

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

JUNE 19, 2007

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER	Chair
CURTIS ETHERLY, JR.	Vice-Chair
MARC LOUD	Board Member
JOHN A. MANN, II	Board Member
	(NCPC)

ZONING COMMISSION MEMBER PRESENT:

GREGORY N. JEFFRIES Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Sr. Zoning Spec.
ESTHER BUSHMAN	General Counsel

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
MAXINE BROWN-ROBERTS
MATT JESICK
JOHN MOORE

This transcript constitutes the
minutes from the Public Hearing held on June
19, 2007.

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

2 10:15 a.m.

3 CHAIRPERSON MILLER: This hearing
4 will, please, come to order. Good morning,
5 ladies and gentlemen. I'm sorry for the
6 delay. It seems there were some problems on
7 the Metro today, but we're ready to go. This
8 is the June 19th Public Hearing of the Board
9 of Zoning Adjustment of the District of
10 Columbia.

11 My name is Ruthanne Miller. I'm
12 the Chairperson. Joining me today to my right
13 is Vice Chair Curtis Etherly and next to him
14 from the Zoning Commission is Mr. Greg
15 Jeffries and to my left is Marc Loud, Mayoral
16 appointee, and next to him is Mr. John Mann
17 representing NCPC.

18 We also have with us from the
19 Office of Zoning Mr. Cliff Moy and next to him
20 representing OAG is Lori Monroe and with her
21 is a legal intern for this morning. His name
22 is Bryan Stockton and all legal questions

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1 should be addressed to him. I'm just kidding.
2 And next to him is Esther Bushman with the
3 Office of Zoning and Beverley Bailey, Office
4 of Zoning.

5 And also to my far right is Maxine
6 Brown-Roberts and she is with Office of
7 Planning and she will be participating on a
8 case later in the morning.

9 Okay. Copies of today's hearing
10 agenda are available to you and are located to
11 my left in the wall bin near the door.
12 Please, be advised that this proceeding is
13 being recorded by a Court Reporter and is also
14 webcast live. Accordingly, we must ask you to
15 refrain from any disruptive noises or actions
16 in the hearing room.

17 When presenting information to the
18 Board, please, turn on and speak into the
19 microphone, first, stating your name and home
20 address. When you are finished speaking,
21 please, turn your microphone off, so that your
22 microphone is no longer picking up sound or

1 background noise.

2 All persons planning to testify
3 either in favor or in opposition are to fill
4 out two witness cards. These cards are
5 located to my left on the table near the door
6 and on the witness tables. Upon coming
7 forward to speak to the Board, please, give
8 both cards to the reporter sitting to my
9 right.

10 The order of procedure for special
11 exceptions and variances is: One, statement
12 and witnesses of the applicant. Two,
13 Government reports, including Office of
14 Planning, Department of Public Works, DDOT,
15 etcetera. Three, report of the Advisory
16 Neighborhood Commission. Four, parties or
17 persons in support. Five, parties or persons
18 in opposition. Six, closing remarks by the
19 applicant.

20 Pursuant to Section 3117.4 and
21 3117.5, the following time constraints may be
22 maintained: The applicant, appellant, persons

1 and parties, except an ANC, in support,
2 including witnesses, 60 minutes collectively.
3 Appellee, persons and parties, except an ANC,
4 in opposition, including witnesses, 60 minutes
5 collectively. Individuals 3 minutes.

6 These time restraints do not
7 include cross examination and/or questions
8 from the Board. Cross examination of
9 witnesses is permitted by the applicant or
10 parties. The ANC within which the property is
11 located is automatically a party in a special
12 exception or variance case.

13 Nothing prohibits the Board from
14 placing reasonable restrictions on cross
15 examination, including time limits and
16 limitations on the scope of cross examination.

17 The record will be closed at the
18 conclusion of each case, except for any
19 material specifically requested by the Board.
20 The Board and the staff will specify at the
21 end of the hearing exactly what is expected
22 and the date when the persons must submit the

1 evidence to the Office of Zoning. After the
2 record is closed, no other information will be
3 accepted by the Board.

4 The Sunshine Act requires that the
5 Public Hearing on each case be held in the
6 open and before the public. The Board may,
7 consistent with it's rules of procedure and
8 the Sunshine Act, enter Executive Session
9 during or after the Public Hearing on a case
10 for purposes of reviewing the record or
11 deliberating on the case.

12 The decision of the Board in these
13 contested cases must be based exclusively on
14 the public record. To avoid any appearance to
15 the contrary, the Board requests that persons
16 present not engage the Members of the Board in
17 conversation.

18 Please, turn off all beepers and
19 cell phones, at this time, so as not to
20 disrupt these proceedings.

21 The Board will now consider any
22 preliminary matters. Preliminary matters are

1 those which relate to whether a case will or
2 should be heard today, such as requests for
3 postponement, continuances or withdrawal or
4 whether proper and adequate notice of the
5 hearing has been given. If you are not
6 prepared to go forward with a case today or if
7 you believe that the Board should not proceed,
8 now is the time to raise such a matter.

9 Does the staff have any
10 preliminary matters?

11 MS. BAILEY: Madam Chair, to
12 everyone, good morning. There is and it has
13 to do with Application No. 17621, application
14 of 1925 K Associates LLC, that application was
15 withdrawn, Madam Chair.

16 CHAIRPERSON MILLER: Thank you.
17 And I understand that no action then is
18 required of the Board on this matter?

19 MS. BAILEY: None is required.

20 CHAIRPERSON MILLER: Okay. Thank
21 you. Then, at this time, would all
22 individuals wishing to testify today, please,

1 rise to take the oath? And, Ms. Bailey, would
2 you administer the oath, please?

3 MS. BAILEY: Would you, please,
4 raise your right hand?

5 (Whereupon, the witnesses were
6 sworn.)

7 MS. BAILEY: Thank you.

8 CHAIRPERSON MILLER: Thank you.
9 Would you call the first case, please?

10 MS. BAILEY: Application No. 17623
11 of Meredith Manning, pursuant to 11 DCMR
12 3104.1, for a special exception to construct
13 a rear porch addition to an existing single-
14 family row dwelling under section 223, not
15 meeting the lot occupancy requirements, that's
16 section 403. The property is Zone R-5-B and
17 it's located at 1622 Florida Avenue, N.W.,
18 Square 174, Lot 53.

19 Madam Chair, Member of the Board,
20 there is a request for party status in
21 opposition to this application.

22 CHAIRPERSON MILLER: Thank you.

1 And would you introduce yourself for the
2 record, please?

3 MS. MANNING: Good morning. My
4 name is Meredith Manning. My home address is
5 1622 Florida Avenue, N.W.

6 CHAIRPERSON MILLER: And you are
7 the applicant in this case?

8 MS. MANNING: I'm the applicant,
9 correct. I'm the homeowner. I live there.

10 CHAIRPERSON MILLER: Okay. And we
11 do have a request from Ms. Alameda Harper for
12 party status in the case. Is Ms. Harper here?
13 Would you come forward, please? Good morning.

14 MS. HARPER: Good morning.

15 CHAIRPERSON MILLER: And would you
16 introduce yourself for the record, also,
17 please?

18 MS. HARPER: Good morning. My
19 name is Alameda Harper. I live at 5 -- I'm
20 sorry. I live at 215 Gilman Avenue in
21 Cincinnati, Ohio and I own the property at
22 1620 Florida Avenue, N.W.

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1 CHAIRPERSON MILLER: Thank you.
2 And is anybody here today from the ANC, as the
3 ANC is automatically a party. Okay. Then we
4 have the only parties or we have the party
5 here and then a party applicant here. Ms.
6 Harper, I'm going to start with you, because
7 the first thing we do is establish whether or
8 not you would be a party in this case, because
9 if you are a party in this case, it affects
10 how you participate in the case.

11 And first of all, I just want to
12 ask you or tell you there are two ways you can
13 participate in the case. One is as a party
14 and one is as an individual. And as a party,
15 you would need to convince us that you reach
16 a standard that you are affected different
17 from other members of the public by this
18 relief. And if you are a party, that means
19 that you have all the responsibilities of an
20 applicant and that you can present witnesses
21 and you can cross examine witnesses and you
22 can file pleadings, if so requested by the

1 Board.

2 If you participate as an
3 individual, that means that you can present
4 testimony yourself on the case, which means
5 you can come and say how you feel about the
6 application, etcetera, without getting party
7 status. That would be an automatic
8 entitlement.

9 So my first question to you is do
10 you really want party status, because a lot of
11 people get these notices in the mail and they
12 think that they need to apply for party status
13 when, in fact, all they want to do is testify.
14 So if you have any questions about what I just
15 said, feel free to ask me, too.

16 MS. HARPER: Well, based on my
17 understanding of what you just said, I guess
18 I'm an individual. I have nobody, no
19 witnesses and I don't intend to cross examine
20 anybody, so I'm just an individual opposed to
21 the plan.

22 CHAIRPERSON MILLER: Okay. So

1 what's going to happen then is I would ask you
2 to go back, if you are finished asking me
3 questions, sit down in the audience and then
4 we go through the procedure that I read
5 through at the beginning, but I will call you
6 at the right time in the proceeding to come
7 forward and give your testimony. And could
8 you turn the mike off if you are finished
9 there, too?

10 Okay. Thank you. So therefore,
11 then we would turn to you, at this point, Ms.
12 Manning. This is your application for a
13 special exception. You want to construct a
14 rear porch addition?

15 MS. MANNING: Correct.

16 CHAIRPERSON MILLER: And you don't
17 meet the lot occupancy provisions of section
18 403 and also the open court. Is that correct
19 now? The provision of section 406.1?

20 MS. MANNING: According to Ms.
21 Brown-Roberts, that's the case.

22 CHAIRPERSON MILLER: Okay. But in

1 any event, you are seeking relief under 223?

2 MS. MANNING: Correct.

3 CHAIRPERSON MILLER: Do you want
4 to highlight your case somewhat? We have read
5 the file.

6 MS. MANNING: Sure.

7 CHAIRPERSON MILLER: We know what
8 you are asking for, but if you want to
9 highlight your case, especially in the context
10 of the provisions of 223, how you meet them.

11 MS. MANNING: Sure.

12 CHAIRPERSON MILLER: Okay.

13 MS. MANNING: First, I would like
14 to call your attention to the fact that the
15 BZA did write a letter in support, so despite
16 the fact that they are not here today, they
17 did submit to the file.

18 CHAIRPERSON MILLER: Do you mean
19 the ANC?

20 MS. MANNING: I'm sorry, the ANC.

21 CHAIRPERSON MILLER: The ANC?

22 MS. MANNING: Yes, I'm sorry.

1 What did I say?

2 CHAIRPERSON MILLER: BZA.

3 MS. MANNING: Oh, I'm sorry. The
4 ANC did submit to the BZA a letter of support.
5 So despite the fact that they're not here,
6 they did enter into the record some
7 statements. I believe that my proposal is
8 fairly straightforward. I'm proposing to
9 remove a nonconforming deck that's 17 feet
10 wide by 23 feet deep and 8 feet high with a
11 smaller structure that conforms to the
12 greatest extent possible with the code and the
13 building, you know, permitting rules.

14 I am seeking a variance, because
15 of the setback requirement on the western side
16 of the building, which has an existing court.
17 The court --

18 CHAIRPERSON MILLER: Excuse me, I
19 just want to interrupt you here, because you
20 might be using the wrong terminology.

21 MS. MANNING: I'm sure that I am.

22 CHAIRPERSON MILLER: Okay.

1 Because if you were relying on Office of
2 Planning, they were saying you needed relief
3 from the open court provisions, but it's still
4 under 223 special exception?

5 MS. MANNING: Correct.

6 CHAIRPERSON MILLER: Okay.

7 MS. MANNING: So my understanding
8 of this, which I'm sure your's is greater than
9 mine, is that I'm required to seek relief due
10 to the fact that I am proposing to build a
11 structure that is wider than 9 feet, because
12 the property is 17 feet and the existing --
13 I'm sorry, wider than 11 feet, because the
14 property is 17 feet wide and I would like to
15 build a little bit wider than 11 feet.

16 And so the property, the addition
17 to the structure would be 193 square feet.
18 However, because of the open court issue, it
19 is counted as 375, approximately, feet, which
20 is the open court issue, which I'm sure you
21 all understand better than I do.

22 And so I would like to address Ms.

1 Harper's opposition briefly. She objects to
2 the fact that I'm proposing to build a solid
3 wall along the party line between our homes on
4 the eastern side of the house and as I said
5 when I opened, I'm seeking to replace a
6 nonconforming structure with a conforming
7 structure. And my understanding of the Fire
8 Code is that I'm required to build a burn-
9 proof wall there, which will protect both of
10 our structures from fire risk, should there be
11 a fire.

12 Currently, you know, I have a
13 grill on my deck and her tenants have a
14 hibachi on her porch and so I do see the need.
15 Although, honestly, the wall is not what I
16 want. I'm proposing to do it, because it's
17 required. And so I would be happy to answer
18 any other questions. I'm proposing to build
19 the structure from concrete and metal to
20 reduce the fire risk further. And, you know,
21 that's about it. I have copies of the files.
22 If you would like a bigger copy of the plans,

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1 I did make a bigger Xerox copy.

2 CHAIRPERSON MILLER: So you're
3 doing this wall because it's required by the
4 Building Code. Is that correct?

5 MS. MANNING: Correct.

6 CHAIRPERSON MILLER: When we look
7 at 223, we look at any adverse impacts to
8 light and air on the neighboring properties.

9 MS. MANNING: Right.

10 CHAIRPERSON MILLER: Does that
11 wall create an adverse impact to Ms. Harper's
12 property?

13 MS. MANNING: You know --

14 CHAIRPERSON MILLER: In your
15 opinion.

16 MS. MANNING: -- in my opinion, it
17 doesn't. Her porch extends from the back of
18 the property on three sides and the wall will
19 block one of those sides only. So, you know,
20 the porch on that property will continue to
21 have two open sides as will mine. Mine will
22 only have two open sides, because the code

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1 requires that one of those walls be enclosed.

2 So we are treated equally in that
3 sense. I'm not aware of any other -- I don't
4 believe there is any other adverse impact to
5 anybody else. The neighbor on the western
6 side of the house, which is the side on which
7 I'm requesting a variance doesn't oppose.

8 CHAIRPERSON MILLER: And was the
9 ANC aware of the open court issue when they
10 voted?

11 MS. MANNING: Yes. Ms. Brown-
12 Roberts emailed the ANC membership about that
13 issue.

14 CHAIRPERSON MILLER: Was that
15 before their vote, do you know?

16 MS. MANNING: Yes, it was.

17 CHAIRPERSON MILLER: Okay. Okay.
18 Any questions from Board Members? Mr.
19 Etherly?

20 BOARD MEMBER ETHERLY: Thank you
21 very much, Madam Chair. Ms. Manning, thank
22 you very much for your testimony today. Just

1 a very quick and brief question. I believe
2 your testimony answered it. There was a
3 little bit of conversation about just
4 confirming and I would have asked Mrs. Harper
5 the question, but I take it the residents in
6 question for Mrs. Harper is the gray house.

7 MS. MANNING: That's right.

8 BOARD MEMBER ETHERLY: Just to the
9 side there.

10 MS. MANNING: Yes.

11 BOARD MEMBER ETHERLY: In terms of
12 your drawings present a west elevation. I
13 take it the eastern elevation, which would be
14 the side of the addition that would be
15 immediately abutting Mrs. Harper's residence.

16 MS. MANNING: Correct.

17 BOARD MEMBER ETHERLY: Would that
18 just be a clear solid wall, no windows?

19 MS. MANNING: Yes.

20 BOARD MEMBER ETHERLY: No other
21 fenestration of any type.

22 MS. MANNING: Correct.

1 BOARD MEMBER ETHERLY: Just a
2 clear solid wall.

3 MS. MANNING: Right.

4 BOARD MEMBER ETHERLY: Okay.
5 Thank you.

6 MS. MANNING: Um-hum.

7 BOARD MEMBER ETHERLY: Thank you,
8 Madam Chair. That concludes my questions.

9 CHAIRPERSON MILLER: Thank you.
10 Oh, and what did you say the material was
11 going to be of this wall?

12 MS. MANNING: I believe that the
13 architect has drawn it as cinder block.

14 CHAIRPERSON MILLER: Okay. And
15 are you in a Historic District, do you know?

16 MS. MANNING: I think so, yes.

17 CHAIRPERSON MILLER: And do you
18 know has HPRB looked at this at all?

19 MS. MANNING: They have not.

20 CHAIRPERSON MILLER: Or staff from
21 the Historic Office, Preservation Office? No?

22 MS. MANNING: Not to my knowledge,

1 though I'm not clear on whether or not that
2 happened at zoning before it got bumped over
3 here.

4 CHAIRPERSON MILLER: Okay. We can
5 ask Office of Planning about that as well.

6 MS. MANNING: There is no change
7 to the front of the house.

8 CHAIRPERSON MILLER: No change to
9 the front. And what's the view from the back?
10 Is there an alley or anything?

11 MS. MANNING: There is an enclosed
12 alley, yes.

13 CHAIRPERSON MILLER: Okay.

14 MS. MANNING: And it can easily be
15 described as historic. We're really trying to
16 get the city to pave it, so if we could get
17 that done today, that would be great, too.

18 CHAIRPERSON MILLER: No, we don't
19 do that. Okay.

20 COMMISSIONER JEFFRIES: Let me,
21 Ms. Manning, understand. So Mrs. Harper's --
22 so when this wall is constructed, I mean, she

1 will get absolutely no light from the windows
2 that are currently facing into your yard.

3 MS. MANNING: I'm sorry, to -- she
4 will -- the two -- she has two sets of
5 windows --

6 COMMISSIONER JEFFRIES: Right.

7 MS. MANNING: -- on the first
8 floor that are on -- that open out onto my
9 property.

10 COMMISSIONER JEFFRIES: Right.

11 MS. MANNING: And, yes, those
12 would be blocked by the wall.

13 COMMISSIONER JEFFRIES: The first
14 level and the second? The first floor window
15 and the second floor window in her --

16 MS. MANNING: No. I'm only
17 proposing a one story porch.

18 COMMISSIONER JEFFRIES: Oh, okay.
19 Just the first level.

20 MS. MANNING: Right.

21 COMMISSIONER JEFFRIES: Okay.

22 MS. MANNING: And as Ms. Brown-

1 Roberts pointed out in her letter, there are
2 four banks of windows across the back and then
3 two additional on the eastern side of her
4 property, so, of course, those would be
5 unaffected.

6 BOARD MEMBER LOUD: To follow Mr.
7 Jeffries question, so even on the west side of
8 her property, there will still be two windows
9 on her property that are not affected by your
10 addition in terms of getting light?

11 MS. MANNING: My property is to
12 the west.

13 BOARD MEMBER LOUD: Um-hum.

14 MS. MANNING: So the western wall
15 -- the western windows would be affected. The
16 eastern ones would not be, as well as the
17 southern ones.

18 BOARD MEMBER LOUD: The diagram
19 that I'm looking at, which is, you probably
20 don't -- it's our Exhibit 6. But it shows
21 four windows, two on the first level and two
22 on a second level.

1 MS. MANNING: Oh, okay.

2 BOARD MEMBER LOUD: And so I'm
3 just asking a clarification question actually
4 as to whether all four of those windows will
5 be blocked?

6 MS. MANNING: No.

7 BOARD MEMBER LOUD: Okay. Just
8 the bottom two?

9 MS. MANNING: Correct.

10 BOARD MEMBER LOUD: Okay. Thank
11 you.

12 MS. MANNING: Ms. Brown, Maxine,
13 I'm sorry, Ms. Brown-Roberts is saying it's
14 one. I mean, I guess, it depends on how you
15 count.

16 COMMISSIONER JEFFRIES: One
17 opening.

18 MS. MANNING: Yes, correct. One
19 structural opening, correct.

20 BOARD MEMBER ETHERLY: And if I
21 may, Madam Chair, just as a follow-up. Part
22 of the 223 inquiry, of course, gets into the

1 impact of light and air, so these questions
2 are probably kind of in the direction of
3 getting a sense of just what the impact will
4 be.

5 MS. MANNING: Sure.

6 BOARD MEMBER ETHERLY: What has
7 been your experience? And this will be a
8 question that I'll ask Mrs. Harper as well in
9 terms of her experience with her property, but
10 with regard to your property what has your
11 experience been with respect to sunlight? Do
12 you have a sense of how the sun tends to flow
13 on those southern elevations, if you will?

14 MS. MANNING: Sure. Florida
15 Avenue is on an angle and so where we are
16 situated, we actually point -- the back
17 exposure to the home, both of our homes, faces
18 slightly southeast. So we get substantially
19 more afternoon sun than morning sun. And so
20 in that sense, the sun rises and so we -- the
21 wall would point somewhat to the southeast.

22 You know, because it's southern

1 exposure, we get quite a bit of sunlight.

2 BOARD MEMBER ETHERLY: Okay.

3 MS. MANNING: We do have a --
4 there is a dead-end alley behind the house.
5 There is an embassy on the eastern -- that
6 faces 16th Street. And so we get very little
7 air, because of that building blocks the air.
8 So there is really not a lot of wind back
9 there, which makes it fairly calm.

10 BOARD MEMBER ETHERLY: Okay.
11 Okay. So in terms of your experience with the
12 sun, the exposure tends to be, because of the
13 orientation, fairly straight on?

14 MS. MANNING: Correct.

15 BOARD MEMBER ETHERLY: Okay.
16 Okay. Thank you.

17 MS. MANNING: Um-hum.

18 BOARD MEMBER ETHERLY: Thank you,
19 Madam Chair.

20 CHAIRPERSON MILLER: Thank you.
21 Any other Board questions? Okay. Anything
22 else you want to add, at this point?

1 MS. MANNING: No. You know, I'm
2 sorry that Ms. Harper is opposing and I am
3 happy to work with her to the greatest extent
4 possible. I do feel that -- my understanding
5 of the rules is that I have the right under a
6 special exception to build out along both
7 party walls, you know, without seeking a
8 variance and I chose not to do that, because
9 that would require an even larger structure
10 than what I am proposing today.

11 So I would hope that my
12 willingness and my desire to comply with the
13 code would work in my favor here. Thank you.

14 CHAIRPERSON MILLER: Thank you.
15 Okay. Why don't we go to the Office of
16 Planning then? Good morning.

17 MS. BROWN-ROBERTS: Good morning,
18 Madam Chairman and Members of the Board. I'm
19 Maxine Brown-Roberts from the Office of
20 Planning. The special exception review is for
21 deviation from the lot occupancy requirement
22 to construct an addition to a single-family

1 dwelling.

2 We identified that in addition to
3 the lot occupancy, special exception that is
4 needed, there was also the requirement for the
5 variance. Regarding whether the property is
6 within a Historic District or not, from the
7 maps that I obtained from HP, it didn't
8 indicate that it was within an Historic
9 District. But that is something that I can go
10 back and clarify just to make certain that it
11 is not or it is.

12 Regarding the special exception
13 relief, the light and air from the property on
14 the west would not be impacted by the addition
15 of the porch, as it will be setback 5 feet
16 from the property line. Regarding the
17 property to the east, that property extends
18 beyond the subject building in the rear and
19 has two windows against that wall. The upper
20 window would not be affected by the addition.
21 However, the lower window would be covered.

22 It should be noted that this is a

1 row house community and that window is a
2 compromised window. So that is something that
3 that property owner or occupant should have
4 realized.

5 The one story addition would be
6 modest in size and would be enclosed on like
7 the open balcony that is there now.
8 Therefore, the privacy of adjacent properties
9 would not be any more impacted. In fact, it
10 may be less impacted, because it is enclosed.

11 No additional views into
12 neighborhood properties would be created than
13 currently exist. The property can be viewed--
14 would not be viewed from Florida Avenue.
15 However, it would be viewed from the rear
16 alley. There are a number of houses that also
17 have similar addition balconies, enclosures,
18 so this would not be unusual in that along
19 that alley.

20 The applicant has provided photos,
21 elevation drawings and site plan to show the
22 relationship. The Office of Planning

1 recommends approval of the requested special
2 exceptions. Thank you, Madam Chairman.

3 CHAIRPERSON MILLER: Thank you
4 very much. That's an excellent report. I
5 just want to confirm with you, though, Ms.
6 Harper is losing a window, because I can't see
7 the rest of her house that well. I can see
8 some of it. What I'm hearing is that there is
9 light coming into at least two other sides of
10 her house?

11 MS. BROWN-ROBERTS: That's
12 correct, yes.

13 CHAIRPERSON MILLER: Okay.

14 MS. BROWN-ROBERTS: And again, you
15 know, it's two story. Well, we're more
16 concerned with the lower story.

17 CHAIRPERSON MILLER: Right.

18 MS. BROWN-ROBERTS: So there are
19 windows along the southern side and also along
20 her eastern side, so she will -- I don't think
21 that the light and air there will be severely
22 impacted.

1 CHAIRPERSON MILLER: And if this
2 is in an Historic District, the Historic
3 Preservation Office will take a look at this?

4 MS. BROWN-ROBERTS: Yes, they
5 will.

6 CHAIRPERSON MILLER: Okay.

7 MS. BROWN-ROBERTS: Yes, um-hum.

8 CHAIRPERSON MILLER: So I don't
9 think that there is an issue for us really
10 with respect to or let me ask you, is there an
11 issue for us with respect to the character of
12 the neighborhood that this addition might
13 affect, particularly in the historic context,
14 because I think that Ms. Harper may also raise
15 that issue.

