office of Planning and your  
17 neighbors and the ANC, as well as you're going  
18 to have to amend these plans to seek variances.

19 So I think it's best for you, if you agree,  
20 that we need to move this beyond a 30 day and  
21 move into

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1 -- what's the other date in January?

2 SECRETARY MOY: January 29th, Mr.  
3 Chairman.

4 CHAIRPERSON JORDAN: The 29th. Is  
5 that good for you? Will that work for you?

6 MR. BUSSE: Sure.

7 CHAIRPERSON JORDAN: So let's put  
8 it on January 29th. And as Ms. Sorg has  
9 indicated that you do have a heavy lift. You  
10 have a lot of work to get done by that time.  
11 The plans have to be in to us. Everything has  
12 to be in to us 14 days before that hearing.  
13 You're going to have to meet with OP. You need  
14 to be very diligent in meeting with -- trying  
15 to get a meeting with the ANC. You're going  
16 to have to amend your plans and your request  
17 for relief.

18 SECRETARY MOY: And the 14 days  
19 prior, Mr. Chairman, would be January 15th.

20 CHAIRPERSON JORDAN: So by -- yes,  
21 by January 15th. So the 15th wouldn't work for

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1 a hearing anyway. So the 29th.

2 MR. BUSSE: Is the variance request  
3 in the same hearing, part of the same application  
4 process?

5 CHAIRPERSON JORDAN: Yes.

6 MR. BUSSE: So we would just --  
7 okay.

8 MEMBER TURNBULL: And I just had one  
9 thing on the plans, if you could make sure the  
10 plans are well dimensioned, there really weren't  
11 any on here.

12 MR. BUSSE: At that size, I took  
13 them off because they're illegible.

14 CHAIRPERSON JORDAN: Actually,  
15 you're going to also have to repost. Repost  
16 the signs.

17 MR. BUSSE: Okay.

18 CHAIRPERSON JORDAN: So I would get  
19 with OP and Zoning Office, get what's necessary,  
20 so you can get on that right away, if you're  
21 going to make it to the 29th, okay?

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1 With that, then we're going to  
2 continue this hearing to January 29th.

3 MR. BUSSE: Thank you.

4 (Pause.)

5 SECRETARY MOY: The next  
6 application before the Board is Application No.  
7 18455. This is the application of Lafon McCrae,  
8 pursuant to 11 DCMR 3103.2. This is for  
9 variances from the lot area and lot width  
10 requirements under subsection 401.3, to allow  
11 the construction of two semi-detached dwellings  
12 in the R-2 District at premises 4257 and 4259  
13 Brooks Street, N.E., property located in Square  
14 5087, Lots 930 and 937.

15 I believe, Mr. Chairman, there have  
16 been late submittals for supplemental drawings,  
17 but there is a request to waive the time  
18 requirements.

19 CHAIRPERSON JORDAN: We have a  
20 request to waive the time? Where is that? I  
21 haven't seen it.

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1 SECRETARY MOY: Yes, that arrived  
2 late yesterday afternoon, Mr. Chairman.

3 CHAIRPERSON JORDAN: I'm telling  
4 you, this is going to be a case I'm -- this is  
5 a case, well, that's a request and I'm not going  
6 to accept it because we don't have -- the plans  
7 came in here late yesterday. We haven't had  
8 a chance to review these plans. And I'm  
9 understanding now that there is not a request  
10 for a waiver in the first place. I'm having  
11 some difficulty with that.

12 Would you please identify yourself  
13 for us?

14 MR. AGBIM: My name is Ike Agbim.

15 CHAIRPERSON JORDAN: Last name  
16 again?

17 MR. AGBIM: A-G-B-I-M.

18 CHAIRPERSON JORDAN: Okay, and you  
19 are --

20 MR. AGBIM: I'm the architect for  
21 the applicant.

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1                   CHAIRPERSON JORDAN:     Mr. Agbim,  
2                   this matter has to be continued.   The plans were  
3                   due at least 14 days in advance.   We get plans  
4                   late yesterday.   The Board has not had a chance  
5                   to review these plans and this is really  
6                   unacceptable.   And so I'm not going to go  
7                   forward with this hearing.

8                   Have you had any contact with the  
9                   ANC?

10                  MR. AGBIM:   Yes, sir.

11                  CHAIRPERSON JORDAN:     And you've  
12                  made a presentation to the ANC?

13                  MR. AGBIM:   I have an email.   I  
14                  tried to get on to the agenda, but they denied  
15                  me several times.   And I went ahead and  
16                  presented to the neighbors.

17                  CHAIRPERSON JORDAN:     And you have  
18                  letters of support for the neighbors?

19                  MR. AGBIM:   Yes, sir.

20                  CHAIRPERSON JORDAN:     You presented  
21                  them plans?

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1 MR. AGBIM: Yes.

2 CHAIRPERSON JORDAN: You showed  
3 them the plans?

4 MR. AGBIM: Yes.

5 CHAIRPERSON JORDAN: When did you  
6 show them the plans?

7 MR. AGBIM: The plans were  
8 submitted with the application. The Office of  
9 Planning also received the plans on time from  
10 the BZA. So I'm surprised that --

11 CHAIRPERSON JORDAN: No, the plans  
12 got filed with us yesterday.

13 MR. AGBIM: I mean I can let the  
14 gentleman from Office of Planning speak.

15 CHAIRPERSON JORDAN: It's not  
16 Office of Planning's responsibility to make sure  
17 the plans get filed.

18 MR. AGBIM: What I'm saying is that  
19 we filed the plans when the applications were  
20 submitted.

21 CHAIRPERSON JORDAN: Did you file

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1 the plans in the Office of Zoning?

2 MR. AGBIM: Yes, sir.

3 CHAIRPERSON JORDAN: When?

4 MR. AGBIM: At the time of the  
5 application, several months ago.

6 (Pause.)

7 CHAIRPERSON JORDAN: The official  
8 records and based upon your memorandum to the  
9 Office of Zoning, it's dated December 12th,  
10 December 10th, 12th for the filing of your plans  
11 in the Office of Zoning. So I don't know what  
12 you're talking about anything has been filed  
13 prior to this in regards to these plans.

14 Mr. Moy, give me a date, please?  
15 I guess that's the January 15th date?

16 MR. AGBIM: Can I please clarify,  
17 please?

18 CHAIRPERSON JORDAN: Yes

19 MR. AGBIM: And I'm not trying to  
20 be argumentative, but what I'm saying is what  
21 when the application was submitted we filed the

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1 plans and plat. The same files and plat were  
2 submitted to the Office of Planning from the  
3 Board, from this office. I did not submit the  
4 drawings to Office of Planning. So the drawings  
5 that I filed yesterday were supplemental  
6 drawings, revisions based on my discussion with  
7 Office of Planning.

8 MEMBER TURNBULL: But the Office of  
9 Planning does not submit drawings to us of your  
10 project. That's up to you to submit drawings.

11 MR. AGBIM: But what I'm saying is  
12 I did submit those drawings here.

13 MEMBER TURNBULL: We have no record  
14 of that.

15 CHAIRPERSON JORDAN: Well, our file  
16 has nothing like that in it. We have the  
17 server's plat, which you're filing, but there's  
18 no plans submitted with this file.

19 SECRETARY MOY: Mr. Chairman, well,  
20 we're not going to continue to go back and forth  
21 on this because I've already made a decision

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1 of what we're going to do. I need, Mr. Moy,  
2 please.

3 SECRETARY MOY: Mr. Chairman, I  
4 think the earliest for the Board's convenience  
5 and hopefully the applicant's would be January  
6 15th.

7 CHAIRPERSON JORDAN: January 15th  
8 and in that time, please attempt to -- please,  
9 again, send a formal notice to the ANC regarding  
10 this.

11 It's our understanding that these  
12 two lots are owned by different entities or  
13 people, correct?

14 MR. AGBIM: No, sir.

15 CHAIRPERSON JORDAN: They're not.  
16 They're owned by the same person?

17 MR. AGBIM: They're owned by the  
18 same person. I think the records on the  
19 computer show one of the previous owners still  
20 owning the lot. I have the deeds here from the  
21 Record of Deeds showing that they're owned by

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1 the same person.

2 VICE CHAIR SORG: So in that case,  
3 there may be some good news for you. And it's  
4 been indicated to us that it may be that you  
5 do not require relief.

6 MS. GLAZER: Madam Vice Chair, I  
7 think it's the opposite. If they're owned by  
8 the same individual, then he cannot invoke  
9 subsection 401.2.

10 CHAIRPERSON JORDAN: If it's owned  
11 by different entities, then you probably could  
12 do this as a matter of right and not need relief.

13 When you say owned by the same person, what  
14 are you saying? Who owns one of the lots? For  
15 instance, who owns one of the lots?

16 MR. AGBIM: Lafon McCrae.

17 CHAIRPERSON JORDAN: And the other  
18 lot? He owns both lots?

19 MR. AGBIM: Yes, sir.

20 CHAIRPERSON JORDAN: I thought one  
21 of the lots was in the name of a corporation.

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1 MR. AGBIM: Ramond, LLC sold both  
2 properties to Lafon McCrae, but for some reason  
3 one ownership is still showing Ramond, LLC and  
4 the other is still showing Lafon McCrae.

5 CHAIRPERSON JORDAN: Okay, we're  
6 just trying to be helpful, but okay. Whatever.

7 It's on you to do what's necessary and get this  
8 moving. So we have a date of what, Mr. Moy?

9 SECRETARY MOY: January 15th, sir.

10 CHAIRPERSON JORDAN: January 15th.

11 Okay.

12 MEMBER TURNBULL: If you do have  
13 some documents that show a better status of who  
14 owns the property, corrected, if you could  
15 submit them to Mr. Moy for the record? That  
16 would help.

17 (Pause.)

18 SECRETARY MOY: The next  
19 application before the Board is Application No.  
20 18463. This is the application of CAS, C-A-S,  
21 Riegler Real Estate Development. This is

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1 pursuant to 11 DCMR 3103.2, for variances from  
2 the lot requirements under section 401, rear  
3 yard requirements under section 404, and court  
4 requirements under section 406, to allow the  
5 conversion of and addition to an existing  
6 building into an apartment house in the R-4  
7 District at premises 901 D Street, N.E.,  
8 property located in Square 938, Lot 809.

9 This is the caption as advertized,  
10 Mr. Chairman. I believe the applicant amended  
11 the relief he was seeking and the Board may want  
12 to clarify those sections of relief.

13 CHAIRPERSON JORDAN: Okay. As  
14 soon as you're settled, I invited you to identify  
15 who is at the witness table, please?

16 MR. KADLECEK: Good morning,  
17 members of the Board. My name is Cary Kadlecek  
18 of the law firm of Goulston & Storrs, counsel  
19 on behalf of the applicant.

20 MR. RIEGLER: Kevin Riegler with  
21 CAS Riegler Development.

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1                   MR. ROSEN:    Sacha Rosen with R2L  
2                   Architects.

3                   CHAIRPERSON JORDAN:    I think we  
4                   have some preliminary matters to get straight  
5                   here.   There was a motion request for waiver  
6                   in the file on this case?

7                   MR. KADLECEK:   Yes, we requested a  
8                   motion for a waiver of the 14-day rule for the  
9                   prehearing submission to accept the submission  
10                  one day late.

11                  CHAIRPERSON       JORDAN:           That's  
12                  accepted.

13                  MR. KADLECEK:    Thank you.    One  
14                  other motion to have Sacha Rosen admitted as  
15                  an expert in architecture.   I believe you have  
16                  his resume in the package.

17                  CHAIRPERSON       JORDAN:           And  
18                  previously designated an expert in prior  
19                  hearings?

20                  MR. KADLECEK:    Yes.

21                  CHAIRPERSON JORDAN:    So we will

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1 accept that.

2 MR. KADLECEK: Thank you.

3 CHAIRPERSON JORDAN: Let me ask  
4 you, it's my understanding there's been an  
5 amended request for relief that there's no  
6 longer a request for 404 and 406 relief, is that  
7 correct?

8 MR. KADLECEK: That's correct. We  
9 no longer request relief from the rear yard and  
10 the open court requirements. We're just  
11 seeking relief from the lot area requirements  
12 now.

13 CHAIRPERSON JORDAN: Is Mr. Russin  
14 here? Will you please come to the table,  
15 please? And will you make sure your microphone  
16 is turned on?

17 MR. RUSSIN: Yes.

18 CHAIRPERSON JORDAN: And if you  
19 will give the witness cards to the court  
20 reporter.

21 (Pause.)

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1                   Would you state your name, please?

2                   MR. RUSSIN:     My name is Jacob  
3                   Russin.

4                   CHAIRPERSON JORDAN:     And Mr.  
5                   Russin, you have requested party status, but  
6                   that was contingent upon the need if the  
7                   applicant was seeking 404 and 406 relief.

8                   MR. RUSSIN:   Correct.

9                   CHAIRPERSON JORDAN:     And I think  
10                  you heard here today that they're no longer  
11                  seeking that relief.

12                  MR. RUSSIN:   That's correct.

13                  CHAIRPERSON JORDAN:     Is it still  
14                  your intent to seek party status?

15                  MR. RUSSIN:   No.

16                  CHAIRPERSON JORDAN:     Thank you.   I  
17                  just wanted to be sure we were clear on that.  
18                  Thank you.

19                  Is there any other preliminary  
20                  matter I have before me today on this matter?  
21                  We've been preliminary enough today.   I think

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1       -- okay.

2                   Has there been any headway made with  
3 the ANC regarding this application?

4                   MR. KADLECEK: Other than what you  
5 see before you in the record, no. We'll explain  
6 that.

7                   CHAIRPERSON JORDAN: You've had  
8 some conversations and there's been some  
9 negotiations.

10                  MR. KADLECEK: Right.

11                  CHAIRPERSON JORDAN: And they have  
12 not -- they're kind of like the fiscal cliff.

13                  (Laughter.)

14                  MR. KADLECEK: A little bit, yes.  
15 They're at one place. We're at another. We  
16 believe that the number that we're requesting  
17 is the appropriate number for the site. The  
18 ANC differs, but I will say and Kevin will  
19 explain this a little bit more, we did have some  
20 really good conversation with the ANC and it  
21 was very productive. We just couldn't meet.

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1 CHAIRPERSON JORDAN: It seems like  
2 you're close.

3 MR. KADLECEK: We are close.

4 CHAIRPERSON JORDAN: There's just  
5 a little gap there.

6 MR. KADLECEK: There is.

7 CHAIRPERSON JORDAN: All right.  
8 I'm going to ask you to proceed, but let me first  
9 check with the Board to see if there's anything  
10 in particular that they wanted to hear, to make  
11 sure that you cover it in your presentation.

12 VICE CHAIR SORG: Thank you, Mr.  
13 Chair. Responding and explaining that  
14 negotiations and where you are with the ANC and  
15 the points that they bring up in this letter,  
16 as well as the DDOT report and the conditions  
17 that they suggest.

18 MR. KADLECEK: Yes, we will cover  
19 all of that. I'll give a little bit of a brief  
20 overview and then Kevin will give an overview.

21 CHAIRPERSON JORDAN: I think we're

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1 really good on overview. Let's get to the meat  
2 and the potatoes.

3 MR. KADLECEK: Well, then I'll let  
4 Kevin start. He'll give you an overview of the  
5 project and the ANC discussions and then Sacha  
6 will give you an overview of the actual meat  
7 and potatoes of the project.

8 MEMBER TURNBULL: Mr. Chairman, I  
9 only have one comment. I repeated myself from  
10 the last. I wish we got better drawings, either  
11 ledger size, a little bit bigger than these.  
12 I think they're kind of tiny. So in the future,  
13 if you could submit ledger size.

14 MR. KADLECEK: Did you not get 11  
15 by 17 drawings?

16 MEMBER TURNBULL: No, I did not.

17 CHAIRPERSON JORDAN: Did we reduce  
18 them, Mr. Moy?

19 SECRETARY MOY: No.

20 MR. KADLECEK: I believe what we  
21 submitted 11 by 17.

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1 CHAIRPERSON JORDAN: We might have  
2 reduced them.

3 MEMBER TURNBULL: Well, I'll have  
4 to point my eye right someplace else.

5 SECRETARY MOY: I suspect the staff  
6 kind of reduced it to size of 8.5 by 11.

7 MR. KADLECEK: We have a PowerPoint  
8 that is 11 by 17 that we'll hand out now that  
9 you can see that.

10 MEMBER TURNBULL: Thank you.

11 MR. ROSEN: While he's handing that  
12 out, shall I get started?

13 CHAIRPERSON JORDAN: And that's why  
14 we need 11 by 17 monitors.

15 SECRETARY MOY: Absolutely.

16 (Pause.)

17 CHAIRPERSON JORDAN: Just give us  
18 one moment.

19 MEMBER TURNBULL: No, I can  
20 multi-task.

21 CHAIRPERSON JORDAN: Okay, let's

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1 proceed. We're going to look at the plans.  
2 See, if you were using a computer, Mr. Turnbull,  
3 you could blow it up and do whatever you wanted  
4 to do with it, but that's okay.

5 MEMBER TURNBULL: But these are in  
6 color. Would they have been in color, Mr. Moy?

7 MR. RIEGLER: For you, sir,  
8 absolutely.

9 MEMBER TURNBULL: Okay, thank you.  
10 Happy holidays.

11 CHAIRPERSON JORDAN: Please  
12 proceed.

13 MR. RIEGLER: Good morning, Board.  
14 Just to give a quick overview, a history of  
15 our involvement with the site. As you saw in  
16 the application, the site has been in the hands  
17 of the D.C. Teachers' Federal Credit Union since  
18 the early '80s. Prior to that, it was in service  
19 as a school. I believe there's a gap of a few  
20 years prior to that.

21 The Credit Union is downsizing or

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1 consolidating their existing branches and the  
2 like and so obviously how this opportunity came  
3 up as a privately-owned school. We officially  
4 closed about a month ago. We've been working  
5 on the project, however, for about 9, 10 months.

6 We spent the first two, three months,  
7 obviously, just getting our heads around the  
8 project. It's obviously very important from  
9 an HPRB perspective, in particular. I'm  
10 getting our bearings with Office of Planning,  
11 the ANC, etcetera, before we really move forward  
12 in earnest.

13 We started our community outreach  
14 process, I believe, in June where we  
15 preemptively, pre-ANC, held two non-official  
16 ANC presentations to the neighborhood where we  
17 basically drew a map of three blocks surrounding  
18 the site and flyered everyone's door and the  
19 like and had a couple really good turnovers of  
20 40, 50 people to get people's input, what the  
21 demographic would be like for the market

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1 positioning, what issues would be and all that  
2 kind of stuff. So the culmination of ultimately  
3 what was presented to ANC was already vetted  
4 in our view, not completely, obviously, that's  
5 never the case, by the neighborhood itself.

6 Long and the short, we've gone  
7 through two official ANC Community Economic  
8 Development Committee meetings. As you see in  
9 the letter, we do have this gap between 25 and  
10 27 units. The crux of that is transit and  
11 parking. This is obviously a relatively  
12 transit-oriented location, but it's not on top  
13 of a Metro and people do drive cars. That being  
14 said, it's changing and evolving from -- it's  
15 kind of smack dab in the middle between Eastern  
16 Market and H Street.

17 We have agreed with the ANC to pay  
18 for the installation of a Bikeshare site to be  
19 determined specifically. There is one that's  
20 two and a half or three blocks away right now,  
21 so we're going to be working with the ANC and

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1 DDOT, obviously, on that exact location. Also,  
2 to pay for a Zipcar for five years out of the  
3 developer's pocket. This will be located on  
4 the street.

5 Also to note, surrounding the entire  
6 site of the zone, typically what would be the  
7 RPP zone parking spaces are now non-zoned  
8 commercial spaces. So anyone can park there.

9 I know we've realized that that was a major  
10 issue in the neighborhood because people would  
11 park, office workers, etcetera, would come and  
12 find these kind of secret, hidden neighborhood  
13 spots and walk to them.

14 We have submitted a letter alongside  
15 with the ANC to turn those all into RPP spots  
16 and the feedback from DDOT has been positive,  
17 so that will be happening. One of those spots,  
18 because we're actually closing a curb cut is  
19 where the location for that new Zipcar that we're  
20 going to be paying for is.

21 MEMBER HINKLE: How many spots are

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1       there?

2                   MR.    RIEGLER:       Eleven    total,  
3       depending upon DDOT's final measurements,  
4       somewhere in that 11-12 range.

5                   We attempted -- one of the things  
6       the neighborhood brought up as far as parking  
7       was to not allow any RPP for anyone buying a  
8       unit or renting a unit on the site. Common  
9       measure and PUDs and the like, as you guys are  
10      aware of. We did some due diligence on that  
11      and unfortunately, in this particular location,  
12      that is not enforceable. It's not possible  
13      because it needs to cover an entire block and  
14      so you would actually have to retroactively go  
15      in and create the entire block, including all  
16      the existing rowhouse owners, no RPP allowed,  
17      and then go kind of -- it's a petition process  
18      from what we understood where you've got to go  
19      back and allow people back in. The long and  
20      the short, it's very complicated. So we agree  
21      with the ANC that that wasn't viable.

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1           We then attempted to negotiate a  
2 self-enforced RPP, if you will, process which  
3 we've done in a couple other projects where the  
4 condo regime would have a registration process  
5 for each of the owners, you know, limitations  
6 on deed restrictions and the like on how that  
7 might work. Again, it just -- I think the  
8 ultimate concern, I don't remember if it was  
9 an ANC letter, it just wasn't enforceable. Who  
10 ultimately is responsible for enforcing that  
11 ten years from now? So I think that's how we  
12 kind of came to a head on this.

13           Other than that, Sacha will give you  
14 an overview of the project, but that is the  
15 summary of where we are with the ANC  
16 negotiations. And as Cary mentioned, they have  
17 been very positive, very productive, lots of  
18 kitchen tables and coffee shops and meeting with  
19 a lot of people. And I think overall, the  
20 support from the regulatory level and the  
21 neighborhood level is very strong. We're just

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1 at this small gap between what we believe is  
2 appropriate in the ANC.

3 Sacha?

4 CHAIRPERSON JORDAN: I thought the  
5 ANC was at 23 spaces.

6 MR. KADLECEK: Yes, let me explain  
7 that a little bit. So if you look at the site  
8 in totality, there's part of it that's part of  
9 this BZA application, and then there's a  
10 separate fee simple lot that we've subdivided  
11 that is a flat, a two-unit flat. So that's not  
12 part of this BZA application.

13 So when you think about the whole  
14 site, you can think about it in terms of the  
15 BZA application which we're asking for 25, then  
16 the fee simple which is 2 units. So that's 27.

17 The ANC is talking about 23 units in the BZA  
18 application and then 2 units in the flat, so  
19 the 25.

20 MR. RIEGLER: Basically, two  
21 additional units versus four additional units

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1 in simple, site-wide density is how it shakes  
2 out. And as you probably saw in the original  
3 application, we were at 30. So there has been,  
4 we are kind of in the middle from where we started  
5 with the ANC, so that was all part of the  
6 negotiation. They ended up with 25 and we ended  
7 up at 27 for reasons Sacha will explain.

8 MR. ROSEN: Good morning, members  
9 of the Board. My name is Sacha Rosen with R2L  
10 Architects here representing CAS Reigler.

11 This is a very exciting project for  
12 us. I just wanted to mention off the bat that  
13 we've had a great relationship again with the  
14 neighborhood as well as with Historic  
15 Preservation Review Board and Historic  
16 Preservation Office. In fact, at our hearing  
17 with Historic Preservation Review Board last  
18 week, the project was described by one of the  
19 Board members as textbook and we have just had  
20 a great relationship meeting multiple times with  
21 Amanda Molson, HPRB staff who actually lives

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1 and has grown up in this neighborhood.

2 I'm also very quite aware of the  
3 site. I lived here about 15 years ago. I lived  
4 about a block away. And so this is a  
5 neighborhood I know quite well.

6 I can go more or less fast through  
7 these plans, seeing as you've just got legible  
8 plans. I can spend a little bit more time.  
9 If you want me to move ahead, please let me know.

10 CHAIRPERSON JORDAN: Give us the  
11 moderate.

12 MR. ROSEN: Moderate, perfect.  
13 That I can do.

14 This slide --

15 CHAIRPERSON JORDAN: Can we get the  
16 light, please?

17 MR. ROSEN: This slide demonstrates  
18 the general character of the neighborhood in  
19 which the project is located. It is an R4 zone.

20 It's part of the Capitol Hill Residential  
21 District. Primarily, the buildings throughout

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1 the neighborhood are two and three-story  
2 residential, single-family homes, some flats  
3 with two units. Interspersed among those are  
4 churches and schools.

5 The specific building that we're  
6 dealing with is a historic school building,  
7 constructed in 1903. It was one of a number  
8 of school buildings built off the same plan.  
9 It's a square building, essentially, three  
10 stories in height, including the lower floor  
11 which is partially below grade.

12 This slide represents the existing  
13 conditions of the building. Although built as  
14 a school originally, the building was  
15 decommissioned as a D.C. Public School in, I  
16 believe, 1972 and since that time has been used  
17 as a credit union. And so in this slide, you  
18 can see the very lightest lines are walls  
19 depicting interior partitions that are there  
20 for the current use. Those are all going to  
21 be demolished. They're not historic in

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1 character.

2           However, the gray lines that you see  
3 in kind of a pinwheel configuration at the center  
4 of the building, as well as there are 12 large  
5 columns in the center forming a ring, a square  
6 in the center, that is all historic fabric in  
7 addition to the building exterior and perimeter.

8       So all those dark gray lines are historic walls,  
9 bearing walls. And although at an earlier  
10 iteration of the project when we first started  
11 working with the Historic Preservation Office,  
12 we had contemplated demolishing a portion of  
13 those. But after working constructively with  
14 HPO and given our concept approval from the Board  
15 last week, this is the plan that we've settled  
16 on which essentially maintains all of the  
17 interior and exterior fabric of the historic  
18 building with the exception that we will be  
19 opening up holes within those walls to allow  
20 passage between rooms.

21           But I just want to show you how

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1 nonstandard this is as a residential building.

2 This was, in fact, a school. Each of those  
3 corners was a classroom. In the center was  
4 meeting space and congregation space. You'll  
5 see there are also three stairs, one to the top  
6 -- by the way, in this plan, north is to the  
7 right. So that is facing D Street. So in the  
8 center of the north wall, to the right, as well  
9 as to the east and west which are top and bottom  
10 in the plan, there are these stairs. So there  
11 were three existing stairs on the ground floor,  
12 two of which extended up and down throughout  
13 the building. And we're maintaining all of  
14 those. So this is something we would not do  
15 in a contemporary residential building, nor  
16 would we have bearing walls laid out in this  
17 configuration.

18 The photos just show the character  
19 of the interior. It's going to look --

20 CHAIRPERSON JORDAN: Let me ask  
21 you, maintaining the stairwell is because of

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1 HPRB requests?

2 MR. ROSEN: That's correct. This  
3 is much larger than the minimum code requirement  
4 for a stair. It has a large window in it on  
5 the exterior so it could be quite nice, although  
6 if you see in the photo on the bottom right,  
7 it's pretty ugly in there and very utilitarian.

8 So we're actually removing all the interior  
9 components, the stairs, the handrails, all of  
10 those things, so it's going to be quite beautiful  
11 when we're done. However, this is not something  
12 that we would do if we were building from ground  
13 up or for that matter if this were not historic  
14 and we had the flexibility to make more interior  
15 modifications.

16 So essentially, we're taking the  
17 entirety of a stair shaftway that's designed  
18 to have a couple hundred kids running up and  
19 down whereas we're really only going to have  
20 20 some odd residents using these stairs and  
21 not all at the same time.

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1           In addition, in a building of this  
2 size, it's not unusual to have two stairs  
3 required. It is unusual to have two stairs that  
4 are being used for exit requirements and then  
5 on the main floor to have a whole other separate  
6 entry stair. In some of the historic buildings  
7 that is the case, but again, we would not do  
8 that if we were building ground up.

9           Here's a slide showing the existing  
10 conditions of the building, and again, north  
11 is to the right. I'll start with the perimeter  
12 of the site. You can see on the north side,  
13 there's an existing curb cut. That's the one  
14 that we propose to close. There's an existing  
15 curb cut along 9th Street which is at the top  
16 of the drawing. There's an existing curb cut  
17 there which we're going to modify very slightly  
18 and that is going to be the new entrance into  
19 the parking area that will be behind the  
20 buildings.

21           The site -- the school building

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1       itself, although it was originally constructed  
2       to be surrounded by sort of a grassy knoll that  
3       would be located within the neighborhood, at  
4       a certain point, the history of the school, while  
5       still being used as a school, I believe in the  
6       '50s, almost the entirety of the site was covered  
7       in concrete. So that's the existing condition  
8       today and the condition that local residents  
9       know. And I can tell you that the most strenuous  
10      support that we've got from the community is  
11      just a proposal to remove all the concrete that's  
12      not necessary for the parking areas and to  
13      replace that with landscaping.

14               On the top left, you can see what  
15      is called an existing playground which is really  
16      just a concrete surface and this really weird  
17      little concrete knee wall.

18               Underneath that area is where we've  
19      also found an underground storage tank, so the  
20      site is also going to require some remediation  
21      for environmental reasons.

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1           Almost to the exact center of the  
2 site, you can also see that there's an existing  
3 cell tower. It was originally -- it was not  
4 a feature original to the construction of the  
5 building, at some point fairly early in the  
6 history of the building, a smokestack was added  
7 and the previous owners of this site negotiated  
8 a lease with one of the cell phone companies  
9 and that lease is still ongoing. So that tower  
10 is being used to support some cell phone  
11 equipment. So that's also another extenuating  
12 circumstance that my client is trying to  
13 address. Again, we've worked with the Historic  
14 Preservation and I think everyone would love  
15 to remove that, but at the moment, we can't.

16           The last thing I'd like to show you  
17 on this slide is a configuration of the existing  
18 parking spaces. The amount of parking on the  
19 site available to the community after hours has  
20 been a very important point of negotiation  
21 between my client and the community. And again,

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1 this is one of those spots where the community  
2 has found an opportunity to park and it does  
3 in some sense provide kind of a relief valve  
4 for parking in the neighborhood where on nights  
5 and weekends people can find parking spaces on  
6 the lot when it's not being used by its current  
7 users.

8 I just want to point out that most  
9 of these spaces that are currently striped are  
10 not legal and zoning-compliant parking spaces.

11 So for example, at the bottom of the drawing  
12 there which is on the east side adjacent to some  
13 townhouse neighbors, you can see diagonal  
14 parking spaces and they do not have the required  
15 driveway width accessing those. And then to  
16 the right side you can see there are parking  
17 spaces actually in the front yard of the building  
18 which are also not zoning compliant and a few  
19 other areas, some of the turning radii are also  
20 not compliant.

21 We were lucky enough to be able to

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1 find historic construction documents for the  
2 building. I only wish I only had to produce  
3 three drawings to build a building these days,  
4 but for whatever that's worth, we were able to  
5 use these, work with our Historic Preservation  
6 consultant and Historic Preservation Office to  
7 really be quite confident in the original  
8 structure of the building and do the best we  
9 can to keep any elements, extant elements of  
10 that structure intact.

11 On the outside of the building also  
12 again, this was leading to the reference by  
13 Historic Preservation Review Board as an  
14 exemplary project that we're really just  
15 restoring the exterior condition of the  
16 building.

17 You all, I'm sure, are familiar with  
18 quite a few buildings around town that are  
19 restored schools that have been converted to  
20 condominiums and they've been quite profitable  
21 for their developers and they're great places

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1 to live.

2 I just want to show that in addition  
3 to having to deal with the extensive interior  
4 structure within the building, and to respect  
5 all of that structure, we also really need to  
6 work with the existing window patterns. We  
7 can't really move any windows on the outside.

8 So although they're large and beautiful windows  
9 and anyone would love to have them in their home,  
10 we really are limited to the locations where  
11 we can place additional interior demising walls  
12 between units. They really have to fall between  
13 those windows. And any partitions within  
14 dwelling units that are say between living rooms  
15 and bedrooms also have to fall between those  
16 windows and respect those locations.

