

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 20, 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., Curtis L. Etherly, Jr., Board
Member, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

CURTIS ETHERLY, JR. Board Member
JOHN A. MANN, II Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
STEPHEN MORDFIN
DOUGLAS WOODS

The transcript constitutes the
minutes from the Public Hearing held on
Tuesday, March 20, 2007.

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

2 ACTING CHAIRPERSON ETHERLY: Good
3 morning, ladies and gentlemen. I thank you
4 very much for your patience this morning as
5 the board, as always, had to deal with some
6 administrative matters in preparing for
7 today's cases.

8 We're going to have a little bit
9 of an unusual day and I'll walk you through
10 as we proceed through the morning's agenda.

11 My name is Curtis Etherly. I'm a
12 member of the Board of Zoning Adjustment.
13 I'll be serving as our Chair this morning.
14 As our Vice-Chair, Ruth Anne Miller, is
15 detained on travel outside of the country,
16 we wish her the best as she makes her way
17 back, and our Chair, Mr. Griffis, is engaged
18 also in another commitment that has him away
19 from the board today, but we wish him well
20 in those endeavors.

21 Please, we're going to call to
22 order and welcome you to our March 20th,

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1 2007, public hearing of the Board of Zoning
2 Adjustment. Again, my name is Curtis
3 Etherly. I'm joined, on my left, by Mr.
4 Mann, representing NPCP, National Capitol
5 Planning Commission, and on my right, by Mr.
6 Turnbull, representing the Zoning
7 Commission.

8 We're also joined by, as you look
9 to the dais, Mrs. Bailey, Mrs. Bushman, Mrs.
10 Glazer, Mr. Moy, who will be joined by the
11 Office of Planning, and they will identify
12 themselves for the appropriate case, and
13 will also be assisted throughout the day by
14 other staff members, including Mr. Myarka
15 with the Office of Zoning.

16 Copies of today's hearing agenda
17 are available to you and are located to my
18 left in the wall bin near the door. Please
19 be advised that this proceeding is being
20 recorded by a court reporter who is sitting
21 to my right, your left, and is also
22 broadcast live via the Web.

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1 So please at this time, please
2 refrain from use of your cell phones,
3 Blackberrys, any other communication-
4 oriented devices as they may, from time to
5 time, cause interference with the
6 transmission through those particular
7 mediums.

8 When presenting information to
9 the board, and we'll be sure to direct you
10 as you step forward, you're going to need to
11 present a witness card to the court
12 reporter, you're going to take a seat at the
13 table, make yourselves very, very
14 comfortable, there is a button at the base
15 of those microphones that you'll need to
16 press, so we can get you on the record in
17 terms of your presentation.

18 Again, if you have any questions
19 throughout the day, please do not hesitate
20 to task. Sometimes we have perhaps the
21 trappings of a courtroom but we are not
22 oftentimes as formal. So make yourselves

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1 comfortable.

2 All persons planning to testify,
3 either in favor or in opposition, are to
4 fill out two witness cards. These cards are
5 located to my left on the table near the
6 door 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
11 special exceptions and variance cases are as
12 follows.

13 Statement and witnesses of the
14 Applicant, followed by government reports,
15 including the Office of Planning, Department
16 of Public Works, etcetera. Reports of the
17 Advisory Neighborhood Commission for the
18 relevant application. Parties or persons in
19 support, parties or persons in opposition,
20 and closing remarks by the Applicant.

21 The procedure for appeals and
22 applications, which we do, we'll have one

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1 this afternoon, I'll offer appropriate
2 guidance as we reach that particular case.

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

11 After the record is closed, no
12 other information will be accepted by the
13 board. The Sunshine Act requires a public
14 hearing on each case be held in the open
15 before the public. The board may,
16 consistent with its rules of procedure and
17 practice, enter executive session during or
18 after the public hearing on a case for
19 purposes of reviewing the record or
20 deliberating on the case.

21 The decision of the board in
22 these contested cases must be based

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1 exclusively on the public record. To avoid
2 any appearance to the contrary, therefore,
3 the board would request that persons present
4 not engage members of the board in
5 conversation.

6 Again, please turn off all
7 beepers and cell phones at this time, so as
8 not to disrupt our proceedings as we move
9 forward.

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

17 If you're not prepared to go
18 forward with a case today, or if you believe
19 that the board should not proceed, now is
20 the time to raise such a matter.

21 I'll look to staff at this time
22 as we come someone come forward.

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1 Do we have any preliminary
2 matters at this time, Mrs. Bailey?

3 MS. BAILEY: Mr. Chairman,
4 members of the board, good morning.

5 ACTING CHAIRPERSON ETHERLY: Good
6 morning.

7 MS. BAILEY: There is a
8 preliminary matter, Mr. Chairman. It has to
9 do with Application No. 17582. There is a
10 request that this case not be heard today.

11 ACTING CHAIRPERSON ETHERLY:
12 Excellent, Mrs. Bailey. I'll look to
13 counsel for the Applicant at this time. I
14 think it would be appropriate for us to take
15 that matter up.

16 MS. BALDWIN: Stephanie Baldwin,
17 Greenstein DeLorme and Luchs, attorney for
18 the Applicant, Stanton Development. Due to
19 a death, an illness and then a death of one
20 of the members of the property owner and
21 developer, the Applicant has asked for a
22 postponement of 90 days, respectfully, and

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1 we hope that you'll consider it.

2 ACTING CHAIRPERSON ETHERLY:

3 Excellent. Most certainly, the condolences
4 of the board, our staff and the entire
5 office with respect to that loss regarding
6 one of your team members. I think it would
7 be, indeed appropriate, to entertain that
8 motion for postponement.

9 Ms. Bailey, do we have any
10 appropriate dates at this time, that would
11 look to a minimum of 90 days out. If I
12 understand, Mrs. Baldwin, a minimum of 90
13 days would be appropriate at this time?

14 MS. BALDWIN: Yes.

15 ACTING CHAIRPERSON ETHERLY:

16 Okay. Ms. Bailey?

17 MS. BAILEY: Mr. Chairman, July
18 24th, if I can you to turn your schedule to
19 that date, is what staff is suggesting at
20 this point, sir. Either in the morning or
21 in the afternoon. We have one case already
22 scheduled for the morning, so that would be

1 the second case in the morning, and the
2 afternoon seems to be free. Either that or-
3 -that's it. Other than that, it's
4 September.

5 ACTING CHAIRPERSON ETHERLY: And
6 again, Mrs. Bailey, that date was the 24th
7 of July?

8 MS. BAILEY: Absolutely.

9 ACTING CHAIRPERSON ETHERLY:
10 Okay. Mrs. Baldwin, would there be any
11 objections to that date?

12 MS. BALDWIN: No; that would be
13 wonderful.

14 ACTING CHAIRPERSON ETHERLY:
15 Okay. And again Mrs. Bailey, there is how
16 many cases in the morning agenda for that?

17 MS. BAILEY: There is one case
18 already scheduled for the morning of July
19 24th.

20 ACTING CHAIRPERSON ETHERLY:
21 Okay.

22 Ms. Baldwin, any objections to

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1 being the second case of the day for the
2 24th?

3 MS. BALDWIN: No; that's fine.

4 ACTING CHAIRPERSON ETHERLY:
5 Okay; excellent. Ms. Bailey, let's set that
6 for the second case in the morning, that'll
7 be on July the 24th, 2007.

8 Just for purposes of
9 clarification, Mrs. Bailey, will we require
10 any additional new notice to go out with
11 regard to that rescheduled date, or will
12 this constitute as notice for that?

13 MS. BAILEY: This should
14 constitute notice for that, Mr. Chairman.

15 We suggest that the Applicant do
16 get in touch with the ANC, to let them know
17 of the new date.

18 MS. BALDWIN: We will, and the
19 Capitol Hill Restoration Society.

20 ACTING CHAIRPERSON ETHERLY:
21 Excellent. Okay.

22 Mrs. Baldwin, again, thank you

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1 very much for your time. Our condolences,
2 once again, on the loss.

3 MS. BALDWIN: Thank you very
4 much.

5 ACTING CHAIRPERSON ETHERLY:
6 We'll see you on the 24th.

7 MS. BALDWIN: Okay.

8 ACTING CHAIRPERSON ETHERLY:
9 Thank you very much, Mrs. Bailey. Any other
10 preliminary matters at this point?

11 MS. BAILEY: Swearing in the
12 witnesses, Mr. Chairman.

13 ACTING CHAIRPERSON ETHERLY:
14 Excellent. Thank you, Mrs. Bailey.

15 At this time would all
16 individuals who are planning to testify
17 before the board please rise to take the
18 oath. Mrs. Bailey, again sitting to my
19 left, will direct you according.

20 MS. BAILEY: Would you please
21 raise your right hand.

22 [Witnesses sworn, en masse]

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1 MS. BAILEY: Thank you.

2 ACTING CHAIRPERSON ETHERLY:

3 Thank you very much. Ladies and gentlemen,
4 at this time I think we're ready to return
5 to our regular scheduled programming. Mrs.
6 Bailey, if you could at this time call the
7 first case.

8 MS. BAILEY: Thank you, sir.

9 Application No. 17579 of Keith
10 Catanzano, pursuant to 11 DCMR 3104.1, for a
11 special exception to allow the construction
12 of an accessory structure serving a single-
13 family row dwelling under section 223, not
14 meeting the lot occupancy requirements of
15 section 403. The property is zoned R-4 and
16 is located at 1235 Independence Avenue,
17 S.E., Square 1015, Lot 144.

18 Mr. Chairman, the Applicant is
19 seeking clarification concerning the proper
20 relief for this project.

21 ACTING CHAIRPERSON ETHERLY:

22 Excellent. Thank you very much, Mrs.

1 Bailey.

2 If we could, sir, good morning,
3 to you. If you could identify yourself and
4 state your address for the record, please.

5 MR. CATANZANO: Good morning. My
6 name is Keith Catanzano and my address is
7 1235 Independence Avenue, S.E., Washington,
8 D.C.

9 ACTING CHAIRPERSON ETHERLY:
10 Excellent. Again, very good to see you this
11 morning. Welcome. I think it's going to be
12 appropriate for us, perhaps, at this point,
13 unless my colleagues have any objection,
14 that we just proceed.

15 If I understand correctly, we
16 essentially have two chief questions here.
17 One is whether you're coming in under a 223
18 or whether you're coming in for variance
19 relief.

20 You provided some argumentation
21 with respect to both issues.

22 MR. CATANZANO: That's correct.

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1 ACTING CHAIRPERSON ETHERLY:

2 Again, I'll invite some comment, perhaps at
3 this time from my colleagues, before we get
4 into the presentation as to whether you have
5 any objection to just proceeding with the
6 argument, perhaps taking both arguments,
7 looking to the Office of Planning, perhaps,
8 for some thoughts that they may have on that
9 particular question, and as we move through
10 the case, we'll begin to kind of fine-tune
11 which relief we're going to be looking at.

12 COMMISSIONER TURNBULL: Mr.
13 Chair, I'm in favor of that. I think we
14 should explore it.

15 BOARD MEMBER MANN: I'm also in
16 favor of it, although I would ultimately say
17 that, just to make it clear, it can't be our
18 choice, what, really, facade--it has to be
19 the choice of, ultimately, the Applicant, if
20 I understand correctly the procedure.

21 COMMISSIONER TURNBULL: I would
22 agree.

1 ACTING CHAIRPERSON ETHERLY: I'm
2 tempted to perhaps move out of order and--
3 actually, just a moment, sir.

4 [Pause]

5 ACTING CHAIRPERSON ETHERLY: All
6 right. Thank you very much for your
7 patience, Mr. Catanzano. Obviously, there's
8 a little bit of--it's a major question and
9 we want to be sure that we give you, to the
10 extent we can, the appropriate amount of
11 guidance.

12 As a self-certified application,
13 it is not traditionally, the purview of the
14 board to offer an Applicant an answer, if
15 you will, on what the appropriate relief is.

16 I think what will perhaps be
17 best, as we move forward, is just to go
18 through the facts of the case, go through
19 the parameters of the project that you have
20 in mind, and then we'll kind of see where we
21 are as we move forward through the
22 presentation.

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1 MR. CATANZANO: Okay.

2 ACTING CHAIRPERSON ETHERLY:

3 Okay? Excellent. I'll turn it over to you,
4 sir.

5 MR. CATANZANO: Great; thank you.
6 Again, good morning. I'd like to, before
7 getting into the details of the case,
8 clarify one administrative point which is, I
9 believe made in error, when I filed the
10 affidavit of posting.

11 I believe that I listed that the
12 date that I posted a public notice sign as
13 either the 8th or the 9th of March, and in
14 fact, after going back to my calendar and
15 double-checking, I'd actually posted it on
16 the 5th, so it had been up for the 15 days.
17 I just wanted to clarify that, that it did
18 go up on the 5th, at about 6:00 o'clock.

19 The project that my wife and I
20 are here to propose is for construction of a
21 10 by 18 foot shed at the rear of our
22 property.

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1 The background of this project is
2 that we had, when we first moved into the
3 property, used an extra bedroom as a storage
4 and woodworking area, it's a hobby of mine,
5 furniture making, and with the birth of our
6 son, six months ago, obviously keeping the
7 equipment in the house was not safe and we
8 moved it into warehouse storage in Maryland,
9 and then began the process, working with an
10 architect, and working with various offices
11 within the city, to design and present a
12 case for a shed that would be located at the
13 rear of our property.

14 The property is a property
15 located on Capitol Hill. It's an attached
16 rowhouse, 17 feet wide, a 100 feet deep.

17 We have submitted letters of
18 support from both of our neighbors. We
19 filed it as a request for special exception
20 because after consulting with the Office of
21 Zoning and going back through some of the
22 earlier cases presented before the BZA,

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1 there were two similar cases presented in
2 2004, which I listed in some of the
3 documentation that we submitted.

4 But these are cases 17130, which
5 was the application of James Brady and Lisa
6 Rich, and also the case of 17142, the
7 application of Joseph and Sara Reid. In
8 each case, the homeowners had sought to
9 construct an accessory structure to serve
10 their single-family row dwelling under
11 section 233, and in both cases it was
12 because they were not meeting the lot
13 occupancy requirements.

14 Both homes were in the R-4
15 District, which is also where our property
16 is located, and in both cases, the board had
17 found that the special exception
18 requirements were fully met and had approved
19 those applications as special exceptions.

20 So that was the rationale under
21 which we originally submitted the case as a
22 special exception. However, over the course

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1 of the last couple of months, working with
2 the Office of Planning, we were guided, and
3 we see the recommendation was that it should
4 be treated as a request for variance from
5 the lot occupancy under 403 as opposed to
6 the special exception, and so in preparation
7 for today, not knowing which way the board
8 would choose to treat the case, we have
9 taken several steps.

10 One, which you noted, sir, was
11 that we revised our statement to address the
12 burden of proof of both conditions, and in a
13 minute, we have to walk through that.

14 Also in response to feedback from
15 Mr. Richard Nero, here, at the Office of
16 Zoning, we did modify the sign posted on our
17 property on March 9th, to indicate that it
18 could proceed as either a special exception
19 or as a variance, so that the public would
20 have that awareness, and likewise, based on
21 his advice, I presented at the ANC 6B
22 meeting on March 13th, the fact that it

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1 could proceed as either a special exception
2 or a variance, so that both the ANC as well
3 as the neighborhood members who were in
4 attendance were aware of that.

5 And if I may, I'd like to walk
6 through our rationale or our arguments for
7 both the special exception case as well as
8 the variance case, if I may.

9 Under the special exception case,
10 obviously, as you know, there are several
11 elements that must be met to grant that.
12 The first is that the addition shall not
13 have any adverse effect on the use or
14 enjoyment of our adjacent properties, and as
15 we noted in the burden of proof statement,
16 the design does take into account the light
17 and air availability to our neighboring
18 properties.

19 We have kept the shed relatively
20 small, it's ten feet at its highest point,
21 and the surrounding structures are two and
22 three story dwellings. There's also a

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1 setback from the neighbors' homes. At the
2 closet point, it's about 20 to 22 feet from
3 the shed to the back of our neighbors'
4 homes.

5 And we've made presentations to
6 the Capitol Hill Restoration Society's
7 zoning committee as well as ANC 6B, and both
8 organizations found that the addition would
9 not affect the light and air, nor the
10 privacy of use and enjoyment of our
11 neighbors' properties.

12 The addition has also been
13 designed, the shed has also been designed,
14 so that the privacy of the adjacent
15 properties is not compromised. It doesn't
16 obstruct their views, and as i mentioned
17 before, both neighbors, on either side, have
18 signed letters supporting the proposed
19 project.

20 The design of the shed and the
21 existing home does not also intrude upon the
22 character of the houses along the street

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1 frontage. There are a number of similar
2 alley structure along our alley, and in
3 working with the Historic Preservation
4 office, our design is consistent with the
5 other alley structures, and we believe in
6 both the materials chosen as well as the
7 overall size and scale of the design.

8 It fits the character of the
9 other alley structures, and the Historic
10 Preservation office had signed off on those
11 plans back in October of 2006.

12 The second element for the
13 special exception is obviously that within
14 the R-4 District, the addition and the
15 existing property remain under 70 percent.
16 We're currently at 59 percent with our
17 existing property. With the construction of
18 the shed, that would take us up to 69.6
19 percent, I believe, but it would still be
20 within the 70 percent allowed under a
21 special exception.

22 It has, as I mentioned, been

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1 professionally designed, with appropriate
2 input from the Historic Preservation office
3 staff.

4 Obviously, if there are any
5 measures that the board would like us to
6 also institute, to screen, or protect the
7 neighboring properties, we would be amenable
8 to that, and it does not, as required under
9 the special exception, expand the use of the
10 property. It would remain residential and
11 focused on the current uses allowed under
12 the R-4 District.

13 If it is a case of a variance
14 request, there are obviously the three
15 elements, that the board is well aware,
16 required four variance, and the first is the
17 uniqueness of the size or shape.

18 As we noted in the burden of
19 proof statement, we're seeking refuge under
20 the size of the lot. It's 17 feet wide,
21 1700 square feet in total area, and at the
22 adoption of the original zoning regulations,

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1 it became nonconforming, because as you're
2 aware, within the R-4 District, the minimum
3 requirements are 18 feet in width, and a
4 minimum lot area of 1800 square feet, and
5 this property is unique in that it's one of
6 the few lots on the alley, of its size, that
7 is not also improved with an accessory
8 structure which predated the original zoning
9 regulations.

10 With the issue of peculiarity and
11 exceptional practical difficulty, as we
12 indicated in the statement that we
13 submitted, the practical difficulty flows
14 from a substandard lot area and width
15 dimensions. It's because of the existing
16 nonconformity of the lot with an area that
17 the lot occupancy in excess of 60 percent
18 would result from building this shed, and as
19 I stated at the beginning, the inability to
20 build this structure results in a peculiar
21 difficulty for us, in that our plan is to
22 use it as a hobby/woodworking shop, and as

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1 we converted the bedroom of the small, of
2 what had been our woodworking shop to put
3 into a nursery, we moved the equipment into
4 storage.

5 The property is unique on our
6 block, in that we don't have a basement, and
7 there is no way to feasibly add on to the
8 house itself in a way that would allow us to
9 put this equipment in the house, in a safe
10 manner, with children in the house. So the
11 proposed shed would provide that safe
12 location outside of the house.

13 And then finally, the third
14 element of the variance is that the relief
15 can be granted without detriment to the
16 public good and without impairing the intent
17 of the zoning regulations.

18 As the Office of Planning, ANC
19 6B, and the Capitol Hill Restoration Society
20 have all noted, the shed is consistent with
21 the character of the square, it has our
22 neighbors' approval on each side of the lot,

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1 and is consistent with the overall intent of
2 the regulations to prevent the overbuilding
3 of lots within the R-4 District.

4 The site would continue to retain
5 a significant amount of usable open space
6 and would not impair the ability of our
7 neighbors to enjoy their properties.

8 So those were the key points for
9 both the special exception and well as the
10 variance.

11 ACTING CHAIRPERSON ETHERLY:
12 Excellent. A couple of very quick
13 questions. I'd like to turn to board
14 questions at this time.

15 You indicated that you did
16 represent, if you will, to the ANC, on the
17 13th of March.

18 Are you aware of whether or not
19 the ANC took any, shall we say, revised
20 action on your presentation with respect to
21 the variance relief question?

22 MR. CATANZANO: No, I am aware of

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1 their response, and they, at the meeting on
2 the 13th, listened and understood that it
3 could be considered as a variance.

4 But at that time, where it was
5 still formally listed as a special
6 exception, submitted the letter as support
7 for--I believe it's submitted as a support
8 for the special exception.

9 ACTING CHAIRPERSON ETHERLY:
10 Okay. Okay. Was there any revised
11 discussion with the Capitol Hill Restoration
12 Society with respect to the variance
13 question as well?

14 MR. CATANZANO: No. I did not
15 follow up with the Capitol Hill Restoration
16 Society with respect to the variance.

17 ACTING CHAIRPERSON ETHERLY:
18 Okay. And as we're kind of talking
19 specifically about the ANC piece, I'll just
20 take a moment to add, if we do have a
21 representative from ANC 6B in the room at
22 this time--not seeing that everyone's

1 rushing to the table, I'm going to assume
2 that we don't have a rep--but again, we'll
3 touch on the ANC report at the appropriate
4 time. But I just wanted to clarify that.

5 Any questions from my colleagues?

6 Mr. Mann.

7 BOARD MEMBER MANN: I just wanted
8 to clarify something that you said. I think
9 it was in establishing uniqueness. You said
10 that it was one of the few lots without a
11 structure in the back; is that correct?

12 MR. CATANZANO: That's correct.
13 Of its size. That's correct.

14 BOARD MEMBER MANN: Of its...?

15 MR. CATANZANO: Size.

16 BOARD MEMBER MANN: And did you
17 go on to say that it was one of the few
18 without a structure that predated the
19 current zoning regulations? Or maybe I
20 didn't quite understand what your point was
21 there.

22 MR. CATANZANO: The other lots

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1 which--it is similar to several other lots,
2 on either side of it, in being 17 by 100,
3 also smaller than the minimum requirement.
4 The other lots, many of the other lots have
5 accessory structures, garages along the
6 alleyway, so in that respect it's different.

7 The other lots, alleyway
8 structures or garage structures are old, and
9 I believe predate the zoning requirement,
10 which would have prevented them from also
11 constructing those.

12 BOARD MEMBER MANN: Okay. I see.

13 MR. CATANZANO: That's what I
14 wanted my point--

15 BOARD MEMBER MANN: I wanted to
16 ensure that I--I thought that you said that.
17 Thanks.

18 ACTING CHAIRPERSON ETHERLY:
19 Okay. Thank you, Mr. Mann.

20 Mr. Turnbull.

21 COMMISSIONER TURNBULL: Mr.
22 Chair, I just had--you said that your

1 residence is one of the few that do not have
2 a basement?

3 MR. CATANZANO: I think on our
4 block, it is the only one that does not have
5 a basement.

6 COMMISSIONER TURNBULL: The only
7 one?

8 MR. CATANZANO: Yes.

9 COMMISSIONER TURNBULL: Do you
10 see this structure, at some point, being
11 used as a garage, or--

12 MR. CATANZANO: No. No, I do
13 not.

14 COMMISSIONER TURNBULL: Okay.
15 Cause I noticed you're having a garage door
16 on the alley side. Is that mainly for
17 equipment to come in and out, or material?

18 MR. CATANZANO: Actually, that is
19 based on feedback from the Historic
20 Preservation office. They wanted it to be
21 consistent with the other existing
22 structure, which are in fact garages and

1 have garage doors.

2 COMMISSIONER TURNBULL: I see.

3 MR. CATANZANO: We'd originally
4 proposed a slightly different design with
5 barn-style doors, and they wanted to see the
6 garage door in a way that would be
7 consistent with the other structures.

8 Because we're not asking for the
9 setback relief from the alley, because it's
10 not our intent to use it as a garage, we've
11 also worked with the city to ensure that it
12 could not be used as a garage, and if you'll
13 note in the package, there is a revised
14 design that puts a fold basically in the
15 center, as a structural element, to prevent
16 it from being used as a garage.

17 COMMISSIONER TURNBULL: Okay;
18 thank you.

19 ACTING CHAIRPERSON ETHERLY:
20 Excellent. Any further questions from my
21 colleagues?

22 [No response]

1 ACTING CHAIRPERSON ETHERLY:

2 Okay. I think at this time it'd be
3 appropriate to move forward to government
4 reports and I'd like to welcome the Office
5 of Planning and look to them for their
6 report.

7 MR. WOODS: Good morning, Mr.
8 Chairman, members of the board. I'm Douglas
9 Woods with the Office of Planning.

10 The Office of Planning cannot
11 recommend approval of the application as the
12 Applicant has not adequately met the
13 criteria for granting a variance.

14 While the shed structure at this
15 location would be in keeping with the
16 neighborhood character and would not unduly
17 impact adjacent properties, the subject site
18 is not unique and therefore it does not
19 appear to meet the first or second parts of
20 the three-part variance test.

21 That concludes my testimony. I'd
22 be happy to answer questions.

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1 ACTING CHAIRPERSON ETHERLY:

2 Excellent. Any questions from my colleagues
3 at this time?

4 COMMISSIONER TURNBULL: Mr.
5 Woods, I would just question, the Applicant
6 has also started talking about possible as a
7 special exception. Had you looked at--
8 what's your position on a special exception?

9 MR. LAWSON: Good morning. My
10 name is Joel Lawson with the Office of
11 Planning. We did look at this because that
12 is what the Applicant originally, certainly
13 submitted, and we had a great discussion
14 with the Applicant about this issue, and
15 we've also had discussions with the Zoning
16 Administrator.

17 It's also not normally our role
18 to recommend an alternative where the
19 Applicant has requested. In this case, we
20 felt that it was appropriate to raise the
21 issue of the variance. That has been the
22 interpretation of the Zoning Administrator,

1 that in a case such as this, that it would
2 be reviewed as a variance, and we were
3 concerned that if it was reviewed as a
4 special exception, that once it got to the
5 building permit stage, the Zoning
6 Administrator would have difficulty with the
7 application, simply because he would not
8 consider it as having kind of proceeded
9 through the process the way that it normally
10 should have.

11 I believe last week also, the
12 Board of Zoning Adjustment dealt with a
13 similar case to this one, although I think
14 it was for a garage rather than a shed,
15 which was also dealt with as a variance
16 request as opposed to a special exception.

17 So in some respects, we were
18 doing it--you know, even though the variance
19 test is a higher tested take to make than a
20 special exception, we were doing it to make
21 sure that the BZA dealt with the full range
22 of the issues in this one hearing, to make

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1 sure that the Applicant would not have to
2 come back to the BZA at some point in the
3 future, which would have been possible, if
4 not likely otherwise.

5 With regards to 223, of course,
6 the Office of Planning doesn't normally do
7 the interpretation of the zoning
8 regulations, we leave that up to the Zoning
9 Administrator, and he does that really well.
10 So we would leave it up to him.

11 We do look at this section as
12 clearly saying that it, 223 applies to an
13 addition to a single-family dwelling, and we
14 have some concerns with an interpretation
15 that would allow a separate building on a
16 property to be considered an addition, and
17 what the future ramifications of that kind
18 of an interpretation could be.

19 I just really want to stress,
20 right now, that our concern isn't
21 necessarily with this applications. I think
22 that the Applicant has been very diligent in

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1 working with us and in coming up with a
2 solution that, you know, conforms to the
3 streetscape character and such.

4 But, you know, for the sake of, I
5 guess the integrity of the zoning
6 regulations and the three-part test, we had
7 to agree with the Zoning Administrator and
8 his interpretation of section 223, that a
9 new building on a property, even if it's an
10 accessory building, because an accessory
11 building is clearly defined separately in
12 the zoning regulations, that that doesn't
13 constitute an addition to the existing
14 building, which is what section 223 refers
15 to.

16 COMMISSIONER TURNBULL: Thank
17 you, Mr. Lawson. I guess one question. You
18 know, in looking at the overall neighborhood
19 plan, you do see a lot of ancillary
20 structures at the alley, garages, and I'm
21 just--are those grandfathered in? They're
22 existing before? How does anybody get a

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1 garage put on, then? Is that--

2 MR. LAWSON: We didn't do a
3 history of the rest of the block. It's
4 certainly a common feature in the
5 neighborhood, and throughout Capitol Hill,
6 actually, to have these kinds of structures.
7 I suspect that most of them actually are
8 grandfathered.

9 I wouldn't want to speculate on
10 how all the rest of them were approved. I
11 know that some of them have gone through a
12 BZA process, some of them actually went
13 through BZA process as 223, and I would
14 suspect if we did a full, complete history
15 of all the accessory buildings on Capitol
16 Hill, some of them may have also gone
17 through as variance requests.

18 But I suspect, for the large
19 part, most of them are grandfathered, and
20 there was a structure that predated the 1958
21 zoning regulations. Again, I would expect
22 that many of them have been updated and

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1 renovated since then, so they may not look
2 like a pre 1958 structure; but that would be
3 my guess.

4 COMMISSIONER TURNBULL: Thank
5 you. Although from a uniqueness
6 standpoint, I guess from a zoning, looking
7 at the building, all the lots are very
8 similar, so there's not a uniqueness from
9 the standpoint of a lot itself.

10 And I'm just--I'm not looking for
11 loopholes or anything, but the Applicant did
12 point out that their structure does not have
13 a basement. They're one of the few.

14 Does that contribute, in any way,
15 to adding to the uniqueness of the structure
16 itself?

17 MR. LAWSON: That is kind of new
18 information and wasn't part of our original
19 analysis, and we can't--I guess, you know,
20 we certainly haven't verified that there no
21 other buildings that don't have garages,
22 although I would say that, you know, just

1 from anecdotal experience, my own experience
2 on Capitol Hill, that certainly, you know,
3 basements are common in the area.

4 So to have a building without a
5 basement, and certainly the kinds of uses
6 that are being proposed for this structure
7 are the kinds of uses that we might expect,
8 if somebody had a basement, to put in the
9 basement. Because it's a historic district
10 and because these are older buildings,
11 certainly putting in a basement wouldn't be
12 feasible or practical, and it would
13 certainly make more sense to put these kinds
14 of uses into an accessory structure, the way
15 that the Applicant has proposed.

16 COMMISSIONER TURNBULL: Well, in
17 light of that, would it be--and again, would
18 that add any more weight to your feeling on
19 the uniqueness of this particular building,
20 then?

21 MR. LAWSON: It's difficult for
22 us to answer definitively, because we

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1 haven't verified the situation. But I think
2 that just kind of an off-the-top-of-my-head
3 kind of a comment, that I think that we
4 would have entered that into our thought
5 process and our analysis, the fact that
6 there was [sic] a basement and the kinds of
7 uses that are being proposed are, you know,
8 for lack of a better term--in the shed are,
9 lack of a better term, basement type uses;
10 yes.

11 COMMISSIONER TURNBULL: If this
12 were tabled back to the Applicant, then, to
13 provide or assist in that, I mean,
14 information as to the uniqueness of their
15 house, would you be looking into that?
16 Would they be providing information? How
17 would that work?

18 MR. LAWSON: I suspect it might
19 be difficult for the Applicant, actually, to
20 find all that information. They basically
21 have to canvass all their neighbors and ask,
22 Do you have a basement? and those kinds of

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1 issues. And we're not saying that we
2 disbelieve the Applicant in any way. I
3 think that when the Applicant says that most
4 of the houses have basements, you know, I
5 expect that that is actually the base.

6 I think what I'm saying is from
7 the Office of Planning's standpoint, it'd be
8 difficult, you know, without us doing that
9 research, to say that we would reverse our
10 recommendation, but we would understand
11 entering into the board's discussion and
12 delineation on this application.

13 COMMISSIONER TURNBULL: Okay;
14 thank you. Thank you very much.

15 Mr. Chairman, that's all I have
16 right now.

17 ACTING CHAIRPERSON ETHERLY:
18 Okay. Excellent questions, Mr. Turnbull.
19 Any further questions from the board?

20 BOARD MEMBER MANN: No.

21 ACTING CHAIRPERSON ETHERLY: I'd
22 like to ask, Mr. Catanzano, do you have a

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1 copy of the Office of Planning's report?

2 MR. CATANZANO: Yes, I do.

3 ACTING CHAIRPERSON ETHERLY: Do
4 you have any cross examination questions for
5 the Office of Planning?

6 MR. CATANZANO: No.

7 ACTING CHAIRPERSON ETHERLY:
8 Excellent. I think we should continue
9 moving forward. At this time I'd like to
10 turn our attention to the Advisory
11 Neighborhood report as was referenced in the
12 Applicant's presentation.

13 We do not have a representative
14 from ANC 6B, but we do have an exhibit 26, a
15 report dated March 14, 2007 of the ANC's
16 action, which notes, in relevant portion, at
17 its regularly and properly noticed meeting
18 on March 13th, with a quorum present, ANC 6B
19 voted unanimously, nine/zero, to support the
20 Applicant's request for a special exception
21 from lot occupancy requirements to renovate
22 and construct an accessory structure as

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1 presented in the above case.

2 Again I'll note for the record
3 that, Mr. Catanzano, as you indicated, you
4 did present on the issue of variance relief
5 as a possible scenario to the ANC but you're
6 not aware as to whether or not they took any
7 action on that particular question.

8 MR. CATANZANO: That's correct.

9 ACTING CHAIRPERSON ETHERLY:

10 Okay. Excellent. Again, that's, for my
11 colleagues, at Exhibit 26. With respect to
12 additional government reports I'm not aware
13 of at this particular time, outside of, as
14 we've discussed also, the Historic
15 Preservation Review Board. As I understand
16 from the Office of Planning's report, the
17 concept for the shed and the design were
18 signed off on October 11th, 2006.

19 Mr. Mann.

20 BOARD MEMBER MANN: Mr. Chairman,
21 just as a procedural matter, I would note
22 that the ANC report was actually received a

1 day late. So we might have to consider
2 whether or not to waive our rules, I guess,
3 to accept it.

4 ACTING CHAIRPERSON ETHERLY: To
5 accept it. Excellent point, just for the
6 purpose of procedural.

7 Is there any objection to
8 receiving, to waiving our rules and
9 receiving the report as it is, submitted a
10 day late.

11 COMMISSIONER TURNBULL: I would
12 agree to accept it.

13 ACTING CHAIRPERSON ETHERLY:
14 Excellent. I would have no objections as
15 well. So I'll take it as a consensus of the
16 board, to waive our rules and accept ANC's
17 6B report at Exhibit No. 26.

18 I just referenced the Historic
19 Preservation Review Board's action of
20 October the 11th, 2006. I'm not aware,
21 then, at this time, of any additional
22 government reports. At this time, if there

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1 are any person sin support or opposition to
2 this proposal, please step forward.

3 Again, there's no mad rush to the
4 table, so I'll keep us moving forward.

5 I'll note for the record, as the
6 Applicant did indicate, that we do have, at
7 Exhibit No. 22, a letter dated February 28,
8 2007, from the Capitol Hill Restoration
9 Society. The Restoration Society is noting
10 its approval of the application. Again, it
11 is noting that approval on the basis of a
12 special exception review, if you will, but
13 that is Exhibit No. 22, and as noted also b
14 the Applicant at both Exhibit No. 9, I
15 believe, and Exhibit No. 8, we have what are
16 labeled as neighbor responses in support of
17 the application.

18 Again not seeing anyone else
19 stepping forward with respect to support or
20 opposition, I think it's appropriate at this
21 time, Mr. Catanzano, to turn it back over to
22 you for any closing remarks that you may

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1 have.

2 MR. CATANZANO: I have no
3 additional remarks. Thank you.

4 ACTING CHAIRPERSON ETHERLY:
5 Okay. Thank you very much.

6 What is the desire of my board
7 colleagues at this point?

8 I'll note that I believe I would
9 tend to agree with the Office of Planning's
10 analysis, that it is probably appropriate to
11 move under a variance analysis with respect
12 to this particular case.

13 Mr. Turnbull, you raised some
14 very good questions with respect to some of
15 the additional factors that were raised by
16 the Applicant during the course of his
17 presentation regarding the subject property,
18 whether or not there could be additional
19 information, if necessary, submitted to the
20 Office of Planning.

21 I think we've had some good
22 dialogue. Again, I would invite comment

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1 from my board members but I feel comfortable
2 moving forward at this particular point in
3 time.

4 BOARD MEMBER MANN: I think Mr.
5 Turnbull raised some very good issues in his
6 discussion with Office of Planning in
7 regards to the Applicant making a variance
8 case. So I'm not quite certain whether it
9 is that you want to move to right at the
10 moment, Mr. Chairman, but I think that we
11 probably need to hear definitively from the
12 Applicant as to what route he wants to take,
13 and discuss, I guess, whether or not we
14 require additional information from the
15 Applicant, if he chooses to make that
16 variance case.

17 ACTING CHAIRPERSON ETHERLY:
18 Okay. If I could, I'd like to perhaps look
19 to the Office of Attorney General. Again,
20 we're represented on this case by Mrs.
21 Glazer, not to put Mrs. Glazer surprisingly
22 on the spot here, but I'd perhaps like to

1 invite perhaps a little bit of guidance or
2 comment on what your recommendation might be
3 in terms of us moving forward, one way or
4 the other, on this particular case today.

5 MS. GLAZER: Mr. Chair, I think
6 the board has noted that last week, the
7 board decided that a similar case involving
8 a separate structure, needed to be evaluated
9 as a variance, so--and our office agrees
10 with that interpretation. So I think that
11 if the Applicant is willing to proceed with
12 the variance application, the board should
13 hear it and consider it from that
14 perspective.

15 ACTING CHAIRPERSON ETHERLY:
16 Again, thank you very much, Mr. Catanzano,
17 for your patience.

18 Oftentimes, those procedural
19 questions are just as devilish as the actual
20 substance of the case, and I think is a very
21 important question that's been raised.

22 I think, however, it would

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1 probably be appropriate, based on the
2 discussion and the testimony that's been
3 provided, I think from a procedural
4 standpoint, it's perhaps appropriate to turn
5 it back to you as a self-certified
6 application, to assess your thoughts on how
7 you would like to proceed here.

8 Again, the board, traditionally,
9 and as a matter of course, doesn't, shall we
10 say, suggest, or offer thoughts to
11 Applicants as to which way they should
12 proceed, but I'm going to turn it back over
13 to you for your thoughts on perhaps how
14 you'd like the board to look at this case.

15 MR. CATANZANO: Okay; thank you.
16 I appreciate that. In light of the report
17 from the Office of Planning and likewise in
18 light of the history of the case that came
19 before the board earlier in the month, I'd
20 ask that the board amend the application to
21 be an application for an area variance under
22 section 403.2.

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1 ACTING CHAIRPERSON ETHERLY:

2 Excellent. Thank you very much, sir. With
3 that in mind, I would think that that is,
4 indeed, the appropriate direction for the
5 board to move in at this particular time.

6 I think this case is fairly
7 complete and ready to move forward today.

8 As you heard in terms of some of
9 the exchange with the Office of Planning and
10 Mr. Turnbull, there is perhaps some
11 additional information that could
12 conceivably be sought with regard to what's
13 happening on the rest of your particular
14 block, but I think the testimony, as was
15 indicated by the Office of Planning, I think
16 the testimony speaks to what is, in all
17 likelihood, probably the case in your
18 particular area, and I think the record is
19 fairly full and complete in terms of the
20 board being able to, if you will, adjudicate
21 on the variance question at this point in
22 time.

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1 So I think with that, from my
2 colleagues, it'd be appropriate to move
3 forward under a motion and I will move
4 approval of Application 17579, of Keith
5 Catanzano, pursuant to 403.2, for a variance
6 from the lot occupancy requirements for a
7 detached "accessory structure"--I'm not
8 certain if I want to refer to it as a
9 garage, as it's noted--pursuant to section
10 3103. Perhaps before formalizing that
11 motion, let me just make sure I have my
12 nomenclature.

13 1b [Brief pause]

14 ACTING CHAIRPERSON ETHERLY:

15 Okay; okay. I think that would
16 be the appropriate language to utilize as
17 that motion has been articulated.

18 So, once again, I would move
19 approval of Application No. 17579 of Keith
20 Catanzano for relief under a variance from
21 the lot occupancy at section 403.2 for an
22 accessory structure pursuant to section

1 3103, at address 1235 Independence Avenue,
2 S.E., Square 1015, Lot 144, and would invite
3 a second.

4 COMMISSIONER TURNBULL: Second.

5 ACTING CHAIRPERSON ETHERLY:

6 Thank you very much, Mr. Turnbull.

7 Again, I think the record has
8 been very full and complete on this
9 particular application as we deal with the
10 question, first, as was indicated by the
11 Applicant, indeed, an area variance is a
12 higher standard as opposed to a special
13 exception here, but I think with respect to
14 the first prong of the variance test, as we
15 look at the issue of specific uniqueness
16 with respect to exceptional shape,
17 narrowness, shallowness, topography or other
18 extraordinary, or other exceptional
19 situations or conditions of the subject
20 property, I think more than adequate
21 testimony and representations have been
22 provided with respect to the uniqueness of

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1 this particular structure as it exists. The
2 only unimproved subject in the subject
3 neighborhood, clearly, one of the few, if
4 only structures in the subject neighborhood
5 that does not possess a basement, if you
6 will.

7 I think the Office of Planning
8 raised some very important points.

9 I think it was an important
10 exchange between OP and Mr. Turnbull with
11 respect to those factors helping to further
12 buttress the first prong in the variance
13 test, if you will.

14 With respect to a practical
15 difficulty arising from that condition, I
16 think clearly there's a practical difficulty
17 that's been established with respect to the
18 uniqueness of the subject property, and
19 then, as the final prong in the variance
20 test indicates, can the relief be granted
21 without substantial detriment to the public
22 good, and without substantially impairing

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1 the intent, purpose and integrity of the
2 zoning regulations, and the Office of
3 Planning does indeed indicate that the
4 variance could be granted without detriment
5 to the public office.

6 We have on record, both the ANC
7 and the Capitol Hill Restoration Society, in
8 support, albeit that support, in written
9 form, speaking to a special exception
10 analysis. I think for the purposes of at
11 least further illuminating that third prong
12 of the variance test, I think both of those
13 submittals are helpful in terms of filling
14 in some of our thinking with regard to
15 whether or not there is any substantial
16 detriment, and clearly, the support of your
17 neighbors, while not necessarily a
18 dispositive factor, is always a very helpful
19 component for the board to consider.

20 So I would see the record as
21 being fairly strong and complete with regard
22 to the variance analysis.

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1 I'll open it up to my colleagues
2 for any additional remarks.

3 COMMISSIONER TURNBULL: Mr.
4 Chair, I guess the only thing I would say, I
5 was in two residences last night up on
6 Capitol Hill and both of them had either
7 English basement apartments or they had
8 basements. So I think in this particular
9 case, and again, not wishing to set a
10 precedent for anything, but I think that
11 this--you know, this structure being what it
12 is, I think not having a basement does add
13 that little extra of uniqueness to it, that
14 adding this structure would not, again, do
15 any injustice to our process or to the
16 zoning requirements. So I would agree with
17 all your comments.

18 ACTING CHAIRPERSON ETHERLY:
19 Excellent, Mr. Turnbull, and I think it is
20 very important to emphasize that this
21 decision is not one that hinges on, "My
22 goodness, Mr. Catanzano doesn't have a

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1 basement and he needs to have an
2 opportunity, and his family, to, shall we
3 say, right that significant wrong." But
4 it's a combination of factors. It's the
5 project as it's currently proposed, that I
6 think speaks to the sum of the parts being
7 very strong and compelling in this
8 particular instance. So I think your point
9 is very well-taken.

10 Once again, with the Capitol Hill
11 Restoration Society, the ANC, the Historic
12 Preservation Review Board, as was indicated
13 by the Office of Planning, I think the
14 Applicant has done considerable work to work
15 with OP, to work with your neighbors, to
16 work with HPRB, in terms of presenting a
17 project that is very much in keeping with
18 the character of the surrounding
19 neighborhood and, in particular, with a
20 level of consistency with that rear
21 alleyscape, if you will, which oftentimes is
22 a very important aspect of the Capitol Hill

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1 landscaping, if you will.

2 So with that, if there aren't any
3 further questions at this time for my
4 colleagues, any other comments, I think it's
5 appropriate for us to move forward.

6 We have a motion before it, it's
7 been properly seconded, and I ask all those
8 in favor to please signify by saying aye.

9 [Chorus of ayes]

10 ACTING CHAIRPERSON ETHERLY:

11 Opposed? Hearing none, the motion carries.

12 Mr. Moy, if you could record the
13 vote, please.

14 Ms. Bailey. Thank you very much,
15 Mr. Mann. I want to be sure everyone's
16 involved here on the dais.

17 Ms. Bailey, thank you very much.
18 If you could record that vote, please.

19 MS. BAILEY: Mr. Chairman, the
20 vote is three/zero/two to approve the
21 application. The motion was made by Mr.
22 Etherly, seconded by Mr. Turnbull, Mr. Mann

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1 is in agreement, Mrs. Miller and Mr. Griffis
2 is not present at this time, and the
3 application was granted, as amended by the
4 board.

5 And are we doing a full order or
6 summary order on this, Mr. Chairman?

7 ACTING CHAIRPERSON ETHERLY:
8 Seeing that we have no opposition, I would
9 suggest we move with a summary order at this
10 time, Ms. Bailey.

11 MS. BAILEY: Summary order it is.

12 ACTING CHAIRPERSON ETHERLY:
13 Excellent.

14 That concludes it, Mr. Catanzano.
15 Congratulations on the new addition to your
16 family. Best of luck with the project as
17 you move forward.

18 MR. CATANZANO: Thank you very
19 much.

20 ACTING CHAIRPERSON ETHERLY: All
21 right. Ms. Bailey, if you could move
22 forward to our next and what I believe is

1 our last case of the morning.

2 MS. BAILEY: Yes, Mr. Chairman,
3 and that is Application No. 17580, of Macy
4 Development LLC, pursuant to 11 DCMR 3103.2,
5 for a variance from the residential
6 recreation space requirements under section
7 773, to build an eight unit residential
8 condominium building. The property is zoned
9 C-2-A and it's located at 284 15th Street,
10 S.E, Square 1073, Lot 803.

11 And Mr. Chairman, there are three
12 requests for party status in this
13 application. That's from Michael
14 Washington, Jennifer Solomon, and Michael
15 Young.

16 ACTING CHAIRPERSON ETHERLY:
17 Thank you very much, Ms. Bailey.

18 I'm going to get to those party
19 requests right in a moment. If we could,
20 let's have representatives for the Applicant
21 get settled at the table, introduce
22 themselves, and then we'll move into the

1 party status applications.

2 MR. CONNORS: Good morning, Mr.
3 Chairperson. My name is Dennis Connors.
4 I'm the architect here, representing Macy
5 Development. Sitting to my left is Topher
6 Cushman, vice president of Macy Development,
7 and the project we are discussing today is
8 284 15th Street, S.E., otherwise known as
9 the Gaslight Condominium, on the corner of
10 15th and C Street, S.E.

11 ACTING CHAIRPERSON ETHERLY:
12 Excellent. Okay.

13 MR. CONNORS: We are here today
14 to--

15 ACTING CHAIRPERSON ETHERLY:
16 Actually, if you'd hold just for a minute,
17 Mr. Connors. I want to make sure that we
18 jump into our party status applications.

19 Again, as you heard Mrs. Bailey
20 indicate, the board is in receipt of three
21 applications, Michael Washington, at
22 Exhibit, for the benefit of my colleagues,

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1 at Exhibit No. 24, Jennifer C. Solomon at
2 Exhibit No. 23, and Michael Young at Exhibit
3 No. 21.

4 Mr. Washington, Ms. Solomon, Mr.
5 Young, are you here and present today?

6 Excellent. If we could have you
7 come forward, and I think we have enough
8 space to do all three of you at the same
9 time. If you'd just step forward, make
10 yourselves comfortable, make sure that you
11 have your witness cards handed to our court
12 reporter.

13 Good morning to each of you.
14 We're going to walk through your party
15 status applications. We will, just to give
16 you a sense of our procedure as we walk
17 through that, we'll discuss the applications
18 with you, we'll seek of course comment from
19 the Applicant with respect to whether or not
20 they are in opposition or support of the
21 party status applications.

22 So perhaps if we could just move

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1 from what is my left to the right. How
2 about if we start with you, sir.

3 If you'd identify yourself for
4 the record and state your name and address.

5 MR. YOUNG: My name is Michael
6 Young. I live at 274 15th Street, S.E.,
7 Washington, D.C. 2003.

8 ACTING CHAIRPERSON ETHERLY:
9 Excellent. And if you could identify
10 yourself and your address for the record,
11 ma'am.