16 MS. BROWN-ROBERTS: Yes. Again,
17 the property cannot be viewed from Florida
18 Avenue. From the alley, again, it's really a
19 narrow, enclosed alley, so it is not being
20 seen. There are other additions in a variety
21 of styles along the alley, so I don't think
22 that this addition will be, you know, any more

1 different from anything there. So from my
2 point of view, I don't think that if this goes
3 to HPRB that it will be a big -- would be a
4 big impact.

5 And again, I mean, even if it goes
6 to them, I think the changes will be maybe to
7 the materials and that sort of thing. So the
8 special exception won't be affected.

9 CHAIRPERSON MILLER: Okay. That's
10 very helpful. And did you go to the ANC
11 meeting?

12 MS. BROWN-ROBERTS: I went to the
13 Planning and Zoning Committee meeting and I
14 informed them about, you know, the additional
15 special exception for the court that's
16 required. I also sent them an email making
17 them aware of it and it was discussed. I
18 didn't go to the main ANC meeting, but it was
19 discussed there from conversations with one of
20 the commissioners.

21 CHAIRPERSON MILLER: How about Ms.
22 Harper's opposition. Do you know if they were

1 aware of that?

2 MS. BROWN-ROBERTS: I don't know.

3 CHAIRPERSON MILLER: Okay. Okay.

4 Thank you. Any other questions?

5 COMMISSIONER JEFFRIES: I have a
6 quick question. I'm intrigued with your
7 comment actually, you know, in terms of how to
8 look at this case and this is, in fact, a row
9 house district.

10 MS. BROWN-ROBERTS: Um-hum.

11 COMMISSIONER JEFFRIES: And so,
12 you know, extending out beyond the typical
13 wall, in terms of an addition of some sort,
14 having windows on all sides, you risk, at some
15 point, your neighbor pulling out and blocking.

16 MS. BROWN-ROBERTS: Um-hum.

17 COMMISSIONER JEFFRIES: Have you
18 seen a lot of that? I mean, I've seen a lot
19 of additions where, you know, everyone --
20 there is a uniform rear wall and then someone
21 decides to step out.

22 MS. BROWN-ROBERTS: Um-hum. No, I

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1 wouldn't say that we have seen a lot of that,
2 because most times people realize if they are
3 doing an addition, that if they put a window
4 there and their neighbor decides to extend,
5 they are going to lose the window.

6 COMMISSIONER JEFFRIES: Um-hum.

7 MS. BROWN-ROBERTS: So most
8 additions you will see will not have a
9 window --

10 COMMISSIONER JEFFRIES: Right,
11 right.

12 MS. BROWN-ROBERTS: -- along that
13 side.

14 COMMISSIONER JEFFRIES: Okay.
15 Okay.

16 MS. BROWN-ROBERTS: The windows
17 may come in on the original building, but not
18 on any additions.

19 COMMISSIONER JEFFRIES: Additions,
20 right.

21 MS. BROWN-ROBERTS: Yes.

22 COMMISSIONER JEFFRIES: Right.

1 Okay. Okay. Thank you.

2 CHAIRPERSON MILLER: Okay. Any
3 other questions?

4 BOARD MEMBER ETHERLY: Very, very
5 briefly, Madam Chair.

6 CHAIRPERSON MILLER: Um-hum.

7 BOARD MEMBER ETHERLY: Thank you
8 very much, Ms. Brown-Roberts for your report.
9 I think it was very succinct and right to the
10 point. Let me just put a pin in this issue as
11 it relates again to 223.2(a) and the light and
12 air issue and just emphasize in my question,
13 it would then be the Office of Planning's
14 testimony that the impact to the light and
15 air, for that matter, but I'm probably most
16 interested in the light aspect, the impact of
17 the light, to the light and air of the
18 adjacent property, Ms. Harper's property,
19 would not be unduly affected, in your
20 estimation?

21 MS. BROWN-ROBERTS: That's
22 correct. I mean, there is no doubt that she

1 is going to lose light from that window.

2 BOARD MEMBER ETHERLY: She is
3 going to have an impact, yes.

4 MS. BROWN-ROBERTS: There's no
5 doubt about that. But again, I don't think
6 that will be duly affected because there are
7 windows on the other sides of that addition
8 that she has.

9 BOARD MEMBER ETHERLY: Okay.
10 Thank you very much.

11 MS. BROWN-ROBERTS: Thank you.

12 CHAIRPERSON MILLER: Ms. Manning,
13 do you have a copy of the Office of Planning
14 report?

15 MS. MANNING: Yes, I do.

16 CHAIRPERSON MILLER: Okay. And do
17 you have any questions? You are entitled to
18 cross examine.

19 MS. MANNING: Well, I have lots of
20 questions about the process, but I guess I can
21 ask Mr. Jeffries later or somebody else, I
22 don't know.

1 CHAIRPERSON MILLER: I don't know
2 about that.

3 MS. MANNING: I'm not sure what
4 happens next.

5 CHAIRPERSON MILLER: Oh, okay.
6 Well, let's get through this first.

7 MS. MANNING: Sure.

8 CHAIRPERSON MILLER: Do you have
9 any questions for Ms. Brown-Roberts on --

10 MS. MANNING: No, I don't.

11 CHAIRPERSON MILLER: -- her
12 testimony? Okay. And I don't see that anyone
13 has come in from the ANC, that's where we
14 would go to next. But I would like to
15 mention, as Ms. Manning did earlier, that we
16 have a written report from the ANC in support
17 of the application. And the ANC report meets
18 our great weight requirements. They had a
19 meeting on June 6th and they had a quorum and
20 it was publicly noted and open to the public
21 and they voted on this issue to support
22 unanimously.

1 And they also state that no
2 objections from adjacent property owners were
3 forthcoming, either at the PZT, which is
4 Planning and Zoning Committee meeting, or the
5 general meeting. Okay. So that is the ANC
6 report. We will give it great weight. And at
7 this point, I think we can call up Ms. Harper.
8 Ms. Harper? She can present her testimony.

9 MS. HARPER: The responses to the
10 questions I guess everybody has that, all your
11 committee.

12 CHAIRPERSON MILLER: Wait. I'm
13 not sure what you are referring to. What
14 responses to questions?

15 MS. HARPER: The form that was
16 sent.

17 CHAIRPERSON MILLER: For your
18 party status application?

19 MS. HARPER: Uh-huh.

20 CHAIRPERSON MILLER: Yes, that's
21 what we have been looking at.

22 MS. HARPER: Okay. So I don't

1 need to state any of that again, do I?

2 CHAIRPERSON MILLER: We have it.
3 Unless there is something you want to
4 elaborate on or respond to what you have heard
5 here.

6 MS. HARPER: Yes. So I would
7 rather respond to what I heard --

8 CHAIRPERSON MILLER: Okay.

9 MS. HARPER: -- if everybody has
10 what I have written as to my concern. First
11 of all, I'm operating at a disadvantage,
12 because I have not seen the plans. I'm just
13 learning now that it's only the first floor.
14 I was under the impression it was a wall that
15 would go all the way to the second floor.
16 That's the first thing.

17 Now, someone made a statement that
18 it was only one window that would be affected.
19 Now, these houses 1620 and 1622 have a
20 basement unit that's occupied and that wall,
21 as is my understanding, would be from the
22 ground level up through the first floor. So

1 there are two units that would be affected by
2 that wall. The basement unit, which has
3 limited light already would certainly be -- it
4 would almost be zero with that solid wall.

5 CHAIRPERSON MILLER: Is that the
6 only window? I mean, I'm looking at the
7 picture. Is that the only window which has
8 limited light on the side? Is that the only
9 window for the basement unit?

10 MS. HARPER: For the basement?
11 Right now, the only light that -- there is a
12 light under my first floor porch. I mean
13 there is a window under my first floor porch
14 that lets light into that unit. With a solid
15 wall coming down on the western side of it,
16 that really reduces the lighting for that
17 unit.

18 COMMISSIONER JEFFRIES: This is a
19 residential unit, basement unit?

20 MS. HARPER: Excuse me?

21 COMMISSIONER JEFFRIES: It's an
22 English basement apartment?

1 MS. HARPER: Yes.

2 COMMISSIONER JEFFRIES: So someone
3 is living there?

4 MS. HARPER: Yes.

5 COMMISSIONER JEFFRIES: Okay.

6 MS. HARPER: And both 1620 and
7 1622, I believe. The -- as far as the breeze,
8 the statement about whether there is breeze,
9 when all the windows are open -- first of all,
10 let me say. I did not build this porch. When
11 I purchased the property, those -- it is as I
12 purchased it. I did not add anything to it as
13 far as the porches we are discussing.

14 So I purchased the property with
15 that, those two units already there, the first
16 floor and the second floor porches were in
17 place when I purchased the property. So being
18 aware that someone would build against that,
19 I mean, that never -- that was never an issue
20 for me. I never thought of it, because that's
21 just the way it was when I moved there in 1978
22 and has been that way until now that someone

1 wants to build.

2 It never -- I didn't build it is
3 what I'm saying. And I do -- unless they have
4 changed the regulations, this property is in
5 the historic area and I know that, because of
6 some work I wanted to do when I first got the
7 property. So I know that it does fall in the
8 -- as far as the ANC's meeting, even though I
9 live in Cincinnati, I came here for this
10 meeting.

11 I was not notified of any meeting
12 by the ANC. And if I had been, I would have
13 come. I lived in the District for 30 years.
14 I lived at 1620 for 25 years. And so I
15 attended the ANC meetings when I was -- when
16 I lived here, so I would have come if I had
17 known about it, but I didn't get any
18 notification.

19 The only thing I can say about
20 that wall, when Ms. Manning mentioned that my
21 windows open onto her property, the windows --
22 my porch is on my side of the property line.

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1 What I have are awning windows that crank out.
2 And when those windows crank out, they are
3 extended across the party line.

4 I have no problem having double
5 hung windows that will go up and down. My
6 problem is with a wall there, it certainly
7 cuts off circulation of air. You get a nice
8 breeze when all the windows on both sides are
9 open and the front and it's a very charming
10 sunroom and porch on the first floor, screened
11 in, that once you close off one of those
12 sides, the circulation is going to be
13 diminished. I can assure you of that.

14 And as far as the lighting, yes,
15 there is lighting to the south and there is
16 lighting to the east, but to the west where
17 this wall would be it's just going to dim the
18 whole view of sitting on a screened in porch
19 looking at a blank wall, at a brick wall. And
20 I don't -- it has not been mentioned here, but
21 I'm concerned about the wall, how far down
22 does it extend?

1 I have a tree. I have a maple tree
2 that has been growing there for over 50 years
3 and it's going to have to be removed if the
4 party line -- if this wall that is required
5 has to extend down so many feet into the yard
6 where the tree is. So to lose that tree that
7 has provided shade and just beauty when you
8 sit on that porch and just look at this
9 beautiful maple tree, you know, I'll just lose
10 that.

11 And so that's really my concern.
12 I'm not sure that when this -- if this plan
13 has a wall that will serve as a wall to her
14 property, to her project, to her porch or if
15 in addition to the wall there is another wall
16 for her porch, I'm not sure how -- I haven't
17 seen the plans, so I don't know what we have.
18 And that's what I wanted to say.

19 BOARD MEMBER ETHERLY: One very
20 quick question for you. First of all, thank
21 you very much for your testimony, Mrs. Harper.

22 MS. HARPER: Thank you.

1 BOARD MEMBER ETHERLY: Presumably,
2 thank you very much for traveling here from
3 Cincinnati. With respect to the English
4 basement unit that you spoke to, I just want
5 to be sure I'm clear on where the window that
6 you referenced is located. Again, we have a
7 fairly, and I won't expect you to see it from
8 here, good color shot, but it gets a little
9 dark as you head towards the bottom of the
10 picture.

11 What we have is a rear shot of
12 Mrs. Manning's property and we can clearly see
13 the window that appears to be at the deck
14 level in your sunroom on that western side.
15 Is there another window on that same side for
16 the English basement that's below the deck,
17 the current deck of Mrs. Manning? I'm just
18 trying to be sure I understand where that
19 English basement window is located.

20 MS. HARPER: Okay.

21 COMMISSIONER JEFFRIES: Is it on
22 the west wall at the --

1 BOARD MEMBER ETHERLY: Thank you,
2 Mrs. Bailey.

3 MS. BAILEY: You're welcome.

4 MS. HARPER: Okay. This is her
5 property, okay.

6 COMMISSIONER JEFFRIES: This is
7 the west wall.

8 MS. HARPER: Okay. The window to
9 the basement unit is on the main house. It's
10 not a porch window.

11 BOARD MEMBER ETHERLY: Okay.

12 MS. HARPER: It's the window in
13 the main framing -- the main house. And
14 what's -- you could say it's a porch, but
15 what's -- the space that's under my porch on
16 the first floor is just open space and that's
17 where the light gets through.

18 BOARD MEMBER ETHERLY: I see. So
19 it's facing your back yard, but it's on the
20 main part of your property.

21 MS. HARPER: Of the house.

22 BOARD MEMBER ETHERLY: I

1 understand.

2 MS. HARPER: Yes.

3 BOARD MEMBER ETHERLY: Okay.

4 Thank you very much. Thank you, Madam Chair.

5 COMMISSIONER JEFFRIES: So the
6 wall, this rear wall that is the applicant's
7 wall, you have a similar wall in your unit,
8 but this sunporch is an extension. And so if
9 you were to continue that wall down to the
10 basement area, that's where the window is? Do
11 you follow me? You don't follow me?

12 Okay. This wall, the current wall
13 for 1622, is that it?

14 MS. HARPER: That's correct.

15 COMMISSIONER JEFFRIES: That rear
16 wall, do you have a similar wall behind your
17 addition?

18 MS. HARPER: Yes.

19 COMMISSIONER JEFFRIES: So if you
20 were to go inside your house and look straight
21 down, that wall would continue and that's
22 where the window wall is for the basement

1 unit? Okay. I think that's correct. I just
2 wanted to -- okay.

3 MS. HARPER: Okay. Okay. If you
4 -- he has a --

5 COMMISSIONER JEFFRIES: I mean,
6 your extension, your addition is open at the
7 bottom?

8 MS. HARPER: At the bottom.

9 COMMISSIONER JEFFRIES: And then
10 if you were to look under there, it's almost
11 like a crawlspace.

12 MS. HARPER: You would see --

13 COMMISSIONER JEFFRIES: You would
14 see a window, right?

15 MS. HARPER: Yes.

16 COMMISSIONER JEFFRIES: Okay. But
17 there is not a window to the west wall?

18 MS. HARPER: No, it's open.

19 COMMISSIONER JEFFRIES: It's just
20 to the south wall? Yes? No?

21 MS. HARPER: Oh, to the south?

22 COMMISSIONER JEFFRIES: Yes.

1 MS. HARPER: Yes. Just to the
2 south.

3 COMMISSIONER JEFFRIES: Right,
4 right, right.

5 MS. HARPER: Yes, you're right.
6 The center of the build -- of the main
7 structure, the main house, the brick part,
8 there is a window in the basement under this
9 porch, under my porch.

10 CHAIRPERSON MILLER: I think, you
11 know, part of the problem is, currently my
12 problem is, I don't have a big picture of your
13 house to see where all your windows are, You
14 know, so that's what we are trying to figure
15 out. With respect to the basement, when you
16 said that the side is going to be covered up,
17 what other windows are left? There's one
18 window in the center?

19 MS. HARPER: There's no other
20 window there. That's -- yes, the one in the
21 center.

22 CHAIRPERSON MILLER: How big a

1 window is it?

2 MS. HARPER: Oh, it's, let's see,
3 2 x --

4 CHAIRPERSON MILLER: You don't
5 have to be exact.

6 MS. HARPER: Okay.

7 CHAIRPERSON MILLER: I'm just
8 trying to get a feel for it.

9 MS. HARPER: It's a small bedroom
10 window.

11 CHAIRPERSON MILLER: Small bedroom
12 window.

13 MS. HARPER: That's where the
14 bedroom is.

15 CHAIRPERSON MILLER: Okay.

16 MS. HARPER: It's a small bedroom
17 window. And that's the only light. Well, I
18 shouldn't say the only light. That's the
19 southern light to that room. And there is a
20 window in that bedroom to the east, but on the
21 back end of the house, there's one window. On
22 the southern end, there's one window. And

1 this porch above, my porch is here on the
2 first floor and the basement window would be
3 down here. And this side is open and this
4 side is open, as far as the lighting goes, and
5 the center, of course.

6 But when you put this wall across
7 here, that's going to cut off the light that
8 would come into the area from the west is what
9 I'm saying. It's not a very bright location
10 anyway, because it's down.

11 COMMISSIONER JEFFRIES: Yes, I
12 mean, excuse me, but the light, but this
13 addition, I mean, it's already dark and this
14 addition is not going to block that window.
15 I mean, it's just going to create a little
16 more darkness.

17 MS. HARPER: It's not going to
18 block the window. It's going to block the
19 light.

20 COMMISSIONER JEFFRIES: Yes, yes,
21 yes.

22 MS. HARPER: In the area.

1 COMMISSIONER JEFFRIES: Yes.

2 MS. HARPER: Yes, that's true.

3 COMMISSIONER JEFFRIES: Yes, okay.

4 CHAIRPERSON MILLER: Okay. Other
5 Board questions? Oh, the tree, how do you
6 know the tree is going to be affected?

7 MS. HARPER: Yes, you can see the
8 branches here, but if you came straight down,
9 there is a fence. Can you see the chain link
10 fence that runs? That's serving as the party
11 line now.

12 CHAIRPERSON MILLER: Yes.

13 MS. HARPER: That chain link.
14 Okay. That chain link fence, the tree is
15 right there where this chain link fence comes
16 between the two properties. Supposedly, it's
17 on the party line and that's where the brick
18 wall would have to be constructed.

19 CHAIRPERSON MILLER: I'm sorry,
20 I'm just not following that.

21 MS. HARPER: Okay.

22 CHAIRPERSON MILLER: The tree

1 seems to be off to the side. But you are
2 saying it's where the chain link fence is?

3 MS. HARPER: Yes, see, if you look
4 down under the steps where the steps are
5 coming out of her kitchen, okay, and you see
6 that sort of grayish looking, that's the
7 fence.

8 CHAIRPERSON MILLER: Um-hum.

9 MS. HARPER: And if you follow
10 that on down, you will get to this tree.

11 COMMISSIONER JEFFRIES: How many
12 feet?

13 MS. HARPER: How many feet?

14 COMMISSIONER JEFFRIES: I mean,
15 from that point to where the actual trunk is?

16 MS. HARPER: It's 47 feet. 27
17 feet.

18 COMMISSIONER JEFFRIES: Okay.
19 From her addition or your back, your rear?

20 MS. MANNING: Both of the houses,
21 the south edge of the houses are contiguous.

22 COMMISSIONER JEFFRIES: Yes,

1 right.

2 MS. MANNING: It's 27 feet back
3 from the house.

4 COMMISSIONER JEFFRIES: Right. I
5 gotcha, gotcha, gotcha.

6 MS. MANNING: So it will be about
7 11 feet back from the end of the porch wall.

8 COMMISSIONER JEFFRIES: Okay.

9 CHAIRPERSON MILLER: Anything else
10 you want to testify to, at this point?

11 MS. HARPER: No. I didn't get the
12 exact measurements of the structure that's
13 being proposed.

14 CHAIRPERSON MILLER: Okay.

15 MS. HARPER: Could you give that
16 again, please? Thank you.

17 CHAIRPERSON MILLER: Ms. Manning,
18 you are entitled to cross examination
19 questions if you want to, unless there is
20 something further, Ms. Harper? But I think we
21 have heard your testimony.

22 MS. HARPER: Yes.

1 CHAIRPERSON MILLER: Okay.

2 MS. HARPER: That's basically it.

3 CHAIRPERSON MILLER: Okay.

4 MS. MANNING: I don't have any
5 cross examination. I do have a few statements
6 to make in rebuttal, if you will. Ms. Harper,
7 these are the exact same plans that I mailed
8 to you last July, so I believe that you did
9 get a copy of these last summer. And then we
10 discussed them several times this past fall.

11 CHAIRPERSON MILLER: That's a
12 question. Do you want to ask her if she can
13 confirm that she got those plans?

14 MS. MANNING: Do you recall that?

15 MS. HARPER: Okay. What I got
16 last June was a set of plans and I discussed,
17 Meredith and I discussed the plans when I came
18 to D.C. She told me the plans had been
19 rejected, that she could not -- they weren't
20 approved. Okay. Then we talked again and she
21 said she was going to resubmit and she did and
22 she said they were refused. It was rejected

1 twice.

2 So I didn't know that she was
3 still submitting the same set of plans. So
4 when I say I didn't get it, that's what I'm
5 referring to.

6 MS. MANNING: Sure.

7 MS. HARPER: Because I thought if
8 they had been rejected twice that either she
9 is proposing something different, you know.
10 I didn't realize it was the same plans. So I
11 stand corrected.

12 MS. MANNING: I'll admit I believe
13 what she is referring to is my application for
14 a permit, which I submitted to the Office of
15 Zoning, which -- and it was rejected in the
16 sense that I was told that I had to come here
17 and so I told her that I had to come here and
18 that I was considering not coming here. I was
19 just going to give up. And then when I did
20 decide to go forward, you know, I complied
21 with the notification provisions of the
22 regulations.

1 So I think that's the confusion
2 about the plans. The tree, as I noted
3 earlier, is 27 feet back and so the wall will,
4 you know, be structurally sound, so we will
5 have to dig down into the ground, which could
6 affect a few of the roots, but they are 11
7 feet back from the tree, so I don't think that
8 there will be damage to the tree. My
9 contractor doesn't believe that the tree will
10 suffer. I certainly don't intend that.

11 I think everybody is clear on the
12 basement issue. There is no addition off of
13 her house on the basement that would have a
14 window that is blocked. Currently, the steps
15 into my front door are contiguous with that
16 basement area and those are solid concrete
17 steps. So the wall will be the equivalent of
18 the solid concrete steps that exist today.

19 CHAIRPERSON MILLER: Is the wall
20 going to be closer though?

21 MS. MANNING: Actually, maybe by
22 just an inch or two.

1 CHAIRPERSON MILLER: Okay.

2 MS. MANNING: The steps are right
3 on the line or very close to the line and I
4 know this, because I have to weed back there.
5 It is quite close to the chain link fence,
6 which currently is at the edge of the
7 property.

8 CHAIRPERSON MILLER: And does her
9 windows go right to the line or is there going
10 to be some space in between?

11 MS. HARPER: I'm sorry?

12 CHAIRPERSON MILLER: Is your
13 addition going to touch her wall?

14 MS. MANNING: Yes, I believe that
15 it will, yes.

16 CHAIRPERSON MILLER: Okay. Okay.

17 MS. HARPER: So you actually
18 believe you gave me this detail or you just
19 gave me a little scheme? I haven't seen this
20 detail, Meredith. I did see a little scheme
21 kind of thing, you know, sketch. This is my
22 first time seeing this detail. So, you know,

1 I'm operating in the dark. I didn't know just
2 how, you know, the steps were going to be
3 changed, how the wall and all this, but will
4 your house -- will your porch actually be part
5 of the fire wall?

6 MS. MANNING: Correct, yes.

7 COMMISSIONER JEFFRIES: What it
8 sounds like, there is a little bit of good
9 news in that you thought this was going to
10 take up two levels, I mean, so it's just going
11 to block really one window opening.

12 MS. HARPER: Yes.

13 COMMISSIONER JEFFRIES: At the
14 first floor, your west wall of your porch.

15 MS. HARPER: Yes, that's true.

16 COMMISSIONER JEFFRIES: So --

17 MS. HARPER: And the basement.

18 COMMISSIONER JEFFRIES: It's not
19 going to block your basement window, but it's
20 going to lessen the amount of light.

21 MS. HARPER: That's true.

22 COMMISSIONER JEFFRIES: Yes.

1 MS. HARPER: Yes.

2 COMMISSIONER JEFFRIES: But it's
3 all -- it's pretty dark down there anyway.

4 MS. HARPER: Yes, that's true.

5 COMMISSIONER JEFFRIES: Yes,
6 right, okay.

7 CHAIRPERSON MILLER: Okay. Any
8 other questions?

9 MS. MANNING: No, thank you very
10 much.

11 CHAIRPERSON MILLER: Okay. Thank
12 you, Ms. Harper. Is there anybody else who is
13 here to testify in support or in opposition of
14 this application? Okay. Any last questions
15 by the Board? Okay. Then, Ms. Manning, you
16 are entitled to do a closing argument, if you
17 would like.

18 MS. MANNING: Thank you. I
19 believe that I'm proposing to build a
20 structure that's smaller than the existing
21 structure and that conforms more completely
22 with the requirements of the District of

1 Columbia and so I would ask that the Board
2 support my application and allow me to go
3 forward. Thanks.

4 CHAIRPERSON MILLER: Could I just
5 ask you what you mean by conforms more with
6 the requirements of the District of Columbia?

7 MS. MANNING: Sure. The existing
8 structure, which was on the property when I
9 bought it, is 17 feet wide, so it doesn't have
10 a fire wall, which is required on the east
11 side and it extends all the way to the
12 property line on the west side, so it doesn't
13 have a setback on the west side. So it
14 currently is nonconforming on both sides.

15 And I'm seeking to have it conform
16 next to Ms. Harper and to be back 5 feet
17 instead of 6 feet on the west side. So I
18 believe that it goes further to meeting the
19 requirements of the Building Code and the
20 Zoning Code in the District than the current
21 structure, which is structurally unsound. And
22 so I believe as a homeowner, I have the right

1 to improve my property to take out a
2 structurally unsound structure and I'm really
3 struggling here to build one that is going to
4 be an improvement and is going to comply to
5 the greatest extent possible with all the
6 requirements. So that's what I would like to
7 do and I would like your ability to proceed
8 with that, your support in my ability to do
9 that.