17 So that being said, we're sort of  
18 squeezed from the inside and the outside for  
19 how we can lay out the interior configuration  
20 of these units. I'll also point to this plan  
21 to say and ask if you've ever seen a square

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1 residential building and I can tell you you have  
2 not, except maybe a restored school like this.

3 Ideally, when we start a job for new  
4 construction, we lay out our residential  
5 buildings today with a width from side to side  
6 of about 60 feet, maybe 65 feet. And the reason  
7 we do that is because then you can have a  
8 relatively efficient building with a central  
9 corridor and dwelling units on either side.  
10 And those dwelling units range from ideally from  
11 about 28 feet deep to maybe 33, 35 feet deep,  
12 actually 32, 33, so about the logical maximum.

13 And the reason that is is because in any  
14 residential unit, you've got living spaces,  
15 habitable rooms which are living rooms and  
16 kitchens, living rooms and bedrooms. And then  
17 you have interior spaces, kitchens and  
18 bathrooms.

19 This slide shows you superimposed  
20 on the existing plan the white area is the  
21 approximate amount of space that if we were going

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1 to lay out a unit ideally the white area is the  
2 space we would devote to habitable rooms, living  
3 rooms, bedrooms and some dens, for example.  
4 The gray area is the amount of area that we would  
5 devote to back of house spaces which would be  
6 laundry rooms, bathrooms, kitchens and storage,  
7 closets. But given the configuration of this  
8 building in a square, the dark gray area in the  
9 center is actually an area we don't really know  
10 what to do with. There's really no usable space  
11 within the dwelling unit.

12 So when my client goes to sell  
13 dwelling units, if he were asking me to design  
14 a building ground up, we would design extremely  
15 efficient units that wouldn't have any of the  
16 dark gray area. They would be ideally  
17 configured. We'd get natural light and air into  
18 as many rooms as possible. This diagram shows  
19 that a substantial portion of this building,  
20 at least 10 to 15 percent of the building, can't  
21 really be sold as a sellable interior area within

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1 dwelling units.

2 So this is the ground floor plan.

3 By ground floor plan, we refer to the storage  
4 that is partially below grade. And when I say  
5 partially below grade, this is not a cellar.  
6 It is usable area because the ceiling is more  
7 than four feet above grade. But I will say it  
8 is quite deep and so the floor of this is more  
9 than five feet below surrounding grade. And  
10 so the existing windows in the building start  
11 at about 5.5 feet above the floor and then go  
12 up to fairly high to the ceiling, about 10 feet  
13 clear. So the windows so almost that high.  
14 So it's a fairly tall space and quite nice.

15 We are making some minor  
16 modifications that we've now got concept  
17 approval from Historic Preservation Review  
18 Board which is to take some of those windows  
19 and open the exterior wall down to floor level  
20 and to create a terrace on the outside. But  
21 I just want to say that on the ground floor,

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1 not only are we really compromised by the  
2 location of the windows as well as all the  
3 interior stuff, the existing bearing walls and  
4 columns, but also the height of the windows and  
5 the depth of the floor.

6 So that's a little bit about the  
7 constraints of the school building and I'll come  
8 back to the upper floors in a moment.

9 But on this, this is the proposed  
10 site plan and you can see that to the left of  
11 your drawing, it's facing 9th Street which is  
12 actually the southwest corner of the site.  
13 We're proposing three townhomes. And those  
14 townhomes are in addition to the school building  
15 and you'll see two slides down that they're  
16 connected.

17 On the bottom right of your drawing  
18 which is the northeast corner of the site, you  
19 can see that's an area of the project that is  
20 separated as a separate fee simple lot.

21 On the bottom left of your drawing

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1 which is the southeast corner, you can see that  
2 we've located all of the parking for the project  
3 behind the new construction in the rear yard,  
4 so that it is shielded from view from the public  
5 streets and it is bordered by an alley to the  
6 east, so at the bottom of the drawing. So the  
7 parking area is not immediately adjacent to any  
8 residential structures.

9 CHAIRPERSON JORDAN: That's 14  
10 parking spaces?

11 MR. ROSEN: It is 14 parking spaces,  
12 that's correct. One of those spaces is located  
13 on the townhouse in a separate lot.

14 CHAIRPERSON JORDAN: So it's  
15 actually 13 parking spaces?

16 MR. ROSEN: That's correct. This  
17 is what we refer to as a ground floor plan which  
18 is actually the first elevated floor, so it's  
19 a few feet above natural grade. So here you  
20 can see the beautiful landscaping that we'll  
21 be replacing the concrete berm with around

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1 nearly the entire perimeter of the project.  
2 We'll be doing nice front yards in front of the  
3 townhome additions, the three there on the top  
4 left, and the landscape will attend all the way  
5 around.

6 On the bottom right, you can see the  
7 removal of the existing curb cut to provide  
8 continuity with the sidewalk there. And in that  
9 location we'll have a nice sort of a garden path  
10 between the new townhome and the school  
11 building. We'll be reusing all of the existing  
12 entrances as they were historically used, both  
13 the stair towers and the main entry there off  
14 of D Street.

15 This is the second floor plan of the  
16 project. Right in the center of the slide you  
17 can see the bridge connection between the  
18 existing school building and the new townhome  
19 structures on the top left. This is something  
20 that we carefully worked out with Historic  
21 Preservation Office and I'll also say that

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1 although this particular bridge was a matter  
2 of some concern to the Capitol Hill Restoration  
3 Society, overall, we received a very strong  
4 letter of support and actually a personal  
5 appearance at our HPRB hearing from Capitol Hill  
6 Restoration Society. So again, that's yet  
7 another community group that we've reached out  
8 to and received very positive support from.

9 Like I said, one of their main  
10 concerns was the architectural detailing of the  
11 bridge and we'll be going back to them to refine  
12 that.

13 The last plan, the volume of the  
14 school building has a very large -- it's a  
15 pitched roof and within that pitched roof  
16 there's quite a large attic space and we'll be  
17 converting that to sort of second floor  
18 mezzanine space within the dwelling units. So  
19 again, all of that even considered as gross floor  
20 area, we're still well within our maximum lot  
21 occupancy and building height. So we're not

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1 asking for relief on any of those issues.  
2 Again, the only area of relief that we're asking  
3 for is the amount of lot area per dwelling unit.

4 And the roof, again, minor  
5 modifications to the roof structure. We're  
6 adding several dormers that were originally  
7 designed, but never constructed. The only  
8 modifications to the roof are to hide mechanical  
9 units. So again, this was particularly  
10 commended by Historic Preservation Review  
11 Board.

12 A couple slides of the elevations.  
13 This is the D Street elevation. And you can  
14 see this is a school building which is restored  
15 essentially to its original condition plus the  
16 dormers that were never built, but originally  
17 designed. And on the left side of the drawing  
18 those two sort of dark reddish structures are  
19 existing townhomes that are the current  
20 neighbors to the property. It's sort of a  
21 matching set of townhomes.

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1           Next to that, we've designed --  
2       that's the fee simple townhome which has gone  
3       through several iterations in terms of concept  
4       design. This was one of the latest, although  
5       it may change a little bit. But generally, what  
6       we've designed is a townhouse structure that  
7       essentially completes a row of townhomes, both  
8       on the D Street and on the 9th Street side.

9           And in fact, in the spirit of  
10      on-going negotiations, my client just had a  
11      meeting in fact last night with the owner of  
12      the adjacent townhomes to resolve a few issues  
13      relating to the design and layout of this  
14      particular townhouse that is adjacent to her  
15      structure. So those negotiations continue,  
16      even though there's nothing about any issues  
17      for which we're seeking relief. It's just  
18      neighborliness essentially.

19           This is the 9th Street facade. It's  
20      again on the left. You see the restored school  
21      building. Then there's the bridge element and

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1 underneath the bridge element there you'll see  
2 there's a gated access point. So that opening  
3 is large enough for trash trucks to go through.

4 And so all the loading the service and parking  
5 and everything happens in the back shielded from  
6 -- acoustically and visually from the streets.

7 Then you'll see a series of three  
8 new townhouse structures, again, as an addition  
9 to the existing building. That design  
10 continues to evolve a little bit, although we  
11 did receive approval for height, bulk, and  
12 massing for that. I think generally the  
13 fenestration and all of that is good. There's  
14 just some minor detailing as to cornice lines  
15 and things like that that we'll be coming back  
16 with.

17 And then to the right of that --  
18 those two story or two and a half story townhouse  
19 structures with porches. Those are existing  
20 as well. And so we received particular  
21 commendation from Historic Preservation Office

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1 and Review Board both as well as Capitol Hill  
2 Restoration Society for essentially designing  
3 an element that provides continuity and  
4 completion of the block. So not only are we  
5 restoring the school building, but we're also  
6 completing sort of the fabric of that entire  
7 block with an element that ties in with the  
8 residential structures because a mix of two and  
9 three-story structures or two and a half or three  
10 and a half story structures is standard for this  
11 block. In fact, all the houses on the facing  
12 side are three and a half stories.

13 And that element, in addition to  
14 completing that and being contextual with the  
15 existing structures, provides a stepping up.  
16 So it's a nice transition in the Board's opinion,  
17 Historic Preservation Review Board's opinion,  
18 between existing structures and the school  
19 building.

20 Here's a rendering of the completed  
21 project, so essentially the character of the

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1 school building is always going to look like  
2 a school building that was brought back to  
3 contemporary use and active use. The  
4 streetscape itself is going to be beautified.

5 I would venture to say that you will never see  
6 that few parking -- or parked cars parked  
7 immediately in front of the building, now that  
8 we'll be returning that entire street frontage  
9 to RPP parking. There's plenty of local  
10 residents that will be able to park in those  
11 spots.

12 That concludes my presentation. If  
13 anyone has particular questions, please ask me,  
14 but Kevin has a few additional comments.

15 MR. RIEGLER: Sure, and this is  
16 obviously not very legible up on the screen  
17 there, but it was a study done by our sales and  
18 marketing team. The crux of the point, you can  
19 obviously see the challenges --

20 CHAIRPERSON JORDAN: Give us one  
21 second.

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1 MR. RIEGLER: Can you guys see that  
2 on your screen? I really just need to see the  
3 bottom left, the little box. As you can see  
4 from Sacha's presentation, the crux of our --

5 CHAIRPERSON JORDAN: What exhibit  
6 is that again in your filing?

7 MR. KADLECEK: I believe it's  
8 Exhibit C in the filing. Yes, Exhibit C.

9 CHAIRPERSON JORDAN: Okay.

10 MR. RIEGLER: As you can see by  
11 Sacha's presentation, the crux of our challenge  
12 as far as the unit count really revolves around  
13 the natural demising that happened with the  
14 existing structure and the HPRB challenges and  
15 those kind of things, all of which have created  
16 what we believe to be a beautiful project.

17 Financially, there's always  
18 obviously that balance. We need to make this  
19 a viable project for us, our investors, and the  
20 like. And all this simply was was if we do not  
21 increase the unit count beyond the by right,

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1     what we end up having are unmarketable -- I'll  
2     take that back.     They are marketable.  
3     Unprofitable, therefore unviable units.   And  
4     this was done in context of one bedrooms.   It's  
5     a corollary argument for two bedrooms.   We don't  
6     have large units.   Our average unit size is,  
7     I believe, about 1100 square feet which is  
8     probably 25 percent more than the norm of most  
9     new construction projects these days.

10                 It is Capitol Hill, so it lends  
11     itself to a little bit larger unit count.   But  
12     you can see -- all the units above are comps  
13     to back this up.   But the ideal one bedroom,  
14     it says 4800, that's obviously more of a studio  
15     range.   But the focus is the per square foot  
16     value versus if we didn't get the additional  
17     units how that would be substantially decreased,  
18     well below something that's viable to go through  
19     --

20                 CHAIRPERSON JORDAN:   By viable, are  
21     you saying that it's not going to make a profit

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1 if it's without the variance relief? Or is it  
2 a degree of profit we're talking about?

3 MR. RIEGLER: The by right project  
4 is very challenging, if we were just to do the  
5 23. So that's why we believe that the 27 unit  
6 is the right balance --

7 CHAIRPERSON JORDAN: That's not  
8 what I'm asking you.

9 MR. RIEGLER: It does not make it  
10 unprofitable without the variance relief.

11 CHAIRPERSON JORDAN: So the answer  
12 is yes, there's still a profit at 23 units?

13 MR. RIEGLER: Right. It's more of  
14 a market correlation.

15 CHAIRPERSON JORDAN: It's just more  
16 profit at 25 units?

17 MR. RIEGLER: Pardon me?

18 CHAIRPERSON JORDAN: It's just more  
19 profit at 25 units? Well, 27 I thought was  
20 overall for the whole site, right?

21 MR. RIEGLER: Right, you guys are

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1 saying the same thing. Twenty-seven, the whole  
2 site. Twenty-five as far as the variance.

3 Yes, is the answer, but --

4 CHAIRPERSON JORDAN: What's the  
5 profit difference based upon the request for  
6 relief here with the 23 units? What's the  
7 percent -- what's your profit percent?

8 MR. RIEGLER: Two or three percent.  
9 I mean it's not a huge -- it just goes from  
10 it being a viable deal to a --

11 CHAIRPERSON JORDAN: That's not  
12 what I'm asking you. The Board is going to make  
13 a determination what is going to be fair in this  
14 regard.

15 MR. RIEGLER: I understand.

16 CHAIRPERSON JORDAN: So I'm asking  
17 you directly, what does 23 represent? What's  
18 the number? What the percent of profit on 23  
19 units?

20 MR. RIEGLER: The typical margin  
21 that we shoot for is a minimum on a condominium

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1 project is about --

2 CHAIRPERSON JORDAN: I will ask you  
3 again. I think I'm not being clear myself.

4 MR. RIEGLER: I don't know the exact  
5 difference off the top of my head.

6 CHAIRPERSON JORDAN: I'm not asking  
7 for the difference, I'm asking what that percent  
8 is for the 23 units. Do you understand what  
9 I'm asking?

10 MR. RIEGLER: Maybe I don't.

11 CHAIRPERSON JORDAN: I'm asking if  
12 you did 23 units, there's a certain income level  
13 amount of revenue that you're going to generate.  
14 There's a certain amount of costs,  
15 construction, XYZ. And then you come down to  
16 the bottom line, something is going to be left  
17 over and that's a percent. What's the percent  
18 number?

19 MR. RIEGLER: I don't have that.  
20 The point of this presentation is simply to say  
21 that if we build 1100 square foot one bedrooms,

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1 they're not marketable. If we build 1700, 1800  
2 square foot two bedrooms, they're not marketable  
3 at a profit. They are not profitable if you  
4 were to break down the allocation of costs on  
5 a per unit basis. There's a law of diminishing  
6 return in the market that if we break what people  
7 are willing to pay, it will not go there.

8 And I also -- it's very important  
9 to note that there are a lot of extenuating  
10 circumstances of cost and quite frankly, we  
11 haven't even started construction and therefore  
12 who knows if our contingencies and the like are  
13 high enough where we've got environmental  
14 remediation. We have to remove the cell phone  
15 tower. We have to restore a historic building.

16 So there's a lot of extenuating circumstances  
17 that are above and beyond the normal financial  
18 analysis. I appreciate what you're asking.  
19 I just didn't bring the pro forma metrics with  
20 me.

21 CHAIRPERSON JORDAN: Go ahead,

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1 continue.

2 MR. RIEGLER: That's all. I just  
3 wanted to make it clear while again we've kind  
4 of gone from a design standpoint backed into  
5 or just ended up with the unit layouts and count  
6 that Sacha has presented, there are also other  
7 factors that are not design related that at least  
8 in our view add to the merits for needed relief  
9 in order to restore a challenging property.

10 MR. KADLECEK: Kevin, can you  
11 explain if we were constructing 23 units on the  
12 site as opposed to the 25 we're asking for, what  
13 marketing challenges would have with the way  
14 those units would lay out?

15 MR. RIEGLER: Right. The average  
16 unit in our 25 unit BZA case, the 27 including  
17 townhomes, like I said is about 1100 square feet.

18 If we go down to the 23 which is the by right,  
19 we have an average unit size of about 1500 or  
20 1600 square feet, average. So that means we're  
21 going to have units in the 1800, 1900, 2000

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1 square foot range. Again, not to say that  
2 there's not a price that the market will bear  
3 for selling those, but given all the costs  
4 associated with constructing them in this  
5 market, in this sub-market, in our opinion those  
6 are not viable unit to be putting on the market.

7 MR. KADLECEK: And can you explain,  
8 Sacha, if we were to do a by right plan or  
9 something less than what we're requesting, can  
10 you explain how those units would be different  
11 with respect to light, narrow spaces,  
12 configuration of spaces and so forth?

13 MR. ROSEN: Sure. The issue is  
14 that when a purchaser comes to the property to  
15 buy it, they certainly expect a number of usable  
16 rooms as well as back of house rooms. And  
17 everybody loves more storage, but nobody wants  
18 to pay \$500 a square foot for a closet that's  
19 larger than what they actually need or larger  
20 than their living room.

21 So essentially what we would have

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1 is dwelling units that might be 25 to 30 percent  
2 usable rooms like two bedrooms or a bedroom and  
3 a living room and then you would have a kitchen  
4 and possible two, two and a half bathrooms for  
5 the most luxurious and then you'd have  
6 additional space that would not only be a walk-in  
7 closet, but you know another room or two worth  
8 of space. And that space will cost my client  
9 the same amount to actually build out as any  
10 other space, any other usable space. But when  
11 purchasers come to tour those properties,  
12 they're going to be expected to pay for those.

13 And so when they go to the market and compare,  
14 they can either buy one unit that has a nice  
15 bedroom and a nice living room, a kitchen and  
16 a bathroom, and that's all they have to pay for  
17 or they have to get that and this additional  
18 interior space that they may or may not be able  
19 to use.

20 MR. KADLECEK: And Kevin, in your  
21 opinion, in your experience as a developer, if

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1 we were to construct the by right scheme which  
2 would be 23 units on the site or 21 units without  
3 the fee simple townhouse, is it the case that  
4 those because of the size of the units that would  
5 result, they would drop to a price that's lower  
6 than what's commensurate with the market for  
7 that neighborhood?

8 MR. RIEGLER: Absolutely. And  
9 also more importantly, they will be marginally  
10 more --

11 VICE CHAIR SORG: Can you repeat the  
12 last part of your question? I just missed it.

13 MR. KADLECEK: Sorry. I was asking  
14 him if we were to go with a by right scheme or  
15 something less than what we're requesting would  
16 the units increase in size and result in a  
17 configuration that they would have to sell,  
18 based on the study we've submitted, at a price  
19 that's lower than commensurate with the market  
20 in the neighborhood for new construction.

21 MR. RIEGLER: Absolutely. And

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1 more importantly, it's where those units are  
2 located within the building. So as you saw from  
3 Sacha's plan, I know we didn't delve into the  
4 unit devising plan on each floor, but the only  
5 -- on the first floor, the first level above  
6 grade, we divided that up into the four  
7 classrooms, just like you show in any school.  
8 Those are marketable. They're above grade.  
9 They're beautiful.

10 In the ground floor, it's not  
11 marketable. There's not a buyer for a 1600  
12 square foot two bedroom, den, two and a half  
13 bath and a basement. Yes, there is some strike  
14 price or some bottom line that someone would  
15 pay for that, but it's -- I would argue to say  
16 barely above cost. And then the same with the  
17 mezzanine as Sacha mentioned. The whole -- from  
18 our standpoint, the whole viability of this  
19 project revolves around the ability to build  
20 the townhouse structures and capture the  
21 mezzanine attic space. And so same thing on

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1 that top floor where it might be easy to say  
2 divide it into four, we've got to take advantage  
3 of the attic space as livable space.

4 And again, those balanced 1300  
5 square foot two bedrooms that we have on the  
6 first floor become 2400, 2500 square foot and  
7 as Sacha said, I don't know what that unit type  
8 would end up with all the deep, dark spaces.  
9 But that's where again, it was very clear early  
10 on in the project that while they could be  
11 architecturally attractive, they're not  
12 marketable, especially in this sub-market.  
13 This isn't the heart of Georgetown or the heart  
14 of Dupont Circle, something that might warrant  
15 a much higher per square foot price.

16 CHAIRPERSON JORDAN: We're getting  
17 there. Mr. Moy, can we have the lights on?

18 MR. KADLECEK: That concludes our  
19 presentation.

20 CHAIRPERSON JORDAN: Thank you.  
21 Now let me go back a second and ask regarding

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1 the transportation issues or the parking issue,  
2 mitigations being offered by doing a five-year  
3 Zipcar. You're providing 13 parking spaces on  
4 site. What about the Capital Bikeshare, did  
5 I hear you doing the Bikeshare?

6 MR. RIEGLER: Correct. We didn't  
7 even, we weren't even aware this was possible,  
8 but Commissioner Holmes made us aware that you  
9 can actually purchase, privately pay for the  
10 installation of a new Bikeshare location which  
11 we've agreed to do. And again, we don't know  
12 the exact location, but obviously, that's a  
13 benefit to us and a benefit to the neighborhood.

14 CHAIRPERSON JORDAN: Is that in  
15 addition to the bike space set up?

16 MR. RIEGLER: On site, yes.

17 CHAIRPERSON JORDAN: Is there  
18 anything else?

19 MR. RIEGLER: Not on those --

20 CHAIRPERSON JORDAN: That's going  
21 to let mitigate the parking issue in the area?

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1 MR. RIEGLER: The Zipcar which we  
2 mentioned.

3 CHAIRPERSON JORDAN: Yes.

4 MR. RIEGLER: It's kind of an  
5 indirect benefit of this going from a commercial  
6 use to residential. We've added those 11 RPP  
7 zoned spaces that if this remained as a  
8 commercial use --

9 CHAIRPERSON JORDAN: But I thought  
10 that's not viable or something?

11 MR. RIEGLER: That is.

12 CHAIRPERSON JORDAN: Okay.

13 MR. RIEGLER: The RPP aspect that  
14 wasn't viable was limiting new owners of the  
15 school condominiums or the townhouses to not  
16 be able to apply for RPPs. There's no  
17 enforceable mechanism in DDOT or privately that  
18 we could agree on that worked.

19 CHAIRPERSON JORDAN: And the public  
20 transportation around the area is?

21 MR. RIEGLER: Not Metro, but

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1 strong. There's a Circulator, bus lines,  
2 Maryland Avenue. You're only -- not a 10-minute  
3 walk to H Street, so whenever the cars get  
4 installed finally on H Street, that will  
5 obviously be a huge benefit. And Eastern Market  
6 is equidistant, maybe 10, 15-minute walk for  
7 sure.

8 CHAIRPERSON JORDAN: Does the Board  
9 have any other questions of the applicant?

10 MR. RIEGLER: I will note as well  
11 that our parking from a ratio standpoint, we're  
12 about one for two and R4 is one for three, so  
13 we're -- we are over parked as if this was a  
14 new construction building, but appreciate the  
15 dynamics of the neighborhood and all that.

16 CHAIRPERSON JORDAN: Does the Board  
17 have any other questions?

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

20 I wanted to understand a little bit  
21 more about the unit mix and sizes. It looks

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1 to me from this plan like in your ground floor  
2 you've got nine units, is that right?

3 MR. RIEGLER: That's correct.

4 VICE CHAIR SORG: And on the first  
5 floor above, you've got five?

6 MR. RIEGLER: Four, I believe.  
7 Five.

8 VICE CHAIR SORG: Yes. And then  
9 seven on the second and mezzanine?

10 MR. RIEGLER: Correct. Those are  
11 all two-story units.

12 VICE CHAIR SORG: Right, got it.  
13 And then the three townhouses that are attached  
14 to the school, those are two over two?

15 MR. RIEGLER: No, those are single  
16 family.

17 VICE CHAIR SORG: Those are just  
18 single family ago. Got it.

19 MR. RIEGLER: But they're  
20 condominium owned.

21 VICE CHAIR SORG: Yes. So that's

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1 three units. So --

2 MR. RIEGLER: It's eight. I was  
3 corrected. Eight on the second floor  
4 mezzanine. It's not seven.

5 VICE CHAIR SORG: Okay, that's my  
6 count was one down. That's why I was asking.  
7 Good.

8 Okay, and can you give what is  
9 generally speaking the unit mix?

10 MR. RIEGLER: Sure. Ground floor  
11 is primarily one bedrooms and studios and  
12 studios not by size. They are still 600, 700  
13 square feet, but because they're 45 foot deep.

14 So those units, I believe are all one bedrooms  
15 or studios.

16 The first floor units, again, the  
17 first level above grade, there's one studio  
18 unit, and four two bedroom, two bath. And then  
19 all of the mezzanine which I think with the  
20 exception of one are above 1100 is 1700 square  
21 foot, two bedroom, two bedroom/den, two baths

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1 kind of -- they're kind of awkward. The  
2 relative bedrooms, there's actually -- none of  
3 them, I don't think, technically will be legal  
4 bedrooms technically except for a couple because  
5 they're up in a mezzanine, set back in deep  
6 space. But that's the dormer windows and some  
7 of those are architectural elements that will  
8 dramatically bring light in hopefully.

9 VICE CHAIR SORG: And then can you  
10 answer for the studio units what's the sort of  
11 average size? I know you're only providing a  
12 few.

13 MR. ROSEN: Well, in the market,  
14 normally we provide studios at 500, 600 square  
15 feet.

16 VICE CHAIR SORG: Right, I  
17 understand.

18 MR. ROSEN: These are larger than  
19 750 square feet.

20 VICE CHAIR SORG: Right, you guys  
21 made that point like four times. And I think

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1 we understand that. And it is an important  
2 point which is I just wanted to understand  
3 specific to this project what they would be.  
4 I understand they're a lot bigger. We got it.

5 So here you are saying the studios  
6 are around 700 feet?

7 MR. ROSEN: Yes.

8 VICE CHAIR SORG: And the one  
9 bedroom?

10 MR. RIEGLER: Eight hundred. A  
11 couple of them are actually on the corners.  
12 We actually have really nice traditional units  
13 because it's a linear window wall, 750 to 900,  
14 but again, those are good -- I'm not complaining  
15 about those units.

16 VICE CHAIR SORG: I got it.

17 MR. RIEGLER: Those are very  
18 marketable.

19 VICE CHAIR SORG: And what's the  
20 sort of range of your two bedroom units?

21 MR. RIEGLER: Ground floor is, I

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1 believe, about 1250 at the low end to about 1350,  
2 I'm sorry, first floor. The top floor, I  
3 believe the lowest is about 1150 up to about  
4 1700 square feet.

5 VICE CHAIR SORG: So like 1200 to  
6 1700, okay.

7 And then one question about the  
8 transportation that you're offering. Can you  
9 explain what it means when you say we will pay  
10 for the Zipcar?

11 MR. RIEGLER: Again, this is based  
12 upon the advice or conversations with  
13 Commissioner Holmes. We can pay for the minimum  
14 amount of rental income or whatever you call  
15 it that Zipcar or one of the car share programs  
16 will need in order to guarantee that that will  
17 be a spot.

18 VICE CHAIR SORG: I see.

19 MR. RIEGLER: I can't tell you the  
20 exact economics how that works, but we like it  
21 as an attribute to the building anyway.

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1 CHAIRPERSON JORDAN: So the people  
2 don't have free use of the car.

3 MR. RIEGLER: No.

4 CHAIRPERSON JORDAN: You --

5 MR. RIEGLER: We tried that, but the  
6 problem is -- if we put it on our site, then  
7 we only have 20 some odd users which is not enough  
8 to man and it's a private gated entry, so there  
9 was no way -- it would be like putting it in  
10 a parking garage, which I've done before, but  
11 on a 300-unit project. So there's more demand.

12 VICE CHAIR SORG: You could buy him  
13 a car.

14 MR. RIEGLER: But it's still a  
15 guaranteed Zipcar spot that is not there now.

16 CHAIRPERSON JORDAN: I understand.

17 VICE CHAIR SORG: I just didn't  
18 understand how that worked with the Zipcar.

19 CHAIRPERSON JORDAN: I was  
20 thinking, whoa, they're going to get free use  
21 of a Zipcar.

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1 VICE CHAIR SORG: I think that was  
2 all my questions. Thank you.

3 CHAIRPERSON JORDAN: Mr. Turnbull?

4 MEMBER TURNBULL: Thank you, Mr.  
5 Chair. I heard the word condo mentioned and  
6 then I see in the literature apartment. Are  
7 these condos and apartments or all condo?

8 MR. RIEGLER: I imagine the  
9 apartment reference is solely just from a zoning  
10 standpoint. They're all apartment houses. As  
11 of now, unless the market shifts, they're  
12 absolutely condos.

13 MEMBER TURNBULL: Condos. And  
14 they're all market rate?

15 MR. RIEGLER: Yes.

16 MEMBER TURNBULL: So you're not  
17 looking to provide any affordable housing?

18 MR. RIEGLER: No, this is historic  
19 property and so we're exempt from the MIZ  
20 regulation.

21 MEMBER TURNBULL: But you didn't

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1 proffer it or talk to the ANC or anybody in the  
2 neighborhood or look at a benefit that this might  
3 be?

4 MR. RIEGLER: We have a variety of  
5 projects that do include MIZ and the price, quite  
6 frankly that the seller was willing to part with  
7 the building on would not have made affordable  
8 housing viable.

9 MEMBER TURNBULL: Okay.

10 MR. RIEGLER: It was privately  
11 held, so it wasn't something that we could have  
12 negotiated with them.

13 MEMBER TURNBULL: You talk about  
14 the Bikeshare and how much bike storage is in  
15 the project?

16 MR. RIEGLER: I would venture to  
17 guess we have at least 20 spaces. We usually  
18 try to shoot for one space per unit. Quite  
19 frankly, we haven't gotten to the formal  
20 landscape site-plan design. But as you can see,  
21 we've got a lot of extra site area in the back

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1 of house there.

2 MEMBER TURNBULL: They would be  
3 outside?

4 MR. RIEGLER: They would be  
5 outside?

6 MEMBER TURNBULL: Sheltered or  
7 open?

8 MR. RIEGLER: We had the auxiliary,  
9 ancillary -- legal term?

10 MR. ROSEN: We're going to create  
11 a structure in the rear of the building that  
12 will shield the trash from view and will also  
13 create one to park underneath, the bikes.

14 MEMBER TURNBULL: Okay. You're  
15 getting rid of all the concrete. You have some  
16 remediation to do. The new parking permeable  
17 or what are you looking at from the standpoint  
18 of water on the site? Are you going for any  
19 kind of LEED certification on this or nothing?

20 MR. ROSEN: We are not pursuing LEED  
21 certification. We looked at doing permeable

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1 pavers. For me, as a designer, I have some  
2 issues with permeable pavers underneath parking  
3 areas.

4 MEMBER TURNBULL: That's your own  
5 predilection. It's not a --

6 MR. ROSEN: I would say there's a  
7 lot of science behind the issue. If you have  
8 permeable pavers you get that much more  
9 contaminated -- you get oil dripping into the  
10 groundwater. And so for me, until -- it is  
11 prohibitively expensive to create --

12 MEMBER TURNBULL: Are you doing any  
13 green landscaping at all?

14 MR. RIEGLER: Absolutely. All the  
15 landscape design will be local plantings and  
16 the like. I believe -- we did the calculation.

17 I believe 60 percent of the site is going to  
18 be porous in some form or fashion. All of our  
19 interiors are all FSC certified -- essentially,  
20 we would absolutely get LEED certification --  
21 on this size project --

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1                   MEMBER TURNBULL: Are you following  
2 any of the LEED guidelines, at least on  
3 landscaping?

4                   MR. RIEGLER: That's what I'm  
5 explaining. This project size is cost  
6 prohibitive and time prohibitive, more  
7 importantly, to actually get the LEED  
8 certification.

9                   MEMBER TURNBULL: That's fine. I  
10 just wanted to know if you're following any of  
11 the guidelines at least to make this site greener  
12 than what it was.