12 MS. SOLOMON: Jennifer Solomon,
13 280 15th Street, S.E.

14 ACTING CHAIRPERSON ETHERLY:
15 Okay. And you, sir.

16 MR. WASHINGTON: Michael
17 Washington, 1513 C Street, S.E.

18 ACTING CHAIRPERSON ETHERLY:
19 Excellent. Again, I thank each of you very
20 much for your presence today.

21 As you are aware, party status
22 allows you what we essentially refer to as a

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1 heightened level of participation in an
2 application. If your party status
3 applications are granted, it enables you to
4 cross-examine, to present your own case, to
5 call witnesses in support of your case.
6 It's a higher level of participation.

7 Persons in support or opposition
8 also of course have the opportunity just to
9 provide testimony.

10 Again, you can do that within a
11 limit of three minutes, again, in support or
12 opposition.

13 I share that with you just so you
14 understand the heightened level of
15 participation that you're seeking here.

16 I'm going to take, by virtue of
17 your presence, and by virtue of some of the
18 nodding heads here, that you are very much
19 committed to participating as party
20 participants in this case. Is that correct?

21 Okay. Then if we could, then
22 let's just perhaps move down the line again,

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1 each of you, and I'm going to start with
2 you, Mr. Washington, at Exhibit No. 24, your
3 party status application.

4 If you could just walk us through
5 that application and--I'm sorry, I'm looking
6 over there. My apologies. Mr. Washington,
7 if we could just start with you, if you
8 could just walk us through your party status
9 application, sir.

10 MR. WASHINGTON: Okay. I didn't
11 actually bring a copy of it with me. I
12 rushed to get out of the house.

13 ACTING CHAIRPERSON ETHERLY:
14 That's okay; that's okay.

15 MR. WASHINGTON: But my
16 opposition to the plan is that when Macy's
17 Development sold the concept to the
18 community, they--we all agreed. They were
19 good developers in the neighborhood. But
20 then as they--I object to as they see they
21 could go further, they start making changes
22 without the community's input.

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1 And just to give you a little--a
2 quick history on our neighborhood, we've
3 been fighting a lotta things in that
4 neighborhood--drugs, death, and cleaning,
5 keeping that corner clean. We don't have no
6 sentimental ties to it.

7 But we want a "fair shake" in the
8 development of it. Here, they came up with
9 a plan and submitted it to our neighborhood,
10 and like I said, we all agreed, where their
11 dwelling and dwelling next to it, the front
12 of it, which would be on the C Street side--
13 I mean, on the 15th Street side, all--the
14 buildings would be uniform; okay. Except
15 the one that they're building, the dwelling
16 that they're building next to has a porch.

17 It's not supposed to go past the
18 porch when they first sold it to the
19 community. Now, as they got into their
20 development, building process, they found
21 out that the property line is well past the
22 point of where everybody else dwelling is.

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1 And then finding this out.
2 Instead of them bringing it back to the
3 community, they took it, their right, to
4 just start building past everybody else
5 porch, which obstructs views, blocks
6 sunlight, and is not fair to Ms. Solomon
7 because--and the community, because what
8 they "sold us" is not what they're doing.

9 ACTING CHAIRPERSON ETHERLY:
10 Okay. Let's kind of fine-tune a little bit
11 here in terms of let's focus on just you for
12 the moment. Help orient my colleagues and
13 I, if you will: Where are you relevant to
14 the subject property in terms of your
15 residence?

16 MR. WASHINGTON: Okay. I have a
17 little picture here, if I can. This says,
18 "Site picture looking northeast," and it's a
19 gray building, I don't know if you have this
20 copy. But the site, looking northeast. If
21 you look to my--or to your right, there's a
22 fire station right there.

1 ACTING CHAIRPERSON ETHERLY: Yes,
2 sir.

3 MR. WASHINGTON: I'm right
4 across--it's a alley that separates the two
5 dwellings and I'm right across the street
6 from there.

7 ACTING CHAIRPERSON ETHERLY: From
8 that alley?

9 MR. CONNORS: Yes.

10 ACTING CHAIRPERSON ETHERLY: And
11 for the benefit of my colleagues, Mr.
12 Washington is noting Exhibit No. 6, which
13 are drawings that were provided by the
14 Applicant, and its site picture looking
15 northeast. You are directly across from
16 that alley.

17 MR. WASHINGTON: Yes. Yes, sir.

18 ACTING CHAIRPERSON ETHERLY:
19 Okay. So with respect to you, party status
20 applications are very, very specific in
21 terms of what we seek from each individual.

22 MR. WASHINGTON: Okay.

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1 ACTING CHAIRPERSON ETHERLY: It
2 seeks to really focus the inquiry on how you
3 are uniquely impacted, or affected. As you
4 will note on your party status application,
5 Question No. 6 notes, "Explain how the
6 person's interest--and it's a question that
7 all of you answered on your applications.
8 "Explain how the person's interests will be
9 more significantly, distinctly, or uniquely
10 affected in character or kind by the
11 proposed zoning action and that of other
12 persons in the general public.

13 So with respect to just you, for
14 the moment, Mr. Washington, your reply was
15 it will give them the right to block view
16 and sun and light.

17 So it is your belief, that based
18 on where your property is situated, you are
19 going to have sun and light impacts that
20 will be more significant and more unique
21 with respect to their impact upon you.

22 Is that an accurate--

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1 MR. WASHINGTON: No, that
2 actually isn't accurate, and I was rushing
3 the timeline, but I like to make it clear if
4 I can. Is that they have, on their building
5 plans, parking spaces.

6 ACTING CHAIRPERSON ETHERLY:
7 Okay.

8 MR. WASHINGTON: Four parking
9 spaces. They're extremely small parking
10 spaces, as well as they have to provide a
11 place for refuge for--initially, was nine
12 buildings. Now it's down to eight. They
13 don't have to keep in sight of their plan of
14 have four parking spaces. They don't have
15 enough space for nine, or eight Supercans,
16 which there's additional cans for recycled
17 material, like every other building in the
18 neighborhood.

19 My question is: Where will they
20 be putting this?

21 ACTING CHAIRPERSON ETHERLY:
22 Okay, sir.

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1 MR. WASHINGTON: It's not even
2 enough space for one of those dumpsters.

3 ACTING CHAIRPERSON ETHERLY: A
4 dumpster, if you will.

5 MR. WASHINGTON: Yes.

6 ACTING CHAIRPERSON ETHERLY: So
7 your concern--my apologies for interrupting
8 but I just want to be sure we focus. Your
9 concern is there may be a trash impact by
10 virtue of the proposal, if it's approved, as
11 currently presented, there's not going to be
12 enough of a capacity, if you will, to handle
13 the trash that's going to be generated by
14 the residences?

15 MR. WASHINGTON: That is correct.

16 ACTING CHAIRPERSON ETHERLY:
17 Okay. Excellent. What I'm going to do is
18 I'll move through all of the party status
19 applications and then we'll move into board
20 questions at the close of the three
21 presentations, unless there's specific
22 questions.

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1 Mr. Mann?

2 BOARD MEMBER MANN: Just one
3 clarifying question, just to make sure that
4 I understand where it is that your residence
5 is located in relation to this project. Is
6 that on the south side of C Street?

7 MR. WASHINGTON: Yes; that would
8 be the south side of C Street.

9 BOARD MEMBER MANN: Okay. I just
10 wanted to make sure I understood what you
11 were describing earlier.

12 MR. WASHINGTON: Yes.

13 BOARD MEMBER MANN: Thank you.

14 ACTING CHAIRPERSON ETHERLY: And
15 I neglected to ask: Mr. Connors, are you in
16 receipt of the party status applications for
17 the three individuals?

18 MR. CONNORS: No.

19 ACTING CHAIRPERSON ETHERLY:
20 Okay. Let's make sure if we could--Mr.
21 Moy's going to be sure that we get you
22 copies of the three applications, because

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1 once we walk through the presentations
2 again, I will look to the Applicant just for
3 their position on the party status
4 application in terms of whether they support
5 or oppose the applications.

6 MR. CONNORS: Thank you.

7 ACTING CHAIRPERSON ETHERLY: Ms.
8 Solomon, if I could turn to you. Again,
9 thank you very much for your time today.
10 You heard a little bit of the exchange
11 between Mr. Washington and myself, and other
12 board members, with respect to your party
13 status application.

14 You indicate in relevant portion,
15 and again I'll begin with Question No. 6
16 again, which speaks to how your interests
17 will be more significantly, distinctively,
18 or uniquely affected in character or kind by
19 the proposed action, as opposed to that of
20 the general public.

21 You indicate this affects me the
22 most, because I am the resident that is

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1 right next door.

2 I'll start with the question that
3 I asked Mr. Washington. First, if you could
4 orient us to where your residence is
5 relative to the proposed property. Where
6 are you at?

7 MS. SOLOMON: If you're looking
8 at the building, I'm right smack, end of
9 wall. That's my house you're looking at.

10 ACTING CHAIRPERSON ETHERLY:
11 Okay. And again, you're looking at the same
12 picture that's captioned "Site picture,
13 looking northeast"?

14 MS. SOLOMON: Yes.

15 ACTING CHAIRPERSON ETHERLY: And
16 your residence is actually pictured in that
17 picture?

18 MS. SOLOMON: Yes.

19 ACTING CHAIRPERSON ETHERLY: And
20 is it that very first house--

21 MS. SOLOMON: Yes.

22 ACTING CHAIRPERSON ETHERLY: --

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1 that actually has--you can see the Macy sign
2 on the side?

3 MS. SOLOMON: Yes.

4 ACTING CHAIRPERSON ETHERLY:

5 Okay. So that's your structure there.

6 Your chief concern also--trash.

7 Are there other issues?

8 MS. SOLOMON: No. My chief
9 concern is that wall that's coming up right
10 beyond the porch. When I come out my front
11 door, I turn to my left, and there's a smack
12 wall right there. I can't look down the
13 street anymore. It's blocking--you would
14 say it's blocking my light.

15 ACTING CHAIRPERSON ETHERLY:

16 Okay. And with respect to the windows on
17 that front of your building, by virtue of
18 the picture, there are no windows on the
19 side of your structure.

20 MS. SOLOMON: Correct.

21 ACTING CHAIRPERSON ETHERLY: The
22 windows on the front of the building, on the

1 front of your residence--let's start with
2 the first floor. Those first floor windows
3 are what? living room area for you?

4 MS. SOLOMON: Yes.

5 ACTING CHAIRPERSON ETHERLY:
6 Okay. And then those upstairs windows?

7 MS. SOLOMON: Are bedroom.

8 ACTING CHAIRPERSON ETHERLY:
9 Bedroom area. Okay. Do you also share the
10 concerns with respect to trash?

11 MS. SOLOMON: My main concern is
12 that wall that's going up?

13 ACTING CHAIRPERSON ETHERLY:
14 Gotcha; gotcha. Okay.

15 MS. SOLOMON: Because that's not
16 what was sold to us, from the pictures, and
17 when we talked.

18 ACTING CHAIRPERSON ETHERLY:
19 Okay.

20 MS. SOLOMON: All of us talked.
21 We mainly had a phone number exchange with
22 Topher himself on what was supposed to be

1 constructed there, and after I saw what was
2 going up there, I made some calls--I called
3 him and he called, I guess the architect,
4 and he called me back and said, No,
5 Jennifer, I'm sure it's, it's just porches,
6 not going to block your sight. I came home
7 again, and it keep going up and up, and I
8 called back again and he said yes, I called.
9 I said but that's not what it was supposed
10 to be.

11 ACTING CHAIRPERSON ETHERLY:

12 Okay.

13 MS. SOLOMON: You know?

14 ACTING CHAIRPERSON ETHERLY: I
15 think I have a sense of it. Any other
16 questions from my colleagues at this time?

17 [No response]

18 ACTING CHAIRPERSON ETHERLY:

19 Okay. Let's move on to Mr. Young. I have
20 it right that time, Mr. Young.

21 If you could, let me first start
22 with the question that I walked Ms. Solomon

1 and Mr. Washington through. Can you orient
2 us where your property is located.

3 MR. YOUNG: Yes. Good morning,
4 Mr. Chairman, and members of the panel. My
5 property is approximately two doors down
6 from Ms. Solomon on 15th Street, 274 15th
7 Street, and it not only environmentally
8 impacts the entire neighborhood with the
9 sunlight and the air for the older senior
10 citizens. It's a blatant negative neighbor
11 that's coming into our block.

12 And for years, we have fought to
13 clean up that neighborhood, and we sat down
14 with Mr. Topher, and he gave us a
15 presentation where the property line, as it
16 has been known throughout the district, was
17 the front door. All of the houses on that
18 block are uniform down on the front door.

19 We sat at an ANC meeting, and we
20 all kind of agreed that if he would build it
21 as he stated, then he would be welcome into
22 the neighborhood, we would have a friendly

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1 neighbor, not a negative neighbor that would
2 keep turning, and getting variances and
3 getting special exceptions, and that we
4 could live with what he initially gave us.

5 After having several
6 conversations with Mr. Topher and Mr. Dennis
7 and the ANC, and having another one of his
8 properties built directly across from my
9 house, we were finding different elements of
10 just "Forget what you guys want, this is
11 what we're going to do." This is the
12 attitude that we were receiving from our new
13 neighbors.

14 And we fought hard and long. And
15 the impact now is that if he's allowed to
16 violate what we think was the property line
17 for so many years, then we're going to have
18 one house out, one house in, one house out,
19 one house in, down our rope, because you
20 people have allowed him, or he has found a
21 way to build past this property line, which
22 is rather ugly, if I may say, just for the

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1 record.

2 When she comes out of her house
3 now, we all can look down, we see sunny
4 bright light, the light that he--the picture
5 that he had proposed to all of us. And we
6 are here today to just simply ask the Zoning
7 Commission to put a stop to some of these
8 variances and these special exceptions,
9 because we have representation from the ANC-
10 -they're not here--but our whole point is
11 that everything has been just totally
12 negative toward our neighborhood.

13 ACTING CHAIRPERSON ETHERLY:
14 Okay.

15 MR. YOUNG: And we want to just
16 state our case, get some help from the
17 Zoning Commission, answer any questions.
18 But we oppose the changing of the variance.
19 We want him to be held accountable for that
20 recreation space that he asked for, up
21 front; not giving another unit. Because
22 there's no trash components down there.

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1 They may have adjusted that. We spoke on
2 that at the ANC meeting. There's parking
3 spaces. They may not hold a Volkswagen. We
4 want to get a clear understanding on that.

5 The property, her wall, which is
6 another situation. We need a little
7 clarification on those things.

8 So we're here this morning to not
9 only get help from the Zoning Commission but
10 get a clear understanding and a
11 clarification of this entire matter, and I
12 thank you.

13 ACTING CHAIRPERSON ETHERLY:

14 Okay. Well, I appreciate your comments. I
15 want to again be sure that we're focused on
16 what we're doing right now, which is the
17 question of party status.

18 We've walked through all three of
19 your presentations. What's before the
20 board, just at this moment is, I think
21 again, trying to answer that question of,
22 with respect to your three applications, are

1 you any more uniquely affected in kind, or
2 substance, by the property, as opposed to
3 members of the general public?

4 I'll open it up for any general
5 questions that my board colleagues may have
6 and then I'm going to ask for comments from
7 the Applicant, and then the board will make
8 a decision on your party status
9 applications.

10 Any additional questions from my
11 colleagues at this point?

12 Mr. Turnbull?

13 COMMISSIONER TURNBULL: Mr.
14 Chair, I think, obviously, Mr. Young and Ms.
15 Solomon, have proved their case since
16 they're really adjacent to the property. I
17 think from the standpoint of light and air,
18 they are directly affected.

19 Mr. Washington, I'm not--you're
20 across the street?

21 MR. WASHINGTON: Yes.

22 COMMISSIONER TURNBULL: Across

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1 the street.

2 MR. WASHINGTON: Yes. I am.

3 COMMISSIONER TURNBULL: I mean,
4 obviously, he's concerned about being
5 impacted by the trash and he's distinctly
6 across the street. I'm in favor of granting
7 them party status, at least Mr. Young and
8 Ms. Solomon, and Mr. Washington has made a
9 case, too, that he's--it's not like they're
10 a block away or two blocks away. They're
11 right across the street. So that's my
12 feeling. I think at least they definitely
13 have made a case that they're right adjacent
14 to the site and they would be impacted by
15 whatever's built there.

16 ACTING CHAIRPERSON ETHERLY:
17 Okay. Mr. Mann, any additional questions or
18 comments at this time?

19 BOARD MEMBER MANN: Comments; not
20 questions. I certainly think that, in my
21 mind, Ms. Solomon has made the strongest
22 case for party status. Mr. Young, I think,

1 probably has some very good points, being in
2 as close a proximity as he is. But I'm not
3 certain that earlier, we--I don't know if we
4 went to, perhaps, also suggesting that they
5 consider combining as one party, for one
6 thing, which might serve them best, whether
7 or not, for example, Mr. Washington chose
8 to--if the other two were to join together,
9 let's say, and Mr. Washington weren't, then
10 he could always be called as a witness by
11 the two.

12 I guess the point that I'm trying
13 to get at is I don't know that I see three
14 distinctly strong applications for party
15 status. I see one particularly strong one,
16 that might be better served by combining
17 into at least--at least two of them
18 combining into one party status application,
19 which I think would strengthen it, and they
20 could call Mr. Washington, although I
21 wouldn't be opposed to him joining either.

22 ACTING CHAIRPERSON ETHERLY:

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1 Okay, and that's a very excellent comment,
2 Mr. Mann, and I did not note it at the
3 outset, and one, it's always a careful
4 balance, because we don't want to appear as
5 if we're trying to push you in a certain
6 direction. But there is an option.

7 The board has, in the past, quite
8 frequently, dealt with cases where we've had
9 parties consolidate their interests as one
10 single party, and "hit," if you will, two or
11 three very key issues.

12 I would tend to agree, thus far--
13 again, I'm going to have to, before we move
14 into the decision on your applications,
15 we'll have to seek comment from the
16 Applicant.

17 But I too would tend to agree,
18 that definitely, there's a strength in Ms.
19 Solomon's and Mr. Young's applications,
20 based on your proximity, based on what I
21 think will be clear impacts to you, just by
22 virtue of the proximity that set you apart

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1 from what anyone in the general public might
2 experience.

3 Mr. Washington, your concerns
4 about trash are very well-taken and most
5 certainly need to be addressed and discussed
6 in the course of this applications. By
7 itself, I don't know if that necessarily
8 sets you apart, as uniquely, perhaps, as Ms.
9 Solomon and Mr. Young.

10 So there is the option of the
11 three of you simply consolidating your
12 interests, and for the purposes of your
13 party status applications, you would be
14 viewed as a single party in opposition.
15 You'd have the opportunity to cross-examine,
16 to present your own evidence, to present
17 your own case with respect to the issues
18 that you've outlined.

19 What I'd perhaps like to do is
20 just pause for a moment, let you kind of
21 think about that. I'll invite comment at
22 this time from the Applicant on their

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1 position to your party status application.
2 That's something that we have to do. We
3 have to hear from them. But then I'll look
4 back to you and ask if that is something
5 that you'd like to do, or if you would like
6 to continue to be considered as separate
7 Applicants.

8 Okay. So if you could just
9 perhaps hold it for a moment, give it a
10 little bit of thought, and then I'll come
11 back to you after we hear from the
12 Applicant. Okay.

13 Mr. Connors or Mr. Cushman, we
14 have three applications for party status at
15 this time, clearly in opposition. I don't
16 want us to get into the substance of what
17 they're hitting, so right now, let's just
18 stay very focused on the issue of are you in
19 opposition or support.

20 At this time just are you in
21 opposition, or no position with respect to
22 their applications for party status?

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1 They're seeking to participate in this case
2 as parties in opposition. What does that
3 enable them to do?

4 That enables them to cross-
5 examine your presentation. That enables
6 them to, after your presentation is
7 completed, to present their own case in
8 opposition to your proposed project.

9 They can present their own
10 witnesses. They will make a closing
11 statement, just as you would, and the board
12 would still do the same major steps in terms
13 of consideration of the case. It's just
14 that you now have another party, in addition
15 to yourselves, who's going to be presenting
16 a different, you know, illustration of the
17 project, if you will.

18 MR. CONNORS: Sure. This is a
19 little unusual for me. I've never faced
20 this before, so I hope I can answer this as
21 best as possible.

22 ACTING CHAIRPERSON ETHERLY: No

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1 problem at all. We'll walk you through it
2 very slowly.

3 MR. CONNORS: I am opposed to
4 some of the content in these applications,
5 because I think some of the content is not
6 true.

7 ACTING CHAIRPERSON ETHERLY:
8 Okay.

9 MR. CONNORS: However, I'm not
10 opposed to their concerns, and also I am
11 aware that the representative of the owner,
12 Macy Development, has talked with some of
13 the neighbors about some of these issues,
14 and during that process, I was not fully
15 aware of those discussions. So there was no
16 direct participation between me and the
17 residents. So I certainly understand their
18 concerns. I have different views.

19 ACTING CHAIRPERSON ETHERLY:
20 Okay.

21 MR. CONNORS: And also because
22 when I did present, initially, to the

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1 community back in 2004, it was at a
2 conceptual design level, and at that point
3 in time, I didn't have any of the survey
4 information that I did have by 2006.

5 So it's kind of hard to think
6 back--

7 ACTING CHAIRPERSON ETHERLY: No.
8 I understand.

9 MR. CONNORS: --to then, at this
10 point.

11 ACTING CHAIRPERSON ETHERLY: I
12 understand. I think perhaps what would be
13 most helpful, just in terms--because I want
14 to be sure you understand the opportunity
15 that you have. Again, there are essentially
16 two choices. You can either take no
17 position--three. You could take no
18 position. You could support the
19 applications for party status as opponent
20 parties, or you could oppose them.

21 What we have to decide, or answer
22 as a board, is whether or not they are

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1 uniquely affected in any way, that is more
2 significant or more unique than the general
3 public. So just as a little bit of
4 guidance, you could presumably take the
5 position that there's not a uniqueness here
6 that sets them apart from anybody else in
7 the general public, Board of Zoning
8 Adjustment, you should simply deny the
9 application for party status. They could
10 still present testimony in opposition and
11 that could be the end of it.

12 Or you could simply say we have
13 no position at this time, let's move forward
14 to the case. Or you could say, hey, we
15 welcome them, we support their applications
16 for party opponent status and you can move
17 forward.

18 Mr. Cushman.

19 MR. CUSHMAN: I think, in this
20 particular case, it's important to note that
21 we are applying for a variance to the
22 recreation space for this building. So I

1 question the relevance of where our property
2 line is and where the next-door wall is
3 being built, when it has nothing to do with
4 the recreation space, although, you know,
5 not showing any disrespect to the presence
6 of the neighbors, of course, you know, I'm
7 happy to have them here, I've always been
8 happy to communicate with them, as much as I
9 know about what's going on with the project.

10 But, quite frankly, I think that
11 the strongest letter is with regard to the
12 trash, because that's the only one that
13 actually has anything to do with where our
14 recreation space is and where our trash
15 might be.

16 So given that, I mean, unless I'm
17 seeing this wrong, I feel like, you know,
18 we're building to our property line, we have
19 a permit to do so, and whether or not we get
20 a variance for recreation space, we're going
21 to build to our property line. So I don't
22 feel like those letters are--there's any

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1 relevance to those in this case.

2 ACTING CHAIRPERSON ETHERLY:

3 Okay. And that's a very excellent
4 clarification here, for the benefit of our
5 party status applications.

6 What the Applicant has indicated
7 is that there's a certain relief that
8 they're seeking here, which is a very narrow
9 relief, that in many ways, arguably, is not
10 touched upon by the concerns that you are
11 expressing. I'm just restating what the
12 Applicant has said. I'm not asking you to
13 respond to that.

14 2A Let me come back to that
15 question. I think we've gotten all the
16 information that we need to move forward.
17 Again, I've walked us through this very
18 slowly, because I want to be sure everyone
19 understands what they're seeking, what the
20 opportunities are. There's no question that
21 whether you are party participants or not,
22 you will have an opportunity to participate

1 today, to state your positions, to express
2 your concerns about the project.

3 So rest assured, this is not
4 about whether or not you have to just sit
5 and listen, and not have an opportunity to
6 say your piece.

7 But the question is are you at
8 this point desirous of consolidating your
9 applications and essentially serving as one
10 party for the purposes of presenting your
11 case, cross-examining? I think the point
12 that the Applicant had made is very well-
13 taken, in that the relief they're seeking is
14 a very specific relief. Residential
15 recreation space.

16 So as a board, our inquiry here
17 is going to be a very particular one, and
18 it's not going to necessarily get into a lot
19 of other areas that you may be interested in
20 raising, and that are important from the
21 standpoint of their impacts on you. But our
22 authority and our power in this case is a

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1 very limited one, in terms of do we have the
2 ability to redesign this whole thing?
3 That's not within our purview, in terms of
4 what they're seeking.

5 But with that being said, let me
6 just stay focused on that particular
7 question of your willingness to consolidate
8 your applications and simply serve as one
9 party for the purposes of moving forward,
10 and I'll open it up to any of the three of
11 you at this point on that particular
12 question.

13 If you're comfortable moving
14 forward--I'm seeing some nodding of heads,
15 so perhaps in an effort to expedite us, if
16 you're comfortable with that, we can simply
17 move forward and look at you as one party
18 Applicant.

19 MR. YOUNG: Mr. Chairman, yeah,
20 we would like to combine all three as one.

21 ACTING CHAIRPERSON ETHERLY:
22 Okay. I think that would be an appropriate

1 step. I think it's been indicated by my
2 colleagues, that helps to strengthen and
3 fine-tune your issues.

4 I'll look to my colleagues at
5 this time for a suggested course of action
6 in terms of how we proceed.

7 BOARD MEMBER MANN: I would
8 support party status application for this
9 combined party.

10 COMMISSIONER TURNBULL: I would
11 agree also.

12 ACTING CHAIRPERSON ETHERLY:
13 Okay. I would also share that agreement.
14 So I'll take it as a consensus of the board,
15 that the three of you will be granted
16 single-party status for the opportunity to
17 provide cross examination. I'll call you
18 forward, at the appropriate time, for
19 presentation of your case. So at this
20 point, I'll invite you to take your seats
21 back in the audience, make yourselves
22 comfortable. I'll call you up at the

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1 appropriate time, for the opportunity to
2 cross-examine. Please note, again, that
3 there will be some focus that I'm going to
4 keep us attuned to with respect to the
5 relief that the Applicant is seeking, in
6 essence, what they're here for, and what
7 they're not here for.

8 So I'll be sure to guide you as
9 we walk through this. Okay?

10 MR. YOUNG: Thank you, Mr.
11 Chairman.

12 ACTING CHAIRPERSON ETHERLY:
13 Thank you. Thank you to my colleagues for a
14 very deliberate walk through that, I think
15 that was an important exercise for us to
16 take, and I'm going to turn it back over to
17 you.

18 Mr. Connors, or Mr. Cushman,
19 proceed with presentation of your case.

20 MR. CONNORS: Okay; great.

21 Thank you very much, again. I'll
22 just repeat, we're here today to seek the

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1 complete reduction to recreation space under
2 chapter seven. This project does fall under
3 the C-2-A Zone, which under the guidelines
4 of zoning regulations during 2006, required
5 20 percent recreation space.

6 A brief history of this project.
7 In 2004, the clients started to purchase the
8 property, and from 2004, the spring, roughly
9 through the fall, they had to start the very
10 extensive process of environmental impact
11 survey. The site was formerly a gas
12 station, unoccupied for several years. The
13 site was formerly used, illegally, as
14 storage for a trucking company. So many
15 years it was a detriment to the community.

16 And the clients, then--and this
17 has been brought up in some of the meetings
18 we had, the ANC meetings as well. Why
19 should remediating the gas station be--why
20 should anyone feel sorry for developers who
21 go into a project, full knowing that they're
22 going to have to remediate a gas station.

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1 Well, it was clear they would
2 have to do that, raze the building,
3 remediate the earth. What was not clear was
4 that they would have to remediate the earth
5 beyond the property line.

6 As you can see in the picture,
7 one of the neighboring properties is a fire
8 station, and once they started the
9 environmental impact statement, it became
10 very complex. They had to remediate the
11 earth in public space, get a public space
12 permit to do that, get approval of the fire
13 marshal.

14 So from spring of 2004, all the
15 way till about the spring of 2005, it was a
16 year delay for this project to go through
17 that environmental process. That's number
18 one.

19 Number two. We started our
20 project, creating the construction documents
21 and going through for permit. We even had a
22 preliminary meeting with both DC WASA from

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1 our civil engineer, and I had a preliminary
2 meeting with the zoning official down at the
3 DCRA.

4 Our permit was in process for
5 about six months. A new head of WASA came
6 and told us that our original preliminary
7 design was not good enough, we had to change
8 the design, provide this enormous pump room
9 in the basement, which took away space
10 provided for recreation space.

11 Number three, when we had a
12 preliminary review with the zoning official-
13 -and also I want to make clear, this was a
14 nonbinding meeting that they allow with the
15 DCRA preliminary review--we went through all
16 the zoning items, and it was clear that we
17 were complying with everything, and it
18 wasn't until about ten months after our
19 building, well, our design was in the
20 permanent process, that we were told, oh, by
21 the way, you're short about 300 something
22 square feet of residential rec space.

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1 So, in all, it was about two
2 years of going through this process, and
3 then finding out that we were short the
4 allowable amount of rec space.

5 At that point in time, the permit
6 office suggested to us, why don't you change
7 your one unit on the first floor into a
8 studio, create more rec space to make up for
9 that loss, and we'll give you the building
10 permit and then you can go seek the--at the
11 time, they had told me it was a special
12 exception but now I understand it's a
13 variance that we're seeking, after meeting
14 with Mr. Nero and filing with the zoning
15 office.

16 That they had suggested for us to
17 go through this process because they had
18 told us that anyway, the residential rec
19 space was most likely going to be abolished,
20 come 2007, which from what I understand is
21 true.

22 There was a text amendment, back

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1 on January 9th, I believe, which did abolish
2 recreation space. So we have been following
3 what has been suggested, all this time.

4 Now if I can go back again. Our
5 original design concept for this building, I
6 got us here in the first place, because I
7 factored in no buffer into the design for
8 rec space. The rec space requirement for
9 this building was, at the time, about 1500
10 square feet of the 7,500 square feet of FAR.

11 That's a huge amount of this
12 small building to take into the development.
13 It's almost two full units, comparable to
14 the size of the units in this building.

15 By taking away the rec space--or
16 by using the rec space in a more appropriate
17 fashion, for private storage, and other
18 building amenities, the developer cannot add
19 another unit, cannot add any more parking
20 spaces. It's just impossible at this point.
21 That the site is too small.

22 So we would be complying, still,

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1 with all the regulations, and, originally,
2 when I did show this project to the
3 community, I explained how under this zone
4 there is a height limit of 50 feet. So our
5 first concept was a five story building with
6 a roof terrace and a penthouse.

7 In all, total, it would have
8 probably been about, to the top of the
9 penthouse, 68.5 feet tall. That original
10 concept. I was, quote, unquote, selling the
11 design of a reduced building with no roof
12 terrace, no penthouse. The design was to
13 show a four story building with a loft in
14 the eaves of a mansard roof, make this
15 building more in character with the
16 surroundings of Capitol Hill.

17 And as a result, my good
18 intentions of trying to limit the height and
19 the size of the building, I constrained the
20 building very tightly and we fell short of
21 the rec space. I don't really know what
22 else to say about that.

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1 But if you do take into account
2 the text amendment that was issued in
3 January and then you look at where this
4 project is, the project is directly across
5 the street from the public school, a very
6 large field, it's a few blocks from the
7 Metro, and it also is a few blocks from one
8 of the best urban parks in all of D.C.,
9 Lincoln Park.

10 And, in fact, I think forcing a
11 small condominium to have a residential rec
12 space that would hardly ever be used, really
13 is anti urban. Having no recreation space,
14 I believe, forces people to get out of their
15 building and use the urban environment, go
16 to the parks, hope on the Metro, go to a
17 gym, spend more money in the community, and
18 so on and so forth.

19 So it's many things. It's an
20 economic burden that the owner has had to
21 deal with and also, it's a marketing burden
22 at this point. If the owner has to provide

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1 this full amount of residential rec space
2 under the old 2006 zoning laws, it's not
3 going to be attractive to the potential
4 buyers of the building.

5 ACTING CHAIRPERSON ETHERLY:

6 Let's perhaps just kind of jump right into
7 this as we walk through it. I'm going to
8 open up to questions or comments from my
9 colleagues. But let me kind of jump first.
10 What I think will be helpful--you've hit a
11 couple, very important points, but let's
12 kind of fine-tune it a little bit.

13 When you look at this project, as
14 I kind a walked through it, you have your
15 terrace space, which is included in the
16 project.

17 By virtue of the underground
18 parking that you're doing, the underground
19 parking ramp, in turn, creates--sure, feel
20 free to do that, if you can move freely.

21 We also--if you like, Mr.
22 Connors, you can use the handheld mike here

1 Just be sure to speak closely into it.

2 MR. CONNORS: Thank you, sir.

3 ACTING CHAIRPERSON ETHERLY: If
4 you could, just walk us through where the
5 terrace currently is located, because I
6 think it's important to just--there are a
7 couple of design decisions here, that have
8 ramifications on what you're able to do.

9 So, actually, let's start with
10 your parking access first.

11 MR. CONNORS: Sure.

12 ACTING CHAIRPERSON ETHERLY:
13 Again, parking is not an issue in terms of
14 any relief that you're seeking here--

15 MR. CONNORS: No.

16 ACTING CHAIRPERSON ETHERLY: --
17 but by virtue of the parking decisions that
18 you've made, that, in turn, impacts what
19 you're able to do with the terrace, which is
20 currently your rec space at this point in
21 time in the project.

22 So if you could--

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1 MR. CONNORS: That is right.

2 ACTING CHAIRPERSON ETHERLY: --

3 and for the benefit of our party in
4 opposition, if you could perhaps angle that
5 board a little bit. If you feel that you
6 need to kind of just maybe move a little
7 bit, so you can see that better, feel free
8 to do that. But if you could perhaps just
9 walk through where the parking ramp is--

10 MR. CONNORS: Sure.

11 ACTING CHAIRPERSON ETHERLY:

12 Thank you very much. If you could walk
13 through where the parking ramp is, and how
14 the orientation of that ramp has impacted
15 where the terrace is, and the size of the
16 terrace, that would be, I think, a helpful
17 starting point.

18 MR. CONNORS: Okay; sure.

19 Well, first, these plans are set
20 up to show specifically what we were allowed
21 to do during the permit applications, and,
22 you know, what we would desire to do without

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1 the recreation space.

2 So starting with the parking.
3 Indeed, the parking spaces are legitimate,
4 legal spaces. They're all nine by 19 feet,
5 which is the standard space in D.C. The
6 driveway is legal. Part of the initial
7 zoning review, they required us to have this
8 additional six foot curve radius on to the
9 alley for the safety of alley users.

10 The drive aisle in the middle of
11 the parking does meet the 20 foot minimum.
12 In fact ours is even more, though. But our
13 original design, like I said, rather than
14 having a terrace on the roof, we created
15 this L-shaped building with a internal
16 terrace courtyard there, and the idea at the
17 time too was that since C Street, here, on
18 the south--most of the height of the
19 building will be along C Street, and not
20 really much is going to be affected by that.

21 After all, it is next to a fire
22 station. So I don't think the height is

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1 going to affect the fire station. But I was
2 concerned about the shadow of the building
3 casting on the neighbors' properties in the
4 first place, because--

5 COMMISSIONER TURNBULL: Mr.
6 Connors, I wonder if I could just interrupt
7 you for one minute. Could you show, or
8 indicate with your finger, where Ms.
9 Solomon's property starts, the front of her
10 property.

11 MR. CONNORS: Okay. It's not on
12 these plans but the front of her property--
13 the front of her property or her building?

14 COMMISSIONER TURNBULL: Her
15 building.

16 MR. CONNORS: Her building starts
17 six feet back, or six feet east from the
18 property line.

19 COMMISSIONER TURNBULL: Of yours.

20 MR. CONNORS: And she has a
21 covered porch which occupies that entire six
22 feet.

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1 COMMISSIONER TURNBULL: So does
2 the porch line up with the front of your
3 building?

4 MR. CONNORS: Yes.

5 COMMISSIONER TURNBULL: Or is the
6 porch six feet back? You're saying the
7 porch line ups.

8 MR. CONNORS: The porch lines up.
9 The building face does not.

10 COMMISSIONER TURNBULL: Okay.
11 Thank you.

12 MR. CONNORS: Again, we've done
13 as much as possible providing the parking
14 space below ground, out of sight. Part of
15 the impact of this recreation space is that
16 you can see the comparison here. We were
17 forced to extend the terrace out, beyond the
18 end of the building here, to get the permit.

19 But what we'd really like to do
20 is have this space here available for an
21 enclosed trash area. That was our plan.

22 If we don't get that,

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1 unfortunately, we'll have to move all the
2 equipment from the electrical room out into
3 public space, which I've always never wanted
4 to do, but I mean, PEPCO allows the meters
5 to be outside other building. I find them
6 extremely unsightly and detrimental.

7 So we planned, specifically, that
8 all that equipment would be below ground.
9 So if we can't get that, we're going to have
10 to move the equipment outside and make a
11 trash room down here.

12 This pump room used to be just
13 this little piece here, but then it extended
14 all to here because of the strange nature of
15 what is in this Capitol Hill area, with all
16 the pipes in the ground, and the pressure is
17 just completely inadequate.

18 We have to upgrade to a higher
19 line, and that caused that problem. So what
20 we'd really like to do is create this area
21 here for something else other than, you
22 know, a gathering space. I feel that eight

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1 tenants, or at most, sixteen tenants in the
2 building, could easily meet in the lobby, or
3 someone's apartment for condo meetings, and,
4 you know, a nice day out in the courtyard.

5 The courtyard's never going to go
6 away. That space is not going to disappear
7 from the project. It's going to be there.

8 ACTING CHAIRPERSON ETHERLY: So
9 with the relief that you're seeking, under
10 first floor proposed plans, zero percent
11 recreation space, where courtyard remains,
12 currently, at the bottom of what is page
13 four there, an immediate impact, if you were
14 forced into compliance, one was you'd have
15 to move some of your electrical outside, to
16 the exterior of the building, potentially in
17 public space.

18 Does full compliance also have
19 any impacts with respect to the front of
20 your building, in terms of any of the
21 massing on that 15th Street side of the
22 building? It has no impact, whatsoever?

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1 MR. CONNORS: No, the recreation
2 space would have no impact on the building.
3 The building is complying with the lot
4 occupancy coverage. It's 60 percent. They
5 have a permit and they've complied with the
6 project requirements for the bay windows.
7 So it wouldn't.

8 ACTING CHAIRPERSON ETHERLY:
9 Okay. And just to be sure, with respect to
10 trash, under the proposed scenario, if
11 you're granted the relief, where would the
12 trash be oriented? If you could indicate on
13 page four.

14 MR. CONNORS: On the proposed--
15 the nonpermit scenario or the existing--

16 ACTING CHAIRPERSON ETHERLY: On
17 the first floor proposed plan, zero percent
18 recreation space, at the bottom, your trash
19 enclosure's going to be right at the rear
20 there; correct?

21 MR. CONNORS: That's right. it
22 would be at this blank, left-over space,

1 near the alley. It would allow easy access
2 for the trash company to pick it up. It
3 would be enclosed with a fence.

4 ACTING CHAIRPERSON ETHERLY: And
5 there's a little bit of a rendering that
6 appears on page three. Could you perhaps
7 speak a little more specifically to what
8 that enclosure will look like, for the
9 trash.

10 MR. CONNORS: The building is--
11 it's broken up, so that it has a base, a
12 middle and a top. So it really is trying to
13 scale down what is actually not a very tall
14 building. It's a four story building. I
15 don't feel that in an urban environment, a
16 few blocks from the Metro, a four story
17 building is towering.

18 There are some other four story
19 buildings in the neighborhood. But the
20 trash enclosure would be of a similar cast
21 stone masonry. At least on the 15th Street
22 side, it would be a screened wall, it would

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1 continue that belt course around the front
2 of the building.

3 ACTING CHAIRPERSON ETHERLY: And
4 with respect to--we've touched upon it,
5 maybe just fairly obliquely--with respect to
6 kind of the uniqueness of the lot that
7 you're working with here, what's your
8 argument there? Are you finding that this
9 is a somewhat substandard lot?

10 Is it a fairly nontraditional
11 lot, in terms of what you're seeing on
12 Capitol Hill, such that it's constraining
13 your ability to make use of--let me rephrase
14 it.

15 The lot's shape and width, could
16 you speak a little bit to what you're
17 encountering there and how that's impacting
18 what you have to work with in terms of your
19 residential rec space.

20 MR. CONNORS: Yes. It was very
21 unique working on this site, in particular,
22 one, because of the zoning limitations. On

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1 a corner site, as you're probably aware, in
2 C-2-A, there's a strange zoning clause that
3 says if your building is on a corner next to
4 an alley, you have to, above a certain
5 height, set back from the alley 15 feet.

6 That automatically determined
7 where our rear yard was going to be. So we
8 had to orient the building. We looked at
9 the building, originally, as a five story,
10 square sort of configuration. But it would
11 not comply with that piece of zoning
12 criteria.

13 And then also, the--and this was
14 confirmed during our ANC meeting, actually.
15 The gas station building was original. It
16 had been existing there for maybe 90 years
17 or so. It was originally built that way in
18 1910.

19 So Ms. Jennifer Solomon's
20 structure--although I had thought, when I
21 originally looked at the building, that
22 there must have been a former rowhouse or

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1 something on the site, because it looked
2 like there was a party wall condition on her
3 house. But, in fact, her house is an end
4 wall condition, and the main portion of her
5 house encroaches this property above grade,
6 six inches, for about 40 feet.

7 The length of her main structure
8 encroaches our property six inches, for 40
9 feet. After our third or fourth reiteration
10 of our civil survey, we found out that that
11 six inch encroachment gets more extreme as
12 you go below surface.

13 It steps out, and then steps out
14 again. It's a very strange condition. So,
15 in fact, even though our lot is 34 feet,
16 four inches wide, the width we can use is 32
17 inches, ten inches above ground, and then
18 below ground, we've had to reduce the
19 parking area, and that, in itself, is why we
20 can no longer provide five parking spaces.

21 So that limits us to four parking
22 spaces, eight units. It was an unusual

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1 condition that has caused further difficulty
2 with building on this site.

3 ACTING CHAIRPERSON ETHERLY:

4 Okay. Any further questions from my
5 colleagues?

6 Mr. Mann.

7 BOARD MEMBER MANN: Despite the
8 fact that you're not able to provide any of
9 the recreation space that's required under
10 the current zoning regulations, you still
11 have a terrace that's going to be accessible
12 to all the units; is that correct?

13 MR. CONNORS: Yes.

14 BOARD MEMBER MANN: And can you
15 explain to us why that terrace can't be
16 counted towards the recreation space.

17 MR. CONNORS: It can.

18 BOARD MEMBER MANN: Does it meet
19 all the minimum dimension requirements to be
20 counted towards recreation space?

21 MR. CONNORS: Oh, yes. that was
22 very specific when we went to our first--you

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1 know, as I said, a nonbinding PDR with
2 zoning. The width of the courtyard, and the
3 arrangement of the courtyard, was very
4 specific in terms of its relationship to the
5 height of the building, four inches per
6 vertical height of the building, it's--

7 BOARD MEMBER MANN: But as
8 recreation space, does it meet the minimum
9 dimension requirements for recreation space?

10 MR. CONNORS: Yes; absolutely.

11 BOARD MEMBER MANN: Then why is
12 it that it can't be counted towards the
13 recreation space?

14 MR. CONNORS: It can. I think
15 the owners just felt that if this text
16 amendment recently acknowledged the fact
17 that recreation space is, well, you know,
18 outdated, then why even address that fact,
19 why even say that any amount is required?

20 BOARD MEMBER MANN: I'll address
21 that again with Office of Planning, I didn't
22 look in the regulations myself, but I was

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1 assuming that it didn't meet the minimum
2 dimension requirements. But we can discuss
3 that with Office of Planning. Thanks.

4 ACTING CHAIRPERSON ETHERLY:

5 Okay. Mr. Turnbull?

6 COMMISSIONER TURNBULL: Thank
7 you, Mr. Chair. Mr. Connors, I don't know
8 if you had responded to Mr. Etherly's
9 earlier question about the trash enclosure.
10 You have a drawing of it but what, exactly,
11 is that made of or what is it going to look
12 like?

13 MR. CONNORS: The front, facing
14 on 15th Street, would be of similar cast
15 stone construction that is along the belt
16 course of the proposed design.

17 COMMISSIONER TURNBULL: Okay.

18 MR. CONNORS: The side along the
19 alley would be a fence, most likely a six
20 foot high, pressure-treated wood, privacy
21 fence.

22 COMMISSIONER TURNBULL: Okay. So

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1 it's not an open cyclone fence. You won't
2 see the containers behind it? You're trying
3 to screen it all?

4 MR. CONNORS: Right.

5 COMMISSIONER TURNBULL: So it's
6 an enclosed screen on all sides?

7 MR. CONNORS: Right. And I guess
8 one of the sort of disappointments of this
9 issue is that, as far as I know, when you
10 apply for a building permit in D.C., trash
11 is not an issue. They don't even--the
12 building and land regulation, they really--
13 they don't ask for that.

14 COMMISSIONER TURNBULL: Right.

15 MR. CONNORS: It's kind of absurd
16 that they don't; but they don't. And we,
17 developers and architects, we proceed,
18 knowing that at some point when the project
19 gets rolling, you have to go talk to an
20 independent company like Tenleytown Trash,
21 or Bowie, or whatever, and they come in and
22 you talk about how many size cans you need,

1 and so forth. But we determined, very early
2 on, that this building, because it's small,
3 eight units, would not require something
4 substantial like a dumpster, or a trash
5 chute.

6 COMMISSIONER TURNBULL: Okay;
7 thank you.

8 ACTING CHAIRPERSON ETHERLY:
9 Okay. If there aren't any other further
10 questions from my colleagues, it would be
11 appropriate to turn to the party in
12 opposition for any cross examination
13 questions.

14 If you'd like to step forward.
15 Do you have any cross examination questions
16 at this time?

17 MR. WASHINGTON: Yes. I do.

18 ACTING CHAIRPERSON ETHERLY:
19 Okay. If you'd come forward, please; make
20 yourself comfortable again.

21 MR. WASHINGTON: Should I be on
22 the microphone or at the exhibit?

1 ACTING CHAIRPERSON ETHERLY: And
2 again, as you prepare for your cross
3 examination questions, let me just offer a
4 little bit of guidance, this is your time
5 for specific questions based on the
6 testimony that you've just heard from the
7 Applicant. I'll again keep you in mind of
8 the fact that the inquiry here is one
9 focused on residential recreation. Okay.

10 Clearly, there are a number of
11 concerns that were raised in your party
12 status application, that we may in fact hear
13 a little bit about when we get into your
14 full presentation. But for right now, your
15 questions are just specific to what you've
16 just heard, anything that's been presented
17 to you based on their testimony just from a
18 moment ago. Okay.

19 MR. WASHINGTON: I'm sorry. I
20 don't know your name.

21 MR. CONNORS: Dennis.

22 MR. WASHINGTON: Dennis. How you

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1 doing, Dennis? You've been in architectural
2 design for how long?

3 MR. CONNORS: Ten years.

4 MR. WASHINGTON: Ten years.

5 Okay. And by your training, your eye and
6 your ability are supposed to actually look,
7 or think about design or something, and then
8 your visualization of it is what generally
9 appears to be what's happening? Is that--
10 any truth into that?

11 ACTING CHAIRPERSON ETHERLY: And
12 before you answer, Mr. Connors, if you could
13 just make sure your microphone is on and
14 orient it towards you, so we can pick your
15 responses up, please.

16 MR. CONNORS: Yes. I'm not sure
17 what the relevance is; but yes.

18 MR. WASHINGTON: Okay. Because--
19 so now you're saying that you did all this
20 research for the design of this building but
21 you lack the experience to take a couple a
22 small factors in account. That you agreed

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1 to do; but now you found a couple a
2 problems. Right?

3 MR. CONNORS: By "factor," you're
4 talking about the neighbors' property?

5 MR. WASHINGTON: Yes.

6 MR. CONNORS: Yes. No, not
7 specifically, because beyond the property
8 lines of this site, owners hire civil
9 engineers and surveyors, so forth, to do
10 that work, and I myself don't take on that
11 responsibility.

12 MR. WASHINGTON: So you're saying
13 that wasn't done, to prepare you for your
14 task on this project?

15 MR. CONNORS: It was done in
16 conjunction with my design development. So
17 it was only until about 70 percent through
18 the construction document phase, that I did
19 see on print, you know, wow, the neighbor's
20 building does indeed start six feet back
21 from the property line.