10 CHAIRPERSON MILLER: Okay. I have
11 one last question.

12 MS. MANNING: Sure.

13 CHAIRPERSON MILLER: And that is
14 did you consult at all with an arborist or a
15 tree person with respect to protecting that
16 maple?

17 MS. MANNING: I didn't with
18 respect to this property, but I have had tree
19 people over in the past, because we have a lot
20 of tree problems in the alley, which are
21 related to the renovation of the alley, which
22 the District won't do, but anyway, you know,

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1 I told Ms. Harper actually last summer that,
2 you know, to the extent that the trees need to
3 be trimmed or reviewed, we should do that.
4 And I certainly don't have a problem.

5 CHAIRPERSON MILLER: No, I don't
6 mean that. I think she was concerned --

7 MS. MANNING: In terms of damaging
8 it?

9 CHAIRPERSON MILLER: Yes, losing
10 the tree.

11 MS. MANNING: No. The answer is
12 no. But I mean, I would be happy to work with
13 her on that. There is -- you know, there are
14 going to be plenty of issues that come up if
15 I can proceed in terms of wiring and other
16 matters and I certainly plan to, you know, do
17 everything I can to make sure that this is not
18 -- you is as unobtrusive and is easy for her
19 as possible.

20 CHAIRPERSON MILLER: Okay. Thank
21 you. I was just checking with my Board
22 Members to see if we're prepared to go forward

1 today and the sentiment is that we are
2 prepared to go forward, that we think that we
3 have all the evidence in the record that we
4 need to deliberate on this.

5 So any other Member want to start
6 with this, otherwise I will.

7 BOARD MEMBER ETHERLY: Madam
8 Chair, I'm more than pleased to move forward.

9 CHAIRPERSON MILLER: Okay.

10 BOARD MEMBER ETHERLY: By moving
11 approval of Application No. 17623 of Meredith
12 Manning, pursuant to 11 DCMR 3104.1, for a
13 special exception to construct a rear porch
14 addition to an existing single-family row
15 dwelling under section 223, not meeting the
16 lot occupancy provisions at premise 1622
17 Florida Avenue. Are we also doing the open
18 court as well? That would also be for
19 approval of special exception relief under 223
20 from the open court requirement at 406.1 and
21 I would invite a second, Madam Chair.

22 COMMISSIONER JEFFRIES: Second.

1 BOARD MEMBER ETHERLY: Thank you
2 very much, Mr. Jeffries. Madam Chair, I'm
3 more than happy to step in here. Normally, I
4 won't say normally, and I won't say typically,
5 because often times atypical is the watch word
6 for this body.

7 223s are, for the most part,
8 fairly straightforward inquiries. However,
9 there are times where we have very substantial
10 discussion, as I think we did today and needed
11 to have, about the impacts on light and air as
12 it relates to adjacent properties. So I'm
13 going to speak perhaps most directly to
14 223.2(a) as it relates to the light and air
15 discussion that we have had.

16 Again, as we heard, I think very
17 necessary testimony about understanding
18 precisely the nature of the impact to the
19 adjacent property. I want to be sure that I
20 emphasize here that the applicant before us is
21 entitled to construct from lot line to lot
22 line, because it is a row dwelling in an R-5-B

1 District.

2 Clearly, she is not doing as much
3 as she could do in this entity, but the reason
4 why I offer that is just as a reminder that
5 there is a matter-of-right scenario here that
6 could result in conceivably a more significant
7 impact.

8 As my colleagues will recall in my
9 interchange with the Office of Planning, I
10 asked specifically about section 223.2(a) as
11 it relates to the issue of unduly affected.
12 There is absolutely, as was stated by the
13 Office of Planning's representative, Ms.
14 Brown-Roberts, and I think as was articulated
15 by Mrs. Harper in her testimony, there is
16 absolutely no dispute that there is going to
17 be some impact.

18 I wish I could say there were not
19 going to be any. Part of this Board's inquiry
20 focuses on whether or not that impact will be
21 undue. And it is a tough balance often times
22 to strike, because you have a sunroom that has

1 been utilized to its fullest possible extent.
2 As you discussed, there is an English basement
3 unit that has had the benefit of some light
4 from one of the southward facing windows.

5 There is going to be some impact
6 here. But I think as I have looked at the
7 record, as I have heard the testimony and
8 weighed what has been presented to us, I think
9 that impact, however, does not rise to the
10 level of being undue. As has been indicated
11 by the Office of Planning, there will continue
12 to be light from the southern and eastern
13 exposures, if I have my directional
14 orientations correct, for that sunroom.

15 Is it going to be less than what
16 you currently -- what your tenants currently
17 enjoy? Yes, it will be. But again, I think
18 does it rise to the level of being undue in
19 terms of its impact? I can't say that the
20 record supports a finding in that regard.

21 As relates to the issue of privacy
22 of use and enjoyment of neighboring

1 properties, being also unduly compromised, I
2 think the scale of the addition being one
3 story as opposed to two, I think we might have
4 more to talk about if it were a two story
5 addition, because I think that would create a
6 somewhat more significant impact that would
7 need to be assessed.

8 But I think in this particular
9 instance, the privacy and the use and
10 enjoyment of the neighboring properties will
11 also not be unduly affected. As we have
12 discussed with respect to the context of the
13 addition as it relates to the alley, as it
14 relates to the surrounding neighborhood, I
15 don't think anything in the record supports a
16 finding that the addition will be out of
17 character with what already exists on the rear
18 of the property here.

19 But I wanted to be sure to
20 emphasize again, as I indicated at the
21 beginning of Ms. Harper's testimony, I know it
22 takes time and energy and resources to come

1 here from Cincinnati. And I would probably
2 say the same thing if you came from across the
3 street. But the bottom line is it's important
4 to protect your property interests and rights
5 to assure that you can do whatever possible to
6 maximize the use and enjoyment of your
7 property.

8 But oftentimes, we end up in an
9 urban environment balancing a lot of different
10 competing considerations. And again, I feel
11 that the record here supports the finding that
12 there is not an undue impact in terms of the
13 light and air.

14 Madam Chair, I'll stop there,
15 because I think I have hit some of the key
16 elements from my standpoint in terms of the
17 record and I'm prepared to move forward.

18 CHAIRPERSON MILLER: Thank you.
19 Mr. Jeffries?

20 COMMISSIONER JEFFRIES: I just
21 wanted to say to Ms. Harper, I do appreciate
22 you coming out and I just wanted to say to you

1 that, I think for me, this case really turns
2 on this whole notion of a row house or row
3 dwelling district. You know, this is the
4 context in which, you know, this property
5 sits. And so, I mean, there's just different
6 standards that one looks at as opposed to if
7 you are in an R-1 and R-2.

8 And so I have to also think given
9 sort of the density of the area, you're having
10 more residents move in and so forth, that
11 you're probably not going to see a lot of
12 impact in terms of, you know, someone looking
13 to rent your place and saying wow, this window
14 is blocked or this wall doesn't have light and
15 so I don't know if I could rent it.

16 I mean, my suspicion is that
17 you're going to be fine, that there is not
18 going to be, you know, any depreciation in
19 value, because I think -- I thought I read
20 somewhere that that was a lot of your concern.
21 I think that, you know, the District is going
22 to really continue with new residents. And I

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1 think there is going to be a premium place on
2 being in a certain location and so forth and
3 I think the light issue is probably not going
4 to be as significant as you might think,
5 particularly in terms of renting the place and
6 so forth.

7 So I just wanted to add that. I
8 know that's outside of sort of, you know, the
9 case that we're looking at, but I just wanted
10 to sort of address that to you.

11 BOARD MEMBER LOUD: Good
12 afternoon. I want to also repeat what my
13 colleague, Mr. Jeffries, has said regarding
14 concerns that I may have had reviewing the
15 file about the potential impact to you, as a
16 retired person, depending on this property for
17 income. But I do think that the applicant has
18 made the case that light and air would not
19 result in an adverse impact to you in a way
20 that's undue in this context.

21 Also, I wanted to note I was a
22 little concerned that you had not received the

1 ANC notice, but at least your testimony was
2 that you had not received the ANC notice. But
3 at the end of the day, I think the issue for
4 me boiled down to light still being available
5 on the east and the south sides of the
6 property, as well as the second floor from the
7 west side.

8 I do think that there was some
9 testimony that came out regarding historic
10 review that remains an open question outside
11 of our forum for you and the applicant to
12 pursue and think that that should be pursued.
13 But I would support Mr. Etherly's motion at
14 this point.

15 CHAIRPERSON MILLER: Thank you.
16 Any others? I just want to make a few
17 comments with respect to the ANC notice. And
18 I can't speak for your ANC, however, I was an
19 ANC Commissioner at one point and my knowledge
20 of the ANCs are that since you are in
21 Cincinnati, you may have totally missed it,
22 because often the announcements are pretty

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1 local. They are posted often around or they
2 are put on the listservs or something like
3 that and there is not a requirement under our
4 regulations that they send you a notice.

5 Whereas, our requirements require
6 our Office of Zoning or the applicant to send
7 out a notice to you. And so I'm glad that you
8 got that, but that's all that we're
9 responsible for.

10 Also, you know, in listening to
11 the testimony today, I was concerned somewhat
12 about the adverse impact on Ms. Harper's
13 property, but when we look at the test before
14 us, this is a 223, and under 223, additions of
15 this type, and this qualifies under a 223, it
16 says that "They shall be permitted as a
17 special exception if approved by the Board,
18 subject to the provisions of this section."

19 And we have been talking about
20 223.2, in particular, which doesn't just say
21 an adverse effect. It talks about a
22 substantial adverse effect on the neighboring

1 property of light and air and that's why we
2 were exploring how great is this. And even
3 though I believe the conclusion is that there
4 is some adverse impact, some of your light is
5 going to go, that there is not a substantial
6 adverse effect.

7 And with respect to privacy, it
8 appears that there may be an increase in
9 privacy instead of a decrease in privacy,
10 which is another provision that we look at.
11 So I think Mr. Etherly and all the other Board
12 Members covered everything else pretty
13 thoroughly. So I don't have any other
14 comments.

15 If there are no other comments,
16 then we have a motion before us that has been
17 seconded. All those in favor say aye.

18 ALL: Aye.

19 CHAIRPERSON MILLER: All those
20 opposed? All those abstaining? And would you
21 call the vote, please?

22 MS. BAILEY: Madam Chair, the vote

1 is recorded as 5-0-0 to approve the
2 application. The motion was made by Mr.
3 Etherly, seconded by Mr. Jeffries, Mr. Loud,
4 Mrs. Miller and Mr. Mann support the motion.

5 CHAIRPERSON MILLER: Thank you.
6 And I think we can also waive our rules and
7 regulations for a full order of findings of
8 fact and conclusions of law and issue a
9 summary order in this case, as we don't have
10 a party in opposition.

11 MS. BAILEY: Thank you. Madam
12 Chair, the applicant did indicate that she had
13 a larger set of plans. Did we want to accept
14 that into the record?

15 CHAIRPERSON MILLER: I don't think
16 we need it. Does somebody else think we need
17 it? No.

18 MS. BAILEY: Thank you.

19 CHAIRPERSON MILLER: I think that
20 the applicant also had some questions, but I
21 think that it would be appropriate if you want
22 to follow-up with the Office of Zoning, they

1 will answer your questions. And I think some
2 of Ms. Harper's concerns also may have been
3 misunderstandings or not being aware fully of
4 your plans and so we anticipate that you are
5 going to be working together and sharing those
6 with her.

7 COMMISSIONER JEFFRIES: And it
8 also might be a good idea to check with an
9 arborist to just, you know -- I mean, you
10 know, definitely in Ward 1, you know, that
11 ward has the lowest amount of tree canopy and
12 so forth, so I would hate to see some adverse
13 impact on that tree.

14 CHAIRPERSON MILLER: I agree.
15 Okay. Thank you very much. Ms. Bailey, when
16 you are ready, you can call the next case.

17 MS. BAILEY: Application No. 17628
18 of Paul and Christina Wilson, pursuant to 11
19 DCMR 3103.2, for a variance from the floor
20 area ratio limitations under subsection
21 1203.3, and pursuant to 11 DCMR 3104.1 and
22 1202, a special exception to allow an addition

1 to an existing flat under section 223, not
2 meeting the lot occupancy requirements at
3 section 403. The property is in the CAP/R-4
4 District and it's located at premises 323 C
5 Street, S.E., Square 791, Lot 823.

6 CHAIRPERSON MILLER: Would the
7 parties in this case, please, come forward?
8 Good morning, when you are ready, you can
9 introduce yourselves for the record.

10 MR. WILSON: Good morning. My
11 name is Paul Wilson. I reside at 323 C
12 Street, S.E.

13 MS. WILSON: Good morning. My
14 name is Christina Wilson. I also reside at
15 323 C Street, S.E.

16 CHAIRPERSON MILLER: Okay. We
17 have read the whole file, just so you know
18 that, so you don't have to repeat everything
19 in this file. I know you are seeking a
20 special exception under 223, which 223 we just
21 had before, and a variance also in this case.
22 And I understand that the Office of Planning

1 supports your special exception, but not the
2 variance, correct?

3 MR. WILSON: Yes, that's correct.

4 CHAIRPERSON MILLER: And I'm going
5 to let you, you know, present your case as you
6 will, but I do want to suggest that, at least
7 to start, that I think the Office of Planning,
8 one of the reasons that it has opposed your
9 variance is that it didn't find that you had
10 a practical difficulty.

11 And in going through the file, I
12 think perhaps one could read between the lines
13 that you may have a practical difficulty here,
14 but I'm not sure you have laid it out. So I
15 would encourage you to lay it out. I think
16 what's at issue most is the variance, so you
17 could touch lightly on the 223.

18 MR. WILSON: Okay. I actually do
19 have written copies of my testimony, I would
20 like to enter those into the record.

21 CHAIRPERSON MILLER: Do you have
22 copies?

1 MR. WILSON: Sure, I have plenty
2 of copies.

3 CHAIRPERSON MILLER: Oh, I'm
4 sorry, my microphone wasn't on. Give it to
5 the staff and pass it down. I just want to
6 note for the record, I don't believe anybody
7 is here from the ANC.

8 MR. WILSON: Yes, we do have a
9 letter of support from the ANC. I think that
10 should be part of your -- should have been in
11 the record.

12 CHAIRPERSON MILLER: Yes, we have
13 a copy of that in the record.

14 COMMISSIONER JEFFRIES: Excuse me,
15 can you get closer to that mike?

16 MR. WILSON: Oh.

17 COMMISSIONER JEFFRIES: Yes, thank
18 you.

19 MR. WILSON: I also would like to
20 note that we have a letter of support from the
21 Capitol Hill Restoration Society, both for the
22 special exception and the variance, that

1 should also be in the record.

2 CHAIRPERSON MILLER: We have that
3 in our record.

4 MR. WILSON: Okay.

5 CHAIRPERSON MILLER: Exhibit 31.

6 MR. WILSON: Okay. There as the
7 Chairwoman noted, there are actually two parts
8 to this. The first is a special exception to
9 build a garden room at the cellar level. And
10 we would also like to add a bedroom at the
11 third floor and that is what has triggered the
12 variance under the FAR provisions. At the
13 same time --

14 CHAIRPERSON MILLER: Wait. Can I
15 ask you one thing?

16 MR. WILSON: Yes.

17 CHAIRPERSON MILLER: The variance
18 is triggered by the third floor bedroom?

19 MR. WILSON: That's correct.

20 CHAIRPERSON MILLER: And the 223
21 is just any addition. Is that right?

22 MR. WILSON: That's any addition.

1 CHAIRPERSON MILLER: Okay. Go
2 ahead.

3 MR. WILSON: The cellar level, as
4 you know, does not count against FAR, so it's
5 really the third floor that is causing -- that
6 triggered the variance. I should note that we
7 are also proposing to build a new facade over
8 the entire rear of the house, so that the
9 whole thing is really designed to work
10 together.

11 Right now, most of our third floor
12 is actually an office. Both of us work in the
13 home and we -- at present, we do not have a
14 separate guest room in the form of a third
15 bedroom, if you look at the plans. The
16 reaction to our proposal has been, I know,
17 universally positive and supportive, except
18 for the Office of Planning.

19 Our probably most affected
20 neighbor, Mr. Gerry Susman at 330 North
21 Carolina Avenue has written a letter of
22 support and that's in the record as well.

1 CHAIRPERSON MILLER: We have that
2 in our record also.

3 MR. WILSON: I should also note
4 that we have staff approval from Historic
5 Preservation. I originally submitted plans to
6 them back in October of last year and we have
7 gone through that process. I think in
8 speaking about the variance, we can begin by--
9 I can refer to the Capitol Hill Restoration
10 Society's letter. They mentioned their
11 intended changes are de minimis in character.
12 In fact, they say certainly de minimis.

13 I have to concur that a .06
14 increase in FAR and what we are talking about
15 is 65 square feet, basically, qualifies as de
16 minimis.

17 As I understand it, there are
18 three parts for the variance, three tests for
19 the variance.

20 CHAIRPERSON MILLER: Can I just
21 stop you there for one second --

22 MR. WILSON: Okay.

1 CHAIRPERSON MILLER: -- before you
2 go into that? The .06 FAR that you are saying
3 is de minimis, is that just like -- what
4 judgment or what basis are you using to make
5 that assumption?

6 MR. WILSON: That's 3 and 1/3
7 percent over the allowable.

8 CHAIRPERSON MILLER: Okay.

9 BOARD MEMBER LOUD: So would that
10 be .033 percent? I'm sorry, I don't know if
11 I understand. Sorry, Madam Chair.

12 CHAIRPERSON MILLER: That's okay.

13 MR. WILSON: Well, allowable FAR
14 is 1.8. We're going to 1.86, so that 3 and
15 1/3 percent of 1.3 is 1.86. 3 and 1/3
16 increase.

17 CHAIRPERSON MILLER: Okay. I
18 just, you know -- it's kind of a judgment, but
19 I just wanted to see where you were drawing it
20 from.

21 MR. WILSON: Okay. Um-hum. Okay.
22 I have referred you first to the drawing

1 marked lot dimensions and lot and building
2 lines in your -- it should have been entered
3 into the record. It shows 5 contiguous lots
4 along C Street and ours is in the center of
5 that.

6 The two western most lots are 18 x
7 70 and the eastern most lots are 17 feet wide,
8 the same width as ours, but they extend
9 through to North Carolina Avenue. Our lot is
10 17 feet wide and it's 59 feet along the west
11 line and 82 feet on the east, which leaves us
12 with a peculiar wedge-shaped backyard.

13 If lot 823 were rectangular, it
14 would be 17 x 65. In other words, it would be
15 5 feet shorter than Lots 825 and 826. And it
16 bears noting much smaller than the lots to the
17 east. In fact, Lot 823 is the smallest lot of
18 neighboring properties at least three doors
19 down in each direction on C Street. And you
20 can refer to the 200 foot radius for that.

21 I would also note that the BZA in
22 the past has said that exceptional character

1 of a parcel is not just limited to its shape.
2 I mean, we obviously have a shape situation
3 here, but also in Case 17125, that's from 507
4 Independence Avenue, decided back in 2004, BZA
5 also determined that the size of a lot could
6 also be considered exceptional.

7 In that case, the applicants wish
8 to build a one story addition inside a
9 nonconforming dogleg and sought a variance to
10 increase lot occupancy to 75 percent. They
11 also noted the kind of practical difficulties
12 they would have due to other factors such as
13 the footprint of the building and its unique
14 interior arrangement of the existing structure
15 and also from nonconforming construction.

16 And I'll get into why these are
17 important in our case, because I think they
18 all apply. It's also noteworthy in 17125 the
19 Board rejected OP's suggestion, the Office of
20 Planning's suggestion that the project be
21 trimmed down to a 70 percent lot occupancy
22 special exception. I note that we find

1 ourselves in much the same situation.

2 At 507 Independence, the
3 applicants wish to fill out the dogleg
4 completely as paring back their addition would
5 cause a whole -- would not solve a lot of the
6 difficulties they were having with their
7 property. In the same way, I believe that
8 paring back our third floor creates many
9 practical difficulties and leaves problems
10 unabated.

11 I would note that the lot deemed
12 exceptional by its smallness was 1,393 square
13 feet, whereas our's is 1,118 square feet.
14 Obviously, there are many small building lots
15 on Capitol Hill, but the convergence of our
16 small oddly-shaped lot with other factors is
17 what creates the hardship in our case. And
18 I'll be glad to go into that in some detail as
19 far as how those factors interact.

20 But one thing with 323, we've got
21 a nonconforming first and second story
22 addition that was completed in the 1950s.

1 It's about 2 feet beyond the 60 percent
2 building envelope. And what we are trying to
3 do in this project is integrate it into a
4 reasonable architectural scheme by building
5 the two modest additions that consume no more
6 space than absolutely necessary.

7 These additions will create a
8 uniform architecturally coherent and
9 consistent four story facade on the rear of
10 our house and it's going to replace a
11 dilapidated assemblage of openings and
12 materials.

13 While the 1950s addition is
14 nonconforming, it is also built to align
15 consistent with the four neighboring
16 properties at each side of our house. In
17 doing so, the build of our present kitchen and
18 sunroom put us in a bind by doing what made
19 good sense back then, but it has also eaten up
20 FAR that we can't use on the third floor now.

21 It's worth noting that in spite of
22 differing lot sizes, the houses at the east

1 end of the 300 block are built to a consistent
2 line and ours is the only one not to have a
3 third floor and cellar level that are built
4 out to that line.

5 If you look at the aerial photos
6 starting at about 319 C Street all the way
7 through 333 C Street, they are all built
8 pretty much to a consistent line. Some of
9 them may step out a foot or two. That makes
10 our case unique and exceptional, in our view.

11 As we have noted, the backyard
12 creates a wedge shape and what that does is
13 reduce -- it results in a relatively small lot
14 compared to our neighbors. Under the current
15 lot occupancy and FAR rules, the facade would
16 result that has three separate faces if we
17 build it strictly by right. The cellar wall
18 would be at 39 feet off of C Street. The
19 nonconforming 1950s addition in its current
20 position is at 40.5 feet and then the third
21 floor, if we build an addition, would sit out
22 at 36.5 feet.

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1 Unfortunately, the 35.5 foot face
2 on the third floor, essentially, means our
3 home can't have two appropriately sized
4 bedrooms on the third floor in addition to a
5 small settee and closet space. I have noted
6 that it seems reasonable to expect a 2,700
7 square foot house to have three bedrooms and
8 two baths, in addition to the separate cellar
9 unit, and it is set up as a flat right now.

10 In addition, the current third
11 floor rear facade is less than ideal. Our
12 third floor feels sandwiched in between two
13 blank walls, which limit the available light,
14 particularly in the wintertime and the views
15 are compromised. You can see from the photos
16 that we're looking at two side walls that come
17 out. They come out about 8 feet on each side
18 of our third floor.

19 I would also note that paring back
20 the 65 square feet is not really an option nor
21 is partially embedding the third floor into
22 the existing construction. Building the 4

1 foot extension and grabbing space on the
2 interior, existing interior means modifying
3 the stairs and the landing on the third floor
4 and that creates head clearance problems and
5 disrupts our original staircase.

6 Furthermore, using the full width
7 of the house is optimal in getting reasonably
8 proportionate and spacious rooms. Taking the
9 4 feet and connecting it to an existing
10 smaller room marked office on the plans
11 creates an awkward L-shape. There are also
12 problems with floor levels. The back-end of
13 our house is a split-level and that's another
14 legacy from the 1950s addition.

15 To make the internal circulation
16 and the roof lines work, the bedroom really
17 needs to be accessed off the landing of the
18 stairs and that means it really can't be
19 absorbed into the room marked office, because
20 there would be on two different levels.

21 I would also note that diminishing
22 the bedroom's width is another undesirable

1 option that creates a nonconforming court,
2 unless we made the court 6 feet wide. The
3 court would also force the room off-center on
4 the facade and it also adds considerable
5 exterior wall. In any event, the room
6 couldn't be any more than 71 square feet due
7 to the FAR limit and that's barely 8 x 8.

8 That leaves building a deck or
9 adding the room elsewhere such as at the
10 cellar level. The deck is not really
11 something we find particularly useful and it
12 won't increase living space. The deck means
13 we have less cause to remove the rear mansard
14 roof. The mansard is thoroughly decrepit from
15 years of neglect and likely to have to be
16 replaced in time.

17 I should note that we did similar
18 work to the front of our house and that cost
19 us \$19,000 to rebuild the front mansard, the
20 dormers and also the built-in gutter. In
21 addition, I believe a deck would be somewhat
22 of an anomaly on the block.

1 As for building at the cellar
2 level, out of a presumed -- we could
3 presumably come before the Board asking for up
4 to 70 percent under a special exception to
5 build-out the cellar level, but that would
6 consume more of the backyard. And secondly,
7 the construction would be too close to the
8 trunk of an enormous elm tree that's in the
9 backyard. If you look at the Office of
10 Planning's report, you can see the aerial
11 views of the elm tree.

12 That's assuming, of course, that
13 the scheme that we came in with would meet the
14 test for a special exception, as coming out
15 beyond that building line intentionally or
16 blocking light and air of neighboring
17 properties.

18 So I think what this long-winded
19 explanation shows is that we have a practical
20 difficulty that is caused by the convergence
21 of the size and shape of our lot and the
22 existing nonconforming structure and the

1 split-level design of that addition from the
2 1950s and also the large elm tree.