13                  MR. RIEGLER: One hundred percent,  
14 absolutely.

15                  MEMBER TURNBULL: Lighting, you're  
16 going with at least a LEED concept all down  
17 lighting. You're not worried about light  
18 spilling into the neighbors? From a  
19 landscaping standpoint, good neighbor  
20 standpoint, you're observing all of the  
21 qualities?

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1                   MR. ROSEN: We will be complying  
2 with the contemporary energy code which is  
3 actually, the most recent one is very stringent  
4 and is pretty much the same as LEED, LEED  
5 certified at a silver level. We are, in fact,  
6 doing a number of things to increase the energy  
7 performance of this building. One, we're  
8 replacing all the windows with contemporary  
9 thermally broken windows which will be a  
10 dramatic improvement. Roof insulation, as  
11 we're reconstructing the roof, we'll be  
12 increasing the roof insulation so that will  
13 again dramatically increase the energy  
14 performance.

15                   We're replacing all of the  
16 mechanical systems which are now -- these  
17 mechanical systems existing in the basement date  
18 from the '70s. They use outdated refrigeration  
19 systems and they're not terribly efficient.  
20 We'll be replacing them all with contemporary  
21 systems . It will be much more efficient.

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1           The townhome structures will all be  
2 built to the very latest energy efficient codes  
3 such as the exterior walls, roof, basement  
4 insulation will all be at a very high level,  
5 so they'll be quite energy efficient as well.

6           Lighting, it's hard to do a project  
7 these days with incandescent lighting, so most  
8 of the lighting also will be very carefully  
9 controlled to meet contemporary standards which  
10 -- and purchaser expectations because now  
11 purchasers have distinct energy-conscious  
12 requirements.

13           MEMBER TURNBULL:    You've got a  
14 trash area in the back there, too. This is a  
15 -- there's a pair of gates so a trash truck will  
16 not be coming in, you'll be moving trash out  
17 to the front?

18           MR. RIEGLER:    What we've done on  
19 other similar projects is a trash truck will  
20 be able to back up into the drive aisle, not  
21 go through the gates themselves, but essentially

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1 back up to that and then those are non-dumpsters.

2 Those are the large rolling bins. So three,  
3 four, five times a week, when we see how that  
4 demand goes they'll be rolled out through the  
5 gates. Trash trucks are trash trucks, but it's  
6 relatively minimal impact from a noise and all  
7 that stuff.

8 MR. ROSEN: The gateway has been  
9 designed to permit the passage of a trash truck,  
10 so depending on how things are worked out with  
11 the trash removal company, we can work out the  
12 --

13 MR. RIEGLER: The neighbors have  
14 been very vocal in making sure that we've  
15 addressed the trash noise and timing and all  
16 that, so I think it will be in line to say we  
17 have it all figured out, but we've done our best  
18 to design a functional circulation and means  
19 of doing that.

20 MEMBER TURNBULL: And the parking  
21 space, selling those are on a first-come,

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1 first-served basis, is that it?

2 MR. RIEGLER: We've got one each for  
3 the large townhouse condominiums over on the  
4 9th Street side. They'll be included in that  
5 price because --

6 MEMBER TURNBULL: They're bundled.

7 MR. RIEGLER: It's a four or five  
8 bedroom house, so those more than likely -- and  
9 the same goes with a handful -- three or four  
10 of the larger penthouse units in the school.  
11 Those will also be bundled and the rest will  
12 be first-come, first-served. That being said,  
13 all the additional units that we're adding are  
14 studios or relatively small units which in our  
15 experience are very rarely car owners, so they  
16 will not be allowed to buy a parking space unless  
17 all the other two bedrooms, for example, have  
18 been sold and they're still left over.

19 MEMBER TURNBULL: To get back to the  
20 cell phone tower, cell tower. You talked about  
21 it's there, you can't do anything with it.

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1                   MR. RIEGLER:   It's Sprint Nextel is  
2                   the latest conglomerate to control the lease.

3                   As you can imagine, that's quite a bureaucratic  
4                   process to get to the right person.   We've been  
5                   working on it for months.   The good news is  
6                   there's the technology associated with that  
7                   tower is antiquated technology that is being  
8                   decommissioned over the next couple of years.

9                   So the different -- the only thing that is  
10                  unsure of is whether there's some new technology  
11                  that they love this site for, so that's what  
12                  we're trying to figure out right now.   We're  
13                  retained counsel that's a pro at these cell tower  
14                  leases.

15                  The issue with the lease is that it's  
16                  a 20 year lease with a 20-year extension with  
17                  a 20-year extension.   And so they've kind of  
18                  -- we're begging, if you will, to work with us.

19                  But we have coffered funds as part of the sales  
20                  transaction in escrow to pay for moving that  
21                  offsite.   It's obviously to the benefit of us

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1 and the neighborhood. HPRB, obviously, as you  
2 can imagine is not a lover of that.

3 MEMBER TURNBULL: I was just  
4 curious because on the one plan on Sheet 03 it  
5 shows roughly where it is, but 07, when you look  
6 at your other plans, isn't it right in the way  
7 of the little extension --

8 MR. RIEGLER: Right, well, we're  
9 optimistically showing it not in the plans.  
10 The backup plan is we do have permission in the  
11 lease, you've got to go through the  
12 technicalities of the engineering to take the  
13 actual antenna panels and tack them on somewhere  
14 else. So one idea we've had -- the best idea  
15 is on the back side of that bridge, just so it's  
16 kind of hidden out of harm's way. It's not on  
17 a smokestack. So that would allow us to move  
18 the smokestack, still this is again our worst  
19 case in our view, put it on the back side of  
20 that.

21 MEMBER TURNBULL: So the worst case

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1 scenario, it's got to stay, worst case.

2 MR. RIEGLER: Yes.

3 MEMBER TURNBULL: Only you can  
4 remove the --

5 MR. RIEGLER: The panels  
6 themselves.

7 MEMBER TURNBULL: The  
8 infrastructure of it and remount it on something  
9 else.

10 MR. RIEGLER: Right, and they have  
11 this incredibly inefficient mechanical room  
12 down in the basement that takes up like a  
13 thousand square feet where it could take up 300.

14 So those are the conversations -- we haven't  
15 gone there yet with them because we want them  
16 just to remove it, but that's a backup plan.

17 MR. ROSEN: Again, we're  
18 optimistically not showing that on the lower  
19 level, so that could be another imposition on  
20 the building. And the third option for the  
21 actual smokestack is that we remove the lower

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1 portion of it and just put -- bury new structure  
2 within that bridge element, so the upper portion  
3 stays there which we don't want, but it could  
4 be there and it just doesn't come all the way  
5 down to the ground.

6 MEMBER TURNBULL: Okay. Regarding  
7 the RPP, and I know we've done it on PUDs, we've  
8 been able to put into the order a building is  
9 exempt. So you're running into a problem with  
10 being able to do that?

11 MR. RIEGLER: Yes, and the issue,  
12 I had never thought about this before in doing  
13 our investigation, but most PUDs are very  
14 large-scale projects that take up a block, you  
15 know, so the example that this particular ANC  
16 had recently was the H Street Connection, the  
17 Rappaport PUD that's on -- right on H Street.

18 And that's a city block project. And so you've  
19 got a huge parking garage, you know, it's just  
20 a different dynamic.

21 And so here, they can only, they

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1 being DDOT/DMV, can only take the entire block.

2 They can't do address by address. So we looked  
3 at every combination of can we say specific units  
4 within the building, can you take just this  
5 building out and the simple answer was that we  
6 have to go through the entirety of the block  
7 and then retroactively go and, my word, sign  
8 people in to being allowed to do RPP for the  
9 existing owners which God knows how long that  
10 would have taken. So we just -- it was kind  
11 of a quick investigation.

12 MEMBER TURNBULL: Thank you.

13 VICE CHAIR SORG: I just want to ask  
14 one follow-up question, as a note we've actually  
15 had projects that have proffered that and DDOT  
16 had said that are not a full block and DDOT had  
17 said that we can do this and it is enforceable.

18 That doesn't matter, you're not offering it.

19 So whatever.

20 But to ask about the RPP, it's  
21 basically and please correct me if I'm wrong,

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1     you guys are saying we're going to shoulder the  
2     burden of changing the street back into RPP which  
3     adds 11 spaces for the use of the whole  
4     community?

5                   MR.     RIEGLER:           Correct,     and  
6     obviously Commissioner Holmes is going to be  
7     taking a lead on the coordination with DDOT,  
8     but we're obviously in full support of that and  
9     I don't believe DDOT would have been supportive  
10    of that if the use wasn't changing with the  
11    residential on this site, because the whole  
12    reason they're commercial in the first place  
13    is because it's a credit union now.

14                   VICE CHAIR SORG:   Got it.   Okay,  
15    thank you.

16                   CHAIRPERSON JORDAN:   And that goes  
17    to my question, its presently in use by the  
18    credit union?

19                   MR.     RIEGLER:   Correct.   We closed  
20    about -- I guess it's been about a month now.  
21    They're leasing back from us for a couple of

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1 months while their new space is being built out,  
2 so end of January, they'll be vacating the  
3 building.

4 CHAIRPERSON JORDAN: Were they  
5 going to vacate the building prior to this  
6 transaction?

7 MR. RIEGLER: No. This was the  
8 hinge point of allowing them to have the funds,  
9 etcetera, to consolidate their program.

10 CHAIRPERSON JORDAN: Any other  
11 questions from the Board?

12 Then let's turn to the Office of  
13 Planning to see if there's something that  
14 Planning needs to add.

15 MR. GOLDSTEIN: Good morning,  
16 members of the Board. My name is Paul Goldstein  
17 with the Office of Planning. As you'll note  
18 in the report, the Office of Planning is  
19 supportive of the application. We think that  
20 it meets the variance test for the lot area  
21 relief. The property is exceptional, a large

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1 size, existing historic building. I don't  
2 think I need to go much more into that.

3 I think we've heard -- we've been  
4 convinced of the practical difficulty argument  
5 that the layout of the building lends itself  
6 to a certain layout of unit sizes and unit mixes.

7 And that these are the appropriate -- we think  
8 there's been enough evidence that these are the  
9 appropriate sizes and marketable units for this  
10 site. And that we do not see that there should  
11 be any harm to the public good.

12 We are encouraged to hear that the  
13 applicant is committing the certain TDM tight  
14 measures and are supportive of the project  
15 generally.

16 Thank you. And I'm available for  
17 any questions that you may have.

18 CHAIRPERSON JORDAN: Thank you.  
19 Does the building have any questions for the  
20 Office of Planning?

21 Does the applicant have any

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1 questions of the Office of Planning?

2 MR. RIEGLER: No questions.

3 CHAIRPERSON JORDAN: Is anyone here  
4 from DDOT or any other government agency?

5 We do have a Department of Transportation  
6 report that recommends support of the project  
7 or in their language no objection which is  
8 submitted in Exhibit 27. In that report, they  
9 state that certain measures that they will like  
10 to see, a minimum of ten bicycle spaces, one  
11 for every three dwelling units, either inside  
12 the building or secure covered area in the rear  
13 yard. And then even to further encourage the  
14 non-automobile use by implementing a  
15 transportation demand management plan. And  
16 certainly suggests that a Capital Bikeshare  
17 membership be offered to the residents and  
18 supporting Smart Cars at a value of \$100. I  
19 don't know if we covered that.

20 Are you doing any of those things?

21 MR. RIEGLER: We hadn't gotten to

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1       that level of implementation of our mitigation  
2       methods or agreements, but certainly they're  
3       not out of the question.

4                   MR. KADLECEK:   I would like to add  
5       what we're already offering which is the actual  
6       installation of a Capital Bikeshare station and  
7       the subsidy of a Zipcar space is far more of  
8       a proffer, we believe, than the sort of usual  
9       package that DDOT recommends in every BZA case.

10       So we think we've actually thought about it  
11       a little bit more and come up with a better  
12       solution than what DDOT is asking us to do.

13                   CHAIRPERSON                               JORDAN:  
14       Representations from ANC 6A, is anyone here for  
15       -- please, come forward to the witness table,  
16       please, and identify yourself.

17                   MR. HOLMES:       I'm David Holmes,  
18       Commissioner for 6A-03 representing this area.

19       I'm also chair of the ANC.

20                   CHAIRPERSON JORDAN:   Thank you.  
21       Thanks for coming.

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1                   MR. HOLMES: As you've seen in the  
2 letter that we have provided you --

3                   CHAIRPERSON JORDAN: Let me just so  
4 that we can --

5                   MR. HOLMES: That was five minutes,  
6 sir?

7                   CHAIRPERSON JORDAN: Yes, I wanted  
8 to make sure Mr. Moy was back in his seat before  
9 you started. Very good, thank you.

10                  MR. HOLMES: All right, the  
11 Commission adopted a motion that it opposed  
12 increased density at the site for the entirety  
13 of the site unless the chairs of the Commission  
14 and the Zoning Committee jointly were able to  
15 negotiate a lessened impact on the parking in  
16 the neighborhood with the developer. That  
17 motion passed unanimously with a quorum present.

18                  The chairs, Commissioner Ronnenberg  
19 and myself, and thus the ANC, support 25 units  
20 on this site and no more. This represents the  
21 consensus of the neighborhood as well, the

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1 consensus built over three public meetings  
2 devoted to the topic, discussions by and at our  
3 Zoning Committee and at the ANC meeting.

4 I've also been the recipient of  
5 hundreds of emails from neighbors and developers  
6 and some near 100 phone calls. Many of the  
7 neighbors still strongly assert that no  
8 additional density over the 23 allowed by right  
9 should be given to the developers.

10 I do, however, want to praise CAS  
11 Reigler and their partners, Ditto Residential,  
12 for their outreach, for the design changes, and  
13 we're delighted at the restoration. The  
14 present look of the building is penitential and  
15 this would be a considerable improvement.

16 The standard for variance requires  
17 that there must be exceptional practical  
18 difficulties or exceptional and undue hardship.

19 I do not see that in this case. There are no  
20 exterior difficulties that require more than  
21 the by right number. This is a flat lot. It's

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1 a rectangle with driveway access from two  
2 streets. There's no physical impediment to the  
3 site. The internal designs that are to be  
4 reserved are not a serious hindrance to  
5 allocating space within the building, not so  
6 much that a good architect and these are good  
7 architects, will not be able to find a ready  
8 solution.

9 Why is density so much a problem in  
10 the neighborhood? Within one block there are  
11 three many unit large apartment buildings all  
12 with no off-street parking. Across Maryland  
13 Avenue there are two very large apartment  
14 buildings with limited parking. And just to  
15 show you --

16 CHAIRPERSON JORDAN: Could we have  
17 the hand mic?

18 MR. HOLMES: This is the credit  
19 union building here. Across Maryland Avenue  
20 are two gigantic apartment buildings. There  
21 are two very large apartment buildings here and

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1 a smaller one here. There's a very large  
2 apartment building here, here. There's  
3 construction -- there's apartments and for staff  
4 and interns here, for the Coalition of Christian  
5 Colleges and Universities. There are -- and  
6 characteristic of this part of Capitol Hill,  
7 many rooming houses and flats along 10th Street,  
8 11th Street, and directly across from the credit  
9 union and along here. So there are often three  
10 or four flats and many of what looks like houses.

11 CHAIRPERSON JORDAN: And did I hear  
12 you correctly that they don't offer parking,  
13 any of those organizations?

14 MR. HOLMES: The two largest across  
15 the street, across Maryland, offer some parking,  
16 but there's many folks parking on the street.

17 There are also staff and visitors for the  
18 specialty hospital which is a block away. Those  
19 people have internal parking that they don't  
20 use because the parking inside, underground,  
21 has black mold, has block mold on many of the

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1 walls.

2 Many Eastern Ward 6 people commute  
3 to this area and park especially around the  
4 credit union currently to catch the northbound  
5 buses on 8th Street. The parking is absolutely  
6 saturated in the evening. I live near this  
7 place. Parking is a killer for us.

8 The situation is exacerbated by the  
9 well-attended church at 9th and D which has only  
10 two parking spots and meets most nights. There  
11 is simply no room for additional cars. One of  
12 the curses of my time as Commissioner has been  
13 dealing with the physical confrontations, the  
14 car keying, the calls for police enforcement  
15 of church and local parked cars parked  
16 illegally. We've had Commander Grooms, now  
17 Chief Grooms, come to speak to the community  
18 and the churches about intemperate reactions  
19 for parking stresses.

20 To complicate the already volatile  
21 situation, the conversion of 901 will mean the

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1 9th and D Street Church will lose the use of  
2 the credit union lot which they've been kind  
3 enough to provide to that church, a lot that's  
4 provided relief for much of the stress, for some  
5 of the stress on Sunday morning and Wednesday  
6 evening in particular.

7 In sum, 27 units should not be  
8 approved because there's neither practical  
9 difficulty, nor exceptional or undue hardships  
10 that require the variance. Because of the  
11 careful and sympathetic presentations of CAS  
12 Reigler and Ditto Residential, the ANC and the  
13 neighborhood authorized a proposal of two and  
14 only two additional residential units in  
15 exchange for the purchase of a Capital Bikeshare  
16 station, a small one, to be installed in the  
17 immediate vicinity and the public -- payment  
18 of the public space fee for a period of five  
19 years for on street parking space for a Zipcar  
20 to be located adjacent to the building.

21 Twenty-seven units is a step too

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1 far, especially since I believe that there would  
2 have been a neighborhood consensus to approve  
3 the original request if RPP had been foregone.

4 No RPP would have been a solution to the  
5 principal problem caused by the extra density.

6 Thank you.

7 CHAIRPERSON JORDAN: Does the Board  
8 have any questions of Mr. Holmes?

9 VICE CHAIR SORG: Yes, thank you,  
10 Mr. Chair.

11 Thank you, Mr. Holmes, for coming  
12 down. It seems like your ANC and the applicant  
13 were pretty close together here, two units, not  
14 a lot when you're talking in the 20s. What,  
15 in your opinion, catalyzed the impasse that you  
16 seem to be at here?

17 MR. HOLMES: They would view it as  
18 wanting to insist on 23, but because of the  
19 sympathetic presentation and the fact that they  
20 want the building to succeed and not fail,  
21 because they want the extra folks to live there,

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1       they want to convert it back to residential,  
2       that they are extending the offer of an extra  
3       two spots. The ANC is entirely sympathetic to  
4       this. This is an enormously over-parked  
5       neighborhood.

6                   VICE CHAIR SORG:       So the  
7       over-arching concern above anything else it  
8       sounds like -- just to reiterate, is the parking  
9       for all the members, period?

10                  MR. HOLMES:   Density results in  
11       extra parking. Extra density means extra  
12       parking.

13                  VICE CHAIR SORG: Right. And can  
14       you share your opinion on how converting the  
15       spaces on the surrounding street back to  
16       residential parking would help mitigate the  
17       parking in the area, and what's your opinion  
18       on that?

19                  MR. HOLMES:   The parking currently  
20       is not available during the daytime for a number  
21       of folks. But it's without limit. So a lot

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1 of commuters come in and fill it as soon as they  
2 can and they're all from -- this is the Hill.

3 A lot of folks work at the Capitol. They work  
4 at the Library, the Courts, the Administrative  
5 Conference of the Courts. They come home late  
6 and their parking is gone. A lot of it is  
7 because people are catching the buses and the  
8 bus that goes up 8th Street primarily serves  
9 the hospitals, for example, and those folks tend  
10 to work late. Those are nurses and so forth.

11 So those parking spaces are often crowded and  
12 gone.

13 We will convert it. I sent another  
14 email to DDOT asking for them to tell me what  
15 their situation was, but they haven't responded.

16 I expect that will come back and I expect that  
17 we will probably convert that to Ward 6 only  
18 24 hour parking on that side of the street and  
19 that will help.

20 VICE CHAIR SORG: And you concur  
21 that that will provide 11 additional spaces?

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1 MR. HOLMES: No, not that many, but  
2 I think they are probably counting D Street and  
3 that's a problem with just a missing sign.  
4 There's a sign on one end of the parking next  
5 to the fee simple house to 9th Street. That  
6 parking is actually public parking now, but the  
7 sign is missing at one end, so it's being treated  
8 as if it weren't Ward 6 only. It's not enforced.

9 VICE CHAIR SORG: So how many spaces  
10 in your investigation does the change in the  
11 --

12 MR. HOLMES: Probably seven.

13 VICE CHAIR SORG: Okay.

14 MR. HOLMES: Hopefully, one of  
15 those would be used for -- excuse me, make that  
16 eight because they're giving up the parking of  
17 the driveway.

18 VICE CHAIR SORG: Okay.

19 MR. HOLMES: One of those hopefully  
20 will be used for the Zipcar.

21 VICE CHAIR SORG: Right.

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1 MR. HOLMES: Zipcar is a major  
2 mitigation for us.

3 VICE CHAIR SORG: Okay, thank you.  
4 That's all my questions.

5 CHAIRPERSON JORDAN: Any other  
6 questions of Mr. Holmes or the ANC?

7 MEMBER TURNBULL: I just have one  
8 question. So the difference we're dealing with  
9 here is two units.

10 MR. HOLMES: Yes, sir.

11 MEMBER TURNBULL: And you think  
12 that the two units is going to be that much of  
13 a break on the neighborhood?

14 MR. HOLMES: I'm expressing the  
15 opinion of my neighborhood.

16 MEMBER TURNBULL: I understand.  
17 But if the project -- I'm just thinking it's  
18 probably two cars.

19 MR. HOLMES: Yes, sir.

20 MEMBER TURNBULL: Maybe, if we're  
21 lucky. I don't know. I'm just curious. It

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1 just seems we're so close on this and yet so  
2 far away. Okay, all right, thank you.

3 MR. HOLMES: Yes, sir.

4 CHAIRPERSON JORDAN: Any other  
5 questions for Mr. Holmes?

6 Then I'm going to ask the applicant,  
7 do you have any questions for Mr. Holmes?

8 MR. KADLECEK: No questions.

9 CHAIRPERSON JORDAN: Good. Mr.  
10 Holmes, we appreciate it. Thank you so much.  
11 Appreciate taking the time and the diagram,  
12 too.

13 Are there persons in the audience  
14 wishing to speak in support of this application?

15 Anyone wishing to speak in opposition to this  
16 application?

17 Then let's move back to the  
18 applicant for rebuttal and closing.

19 MR. KADLECEK: Sure.

20 CHAIRPERSON JORDAN: Are you going  
21 to present any rebuttal evidence?

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1                   MR. KADLECEK:   Not any evidence,  
2                   just a closing.

3                   CHAIRPERSON   JORDAN:       Just a  
4                   closing.

5                   MR. KADLECEK:   I really just want  
6                   to reiterate the issue with respect to parking.

7                   We are completely sympathetic to Commissioner  
8                   Holmes and the ANC and as you can see we are  
9                   quite close. The fact of the matter is it's  
10                  a difference of two units and as Commissioner  
11                  Turnbull pointed out, you know, it's probably  
12                  two cars. We think 27 units is the right number  
13                  of units and we don't think that there's any  
14                  material difference on the impact to the  
15                  neighborhood with respect to those two units.

16                  But with respect to the project design it does  
17                  make a big difference.

18                  We have worked tirelessly with the  
19                  ANC to try and reach some sort of agreement,  
20                  that's why we're offering the Capital Bikeshare  
21                  station. That's why we're offering the Zipcar

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1 space.

2 I just want to point out a couple  
3 last points about parking. It's important to  
4 note that with respect to legal spaces on the  
5 site now, we're not actually losing any legal  
6 spaces. We're providing more spaces than are  
7 legal spaces on the site. We're providing more  
8 parking than if it were a brand new building.

9 We're providing parking mitigation. And then,  
10 of course, the spaces on the street that are  
11 being returned to residential use.

12 So we're doing as much as we can to  
13 mitigate parking, but it is important to  
14 remember underneath all of this, we're not  
15 asking for parking relief. We're complying  
16 with the zoning regulations and we're trying  
17 to do our best to be good neighbors and to  
18 accommodate the crunch in parking in the  
19 neighborhood, but we believe that we have done  
20 the best that we can and are providing the best  
21 plan that we can for the site. And we believe

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1     that 27 units for the site, or 25 in the BZA  
2     case is the right number of units. We don't  
3     think the two additional units is really  
4     material and that's why we believe that we have  
5     this slight impasse with the ANC.

6                 CHAIRPERSON JORDAN: Well, good.  
7     Then we'll close this hearing based upon the  
8     record already submitted, except we would --  
9     we're going to pass this for decision. I'm  
10    going to put this on our next decision calendar.

11    And the reason why, I really would like for  
12    the parties to sit and talk again. It's better,  
13    as we find, for those doing development in the  
14    area that they try to do -- work as closely as  
15    possible with the neighborhood and community.

16    And I think we're just so very, very close to  
17    getting this resolved, I'm going to move this  
18    and give you opportunity to do that.

19                 At the same time, I'm going to ask  
20    that the applicant submit a list of conditions  
21    that they would live with regarding this,

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1 particularly those as referenced by the  
2 Department of Transportation.

3 Mr. Moy, our next decision meeting  
4 is when, a week from now?

5 SECRETARY MOY: The next regular  
6 decision would be next week, next Tuesday.

7 CHAIRPERSON JORDAN: The one after  
8 that?

9 SECRETARY MOY: After that would be  
10 January 15th.

11 CHAIRPERSON JORDAN: Next Tuesday.  
12 Do you have enough time to meet within a week?

13 MR. KADLECEK: Yes, we believe we  
14 can complete something by next week.

15 CHAIRPERSON JORDAN: Then let's put  
16 it on for next week, but I mean I want to see  
17 how we try to meet with -- again, let's go back  
18 to the drawing board, sit there and let's make  
19 sure that we can end this cliff.

20 MR. KADLECEK: Can I get a  
21 clarification on -- is the record being left

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1 open for us to --

2 CHAIRPERSON JORDAN: Just for the  
3 submission of the conditions.

4 MR. KADLECEK: Just for the  
5 conditions.

6 CHAIRPERSON JORDAN: Unless  
7 there's some changes, unless you have some  
8 changes.

9 MR. KADLECEK: I want to make it  
10 clear that if we have changes that we can submit  
11 those as well. Okay, thank you.

12 CHAIRPERSON JORDAN: Thank you, and  
13 I really appreciate the effort you're making,  
14 but please let's take that other step.

15 MR. KADLECEK: Thank you very much.

16 CHAIRPERSON JORDAN: Thank you,  
17 everyone, for coming.

18 SECRETARY MOY: Mr. Chairman, just  
19 one real quick. In terms of filing the list  
20 of conditions, the Board desires that by when?

21 CHAIRPERSON JORDAN: We can give

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1       them to Monday.

2                   SECRETARY MOY:       Monday?     Okay,  
3       very good.

4                   CHAIRPERSON JORDAN:       By   noon,  
5       Monday, next week Monday by noon.   Is that good  
6       enough?

7                   SECRETARY MOY:    Yes, sir.   Thank  
8       you very much.

9                   MEMBER TURNBULL:   And I would just  
10       like to add that I think the project is looking  
11       very good.   It's a significant thing in saving  
12       the school and rehabilitating it, reusing it,  
13       and the townhouse, I think the character, I think  
14       it fits in very well with the neighborhood.  
15       So I think you're doing an excellent job.

16                   CHAIRPERSON JORDAN:    Thank you.  
17       We appreciate you all coming down.   Thank you.

18                   We're going to take a very brief  
19       five-minute break.   The time now is 11:33.  
20       When that hand hits 11:38, we'll be back into  
21       session so everybody take note.   It's 11:33,

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1 five minutes from now. Thank you, 11:38.

2 (Off the record.)

3 CHAIRPERSON JORDAN: Let's move  
4 through this one. 18464.

5 Mr. Sullivan, will you do the  
6 introduction.

7 MR. SULLIVAN: I'd rather have Mr.  
8 Moy call the case first.

9 CHAIRPERSON JORDAN: I'm sorry, I  
10 jumped the gun. Because I know how much you  
11 really enjoy calling the case.

12 SECRETARY MOY: I'll remember that.  
13 Thank you, Mr. Chairman.

14 The next application for the Board  
15 is Application 18464. This is the application  
16 of McKinley Battle, pursuant to 11 DCMR. This  
17 is the advertisement -- this is the caption as  
18 advertised, pursuant to 11 DCMR 3104.1, for a  
19 special exception to for an expansion of an  
20 existing child development center under section  
21 205, to allow 24 children and 6 staff, in the

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1 R-4 District at premises 4124 3rd Street, N.W.,  
2 property located in Square 3312, Lot 61.

3 I believe, Mr. Chairman, the  
4 applicant has amended the application for  
5 additional relief.

6 CHAIRPERSON JORDAN: Let's call the  
7 case then. I mean, Mr. Sullivan,  
8 introductions?

9 MR. SULLIVAN: Thank you. Good  
10 morning, Mr. Chairman, and members of the Board.

11 My name is Marty Sullivan with the law firm  
12 of Sullivan and Barros. I'm here today on  
13 behalf of the owner of the property is Mr.  
14 McKinley Battle and Dr. Ernesta Battle, his  
15 wife, is the owner and operator of the 2 New  
16 Heights Child Development Center.

17 CHAIRPERSON JORDAN: And there's a  
18 request for waiver, I believe?

19 MR. SULLIVAN: That's correct. We  
20 filed an amendment to include a parking  
21 variance. There's two parking spaces in the

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1 back, but I made a mistake in the original  
2 application. They're not going to be used  
3 during the time that the child development  
4 center is used. So they're not really available  
5 for the child development center.

6 So we amended about 20 days ago and  
7 we did include the change on the notice poster  
8 and we have notified the ANC. They put us on  
9 the agenda for tomorrow night just to confirm,  
10 but the Single Member District representative  
11 said he didn't think there would be any issue  
12 with that.

13 It was unanimously approved when we went to them,  
14 initially, for just the special exception. But  
15 we haven't changed any of the substance of the  
16 operation.

17 CHAIRPERSON JORDAN: But now we  
18 have the variance issue. How does the Board  
19 feel about going ahead and proceed with this?

20 I see heads kind of nodding, some not moving.

21 Go ahead, we'll grant that waiver.

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1 Does the Board have any questions  
2 regarding this application, the request for the  
3 variance?

4 Ms. Sorg, do you have a question  
5 about the parking issue?

6 VICE CHAIR SORG: Well, I think Mr.  
7 Sullivan clarified it in his statement, but I  
8 think because we might generally, you know,  
9 increase the request to include a parking  
10 variance is something that we may often send  
11 people back to renote and stuff. I think if  
12 we're not doing that, a discussion about how  
13 you have reached out to the community and how  
14 you could understand the argument with regard  
15 to the parking. I think would be important to  
16 get on the record for me.

17 CHAIRPERSON JORDAN: Anybody else?  
18 If you could just respond to Ms. Sorg.

19 MR. SULLIVAN: Thank you, the need  
20 for the parking variance stems from the location  
21 of the play space. There's enough play space

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1 perhaps, but it's very limited and the parking  
2 spaces we'd like to leave those free and we think  
3 it would be better for the safety of the children  
4 as well.

5           Regarding the available parking in  
6 the area, 3rd Street is RPP, but there's often  
7 parking available. But Upshur which is only  
8 three doors away always has available parking.

9       It's actually commercial zoned and that block  
10 has actually a lot of vacant commercial uses.

11       So plenty of parking.

12           Currently, we only have one staff  
13 person in the current operation that parks and  
14 so we're adding two staff. So we may still be  
15 at the same number one. We may go to two.  
16 Couldn't be more than three. So we really have  
17 a very minimal need for parking at the center.

18           CHAIRPERSON JORDAN:     What's the  
19 parking requirement?

20           MR.     SULLIVAN:           The     parking  
21 requirement is two.

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1                   CHAIRPERSON JORDAN:   You have two  
2                   spaces?

3                   MR. SULLIVAN:   We have two spaces,  
4                   but we can't use them during the operation of  
5                   the child development center.

6                   CHAIRPERSON JORDAN:   Because?

7                   MR. SULLIVAN:   It includes the play  
8                   area and we think there's a safety issue.

9                   CHAIRPERSON JORDAN:   Yes, but you  
10                  have two spaces?

11                  MR. SULLIVAN:   We have two spaces.  
12                  That's correct.   Arguably, the Office of  
13                  Planning asked us to file for the variance.  
14                  Arguably, we don't need it, but I understand  
15                  it.