22 And I do live in Washington,

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1 D.C., so I'm aware that this is not a unique
2 condition, and I hadn't brought it up at the
3 time to--you know. I mean, it's not on our
4 property.

5 MR. WASHINGTON: Okay. Do you
6 have an obligation--or this is to Mr.
7 Topher, I'd like to present this to. Do you
8 have a obligation as what you presented to
9 the community, to stand by what you've done
10 so far, even though you know you're going do
11 what you're going do anyway?

12 ACTING CHAIRPERSON ETHERLY:
13 Before we get into that, let me perhaps
14 offer just a little bit of guidance here,
15 and I want to kind of walk carefully through
16 it.

17 We've heard, a couple of times,
18 some indication that there have been some
19 prior discussions, some prior back and
20 forth, perhaps, between the developers and
21 the neighboring community. It's not unusual
22 for that to happen. In point of fact we see

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1 it quite frequently. What is difficult for
2 this board, and oftentimes what is outside
3 of our purview, is what those conversations
4 may have encompassed.

5 When we address these
6 applications, we're dealing with what's
7 happening in the four corners of this room.

8 So I'm perhaps offering just a
9 little bit of guidance. As we talk through
10 that, I'm perhaps inclined to allow a little
11 bit of flexibility, but unless there's some
12 disagreement from my colleagues, I want us
13 to be very careful with respect to the
14 extent that we get into that, because
15 there's probably not a whole lot that we're
16 going to be able to do about that.

17 Again, the application here is a
18 very narrow one on the issue of residential
19 rec space. I think we can get to a little
20 bit of it but I want to be--I'm perhaps
21 going to have to offer some guidance on not
22 getting too deeply into it, cause there's

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1 not a lot we're going to be able to do about
2 it, in all honesty.

3 But if you could, Mr. Topher,
4 move forward with that.

5 MR. CUSHMAN: Sure. The
6 question, again, was--

7 MR. WASHINGTON: I'd like to
8 change the question and try another
9 question.

10 You presented this plan to the
11 city board, that planning, to get approved
12 for this dwelling; is that correct?

13 MR. CUSHMAN: During the
14 permanent process, all divisions of the city
15 see the plans and approve them.

16 MR. WASHINGTON: Okay. And when
17 you initially did that, you agreed on the
18 design you had at hand, without deviation;
19 is that correct?

20 MR. CUSHMAN: Right. And our
21 design was to build to the property line of
22 our property.

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1 MR. WASHINGTON: Right; okay.
2 That's good. All right. Now, you were say-
3 -is your intent to be a good neighbor and to
4 operate this dwelling in good faith?

5 MR. CUSHMAN: Sure. I can speak
6 to whether or not we're good neighbors, if
7 you like.

8 MR. WASHINGTON: Okay.

9 MR. CUSHMAN: If you like, I can
10 happily do that real quickly, for everyone's
11 benefit.

12 MR. WASHINGTON: Okay.

13 MR. CUSHMAN: You know, in your
14 opening remarks, earlier, with respect to
15 what you all have been fighting on your
16 block for 10, 15, 30 years, with regard to
17 crime and death and drug sales, and public
18 drinking, and all the problems associated
19 with those activities, you know, I'm a
20 member of the community. Dennis also lives
21 in the neighborhood, and, you know, we're
22 aware of what's been there over the last ten

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1 years. That's the extent of my personal
2 experience, and I know you have all lived
3 there much longer than I have.

4 But, you know, in seeing that, I
5 thought this is an opportunity of somewhere
6 we can go and try to improve in a community.
7 We've got a vacant gas station that's a
8 brownfield. We've got four derelict retail
9 spaces across the street, and we have a
10 Chinese takeout that the neighbors are
11 constantly asking to be in the press, you
12 know, to hear the problems that are
13 associated around that takeout.

14 And our investment in the
15 community, and especially on this block, has
16 been to clean up the gas station and
17 redevelop it with this eight unit building,
18 to capture those four derelict retail pads,
19 and build a new residential building there,
20 to buy the New Dragon itself with the tenant
21 in place and ask the tenant to leave--

22 MR. WASHINGTON: But I can stop

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1 you one second.

2 MR. CUSHMAN: I'd like to finish.
3 --and ask that tenant to leave and replace
4 it with a new use for that building, and
5 quite honestly--

6 MR. WASHINGTON: But that's not
7 our concern. Our concern right now is the
8 dwelling that we're speaking on here.

9 MR. CUSHMAN: Exactly.

10 MR. WASHINGTON: And I'd like to
11 stay focused on that, if we can.

12 MR. CUSHMAN: Okay; so let me
13 finish, please. So coming back to that, you
14 know, as far as being a good neighbor on
15 this block, I think we've done a lot of
16 positive things, and I feel like, you know,
17 this one thing that, you know, may have been
18 an oversight on my part, I've apologized to
19 Ms. Solomon directly.

20 Unfortunately, there's nothing we
21 can do at this point but to build out what
22 we've planned for on the site, and this one

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1 negative impact that I can see, and if
2 there's others please let me know, is, you
3 know, kind of one small thing, and you're
4 kind of losing sight of the grand scheme of
5 things and our effort to be a good neighbor
6 and to make the neighborhood a better place.

7 MR. WASHINGTON: Okay. I'd like
8 to speak on one of the things you said. I'm
9 losing focus on the grandeur. Yes, I see a
10 pretty building going up--

11 ACTING CHAIRPERSON ETHERLY: Mr.
12 Washington, let me stop you there. I know
13 the desire is tough--

14 MR. WASHINGTON: Yes.

15 ACTING CHAIRPERSON ETHERLY: --to
16 want to respond. You're going to need to
17 hold that until your case presentation. So
18 It's just keep it focused on cross
19 examination right now. Again, specific
20 questions on what you've heard in terms of
21 the Applicant's case, presentation to date.

22 As an example, one question that

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1 you heard me interact with the Applicant
2 around is based on what you've had to do in
3 terms of your parking access, based on some
4 of the issues that you've encountered as
5 you've begun to get a better sense of what's
6 happening below grade, as well as above
7 grade, in particular, some of the property
8 line encroachment issues.

9 There are certain decisions that
10 now have to be made with respect to where
11 the trash is oriented, with respect to
12 what's happening on the rear of the property
13 on what is the C Street side of the
14 building.

15 Perhaps it may be of interest
16 just to explore a little bit around, you
17 know, as you've heard, some of the questions
18 about the trash enclosure.

19 I might be very well interested
20 in understanding, you know, what's the size
21 of that enclosure going to be. One of the
22 questions that you identified as you went

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1 through your party status application was
2 your concern about the trash that's going to
3 be generated.

4 Perhaps it might be of interest
5 to know, and I'll query this question, is
6 what is the capacity of the trash enclosure
7 that you're looking to use here, and what
8 are you intending, what do you envision
9 happening in terms of collection for that
10 particular trash receptacle?

11 Are you looking at a biweekly?
12 Again, it's not necessarily something that
13 is attendant to the recreation space issue,
14 but based on what you're doing with
15 recreation space, your trash receptacle is
16 where it's at right now.

17 So perhaps it might be useful to
18 just get a sense of what you're envisioning
19 in terms of your trash collection schedule
20 and the size of that receptacle that you're
21 using, or intend to utilize, I should say.

22 MR. CONNORS: Sure. I have a

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1 general idea of what it would be, based upon
2 some preliminary discussions with trash
3 management companies. There would be, most
4 likely, bare minimum, four very large, what
5 are called Supercan receptacles for garbage,
6 and there would be bare minimum to very
7 large Supercans for recycling. That's
8 minimum. I don't know what the maximum is
9 going to be. It's going to be further
10 studied.

11 The owner, once they sign on with
12 a trash management company, would most
13 likely talk about the schedule. Now if the
14 schedule is once a week, I can assure you
15 those receptacles, in number, would probably
16 double.

17 If it was twice a week, they
18 might remain the same. I'm not really quite
19 certain. But this did come up in the ANC,
20 when I did say Supercans, it was again very-
21 -it was confused, that we are using the
22 same--we will be using the same receptacles

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1 that are distributed by the District of
2 Columbia. No. Those are 18 inches by 18
3 inches and about three feet high.

4 These Supercans are about 3 and a
5 half feet wide by 3 and a half feet wide, by
6 about 4 feet high. I don't know what the
7 volume is, in particular, but they're quite
8 extensive.

9 ACTING CHAIRPERSON ETHERLY:

10 Okay. And again, if you weren't granted the
11 relief that you're seeking here, that trash
12 would, in all likelihood, have to go inside
13 of the structure.

14 MR. CONNORS: In all likelihood,
15 it would have to go inside the structure.
16 The garage level, most, if not all the
17 equipment in the electrical room, would have
18 to go out into the public space.

19 ACTING CHAIRPERSON ETHERLY:

20 Okay. Mr. Washington, I'll turn it back to
21 you, sir.

22 MR. WASHINGTON: Do you live in a

1 apartment or house?

2 MR. CONNORS: I live in a house.

3 MR. WASHINGTON: In a house. And
4 you have a Supercan for your house; right?
5 What D.C. provides as a Supercan?

6 MR. CONNORS: I have the D.C.
7 cans; yes; two of them.

8 MR. WASHINGTON: So how much
9 trash do you put in that? Do you fill yours
10 up in a week's period?

11 MR. CONNORS: No. I don't. I
12 don't really know what to say about that
13 but--

14 MR. WASHINGTON: The reason why
15 I'm asking this question--because you just
16 stated that it'll be two Supercans, three
17 feet by three feet--

18 MR. CONNORS: I stated from
19 preliminary discussions. I'm not a trash
20 service--

21 MR. WASHINGTON: But you're
22 talking about a nine unit--a eight unit

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1 building--

2 MR. CONNORS: Eight unit; yes.

3 MR. WASHINGTON: --and two
4 Supercans for that entire building.

5 MR. CONNORS: For the recycling
6 aspect of it, separate for the trash, and I
7 said minimum.

8 MR. WASHINGTON: Okay. So how
9 many--

10 MR. CONNORS: Six Supercans,
11 minimum, was the preliminary discussion, and
12 based upon the final signing with the trash
13 management company, that would either stay
14 the same, go up slightly, or double. There
15 might be eight. There might be twelve.

16 MR. WASHINGTON: So why not put
17 those Supercans inside, if it's going to be
18 so few, to keep from smelling up the
19 neighborhood, because now you have too
20 little, few cans, that--and not enough
21 space. That would probably be outside, you
22 won't have enough space, you know, for more,

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1 which you can contain 'em so, inside.

2 ACTING CHAIRPERSON ETHERLY: And
3 let me rephrase Mr. Washington's question.
4 It's an excellent question. Again, if you
5 do not get the relief that you're seeking
6 here, where, inside, in all likelihood,
7 would your trash room go? If I'm looking at
8 2b the basement permit plan, full recreation
9 requirements, where would, if you could pull
10 that drawing up, where, in all likelihood,
11 would you put the trash room?

12 MR. CONNORS: Again, in all
13 likelihood, on the basement level. The
14 entire electrical room would be used for
15 trash and the electrical equipment would go
16 outside the building and be attached to the
17 face of the building.

18 So if you look at the elevation
19 along C Street, which is the bottom
20 elevation, all along that facade would be
21 multiple pieces of electric equipment--
22 meters, emergency switch-offs, things like

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1 that, which I've seen on many other
2 buildings, and they're extremely unsightly.

3 And in that scenario, if the
4 trash were to go outside the building, it
5 would go behind a screened area, that the
6 tenants could access, they could come out
7 through the courtyard and put their trash in
8 the receptacle.

9 And why it's not preferred to go
10 inside the building, in the basement, is
11 because of the mess it creates in a parking
12 area.

13 We have that proposed on another
14 building but it'll be in a dumpster rather
15 than trash bins, and I don't feel that this,
16 the number of units here really necessitates
17 a dumpster.

18 ACTING CHAIRPERSON ETHERLY:
19 Okay. Would there be any impact in terms of
20 your existing, your proposed parking count?
21 You would still have your four spaces below
22 grade, but instead of the electrical room,

1 you'd simply have a trash room that would be
2 the same dimensions?

3 MR. CONNORS: Yes. The parking
4 cannot go away; it will not go away; no.

5 ACTING CHAIRPERSON ETHERLY:
6 Okay. Would that necessitate, would you do
7 anything in terms of any interior redesign
8 to introduce a trash chute, or would it
9 simply be your residents bringing that trash
10 to--

11 MR. CONNORS: The residents would
12 bring it down into the basement area, put it
13 in the trash room. The only additional
14 feature to the design would probably be
15 additional exhaust requirements, floor
16 drain, mop, sink, and things like that.
17 Building maintenance.

18 ACTING CHAIRPERSON ETHERLY:
19 Okay. Mr. Washington, I'm going to--I don't
20 want to use the word "allow" one more
21 question, but I think we've kind of gotten a
22 sense of where we are on the trash piece.

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1 i think the point you're trying
2 to raise, again, is a good one, in terms of
3 the decision to place the trash outside
4 versus handling it inside, and I think the
5 rest of that conversation is going to be
6 most appropriate in your case presentation.

7 MR. WASHINGTON: He was talking
8 about unsightly electrical panels and meters
9 and things. Okay. A trash can would be
10 pretty much unsightly too, would you agree?

11 MR. CONNORS: Not if it were
12 screened in, out of sight, off the alley.
13 If you go down any alley in D.C., there's
14 trash off an alley.

15 MR. WASHINGTON: But my point is
16 why not just put--like you said, you was
17 going to put a fence barrier over, to
18 surround the trash. People are going to
19 still smell it and see trash on the ground.

20 Why not just put a wooden cover
21 over the electrical panels, that way it
22 won't be so unsightly, and, you know, it'll

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1 be better than having trash slung all over
2 after the guys.

3 MR. CONNORS: Most likely these
4 decisions are really going to be based upon
5 the owner, not necessarily my decisions.
6 Anything they do, in terms of trash, in
7 terms of electric, has to again be run by
8 the trash management company they'll sign a
9 contract with, and also PEPCO. PEPCO has
10 some pretty specific requirements, so I
11 can't answer that--

12 MR. WASHINGTON: Would you have a
13 superintendent for the building, to clean up
14 trash outside, after that trash is left down
15 after the trashmen?

16 MR. CONNORS: Again I don't know--
17 -I don't know specifically what the owners--
18 maybe I'll have Topher Cushman answer that
19 question.

20 ACTING CHAIRPERSON ETHERLY: I
21 think we've hit the end of that one, Mr.
22 Washington. Again, excellent questions.

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1 I'm not attempting to--thank you, sir--to
2 censor you or cut you off, but I want to be
3 sure that we keep moving.

4 I think the point is well-taken
5 in terms of are there alternative design
6 scenarios whereby the trash is not placed
7 where it's currently proposed to be placed,
8 but otherwise inside the building?

9 I think you've drawn that point
10 out, excellently.

11 Are there any further cross
12 examination questions?

13 MR. YOUNG: Yes, Mr. Chairman.

14 ACTING CHAIRPERSON ETHERLY: And
15 please feel free to stay stationary. I was
16 going to be indicate, we want to be sure
17 that we get you on video as well as on the
18 microphone, so don't feel that you have to
19 stand up. Please be comfortable.

20 MR. YOUNG: Okay. Everything has
21 pretty much been covered in the area of the
22 recreation questions. I just want to kind a

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1 talk about the electrical box outside.
2 Every house in the neighborhood has
3 electrical boxes outside. What makes them
4 so different, that they have to have it
5 inside an electrical room? is my question.
6 And number two, this picture of the drawing,
7 is that in the back of the building where
8 the trash is going to be held, cause I heard
9 someone mention that it was on the front of
10 the building. So question one and two.

11 MR. CONNORS: Question one. What
12 makes this building different than a row
13 house dwelling. Most rowhouse dwellings
14 have one, usually a single-family unit, so
15 they have one meter. If they have an
16 English basement, perhaps, maybe they have
17 two meters, and in an extreme case they
18 might have three. That's the limit for a
19 single-family residence.

20 Once you go above three meters,
21 and we will have at least nine meters on
22 this building. We'll have eight units, one

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1 for the main building tower. Once you go to
2 that level, it steps into an emergency power
3 type of situation. There are major pieces
4 of big equipment, emergency shutoff and
5 things like that.

6 So it wouldn't just be a couple
7 of meters stuck on a building, and I've seen
8 some of these, on some of these new condo
9 buildings, when they're outside, and the
10 second part of the question is--

11 ACTING CHAIRPERSON ETHERLY: In
12 that scenario, you'd have a significant bank
13 of electrical equipment--

14 MR. CONNORS: That's right.
15 That's the correct term, yes. A bank.

16 ACTING CHAIRPERSON ETHERLY: --in
17 the scenario. If you were to move it
18 outside, it would be a fairly sizeable
19 collection of equipment that would be
20 noticeable from an aesthetic standpoint.

21 MR. CONNORS: Right.

22 ACTING CHAIRPERSON ETHERLY:

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1 Clearly, you'd see it from the street.

2 MR. CONNORS: And the trash in a
3 outside scenario, once again, would be
4 outside, but within the property lines, off
5 the back or off the alley in between the
6 west face of the building and the fire
7 station, and it would be fenced off,
8 enclosed.

9 MR. YOUNG: So not on the front
10 of the building, at all?

11 MR. CONNORS: Oh, no; no.

12 MR. YOUNG: Okay.

13 MR. CONNORS: I didn't think it
14 would--

15 MR. YOUNG: I just wanted to ask
16 the question. In our summary, we'll talk
17 about those things, because you and Mike,
18 Mr. Washington, kind of--in the effort of
19 saving some time and not going through an
20 elaborate, you know, back and forth about
21 our feelings, we're trying to keep it to the
22 recreational part.

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1 My third question is we had
2 discussion, earlier, about the recreational
3 space, and we talked about the playground,
4 the parks, and all those things, and that
5 wasn't good enough. If I recall, if the
6 variance isn't given, why shouldn't that be
7 enough to do what this unit need to do in
8 respect to recreation?

9 You want to do away with the
10 recreational space?

11 MR. CONNORS: That's correct.

12 MR. YOUNG: Okay. And we're
13 saying that why shouldn't it stay as it is.

14 MR. CONNORS: Again, for some of
15 the--

16 MR. YOUNG: Go ahead.

17 MR. CONNORS: Again, for some of
18 the reasons, there are many last-minute
19 decisions during the permit process, in
20 which we were suggested to comply with the
21 full 20 percent rec space, which we did.

22 What that created was, in my

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1 opinion, a very unsightly corner unit on the
2 first floor, the studio unit. That's one
3 aspect of it. And two, it would create a
4 burden upon some of these other maintenance
5 issues such as trash. Most likely--and I'm
6 again saying I don't know for sure--but most
7 likely, the electrical equipment would go
8 outside and the trash would go in the
9 cellar, and again, it's not necessarily
10 something that is very marketable for a
11 small building. I think the owner can speak
12 to that.

13 But I think it's more desirable
14 to have a full corner unit where someone has
15 a living room looking out on the street, you
16 know, interacting with the community and
17 being aware of the surroundings, and having
18 a space that is hardly ever used.

19 MR. YOUNG: So do you think that
20 look that they're looking for when they look
21 out to this beautiful whatever, near the
22 electrical boxes, isn't the same feeling

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1 that Ms. Solomon is feeling when she looks
2 out to that brick wall? From a home owner's
3 point of view? I rest my case. I haven't
4 any more questions. Thank you.

5 ACTING CHAIRPERSON ETHERLY:

6 Okay. Let me follow up on a question that
7 Mr. Young asked, cause I just want to be
8 sure we're clear.

9 If you were to comply with the
10 full recreation requirements, the unit that
11 would be most impacted, would that be unit C
12 on your first floor?

13 MR. CONNORS: Yes. Unit C.

14 ACTING CHAIRPERSON ETHERLY:

15 Okay. And again, looking at page four of
16 the drawings that have been provided, what
17 happens to unit C--I mean, I see it
18 visually, but I just want to be sure we kind
19 of touch upon it on the record.

20 What happens to that unit if you
21 are in a full compliance scenario? The unit
22 clearly becomes a smaller unit, if you will;

1 correct?

2 MR. CONNORS: That's correct. A
3 studio type of unit.

4 ACTING CHAIRPERSON ETHERLY:
5 Okay. As opposed to in the scenario with
6 the relief that you're requesting, unit C
7 becomes a what?

8 MR. CONNORS: A similar one
9 bedroom unit that is some of the other units
10 in the building.

11 ACTING CHAIRPERSON ETHERLY:
12 Okay.

13 MR. CONNORS: So the corner bay
14 would be a living room.

15 ACTING CHAIRPERSON ETHERLY:
16 Okay. So, in essence, to summarize the
17 impacts, if you were in a full compliance
18 scenario, you, in all likelihood, would move
19 your trash inside the building. You'd have
20 some issues with--you'd have to resolve some
21 issues around the electrical equipment.
22 Some of the electrical equipment, if you

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1 will, probably coming out to the front of
2 the building, and you would definitely have
3 a redesign of, at minimum, unit C of the
4 building as is currently proposed?

5 MR. CONNORS: That's right.

6 ACTING CHAIRPERSON ETHERLY:

7 Okay. Any further questions?

8 Ms. Solomon, cross examination
9 questions.

10 MS. SOLOMON: I don't see this as
11 a question but this is just a statement.

12 ACTING CHAIRPERSON ETHERLY:

13 Well, no statements at this point, Ms.
14 Solomon.

15 MS. SOLOMON: Okay. Well, I'm
16 going to ask a question.

17 ACTING CHAIRPERSON ETHERLY:

18 Excellent.

19 MS. SOLOMON: From what I'm
20 hearing about the C efficiency turning into
21 a one bedroom, is not more for space for
22 you. It seems to me is more for--is it

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1 money, as far as it'll be a one bedroom
2 instead of a efficiency. So it'll be a
3 bigger space for you, which will bring you
4 bigger income, wouldn't it?

5 ACTING CHAIRPERSON ETHERLY: Let
6 me perhaps rephrase. The economics of the
7 project would be impacted, if you were to
8 move from an efficiency, in a full
9 compliance scenario, an efficiency unit C
10 versus a full one bedroom unit C, would have
11 an economic impact; correct?

12 MR. CONNORS: Absolutely, and
13 again, I'm not the developer, I'm the
14 architect, so I'm speaking for the
15 developer. But it would be an additional
16 economic impact upon many of the economic
17 impacts they've already had with the site in
18 terms of treating the environmental
19 concerns, razing the building and dealing
20 with other things that have caused the
21 building to shrink or be rearranged.

22 So, yes, it's a further economic

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1 impact and of course any sensible developer
2 would want to have a bigger, more marketable
3 unit for a building.

4 ACTING CHAIRPERSON ETHERLY:
5 Okay. One final cross examination question.
6 Make sure we have that microphone on.

7 MR. WASHINGTON: I'd like to try
8 two quick ones, and one of them is that
9 you're having a condo out there, and your
10 trash will be outside. You think your
11 tenants are going to come outside and pick
12 up trash in front of my house that was
13 created for your building?

14 Or would you think if it was
15 inside the building, they'll be more apt to
16 be tidy and cleanly neighbors?

17 MR. CONNORS: I understand the
18 question that you're raising. I think it's
19 a difficult one to answer.

20 MR. WASHINGTON: These are just
21 some of the issues.

22 MR. CONNORS: No; understood.

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1 MR. WASHINGTON: That's a
2 pertinent question on the trash.

3 MR. CONNORS: Understood.

4 MR. WASHINGTON: Because I live
5 there.

6 MR. CONNORS: Yes, sir.

7 MR. WASHINGTON: And the trashmen
8 are neat.

9 MR. CONNORS: Yes, sir.

10 MR. WASHINGTON: But if the
11 trash, the mess is made in the building,
12 those tenants are going to clean up in their
13 building. I'm not going to have--they're
14 not going to come over to my yard and pick
15 up trash in my hard, and that's my issue.

16 You know, for the love of money,
17 that inconvenience us, just for more profit
18 for them. We were there first.

19 ACTING CHAIRPERSON ETHERLY: I
20 think it's going to be an argument that'll
21 be better suited in your case presentation.
22 Again, I understand the question. I just

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1 think it's going to be speculation, at best,
2 on the part of the Applicant. But the point
3 is very well-taken. What is the likelihood
4 of perhaps a cleaner, more efficient trash
5 operation, if it's all inside of the
6 building and none of it ever has to see the
7 outside, anywhere near 15th and C, in terms
8 of the exterior, as opposed to how does the
9 trash get from the interior of the building
10 to the rear trash enclosure, as it's
11 proposed.

12 It's a valid question to ask. I
13 think, at best, though, it's one that's
14 going to be somewhat speculative in terms of
15 the response. But it's a point that I think
16 can be hit as you do your case presentation.

17 Okay. I want to keep us moving
18 forward and I think it's appropriate at this
19 time that we move into any additional case
20 presentation remarks from the Applicant at
21 this point?

22 MR. CONNORS: I would like to

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1 summarize, and this is just based upon--

2 ACTING CHAIRPERSON ETHERLY:

3 Well, from a summary standpoint, if you want
4 to move into closing, we can hold off on
5 that until we get through the remainder of
6 the case.

7 MR. CONNORS: Oh. Yes.

8 ACTING CHAIRPERSON ETHERLY: If
9 that concludes your case in chief for the
10 moment, I'd like to move us into the Office
11 of Planning now.

12 MR. CONNORS: I think so.

13 ACTING CHAIRPERSON ETHERLY: Mr.
14 Turnbull.

15 COMMISSIONER TURNBULL: I just
16 have one question. In looking at recreation
17 space on your project, on the fourth floor,
18 you have a fourth floor mezzanine.

19 MR. CONNORS: That's right.

20 COMMISSIONER TURNBULL: And it
21 looks like unit D has two hundred and--it's
22 like a 15 by 18 foot square terrace up

1 there?

2 MR. CONNORS: Private terrace;
3 yes.

4 COMMISSIONER TURNBULL: Okay.
5 I'm just curious. On your plan, it's hard
6 to tell. Are there other--it looks like you
7 come up a circular stairs to a little--an
8 area, and then you go out on to the terrace.

9 But I'm confused about the other
10 area off to the next unit D. How does that--
11 --what is that other spacer? Is that
12 occupiable space, or I'm just curious, what
13 we're looking at we go up on to the
14 mezzanine, on to that recreational terrace.

15 MR. CONNORS: The other areas,
16 let's say, open to below, and some of the
17 other areas too.

18 COMMISSIONER TURNBULL: Well,
19 open to below shows--yes, I can see that,
20 which is over the living room area. But the
21 other areas up there which aren't really
22 identified, are they usable space or--

1 MR. CONNORS: Those units have
2 this, not necessarily a double height, but
3 some of the areas have these tall cathedral
4 style ceilings, and in that case, in
5 particular, unit D, some of those little
6 areas, they're storage areas above, about
7 eight feet high. They really only have the
8 depth of, say, four and a half feet.
9 They're storage areas for that unit.

10 COMMISSIONER TURNBULL: Okay.

11 MR. CONNORS: It's not occupiable
12 space. Some of it is for mechanical
13 equipment.

14 COMMISSIONER TURNBULL: Okay.
15 Thank you. The only thing, is there--and
16 again--so unit D has this--am I right? it's
17 about 15 by 18 recreational space you're
18 providing for just that one unit, then?

19 MR. CONNORS: Yes.

20 COMMISSIONER TURNBULL: Okay.

21 Thank you.

22 ACTING CHAIRPERSON ETHERLY:

1 Okay. If there's nothing more from my
2 colleagues, let me turn it to the Office of
3 Planning.

4 MR. WOODS: Mr. Chairman, the
5 Office of Planning continues in support of
6 the application, since the Zoning Commission
7 has taken final action to eliminate this
8 requirement. The support of the application
9 is subject to none of the amenities or
10 recreation space being reallocated, such
11 that additional units are created.

12 The Applicant is providing
13 exterior terraces, accessible to all the
14 residents, but which do not meet the minimum
15 25 foot dimension requirement.

16 Mr. Chairman, we do understand
17 the neighborhood's concerns, and always
18 encourage dialogue between the developer and
19 the neighborhoods.

20 However, the Applicant is
21 requesting relief only from section 773, a
22 requirement that is being eliminated. Not

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1 approving this relief would not change the
2 bulk or size of the otherwise-permitted
3 structure and the Applicant does not need
4 relief from lot occupancy, height, FAR, or
5 any setback.

6 That concludes the Office of
7 Planning testimony.

8 ACTING CHAIRPERSON ETHERLY:
9 Excellent. Any questions from my
10 colleagues?

11 Mr. Mann.

12 BOARD MEMBER MANN: There's been
13 a lot of discussion about where the trash
14 enclosure may or may not be, depending on
15 different scenarios. If you could look at
16 sheet four of our, what we have labeled
17 number six in our application here.

18 In the upper right-hand corner is
19 the first floor permit plan with a terrace
20 of 195 square feet. Would that particular
21 terrace of 195 square feet meet any of the
22 minimum dimensional requirements, as

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1 depicted?

2 MR. WOODS: For the required
3 residential recreation space, it would not
4 meet the 25 foot minimum dimension.

5 BOARD MEMBER MANN: Okay. Thank
6 you very much.

7 ACTING CHAIRPERSON ETHERLY:
8 Excellent. Other questions?

9 As Mr. Mann alluded to, we've had
10 some conversation on the trash piece.
11 Again, the relief that's being sought here
12 is a very specific inquiry, but I've
13 entertained some considerable discussion on
14 the trash piece because, clearly, the
15 residential rec decision does have some
16 ramifications, that because of what's being
17 done, there are other decisions in place
18 here.

19 So perhaps let me just kind of
20 throw this one question out as it relates to
21 the issue of a trash enclosure.

22 What OP's experience been with

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1 the use of trash enclosures on multi-unit
2 buildings? Is it generally a positive one?
3 Are there aesthetic issues that OP's
4 encountered, that perhaps are unique to the
5 issue of trash enclosures that are exterior
6 to the building? It's a fairly open-ended
7 question; but if you could.

8 MR. LAWSON: I'm going to see if
9 this mike is working now. It sounds like
10 it. Thanks. Once again, Joel Lawson from
11 the Office of Planning.

12 The issue of trash actually is an
13 interesting one. It has been an interesting
14 discussion, and certainly, you know, as a
15 general rule of thumb, we would support an
16 offer by the Applicant to move the trash
17 inside, if that was feasible. However, the
18 solution being offered by the Applicant is a
19 permitted one, under zoning, and again, if
20 the trash were moved inside, the space that
21 would be left over would not meet, actually,
22 recreation space requirements in terms of

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1 dimensions, and, frankly, wouldn't be
2 particularly good or functional recreation
3 space anyways.

4 We feel that it's kind of a
5 separate issue from the relief that's
6 specifically being requested. Just a couple
7 of other notes I would like to make, though,
8 not specifically in--you know, notes that
9 come not specifically from this application,
10 though. We have had discussions, in the
11 past, over the last few years, with DDOT,
12 and with DPW, with regards to kind of things
13 at the back of the property, and that
14 usually is trash receptacles and the
15 screening for those trash receptacles, and,
16 certainly, we would support and encourage
17 the Applicant, if they're going to have
18 exterior trash, to adequately screen it.

19 However, DPW has indicated that
20 they have had problems in the past with
21 fences or walls or anything being located
22 right on the property line when the alley is

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1 only ten feet wide.

2 Those fences are sometimes prone
3 to damage, which can be costly to the
4 Applicant, and also doesn't really help with
5 the character of the alley, kind of over the
6 long run, if these structures become
7 damaged, and they have recommended to us
8 that screening walls be set back a little
9 bit from the property line.

10 Whether it's an enclosure,
11 whether it's a screening wall, that the
12 Applicant provide a bit of a setback from
13 the property line, just to minimize
14 potential damage to that structure and make
15 sure that the alley continues to look and
16 function orderly.

17 So we would encourage the
18 Applicant, if they're going to provide
19 screening around the trash receptacle, to
20 maybe set that back by, you know, a foot, or
21 preferably two feet, something like that. I
22 assume that would leave lots of space for

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1 the receptacles themselves and would
2 minimize the chances for damage to the
3 structure.

4 So long answer to a short
5 question, but I guess I would say that, in
6 short, we would obviously support moving
7 those receptacles inside. We know of no
8 regulation that would require it. We see,
9 in our analysis of the application--we don't
10 see anything that would make this rise to
11 the level of a condition, that we would
12 place on approval or denial of this
13 application, that the trash be moved inside.

14 Again, we totally understand the
15 neighbor's concerns and, you know, if I
16 lived next door, I probably would have very
17 similar concerns, and we would encourage the
18 Applicant to take these concerns really
19 seriously. gain, from the Office of
20 Planning standpoint, though, we look at what
21 the regulations are and we can't help out
22 the neighbor's case, in this case, by saying

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1 that we think there's a regulation that
2 would, in any way, require a particular
3 solution, one way or another.

4 ACTING CHAIRPERSON ETHERLY:

5 Okay, and I appreciate that response. It is
6 an excellent response that highlights the
7 challenge that we have. To an extent, I'm
8 not trying to anticipate any of the
9 questions that may come from the party in
10 opposition, but it is a difficult place that
11 the board finds itself in, because, clearly,
12 one of your chief concerns is a concern that
13 doesn't quite hit the issue of the relief
14 that's being sought here.

15 But I think the Office of
16 Planning's response is a good one in terms
17 of encouraging ongoing discussion and
18 deliberation about how you treat that issue
19 of screening, of potentially setting back--I
20 don't want to veer too far into, as was
21 indicated by the Office of Planning, kind of
22 the challenge of creating a condition around

1 that, but I think it's an important
2 response. Similarly, let me ask if, in
3 terms of the presentation by the Applicant--
4 again, it's not on the issue of the relief
5 that's being sought, but with respect to the
6 issue of the trash enclosure, and, in
7 particular, the containers that were
8 referenced, was there anything that the
9 Office of Planning heard with respect to
10 possible concerns around the sizing and
11 quantity of the containers that would be
12 used, if it were an exterior enclosure, as
13 it's being proposed by the Applicant?

14 MR. LAWSON: I guess I would say
15 that we probably don't have much of a
16 comment on that. We would leave that to
17 Department of Public Works. We didn't
18 receive comment from Department of Public
19 Works regarding what kind of level of
20 receptacle is needed.

21 Frankly, it's in the Applicant's
22 best interest to provide an appropriate

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1 number and size of receptacles. It doesn't
2 serve anybody's purpose, least of all their
3 own tenants, if the trash receptacles being
4 provided are inadequate, and I would expect
5 that if that proved to be the case, the
6 neighbors will remain vigilant and make sure
7 that the district knows that there's a
8 problem and that the Applicant needs to
9 rectify that.

10 ACTING CHAIRPERSON ETHERLY:

11 Okay; excellent. I don't have any further
12 questions for the Office of Planning at this
13 time. Not seeing any from my colleagues,
14 I'll turn to the Applicant.

15 Do you have any cross examination
16 questions for the Office of Planning?

17 MR. CONNORS: No. Thank you.

18 ACTING CHAIRPERSON ETHERLY:

19 Okay. I'll turn to the party in opposition.
20 Do you have any cross examination questions
21 for the Office of Planning at this time?

22 MR. YOUNG: Yes, Commissioner.

1 My name, once again, is Mike Young and I
2 just simply want to get a clarification. As
3 far as the Office of Planning, there are no
4 requirements concerning the trash
5 receptacles and that's a problem that deals
6 with Department of Public Works?

7 MR. LAWSON: Yes. Good
8 afternoon, Mr. Young. That's basically what
9 I'm saying. The zoning regulations don't
10 really regulate whether the trash must be
11 inside or outside. It's maybe not a bad
12 thing for us to take a look at but they
13 currently don't, and, again, we would, you
14 know, as always, we really recommend that
15 the Applicant address this issue
16 satisfactorily to everybody's concern. But
17 there's no regulations.

18 MR. YOUNG: Okay. Thank you, Mr.
19 Lawson.

20 ACTING CHAIRPERSON ETHERLY:
21 Okay. At this time, I neglected to note at
22 the top whether or not we have a

1 representative from ANC 6B present. Not
2 seeing a large phalanx of people moving
3 forward to the table, I am presuming that we
4 do not. The record does have at Exhibit No.
5 20, an ANC 6B report dated February 27,
6 2007, in which it notes in relevant portion,
7 "At its regularly and properly-noticed
8 meeting on February 20th, 2007, with a
9 quorum present, ANC 6B voted four, three,
10 one to support the above-Applicant's request
11 for a variance from the residential
12 recreation space requirement." And that's
13 the ANC 6B report. I'm not aware of any
14 other government reports at this time.

15 The Office of Planning referenced
16 it very, very quickly. You're not aware of
17 any comment, at all, at this point, from
18 DDOT, on the particular issue of the alley
19 and any of the treatment to the rear of the
20 property; correct?

21 MR. WOODS: No, Mr. Chairman.

22 ACTING CHAIRPERSON ETHERLY:

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1 Okay. I think that concludes it as it
2 relates to any government reports that we
3 may have. I will now turn to any persons or
4 parties in support of the application who
5 may be present.

6 [No response]

7 ACTING CHAIRPERSON ETHERLY: Not
8 seeing any, it is now appropriate to turn to
9 the party in opposition for a presentation
10 of their case. At this time, I turn it over
11 to you.

12 MR. WASHINGTON: Thank you for
13 listening to me today. I don't think my
14 concerns are concerns, at least of the
15 developer, has no concerns about what my
16 feelings are on them creating a mess in my
17 neighborhood. We've talked to them a couple
18 times, tried to schedule meetings with them
19 to try to come to a happy medium.

20 Our little neighborhood, you
21 know, been there for 20, 30 years, in some
22 cases. Price has ballooned astronomically.

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1 Now we are being bullied by people with
2 money to infringe on our rights, not because
3 we created the situation. It's just six
4 inches here, property line there was
5 changed, probably many times, when these
6 places were built. Zoning change, like
7 other issues, building codes in this city.

8 I want the board to think about
9 this. Each and every one of you have a
10 home. There's no way that one Supercan is
11 sufficient for even you, you and your wife.
12 You know. What's his interpretation, the
13 builder's interpretation of a Supercan, I
14 have no idea, but that's what D.C. call
15 theirs--a Supercan.

16 They have recycled, and they have
17 a trash receptacle. There's no way that two
18 Supercans for, I mean cans for recycled, and
19 six is going to be sufficient for a eight
20 unit building. Pretty much going to be
21 yuppies. Wherever they're shopping, there's
22 going to be shopping trash from buying

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1 Neiman Marcus, or expensive tastes, food,
2 that creates trash. There's no way. This
3 has been the consensus of this neighborhood.
4 The "transcendians" come and the people who
5 are there clean up their mess. There's no
6 way possible that any of you on this panel,
7 or at these tables, can sit back and say
8 these people who are about to pay 400- to
9 \$500,000 for these matchboxes that they're
10 building are going to come outside and pick
11 up trash that's created because, for one,
12 they're not going to get enough, and then
13 two, when they get enough, it's going to be
14 infringing on that alley.

15 There's no way--it's a small
16 alley, and I invite the board to, you know,
17 even before you make your decision, you come
18 out and look and see if what they say, and
19 what you see is the truth. Because it's
20 not. That lot--you look at their dwelling,
21 it looks like a glorious lot that's, you
22 know, going to be decked with cathedral

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1 ceilings and lofts. This is a single-family
2 dwelling that they're trying to make
3 millions out of, which is ludicrous, and
4 totally an infringement on the community.

5 For the love of money. For the
6 love of money. That's what we do. They say
7 these fields that he says outside a their
8 house. Do you know? That's a public school
9 field. It's locked off to the public
10 because some person, with money, comes and
11 say they're going to keep up the field, and
12 keep it nice for people not in the
13 community. These people live by the
14 Capitol, on Third Street, and they lock the
15 field out for the community and the kids sit
16 on there and watch them, the elitists play
17 baseball and their soccer and flag football,
18 where those kids who've been living in that
19 neighborhood don't even have--no longer have
20 access to this field.

21 The new people, whether they be
22 developers, or people who live up on Capitol

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1 Hill, take advantage of that neighborhood
2 because they paid more. It's not our fault,
3 and we should not be subjected to their
4 elitist belief of we going do what we want
5 because that's our right and that's what we
6 paid.

7 It sounds like the Boston Tea
8 Party to me. You know. Throw your tea in
9 the water and don't pay no taxes. Right
10 now, we, we--the D.C. resident get punished
11 because this is where the money's at now.
12 This is where the property value is off the
13 Richter scale. If I didn't buy my house 11
14 years ago, I couldn't live in it now, for
15 these guys to come in and tell me what
16 they're going do, and once that project is
17 finished, not none of you guys going to be
18 there to help me correct this injustice that
19 will be portrayed on me by letting them get
20 away with what they initially agreed to, and
21 now because they want more money, and see
22 that it's not as great a profit as they

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1 thought, but they're going milk it for every
2 square inch, to the community as expense,
3 with the help of the parties involved. It
4 is not fair, and I hope you oppose that
5 request that they're making to eliminate
6 that space, because that's what they asked
7 for.

8 That's what they was required
9 then. Now they're trying to beat, get out
10 of it, because now they want more money.
11 It's not fair. And if this was your
12 neighborhood, you guys would be just as
13 adamant and compassionate about being
14 "shafted" like we are. You know, we can't
15 do nothing about it. We can't tear--Ms.
16 Solomon can't tear down her house, and now
17 go six foot out because now they said they
18 can go six foot out, and that's what they
19 going do because that's ours. That's the
20 most selfish thing that I ever heard of.

21 You know, that's what no respect
22 or regard of their community, and they say

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1 they are. But that's what they going do.

2 Vote no. That's it.

3 ACTING CHAIRPERSON ETHERLY:

4 Okay. Mr. Young. Ms. Solomon?

5 MS. SOLOMON: I'm a lot nervous;
6 okay?

7 ACTING CHAIRPERSON ETHERLY: Take
8 your time; take your time.

9 MS. SOLOMON: I was listening to
10 him and he was saying that the way to build
11 this building was to give me light in the
12 back. He said that; right? Then he said
13 his building, his apartment, or whatever, C,
14 whatever C is, is going to be too small and
15 these people can see out, and whatever,
16 whatever. I'm not going to be able to see
17 out.

18 You know, those buildings been
19 there before any of us in this room ever
20 came on this Earth. Since I moved there,
21 I've been able to sit on my front porch and
22 reminisce with the neighbors, look down the

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1 street, look here and there. There's no
2 need to sit on my front porch anymore. Why?
3 You know, once they're building this up,
4 they're going to have to come on my
5 property, on my porch, in order to paint or
6 whatever they got to do to the side of the
7 building.

8 3A I don't want them on my property,
9 but when I'm at work, I don't have a choice,
10 do I? You know, it's so unfair for what
11 they're trying to do to--well, not what
12 they're trying to do to me--for what you all
13 are giving them permission to do. That's
14 not fair. I don't have the money, and I
15 wouldn't even do, infringe on my neighbor,
16 to say that I'm going to push it out where
17 they're blocking me, so I can have the
18 sunlight that I used to have. That's
19 unfair.

20 You know, not because the law
21 says so you must go ahead and do it, for the
22 love of money. That's unfair. You know,

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1 I've talked to this guy as a friend. I've
2 shook his hand, and because of what I was
3 see being done, if I didn't recognize what
4 was being done to me, it would go up in my
5 face and I wouldn't even know what was
6 happening to me, for me to even have a
7 chance to cry out to people.

8 I've been down to North Capitol
9 Street, many times, I made many phone calls,
10 and nobody have ever called me back.

11 You know? I've called the Office
12 of the Attorney General, and they said they
13 were going to call back in 24 hours. I
14 still have not heard from anybody there.

15 That's unfair. You know? It's
16 just me and a sister. We're struggling, we
17 work every day like everybody else. I can't
18 afford to buy a house that's 400- or
19 \$600,000. You know, if I sell that house,
20 what am I going to do with the money that
21 they give me to buy a house that--how am I
22 going to afford to pay for that?

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1 Because it's going to be
2 finished. You know, it's unfair, what
3 they're trying to do--well, what they're
4 doing to me, anyway. You know, I've had a
5 call from one a the owners that said he was
6 going to come see me and talk to me about
7 what we can do.

8 He and the builder came. The
9 owner never showed up. I got a call from
10 the owner, said he's going out of town, he's
11 going to call me when he comes back. I have
12 not heard from him yet. You know, it's
13 unfair; it's really unfair. You know,
14 every, every--that build--everything on that
15 is a straight line, it's a straight line,
16 and that's what he said he was going to do,
17 or that's what they said they were going to
18 do; you know?

19 And they're supposed to be so
20 experienced at what they're doing, or the
21 architect experience, whatever they were
22 building. They should have known what the

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1 property was going to provide for them when
2 they started digging and when they saw it.
3 You know, and it's people like him and I
4 that give them a opportunity to even buy
5 that property, because we fought and fought
6 for what was going to be there. You know?

7 We didn't come--this was a
8 struggle on that block. You know. My house
9 has been hit by bullets. My kids have had
10 to jump on the floor every night when we
11 used to hear these bullets coming. We have
12 been to different meetings where we had--we
13 were the ones that closed that corner store.
14 You know, we go to bed at night and we hear
15 bang and banging at the corner store at
16 night to open up place, and when they open
17 up the door for those people to come to buy
18 stuff. It's unfair, what they're try--what
19 they're doing. You know? It's not right.
20 It's not right.

21 I've been complaining to, on
22 North Capitol Street, the route to complain.

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1 I've called every day. Nobody have called
2 me back. They haven't even acknowledged
3 that they got a complaint, a written
4 complaint from me. You know? I mean, I'm a
5 person, I pay taxes just like everybody
6 else. I do. You know? I want to come home
7 and I don't want to be blocked out by a big
8 wall over my door. You know? He don't, he
9 don't want his people, his tenants to do--to
10 not see out their window. He said that.

11 Why wouldn't I want to see? I
12 don't want to see out my window? I can't
13 stand at my front door and look down the
14 street? Once the wall is there, I can't any
15 more.

16 That's all I gotta say.

17 ACTING CHAIRPERSON ETHERLY:

18 Thank you very much, Ms. Solomon.

19 Mr. Young.

20 MR. YOUNG: Thank you, Mike,
21 thank you, Jennifer, thank you,
22 Commissioner, thank you, panel, for

1 listening to us this morning.

2 We have grave concerns, and we
3 know that you are only limited to what's
4 before you today. But we deeply appreciate
5 you listening to our concerns. It's like
6 the David and the Goliath story. That's how
7 we feel. Our ANC rep did not show. We'll
8 talk to him later.

9 But our concerns are very simple.
10 You've heard from Mike and you've heard from
11 Jennifer, the trials and tribulations that
12 we went through to get to this point. By
13 all means, we won't give up, because we
14 feel, in neighbors and neighborhoods, we
15 feel a negative and positive, we try to help
16 them if they will be willing to try to help
17 us.

18 Today, we're here very simply as
19 you said, Mr. Commissioner, to talk about
20 the variances, about the recreation. For
21 the variance from the residential recreation
22 space requirements under section 773 to

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1 build an eight unit residential condominium
2 building in C-2-A district, at premises 284
3 15th Street, S.E, on Square 1073, Lot 803.

4 And we've heard from both the
5 opponent and--we've heard from the other
6 side, and we've come to the conclusion that
7 this is a very poor plan from survey to
8 today.

9 There were trash problems from
10 the day that they planned it. We have rats
11 and roaches running throughout our entire
12 city. For an architect and a planner to sit
13 down and not even consider that, we find
14 that appalling.

15 The electrical project that
16 they're talking about, where they can put
17 the trash inside, in that building, and even
18 though we don't know whether they're
19 required by Public Works. We have projects
20 in this city that have the electrical boxes
21 outside. So what makes them so unique, that
22 they can't put them outside?

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1 We have high-cost condominiums
2 that have eight, nine, ten brown electrical
3 boxes outside. What makes them the
4 exception? And as I heard from the Office
5 of Planning, something has to be done if it
6 should go outside.

7 We know that there's going to be
8 a problem with the trash and the pickup, and
9 we know there's going to be a problem with
10 the rats and the roaches, because we live
11 there. We know that this recreational space
12 that we want them to be held accountable
13 for, which is why we're here today, it's
14 simply a move that we feel is for them to
15 make more money, to widen the space and all
16 the other things.

17 But they've been allowed to get
18 away with a lotta things that weren't
19 brought up in here today. The other
20 projects that are on our block. The
21 property line, which you all can't do
22 anything about at this particular moment.

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1 The deep-rooted negativity that's
2 being put on us from them. They tell us one
3 thing. They do another. We have to take
4 off our jobs and come down here and sit and
5 talk to you people.