3 In a nutshell, we wish to build-
4 out to a consistent line formed by our
5 neighbors and eliminate the odd cutout on the
6 third floor. Eliminating this slot creates an
7 architecturally coherent facade at the rear of
8 the building, which is perhaps the most
9 important objective of this project, a fact
10 that ANC-6B recognized in their letter they
11 sent over, and I don't need to repeat that.

12 So I think that's really all I
13 need to say as far as an opening statement.
14 I apologize for the length, but I think there
15 are a lot of points to cover here.

16 CHAIRPERSON MILLER: Thank you.
17 Yes, there's a lot here. Did you share this
18 with the Office of Planning before they wrote
19 their report?

20 MR. WILSON: No, I did not.

21 CHAIRPERSON MILLER: But
22 afterwards, have they seen this before the

1 hearing?

2 MR. WILSON: No, they haven't.

3 CHAIRPERSON MILLER: Do they have
4 a copy now?

5 MR. WILSON: No.

6 CHAIRPERSON MILLER: Okay. Well,
7 it is being handed to the Office of Planning
8 now. Because when I read the file, as I said
9 earlier, I assumed that you had practical
10 difficulties or you wouldn't be here, but I
11 didn't see it elaborated in the other
12 pleadings. There is a lot in here and I'm
13 just wondering, if you don't mind, if we could
14 just go through it a little systematically.

15 MR. WILSON: Sure.

16 CHAIRPERSON MILLER: With the
17 variance test, the first is the exceptional
18 condition. And I believe I heard you say that
19 you have a confluence of factors?

20 MR. WILSON: That's correct.

21 CHAIRPERSON MILLER: Okay. Can we
22 just highlight those? I mean, I know they are

1 woven in all through this testimony.

2 MR. WILSON: Okay.

3 CHAIRPERSON MILLER: I mean, I
4 know that the property is shaped unusually.

5 MR. WILSON: Um-hum.

6 CHAIRPERSON MILLER: I wasn't sure
7 in reading the file before that that actually
8 contributed to your practical difficulties,
9 but it sounded like it may. And I wonder if
10 you could flesh that out a little bit more, if
11 that's true.

12 MR. WILSON: What it means is
13 because of the wedge, it has created one of
14 the smallest lot on that end of the block on
15 C Street. As I said in the testimony, that if
16 our lot were rectangular, it would be 17 feet
17 wide and 65 feet deep. The lots to the west
18 are all 18 feet wide and 70 feet deep, so that
19 extra 5 feet makes a difference, because if,
20 by right, our facade would always be pushed in
21 in relation to our neighbors.

22 Now, I would note that the lots to

1 the east are even much larger, because they go
2 all the way to North Carolina. And
3 conceivably, by right, those owners could pull
4 those facades out much farther than they are
5 now. So what I see is a consistent building
6 line across that end of the block on the rear
7 exists, even though we have differing lot
8 sizes.

9 So I'm suggesting that our lot is
10 exceptional for that reason and that has
11 caused us some of these difficulties.

12 CHAIRPERSON MILLER: I'm not an
13 architect, so I just have to just ask you one
14 more time.

15 MR. WILSON: Okay.

16 CHAIRPERSON MILLER: When I looked
17 at the pictures, I could see how your house is
18 different from all the other houses that way.
19 It has got pieces missing and they all are
20 built-out and I can see that. What I wasn't
21 sure about, again, is what you were saying
22 about because it's shaped differently, that

1 that has an impact on what you can do with the
2 lot. That that has an impact on what you can
3 do as a matter-of-right, that you can't do
4 something that those other, I mean --

5 MR. WILSON: Really the wedge just
6 affects the size of the lot, because even
7 though it's the same width as the other lots,
8 having that wedge shaved off means that we
9 have a lot of --

10 CHAIRPERSON MILLER: But does that
11 affect your FAR?

12 MS. WILSON: Yes.

13 CHAIRPERSON MILLER: Isn't 1.8 all
14 that you would be allowed anyway? How does
15 that affect --

16 MR. WILSON: Well, essentially,
17 the FAR 1.8, I mean, 60 percent times 3. 60
18 percent of your lot up to three stories. So
19 in this case, I think what's driving the FAR
20 more is actually the nonconforming 1950s
21 addition that has eaten up, essentially eaten
22 up or away at the FAR, meaning we can't do the

1 third floor.

2 CHAIRPERSON MILLER: Okay. Well,
3 let's focus. Let's, you know, focus. So you
4 have to make a connection and I think that the
5 Office of Planning had some concerns about
6 that between what's unusual about your piece
7 of property that leads to the practical
8 difficulty that you are seeking the relief to
9 cure.

10 MR. WILSON: Okay. Well, we did
11 look at 507 Independence case. There the
12 Board was able to make a connection between
13 the size of the lot, even though it was
14 perfectly rectangular, with square corners,
15 and the kind of difficulties that the owners
16 faced.

17 In that case, it was, I think,
18 analogous to ours, because they had a dogleg
19 that was much deeper than their neighbors, so
20 it required they go up to 75 percent of the
21 lot occupancy to completely fill in the
22 dogleg. In that case, the Board decided the

1 smallness of the lot was really what was
2 causing these difficulties that they faced.

3 CHAIRPERSON MILLER: I also, you
4 know, want to say that court cases have also
5 said that we look at the property as a whole
6 and not just the topography. We include
7 improvements on the property. So therefore,
8 you know, we can look at your property with
9 its improvement on it now and you're talking
10 about the '50s addition or whatever, that may
11 be unique in creating the practical
12 difficulties for you.

13 MR. WILSON: That's combined with
14 the small lot. I mean, if we had a lot that
15 was exactly the same size as our neighbors
16 doing those -- whoever those anonymous people
17 were who built the house at that level in the
18 '50s, they would have not have caused this
19 problem. But because our lot is slightly
20 smaller, they built-out to that line and that
21 was what has triggered all the problems with
22 the FAR.

1 COMMISSIONER JEFFRIES: So let me
2 understand. So the shape of your site, how
3 does that create a practical difficulty for
4 you? Why do you have to exceed your FAR,
5 okay, based on the shape of the site? Is it
6 just because of your -- are you saying the
7 size of the lot? I mean, if you had a regular
8 shaped lot, you would have more coverage? You
9 have more lot and, therefore, you would not
10 have to -- you could just build matter-of-
11 right?

12 MR. WILSON: I think what -- we
13 really need to look at the connection between
14 the size of the lot, regardless of its shape
15 and the 1950s addition, which is causing the
16 nonconforming addition.

17 COMMISSIONER JEFFRIES: Can you
18 bring the mike up? I don't know why, I think
19 I'm just getting older and my hearing is being
20 impacted here.

21 MR. WILSON: I would say it's not
22 so much the shape of the lot. It's the fact

1 that the shape is affecting the size.

2 COMMISSIONER JEFFRIES: The shape
3 is affecting the size.

4 MS. WILSON: Of the whole lot, you
5 mean?

6 MR. WILSON: Because of that
7 slice, we have a lot that is 5 feet -- that if
8 it were rectangular, it's 5 feet shorter than
9 our neighbors to the west.

10 COMMISSIONER JEFFRIES: Okay.

11 MR. WILSON: Therefore, building
12 the 1950s addition out to the same line as the
13 two neighbors means that whether they knew it
14 or not, they built-out to 62 percent of lot
15 occupancy, that, in effect, stole FAR from the
16 third floor.

17 COMMISSIONER JEFFRIES: Now, the
18 Office of Planning also said that, you know,
19 you could perhaps look at, you know, doing a
20 smaller room at the top floor. Why would you
21 not accept or look at that particular option?

22 MR. WILSON: The Zoning

1 Administrator's memorandum says where FAR is
2 exceeding -- limited by 65 square feet.

3 COMMISSIONER JEFFRIES: Uh-huh.

4 MR. WILSON: And by my
5 calculations, that leaves us with a room of
6 about 80 square feet. It's not a very large
7 bedroom. Yes, barely more than 8 x 8.

8 COMMISSIONER JEFFRIES: So you
9 think a smaller bedroom, I mean, that the
10 smaller bedroom would be an inferior bedroom?

11 MR. WILSON: Inferior bedroom and
12 it would affect the functionality of our home.
13 It is not a "real bedroom" at that size.

14 COMMISSIONER JEFFRIES: Okay.

15 MR. WILSON: Not to mention we
16 also have difficulties with nonconforming,
17 potential nonconforming courts at the third
18 floor. We have got more exterior wall that we
19 have to build, which adds costs. The most
20 prudent thing to do in most row house
21 situations is to build from lot line to lot
22 line and not get into these odd shapes and,

1 you know, pushing in and out.

2 COMMISSIONER JEFFRIES: Okay. So
3 give me a list of all the practical
4 difficulties.

5 MR. WILSON: Okay. The practical
6 difficulties are --

7 COMMISSIONER JEFFRIES: I mean,
8 you don't have to read. I just want you to
9 one, two, three.

10 MR. WILSON: That we wouldn't have
11 a suitably sized bedroom.

12 COMMISSIONER JEFFRIES: Okay. One
13 is a bedroom, inferior bedroom.

14 MR. WILSON: It would not,
15 depending on the scenario, be an appropriate
16 shape as well.

17 COMMISSIONER JEFFRIES: That
18 wouldn't tie to the first one?

19 MR. WILSON: The bedroom as
20 designed is about 8 feet wide and about 16
21 feet long, some of which we can use for a
22 closet.

1 COMMISSIONER JEFFRIES: Okay.

2 MR. WILSON: Because of the split-
3 level condition that I talked about earlier,
4 an 8 x 8 room would be kind of an orphan by
5 itself and there is -- you really couldn't
6 have a closet that was adjacent to that as
7 well.

8 COMMISSIONER JEFFRIES: Are you
9 still on the first point? The first one?

10 MR. WILSON: Yes.

11 COMMISSIONER JEFFRIES: Okay.

12 MR. WILSON: So it's size and
13 shape of bedroom. The second difficulty is
14 that the potential for a nonconforming court
15 on the third floor.

16 COMMISSIONER JEFFRIES: Okay.

17 MR. WILSON: For pulling back from
18 the neighbors. The third point is that our
19 rear facade on the third floor, because it is
20 pushed back, is less than optimal for a lot of
21 reasons, especially in the wintertime it can
22 be very dark, because the house to our -- the

1 house to the west is actually a few feet
2 taller. You can see it there, so we do get
3 some shadows there from the adjacent house.

4 COMMISSIONER JEFFRIES: So wait,
5 wait. I'm not following that third one. Say
6 it again.

7 MR. WILSON: Okay. This house is
8 a little higher than ours.

9 COMMISSIONER JEFFRIES: Right.

10 MR. WILSON: You can see, so it
11 does cast much more of a shadow across the
12 facade.

13 COMMISSIONER JEFFRIES: Okay.
14 Okay.

15 MR. WILSON: Especially when the
16 sun is low, that facade is in shadow for a
17 good bit of the day in the wintertime.

18 COMMISSIONER JEFFRIES: Okay.
19 Okay. So those are the --

20 CHAIRPERSON MILLER: And what's
21 your point about the shadow? If you don't get
22 the relief or if you do get the relief, how is

1 it different?

2 MR. WILSON: The fact that it is
3 pulled back from the two adjoining houses
4 means that it spends a lot of the day in
5 shadow, especially in the winter months.

6 MS. WILSON: Can I just add to
7 that? If we build-out and this floor is flush
8 with this floor, we're going to have three
9 windows across the facade. I'm sorry. I'm
10 just -- Paul is trying to say that considering
11 the existing mansard condition --

12 COMMISSIONER JEFFRIES: Right.

13 MS. WILSON: -- the back wall of
14 the third floor is recessed in --

15 COMMISSIONER JEFFRIES: Right.

16 MS. WILSON: -- from the walls to
17 the north or to the east and the west, which
18 means that that part of the house is quite
19 dark, especially in the winter. If we fill
20 out this bedroom so that this third floor is
21 flush with the first and second floors and the
22 garden room --

1 COMMISSIONER JEFFRIES: Um-hum.

2 MS. WILSON: -- that means we get
3 three large windows across the top, which will
4 considerably increase light in the interior as
5 well as ventilation.

6 COMMISSIONER JEFFRIES: All right.

7 MS. WILSON: This facade will also
8 conform architecturally in terms of its
9 massing and the line to all the other
10 structures. All the other structures have a
11 flat facade.

12 COMMISSIONER JEFFRIES: But if you
13 pulled that wall -- I mean, I'm just
14 technically speaking.

15 MS. WILSON: That's okay.

16 COMMISSIONER JEFFRIES: If you
17 pulled that wall back, the addition on the
18 third floor, you pulled it back 3 feet or 4
19 feet, you can still put those windows there,
20 right?

21 MS. WILSON: Except if you look at
22 the section, if we pull the wall back so it's

1 only --

2 COMMISSIONER JEFFRIES: Right,
3 right.

4 MS. WILSON: You're going to have
5 a bedroom that's 6 feet or 8 feet wide.

6 COMMISSIONER JEFFRIES: Right,
7 right.

8 MS. WILSON: That's not even room
9 for a double bed.

10 COMMISSIONER JEFFRIES: Yes, see,
11 I guess that to me is your number one. It
12 goes back to number one.

13 MS. WILSON: Okay.

14 COMMISSIONER JEFFRIES: Your three
15 is like your one, to me, in terms of, you
16 know, you just won't have a functional, you
17 know, bedroom.

18 MS. WILSON: You can't use that
19 room for anything. If it doesn't come out and
20 it's not, what is it 8 x 16?

21 COMMISSIONER JEFFRIES: You can
22 use it as an office.

1 MS. WILSON: Not with all the
2 books we have.

3 COMMISSIONER JEFFRIES: Okay.

4 MS. WILSON: And not with Paul's
5 drafting table and not with all -- you know.
6 Okay. Go ahead. Could I just make a couple
7 of points or do you have something else? Is
8 that okay? Yes, could I? Well, do you want
9 to talk about practical difficulties or
10 enhancement of the property?

11 COMMISSIONER JEFFRIES: I'm sorry,
12 I just want to talk about practical
13 difficulties.

14 MS. WILSON: Okay. That's fine.
15 That's fine. Let me just say a couple of
16 things about that. I don't know if this
17 counts as a practical difficulty. It is a
18 practical issue. This mansard roof is falling
19 off. It's open to the air.

20 COMMISSIONER JEFFRIES: Um-hum.

21 MS. WILSON: We have a variety of
22 creatures of all types mammal and bird and

1 otherwise living up here.

2 COMMISSIONER JEFFRIES: Um-hum.

3 MS. WILSON: This is aluminum
4 siding that has rotten wood behind it. These
5 windows all are surrounded with rotten wood.
6 And we get unbelievable drafts in the
7 wintertime. The practical difficulty with the
8 existing structure is that it's falling off
9 and we have to do something. Not only does it
10 look terrible, it's really impractical. And
11 we have to do something to improve it.

12 Paul was discussing in terms of
13 potential building out on the cellar level,
14 right? Which would mean we would have to
15 extend this area.

16 COMMISSIONER JEFFRIES: Um-hum.

17 MS. WILSON: So in lieu of
18 extending this wall out so it's flush with the
19 rest of the facade --

20 COMMISSIONER JEFFRIES: Right.

21 MS. WILSON: -- there is the
22 potential to build a room out on the garden

1 level. The practical difficulty with that is
2 take a look at this tree. Let me give you
3 some perspective on its size. It's caliper is
4 3 feet, which dates it to between 140 and 150
5 years old. It was a sapling when Abraham
6 Lincoln was President.

7 Its root base extends several feet
8 in every direction. If we were to build-out
9 with the proper footings and everything else
10 to meet code on this level, it would
11 jeopardize this tree. There are only a few
12 hundred trees of this size in the District of
13 Columbia and they are especially rare in old
14 neighborhoods, residential neighborhoods like
15 Capitol Hill.

16 I will refer you to the Casey Tree
17 Endowment, which has done an inventory of
18 mature trees in the District. And I'm sure
19 you all know that the District has lost 70
20 percent of its tree canopy in the past three
21 years. This is an extraordinary treasure.

22 COMMISSIONER JEFFRIES: Um-hum.

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1 MS. WILSON: It provides shade,
2 you know, all sorts of benefits that we all
3 know from trees and we don't want to
4 jeopardize it in any way. The practical
5 difficulty here is not only an architecturally
6 unappealing facade, but the real danger is
7 endangering that tree.

8 COMMISSIONER JEFFRIES: Okay.

9 MS. WILSON: Let me also call your
10 attention -- oh, that's difficulty. Is that
11 good or did you want me to -- in terms of
12 practical difficulty, would you like us to
13 elaborate on any other points?

14 COMMISSIONER JEFFRIES: I just
15 want you to make the case very succinctly in
16 terms of the list of things that you consider
17 to be practical difficulties, because from
18 what I --

19 MS. WILSON: Number one --

20 COMMISSIONER JEFFRIES: -- see,
21 this case swings right there.

22 MS. WILSON: Okay. Let me try to

1 be succinct. Number one, if we don't do the
2 third floor as we have designed, we're going
3 to have a room that is impractical as a
4 bedroom or as an office.

5 COMMISSIONER JEFFRIES: Got that.

6 MS. WILSON: We want a room that
7 is practical that will enhance our living
8 space and the functionality of the house.

9 COMMISSIONER JEFFRIES: Okay.

10 MS. WILSON: If we build it
11 according to right, we will jeopardize the
12 historic fabric inside, which we would have to
13 reconfigure steps and do all these other
14 things, which will add to the cost of the
15 renovation, which is already significant. If
16 we build --

17 CHAIRPERSON MILLER: Could --

18 MS. WILSON: Okay.

19 CHAIRPERSON MILLER: -- you
20 elaborate on that? That's a new point you are
21 making.

22 MS. WILSON: Well --

1 CHAIRPERSON MILLER: About what do
2 you mean the historic fabric inside?

3 MS. WILSON: If -- go ahead. Is
4 there a better --

5 MR. WILSON: The third floor plan.

6 MS. WILSON: The third floor plan,
7 I know.

8 MS. MONROE: Madam Chair, can I
9 just say one thing?

10 CHAIRPERSON MILLER: Yes.

11 MS. MONROE: To direct this a
12 little bit, just so you know, I think you're
13 doing the right thing. What you need to show
14 is why it would be practically difficult for
15 you to stay within the parameters of the
16 Zoning Regulations, such as what your --

17 MS. WILSON: Okay.

18 MS. MONROE: In other words, if
19 you stayed within what the Zoning Regulations
20 say you have to, okay, you would have run into
21 practical difficulty, such as cost and things
22 like that. That's what we are after.

1 MR. WILSON: One of the things is
2 if you have a room that pulls back from the
3 two neighbors, you are, in a sense, increasing
4 the amount of exterior wall. You are also
5 adding a little tiny roof somewhere in there.
6 That's if all the court issues can be worked
7 out, so we don't end up back here again.

8 It also becomes sort of a
9 maintenance headache. I have noticed from our
10 existing roof that it becomes a repository for
11 leaves and trash and everything else, because
12 the way the prevailing winds work, that this
13 creates an area where things tend to
14 accumulate. So if we had a little court, even
15 if we were to make it the correct dimensions,
16 I think that would tend to become a
17 maintenance headache.

18 And without a door or some other
19 access to it, it's just sort of a dead nothing
20 space out there that you really can't use for
21 anything besides a place to --

22 CHAIRPERSON MILLER: I just want

1 to follow-up.

2 MR. WILSON: -- remove leaves.

3 CHAIRPERSON MILLER: I'm sorry, I
4 might have interrupted you. I thought that
5 Ms. Wilson made a point that you were
6 constrained from doing some other type of work
7 or reconfiguration because of protecting
8 historic interior situation.

9 MR. WILSON: Oh.

10 MS. WILSON: Yes.

11 MR. WILSON: I think that has to
12 do with the stairs. This is the existing
13 original steps that come up. And the way our
14 stair works is it comes up. You will have a
15 landing and then you go up a few more steps to
16 the upper level. What we are proposing is the
17 bedroom would be at this landing level.

18 If we were to try to pull the
19 bedroom into this construction somehow, we
20 would potentially end up disturbing this
21 original set of steps. So that's kind of
22 where I think what she was alluding to.

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1 MS. WILSON: In other words, we
2 would have to modify significantly the stair
3 core, which if we build-out to the back wall,
4 we don't have to do. That would be difficult.
5 It would compromise the historic -- we've very
6 lucky that we have extensive original historic
7 fabric and we would have to rip it all out to
8 build the room according to the FAR.

9 COMMISSIONER JEFFRIES: Okay. So
10 for me, you know, looking at what is matter-
11 of-right and saying that if I build it out as
12 a matter-of-right, you know, I'm going to have
13 an inferior bedroom or office at the top.
14 What if you build-out the top floor and then
15 did not build out the bottom floor to stay
16 within the FAR matter-of-right?

17 MS. WILSON: It would be the same
18 problem. We would have a room on the bottom
19 floor that would be, you know. Go ahead.

20 MR. WILSON: If I could
21 interject, that's actually a cellar level, so
22 that doesn't count against the FAR.

1 COMMISSIONER JEFFRIES: Oh, so
2 that's considered cellar?

3 MR. WILSON: Yes. So that's a
4 freebie, essentially.

5 COMMISSIONER JEFFRIES: Oh, okay.
6 Okay. Well, fine.

7 MS. WILSON: And again, let me
8 reiterate. Even though that does not
9 technically count, if we were to build it so
10 there was that setback on the cellar level, we
11 would have the same problem. A room that
12 really can't be used for anything. It would
13 be the same dimension as the room on the third
14 floor. It would be, you know, barely 6 feet
15 wide. You couldn't use it as a bedroom or an
16 office. It would basically be an unusable
17 space.

18 CHAIRPERSON MILLER: Are you using
19 it now though?

20 MS. WILSON: No, because it's all
21 open. If you look at the cellar level, if I
22 can call your attention to the existing

1 conditions, this is where the back door is.
2 Oh, I'm sorry, whoops. The back door is here.
3 There is a structural pier here. This is open.
4 Okay. And so what we are proposing is to
5 close it in and make a room here that could
6 serve as an office or a bedroom, maintain the
7 architectural facade to a consistent line all
8 the way up and then have a room that could
9 also be used as a bedroom or an office.

10 Does that make sense? Is that
11 clear?

12 CHAIRPERSON MILLER: Yes, how
13 about the top floor though, are you using that
14 now, the third floor?

15 MS. WILSON: There is nothing out
16 there. There is a --

17 CHAIRPERSON MILLER: No, no. I
18 know where it is now. Like well, where it is
19 now, you have something on the third floor.
20 It's setback, right?

21 MS. WILSON: We have a front
22 bedroom here.

1 CHAIRPERSON MILLER: Front
2 bedroom, okay.

3 MS. WILSON: And then we have a
4 tiny -- this is a door to a closet. And we
5 have a tiny office that barely has room for a
6 desk and a filing cabinet.

7 CHAIRPERSON MILLER: Okay.

8 MS. WILSON: There is no room for
9 anything else. It's not really a proper room.

10 CHAIRPERSON MILLER: Okay. And
11 how long have you lived there? Just curious.

12 MS. WILSON: We purchased the
13 house in November of '98. It was carved into
14 apartments at that time. We turned it back
15 into a single family and moved in in April
16 '99. So we have owned it almost nine years
17 and we have been trying to restore it to its
18 historic integrity ever since then in bits and
19 pieces, slowly, but surely.

20 CHAIRPERSON MILLER: Okay. I want
21 to ask you the topography question again. If,
22 just so that I get it, you didn't have this

1 little wedge into your property and it was a
2 straight line across like these other
3 neighbors, would you be able to do as a
4 matter-of-right what you are seeking to do
5 with your plans now? Would you have an FAR
6 problem?

7 MR. WILSON: If we had a lot that
8 was 17 x 70? Is that the question?

9 MS. WILSON: Right.

10 CHAIRPERSON MILLER: Is that what
11 your neighbors --

12 MS. MONROE: If it was like all
13 the others on the block.

14 MR. WILSON: Oh, if we had a lot
15 that was the same. What really controls the
16 FAR and the lot occupancy is not so much the
17 width of the lot as the depth. And if our lot
18 were exactly as deep as the neighbors, then we
19 would actually be under what we could build by
20 matter of right. You can see that on the
21 first drawing I submitted shows the 60 percent
22 line for those lots next door and they are

1 actually a little bit less than 60 percent
2 occupancy.

3 MS. WILSON: So you're saying that
4 we wouldn't even be here if we had a different
5 shaped lot, right?

6 MR. WILSON: Yes.

7 MS. WILSON: Let me just reiterate
8 that. If we had a lot that conformed to the
9 sizes of every other lot on the block that was
10 17 feet wide and 70 feet deep, we would not be
11 here, because we would not need a variance,
12 because we would conform to the FAR. Is that
13 pretty clear?

14 CHAIRPERSON MILLER: Okay. I just
15 wanted to pin down also how you are different
16 from your neighbors. You're different from
17 them based on the topography of your lot, your
18 lot size.

19 MR. WILSON: That's correct.

20 CHAIRPERSON MILLER: You are
21 different from them also in that they are all
22 built-out and your's is the only one that

1 isn't in that line. Is that correct?