16                  We do have support from several  
17                  neighbors.   Hopefully, that's in the record.  
18                  I have three letters of support from neighbors.

19                  CHAIRPERSON JORDAN:   We do have  
20                  three letters provided in our Exhibit 21.   We  
21                  do.

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1                   Are there any questions anyone else  
2                   has in regards to this application? I think  
3                   the record -- Ms. Sorg?

4                   VICE CHAIR SORG: Just -- can you  
5                   just remind me how many children are currently  
6                   at the center?

7                   MR. SULLIVAN: Currently 16.

8                   VICE CHAIR SORG: Sixteen to 24,  
9                   thank you.

10                  CHAIRPERSON JORDAN: And the staff  
11                  is two?

12                  MR. SULLIVAN: Currently four. It  
13                  will be six.

14                  CHAIRPERSON JORDAN: And have you  
15                  seen the conditions set by OP which is basically  
16                  the operational things that you've already  
17                  discussed. Those are acceptable conditions?

18                  MR. SULLIVAN: Yes, we're fine with  
19                  those conditions.

20                  CHAIRPERSON JORDAN: Any more  
21                  questions of the applicant? Does the applicant

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1 have anything else that they think they need  
2 to tell us in regards to the site?

3 As I said, I believe the record is  
4 pretty clear.

5 MR. SULLIVAN: No, Mr. Chairman.

6 CHAIRPERSON JORDAN: Let's turn to  
7 OP to see if there is something that OP needs  
8 to supplement in their report that's already  
9 written that we've read at least a couple of  
10 times.

11 MR. MORDFIN: Good morning, Chair,  
12 members of the Board. There is nothing  
13 additional that OP would like to add to the  
14 record.

15 CHAIRPERSON JORDAN: Thank you.  
16 Board, any questions of Office of Planning?

17 Does the applicant have any  
18 questions of Office of Planning?

19 MR. SULLIVAN: No, Mr. Chairman.

20 CHAIRPERSON JORDAN: I clearly see  
21 there's no other representative or government

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1 agency here. We do have a letter recommending  
2 approval from the State Department of Education  
3 and we do have a letter recommending no  
4 objections from Department of Transportation  
5 in this matter.

6 Is anyone here wishing to testify  
7 in support of this application? As I said  
8 before, we do have three letters of support from  
9 Mr. Schumacher and Ms. Aldridge and a Sammy Gess.

10 I don't know if that's a man or woman, that's  
11 already in our file in support of this  
12 application.

13 Is there anyone else wishing to  
14 testify in support?

15 Our file does not have any letters  
16 of opposition, but is there anyone here wishing  
17 to testify in opposition to this application?

18 Then let's turn back now to the  
19 applicant for any closing that you would like  
20 to give.

21 MR. SULLIVAN: Thank you, Mr.

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1 Chairman. The only thing I would say in closing  
2 is we would very much appreciate a bench decision  
3 and summary order because --

4 CHAIRPERSON JORDAN: Not if it's  
5 not favorable.

6 (Laughter.)

7 MR. SULLIVAN: Assuming that, yes.

8 And because there is a waiting list. This is  
9 a neighborhood-serving center and the waiting  
10 list continues to grow and the beginning of the  
11 new year is a good cutoff point for people that  
12 are changing these uses. So thank you.

13 CHAIRPERSON JORDAN: With that then  
14 we will close the record on this application  
15 and move into deliberation.

16 I would move that we grant the  
17 request of the applicant, as amended, granting  
18 the special exception and the variance in this  
19 matter with the conditions recommended by the  
20 Office of Planning.

21 VICE CHAIR SORG: Second.

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1                   CHAIRPERSON JORDAN:    Motion made  
2                   and seconded.   Any discussion?

3                   All those in favor of motion signify  
4                   by saying aye.

5                   (Chorus of ayes.)

6                   Those opposing, nay.   The motion  
7                   carries.

8                   Mr. Moy?

9                   SECRETARY MOY:   Staff would record  
10                  the vote as 4 to 0 to 1.   This was a motion of  
11                  Chairman Jordan to approve the application with  
12                  conditions, I believe, as cited in the OP Report.

13                 Second the motion by Vice Chair Sorg.   Also  
14                 in support of the motion, Mr. Michael Turnbull  
15                 and Mr. Jeffrey Hinkel.   We have a Board seat  
16                 vacant so again the motion carries on vote of  
17                 4 to 0.

18                  CHAIRPERSON JORDAN:   And I'll tell  
19                  you why, as I try to close this out.   May we  
20                  have a summary order?

21                  SECRETARY MOY:   Yes, sir.   Thank

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1       you.

2                   CHAIRPERSON JORDAN:   The reason why  
3       it is with 4 to 0 to 1 means there were actually  
4       five people sitting and then if we needed a  
5       majority, requiring a vote of three in that  
6       regard, if you have that regard.   Because 4 to  
7       0 to 1 means one abstained, but there's not five  
8       people sitting here and one did not abstain,  
9       we actually have four people sitting.

10                  SECRETARY MOY:   That's true and we  
11       do have a Board seat that's actually vacant.

12                  CHAIRPERSON JORDAN:   The fifth to  
13       one did not abstain.

14                  SECRETARY   MOY:       Not   in   this  
15       situation, no.

16                  CHAIRPERSON   JORDAN:       No,   no,  
17       actually, if you're going to get down to did  
18       you have a majority vote on something.   Very  
19       good.   You need to hear that.   Thank you so  
20       much.   We appreciate it.   We did ask for a  
21       summary order that you can get your students

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1 in by the first part of the year. Thank you  
2 for coming and thank you for sitting through  
3 all this with us this morning.

4 MR. SULLIVAN: Always a pleasure.  
5 Thank you.

6 CHAIRPERSON JORDAN: A lot of  
7 citizens miss having this opportunity, by not  
8 just coming down and watching. Thanks a lot.  
9 Then we'll be in recess until the 1 o'clock  
10 docket.

11 (Whereupon, at 11:50 a.m., the  
12 hearing was recessed, to reconvene at 1:00 p.m.)  
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A F T E R N O O N   S E S S I O N

1:08 P.M.

CHAIRPERSON JORDAN: Okay, let us then come back off of recess and move into our afternoon docket.

Mr. Moy, would you call our case for this afternoon?

SECRETARY MOY: Yes, good afternoon, Mr. Chairman and members of the Board. The first application before the Board for action in this public hearing session is Application No. 18465. This is the application of St. Patrick's Episcopal Day School, pursuant to 11 DCMR 3104.1. This is for a special exception to allow an increase in the number of private school and child development center students from 440 to 485 students under sections 205 and 206, in the R-1-B and D/R-1-B Districts

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1 at premises 4700 Whitehaven Parkway, N.W. The  
2 property is located in Square 1372, Lot 817 and  
3 Square 1374, Lots 838, 839, and 857.

4 CHAIRPERSON JORDAN: Before we  
5 begin this hearing, a couple of announcements.

6 One, we are broadcast on -- webcast live and  
7 also this is being recorded by a court reporter.

8 So I'm going to ask that we refrain from any  
9 disruptive noises. If you have cell phones,  
10 please turn them on vibrate or something.

11 Additionally, all those who are  
12 going to testify on any case on today's docket,  
13 please stand and take the oath or affirmation  
14 from the Board's Secretary, please. If you're  
15 going to testify in any cases on the docket,  
16 please stand and take the oath or affirmation  
17 from the Board's Secretary. And I'm going to  
18 ask that you complete, afterwards, complete two  
19 witness cards and hand them to the court reporter  
20 prior to you testifying. Two cards each.  
21 Thank you.

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Mr. Moy?

SECRETARY MOY: Thank you, sir.

(Witnesses sworn or affirmed.)

CHAIRPERSON JORDAN: Will the parties or persons for Case No. 18465, please come to the witness table.

Please introduce yourselves.

MS. PRINCE: Allison Prince from Goulston and Storrs.

MS. MILANOVICH: Good afternoon. My name is Jami Milanovich with Wells & Associates.

MR. BARRETT: Peter Barrett, head of school, St. Patrick's Episcopal Day School.

CHAIRPERSON JORDAN: Thank you. Let's see where we are.

Is there an ANC report filed in this case? I don't have it in my records.

MS. PRINCE: Yes, we have the unanimous support of the ANC.

CHAIRPERSON JORDAN: And you

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1 submitted it to Zoning?

2 Mr. Moy, do we have it?

3 SECRETARY MOY: Yes, sir. This ANC  
4 letter arrived untimely and I believe it should  
5 be -- well, I don't have an exhibit number on  
6 it.

7 CHAIRPERSON JORDAN: But we do have  
8 one. Do we have it to circulate or do you just  
9 have --

10 SECRETARY MOY: I do have it, but  
11 I'm looking at the wrong file.

12 CHAIRPERSON JORDAN: That doesn't  
13 help us.

14 In the ANC letter, you said it was  
15 --

16 MS. PRINCE: Unanimous support,  
17 9-0.

18 CHAIRPERSON JORDAN: With a quorum.  
19 Now there are, in this matter, conditions of  
20 approval has been acceptable by the applicant,  
21 correct?

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1 MS. PRINCE: We've consolidated the  
2 conditions of approval and we're prepared to  
3 submit them, such that this order will contain  
4 all of the conditions, historically, from  
5 previous St. Patrick's approvals as well as this  
6 one. We've included all of the Office of  
7 Planning conditions. The only caveat is that  
8 with respect to DDOT, there were five  
9 conditions. One was infeasible and we mutually  
10 agreed it can't be implemented.

11 CHAIRPERSON JORDAN: The applicant  
12 and DDOT?

13 MS. PRINCE: Right, we've discussed  
14 one that can't be implemented because we don't  
15 control the property. That's an issue in the  
16 condition and it involves continuous sidewalk  
17 in front of the property we don't own.

18 CHAIRPERSON JORDAN: Which  
19 condition is that, close the unused curb? No,  
20 which one is it?

21 MS. PRINCE: Condition 3.

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1                   CHAIRPERSON JORDAN:       Oh, the  
2 sidewalk gap.

3                   MS. PRINCE:   Right, the sidewalk  
4 gap. We can't accommodate that because we don't  
5 control that property. We're able to comply  
6 with the other conditions. There is only one  
7 condition that we would not like to adopt and  
8 that involves the closure of a curb cut on  
9 Whitehaven that we find still quite useful.

10                  CHAIRPERSON JORDAN:   Okay. So --

11                  MS. PRINCE:   And this is the only  
12 unresolved condition.

13                  CHAIRPERSON JORDAN:   We'll get to  
14 that. So three out of the five DDOT, we have  
15 agreement for.

16                  MS. PRINCE:   Correct.

17                  CHAIRPERSON JORDAN:   Well, no.  
18 Four out of the five, the issues -- the one issue  
19 with the curb cut with DDOT and we're okay with  
20 OP?

21                  MS. PRINCE:   Yes, all of the OP

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1 conditions.

2 CHAIRPERSON JORDAN: Then let's do  
3 this. Does the Board have any issues or  
4 questions we need to discuss other than -- I'm  
5 going to get to the DDOT issue and discuss with  
6 DDOT the particular issue, the one condition  
7 that's not acceptable to them. But is there  
8 anything else we need in regards to proof  
9 necessary that the Board wants to hear from the  
10 applicant?

11 Then let's do this, Ms. Prince, if  
12 we can, let's do this. The Board believes that  
13 we have enough in the record, in the file to  
14 support the request for relief. I would like  
15 then to -- you'll certainly have an opportunity  
16 to do a presentation, but you also have a right  
17 to rebut. But I want to turn to, see if there's  
18 anything from Planning and discuss the issue  
19 with DDOT before we proceed and then come back  
20 to it, if that's agreeable to you?

21 MS. PRINCE: That's agreeable.

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1                   CHAIRPERSON JORDAN:       Then let's  
2       turn now to the Office of Planning and see if  
3       there's anything in addition to what Planning  
4       has already submitted in its report that  
5       Planning wants to talk about.

6                   MS.       BROWN-ROBERTS:               Good  
7       afternoon, Mr. Chairman, and members of the BZA.  
8       Maxine Brown-Roberts for the record.

9                   We have nothing else to add to the  
10       record. We have worked with the applicant on  
11       these conditions and we came to mutual agreement  
12       on them, so we have nothing else.

13                  CHAIRPERSON       JORDAN:               The  
14       conditions you have worked out?

15                  MS. BROWN-ROBERTS:   Yes.

16                  CHAIRPERSON JORDAN:       Thank you.  
17       Does the Board have any questions for the Office  
18       of Planning?

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

21                  MS. PRINCE:   We do not.

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1 CHAIRPERSON JORDAN: Then let's  
2 turn now to Department of Transportation.

3 MS. CHAMBERLIN: Good afternoon.  
4 I guess to clarify, we're not in agreement yet  
5 about the missing sidewalk. It was just brought  
6 to our attention that the sidewalk might be on  
7 the Lab School's property. We were under the  
8 impression that it would be public right of way.

9 We understand it's not directly across the  
10 school property and it is across the Lab School  
11 property, but it is the missing link right now  
12 for that sidewalk all along Whitehaven that we  
13 would like to see completed in order to improve  
14 access to transit facilities.

15 So in that sense, we would like to  
16 look back and make sure if it is or if it's not  
17 on public right of way. If it is on public right  
18 of way, we would still like to see that sidewalk  
19 completed.

20 CHAIRPERSON JORDAN: All right.

21 MS. CHAMBERLIN: And I guess -- I've

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1 also been told just now before the hearing that  
2 the applicant wishes to keep the middle curb  
3 cut that's rarely used still open. And that's  
4 something our Operations and Safety Team still  
5 would like to see closed. We can agree to  
6 further discuss with the applicant the  
7 conditions and analysis required in order to  
8 maintain that access.

9 CHAIRPERSON JORDAN: Okay. Board  
10 questions of Transportation? Any questions for  
11 Transportation?

12 Does the applicant have questions  
13 for Transportation?

14 MS. PRINCE: We do not.

15 CHAIRPERSON JORDAN: Then is there  
16 any other governmental entity present? We do  
17 have a letter from the State Office of Education  
18 recommending approval which is contained in our  
19 Exhibit 33.

20 Is there a representative here from  
21 ANC 3D?

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1                   We do have a letter of support, our  
2                   Exhibit 38 from ANC 3D which had a quorum present  
3                   and who unanimously voted in support of this  
4                   application 9 to 0 to which we will give great  
5                   weight.

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

10                  Anyone wishing to speak in  
11                  opposition to the application? Anyone wishing  
12                  to speak in opposition to the application?

13                  Then let's turn back to the  
14                  applicant for any rebuttal or any closing you  
15                  wish to make?

16                  MS. PRINCE: Since this application  
17                  really involves almost no open issues except  
18                  these two small DDOT related issues, I'd like  
19                  Peter Barrett and Jami Milanovich, our traffic  
20                  engineer, to address both those issues.

21                  With respect to the sidewalk, it's

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1 entirely possible that the sidewalk that's  
2 proposed is in public space. Our point is that  
3 it's directly adjacent to Lab School property,  
4 so I think the completion of that sidewalk is  
5 more appropriately part of an application  
6 relating to the Lab School. And that's why  
7 we've raised it. The Lab School parks a lot  
8 of buses back in that area and for whatever  
9 reason they may want to weigh in on the  
10 completion of the sidewalk. If the Board feels  
11 very strongly about that issue, we can revisit  
12 it.

13 But with respect to the closure of  
14 the curb cut, I'd like both Peter and Jami to  
15 address it briefly.

16 CHAIRPERSON JORDAN: Please.

17 MS. MILANOVICH: Thank you. I just  
18 want to quickly review how the operations of  
19 the lay-by lane operate and just generally  
20 review why we believe that that middle curb cut  
21 should stay open and then I'll turn it over to

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1 Peter and he can provide some more specifics  
2 regarding the day-to-day operation.

3 The slide that's up now depicts how  
4 vehicles enter the lay-by lane. There is a --  
5 I'm not sure if it's possible to turn off the  
6 lights. It might be easier to see. Thank you.

7 There is a 250-foot lay-by lane  
8 immediately in front of the school along  
9 Whitehaven Parkway. That lay-by lane is  
10 separated from Whitehaven Parkway by a median.

11 And the way the traffic operations work today,  
12 primarily cars are heading westbound on  
13 Whitehaven Parkway and they turn left into the  
14 western most curb cut and then they head  
15 eastbound in the lay-by lane to drop off or pick  
16 up students. There is a police officer that  
17 controls the traffic entering the lay-by lane.

18 A few cars do approach from the west in an  
19 eastbound manner and turn right into the lay-by  
20 lane.

21 When exiting the lay-by lane,

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1 vehicles pull through the lay-by lane to the  
2 eastern most curb cut and then either make a  
3 right to head eastbound on Whitehaven Parkway  
4 or make a left to head westbound on Whitehaven  
5 Parkway.

6 The curb cut in question is located  
7 approximately midway in that 250-foot lay-by  
8 lane. And it is typically blocked by traffic  
9 cones because it's not used on a regular basis.

10 The school does or would like to retain the  
11 ability to use that curb cut in case of an  
12 emergency situation where they needed to either  
13 get people into or get people out of the lay-by  
14 lane to prevent traffic from queuing further  
15 back on Whitehaven Parkway and impeding the  
16 traffic flow on the adjacent streets.

17 As I said, it's not typically used.

18 It's typically coned off, but from time to time,  
19 they do have school personnel that find it  
20 necessary to remove the cones and direct traffic  
21 either into or out of that curb cut, like I said,

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1 just as an emergency relief valve. And with  
2 that, I'll let Peter maybe talk about the  
3 specifics of that a little more.

4 MR. BARRETT: I don't have a great  
5 deal to add, although if we want to really put  
6 a finer point of how much use it gets I would  
7 say that for 23 and a half hours out of any one  
8 day, there is no use of that curb cut. I've  
9 accepted a half hour period there and that would  
10 be during our afternoon dismissal time period  
11 when congestion is the greatest in terms of  
12 arrival and dismissal, in this case dismissal.

13 And quite often during that  
14 30-minute window between say 2:45 and 3:15,  
15 which isn't even the extent of our dismissal  
16 period that we do find it necessary to direct  
17 cars out of that lengthy lay-by lane in order  
18 to reduce congestion and keep the traffic  
19 moving. And generally, that is done not with  
20 the supervision of the Metropolitan Police  
21 Department, but with the presence, not only at

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1 the western most curb cut, but the eastern most  
2 curb cut as well. We normally have two police  
3 officers present at the time of dismissal.

4 So we do use it for the purposes of  
5 reducing congestion, keeping traffic flowing  
6 and that notion of emergency use is one that  
7 I am concerned about moving forward to not have  
8 any way in or out other than the western most  
9 and the eastern most curb cuts. That is a  
10 concern of mine along such a lengthy lay-by.

11 CHAIRPERSON JORDAN: Mr. Moy, can  
12 we have the lights back on, please?

13 We've got this diagram. I thought  
14 you could use the diagram for the sidewalk.

15 Let me ask a question. What's the  
16 negative to keeping the curb cut there? And  
17 I'm going to ask Transportation the same thing.

18 What's allegedly the negative of having a curb  
19 cut?

20 MS. MILANOVICH: You know, from our  
21 perspective, I frankly don't see a negative.

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1 It has been operating in this manner for a number  
2 of years, since at least 1990.

3 (Off mic comments.)

4 So at least 2000 it's been operating  
5 in this manner. There are no known issues  
6 related to the way that it's being used today  
7 and the way we propose to continue to use it.

8 The increase in traffic associated with this  
9 application is very small, so we're not adding  
10 a significant number of new trips. So from our  
11 perspective, I don't frankly see any negatives.

12 I do know that DDOT has implemented some new  
13 policies in the intervening years and I think,  
14 I don't want to speak for them, but I think that  
15 may be where the comment is coming from.

16 CHAIRPERSON JORDAN: Let me turn to  
17 the Department of Transportation and ask you  
18 the same question. What's the negative in  
19 keeping the curb cut?

20 MS. CHAMBERLIN: So keeping  
21 additional curb cuts are essentially -- they're

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1 intersections on the street. So DDOT's policy  
2 is to reduce conflict points and to manage access  
3 points. So whenever there's a reduction of curb  
4 cuts, there's a reduction of conflict points  
5 on any given street. So it's an improvement  
6 to the flow of traffic and to pedestrian safety,  
7 although that's actually not at the sidewalk.

8 But generally, when it's by a sidewalk,  
9 pedestrian safety is one of the main concerns.

10 CHAIRPERSON JORDAN: So regarding  
11 this particular curb cut, what's the negative  
12 about it and how is it impacting the traffic?

13 MS. CHAMBERLIN: It's access  
14 management, so it's creating access points and  
15 I think to note the driveway, the lay-by itself  
16 is 22-feet wide, so it's wide enough for two  
17 cars to pass each other. Just by creating  
18 another access point, you're just creating more  
19 turning movements on to and off of Whitehaven.

20 CHAIRPERSON JORDAN: It's my  
21 understanding that it's managed, this curb cut

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1 is managed during its operable time through --  
2 I think there's cones there and there's police  
3 officers. Does that not mitigate any issues  
4 with the curb cut?

5 MS. CHAMBERLIN: It does to a  
6 certain extent, except that that opportunity  
7 is still there for misuse or excessive use.  
8 And instead, it could be a planted strip which  
9 is currently on both sides of the curb cut, so  
10 increased impervious surfaces in addition.

11 CHAIRPERSON JORDAN: Okay. Does  
12 the Board have any questions of the applicant  
13 or DDOT on this particular issue before we move  
14 on?

15 MEMBER TURNBULL: I just have -- I  
16 think it was -- you made a comment, I think it  
17 might be used a half hour of a day?

18 MR. BARRETT: Correct. It would  
19 not be used for that half hour, but during that  
20 half hour. Our afternoon -- as I said, it's  
21 virtually never used during our morning arrival

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1 and dismissal. There would be no need to use  
2 it at any other time during the day, again, with  
3 the exception of any possible emergency  
4 situation, but with that one exception of our  
5 afternoon dismissal time.

6 Afternoon dismissal extends from  
7 2:45 to 3:30 and we normally -- if we are lifting  
8 the cones and directing cars out of the lay-by  
9 at that point it's usually in the early minutes  
10 as we're getting going, so in that 2:45 to 3:15  
11 time frame. So not used for a half hour, but  
12 during that half hour.

13 MEMBER TURNBULL: And are the cars  
14 that go through this supervised?

15 MR. BARRETT: Oh, yes. There is  
16 significant supervision. As we've said,  
17 there's generally a policeman at each of the  
18 entrance curb cut and the exit curb cut and there  
19 are faculty and administrators who are assigned  
20 to that car pool duty. Generally, when -- with  
21 respect to supervision, if someone is directing

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1 a car out of the lay-by at that point, it is  
2 either me or the assistant head of school who  
3 does that. We win that hour each afternoon.

4 MEMBER TURNBULL: Now can the cars  
5 go either way on Whitehaven?

6 MR. BARRETT: As they exit at that  
7 location, yes. They may turn left to go  
8 westbound or right to go eastbound on Whitehaven  
9 Parkway.

10 MEMBER TURNBULL: Okay. And you  
11 would do this because there's either a problem  
12 with queuing coming into the lay-by?

13 MR. BARRETT: I hesitate to bring  
14 you through our entire procedure, but as Ms.  
15 Chamberlin has said, the lay-by lane is wide  
16 enough for two cars and in the early part of  
17 our carpool, again, which is why I can narrow  
18 it down to that half-hour period, it's actually  
19 probably less than that, but in the early time  
20 of our car-pool we do pull cars around the queue,  
21 still within the lay-by, and pull them up to

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1     our nursery school point of departure. We get  
2     our nursery school students moving more quickly  
3     that way. So it's possible -- well, we would  
4     pull those cars, those nursery cars up above  
5     the curb cut. It's possible that a car below  
6     it can be ready to leave, can pull around the  
7     queue and rather than create an additional  
8     queue, we have the car exit the lay-by at that  
9     middle curb cut, if that's clear to you.

10           MEMBER TURNBULL: So actually, this  
11     looks like this is a traffic management control  
12     measure. You're trying to alleviate issues on  
13     the street.

14           MR. BARRETT: We're managing,  
15     that's managing congestion within the lay-by.

16           MEMBER TURNBULL: Within the  
17     lay-by, right.

18           MR. BARRETT: But as we do that,  
19     that affects what's happening on the street  
20     itself, yes.

21           MEMBER TURNBULL: Okay. So it's

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1 actually a relief measure.

2 MR. BARRETT: Precisely.

3 MEMBER TURNBULL: Thank you.

4 CHAIRPERSON JORDAN: Have we had  
5 any traffic accidents or anything with that  
6 middle curb cut exit?

7 MR. BARRETT: None that I'm aware  
8 of.

9 CHAIRPERSON JORDAN: Any other  
10 questions from the Board on this issue?

11 MEMBER TURNBULL: Have you ever  
12 thought of making other than the cones a more  
13 permanent, either posts or something set in the  
14 area rather than cones?

15 MR. BARRETT: The way we use it, in  
16 the way I've described, means that at a moment's  
17 notice we can pick up the cones and get them  
18 on their way and then place them back there.  
19 Anything -- if there's going to be anything more  
20 fixed or permanent, then we might as well shut  
21 it down unless it's there strictly for emergency

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1 purposes, emergency access, which I think there  
2 would be other means.

3 MEMBER TURNBULL: Thank you.

4 CHAIRPERSON JORDAN: Regarding,  
5 you're going to have some testimony, rebuttal,  
6 regarding the sidewalk issue?

7 MS. PRINCE: Jami can address that  
8 as well, but I would like to note that were the  
9 sidewalk to be completed in that area, it would  
10 cross two driveways and it would also affect  
11 the Lab School because the Lab School is the  
12 property owner adjacent to that area.

13 So I think it's inappropriate to be  
14 requiring St. Patrick's to complete a sidewalk  
15 adjacent to property that it does not own. I  
16 think the Lab School is likely to have an opinion  
17 about continuing the sidewalk there and the next  
18 time the Lab School is before you, we can have  
19 this discussion. But I don't think it's  
20 appropriate for today's discussion.

21 VICE CHAIR SORG: Would you mind

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1 just starting out by pointing out where it is  
2 on the diagram there you're showing right now?

3 MS. MILANOVICH: Let me see if I can  
4 get my pointer to work. This area right here.

5 CHAIRPERSON JORDAN: Where's the  
6 pointer?

7 (Pause.)

8 MS. MILANOVICH: Okay, sorry about  
9 that. This is the area in question. Our  
10 concern is you can see the sidewalk here is  
11 located sort of behind these angled parking  
12 spaces. The sidewalk here is located here, so  
13 we somehow across this short distance have to  
14 connect the two pieces of sidewalk. And so in  
15 order to do that, I think we would be encroaching  
16 on Lab School property.

17 CHAIRPERSON JORDAN: Where's the  
18 Lab School property?

19 MS. MILANOVICH: I don't know  
20 specifically the public right of way line is.

21 CHAIRPERSON JORDAN: Where is the

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1 Lab School?

2 MS. MILANOVICH: This is the Lab  
3 School property from the edge of this driveway  
4 to the west is the Lab School.

5 VICE CHAIR SORG: So who -- if we  
6 don't know the property, whose buses are those?

7 MS. MILANOVICH: Those are the Lab  
8 School buses.

9 VICE CHAIR SORG: Okay.

10 MEMBER HINKLE: And that driveway  
11 there, that's St. Patrick's?

12 MR. BARRETT: The driveway there  
13 just to the right of the buses is St. Patrick's  
14 and there is along the lower edge where the buses  
15 are, there's a wooden fence that marks that  
16 property line.

17 MEMBER HINKLE: Okay, from the  
18 location where the crosswalk is to that  
19 driveway, it looks like there is a piece of  
20 sidewalk missing. Is that correct?

21 MR. BARRETT: There's probably a

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1 two to three foot section -- that's right, that  
2 you're seeing there.

3 MEMBER HINKLE: Okay.

4 MR. BARRETT: Yes, between the  
5 driveway and the crosswalk, yes.

6 CHAIRPERSON JORDAN: Does the Board  
7 have any additional questions?

8 Does the applicant have any  
9 additional testimony regarding this?

10 MS. PRINCE: I just have some brief  
11 closing comments.

12 CHAIRPERSON JORDAN: Okay. Then  
13 let's put the lights back on, Mr. Moy, please.

14 Proceed.

15 MS. PRINCE: Thank you for your time  
16 this afternoon. As you can see from the record,  
17 there's a high level of support for this  
18 application including the unanimous support of  
19 ANC 3D which is not something that you see  
20 regularly.

21 St. Patrick's has really been a

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1 model to the other independent schools in the  
2 area of carpooling and the management of their  
3 carpool operation. I think as you heard from  
4 Mr. Barrett, he's quite an expert in the  
5 management and operation of orderly drop off  
6 and pick up and the community appreciates that  
7 and I think that's a lot of the reason why the  
8 ANC is so supportive of the school.

9 I think that we're hearing a little  
10 bit of a conflict between just general DDOT  
11 policy and actual on-the-ground operational  
12 issues and Mr. Barrett knows the day-to-day  
13 situation well at St. Patrick's and I think  
14 manages it quite well with the ability to use  
15 that, that cut on a fairly regular basis although  
16 not a lot.

17 So I think that the general DDOT  
18 policies have to be weighed against the  
19 on-the-ground operation and frankly, the  
20 history of success in the operation of this  
21 carpool arrangement.

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1           With respect to the sidewalk, as I  
2       said earlier, the Lab School controls the  
3       adjacent property. I think the Lab School needs  
4       to be at the table regarding any discussions  
5       about completing the sidewalk. Again, that's  
6       a general DDOT policy we fully respect, interest  
7       in a continuous sidewalk.

8           St. Patrick's made a huge investment  
9       in the creation of a sidewalk along its entire  
10      site when they installed angled parking spaces,  
11      but to require the Lab School, as a condition  
12      of their application, to complete a sidewalk  
13      adjacent to the Lab School's property that will  
14      affect Lab and that Lab will have opinions about,  
15      I think is just not appropriate for this  
16      application.

17           CHAIRPERSON JORDAN: Let me ask two  
18      things. Well, let me do the quicker one first  
19      and then come to the second. But there is  
20      property that requires -- that DDOT has talked  
21      about that requires a construction of the

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1 sidewalk gap that's on property owned by St.  
2 Patrick's.

3 MS. PRINCE: Sounds like there  
4 might be a little two to three foot area.

5 CHAIRPERSON JORDAN: But there is  
6 some so that can -- okay.

7 The second thing is will you go over  
8 with me the conditions that were agreed to with  
9 OP regarding those 13, I think it's 13. I want  
10 to make sure we're on the same page with those,  
11 the 13. Or do you already have them written  
12 out?

13 MS. PRINCE: We have them all  
14 written out for you.

15 CHAIRPERSON JORDAN: I want to  
16 compare them to what I already have in my record  
17 to make sure that they're the same record. You  
18 don't have to read them. We can just do a  
19 comparison.

20 They change to some extent from what  
21 OP had in its report. Is that what you're

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1       indicating?

2                   MS. PRINCE:   The OP conditions --

3                   CHAIRPERSON JORDAN:   The same ones  
4       in the OP Report?   Okay, I thought they changed.

5       Okay.   Yes, they're the same.   Okay.   Sixteen  
6       conditions.

7                   MS. PRINCE:   The only addition is  
8       the 14 to 16 to address DDOT.

9                   CHAIRPERSON JORDAN:   Excellent.  
10       Fourteen to 16 to address DDOT.   All right.  
11       Does the Board have any other questions of the  
12       applicant or anyone in this process?   Okay.  
13       Then we'll bring this hearing to a close based  
14       upon the record that's before us.

15                   I'm going to ask if the Board is  
16       ready to deliberate in this case?   Then I would  
17       move that the Board grant the relief requested  
18       in the application and the adoption of the  
19       conditions with one additional -- the conditions  
20       submitted by the applicant with one additional  
21       condition that being 17, construct the missing

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1 sidewalk gap on the south side -- on the property  
2 that's owned by St. Patrick. That would be my  
3 motion.