6 There's a host of other folks who
7 may feel the same way we feel and they're
8 not here today to be represented. But I
9 want you to know, each and every one of you,
10 I want you to understand that if you
11 continue to allow them to do whatever, it's
12 not going to get any better.

13 And I understand what has to
14 happen within the law. But today, we're
15 standing for the little man. We don't want
16 them to be given anything outside of what
17 they were given; nothing. Because he said,
18 in his own words, we're going to build to
19 the property line, no matter what. No
20 consideration. No understanding. No
21 thought about any of the people that stood
22 90 years to keep that property line where it

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1 was. And then they wait and they use ploys,
2 until things are taken off the record and
3 moved. We understand that. But it doesn't
4 feel good to the people in that
5 neighborhood.

6 So we're here today, asking,
7 cause that's all we can do, that the
8 variances stay as it is, don't make any
9 changes, let the little man win one. Make
10 'em put the trash inside, if you can. And
11 truly understand that we're about the
12 neighborhood of Washington, D.C. I'm a
13 native Washingtonian, born and raised in
14 this city, been here all my life. And I
15 expect some change, because now I'm on the
16 good side of society. Always have been. So
17 I ask you to look at that variance and speak
18 on behalf of the little man.

19 Thank you, again, Mr. Chairman,
20 thank you again, committee members, and I'll
21 close.

22 ACTING CHAIRPERSON ETHERLY:

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1 Okay. Thank each of you for your testimony
2 and your time. Any cross examination
3 questions from my board colleagues?

4 [No response]

5 ACTING CHAIRPERSON ETHERLY: Any
6 cross examination from the Applicant?

7 MR. CONNORS: No cross
8 examination; no.

9 ACTING CHAIRPERSON ETHERLY:
10 Okay. I think at this point it's
11 appropriate to move to your closing remarks.

12 MR. CONNORS: Sure. A simple
13 summary from our perspective here, as
14 architect and client. Again, we're here to
15 seek the reduction to recreation space.
16 This was the suggested path or approach that
17 we were told to take by the DCRA when we
18 filed for the permit.

19 And, unfortunately, I do agree
20 with much of what's been said about the
21 process of D.C. I really do wish there was
22 a better process for streamlining how a

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1 building gets built in D.C., but the truth
2 of the matter is we were in a 10 month
3 process. There's a different permit from DC
4 WASA, there's a different permit from
5 Department of Health, from Public Space,
6 from the Building Department, and others.
7 And unfortunately, they don't coordinate at
8 all, they don't talk to each other, and a
9 lot of these driving forces in this building
10 design have been very difficult to succeed
11 the full package.

12 And again, it was my convincing
13 the owner, early on, way back when, in about
14 2004, where I suggested, you know, try to
15 limit the height of the building, make a
16 four story building, not a five story
17 building. Don't do a roof terrace; don't do
18 a penthouse. Minimize the scale of the
19 building and we will fit the required
20 recreation space upon the site.

21 That being said, it didn't work
22 out. It was at the last hour of the permit

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1 process, that we were told we fell short,
2 even though we were told earlier on, in the
3 beginning, that we complied with other
4 things. I don't know why we were told, not
5 told at that time.

6 And again, the text amendment, in
7 January, reinforces this notion, where
8 specifically for a small building in this
9 case, to have to provide 20 percent, which
10 is 1500 square feet, that's roughly the size
11 of two of the units in this building, for
12 common gathering, is fairly ridiculous in
13 this day and age.

14 From what I understand recreation
15 space was designed in the zoning laws from
16 the whole K Street corridor fiasco back in
17 the '50s and '70s, or whenever that was.

18 Buildings that were built as
19 boxes, with no insight into how to
20 incorporate people outside the building, and
21 they had to require these, you know, gyms
22 for their employees, and things like that.

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1 It really doesn't have to do with
2 condominium development that has been
3 prevalent in the last 20 years. So the
4 client has asked me to come forward and
5 follow their wishes, and to make this
6 request, that after all they've been through
7 in terms of cleaning up the site, building,
8 or, you know, razing the existing building
9 and then providing the new building, that
10 eliminating this recreation space would
11 create a better use for their future
12 tenants.

13 And I do think some of the
14 comments, and specifically about trash, are
15 relevant, especially if it is provided
16 outside, that it's set back from the alley.
17 I think that makes a lot of sense. I don't
18 think the client would want their walls to
19 be damaged. Maybe even set it back two feet
20 and put a bollard, so that not only it's set
21 back but the walls wouldn't get damaged. It
22 makes sense.

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1 But, really, that's all I can say
2 at this point. And I don't know if the
3 client wants to, or the client's
4 representative wants to make one further
5 statement. I don't know.

6 MR. CUSHMAN: I don't really have
7 anything to add to Dennis's commentary about
8 what we're trying to accomplish here, but I
9 do want to--maybe it was more appropriate in
10 the last cross examination, although I'm not
11 trying to cross-examine anybody. But I just
12 want to say that, you know, I'm a
13 representative of the developer, and I mean,
14 I've made every effort I could to
15 communicate with the community, these three
16 individuals as well as many other people.

17 You know, I really truly believe
18 that we're trying to do something positive
19 and not negative, and to hear the negative
20 venom, and some of the things I've heard
21 today are news to me and--anyway, I'd be
22 happy to continue to communicate with the

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1 neighbors and do everything I can to make
2 this a positive development, and I think a
3 lot of things that they've dealt with over
4 the last years, and the change that's
5 happening is good. I understand that there
6 are some issues that, you know, we can't
7 overcome, but, you know, in my good faith as
8 a member of the community and also a manager
9 for this development, I'm happy to continue
10 to dialogue, and communication, and, you
11 know, hopefully we can sit down and have
12 civilized conversations in the future, and
13 that's it. Thanks.

14 ACTING CHAIRPERSON ETHERLY:

15 Okay. I think it's appropriate that we set
16 this application for decision at our next
17 public meeting. I would suggest that we
18 look to our May 1st public meeting date,
19 which would of course be on a Tuesday.

20 I don't think there's any
21 additional information that we need in the
22 record, unless my colleagues are in need of

1 additional information. I think the record
2 is full on this particular case.

3 COMMISSIONER TURNBULL: Mr.
4 Chair, whenever you're finished, I didn't
5 mean to interrupt you, but I just had a
6 question or two, when you're finished, to
7 ask the Applicant.

8 ACTING CHAIRPERSON ETHERLY:
9 Okay. I'll note, just for the benefit of
10 the Applicant, and for the party in
11 opposition, typically, the board's public
12 decision meetings are on the first Tuesday
13 of every month, which would normally be
14 April the 3rd.

15 As you've heard a little bit of
16 the discussion, there is anticipated action
17 on the part of the Zoning Commission that
18 could conceivably impact the relief, the
19 provision under which this case is coming
20 forward.

21 I am suggesting that we push our
22 decision back until May to allow for an

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1 opportunity for that action to take its
2 course. It may or may not happen. This
3 board will still move forward, in either
4 event, at its May 1st meeting. There will
5 not be an opportunity for additional public
6 comment but you are welcome to either tune
7 in via our Web site or come down here to
8 listen to the deliberation, directly. But
9 that would be my suggestion.

10 Mr. Turnbull.

11 COMMISSIONER TURNBULL: Thank
12 you, Mr. Chair. I just had a question for
13 the Applicant. On your drawings, in the
14 first, your title sheet, zero, there is a
15 rendering of the project, looking from the
16 corner down, which does show the building
17 lining up with the building and Ms.
18 Solomon's porch projecting out. Your
19 original design.

20 Did you originally have a design
21 that would fit that, then?

22 MR. CONNORS: Again, I apologize

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1 for the confusion here, and you have to take
2 into account that I submitted this package
3 very quickly, after permit, in October,
4 prior to going to the ANC. That image,
5 which is not here before you today, it's a
6 conceptual image, a design that was done in
7 2004, prior to any of the work I did towards
8 further development of the site.

9 The building, our building design
10 has never really changed. It's always been
11 on the property line.

12 The information about the
13 neighboring properties became more clear as
14 further surveys were developed, and I agree,
15 it's an unusual condition.

16 When I first went out as an
17 architect, back in 2004, and I took some
18 measurements--there's no way I can go out by
19 myself and measure a 90 foot lot that's
20 fenced off, with, you know, a building being
21 demolished. I took some key dimensions, one
22 of which is I measured their porch. I had

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1 no idea where the property line was at that
2 point.

3 Under DCMR Title 12, which is the
4 building supplemental code, it describes the
5 regulations for porch projections in the
6 city.

7 The maximum porch projection
8 allowed is six feet. I wrongfully assumed
9 that time in 2004, that hey, their porches
10 are six feet. Most likely, they're
11 complying--as I've seen all over D.C., their
12 building faces on the property line and
13 their porches are on public space.

14 Why the developers, in the early
15 1900's, built these houses this way, I
16 honestly have no idea. There are conditions
17 right across the street, which are
18 different, and shown on the picture of 15th
19 Street, looking up the street. There are
20 some houses that have porches.

21 Those porches are eight feet
22 deep, and six feet of that porch is in

1 public space and two feet is on their
2 property. That's the more typical condition
3 in D.C. and--

4 COMMISSIONER TURNBULL: Well, let
5 me just ask a theoretical design question,
6 and given the request that you're looking
7 for, for recreational space, the 695 square
8 feet that you have in that terrace at the
9 back site, not edged in stone, if that were
10 less and the design accommodated lining up,
11 would that impact you, to any extent, from
12 the standpoint that that space in the back
13 is just--again, it's a bonus that you're
14 giving and you made that shift. What would
15 that do?

16 I mean, I'm looking--

17 MR. CONNORS: Right.

18 COMMISSIONER TURNBULL: You had a
19 made a statement earlier, willing to work
20 and be a proactive neighbor.

21 MR. CONNORS: If the whole
22 building were--if the whole building on that

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1 side were to shift back six feet, to line up
2 with the neighboring structures, our core
3 elements, the stairs that go down into the
4 garage, would be out into the parking areas,
5 into the drive aisle and the access to the
6 building, below grade. We would not be able
7 to accommodate the full four parking spaces,
8 not be able to accommodate eight units.

9 And we've already done some
10 pretty substantial structural design to, in
11 fact, cantilever some of that portion of the
12 building above the parking area. it's very
13 complicated, with steel, and so forth.

14 If we were to push that back, all
15 the core elements of the building would be
16 completely reversed.

17 COMMISSIONER TURNBULL: Well, I
18 guess I question that in that if--I'm
19 looking at the stair element, goes back--
20 basically, you've got a space to be
21 determined by the owner, which was original
22 recreation space, which is now a question.

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1 Pushing that stairs back just six
2 feet means it just opens up into the center
3 of the space rather than being at the far
4 end.

5 So I'm just curious, how much--it
6 wouldn't impact parking, at all, that stairs
7 coming down. I'm just throwing this out as
8 an idea, as a concept. I don't know if
9 you've studied it or looked at it. But just
10 looking at trying to be proactive with the
11 neighbor and try to get a solution that
12 would be a win-win for everybody.

13 I'm just curious. I don't see
14 that reaction or that happening right now.

15 MR. CONNORS: Also i can further
16 say that this concern from the neighbors was
17 first--first became aware to me at the ANC
18 meeting, which was in--do you recall?

19 MR. CUSHMAN: February. Or no;
20 first week of March.

21 MR. CONNORS: First week of
22 March. Now Mr. Young, Ms. Solomon, Mr.

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1 Washington, were very respectful of me, at
2 that time, in that meeting, and we discussed
3 it and I explained the situation. A couple
4 of the ANC members were not. They came to
5 the meeting with such extreme energy, and
6 how--you know, telling me, as a--and I'm "an
7 awful person" for not making people aware of
8 this, and, you know, that I'm building--I'm
9 not building, I'm the architect--but that
10 I'm building over "our property line" and
11 doing things illegally.

12 No. I've taken great efforts to
13 do everything legal according to this
14 design. But, you know, if I had known, if
15 that energy had not been bottled up, and if
16 that had been known to me prior to the
17 meeting, and during the permitting process,
18 maybe things could have been redesigned, or
19 whatever. But at this point in time it's
20 very--it'd be so complicated to change the
21 structure of the building and we've already
22 done, we've already changed the structure of

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1 the building a couple times with some other
2 issue that came up on the site.

3 So for the owner to do that, I
4 think it would be a great impact.

5 ACTING CHAIRPERSON ETHERLY:

6 Here's where I'd perhaps like to suggest
7 that we leave that. Mr. Turnbull has raised
8 what is a very good point, as have you, the
9 Applicant, in terms of what you've done to
10 get to this place where we are.

11 I want to be sensitive to the
12 fact that we're nearing our advertised 1:00
13 o'clock start time for our afternoon
14 session.

15 May 1st is our decision meeting.
16 Don't take any of our comments to suggest
17 that it is this board's sense that you go
18 and do something different.

19 I don't want anyone to think that
20 we're already at a decision point, because
21 we're not. I think the record is full.
22 However, that being said, there is, with the

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1 additional time, opportunity, even if it's
2 just for further dialogue. Whatever that
3 dialogue may be. I'm going to close it off
4 here, Ms. Solomon, but I want to be very
5 clear as I say this.

6 Clearly--and I'll use the
7 architect's term--clearly, there's a lot of
8 energy around this application, around
9 what's happening, not only in this
10 community, which I am somewhat familiar
11 with, not living--I live on the other side
12 of Pennsylvania Avenue. I live near the
13 Potomac Gardens side of Pennsylvania Avenue.
14 But I'm familiar with the area.

15 The pressures and the tensions
16 that we've touched upon here are not unusual
17 in many other parts of the city where we see
18 the change, where we see the dynamic process
19 of new residents and new development vying
20 for a lot of the same space that's occupied
21 by properties that have been there for 50,
22 60, 70 years, and for residents who've been

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1 there just as long.

2 Oftentimes, personally, we may
3 have a desire to see a different outcome,
4 but those personal desires, oftentimes, have
5 to stop right at the doorstep when we walk
6 in this room, because the zoning regulations
7 dictate how we assess certain decisions, how
8 we assess these projects.

9 That is not to say that what you
10 three are confronted with, and what the rest
11 of your neighbors are confronted with, is
12 any less important. We heard the passion
13 that you spoke with Ms. Solomon, that you
14 spoke with Mr. Washington and Mr. Young.

15 I know that you understand the
16 limitations that we are subject to here.

17 You've heard the Office of
18 Planning illuminate some of those. You've
19 heard me mention some of those. All I can
20 say, as we wind up our proceeding here is,
21 if there is an opportunity for additional
22 discussion and dialogue, at least to reopen

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1 and reestablish some communication channels,
2 try to take advantage of it. It may be the
3 case, at the end of the day, for the three
4 of you, and for your neighbors, that the
5 Applicant, the developer, can't do any more
6 than what's already been done.

7 And that may leave a very
8 difficult taste to deal with. Again, not
9 indicating where this board is going to be
10 in terms of its decision, come May 1st. But
11 if there's an opportunity for additional
12 discussion and dialogue, take advantage of
13 it and see what happens, if only to, shall
14 we say, strengthen and rebuild some of the
15 community connections that hopefully, should
16 this project go forward, reestablish some of
17 those community connections that hopefully
18 you'll have with those new neighbors.

19 But I know it's not easy. All we
20 can say is thank you for the time that
21 you've taken. You said it, Mr. Young.
22 You're missing work time. We're volunteers

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1 as well but we probably had some nice
2 conversations with our employers about being
3 here, and we know it's difficult for you to
4 take the time to come and spend the entire
5 morning, now into the afternoon, to say your
6 piece. But all I can say is thank you for
7 that time.

8 This board is going to deliberate
9 fully, on the record.

10 We've talked about trash. We've
11 talked about enclosures. OP has made some
12 observations about that. The Applicant has
13 stated, and will initial some portions to
14 look at some of those issues.

15 I think that's the best that we
16 can do and accomplish today, but your
17 testimony and your presentations have been
18 very helpful in terms of filling out this
19 record. That's what this process is all
20 about.

21 With that, I would like--

22 COMMISSIONER TURNBULL: Mr.

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1 Chair, I don't mean to add on to this, but
2 in your comments about opportunities and a
3 win-win situation, there was just one other
4 item, is that the electrical room looks
5 rather large for nine meters, and my one
6 thought is you have got a door going to the
7 basement down there, which I don't know if
8 that's the access for reading the meters or
9 not, or just an exit.

10 But one thought is why couldn't
11 that room be divided in a third for--I mean,
12 if you've got just a bank of nine meters,
13 and two-thirds, the other two-thirds be for
14 the trash pickup? I'm just throwing that
15 out as an option. That looks like it's--
16 from a space standpoint. But I mean I'm
17 just--

18 ACTING CHAIRPERSON ETHERLY: And
19 what I would say is--

20 MR. CONNORS: I'll answer, just
21 quickly--

22 ACTING CHAIRPERSON ETHERLY: No

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1 need to answer.

2 MR. CONNORS: Oh, okay.

3 ACTING CHAIRPERSON ETHERLY: But
4 just, you know, where there may be
5 opportunities to think, you know, and I
6 think I'm hearing very clearly from you
7 that, hey, if it's not there, it's not
8 there. You know. Mr. Turnbull, the spirit
9 of his suggestions I think is well-taken, in
10 that it may be at the end of the day,
11 there's nothing more that can be done here.

12 I think that's probably the best
13 place, where we are right now. I mean, I'll
14 invite some guidance from my colleagues in
15 terms of whether we want to keep the record
16 open for additional submittals, but at this
17 point, I don't want to necessarily create an
18 expectation on the part of the opponents
19 that something's going to come forward,
20 because it may be the case that the
21 Applicant, again, has done all that the
22 Applicant can do.

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1 Is it appropriate? Can this
2 board keep the record open on a very limited
3 basis for any changes that, while they may
4 not necessarily go to the relief that's
5 being sought, I'll perhaps, you know, look
6 to Ms. Glazer or any other staff members.
7 If the underlying relief is not being
8 changed, in any material way, but there are
9 modifications to address some of the other
10 issues that have been raised during the
11 course of this hearing can the record be
12 kept open for any submittals to that extent?

13 Ms. Glazer? Mr. Moy? Anyone?

14 MS. GLAZER: Mr. Chair, I think
15 it would be appropriate to leave the record
16 open on a limited basis to allow for any
17 revised plan.

18 ACTING CHAIRPERSON ETHERLY:
19 Okay. I'm comfortable doing that. Again, I
20 want to be very clear for the Applicant,
21 that that is not this board's indirect way
22 of saying go change something. I am

1 hearing, very clearly, in one sense, that
2 you've whittled and you've cut and you
3 carved to a pretty significant extent.

4 Similarly, I don't want to
5 suggest or set up the expectation on the
6 part of our parties in opposition that
7 you're going to see something new. You may
8 very well not. But in the spirit of what I
9 think is a very good spirit and positive
10 spirit, I'm more than comfortable to keep
11 the record open on a limited basis, if there
12 should be any changes that are made by the
13 Applicant and you wish to submit those, the
14 record shall be kept open to do that.

15 I would say for the purposes of
16 our decision meeting, then, that would
17 probably necessitate us looking at a little
18 bit of a schedule, so we provide some
19 guidance. So I'll look to Mrs. Bailey and
20 Mr. Moy, and staff, for some guidance on,
21 again, should there be additional
22 submittals, when would we need to have those

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1 in by, in order to be before the board?

2 And of course any additional
3 submittals would have to be made available
4 to the parties in opposition.

5 So you'd have to serve the
6 parties in opposition. You'd also have to
7 serve the ANC of course. It could be the
8 case that, let's say, some additional
9 submittals are made.

10 In all likelihood, that could
11 have an impact on whether or not the board
12 acts in May or not.

13 Again, I don't want the Applicant
14 to think that you've got to do something. I
15 don't want our parties in opposition to
16 think that we're in agreement that they have
17 to do something.

18 But in the spirit of taking one
19 final look at whether or not there are
20 changes that can be made to reach a win-win,
21 as Mr. Turnbull said, I'm willing to keep
22 the record open.

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1 So if we were to keep the record
2 open on a limited basis, what would be our
3 timeline for submission?

4 Ms. Bailey.

5 MS. BAILEY: Mr. Chairman, I
6 would suggest April 16th, the Applicant can
7 file any documents in the record, and then
8 the parties, or the party, would have a week
9 to give a response, and that would be April
10 23rd.

11 So that's April 16th for the
12 submission, possible submission, and then
13 April 23rd for possible response.

14 ACTING CHAIRPERSON ETHERLY:
15 Okay. Everyone understand that? So if
16 there are any additional submittals from the
17 Applicant, they would need to be here, into
18 the office, by April 16th. They would need
19 to be served on the party in opposition, ANC
20 as well. It would I think be very prudent,
21 of course, to make sure that OP is aware of
22 any additional submittals.

1 The parties in opposition, you
2 would then have a week to review those
3 documents, and respond, if you so choose, to
4 the board by April 23rd. And at this point
5 the board would still be scheduled for a May
6 1st decision.

7 But if there are significant and
8 material changes, we would probably need to
9 have a dialogue as to whether or not we
10 would still move forward.

11 BOARD MEMBER MANN: Mr. Chairman.

12 ACTING CHAIRPERSON ETHERLY:

13 Thank you very much for noting that.

14 BOARD MEMBER MANN: While there's
15 a pause, I was just reminded that April 16th
16 is Emancipation Day.

17 ACTING CHAIRPERSON ETHERLY:

18 Thank you very much for that reminder. One
19 of my colleagues was just highlighting that.
20 April 16th is a holiday here, in the
21 District of Columbia, a very important
22 holiday, Emancipation Day, which means that

1 our offices will be closed.

2 MS. BAILEY: I'm sorry, Mr.
3 Chairman.

4 ACTING CHAIRPERSON ETHERLY:
5 That's okay, Ms. Bailey.

6 MS. BAILEY: The 17th is the next
7 day, so--

8 ACTING CHAIRPERSON ETHERLY: So
9 the submittal date would be April the 17th.
10 That would be the next day. Would that then
11 also adjust us to April 24th for the
12 responses due, Ms. Bailey? Would you
13 recommend that?

14 MS. BAILEY: I would stay with
15 the 23rd, unless the parties in opposition
16 have a problem. It's just a day off.

17 ACTING CHAIRPERSON ETHERLY:
18 Okay. So if there are additional submittals
19 the party in opposition, we would still like
20 you to respond by April 23rd, reason being
21 that gives this office enough time to
22 package up your response and get it to us

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1 for our review prior to the hearing that
2 following week. So any new submittals would
3 come into the office on April the 17th, and
4 then your responses, if any, would be due
5 back into this office on April the 23rd.

6 Any questions about that
7 timeline? Sir, if you could turn your
8 microphone on, Mr. Young. Thank you, sir.

9 MR. YOUNG: Sorry, Mr. Chairman.
10 I apologize to the committee. The May 1st
11 date, is it the same time, 9:30?

12 ACTING CHAIRPERSON ETHERLY: That
13 would be the same time. It would be part of
14 a regular public meeting agenda. I wouldn't
15 be able to give you firm guidance on exactly
16 when the case would come up but it would be
17 scheduled for decision that morning. Okay?

18 MR. YOUNG: All right. Thank you
19 very much.

20 ACTING CHAIRPERSON ETHERLY: With
21 that being said, thank you, everyone, for
22 your patience. Thank you to my colleagues,

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1 Office of Planning.

2 We're at 1:05. Before we
3 adjourn, you're all fine, you're good to go.
4 Thank you. Thank you all very much.

5 Let me give some guidance to
6 those that are arriving in the room for our
7 1:00 o'clock session. As you can see we are
8 now just concluding our morning session,
9 which is not an unusual feat for us.

10 I'd like to reconvene the board
11 at 1:30. I'd like to take a very short
12 quick lunch recess, just to get my
13 colleagues some sustenance, so we're not all
14 barking too loudly at you, in about 30
15 minutes, and I'd like to reconvene at 1:30
16 for our afternoon session.

17 Mrs. Bailey, is there any other
18 business in front of us for the morning
19 session?

20 MS. BAILEY: Mr. Chairman, I want
21 to welcome Mr. Douglas Woods from the Office
22 of Planning. He's a new employee. So

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1 welcome.

2 ACTING CHAIRPERSON ETHERLY:

3 Welcome, Mr. Woods. We picked a couple a
4 good cases to break you in on and thank you
5 for holding up well under the onslaught. So
6 welcome.

7 MR. WOODS: Thank you.

8 ACTING CHAIRPERSON ETHERLY: Not
9 having any further business before the board
10 this morning, that concludes our morning
11 session. We will reconvene at 1:30. Thank
12 you.

13 [Whereupon, a luncheon recess was
14 taken from 1:07 p.m. to 1:30 p.m.]

AFTERNOON SESSION

[1:43 p.m.]

ACTING CHAIRPERSON ETHERLY: Good

afternoon, ladies and gentlemen. We're going to pull our afternoon hearing to order. Thank you all very much for your patience. As a number of you noted and saw, the board had a very long and full agenda in the morning. I cajoled my colleagues to eat very quickly and expeditiously, so we could get back out here and get right into our afternoon.

Notices regarding our agenda are posted at the door, at or near the door as you came in. So you'll see that we have two cases that are on our agenda for this afternoon.

I'm going to read through our traditional introduction and then I'll have specific introductory remarks for the appeal, which will be our second case in the afternoon. My name is Curtis Etherly. I am

1 sitting in an unusual seat today, for those
2 of you who are regular practitioners and
3 observers of the Board of Zoning Adjustment,
4 and that is due to two of our colleagues
5 being out due to competing commitments, one
6 out of the country, and we wish her safe
7 travels as she returns to us, Ruth Ann
8 Miller, and one who is currently engaged in
9 activities before the D.C. Council, in the
10 form of our Chairperson, Mr. Griffis, and we
11 wish him all the best in his endeavors.

12 I am, however, ably joined today
13 by my colleagues, Mr. Mann, representing the
14 National Capitol Planning Commission and Mr.
15 Turnbull, representing the Zoning
16 Commission.

17 We're also joined up here on the
18 dais by differing staff members who will be
19 with us throughout the day and of course a
20 representative from the Office of Planning
21 who we will allude to as we move through our
22 docket this afternoon, but we'll be assisted

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1 by Mrs. Bailey, who's seated at the far end
2 of the dais, Mrs. Glazer with the Office of
3 Attorney General, and we'll have other
4 Zoning Office staff members joining us.

5 Copies of today's hearing agenda
6 are available to you and are located to my
7 left in the wall bin near the door. Please
8 be aware that this proceeding is being
9 recorded by a court reporter and is also
10 Webcast live.

11 Accordingly, we must ask you
12 refrain from any disruptive noises or
13 actions in the hearing room. When
14 presenting information to the board, please
15 turn on and speak into the microphones that
16 are placed at the table in front of you,
17 first stating your name and home address for
18 the record.

19 When you're finished speaking,
20 please turn off your microphone, so that
21 your microphone is no longer picking up
22 sound or background noise. All persons

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1 planning to testify, either in favor or in
2 opposition, are to fill out two, count them,
3 two witness cards.

4 Those cards are located on my
5 left on the table near the door and on the
6 witness table.

7 Upon coming forward to speak,
8 please give both cards to the reporter
9 sitting on my right.

10 The order of procedure for
11 special exceptions and variances is as
12 follows. Statement of the Applicant.
13 Government reports, including the Office of
14 Planning, Department of Public Works.
15 Report of the Advisory Neighborhood
16 Commission or ANC. Persons or parties in
17 support, persons or party in opposition, and
18 closing remarks by the Applicant.

19 When we move into our appeal
20 case, later in the afternoon, I'll have
21 specific instructions for the proceeding of
22 that case.

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1 The record will be closed at the
2 conclusion of each case, except for any
3 material specifically requested by the
4 board. The board and the staff will specify
5 at the end of the hearing exactly what is
6 expected and the date when the persons must
7 submit the evidence to the Office of Zoning.

8 After the record is closed, n
9 other information will be accepted by the
10 board. The Sunshine Act requires a public
11 hearing on each case to be held in the open,
12 before the public.

13 The board may, however,
14 consistent with its rules of procedure and
15 the Sunshine Act, enter executive session
16 during or after the public hearing on a case
17 for purposes of reviewing the record or
18 deliberating on the case.

19 The decision of the board in
20 these contested cases must be based
21 exclusively on the public record.
22 Therefore, to avoid any appearance to the

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1 contrary, the board requests that persons
2 present not engage members of the board in
3 conversation. No matter how engaging we may
4 seem to be outside of these walls, please
5 don't engage us in conversation.

6 Please turn off all beepers and
7 cell phones at this time so as to not
8 disrupt our proceedings. Again, for those
9 of you familiar with our proceedings, at
10 times, cellular reception, and in fact
11 Blackberry reception, will create feedback
12 on our microphones.

13 So if you could please place your
14 cell phones or other devices to either
15 silent, or off, that would be greatly
16 appreciated.

17 The board will make every effort
18 to conclude the public hearing as near as
19 possible to 6:00 p.m. If our two cases here
20 in the afternoon are not completed at 6:00,
21 we will assess where we are, as we near that
22 time, and offer appropriate guidance as we

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1 go forward.

2 At this time the board will
3 consider an preliminary matters.
4 Preliminary matters are those that relate to
5 whether a case will or should be heard
6 today, such as requests for a postponement,
7 continuance or withdrawal, or whether proper
8 an adequate notice of the hearing has been
9 given.

10 If you are not prepared to go
11 forward with a case today, or if you believe
12 that the board should not now proceed, now
13 is the time to raise such a matter.

14 I'll look to Mrs. Bailey and say
15 a very happy and hearty good afternoon, Ms.
16 Bailey. Did you know that at 8:07 Eastern
17 Standard Time this evening, if you're on the
18 East Coast, that marks the official start of
19 spring. I told you I was going to share
20 that on the record just so everyone can take
21 note that the end is indeed nigh with
22 respect to the winter, at least officially

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1 on the calendar. Good afternoon, Ms.
2 Bailey.

3 MS. BAILEY: Thank you for
4 sharing, Mr. Chairman.

5 ACTING CHAIRPERSON ETHERLY:
6 You're very welcome. Are there any
7 preliminary matters that the staff are aware
8 of at this time?

9 MS. BAILEY: No, sir; staff does
10 not have any at this time.

11 ACTING CHAIRPERSON ETHERLY:
12 Excellent. And I'll note that we've been
13 joined by Mr. Moy, sitting to my left.
14 Welcome and good afternoon to you as well,
15 Mr. Moy, and Ms. Glazer, with the Office of
16 Attorney General.

17 At this time, individuals wishing
18 to testify before the board, if you could
19 please rise to take the oath, Mrs. Bailey
20 will direct you appropriately.

21 Again, if you are testifying
22 before the board, either as an Applicant, or

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1 as a person in support or opposition, we
2 need to have you sworn or affirmed in. So
3 Ms. Bailey, thank you.

4 MS. BAILEY: Sir, will you be
5 testifying today?

6 Please raise your right hand.

7 [Witnesses duly sworn]

8 MS. BAILEY: Thank you.

9 ACTING CHAIRPERSON ETHERLY:

10 Thank you very much, ladies and gentlemen.
11 Please sit down, make yourselves
12 comfortable, we're going to try to keep the
13 entertainment brief and light this
14 afternoon.

15 With that, Mrs. Bailey, can you
16 call the first case, please.

17 MS. BAILEY: Thank you, Mr.
18 Chairman. Application No. 17600 of Dakota
19 Square LLC, pursuant to 11 DCMR 3103.2, for
20 a variance from the loading berth
21 requirements under subsection 2201.1, to
22 allow the construction of a mix-use

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1 building, that's a commercial residential
2 building, in the C-2-A District. The
3 property is located at 300 through 320 Riggs
4 Road, N.E., Square 3748, Lot 52.

5 Mr. Chairman, there is a request
6 for party status in opposition to this
7 application.

8 ACTING CHAIRPERSON ETHERLY:
9 Excellent. Thank you very much, Mrs.
10 Bailey. I'll note for my colleagues, at
11 Exhibit No. 28, we have a party status
12 applications from Richard Smith. Is Mr.
13 Smith present here in the room today?

14 [No response]

15 ACTING CHAIRPERSON ETHERLY:
16 Okay. Not seeing any indication,
17 let's deal with that as we move into the
18 case.

19 If we could have the
20 representatives of the Applicant step
21 forward and be seated.

22 Good afternoon, sir. I'll turn

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1 it over to you.

2 MR. EPTING: Thank you, sir.

3 Thank you. Members of the board, I'm John
4 Epting with Pillsbury Winthrop Shaw Pittman.
5 Joining me is Jeff Utz from Pillsbury
6 Winthrop Shaw Pittman, also Mark Rivers
7 representing the Applicant, and the
8 architect, Laurence Caudle.

9 ACTING CHAIRPERSON ETHERLY:

10 Excellent. If I could just hold you there
11 for a moment, Mr. Epting. My colleagues,
12 let's deal with the party status
13 application.

14 First of all, Mr. Epting, are you
15 in receipt of Exhibit No. 28? It's a party
16 status applications from Richard Smith?

17 MR. EPTING: Yes; we have it.

18 ACTING CHAIRPERSON ETHERLY:

19 Okay. My colleagues, given that Mr. Smith,
20 again, has not appeared in the room,
21 appearance of course is not necessarily
22 taken to be required in terms of party

1 status, but I would suggest that given the
2 fact that Mr. Smith is not present at this
3 time, that the party status application be
4 denied. Is there any objection to that?

5 BOARD MEMBER MANN: No, I don't
6 object, and, in addition, I'd note that only
7 certain portions of the party status
8 application were completed, which would make
9 it difficult to grant it without additional
10 information anyway.

11 ACTING CHAIRPERSON ETHERLY: I
12 would agree. Mr. Epting, again, you are in
13 receipt of the application. Had you had an
14 opportunity to speak with Mr. Smith at any
15 point?

16 MR. EPTING: No, sir.

17 ACTING CHAIRPERSON ETHERLY:
18 Okay. Do you have any position, formally,
19 on the record, with respect to the party
20 status application?

21 MR. EPTING: We don't believe he
22 met the standards of 3106.2.

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1 ACTING CHAIRPERSON ETHERLY:

2 Excellent. I would tend to agree, Mr.
3 Epting, and I'd agree with my colleague, Mr.
4 Mann, so I'll take it as a consensus of the
5 board, that the party status application of
6 Richard H. Smith will be denied.

7 Mr. Epting, your show.

8 MR. EPTING: Thank you. The
9 Applicant is seeking a variance from the
10 residential loading berth size requirement
11 of 2201.1, which requires a minimum loading
12 berth of 55 feet for a residential building
13 with 50 or more units.

14 Instead, a loading berth of 30
15 feet is provided. Before turning to our
16 witnesses, I would like to provide a quick
17 rundown of how our case satisfies the
18 standards of approval of an area variance.

19 Under **Gilmartin v. D.C. Board of**
20 **Zoning Adjustment**, there are three tests.
21 The property is affected by an exceptional
22 or extraordinary situation, strict

1 application of the zoning regs results in a
2 practical difficulty, and granting the
3 relief will not adversely affect the zone
4 plan or the public good.

5 The architect is prepared today
6 to discuss the exceptional situation. It's
7 an oval-shaped lot. It's very unusual for
8 D.C. It's very large. It has a
9 considerable sloping situation that makes
10 loading difficult. Third, since there's
11 such a high degree of retail that
12 essentially needs surface parking, the same
13 area for the retail surface parking would
14 also be the only area we could provide the
15 55 foot truck.

16 Practical difficulty. Under
17 **Gilmartin**, there's a variety of factors in
18 terms of practical difficulty in this case.
19 The loading berth size would greatly and
20 negatively impact the retail and the grocery
21 store. The site is situated in a manner
22 that either allows the surface parking or

1 space for the 55 foot loading dock.

2 Reducing the parking would have a negative
3 impact on the retail.

4 This is a very minor request for
5 relief. In fact, because of the size of the
6 units, a 55 foot truck is not needed for the
7 residential. We provide all the other
8 loading for the commercial and retail.

9 The final standard which the
10 architect will also review, as a whole, the
11 project is an important investment to the
12 neighborhood. It's a revitalization. The
13 requested relief does not affect the
14 surrounding neighborhood.

15 The variance will not change the
16 overall permitted density or height, and I'd
17 like to conclude my statement, and go ahead
18 and turn it over to Mr. Rivers.

19 MR. RIVERS: Thank you, John.
20 Good afternoon. I'm Mark Rivers, the senior
21 development manager with Lowe Enterprises
22 for this project. This property currently

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1 is developed low density, .23 FAR. It's an
2 old strip mall that is mostly vacant, and we
3 intend to redevelop it into a metro-oriented
4 mixed-use development, and which we intend
5 to coordinate with nearby parcels, including
6 residential and retail development.

7 All these parcels are currently
8 zoned C-2-A.

9 For two years, we've been meeting
10 with various representatives of the
11 community, including as recently as February
12 with the ANC. We're pleased that they've
13 supported this project and just this past
14 weekend, we conducted a bus tour with many
15 representatives of the community, to show
16 them other projects in the metro area and
17 how ours might be similar and different, and
18 to solicit their feedback.

19 We're looking forward to starting
20 this project as soon as possible and we're
21 prepared to do that with the team in place,
22 and everything else we need to proceed.

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1 Thank you.

2 MR. RIVERS: And with that, I'd
3 like to go ahead and call the architect.

4 MR. CAUDLE: Good afternoon.
5 Again, my name is Laurence Caudle. I'm
6 associate principal with Hickok Cole
7 Architects. We're the design firm for the
8 project, and to give you a little brief
9 background, we're really excited to be here,
10 because it was just about a year and a half
11 ago when we first saw the site, and
12 immediately recognized that it was really
13 ready for redevelopment, and as Mr. Rivers
14 pointed out, they had been meeting with the
15 community for well over two years now, and
16 continue to do so.

17 And out of those meetings came
18 the realization that there was a real need
19 to provide some vital retail and probably a
20 full-size grocery store, which is what you
21 see here planned now, and with that, there
22 are some real critical design plan issues

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1 that we must provide, and as Mr. Epting
2 stated, this slight variance will help us
3 accomplish that.

4 So I'll try to keep my testimony
5 brief but also walk you through the project.

6 Essentially it's a 201,000 square
7 feet site in the C-2-A Zone, and I'd like to
8 point out that we are meeting all zoning
9 requirements, matter of right, with the
10 exception of this slight variance.

11 We gave you an additional handout
12 today that's not in your packet, it's
13 actually an aerial of the site, but we
14 thought it would help you get orientated to
15 the site, in addition to our boards.

16 So using my handy-dandy laser
17 pointer, this green patch right here is the
18 site that we're talking about today. The
19 Maryland, D.C. line is right here. This is
20 Riggs Road, coming in this way.

21 This is the Red Line and this is
22 North Capitol Street. And here's the Fort

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1 Totten Metro Station. So it's a brief walk
2 to the Fort Totten Metro station, which is
3 another great thing about the site.

4 There are some unique and
5 historic conditions about the site as Mr.
6 Epting said. One of the main things is the
7 fact that there is--which is unusual for
8 D.C., actually--a 20 foot grade change from
9 one side of the site to the other. And this
10 site section shows that.

11 But to get you orientated, here
12 is basically a roof plan of the whole
13 development. This is Riggs Road here,
14 Chillum Place and 3rd Street, and you can
15 see how the site narrows down into this
16 little point at this end.

17 Looking at the ground floor plan,
18 that essentially means that we have a retail
19 space here, a grocery store space here, with
20 surface parking all around.

21 This section is taken through the
22 grocery store from Riggs Road up to 3rd

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1 Place, and you can see that car there, the
2 grocery store being here, parking here, that
3 20 foot grade change occurring right there.
4 So it's quite a dramatic jump.

5 That immediately means that it
6 makes it very difficult for large trucks to
7 maneuver anywhere off the site to access the
8 service level from anywhere except Riggs
9 Road, and perhaps just a little bit up from
10 the intersection off of Riggs Road as well.

11 Again, as I stated before, the
12 need for the surface parking for success of
13 the retail and the grocery store is very
14 critical. There are some beliefs that the
15 spaces that we show are absolutely
16 necessary, so that they actually survive.

17 What this board here shows is
18 that if we were to provide the 55 foot
19 tractor-trailer, it would eat up a lot of
20 that surface parking, right here, in order
21 to get to the area where we're providing for
22 the loading, surface space.

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1 If I can point out on the rest of
2 the site here, we already do have the
3 required loading for the grocery store on
4 this side. So we'd rather not burden
5 Chillum Place with any further access for
6 loading spaces. Ideally, the loading space
7 will come here at the level of Riggs Road,
8 into this area here. We are providing a
9 little bit of an access here, but even right
10 there, that's already ten feet above the
11 surface level.

12 In terms of practical difficulty,
13 as I just stated, again, this parking area
14 is very critical for the success of the
15 grocery store and the retail space, and in
16 terms of building efficiency, we want to
17 consolidate the service areas into this area
18 rather than try to pepper the site with
19 loading spaces around the back side.

20 Also this curving shape of this
21 street here, and the extreme topographical
22 change, means that maneuvering large trucks

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1 off of this site into the site, off of this
2 street into the site would also require some
3 great gymnastics in terms of planning, and
4 again about right here we're already 20 feet
5 above the surface level of the site.

6 So giving us a variance and
7 allowing us to utilize a 30 foot space
8 instead of a 55 foot space, would allow us,
9 again, to minimize a number of access points
10 to the site. I again would merely point out
11 that we're providing all the number of
12 loading spaces required for the development,
13 but for the one residential space, we're
14 asking for a decrease in the length from 55
15 to 30 feet, and this plan sort of shows you
16 the sort of unit size of the development and
17 a 30 foot truck would more than satisfy the
18 surfaces needed for a two bedroom unit,
19 which is essentially our largest unit.

20 In summary, I'd like to point out
21 that this will not affect the surrounding
22 neighborhood and therefore not be

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1 detrimental to the neighborhood, and that
2 it's a very minor relief. Again, the size
3 of the loading space will adequately serve
4 the development. What this will allow us to
5 do, as designers, is to provide a better
6 retail and grocery design, which as I
7 stated, is very vital to the development,
8 and to provide a better and more vibrant
9 streetscape design, which again is important
10 to the community.

11 As I stated before, the rest of
12 the development is meeting all the zoning
13 requirements, and I believe there are eight
14 spaces, in total, and I think that ends my
15 statement for now.

16 MR. RIVERS: Actually, Laurence,
17 in your experience, is this site very
18 unusual for D.C.?

19 MR. CAUDLE: Yeah; it actually
20 is. We're kind of surprised to have this 20
21 foot grade change, and if you can imagine,
22 it's taken a long time to get to this point.

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1 There's months of master planning.

2 We've tried locating the grocery
3 store, for instance, at all sorts of areas
4 of the site but it just "wouldn't fly," if
5 we're trying to get the type of retailer we
6 want to come into this space.

7 This whole end is what proved to
8 be very difficult. It's ideal for the
9 retail space but not a grocery store, and
10 the fact that we'd rather not put anything
11 up in this area, because we'd rather keep
12 this residential side of the site, we'd
13 rather keep units and a more residential
14 character on that side of the site.

15 As I've stated before, we've
16 already got a difficult loading situation
17 here. We're actually almost ten feet above
18 the level of grocery store already. But
19 there's really no other place to service
20 that grocery store.

21 So particularly this end of the
22 site, which is very unique, and it's given

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1 us some real architectural opportunities
2 from an elevation standard. From a
3 practical standard, having to service the
4 site was difficult.

5 And I think that's about it.

6 MR. RIVERS: And I apologize, we
7 did submit Laurence's resume. He's been an
8 expert here before, and if you would,
9 whatever appropriate, consider him an
10 expert. And that's my fault. I was ready
11 to go.

12 ACTING CHAIRPERSON ETHERLY:
13 Let's pause then and take up that particular
14 question with regard to the expert status.

15 My colleagues, you have a resume
16 in front of you. I have no objection. I'm
17 familiar with the architect's work from
18 having testified in front of the board
19 before. But I'll open it up to my
20 colleagues; if there's any objection.

21 [No response]

22 ACTING CHAIRPERSON ETHERLY: Not

1 having any objection, consider yourself so
2 designated as an expert.

3 MR. RIVERS: Thank you.

4 ACTING CHAIRPERSON ETHERLY: You
5 should print new resumes and send those out
6 immediately.

7 MR. RIVERS: Thank you. And that
8 concludes our direct testimony.

9 ACTING CHAIRPERSON ETHERLY: I
10 neglected to note if we had a representative
11 from the ANC present. That would be ANC 4B?

12 [No response]

13 ACTING CHAIRPERSON ETHERLY:
14 Okay. Any questions from my colleagues?

15 Mr. Turnbull.

16 COMMISSIONER TURNBULL: Thank
17 you, Mr. Chair. I wonder if I might just
18 ask--I just had a question on the entrance,
19 the second entrance by the loading dock.

20 There's a lot of other streets
21 coming in there, and I'm just wondering,
22 from your studies, is that going to be an

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1 issue as far as traffic and--

2 MR. CAUDLE: This side here?

3 COMMISSIONER TURNBULL: Yes;
4 right. It seems there's about five streets-
5 -there's a lot of entrances coming--

6 MR. CAUDLE: You mean traffic
7 lanes right here?

8 COMMISSIONER TURNBULL: Yeah.
9 Well, no, I mean if you look at your sheet,
10 which is this sheet here, if I look down
11 here, there's a lot of--

12 MR. CAUDLE: Oh. You're talking
13 about the curb cuts coming in off the
14 adjacent sites.

15 COMMISSIONER TURNBULL: The cuts,
16 yes, and I'm looking at trying to get in and
17 out. Is there a lot of activity along
18 there? And again, with your proposed
19 shortened loading dock in there and traffic
20 coming in, are you creating any issues from
21 the standard of--I'm just concerned if
22 you've got "an accident waiting to happen

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1 here."

2 MR. CAUDLE: No. I understand.
3 Actually, this side of the street is all
4 zoned industrial, and actually, there isn't
5 a lot of high traffic volume there during
6 the day from what we've observed. Wells &
7 Associates is the traffic consultant and
8 they voiced no concerns about that activity
9 directly across the way.

10 When you're there during the
11 daytime, which we've been there many times,
12 you observe very little traffic during the
13 week, during the day, at that street.

14 COMMISSIONER TURNBULL: What
15 about the loading dock--I'm just--how wide
16 is it? That's about 20 feet wide in there?
17 Is that--

18 MR. CAUDLE: In this area?

19 COMMISSIONER TURNBULL: Yes.
20 Twenty feet?

21 MR. CAUDLE: Each of the loading
22 spaces is designed to be 12 feet wide.

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1 COMMISSIONER TURNBULL: So 24
2 feet overall.

3 MR. CAUDLE: Correct.

4 COMMISSIONER TURNBULL: Okay.
5 Those are my questions.

6 ACTING CHAIRPERSON ETHERLY: Any
7 additional questions?

8 [No response]

9 ACTING CHAIRPERSON ETHERLY:
10 Okay. At this time, let's then turn it to
11 the Office of Planning. Welcome to Mr.
12 Mordfin.

13 MR. MORDFIN: Good afternoon, I'm
14 Stephen Mordfin with the Office of Planning,
15 and the subject property is unique due to
16 topographical constraints that restrict
17 access to the property, limiting access from
18 Riggs Road--limiting access to the property
19 from Riggs Road and the easternmost
20 frontages of 3rd Street and Chillum Place.

21 Not granting the variance will
22 result in peculiar and exceptional practical

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1 difficulty to the owner as a substantial
2 amount of area within the building will have
3 to be set aside for the maneuvering of
4 trucks only, an inefficient use of space, or
5 require truck maneuvering within the public
6 streets as there are no public alleys.

7 The applications proposes one and
8 two bedroom units, which typically do not
9 require 55 foot long trucks. By limiting
10 the size of the proposed units to no more
11 than two bedrooms, the larger berth will not
12 be required. Therefore, the granting of
13 this variance request will not substantially
14 impair the intent and integrity of the
15 zoning regulations and the Office of
16 Planning recommends that the board approve
17 the applications as submitted by the
18 Applicant. Thank you.

19 ACTING CHAIRPERSON ETHERLY:

20 Excellent. Thank you very much, Mr. Mordfin
21 Any cross examination questions for the
22 Office of Planning?

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1 MR. RIVERS: None.

2 ACTING CHAIRPERSON ETHERLY: You
3 have a copy of the Office of Planning's
4 report?

5 MR. RIVERS: Yes. I do. It's
6 beautiful.

7 ACTING CHAIRPERSON ETHERLY:
8 Excellent. Any questions from my colleagues
9 of the Office of Planning?

10 [No response]

11 ACTING CHAIRPERSON ETHERLY:
12 Seeing none, then, I'd like to move us
13 forward. Let me ask you, first, before I
14 move off the Office of Planning, I know
15 there was a little bit of back and forth,
16 let me ask you, Mr. Mordfin, have there been
17 any outreach--we're not in the receipt of
18 any specific written report from the
19 Department of Transportation at this point;
20 is that correct?