2 MR. WILSON: That's correct. All
3 the way from about 319 C Street through 333,
4 they are all built to the same line.

5 CHAIRPERSON MILLER: Okay.

6 MR. WILSON: I think the Office of
7 Planning has a diagram that shows that.

8 CHAIRPERSON MILLER: Okay. Is
9 there more that you want to add right now?

10 MR. WILSON: I don't think so,
11 unless there --

12 MS. WILSON: Pardon me, Madam
13 Chair, but does Zoning consider what it will
14 look like when we are done? Is it only a
15 question of the FAR formulas and so on? I
16 just want to call --

17 CHAIRPERSON MILLER: No, it does
18 consider what it will look like, because we
19 also look at the third prong is "no
20 substantial detriment to the public." So
21 that --

22 MS. WILSON: May I answer that,

1 Madam Chair?

2 CHAIRPERSON MILLER: Um-hum.

3 MS. WILSON: I just want to call
4 your attention to the proposed design of the
5 finished facade. This is the existing first
6 floor. This is the kitchen. This is the
7 existing second floor. It's a sunroom with
8 new windows. In the current condition, the
9 windows are rotten and falling out. This is
10 the facade of the third floor, which is
11 pulling out that bedroom adding three windows.
12 And then this is the garden room on the
13 basement or the cellar level that has a door
14 that leads out to our garden and two windows.

15 Paul has made every effort to make
16 sure that this is historically appropriate, in
17 terms of the size and dimension and proportion
18 of window openings to facade. You will notice
19 all the proposed windows are two over two,
20 which complies with the original historic
21 windows on the back of the -- on the front of
22 the house.

1 It is architectural uniform. It
2 has appropriate historical trim and
3 embellishments. It's very clear as you have
4 noted from the documents that this facade is
5 very visible from North Carolina Avenue. I
6 think you would all agree that it looks pretty
7 terrible, despite the problems of it falling
8 down and so on. It really looks awful.

9 And we are proposing a facade that
10 is not only architecturally unified, it will
11 have a substantially improved appearance from
12 North Carolina Avenue, which is -- you know,
13 we're three blocks from the Capitol. It is a
14 very busy street. And I think that will be
15 not a detriment to the neighborhood, but a
16 significant improvement to the neighborhood.

17 Not only will it help us, in terms
18 of increasing our floor space and, frankly,
19 our office space, since we both have offices
20 in our home, but it will contribute
21 significantly to enhance the community. It is
22 not noted in the record, but a couple of the

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1 members of the ANC, who reviewed the plans and
2 approved it, commended Paul on his exceptional
3 architectural design for its beauty, its unity
4 and its potentially positive impact to the
5 neighborhood as a whole.

6 Do you have anything to add?

7 COMMISSIONER JEFFRIES: And that
8 concludes your testimony.

9 MS. WILSON: Unless you want me to
10 keep going.

11 COMMISSIONER JEFFRIES: No, no.

12 MS. WILSON: I'll be glad to.

13 COMMISSIONER JEFFRIES: No, no.

14 CHAIRPERSON MILLER: You'll have a
15 chance for closing and everything.

16 MS. WILSON: Paul is going to do
17 the closing.

18 CHAIRPERSON MILLER: Okay. Then I
19 think we can turn to Office of Planning.

20 MR. JESICK: Thank you, Madam
21 Chair and Members of the Board. My name is
22 Matt Jesick. As has been noted, the applicant

1 is seeking two areas of zoning relief. One is
2 a special exception for lot occupancy under
3 section 223 and I think I can just rest on the
4 record for that part of the Office of
5 Planning's analysis, but if the Board wants me
6 to go into that, I would be happy to.

7 The second area of zoning relief
8 that has been requested is a variance to the
9 maximum FAR in the Capitol Interest Overlay.
10 The Capitol Interest Overlay limits FAR to 1.8
11 and the applicant is proposing 1.86. And as
12 you know, there is a three part test for all
13 variance relief and it has been discussed
14 already. I'll just go through the Office of
15 Planning's analysis.

16 The first part of the test states
17 is the property unique or is there some other
18 exceptional circumstance associated with the
19 property? As has been noted, the rear lot
20 line is at a very unusual angle on this
21 property. Not only does that create an
22 unusual shape, it also reduces the lot area

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1 for this particular lot. So certainly the lot
2 is unique.

3 And the second part of the tests
4 asks does that uniqueness, does it impose a
5 practical difficulty that is unnecessarily
6 burdensome to the applicant? And the Office
7 of Planning answers that question with no,
8 that the effects of the smaller lot area are
9 not unnecessarily burdensome to the applicant.

10 While the FAR limit would reduce
11 the potential floor area for the house, that
12 does not necessarily mean that it is
13 unnecessarily burdensome to have that smaller
14 unit. It would still be a viable unit without
15 the extra bedroom.

16 The third part of the test asks
17 can relief be granted without impacts to the
18 public good or without impairing the intent of
19 the Zoning Regulations? I think we can
20 definitely say there would be no impact to the
21 public good whatsoever. The addition will not
22 extend beyond the existing building line. It

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1 will not impact light or air to neighboring
2 properties.

3 Whether it will impair the intent
4 of the Zoning Regulations, I think we can also
5 say no, it will not. Although, the FAR
6 regulations generally intend to create a
7 relationship between the size of the lot and
8 the size of the building on that lot, the
9 greater intent of the Zoning Regulations is to
10 prevent overcrowding in residential districts,
11 and specifically, in the Capitol Interest
12 Overlay, to maintain the scale of those
13 neighborhoods on Capitol Hill that fall under
14 the overlay.

15 And this application would not
16 materially change the scale of the
17 neighborhood in any way. So although the
18 Office of Planning would like to support the
19 application, we cannot fully support the
20 variance relief requested, because the second
21 part of the variance test has not been met.

22 So I would be happy to take any

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1 questions.

2 COMMISSIONER JEFFRIES: So you
3 didn't find any of the testimony compelling as
4 it relates to practical difficulty?

5 MR. JESICK: Well, as I stated,
6 the FAR will certainly limit the floor area
7 potential for the house.

8 COMMISSIONER JEFFRIES: For the
9 bedroom?

10 MR. JESICK: Yes.

11 COMMISSIONER JEFFRIES: Um-hum.

12 MR. JESICK: They could
13 potentially have a smaller room or no room on
14 the third floor. But the test asks does that
15 create an unnecessarily burdensome practical
16 difficulty for the applicant. And in the
17 Office of Planning's view, the desire for a
18 larger house with an extra bedroom does not
19 necessarily create an undue hardship or excuse
20 me a practical difficulty for the applicant.

21 COMMISSIONER JEFFRIES: So,
22 effectively, to stay within matter-of-right,

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1 they should just, you now, perhaps deny
2 themselves a room. They don't really need the
3 room. It's not like it's preventing them
4 from, you know, the enjoyment of their space
5 by not having this room?

6 MR. JESICK: The house would still
7 be a viable residential unit without that
8 extra bedroom.

9 COMMISSIONER JEFFRIES: Okay.

10 CHAIRPERSON MILLER: Office of
11 Planning is making a judgment on the nature of
12 the practical difficulty. Do you see that
13 they have a practical difficulty, but that it
14 doesn't rise to the level, in your opinion, of
15 being unduly burdensome?

16 MR. JESICK: I think that's a fair
17 statement. Obviously, as the applicant has
18 testified, if they were to build a room of
19 some dimension, there might be structural
20 difficulties. There might be maintenance
21 issues. So there would be some sort of burden
22 if the room were to be smaller. So, yes, it

1 may be a matter of degree to whether that
2 rises to the level of unnecessarily
3 burdensome.

4 CHAIRPERSON MILLER: What's your
5 opinion about whether or not the deviation of
6 .06 in this 1.86 FAR is de minimis or not?

7 COMMISSIONER JEFFRIES: Given the
8 context, I mean, you know, maintaining the
9 rear wall continuity and all that.

10 MR. JESICK: Certainly there would
11 be no impact to adjacent property owners or
12 the public in general if that were -- if it
13 were built as planned. The Zoning
14 Administrator, I believe, has flexibility
15 within 2 percent of whatever limit is imposed.
16 In this case it's 3.2 percent, so I believe
17 that would be slightly beyond what would be
18 considered a minor change.

19 MR. WILSON: May I interject?

20 CHAIRPERSON MILLER: Under that --
21 okay. No, we'll get back to you.

22 MR. WILSON: Okay.

1 CHAIRPERSON MILLER: Under that
2 analogy, even though the Zoning Administrator
3 doesn't have it with respect to the FAR,
4 correct? It's my understanding that he has
5 that leeway with respect to other areas.

6 MR. JESICK: Yes, I'm using that
7 analogy though.

8 CHAIRPERSON MILLER: Yes, okay.
9 Is it your opinion that these practical
10 difficulties regardless of what level they
11 rise to come from somewhere or are related in
12 some way to the topography of the property?

13 MR. JESICK: No. I wouldn't say
14 topography generally. I think the argument
15 that has been made is that the lot is smaller
16 and that is indeed the case. It's smaller
17 than the neighboring properties, because of
18 the way the back corner of the lot has been
19 cut off. But I think the practical difficulty
20 has to be phrased in such a way that it is
21 practically difficult to remain under the FAR
22 limit. And in the Office of Planning's view

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1 that has not been demonstrated.

2 COMMISSIONER JEFFRIES: For one,
3 I'm not, at this point, inclined to fully
4 agree with the Office of Planning on this one.
5 I mean, we'll get to this. I mean, until I
6 hear something in addition, I'm not so
7 compelled to deny this application just based
8 on this. I think it's a technicality. I
9 think it's very de minimis and I think the
10 result here is going to be absolutely much
11 improved.

12 I understand, you know, that the
13 variance test we need to be very firm and
14 close and rigid around it, but I would agree
15 that, particularly in terms of the shape of
16 the lot and in the context in terms of where
17 they are located, the shape of their lot, you
18 know, puts them at somewhat of a disadvantage
19 to be able to, you know, have a full enjoyment
20 no their house and build-out and so forth
21 based on the shape of the lot.

22 So I do see a nexus between the

1 shape of the lot reducing their lot size and
2 how that impacts on their ability to really
3 get the full use and enjoyment of their house,
4 particularly in the context. So, Madam Chair,
5 I just wanted to put that out there, at least
6 from where I sit. I do not concur with the
7 Office of Planning.

8 CHAIRPERSON MILLER: Okay. I
9 think we'll get to that later.

10 COMMISSIONER JEFFRIES: I didn't
11 want to jump ahead, but I just --

12 CHAIRPERSON MILLER: Yes, thank
13 you. Yes, Mr. Loud?

14 BOARD MEMBER LOUD: I just wanted
15 to ask the Office of Planning for several
16 examples or actually not even several, just
17 one or two examples of what would, in your
18 mind, qualify as a practical difficulty with
19 this set of facts. You having testified that
20 their inability to have a bedroom that's
21 functional, that has a closet, for example,
22 that can get a certain size bed in it is not

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1 a practical difficulty.

2 But what would you see as a
3 practical difficulty in this specific
4 scenario? What could they do, in your mind,
5 to make -- to qualify as a practical
6 difficulty?

7 MR. JESICK: I'm not sure that
8 there is something that they could do to
9 qualify for a practical difficulty. I think
10 that they have to show why they must exceed
11 the FAR limit.

12 BOARD MEMBER LOUD: Is there
13 anything in your experience or your review or
14 your reflection on this case that would meet
15 that standard?

16 MR. JESICK: No, I don't think so.
17 I mean, I could give maybe a different example
18 of where lot dimensions might entirely
19 preclude the development of any unit on say a
20 very narrow lot. In that case, that would be
21 a practical difficulty. In this case, we have
22 a unit, a flat actually, that is viable.

1 There are two bedrooms in the house. So we
2 feel that that level of unnecessary burden has
3 not been met.

4 BOARD MEMBER LOUD: Thank you.

5 COMMISSIONER JEFFRIES: So
6 effectively, what you're saying is that they
7 really need not do anything? That they really
8 -- I mean, in terms of this should really stay
9 as it is? I mean, because they are saying
10 that if they get a smaller, you know, bedroom
11 or office, I mean, it's not going to be
12 functional. So, you know, what's the point in
13 between?

14 MR. JESICK: Well, in our report,
15 we, you know, laid out maybe a few options.
16 We were just looking to perhaps somehow find
17 a middle ground. If a room is going to be
18 built, certainly I don't think it makes a
19 difference in terms of impact to neighbors
20 whether it is 8 x 8 or 17 x 8.

21 COMMISSIONER JEFFRIES: But the
22 costs involved in building a -- I mean, there

1 needs to be some type of benefit. I mean, I
2 guess they could build a small closet up there
3 and stay within FAR, but, you know, what would
4 building an additional closet do in terms of
5 appreciation?

6 I guess what I hear, unless you
7 are telling me otherwise, it sounds like you
8 guys are effectively saying that they really
9 should not build anything up here. I mean,
10 what are your options?

11 MR. JESICK: Well, they could
12 build a smaller room. The applicant has
13 testified that that would not be practical.

14 COMMISSIONER JEFFRIES: Like what
15 kind of room? Like an office? Because they
16 are saying that they couldn't even use it as
17 a bedroom.

18 MR. JESICK: Yes, some other
19 office or an add-on to the study that's
20 already on the third floor. They could put a
21 deck on that level, which would hopefully add
22 value to the home or leave the third floor as

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1 is.

2 COMMISSIONER JEFFRIES: Okay.

3 CHAIRPERSON MILLER: Any other
4 questions from the Board? Do you have any
5 questions for Office of Planning?

6 MR. WILSON: Just as a point of
7 information, the Zoning Administrator has no
8 flexibility on FAR. That only applies to
9 things other than FAR, lot coverage, courts,
10 etcetera.

11 CHAIRPERSON MILLER: Okay.

12 MR. WILSON: I don't think I have
13 any questions, at this time.

14 CHAIRPERSON MILLER: I don't think
15 we have any other questions, do we? And there
16 is no one else here to testify, that I see, in
17 the audience. So it's now up to you for
18 closing arguments. Any other final comments
19 you want to make?

20 MS. WILSON: Thank you, Madam
21 Chair. I just want to conclude by saying that
22 I feel that we have made a reasonably good

1 case for improving our property. We have
2 demonstrated the practical difficulties in
3 terms of the shape of our lot, the limited
4 FAR, the problems of building a different kind
5 of addition that would jeopardize our elm
6 tree, which is a further unique situation, as
7 I've outlined.

8 I feel that we are asking for, in
9 terms of zoning variance, very little in terms
10 of the Zoning Code, but it would make a great
11 deal of difference for us to have a third
12 properly sized bedroom that could be used as
13 an office or a bedroom. If we conform exactly
14 to what the Office of Planning is requiring,
15 in terms of FAR, we can do neither of those.

16 And I hope that we have
17 demonstrated that point. Again, I also want
18 to reiterate that we propose to improve our
19 house not only for the benefit of our own
20 family, but for the benefit of the
21 neighborhood by improving the appearance
22 significantly and creating a structure that is

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1 new, but conforms very nicely with the
2 architectural integrity of the Capitol Hill
3 Historic District. And that's the close of my
4 comments. Anything else?

5 MR. WILSON: I would just like to
6 add to Christina's comments that we are not
7 asking for any more than I think is absolutely
8 necessary to solve the architectural problems
9 that we have faced. We have lived in this
10 house since 1998. We have had nine years to
11 reflect on what we think needs to happen to
12 this property in order to make it more
13 functional and more enjoyable.

14 To add a separate guest room,
15 right now, we have no guest room in the house,
16 since the third floor is occupied with
17 Christina's office in the "front bedroom." So
18 I think our proposal is a very modest one.
19 And we're not asking for relief that is out of
20 bounds considering the problems we're trying
21 to solve.

22 CHAIRPERSON MILLER: Thank you

1 very much. I think this Board is ready to
2 deliberate on this today. I think we might as
3 well do it under a motion and then see how
4 that goes. So I would move approval of
5 Application No. 17628 of Paul and Christina
6 Wilson, pursuant to 11 DCMR section 3103.2,
7 for a variance from the floor area ratio
8 limitations under subsection 1203.3, and
9 pursuant to 11 DCMR section 3104.1 and 1202,
10 a special exception to allow an addition to an
11 existing flat under section 223, not meeting
12 the lot occupancy requirements, that being
13 section 403, at premises 323 C Street, S.E.
14 Do I have a second?

15 BOARD MEMBER ETHERLY: Second.

16 BOARD MEMBER LOUD: Second.

17 BOARD MEMBER ETHERLY: I'll defer
18 to my colleague, Mr. Loud.

19 BOARD MEMBER LOUD: Second, Madam
20 Chair.

21 CHAIRPERSON MILLER: Thank you. I
22 guess I would like to begin this. All right.

1 I think I would like to begin this with the
2 variance test, since that's basically what we
3 have been addressing and it's the more
4 difficult one. And basically, it's a three
5 point test.

6 The first test being an
7 exceptional condition of the property, that
8 leads to the second test of practical
9 difficulties and then if we get through those
10 two, that there be no substantial detriment to
11 the public if the relief is granted.

12 So we were exploring what is
13 exceptional about this property and is it
14 connected to the practical difficulty of
15 complying with the FAR. And I believe Mr.
16 Jeffries touched upon this as well that the
17 size of the lot does, and the configuration,
18 in some way affect the FAR in this case.

19 And that not only is it the size
20 of the property, but I believe it's Gill
21 Martin also, it's a Court of Appeals' case,
22 lets us look at the improvements on the

1 property and we're not just looking at a
2 vacant piece of property. We're looking at
3 something that is already there that has
4 specific features, I think, that are different
5 from its neighbors.

6 And one being the size of the lot.
7 One being that it is the only one in the
8 grouping that is not built-out as the others
9 are. It has these gaps that the applicant is
10 trying to fill, at this point. And it also
11 has an historic fabric inside that the
12 applicant needs to work around.

13 Some of these kind of overlap with
14 practical difficulties, but running into the
15 practical difficulties question, which is
16 really the one that we have most focused on,
17 I hear Office of Planning, but I think that
18 Office of Planning is looking at this too
19 strictly and the case law that we look at in
20 the Court of Appeals, specifically Gill
21 Martin, gives the Board discretion to
22 determine what is practically difficult and

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1 what isn't.

2 And it's not one rigid standard.
3 It varies with the nature of the case. And,
4 specifically, in Gill Martin they talk about
5 if something is de minimis in nature, then
6 there is a lesser burden of proof on the
7 applicant. And whether or not this deviation
8 is de minimis compared to the 2 percent of the
9 Zoning Administrator or not, we can make a
10 judgment whether this certainly seems like a
11 small deviation.

12 And that's related to how great a
13 burden the applicant needs to prove. In this
14 case, I think that Office of Planning was
15 looking for way too high a practical
16 difficulty, almost that well, they have a
17 viable house, so they don't need to do this.
18 And I think that that's not quite the right
19 standard here.

20 In Gill Martin the Court talked
21 about BZA having the flexibility to look at
22 the weight of the burden of strict compliance

1 and the severity of the variance requested and
2 then the effect that the proposed variance
3 would have on the overall Zone Plan.

4 And in this case, we did explore
5 practical difficulties and even Office of
6 Planning admitted or acknowledged that there
7 were practical difficulties. I think he was
8 just trying to measure it up against too high
9 a standard. They do have to do something
10 here. The windows are deteriorating. They
11 have to put out money to repair. And the
12 point is, they could put out that money and
13 repair these windows and have something that's
14 not functional at all and that's not really
15 what the law is about.

16 They said that they could not have
17 a functioning bedroom or office unless they
18 came out to that line and deviated slightly
19 from the FAR. They said they couldn't go in
20 to a certain extent, because they needed to
21 protect an historic stairway. They talked
22 about the maintenance issues, which are

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1 practical difficulties if they leave part of
2 the roof exposed. And they talked about, I
3 believe, trying to not build into a tree.

4 So I think that they have specific
5 practical difficulties related to their
6 exceptional condition and it does not need to
7 go to that high standard that they don't need
8 to do this to live there to have a viable
9 house. That's not the issue. The issue is do
10 they have practical difficulties and how high
11 a standard do we want to pose on that related
12 to the relief that's being sought?

13 And the relief that's being sought
14 is pretty minimal. So I think that it's there
15 and Office of Planning, ANC, Capitol Hill
16 Restoration Society, nobody had any concerns
17 with any substantial detriment. And, in fact,
18 it appears to be that it would be an
19 improvement to the property.

20 So for those reasons, I think it
21 meets the variance test. Does anyone want to
22 jump in with more, at this point? Okay.

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1 As far as the 223 goes, there is
2 no evidence of light and air being affected by
3 any neighbors or privacy being unduly
4 compromised. And Office of Planning has gone
5 through this pretty thoroughly. So I think
6 that about covers it.

7 Capitol Hill Restoration Society
8 is in support. ANC-6B is in support. The
9 neighbor, Mr. Susman is in support and there
10 is no opposition in the record at all, except
11 for Office of Planning's concern about the
12 practical difficulty test, which I think we
13 have addressed.

14 Okay. So I think that covers it.
15 And if there's no other comments, I'll call
16 the vote then. And that is all those in favor
17 say aye.

18 ALL: Aye.

19 CHAIRPERSON MILLER: All those
20 opposed? All those abstaining? Okay. Would
21 you call the vote, please?

22 MS. BAILEY: Madam Chair, the vote

1 is recorded as 5-0-0 to approve the
2 application. Mrs. Miller made the motion, Mr.
3 Loud seconded, Mr. Mann, Mr. Etherly and Mr.
4 Jeffries support the motion.

5 CHAIRPERSON MILLER: Okay. And I
6 would also suggest that since there's no party
7 in opposition that we could waive our rules
8 and regulations for issuing a full order and
9 issue a summary order in this case.

10 MS. BAILEY: Summary order.

11 CHAIRPERSON MILLER: Consensus of
12 the Board? Okay. Then that concludes this
13 case. Thank you very much.

14 MS. WILSON: May I ask just one
15 practical question?

16 COMMISSIONER JEFFRIES: Practical?

17 MS. WILSON: Yes, since that's the
18 word of the day. Do we get an official letter
19 stating that we do have approval of the
20 variance, which means we can proceed to permit
21 the next steps?

22 CHAIRPERSON MILLER: You will get

1 what I was referring to as a summary order,
2 which will grant you the relief that you
3 sought, and that should happen within the next
4 few days, I believe.

5 MS. WILSON: Thank you very much,
6 Madam Chair.

7 CHAIRPERSON MILLER: Okay.

8 MS. WILSON: And to the Board.
9 Appreciate it very much.

10 CHAIRPERSON MILLER: You're
11 welcome. If you have any other questions, you
12 can contact the Office of Zoning. Thank you.
13 Okay. Ms. Bailey, do we have any other
14 business on the agenda for the morning?

15 MS. BAILEY: Not for the morning,
16 Madam Chair.

17 CHAIRPERSON MILLER: Okay. Then I
18 think that concludes the morning's business
19 and that the Board is going to take a recess
20 before the afternoon session and come back at
21 1:30. Thank you.

22 (Whereupon, the Public Hearing was

1 recessed at 12:34 p.m. to reconvene at 1:48
2 p.m. this same day.)
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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:48 p.m.

3 CHAIRPERSON MILLER: This hearing
4 will, please, come to order. Good afternoon,
5 ladies and gentlemen. This is the June 19th
6 Public Hearing of the Board of Zoning
7 Adjustment of the District of Columbia.

8 My name is Ruthanne Miller. I'm
9 the Chair of the BZA. Joining me today is the
10 Vice Chair, Mr. Etherly, to my right and to my
11 left is Mr. Loud, the other Mayoral appointee
12 and next to Mr. Loud is Mr. John Mann
13 representing NCPC. Also with us to my left is
14 Ms. Lori Monroe from the Office of Attorney
15 General with a legal intern who is with us
16 this summer and the Office of Attorney
17 General. His name is Bryan Stockton. And
18 next to him is Esther Bushman with the Office
19 of Zoning and Ms. Beverley Bailey with the
20 Office of Zoning.

21 Copies of today's hearing agenda
22 are available to you and are located to my

1 left in the wall bin near the door. Please,
2 be aware that this proceeding is being
3 recorded by a Court Reporter and is also
4 webcast live. Accordingly, we must ask you to
5 refrain from any disruptive noises or actions
6 in the hearing room.

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

14 All persons planning to testify
15 either in favor or in opposition are to fill
16 out two witness cards. These cards are
17 located to my left on the table near the door
18 and on the witness tables. Upon coming
19 forward to speak to the Board, please, give
20 both cards to the Court Reporter sitting to my
21 right.

22 The order of procedure for special

1 exceptions and variances is: One, statement
2 and witnesses of the applicant. Two,
3 Government reports, including Office of
4 Planning, Department of Public Works, DDOT,
5 etcetera. Three, report of the Advisory
6 Neighborhood Commission. Four, parties or
7 persons in support. Five, parties or persons
8 in opposition. Six, closing remarks by the
9 applicant.

10 Pursuant to Section 3117.4 and
11 3117.5, the following time constraints may be
12 maintained: The applicant, appellant, persons
13 and parties, except an ANC, in support,
14 including witnesses, 60 minutes collectively.
15 Appellees, persons and parties, except an ANC,
16 in opposition, including witnesses, 60 minutes
17 collectively. Individuals 3 minutes.

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

1 located is automatically a party in a special
2 exception or variance case.

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

7 The record will be closed at the
8 conclusion of each case, except for any
9 material specifically requested by the Board.
10 The Board and the staff will specify at the
11 end of the hearing exactly what is expected
12 and the date when the persons must submit the
13 evidence to the Office of Zoning. After the
14 record is closed, no other information will be
15 accepted by the Board.

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

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1 deliberating the case.

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

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

11 The Board will make every effort
12 to conclude the Public Hearing as near as
13 possible to 6:00 p.m. If the afternoon cases
14 are not completed at 6:00, the Board will
15 assess whether it can complete the pending
16 cases remaining on the agenda.