4 MEMBER HINKLE: I'll second that  
5 Mr. Chair. I also just wanted to address the  
6 curb cut issue real quick. It seems like it  
7 helps actually to manage some of the traffic  
8 issues. I am certainly not in favor of DDOT's  
9 recommendations to remove it. It's not  
10 impacting the pedestrian flow of the sidewalk  
11 in that area and I think it actually helps.

12 VICE CHAIR SORG: Just one other  
13 comment. I'm in support of your motion. My  
14 only question is on the condition that you  
15 proposed, the sidewalk, whether or not it's  
16 adjacent or close to the St. Patrick's property  
17 would actually always be in public space? I'm  
18 not certain that whether the language that  
19 you're using helps to achieve what we're kind  
20 of going for here.

21 CHAIRPERSON JORDAN: You said it

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1 would be in public space.

2 VICE CHAIR SORG: This will be in  
3 public space, so you might indicate that if --  
4 see.

5 CHAIRPERSON JORDAN: Go ahead.

6 VICE CHAIR SORG: My point is only  
7 that, you know, the sidewalk that's under  
8 discussion would necessarily be in public space,  
9 so if you want to leave it alone then I just  
10 want to clarify that which is fine.

11 CHAIRPERSON JORDAN: Anything  
12 else? All those in favor of the motion signify  
13 by saying aye.

14 (Chorus of ayes.)

15 Those opposed nay. The motion  
16 carries.

17 Mr. Moy?

18 SECRETARY MOY: Staff will record  
19 the vote as 4 to 0 and 1 Board seat vacant.  
20 This is on the motion of Chairman Jordan to  
21 approve the application with the 17 conditions

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1 as he cited, 16 plus 1.

2 CHAIRPERSON JORDAN: That's  
3 correct.

4 SECRETARY MOY: That's correct.  
5 Second the motion, Mr. Hinkle. Also in support  
6 of the motion, Mr. Michael Turnbull and Ms. or  
7 Vice Chairperson Sorg. And the motion carries,  
8 Mr. Chairman.

9 CHAIRPERSON JORDAN: Thank you.  
10 Then may we have a summary order, Mr. Moy, in  
11 this matter?

12 SECRETARY MOY: Yes, sir.

13 CHAIRPERSON JORDAN: Thank you.  
14 We'll call the next case.

15 SECRETARY MOY: The next  
16 application before the Board is Application  
17 18471. This is the application of Universalist  
18 National Memorial Church, pursuant to 11 DCMR  
19 3103.2. This is for a variance from the use  
20 provisions for theater performances on the  
21 basement level of a church under subsection

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1 350.4, in the DC/R-5-B District at premises 1810  
2 16th Street, N.W. property located in Square  
3 177, Lot 802. I believe in this application,  
4 Mr. Chairman, there are two party status  
5 requests.

6 CHAIRPERSON JORDAN: Very good.  
7 Would the persons involved in 18471 please --  
8 excuse me, is it 18471? 18471, please come to  
9 the witness table and identify yourselves,  
10 please?

11 MR. GATTON: Dave Gatton. I'm  
12 chair of the Building and Grounds Committee for  
13 the church, Universalist National Memorial  
14 Church.

15 MR. HEMRICH: Richard Hemrich,  
16 Artistic Director, Spooky Action Theater.

17 CHAIRPERSON JORDAN: Hemrich?

18 MR. HEMRICH: Hemrich, yes.

19 MR. MEEHAN: Bob Meehan,  
20 Commissioner from the Dupont Circle ANC 2B.  
21 The church is in my district, 2B-03.

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1                   CHAIRPERSON   JORDAN:       Is    Mr.  
2   Santucci present?   Are you Mr. Santucci?   He  
3   has already submitted some documents and he  
4   needs to be here for party status purposes.  
5   Just leave those with the Board Secretary.

6                   And is Mr. Jadin -- are you Mr.  
7   Jadin?

8                   MR. JADIN:   Yes.

9                   CHAIRPERSON JORDAN:   If you will  
10   take a seat at the witness table.

11                   (Pause.)

12                   Mr. Jadin, I understand that you're  
13   submitting for party status in this matter.  
14   Can you come closer and make sure your mic is  
15   turned on?   It should be a bright, glowing,  
16   green light for you.   Is the light very green?  
17   Say something, please?

18                   MR. JADIN:   Yes, I have filed for  
19   party status.

20                   CHAIRPERSON JORDAN:   And are you  
21   aware of the difference between party status

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1 and then speaking -- or just speaking in  
2 opposition?

3 MR. JADIN: Yes, I read the  
4 description from what was online. I get to ask  
5 questions and --

6 CHAIRPERSON JORDAN: Exactly.  
7 Okay, I just wanted to make sure.

8 MR. JADIN: Things like that.

9 CHAIRPERSON JORDAN: It's my  
10 understanding that you live within 120 feet of  
11 this location?

12 MR. JADIN: Yes.

13 CHAIRPERSON JORDAN: And your issue  
14 is about the flow of traffic, both vehicular  
15 and persons walking back and forth from the  
16 theater or the church?

17 MR. JADIN: Yes, that's the  
18 residential -- yes. That's one reason. The  
19 other -- that it just doesn't, to me, doesn't  
20 meet the requirements for the granting of the  
21 variance.

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1                   CHAIRPERSON JORDAN: Let me ask the  
2 Board if there are any questions.

3                   VICE CHAIR SORG: Can you describe  
4 --  
5 thank you, where is your home in relation to  
6 the front entrance of the church?

7                   MR. JADIN: I just submitted a map.

8                   CHAIRPERSON JORDAN: Just tell us,  
9 please.

10                  MR. JADIN: Well, I'm on the south  
11 side of the street. The second house in from  
12 the alley down from the alley. Diagonally, you  
13 know, across the street in the alley the church  
14 is about 120 feet away. And the entrance is  
15 on 16th -- to the church. Now they're only going  
16 to use the entrance on the front.

17                  MR. GATTON: Mr. Chairman, if we  
18 might be of assistance. We have a PowerPoint  
19 that shows an aerial view of the church and that  
20 would help in pinpointing the location.

21                  CHAIRPERSON JORDAN: All right,

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1 let's do that. Let's hit the lights, Mr. Moy.

2 Can we focus that up, please?

3 MR. GATTON: You'll see going  
4 across the middle is S Street and 16th Street  
5 goes north-south there.

6 CHAIRPERSON JORDAN: If you want to  
7 go up and just -- if you have the microphone.

8 Do we have the portable microphone handy?

9 MR. JADIN: Here's the church and  
10 here's the alley. This is Mr. Santucci's house  
11 right here and the next one is mine, right there.

12 CHAIRPERSON JORDAN: Okay.

13 MR. JADIN: And from my windows I  
14 have six foot by six foot windows on S Street.

15 I can see up the alley back to where the service  
16 doors are.

17 MR. GATTON: Mr. Chairman, in all  
18 fairness to the gentleman, we're a little off.

19 And again, we've got the church circled in the  
20 red box.

21 CHAIRPERSON JORDAN: Where's the

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1 hand microphone?

2 MR. JADIN: Here's the church.  
3 Here's the alley behind the church coming across  
4 S Street. This is Mr. Santucci's house. His  
5 property is two lots. That one and you can see  
6 the small building here on the lot closest to  
7 the alley is the front of his house. And this  
8 is our house, my wife's and my house.

9 CHAIRPERSON JORDAN: So you're next  
10 door to Mr. Santucci?

11 MR. JADIN: I'm right next door to  
12 Mr. Santucci. I don't know how well you know  
13 the city, these three houses together are what's  
14 known as Old Castle Row. They're very  
15 Romanesque Henry Richardson style, very heavy  
16 granite stone facades.

17 CHAIRPERSON JORDAN: Okay, thank  
18 you. You can take your seat, please.

19 I'm going to ask again does the Board  
20 have any issues with --

21 MEMBER TURNBULL: I find it

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1 acceptable.

2 VICE CHAIR SORG: We recently got  
3 in communication I think just before this  
4 hearing that the church is changing their  
5 request to indicate that the theater, potential  
6 theater use exit would be out of the main door  
7 of the church on to 16th Street. Were you aware  
8 of that agreement?

9 Sounds like no.

10 MR. JADIN: I knew they had said  
11 they were going to move everything they could  
12 to the front door. Now there are going to be  
13 egress requirements necessary.

14 VICE CHAIR SORG: Okay, so were you  
15 aware?

16 MR. JADIN: They all can't go out  
17 the front door. I was aware that they were  
18 moving entrance to the theater from the back  
19 to the front, yes. I'm aware of that.

20 VICE CHAIR SORG: So that does not  
21 alter your opposition?

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1 MR. JADIN: No.

2 VICE CHAIR SORG: Thank you.

3 CHAIRPERSON JORDAN: We'll grant  
4 you party status and so let's proceed in the  
5 hearing.

6 Sir, I don't think I had you  
7 introduce yourself?

8 You need to pull the microphone up.

9 MR. SALONIA: Hello, yes. I'm  
10 Lance Salonia, 1603 S Street, N.W.

11 CHAIRPERSON JORDAN: Salonias?

12 MR. SALONIA: Salonia, S as in Sam,  
13 A-L-O-N-I-A.

14 CHAIRPERSON JORDAN: And regarding  
15 this application, you're here for?

16 MR. SALONIA: I'm the one who  
17 originally filed the complaint because of the  
18 theater, as you'll see --

19 CHAIRPERSON JORDAN: You're here to  
20 testify in opposition?

21 MR. SALONIA: In opposition, but

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1 open to -- if all conditions are met, agreeable.

2 I'm not sure what do I check here.

3 CHAIRPERSON JORDAN: Okay. All  
4 right, just sit tight.

5 (Pause.)

6 Let's turn to the applicant to  
7 proceed with their presentation, please.

8 MR. BROWN: Good afternoon, Mr.  
9 Chairman. Patrick Brown from Greenstein  
10 DeLorme & Luchs. Before we start, I'd like to  
11 have my witnesses introduce themselves.

12 CHAIRPERSON JORDAN: They've done  
13 that while you weren't in the room.

14 MR. BROWN: I was talking to my  
15 colleagues. What I'd like to do is before I  
16 ask the church and the theater to speak briefly,  
17 I'd like to put this case in the context of the  
18 variance test and where we are and if you look  
19 at the three-point variance test and putting  
20 it as succinctly as I can, you'll see from the  
21 pictures, both the --

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1                   CHAIRPERSON JORDAN:    Sir, are you  
2                   going to talk about the facts as it applies to  
3                   the criteria to be granted a variance?  I don't  
4                   want you to tell us what the variance test is.

5                   I just --

6                   MR. BROWN:    No, no, no, no.

7                   CHAIRPERSON JORDAN:    All right.  
8                   Sometimes we have lawyers sit here that do that  
9                   and it's a waste of everybody's time, so I didn't  
10                  want you to do the same thing.

11                  MR. BROWN:    But if you look at the  
12                  aerial photograph and some of the following  
13                  photographs which are on the PowerPoint you have  
14                  hard copies of, you've got a sizable urban church  
15                  dating back to 1930 contributing building in  
16                  the Historic District.

17                  And you factor in the size of that  
18                  building, 27,000 square feet, and the rapidly  
19                  diminished congregation down to 40 or less  
20                  members, and you've got a big building with few  
21                  users and occupants and a church with an under

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1 utilized expensive building to maintain in  
2 search of a ways to utilize their property in  
3 an efficient and appropriate manner and also  
4 at the same time generate use, users and revenue.

5 Made more critical by the aging building, the  
6 capital needs of this building which we've laid  
7 out in our exhibits and the catastrophic events  
8 that arose in the earthquake.

9 So you have a unique property, and  
10 unique type of structure and limitations on that  
11 property. And to require this building to  
12 essentially go under utilized, vacant, and not  
13 a productive resource for the church and  
14 community will eventually, as has done many  
15 urban, large urban church buildings, end up with  
16 the loss of the church as a church.

17 If you look at the zoning  
18 regulations R5B and the permitted uses, there  
19 are very limited if you view it in the context  
20 of a church building. Now if you were building  
21 a new building, you could build an apartment

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1 building, you could build any number of things,  
2 but to look at -- to use space within a church  
3 and in this case we're talking about the basement  
4 auditorium, those uses are wholly  
5 inappropriate. You're not going to put  
6 multi-family housing. You're not going to put  
7 single-family housing in this space. The list  
8 of uses are really inappropriate in the context  
9 of a functioning church building.

10 The one that sticks out, and Mr.  
11 Gatton will testify about this, is what I refer  
12 to as a daycare or a child development or elderly  
13 development center and I think the testimony  
14 that Mr. Gatton has provided in writing, and  
15 we'll provide, is that that was not a feasible  
16 use of this space.

17 You've got ANC support, Dupont  
18 Circle Citizens Association support and you've  
19 got a use that fits neatly with the community  
20 in such a way that with the conditions we've  
21 put forward respond to neighbors, to the ANC.

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1       And I think in the short term has proved the  
2       workable operating approach so that the focus  
3       of the use is in the front of 16th Street rather  
4       than away from the neighborhood. Limits on  
5       performances, limits on seats.

6               It's important to note that we're  
7       asking for a maximum of 75 seats in a room that  
8       holds 225 people. And finally, if the church  
9       was running this theater, I think there would  
10      be no dispute that the church could, in fact,  
11      operate their own theater as part of their  
12      ministry would fall within the church umbrella.

13             So we've got flexibility requested,  
14      but not dramatic and not in context with some  
15      of the other special exception uses that are  
16      allowed in our 5B zone, art galleries and others  
17      to bring some light and public activity to a  
18      medium density residential area.

19             With that, you've heard enough from  
20      me. I'd like to turn it over to Mr. Gatton.  
21      He's the former moderator which is chairman of

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1 the board, trustees of the church, as well as  
2 chief of the building and grounds committee,  
3 and allow him to make some remarks.

4 MR. GATTON: Thank you, Chairman  
5 Jordan and Board members. I'm sorry for a raspy  
6 throat.

7 I'll just talk a little bit about  
8 the church, very quickly, because most people  
9 haven't heard of the Universalist Church. It's  
10 the second U in the Unitarian Universalist  
11 Church. The Unitarians merged with the  
12 Universalists in 1961. Some of the famous  
13 Universalists were Clara Barton, Olympia Brown,  
14 the first ordained woman in the United States,  
15 Jose Ballou and others.

16 The building was built around 1930.  
17 It's a contributing structure to the 16th  
18 Street Historic District. I've been there for  
19 30 years, nearly 30 years, since 1983. And when  
20 I arrived at the church there were probably  
21 around 90 active members. Attendance would

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1 range around 60-70 people.

2 Today, the congregation has  
3 dwindled to around 40 active members and our  
4 Sunday attendance ranges from 25 to 35 people.

5 This decline has resulted in a  
6 significant financial strain on the church so  
7 much so that last year we decided to become a  
8 lay-led congregation. In October, we did hire  
9 a part-time temporary and retired minister, but  
10 we remain essentially lay led.

11 We face many challenges, many of  
12 them related to the building. It is beautiful  
13 in its internal and external architecture, but  
14 extremely expensive to maintain. Due to the  
15 recent earthquake, we had extensive damage to  
16 the church tower which required us to make over  
17 \$100,000 of repairs. The scaffolding of that  
18 repair came down last week.

19 In addition, the church building is  
20 in desperate need of restoration and other  
21 critical repairs, especially replacement of its

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1 capstones. A few years ago, we had Waters  
2 Craftsmen prepare a needs assessment which we  
3 have included in our submission. The repairs  
4 needed are around \$1 million. Our annual  
5 operational budget is well under \$200,000.

6 So the combination of our declining  
7 and small membership and the need to restore  
8 and repair our historic church building has left  
9 the church in a precarious position to say the  
10 least. So we have Perkins Hall. It's about  
11 7,400 square feet. A capacity of 225 people.

12 It actually at one end has a stage and in its  
13 day was used for congregational meetings and  
14 probably plays and performances. Perkins Hall  
15 by any measure is a significantly under utilized  
16 space. It is used infrequently for  
17 congregational purposes and but for the Spooky  
18 Action Theater's performances stands empty and  
19 idle most of the time.

20 At one point about ten years ago,  
21 we did look at the feasibility of daycare use

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1 for the basement, but the needed changes to  
2 restroom facilities, other physical  
3 requirements and impediments made this use in  
4 our mind totally unrealistic. And we could not  
5 find any other sort of suitable alternative use  
6 for the space.

7 Spooky Action's performances in the  
8 basement bring desperately needed revenue to  
9 the church that is critical to helping us restore  
10 and repair the building. We believe this  
11 restoration is beneficial to the neighborhood  
12 by improving the neighborhood's aesthetics and  
13 safety.

14 We also believe that the use of the  
15 under utilized space as in this case contributes  
16 to the city's commitment to sustainable  
17 development.

18 While it may not be a determining  
19 issue for this hearing, we do believe that the  
20 theater's artistic expression adds to the  
21 cultural and artistic life of the city and the

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1 neighborhood, values, we as a church community  
2 of faith strongly support.

3 In this spirit, the church wants to  
4 be a good neighbor and be respectful of the  
5 residents in the surrounding area. Working  
6 with the ANC 2B and Mr. Meehan and some of the  
7 neighbors, we've agreed to several restrictions  
8 that we have listed in our formal statement  
9 including requirements that theater use the  
10 alley entrance only for service functions and  
11 that all audience attendees, staff, and actors,  
12 use the front 16th Street entrance of the church.

13 We were able to do this for the last  
14 Spooky Action Theater performance in October  
15 and we do not believe that the neighborhood was  
16 negatively impacted. We want to emphasize that  
17 the church is willing to restrict the theater  
18 to approximately 48 performances annually.

19 With these requirements and  
20 restrictions in place, we believe that we will  
21 not be a noise or nuisance in any way to the

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1 neighborhood. Quite the opposite. We want to  
2 be seen as an integral part of the life of the  
3 community. We believe our use of Perkins Hall  
4 for performances by outside theaters is  
5 consistent with the subjective and protective  
6 of the neighborhood. We ask that you seriously  
7 consider our request.

8 CHAIRPERSON JORDAN: Let me ask a  
9 question of you, Mr. Brown. Let me try to get  
10 an understanding. Is this a church program and  
11 Spooky Action then has been contracted with to  
12 run the program or is this a lease to Spooky  
13 Action Theater to do the Spooky Action Theater's  
14 performances?

15 MR. GATTON: It's a lease to Spooky  
16 Action to do the performances. However, I might  
17 say that, you know, we hope and maybe in the  
18 future there's some synergy there with our  
19 spiritual component, but at this point no.

20 CHAIRPERSON JORDAN: All right, got  
21 it. Thank you. Any other questions for Mr.

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1 Brown?

2 VICE CHAIR SORG: Yes. Thank you,  
3 Mr. Chairman.

4 I'm curious about the theater inside  
5 the church itself. Has it been there? You said  
6 you joined in 1983. Has it been there since  
7 then or it looks like perhaps it's been recently  
8 built out or improved.

9 MR. GATTON: Well, the Spooky  
10 Action Theater --

11 VICE CHAIR SORG: The audience that  
12 is -- I'm sorry.

13 MR. GATTON: The audience was there  
14 at the original construction.

15 VICE CHAIR SORG: Interesting.

16 MR. GATTON: Yes. It was a rather  
17 robust congregation in its day.

18 VICE CHAIR SORG: It strikes me as  
19 fairly unique to find this type of space. I  
20 don't know that I've seen another church, even  
21 the larger churches that has this kind of

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1 resource in its basement actually. So that's  
2 why I wanted to know whether it had been there  
3 originally.

4 MR. GATTON: It's original.

5 VICE CHAIR SORG: Thank you.

6 CHAIRPERSON JORDAN: Any other  
7 questions of this witness from the Board?

8 Then let me turn to our party in  
9 opposition, Mr. Jadin, correct? And I'm going  
10 to make the record clear. We did not grant party  
11 status to Mr. Santucci. He's not here and  
12 that's one of our requirements. You need to  
13 be here.

14 Mr. Turnbull?

15 MEMBER TURNBULL: I didn't know if  
16 the applicant was really finished.

17 CHAIRPERSON JORDAN: No, but I'm  
18 taking him --

19 MEMBER TURNBULL: I see. Okay.

20 VICE CHAIR SORG: And I did have one  
21 more question that I wanted to ask of the

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1 applicant. How do you -- you mentioned that  
2 the annual budget for maintenance is under  
3 \$200,000 and where does that money for that budget  
4 come from?

5 MR. GATTON: Yes, it comes from part  
6 of the revenues that we get from this theater  
7 and from -- we have a small endowment that we  
8 use to support the operations of the budget and  
9 from dues and membership.

10 CHAIRPERSON JORDAN: Now is this a  
11 -- maybe I misunderstood. The \$200,000 is the  
12 budget for maintenance or \$200,000 are revenue?

13 MR. GATTON: It's the entire budget  
14 of the church.

15 CHAIRPERSON JORDAN: It's the  
16 revenue of the church. It's the total revenue  
17 of the church, not for maintenance.

18 MR. GATTON: It's our entire annual  
19 budget.

20 CHAIRPERSON JORDAN: That's  
21 everything.

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1                   MR. GATTON: That doesn't include  
2 capital.

3                   CHAIRPERSON JORDAN: That's what I  
4 wanted to get clear. Okay. All right. Well,  
5 just a second. Did you have -- what we're doing  
6 are questions of your witness. Something you  
7 want to contribute, Mr. Brown? I'm going to  
8 go back --

9                   MR. BROWN: No, I think the point  
10 was well made that this is their operating  
11 budget, inclusive for all their --

12                  CHAIRPERSON JORDAN: That's what I  
13 just got clear. Thank you.

14                  You had a question you would like  
15 to ask, a question that you need to ask of the  
16 witness?

17                  MR. JADIN: Yes, and what is the  
18 total operating budget, what figure is it?

19                  MR. GATTON: I believe it's around  
20 \$170,000.

21                  MR. JADIN: \$170,000?

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1 MR. GATTON: \$170,000 to \$180,000,  
2 around there.

3 MR. JADIN: Thanks.

4 CHAIRPERSON JORDAN: Any other  
5 questions that you have of this witness?

6 MR. JADIN: Yes. I think I heard  
7 you say that the church would be allowed to run  
8 a private theater in the basement auditorium.  
9 Did I understand that right? That's what I  
10 thought you said.

11 MR. BROWN: I actually said that.  
12 And to clarify and I think, Mr. Chairman, you  
13 made the point by -- or Ms. Sorg, that a church  
14 has a wide umbrella of uses within the church  
15 ministry and I think one of them would be for  
16 the church to sponsor theatrical, religious  
17 performances.

18 CHAIRPERSON JORDAN: Okay, but  
19 that's not the point. I tried to point that  
20 out. But I think the word, trigger word that  
21 was used was a private theater and that was his

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1 question. Did you say that the church can have  
2 a private -- meaning private, I'm thinking --  
3 what do you mean by private?

4 MR. JADIN: Well, I thought that's  
5 what he had said and would be able -- here's  
6 my  
7 --

8 CHAIRPERSON JORDAN: I guess the  
9 response --

10 MR. JADIN: I thought the church was  
11 allowed to do church and religious-related  
12 functions within its building.

13 CHAIRPERSON JORDAN: The church is  
14 allowed to do -- just so we make sure we're clear  
15 and I think I'm understanding what they're  
16 saying so we can move on, is that the church  
17 is allowed to do church programming and anything  
18 related to the church's mission. That could  
19 be having plays, if necessary, and use the  
20 theater space downstairs. It could be music  
21 downstairs. It could be anything that the

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1 church does as a church program activity of the  
2 church itself.

3 And so that's kind of open as long  
4 as they can kind of tie to the church. If it's  
5 a church related, operated function.

6 Do you have any other questions?

7 MR. JADIN: Would that include a  
8 performance of a new popular play and it's just  
9 for raising money for the church?

10 CHAIRPERSON JORDAN: The church  
11 could have a performance ministry and decide  
12 that -- or a good will ministry. Or -- well,  
13 I'm talking more about plays and a performance  
14 ministry, it may include that. It might be one  
15 where they find a way of bringing healing and  
16 they could have plays in the church if it's a  
17 church program, meaning that the church is  
18 sponsoring as part of their ministry, as part  
19 of their purpose and that they can tie it into  
20 their overall church ministry purpose mission.  
21 Okay?

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1                   You can't ask a question, sorry.  
2                   Do you have another witness you want to bring  
3                   to us?

4                   MR. BROWN:       Yes, I'd like to  
5                   introduce Mr. Hemrich who is the artistic  
6                   director at Spooky Action. He will make some  
7                   brief comments and certainly make himself  
8                   available for questions.

9                   MR. HEMRICH:       Good afternoon,  
10                  Chairman Jordan, Board members. I'm Richard  
11                  Hemrich, artistic director of Spooky Action  
12                  Theater.

13                  Our name comes from Albert Einstein  
14                  who used the term spooky action of distance to  
15                  describe a mysterious and very real interaction  
16                  in quantum mechanics.

17                  CHAIRPERSON JORDAN:       Ms. Sorg  
18                  educated us on that.

19                  MR. HEMRICH:       We found this a  
20                  wonderful metaphor for the experience we find  
21                  in theater when actors connect with each other

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1 and connect with audience in an intangible,  
2 mysterious, but very real way. And our theater  
3 was founded to explore that and make it happen.

4 We were incorporated in the District  
5 as a 501(c)(3) not for profit in 2004. Our first  
6 full season was 2005-2006 where we performed  
7 at the Cultural Development Corporation's Flash  
8 Point facility, opposite Martin Luther King  
9 Library. That's a small space and we were  
10 looking for a little bit more space and we have  
11 wandered ever since then or for many years since  
12 then from venue to venue looking to put down  
13 roots and find a home.

14 You can imagine how thrilled we were  
15 when the church approached us and said let's  
16 get together, join forces and renovate the  
17 downstairs auditorium which we thought was a  
18 great idea. It's a multi-purpose facility.  
19 It's not just leased to the theater. It's a  
20 pay as you go kind of situation. We use it,  
21 but the church uses it for their functions and

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1 community events are also welcomed to the space.

2 This happened in early 2010. We  
3 spent most of that year planning and doing the  
4 renovations and finally in the fall we did our  
5 first production which was a one man show of  
6 a play by Samuel Beckett, from a text of Samuel  
7 Beckett, called The Lost Ones. Since then, our  
8 configuration constantly changes for each  
9 individual production. And the audience size  
10 has ranged from 30 to 60. Our normal attendance  
11 averages 25 to 30.

12 We like this. We like being small.  
13 We think a small, intimate venue permits us  
14 to create that spooky action that we are  
15 interested in.

16 CHAIRPERSON JORDAN: Are you  
17 operating in any other place or just at the  
18 church, at this church?

19 MR. HEMRICH: In the past we have,  
20 but now nowhere else. We've performed at the  
21 Capital Fringe Festival. We've performed other

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1 places, but right now it's just at the church.

2

3 People have called our performances  
4 experimental, avant garde. We think it's just  
5 good theater. We're trying to make spooky  
6 action happen.

7 We don't rely on big sets or props.

8 We rely on the inventiveness and versatility  
9 of our actors to engage the audience in an  
10 imaginative project to create the world of the  
11 play. We have developed a good following, lots  
12 of friends in the Dupont neighborhood. We are  
13 a valued part of the Washington theater  
14 community. Helen Hayes comes to our  
15 productions and looks at them for the Helen Hayes  
16 awards.

17 We're a seed bed. We're a small  
18 theater that provides opportunities to emerging  
19 new artists, actors, directors, designers, to  
20 try their wings. And we feel that the Dupont  
21 Circle area is really well suited for the kind

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1 of work we do.

2 We try to do work that's  
3 intellectually stimulating. But we do it in  
4 a physical, movement-based performance style  
5 that's fun to watch whether you want to ponder  
6 what it all means or not. And Dupont Circle  
7 is filled with folks who enjoy this kind of  
8 amenity. It's part of urban life that really  
9 is why people have come back to the city, left  
10 the suburbs. They come back to the city because  
11 they want this kind of experience that just isn't  
12 available in the boondocks.

13 So we feel we provide something  
14 valuable. We want to work with the church to  
15 find ways to use our theater techniques and  
16 skills to reach out to disadvantaged folks that  
17 the church wants to reach, help them to tell  
18 their stories and use the language of theater  
19 effectively.

20 So we really feel that this is the  
21 perfect home. It starts to feel like home.

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1 We hope that you, Mr. Chairman, and Board members  
2 will agree that we have something great to offer  
3 the immediate neighborhood and the Washington  
4 community and we'll support this variance and  
5 let us continue in residence at the Universalist  
6 National Memorial Church. Thanks so much.

7 CHAIRPERSON JORDAN: Thank you.  
8 Let me ask a question kind of jointly to the  
9 applicant. How many performances do we have  
10 a month?

11 MR. HEMRICH: Well, we perform  
12 three productions a year.

13 CHAIRPERSON JORDAN: Three a year?

14 MR. HEMRICH: Three a year, and each  
15 production has to be 16 performances in order  
16 to qualify for the Helen Hayes awards. That's  
17 why we're looking at 48 in the course of a year.

18 CHAIRPERSON JORDAN: Forty-eight  
19 in the course of a year. So how would they run?

20 MR. HEMRICH: Four weeks  
21 continuously, Thursday through Saturday

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1       evenings and a Sunday matinee.

2                   CHAIRPERSON JORDAN:   So it's almost  
3       every week there's something -- almost every  
4       week in a year?

5                   MR. HEMRICH:   No.   If you figure we  
6       do four in a week and we do 48 a year that  
7       means 12 weeks a year we're performing.

8                   CHAIRPERSON JORDAN:   Okay.

9                   MR. HEMRICH:   Twelve out of 52.

10                  CHAIRPERSON JORDAN:   And let me ask  
11       -- now after the performances does the church  
12       or does the theater have anyone that goes out  
13       and polices the neighborhood, making sure  
14       litter, trash is picked up?

15                  MR. HEMRICH:   We always routinely  
16       look around the inside of the church and the  
17       immediate outside of the church and pick  
18       anything up, but our folks are more likely to  
19       give us the programs back and ask that they be  
20       recycled than they are to drop them on the  
21       sidewalk.

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1                   CHAIRPERSON JORDAN: Do you have a  
2                   recycling program that you use?

3                   MR. HEMRICH: The church has  
4                   regular recycling bins and we recycle materials  
5                   and put them in there. But if the program isn't  
6                   bent or crumbled, we give it to the next guy.

7                   MR. BROWN: And Mr. Chairman, in the  
8                   letter that was submitted today from our firm  
9                   laying out the various conditions, I think we've  
10                  addressed that issue, among others.

11                  MEMBER TURNBULL: Just quoting that  
12                  letter, and I think you're looking at Item 6,  
13                  "during the times of residential theater  
14                  performance, the UUMC will ensure that the  
15                  gathering of people outside the premises of the  
16                  church during pre-performance, waiting,  
17                  intermissions, smoke breaks or post-performance  
18                  socializing will not disturb the peace, order,  
19                  or quiet of the residential neighborhood." Now  
20                  you don't say how you're going to do it. It's  
21                  just a broad term which in one way I understand,

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1 but I wish it was a little bit more meaty.

2 MR. BROWN: And we're certainly  
3 willing to bulk up the language, but certainly  
4 the goal and the intent of the church is to do  
5 that.

6 I'm going to let Mr. Gatton respond,  
7 but I'd like to put up the floor plan, both of  
8 the main level and you'll see an arrow there.

9 That's where everyone coming to a performance  
10 will enter and that's on 16th Street, and then  
11 they'll go downstairs to the lower level where  
12 the auditorium and the theater area is. But  
13 I think Mr. Gatton can explain why that front  
14 entrance is important for all these issues.

15 MR. GATTON: Yes. If you'll look,  
16 the entrance of the church and that whole portion  
17 of 16th Street is set back from the sidewalk,  
18 I'm guessing here, 30 to 40 feet.