21 MR. MORDFIN: I've not received a
22 written report. I spoke to Mr. Baugh this

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1 morning and he said his only concern was how
2 a 30 foot truck would be able to maneuver in
3 and out of the parking space that's
4 proposed.

5 ACTING CHAIRPERSON ETHERLY:

6 Okay.

7 MR. MORDFIN: Rather, the loading
8 berth.

9 ACTING CHAIRPERSON ETHERLY:

10 Okay.

11 Mr. Epting, are you aware of any
12 discussions that have occurred recently with
13 Department of Transportation?

14 MR. EPTING: Mr. Utz has talked
15 to Mr. Baugh today. We've been trying to
16 talk to him. His issue is not with the
17 variance as with he needs to review the site
18 plan before building permit, just to make
19 sure that that 30 berth fits on there
20 correctly.

21 ACTING CHAIRPERSON ETHERLY:

22 Okay.

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1 MR. EPTING: So I see it as
2 almost like a normal matter-of-right zoning
3 issue you'd have to deal with at the permit
4 process.

5 ACTING CHAIRPERSON ETHERLY:
6 Okay, and with respect to the question that
7 Mr. Mordfin alluded to in terms of his
8 conversation with Mr. Baugh, again, any
9 concerns about turning radiuses with respect
10 to the trucks that will be entering into the
11 site?

12 MR. EPTING: None.

13 ACTING CHAIRPERSON ETHERLY:
14 Okay; excellent.

15 MR. EPTING: If they can't do it,
16 we'll be back for another variance.

17 ACTING CHAIRPERSON ETHERLY:
18 There you go. All right. There are not any
19 questions--Mr. Turnbull.

20 COMMISSIONER TURNBULL: Mr.
21 Chair, I guess the only question, and I
22 just--the plan, the application, the plan

1 here that sort a shows, which is that plan,
2 the middle board up there--the trucks in
3 this loading dock going for the variance
4 show the trucks going in, straight on, not
5 backing in for unloading.

6 Is that an issue, or I mean,
7 actually, the trucks are going to be pulling
8 in, cab first, I mean you're not backing in,
9 they're going to have to then turn around to
10 go in front forward, or, actually, are you
11 backing in?

12 MR. RIVERS: Our intention is for
13 these two spaces here--and I'm having a hard
14 time reading from this distance, but tell me
15 if I'm wrong, but those are the ones that
16 are pulling head in.

17 COMMISSIONER TURNBULL: Yes.

18 MR. RIVERS: And the intention is
19 that they would pull in and back up into
20 this space, area here, and turn around and
21 go back out, back out through this exit
22 here.

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1 COMMISSIONER TURNBULL: So your
2 intent is that they would pull in from Riggs
3 Road, then, for the most part?

4 MR. RIVERS: Yes. In the
5 likelihood, we feel that they certainly can
6 come in from Riggs Road. There's probably a
7 lot of trucks that will be coming up from
8 Riggs Road and to get to that service area,
9 they'll come in through this entrance here.

10 COMMISSIONER TURNBULL: I mean,
11 unloading then, they're going to be
12 unloading into the parking area?

13 MR. RIVERS: Well, they're going
14 to be driving into the parking area and then
15 unloading from these loading spaces here.

16 COMMISSIONER TURNBULL: So
17 they're not actually going to be unloading
18 on to a dock. They're loading on to parking
19 level.

20 MR. RIVERS: Well, they're going
21 to have a loading area behind the trucks, as
22 required, and then from there, they'll be

1 moving the merchandise into just the retail
2 spaces.

3 COMMISSIONER TURNBULL: Okay.
4 I'm just looking at a safety aspect. But
5 with guys unloading with either a forklift
6 from the trucks or getting things out with
7 cars pulling in and out, the safety aspect
8 of somebody getting hit in there.

9 MR. RIVERS: Well, I would agree
10 that that's probably a challenge for any
11 such layout, so we'd have to do operations
12 in such a way that those safety issues are
13 addressed.

14 COMMISSIONER TURNBULL: Okay.

15 ACTING CHAIRPERSON ETHERLY: But
16 it's your sense that with respect to the
17 size of that particular area, once you have
18 a cab first entry into that loading dock, as
19 unloading is occurring at the rear of that
20 vehicle, there's enough space there that
21 you're not encountering any of the regular
22 general public traffic that comes on to the

1 site to park?

2 MR. RIVERS: That's true. There
3 probably--which is not shown on this
4 drawing--probably be additional curbs which
5 would keep traffic out of the loading area,
6 and keeping the people loading out of the
7 traffic areas.

8 ACTING CHAIRPERSON ETHERLY:
9 Okay.

10 MR. RIVERS: So it's diagrammatic
11 in a sense that showing where their general
12 locations are but it's not showing every
13 detail, which you're right--we need to show
14 more detail as we develop the plan.

15 ACTING CHAIRPERSON ETHERLY:
16 Okay.

17 COMMISSIONER TURNBULL: Just
18 following up on your comment.

19 ACTING CHAIRPERSON ETHERLY:
20 Sure.

21 COMMISSIONER TURNBULL: So you do
22 see a refinement of the layout there with

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1 curb lengths and everything else, that would
2 clearly more identify, I mean--

3 MR. EPTING: Yes. We're actually
4 even talking about perhaps walling around
5 the loading areas, for instance, for visible
6 reasons, visibility reasons from the units
7 above the courtyard space. So there's going
8 to be a little bit more of that at some
9 point.

10 COMMISSIONER TURNBULL: Okay.
11 Thank you.

12 MR. CAUDLE: Okay. Not seeing
13 any further questions from my colleagues,
14 it's be appropriate to move forward towards
15 the Advisory Neighborhood Commission report.
16 Again, for the benefit of those who may have
17 arrived, more recently, we're in Application
18 No. 17600 of Dakota Square LLC. Again, do
19 we have a representative from ANC 4B
20 present?

21 [No response]

22 ACTING CHAIRPERSON ETHERLY:

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1 If not, we do have in the record Exhibit No.
2 24, for the benefit of my colleagues, a
3 letter in support of Application No. 17600,
4 from ANC 4B, dated--actually, there's not a
5 firm date on the letter itself, but it has
6 been received by the office, dated February
7 28th, and it notes that the ANC at its
8 regularly-scheduled February 22nd meeting
9 voted to pass a resolution supporting this
10 application.

11 The vote was seven to one. A
12 proper quorum was present and in attendance.
13 And that is in the record.

14 I'm not in receipt of any
15 additional government reports at this time,
16 pursuant to this application. With that, I
17 think it's now appropriate for us to move
18 forward to any parties or persons in support
19 or opposition to Application No. 17600. Now
20 would be the time to testify. Again, any
21 persons in support or opposition to
22 Applications No. 17600.

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1 Not seeing for the second
2 consecutive--yes, ma'am. If you'd like to
3 please come forward. If you can make
4 yourself comfortable there. I'd like to,
5 one, make sure, that if you haven't
6 completed a witness card, if you could
7 please make sure that after you finish up,
8 we need to get two cards to our court
9 reporter there, but I'd like to have you,
10 just for purposes of expediting ourselves,
11 if you could state your name and address for
12 the record and perhaps spell it to assist
13 the court reporter in the preparation of her
14 transcript, that would be greatly
15 appreciated.

16 MS. POWELL: Thank you. My voice
17 is not what it should be but hopefully you
18 can understand what I'm saying. My name is
19 Evanna Powell. I live at 5749 5th Street,
20 N.E., Washington, D.C., and I am both a
21 proponent and opponent of this development.

22 ACTING CHAIRPERSON ETHERLY:

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1 Okay. You're wearing two hats today, Ms.
2 Powell.

3 MS. POWELL: Yes, sir.

4 ACTING CHAIRPERSON ETHERLY:
5 Excellent.

6 MS. POWELL: Good afternoon,
7 Commissioners. Let me ask: How much time do
8 I have?

9 ACTING CHAIRPERSON ETHERLY:
10 Three minutes, ma'am.

11 MS. POWELL: Three minutes?

12 ACTING CHAIRPERSON ETHERLY: Yes.

13 MS. POWELL: I thought the rule
14 says that up to six minutes would be allowed
15 to the opposition, or, you know, anybody
16 that wants to speak, and I don't see anybody
17 else here. So I was wondering if I could
18 take that time.

19 ACTING CHAIRPERSON ETHERLY:
20 Well, typically, we limit our testimony in
21 support or opposition, just on the part of
22 persons to three minutes. But how you just

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1 begin to proceed and we'll see how we're
2 moving along here.

3 MS. POWELL: Okay.

4 Thank you, Commissioners, for
5 giving me the opportunity to testify
6 regarding this area variance at the Riggs
7 Road Shopping Center at 300-320 Riggs Road,
8 N.E. The area consists of the requests that
9 relate to construction of mixed-use retail
10 residential building at the shopping center.
11 The planned structure will be four stories
12 tall. The retail space will occupy the
13 first space and the residential units will
14 occupy the three floors, totaling 420 units.

15 There'll be 550 parking spaces
16 and 210 parking spaces for residential
17 units, and 340 for the retail parking.

18 My primary concern enters around
19 the increase in traffic that will be caused
20 on Riggs Road by the additional cars from
21 this development and other nearby existing
22 and proposed development. The next-to-worse

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1 traffic scenario will be caused by the
2 addition of 420 vehicles from the Riggs Road
3 Shopping Center, plus 2,187 additional
4 vehicles from the other developments to the
5 traffic fiasco in the Riggs Road area.

6 The total, 2,607 vehicles, would
7 come from the various developments, which I
8 can enumerate if you want to. The worst
9 traffic fiasco will come from development,
10 residents having two or more vehicles. Is
11 there a law to prevent ownership of more
12 than one vehicle? Omitted from the 2,607
13 vehicles associated with the new
14 developments in the area, excluding the
15 vehicles that will be associated with the
16 liquor store at Chillum Road and Riggs Road,
17 rumored to contemplate, convert into
18 condominiums and vehicle associated with the
19 340 retail parking spaces at the shopping
20 center.

21 Let me just add that the proposed
22 existing developments in the area include

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1 the one at the Riggs Road Shopping Center,
2 one at the Dakota Apartments, 5545 through
3 5575 South Dakota Avenue, to the proposed
4 development at the triangle at South Dakota
5 and Riggs Road, rumored to include four more
6 additional units--the Fort Totten East
7 development, the Fort Totten West
8 development and the Riggs Plaza, Cafritz
9 site, which is in the same area.

10 As of July 7, 06, a traffic count
11 was done at the expense of the Department of
12 Transportation, indicating the following.

13 At the Riggs Road and South
14 Dakota intersection, approximately 8000 and
15 10,000 vehicles pass, respectively, through
16 the intersection at the a.m. and p.m. three
17 hour periods, and 3000 to 4000 vehicles
18 pass, respectively, through the intersection
19 at the one hour a.m. and p.m. time.

20 At the Riggs Road and Chillum
21 Road intersection are approximately 3000 and
22 5000 vehicles pass, respectively, through

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1 the intersection during the a.m./p.m. three
2 hour periods, and 2000 vehicles pass,
3 respectively, during the one hour a.m. and
4 p.m. periods.

5 At the South Dakota Avenue and
6 Exxon intersection, approximately 3000 and
7 5000 vehicles pass, respectively, through
8 the intersection during the a.m. and p.m.
9 three hour periods, approximately 2000
10 vehicles pass through the intersection
11 during the one hour a.m. and p.m. peak
12 periods.

13 In order to get a better idea of
14 the total number of vehicles that will pass
15 through the intersection mentioned above,
16 add 2,607 vehicles, estimated to be
17 associated with the developments.

18 My second concern relates to the
19 impact the increased number of vehicles will
20 have upon the quality of air in the Riggs
21 Road/South Dakota area.

22 My third concern relates to the

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1 impact, 420 new units at the Riggs Shopping
2 Center site, with an estimated 840
3 residents, estimated two persons per unit,
4 plus 4,374 units from the remaining
5 development units, totalling 5,214 units.
6 We'll have on our water and sewage system
7 between October 06 and January 07, the main
8 water line on Riggs Road between Nicholson
9 Street and Oglethorpe burst approximately
10 three times, sending water over cars and
11 down Riggs Road.

12 My last concern relates to the
13 manner in which the design of the Riggs Road
14 and South Dakota intersection has been
15 presented to the residents of the area.

16 Redesign of the Riggs Road/South
17 Dakota intersection into a cross road where
18 all cars will have to cross the intersection
19 at the same place is not for the benefit of
20 the Riggs Road/South Dakota area residents
21 or of users of the intersection.

22 The current design of the

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1 intersection with two ramps, one going south
2 on South Dakota and one going north, with
3 the traditional intersection that is the
4 cross-section in the setup, facilitates
5 movement of both vehicles in and walkers
6 near the intersection. Redesign of this
7 intersection is more for the benefit of the
8 developer.

9 The developer wants to acquire
10 the triangle land at the intersection, add
11 that land to the 5545 through 5575 South
12 Dakota Avenue site to the total 400 units he
13 wants to build on the land, inclusive of the
14 triangle land.

15 Redesign of the intersection into
16 a cross road, as described above, will
17 neither promote safety of walkers near the
18 intersection, nor facilitate the movement of
19 the number of cars that enter the
20 intersection.

21 I support the development at the
22 Riggs Road Shopping Center to be in

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1 conformity with the neighborhood. That is,
2 development that is consistent with
3 semidetached houses and townhouses of brick
4 construction, and of no more than two
5 stories above ground.

6 I am of the opinion that the
7 structures described above, plus the retail
8 development proposed for the site can be
9 located on the site, in a manner that blends
10 with the neighborhood in a compatible
11 manner.

12 I am also of the opinion that
13 blending in a compatible manner will also
14 provide the developer with a reasonable
15 profit under the existing real estate
16 market. Thank you.

17 ACTING CHAIRPERSON ETHERLY:
18 Excellent. Thank you very much for your
19 testimony and your time today, Mrs. Powell.

20 You've hit upon a number of
21 issues, all of which are very valid and
22 excellent issues. As you are aware, we are

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1 here for a very specific question today, and
2 that is the issue of an area variance
3 relief, as you indicated, with respect to
4 the loading dock. So I believe it's
5 probably going to be most appropriate that
6 we focus on some of the traffic-related
7 concerns, and you provided a lot of very
8 excellent information about the pressures
9 that you're currently seeing on that Riggs
10 Road corridor, especially a couple of the
11 key intersections, Riggs and Chillum, Riggs
12 and South Dakota.

13 What I would perhaps want to ask
14 is just as a starting point, and then I'm
15 going to ask the Applicant if they have any
16 cross examination questions for you, and my
17 colleagues may also have some questions.

18 I take it that you're very
19 familiar with this corridor. You've lived
20 in that community for approximately how many
21 years?

22 MS. POWELL: Over 25 years.

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1 ACTING CHAIRPERSON ETHERLY:

2 Okay. So you've seen a lot of growth, a lot
3 of development, a lot of change.

4 MS. POWELL: Yes.

5 ACTING CHAIRPERSON ETHERLY:

6 What's your experience been, if you will,
7 just anecdotally, with respect to--you heard
8 a little bit of the exchange, perhaps,
9 between my colleague, Mr. Turnbull, and the
10 Applicant's architectural representative,
11 around the traffic, specifically as it
12 relates to Riggs Road and what would be--
13 let's say you're coming along South Dakota
14 Avenue and you're heading westward.

15 You cross over Riggs Road and
16 you're kind of moving behind the property,
17 and you're moving towards either 3rd or 2nd
18 Street. What's your sense of traffic in
19 that immediate area? Is that a high traffic
20 area? We've heard a little bit of testimony
21 that it's fairly industrial, once you cross
22 over, so there's not a lot of traffic.

1 What's your experience over
2 there?

3 MS. POWELL: Well, the traffic on
4 that area, usually either comes from South
5 Dakota, because once you cross Riggs Road,
6 it is no longer called South Dakota. That's
7 3rd Street. So you have cars coming from
8 South Dakota across Riggs, going north, if
9 you want to say--

10 ACTING CHAIRPERSON ETHERLY:
11 Going up 3rd Street.

12 MS. POWELL: Right, trying to get
13 to New Hampshire Avenue, so they can
14 circumvent--it's sort of like a shortcut.

15 ACTING CHAIRPERSON ETHERLY: Yes,
16 ma'am.

17 MS. POWELL: And then you have
18 people coming down in the mornings from New
19 Hampshire and they will get on 3rd Street
20 and come down to Riggs, at Riggs and South
21 Dakota intersection.

22 ACTING CHAIRPERSON ETHERLY: So

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1 you would characterize, in your experience,
2 the traffic flow on 3rd Street, after you--
3 you're on South Dakota, you cross Riggs, and
4 you're now on 3rd Street. You would
5 characterize that as a busy street?

6 MS. POWELL: It's busy; however,
7 it is not as busy as Riggs and South Dakota.

8 ACTING CHAIRPERSON ETHERLY:
9 Okay; thank you. That concludes my
10 questions. Do my colleagues have any
11 questions for Ms. Powell?

12 [No response]

13 ACTING CHAIRPERSON ETHERLY: Mr.
14 Epting or the Applicant, any cross
15 examination questions?

16 MR. UTZ: I'm sorry. John Epting
17 left, so my name's Jeff Utz.

18 ACTING CHAIRPERSON ETHERLY: Good
19 to see you Mr. Utz.

20 MR. UTZ: Hello. I also am with
21 Pillsbury Winthrop Shaw Pittman. I'm here
22 on behalf of the Applicant. We don't have

1 any specific questions but we would just
2 note that most of the issues are related to
3 the wider area and not related to the area
4 variance at hand.

5 ACTING CHAIRPERSON ETHERLY:

6 Okay. With that being said, Ms. Powell,
7 thank you very much for your testimony.

8 MS. POWELL: And may I just add,
9 though, the individual site should not be
10 considered in a vacuum, because the overflow
11 from the other developments will end up on
12 Riggs Road and South Dakota.

13 ACTING CHAIRPERSON ETHERLY:

14 Okay.

15 MS. POWELL: Thank you.

16 ACTING CHAIRPERSON ETHERLY: Ms.
17 Powell, thank you very much for your time
18 and your testimony.

19 MS. POWELL: And thank you.

20 ACTING CHAIRPERSON ETHERLY:

21 Excellent. Any other persons in support or
22 opposition?

1 At this time, Mr. Utz, it'd be
2 appropriate to turn it over to you for
3 closing remarks.

4 MR. UTZ: Thank you. As Mr.
5 Rivers and Mr. Caudle have shown, we believe
6 that South Dakota Square LLC--

7 ACTING CHAIRPERSON ETHERLY: Mr.
8 Utz, I apologize for interrupting. I just
9 wanted to be sure. Mrs. Powell--

10 MS. POWELL: Yes, sir.

11 ACTING CHAIRPERSON ETHERLY: If
12 you could, just make certain that you
13 complete those two witness cards for me and
14 turn them in to the court reporter.

15 MS. POWELL: Yes, sir. I shall.

16 ACTING CHAIRPERSON ETHERLY:
17 Thank you, ma'am. Pardon the interruption,
18 Mr. Utz.

19 MR. UTZ: No problem. As Mr.
20 Rivers and Mr. Caudle have shown, we believe
21 the Applicant satisfies the three prongs of
22 the area variance test. The site provides a

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1 clear set of exceptional conditions that are
2 unique to the property. The result is an
3 array of practical difficulties that would
4 be imposed on the project plan, if the
5 Applicant was required to include a 55 foot
6 residential loading berth at the site and a
7 negative impact.

8 Finally, the requested relief
9 does not harm the District's zone plan and
10 actually results in a positive to the
11 surrounding community.

12 That brings our presentation to a
13 close. We greatly appreciate the
14 opportunity to present our case to you and
15 South Dakota Square is very excited to begin
16 this project soon. We would like to request
17 a bench decision and a summary order, if you
18 believe that is appropriate. Thank you.

19 ACTING CHAIRPERSON ETHERLY:

20 Okay. Thank you for that closing. I feel
21 that the record is fairly full and complete
22 in terms of what's been presented today. I

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1 think it might be useful, perhaps, just to
2 revisit very, very briefly--I want to come
3 back to Mr. Turnbull's questions as it
4 related to what is--what I'll refer to kind
5 of as, shall we say, that little pinpoint at
6 the bottom portion of the property.

7 I just want to be sure that we're
8 very, very clear. It's not necessarily
9 something that, from my standpoint, is
10 rising to the level of a condition, or
11 anything along those lines. But just to be
12 clear in terms of the Applicant's plans.

13 You will of course be utilizing
14 all appropriate signage with respect to
15 traffic circulation and flow, once vehicles
16 are on the property, so as to properly
17 demarcate loading and other service types of
18 areas as being distinct and separate from
19 general traffic flow areas.

20 Would that be an accurate
21 statement in terms of your planning for
22 those loading dock portions towards the

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1 bottom there?

2 MR. CAUDLE: Absolutely, because
3 as we said before, this parking is critical
4 to the development, as you may know, and
5 we've all been to these types of
6 developments. If we don't provide the right
7 amount of security and safe design for the
8 users and the patrons, it will not be
9 successful. So it's not the sheer number of
10 spaces but also how the spaces are laid out,
11 and so we'll pay careful attention to that.

12 ACTING CHAIRPERSON ETHERLY: And
13 you indicated in the course of your
14 presentation that you've employed Wells &
15 Associates whom this board is very familiar
16 with. You've employed them to assist in
17 terms of your traffic analysis for the
18 property; is that correct?

19 MR. CAUDLE: That's correct.

20 ACTING CHAIRPERSON ETHERLY: Do
21 we have a copy in the record of the report?
22 Or was there a report that was generated by

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1 Wells & Associates pursuant to this project?

2 MR. CAUDLE: There is a report
3 but I do not believe a copy was submitted
4 for this variance application.

5 ACTING CHAIRPERSON ETHERLY:
6 Okay. With respect to--I don't think it's
7 necessary that we postpone our action for
8 submission of that report but let me just
9 kind of perhaps talk through it, real, real
10 quickly, on the issue.

11 Was it a full-fledged traffic
12 analysis that got into level of service,
13 characterization of any of those surrounding
14 intersections?

15 MR. CAUDLE: Yes; it actually
16 did. It graded all the intersections around
17 the development and it was quite a hefty,
18 full service report.

19 [The Commission confers]

20 ACTING CHAIRPERSON ETHERLY:
21 Thank you, everyone, for your patience.
22 Occasionally, we will huddle up and kind of

1 just sort out, and what we're talking a
2 little bit about is--I'm trying to exercise
3 some sensitivity to the excellent questions
4 that Mr. Turnbull raised with respect to
5 just kind of how that interior area is being
6 programmed, more so from a safety standpoint
7 as opposed to a general traffic standpoint.

8 Mrs. Powell has raised some
9 excellent comments which I think just speak
10 to general traffic issues, and as was
11 indicated by one of the witnesses, this is a
12 high traffic corridor, and in many ways, a
13 lot of the pressures that are being felt by
14 this corridor are general pressures
15 pertaining to commuter patterns, any number
16 of factors that are well beyond the control
17 of the Applicant.

18 All of that being said,
19 obviously, part and parcel of this board's
20 decision making responsibility is, as we
21 talk about a reduction in the loading berth
22 requirement, I understand, and I think my

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1 colleagues understand the argument with
2 respect to what's really going to be
3 required for two bedroom residential units
4 in terms of a loading berth. You're not
5 going to have 18-wheelers coming through
6 with all types of possessions and what have
7 you.

8 All of that being said, however,
9 let me perhaps turn back to the opposition
10 and Mr. Mordfin, if I will. Again, there
11 was a little bit of an exchange with
12 Department of Transportation, not a detailed
13 one, and of course we don't have anything in
14 writing from the Department of
15 Transportation. But just based on your
16 assessment of the project, as it's been
17 proposed, were there any concerns or any
18 issues that arose with respect to traffic
19 impact in terms of the overall quality of
20 service, level of service, if you will, in
21 the vicinity around--and I'm talking
22 specifically more so about the Riggs, the

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1 Riggs and South Dakota portion of the
2 property in terms of exterior traffic, but
3 then were there also any safety-related
4 concerns that perhaps arose with regard to
5 that loading dock programming once you get
6 inside the property at the bottom portion?

7 Treat that as a very open-ended
8 question.

9 MR. MORDFIN: Okay. From my
10 conversations with DDOT, their concerns only
11 were that they wanted to make sure that the
12 30 foot trucks that would use the 30 foot
13 berths would be able to maneuver adequately
14 on site. That there was adequate--the
15 design would accommodate those trucks. That
16 was the extent of my conversation with Mr.
17 Baugh.

18 ACTING CHAIRPERSON ETHERLY:
19 Okay. And again of course it's the
20 testimony of the Applicant, that you're of
21 the opinion, that with the cabs heading, cab
22 first, into those loading docks, there's

1 more than enough space for them, one, to
2 negotiate that entrance into those loading
3 docks, but then, in terms of the movement to
4 exit the loading docks, in turn, and prepare
5 to head what is northward, back out towards
6 the Riggs Road exit of the site, that
7 there's enough space for that to take place,
8 and not necessarily impede, in any way, your
9 interior traffic flow.

10 MR. CAUDLE: That's correct.

11 ACTING CHAIRPERSON ETHERLY:

12 Okay. Mr. Turnbull.

13 COMMISSIONER TURNBULL: Thank
14 you, Mr. Chair. I guess getting back to Mr.
15 Mordfin's conversations with DDOT, on that
16 plan which they show on the middle board
17 with the blue, showing how you can
18 accommodate a larger truck, in the same
19 vein, you've got five loading berths at that
20 lower end there. By 3rd Street they come
21 around, separated by an entrance for
22 exiting, and the entrance for cars.

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1 I guess my only concern was from
2 a safety management standpoint, with five
3 loading berths all going into--and as the
4 Chair was speaking, if you wanted to
5 pinpoint, it's almost like it's a pinch
6 point. You've got five berths coming into a
7 center section and if you have one or two
8 trucks coming out at once, and cars coming,
9 I am just concerned about the management of
10 trucks and who's--cause they're going to be
11 backing out.

12 So the guy's got to be looking
13 into his mirror, looking out back, and I'm
14 just--that was my only troubling thing, is
15 who's managing people coming in and out and
16 the cars going across.

17 It's different if it was a
18 separate loading berth off to the side with
19 five things but here you've actually got a
20 double lane of traffic either exiting or
21 entering into the parking area. That's the
22 only thing that troubled me, is how you're

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1 managing that, and just as a safety concern
2 for the interior of the site, for the
3 traffic and the trucks, and any pedestrians
4 who are getting out of their cars, either
5 going into the residential lobby--I don't
6 know if you can get in on the backside there
7 or not.

8 But I'm just concerned about a
9 safety management plan across that critical
10 entry/exit area.

11 MR. UTZ: I can hopefully clarify
12 that, if that's okay, at this time. Two of
13 these spaces here, there are two loading
14 spaces and one delivery space, this north
15 side of that drive aisle. The one loading
16 space and one delivery space are for the
17 residential units and there's a vertical
18 service elevator right there. So any
19 loading won't be--two of those two spaces
20 won't be crossing that traffic.

21 There is one retail loading space
22 on that side, as we're currently showing it.

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1 There are two loading and one delivery
2 spaces required. But two of those three
3 requirements are south of that drive aisle.
4 So at all times, there are two available
5 spaces to service this inline retail, which,
6 you know, in the end of the day, they're
7 going to be small service things. They will
8 hardly be having large deliveries.

9 But there are going to be two
10 spaces on this side. We feel it's going to
11 be very infrequent that a retailer, there
12 would actually be three loading trucks at
13 any one time that are going to be used all
14 at the same time, and therefore anybody who
15 will be crossing that drive--I guess what
16 I'm trying to clarify is that we're getting
17 basically organized such that there isn't a
18 crossing of that "in and out" traffic when
19 people are loading and offloading into the
20 stores and the residential units above.

21 COMMISSIONER TURNBULL: And I can
22 understand the nature of--I'm just--I guess

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1 my basic concern is you have trucks backing
2 out into traffic, and I didn't know if you
3 had a management plan or you had solid ideas
4 on how to control that.

5 MR. UTZ: Well, I'd also point
6 out that's one of the reasons why we have
7 for just cars, we have three access points
8 to the site. The middle of Riggs Road from
9 3rd Street, and there's also a vehicle
10 access point off Chillum Place.

11 COMMISSIONER TURNBULL: I just
12 want to go back to Mr. Mordfin. Had you
13 gone through any of this with them, and you
14 felt comfortable with the way they were
15 planning it?

16 MR. MORDFIN: Well, we reviewed
17 it for the application was to reduce the
18 size of the loading space and that's what we
19 reviewed this application for, was whether
20 or not a 30 foot loading space or loading
21 berth would be adequate for this site. We
22 did not review the internal circulation of

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1 the site in terms of the truck traffic and
2 the car traffic and the pedestrians.

3 COMMISSIONER TURNBULL: Okay;
4 thank you.

5 ACTING CHAIRPERSON ETHERLY: And
6 Mr. Mordfin, you had no indications, other
7 than talking about kind of the movements, if
8 you will, of the trucks that will be
9 entering, there was no indication or no
10 expression of concern from the office, from
11 the Department of Transportation, with
12 regard to kind of other traffic-related
13 factors?

14 MR. MORDFIN: That's correct.

15 ACTING CHAIRPERSON ETHERLY:
16 Okay. I think with that discussion, I'm
17 comfortable moving forward.

18 I think in terms of the overall
19 variance argument, there's more than enough
20 factual detail on the record for us to move
21 forward at this time with deliberations. So
22 I'd like to perhaps look to my colleagues

1 for some guidance on moving forward.

2 BOARD MEMBER MANN: I agree. I
3 think we should move forward.

4 ACTING CHAIRPERSON ETHERLY:
5 Okay. I think it's be appropriate at this
6 time for us to move forward under a motion,
7 and it would then be my motion to approve
8 Application No. 17600 of Dakota Square LLC,
9 pursuant to 11 DCMR 3103.2, for a variance
10 from the loading berth requirements under
11 subsection 2201.1, to allow the construction
12 of a mix-use building at premises 300-320
13 Riggs Road, N.E., Square 3748, Lot 52, and I
14 would invite a second.

15 BOARD MEMBER MANN: Second.

16 ACTING CHAIRPERSON ETHERLY:
17 Thank you very much, Mr. Mann. I think it
18 was appropriate for us to move forward under
19 a motion here. I think, clearly, with
20 respect to the uniqueness of the subject
21 property, as has been discussed by the
22 Applicant, we're definitely looking at some

1 topographical considerations as relates to
2 the grade change of the site from north to
3 south, that clearly funnelled the
4 appropriate traffic entry points towards the
5 southernmost portion of the site, as has
6 been laid out by the Applicant. I think
7 it's in a way that is thoughtful, both from
8 a traffic planning standpoint and also from
9 a circulation standpoint in terms of when
10 you look at the overall project as it's
11 proposed, as the Applicant has indicated,
12 while it may not necessarily be the first
13 departure point, if you will, for how they
14 might have otherwise structured the
15 property, given what you're trying to get at
16 and the product that you're trying to
17 deliver in terms of the retail and
18 residential amenities for the residents and
19 members of the community, this particular
20 traffic plan I think is the most appropriate
21 and prudent layout, as has been discussed
22 both by the Office of Planning, to some

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1 extent, by some of the conversations that
2 are underway with DDOT. I think clearly
3 this plan presents the best option and entry
4 point for the types of vehicles that are at
5 issue here.

6 It is very important to note, as
7 the Applicant has done in their
8 presentation, that with respect to the types
9 of units that are being served in terms of
10 the residential and retail tenants, you're
11 not looking at the necessity for the large-
12 scale trucks.

13 So while our experience might
14 frequently be when we talk loading berth and
15 we talk delivery docks, we're automatically
16 thinking of 18-wheelers, we're not
17 necessarily envisioning that in this
18 particular instance at issue here, and that
19 southernmost portion of the property will be
20 residential loading services, and I think
21 those berths are appropriately sized and
22 correctly anticipate the right size of

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1 vehicle that will be coming into the subject
2 property. As was indicated by the Office of
3 Planning, there was no affirmative mention
4 on the part of DDOT, in their discussions,
5 about any concerns that might exist with
6 respect to larger traffic impacts.

7 And I'll look to Mrs. Powell as I
8 discuss this point. That is not to say that
9 there are not pressures that are being felt
10 by this intersection, by the intersections
11 that ring this property, but I think the
12 plan that's been presented takes a very
13 strong step towards minimizing and
14 mitigating any impacts, and I'm using
15 language that's not necessarily applicable
16 here, but just in terms of talking about the
17 real life application of how this is going
18 to work in practice.

19 Your proposal I think takes that
20 more than adequately into account and helps
21 to not add or further complicate the matter,
22 if you will. But, again, there are clearly

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1 some larger traffic issues at work here and
2 I am certain that the Applicant will
3 continue to work with DDOT, the Office of
4 Planning and interested members of the
5 community to make sure that the appropriate
6 programming is done with respect to this
7 overall area. But that being said, with
8 respect to the variance as it relates to the
9 loading berth, I think we have a very clear
10 establishment of uniqueness here.

11 That uniqueness does in fact lead
12 to a practical difficulty with respect to
13 compliance with the zoning regs, and then
14 finally with respect to being able to
15 implement this without an impact to the
16 zoning plan or map, I think clearly has been
17 established in terms of looking at both the
18 existing Comprehensive Plan, the draft
19 Comprehensive Plan, the reanimation, the new
20 life being brought into a retail corridor is
21 most certainly something to be celebrated
22 here.

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1 So I think the case has been very
2 well laid out and I'll turn it over to my
3 colleagues for any additional comments at
4 this time.

5 Not seeing any, I think the
6 discussion has been very good. I think the
7 record is full. I invite action at this
8 time.

9 We have a motion before us that's
10 been properly seconded. I'll ask all those
11 in favor, please signify by saying aye.

12 [Chorus of ayes]

13 ACTING CHAIRPERSON ETHERLY:
14 Opposed? The ayes have it. Ms. Bailey, if
15 you could record that vote, please.

16 MS. BAILEY: Mr. Chairman, the
17 vote is recorded as three, zero, two to
18 approve the application. The motion was
19 made by Mr. Etherly, seconded by Mr. Mann,
20 Mr. Turnbull supports the motion, Mrs.
21 Miller and Mr. Griffis are not present at
22 this time.

1 ACTING CHAIRPERSON ETHERLY:

2 Excellent. And if there's not any
3 objection, I think it'd be appropriate to
4 waive our rules and issue a summary order in
5 that regard. Looking to my colleagues and
6 not seeing an objection, that concludes our
7 business on Case No. 17600. Thank you very
8 much for the presentation.

9 Ms. Bailey, call the next case,
10 please.

11 MS. BAILEY: The next case, Mr.
12 Chairman, is an appeal, and the number is
13 17581, of Edward B. Rooths, pursuant to 11
14 DCMR 3112, from the administrative decision
15 of the Zoning Administrator, Department of
16 Consumer and Regulatory Affairs, to revoke
17 Certificate of Occupancy Permit No. 109733,
18 dated September 12, 2006, for a dry cleaning
19 pick-up only establishment. The property is
20 located in the R-5-C District at 1312 13th
21 Street, N.W., Square 243, Lot 12.

22 ACTING CHAIRPERSON ETHERLY: Ms.

1 Bailey, thank you very much. We're going to
2 take a very quick five minute recess, just
3 to give everyone an opportunity to get
4 settled and get set up. So take your time
5 and the board's going to reconvene in about
6 five minutes at 2:50.

7 [A recess was taken from 2:45
8 p.m. to 2:51 p.m.]

9 ACTING CHAIRPERSON ETHERLY: I
10 believe Mrs. Bailey has called the case.
11 We're on the appeal application. Just so
12 everyone is clear about how we're going to
13 be proceeding as we move forward today. The
14 order of procedure for appeal applications
15 will be as follows.

16 Statement and witnesses of the
17 Appellant. The Zoning Administrator or
18 other government official's case. Case for
19 the owner/lessee, or operator of the
20 property involved, if not the Appellant.
21 The ANC within which the property is
22 located. If we have an Intervenor, then the

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1 Intervenor's case, if permitted by the
2 board, followed by the rebuttal and closing
3 statement of the Appellant.

4 Pursuant to sections 3117.4,
5 3117.5, the following time constraints will
6 be maintained. The Appellant, persons and
7 parties, excepting ANC, in support,
8 including witnesses, sixty minutes
9 collectively. Appellees, persons and
10 parties, excepting ANC, in opposition,
11 including witnesses, sixty minutes,
12 collectively. Individuals, three minutes.

13 These time constraints do not
14 include cross examination and/or questions
15 from the board. Cross examination of
16 witnesses is permitted by the Applicant or
17 parties, the ANC within which the property
18 is located is automatically a party, and I'm
19 going to conclude right there.

20 I think with that, Mrs. Bailey,
21 we're prepared to move forward, and again
22 have you already called the case or do we

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1 need to do that again?

2 MS. BAILEY: I've called the
3 case, Mr. Chairman.

4 ACTING CHAIRPERSON ETHERLY:
5 Excellent. With that being said, let's have
6 identification remarks of those before us
7 and we can move forward.

8 Good afternoon to you all.

9 MS. MADDOX: Good afternoon My
10 name is Sandra Maddox and my address is 8701
11 Georgia Avenue, Silver Spring, Maryland
12 20910, and that's Suite 403, and I represent
13 Edward Rooths.

14 MR. ROOTHS: Good afternoon. My
15 name is Edward Rooths. I'm the business
16 owner and I'm located at 1312 13th Street,
17 where I reside.

18 ACTING CHAIRPERSON ETHERLY:
19 Welcome.

20 MS. HENRY: Good afternoon. I
21 was about to say Your Honors. I'm Jeanett
22 Henry. I'm here with Ms. Maddox on behalf

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1 of the Applicant and we're also at 8701
2 Georgia Avenue in Silver Spring, Maryland.

3 ACTING CHAIRPERSON ETHERLY:

4 Excellent. And just for the record, how
5 about we round out our panel. Good
6 afternoon to you both. if you could
7 identify yourselves for the record.

8 MR. TAYLOR: Good afternoon, Mr.
9 Etherly and board. My name is Dennis
10 Taylor, assistant attorney general, here
11 representing DCRA, and specifically, the
12 Office of the Zoning Administrator.

13 MR. CREWS: And I'm Bill Crews.
14 I'm the Zoning Administrator for the
15 District of Columbia.

16 ACTING CHAIRPERSON ETHERLY:
17 Excellent. Welcome to you all and again,
18 good afternoon.

19 Ms. Maddox, I'll turn to you.

20 Mrs. Bailey--pardon the
21 interruption. Refresh my recollection. We
22 don't need to--do we need to do swearing-ins

1 on a case of appeals?

2 MS. BAILEY: If I'm not mistaken,
3 some of the persons who are seated were
4 here, but all may not be, so those persons
5 who were not sworn in before, would you
6 please stand.

7 MS. MADDOX: Excuse me. May I
8 make an inquiry, a point of clarification?

9 ACTING CHAIRPERSON ETHERLY:
10 Certainly. Just a moment, Ms. Bailey.

11 MS. MADDOX: Does that also
12 include attorneys or just--

13 ACTING CHAIRPERSON ETHERLY: No.

14 MS. MADDOX: Okay; just wanted to
15 make sure cause I thought--

16 ACTING CHAIRPERSON ETHERLY: No.
17 We have higher and greater consequences for
18 members of the bar.

19 MS. MADDOX: I am sure. Thank
20 you.

21 ACTING CHAIRPERSON ETHERLY:
22 Excellent. Thank you, Mrs. Bailey.

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1 [Witnesses duly sworn]

2 ACTING CHAIRPERSON ETHERLY:

3 Excellent. And just as a reminder, once
4 again, I want to make sure that everyone's
5 prepared their two witness cards for our
6 court reporter. So if you haven't done so,
7 please be sure to do that. That way, we can
8 accurately attribute to you remarks that are
9 made on the record.

10 Okay. With that, I think that
11 concludes all of our preliminary business.
12 Again, I'll turn it to you, Ms. Maddox.

13 MS. MADDUX: Edward Rooths was
14 issued a certificate of occupancy on
15 December 22nd of 2005 to open up a dry clean
16 pickup. On September 12th, 2006, because of
17 pressure from the community members, the
18 Office of Zoning Administration officials
19 revoked that certificate of occupancy,
20 alleging the discontinuance of a
21 nonconforming use for more than three years,
22 misstatement of fact, and failure to open

1 within a six month period.

2 We believe that the Zoning
3 Administration has no valid reason to revoke
4 the certificate of occupancy based on
5 discontinuance of the nonconforming use, and
6 that the doctrine of latches and estoppel
7 applies to the circumstances that will be
8 elaborated on.

9 Further, with regard to the
10 allegation that the Rooths application
11 contained material misrepresentations for
12 the previous use section and their
13 applications for a certificate of occupancy,
14 we contend that if there is any wrongdoing
15 here, that the Office of Zoning
16 Administration staff misled the Rooths in
17 filling out their application year after
18 year.

19 Finally, the Rooths were
20 prevented from opening their business within
21 the allotted six month time period because
22 of several stop work orders that were issued

1 and lifted sometimes over a month later by
2 the Office of Zoning Administration and the
3 Building and Lands Regulation
4 Administration.

5 If you don't mind, I'll say OZA
6 for Office of Zoning and BLRA for Buildings
7 and Lands Regulation Administration.

8 ACTING CHAIRPERSON ETHERLY:
9 Certainly.

10 MS. MADDUX: OZA and BLRA had the
11 Rooths on hold for three months during their
12 six month time period to open. They did not
13 open, through not fault of their own, and
14 should not be penalized for the agency's
15 actions and lack of follow-through.
16 Therefore, based on these arguments that
17 will be further explained, we are asking
18 that the BZA reverse the OZA's decision to
19 revoke the certificate of occupancy.

20 Mr. Rooths will give testimony,
21 and I will give a closing summary
22 summarizing the applicable law.

1 Mr. Rooths.

2 MS. MADDUX: Hello, Mr. Rooths.

3 MR. ROOTHS: Hello. How you
4 doing?

5 MS. MADDUX: Okay. Would you
6 please tell me what this document is.

7 MR. ROOTHS: This is the deed for
8 1312 13th Street.

9 MS. MADDUX: Okay. We've marked
10 this as Exhibit 1.

11 [Rooths Exhibit No. 1
12 was marked for
13 identification]

14 MS. MADDUX: Would you please
15 tell me whose signatures are on this
16 document?

17 MR. ROOTHS: The previous owner,
18 Ho Kim and Yoso Kim.

19 ACTING CHAIRPERSON ETHERLY: And
20 if I could interrupt just very briefly, Ms.
21 Maddox; pardon the interruption. I just
22 want to make sure that my colleagues are and

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1 I are following. There was a submittal that
2 was received via fax, which has denoted 16
3 exhibits; correct?

4 MS. MADDUX: Yes. That's what
5 I'm using.

6 ACTING CHAIRPERSON ETHERLY:
7 Excellent. And I just want to make sure: Is
8 DCRA in receipt of the submittal?

9 MR. TAYLOR: Yes. We received
10 that minutes before the hearing.

11 ACTING CHAIRPERSON ETHERLY:
12 Excellent. Continue, please.

13 MS. MADDUX: Is this a true and--
14 well, excuse me. When did you purchase the
15 property at 1312 13th Street?

16 MR. ROOTHS: January 22nd, 2000,
17 we closed on the property. January 12th,
18 2000, we closed on the property.

19 MS. MADDUX: And how much was the
20 property? How much did you pay for the
21 property?

22 MR. ROOTHS: At that time, we

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1 purchased the property for \$275,000.

2 MS. MADDUX: Why did you buy this
3 particular property?

4 MR. ROOTHS: We bought this
5 property because it was identified by the
6 previous owner in trips to the zoning--
7 downtown, to the Office of--that this was a
8 mixed use building and we would have the
9 opportunity to open a business, if we chose
10 to do so.

11 MS. MADDUX: And did you have a
12 specific commercial activity in mind, when
13 you bought the property?

14 MR. ROOTHS: Yes. I had planned
15 on opening a accounting office on the first
16 floor, and a pickup laundry type tailoring
17 business on the ground floor?

18 MS. MADDUX: Was there a business
19 being operated out of this property when you
20 bought it?

21 MR. ROOTHS: Yes. There was a
22 business there when I bought it.

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1 MS. MADDUX: And what was that?

2 MR. ROOTHS: That was a shoe
3 repair and laundry service.

4 MS. MADDUX: Thank you.

5 Would you please tell us what
6 this document is.

7 MR. ROOTHS: This is the
8 certificate of occupancy dated 12-19-01, the
9 first certificate of occupancy that we
10 obtained.

11 MS. MADDUX: And why did you wait
12 until 12-19-01 to obtain this document?
13 Excuse me. To obtain this certificate of
14 occupancy.

15 MR. ROOTHS: I had been ill. I
16 had been ill with a type of sarcoma cancer,
17 and had to delay getting started, getting it
18 started.

19 MS. MADDUX: And if I may back
20 up, this is Exhibit 2A.

21 [Rooths Exhibit 2A was
22 marked for

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1 identification]
2 [Rooths Exhibit 2B was
3 marked for
4 identification]

5 MS. MADDOX: I'm now going to
6 show you what is marked as Exhibit 2B. What
7 is this?

8 MR. ROOTHS: This is a
9 certificate of occupancy dated 6-28-02.

10 MS. MADDOX: And why did you
11 obtain another certificate of occupancy?

12 MR. ROOTHS: Per instructions of
13 the office downtown, that we needed to
14 obtain another certificate of occupancy to
15 keep our intent active, of what we were
16 going to do in the business.

17 MS. MADDOX: Were you able to
18 start the business at this time?

19 MR. ROOTHS: No. I was not able
20 to start the business. I was diagnosed with
21 another type a cancer and went back to
22 chemotherapy and intensive radiation

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1 treatments.

2 [Rooths Exhibit 2C was
3 marked for
4 identification]

5 MS. MADDUX: I'm going to show
6 you what's marked as Exhibit 2C. Would you
7 please tell us what this is.

8 MR. ROOTHS: This is the
9 certificate of occupancy dated 7-12-02, that
10 I obtained per instructions of the office
11 downtown for a legal service and consulting
12 business.

13 MS. MADDUX: And what was the
14 name of that business?

15 MR. ROOTHS: The name is Bar
16 Legal Services and Consulting.

17 MS. MADDUX: And who ran that
18 business?

19 MR. ROOTHS: My brother and two
20 of his associates.

21 MS. MADDUX: And what did he do
22 in that business?

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1 MR. ROOTHS: They provided
2 copying services to law firms and the
3 general public.

4 MS. MADDUX: Did you have a lease
5 with him?

6 MR. ROOTHS: Yes. I had a lease.
7 I had a three year lease with him.

8 [Rooths Exhibit No. 3
9 was marked for
10 identification]

11 MS. MADDUX: I'm going to show
12 you what's marked as Exhibit 3. Would you
13 please tell us what this document is.

14 MR. ROOTHS: This is the cover
15 page to the lease that I had with Bar Legal
16 Services.

17 MS. MADDUX: Okay. And is it a
18 true and accurate copy of the first page.
19 There's two pages here. Can you please tell
20 us what this--and signature page of a lease
21 that you had with Bar Legal Services.

22 MR. ROOTHS: This is the

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1 signature page where I signed as the
2 landlord and where his two partners signed
3 as the tenants, Robert Ente and Debbie
4 Anderson.

5 MS. MADDUX: And how long as this
6 lease for?

7 MR. ROOTHS: The lease was for 36
8 months.

9 MS. MADDUX: How long did your
10 brother operate Bar Legal Services out of
11 the premises?

12 MR. ROOTHS: He was there
13 approximately 24--about 24 to 26 months out
14 of 36 months.

15 MS. MADDUX: Are you aware of any
16 complaints from the community about Bar
17 Legal Services operating out of the
18 premises?

19 MR. ROOTHS: Not in the way of
20 any complaints.

21 MS. MADDUX: And did your brother
22 have steady customers?

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1 MR. ROOTHS: Yes.

2 MS. MADDOX: Do you know about
3 how many?

4 MR. ROOTHS: He had foot traffic
5 of probably ten to fifteen--ten to twenty-
6 five people a day. Then he had the law
7 firms' couriers dropping off packages to be
8 copied.

9 MS. MADDOX: Okay. Why did he
10 leave the premises?

11 MR. ROOTHS: He purchased several
12 large Xerox machines that could not be
13 readily put, lowered into the space without
14 making structural changes.

15 [Rooths Exhibit No. 4A
16 was marked for
17 identification]

18 MS. MADDOX: I'm going to show
19 you what is marked as Exhibit 4A. And would
20 you please tell us what this is.

21 MR. ROOTHS: This is a
22 certificate of occupancy dated 6-13-2003.

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1 Bar Legal Services.