17 At this time, the Board will
18 consider any preliminary matters. Preliminary
19 matters are those that relate to whether a
20 case will or should be heard today, such as
21 requests for postponement, continuance or
22 withdrawal or whether proper and adequate

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

6 Does the staff have any
7 preliminary matters?

8 MS. BAILEY: Madam Chair, Members
9 of the Board, to everyone, good afternoon.
10 Yes, we do and it concerns Application No.
11 17594. There was a request for the hearing on
12 this case to be postponed.

13 CHAIRPERSON MILLER: Thank you.
14 That case is listed, at least on my schedule,
15 as third, but I think what the Board would
16 like to do is have that preliminary matter
17 taken care of first, then we can deal with the
18 other matters. So would the parties -- do you
19 want to call that case, Ms. Bailey, 17594, did
20 you call that?

21 MS. BAILEY: 17594. Did you want
22 me to call it?

1 CHAIRPERSON MILLER: Call it for
2 the preliminary matter.

3 MS. BAILEY: Okay. Certainly.
4 Mitchell Stewart Properties LLC on behalf of
5 Donna Hugh, Wilmington Associates LP, pursuant
6 to 11 DCMR 3103.2, for a variance from the
7 court width requirements under section 776, a
8 variance from the transferable development
9 rights 45 degree setback requirements under
10 subsection 1709.20, and a variance from the
11 loading requirements under section 2201. All
12 of this is to allow the development of an
13 office and retail building at premises 2175 K
14 Street, N.W. The property is Zoned C-3-C. It
15 is located in Square 73 on Lot 883 and Lot
16 884.

17 CHAIRPERSON MILLER: Thank you.
18 Okay. My understanding is there is no
19 disagreement about postponing this case and
20 the issue is to when, at least one of the
21 issues, we postpone it. The appeal is
22 scheduled, that is related to this case, for

1 September 21st.

2 MR. EPTING: September 11th.

3 CHAIRPERSON MILLER: September
4 11th? I'm sorry.

5 MR. EPTING: John Epting,
6 Pillsbury Winthrop Shaw Pittman.

7 CHAIRPERSON MILLER: You know, why
8 don't you introduce yourselves for the record
9 while I check this date.

10 MR. HITCHCOCK: Corn Hitchcock on
11 behalf of Westend Place Condominium
12 Association and AMC-2A, which have been
13 admitted as parties in opposition.

14 MR. GELL: I'm Steve Gell. I'm
15 representing Florence Harmon and Tom Schultz,
16 who are condominium owners and who are
17 specifically affected or more particularly
18 affected by the proposed development.

19 CHAIRPERSON MILLER: It is
20 September 11th, I'm sorry.

21 MR. EPTING: Yes. Okay.

22 CHAIRPERSON MILLER: Okay. So the

1 appeal is scheduled for September 11th and one
2 of the issues before us is a request that we
3 schedule the variance case for right after the
4 appeal that afternoon. I don't know if there
5 is anything else you want to add to your
6 letters. We have read what's in your letters.

7 MR. EPTING: I think the letter
8 speaks for itself.

9 CHAIRPERSON MILLER: Okay. I
10 think that the problem with hearing it the
11 same day is that, number one, we don't know
12 how long that is going to take, but, number
13 two, the Board does not always rule on an
14 appeal the day that it hears it. So I think
15 it's impractical for the Board to schedule it
16 that same day.

17 Therefore, I think what we need to
18 do is look for the next available opening for
19 the variance case. And, Mr. Moy, we looked at
20 the schedule last week, the first available
21 opening for new cases was November 13th. Is
22 that still the situation?

1 MR. MOY: Well, we could -- staff
2 would suggest that the Board desire would be
3 the -- actually would be the third case in the
4 afternoon, otherwise, we're looking at
5 November 20th where we could take up either in
6 the morning or in the p.m., afternoon session.
7 So I think those are the desirable choices if
8 it's agreeable with the parties.

9 CHAIRPERSON MILLER: How are your
10 availabilities for either of those dates, to
11 begin with?

12 MR. HITCHCOCK: Both look fine
13 from my standpoint.

14 MR. GELL: Yeah, I'm okay with
15 both dates.

16 MR. EPTING: I am, too.

17 MR. HITCHCOCK: As a footnote, we
18 have some additional individuals who sought
19 party in opposition status. I don't believe
20 they are here today, but we will advise them
21 as well. Do we know if that would be morning
22 or afternoon, Madam Chair? Oh, I'm sorry.

1 CHAIRPERSON MILLER: Yes?

2 MR. HITCHCOCK: Do we know if that
3 would be morning or afternoon?

4 CHAIRPERSON MILLER: Well, okay.
5 If we go to the 20th, I think the calendar is
6 pretty free. Is that correct, Mr. Moy? So
7 it's hard to assess, you know, how long this
8 case is going to take or anything, so if you
9 go to the 20th, it's probably the safer date,
10 because we could be first thing in the
11 morning. You could start off, that's your
12 case. Second in the morning?

13 MR. MOY: It would be second in
14 the morning or first in the afternoon at 1:00.

15 CHAIRPERSON MILLER: Okay. Do you
16 have an opinion on that?

17 MR. EPTING: Yes, I have an
18 opinion, but I'm okay.

19 CHAIRPERSON MILLER: Do you have a
20 preference?

21 MR. EPTING: I have no preference.

22 CHAIRPERSON MILLER: If there's

1 not a preference, we might put you first in
2 the afternoon, but if you have a preference,
3 speak now.

4 MR. GELL: Well, it just occurs to
5 me that if we're on in the morning, we're the
6 first case in the morning, then we'll start
7 right then.

8 CHAIRPERSON MILLER: I agree. I
9 had misspoke though.

10 MR. GELL: The 20th actually --

11 CHAIRPERSON MILLER: I don't think
12 you would be the first case in the morning,
13 right? They would be the third case in the
14 morning?

15 MR. MOY: It would be the second
16 case.

17 CHAIRPERSON MILLER: Second case.

18 MR. GELL: Oh, I'm sorry.

19 MR. MOY: We already have a case
20 scheduled in the morning.

21 MR. GELL: Well, even so, I think
22 that might be better in the morning, the

1 second case, but I don't have a strong, strong
2 opinion on that.

3 CHAIRPERSON MILLER: Okay. That's
4 fine.

5 MR. GELL: A slight preference.

6 CHAIRPERSON MILLER: Let's do
7 that. That's fine. Not hearing from any
8 other preferences, we can put you as second
9 case in the morning on November 20th.

10 MR. EPTING: Thank you.

11 CHAIRPERSON MILLER: Is there
12 another issue with respect to filing of papers
13 with respect to the motion to dismiss?

14 MR. GELL: Madam Chair, yes. We
15 had filed something opposing their motion for
16 the Board to review whether or not they even
17 have to go to the BZA. And we had set a date,
18 I think, a couple of weeks ago for us to
19 revise that and kind of provide a final brief
20 on that.

21 If it's possible for you to set a
22 date fairly close to the time that we're going

1 to have the appeal, like two or three weeks
2 before that, that would be preferable to us.
3 It would give us a little more time and I
4 don't think it will unduly prejudice the other
5 parties.

6 CHAIRPERSON MILLER: You mean
7 close to the time for the variance case or do
8 you -- you said the appeal.

9 MR. GELL: It could be -- it has
10 to be before the variance case.

11 CHAIRPERSON MILLER: Right.

12 MR. GELL: And probably --

13 CHAIRPERSON MILLER: Okay. I
14 thought you said the appeal, but you really
15 mean closer to when -- this is going to be the
16 variance case we're talking about.

17 MR. GELL: It is. It is
18 opposition to the variance case.

19 CHAIRPERSON MILLER: Okay. Okay.

20 MR. GELL: Do we have some issues
21 on appeal? To the extent that we had issues
22 on the appeal, we would file those, obviously,

1 prior to the appeal.

2 CHAIRPERSON MILLER: Right, okay.
3 No, I thought you might have misspoke about
4 when you wanted to file this. But you're
5 talking about filing it in October then or
6 something like that? Closer to the --

7 MR. GELL: That would be
8 satisfactory.

9 CHAIRPERSON MILLER: Do you have
10 an objection to that?

11 MR. EPTING: None.

12 CHAIRPERSON MILLER: What is this
13 document going to be called? It's the revised
14 opposition to the motion to dismiss or what?

15 MR. GELL: It is. It's a joint
16 opposition to applicant's motion to address
17 the Board's jurisdiction and dismiss the
18 application. And well, the other was a
19 request for postponement, but that's already
20 occurred, so that would not be there.

21 CHAIRPERSON MILLER: And, Mr.
22 Epting, is this something that you might want

1 to file a reply to?

2 MR. EPTING: Yes, I would.

3 CHAIRPERSON MILLER: Okay.

4 MR. EPTING: As I remember when we
5 discussed this in April, Mr. Gell mentioned
6 that that had put together I think quickly
7 their motion to postpone and to their
8 opposition and they wanted time to clean it
9 up. And we didn't object to that, but we
10 would like to respond to it.

11 CHAIRPERSON MILLER: Do you object
12 to this?

13 MR. EPTING: No.

14 CHAIRPERSON MILLER: Oh, okay.

15 MR. EPTING: We did not object to
16 it.

17 CHAIRPERSON MILLER: Okay.

18 MR. EPTING: And we just would
19 like to respond to it before the variance
20 hearing.

21 CHAIRPERSON MILLER: Right,
22 exactly. Okay. So we need to schedule this,

1 Ms. Bailey, in time for Mr. Epting to have an
2 opportunity to reply. Do you have any
3 suggestions for the schedule? The hearing is
4 going to be November 20th, we have plenty of
5 time between now and November, but we're
6 talking about giving them time close to the
7 hearing, up to October, it doesn't have to be
8 to the last minute before the hearing, but
9 sometime in October.

10 MS. BAILEY: October 29th, Madam
11 Chair, which is on a Monday, and then the
12 applicant would have perhaps two weeks to
13 respond, that being, or is that sufficient
14 time for the response, two weeks?

15 MR. EPTING: That's fine. That's
16 fine.

17 MS. BAILEY: That being November
18 20th. Is that two weeks, yes.

19 CHAIRPERSON MILLER: November 20th
20 is the hearing date.

21 MR. EPTING: That's the hearing.

22 MS. BAILEY: I'm sorry, November.

1 I'm looking at November 12th and saying the
2 20th. November 12th.

3 MR. EPTING: Okay.

4 MS. BAILEY: So again, the
5 submission would be on October 29th and then
6 the responses November 12th.

7 CHAIRPERSON MILLER: This is
8 pretty wide open. Is that all right with you
9 all?

10 MR. EPTING: That's fine.

11 MR. GELL: Fine.

12 CHAIRPERSON MILLER: All right.

13 MR. EPTING: Thank you.

14 CHAIRPERSON MILLER: I think the
15 only other thing that may be hanging out here
16 is those individuals who weren't here when we
17 did party status. And we gave them -- I guess
18 one of the options was to join with
19 individuals you are representing. I don't
20 know if they did. Do you have an update on
21 that?

22 MR. GELL: I have not spoken to

1 them. They haven't contacted me. They may
2 join with Mr. Hitchcock.

3 MR. HITCHCOCK: Yes, I mean, also
4 with the appeal having been filed, that's a
5 new proceeding. Nobody has filed papers as to
6 that yet. That will come in first.

7 CHAIRPERSON MILLER: We're talking
8 about this case though.

9 MR. HITCHCOCK: Right.

10 CHAIRPERSON MILLER: Yes.

11 MR. HITCHCOCK: Yes. I don't
12 know. I don't have anything really to add to
13 what Mr. Gell said.

14 CHAIRPERSON MILLER: Okay. All
15 right. So we will --

16 MR. HITCHCOCK: I'll work on that.

17 CHAIRPERSON MILLER: I think how
18 we left it was we left that you all would be
19 served with the papers and I guess, I think,
20 they were being served as well or something?
21 Okay. However, we left it before, we can just
22 continue doing the same thing. All right.

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1 MR. GELL: We have been serving
2 them as a matter of course. May I add one
3 more thing? In some of our responses and
4 motions, we indicated that there had been
5 shadow studies that had been done following
6 the shadow studies shown in their application.

7 Now, we have talked to Mr. Epting
8 today about supplying them and he has
9 graciously agreed to go and look and get those
10 and send them to us. So we assume that that
11 will come to us in plenty of time for us to
12 evaluate them and have an expert look at them
13 and so forth in addition to which we are
14 hoping to get some clarification about why
15 they believe that they don't need variances
16 for the loading and for the courts. I believe
17 those were the two.

18 They have responded about why they
19 don't need the variance for the connection and
20 that may still be an issue, but at least they
21 have explained where that is. So that's just
22 to put that on the record and I'm sure Mr.

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1 Epting will do what he can to get us that
2 information.

3 CHAIRPERSON MILLER: Great.
4 Anything else you want to say? Okay. So
5 that's good that you all are talking during
6 this period. Okay. Anything else that we
7 need to attend to in this case?

8 MR. EPTING: Thank you.

9 CHAIRPERSON MILLER: Okay. Thank
10 you. Then we will see you in September.

11 Now that we have concluded that
12 preliminary matter, I think this would be a
13 good time for anyone who is going to be
14 presenting testimony today or think they might
15 be presenting testimony to rise and Ms. Bailey
16 will deliver the oath to you.

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

19 (Whereupon, the witnesses were
20 sworn.)

21 MS. BAILEY: Madam Chair, are you
22 ready for the next case?

1 CHAIRPERSON MILLER: Yes, we are.

2 Thank you.

3 MS. BAILEY: Application No. 17632
4 of Estelle Goldman on behalf of 7-Eleven,
5 Inc., pursuant to 11 DCMR 3104.1, for a
6 special exception to continue the operation of
7 a retail grocery/delicatessen store with
8 basement storage, last approved under BZA
9 Order No. 17021. The application is under
10 subsection 2003.1. It is located in the Foggy
11 Bottom/R-3 District at premises 912 New
12 Hampshire Avenue, N.W., Square 28, Lot 122.

13 CHAIRPERSON MILLER: Thank you.
14 Would the parties, please, come forward in
15 this case and identify yourselves for the
16 record when you are ready.

17 MR. BROWN: Good afternoon, Madam
18 Chair, Patrick Brown from Greenstein, DeLorme
19 and Luchs on behalf of the applicant. With me
20 this afternoon to my left is Nancy Wade, the
21 real estate manager for 7-Eleven. She has
22 been involved with this property almost

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1 throughout the 25 year history of its special
2 exception approval.

3 To my right is Mr. Sam Motamedi
4 and he is the actual franchisee operator of
5 the 7-Eleven and was before the Board back in,
6 I guess, 2004 when you last heard this case.
7 Mr. Etherly and you, Ms. Miller, sat on that
8 case, so we're not starting from scratch.

9 I would point out and I think the
10 record is complete and no need to belabor the
11 matter. This would be the sixth approval of
12 this project over a course of 25 plus years
13 for a special exception. The requested
14 approval is in the same manner as previous
15 approvals. With the only exception that we
16 have asked for a five year approval period,
17 rather than -- the last approval was for three
18 years.

19 You have seen the record. The ANC
20 has supported five years as well as the Office
21 of Planning. We have also incorporated with
22 the exception of the approval period, the

1 exact same conditions which were in the
2 previous BZA order, which arise out of a
3 management agreement that is still in effect
4 dating back to 1997.

5 We have taken those conditions
6 verbatim from the previous order. And you
7 will recall back in the last approval, the
8 Board did not want to incorporate the entire
9 agreement into the Board's order, but just
10 simply to harvest the appropriate conditions
11 and place them in the order. And so we have
12 maintained that.

13 So that I think we have put
14 together as about a neat and clean package as
15 doable in the zoning process and are prepared
16 to have some questions from the Board. We
17 will stand on the record and I think
18 importantly ask for a Bench decision and
19 summary order.

20 CHAIRPERSON MILLER: Okay. Yes, I
21 think this is pretty straightforward. If I
22 recall, I think there were some problems or

1 issues the last time around, but it looks like
2 this time around there's no opposition
3 whatsoever that we see in the record, so it
4 looks like the conditions are working and
5 everything is operating smoothly. And we
6 don't see any evidence of adverse impacts.

7 I have a question. I don't
8 remember why we did this and I don't know
9 whether -- it's not a big issue, but it looked
10 like in our order we set forth all these
11 conditions separate from the management
12 agreement, except for the landscaping. For
13 some reason I think Condition No. 13, yes, it
14 refers to the management agreement. Is there
15 any specific reason for that?

16 It says "Applicant will maintain
17 the exterior landscaping at the property as
18 provided in the negotiated management
19 agreement."

20 MR. BROWN: I don't recall
21 specifically. There was great care taken and
22 I think Mr. Griffis was Chair then. The Board

1 was extremely careful in not incorporating the
2 whole agreement, because the strong view was
3 that there were issues in the agreement, which
4 is still enforceable between the parties, but
5 that went beyond the Board's jurisdiction and
6 the appropriateness of conditions.

7 So beyond that, I don't think I
8 can add anything more, but certainly
9 landscaping is an issue that routinely is
10 before the Board and incorporated in
11 conditions.

12 CHAIRPERSON MILLER: What happened
13 with the landscaping the last few years? Has
14 it improved in the last few years? Anybody
15 want to answer?

16 MR. MOTAMEDI: Sure. Sam
17 Motamedi. I wasn't here during the last
18 meeting, but it still was under the
19 management, so I took over and I took care of
20 the landscaping, even the parts that the city
21 was required to handle, so I took it on my
22 shoulder to take care of all the landscaping

1 myself, because I didn't want to, you know,
2 take any more time, you know, in calling the
3 city for small matters that was supposed to be
4 handled.

5 For example, the shrubs and bushes
6 that was across the sidewalk and stuff, I took
7 it on my shoulder to take care of all that.
8 I planted new trees and flowers and new
9 shrubberies and everything seems to be okay,
10 as far as the neighborhood is concerned.

11 CHAIRPERSON MILLER: Okay. I
12 mean, it seems to be working, so I don't know
13 that we want to upset it or not, but do you
14 have people that, you know, want to see what
15 the conditions are for the 7-Eleven, for the
16 property? Do you have them available for them
17 to look at? Does anybody ask? I mean, has it
18 just been operating so well that that's not an
19 issue or what?

20 MR. BROWN: I guess I'm not
21 following your question.

22 CHAIRPERSON MILLER: Well, okay.

1 What my question goes to is that sometimes we
2 like to incorporate everything, all the
3 conditions in the order, so that if somebody
4 wants to look and see what conditions govern
5 the property, it's all in one place. They
6 look at the order and there it is. And my
7 point about No. 13 was then they have to go
8 look at the management agreement, too.

9 And my question is does anybody
10 even ask to look at these agreements or orders
11 or are things going to smoothly that nobody
12 even asks?

13 MR. BROWN: Well, certainly from--
14 and I've been -- other than Sam who actually
15 runs it and appears day-to-day, I've been the
16 point person in the approval process. And
17 speaking for attending the ANC meeting, there
18 were no complaints or concerns and, in fact,
19 several compliments raised about the, really,
20 non-issues and how smooth the operations are.
21 So that's all I can report.

22 CHAIRPERSON MILLER: Any other

1 questions from anyone? Okay. I think you did
2 an excellent job covering this application and
3 the pleadings. So I don't have any questions,
4 other than those right now. So why don't we
5 turn to the Office of Planning.

6 MR. MORDFIN: Good afternoon. I'm
7 Stephen Mordfin with the Office of Planning.
8 The subject application is in conformance with
9 the provisions of section 2003 of the Zoning
10 Regulations in that the continuation of the
11 existing use only as proposed, no changes are
12 proposed, the use will not adversely affect
13 the present character or future development of
14 the surrounding area or result in deleterious
15 effects provided. It remains in conformance
16 with the list of conditions approved as a part
17 of the last BZA application.

18 The retail grocery/delicatessen
19 use is first permitted by the Zoning
20 Regulations in the C-1 District and the
21 conditions of approval of the last BZA
22 application help to ensure that the use does

1 not become objectionable to the neighborhood.

2 Therefore, the Office of Planning
3 recommends that the subject application be
4 approved, subject to the 13 conditions listed
5 within the staff report. Thank you.

6 CHAIRPERSON MILLER: Thank you.
7 Any questions? Okay. Any questions from the
8 applicant of the Office of Planning? Is
9 anyone from the ANC here for this application?
10 Is there anybody here who wants to testify in
11 support or in opposition to this application?
12 Any other questions from the Board? Mr. Mann?

13 BOARD MEMBER MANN: Well, I have a
14 question that I thought perhaps we should --
15 that you were getting to, but maybe we should
16 address it before we go into deliberation, if
17 we take that direction today. Regarding
18 Condition No. 13, would it be appropriate to
19 ask the applicant if they had a position if we
20 were to strike as provided in this negotiated
21 management agreement from that condition?

22 CHAIRPERSON MILLER: If you want

1 to know and want another opinion on it, you
2 should ask them. Sure.

3 BOARD MEMBER MANN: Then I'm going
4 to ask the applicant if they have a position
5 regarding if we were to strike those words, so
6 that the condition read "Applicant will
7 maintain the exterior landscaping at the
8 property."

9 CHAIRPERSON MILLER: Well, I don't
10 think I would leave it at that.

11 BOARD MEMBER MANN: Well, that's
12 why I'm asking.

13 CHAIRPERSON MILLER: Because you
14 can maintain it in a poor condition. You can
15 maintain it in a good condition.

16 BOARD MEMBER MANN: Well, but I
17 think what you are getting to was as provided
18 in the negotiated management agreement is
19 there are -- I mean, we could -- I was trying
20 to --

21 CHAIRPERSON MILLER: Yes, I know
22 what you're saying.

1 BOARD MEMBER MANN: Right.

2 CHAIRPERSON MILLER: If I were to
3 change that, I guess, I would substitute what
4 it is that we were referring to in the
5 landscaping agreement. Let's see if I can
6 find it.

7 MR. BROWN: In the agreement,
8 Madam Chair, it talks about --

9 CHAIRPERSON MILLER: Here it is.

10 MR. BROWN: -- specifically will
11 ensure that the shrubs along the handicapped
12 railing are --

13 CHAIRPERSON MILLER: Exactly.

14 MR. BROWN: And then it goes
15 further down and seasonal landscaping will be
16 provided, so as to beautify the premises.
17 It's very generic.

18 CHAIRPERSON MILLER: It's very
19 what, generic?

20 MR. BROWN: In the agreement. An
21 answer to Mr. Mann's question, certainly, from
22 our perspective, striking the reference to the

1 agreement in the condition would be acceptable
2 to us. I can't speak for the others. But
3 also, it's important to remember that the
4 agreement dated 1997, in our view, still
5 remains in effect between the parties as a
6 second layer of conditions, so that you've got
7 the Board conditions which are enforceable
8 through the Board procedure and through the
9 Zoning Office as well as what amounts to a
10 private agreement between the parties that
11 certain in 7-Eleven's view is still operative
12 and an obligation of theirs.

13 So I think you could strike the
14 reference to the agreement from the conditions
15 and still be assured that the agreement itself
16 remains effective. So I don't think you would
17 lose anything.

18 CHAIRPERSON MILLER: I guess I'm
19 not sure if this is what you're getting at,
20 Mr. Mann, but at least where I was going was
21 we would substitute language that we would
22 have just been referring to and that would be

1 that "The applicant will ensure that the
2 shrubs along the handicapped railing are of a
3 height that covers the railing completely when
4 see from the sidewalk and that perennial and
5 seasonal landscaping be provided so as to
6 beautify the premises."

7 BOARD MEMBER MANN: Well, I think
8 that would be fine or we could just say
9 something generic like the landscaping shall
10 be maintained in a healthy growing condition
11 or whatever. I just wanted to make sure that
12 while they still had an opportunity to express
13 whether or not there was a reference to a
14 management agreement, that we should get that
15 from them. And I think they just expressed
16 that.

17 CHAIRPERSON MILLER: But what's to
18 -- let me ask the applicant. It's possible
19 that this management agreement could end next
20 year or something. Is there a term?

21 MR. BROWN: It doesn't appear to
22 have a term limit on it. I mean, it was in

1 the context in an earlier approval.

2 CHAIRPERSON MILLER: Um-hum.

3 MR. BROWN: But 7-Eleven is
4 certainly considered it still operative and
5 operates under it and has made that
6 representation both to the community, as well
7 as to this Board. I think incorporating the
8 language, you know, the specific language from
9 the management agreement into the order,
10 rather than a reference to it, is fine.

11 And I think with the caveat being,
12 and I think we can work this out, that the
13 standard should be, you know, using the
14 language as a minimum, not in any way to
15 preclude 7-Eleven or the franchisee from going
16 beyond that. So that would be my only
17 concern.

18 CHAIRPERSON MILLER: So we could
19 say will ensure it at minimum that, correct?
20 Is there another reference to landscaping or
21 is that it that we're looking at? So I would
22 hate to just cite one part if we were to do

1 that and miss something else.

2 MR. BROWN: Well, up above in that
3 same paragraph, you have generic language
4 about paying special regard to maintaining the
5 exterior appearance of the premises consistent
6 with the characteristics as a contributing
7 residential townhouse in the Foggy Bottom
8 Historic District.

9 CHAIRPERSON MILLER: Okay. Yes,
10 Mr. Etherly is saying it looks like we may
11 have included that last time around in
12 Condition No. 10.

13 MR. BROWN: Yes. So otherwise,
14 really all the other conditions have been
15 lifted --

16 CHAIRPERSON MILLER: Yes.

17 MR. BROWN: -- from the order very
18 specifically.

19 CHAIRPERSON MILLER: They have.
20 Yes, okay. Okay. Anything else? Any other
21 comments? Closing remarks?

22 MR. BROWN: Just a Bench decision

1 and summary order would be greatly
2 appreciated.