19 MR. BROWN: Thirty to 40 feet I  
20 would say.

21 MR. GATTON: And so on, so you're

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1 not in a situation where attendees, audiences,  
2 and others coming to the church are going to  
3 be lined up on the sidewalk or milling on the  
4 sidewalk per se. They're going to be in that  
5 large front courtyard entrance, if you will,  
6 that is away from the sidewalk.

7 Now, I will say we have a Metro bus  
8 stop right outside, so you know, there's traffic  
9 and noise and a lot of people use that bus stop.

10 But the point here is we are set back 30 or  
11 40 feet from the sidewalk and therefore, I think,  
12 exposure to the general public is mitigated by  
13 that or lessened by it.

14 CHAIRPERSON JORDAN: Does the Board  
15 have any other questions of the witness?

16 MEMBER TURNBULL: Is there a  
17 handicap entrance or accessibility?

18 MR. HEMRICH: There currently is no  
19 handicap accessibility. It's something the  
20 church really wants to do. It's something we  
21 also really want to do. But to do it in a

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1 full-blown way is just not feasible financially  
2 for the church. We've applied to have the rear  
3 entrance available for ADA access because there  
4 are two flights fewer stairs going down the back.

5 And we have had polio survivors as actors in  
6 our productions and they really appreciate  
7 having fewer stairs.

8 So in the future, it might be  
9 possible to work something to get a handicap  
10 access there which would be less expensive, but  
11 right now there is none and we're doing the best  
12 we can by providing for handicap people only  
13 the rear entrance as a possibility. Generally,  
14 we have one or two people like that in the course  
15 of the four-week production.

16 MR. GATTON: If I could just add to  
17 that. It's very important to the church to at  
18 some point address this. But we literally are  
19 getting water damage inside the church and  
20 inside the sanctuary and if we don't address  
21 the replacing the capstones, tuck pointing the

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1 church, repairing the stained glass windows  
2 where we're getting water incursion around the  
3 edges of the windows, we -- I don't want to sound  
4 overly dramatic here, but we run the risk of  
5 losing the building. Water is a very corrosion  
6 thing.

7 So we had to put aside our plans to  
8 address handicap access for the time being to  
9 literally, in our minds, save the building.

10 Another reason why we value the  
11 relationship that we have with Spooky Action,  
12 the chairman mentioned later about a lease, yes,  
13 it is a lease arrangement, but the benefit that  
14 the theater has given to the church in helping  
15 us make some internal repairs being around as  
16 handy people and so on, people that the church  
17 can't afford, has proven quite valuable to us.

18 CHAIRPERSON JORDAN: Any other  
19 questions of the applicant, Ms. Sorg?

20 VICE CHAIR SORG: Thank you. To  
21 Mr. Hemrich, what time do the performances

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1 usually end?

2 MR. HEMRICH: It depends. Some  
3 plays are very short. The Lost Ones was 60  
4 minutes. Other plays can be as long as two and  
5 a half hours with a break. We start at 8  
6 o'clock, so we finish at the latest by 10:30  
7 and everybody can be out of the building by 11.

8 VICE CHAIR SORG: Okay. Thank you.

9 MEMBER TURNBULL: Your church is a  
10 landmark structure also. Is it or is it not?

11 MR. BROWN: It's a contributing  
12 building.

13 MEMBER TURNBULL: Contributing  
14 building, Historic District. Okay.

15 CHAIRPERSON JORDAN: Does the Board  
16 have any other questions of the applicant?

17 MEMBER TURNBULL: In your mission  
18 statement as a church, and outreach, I'm just  
19 wondering how you -- I mean I'm trying to --  
20 we have a theater that's not allowed in a  
21 residential district like this. And I'm just

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1 wondering, we talked about if it was a -- if  
2 you were putting on like a Christmas show or  
3 a play, an Easter play or whatever, there's not  
4 a problem. By bringing in an outside  
5 organization, and I'm looking for some -- I'm  
6 trying to see the synergy here and we talked  
7 about -- I think Mr. Hemrich was talking about  
8 trying to work with the church on certain aspects  
9 about community outreach.

10 Have you talked in depth, is there  
11 any kind of a program that you sort of put  
12 together between the two of you that we could  
13 see or that is out there for us to look at?

14 MR. GATTON: Actually, there is one  
15 in planning. It's not been implemented yet.  
16 I serve on the scholarship committee of the  
17 Friends of Ballou which is a supportive group  
18 of Ballou High School and my work there is very  
19 involved with that high school, Principal  
20 Branch, and others.

21 And the church has gone to Richard

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1 and said we want to figure out a way to provide  
2 an opportunity for summer high school kids to  
3 have maybe a theater experience or hold some  
4 theater workshops as part of their summer  
5 experience. Teachers and principals at Ballou  
6 say that there's a large fall off over the summer  
7 in terms of the learning experience, so we are  
8 talking now about the possibility of this summer  
9 providing a theater workshop type experience,  
10 using Spooky's sets and theaters and expertise  
11 to educate -- it doesn't have to be just Ballou  
12 kids, but high schoolers around the city to give  
13 them a more meaningful summer experience. So  
14 that would be an example of the type of creative  
15 thinking we're doing to try to fulfill a mission  
16 of the -- what we would consider religious  
17 mission that the theater might articulate it  
18 differently.

19 MEMBER TURNBULL: Sure. Okay,  
20 thank you.

21 CHAIRPERSON JORDAN: Okay, Mr.

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1 Jadin, do you have any questions that you would  
2 like to ask of the applicant or Mr. Hemrich?

3 MR. JADIN: Do you use the  
4 auditorium space for anything other than theater  
5 events?

6 MR. GATTON: I'm sorry, is that to  
7 Richard or to me?

8 MR. JADIN: That's to Richard.

9 MR. GATTON: Okay, sorry.

10 MR. HEMRICH: I have a pretty  
11 inclusive idea of what theater is. We use it  
12 for rehearsals. We use it for workshops,  
13 developmental workshops to help people develop  
14 their skills as performers. We use it for  
15 sit-down readings of new plays to see if this  
16 something that we might want to bring to  
17 production or just give feedback to playwrights.

18 We also have used it to do a  
19 fundraiser for the theater. We held a  
20 fundraiser just to help support the theater.  
21 The income we get from ticket sales is way, way

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1 below the actual cost of operating a theater,  
2 so we use every opportunity we can to encourage  
3 people to support us beyond simply buying a  
4 ticket.

5 MR. JADIN: Have you subleased the  
6 space to other groups?

7 MR. HEMRICH: We have a rental  
8 agreement with the church that we entered into  
9 when we did the renovation. There were a lot  
10 of unknowns at that time and it was unknown  
11 whether we would be exhausted by the effort to  
12 build it out. And we had a clause for a limited  
13 time in that agreement that permitted us to bring  
14 in other companies if we couldn't use our time,  
15 if we couldn't use the time that was allocated  
16 to us. We were allowed to bring in another  
17 company.

18 But that is over. We no longer have that right.

19 And it's very clear from everything that we've  
20 put in our agreement with the ANC and others  
21 that we don't contemplate ever doing that again.

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1       That was a special circumstance related to  
2       getting the work done to create the space with  
3       the limited resources that we had at the time.

4               MR. JADIN:   Now did you -- when you  
5       opened your theater or began your lease and began  
6       operating there, did you conform to all of the  
7       District laws?

8               MR.     HEMRICH:       We     learned  
9       subsequently that we needed a C of O to operate  
10      in that space, separate from the church.  We  
11      had concluded, we thought, hey, there's a stage  
12      there.  Not only is there a stage, but it was  
13      originally built with a projection booth with  
14      projection equipment that this was -- we thought  
15      well, this was set up as a theater.  It's  
16      allowed.  We didn't know that it was not  
17      allowed.

18              We were visited by DCRA and we were  
19      informed that we needed a separate C of O.  So  
20      out of ignorance, no, we were not conforming  
21      at that point and since we got that visit, we

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1 have been continuously working to come into  
2 compliance, but it's been a long and difficult  
3 process and we're working hard at it. We're  
4 committed to compliance.

5 MR. JADIN: Which is the purpose of  
6 this application.

7 CHAIRPERSON JORDAN: Any other  
8 questions?

9 MR. JADIN: Let me think. No  
10 questions.

11 CHAIRPERSON JORDAN: We're going to  
12 take a brief five-minute recess and start back  
13 after the five-minute recess.

14 (Off the record.)

15 CHAIRPERSON JORDAN: We need to  
16 come back to session. We're going to take a  
17 procedural step back.

18 Mr. Salonia, at the break you  
19 presented to the Board Secretary a document that  
20 was a Form 140 for party status request. That  
21 appears you have a file stamp copy on here for

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1 November 20th. Did you present any other  
2 document other than this with this application?

3 MR. SALONIA: It was an attachment.

4 CHAIRPERSON JORDAN: It was an  
5 attachment? Can we have that, too, please.  
6 Let me go back, because we asked earlier why  
7 were you here, what was your position and we  
8 went kind of back and forth and he said you didn't  
9 know -- I asked if you were going to testify  
10 in opposition, you said you didn't know based  
11 upon what they were going to say or not.

12 I understand that you are at 1603  
13 S Street. Are you next door to this property?

14 MR. SALONIA: I am next door. And  
15 I am the one who was affected by having the  
16 theater entrance ten feet from my house for about  
17 a year and a half.

18 CHAIRPERSON JORDAN: All right.  
19 Then we'll go ahead and grant you party status  
20 in this matter.

21 MR. SALONIA: Thank you.

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1                   CHAIRPERSON JORDAN:   Is there --  
2                   well, you've heard the testimony.   Is there any  
3                   questions that you need to ask of these witnesses  
4                   that so far have not been asked?

5                   Let me go back a second.   I'm going  
6                   to combine you two as party status because I  
7                   think your issues are the same.   I think you  
8                   said that before.   What's your issue?

9                   MR.    SALONIA:        My    issues    are  
10                  different.

11                  CHAIRPERSON   JORDAN:        In    what  
12                  regard?

13                  MR.    SALONIA:   In that some of them  
14                  -- the most immediate ones will be addressed  
15                  by moving it to the front entrance.   I don't  
16                  know if you have my testimony.

17                  CHAIRPERSON JORDAN:   What's your  
18                  opposition?   Tell me what it is succinctly.

19                  MR.    SALONIA:   My position is to it  
20                  being operated as a commercial theater.   During  
21                  the year and a half when I spoke with Mr. Hemrich,

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1 and you'll hear my testimony, it was sublet out  
2 substantially. It was not a very small theater  
3 as a church, it promised me when it first started  
4 operating. It was very, very busy, very, very  
5 crowded.

6 CHAIRPERSON JORDAN: So yours is  
7 the issue of noise and the congestion and all  
8 that?

9 MR. SALONIA: Disorder and quiet,  
10 the value of my home.

11 CHAIRPERSON JORDAN: Then I'm going  
12 to consolidate you two as one party, so you can  
13 decide who is going to speak in regard to that.

14 The issues are the same and so then let's move  
15 forward.

16 Now let's move to -- do you have any  
17 other witnesses, the applicant, any other  
18 witnesses?

19 I know you were earlier conversing  
20 with Mr. Jadin in regards to questions to ask,  
21 so I know you were already conversing with him

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1 and asking questions. Are there any other  
2 questions you wish to ask the applicant? I'm  
3 going to give you that opportunity at this point.  
4 And I'm talking to Mr. Salonia.

5 MR. SALONIA: Yes, and I guess this  
6 is the question which concerns me the most.  
7 How do we differentiate between what will be  
8 called a church theater performance and what  
9 will be called a Spooky Action or other rented  
10 out space performance? It's just because over  
11 the past two years I've experienced -- most of  
12 the problems were from the Spooky Action Theater  
13 itself.

14 CHAIRPERSON JORDAN: That's your  
15 question. Would the applicant have someone  
16 respond to the question? The question is how  
17 does he differentiate between a church program  
18 performance and a Spooky Action Theater  
19 performance? Correct, that's your question.

20 MR. GATTON: Well, let me say from  
21 the outset, I think that a Spooky Action

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1 performance would be one that is advertised as  
2 such where tickets are sold as such and that  
3 where the church has minimal involvement other  
4 than those requirements that are set out earlier  
5 to help ensure that noise and litter and so on  
6 are mitigated.

7 CHAIRPERSON JORDAN: Any other  
8 questions?

9 MR. SALONIA: No.

10 CHAIRPERSON JORDAN: Okay, then  
11 let's turn back to the applicant. Is there any  
12 other evidence that you wish to present to us?

13 We've kind of moved on at this point. We're  
14 back to the applicant for additional testimony.

15 MR. BROWN: Not at this point. I  
16 would, as we go forward, draw your attention  
17 to the conditions in my letter and I think that  
18 would be a good closing point when the time  
19 comes.

20 CHAIRPERSON JORDAN: We can do that  
21 probably in the rebuttal.

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1                   So now let's turn to the Office of  
2                   Planning, please, for its report or whatever  
3                   you may need to add in addition to what you have  
4                   in your report?

5                   MR. JACKSON:   Mr. Chairman, members  
6                   of the Board.   My name is Arthur Jackson, D.C.  
7                   Office of Planning.   You have before you an  
8                   Office of Planning report that summarizes the  
9                   issues in this case, and outlines our position.  
10                  Essentially, we do not think the applicant has  
11                  met the standards --

12                  CHAIRPERSON JORDAN:   Mr. Jackson,  
13                  can you sit a little --

14                  MR. JACKSON:   Essentially, we don't  
15                  think the applicant has met the standards for  
16                  variance approval based on the circumstances  
17                  in this case, primarily because there is no  
18                  existing condition that would prevent the  
19                  principal use on the property which is the church  
20                  use.   And the basis for this application is that  
21                  they want to bring in a use that is not allowed

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1 by special exception or by right in any  
2 residential use and in the low district  
3 commercial use into this residential district  
4 to raise money. We don't think that per se,  
5 even though it is very important for their  
6 operations, that that's not an issue that can  
7 be -- that should be addressed under zoning.

8 On that basis, we don't think they  
9 meet the standards for variance approval and  
10 we are available to answer questions about our  
11 case or any particulars --

12 CHAIRPERSON JORDAN: Have you taken  
13 into consideration that the Court of Appeals'  
14 holding in the case of Clerics of Saint Viator  
15 in regards to another church that had a similar  
16 kind of situation where they had an issue with  
17 the ability to maintain their church, declining  
18 membership, a building that was becoming into  
19 deplorable state and that they reached out to  
20 other -- an outside venture to supplement the  
21 church through money to help it fix itself up

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1 and that being a consideration for a variance?

2 MR. JACKSON: I'm familiar with the  
3 details of that case.

4 CHAIRPERSON JORDAN: I didn't know  
5 if you had that into consideration with the  
6 recommendation. Okay.

7 MR. JACKSON: I think the principal  
8 concern with us is that this use it totally  
9 inappropriate for a residential district and  
10 as the zoning regulations are structured,  
11 placing it there would be contrary to the  
12 structure -- not the way the regulations were  
13 intended to be used.

14 CHAIRPERSON JORDAN: Okay. Does  
15 the Board have any other questions of Mr.  
16 Jackson?

17 Mr. Turnbull.

18 MEMBER TURNBULL: So a commercial  
19 theater in any form, you're saying, is  
20 prohibited?

21 MR. JACKSON: Under the

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1 regulations, a theater, as I stated, a theater  
2 use including movies is not allowed in any  
3 residential district by right or by special  
4 exception or in a base commercial district.  
5 It has to be at least C2.

6 MEMBER TURNBULL: It has to be at  
7 least C2.

8 MR. JACKSON: Right. And we also,  
9 of course, you can see on the map that's in  
10 our Office of Planning report, when the zoning,  
11 current zoning was put in place, there was a  
12 lot of effort made to make sure that each zone  
13 district met the -- was suitable for the  
14 buildings that existed at that time. You note  
15 that on our map figure 2 there's an R4DC and  
16 R5BDC and R5DCD and so on. So a lot of effort  
17 was made to make sure that the zoning was  
18 appropriate for the -- not only uses for the  
19 area, but also for the structures in the area.

20 Again, but back to our basic point,  
21 this is a commercial use that belongs in a

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1 commercial zone, should not be allowed and the  
2 zoning regulations as designed does not  
3 anticipate that it will be allowed in a  
4 residential district.

5 MEMBER TURNBULL: And the area  
6 surrounding this is all the same, right? I mean  
7 across the street on 15th?

8 MR. JACKSON: There's a variety of  
9 uses. You have institutional across the street  
10 with the --

11 MEMBER TURNBULL: Scottish Rite.

12 MR. JACKSON: Scottish Rite  
13 facility. I'm not sure if temple is the right  
14 term. Then you have high rise apartment  
15 buildings on two corners. If you go up 16th  
16 Street, it does get to be more commercial, but  
17 not until you get to U Street. If you go down  
18 16th Street, it's a mix of small or large-scale  
19 residential, some more institutional, but in  
20 this general area there is no commercial use  
21 of any size.

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1                   MEMBER TURNBULL:   Okay, thank you.

2           So it's mainly for residential zoned or  
3   institutionally.

4                   MR. JACKSON:       It's residential  
5   zoned, but you do have a number of smaller or  
6   larger institutions. You have buildings that  
7   are used for -- they're fraternal organizations.

8           You have other types of use. It is a mix of  
9   uses, but that mix of uses I'd say -- I did not  
10   -- in the immediate vicinity, I did not identify  
11   any existing use that's not allowed in a  
12   residential district.

13                   MEMBER TURNBULL:   Okay, thank you,  
14   Mr. Jackson.

15                   VICE CHAIR SORG:   I just have one  
16   follow up. Similarly, following on the uses  
17   that are found on 16th Street, nonprofit  
18   institutional uses are allowed. I believe I  
19   can recall -- well, let's see. There's the JCC  
20   which I think is on 16th and Q. There are, I  
21   think, in the five-block radius at least two

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1 or three embassies. There are also a few  
2 associations, I think. Is that correct?

3 MR. JACKSON: I am familiar with the  
4 embassies, but I'm not familiar with  
5 associations. But again, I still point to those  
6 being allowed in the residential zones that  
7 they're in.

8 VICE CHAIR SORG: As nonprofit  
9 uses?

10 MR. JACKSON: Probably  
11 institutional use.

12 VICE CHAIR SORG: Institutional  
13 uses.

14 MR. JACKSON: But again, that's a  
15 wide range of uses. The chanceries for sure.

16 VICE CHAIR SORG: Of course. Okay,  
17 thank you.

18 CHAIRPERSON JORDAN: But couldn't  
19 a church -- but you agree, the church can use  
20 this facility to hold theaters and they can  
21 charge people to come as the zoning

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1 administrator noted that the church has a CO  
2 that allows it to use all three floors for church  
3 uses and church uses can be broad, as you noted.

4 If there are certain ministries that the church  
5 is proceeding or supporting, they can have those  
6 ministries in the church and they're given broad  
7 leeway with what they do on their site.

8 However, if the Zoning  
9 Administrator determined that a nonprofit  
10 performing arts company with performances open  
11 to the public that operates on the property under  
12 a separate entity, must stand on its own, and  
13 have its own certificate of occupancy, and  
14 that's the reason why this issue is before this  
15 Board today.

16 Have you had a chance to see the  
17 proposed conditions and I'm going to say I  
18 believe it's been agreed upon with the ANC and  
19 the applicant? Have you had a chance to review  
20 those?

21 MR. JACKSON: Yes.

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1                   CHAIRPERSON JORDAN:     And what's  
2     your opinion on that based upon those things  
3     in regards to its issue and the effect upon the  
4     community?

5                   MR. JACKSON:   I think this list is  
6     good and it addresses some of the issues, but  
7     I would also feel that still at its core, the  
8     use is not allowed in the zoned district.   It's  
9     not anticipated as being in the zoned district  
10    and that its use on this site would be against  
11    the regulations.

12                  The other side I would highlight is  
13    just over time, assuming this is a successful  
14    theater, and that it grows as most successful  
15    theaters do, I'm not sure if we can anticipate  
16    now what the impact would be in the longer term  
17    of a theater use on this site because to date,  
18    I think the estimate was they have had attendance  
19    of 5 to 20.   Well, that ground floor holds 225.  
20    So again, we're talking about the scale of  
21    impacts that we cannot anticipate and for that

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1       there's probably exactly the reason why those  
2       uses are not allowed in residential districts.

3               CHAIRPERSON JORDAN:     But we can  
4       anticipate if have a limitation, isn't that  
5       correct?

6               MR. JACKSON:     Yes.     And assuming  
7       that's enforced, yes.

8               CHAIRPERSON JORDAN:     Does the Board  
9       have any questions for Mr. Jackson, Office of  
10      Planning?     Then I'm going to turn to the  
11      applicant for questions of Mr. Jackson, Office  
12      of Planning.

13              MR. BROWN:     No questions.

14              CHAIRPERSON JORDAN:     Then I'm going  
15      to turn to our joint parties in opposition to  
16      ask -- which one is going to ask the questions  
17      -- you have the opportunity to ask questions  
18      of Mr. Jackson, if you think there's something  
19      you want to ask.

20              MR. JADIN:     If such conditions that  
21      are listed in the ANC report, I think those are

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1 the ones where there's limits on performance,  
2 the number of performances, the size of the  
3 audience that's allowed, who enforces those  
4 regulations?

5 MR. JACKSON: Currently, this is an  
6 agreement that's being -- that the applicant  
7 is applying to -- is agreeing to, I guess with  
8 the ANC. Of course, if the Board was to include  
9 those conditions in a final ruling as conditions  
10 of approval, it's possible that the Zoning  
11 Administrator or the Department of Consumer  
12 Regulatory Affairs would then be responsible  
13 to  
14 -- could be a resource for the residents to go  
15 to in case -- if there were issues with the way  
16 those conditions were being interpreted or  
17 actually put in place.

18 MR. JADIN: So the residents would  
19 sort of monitor the activity and then report  
20 to some public official, potentially a zoning  
21 official?

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1                   MR. JACKSON:       If there were  
2                   conditions adopted by the Board that were  
3                   attached to the variance, that set certain  
4                   standards for the operation, you would have the  
5                   recourse to file -- to contact the Office of  
6                   Zoning or the Department of Consumer Regulatory  
7                   Affairs if you have concerns about the way  
8                   regulations -- the standards were being met and  
9                   seek relief.

10                  MR. JADIN:     So in your opinion,  
11                  would residents having to sort of spy on their  
12                  neighbors and keep track of what's going on,  
13                  would that be a detriment to the public good?

14                  MR. JACKSON:   I think when we have  
15                  special exceptions that come before the Board,  
16                  or other types of approvals that have  
17                  conditions, this would not be unlike those  
18                  circumstances.   And usually situations such  
19                  that if things turn out to be a problem, then  
20                  you complain.

21                  The best of all worlds, of course,

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1 would be that all conditions are met and you'll  
2 never know they're there. It's just there isn't  
3 any -- so the relief that you would have assuming  
4 the Board adopted such standards would not be  
5 unlike what would be the norm in terms of zoning  
6 with regard to special exceptions,  
7 particularly, or the special relief that's been  
8 granted.

9 CHAIRPERSON JORDAN: Any other  
10 questions?

11 MR. JADIN: No, it's just that I'm  
12 not familiar with those norms of your  
13 enforcement that's all.

14 CHAIRPERSON JORDAN: Thank you.  
15 Then let's move to the -- any other governmental  
16 agencies? Is the Department of Transportation  
17 here? No.

18 We do have a letter contained in  
19 Exhibit 30 which is a letter from Department  
20 of Transportation which recommends no objection  
21 which is their approval in support of the

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1 application. And I don't think there's any  
2 other government agency that is here.

3 Then let's move to ANC 2B and I  
4 believe we have representing ANC 2B is Mr.  
5 Meehan.

6 MR. MEEHAN: Thank you, Mr.  
7 Chairman. My name is Bob Meehan. I've given  
8 you a rather lengthy testimony with a couple  
9 of attachments. I put 40 hours into this case  
10 basically trying to confer with neighbors, in  
11 answer to the last question, about how when we  
12 and the ANC talk about conditions been, most  
13 of them are like ABC licenses, inspectors come  
14 out when complaints are made and my  
15 understanding is when you have something other  
16 than by right, that can also be removed. And  
17 the ANC takes that position that if they support  
18 something that isn't by right, that if the  
19 conditions fail to sustain, then the ANC would  
20 entertain revoking its support.

21 With your indulgence, I would like

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1 to read my testimony because I've been on the  
2 ANC ten years and we've never had this kind of  
3 an application before. And therefore, and I'm  
4 the ANC's zoning and historic person. And I  
5 went through the entire neighborhood dealing  
6 with the land use plan, making 37 adjustments,  
7 all that sort of stuff. But this is a new kind  
8 of approach, so I took this very seriously  
9 because jobs are on the line, institutions are  
10 on the line. It's not the normal kind of zoning  
11 application that we get. It's normally how you  
12 get more return of your investment and property.

13 So bear with me as I go through this  
14 logic and why the ANC came out with a strong  
15 recommendation of support.

16 We voted 9 to 0 to support this, but  
17 with carefully restricted resolution. And our  
18 findings were based on the four following  
19 issues. First, issue of disturbance of peace,  
20 order, and quiet. This matter came to my  
21 attention by staff of Councilman Jack Evans

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1 while I was attending the Democratic National  
2 Convention in Charlotte, North Carolina.

3 In response to a request for my  
4 advice, I suggested that the UUMC request a  
5 temporary use variance to cover the play in  
6 production, that the variance stipulate that  
7 entrance to performances be limited to doors  
8 on the front side, 16th Street side of the  
9 church, and that doors on the alley to the rear  
10 of the church where the disturbance of peace,  
11 order and quite be off limits and that the ANC,  
12 the UUMC, and neighbors meet after the October  
13 productions to evaluate the impact of the  
14 temporary variance.

15 We met November 7th. At that  
16 meeting, the neighbors declared that the  
17 restriction of patrons and performers to the  
18 front entrances had eliminated the disturbance  
19 of peace, order, and quiet. On that basis, I  
20 concluded that there was basis to negotiate an  
21 agreement among all parties to back an ANC

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1 recommendation to support the UUMC application.  
2 This is the first time in my ten years that we  
3 were able to see the impact of a potential  
4 variance before we actually voted on the  
5 application.

6 Second issue, the financial  
7 hardship for the UUMC as a result of the  
8 configuration of space in finding renters to  
9 generate income to allow the UUMC to stay in  
10 this building. The variance criteria normally  
11 apply to requests to modify FAR or lot occupancy  
12 ratios as a result of the unusual nature of the  
13 land or the -- am I too close to this microphone?

14 CHAIRPERSON JORDAN: That's fine,  
15 go ahead.

16 MR. MEEHAN: In this case --

17 CHAIRPERSON JORDAN: Right there,  
18 there you go.

19 MR. MEEHAN: Sweet spot.

20 CHAIRPERSON JORDAN: Yes.

21 MR. MEEHAN: In the case of the

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1 UUMC, the hardship comes from a need to rent  
2 out additional space to help offset its  
3 operating budget. Currently, it is able to  
4 provide one office to a nonprofit renter. The  
5 rest of the space is essential to the UUMC  
6 operations as a church. The vast majority of  
7 the space consists of the worship sanctuary and  
8 parlor on the first floor, the 225-person  
9 capacity auditorium in the basement, and  
10 considerable entryway, hallway, and stairwell  
11 space.

12 The auditorium is the only space  
13 that can be rented, but it must also be available  
14 for church needs. At first, the UUMC  
15 investigated the feasibility of remodeling to  
16 include a weekday preschool. There are over  
17 300 preschool children in church-based  
18 facilities in our neighborhood. A feasibility  
19 study concluded that the UUMC could not afford  
20 the renovations necessary to accommodate a  
21 preschool. The only other option was to

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1 consider a nonprofit community-oriented  
2 performance theater that would lease space on  
3 an intermittent basis throughout the year.

4 Spooky Action Theater and the UUMC  
5 seemed like a good match. As a young theater,  
6 Spooky Action Theater set its sights on  
7 performances for no more than 75 percent which  
8 is one third the capacity of the auditorium,  
9 thereby causing minimal disruption of the UUMC's  
10 needs. Given the calendar of events for the  
11 UUMC, the limit of 48 performances per year for  
12 three productions could be accommodated among  
13 the weddings and all that the UUMC sponsors.  
14 In other words, ANC 2B saw the theater as falling  
15 in rather than displacing the UUMC's calendar,  
16 while also providing crucial rent.

17 Third issue, while there is no use  
18 by right for a nonprofit theater like the  
19 existing Spooky Action Theater to operate in  
20 an R-5-B zone, the special exceptions list that  
21 includes nonprofit organizations, uses for

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1 R-5-B zone does not specifically prohibit a  
2 nonprofit theater from operating in an R-5-B  
3 zone under the special exception as far as I  
4 can research. And I spent hours trying to get  
5 through the stuff and I couldn't find. I may  
6 be mistaken on that. I acknowledge that.

7 I asked the director of Office of  
8 Zoning if he could offer any guidance on how  
9 ANC 2B should address this application. He said  
10 that in this case, the policy lies with the BZA.

11 He said he expected that the UUMC would base  
12 its request on the special exception for  
13 nonprofits. When I asked for BZA cases that  
14 dealt with this type of application, he gave  
15 me a web link to BZA cases. I searched over  
16 70 pages of BZA case listings representing over  
17 400 cases using search words "church",  
18 "performance theater", "theater", "arts",  
19 "performing arts", and some combinations of  
20 these words. I downloaded at least 15 cases  
21 whose titles might be relevant. I found nothing

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1 relevant.

2 Art galleries and artist studios  
3 including performance art came up, but they are  
4 specifically mentioned as special exceptions.

5 On the basis of our research failing to find  
6 BZA cases that address this kind of application,  
7 despite the numerous start-up theaters that had  
8 to operate out of noncommercial space in the  
9 45 years I've lived in D.C., and the numerous  
10 examples of churches selling tickets to specific  
11 performance events, especially around the  
12 holidays, ANC 2B concluded that there may be  
13 a "don't ask, don't tell" policy regarding start  
14 up nonprofit theaters in D.C. because of the  
15 difficulty of defining theater to suit different  
16 zoning situations.

17 Unlike art with charcoal and paints,  
18 the art of the theater has always been suspect  
19 in Western culture. When the great, great  
20 playwrights of the Golden Age, some 2500 years  
21 ago such as Euripides were startling their

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1 audiences with themes on the human condition,  
2 the great philosopher, Plato, railed against  
3 this kind of art. Even today, persists the idea  
4 of "legitimate theater." What other form of  
5 the arts struggles under this kind of  
6 discrimination?

7 One, as to the art galleries, the  
8 schools, music centers, museums, doctor's  
9 offices, church, community centers, as well as  
10 all of the additional nonprofits, one sees that  
11 the R-5-B zone is truly a mixed-use zone. In  
12 Dupont Circle, some blocks are 40 percent filled  
13 with art galleries such as the 2000 block of  
14 R Street and the 1600 block of 21st Street.

15 One of the most important incubator  
16 performance theater locations in the city is  
17 1742 Church Street on a block that is entirely  
18 R-5-B sits the building known as the Church  
19 Street Theater is a former school building.  
20 Attached is a web map picture of the lot.

21 The zoning info which I could not

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1 print lists the address as R-5-B, same as all  
2 the rowhouses on either side. The current  
3 occupant is the Keegan Theater Company. The  
4 UUMC application is not requesting that the  
5 whole building become a theater as in the case  
6 of 1742 Church. Spooky Action Theater doesn't  
7 sell about 200 tickets per show. Only up to  
8 75, but more frequently less than 30. Spooky  
9 Action Theater doesn't have ten productions per  
10 year, only three. That as single residential  
11 unit is being displaced. With appropriate  
12 restrictions a church community center could  
13 be an appropriate location for a small-scale  
14 start up nonprofit theater in the judgment of  
15 ANC 2B.