2 MS. MADDUX: Okay. Why did he
3 get another certificate of occupancy on June
4 13th, 2003?

5 MR. ROOTHS: I had a visitor that
6 came out and told my brother and them that I
7 needed to get another sticker of occupancy
8 because of a load change that was from a
9 laundry service to a office space, and that
10 in order to be compliant, I needed to obtain
11 the certificate of occupancy.

12 MS. MADDUX: Who was the visitor?

13 MR. ROOTHS: It was a lady from
14 the DCRA.

15 MS. MADDUX: Okay.

16 BOARD MEMBER MANN: Mr. Chairman,
17 I have a question, real quickly. Could you
18 tell me what a load change is.

19 MR. ROOTHS: Excuse me?

20 BOARD MEMBER MANN: You said this
21 was for a load change.

22 MR. ROOTHS: That's what I was

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1 instructed--

2 BOARD MEMBER MANN: I was just
3 wondering if you could tell me what a load
4 change is. I don't know what a load change
5 is.

6 MS. MADDUX: It's my
7 understanding that it's a changing of
8 equipment size, moving equipment, when the
9 equipment in the building changes, increases
10 or decreases.

11 BOARD MEMBER MANN: Okay. Thank
12 you. So it's equipment, and a change of
13 some sort of equipment?

14 MS. MADDUX: Yes.

15 BOARD MEMBER MANN: Okay; thanks.

16 MS. MADDUX: Okay.

17 [Roots Exhibit No. 4B
18 was marked for
19 identification]

20 MS. MADDUX: I'm going to show
21 you what's marked as Exhibit 4B. Would you
22 please tell us what that is.

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1 MR. ROOTHS: This is a
2 certificate of occupancy obtained by Floyd
3 Smith, Jr.--Sr., I'm sorry, to open a pickup
4 laundry, dated 11-7-2003.

5 MS. MADDUX: And why did he get
6 this certificate of occupancy?

7 MR. ROOTHS: The certificate of
8 occupancy Mr. Smith obtained so he could
9 open up a store--I mean, to pick up laundry.
10 He was going to operate. He's a elderly
11 gentleman.

12 MS. MADDUX: Okay. And did he
13 sign a lease with you?

14 MR. ROOTHS: Yes; he signed a
15 lease with me.

16 MS. MADDUX: Okay.

17 MR. ROOTHS: It was for about 24
18 months.

19 MS. MADDUX: And would you please
20 tell us what a pickup laundry is.

21 MR. ROOTHS: A pickup laundry is
22 a collection point for dry cleaning and

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1 laundry items to be taken out to a factory
2 processor and to be processed and returned
3 for the customers to pick up with 24 to 36
4 hours.

5 MS. MADDUX: And would you
6 describe the equipment needed to operate a
7 pickup laundry.

8 MR. ROOTHS: The only equipment
9 that you need in a pickup laundry is a rack
10 to hang the clothes on.

11 MS. MADDUX: Anything else?

12 MR. ROOTHS: You have to have a
13 computer and other things to interact with
14 your customers, plus tables to mark,
15 adequately identify, mark the clothing.

16 MS. MADDUX: Are there any
17 laundry machines used for pickup laundries?

18 MR. ROOTHS: No, no laundry
19 machines are used in a pickup laundry,
20 because it's an unlicensed business.

21 MS. MADDUX: Is there any other
22 heavy machinery used for a pickup laundry?

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1 MR. ROOTHS: No. No heavy
2 machinery.

3 [Rooths Exhibit No. 5
4 was marked for
5 identification]

6 MS. MADDUX: Okay. I'm going to
7 show you what is marked as Exhibit 5. Would
8 you please tell us what this document is.

9 MR. ROOTHS: This is a document
10 that I found on the Web site, related to
11 business licensing and of various types of
12 businesses in the District of Columbia and
13 this identifies that the type of business I
14 had opened has no requirement for special
15 inspections, investigation approvals, and
16 other items. And I went downtown and
17 verified this with the Office of Business
18 Licensing, and they said I was correct, I
19 fall in the category, the same as a
20 tailoring shop.

21 MS. MADDUX: So you're saying
22 that a pickup laundry does not require a

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1 license to operate?

2 MR. ROOTHS: No; it does not
3 require a license to operate.

4 MS. MADDIX: So when Floyd Smith
5 was opening up the pickup laundry, would you
6 tell us what types of things he did to open
7 up the business.

8 MR. ROOTHS: Mr. Smith installed
9 a stationary rack, moved the counter back
10 into a space, obtained a cash register, put
11 down a rug, did some repairs on the door,
12 and that was basically the bulk of things he
13 did.

14 MS. MADDIX: Okay. And was he
15 able to open the pickup laundry?

16 MR. ROOTHS: No. During the
17 process of Mr. Smith getting it ready, some
18 people in the community started complaining,
19 and he--and one night, him and three other
20 men, three other elderly men were there
21 putting down the rug and cleaning up. They
22 had a visit from about 15 police.

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1 Supposedly they were doing some type a
2 illegal activity there. And after that, Mr.
3 Smith decided that he just was not the
4 person for that. He couldn't take that type
5 a stress, of having police and other people
6 coming in in an intimidating form.

7 MS. MADDUX: Okay. So he's no
8 longer there?

9 MR. ROOTHS: No. Mr. Smith
10 decided he'd go and stay in retirement
11 permanently.

12 MS. MADDUX: What did you do with
13 the premises next?

14 MR. ROOTHS: I had--I decided
15 that I would open the laundry myself, and
16 then I went out and got the certificate of
17 occupancy changed over to me, and started to
18 do some modifications. I put down a tile
19 floor.

20 MS. MADDUX: Did that require you
21 to move in any heavy machinery?

22 MR. ROOTHS: No. I didn't move

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1 any heavy machinery.

2 MS. MADDUX: What was the
3 heaviest piece of equipment that you needed
4 to operate this business?

5 MR. ROOTHS: It was a rack, was a
6 electric rack.

7 [Rooths Exhibit No. 6
8 was marked for
9 identification]

10 MS. MADDUX: I'm going to show
11 you what's marked as Exhibit 6. Would you
12 please tell us what this is.

13 MR. ROOTHS: This is a picture of
14 the rack, and on the left-hand side of the
15 establishment.

16 MS. MADDUX: Was the laundry to
17 be washed there on the premises?

18 MR. ROOTHS: Nothing is washed or
19 processed on the premises. Everything is
20 taken out to a factory.

21 MS. MADDUX: Where was it taken?

22 MR. ROOTHS: It was taken to

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1 Virginia, to the processor.

2 MS. MADDUX: Are there any other
3 pickup laundries in the nearby communities?

4 MR. ROOTHS: Yes. There are two.

5 MS. MADDUX: And where are the
6 located?

7 MR. ROOTHS: One is located in
8 the 1400 block of 14th Street. The other
9 one is located in the 1400 block of P
10 Street.

11 MS. MADDUX: And what made your
12 pickup laundry different from those?

13 MR. ROOTHS: Mine's is a--we
14 chose to be, going--become environmental
15 friendly, and associated ourselves with a
16 provide that uses biodegradable chemicals,
17 and other things, and soaps to clean the
18 clothes, so that it's just better for the
19 community and for your customers.

20 MS. MADDUX: Okay. And any other
21 reason?

22 MR. ROOTHS: Excuse me?

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1 MS. MADDUX: Any other--what else
2 made your company different from theirs?

3 MR. ROOTHS: Our location was a
4 primary reason that I opened, because I have
5 six to eight buildings with at least 50 to
6 90 units right in my 300 foot area, circled
7 area of my building.

8 MS. MADDUX: Would you please
9 tell me what other expenditures you made for
10 the business.

11 MR. ROOTHS: I went out and
12 decided that if I was going to do it, I
13 needed to have a rack, a moving rack. So I
14 went out and got a new rack and I put down a
15 tile floor, I obtained a sign in accordance
16 with the historic DCR--DC--the Historic
17 Board, and Board of Licensing.

18 [Rooths Exhibit No. 7
19 was marked for
20 identification]

21 MS. MADDUX: Okay. I'm going to
22 show you what's been marked as Exhibit 7 and

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1 would you please tell us what this document
2 is.

3 MR. ROOTHS: This is a listing of
4 purchases that I made on one of my credit
5 cards, showing items that I purchased in
6 order to get the business up and running.

7 MS. MADDUX: And what was the
8 total?

9 MR. ROOTHS: The total on this
10 list is \$3,342.

11 [Rooths Exhibit No. 8
12 was marked for
13 identification]

14 MS. MADDUX: I'm going to show
15 you what's marked as Exhibit 8. Would you
16 please tell us what this document is.

17 MR. ROOTHS: This is the sign
18 that I purchased in order to have a signage
19 date that was compliant with the Historic
20 Board, and that's \$1650.

21 [Rooths Exhibit No. 9
22 was marked for

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1 identification]

2 MS. MADDUX: I'm going to show
3 you what's marked as Exhibit 9. Would you
4 please tell us what this document is.

5 MR. ROOTHS: This is another
6 credit card and this is a sort of all the
7 materials purchased in order to get the
8 business--additional materials, and
9 including security cameras and other things,
10 and that's \$10,953.

11 [Rooths Exhibit No. 10
12 was marked for
13 identification]

14 MS. MADDUX: Okay. I'm going to
15 show you what's marked as Exhibit 10.
16 Please tell us what this item is.

17 MR. ROOTHS: This is a
18 certificate from my--I mean, a bill from my
19 welder for \$1850 for providing labor for
20 installing the signs, and putting up the
21 hand rail and repairing the deck that goes
22 down and fixing the doors to come in.

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1 [Rooths Exhibit No. 11
2 was marked for
3 identification]

4 MS. MADDUX: Okay. I'm going to
5 show you what's marked as Exhibit 11. Would
6 you please tell us what this is.

7 MR. ROOTHS: This is a bill from
8 the person that installed the floor for me
9 in the establishment.

10 MS. MADDUX: And how much is that
11 for?

12 MR. ROOTHS: That's for \$1345.

13 [Rooths Exhibit No. 12
14 was marked for
15 identification]

16 MS. MADDUX: And please tell us
17 what is marked as Exhibit 12, what this
18 document is.

19 MR. ROOTHS: Exhibit 12 is
20 another sign from the--another thing from
21 the welder to make up the doors, and repair,
22 and install them.

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1 MS. MADDUX: And what was the
2 total?

3 MR. ROOTHS: The total here is
4 \$1267.

5 [Rooths Exhibit No. 13
6 was marked for
7 identification]

8 MS. MADDUX: And I'm going to
9 show you what's marked as Exhibit 13. Would
10 you please tell us what this is.

11 MR. ROOTHS: This is my Verizon
12 phone bill for the installation of the phone
13 lines, and upgrade the phone lines, of
14 \$1,094.

15 MS. MADDUX: Thank you, sir.

16 [Rooths Exhibit No. 14
17 was marked for
18 identification]

19 MS. MADDUX: I'm going to show
20 you what is marked as Exhibit 14 and would
21 you please tell us what this document is.

22 MR. ROOTHS: This is a

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1 certificate of occupancy dated 12-22-05.

2 MS. MADDUX: And why did you get
3 this certificate of occupancy?

4 MR. ROOTHS: This is the
5 certificate of occupancy that I obtained to
6 make--to give me ownership of the business,
7 or show that I had ownership of the
8 business.

9 MS. MADDUX: So you're saying it
10 was a change of ownership?

11 MR. ROOTHS: Yes; it's change of
12 ownership.

13 MS. MADDUX: And what did you
14 write for previous use on this certificate
15 of occupancy?

16 MR. ROOTHS: I wrote dry cleaning
17 collection pickup. Dry cleaning collection
18 pickup.

19 MS. MADDUX: And what did you
20 write for the, as the approved use?

21 MS. MADDUX: Dry cleaning
22 collection pickup.

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1 MS. MADDUX: Why did you write
2 dry clean collection pickup under previous
3 and approved use?

4 MR. ROOTHS: The staff down at
5 the DCRA told me that all I needed to do
6 was--the only thing I needed to change was
7 the ownership part and that was why I didn't
8 change anything else. I did as I was
9 instructed by them, since I was taking the--
10 I mean, moving the business from Mr. Smith's
11 ownership into mine's, for purposes of, I
12 mean, occupancy certificate.

13 MS. MADDUX: And do you recall if
14 anyone specifically reviewed this
15 application before you submitted it?

16 MR. ROOTHS: Yes. I talked with
17 staff members of the DCRA down at their
18 processing desk and the supervisor, Frank
19 Moody, looked it over, and told me to come
20 back in three days and he would--it should
21 be processed and ready for me.

22 MS. MADDUX: And was this the

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1 first time anyone assisted you in filling
2 out the application for a certificate of
3 occupancy?

4 MR. ROOTHS: No. I sent--every
5 certificate of occupancy I filled out, I
6 filled out with the advisement of the staff
7 there at the desk and the--and whoever the
8 supervisor was at that time.

9 MS. MADDUX: Were you able to
10 open up the pickup laundry within the six
11 month timeframe?

12 MR. ROOTHS: No. I wasn't able
13 to open it up in a six months timeframe
14 because--

15 [Rooths Exhibit No. 15
16 was marked for
17 identification]

18 MS. MADDUX: I'm going to show
19 you what's marked as Exhibit 15. Would you
20 please tell us what this is.

21 MR. ROOTHS: This is a stop work
22 order, stop work order without permits

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1 posted for the basement.

2 MS. MADDUX: And when did you get
3 the first stop--I'm sorry. Did you say the
4 date? What is the date of this stop work
5 order?

6 MR. ROOTHS: The date of the stop
7 work order is 3-22-06.

8 MS. MADDUX: And what did you do
9 in response to this stop work order?

10 MR. ROOTHS: When I got a stop
11 work order, I called the number and asked to
12 speak to Mr. Juan Scott.

13 MS. MADDUX: And what was his
14 response?

15 MR. ROOTHS: He was--he seemed to
16 be out of the office a lot, doing a lotta
17 work, and he didn't return the call for an
18 extremely long time, and when he did return
19 the call, we set up a date, which was in
20 May.

21 MS. MADDUX: A date for what?

22 MR. ROOTHS: A date so he could

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1 come out and inspect, to see what
2 nonpermitted work I was doing in the
3 basement.

4 MS. MADDUX: I'm sorry. And when
5 was that again?

6 MR. ROOTHS: It was in May.

7 MS. MADDUX: And when he came
8 out, what did he--what happened when he came
9 out?

10 MR. ROOTHS: He looked around the
11 basement and he said--he asked me what had I
12 changed in the basement, that people thought
13 I was doing electrical and plumbing, and I
14 said nothing, all I did was put down a floor
15 to this point.

16 MS. MADDUX: And what resulted in
17 the stop work order?

18 MR. ROOTHS: His result was that
19 he lifted it.

20 MS. MADDUX: Now when he lifted
21 this stop work order, how much work was left
22 to do on the premises to get it open?

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1 MR. ROOTHS: There wasn't that
2 much left to do. I had to get the rack
3 installed because I couldn't have it
4 installed while the stop work order was in
5 effect. And I had to put the sign up.

6 [Rooths Exhibit No. 16
7 was marked for
8 identification]

9 MS. MADDUX: Okay. I'm going to
10 show you what's marked as Exhibit 16. Would
11 you please tell us what this is.

12 MR. ROOTHS: This is a stop work
13 order from Ed Ball at the DCRA inspection
14 office.

15 MS. MADDUX: And what is that
16 dated? What is the date on this?

17 MR. ROOTHS: The date on this is
18 6-14-06.

19 MS. MADDUX: Okay. And why was
20 this stop work order issued?

21 MR. ROOTHS: He said that--he
22 said I didn't have--it appeared I was

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1 working without mechanical permits.

2 MS. MADDUX: Okay. Did anyone
3 come out to inspect the premises?

4 MR. ROOTHS: No. I called and
5 could not catch, get Mr. Ball. Then I just
6 kept calling back. And then I just--I was
7 real persistent. I asked them to, you know,
8 identify what was, you know, wrong with
9 doing the--that I had done related to this
10 stop work order, and they went in the
11 computer and looked up, and then they said
12 that evidently, that no stop work order has
13 been lifted, so I--and this was in, about--
14 this was in July.

15 MS. MADDUX: Okay. And did you
16 receive any other stop work orders?

17 MR. ROOTHS: Yes. I received
18 another stop work order from the Department
19 of Regulations, an other inspection,
20 Historic Preservation.

21 MS. MADDUX: And why was that
22 issued?

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1 MR. ROOTHS: They had received
2 that I had a record assigned without
3 retaining a permit, and in the area
4 exemptions on the sign, and I had a permit
5 in the window above the door. I could not
6 post permits outside. People would take
7 them if you left stuff hanging outside.

8 MS. MADDOX: And what was the
9 result of this stop work order?

10 MR. ROOTHS: I talked to Mr.
11 Lambert. He told me that he would check it
12 out, and if I didn't hear back from him then
13 the stop work order had been lifted.

14 MS. MADDOX: Okay. And did you
15 hear back from him?

16 MR. ROOTHS: No. I didn't hear
17 anything else from Mr. Lambert.

18 MS. MADDOX: And when did you
19 open--did you actually open the store at any
20 point?

21 MR. ROOTHS: I actually opened on
22 Decem--I mean September 12th.

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1 MS. MADDUX: Of 2006.

2 MR. ROOTHS: 2006. Yes.

3 MS. MADDUX: Okay. And about how
4 long did you stay open?

5 MR. ROOTHS: It was opened to
6 September--it was open two weeks, about.
7 September 28th, I think it was.

8 MS. MADDUX: Okay. And did you
9 have customers?

10 MR. ROOTHS: Yes. I had a
11 regular flow of customers.

12 MS. MADDUX: About how many
13 customers did you have in that period of
14 time?

15 MR. ROOTHS: I was--about--I
16 guess about two hundred.

17 MS. MADDUX: Okay.

18 MR. ROOTHS: Between 240 and 200.
19 Some were repeat customers.

20 MS. MADDUX: And where were your
21 customers coming from, primarily?

22 MR. ROOTHS: My customers were

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1 primarily coming from the buildings south of
2 me and west--and east of me.

3 MS. MADDUX: And were your
4 customers primarily driving to your
5 location?

6 MR. ROOTHS: No. It's all foot
7 traffic. You know, driving--people--it's
8 downtown. No, I don't have any--I wouldn't
9 have anybody driving up to drop off laundry.
10 Most of these people were going to, on their
11 way to Fresh Fields or somewhere, to do some
12 grocery shopping. They dropped off their
13 laundry.

14 MS. MADDUX: Okay. Why didn't
15 you open up--you received a certificate of
16 occupancy on December 22nd of 2005. Why
17 didn't you open up by June 22nd of 2006?

18 MR. ROOTHS: I had these stop
19 work orders and these stop work orders
20 prevented you from opening. You know, you
21 couldn't finish the work, couldn't do
22 anything, and you had to wait for somebody

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1 to come out from DCRA to lift the stop work
2 order, cause if you did the work, then you
3 were subject to be fined.

4 MS. MADDUX: Okay. Can you use
5 this location as a residential space?

6 MR. ROOTHS: No. This is a mixed
7 use building, a mixed-use commercial
8 building, identified on it by my mortgage
9 company, and everybody else.

10 MS. MADDUX: I'm sorry. What,
11 why--

12 MR. ROOTHS: It's a mixed-use
13 building.

14 MS. MADDUX: Okay. After you
15 received the final stop, the last stop work
16 orders, did you receive anything else from
17 the Office of Zoning Administration?

18 MR. ROOTHS: Yes. I had another
19 stop work order that, some reason, just
20 disappeared.

21 MS. MADDUX: What do you mean?

22 MR. ROOTHS: I had another stop

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1 work and a letter of revocation; yes.

2 MS. MADDUX: I'm sorry. Let me
3 ask you, did you receive anything else,
4 after the stop work orders?

5 MR. ROOTHS: Yes. I received a
6 letter of revocation; yeah. I received a
7 letter of revocation.

8 MS. MADDUX: Okay. Revoking
9 what?

10 MR. ROOTHS: That was telling me
11 that I was--I had so many days to I think
12 appeal the decision or I was going to be
13 shut down on the 28th.

14 MS. MADDUX: Okay. Could you
15 convert the basement where the--and the
16 first floor, to a residential area?

17 MR. ROOTHS: Converting is
18 extremely expensive. I mean, I'd have to
19 put in a full bathroom, full kitchen,
20 restructure the front of the building. It's
21 a--you're talking about a hundred, \$200,000,
22 to get that place to be acceptable under the

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1 new rules and stuff for residential use. I
2 mean--

3 MS. MADDUX: Are you finished?
4 At this time, are you limited in the types
5 of a lease you can get?

6 MR. ROOTHS: As far as...?

7 MS. MADDUX: As far as the type
8 of lease that you can get for the area. Or
9 mortgage; excuse me. Not lease.

10 MR. ROOTHS: Mortgage. Oh, yeah.
11 Well, the banks identify the mortgage, I
12 mean, and they identify the building as a
13 mixed-use commercial building.

14 MS. MADDUX: Okay.

15 MR. ROOTHS: And that's what
16 limits my ability to--I can't get
17 residential mortgages.

18 MS. MADDUX: And does that area,
19 the designation of that area as a commercial
20 area, affect any other expenses that you
21 have?

22 MR. ROOTHS: Do what?

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1 MS. MADDUX: Does that
2 designation of the area as a commercial
3 space affect any other expenses that you
4 have?

5 MR. ROOTHS: You mean does it add
6 any other expenses?

7 MS. MADDUX: Yes.

8 MR. ROOTHS: Utilities.

9 MS. MADDUX: Okay.

10 MR. ROOTHS: By utilities, I'm
11 billed on a commercial rate for the first
12 and second floor--I mean, the ground and the
13 first floor. They bill that. And the
14 utilities said I'd have to submit documents,
15 official documents from the city showing
16 that this had been converted and that it was
17 allowable, before they would change the rate
18 structure. Both the gas and the light
19 company.

20 MS. MADDUX: Okay. I have no
21 further questions at this time.

22 ACTING CHAIRPERSON ETHERLY:

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1 Okay.

2 MS. MADDUX: But I would like to
3 come back for a summary at the end.

4 ACTING CHAIRPERSON ETHERLY:
5 Okay. You'll have an opportunity for your
6 summary and closing at the conclusion.

7 At this point I'll turn to my
8 board colleagues. Any questions?

9 Mr. Mann.

10 BOARD MEMBER MANN: That was an
11 interesting chronology and provided a lot of
12 background information but I'm not quite
13 certain that I understand, if I heard what
14 the--the pertinent information that I needed
15 to understand, and that is what is the
16 alleged error of the Zoning Administrator
17 and which of the information you presented
18 we need to take into account, that
19 substantiates those allegations.

20 ACTING CHAIRPERSON ETHERLY: Your
21 microphone, please.

22 MR. TAYLOR: Who is the witness

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1 here?

2 ACTING CHAIRPERSON ETHERLY: I
3 don't get your question there. You're
4 objecting to counsel answering that
5 question?

6 MR. TAYLOR: Yes. Yes, sir.

7 ACTING CHAIRPERSON ETHERLY: Mr.
8 Mann's question I think is getting at
9 excellent recitation of the calendar of
10 events but let's kind of fine-tune what the
11 error is that's being alleged here.

12 MR. ROOTHS: Okay.

13 MS. MADDOX: Our argument, and
14 which will be summed more clearly, later, is
15 that the error--we believe that the--that
16 latches and estoppel, or equity arguments
17 favor the denial of the--or the reversal of
18 the revocation of the certificate of
19 occupancy. We believe that the certificates
20 of occupancy were issued properly. And that
21 the BZA should be stopped from, or estopped
22 from revoking those, because of the history

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1 of issuing these certificates of occupancy,
2 stemming back from 1989 to 2005. That is
3 their argument, that they issued it
4 incorrectly, because it went to a
5 nonconforming use--excuse me--to a
6 conforming use in 1970 and then went back to
7 a nonconforming use in 1989. Therefore,
8 because of that particular certificate of
9 occupancy, was wrong, was incorrectly
10 issued. Any subsequent ones are also
11 incorrectly issued.

12 ACTING CHAIRPERSON ETHERLY: And
13 are you asserting that DCRA's position, that
14 the nonconforming use stopped at some point,
15 1970 or somewhere, at some later date--are
16 you asserting that that is incorrect, or are
17 you submitting, or proffering--I don't want
18 to say proffer at this point--but are you
19 submitting that the nonconforming use at
20 some point did stop?

21 MS. MADDUX: Yes. That is what
22 they are arguing, that it did stop at some

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1 point.

2 ACTING CHAIRPERSON ETHERLY:

3 Okay. But are you in agreement with that
4 argument? Is your client in agreement with
5 that argument? Or are you saying that at no
6 point did it stop being a nonconforming use?
7 It continued to operate as a pickup laundry
8 throughout the history that we just walked
9 through?

10 MS. MADDUX: Yes, I am, and I
11 pause only because I don't have the
12 documentation from 1949. I'm going based on
13 their letter.

14 ACTING CHAIRPERSON ETHERLY:

15 Okay.

16 MS. MADDUX: They are claiming
17 that the nonconforming use did stop and then
18 became--the nonconforming use was in effect
19 and then it stopped, and then it became a
20 conforming use property, and it became
21 nonconforming again in 1970. Absent that
22 entire--I don't have those documents from

1 DCRA but I have nothing to say that that is
2 an incorrect assertion on their part.

3 ACTING CHAIRPERSON ETHERLY:

4 Okay. and I don't think the answer to that
5 question, one way or another, necessarily
6 stops your argument "dead in the water."
7 The estoppel and the latches still very much
8 apply.

9 MS. MADDUX: Yes.

10 ACTING CHAIRPERSON ETHERLY: I
11 just think for purposes of, as Mr. Mann was
12 getting, trying to figure out, okay, what's
13 the payoff to the calendar that we just
14 walked through? Whether it moved into
15 conformance or not, there still is the
16 issue, as you lay it out, in terms of
17 talking about the estoppel argument, hey,
18 look, my client operated in good faith,
19 number two, we have actions that we allege
20 took place on the part of DCRA and employees
21 under DCRA's auspices, that my client relied
22 upon.

1 We made certain improvements,
2 quite a number of which have a significant
3 monetary value attached to them, and
4 finally, we just think the equities here
5 argue in our favor.

6 MS. MADDUX: Yes.

7 ACTING CHAIRPERSON ETHERLY:

8 That's your estoppel argument. The latches
9 argument is essentially even if you don't
10 buy that, there just was too much delay
11 here. We stop work order, stop work order.
12 But once my client got his certificate of
13 occupancy in that last final "heave ho," we
14 weren't able to even open.

15 And I think that's what Mr. Mann
16 was kind of getting at in terms of trying to
17 kind a clarify where we are here. But I
18 think it was important to just--again, I
19 don't think it's essential for you to argue
20 or prove that, well, it never stopped being
21 nonconforming.

22 As you've indicated, you have no

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1 evidence to prove that it did not. You
2 haven't been able to reach back all the way
3 to the '70s and demonstrate that X, Y and Z
4 haven't happened. So I think that's the
5 answer to the question that Mr. Mann was
6 putting forth, in terms of kind of, okay,
7 kind of, Where are we?

8 I'm not looking to put words into
9 your mouth but I think his point was a well-
10 taken one in terms of just kind of sorting
11 out, okay, at the end of the day, this is
12 kind of what it is.

13 Does that help, Mr. Mann?

14 BOARD MEMBER MANN: That does
15 help. Also this is a different sort of case
16 than I'm used to hearing, because typically,
17 when we hear, when I hear, the cases that
18 I've been in, allegations of an error by the
19 Zoning Administrator, it's usually tied to
20 some provision of the zoning regulations.

21 So that's the sort of arguments
22 that I'm used to hearing. So when you're

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1 talking about latches and estoppel, which is
2 something that I'm less familiar with, it
3 takes a very clear explanation as to what
4 the argument is.

5 ACTING CHAIRPERSON ETHERLY: As a
6 follow-up to Mr. Mann's question, playing
7 your, kind a rolling your argument out, if
8 you will, at what point would--I'm almost
9 inclined to ask, under your argument, would
10 DCRA, at any point in time, be able to step
11 in and correct and erroneously-issued C of O
12 under this particular set of circumstances?

13 i would take it your assertion
14 is, at minimum, the first time your client
15 came to DCRA, used those words, "pickup
16 laundry service," DCRA should have realized
17 at that point some error was at play, and
18 needed to be corrected.

19 But I'm trying to get a sense of
20 at what point would DCRA be able to finally
21 correct that? Under your argument, it
22 sounds as though the answer to that question

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1 would be, well, if you don't correct the
2 bite at the apple on the first go-around,
3 then DCRA is forever stuck with a
4 nonconforming use in this location.

5 It's perhaps a poorly-worded
6 question--

7 MS. MADDUX: No, I understand
8 what--

9 ACTING CHAIRPERSON ETHERLY: --
10 but I'm just trying to get a sense of if
11 you're in the Zoning Administrator's shoes
12 for a moment, at what point, if DCRA
13 realizes they're in error, at what point--
14 again, perhaps, it's--maybe it's just a
15 little circular. At a certain point they're
16 estopped, and that's your argument. You
17 should have caught it on the first go-
18 around. If you didn't, then my client's
19 off, scot-free.

20 MS. MADDUX: Okay. At one point-
21 -our position is when the predecessor of the
22 property owned it.

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1 ACTING CHAIRPERSON ETHERLY:

2 Okay. That's fair.

3 Mr. Turnbull, any questions?

4 COMMISSIONER TURNBULL: Thank
5 you, Mr. Chair. None at this point. I'd
6 like to hear from the Zoning Administrator,
7 though, and ask him questions on--

8 ACTING CHAIRPERSON ETHERLY:

9 Okay. Any cross examination questions from
10 the Zoning Administrator, from DCRA?

11 MR. TAYLOR: Yes, Mr. Etherly.

12 ACTING CHAIRPERSON ETHERLY: And
13 as we prepare to move in, let me just ask,
14 very quickly; Do we have a representative
15 from ANC 2F on hand? All right. I want to
16 be sure that we get you into this fray as
17 well. So I'm going to turn to you after we
18 go through cross examination questions from
19 DCRA, and of course there will be an
20 opportunity for ANC presentation as well.

21 ANC COMMISSIONER DYER: Perfect.

22 ACTING CHAIRPERSON ETHERLY: All

1 right. Excellent.

2 MR. TAYLOR: Mr. Rooths, do I
3 understand, correctly, that you purchased
4 the property in January of 2000?

5 MR. ROOTHS: Yes.

6 MR. TAYLOR: And are you the sole
7 owner?

8 MR. ROOTHS: No.

9 MR. TAYLOR: Who else is an owner
10 with you?

11 MR. ROOTHS: Nancy Dao, my wife.

12 MR. TAYLOR: Have the two of you
13 ever relinquished ownership of the property?

14 MR. ROOTHS: What'd you say?

15 MR. TAYLOR: Have you and Ms. Dao
16 ever relinquished ownership of the property
17 between January 2000 and right now?

18 MR. ROOTHS: You mean have we
19 sold it? Is that what you're saying?

20 MR. TAYLOR: Yes, sir.

21 MR. ROOTHS: No.

22 MR. TAYLOR: How many stories is

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1 the house? Or excuse me. How many stories
2 is the building?

3 MR. ROOTHS: How many what?

4 MR. TAYLOR: Stories.

5 MR. ROOTHS: Four stories.

6 MR. TAYLOR: Okay. One of which
7 is a basement?

8 MR. ROOTHS: It's the ground
9 floor, the other three stories above that,
10 and the sub basement below the basement.

11 MR. TAYLOR: Okay. What do you
12 do with the upper stories?

13 MR. ROOTHS: The upper two
14 stories are residential, four unit
15 residential.

16 MR. TAYLOR: Do you live there?

17 MR. ROOTHS: Yes.

18 MR. TAYLOR: On both floors?

19 MR. ROOTHS: No. We live in one
20 of the units and I rent out the others.

21 MR. TAYLOR: How many units do
22 you rent out?

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1 MR. ROOTHS: I rent out two of
2 them.

3 MR. TAYLOR: Do you have a
4 business license for a rental property?

5 MR. ROOTHS: Do I have a business
6 license for a rental property? I have--
7 yeah, I have a license. What do you mean, a
8 business license for a rental property?

9 MR. TAYLOR: Yes, sir. Do you
10 have a business license to operate rental
11 property in the District of Columbia?

12 MR. ROOTHS: I have a--yes, I
13 have a business license for rental property
14 in the District of Columbia.

15 MR. TAYLOR: And when was that
16 issued?

17 MR. ROOTHS: I'd have to go look
18 it up.

19 MR. TAYLOR: Okay. At this time,
20 I would like to request, among other things,
21 that the record be held open--

22 MS. MADDOX: I'd like to object.

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1 MR. TAYLOR: --afterward, just to
2 get that inserted into the record. DCRA's
3 records do not show such a license to have
4 been issued.

5 MS. MADDUX: I'm going to object.
6 Relevancy.

7 ACTING CHAIRPERSON ETHERLY: Your
8 microphone, please, Ms. Maddox.

9 MS. MADDUX: I'm going to object
10 to that. The relevance of it.

11 ACTING CHAIRPERSON ETHERLY:
12 Where are we heading with that, Mr. Taylor?

13 MR. TAYLOR: We're trying to head
14 into Mr. Rooths' knowledge of how the
15 building may be properly used under the
16 zoning laws of the District. I should say
17 the zoning and the licensing laws of the
18 District.

19 MS. MADDUX: That is not relevant
20 to the reasons that DCRA has revoked the
21 certificate of occupancy for a dry cleaning
22 pickup.

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1 MR. TAYLOR: Mr. Chairman, this
2 argument that the Appellant is putting
3 forward is primarily one--essentially
4 nothing but estoppel and latches, that
5 requires good faith on the part of the
6 Appellant in order to prevail, and this goes
7 toward that good faith.

8 ACTING CHAIRPERSON ETHERLY: By
9 demonstrating that there perhaps is a
10 measure of familiarity with relevant zoning
11 regs as it pertains to his specific
12 property, such that--I mean, I'm just kind
13 of spinning out the argument, Mr. Taylor.
14 Would it be your contention that if such a
15 license is in the possession of the
16 Appellant, that argues towards, or allows
17 the imputation of some knowledge to the
18 Appellant, that he was aware DCRA was making
19 an error, over and over with the C of O's.
20 Is that essentially kind a where it goes?

21 MR. TAYLOR: I think that it cuts
22 a number of directions. Number one, if he

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1 does have that license, then that goes to
2 verify the imputed knowledge of the
3 regulations that is imputed, as a matter of
4 law, to all of the customers in the District
5 that deal with the government.

6 If he does not have that license,
7 then it goes to show that he does not have
8 sufficient knowledge to make the good faith
9 argument.

10 MS. MADDOX: And I--

11 ACTING CHAIRPERSON ETHERLY: And
12 I understand both of you, I'm going to
13 invite some comment from my colleagues, or
14 maybe some quick discussion on this. I
15 understand, I think, both sides, where
16 you're trying to go with it, Mr. Taylor, and
17 I understand your objection, Ms. Maddox.

18 I'm perhaps struggling with
19 whether or not it just leads us down a road
20 that still has no import to what's
21 ultimately at issue in front of us.

22 It could be the case, that

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1 whether he has it or doesn't have it, it
2 doesn't necessarily dispose of the good
3 faith problem, I understand, but--

4 MR. TAYLOR: Mr. Chairman, if I
5 may, I would like to add one more element
6 that this goes to. For the Appellant to
7 prevail--the Appellant has made a
8 considerable number of allegations in these
9 opening questions, that are not verified by
10 any documentation. Veracity and credibility
11 are going to be things that you are in a
12 position of needing to judge, and I believe
13 that this also goes toward the credibility
14 of the Appellant.

15 [The Commission confers]

16 ACTING CHAIRPERSON ETHERLY: I
17 think that perhaps the appropriate way to
18 proceed on that is--and quite frankly, I'm
19 not the biggest fan of kind of holding
20 things in abeyance while we kind a sort them
21 out. But I'm not quite convinced, either
22 way yet, and I'm thinking that I'm hearing

1 from both of my colleagues, perhaps, the
2 same struggle around relevance.

3 But I don't want to dismiss it
4 outright yet, and dispose of it entirely, so
5 I'm simply going to kind of take notice of
6 that and we're probably going to have to
7 clarify that as we move towards determining
8 what our next step is going to be here on
9 that particular issue.

10 So I'm not disposing of the
11 question yet, I'm not walking away from the
12 objection, but let's just kind of hold that
13 in abeyance for the moment and kind of come
14 back to that particular issue.

15 Okay. Please, Mr. Taylor.

16 MS. MADDUX: May I add to that
17 point, that the residential--the process for
18 residential licenses is different from the
19 process of getting a commercial license. To
20 know the process of one is not to know the
21 process of the other. I just want to note
22 that for consideration.

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1 ACTING CHAIRPERSON ETHERLY:

2 Okay. Duly noted.

3 Mr. Taylor, cross examination.

4 MR. TAYLOR: Mr. Rooths, could
5 you please clarify for us the difference
6 between getting a commercial business
7 license and a commercial business license
8 for a residential property.

9 MS. MADDUX: Objection.

10 MR. TAYLOR: Once again, we've
11 had a factual assertion made with no support
12 for what that factual assertion is, whether
13 it is correct or not.

14 ACTING CHAIRPERSON ETHERLY: I'm
15 going to suggest that we hold all questions
16 on that one, kind of--we're going to have to
17 sort that one out. So keep that in mind,
18 but let's move on to another line.

19 MR. TAYLOR: Yes, sir.

20 Mr. Rooths, you stated that
21 before you purchased the property, you spoke
22 with the previous owner, and the previous

1 owner told you that the building was a
2 mixed-use building; is that correct?

3 MR. ROOTHS: The previous owner
4 and downtown DCRA.

5 MR. TAYLOR: And downtown DCRA?

6 MR. ROOTHS: Yeah. I went down
7 there with him.

8 MR. TAYLOR: Could you tell us
9 more about that visit to DCRA.

10 MR. ROOTHS: We just went
11 downtown and talked to the people. I wanted
12 to make sure.

13 MR. TAYLOR: Do you remember with
14 whom you spoke?

15 MR. ROOTHS: In 2000?

16 MR. TAYLOR: Yes, sir.

17 MR. ROOTHS: I'd have to--you'd
18 have to show me a picture of the people
19 working there. I could remember their
20 faces, and then I could point that out to
21 you.

22 MR. TAYLOR: And it's your

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1 contention that someone at DCRA, in either
2 2000 or 1999, told you that that building
3 was in an area that was zoned for both
4 commercial and residential property?

5 MR. ROOTHS: Yes. The previous
6 owner had both occupancy certificates.

7 MR. TAYLOR: Excuse me, Mr.
8 Rooths. My question was: Did someone at
9 DCRA specifically tell you that that
10 building was in a zone zoned for commercial
11 and residential property?

12 MR. ROOTHS: And I'll tell you
13 again, the building owner had both
14 certificates of occupancy and we went down
15 to DCRA and the people said that they were
16 valid for that building.

17 MR. TAYLOR: Okay. We've
18 established, now, that the previous owner
19 had a certificate of occupancy and told you
20 that you could have commercial property
21 there.

22 MR. ROOTHS: Excuse me?

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1 MR. TAYLOR: So we've established
2 that the previous owner had a certificate of
3 occupancy and told you that you could have
4 commercial interest in that building.

5 MR. ROOTHS: You said describe
6 him?

7 MR. TAYLOR: No. I just said we
8 seem to have established that. My question
9 is is there someone at DCRA who specifically
10 told you that you could have commercial
11 interest in that property?

12 MR. ROOTHS: Yes. I went down to
13 the service desk and talked to the people,
14 with the previous owner at the service desk.
15 The people at the service desk identified
16 that the occupancy certificates were valid
17 and that that would transfer to me when I
18 bought the building.

19 MR. TAYLOR: Did anyone there
20 look at a zoning map to see what zone the
21 building was in?

22 MR. ROOTHS: I can't say what

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1 they went in the back and looked at. We sat
2 there and talked to them, and then they got-
3 -they went off and discussed it, and came
4 back.

5 MR. TAYLOR: Okay. And they told
6 you that the previous certificate of
7 occupancy was valid; is that correct?

8 MR. ROOTHS: The previous
9 certificate of occupancies were both valid;
10 yes.

11 MR. TAYLOR: Okay. And did they
12 tell you anything else, other than those
13 were valid and that they could be
14 transferred to you?

15 MR. ROOTHS: Would you repeat
16 that, please.

17 MR. TAYLOR: Okay. They told you
18 that the previous certificates were valid.
19 They told you that they could be transferred
20 to you. Did they tell you anything else?

21 MR. ROOTHS: I can't recollect
22 conversations directly from 2000, word for

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1 word. I mean, I can't remember at this
2 time. Maybe if I sit down and think about
3 it a while, I could determine--even remember
4 a name. But at this time, I can't even
5 remember the names of the people there. I
6 can see their faces, and some of them still
7 work for the District. But their names, I
8 don't know.

9 And as far as someone telling me
10 were they valid, that wasn't my
11 determination to make. They were valid
12 certificates of occupancy. So valid
13 certificates of occupancy implies to me that
14 I can--and they're transferable to me--then
15 I can do what the building allows me to do
16 with that certificate, and that's why they--
17 I went down there to verify them.

18 MR. TAYLOR: Mr. Rooths, is it
19 correct that the certificate of occupancy
20 for the basement and the first floor, that
21 was in the possession of the previous owner,
22 stated that the basement and the first floor

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1 were appropriate for use as an industrial
2 laundry and for shoe repair?

3 MR. ROTHES: I did not say that
4 they said it was for an industrial laundry.
5 They said that the thing was--that they were
6 valid for what I wanted to use them for.
7 That he was using as a shoe repair and doing
8 other things down there, and that all I
9 wanted to do was a pickup laundry type of
10 operation outta there, and that's what they-
11 -they told me that my--that what I stated to
12 them was a correct use. I did not go down
13 and discuss with them what he was doing at
14 that time there.

15 MR. TAYLOR: Did you know what he
16 was doing there at that time?

17 MR. ROTHES: He was doing shoe
18 repair and he was doing something, something
19 with laundry there. But that was--the
20 laundry was not my concern. I mean, all I
21 wanted to do was make sure that I could do
22 what I wanted to do. I didn't go into

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1 detail over the difference between one thing
2 and another. All I knew is that what I
3 wanted to do was a unlicensed business in
4 the District of Columbia and it fell in the
5 category of shoe repairs and valets, and
6 other types of shops like that, and that's
7 what I went down there with the intention of
8 finding out at that time.

9 But an industrial laundry? You'd
10 have to--I don't know. And I didn't--I'm
11 not privy to say that he was doing it--I
12 mean, I'm not able to say he was doing
13 industrial laundry. I came there on the
14 weekends, I took off and went down there, me
15 and my wife was living out of--partially out
16 of the area. So it was not a thing that I
17 could go and come, come readily. My job is
18 very--was very demanding.

19 MR. TAYLOR: Okay. So you're
20 saying that you cannot state, with
21 certainty, just exactly what kind of
22 operation the previous owner was doing down

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1 there?

2 MR. ROOTHS: I can state with
3 certainty that there was a operation down
4 there.

5 MR. TAYLOR: That there was
6 something--

7 MR. ROOTHS: The machines were in
8 place and they were not dusty. They were
9 clean. But I came on the weekends most a
10 the time, so--and there was nobody there on
11 the weekends. He met me there and I went
12 through the building and everything, and
13 that's what I based it on, is going through
14 the building on a couple a weekends with
15 him, that we will buy tonight, and we put
16 the money down on September 30th, and we
17 were not able to close because the building
18 was identified as an industrial building and
19 I had to go around and shop mortgages and I
20 didn't get a mortgage until the middle of
21 November, and I couldn't close until the--
22 whatever the closing date is on there.

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1 MR. TAYLOR: So you never saw the
2 commercial operation actually functioning
3 down there; is that correct?

4 MR. ROOTHS: I never saw it but
5 the machines were clean and they were
6 working. The floors were cleaned up. The
7 stuff was hanging up. So, you know, I've--
8 I've been in commercial operations, and I
9 know what they looks like when a active
10 operation is going on, and when nothing's
11 going on. There's dirt everywhere, there's
12 dust, and the bathroom is dusty. I mean,
13 and it's just in somewhat disrepair.

14 This wasn't in disrepair. This
15 was clean, like people--cause people's shoes
16 was sitting there, and everything else, so--

17 MR. TAYLOR: Okay. In your
18 Exhibit 2B, I believe you stated that you
19 got this new certificate of occupancy
20 because you and your wife were going to
21 start a new business there; is that correct?

22 MR. ROOTHS: Yeah.

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1 MR. TAYLOR: And then--now would
2 you please look at your Exhibit 4, which I
3 believe is the lease you signed with Bar
4 Legal Services.

5 MR. ROOTHS: A lease?

6 MS. MADDOX: Hold on a sec. I'm
7 sorry. You said--

8 MR. TAYLOR: Excuse me. Exhibit
9 3.

10 MR. ROOTHS: What is it? What's
11 the question on it? Three?

12 MR. TAYLOR: Okay. And this was
13 a subsequent business that your brother and
14 two other people were going to operate; is
15 that correct?

16 MR. ROOTHS: They did operate.

17 MR. TAYLOR: They did operate.

18 MR. ROOTHS: Yes. I explained to
19 you, during my--

20 MR. TAYLOR: When did the lease
21 begin?

22 MR. ROOTHS: The lease began

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1 February the 1st, 2002.

2 MR. TAYLOR: So approximately
3 five months before you applied for a
4 certificate of occupancy for you to operate
5 your business in the location?

6 MR. ROOTHS: Excuse me?

7 MR. TAYLOR: Was that not about
8 five months before you applied for a
9 certificate of occupancy for you to operate
10 your business in that location?

11 MR. ROOTHS: No; it's not five
12 months. This is--the other certificate of
13 occupancy is before this. You're confused.
14 This is--

15 MR. TAYLOR: Maybe I am confused.
16 Would you please tell me again about your
17 Exhibit 2B.

18 MR. ROOTHS: This is 12-19-01.
19 That's the first one I--

20 MR. TAYLOR: I'm looking at
21 Exhibit 2B. 2A says it--

22 MR. ROOTHS: 2A. Yeah.

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1 MR. TAYLOR: Says it is going to
2 be a laundry service, does it not?

3 MR. ROOTHS: Yes; yes.

4 MR. TAYLOR: And then 2B--

5 MR. ROOTHS: Yes.

6 MR. TAYLOR: --says it's going to
7 be a laundry and consulting business?

8 MR. ROOTHS: Yes. That's what I
9 was--that was how I was told to identify it
10 by DCRA staff.

11 MR. TAYLOR: Why did DCRA staff
12 tell you to add the consulting, if you had a
13 laundry there?

14 MR. ROOTHS: DCRA staff--I went
15 down and talked to DCRA staff. They told
16 me--I told them that I was--that I was--that
17 I had leased the place, space out, and was
18 the certificate of occupancy still valid.
19 And I was sick. And they told me that I
20 needed to add the consulting part to that
21 certificate. That's what the staff at the
22 desk down there told me, and I don't think

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1 Frank Moody was the supervisor at that time;
2 was somebody else. I think he was working,
3 one of the workers somewhere along the desk,
4 but he wasn't a supervisor, and the
5 directions came from the back office which I
6 was not privy to, and I stood outside and
7 waited for them to go back and talk to the
8 people in the back office.

9 MR. TAYLOR: So is it your
10 contention that DCRA staff told you, on or
11 about June 28, 02, that in order for Bar
12 Legal Services to operate in that space, you
13 needed to get a new certificate of occupancy
14 in your name, stating that it was going to
15 be a laundry and a consulting operation?

16 MR. ROTHES: They told me--this
17 is what they told me. They told me not to
18 drop the laundry part because of some load
19 differential, or difference between laundry
20 and consulting, and if I wanted to have a
21 pickup laundry at that--if I dropped the
22 laundry part, it might be affected. And so

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1 I maintained the laundry part and got the
2 certificate, consulting, yes, according to
3 the staff.

4 MR. TAYLOR: Now did the previous
5 owner run a pickup laundry, dry cleaning
6 business?

7 MR. ROOTHS: I already answered
8 that question, I believe. You asked me that
9 question, what was there when I took
10 possession and I told you what was there.

11 So I didn't say nothing about dry
12 cleaning at that time, did I?

13 MR. TAYLOR: Okay. I'll take
14 that as a no. Was it a pickup retail
15 operation that your predecessor ran?

16 MR. ROOTHS: He had a operation
17 out there with shoe repair and some type of
18 laundry stuff, cause he had machines setting
19 along, laundry machines setting along the
20 wall. Now I told you I went there on the
21 weekends. If I had any idea that I had to
22 go there during the week and observe his

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1 business, I would a done it.