3 CHAIRPERSON MILLER: Do you want
4 to address the five year term versus the three
5 year term again? That's the change, correct?

6 MR. BROWN: Yes. If you look at
7 the history of this case, the length of the
8 approvals have been up and down once as high
9 as six years and then several at three years.
10 It has been across the board. I think based
11 on the ANC's comments as well as the Office of
12 Planning, and the quiet and satisfied nature
13 of the operation in the last three years, that
14 7-Eleven has proven that they are worthy of a
15 longer period of time.

16 And I think that can be done,
17 certainly, without opposition and without any
18 substantial risk to the community or any of
19 the other participants. And I think it's
20 warranted. Every three years is burdensome to
21 7-Eleven and you strike a balance between the
22 burden and the obligations and I think five

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1 years comes at a good balance between the two.

2 CHAIRPERSON MILLER: Okay. Thank
3 you. Okay. I think that we can deliberate on
4 this application at this time. And I think we
5 might as well do this under a motion. And I
6 would move to approve Application No. 17632 of
7 Estelle Goldman on behalf of 7-Eleven, Inc.,
8 pursuant to 11 DCMR section 3104.1, for a
9 special exception to continue the operation of
10 a retail grocery/delicatessen store with
11 basement storage under subsection 2003.1 at
12 premises 912 New Hampshire Avenue, N.W.

13 BOARD MEMBER ETHERLY: Second,
14 Madam Chair.

15 CHAIRPERSON MILLER: Okay. I
16 think that we can do this one fairly rapidly.
17 Mr. Etherly and I did look at this same
18 application in 2004 when it had more issues
19 and it seems like all the conditions that were
20 put upon it seem to be working and there seem
21 to be no evidence of any adverse impacts from
22 this operation. And, in fact, it has got

1 favorable support from the ANC and Office of
2 Planning and who else?

3 In any event, I also think it
4 would be a good idea to substitute the
5 language when we get to the conditions. Okay.
6 I would recommend that we adopt the same
7 conditions, except with a five year term and
8 that we substitute the language from the
9 management agreement specifically addressing
10 landscaping into our next order, so that all
11 the conditions are clearly set forth in one
12 order. And the substance would be the same.

13 And because they have done so
14 well, I don't see any need for them to have to
15 come back in three years. Others?

16 BOARD MEMBER ETHERLY: No
17 objection, Madam Chair.

18 CHAIRPERSON MILLER: Okay. All
19 right. Then we have a motion on the table to
20 approve the special application of 17632 with
21 the conditions as articulated.

22 All those in favor say aye.

1 ALL: Aye.

2 CHAIRPERSON MILLER: All those
3 opposed? Those abstaining? Would you call
4 the vote, please?

5 MS. BAILEY: Madam Chair, the vote
6 is recorded as 4-0-1 to approve the
7 application. Mrs. Miller made the motion, Mr.
8 Etherly seconded, Mr. Mann, Mr. Loud is in
9 agreement, are in agreement, and there is no
10 Zoning Commission Member present at this time.

11 CHAIRPERSON MILLER: Okay. And I
12 would also suggest that we waive our rules and
13 regulations for a full order in this case and
14 issue a summary order, as there is no party in
15 opposition. And I believe that's the
16 consensus of the Board. Okay. Thank you.

17 MR. BROWN: Thank you very much.

18 CHAIRPERSON MILLER: Thank you.

19 MS. BAILEY: All righty.

20 CHAIRPERSON MILLER: Ms. Bailey,
21 would you like to call the next case, please?

22 MS. BAILEY: Madam Chair, the last

1 case today is the Application of Our Lady of
2 Victory Church, the number is 17625, and it's
3 pursuant to 11 DCMR 3104.1, for a special
4 exception to allow the placement of a
5 temporary classroom modular trailer on an
6 existing private school campus under section
7 206. The property is located in the R-1-B
8 District at 4755 Whitehaven Parkway, N.W.,
9 Square 1374, Lot 4.

10 CHAIRPERSON MILLER: Thank you.
11 Would you introduce yourselves for the record,
12 please?

13 MR. TUMMONDS: Absolutely. Good
14 afternoon. I am Paul Tummonds with Pillsbury
15 Winthrop Shaw Pittman. Also with me here this
16 afternoon is Kate Myers of Pillsbury Winthrop
17 Shaw Pittman as well as Sheila Martinez, the
18 principal of Our Lady of Victory School. We
19 have a very simple and straightforward case
20 here, I'm very happy to say and we would
21 respectfully request to rest on the record.
22 Our pre-statement really goes through what we

1 are proposing to do.

2 As Ms. Bailey mentioned, this is
3 merely for the placement of a temporary
4 classroom modular trailer on the site. The
5 school has been in operation for over 50
6 years. We are well within our student cap
7 from the 1953 order of 260 students. This
8 proposal will not increase the number of
9 faculty, staff or students on-site.

10 We would note three things. We
11 are requesting the --

12 CHAIRPERSON MILLER: Wait a
13 second.

14 MR. TUMMONDS: Sorry.

15 CHAIRPERSON MILLER: I'm sorry.
16 I've just been reminded we do have a request
17 for party status, so we usually do that first.
18 I don't see anyone here who would be
19 requesting it, but let me note for the record
20 we do have one. Were you aware that there was
21 a request for party status?

22 MR. TUMMONDS: Yes, and perhaps

1 I'll have -- Ms. Martinez can talk about that.

2 CHAIRPERSON MILLER: Okay. Let me
3 just -- that is from Ms. Grady Means?

4 MS. MARTINEZ: Mr. and Mrs. Means.

5 CHAIRPERSON MILLER: 2000 48th
6 Street, N.W. So Ms. Means is not here today.
7 Okay. I just wanted to recognize I see that
8 Ms. Gates is here from the ANC. Okay. And
9 we'll call you later. Okay. Okay. Go ahead.

10 MR. TUMMONDS: We are requesting
11 to have this trailer placed on-site for a
12 period of five years, although we hope that
13 the work can be done much quicker than that.
14 I would note that the ANC's conditions of
15 support included including the faculty, or I
16 should call it, the staff of the church in the
17 cap of 35, we would not agree to that
18 condition.

19 The church use is a matter-of-
20 right use. It is not properly, I think,
21 included in the special exception approval. So
22 we would agree to a faculty/staff cap of the

1 school use of 35. And then finally, we would
2 request a Bench decision this afternoon to
3 approve this application, as we have been told
4 by the manufacturer of the trailer that we
5 need to place our order now in order to have
6 it ready when classes resume in the fall.

7 And with that, Ms. Martinez is
8 here to answer any questions that you may
9 have.

10 CHAIRPERSON MILLER: Okay. First
11 of all, I should just step back for one second
12 and say to my Board that I think we ought to
13 deny the request for party status as the
14 person isn't here and we don't have any
15 indication how they would participate. Okay.
16 Just to tidy that up. Okay.

17 All right. I just have a couple
18 of questions, Mr. Tummonds. How do you see
19 that it's appropriate for you to be here under
20 206? Is that what you are here under?

21 MR. TUMMONDS: Yes, it is. 206 is
22 the private school approval. Realistically,

1 I came to this somewhat late in the game, in
2 that the manufacturer of the trailer had tried
3 to go through the Zoning process to obtain a
4 permit. The Zoning Administrator in December
5 of 2006 sent them to the BZA.

6 There is some precedent for having
7 these temporary classroom administrative
8 trailers being reviewed by the BZA. I wrote
9 down a case for Moray a few years ago where we
10 had to do a similar thing. So it is because
11 these are semi-permanent, they are deemed to
12 be buildings or structures used as a private
13 school in an R-1 Zone. So that is the
14 interpretation of the Zoning Administrator as
15 to why you need section 206 relief for even
16 this temporary use.

17 CHAIRPERSON MILLER: Okay. Thank
18 you. I remember Moray, but I think that may
19 also have involved taking up some parking
20 spaces that they were required to provide.

21 MR. TUMMONDS: That's correct as
22 well.

1 CHAIRPERSON MILLER: It's not the
2 case here. It's not that -- the school is not
3 doing something it is required to do because
4 of the trailer.

5 MR. TUMMONDS: Correct. I mean,
6 too, the permit to place this trailer was
7 denied by the Zoning Administrator referring
8 them here for special exception approval.

9 CHAIRPERSON MILLER: And the
10 conditions that you were talking about,
11 faculty cap, it's not related to the trailer
12 though, per se? It's just that it doesn't
13 exist in the order?

14 MR. TUMMONDS: Correct.

15 CHAIRPERSON MILLER: Okay. And
16 what is the other conditions that --

17 MR. TUMMONDS: Right now, the
18 conditions that the ANC proposed would be five
19 years for placement of this trailer. We agree
20 with that. The second condition would be to
21 maintain the student cap in the original order
22 from 1953 of 260 students. We agree to that.

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1 They have the condition about capping faculty
2 and staff of both the employees of the church
3 and the school at 35.

4 We would not agree to that for the
5 reason we cited, is that the church is not
6 under the auspices of the special exception
7 approval. And finally, the last condition
8 from the ANC was that the school will serve
9 children in nursery through grade 8. And, in
10 fact, we serve -- we have pre-K through grade
11 8. So we don't have a problem with that
12 condition as well.

13 CHAIRPERSON MILLER: Does that
14 change what's in the previous order with the
15 students that you are serving?

16 MR. TUMMONDS: I've learned
17 through this process a little bit about the
18 state of elementary education in 1953 when
19 there was -- kindergarten wasn't a part of
20 that. 4 year-old education wasn't part of
21 that. And perhaps Ms. Martinez could
22 enlighten us some more on that.

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1 MS. MARTINEZ: Good afternoon.
2 Back in the original order that was set with
3 Archbishop O'Boyle, the timings of the day and
4 also the grades, obviously, since then, back
5 in the 1950s, now, we're required to have
6 kindergarten. And now, the requirements for
7 the number of hours and days of the year that
8 students are required to be in school by our
9 Archdiocese, we operate under the auspices of
10 the Archdiocese of Washington, have changed
11 from what was originally in here, which was
12 9:00 to 3:00 p.m.

13 We now operate 8:00 to 3:00, is
14 the main hours of the school. And as Mr.
15 Tummonds was saying, we now have a
16 kindergarten and a pre-K, 3/4 year-old,
17 program. Originally, the school was a 1
18 through 4 and then it became a 1 through 8.
19 You know, it kind of developed.

20 CHAIRPERSON MILLER: Okay. So
21 those conditions would actually bring the
22 order into conformity with reality?

1 MS. MARTINEZ: Yes.

2 MR. TUMMONDS: That's correct.

3 CHAIRPERSON MILLER: So you would
4 be in favor of that. Okay. Questions? Any
5 questions?

6 BOARD MEMBER MANN: It's perhaps a
7 question more for the Chair and other Board
8 Members than for the applicant, although the
9 applicant is free to answer this. If we
10 condition this temporary trailer with these
11 sorts of conditions, what happens when the
12 temporary trailer goes away? Then what
13 happens to all those conditions?

14 MR. TUMMONDS: I would say that
15 because we are seeking special exception 206,
16 ostensibly for the trailer, but we would agree
17 to condition the use of the property, you
18 know. I think one of the concerns through
19 dealing with the ANC as well was that this is
20 an order from 50 years ago. It's not often
21 that we have, as you well know, private
22 schools operating in the District under orders

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1 that are 50 years old.

2 Obviously, the orders we do now
3 have a lot more conditions, a lot more
4 specificity, so I think the ANC would like to
5 add a level of specificity. The conditions
6 that we mentioned, we agree it probably makes
7 more sense for everyone involved to have some
8 specificity, so that we all are on the, for
9 lack of a better term, same page in moving
10 forward.

11 MS. MONROE: I'm just sitting here
12 listening to this and thinking about the Lab
13 School. There were questions about some
14 conditions ending and some not ending at the
15 same time and how confusing it was. And I'm
16 just -- the other question I have is, you
17 know, conditions have to go, as you know, to
18 mitigate something. We haven't seen any
19 adverse impacts. I mean, there's nothing here
20 saying that your cap or anything is having any
21 effect.

22 I'm not sure we have any authority

1 under this record to put any further
2 conditions on the special exception use as a
3 whole. Not the use of the trailer itself,
4 because that's what we're dealing with. And
5 I would be wary of it. I know you are saying
6 it's okay and if you agree to it, you know, we
7 can condition it. But that order would have
8 to be very clear that these conditions go to
9 the school, but there's no much in the record
10 to base them on. I don't know how you would
11 base the condition on it, there's nothing in
12 there.

13 MR. TUMMONDS: And then if you
14 felt that no conditions were necessary, we
15 would be fine with that, too.

16 CHAIRPERSON MILLER: I think this
17 is tricky. I think we can air this a little
18 bit, because I think Mr. Mann makes a good
19 point. On the one hand, this is an
20 application to allow the placement of a
21 trailer, that's what it's called. And so it
22 doesn't really have anything to do with the

1 number of students on the campus.

2 On the other hand, we have a
3 situation that looks like you may be out of
4 compliance with the 1953 order and how can we
5 get you into compliance in a simple way? I'm
6 just not sure that this is the way.

7 BOARD MEMBER ETHERLY: Well, if I
8 may, Madam Chair, just as a follow-up both to
9 your question and to the Office of Attorney
10 General, would it be OAG's position that it
11 would be difficult for us to reach the overall
12 operation of the school, one, because the
13 record, of course, would not have been
14 developed on any of those questions through
15 this particular vehicle today, so to speak?

16 MS. MONROE: That is my take on
17 it. Now, that's how I feel, because I just
18 worry about it. What I might recommend, if I
19 may, is if there's some way to modify this
20 order, you could -- you know, I realize it's
21 not six months and all these other things, but
22 waive the six months and see if we can just

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1 modify the old order to bring it up to date.

2 Because to condition is a
3 different situation than changing the
4 underlying language order. You've got to be
5 conditioning something for a reason. And I
6 don't see any evidence in this record to
7 condition these other things, even though the
8 ANC might want them and you might agree to
9 them. We have to do what's in the record. I
10 don't see anything here.

11 As opposed to, as you said, Madam
12 Chair, changing the language of the order to
13 make it kindergarten or pre-K through 8 as
14 opposed to 1st through 8, that's just kind of
15 a language change. That might be a
16 modification issue, clarification, kind of a
17 different issue.

18 MR. TUMMONDS: Right, right.

19 MS. MONROE: That you might try.

20 MR. TUMMONDS: Yes, and I think we
21 would gladly make a motion to, you know, amend
22 our requested relief. I think we don't have

1 a notice issue, because it's still all under
2 section 206 for private school operations in
3 an R-1 Zone. We could make a motion to amend
4 the conditions in BZA Appeal No. 3586 to
5 reflect our proposed conditions of approval
6 that we put in the record of this case, such
7 that we would agree to maintaining the student
8 cap of 260 students, to establish a staff cap
9 of 35 for the faculty and staff and to allow
10 pre-K through 8th grade consistent with the
11 information in the record of this case.

12 I would note that, you know, the
13 areas of relief, the standards are the same.
14 There isn't a different standard for amending
15 whether we have a staff cap or for having the
16 temporary trailer. The 206 standards are all
17 the same, so I think that by showing there is
18 the history of use of this site, the ANC's
19 support for this site recognized that the
20 ongoing operations of this school do not cause
21 adverse impacts on adjacent property owners.

22 There are not adverse impacts due

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1 to traffic or other situations. But if you
2 feel uncomfortable that there is not enough
3 information in the record about the staff cap,
4 then, you know, we would agree that that was
5 not a necessary condition and we would not
6 include that in our application today.

7 CHAIRPERSON MILLER: Any other
8 questions or comments right now? I mean, I
9 think we will hear from Office of Planning and
10 we'll hear from the ANC and get back to this,
11 but do you have anything further on this?

12 MR. TUMMONDS: Nothing further.

13 CHAIRPERSON MILLER: Okay.

14 BOARD MEMBER MANN: Madam Chair?
15 So does that mean that the original
16 application that we're considering today 17625
17 will mean that it's simply for the trailer and
18 nothing else or is there a condition along
19 with the other conditions amending the
20 previous order that says that there can be a
21 trailer not to exceed a term of five years?
22 How is the trailer dealt with then? Is that

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1 still a separate application?

2 CHAIRPERSON MILLER: Okay.

3 MR. TUMMONDS: I guess my answer
4 would be with our -- the, I guess, amended
5 relief that I would put on the record, I'll
6 just briefly go that we could add -- you know,
7 that there would be one condition that says
8 the temporary trailer as requested in BZA
9 Application No. 17625 shall be permitted on
10 the site for a period of five years from
11 today's date.

12 Then the other conditions pursuant
13 to the amended application presented at the
14 Public Hearing by the applicant, the following
15 conditions would apply to Our Lady of Victory
16 School's use of the property. I don't want to
17 make it more complicated than it need be,
18 because I think, at the end of the day,
19 everyone is recognizing that this school, the
20 operation does not cause adverse impacts on
21 the neighborhood, as it has been operated as
22 it exists.

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1 MS. MONROE: I just want to say
2 one last thing. You do not have to condition
3 this. You realize that? I mean, everybody
4 wants to condition, but I just want to point
5 out that's kind of crazy, because we don't
6 have a reg for -- you know, it's modification
7 of plans. It's not conditioning. And it has
8 to come within six months, though we can waive
9 the six months.

10 So I'm not sure how we would get
11 to this, unless we decided today on the
12 trailer alone, put no conditions on and you
13 guys came back in six months and said oh, we
14 want to condition our use. I mean, that's --
15 I realize that. But that's what is happening
16 now is you are asking us to condition when
17 there is no conditions in the original order.
18 And I don't see that we can just willy-nilly
19 impose them, because we decided they should
20 have a faculty cap of 35.

21 We don't have any reason to do
22 that, even though everybody might agree to it.

1 I think it would be lacking of fundamental
2 basis substantial of evidence just to --

3 BOARD MEMBER ETHERLY: Well, if I
4 may, I mean, isn't that what the intern is
5 here for to write, correct? He is -- I'm just
6 kidding. I'm just kidding. That's meant to
7 be tongue and cheek.

8 MS. MONROE: Mr. Etherly --

9 BOARD MEMBER ETHERLY: He is
10 welcome to. But in all seriousness, so would
11 it be your guidance or your suggestion that
12 perhaps we just focus on the trailer for the
13 purposes of getting them in, getting them out,
14 moving forward and then the applicant however
15 it chooses to at some later date can consider
16 its options in terms of the overall operation?

17 MS. MONROE: I would say that that
18 is the cleanest way to do this. Because
19 legally, that's what the application is for,
20 the use of the trailer. You're not requesting
21 any other relief. You know, and even if
22 everybody wants to condition it, that's nice,

1 but there's no condition -- there's nothing in
2 the order. That would be the best way to do
3 it, but I'm not making that decision, I mean.

4 CHAIRPERSON MILLER: Right, right.
5 And we haven't heard from the ANC yet and we
6 haven't heard from Office of Planning yet.
7 But I guess to sort of respond to your
8 question though, Mr. Mann, I mean, the way I
9 see it is we have an application which goes
10 for special exception regarding the placement
11 of trailers before us. That's what we do have
12 before us.

13 And then it sounded like Mr.
14 Tummonds was creatively trying to amend this
15 somehow. But we haven't accepted any
16 amendments yet. And I know that the Zoning
17 Commission is going to be looking at the
18 revamping of the regulations and we may need
19 to have a regulation that allows schools to
20 update. You know, their order is in 1950s
21 and, you know, it may not be totally
22 reflective of their situation. But there may

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1 be no adverse impacts just as well.

2 So it may not be able to be cured
3 in this application, but we will hear from all
4 the others. Okay. Mr. Etherly, you have
5 something else?

6 BOARD MEMBER ETHERLY: No, nothing
7 for me.

8 CHAIRPERSON MILLER: Okay.
9 Anything else, Mr. Tummonds, before we go to
10 Office of Planning?

11 MR. TUMMONDS: Nothing else.

12 CHAIRPERSON MILLER: Okay. Good
13 afternoon, Mr. Moore.

14 MR. MOORE: Good afternoon, Madam
15 Chair and Members of the Board. I'm John
16 Moore with the Office of Planning. Office of
17 Planning will stand on the record in support
18 of the application as meeting the requirements
19 under 206. When I first got the application,
20 I called Mr. Tummonds and I asked him why are
21 you here. I couldn't understand why they were
22 here.

1 Let's face it, there must be at
2 least 30 schools in the District, public
3 schools with trailers on the property. In
4 this case, I would ask the legal counsel to
5 consider if there will be any change, I do
6 take Mr. Mann's question, maybe the solution
7 should be that the placement of the trailer on
8 the property cannot exceed any of the caps
9 that's already agreed upon, cannot exceed the
10 260, cannot exceed parking, cannot exceed what
11 the staff requirements are, could be a
12 potential solution. If accepted, they should
13 be here in the first place.

14 CHAIRPERSON MILLER: So you're not
15 convinced that this really falls under 206.
16 Is that correct?

17 MR. MOORE: I'm not convinced it
18 falls under anything other than put the
19 trailer there and don't exceed your cap.

20 CHAIRPERSON MILLER: Did you
21 finish? Are you ready for questions?

22 MR. MOORE: I'm ready for the

1 questions.

2 CHAIRPERSON MILLER: Oh, okay.
3 Did you happen to see the party status
4 application?

5 MR. MOORE: No, I didn't.

6 CHAIRPERSON MILLER: You didn't?

7 MR. MOORE: No.

8 CHAIRPERSON MILLER: Okay. And I
9 bring it up, because a neighbor raises
10 concerns about the aesthetics of it.

11 MR. MOORE: The aesthetics of the?

12 CHAIRPERSON MILLER: I can read it
13 to you. She says her home is across the
14 street from the U Street entrance to the Lady
15 of Victory parking. Okay. She is concerned
16 that it's going to be an eyesore. And do you
17 have a comment on that, at least?

18 MR. MOORE: My view of, my
19 personal view of visiting the site, and from
20 the photographs I looked at, there are
21 surrounding residential properties, but they
22 are mostly buffered from this site, from the

1 location of the trailer by either trees on the
2 east, I think, and south side and, of course,
3 the buildings. There are two buildings, the
4 directory and the school building itself off
5 of the property from, I believe, MacArthur
6 Boulevard. She lives in U?

7 CHAIRPERSON MILLER: She says she
8 is across the street from the U Street
9 entrance.

10 MR. MOORE: Obviously, her vision
11 is greater than mine. I didn't see where it
12 would be visible.

13 CHAIRPERSON MILLER: I think the
14 applicant is going to address this as well.

15 MR. TUMMONDS: And if --

16 CHAIRPERSON MILLER: All right.
17 You want to address it now?

18 MS. MARTINEZ: Father Jordan and I
19 met with Mr. and Mrs. Means and they live on
20 U Street. You can see from the map here that
21 the U Street is quite a distance away from
22 where the existing buildings are. And I think

1 their concern was that we were going to place
2 the trailer on the parking lot, on that side
3 of the building, which would be then maybe
4 visible to their property.

5 In fact, the plan for the
6 temporary modular is to put it between our own
7 existing buildings, which will mean that it
8 will not be visible to any of our neighbors.
9 There is a retaining wall, a high retaining
10 wall and a set of trees and our own buildings
11 around. So once we shared that with them,
12 they were totally happy and fine and had no
13 other problems.

14 CHAIRPERSON MILLER: She also was
15 concerned it might be a traffic hazard, but if
16 she was thinking it was in a different place,
17 that would affect her analysis anyway. But
18 are you concerned of any traffic hazards that
19 this would cause?

20 MR. MOORE: No, there's not going
21 to be any increase in traffic onto the
22 property. It will be the same number.

1 CHAIRPERSON MILLER: Right. It's
2 going to be blocking something that might
3 cause that traffic hazard?

4 MR. MOORE: I don't see that at
5 all.

6 CHAIRPERSON MILLER: Okay. Are
7 you aware of any problems with the school?

8 MR. MOORE: No, except getting my
9 granddaughter in.

10 CHAIRPERSON MILLER: Okay. Any
11 other questions? Mr. Tummonds, do you have
12 any questions for the Office of Planning?

13 MR. TUMMONDS: No questions.

14 CHAIRPERSON MILLER: Do you have a
15 copy of their report?

16 MR. TUMMONDS: Yes, I do.

17 CHAIRPERSON MILLER: Okay. Yes,
18 okay. Ms. Gates, would you like to come
19 forward on behalf of the ANC?

20 MS. GATES: Good afternoon, Madam
21 Chair. I'm Alma Gates here to represent ANC-
22 3D.

1 CHAIRPERSON MILLER: Ms. Gates,
2 thank you. No. I want to stop you there just
3 before you --

4 MS. GATES: I have no testimony.

5 CHAIRPERSON MILLER: Oh, I wanted
6 to say before you went into your testimony
7 that you have a chance to ask either Mr. Moore
8 or Mr. Tummonds any questions. Do you have
9 any questions for them?

10 MS. GATES: I have no questions,
11 other than I would like to address the Means
12 as well. I grew up in a house two doors from
13 the Means, which their house didn't exist when
14 I was there. I was married at Our Lady of
15 Victory. My children were baptized at Our
16 Lady of Victory and my son graduated from the
17 school.

18 I now live within three blocks of
19 the school. It is exemplary. It is one of
20 the schools that we never bring up when we
21 talk about problems. I do want to address
22 one, because Ms. Monroe has raised the issue

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1 of whether or not we can condition this
2 application.

3 Because it came in under section
4 206 of the Zoning Code, the ANC felt it was
5 time to bring the existing order into the 21st
6 Century and just to sort of set clear the
7 conditions that we felt made this acceptable.
8 And so the five year use of the trailer was
9 one. We simply picked up the number of
10 students from the earlier application and
11 after discussion with the school, felt that 35
12 cap on teachers was sufficient.