16 Fourth issue. Increasing reliance  
17 on churches within our community on community  
18 support to stay viable and remain in our  
19 community. ANC 2B is witness to churches in  
20 our neighborhood, particularly on 16th Street,  
21 coming increasingly under financial duress in

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1 their effort to maintain their presence and  
2 outreach in our community. More than 20 years  
3 of threats to landmark Third Church of Christ  
4 Scientist to block its efforts to stay located  
5 with ministry at 16th and I Streets by  
6 redeveloping its lot nearly forced the collapse  
7 of the congregation until a federal court  
8 intervened last year and forced the city to  
9 negotiate fairly with full ANC 2B backing.

10 The First Baptist Church at 16th and  
11 O Streets needed significant FAR zoning relief  
12 to develop its parking lot on 17th Street to  
13 generate the kind of income needed to support  
14 all the major outreach programs it sponsors,  
15 as well as to compensate for lower donations  
16 of parishioners as parishioners aged.

17 Now we have the UUMC at 16th and S  
18 Streets needing community support as  
19 represented by ANC 2B just to meet its operating  
20 budget. Approving this use variance  
21 application -- summation. Approving this use

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1 variance application with the restrictions  
2 incorporated in the ANC 2B resolution would not  
3 constitute a precedent for a neighborhood and  
4 would not displace a residence as hundreds of  
5 nonprofit organizations are. The Church Street  
6 Theater at 1742 Church Street already is the  
7 precedent.

8 As a community center, the UUMC  
9 already sponsors all sorts of public events as  
10 a matter of right including performance theater  
11 as part of its programs. On the other hand,  
12 while commercial art galleries are okay, why  
13 not nonprofit start up performance theaters  
14 selling tickets? ANC 2B recognizes the  
15 difficulty of defining what is theater that  
16 might be licensed in a community center located  
17 in the church in an R-5-B zone. As a result,  
18 ANC 2B takes very seriously the concerns of the  
19 Office of Planning about theaters and  
20 residential zones.

21 In negotiations among the

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1 neighbors, the UUMC and existing theater  
2 company, the ANC worked out a series of  
3 restrictions that (1) have proven to have  
4 already eliminated the disturbance of peace,  
5 order, and quiet in the alley behind the church,  
6 the basis for the original complaint. Not just  
7 from theater performers, but also for all events  
8 sponsored by the UUMC. It turns out some of  
9 the complaint was based on events that the UUMC  
10 sponsored with people using the alley entrance,  
11 so this is a concession of the church to all  
12 of their events.

13 It will prevent the theater -- it  
14 will restrain the growth of the theater beyond  
15 what's appropriate for this space by limiting  
16 75 tickets per performance and 48 public  
17 performances over the course of a year, as  
18 proposed in the original application for a use  
19 variance.

20 (3) It will prevent the theater  
21 from becoming its own leasing agent for other

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1 theaters by the UUMC incorporating within its  
2 lease the theater the prohibition of the theater  
3 subleasing its space.

4 (4) It will require an agreement  
5 signed by the ANC and the UUMC, unless, of  
6 course, all these restrictions are in the BZA  
7 order, and witnessed by at least three neighbors  
8 involved in this case that incorporates all the  
9 constraints contained in the BZA order as well  
10 as include responsibilities of the UUMC to  
11 police any gatherings outside the building  
12 associated with the theater performances, to  
13 provide offstreet site parking and to clear  
14 public space of trash. Such an agreement is  
15 attached unless the BZA order itself  
16 incorporates these responsibilities.

17 The UUMC is a valuable community  
18 center for our neighborhood. It is often the  
19 host of meetings of the Dupont Circle Citizens  
20 Association and the Dupont Circle Conservancy.

21 It would be tragic if turning down this request

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1 results in the financial collapse of the UUMC  
2 with the potential sale of this property to an  
3 embassy. After all, this section of 16th Street  
4 is covered by the Diplomatic Overlay. Then this  
5 neighborhood will suffer the same fate that the  
6 neighbors of the former Toutorsky Mansion at  
7 16th and Riggs Place now complain about the  
8 embassy that bought that property.

9 ANC 2B is convinced that this  
10 application for a use variance will do no harm  
11 to the residential nature of our neighborhood,  
12 nor to the intent of the zoning regulations to  
13 protect R-5-B zones. Thank you.

14 CHAIRPERSON JORDAN: Wow, you said  
15 a lot. Thank you so much for your time and hard  
16 work in doing your presentation and providing  
17 us this information, some of which we didn't  
18 have before until you gave your testimony.

19 Does the Board have any questions,  
20 any questions of Mr. Meehan?

21 Does the applicant have any

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1 questions of Mr. Meehan?

2 Does our joint parties in opposition  
3 have a question? Microphone, please.

4 MR. SALONIA: Okay, Bob, you  
5 mentioned about the performance art that was  
6 played out at the end and you said it was church  
7 sponsored. I know it was and I know from the  
8 internet ads that were run, renting the space  
9 that it was done by the theater as subletting  
10 situation. I do believe now that the church  
11 is not going to permit that. So my question  
12 comes down to and I want to be sure that we're  
13 in agreement on this, the 48 performances a year,  
14 theater performances include all performances  
15 in that theater unless we're talking about like  
16 a church Christmas pageant or whatever. I don't  
17 want this opening the door to their being  
18 innumerable around-the-clock usage again,  
19 because it is important to note 48 performances  
20 a year doesn't mean just three times a year.  
21 Because for every play, they were there

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1 practicing for two or three months before,  
2 people coming and going at all times of the day  
3 and night. The 48 performances a year is just  
4 the tip of the iceberg.

5 CHAIRPERSON JORDAN: So your  
6 question --

7 MR. SALONIA: My question is, Bob,  
8 does that -- I noticed the word "ticket holding"  
9 got somehow included in the resolution I saw  
10 recently, I guess it wasn't in your resolution.

11 But is that -- what does the 48 performances  
12 per year include?

13 MR. MEEHAN: Mr. Chairman, I  
14 perhaps kicked a sleeping dog because in my  
15 resolution I had point six which eliminated the  
16 restriction on the number of performances  
17 because in my experience in the ANC things that  
18 cannot be seen immediately by an inspector,  
19 perhaps are better put in agreements between  
20 the applicant and the ANC. That serves sort  
21 of as an immediate policeman and I wish I had

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1 simply said in the judgment to BZA whether the  
2 limitation should be in the order or in a  
3 separate agreement. It makes no difference.

4 We understood that the request for  
5 was if the church is renting space out to a  
6 theater, there could be no more than 48  
7 performances a year. Period.

8 CHAIRPERSON JORDAN: And by  
9 performances, you're including --

10 MR. MEEHAN: Ticket buying --

11 CHAIRPERSON JORDAN: Ticket  
12 events.

13 MR. MEEHAN: Ticketed events.  
14 Based on renting out the space.

15 MR. SALONIA: I guess that's my  
16 question because you can get revenue for the  
17 space without getting tickets.

18 CHAIRPERSON JORDAN: I think he  
19 answered your question. He said what he  
20 considers as performances are ticketed events.

21 Next question.

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1 MR. JADIN: Well, it's a follow up  
2 to that. So it item 6 off the table. It's not  
3 part of your recommendation then?

4 MR. MEEHAN: As I humbly apologize  
5 for kicking a sleeping dog, I shouldn't have  
6 said anything. I thought 48 made more sense  
7 in agreement in the neighborhood because when  
8 you put things in a BZA order or ABC order or  
9 any of these things, it becomes a big issue if  
10 there needs to be some adjustments somewhere  
11 down the future, it doesn't involve bringing  
12 these gentlemen and ladies all the way back here  
13 to make a change to an i or t. But if that is  
14 the decision of the BZA, that is acceptable to  
15 the ANC. That's work down the line.

16 But in the otherwise, these  
17 restrictions which the church has agreed to,  
18 to the ANC basically mean if this church, if  
19 this theater becomes really successful as we  
20 hope it will, as several theaters that went  
21 through the Church Street Theater became

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1       successful, we think there will be other space.

2               The irony for us is that we have the  
3       arts overlay on 14th Street. Restaurants are  
4       one of the eligible uses of that as a result  
5       of being no nonprofits being able to do that  
6       except unless you were a major studio, theater,  
7       which by the way use the Church Street Theater  
8       while they were doing renovations. That's one  
9       of the travesties of that art overlay. It  
10       doesn't permit these kinds of organizations to  
11       go into that space which would have to be rented  
12       at lower rates than the other rates.

13              If a restaurant is the competition  
14       with an art gallery or a theater, it will be  
15       a restaurant because they can afford the higher  
16       rate. This is what troubles us. We have  
17       theaters in our neighborhood. We have the  
18       Keegan Theater at Church Street. We have the  
19       JCC Theater which is a preeminent theater  
20       getting all sorts of awards. And we have Spooky  
21       Action Theater. All them have been good

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1 neighbors. All of them walk to work theaters  
2 and they're well patronized by the neighborhood.

3 CHAIRPERSON JORDAN: Do you have  
4 any questions of the witness?

5 MR. JADIN: Yes. Your testimony  
6 seems to indicate that you don't think there's  
7 a difference between an art gallery and a  
8 performance theater, commercial theater?

9 MR. MEEHAN: My classmate had an  
10 opening over at the Addison/Ripley Art Gallery  
11 in Georgetown. That was like watching stand  
12 outside for Star Wars tickets. That was a  
13 residential neighborhood in Georgetown. Art  
14 galleries are a big deal. Go to the art gallery,  
15 for example, Phillips on 16th Street. Takes  
16 up 50 percent of the block right there. When  
17 you add art galleries and embassies in our  
18 neighborhood, we have pushed out people, but  
19 we have a church that is an existing structure,  
20 hasn't displaced anybody, is providing a service  
21 in the neighborhood and this particular kind

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1 of application is for a very limited one because  
2 the ANC feels just like the Office of Planning,  
3 for some reason there's been no sense of  
4 differentiating what is a theater and therefore  
5 there's reluctance to suddenly open up.

6 I've got a lot of cases I've looked  
7 at turned out to be about nude dancing or  
8 something like that, because there are things  
9 that people don't want. They don't tell you  
10 what they actually do want. So art galleries  
11 are not as innocuous an institution as you think,  
12 particularly when they end up with a critical  
13 mass on a block.

14 MR. JADIN: However, their  
15 intensity of use is not to the level of a 200-seat  
16 theater.

17 MR. MEEHAN: If UUMC were to work  
18 a deal with a church that likes to do mass  
19 weddings every weekend, you would have a lot  
20 of people at this church by their right. This  
21 is not what we're talking about. We're not

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1 talking about huge amounts of people. And none  
2 of these people will be in the alley, nor on  
3 S Street.

4 And the question came up what would  
5 the church do to maintain crowd control? I'm  
6 the one who put that language in and my  
7 assumption would be since they do have staff  
8 to manage the building, there would be someone  
9 out there if they saw people making a lot of  
10 noise and just go out there and say please, could  
11 you move on to your cars or could you hold it  
12 down? There would be stuff like that going on.

13 MR. JADIN: So I understand from  
14 your testimony that you're very favorable to  
15 theaters and they're very important, but somehow  
16 the city zoning isn't quite right because of  
17 the conditions on 14th Street where they would  
18 be eligible to be. Do you have any concern for  
19 the residents of the neighborhood where you  
20 would impose this large, intense activity of  
21 crowds coming out, not just now, but in the

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1 future when this theater is really successful?

2 MR. MEEHAN: All the testimony  
3 you've heard tonight is basically saying  
4 restrictions will be put in place so that could  
5 not happen. We recently reviewed the  
6 historical application for the Church Street  
7 Theater. They wanted to make it handicap  
8 accessible. To do that, they had to move the  
9 entrance to the side, otherwise, they had six  
10 steps in front that are even hard for me to get  
11 up because there's no railing. There was no  
12 complaint from the community. They love that  
13 theater. But they wanted to make sure that the  
14 new entrance didn't break the line of sight on  
15 the bays of the house next door. They wanted  
16 to make sure that the materials were compatible,  
17 but they were not complaining about the Church  
18 Street Theater which has 200 seats, which has  
19 about 10 productions a year.

20 People who come to these theaters

21 --

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1 MR. JADIN: How long has that  
2 theater been there?

3 CHAIRPERSON JORDAN: Wait, let him  
4 finish answering the question.

5 MR. MEEHAN: People like you or me  
6 are not going to rock concerts. We're talking  
7 at maximum 75 people and I've been spending the  
8 last 10 hours trying to deal with the fact that  
9 some point there has to be some belief that rules  
10 will be followed, that there is enforcement.  
11 When -- I can't ask a policeman to come to a  
12 place in anticipation there's going to be a  
13 robbery, but when there's a robbery, you call  
14 the police and he comes.

15 If this theater is misbehaving, if  
16 they have 100 seats sitting up there, take a  
17 picture of it. I mean if something happens,  
18 if you feel like that. But that's the way  
19 enforcement is done in a democracy. You don't  
20 preemptively assume people are breaking the law.

21 This case came about because they

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1 were not in compliance and if we hadn't had that  
2 one month of restriction to see what the impact  
3 of peace, order, and quiet would be, it might  
4 have been problematic for the ANC to support  
5 this. But we actually had a month of one third  
6 of their annual production and when we met in  
7 the church, Mr. Salonia was there and one or  
8 two other residents. It solved the problem only  
9 on that basis that the ANC said all right,  
10 there's a way we could try to keep the intent  
11 of the zoning rights in place and allow this  
12 other form of art to take place.

13 As the Office of Planning mentioned  
14 the issue came down to the theater was  
15 incorporated separately from the church.  
16 That's why they needed a C of O. And to have  
17 that C of O, then they had to have that use.  
18 That's the sequence. So what we're trying to  
19 do is to see is there a basis, very limited basis  
20 that one could test the waters here having seen  
21 that the limitations had a real impact. And

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1 knowing that our ANC would be the first to say  
2 did you lie to us? We're going to back to BZA  
3 and ask for a reconsideration. That's been my  
4 experience in my ten years on the ANC.

5 MR. JADIN: So I understand you to  
6 say there were two to three neighbors at this  
7 ANC meeting where you sort of ratified this  
8 policy or this attitude about the -- the  
9 neighbors' attitude towards the theater? Yes?

10 MR. MEEHAN: Two or three. Mr.  
11 Salonia was one of them and I have a series of  
12 emails of which four or five say yes, this looks  
13 good, I support. And three or four say no, I  
14 question whether you really mean this. We're  
15 going back and forth and back and forth. Now  
16 we're testifying as a result of that back and  
17 forth, the church sent this letter in  
18 incorporating every single limitation that the  
19 ANC insisted on to go in the BZA order. That's  
20 extraordinary. That's very bad process in my  
21 view to go to that level of detail, but they

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1 are committed to responding in a way that says  
2 we are good neighbors and we take you seriously  
3 and we're willing to turn our flexibility over  
4 to the BZA so it's incorporated in the BZA order.

5 I don't know how you can get stronger than that.

6 MR. JADIN: I could give you a  
7 suggestion.

8 CHAIRPERSON JORDAN: Are you asking  
9 a question please?

10 MR. JADIN: Don't you think that  
11 adhering to the current zoning would be a  
12 stronger way?

13 MR. MEEHAN: As I said, this is a  
14 nonprofit organization and I searched high and  
15 low -- provision 213, I think it was, definition  
16 of a nonprofit, I had to have proprietary access  
17 to actually see the regs nowadays, so I couldn't  
18 actually see that, so it's my -- I may be failing  
19 on this one, but I could not get down to some  
20 of the conditions for nonprofits. So to the  
21 best of my knowledge the theater is not

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1 explicitly omitted under the special exceptions  
2 for nonprofits.

3 MR. JADIN: So because you couldn't  
4 find a case of denial of an application for a  
5 theater in a zone, you're suggesting that that  
6 means that actually then was either proposed  
7 or should be included in it? What's the  
8 significance of the fact that you've never found  
9 a denial? Isn't it most likely that there's  
10 never been an application because it's such an  
11 intrusive activity in a residential zone that  
12 it just hadn't been thought of?

13 MR. MEEHAN: How do you explain  
14 Church Street Theater in an R-5-B zone?

15 MR. JADIN: It's been there a long  
16 time.

17 CHAIRPERSON JORDAN: Gentlemen,  
18 please, please, we're not going to have argument  
19 here. You're going to ask a relevant question  
20 and we're going to give a concise reply answer.  
21 Are there any other questions you'd like to

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1 ask?

2 Does the Board have any questions?

3 You'll have an opportunity to present your case  
4 which as it so happens -- just one second.

5 Are there anyone in the audience  
6 wishing to testify in support of the  
7 application?

8 Then let's move to the party in  
9 opposition and I believe we gave -- what was  
10 it, Mr. Moy, we gave the applicant 15 minutes  
11 for their presentation?

12 SECRETARY MOY: You gave 15, but  
13 they went over -- they used 27 minutes. So  
14 that's why I gave --

15 CHAIRPERSON JORDAN: That was  
16 including questions, wasn't it?

17 SECRETARY MOY: To the exclusion of  
18 Q & A.

19 CHAIRPERSON JORDAN: You have 27  
20 minutes to do a presentation, so you two can  
21 either read your statements or present

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1 witnesses, whichever, collectively, you've got  
2 27 minutes.

3 MR. SALONIA: Can you hear me?

4 CHAIRPERSON JORDAN: Yes.

5 MR. SALONIA: And I don't think I'll  
6 go for more than ten minutes at most.

7 Okay, my home, which is adjacent to  
8 the applicant's property in the R-5-B zone,  
9 residential zone, will continue to be subject  
10 to unwanted and unwarranted impacts of  
11 commercialization if this variance gets granted  
12 without substantial limitations and conditions  
13 and equally importantly without a clear means  
14 of enforceability of these limitations and  
15 conditions.

16 And I should mention that I am a  
17 homeowner. I am also a former ANC Commissioner  
18 and ANC chair and I have experience in knowing  
19 the ANC's role really is advisory and once a  
20 decree is done, there's very little that ANC  
21 can do to change or to enforce what's going on

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1 afterwards.

2 So getting back to my statement.

3 I am the owner and resident of 1603 S Street  
4 and end rowhouse on the north side of the 1600  
5 block of S Street, N.W., just around the corner  
6 from the church which fronts on 16th Street,  
7 N.W. The end row wall of my home abuts the  
8 10-foot wide alley separating my property from  
9 the rear of the church property and it is this  
10 10-foot wide alley which provides access to the  
11 service door located in the rear of the church.

12 The service door is used to provide access to  
13 the church basement for repairmen and others  
14 needing access to mechanical systems of the  
15 church, as well as for it's part-time  
16 maintenance staff at the church which is there  
17 maybe two mornings a week for a couple of hours  
18 a week each.

19 It is this same rear door which for  
20 a year and a half doubled during the day and  
21 late into the evenings often past midnight as

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1 the main and only public and staff entrance to  
2 the basement theater space and its offices.  
3 And I should mention the church, I believe, has  
4 another four or five rented offices at least  
5 in there from what I found on line, plus the  
6 numerous doorbells in the front of the church.

7 So I'm not sure where there's one office that  
8 came up in Mr. Meehan's testimony.

9 The theater began operating in this  
10 space in late 2010. Since that time I have  
11 experienced repeated disturbances of commercial  
12 nature which are not allowed by right or by  
13 special exception in a residential zone. These  
14 disturbances include, but are not limited by  
15 heavy foot traffic coming and going to  
16 performances, auditions, rehearsals, dinner  
17 galas, fashion shows, and other nonperformance  
18 uses including even the filming of a commercial  
19 one time if the sign in the back service door  
20 one week said "commercial being filmed here,  
21 please be quiet" wants to be believed.

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1 I also observed the space being  
2 advertised without restriction on its use on  
3 the internet. Here is one sample. With the  
4 theater company effectively subletting the  
5 space to any and all sublessors, \$40 an hour  
6 or \$1200 for the week.

7 Other disturbances of  
8 commercialization of space in the neighborhood  
9 including the setting up of tables in the shared  
10 alleys with sales of t-shirts and other  
11 performance-specific paraphernalia effectively  
12 blocking the alleys for its intended and legal  
13 uses. This occurred notably during one special  
14 heavy period when the Capital Fringe Festival  
15 was conducting approximately four performances  
16 a day for six days a week, extended to a five  
17 to six week period during the summer of 2011.

18  
19 Additionally, using the back  
20 service door as an entrance for the theater  
21 resulted in not only the foot traffic and noise

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1 the service has already noted, but in the almost  
2 constant presence of people hanging out in our  
3 shared alley. Performers and guests and people  
4 building sets congregated before and after  
5 auditions and practices, before and after and  
6 during performances and just about any other  
7 time you could think of to smoke and to chat  
8 and to do what people do when they're at work  
9 or when they're at a theater performance or when  
10 they're at a venue where a commercial is being  
11 filmed or a fashion show being set up.

12 Again, as I say, the 48 performances  
13 themselves are just the tip of the iceberg of  
14 use here.

15 I found myself increasingly  
16 refraining from working or even being in my front  
17 or back yards because there are always people  
18 gathered just a few feet away. One such person  
19 once leaned over my fence as I was planting  
20 flowers to ask me "isn't it strange living so  
21 close to a theater? Do you like living here?"

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1                   Other people stood and stared into  
2 my kitchen and dining room windows while I went  
3 about my daily life and they went about their  
4 smoking and chattering and pondering the great  
5 urbanism of this theater venue.

6                   My front garden began sprouting  
7 weeds and cigarette butts and soda cans instead  
8 of the flowers my neighbors always used to thank  
9 me for for planting and caring for before the  
10 theater came.

11                  These disturbances coming from the  
12 theater were not limited to any specific day  
13 of the week or even a specific night or nights  
14 of the week. And they extended almost without  
15 interruption throughout the year for a full year  
16 and a half.

17                  Since I first met Mr. Hemrich  
18 outside in the alley in late 2010 and he told  
19 me his plans to turn the church's basement into  
20 a theater space and the church's back basement  
21 door into a separate entrance for the theater.

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1 I have objected to this on the grounds that  
2 this is my home and I am entitled to the peace,  
3 order, and quiet which is in the rules for 5-R-B  
4 zoned that are designed to protect and promote.

5 And I have objected on the grounds that I made  
6 a very substantial monetary commitment, i.e.,  
7 a big mortgage to be a part of this community  
8 and to live where I live. And it's not fair  
9 to see my financial interests and commitment  
10 harmed by the commercialization of a property  
11 so close to mine probably which is zoned as the  
12 same as mine in which I expect it to function  
13 as a church with use on Sundays and maybe some  
14 meetings during the week and a wedding here or  
15 there, but definitely not to the level I've been  
16 experiencing nor the times of day and night I  
17 witnessed the theater moved in.

18 And I should mention I did write to  
19 Mr. Hemrich at the time and informed him that  
20 this was a clear zoning violation and he  
21 responded that in New York it wasn't where he

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1 had come from and he didn't believe it should  
2 be here either.

3 I understand the need of a church  
4 to generate income to support the maintenance  
5 of a church building which is aging just at the  
6 same time its congregation is dwindling and I  
7 understand it seeks to do so in a way which won't  
8 interfere with its own mission and its own needs  
9 in regard to use of the space within the church  
10 including the basement. And I understand it  
11 is attempting to find secondary uses for the  
12 church property, the church's really own asset  
13 other than its congregants' limited savings  
14 which can synergistically use the space in times  
15 the church is otherwise using it. But I asked  
16 and the church agreed to and the Board of Zoning  
17 Adjustment put in writing what was told me by  
18 the then administrator of the church when I first  
19 approached her back in late 2010 after I first  
20 learned of Mr. Hemrich's plan for the church  
21 basement. The Reverend Lilly said to me "Lance,

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1 don't worry. We're only talking a few shows  
2 a year with very few performances each. Three  
3 shows a week, a week at a time, maybe three or  
4 four times a year. The number of people  
5 attending won't be anywhere close to the  
6 200-person occupancy of the space. We've been  
7 told it will be maybe 25 or 40 at the very most.  
8 That's what we've been promised. You won't  
9 even know they're here. And if you get bothered  
10 by it, we'll stop it. We don't want to be bad  
11 neighbors. Our relationship with the neighbors  
12 is of the utmost importance to us."

13           Shortly after that promise was made  
14 to me, the Reverend was let go from the church.

15       The long-time church administrator had also  
16 been let go shortly before the Reverend. When  
17 I approached a church board member to discuss  
18 the escalating use of the space and six months  
19 later, I was told "Deal with Richard Hemrich.

20       This is between you and him. The church just  
21 rents the space." And that I tried for the next

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1 year or more and it didn't help.

2 So while I understand the needs of  
3 the church for the income from this use, I ask  
4 if such a variance, if granted, could guarantee  
5 that this theater not be commercial in nature  
6 and really be for the very, very limited number  
7 of performances and for a very, very limited  
8 number of patrons. And I ask that the back  
9 service door be used only as a back service door  
10 and not as a theater entrance and all that  
11 entails from me living so close to that door.

12 Specifically, I ask that  
13 conditional to granting of the variance that  
14 the church and any tenant theater company or  
15 other organization using the space, be it for  
16 a year or a day, abide by the conditions  
17 specified by the ANC, a special order in regards  
18 to prohibiting all non-service, non-handicap  
19 access to use of the back service door, and that  
20 the church's -- and I should add to that as was  
21 agreed to at the meeting, we would not be

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1 building a handicap entrance in the back when  
2 it came time to build a handicap entrance, that  
3 that would be in the front where it belongs as  
4 ADA mandates to.

5 In any case, and that the church's  
6 own self-imposed limitations as stated in its  
7 application asking for a maximum of 48  
8 performances a year and a cap of 75 patrons at  
9 each performance be made part and parcel of any  
10 approved variance. And equally important, I  
11 ask that these condition limitations be  
12 formalized in such a way that they are legally  
13 enforceable at the bequest of the neighbors  
14 individually or severally. I don't want to have  
15 to depend on promises made by people or an  
16 organization who may or may not still be around  
17 when a promise resurfaces or whose institutional  
18 memory may have been clouded by time.

19 I believe the Reverend Lilly when  
20 she told me she would be sure to keep it small  
21 because I trusted her, but things happen. I

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1 don't want the enforcement of a variance granted  
2 here today through subject of people or  
3 organizations. It must be fully enforceable,  
4 under the law, and at the bequest of those most  
5 specifically affected. If that cannot be done  
6 this variance should not be granted.

7 I am not addressing other commercial  
8 uses for the space which a church or a theater  
9 may be contemplating which have occurred over  
10 the last two years with increasing frequency  
11 since the space was renovated. But neither is  
12 the variance application. The variance  
13 application is simply for theater use and not  
14 for non-church uses which would otherwise  
15 require variances of their own including events  
16 where the church benefits either directly from  
17 the rental of the space or benefits indirectly  
18 by sharing in the proceeds of an event in lieu  
19 of rent.

20 These other non-church uses are  
21 auctions, dinner galas, etcetera, are not

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1 permitted under the zoning laws as far as I know  
2 and this variance, a variance for theater use  
3 will not do anything to change that. However,  
4 in the case of theater performances which are  
5 in the scope of the requested variance, I do  
6 not want ticket sales to be made a condition  
7 of determining what is covered by the variance  
8 and what isn't. A large crowd is still a large  
9 crowd irrespective of whether they've purchased  
10 tickets or benefitted some other organization  
11 by contributing to another organization such  
12 as an auction or being a sponsor or whatever.

13 Making ticket sales a criteria for  
14 commercialization is just inviting creative  
15 thinking on how to characterize a theater  
16 performance which isn't the church's and which  
17 is commercial in nature irrespective of how the  
18 funds are collected in which other than this  
19 variance would not otherwise be allowed.

20 We must be sure we are really looking  
21 at no more than 48 performances a year and no

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1 more than 75 participants at any one  
2 performance. And again, as I've noted, 48  
3 performances does translate into at least four  
4 times with people coming and going for two to  
5 three months for practices, auditions,  
6 meetings, whatever before the first performance  
7 even begins.

8 In closing, my immediate concerns  
9 with the theater being located in this  
10 commercial space have been addressed over the  
11 past several months by a temporary variance  
12 which very effectively placed the same  
13 conditions, limitations on use of the space that  
14 I'm now asking be placed in a permanent manner  
15 if a variance is granted.

16 While I can now raise my head from  
17 the trenches or from my garden after some very  
18 hard years of concerns, the greater concerns  
19 of the neighborhood must still be addressed.  
20 I don't want what I have to experience close  
21 up passed on to others simply because they never

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1 experienced first hand what a commercial  
2 presence in a residential neighborhood can do  
3 to the peace, order, and quiet and daily lives  
4 of those affected.

5 If the theater is to be successful,  
6 it will entail having audiences of greater than  
7 the 5 to 20 individuals which the application  
8 by the church estimates as attending Spooky  
9 Action performances today. It could entail  
10 numbers more akin to the number of people I saw  
11 involved in the subletting situations out the  
12 back door such as the Capital Fringe Festival  
13 and that's different from what most of the other  
14 neighbors not immediately adjacent to the church  
15 have experienced.

16 Any theater use permitted on this  
17 site must be limited in size and infrequent in  
18 number as the Reverend Lilly had promised me.

19 The theater use must be incidental to the church  
20 use of this property, a permanent use, and not  
21 be in lieu of it. The theater there must be

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1       there to benefit the church and not vice versa  
2       and I'm counting on the Board to permit this  
3       use only if the Board can do so with certainty  
4       of those conditions and limitations can and will  
5       be enforced in practice as well as in promise.

6       I don't want any more promises that aren't kept.

7               By granting this variance, you may  
8       very well be setting a precedent for other  
9       churches that want to raise capital by renting  
10      out their basements to unrelated groups.  
11      Please ensure the precedent you are setting  
12      comes with limits and a means of enforcement.

13      Thank you.

14              CHAIRPERSON JORDAN:     Thank you.  
15      Does the Board have any questions they would  
16      like to ask?

17              When you had the issue with the  
18      persons leaning over the fence and the cigarette  
19      butts and all, did you complain to the church  
20      about that?

21              MR. SALONIA:    I did, but the church

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1 was in transition at the time and they told me  
2 to deal directly with Mr. Hemrich and the Spooky  
3 Action and I did.

4 CHAIRPERSON JORDAN: So does this  
5 happen all the time when there's an event of  
6 this nature at the church?

7 MR. SALONIA: This is what I want  
8 to emphasize, it's not just the event. The  
9 event is just the final stages of what's a  
10 three-month effort. People coming and going  
11 all day long for practices, etcetera.

12 CHAIRPERSON JORDAN: So it happens  
13 in relation to this theater, this happens as  
14 an on-going issue?

15 MR. SALONIA: It was. Now that  
16 they've moved to the front, I'm obviously not  
17 the neighbor directly affected because I am  
18 where the back entrance was.

19 CHAIRPERSON JORDAN: When they  
20 moved to the front it kind of --

21 MR. SALONIA: My immediate concerns

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1       were met because now they're using the church  
2       door where the other neighbors are obviously  
3       there and I wouldn't want to see them, but  
4       obviously a 10-foot alley would be different  
5       from a large esplanade in front.

6                   CHAIRPERSON JORDAN:   Does the Board  
7       have any other questions?

8                   Then I'm going to turn to -- just  
9       a second, please.   I'm going to turn to the  
10      applicant.       Does the applicant have any  
11      questions?

12                  MR. BROWN:   No questions.

13                  CHAIRPERSON JORDAN:   And the ANC  
14      have questions?

15                  MR. MEEHAN:   I'd like to address one  
16      point that Mr. Salonia made.

17                  CHAIRPERSON JORDAN:   You're going  
18      to ask a question?

19                  MR. MEEHAN:   Well, Mr. Salonia,  
20      would not the condition that we had total number  
21      of performances for theater, renting the space,

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1 or any other space within the church building  
2 and/or grounds in which tickets are sold to the  
3 public or donations are sought, which would not  
4 directly benefit UUMC, is limited to 48 per year,  
5 wouldn't that solve the semantic issue of  
6 whether it's a ticket or not a ticket? In other  
7 words, we recognize -- I recognize that and  
8 therefore whether someone says here's a ticket  
9 or someone says suggested contributions are \$25  
10 --

11 CHAIRPERSON JORDAN: Your question  
12 to him is?

13 MR. MEEHAN: Doesn't that resolve  
14 the semantic issue that you just raised?

15 MR. SALONIA: Well, here's my  
16 concern and maybe because of Richard I have an  
17 accounting background. You can spin things  
18 different ways. And I mean they could, for  
19 example, partner with an organization that has  
20 received contributions in other different ways,  
21 not just tickets, but in other ways and then

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1       they're holding performances there for that  
2       other organization.       It's not a church  
3       function, but it's somebody else's function and  
4       that's where I guess if you took out the words  
5       tickets and donations and said "by any means"  
6       then your thing would be satisfied.