2 ACTING CHAIRPERSON ETHERLY: So
3 just to be clear, so we put a pin in this
4 particular question, cause I agree, it has
5 come up, let me make sure I'm just clear on
6 it.

7 Would it be your testimony, Mr.
8 Rooths, that you're not in a position to
9 characterize what precisely was the nature
10 of what was underway in the, on the premises
11 at that time when you went? You only went
12 on the weekends. That's your testimony.
13 You saw equipment that appeared to be in
14 current working order, shall we say.

15 It did not appear to be neglected
16 or dusty or anything along those lines. But
17 you're not able to say, with specificity,
18 what the nature of the operation was there?

19 Or are you able to say, when you
20 went there previously, what you saw there
21 was laundry pickup equipment?

22 MR. RROOTHS: Yes, sir. I stated,

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1 I believe I stated that the machine--the
2 machinery was working, you know, like when
3 you shine shoes.

4 ACTING CHAIRPERSON ETHERLY:
5 Okay.

6 MR. ROOTHS: The shoes are piled
7 up and--

8 ACTING CHAIRPERSON ETHERLY: The
9 shoe portion of it.

10 MR. ROOTHS: --the other stuff
11 had clothes piled on top of it. But I--but
12 like I said, it was not operating on the
13 weekends when I went there.

14 ACTING CHAIRPERSON ETHERLY:
15 Okay.

16 MR. ROOTHS: And I went there
17 approximately three weekends before I
18 purchased the building.

19 ACTING CHAIRPERSON ETHERLY: So
20 are you in a position to say what operation
21 beyond shoe repair or shoe shining was going
22 on on the property, based on what you saw

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1 when you did go, before you purchased it?

2 You indicated that you saw
3 clothes and things piled up.

4 MR. ROOTHS: Yeah. Clean clothes
5 folded up on top, up on top the machines.

6 ACTING CHAIRPERSON ETHERLY:
7 Okay. Mr. Taylor, I apologize for the
8 interruption.

9 MR. TAYLOR: It's fine with me,
10 Mr. Chair. Mr. Rooths, did any of those
11 machines down there have any spools of
12 thread on them?

13 MR. ROOTHS: Excuse me?

14 MR. TAYLOR: Did any of the
15 machines in the basement of the building,
16 while the building was owned by the previous
17 owner, have any spools of thread?

18 MR. ROOTHS: I'm not picking up
19 that last part a your statement. You're
20 saying spiritual something?

21 MR. TAYLOR: No. I must not be
22 enunciating well. Did any of the machines

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1 belonging to the previous owner, which you
2 saw in the building, prior to purchasing the
3 building, have any spools of thread on top
4 of them?

5 MR. ROOTHS: You're stating
6 something on top of them? I'm sorry. I
7 have a hearing defect. I'm not trying to--

8 ACTING CHAIRPERSON ETHERLY: Do
9 you recall--I'll phrase it for you. Do you
10 recall seeing spools of thread--I would take
11 it your question, Mr. Taylor, is thread that
12 would be used for alterations or tailoring
13 or sewing?

14 MR. TAYLOR: Yes. Yes, Mr.
15 Chair.

16 ACTING CHAIRPERSON ETHERLY:
17 Okay. Do you recall seeing any of that type
18 of equipment or accoutrements on the
19 machinery?

20 MR. ROOTHS: When I went there?

21 ACTING CHAIRPERSON ETHERLY: Yes,
22 sir.

1 MR. ROOTHS: Not at that
2 building.

3 ACTING CHAIRPERSON ETHERLY:
4 Okay.

5 MR. ROOTHS: I saw it at his
6 other building.

7 ACTING CHAIRPERSON ETHERLY:
8 Okay. But not at the building in question
9 here?

10 MR. ROOTHS: Not at the building
11 I was going to purchase.

12 ACTING CHAIRPERSON ETHERLY:
13 Excellent. Next question, Mr. Taylor.

14 MR. TAYLOR: Thank you.

15 If you would look at your Exhibit
16 2C, what prompted you to get that
17 certificate of occupancy?

18 MR. ROOTHS: Excuse me?

19 MR. TAYLOR: Why did you get that
20 certificate of occupancy?

21 MR. ROOTHS: Why did I get this
22 certificate of occupancy? Because someone

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1 came in from DCRA and told me that I needed
2 it. Or maybe not DCR but from Business
3 Zoning or whatever. They told me that I
4 needed this certificate of occupancy cause
5 the trading name of the business that was
6 occupying the space was not in any service.
7 It was Bar Legal Services and Consulting.
8 That's why I got it.

9 MR. TAYLOR: In fact, were you
10 not issued a citation for operating without
11 a proper certificate of occupancy?

12 MR. ROOTHS: I was not issued a
13 citation. My brother received a citation.
14 Then I went down and got this to clear up
15 the thing. But I did not get a citation.
16 My brother--I was not there. I was--I think
17 I was at Georgetown, in the hospital, or
18 something, when that woman came by, or the
19 person, whoever he said came by.

20 ACTING CHAIRPERSON ETHERLY: And
21 if I may, was that citation issued to your
22 brother for activity pursuant to the lease

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1 agreement that's referenced at Exhibit 3?

2 MR. ROOTHS: The citation was--
3 from what I understand, the citation was
4 issued because it did not adequately
5 identify--it did not have Bar Legal Services
6 trading name, the business that was
7 occupying the space at that time.

8 And we--when I talked to the
9 people downtown, all they told me was if
10 you're going to have a consulting service
11 down there, all you have to do is add
12 consulting as one of the descriptions of
13 use.

14 MR. TAYLOR: But now when you
15 were in the process of applying for the
16 certificate of occupancy that is Exhibit 2B,
17 didn't you testify that you told them you
18 had the lease for Bar Legal to run that
19 business?

20 MR. ROOTHS: I told them, yes,
21 that--but they didn't--they just told me to
22 add consulting to it. The person down there

1 that issued it.

2 MR. TAYLOR: So they--

3 MR. ROOTHS: The person at the
4 desk that I spoke with, and to on that date,
5 told me all you have to do is add the
6 consulting service--I mean, the consult--
7 that you're having a consulting, doing
8 consulting work out there. They did not say
9 nothing about trademark, the trade name.

10 MR. TAYLOR: Okay. So they never
11 suggested to you that the person running the
12 business should get the certificate of
13 occupancy?

14 MR. ROOTHS: No. I owned the
15 building. They told me I should get the
16 certificate of occupancy.

17 MR. TAYLOR: And was that true
18 for all the certificates of occupancy that
19 you got?

20 MR. ROOTHS: I wouldn't say that.

21 MR. TAYLOR: Okay. Would you--

22 MR. ROOTHS: If we examine them

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1 one by one, then we can determine from
2 there. I'm not going to make a blanket
3 statement because, you know, I don't know
4 where you're going with this.

5 MR. TAYLOR: Okay. Which floor
6 did Bar Legal Services use for its business?

7 MR. ROOTHS: Which floor did Bar
8 Legal Service use? They used both floors,
9 par--they used the whole basement and they
10 used part of the upstairs.

11 MR. TAYLOR: While Bar Legal
12 Services was operating in the building, was
13 there a laundry service being operated at
14 the same time?

15 MR. ROOTHS: No. There was no
16 type of laundry service being operated when
17 Bar Legal was there. I did what the people
18 said do, told me to do at the office
19 downtown that you represent.

20 ACTING CHAIRPERSON ETHERLY: So
21 there was no pickup laundry operations at
22 the time that Bar Legal Services was in

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1 existence on the premises?

2 MR. ROOTHS: No. There was no
3 laun--no pickup laundry service there. I
4 wasn't physically able to do a pickup
5 laundry service. I was going through
6 chemotherapy at the time.

7 ACTING CHAIRPERSON ETHERLY:
8 Okay.

9 MR. TAYLOR: And so had you, at
10 this point in time, which is July of 2002,
11 had you yourself yet operated any form of
12 laundry in the building?

13 MR. ROOTHS: Did I operate any
14 form of laundry?

15 MR. TAYLOR: Yes, sir, that's--

16 MR. ROOTHS: No. I hadn't had
17 the opportunity to do it. In my opening
18 statement, I explained that I had got--I had
19 been diagnosed with soft tissue sarcoma,
20 went into treatment, then I got diagnosed
21 with soft tissue and testicular sarcoma and
22 a massive growth, and then I had to go back

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1 into treatment.

2 ACTING CHAIRPERSON ETHERLY: So
3 from purchase of the building up to 2002, I
4 mean, we're kind of stumbling through it--I
5 mean that politely, Mr. Taylor, but--

6 MR. ROOTHS: I was in--I had
7 excessive medical problems.

8 ACTING CHAIRPERSON ETHERLY: So
9 there was no laundry operation of any type
10 from your purchase of the building up to
11 2002?

12 MR. ROOTHS: When my brother took
13 the space over?

14 ACTING CHAIRPERSON ETHERLY: Yes,
15 sir.

16 MR. ROOTHS: No, sir; there was
17 no laundry service there.

18 ACTING CHAIRPERSON ETHERLY:
19 Okay. Mr. Taylor.

20 MR. TAYLOR: Did Bar Legal
21 Services have customers walk in off the
22 street?

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1 MR. ROOTHS: Yes.

2 MR. TAYLOR: Were the basement
3 doors ever open when Bar Legal Services was
4 in operation?

5 MR. ROOTHS: The basement doors?
6 Which door are you talking about? There's
7 two doors in the basement. The door was
8 open, the door was open when they were
9 there.

10 MR. TAYLOR: Okay. Now did
11 anyone ever tell you that your property
12 could not be used for commercial purposes as
13 a matter of right?

14 MR. ROOTHS: Did anyone downtown,
15 you're talking about? Or what?

16 MR. TAYLOR: Did anyone ever tell
17 you that your property could not be used for
18 commercial purposes as a matter of right?

19 MR. ROOTHS: No one at the
20 District addressed that with me; no, they
21 did not.

22 MR. TAYLOR: Did anyone who was

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1 not with the District government make that
2 suggestion to you?

3 MR. ROOTHS: A couple a people in
4 there, in the neighborhood asked me, was I
5 really able to have a business down there,
6 and they didn't think that it was a business
7 down there. But what people, what the
8 general--what the people--people in the
9 neighborhood don't know what was going on in
10 the business. I mean, like I mean, they got
11 a gas station across the street. I don't
12 have no idea what his matter of right or not
13 matter of right is. That was his concern as
14 far as I was concerned. That the Chinese
15 store was closed. They opened up another
16 store there, and I didn't go over there and
17 ask them did they--was it--were they able to
18 have a business there. I mean, you're
19 asking me to take somebody who just walks up
20 off the street's word for that I have a--
21 that they--that they're knowledgeable enough
22 to guide me through somebody. And I've

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1 already been downtown and talked to the
2 people in the District.

3 MR. TAYLOR: Did Bar Legal
4 Services pay you rent?

5 MR. ROOTHS: Yes.

6 MR. TAYLOR: Do you have any
7 receipts for rent paid for that space?

8 MR. ROOTHS: I got receipts;
9 yeah. I got a couple--I think I have a
10 couple a old checks they paid me.

11 MR. TAYLOR: Okay. Do you
12 currently believe that your property can be
13 used as a matter of right for commercial
14 purposes?

15 MS. MADDOX: I'm going to object
16 to the use of "as a matter of right." It's
17 a legal term that Mr. Rooths perhaps does
18 not understand. It's a legal term of art
19 and I want to make sure--

20 MR. TAYLOR: With all due respect
21 to counsel, the Appellant submitted an
22 application in 2003 to this body, requesting

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1 a special exception to allow Bar Legal
2 Services to operate at that location. Just
3 the fact that they submitted the application
4 would tend to indicate a knowledge that
5 something needed to be done.

6 MR. ROOTHS: And my response to
7 that is that we submitted a application and
8 on the advice of attorney, that that--we did
9 not need to come before this board because a
10 copying business is a unlicensed business
11 and it fell within the parameters of that
12 building zoning.

13 MR. TAYLOR: So you're saying
14 that you did not submit an application to
15 this board for a special exception?

16 MR. ROOTHS: I'm saying that we
17 withdrew the application based on the
18 attorney at that time. He said that why are
19 you going down--why are you going before the
20 board when you don't need to come before the
21 board? You're not doing anything that's out
22 of order with your building. So I withdrew.

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1 MR. TAYLOR: Okay. and ho was
2 that attorney?

3 MR. ROOTHS: Huh?

4 MR. TAYLOR: Who was representing
5 you at that time?

6 ACTING CHAIRPERSON ETHERLY:
7 Well, help me understand where we're kind of
8 heading with this. How does that help us
9 out here?

10 MR. TAYLOR: As I understand Mr.
11 Rooths' testimony, he believes that he has a
12 right, under D.C. zoning law, to operate a
13 commercial entity in that building.

14 However, in 2003, he filed a
15 special exception--or excuse me--he filed an
16 application for a special exception to be
17 able to operate a commercial enterprise in
18 that building.

19 He has testified here, that he
20 withdrew that exception because his attorney
21 did not believe such an application was
22 necessary, and I would just proffer that

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1 this board should look at the record, and
2 the record would speak for itself as to what
3 was said at the time.

4 The other thing that this--but I
5 guess the larger point here, Mr. Chair, is
6 that filing the application to get a special
7 exception to operate a commercial entity is
8 at odds with an understanding that you
9 already have a matter of right to operate a
10 commercial entity in that location. No
11 more; no less.

12 ACTING CHAIRPERSON ETHERLY:
13 Okay. Next question.

14 MR. TAYLOR: Thank you.

15 Mr. Rooths, when you filed that
16 application with the BZA in 2003, did you
17 put in the application that you had used the
18 basement and the first floor of the building
19 as a laundry, pursuant to the certificate of
20 occupancy that you were issued on December
21 19, 2001?

22 MR. RROOTHS: I don't know what he

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1 put in the application. Now if you want the
2 truth, I don't know what he put in the
3 application. That's why, you know, when I
4 talked to him further, he decided to
5 withdraw the application. Okay. So I don't
6 know--you're asking me about specifics and a
7 application that he wrote up. I didn't
8 write that application. Okay. My brother
9 had him write that application up, if I'm
10 correct and he was assigned to represent me.
11 I don't know who you're talking about.

12 MR. TAYLOR: Okay. Were you the
13 one that made the application?

14 MR. ROOTHS: Excuse me?

15 MR. TAYLOR: Were you the person
16 who made--

17 MR. ROOTHS: I was told by the
18 attorney--what's the question?

19 MR. TAYLOR: The question is are
20 you the one who made Application 17071 to
21 the Board of Zoning Adjustment?

22 MR. ROOTHS: I'd have to see the

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1 application. I'm just telling you the
2 truth.

3 MR. TAYLOR: Okay. At this
4 point, Mr. Chair, I would like to request
5 about a five minute break. I think
6 everyone, now that we are--it's 4:27--could
7 use that time. There's some exhibits about
8 which I would like to ask Mr. Rooths. I
9 need to make sure that copies are provided
10 to his counsel and make sure that they get
11 distributed to you as well. So I would to
12 use a break for that purpose.

13 ACTING CHAIRPERSON ETHERLY:
14 Okay. Let's do that. A five minute recess
15 and we'll return.

16 [A recess was taken from 4:28
17 p.m. to 4:38 p.m.]

5B18 ACTING CHAIRPERSON ETHERLY: All
19 right. Thank you, everyone, for your
20 patience. We're making good progress. Let's
21 pause for a moment before we jump into the
22 continuation of cross examination, just to

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1 take a little bit of a stock of where we
2 are. We're at about 4:38 now. As you heard
3 in our opening remarks, typically, we try to
4 adjourn by 6:00. As I indicated, I'll give
5 some guidance as we near that time, as to
6 where we are, what we can reasonably
7 accomplish through the remainder of the day,
8 and whether or not we need to look towards
9 an additional hearing date to complete the
10 case.

11 I'm not at a point yet and I
12 don't think my colleagues are at a point yet
13 where it's appropriate to say where we are.
14 Let's just see how far we get.

15 That being said, let me take--
16 perhaps oftentimes for those who are
17 familiar with practice before the board,
18 when we have differing Chairs, oftentimes
19 hearings at times can take on the
20 personality of our differing Chair. I am
21 always one for administrative efficiency and
22 expediting our process.

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1 That being said, and let me be
2 very clear, this is not an indication of
3 where we are in terms of the merits of the
4 case that's been presented on your behalf
5 thus far, nor is it a statement with respect
6 to the merits of the case that's being
7 argued by DCRA in response to the appeal
8 here.

9 But I just want to take a quick
10 sense of where we are, keeping in mind of
11 course that we have yet to get our ANC
12 involved in the fray, and I know they are
13 just simply chomping at the bit here to get
14 into this.

15 All of that being said, we're
16 still in the midst of cross examination. I
17 think it's appropriate to perhaps just, as a
18 signal, Mr. Taylor, I think the board
19 understands where you're heading now, I
20 think we have a sense of one of the pegs--
21 I'm not going to speak for you and present
22 your case--but I think we have a sense of

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1 one of the pegs that you're trying to hang
2 on here. So as we continue to move forward,
3 I just wanted to highlight that.

4 Clearly, there are questions that
5 DCRA is endeavoring to raise about different
6 actions that have taken place during the
7 course of your ownership of the subject
8 property.

9 Obviously you, Mr. Rooths, and
10 your counsel, will have very specific
11 responses to what DCRA is trying to get at.

12 But I signal that just as a way
13 of saying I want us to be as aggressive as
14 we can about the time that we're using
15 today.

16 So as we begin to move forward,
17 Mr. Taylor, with the continuation of your
18 cross examination, let's endeavor to be as
19 judicious as we can.

20 I know sometimes, if counsel
21 feels as though it has a home run, it just
22 wants to keep swinging until that horse is

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1 dead. But I think we're making good
2 progress in terms of getting some good
3 information on the record.

4 I'm not saying, one way or the
5 other, where that information is pointing,
6 but I think we understand what you're trying
7 to do, so I don't want to spend too much
8 time, in terms of our remaining time today,
9 in the back and forth with what do your
10 recall here, what do you recall there. I
11 think you've established some points and I
12 think clearly counsel for the Appellant has
13 raised some excellent objections and
14 concerns about what's being laid.

15 So I just want to kind a
16 highlight that to give a sense of where we
17 are.

18 That being said, Mr. Taylor, are
19 you prepared to continue with your cross?

20 MR. TAYLOR: Yes, Mr. Chair.

21 To help expedite matters, I would
22 ask if counsel would stipulate that this

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1 document that she's been handed, entitled,
2 Statement of the Applicant to the District
3 of Columbia Zoning Commission for approval
4 of special exception regarding an existing
5 nonconforming use, is a true and correct
6 copy of the document that was submitted to
7 this board as part of Case 17071.

8 MS. MADDUX: If you would give me
9 a minute, please.

10 [Pause while document is
11 reviewed]

12 MR. TAYLOR: I'd like to make a
13 request that may simplify the current
14 matter, and that is a request that this
15 board take judicial notice of the
16 application put before it in 2003, and the
17 file that would be attached to that
18 application.

19 ACTING CHAIRPERSON ETHERLY: Ms.
20 Maddox?

21 MS. MADDUX: I don't have an
22 objection to that.

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1 ACTING CHAIRPERSON ETHERLY:

2 Okay. Any comment from my colleagues? And
3 has a copy been provided to the ANC as well?
4 Okay.

5 MR. TAYLOR: A copy of the
6 complete file, I suspect that they have a
7 more complete file than I have at this
8 point. But I will make sure that such files
9 get distributed and I don't think I would
10 have any more questions regarding that
11 application as long as it's a part of the
12 record and available for your notice.

13 ACTING CHAIRPERSON ETHERLY:
14 Okay. Not having any objections to that,
15 what we're looking at is the Statement of
16 Applicant that's been taken from Case BZA
17 Application 17071; is that correct?

18 MR. TAYLOR: No, sir. I would
19 request that you take judicial notice of the
20 complete application file of 17071, that is
21 part of the record of this body.

22 ACTING CHAIRPERSON ETHERLY: I

1 see.

2 MR. TAYLOR: This is one aspect
3 of that file with which I was going to ask
4 some impeachment questions; however, I think
5 it would be instructive if you took judicial
6 notice of the entire record from that
7 application.

8 ACTING CHAIRPERSON ETHERLY: Mr.
9 Taylor, you offer what is, in my short
10 experience on the board, a very interesting
11 route. It is of some concern to me,
12 however, because from the standpoint of us
13 sitting in an appeal posture, to an extent
14 we are looking at the record as if we were
15 the ZA. Because that file that is
16 referenced, however, is a public record, and
17 available for anyone to see, it conceivably
18 could be reviewed by anyone, at any time,
19 literally by simply walking into our office
20 and asking for that file.

21 So I understand that it is not a
22 document that is somehow secret or not

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1 available to the public. That being said,
2 however, the step of taking judicial notice
3 of it is an interesting and perhaps maybe an
4 aggressive one that I don't have a clear
5 resolution on, internally, here.

6 So my inclination in this would
7 be my suggestion to my colleagues, again is
8 that if there's not an objection from the
9 Applicant's counsel--I'd simply, perhaps,
10 like to invite a little more discussion.

11 Ms. Maddox?

12 MS. MADDUX: Yes. I do have an
13 objection because this was not included in
14 as an argument--excuse me--this was not
15 included in the argument of a revocation of
16 the certificates. This is not an included
17 argument in that.

18 MR. TAYLOR: Mr. Chair, I have
19 not even begun making my case in chief. I
20 haven't made my argument yet. I am cross-
21 examining the Appellant on this argument,
22 and his argument, as I've said before,

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1 contains statements, the veracity of which I
2 question, and the record before this body,
3 from 2003, is a very important piece of
4 evidence in comparing that record to what
5 you are hearing today.

6 ACTING CHAIRPERSON ETHERLY: I
7 would agree to--pardon the interruption. I
8 would agree, to an extent. What concerns
9 me, however, with respect to the original
10 case, is, again, though it's public record,
11 that case had no effective conclusion, it
12 was withdrawn. So this body, in no way
13 acted on the information that was provided,
14 doesn't necessarily mean that the veracity
15 of what was filed is true, yea or nay, is
16 false yea or nay, however. But there was no
17 action on the part of this board resolving
18 anything that was raised by virtue of the
19 arguments.

20 So perhaps barring a stipulation,
21 a willingness or an agreement to stipulate
22 to what was submitted, even though it's part

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1 of the public record on the part of the
2 Appellant at this point in time, I would be
3 hesitant to-again, I'll just use the wording
4 "aggressive." I think it would be
5 aggressive to admit it and allow us to move
6 down a whole line of argument based upon it.

7 MR. TAYLOR: I'm just trying to
8 save 20, 30 minutes of your time.

9 ACTING CHAIRPERSON ETHERLY: I
10 understand. I think probably--let me ask
11 this question. I don't think it's
12 dispositive but I'll ask, if I may, it's a
13 little bit unusual but I'll perhaps ask,
14 through you, to your client, Mr. Crews, in
15 situations where there have been prior BZA
16 action or activity of any sort on an
17 address, or on a property that comes before
18 you for consideration, is it customary for
19 the ZA to look at prior BZA decisions with
20 respect to that particular property, much
21 less the particular issue?

22 I would hazard a guess that on an

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1 issue, of course you may look to pass BZA
2 precedent on particular issues, to inform
3 your thinking. Would it be customary for
4 you as ZA, to look, if you have a BZA case
5 on a particular property and that same
6 property is before you, would you
7 customarily look at that BZA case?

8 MR. CREWS: Absolutely.

9 ACTING CHAIRPERSON ETHERLY:

10 Okay.

11 MR. CREWS: And not only just the
12 BZA case in a conclusion or an order, but
13 also the supporting documents surrounding
14 that application in terms of both factual
15 basis, of understandings and interpretations
16 of the time, and as you're well aware, our
17 colleagues at the Office of Planning often
18 "weigh in" on BZA applications and I find
19 them quite credible, and so that that aspect
20 of a submission is also very crucial to our
21 determinations.

22 ACTING CHAIRPERSON ETHERLY: In

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1 this particular instance, again, a little
2 bit of an unusual step at this point for us
3 to kind of go into some direct with you,
4 but just for purposes of trying to resolve
5 this particular issue, in this particular
6 case, did you have occasion to look at the
7 BZA file pertaining to Application 17071 and
8 all of its contents with regard to your
9 decision making on this particular issue?

10 MR. CREWS: I have looked at
11 portions of the application. I'm not sure
12 that I could say that I've looked at all of
13 the file.

14 ACTING CHAIRPERSON ETHERLY: But
15 pursuant to the decision surrounding the
16 revocation here--

17 MR. CREWS: Right. Both this
18 declaration, the statement, and the Office
19 of Planning report.

20 ACTING CHAIRPERSON ETHERLY: You
21 do recall looking at in making your
22 decision--

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1 MR. CREWS: Absolutely.

2 ACTING CHAIRPERSON ETHERLY: --on
3 this particular revocation issue.

4 [Pause as board members confer]

5 ACTING CHAIRPERSON ETHERLY: I
6 think with that in mind, here's how I want
7 to proceed. I think with that in mind, I
8 think it is, it would indeed be appropriate
9 for the introduction of this document as a
10 document that was considered by the ZA in
11 the assessment of his decision.

12 Clearly, there would of course be
13 ample opportunity for cross examination on
14 the part of the Appellant and other parties,
15 ANC, with respect to the document, but I
16 think with that particular grounding, I'd
17 look back to you, Ms. Maddox. It would be
18 my sense--and I'll open it up to my
19 colleagues--but as the ZA has indicated, it
20 is, indeed, a matter of public record. It
21 is available for the public to see.

22 The ZA did take consideration of

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1 at least portions of that file, and the ZA
2 of course could take notice of that entire
3 file in conducting his decision on this
4 particular issue. So I think it would be
5 appropriate for it to be introduced here.

6 I'd perhaps allow, you know,
7 definitely some flexibility here, in terms
8 of at the appropriate point in time, some
9 question and answer from the Appellant back
10 to the ZA. It's perhaps a little awkward in
11 terms of the introduction for cross
12 examination purposes, because, again, I
13 think the cross examination should be
14 perhaps limited to what was raised
15 affirmatively in the direct testimony.

16 So perhaps I'm willing to "split
17 the harm" here--I won't say harm, that's the
18 wrong word to use. I'm willing to kind of
19 "split the baby" here and suggest that
20 perhaps it's best to deal with this in your
21 direct case presentation, because it indeed
22 part of what the Zoning Administrator looked

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1 at in reaching his decision on the issue of
2 revocation.

3 MS. MADDUX: That's mentioned
4 nowhere in the letter, sir, and we would ask
5 that that decision, if you can hold that
6 issue in abeyance until the opportunity for
7 cross examination, because it is not
8 mentioned anywhere in this letter as a basis
9 for revoking this certificate of occupancy.
10 It's the first time we've heard about this.

11 ACTING CHAIRPERSON ETHERLY: So
12 it would be your position, Ms. Maddox, that
13 this statement should not necessarily even
14 be used in the direct presentation of the
15 administrator's case.

16 MS. MADDUX: No, no, because--

17 ACTING CHAIRPERSON ETHERLY:
18 Understood.

19 MS. MADDUX: This was not used--
20 this was not a basis for the revocation of
21 the certificates of occupancy. It's
22 mentioned absolutely nowhere in this letter.

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1 MS. MADDUX: Your letter asserts
2 what your basis is, and it's nowhere in this
3 letter.

4 MR. TAYLOR: Well, Mr. Chairman.

5 ACTING CHAIRPERSON ETHERLY: Yes,
6 Mr. Taylor.

7 MR. TAYLOR: I think maybe in the
8 interest of economy of time, i believe that
9 the admission of this particular exhibit was
10 not challenged, when you asked earlier. I
11 will ask two extremely fast questions about
12 it as part of the cross examination of the
13 Applicant and I will then be done with it.

14 MS. MADDUX: What exhibit are you
15 referring to? The--

16 ACTING CHAIRPERSON ETHERLY:
17 Again, he's referencing the exhibit that
18 was just introduced labeled as Exhibit 10,
19 Statement of Applicant to the District of
20 Columbia Zoning Commission for the approval
21 of special exceptions. Here's what I want
22 to do here. Just a moment.

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1 [Pause as board members confer]

2 ACTING CHAIRPERSON ETHERLY: Yes.

3 here's what I'm going to suggest to my
4 colleagues with respect to--out of an over-
5 abundance of caution. I am sensitive to the
6 objection and the concerns that have been
7 raised by Appellant's counsel. However,
8 because the document is, in fact, part of a
9 public record, which is available and
10 accessible to any and everybody who choose
11 to see it, I don't necessarily see it to be
12 so out of bounds that a prior BZA case on
13 this subject property, albeit one that was
14 withdrawn, but nevertheless possessing a
15 record that is again available to the
16 public, would perhaps come up in this
17 particular proceeding.

18 I think the balanced approach to
19 this would be to have DCRA bring it up in
20 its direct presentation. However, I don't
21 think a cross examination, however, gets us-
22 -I think it's a little cleaner simply to

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1 deal with it in the course of the direct
2 presentation with regard to questions on
3 direct examination of Mr. Crews, and how he
4 dealt with the information contained in
5 Exhibit 10.

6 I think that provides the
7 Appellant the opportunity for cross
8 examination when the issue is raised. I
9 think it adequately protects the rights of
10 both parties in this particular instance.

11 Again, I'm perhaps being
12 overabundantly cautious in terms of dealing
13 with it, but I think it is probative as
14 evidentiary material, because it is, in
15 fact, part of the public record. So it is
16 not anything that is coming so far out of
17 left field. But I think that would be the
18 appropriate way to proceed. It's perhaps,
19 shall we say, a hammer response for what is
20 perhaps attack in the grand scheme of
21 things, but I think it's important that we
22 be just cautious with how we deal with this

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1 document.

2 So that would be my suggestion,
3 that you would continue with your cross
4 examination, not however go into the issues
5 that you're raising, that you're hoping to
6 raise out of this particular document, but,
7 rather, you would deal with them in your
8 cross examination in terms of eliciting from
9 the Zoning Administrator how he dealt with
10 portions of this information based on his
11 review of the overall file. That would be
12 my suggestion.

13 MR. TAYLOR: Thank you, Mr.
14 Chair. I took my notes. You will see this
15 document again.

16 ACTING CHAIRPERSON ETHERLY:
17 Excellent. Okay. With that, we are still
18 in cross examination.

19 MR. TAYLOR: Mr. Rooths, turning
20 your attention to the certificate of
21 occupancy issued December 22 of 2005, I
22 believe that it is your Exhibit No. 14, it

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1 does state, does it not, that the location
2 was previously used for dry cleaning,
3 collection and pickup?

4 MR. ROOTHS: Excuse me?

5 MR. TAYLOR: Does that
6 certificate of occupancy state that the
7 previous use of the location was a dry
8 cleaning collection and pickup?

9 MR. ROOTHS: Yes.

10 MR. TAYLOR: And did you write
11 that same information on your application?

12 MR. ROOTHS: I wrote that
13 statement on the application as advisement
14 of your staff down at DCRA.

15 MR. TAYLOR: But it had not been
16 used as a dry clean collect and pickup at
17 that point, had it?

18 MR. ROOTHS: The previous one to
19 this had already had the approved use and
20 the previous use, and that's what was on
21 that, and I was instructed by your staff to
22 do the same thing and just change ownership.

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1 MR. TAYLOR: But my question
2 isn't regarding a certificate of occupancy.
3 The location at that point had not been
4 actually used as a dry clean collection and
5 pickup location, had it?

6 MR. ROOTHS: No; it hadn't.

7 MR. TAYLOR: Thank you. Now it
8 also stated, regardless of why it says it,
9 it states that this certificate of occupancy
10 was issued because there had been a change
11 of ownership; is that correct?

12 MR. ROOTHS: Yes.

13 MR. TAYLOR: And that wasn't true
14 either. There had not been a change of
15 ownership, had there?

16 MR. ROOTHS: Yes. My name is
17 Edward Rooths. I'm Floyd B. Smith.

18 MR. TAYLOR: Okay. I'll go on.
19 What were the store hours you used for your
20 dry clean and pick up business?

21 MR. ROOTHS: Excuse--you're
22 saying what?

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1 MR. TAYLOR: When you were
2 operating your dry cleaning pick up
3 business, what were your store hours?

4 MR. ROOTHS: What was the store
5 what?

6 MR. TAYLOR: When were you open?
7 What time of day?

8 MR. ROOTHS: What time of day did
9 I open?

10 MR. TAYLOR: Yes.

11 MR. ROOTHS: 7:00 to 6:00.

12 MR. TAYLOR: 7:00 to 6:00. Okay.

13 And how about weekends?

14 MR. ROOTHS: 7:00 to 6:00 on
15 Saturday. 10:00 to 4:00 on Sunday.

16 MR. TAYLOR: Okay. and do you
17 recall what the hours of operation were for
18 Bar Legal when it was using your building?

19 MR. ROOTHS: I wasn't working
20 functionally inside the place. I guess they
21 opened up around 7:00, 6:30 in the morning,
22 and then they'd work until 9:00, 10:00

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1 o'clock at night, I guess.

2 MR. TAYLOR: Okay. Regarding the
3 two stop work orders that are your Exhibits
4 15 and 16, you testified, I believe, that
5 the one in Exhibit 15, someone had lifted
6 that?

7 MR. ROOTHS: I testified that--
8 yeah--that I called downtown and the person
9 had told me on the phone that it was no
10 longer in effect.

11 MR. TAYLOR: Do you have any
12 piece of paper documenting--

13 MR. ROOTHS: I called downtown.
14 Someone told me on the phone that the stop
15 work order was no longer in effect. I
16 called the office--

17 MR. TAYLOR: in a yes or--in a
18 yes or no form, do you have a piece of paper
19 stating that that stop work order has been
20 lifted?

21 MR. ROOTHS: Do I have a piece of
22 paper? I don't have a piece of paper.

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1 MR. TAYLOR: Okay. With--

2 MR. ROOTHS: Oh. For 15?

3 MR. TAYLOR: Yes, sir.

4 MR. ROOTHS: You're talking about
5 Juan Scott's stop work order?

6 MR. TAYLOR: Yes, sir.

7 MR. ROOTHS: He came out. He
8 came out and told me to my face, that that
9 stop work order was lifted.

10 MR. TAYLOR: Do you have a piece
11 of paper stating that?

12 MR. ROOTHS: Do I have a piece of
13 paper? Well, he never sent me a piece of
14 paper.

15 MR. TAYLOR: So does that mean
16 the answer would be no?

17 MR. ROOTHS: No, I don't have a
18 piece of paper but he told me that a stop
19 work order was lifted.

20 MR. TAYLOR: Now regarding the
21 stop work order that is your Exhibit 16, do
22 you have a piece of paper stating that that

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1 has ever been lifted?

2 MR. ROOTHS: Now this is the one
3 I called downtown on, and talked to someone
4 in the, in that office, and they went on the
5 computer, and it wasn't--and they couldn't
6 find where the stop work order was still in
7 effect.

8 MR. TAYLOR: You testified that
9 you received a letter revoking the
10 certificate of occupancy, and which is why
11 we're here today. Do you recall when you
12 received that document?

13 MR. ROOTHS: When I received the
14 letter that the certificate of occupancy
15 would be revoked?

16 MR. TAYLOR: Yes, sir.

17 MR. ROOTHS: Is that what you're
18 saying?

19 MR. TAYLOR: Yes.

20 MR. ROOTHS: I think it was the
21 12th of September.

22 MR. TAYLOR: And did you stop

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1 operating the business at that point?

2 MR. TAYLOR: No. I didn't stop
3 operating the business because it was my
4 understanding that we had--we could appeal
5 the process, and the appeal would put this
6 into a holding pattern until there was a
7 decision.

8 MR. TAYLOR: Did anything happen
9 that changed your mind on that?

10 MR. ROOTHS: What happened to
11 change my mind on what?

12 MR. TAYLOR: On your ability to
13 continue operating the business during the
14 appeal process.

15 MR. ROOTHS: What do you want?
16 What are you looking for?

17 MR. TAYLOR: Well, I am just
18 asking you. Well, okay, I'll rephrase this.

19 Have you continued operating the
20 business?

21 MR. ROOTHS: No. I didn't
22 continue operating the business. You know

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1 as well as I do, Mr. Crews came out and told
2 me that, on the 28th of September, that I
3 could no long--that I could no longer be
4 open. I closed the business at 4:00 o'clock
5 on the 28th of September and then he came
6 out to verify it. I sent my staff home on
7 the 20th of September at 4:00 on the 28th of
8 September

6a 9 MR. TAYLOR: Do you have any
10 document from your mortgage company telling
11 you that your building is zoned for
12 commercial use?

13 MR. ROOTHS: I got the mortgage;
14 it's a commercial mortgage. I can't get a
15 residential mortgage on it because of the
16 status of the building in the District
17 records.

18 MR. TAYLOR: Have you made an
19 attempt to get such a mortgage?

20 MR. ROOTHS: Have I made an
21 attempt to do what, sir?

22 MR. TAYLOR: Have you made an

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1 attempt to get a residential mortgage?

2 MR. ROOTHS: I refinanced with
3 BB&T Bank. They forced me to take a
4 commercial mortgage through their commercial
5 division in Columbia, Maryland, and I had to
6 pay the commercial rate.

7 MR. TAYLOR: Okay. Mr. Chairman,
8 that ends my portion of the cross
9 examination. I will yield to my ANC
10 colleagues.

11 ACTING CHAIRPERSON ETHERLY:
12 Excellent. Thank you very much, Mr. Taylor.

13 ANC, let's get you up here. I
14 know you've been excellently patient. We
15 may have need for one more chair. If we
16 could perhaps make a little bit of space.
17 Excellent. I appreciate it. There's plenty
18 of space to go around.

19 Excellent. Sir, if you and your
20 colleague could identify yourselves and
21 provide your addresses for the record.

22 ANC COMMISSIONER DYER:

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1 Certainly.

2 ACTING CHAIRPERSON ETHERLY: I
3 want to make sure that you filled out two
4 witness cards for our reporter.

5 ANC COMMISSIONER DYER: We did.

6 ACTING CHAIRPERSON ETHERLY:
7 Excellent.

8 ANC COMMISSIONER DYER: My name
9 is Christopher Dyer. I am the ANC
10 Commissioner representing single member
11 district 2F03. My address is 1420 N Street,
12 N.W., Apartment No. 508, Washington, D.C.
13 20005.

14 ACTING CHAIRPERSON ETHERLY:
15 Excellent. Welcome to you, Commissioner.

16 ANC COMMISSIONER DYER: Thank
17 you. Yes, ma'am.

18 MS. KRAMER: I'm Helen Kramer.

19 ACTING CHAIRPERSON ETHERLY: Ms.
20 Kramer, if you could make sure your--thank
21 you very much, Mr. Taylor

22 MS. KRAMER: I'm Helen Kramer. I

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1 live at 1325 13th Street, N.W., No. 25. I'm
2 the former chairman of ANC 2F and the
3 current member of the Community Development
4 Committee. I also was the Commissioner, for
5 ten years, for the single member district in
6 which the subject property is located.

7 ACTING CHAIRPERSON ETHERLY:
8 Excellent. And Mr. Dyer, Commissioner Dyer,
9 the subject property is now in your SMD?

10 ANC COMMISSIONER DYER: No, but
11 I'm the designee for the ANC because I'm the
12 chair of the Community Development Committee
13 that made the recommendation to the full
14 ANC.

15 ACTING CHAIRPERSON ETHERLY:
16 Excellent. Okay. Let's do a little bit of
17 housekeeping, just so we're aware of the
18 footing that we're on with respect to the
19 ANC. As I recall, we do not currently have
20 anything in submittal from the ANC, in
21 writing; is that correct?

22 ANC COMMISSIONER DYER: You

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1 should have a piece of--I mean, I will have
2 to check with our secretary, but we have a
3 letter that is hopefully being submitted in
4 writing, that is a summary of the action
5 that we took at our meeting on May 5th. Or
6 I'm sorry. March.

7 ACTING CHAIRPERSON ETHERLY:

8 Okay. And even though we're in the midst of
9 cross examination, I just want to be sure
10 that we're clear for the record.

11 Mrs. Bailey, do you have a record
12 of any submittal from the ANC at this time?

13 MS. BAILEY: Unless it came in
14 today, Mr. Chairman, I'm not aware of it.
15 If it's something that was filed today, I
16 can go and check; but I'm not aware of
17 anything prior to today.

18 ACTING CHAIRPERSON ETHERLY:

19 Commissioner Dyer, do you have a sense on
20 when that submittal might have taken place?

21 ANC COMMISSIONER DYER: I do not
22 know. I hope that it happened--I mean, is

1 there a deadline for submittal?

2 ACTING CHAIRPERSON ETHERLY:

3 Normally, we like to have it in advance of
4 the proceeding.

5 ANC COMMISSIONER DYER: Yes. I
6 know.

7 ACTING CHAIRPERSON ETHERLY: It's
8 not going to be a major issue. We can work
9 around that issue today. So just in the
10 interest of time, because we want to get the
11 benefit of your cross examination, your
12 presence, and of course that of Mrs. Kramer.
13 So I'll just ask: The ANC did take action on
14 this appeal?

15 ANC COMMISSIONER DYER: We did
16 take formal action on this appeal.

17 ACTING CHAIRPERSON ETHERLY:
18 Okay. And that action was to support the
19 appeal?

20 ANC COMMISSIONER DYER: To oppose
21 the appeal.

22 ACTING CHAIRPERSON ETHERLY: To

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1 oppose the appeal. Okay. And you were
2 designated as the representative on behalf
3 of the ANC for all actions related to the
4 appeal; correct?

5 ANC COMMISSIONER DYER: Yes.
6 During the resolution at the meeting, yes, I
7 was.

8 ACTING CHAIRPERSON ETHERLY:
9 Okay. And for the purposes of Mrs. Kramer--

10 ANC COMMISSIONER DYER: And Mrs.
11 Kramer was also identified as another person
12 who could speak on behalf of the ANC as
13 well, based on her extensive knowledge of
14 the case, prior.

15 ACTING CHAIRPERSON ETHERLY:
16 Excellent. So in terms of the presentation
17 of the case, we will expect to see you,
18 Commissioner Dyer, and you, Mrs. Kramer,
19 when we get to that appropriate point in
20 time, and for purposes of cross examination,
21 both of you will be handling cross
22 examination at the appropriate time.

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1 ANC COMMISSIONER DYER: Right.

2 Either her or me; yes.

3 ACTING CHAIRPERSON ETHERLY:

4 Okay; excellent.

5 MS. BAILEY: Mr. Chairman, excuse
6 me.

7 ACTING CHAIRPERSON ETHERLY: Mrs.
8 Bailey.

9 MS. BAILEY: If the Commissioner
10 has a copy, we would love to make--do you
11 have a copy?

12 ANC COMMISSIONER DYER:
13 Unfortunately, I don't, and I will 'fess up
14 to the fact that we have a new secretary in
15 the ANC, and we have a Chair who has a
16 tendency, sometimes, to really extrapolate
17 and expand upon things that are made, and it
18 is a possibility that because of the
19 relative newness of our secretary, that the
20 letter is--I've seen a draft of it. I will
21 double-check, when I get back to a computer,
22 to make sure that it is immediately

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1 transmitted.

2 ACTING CHAIRPERSON ETHERLY: I
3 would suspect that we'll probably have some
4 time to be able to accept that into the
5 record. So we'll deal with kind of how we
6 resolve that at the end of our proceeding
7 today. But I think that helps just to
8 establish, one, who everybody is, and who's
9 representing whom, as we move forward.

10 So that was a little bit of an
11 unusual preamble, but we are in cross
12 examination now, so again, this is the
13 opportunity for the two of you, as designees
14 of the ANC, to ask cross examination
15 questions on what you've heard in terms of
16 the direct presentation. And so we're not
17 even yet at the presentation of your case.
18 We're still at cross examination.

19 So, with that, if you have any
20 cross examination questions, now would be
21 the time, just on their direct testimony.

22 ANC COMMISSIONER DYER: I don't

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1 have any but Helen might have one.

2 ACTING CHAIRPERSON ETHERLY:

3 Certainly. Ms. Kramer.

4 MS. KRAMER: Mr. Rooths, you
5 testified--rather, responded to a direct
6 question in cross examination by Mr. Taylor,
7 that nobody in the community ever told you
8 that you could not use this property for
9 commercial purposes as a matter of right.

10 Do you recall being introduced to
11 me by one of the co-owners of the French
12 deli located at 1313 13th Street, N.W.,
13 shortly after you purchased the property in
14 January 2000? I was then the Commissioner--

15 MR. ROTHHS: Shortly after I
16 purchased the property?

17 MS. KRAMER: Yes.

18 MR. ROTHHS: The French deli
19 wasn't open when I purchased the property.

20 MS. KRAMER: Do you recall being
21 introduced to me, shortly after you
22 purchased the property?

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1 MR. ROOTHS: No, I don't, really.

2 MS. KRAMER: Mr. Chairman, may I
3 recount my conversations with Mr. Rooths at
4 that time?

5 MS. MADDOX: Objection.

6 ACTING CHAIRPERSON ETHERLY: I
7 think it would probably be most appropriate
8 in your direct case presentation.

9 MS. KRAMER: Very well. I'll
10 hold it for then. Thank you.

11 ACTING CHAIRPERSON ETHERLY:
12 Okay. Nothing further at this time?

13 ANC COMMISSIONER DYER: No;
14 nothing further.

15 ACTING CHAIRPERSON ETHERLY:
16 Okay. Thank you both very much. Please
17 make yourselves comfortable. We'll call you
18 back up at the appropriate point in time.

19 Okay. With that being said, I
20 think we are now at the point in time where
21 the District's case is presented. Okay.
22 All right. What we'll do is, well, let's

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1 just simply recount where we are. We would
2 next hear the District's case in response,
3 as the Appellee. There would of course be
4 the opportunity for cross examination on the
5 part of the Appellant of the direct
6 testimony that you hear from DCRA. There
7 will be opportunity for cross examination by
8 the ANC of what they hear from DCRA.

9 We would then move to the ANC's
10 presentation of its case, following DCRA's
11 presentation. We would then have cross
12 examination, one final time, and then we
13 would finally come back to closing, summary
14 and closing.

15 We are at about 5:21 right now.
16 I would still suggest to my colleagues that
17 we'll probably assess--let's take five
18 minutes and maybe just assess, in executive
19 session, where we are, and what we can
20 reasonably expect to accomplish today, and
21 see whether or not we're going to need to
22 set another date.

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1 It may very well be the case that
2 we can get quite a bit done today, so I'm
3 not necessarily suggesting that we're going
4 to close right at 6:00. We might look to go
5 a little bit beyond. But I want to get a
6 sense of my colleagues.

7 Perhaps while we're waiting, I'll
8 have you come back to the mike, sir. But
9 perhaps as Mr. Taylor comes forward--Mr.
10 Taylor, we're at the time where it would be
11 appropriate for the direct presentation of
12 DCRA's case, but I'm also just using this
13 brief lull in the activity to get a sense of
14 where we are from timing.

15 Let me perhaps ask you, and then
16 Commissioner Dyer has a comment, what are
17 you anticipating in terms of the time needed
18 for your direct presentation? Of course
19 that's not going to account for cross
20 examination or board questions.

21 MR. TAYLOR: I think it will take
22 a half hour--

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1 ACTING CHAIRPERSON ETHERLY: If
2 you could be sure to get us on the mike
3 there.

4 MR. TAYLOR: Mr. Chair, I project
5 that my direct presentation will take
6 appropriately one half-hour, maybe slightly
7 less.

8 ACTING CHAIRPERSON ETHERLY:
9 Okay, then. All right. Thank you very
10 much for that guidance.

11 Commissioner Dyer?

12 COMMISSIONER DYER: And I was
13 only going to tell you that my direct
14 presentation will be about a minute to a
15 minute and a half, and then maybe--I don't
16 know how many questions will be asked but
17 it's a very brief statement.

18 ACTING CHAIRPERSON ETHERLY:
19 Okay; excellent. Let me, if I could
20 perhaps, just get a general indication of
21 what type of timing pressures, scheduling
22 pressures any of our participants may have,

1 should the board be desirous of moving past
2 6:00 p.m., to any significant extent. How
3 are participants doing in terms of timing?
4 Are there any scheduling issues with respect
5 to the Appellant? Ms. Maddox, Ms. Henry,
6 any particular issues with respect to--if we
7 move beyond 6:00, for yourself or your
8 client? Okay.