13 I do believe that some of the
14 staff at the church teach at the school, which
15 was why we included both of them. However, if
16 this cannot be conditioned under this order,
17 I would suggest that perhaps a modification
18 might be appropriate, just so we are up to
19 date on where this school stands.

20 We had no notion that the earlier
21 BZA Order even existed. I'm sure it was filed
22 in the basement some place.

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1 CHAIRPERSON MILLER: Okay.

2 Anything else?

3 MS. GATES: I think that's it.

4 CHAIRPERSON MILLER: How did you
5 come to the five years as an appropriate term
6 for this trailer?

7 MS. GATES: Well, we talked to the
8 school and asked what they felt was an
9 appropriate length of time, what would give
10 them the necessary time to get their
11 renovation done. They said five years. I
12 also want to sort of comment on Mr. Moore's
13 comment.

14 We had difficulty putting the
15 trailer in the Zoning Regulations. We know
16 that the Lab School has had a series of
17 trailers and they have never come, so this
18 seems a little over the top almost. And it's
19 a great -- I might add on behalf of the
20 church, this is an expense they didn't need.

21 CHAIRPERSON MILLER: Yes, I have
22 to say, I mean, as you heard us say earlier,

1 we had some questions whether this requires a
2 special exception as well under 206. I
3 believe the experience I have had is when the
4 trailers have taken up parking spaces that
5 were required or something like that and,
6 therefore, it did affect an existing order.
7 And this does not really affect an existing
8 order.

9 But anyway, I guess the ZA sent
10 them here. So our regulations are not perfect
11 and that's why they are being reexamined.
12 Anything else?

13 BOARD MEMBER ETHERLY: Thank you,
14 Ms. Gates, for your testimony. As always spot
15 on the mark. I think to put it bluntly, it's
16 almost as if we're using a hammer really to
17 deal with what is, at most, a fly. Is there
18 anything with respect to the trailer, and I'm
19 beginning to try to work towards what we do at
20 the end of our time today, and I still haven't
21 sorted it out, but I tend to agree with what
22 the Chair just said, in that we don't want to

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1 have the applicant caught between the ZA
2 saying you need to do something and us saying
3 well, it just seems kind of nonsensical that
4 you're here just for a trailer.

5 So kind of anticipating hopefully
6 a resolution towards the end of this, is there
7 anything with respect to the placement of the
8 trailer or a temporary trailer in general on
9 the subject property that raises any concerns
10 or that would, in your opinion or by virtue of
11 the discussion at the ANC, raise any concerns
12 or potentially present any issues?

13 I think I'm hearing that there
14 wouldn't be any, especially given where the
15 trailer would be placed. That seemed to be
16 the only thing that even vaguely got close to
17 a concern being expressed. We don't want the
18 trailer placed in such a location as it would
19 be visible to perhaps surrounding residences.

20 MS. GATES: I don't think there
21 are any concerns. I assume that this has been
22 cleared with the fire marshal, etcetera, and

1 it has passed all those tests.

2 BOARD MEMBER ETHERLY: Okay.

3 MS. GATES: So it is well-
4 buffered, secluded. It shouldn't be a
5 problem.

6 BOARD MEMBER ETHERLY: And with
7 respect to traffic and other issues, the
8 orientation of the trailer where it is
9 suggested at present, wouldn't, in your
10 opinion or the ANC's opinion or experience,
11 create any traffic issues?

12 MS. GATES: No.

13 BOARD MEMBER ETHERLY: Or any
14 otherwise objectionable conditions in that
15 regard?

16 MS. GATES: No.

17 BOARD MEMBER ETHERLY: Okay.
18 Thank you, Ms. Gates. Thank you, Madam Chair.

19 CHAIRPERSON MILLER: I have a
20 question, Ms. Gates. With respect to the
21 proposed Condition No. 2 through 4, "That the
22 school will serve the children in nursery

1 through grade 8, that the cap is set at 260
2 for the students and the faculty cap is set at
3 35 for the school," are those numbers proposed
4 as a reflection of reality of what's there or
5 are they proposed -- well, let me just leave
6 it at that. Let me start with that. Would
7 that be accurate to say that?

8 MS. GATES: Currently, the school
9 has grades -- we put nursery, is that correct?

10 MS. MARTINEZ: We call it pre-K.
11 It's a 3 and 4 year-old program, pre-
12 kindergarten through 8th grade.

13 CHAIRPERSON MILLER: Right. You
14 explained that before. I understand that's
15 what you have.

16 MS. GATES: So --

17 CHAIRPERSON MILLER: But I'm
18 wondering if the ANC has proposed it because
19 they want to reflect what's there or because--

20 MS. GATES: Yes, yes.

21 CHAIRPERSON MILLER: Okay.

22 MS. GATES: The student cap was

1 drawn in from the previous BZA Order. I don't
2 believe they are near 260 students, at this
3 time, but we carried forward the cap that was
4 in the previous order, the old order. And the
5 35 gave them some leeway should they wish to
6 hire a few more teachers. That is not what
7 currently exists.

8 CHAIRPERSON MILLER: Mr. Tummonds,
9 could you just remind me are -- some of these
10 conditions are different from what's in the
11 order and that would be the nursery through
12 grade 8, correct? And that there is no
13 faculty cap in the other order. Is that
14 correct?

15 MR. TUMMONDS: Correct. And I
16 think what's also -- when you look at the 1953
17 order, unlike what we have today, they didn't
18 spell out conditions. It referred to some --
19 I mean, there has been question whether there
20 were conditions in the '53 order, because it
21 is almost like a findings of fact, like we
22 would have today.

1 So there aren't conditions. Use
2 of this school is approved with the following
3 conditions. You know, fortunately or
4 unfortunately, that's not how they drafted the
5 orders in 1953. So I would say that this is
6 Exhibit C of our June 5th statement is the
7 1953 order. And, you know, it's almost as if
8 it's finding of fact number two. "The
9 proposed school will be for elementary grades
10 from the 1st through 8th, will accommodate a
11 maximum number of 260 children. The hours of
12 operation will be 9:00 to 3:00 p.m."

13 You know, is that a condition or
14 is that a finding of fact? It's probably more
15 aligned with a finding of fact. So, you know,
16 this is -- I think as Ms. Gates said, the ANC
17 wanted to bring approval of Our Lady of
18 Victory's use of the property to the 21st
19 Century to bring it more in line with how we
20 see our orders today.

21 So there aren't any questions when
22 you go down, you look at the Certificate of

1 Occupancy, it says per BZA Application No.
2 blank, this many students, this many faculty
3 cap. That was our goal today.

4 CHAIRPERSON MILLER: All right.
5 Well, okay. Let me ask you this then. If we
6 look at that as descriptive and not as a
7 condition that would be changed, and we are
8 about to write, I'm just thinking out loud, a
9 new order under 206 related to the school and
10 we just want to be descriptive as opposed to
11 imposing any conditions, and we want that
12 description to just reflect what the school is
13 now, we would be changing the students that it
14 is serving. We would now describe it as
15 serving students pre-K through grade 8.

16 MR. TUMMONDS: That's correct.
17 Though hours of operation would be 8:00 a.m.
18 to 3:00 p.m.

19 CHAIRPERSON MILLER: Okay. So
20 that would be 8:00 a.m. to 3:00 p.m., okay.
21 Does it still accommodate a maximum of 260
22 children?

1 MR. TUMMONDS: I think as we have
2 noted in our statement, you know, we have,
3 approximately 185 students right now. We
4 would like to maintain the flexibility of
5 having 260 students.

6 CHAIRPERSON MILLER: That's
7 already in the previous one, too.

8 MR. TUMMONDS: Right.

9 CHAIRPERSON MILLER: That's still
10 accurate, at least.

11 MR. TUMMONDS: Yes, we are well
12 below that.

13 CHAIRPERSON MILLER: The previous
14 order. Okay. And then the previous order
15 just doesn't mention faculty.

16 MR. TUMMONDS: Right.

17 CHAIRPERSON MILLER: And the
18 reality of the faculty of the school is what?

19 MS. MARTINEZ: Just under 30 right
20 now.

21 CHAIRPERSON MILLER: You have 30,
22 but you --

1 MS. MARTINEZ: 29.

2 MR. TUMMONDS: At any one time.

3 CHAIRPERSON MILLER: -- want to
4 have room for up to 35?

5 MS. MARTINEZ: Yes, please.

6 MR. TUMMONDS: And I think what we
7 discussed is well, there are, approximately,
8 I think we decided, 28 people who are staff
9 members, however, they are not there like most
10 schools at any one time. There is --

11 MS. MARTINEZ: 18 usually.

12 MR. TUMMONDS: Yes, 16 to 18
13 faculty/staff on campus at any one time. I
14 know that these are issues we see in other --

15 CHAIRPERSON MILLER: What did you
16 say? I'm sorry. How many?

17 MS. MARTINEZ: The school is --
18 you know, it's a small school, so there's only
19 one class per grade, so the art teacher only
20 works a day and a half a week.

21 CHAIRPERSON MILLER: Right.

22 MS. MARTINEZ: The computer

1 teacher works three days. The music teacher
2 works two days. So although overall there are
3 28 people who are employed on the records,
4 there are only about 18 there on any one day,
5 because teachers work different days,
6 different hours.

7 CHAIRPERSON MILLER: Okay.

8 MS. MARTINEZ: So it's --

9 CHAIRPERSON MILLER: Yes, I know.
10 Okay.

11 MS. MARTINEZ: You know.

12 CHAIRPERSON MILLER: Ms. Gates,
13 when the ANC was talking about the faculty,
14 did they talk about any adverse impacts from
15 faculty parking in the neighborhood or any
16 reason why they wanted a cap on the faculty?

17 MS. GATES: No. As I said
18 earlier, there have been no adverse impacts
19 from Our Lady of Victory. However, if they
20 were to increase their number of students to
21 260, presumably, they would increase their
22 faculty from the current number. So we felt

1 it appropriate to maybe set a limit in the
2 long-term.

3 Father Jordan and Ms. Martinez
4 might not be there 10 years from now and it
5 could be a very different operation. I want
6 to raise with the Board the fact that if there
7 are no conditions, I suppose I want to ask the
8 Board if there are no conditions, is this
9 order enforceable?

10 BOARD MEMBER ETHERLY: If I may,
11 Madam Chair. Not to answer that question, I
12 think it perhaps highlights the awkwardness of
13 where we are procedurally. And I would just
14 say from just one Board Member's standpoint,
15 I think we all probably are sensing it, it's
16 more of just a procedural buckaboo here as
17 opposed to the substance of what we're talking
18 about, because it's just a trailer, which is
19 fairly straightforward.

20 I had a little bit of back and
21 forth with the Office of Attorney General on
22 kind of the ultimate question of how do we

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1 resolve this once we get to the end? And
2 again, not speaking for OAG, but it was the
3 guidance and as followed up on the earlier
4 point that perhaps the cleanest thing is just
5 to deal with the special exception for the
6 trailer as it is, alone by itself.

7 No conditions, no ifs, ands or
8 but, just because the trailer itself is what
9 got you here today. And the trailer itself
10 doesn't evoke 260 students. It doesn't evoke
11 the 35 faculty. It doesn't evoke the required
12 parking. It's just a trailer in and of
13 itself. The valid point that was raised by
14 the ANC is still a very critical one and that
15 is the need for updating the special exception
16 and bringing it into the 21st Century, but it
17 might be a little bit of an awkward exercise
18 to do it today, more because of the procedural
19 posture that we're in as opposed to can we get
20 it done.

21 Because part of me would be
22 desirous, I would love to try to get it done,

1 because it saves the organization, it saves
2 the applicant the -- it avoids the added
3 expense of having to come back to clean up
4 that other piece later. But it's OAG's
5 concern that we might procedurally not be able
6 to do it, because technically it's the trailer
7 that's driving this and the trailer itself
8 doesn't have those intended effects that
9 normally conditions are meant to address.

10 CHAIRPERSON MILLER: I would agree
11 with you, but I guess where I'm heading is
12 that there are a couple of things, I think, we
13 could change descriptively that aren't
14 conditions. And that even if we grant a
15 summary order on this application for the
16 trailer, that we could describe Our Lady of
17 Victory School as a school that teaches pre-K
18 through grade 8 students, operating hours from
19 8:00 to 3:00 and maybe stop there.

20 Because I don't think that there
21 are really necessarily conditions and that
22 they might bring -- but if you looked at the

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1 old order and it says they operate 9:00 to
2 3:00, then maybe it looks like they are out of
3 compliance or I don't know, even though they
4 are not really conditions.

5 So that's just one option we can
6 consider. Does the Office of Attorney General
7 have a problem with that?

8 MS. MONROE: Your options you
9 should just put in the body of the order.

10 CHAIRPERSON MILLER: Yes, but very
11 little, just that it's a school that has pre-K
12 through 8th grade.

13 MS. MONROE: I have one thing to
14 say.

15 CHAIRPERSON MILLER: And what the
16 hours are.

17 MS. MONROE: I think that's a very
18 good idea and I think if you put it in the
19 body of the order, that's fine, but it isn't
20 a condition. I mean, it isn't the kind of
21 thing you go enforce. It's a finding of fact.
22 I want to say, and this may sound harsh, but

1 it isn't up to the Board to bring the
2 applicant up to date.

3 I mean, if they have an old order
4 and it's out of date and they need to bring it
5 up to date, they need to come to the Board and
6 ask for -- I don't even know which procedure,
7 but modification of the order or, you know,
8 something.

9 MR. TUMMONDS: Right.

10 MS. MONROE: Because I hate to go
11 about it this way. You know, we're not even
12 dealing with this. There's no evidence in the
13 record as to cap and, you know, all this.

14 CHAIRPERSON MILLER: No, I would
15 not go into cap and stuff like that. I don't
16 think there is a record really for what the
17 faculty should be and what the student cap
18 should be. We don't really have anything
19 about traffic or adverse impact on the
20 students or anything like that. Ms. Gates and
21 I would, you know, appreciate your reaction,
22 but I think when you just described who the

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1 school services, that it's pre-K through 8th
2 grade as opposed to just 1 through 8th grade,
3 that that's really just descriptive. It's not
4 really a condition. I don't think.

5 And I know the ANC was in support
6 of that in any event, I believe, but also the
7 hours of operation. It's really just kind of
8 descriptive and it actually goes to perhaps to
9 the trailer, because the trailer will be in
10 use during those hours, I assume, perhaps, the
11 school hours. So it's a little bit relevant.
12 I mean, anyway, if I look back at that order
13 though, the 260 number you are still within
14 that cap, so you don't need to go for
15 compliance on that one.

16 And I don't think that we have
17 heard -- I think what Ms. Monroe also was
18 concerned about if we start putting a cap on
19 the faculty, we really haven't heard any
20 evidence about what the impact of that would
21 be if it was over that cap. Is that the right
22 number, etcetera, that's more fact-based. So

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1 that's where I'm at on this. Where are we?
2 Oh, Ms. Gates. Do you have anything further,
3 ms. Gates?

4 MS. GATES: I don't.

5 CHAIRPERSON MILLER: Okay.

6 MS. GATES: I have to express a
7 sense of disappointment. We have seen
8 situations in the past with Saint Patrick's
9 where faculty cap, the Lab School faculty cap
10 got so far out of control and there was
11 nothing anyone could do about it. I think
12 that I understand that having an order that
13 deals only with the trailer that expires in
14 five years is very clean.

15 However, this application cites
16 the number of students, the number of faculty,
17 hours of operation, etcetera. They have
18 themselves included those in the application.
19 So I would just point that out to the Board
20 again that unless they are going to come back
21 and bring their order into the 21st Century,
22 the community has nothing.

1 CHAIRPERSON MILLER: I guess what
2 I have to say though, just in response to
3 that, is it's speculative, you know. We don't
4 have evidence in this case of adverse impacts
5 that would occur if there was a certain change
6 in the number of faculty or anything to that
7 effect for us to rule on that.

8 MS. GATES: I agree.

9 CHAIRPERSON MILLER: Okay. I
10 mean, they didn't give us evidence, even
11 though they addressed the issue, of adverse
12 impacts and the community hasn't. Maybe that
13 will never happen, you know.

14 MS. GATES: Madam Chair, have you
15 ever seen an applicant come in and give you
16 the adverse impacts?

17 CHAIRPERSON MILLER: You don't see
18 any either. You said there hasn't been any.

19 MS. GATES: There haven't been.

20 CHAIRPERSON MILLER: Okay.

21 MS. GATES: And I do believe the
22 school, as I said, is exemplary. I just think

1 it's setting precedent not to have an order,
2 a current order, and this is an opportunity to
3 do that.

4 MS. MONROE: Can I say one last
5 thing? I don't think anybody is against
6 bringing the order up to date. I think that's
7 an excellent idea. I think it should reflect
8 reality. I just don't think today is the way
9 to do it. I think there has got to be a way
10 that we address the underlying special
11 exception and conditions dealing with that.

12 And what we are dealing with today
13 is merely the use of the trailer, not the
14 entire operation, meaning faculty, staff and
15 students, time, hours, cafeteria. That's all
16 different. That's a way bigger issue which
17 may have to come up at some point and then it
18 can be conditioned appropriately. But I don't
19 think today is the day to do that, that's my
20 advice.

21 CHAIRPERSON MILLER: Okay. Any
22 other -- Mr. Tummonds, do you have any cross

1 examination?

2 MR. TUMMONDS: No cross.

3 CHAIRPERSON MILLER: Okay. Is
4 there anybody in the audience who wishes to
5 testify in support or in opposition to this
6 application? Okay. Not seeing any, could I
7 turn to you, Mr. Tummonds, for any closing.

8 MR. TUMMONDS: Just real briefly.
9 I would note that we submitted into the record
10 the letter we received from the Office of the
11 Zoning Administrator sending us here, December
12 6, 2006, just so that is in the record to
13 address Mr. Moore's concerns and some of the
14 concerns raised by the Board as to why we need
15 to be here.

16 I believe that the -- at the end
17 of our discussion here where we are, which
18 does address the school's needs, is, I think,
19 what the Chair and Commissioner Etherly said,
20 which is we could just have approval for just
21 the temporary classroom trailer today,
22 including in the findings of fact about Our

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1 Lady of Victory, we note, pre-K through 8th
2 grade, general hours of operation, 8:00 to
3 3:00, that fulfills all of the needs of the
4 school today.

5 I know that real briefly, Ms.
6 Martinez would like to talk about the cost
7 that coming before this Board brings to an
8 entity like the school.

9 MS. MARTINEZ: I just wanted to
10 let you know that this experience of sort of
11 being shuffled between these two bodies has to
12 date cost us \$15,000. And so just from our
13 perspective, we wouldn't want to be dragging
14 out in any way the process of trying to
15 satisfy whoever it is we need to satisfy with
16 whatever it is we need to satisfy those
17 different Boards and bodies with in order to
18 just move on and have school and operate and
19 satisfy everybody, because it's very
20 expensive. So thank you.

21 MR. TUMMONDS: And that concludes
22 our presentation.

1 CHAIRPERSON MILLER: Thank you
2 very much. I think the Board is prepared to
3 deliberate on this application, are we not,
4 under motion?

5 BOARD MEMBER ETHERLY: Madam
6 Chair, it would be my motion to move approval
7 of Application No. 17625 of Our Lady of
8 Victory Church pursuant to 11 DCMR 3104.1, for
9 a special exception to allow the placement of
10 a temporary classroom modular trailer on an
11 existing private school campus under section
12 206 at premises 4755 Whitehaven Parkway, N.W.,
13 and I would request a second.

14 CHAIRPERSON MILLER: Second.

15 BOARD MEMBER ETHERLY: Thank you
16 very much, Madam Chair. For the purposes at
17 the moment of at least dealing with the issue
18 of the trailer within the context of the
19 section 206 analysis, Madam Chair, I would
20 submit that our record is extraordinarily full
21 and complete with regard to that particular
22 aspect, not raising or evoking any concerns as

1 it relates to section 206 and its relevant
2 portions.

3 I would suggest that the approval
4 for the trailer would be for a period of five
5 years as requested by the applicant. For the
6 purposes perhaps of discussing the trailer in
7 specific fashion, the applicant, I believe,
8 did note in its submittal that the trailer
9 would be for a compliment of students not to
10 exceed 40, was that correct?

11 As we heard some of the testimony,
12 both in response to the letter that was
13 submitted from one of the neighboring property
14 owners, some of the testimony that was
15 provided by Ms. Gates as it relates to both
16 the size and the scope of the trailer, the
17 applicant is representing that the trailer
18 will be of such a size and such a placement on
19 the campus itself as to not create any
20 objectionable conditions, traffic or
21 otherwise.

22 We have nothing in the record to

1 speak to any other considerations, be they
2 safety or otherwise, but I would perhaps
3 submit as an additional suggestion and invite
4 conversation from my colleagues as to whether
5 it is appropriate to specify the number of
6 students that the trailer should be built to
7 accommodate, so as not to create any larger
8 structure, but I'm not wedded to that as a
9 condition, but I would perhaps highlight that.

10 Other than that, I think perhaps
11 again in keeping with the discussion that we
12 have already had under the tutelage of OAG,
13 let's just keep it clean and to the point.
14 But I would note if any of my colleagues are
15 inclined to take this bear head-on and just
16 try to carve this out and work through it, I'm
17 comfortable doing that, too.

18 I hate to see this applicant take
19 on an additional hardship of having to come
20 back and clean it up at some date subsequent,
21 but at the same time I'm always chastened by
22 the Office of Attorney General and their

1 guidance on what to do, so as not to invoke
2 the ire of the D.C. Court of Appeals or other
3 bodies.

4 But I think it's safe to say that
5 this thing isn't going to get appealed
6 anywhere. All the parties have worked
7 together, have kept an excellent environment
8 of collaboration and it's very rare that Mrs.
9 Gates says exemplary and that's not to peeve
10 at Mrs. Gates, but it is indeed high praise
11 coming from Mrs. Gates who has many years of
12 experience in dealing with applications and
13 applicants that don't often times go as
14 smoothly as this.

15 So that's a long winded motion, a
16 long winded statement regarding how I think
17 this applicant meets the relevant test of
18 section 206 and I'll pause and go from there,
19 Madam Chair. Thank you.

20 CHAIRPERSON MILLER: Thank you.
21 First of all, with your comment about
22 addressing the number of students in the

1 specifically in the trailer, I don't
2 personally want to go there. And we didn't
3 have any discussion on that at this hearing
4 and I don't think there is any evidence that
5 they are going to, I don't know, pack in a lot
6 of students.

7 BOARD MEMBER ETHERLY: Right.
8 It's presented in the record that they are
9 going with 40, so I am more than comfortable
10 just going based on that reliance and not
11 needing to condition it.

12 CHAIRPERSON MILLER: Okay.

13 BOARD MEMBER ETHERLY: But I just
14 wanted to highlight that.

15 CHAIRPERSON MILLER: Okay. Right.
16 And I think that the ANC and Office of
17 Planning didn't have any concern about that.
18 And again, I guess, I would certainly be in
19 favor of including the descriptive language
20 that I suggested earlier about that the school
21 services pre-K through grade 8 and its hours
22 of operation are 8:00 to 3:00.

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1 BOARD MEMBER ETHERLY: No
2 objection, Madam Chair.

3 CHAIRPERSON MILLER: Okay. I
4 don't think that it was necessarily a
5 condition or that we're changing a condition,
6 but it's a reflection of reality and the ANC
7 doesn't have any concern with that. There
8 hasn't been any problems.

9 So also, this will go for only the
10 five years, I suppose. I mean, it's the
11 description and then we have this trailer and
12 then this order is probably going to expire.
13 But perhaps in those five years, there will be
14 some better regulations to address updating
15 information about schools.

16 But in any event, it will reflect
17 that we recognized those other hours right now
18 and those are the students it serves and that
19 it will reflect reality and that will be in
20 the record and I think that would be a
21 positive thing that might come out of this
22 application, because I think we also have

1 concerns whether or not, you know, the
2 applicant needed to come here or not.

3 It's not clear. It's not clear.
4 It's probably a gray area, but since they are
5 here, they might as well at least get that
6 benefit that I don't think requires a further
7 record that's not before us.

8 Any other comments? Okay. Then I
9 think that covers it.

10 All those in favor say aye.

11 ALL: Aye.

12 CHAIRPERSON MILLER: All those
13 opposed? All those abstaining?

14 MS. BAILEY: Madam Chair, the vote
15 is recorded as 4-0-1 to grant the application
16 as discussed. The motion was made by Mr.
17 Etherly, seconded by Mrs. Miller, Mr. Mann,
18 Mr. Loud support the motion and there is not
19 a Zoning Commission Member present at this
20 time.

21 CHAIRPERSON MILLER: Thank you.
22 And since there is no party in opposition in

1 this case, we can waive our rules and
2 regulations for a full order and issue a
3 summary order in this case. And that summary
4 order can just put at the beginning the little
5 description about the school with respect to
6 the students it serves and the hours of
7 operation.

8 Okay. I guess that concludes
9 everything for this case. Thank you very
10 much.

11 MR. TUMMONDS: Thank you.

12 MS. MARTINEZ: Thank you. Thank
13 you very much.

14 CHAIRPERSON MILLER: Thanks. Ms.
15 Bailey, do we have anything else on the agenda
16 for this afternoon?

17 MS. BAILEY: That's it.

18 CHAIRPERSON MILLER: Okay. Then
19 this hearing is adjourned.

20 (Whereupon, the Public Hearing was
21 concluded at 3:20 p.m.)

22