7                   CHAIRPERSON JORDAN:       Okay, so  
8       there's no other questions being asked of this  
9       particular witness. Do you want to use your  
10      remaining time to do your presentation or bring  
11      on your testimony or evidence?

12                  MR. JADIN: Yes.

13                  CHAIRPERSON JORDAN: Okay. Thank  
14      you.

15                  MR. JADIN: My name is Patrick  
16      Kenneth Jadin. I'm a retired professor of  
17      architecture from Howard University School of  
18      Architecture and Design where I taught courses  
19      in architecture and environment and urban design  
20      for 33 years and plus I was a professor at  
21      Maryland for 7 years.

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1 I am writing in opposition to this  
2 request for use variance. My wife and I live  
3 at 1614 S Street. I gave you a map which shows  
4 that it's Lot 58 on that map. I put my name  
5 on it. It's across from the church and a little  
6 further down.

7 We have lived for over 38 years and  
8 we have not had any problem with UUMC church  
9 activities until the Spooky Action Theater began  
10 renting the basement auditorium a couple of  
11 years ago. Our home life has been and will  
12 continue to be disrupted by the intrusion of  
13 the 225-seat commercial theater in our and the  
14 church's residential R-5-B zone.

15 Our living, sleeping, and study  
16 spaces front on S Street. The increased  
17 pedestrian traffic to and particularly from the  
18 theater pass right by our six foot by six foot  
19 front windows. I forgot the word "bay" in  
20 there. First floor. And the groups leaving  
21 the theater are more animated and the noise is

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1 quite disturbing and if this application for  
2 use variance is approved, these negative impacts  
3 will be increased.

4 Very often this is just as we're  
5 getting to sleep at night. We're a little  
6 older. We go to bed earlier.

7 Now an applicant must satisfy three  
8 requirements to be granted approval of use  
9 variance in R-5-B zone. I think the Office of  
10 Planning report has found that the applicant  
11 does not satisfy them and I will not repeat the  
12 basis of that finding. I think it is adequately  
13 documented there. But I have a few pertinent  
14 observations.

15 What the UUMC is claiming as  
16 extraordinary and exceptional condition of its  
17 property leading to undue and exceptional  
18 hardship seem to me more like normal required  
19 maintenance. And the church has used its  
20 property, including the building since its  
21 construction in 1930 and they have maintained

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1 it throughout that time just like residential  
2 property owners in the neighborhood. And in  
3 fact, from my front windows, I have a view of  
4 the south facade of the church and I even can  
5 see the west side and both of those facades have  
6 been upgraded, maintained. The church to me  
7 has been a terrific neighbor and I think they  
8 have the support of the residents in the  
9 neighborhood.

10 But as an example of the maintenance  
11 that's going on, I think it's regular and normal  
12 maintenance except for some things that was  
13 precipitated by the hurricane and a little bit  
14 before from the earthquake and that's equally  
15 affected the residential units, some of the  
16 roofs and things. In fact, I was on a neighbor's  
17 -- gave them access through my house to their  
18 roof for an insurance adjuster to talk to stuff  
19 that was a result of the strong winds recently.

20 And on our block, at least three  
21 residents on the south side of the house also

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1 had very significant maintenance expenses for  
2 remortaring their front masonry facades in the  
3 last three years. For a homeowner for the size  
4 of these houses, that's an expensive  
5 proposition.

6 So another point is in considering  
7 a use variance a concern now must not only be  
8 for the present conditions, but also for those  
9 of the future. The applicant now cites small  
10 current attendance at theater performances to  
11 minimize its impact. But the commercial  
12 theater is an intense public use where crowds  
13 leave all together at a specific time and it's  
14 an intense public use with significant negative  
15 impact on its neighborhood, a residential  
16 neighborhood particularly.

17 Now and even more so in the future,  
18 a commercial theater with a seating capacity  
19 of 225 patrons and no limit on the amount of  
20 use will impose a substantial detriment to the  
21 public good of its residential neighbors.

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1                   Now my experience so far is that the  
2       Spooky Action Theater has shown a consistent  
3       disregard of the rules and regulations regarding  
4       its operation.       Mr. Hemrich is a very  
5       entrepreneurial person so I have no confidence  
6       that such behavior will change in the future.

7       So I do implore the Board not to grant this  
8       request for a variance on this property.

9                   CHAIRPERSON JORDAN:    Very good.  
10      Thank you.

11                  Does the Board have any questions  
12      of Mr. Jadin?

13                  Does the applicant have any  
14      questions of Mr. Jadin?

15                  MR. BROWN:   No.

16                  CHAIRPERSON JORDAN:    Then we'll  
17      turn back to the applicant for any rebuttal.

18                  MR. BROWN:   Mr. Chairman, briefly,  
19      I'd like to make a number of points.   First,  
20      to put this in context that we can hopefully  
21      identify with --

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1 CHAIRPERSON JORDAN: Is this  
2 rebuttal or is this going to be closing?

3 MR. BROWN: Both, and brief.

4 CHAIRPERSON JORDAN: Okay, you've  
5 got five minutes.

6 MR. BROWN: Again, putting it into  
7 context, the room we're in now, best of my  
8 counting seats over 80 people. We've agreed  
9 to limit seating to 75 in a room considerably  
10 bigger than this, again, by my estimation.

11 The repeated reference to the  
12 capacity of this room, it is 225 for a church  
13 function. We have specifically tried to  
14 address that issue by limiting it to 75 seats.

15 We've tried to limit the number of performances  
16 and we tried to identify performances in a way  
17 that would only count those real, live, general  
18 public is coming to a performance, to establish  
19 an objective standard based on the ticket sales.

20 A dress rehearsal is not to be  
21 considered a performance for counting the

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1 number. A walk through, auditions, all that  
2 is encompassed within the 48 performances, three  
3 productions a year over a period of time.

4 I think, Mr. Chairman, you hit on  
5 it very importantly, the Clerics of Saint Viator  
6 case which was 1974 and talking about the  
7 conditions faced by a seminary with a much  
8 reduced number of seminarians and students.  
9 That was 1974 and the church pressures, whether  
10 it's UUMC or the Catholic Church and seminaries  
11 is even greater now which I think makes that  
12 case even more important and very much should  
13 guide the BZA's handling of this case as well  
14 as the flexibility that's been clearly set out  
15 by Monaco and other cases in the context of not  
16 for profit organizations.

17 I would go through and we've  
18 outlined a slide as well as in the letter, seven  
19 conditions, which I think meet each one of the  
20 concerns raised by the neighbors. And I think  
21 also a point was made by Mr. Meehan is that we

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1 have a unique advantage here because we now  
2 operated in a period where many of these  
3 conditions were in place, most importantly, the  
4 use of the front entrance exclusively for the  
5 theater operations. And I think each of the  
6 witnesses testified that there had been an  
7 improvement of those conditions that were  
8 directly a result of using the alley.

9 And if you look at these conditions  
10 and I think they establish a good framework  
11 that's one, the parties know exactly what their  
12 responsibilities are; and also, if they fail  
13 to meet those responsibilities, they'll be held  
14 responsible for it which the origin of this case  
15 which was a complaint by the neighbors to DCRA.

16 That system works and if the parties here don't  
17 abide by the condition, there's a ready-made  
18 framework for enforcement. If not, Mr. Meehan,  
19 picking up the phone and calling Mr. Gatton or  
20 Mr. Hemrich and saying we have a problem, but  
21 there's objective standards, enforcement

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1 mechanisms and I think a pretty good track record  
2 under some of the major conditions.

3 So I think -- I'd ask the Board for  
4 approval. I think in this case since we've had  
5 a full airing of the record that a bench decision  
6 would be appropriate.

7 The church and the theater are  
8 operating on a December 31st expiration of their  
9 temporary C of O. So if we don't have a decision  
10 promptly, they're put in an untenable position  
11 of just by virtue of the passing of time falling  
12 out of compliance.

13 CHAIRPERSON JORDAN: Thank you.  
14 Then we'll close the record in this case. Based  
15 upon the evidence that's been submitted and  
16 testimony received here today. Let me check  
17 and see if the Board is willing to deliberate  
18 today? I think I got a yes, yes, and a kind  
19 of left and right. I think so. All right.

20 I'll take a stab at this. This  
21 comes before the Board as a use variance to allow

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1 a theater within the church, I think that the  
2 applicant has made its case for the variance.

3 I think that there's been a showing of  
4 extraordinary exception situation but that's  
5 in light of the condition overall, condition  
6 affecting the property's overall operation, the  
7 condition as it flows. That the church finds  
8 itself in a situation due to several things and  
9 those things will be supported by the fact that  
10 it's affected by the earthquake and that there  
11 was a need assessment done. That the drawing  
12 has maybe somewhere around \$1 million worth of  
13 repairs that need to be done to the church and  
14 to restore the church. That the church's annual  
15 budget is somewhere south of \$200,000 a year  
16 and doesn't have the resources to be able to  
17 do that, to take care of that church.

18 That the use of the relationship  
19 with the theater is necessary for the church  
20 as an institution to be able to get enough money  
21 to function and to do the repairs to the church

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1 and to further the church's mission and outreach  
2 for community outreach and service that they  
3 would deliver that which the church is able to  
4 do on a limited budget. That all the  
5 performances are continually inside the church  
6 so there's no noise outside, but also the fact  
7 that this theater, I'm using the word theater,  
8 the physical space inside the church has been  
9 there since 1930. And that the church has its  
10 own ability to use that function in a same,  
11 similar way, even if it did want to charge for  
12 -- if it was a church function. So that's any  
13 greater impact.

14 That there are other fine arts kind  
15 of theaters or theaters in the general  
16 neighborhood area that's kind of similarly  
17 operated in the neighborhood. There hasn't  
18 been any real evidence that there's been any  
19 substantial on-going adverse impact in regards  
20 to noise and litter regarding this church. And  
21 that there has been some, but not a lot of

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1 complaints regarding any use of the facility.

2 And the ANC has also provided and  
3 testified that we've had a dry run of this under  
4 I guess a temporary occupancy permit that had  
5 shown that there's not been any major issue here  
6 in regards to the effect upon the neighborhood.

7 And that now that there's an entrance on 16th  
8 street is going to be used for this property  
9 which reduces any negative impact, a lot of  
10 negative impact that may happen in the  
11 neighborhood, that there's not an on-going  
12 regular use.

13 There's been a limited amount of  
14 production that's going to be on this property  
15 and for this theater to 48 performances a year.

16 And that the church, as I said, this theater  
17 has been there since part of the church since  
18 1930 which predated our present zoning  
19 requirements.

20 The church has substantial need for  
21 raising income so it can continue its mission.

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1       That being said, I think those facts support  
2       that there's an exceptional or extraordinary  
3       situation or condition with the property that  
4       then rises to the -- and if we use the Monaco  
5       case in regards to institutional needs and the  
6       undue hardship, then brings us to a point of  
7       looking that the applicant has a declining  
8       membership.

9               I think it has less than 40 active  
10       members and therefore it's a hardship for them  
11       to do what's necessary to meet the requirements  
12       and missions of the church, limiting operating  
13       budget, the financial impact, the needs  
14       assessment will support that there's an undue  
15       hardship facing the church to be able to do the  
16       things that are necessary for the church to do.

17              Regarding substantial -- I believe  
18       there's no substantial detriment to the public  
19       good and I'm going to say substantial detriment  
20       to the public good. We have the testimony of  
21       the ANC which we give great weight as a matter

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1 of law to the ANC as testified here that there's  
2 no substantial negative impact. There's an  
3 agreed-upon condition that the applicant, along  
4 with the ANC has reached -- if there was any  
5 issue detrimental to the public good that it  
6 should be mitigated by these conditions that's  
7 been agreed upon.

8 That the exclusive use of 16th  
9 Street will help mitigate any impact on the  
10 neighborhood and that's been even agreed upon  
11 even by the parties in opposition, that that  
12 reduces any impact. That there's no  
13 substantial, in my belief, no substantial  
14 impairment of the intended purpose of the zoning  
15 regulations in that the events are being held  
16 inside the church and as I said before, this  
17 church has had this event theater, what do you  
18 want to call it, event room, theater room inside  
19 the church since 1930. And so the opportunity  
20 to have events of this nature has been there.  
21 This has a different spin because it's

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1 commercial, but it's all being self contained  
2 and if you're inside the church you really  
3 wouldn't see any outside effect upon it.

4 So that's my thought on the matter  
5 and how it reaches and meets the test. I did  
6 mention including the conditions that's been  
7 agreed upon by the parties. So that's my  
8 thought. Anyone else?

9 Ms. Sorg?

10 VICE CHAIR SORG: Thank you, Mr.  
11 Chairman. I agree with your comments and I  
12 won't repeat your analysis regarding the  
13 uniqueness that I think was further demonstrated  
14 today in testimony.

15 I would make four related points,  
16 perhaps of a policy nature. The first is that  
17 I think here we find a case where a finer  
18 definition of some uses in our zoning  
19 regulations would be very helpful so that we  
20 can promote and grow cultural and arts uses  
21 without lumping those things in together with

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1 large, commercial endeavors.

2 Secondly, I think to the extent that  
3 this is a small start-up theater and a nonprofit,  
4 nonprofit incubation is an important goal  
5 citywide and that's something that I don't think  
6 is accurately reflected yet in the zoning  
7 regulations, but it's certainly a goal from a  
8 business and nonprofit standpoint of economic  
9 development throughout the city.

10 And thirdly, I think with regard  
11 to the third prong, OP brings up in their  
12 analysis of the third prong and a conclusion  
13 that allowing this use would cause harm to the  
14 zoning regulations. And they indicate the  
15 third portion of the Dupont Circle Overlay which  
16 indicates that so on and so forth, there should  
17 be control of the scale, location, and density  
18 of commercial development. And I think that  
19 the process and regulations of the variance  
20 standard as well -- and that as a public process  
21 combined with what I view are fairly stringent

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1 conditions are mechanisms which control  
2 commercial development in this area.

3 I would also point to what I think  
4 is a microcosm of this portion of 16th Street  
5 which is south of U Street and its commercial  
6 corridor and north of the sort of downtown dense,  
7 commercial corridor and its mix of uses which  
8 I think under this type of use would indicate  
9 that the plan and fabric of that neighborhood  
10 could be prevented from being detracted from.

11 With that said, I could support the  
12 application.

13 CHAIRPERSON JORDAN: Anyone else?

14 MEMBER TURNBULL: Well, Mr.  
15 Chairman, I'm struggling with this. I see the  
16 need, I see the opportunities here. But I also  
17 see my colleague, Mr. Jackson's point about the  
18 R-5 neighborhood. So looking for a balance.

19 I guess what I had and I was -- I  
20 sort of touched upon this in some of the  
21 questions before. I guess what I would feel

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1 better about or would make me feel a little less  
2 reticent in going along with this is that if  
3 I saw something in the church's mission which  
4 talked about an evolving mission reaching out  
5 to the community possibly partnering with a  
6 nonprofit theatrical organization to assist in  
7 its educational mission, part of it leasing out  
8 the auditorium, but also as Mr. Gatton also  
9 talked about, having the organization assist  
10 in its educational program, such as Ballou High  
11 School. If I saw something like that and then  
12 something in the contract that said that the  
13 lessee would assist in the educational programs  
14 of the church, I see a little bit more synergy  
15 with the community, with the neighborhood, and  
16 I think if I saw that, I would feel more  
17 comfortable in granting this and being able to  
18 see that yes, it's not just a theatrical  
19 nonprofit performing its plays, but tied back  
20 into the mission of the church trying to help  
21 the community. If I saw something there in that

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1 language, I would have no problem with this.

2 I think I would go along with this.

3           The other thing is I'd like to see  
4 item six tightened up a bit as far as patrolling,  
5 policing the neighborhood. And the other thing  
6 I would add is maybe a number eight which says  
7 that the church and the lessee will meet with  
8 the ANC, adjacent neighbors or however we want  
9 to say it, quarterly, biannually, to assess  
10 possible issues or whatever, just so that there  
11 is, again, another meeting this thing -- we're  
12 all on board with everything. That would be  
13 -- I would feel better with that. And I think  
14 I could -- annually, biannually -- it depends  
15 upon what the ANC thinks would -- how they could  
16 weigh in on this. But if I saw something like  
17 that, I would feel more comfortable.

18           And I don't know how Mr. Jackson  
19 would feel. I'm sure he's still reluctant, but  
20 I think I would feel better that at least we're  
21 trying to sort of bring everything together.

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1 CHAIRPERSON JORDAN: Mr. Hinkle?

2 MEMBER HINKLE: Thank you, Mr.  
3 Chair. You know, I was really struck by the  
4 photograph that Mr. Salonia provided with his  
5 testimony in terms of the crowd within the alley  
6 and I can understand how that could really be  
7 a detriment to the public interest. So I'm  
8 encouraged that there's a commitment here by  
9 the applicant to use the 16th Street entrance  
10 and exit.

11 But essentially we are looking at  
12 a new use. This is a use variance and oftentimes  
13 when we do look at these we put in term limits  
14 and that's something that we haven't discussed  
15 yet and I was wondering if the other Board  
16 members would be interested in entertaining that  
17 idea?

18 CHAIRPERSON JORDAN: In fact, if  
19 you're finished, and I didn't mean to step on  
20 you. Let's take a moment, the Board take a  
21 moment and let's look at the conditions and let's

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1 talk about those and if there are any changes  
2 we want to make to the conditions.

3 I'm going to give some deference to  
4 the ANC, and ANC only. You wanted to say --

5 MR. MEEHAN: In our original  
6 proposal, we felt there would be both a BZA order  
7 and a separate agreement, but we really didn't  
8 know what, in your judgment, would be the most  
9 effective way of doing it.

10 My sense is --

11 CHAIRPERSON JORDAN: It's  
12 enforceable by government and we also have to  
13 be careful what we do put in conditions that  
14 makes it enforceable. So that's why I've kind  
15 of absorbed it for us to do it.

16 MR. MEEHAN: But since ANC's rise  
17 and fall in their commitment, I think the idea  
18 of a sunset provision might be an interesting  
19 way to start looking at how as Ms. Sorg said,  
20 you start trying to tweak what is appropriate  
21 for residential areas, basically not saying it's

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1 permanent. You have started the process and  
2 we're in a major rezoning situation right now  
3 and that seems to me that might be an interesting  
4 concept to introduce in this rezoning process  
5 that in some areas where you don't have a lot  
6 of precedent and it is supportive of economic  
7 growth and changes going on. Can you try it  
8 on a temporary basis and then come back and then  
9 that becomes a mandate to the ANC to revisit  
10 it as well.

11 CHAIRPERSON JORDAN: Thank you, Mr.  
12 Meehan, so Board, I have -- Ms. Sorg, I know  
13 you want to look at a change to something and  
14 then we'll come back -- I know you were talking  
15 about --

16 VICE CHAIR SORG: Yes, thank you,  
17 Mr. Chairman. I think -- I agree both with Mr.  
18 Turnbull and also I think Mr. Hinkle's idea is  
19 a very good one. I would also suggest in  
20 Condition 1 as proposed by the applicant to  
21 strike a portion of it that indicates for which

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1 tickets are sold in advance to the general  
2 public. So that the first condition would read  
3 "total number of performances for outside  
4 residential, non-whatever theaters renting the  
5 space is limited to 48 per year."

6 CHAIRPERSON JORDAN: And the reason  
7 for that is?

8 VICE CHAIR SORG: The reason for  
9 that is that that limits the performances for  
10 the rental of the public theater to 48  
11 performances.

12 CHAIRPERSON JORDAN: I guess I'm  
13 not understanding. Because it says 48 and I  
14 think what was the definition of which tickets  
15 are sold, what's the issue? Because that's the  
16 way to determine the commercial aspect. I think  
17 that's what we're using to determine the  
18 commercial aspect of this.

19 VICE CHAIR SORG: In my view, what  
20 would mitigate the potential adverse impact is  
21 that there are 48 evenings a year where there's

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1 the largest crowd gathering outside the church.

2 CHAIRPERSON JORDAN: And you're  
3 saying --

4 VICE CHAIR SORG: I'm very well  
5 acquainted with arts organizations and there  
6 are many, many ways to go about holding events.  
7 And that's not just true of arts organizations.

8  
9 I certainly don't mean to impute any  
10 other, you know, motives or anything to this  
11 particular use, but I do think that what is under  
12 discussion and what I think is important for  
13 the neighbors and if we're putting a time horizon  
14 on this, it's certainly something that can be  
15 revisited, that 48 performances which would draw  
16 the largest crowd outside the church would  
17 probably be the simplest way to go about it.

18 CHAIRPERSON JORDAN: Because  
19 tickets may not be sold, but it may be a donation  
20 by an organization which is used. I got you.  
21 I'm with you.

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1                   Mr. Turnbull, you wanted to say  
2 something?

3                   MEMBER TURNBULL: My only change is  
4 that since it's a church and so my only feeling  
5 was that somehow in the mission it ought to be  
6 tied that the theatrical group -- their  
7 performances are tied into the educational  
8 mission of the church, that they are going to  
9 partner and at some point the partnership will  
10 lead in some assistance by the theatrical group  
11 in the educational mission of the church. This  
12 gets back to a very -- gets back to the religious  
13 concept of the church and so such as Ballou High  
14 School, community outreach, that there is  
15 something in the contract that relates back that  
16 they would assist in that endeavor. To me, that  
17 makes me feel more comfortable that it's part  
18 of an educational mission of the church.

19                   However, minuscule it may be, it's  
20 still part of the mission of the church which  
21 would tie it back in.

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1                   And then as I say, I think there  
2                   ought to be a meeting, there ought to be some  
3                   type of a review every year with the ANC and  
4                   some of the neighbors to go over what's going  
5                   on with -- how the regulations that we've got  
6                   are being held to something, does something need  
7                   to be done, without going to DCRA, somebody  
8                   raising -- meet more informally as a  
9                   neighborhood and solve these things. I think  
10                  that's the best way to actually do that.

11                  But I'd like to tie getting back to  
12                  Mr. Jackson's concern about it's an R-5  
13                  neighborhood, it's a church. We don't allow  
14                  theaters. So in some way can the theater assist  
15                  in the mission of the church? I'm not saying  
16                  it has to have religious performances, but  
17                  somehow giving back in some other accessory way  
18                  that can assist them.

19                  CHAIRPERSON JORDAN:       My only  
20                  concern about that, trying to make that a  
21                  condition is is that something we can enforce

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1 within the zoning law, or is that our suggestion  
2 that the bodies put that into a private --

3 MEMBER TURNBULL: I think it would  
4 be in a private agreement. I surely think it  
5 would be in the contract. I think we should  
6 get a copy of it. It cannot be in our order,  
7 but I would like to -- I just feel uncomfortable  
8 just saying it's a theatrical use, go ahead,  
9 use it, even though it's nonprofit. I think  
10 it definitely should say -- I think it does say  
11 nonprofit in the ANC's language. That's my only  
12 concern. I just think until we go further down  
13 the road with the zoning rights and the rewrite,  
14 and possibly looking at some of these options,  
15 Mr. Jackson can take this back and meet with  
16 the staff of OP, but I'm just a little bit  
17 concerned that -- that the sunset idea is also  
18 a very good option on this.

19 CHAIRPERSON JORDAN: So let's kind  
20 of put a plug on that portion, Mr. Turnbull.  
21 I certainly want to add number nine that this

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1 use is a conditional use for a term of three  
2 years?

3 MEMBER HINKLE: Well, I don't know  
4 if the applicant wants to speak to that. There  
5 are some difficulties with that, but I think  
6 that would help address -- it would allow the  
7 use to occur for a while so it could be tested  
8 out and it would let the neighbors have some  
9 assurance that within a certain amount of time  
10 frame that there are some issues, they can come  
11 back to the Board for discussion.

12 MR. BROWN: Mr. Chairman, I'd like  
13 to and I think you opened the door slightly to  
14 get our input.

15 CHAIRPERSON JORDAN: Not really.  
16 It was suggested. I didn't put it out there.  
17 I know you're not jumping up and down about  
18 that.

19 MR. BROWN: One question is on the  
20 question of defining performances, I think --  
21 and I understand what Ms. Sorg is trying to

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1 accomplish, but so that we don't create a problem  
2 we need to be very careful about that and maybe  
3 drafting language isn't the best thing to do  
4 --

5 CHAIRPERSON JORDAN: Respond to Mr.  
6 Hinkle's point. We're kind of -- this ship is  
7 starting to sail and this is not really  
8 something we're putting out for negotiation in  
9 that regard. Mr. Hinkle kind of thought he  
10 wanted to have you weigh in on the limitation  
11 aspect. If you have us start going back and  
12 thinking where we are, you might put yourself  
13 in a real bad situation.

14 So Mr. Hinkle talked in regards to  
15 the term limit of three years and that's what  
16 he wanted some feedback on.

17 MR. BROWN: Accepting the notion of  
18 a term limit, which is not unusual, three years  
19 is a little bit brief in the context of what  
20 I understand the contractual relationship is  
21 likely to be between the church and the theater.

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1       And I think a five-year period would be more  
2       in keeping with the contractual relationship  
3       that is expected. And this is an expensive  
4       process, necessarily, but expensive process.  
5       So I just make that suggestion of five years.

6               CHAIRPERSON JORDAN: Thank you. I  
7       think we're at three here. Thank you,  
8       appreciate that.

9               VICE CHAIR SORG: Mr. Chairman, to  
10       bring this out, I do think I would agree with  
11       one of the things that I think the applicant  
12       is getting at that we may include language in  
13       the first condition to be explicit that 48  
14       performances not to include auditions,  
15       rehearsals and other preparatory activities for  
16       performance in the schedule.

17              CHAIRPERSON JORDAN: I think I'm  
18       willing to go forward with these conditions,  
19       but I'm still trying to see how I can put Mr.  
20       Turnbull's --

21              MEMBER TURNBULL: Just like we've

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1 done in a lot of orders, you can mention things  
2 and highlight issues that are not enforceable,  
3 but I think we can talk about -- I think these  
4 can be mentioned. And if it is the  
5 understanding that the lessee will be assisting  
6 the church in its educational mission. At least  
7 it's out there on the table. It's in the order.

8 It's not an enforceable -- but I think from  
9 the standpoint of the Board here, at least we've  
10 got, we're on record as saying that it's our  
11 understanding. It may not be enforceable, but  
12 I think from our standpoint that it's out there.

13  
14 CHAIRPERSON JORDAN: If I can do  
15 this because as it goes into the order, I mention  
16 it was one of the findings that should be part  
17 of the community mission and outreach of the  
18 church, and specifically that would amend what  
19 I said to include that it is also part of the  
20 educational mission of the church and that the  
21 church -- we had in the testimony that they will

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1 do outreach with some -- a charitable nature,  
2 the church will use this in regards to a  
3 charitable nature to help support that church  
4 mission, to help a charity of some point or need  
5 of the community by -- that the church has  
6 already designated that they're doing or will  
7 do. I want to amend my statement to add that  
8 and what I said in regards to --

9 MEMBER TURNBULL: I think that will  
10 be acceptable.

11 VICE CHAIR SORG: I would just also  
12 add I don't think it's nonenforceable. I think  
13 that if the applicant is coming back here in  
14 three years to request another variance for  
15 this, then including a condition that there  
16 should be some, you know, charitable and  
17 educational outreach in conjunction with the  
18 church's mission, would be something that would  
19 have to be demonstrated at that time.

20 CHAIRPERSON JORDAN: For this use,  
21 the church shall put in place a charitable,

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1 educational program for which the -- okay, got  
2 it, done.

3 MS. GLAZER: Mr. Chairman, I'm  
4 sorry to interrupt, but is this a proposed  
5 condition or is this a finding within the order  
6 that's being discussed?

7 CHAIRPERSON JORDAN: I would just  
8 add that as a condition. We're aware of what  
9 we're doing, so okay.

10 Let's move forward here.

11 MR. BROWN: Mr. Chairman, point of  
12 clarification in this last one the charitable,  
13 educational process, would that have to rise  
14 to the level of performances or --

15 CHAIRPERSON JORDAN: No.

16 MR. BROWN: Because we don't want  
17 the right hand to ask us to do something which  
18 is fine and then at the same time have that  
19 potentially counting our performances.

20 CHAIRPERSON JORDAN: Okay, good.  
21 So the conditions -- I move the granting of the

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1 relief as requested with the conditions as  
2 amended as such. Number one should be amended  
3 as previously read by Ms. Sorg that total number  
4 of performances for outside residential,  
5 non-UUMC-sponsored theater renting this space  
6 for the general public is limited to 48  
7 performances per year, not to include auditions,  
8 rehearsals, or preparatory activities for  
9 performances.

10 A new number eight will be added that  
11 the church must meet with the ANC annually to  
12 discuss any needs to implement any new  
13 mitigation measures.

14 Number nine, that this use shall  
15 have a term limit for three years.

16 Number ten, that the church shall  
17 put in place a charitable and educational  
18 activity for which the rental theater shall  
19 participate.

20 With that, that would be my motion.

21 MEMBER HINKLE: Second.

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1                   CHAIRPERSON JORDAN:    Motion made  
2                   and seconded.   All those in favor of motion  
3                   signify by saying aye.

4                   (Chorus of ayes.)

5                   Those opposed nay.    The motion  
6                   carries.

7                   Mr. Moy?

8                   SECRETARY MOY:   Staff would record  
9                   the vote as four to zero and we have one seat  
10                  that's vacant.   This was the motion of Chairman  
11                  Jordan to approve the application per the  
12                  conditions as amended.   Second the motion by  
13                  Mr. Hinkle.   I believe, in support, Mr. Turnbull  
14                  and Vice Chairperson Sorg and again, the motion  
15                  carries.

16                  CHAIRPERSON JORDAN:   And let's have  
17                  a full order in this, please.

18                  SECRETARY MOY:   Yes, sir.

19                  CHAIRPERSON JORDAN:   I want to  
20                  thank you all for really taking the time and  
21                  coming down and your support and your testimony

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1 here. I think we -- everybody is not running  
2 away happy, but I think we got something done,  
3 yes. So we will conclude this hearing.

4 MR. MEEHAN: Mr. Chairman, given  
5 the completeness of your order, it seems to me  
6 then the ANC doesn't need to have a separate  
7 voluntary agreement. It seems like everything  
8 we talked about you've now incorporated, is that  
9 correct?

10 CHAIRPERSON JORDAN: We have.  
11 Whatever you want to do, we have to put it in  
12 ours.

13 MR. MEEHAN: Make a note that once  
14 a year they need to come before us, sort of like  
15 an ABC license coming before us and saying all  
16 right, what kind of incidents have you had, that  
17 sort of thing?

18 CHAIRPERSON JORDAN: Yes.

19 MR. BROWN: Great.

20 CHAIRPERSON JORDAN: Thank you.  
21 Then this hearing is over.

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1                   Mr. Moy, is there any other activity  
2                   that needs to come before the Board today?

3                   SECRETARY MOY:   Not from the staff,  
4                   Mr. Chairman.

5                   CHAIRPERSON JORDAN:   Okay.   Does  
6                   the Board have anything?

7                   MR. BROWN:    Mr. Chairman, if I  
8                   could?  With this December 31st deadline, our  
9                   current C of O, we would be happy to assist the  
10                  Board staff with this draft order because  
11                  there's some urgency.

12                  CHAIRPERSON JORDAN:   If you want to  
13                  take a shot at it, you can take a shot.  That's  
14                  fine.  I think there's no harm in that because  
15                  we either use it or don't use it.  All right,  
16                  again, we will adjourn.  Thank you.

17                  (Whereupon,   at   4:32   p.m.,   the  
18                  hearing was concluded.)

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