9 COMMISSIONER DYER: Mr. Chairman,
10 it would be preferable for my schedule, if
11 we were to actually finish by--if we were to
12 go into overtime, and not have to have
13 another extended day, to come back--

14 ACTING CHAIRPERSON ETHERLY:
15 You'd love to get us done today.

16 COMMISSIONER DYER: I would love
17 for you--it would be gratefully appreciated.

18 ACTING CHAIRPERSON ETHERLY:
19 Okay. Let's take just a very quick five
20 minute recess. We'll come back and convene,
21 start with DCRA's presentation. I'll take
22 stock of my colleagues and see where we are.

1 [A brief recess was taken from
2 5:24 p.m. to 5:25 p.m.]

3 ACTING CHAIRPERSON ETHERLY: All
4 right, ladies and gentlemen, if we can
5 reconvene. Thank you yet again for your
6 patience.

7 It's the board's sense, that if
8 we're aggressive, we'd like to try to at
9 least see what we can get done by 6:30,
10 perhaps 7:00 o'clock at the latest.
11 Obviously, of course, that's not
12 anticipating what cross examination might
13 hold for us, but let's just jump right into
14 it.

15 Mr. Taylor, your direct
16 presentation.

17 MR. TAYLOR: Thank you, Mr.
18 Chairman. I have a very short opening
19 statement to make, deferred from the
20 beginning, and I would say that, in
21 actuality, this is an extremely simple case.

22 This is a case regarding a

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1 commercial entity attempting to operate in a
2 zone that is zoned completely residential.
3 There may once have been a use, prior to the
4 publishing of the current zoning regimen, in
5 1958, that would violate the current zoning
6 regimen. However, that use was discontinued
7 no later than 1970, and therefore, there is
8 no grandfathering of any use that remains.
9 In fact, the property was used in
10 conformance with zoning regulations from
11 1970 until at least 1988, and pursuant to
12 Regulation 2003.4, the use of the property
13 is not allowed to revert to a nonconforming
14 status, once it has been brought into
15 conformance.

16 Furthermore, we contend that
17 there's been no use of this property as a
18 laundry in the three years prior to the
19 issuance of the one certificate of occupancy
20 that is in question today. This hearing is
21 not concerning the revocation of any
22 certificate of occupancy other than the one

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1 that was issued December 12, 2005.

2 This hearing is not about any
3 building permit. We are strictly here for
4 the revocation of that one certificate of
5 occupancy. That having been said, I would
6 like to go ahead and call my first witness,
7 Mr. Bill Crews.

8 Would you please state your name
9 for the record, sir.

10 MR. CREWS: My name is Bill
11 Crews.

12 MR. TAYLOR: And what is your
13 current position?

14 MR. CREWS: I'm the Zoning
15 Administrator for the District of Columbia.

16 MR. TAYLOR: And briefly, would
17 you please describe your duties in that
18 position.

19 MR. CREWS: I have the
20 responsibility to interpret, administer and
21 enforce the zoning regulations of the
22 District of Columbia.

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1 MR. TAYLOR: And are you the
2 official who revoked the certificate of
3 occupancy for which we are here today?

4 MR. CREWS: Yes.

5 MR. TAYLOR: Are you familiar
6 with the property in question?

7 MR. CREWS: Yes.

8 MR. TAYLOR: And in what zone is
9 it located?

10 MR. CREWS: It's in a residential
11 zone, R-5-C.

12 MR. TAYLOR: And what are the
13 permitted uses in an R-5-C zone?

14 MR. CREWS: Single-family
15 dwellings, row dwellings, flats, apartment
16 buildings, churches, places of worship, and
17 accessory uses.

18 MR. TAYLOR: And how did the
19 Nancy's Dry Cleaning Pickup come to your
20 attention?

21 MR. CREWS: It came to my
22 attention based on complaints that a

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1 commercial establishment was trying to open
2 in this residential zone.

3 MR. TAYLOR: And once this came
4 to your attention, what actions did you
5 take?

6 MR. CREWS: Our standard is a
7 search of our databases and our files, to
8 see what activity has occurred in terms of
9 building permits, zoning, certificate of
10 occupancies, and other information. I also
11 consult the geographic information system,
12 look at aerial photos and pictures of the
13 property, and as I mentioned earlier, search
14 the Office of Zoning's Web site for any
15 Zoning Commission orders or Board of Zoning
16 Adjustment orders.

17 MR. TAYLOR: Okay. Mr. Crews,
18 I'm going to show you a packet of three
19 photographs that have been provided already
20 to the board and to counsel. Can you
21 identify these three photographs, please.

22 MR. CREWS: Yes. The first

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1 photograph that looks a little molted, is a
2 photograph that was submitted for a building
3 permit to re-stucco the front facade. The
4 second photo with the number 0243, and then
5 0012, and the date, August 24th, 2004, is
6 the photo from the Master Address
7 repository, a District of Columbia database
8 that, as indicated, the photo was taken on
9 August 24, 2004, and the final photo is
10 taken on September 27th, 2006, showing the
11 premises at 1312 13th Street, with the sign,
12 Nancy's Pickup, and as you can see--they
13 don't have color copies, do they?

14 MR. TAYLOR: They do not.

15 MR. CREWS: Okay. But in the
16 color copy, it's quite obvious that the neon
17 Open sign is illuminated.

18 ACTING CHAIRPERSON ETHERLY: Just
19 very quickly, Mr. Crews, what was the date
20 for the first picture regarding the stucco.

21 MR. CREWS: I think that permit
22 was some time in 2003.

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1 ACTING CHAIRPERSON ETHERLY: So
2 the picture is from somewhere in 2003.
3 Okay.

4 MR. CREWS: 2003, or previous.

5 ACTING CHAIRPERSON ETHERLY: And
6 then the second picture is, as dated, 8-24-
7 2004?

8 MR. CREWS: Right.

9 ACTING CHAIRPERSON ETHERLY:
10 Excellent; thank you.

11 MR. TAYLOR: Okay; thank you.

12 Once this--okay. You said you
13 investigated the matter. Did you contact
14 the Appellants during this investigation?

15 MR. CREWS: Yes. We contacted,
16 and Mr. Rooths came in and met with myself,
17 with Linda Argo, our deputy director for
18 communications and customer service, and
19 Chris Kohatsu, a DCRA employee that is--
20 she's no longer with the agency but she was
21 a customer service advocate at the time.

22 And we explained to Mr. Rooths

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1 that his proposed operation of a dry
2 cleaning drop-off would not be allowed
3 because any nonconforming use, as such, had
4 been discontinued, and that there was no
5 evidence that we had, that a dry cleaning,
6 or any commercial operation had occurred for
7 at least the last--the previous three years.

8 We also gave him the opportunity,
9 when he indicated that it had been used,
10 that we gave him the opportunity to provide
11 us with evidence of that use, and that we
12 strongly advised him not to open a business.

13 He said he would go back and look
14 for evidence of what he was asserting as
15 previous use but he never provided us with
16 any indication of an actual commercial use
17 of any type at this location.

18 MR. TAYLOR: And what was the
19 final result of your investigation?

20 MR. CREWS: The final result of
21 my investigation was that the history of the
22 certificate of occupancies showed that there

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1 were a commercial laundry use in the 1940's
2 but that in the 1970's and early 1980's,
3 that there were certificate of occupancies
4 that had the whole building being used as
5 residential, and as I'm sure the board is
6 aware, one certificate of occupancy replaces
7 the previous certificate of occupancies, and
8 so this was a very good indication that it
9 had not been used.

10 We also, other than the
11 certificate of occupancy applications, and
12 the actual certificates from 1998, it
13 appeared that someone came in and applied on
14 a change of ownership use and used the 1940
15 certificate of occupancy as the previous
16 use.

17 MR. TAYLOR: Mr. Crews, let me
18 help you narrow this down for the board.
19 What was the bottom line of the final result
20 of your investigation?

21 MR. CREWS: The bottom line was
22 that a commercial use--there was no

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1 authority, or right, under the zoning
2 regulations, to conduct a commercial use at
3 this building.

4 MR. TAYLOR: And therefore what
5 action did you take?

6 MR. CREWS: We issued a Notice to
7 Revoke the certificate of occupancy as being
8 obtained by misrepresentation, and we also
9 revoked the two building permits that were
10 issued on the basis of that certificate of
11 occupancy.

12 MR. TAYLOR: Now you started to
13 get into this area already, but if you
14 could, just categorize, please, some of the
15 factors that went into your making the
16 decision. Or what--let me rephrase that,
17 sir. In making the decision to revoke the
18 certificate of occupancy, what categories of
19 factors did you consider?

20 MR. CREWS: We had sent an
21 inspector out, and we, again as I mentioned,
22 researched. We had heard testimony from

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1 neighbors in terms of the uses or not--or
2 lack thereof for the building. I discovered
3 the Office of Planning's report on the
4 previous BZA application, filed in 2003.

5 MR. TAYLOR: Okay. Let me stop
6 you--

7 MR. CREWS: Okay; all right.

8 MR. TAYLOR: --just at this
9 point. Do you have copies of that Office of
10 Planning report that you reviewed?

11 MR. CREWS: I do.

12 MR. TAYLOR: Permission to
13 distribute these. Okay, Mr. Crews, for the
14 record, I am showing you a memorandum on
15 Office of Planning letterhead dated January
16 28, 2004, addressed to the District of
17 Columbia Board of Zoning Adjustment, from
18 David J. McGitten through Ellen McCarthy and
19 Andrew Altman. Is that the document that
20 you referenced, when you said you had been
21 through and reviewed the Office of Planning
22 report?

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1 MR. CREWS: Yes.

2 MR. TAYLOR: And in particular
3 with the Office of Planning report, what
4 points in that report did you take
5 particular note of in making your decision?

6 MR. CREWS: First of all, the
7 report was on an application to change from
8 one nonconforming use to another
9 nonconforming use under chapter 20 of the
10 zoning regs, and so the most interesting
11 thing was on the front page, the
12 recommendation of the Office of Planning,
13 that under the bulleted paragraph where they
14 indicate that the change from one
15 nonconforming use to another assumes that
16 there is an existing nonconforming use of
17 the site. And then it quotes the section,
18 2005.1, and then it goes on at the end of
19 the first page.

20 "No evidence has been provided to
21 document that a nonconforming use has
22 actually been in operation on the property

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1 within the last three years."

2 And so this was an indication in
3 early 2004, that there was no nonconforming
4 use in existence. It dovetailed with what I
5 knew in 2006, based on the report of the
6 inspector, that the basement or ground floor
7 level of the premise looked like it was
8 newly remodeled and ready to start
9 something, but nothing that showed anything
10 in existence, and that, again, was
11 collaborated by the neighbors' information
12 that I had.

13 MR. TAYLOR: Mr. Crews, does this
14 report indicate the alleged previous
15 nonconforming use and the nonconforming use
16 for which approval was being sought?

17 MR. CREWS: Right. The summary,
18 on the front page, indicates that the
19 Applicants, in this particular case, Edward
20 Rooths and Nancy Dao, seek a special
21 exception to allow a change from one
22 nonconforming use, paren, laundry, to

1 another nonconforming use, comma, office.

2 MR. TAYLOR: Was it your
3 understanding, when reviewing this document,
4 that the application had been withdrawn and
5 the board had not issued an approval for the
6 location to be used, in this case, as a
7 nonconforming office?

8 MR. CREWS: Right, and I have
9 found no evidence of any special exception
10 or use variance given to this address to
11 allow a nonconforming use.

12 MR. TAYLOR: Okay. Mr. Crews,
13 you said you had researched the history of
14 the certificates of occupancy for the
15 location, and I will be handing you,
16 shortly, a packet of certificates of
17 occupancy, and once I have done that, I
18 would ask you if you could please walk
19 through for the board, the more critical
20 certificates of occupancy, and for the
21 board's benefit, you should have already
22 been handed this packet, and counsel has

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1 already been handed the packet.

2 ACTING CHAIRPERSON ETHERLY: And
3 Mr. Taylor, that would be the packet with C
4 of 0 permit number 109753 at the top of the
5 page; correct?

6 MR. TAYLOR: Yes, Mr. Chairman.

7 ACTING CHAIRPERSON ETHERLY:
8 Okay. I just wanted to make sure. Did you
9 provide a copy to the ANC representative?

10 MR. TAYLOR: No. I haven't.

11 ACTING CHAIRPERSON ETHERLY:
12 Okay. Let's make sure that they--

13 MR. TAYLOR: I will make sure of
14 that.

15 MS. MADDOX: What is the date on
16 that?

17 [Pause]

18 MR. TAYLOR: Your packet, sir.

19 MR. CREWS: Thank you. Okay.
20 What was the question, now? What was your
21 question?

22 MR. TAYLOR: Oh. My question was

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1 simply a request that you identify these
2 certificates of occupancy as business
3 records of DCRA. Well, let's do that first.

4 MR. CREWS: Okay. These look
5 like copies of certificate of occupancies
6 issued by DCRA, and its predecessor
7 agencies, and ones that I have reviewed.
8 Both the certificate and the applications.

9 MR. TAYLOR: Thank you. And are
10 they in inverse chronological order, to your
11 observation?

12 MR. CREWS: They are most recent
13 to earliest.

14 MR. TAYLOR: Is that a yes?

15 MR. CREWS: That's a yes.

16 MR. TAYLOR: Okay. Would you
17 please identify the one in there that show
18 total conforming usage of the structure.

19 MR. CREWS: Several ones down,
20 there's one dated March 27, 1979, numbered
21 B111487, that shows the use of the basement
22 and first floor of the building at 1312 13th

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1 Street, N.W., was a two-family flat, one
2 unit in the basement and one unit on the
3 first floor. That would be a conforming
4 use.

5 The next one, older than that,
6 dated June 3rd, 1977, numbered B101582,
7 shows that all of the floors of the building
8 at 1312 13th Street, N.W. are apartment
9 house, with four units.

10 The one earlier than that,
11 October 5th, 1970, B73932, shows the use of
12 all and basement floors of the address at
13 1312 13th Street as an apartment house, for
14 apartments, and that--the next older
15 certificate of occupancy is 1949, previous
16 to the adoption of the current zoning
17 regulations.

18 MR. TAYLOR: Okay. Thank you,
19 sir. Now would you please look for a
20 certificate of occupancy issued in 1989.

21 [Pause]

22 MR. TAYLOR: Your packet does not

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1 have that.

2 [Pause]

3 MR. CREWS: Excuse me. There is
4 one, it looks like this, a little bit
5 different than most of the rest of them.
6 Certificate of occupancy dated June 23rd,
7 1989, number 1890948, and this is a
8 certificate of occupancy to use the basement
9 as an industrial laundry service, and in
10 parentheses, it also says, "Also shoe
11 repair, 2500 square feet."

12 MR. TAYLOR: Okay. Does that use
13 conform with the zoning code?

14 MR. CREWS: No.

15 MR. TAYLOR: In your professional
16 opinion, was that certificate of occupancy
17 properly issued?

18 MR. CREWS: No.

19 MR. TAYLOR: In considering
20 whether or not to revoke the certificate of
21 occupancy, did you investigate the status of
22 any business licenses that were currently or

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1 previously issued for that location?

2 MR. CREWS: I did and I did not
3 find any.

4 MR. TAYLOR: Is a business
5 license required for a laundry?

6 MR. CREWS: I believe so.

7 MR. TAYLOR: Was it required for
8 a laundry prior to the current business
9 license regimen?

10 MR. CREWS: I believe so.

11 MR. TAYLOR: Was a business
12 license required for a laundry under the
13 current business license regimen?

14 MR. CREWS: I believe so.

15 MR. TAYLOR: Was a business
16 license required under both those regimens
17 to operate an apartment building?

18 MR. CREWS: Yes.

19 MR. TAYLOR: Did you consider--in
20 fact I think you did but let me just
21 refresh. Did you consider whether or not
22 the use of the basement and first floor as a

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1 dry cleaning pickup collection point, could
2 be characterized as an adjunct use to an
3 apartment building?

4 MR. CREWS: I did consider that
5 but that, those regulations in chapter three
6 for the R-5 residential districts, require
7 that any adjunct commercial use of an
8 apartment building be primarily for the use
9 of the residents of that apartment building
10 and that there can be no outside
11 advertisements or signage, and there can be
12 no direct outside entrance to that adjunct
13 commercial use.

14 MR. TAYLOR: Do you happen to
15 recollect the citation for the regulation
16 which you're referencing?

17 MR. CREWS: It would be in the
18 350's section of chapter three of Title 11.
19 I got the book here. I could--I don't know
20 if that's permissible or not.

21 MR. TAYLOR: Is there any kind of
22 document that might refresh your

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1 recollection of the exact citation?

2 MR. CREWS: The zoning regs.

3 MR. TAYLOR: Would you please
4 take a look at the zoning regs and see if
5 you find those.

6 MR. CREWS: Let me just go ahead
7 and flip through them.

8 Section 354, titled Convenience
9 Stores and Apartment Houses.

10 MR. TAYLOR: Are there any other
11 relevant restrictions that would render, or
12 that would affect your decision on this
13 particular property?

14 MR. CREWS: Again, there's no
15 direct entrance to the facility from the
16 outside of the building. No part of the
17 facility or its entrance to the facility
18 shall be visible from a sidewalk. There can
19 be no sign or display indicating the
20 existence of the adjunct facility visible
21 from the outside, and also that the center,
22 or the principal entrance of the apartment

1 house shall be more than one-quarter mile
2 walking distance from the nearest principal
3 business street frontage, and as I mentioned
4 before, this type of facility is intended to
5 supply tenants of the apartment house with
6 the commodities and services--

7 MS. MADDUX: I'm going to object.
8 That is not refreshing recollection. It's
9 reading from the statute.

10 ACTING CHAIRPERSON ETHERLY:
11 Understood. We don't necessarily perhaps
12 stand as much on ceremony, on those
13 particular grounds, so I think it would be
14 more than appropriate for the ZA to refer to
15 the zoning regs. These are regs that he's
16 relying upon in the consideration of the
17 question before him as related to the
18 revocation. Thank you.

19 MR. TAYLOR: Let me ask more
20 specifically. In considering whether or not
21 to revoke this certificate of occupancy, did
22 you refer to regulation 354?

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1 MR. CREWS: Yes.

2 MR. TAYLOR: Now I believe you
3 spoke earlier, that you had relied on
4 reports from neighbors; is that correct?

5 MR. CREWS: Yes.

6 MR. TAYLOR: Is there anything
7 that you need to add, to what you've already
8 stated?

9 MR. CREWS: No. One of the
10 neighbors happened to be Chris Kohatsu, an
11 employee of the Department of Consumer and
12 Regulatory Affairs, who I have confidence in
13 her indication that, and living in the
14 neighborhood, that there was no commercial
15 activity at that location

16 MR. TAYLOR: And in your
17 investigation, did you find any stop work
18 orders that had been issued?

19 MR. CREWS: Yes.

20 MR. TAYLOR: What was the status
21 of those stop work orders when you looked at
22 them?

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1 MR. CREWS: When I looked at
2 them, they were still active.

3 MR. TAYLOR: Do you have
4 knowledge of whether or not they are still
5 active today?

6 MR. CREWS: They are still active
7 today. I checked this morning with our DCRA
8 staffperson, Tamika Jones, who keeps track
9 of all the stop work orders, and they are,
10 in her tracking they are listed as still
11 active, and under the District, the
12 Department's database called Property Holds,
13 they still list them as active.

14 MR. TAYLOR: Would it be standard
15 procedure to issue written documentation
16 when a stop work order is lifted?

17 MR. CREWS: That's my
18 understanding from talking with Ms. Jones.

19 MR. TAYLOR: Mr. Crews, what is
20 meant by a load change for a certificate of
21 occupancy?

6B22 MR. CREWS: There are various

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1 reasons why people would get a new
2 certificate of occupancy. Probably the most
3 prevalent one is a change of ownership, when
4 a business sells and the use remains the
5 same. The next one would probably be a use
6 change, when you change a use from one thing
7 to another, from, say, a retail
8 establishment to office, or from a church to
9 a day care, and then there's a load change
10 which indicates that the use is the same but
11 that the--either the size of the business
12 has changed or the number of participants
13 have changed.

14 A load change would be if a
15 restaurant added seats, because we document
16 how many seats are in a restaurant, whether
17 or not a use was expanded and covered more
18 square feet. Or whether, say, in a child
19 development center, where they increase the
20 number of children that were being served by
21 that child development center.

22 MR. TAYLOR: Would you please

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1 look at the certificate of occupancy dated
2 June 13th, 2003.

3 MR. CREWS: Okay. That's number
4 C056426.

5 MR. TAYLOR: And why was that
6 certificate of occupancy issued?

7 MR. CREWS: It says that it was
8 issued because of a load change.

9 MR. TAYLOR: You sound like you
10 are not sure.

11 MR. CREWS: Well, as I look at
12 the accompanying application, it appears
13 that the Applicant--it was signed by Nancy
14 Dao--had marked load change on item nine of
15 the application. But the proposed use of
16 the premises, laundry service, paren,
17 laundry and office space, and the prior use
18 of the premises, laundry service, paren,
19 laundry and consulting, to me is--there's--
20 that is the use. The load change would be
21 under number 12, line 12, proposed occupancy
22 load, and it's marked not applicable, and

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1 the square feet occupied is 2500, and the
2 floors to be occupied are the first floor
3 and basement.

4 MR. TAYLOR: Now would you please
5 look at the next, most-recently issued C of
6 O, the next to most-previously issued C of
7 O.

8 MR. CREWS: Right. So that's the
9 one issued on July 12, 2002, number C037193,
10 which again, in terms of the loads, talk
11 about, on the application, line 12,
12 "Proposed occupancy load, N/A; square feet
13 occupied, 2500, floors to be occupied, first
14 floor and basement."

15 And so, in fact, there is no
16 evidence of a load change.

17 MR. TAYLOR: Thank you. We have
18 had testimony here, that the certificate of
19 occupancy that is, or was current, was
20 issued December 2005, and that there was
21 construction on the premises regarding the
22 use, that took place in spring and summer of

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1 2006. Is that your recollection?

2 MR. CREWS: Yes.

3 MR. TAYLOR: Is it the standard
4 practice to issue the certificate of
5 occupancy and then have the construction to
6 fulfill that certificate of occupancy?

7 MR. CREWS: Not at all. That the
8 proper process is to obtain a building
9 permit that would be reviewed by the zoning
10 technician to make sure that the proposed
11 use was allowable in that district, and then
12 the applicant would do the renovations
13 necessary and then apply for a certificate
14 of occupancy that could be issued, provided
15 that the inspections showed that the
16 construction complied with the building
17 permit and that the use was the use
18 proposed.

19 MR. TAYLOR: If I may direct your
20 attention back to your review of business
21 licenses. Could you briefly contrast for
22 the board the process for acquiring a basic

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1 business license for a laundry and a process
2 for acquiring a basic business license for
3 rental housing.

4 MR. CREWS: There is no basic
5 difference. The first step to getting a
6 basic business license is to have a
7 certificate of occupancy. On the business
8 license application, which is available
9 online, that in the online version, it's
10 simply when you ask what type of business
11 you're using, there's a drop-down menu that
12 lists all of the businesses that require
13 business licenses, and you just simply
14 choose laundry, or you choose residential,
15 or you choose whatever it is that you're
16 operating.

17 MR. TAYLOR: And finally, you
18 spoke of inspections that would take place
19 following construction and prior to issuance
20 of a certificate of occupancy. Was there
21 such an inspection done by the Office of
22 Zoning Administrator of the subject property

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1 prior to the issuance of the most recent C
2 of 0, dated in December of 2005?

3 MR. CREWS: No.

4 MR. TAYLOR: And why is that?

5 MR. CREWS: Because this 2005
6 certificate of occupancy, C0198753, the type
7 of certificate of occupancy is a change of
8 ownership, and under Title 12 of the
9 District of Columbia Municipal Regulations,
10 basically the construction codes, section, I
11 believe it's in section 110A, which is the
12 requirement under the construction codes for
13 change of ownership, it specifically says
14 that a change of ownership shall be issued
15 without inspection.

16 MR. TAYLOR: And finally, Mr.
17 Crews, the December 22, 05, certificate of
18 occupancy, does it list a prior use?

19 MR. CREWS: It does list the
20 previous use as dry clean collection pickup.

21 MR. TAYLOR: To your knowledge,
22 was that an accurate representation to the

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1 Office of Zoning?

2 MR. CREWS: Absolutely not. In
3 all of my investigation there has been, and,
4 really, as far as I can tell, never was a
5 dry clean collection pickup establishment at
6 this address, 1312 13th Street.

7 MR. TAYLOR: And in your
8 investigation, during the three years prior
9 to the issuance of that certificate of
10 occupancy, was there a laundry in operation
11 there?

12 MR. CREWS: I have found no
13 evidence. We even gave the Appellant an
14 opportunity to present evidence and we have
15 no evidence of any use of that property.

16 MR. TAYLOR: That concludes my
17 direct examination, Mr. Chairman.

18 ACTING CHAIRPERSON ETHERLY:
19 Excellent. Thank you very much. Let's move
20 to board questions before moving to cross
21 examination. Perhaps one of the more
22 pressing questions, I think I perhaps heard

1 a little bit to is, is maybe a layperson's
2 first gut reaction is why, then, so many
3 repeat certificates of occupancy with that
4 key term, laundry, in it? I just want to
5 be sure I'm clear on what DCRA's answer is
6 to that.

7 We've walked through a lot of
8 very good documentation which I think
9 summarizes, in fairly direct order, the
10 number of certificates of occupancy that
11 have been issued here. So looking from
12 2001, forward, beginning with--I don't have
13 my recitation immediately handy, but
14 beginning with a C of O from 12-19-2001
15 through the June 28th of 2002, and so forth,
16 you have, by my count, and my colleagues,
17 please correct me if I'm mistaken, is it
18 five C of O's that are--

19 COMMISSIONER TURNBULL: Maybe
20 six.

21 ACTING CHAIRPERSON ETHERLY:
22 Maybe seven that are issued with "laundry"

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1 in some form or fashion.

2 COMMISSIONER TURNBULL: Oh. With
3 "laundry." I'm sorry.

4 ACTING CHAIRPERSON ETHERLY: And
5 of course, you know, we can kind of quibble
6 on the terminology, but perhaps just my
7 first kind of gut question is, is why so
8 many, one after the other after the other,
9 if, on the other hand, we have evidence that
10 perhaps is to the contrary, in terms of
11 what's going on there?

12 MR. CREWS: Again, as I
13 mentioned, you know, it's a combination of
14 the Applicant's duty to truthfully apply and
15 our requirement under the construction code
16 not to do inspections on change of ownership
17 certificate of occupancies.

18 It actually, to a certain extent,
19 in my opinion, goes back to the 1989
20 certificate of occupancy where someone came
21 in and that application refers back to the
22 '47 shoe repair certificate of occupancy,

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1 and this, in fact, was an error by the clerk
2 in terms of some sort of follow-through.

3 There is a notation that there
4 should be an inspection to see if that
5 nonconforming use is still continued. That
6 apparently wasn't done, and apparently they
7 are not doing what our protocol now is, to
8 make sure--the reviewer makes sure that
9 whatever previous certificate of occupancy
10 is submitted with the application is, in
11 fact, the most recent certificate of
12 occupancy.

13 ACTING CHAIRPERSON ETHERLY:
14 Okay.

15 MR. CREWS: So it's again, the,
16 you know, the fact that the Applicant has a
17 responsibility and certifies that all
18 statements on this application are true.

19 ACTING CHAIRPERSON ETHERLY:
20 Okay. I'll turn to my colleagues for any
21 questions at this time.

22 Mr. Mann.

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1 BOARD MEMBER MANN: I just have a
2 technical question regarding certificates of
3 occupancy. It seems to me that from what
4 we've seen, that the person that's
5 responsible for getting the certificate of
6 occupancy is the person that occupies the
7 space, whether or not they're the owner of
8 the space; is that correct?

9 MR. CREWS: Right; exactly. that
10 The regulation in chapter 32 requires that
11 the person using the space--the certificate
12 of occupancy must be in the name of the
13 person using the space, and so if it's not--
14 currently, if it's not the owner that we can
15 pull up from our databases, then there has
16 to be a separate certification or some sort
17 of indication, a copy of a lease or
18 something, that whoever's making the
19 application has the legal right and
20 possession of that piece of property.

21 BOARD MEMBER MANN: Okay. So for
22 my own understanding then, we can't

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1 necessarily rely on the name we see on the C
2 of 0 as any indication of who the owner was
3 of a particular property, at a particular
4 time?

5 MR. CREWS: Not of the property
6 itself; right. It should be the operator
7 of, or the user of that space, whether it be
8 the owner or the tenant.

9 BOARD MEMBER MANN: Okay. So
10 when we say change in ownership, then it's
11 change in ownership of the establishment
12 occupying the space, and not necessarily the
13 property on which it's located?

14 MR. CREWS: Exactly.

15 BOARD MEMBER MANN: Great; thank
16 you.

17 ACTING CHAIRPERSON ETHERLY: Mr.
18 Turnbull?

19 COMMISSIONER TURNBULL: Mr.
20 Chair, I just had one question. It's
21 standard operating business procedures of
22 CDRA, that on a stop work order there is no

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1 verbal or oral release. That is a standard
2 procedure, that it would be--if there is any
3 release of the stop work order, there is a
4 release form that is then given to the
5 individual that has been given, who has been
6 issued the stop work order?

7 MR. CREWS: Right.

8 COMMISSIONER TURNBULL: Okay.

9 ACTING CHAIRPERSON ETHERLY:

10 Okay. If there isn't any further cross
11 examination, let's turn to the Appellant for
12 cross examination questions of DCRA's direct
13 testimony.

14 MS. MADDUX: Mr. Crews, you train
15 the staff at DCRA?

16 MR. CREWS: I do since I've been
17 there; yes. Well, let me--I train my staff
18 as zoning reviewers, and to a certain
19 extent, the staff at the permit center which
20 are not under my direct supervision but
21 handle the processing of permits and
22 certificates of occupancy.

1 MS. MADDUX: Okay. That is my
2 next question. So the staff helps
3 applicants with their applications?

4 MR. CREWS: They provide
5 information. It's the applicant's
6 responsibility to be truthful and sign the
7 application to that, that truth.

8 MS. MADDUX: But the staff helps
9 the applicants with their applications?

10 MR. CREWS: The staff provides
11 information. The staff is not directed to
12 change the application or make any--

13 MS. MADDUX: Actually, it's a yes
14 or no question. Does the staff help the
15 applicants with their applications?

16 MR. TAYLOR: Objection, Your
17 Honor. The witness has indicated that is
18 not a question that can be properly answered
19 yes or no. It is a question that requires
20 him telling the whole truth, not the portion
21 of the truth represented by either yes or
22 no.

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1 ACTING CHAIRPERSON ETHERLY:

2 Without quibbling too much on the finer
3 points of it, let me phrase it this way. It
4 is not uncommon for staff to provide
5 assistance to patrons who are in the process
6 of completing applications or seeking
7 services at DCRA, and, in particular, under
8 your purview?

9 MR. CREWS: My staff would answer
10 questions and would articulate what the
11 requirements are, and leave it up to the
12 applicant to make the decisions on what the
13 appropriate responses are for the questions
14 on the application.

15 ACTING CHAIRPERSON ETHERLY:

16 Would it then be unusual, in your--in terms
17 of protocols and procedures today, here and
18 now, based on your guidance and instruction
19 to staff members, would it be unusual for
20 staff members to provide guidance,
21 suggesting a certain course of action for a
22 particular applicant with regard to how to

1 label a particular C of O or other type of
2 document?

3 MR. CREWS: Right. They would
4 not provide that advice. They would
5 articulate what the--based on what the
6 applicant says, they want to use the space
7 for. One potential is, as we've talked
8 about before, similar uses, that the zoning
9 regs allow similar uses to those
10 articulated, and when the applicant, say,
11 for example, wants to operate a tatoo
12 parlor, a tatoo parlor is not a designated
13 use classification and so there would be
14 some discussions in terms of what that would
15 be similar to, and would--and that might be
16 directed to the applicant.

17 In other words, that--I mean,
18 this came up last week and we, you know, we
19 looked through and decided that probably a
20 tatoo parlor was either closer to an
21 artist's studio or a beauty shop.

22 ACTING CHAIRPERSON ETHERLY: But

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1 perhaps, playing devil's advocate for the
2 moment, you can't say definitively, however,
3 that there hasn't been instances where staff
4 members may go a step further and perhaps
5 offer fairly specific and decisive guidance
6 on how to complete an application.

7 Are you aware of instances where
8 that's happened in the past? I'm not saying
9 whether it's happened here.

10 MR. CREWS: No. I'm not aware.

11 ACTING CHAIRPERSON ETHERLY: You
12 are not aware of instances where that has
13 happened?

14 MR. CREWS: Right.

15 ACTING CHAIRPERSON ETHERLY:
16 Okay. I think that's where we are on that,
17 Mrs. Maddox.

18 MS. MADDUX: Thank you.

19 When did you become the Zoning
20 Administrator?

21 MR. CREWS: I started October
22 3rd, 2005.

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1 MS. MADDUX: You were not present
2 when Mr. Rooths applied for the certificates
3 of occupancy and talked to the staff, were
4 you?

5 MR. CREWS: No.

6 MS. MADDUX: Certificate are not
7 issued on the spot, are they?

8 MR. CREWS: No.

9 MS. MADDUX: What's involved in
10 the issuance of a certificate of occupancy?

11 MR. CREWS: The acceptance of the
12 application, the payment of the application
13 fee, and then it's reviewed by my staff and
14 a determination's made, and then it is
15 transmitted back to the permit center.

16 During this process, the
17 application is inputted into our data system
18 and then my staff reviews the application,
19 oftentimes now, my staff will "do the fee-
20 ing" of the application and we present it
21 back to the permit center where it is--the
22 applicant receives the invoice for the

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1 permit fee, they pay the fee and then the
2 application is handed to the issuance
3 counter and they issue the certificate.

4 MS. MADDUX: So the staff does
5 some type of research, or a check on
6 regulations?

7 MR. CREWS: My staff does; yes.

8 MS. MADDUX: What date did you
9 meet with the Rooths?

10 MR. CREWS: I'm not sure,
11 exactly. It was some time prior to
12 September 12th.

13 MS. MADDUX: Can you--

14 MR. CREWS: 2005.

15 MS. MADDUX: Can you give me a
16 month or--

17 MR. CREWS: I would say within a
18 month of September 12th, 2005, Mr. Rooths
19 came in, unannounced, and to the director's
20 office, and I was called that he was there
21 and we met.

22 MS. MADDUX: You didn't revoke a

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1 certificate of occupancy at that time, did
2 you?

3 MR. CREWS: Well, no, we gave him
4 a chance to provide us the information that
5 he said he had, that would show that there
6 had been actual use there. I mean,
7 compliance is our goal, and so, you know, we
8 wanted to meet with him and give him an
9 opportunity, to hear his side of the story
10 and provide whatever documentation he had to
11 counter the other information we had, and he
12 did not, was not able to do that.

13 MS. MADDOX: When did you begin
14 the investigation?

15 MR. CREWS: Some time shortly
16 after the sign went up.

17 MS. MADDOX: About when was that?

18 MR. CREWS: Well, you can ask
19 your client when the sign went up. I'm not
20 sure.

21 MS. MADDOX: I'm not asking him
22 when the sign--I'm asking when did you begin

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1 your investigation.

2 MR. CREWS: After the sign went
3 up and we started receiving complaints;
4 handled an awful lot of complaints.

5 MS. MADDUX: But you are prepared
6 for this hearing today. When did you begin
7 this investigation?

8 MR. CREWS: When the sign went up
9 and I received complaints. Some time in the
10 summer of 2005.

11 AUDIENCE MEMBER: Six.

12 MR. CREWS: Six. Excuse me.
13 Thank you.

14 MS. MADDUX: And how long did the
15 investigation last?

16 MR. CREWS: Until we issued the
17 revocation notice on September 12th.

18 MS. MADDUX: You claim that as
19 part of your investigation, you came upon
20 what counsel has marked as Exhibit 11, the
21 Office of Planning report.

22 MR. CREWS: Right.

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1 MS. MADDUX: Could you show me in
2 your letter of revocation to the Rooths, any
3 reference to the Office of Planning report
4 or anything you learned from that report.

5 MR. CREWS: I'm not sure that--

6 MS. MADDUX: This is a copy of
7 the letter.

8 MR. CREWS: I believe on the top
9 of the second page. "Subsequently, DCRA has
10 learned through its investigation that the
11 location has not been used for an operation
12 of a dry cleaning pickup since at least
13 December 22nd, 2002."

14 MS. MADDUX: Where is that--
15 that's not a part of the Office of Planning
16 report.

17 MR. CREWS: It's part of DCRA's
18 investigation, was reviewing the Office of
19 Planning report.

20 MS. MADDUX: But this letter does
21 not specifically mention the Office of
22 Planning report, does it?

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1 MR. CREWS: No.

2 MS. MADDUX: You were not privy
3 to the telephone conversations that Mr.
4 Rooths refers to, when he checked the status
5 of the stop work order dated June 14, 2006,
6 were you?

7 MR. CREWS: No.

8 MS. MADDUX: Do DCRA employees
9 have access to the database to research the
10 status of stop work orders?

11 MR. CREWS: Yes.

12 MS. MADDUX: DCRA employees are
13 not barred from providing this information
14 to affected parties by phone, are they?

15 MR. CREWS: No.

16 MS. MADDUX: You testified that
17 you believed--

18 MR. CREWS: That doesn't mean
19 that it actually happened.

20 MS. MADDUX: You testified that
21 you believe a license is required for a
22 laundry.

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1 MR. CREWS: For a laundry.

2 MS. MADDUX: You know that this
3 is not a laundry that the Rooths were
4 starting, don't you?

5 MR. CREWS: I don't think there
6 was anything there.

7 MS. MADDUX: You know that it was
8 not a laundry that the Rooths were trying to
9 start, don't you?

10 MR. CREWS: There's no evidence--

11 MR. TAYLOR: Objection.

12 MR. CREWS: --that there was a
13 landry.

14 MS. MADDUX: Do you know--

15 MR. TAYLOR: Objection.

16 [Simultaneous conversation]

17 MS. MADDUX: --that this is not a
18 laundry? The issue is--we're talking about
19 a dry cleaning pickup, the subject of the
20 letter. The subject of this entire case
21 here. The clients were trying to start a
22 dry clean laundry. You came to--many

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1 inspections were done for a dry clean
2 laundry. You know that this--the Rooths
3 were not trying to open up a laundry on this
4 premises, don't you?

5 MR. CREWS: I don't know that for
6 sure; no.

7 ACTING CHAIRPERSON ETHERLY:
8 Let's move on.

9 MS. MADDUX: You said that there
10 is no evidence of operating a property, in
11 the DCRA files within the last three years.
12 Correct?

13 MR. CREWS: Right.

14 MS. MADDUX: Okay. You mean that
15 there's no business license for operating a
16 business on record?

17 MR. CREWS: There's nothing that-
18 -other than the certificate of occupancies,
19 of any indication of activity at that
20 location.

21 MS. MADDUX: You are aware that
22 the business that the Rooths were trying to

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1 open does not require a business license,
2 aren't you?

3 MR. CREWS: A dry cleaning pickup
4 and drop-off does not require a basic
5 business license.

6 MS. MADDUX: And you are aware
7 that a copying company does not require a
8 business license, aren't you?

9 MR. CREWS: I'm not sure about
10 that.

11 MS. MADDUX: Are you aware that
12 that is the advice that your staff has given
13 out?

14 MR. CREWS: Not at all.

15 MS. MADDUX: A copy company does
16 not require a business license?

17 MR. CREWS: I'm not aware of
18 that, at all.

19 MS. MADDUX: Okay.

20 Excuse me.

21 You are aware that an actual
22 laundry and a pickup laundry are two

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1 different types of businesses; aren't you?

2 MR. CREWS: I'm not sure. Under
3 the zoning regulations, a pickup and drop-
4 off is not a use classification, and it
5 would probably most likely be under a
6 laundry use classification.

7 MS. MADDUX: That Mr. Rooths
8 explained to you many times, that this was
9 not a--

10 MR. CREWS: I spoke to Mr. Rooths
11 only once.

12 MS. MADDUX: You were never
13 present, at any time, when Mr. Rooths or his
14 wife applied for the certificates of
15 occupancy, were you?

16 MR. CREWS: No.

17 MS. MADDUX: So you don't know
18 what the discussion was that he had with
19 DCRA staff about the applications, do you?

20 MR. CREWS: No.

21 MS. MADDUX: Thank you. That's
22 all I have.

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1 ACTING CHAIRPERSON ETHERLY:

2 Okay. Cross examination questions from the
3 ANC?

4 ANC COMMISSIONER DYER: Would a
5 dry cleaning pickup laundry business
6 constitute a commercial activity in the
7 District of Columbia?

8 MR. CREWS: Yes.

9 ANC COMMISSIONER DYER: Would a
10 copying company constitute a commercial
11 activity in the District of Columbia?

12 MR. CREWS: Yes.

13 ANC COMMISSIONER DYER: And would
14 these be not allowed under the current zone?

15 MR. CREWS: Yes.

16 ANC COMMISSIONER DYER: That's
17 all I have.

18 ACTING CHAIRPERSON ETHERLY:

19 Okay. Thank you very much. All right.

20 Mr. Mann.

21 BOARD MEMBER MANN: I have a
22 follow-up question for Mr. Crews.

1 ACTING CHAIRPERSON ETHERLY:

2 Sure.

3 BOARD MEMBER MANN: I'm certain
4 that we've discussed this some time in the
5 past but I've forgotten. Tell me again how,
6 when DCRA personnel are filling out a
7 certificate of occupancy, and they need to
8 fill out the section that's titled Approved
9 Uses, tell me what the document is or the
10 source is for determining the acceptable
11 uses or the acceptable terminology that can
12 be used in that box.

13 MR. CREWS: Again, the
14 requirement in chapter 32 of the zoning
15 regulations require that the certificate of
16 occupancy have a use designation listed in
17 the zoning regulations, and as we've talked
18 about, that what we're trying to do now,
19 since I've been Zoning Administrator, is
20 that when there are uses that are similar,
21 which are also allowed, that we put the
22 similar use first and then the use

1 designation that is actually listed in the
2 zoning regs in parentheses.

3 And we do that based on the fact
4 that other regulatory agencies may need that
5 similar use but we need to know what it's
6 similar to.

7 BOARD MEMBER MANN: All right.
8 So that it's has to be something that's
9 referred to in the zoning regulations?

10 MR. CREWS: Right.

11 BOARD MEMBER MANN: Okay. When
12 you're filling out the box, Previous Uses,
13 how is that terminology determined?

14 MR. CREWS: It'd be the same use.
15 In practice, it's usually what is on the--
16 whatever is on the previous certificate of
17 occupancy, and I know that this latest
18 certificate of occupancy that's the subject
19 of the appeal today in December 22nd of
20 2005, I'd been there less than three months,
21 and therefore, the procedures that I've put
22 in place to try and be more specific

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1 obviously were not there at the time, and so
2 this was, you know, pretty much the standard
3 practice, to put what the applicant filled
4 out on the application.

5 BOARD MEMBER MANN: But 3203 has,
6 for some time, been the proper authority for
7 determining how to fill out those boxes?
8 3203, 11 DCMR, that's the certificates of
9 occupancy?

10 MR. CREWS: Exactly. 3203.8. Is
11 that the right one? Let's see.

12 BOARD MEMBER MANN: The chapter
13 is adequate for what I need to know about
14 it.

7 15 MR. CREWS: Yeah. Right. Okay.

16 BOARD MEMBER MANN: So that may
17 have been applied, or interpreted
18 differently over the years, but it should
19 have been the source for determining what
20 the proper terminology is?

21 MR. CREWS: Right.

22 BOARD MEMBER MANN: Okay; thank

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1 you.

2 ACTING CHAIRPERSON ETHERLY:

3 Okay. Any further follow-up questions from
4 my board colleagues?

5 [No response]

6 ACTING CHAIRPERSON ETHERLY:

7 Okay. At this time it's appropriate to turn
8 it over to the ANC for presentation of their
9 case.

10 MR. TAYLOR: Mr. Chairman, I do
11 have other witnesses I would like to call
12 before my case in chief is concluded.

13 ACTING CHAIRPERSON ETHERLY: My
14 apologies, Mr. Dyer. We are not yet there,
15 Commissioner, at that point in time.

16 COMMISSIONER DYER: It's okay;
17 don't worry.

18 ACTING CHAIRPERSON ETHERLY: My
19 apologies, Mr. Taylor. Please, if you could
20 proceed with your next witness.

21 MR. TAYLOR: I'd like to call
22 Helen Kramer, please. Why don't you just

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1 sit here. Would you please state your name
2 for the record.

3 MS. KRAMER: Helen Kramer.

4 MR. TAYLOR: And where do you
5 live?

6 MS. KRAMER: 1325 13th Street,
7 N.W., No. 25.

8 MR. TAYLOR: How long have you
9 been in residence there?

10 MS. KRAMER: Since December 1979.

11 MR. TAYLOR: And have you had
12 occasion to view the property at 1312 13th
13 Street?

14 MS. KRAMER: Many, many times. I
15 walk to work and pass by on 13th Street.

16 MR. TAYLOR: Okay. And prior to
17 2006, have you ever seen any people in the
18 basement unit of 1312?

19 MS. KRAMER: No.

20 MR. TAYLOR: Have you seen any
21 movement within the basement unit?

22 MS. KRAMER: No.

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1 MR. TAYLOR: Any pickup, delivery
2 trucks?

3 MS. KRAMER: No.

4 MR. TAYLOR: Any people going in
5 or out?

6 MS. KRAMER: No.

7 MR. TAYLOR: Have you ever seen
8 the grating of the garage door raised?

9 MS. KRAMER: No.

10 MR. TAYLOR: Have you ever seen
11 the walk-in door open?

12 MS. KRAMER: No.

13 MR. TAYLOR: Have you ever seen
14 anyone walking in or out of the unit?

15 MS. KRAMER: No.

16 MR. TAYLOR: Have you ever seen
17 any evidence of business activity prior to
18 2006?

19 MS. KRAMER: No.

20 MR. TAYLOR: And you said you
21 walk your dogs past there. Is that on a
22 daily basis?

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1 MS. KRAMER: Yes.

2 MR. TAYLOR: And how many times
3 per day would you do that?

4 MS. KRAMER: I walk my dog four
5 times a day.

6 MR. TAYLOR: And how many of
7 those times would be during what would be
8 considered normal business hours?

9 MS. KRAMER: The first walk of
10 the morning and the one at 6:00 p.m.

11 MR. TAYLOR: Okay. Have you ever
12 met either Ms. Dao or Mr. Rooths outside of
13 this hearing?

14 MS. KRAMER: Yes.

15 MR. TAYLOR: Would you please
16 describe that meeting for the board.

17 MS. KRAMER: The first meeting I
18 had was with Mr. Rooths, shortly after he
19 acquired the property. I was introduced to
20 him on 13th Street by the co-owner of a
21 store on my side of the street, and Mr.
22 Rooths told me that he wanted to open up a

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1 stationery store in the basement and I said
2 he couldn't do that because the property is
3 zoned residential.

4 And he disputed that, so I
5 downloaded a copy of, from the real estate
6 property tax base, of the record for the
7 subject property, showing its zoning was R-
8 5-C, and at a subsequent meeting with Mr.
9 Rooths, I showed him the printout and I said
10 see, it's zoned residential.

11 And he said C means commercial,
12 and I said no, it means--R-5-C is a
13 residential zoning and you can't use it for
14 any commercial purposes.

15 Over the years, when I was a
16 commissioner, and at one point, the
17 commissioner for the single-member district
18 on which 1312 13th Street was then located,
19 appointed Mr. Rooths to the Community
20 Development Committee. So I saw him on
21 numerous occasions, and his wife would
22 sometimes come to meetings. So I have seen

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1 them in the community for many years.

2 MR. TAYLOR: And were there ever
3 any discussions at the Community Development
4 meetings that would be relevant to this
5 appeal?

6 MS. KRAMER: Yes. The full ANC,
7 on a number of occasions, passed
8 resolutions, and as chairman, I sent at
9 least one letter to the former Zoning
10 Administrator, Denzel Noble, asking that the
11 certificate of occupancy be revoked as
12 having been issued in administrative error.

13 In particular, I sent a letter,
14 after having gone to attend the BZA hearing
15 in 2003, only to find that the applicants
16 had withdrawn on the day of the hearing, and
17 their letter accompanying the request for
18 withdrawal stated that their attorneys had
19 withdrawn from the case, the new attorneys
20 hadn't had time to review the record, and
21 they intended to refile their application at
22 a later date.

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1 When they failed to do that, the
2 ANC voted, unanimously, to request that the
3 Zoning Administrator revoke the certificate
4 of occupancy for laundry slash office use.

5 MR. TAYLOR: Ms. Kramer, you
6 referenced two letters in your last answer.

7 Did you happen to bring copies of
8 those letters with you today?

9 MS. KRAMER: Because I had turned
10 over my files when I no longer was on the
11 ANC, I have a copy of only one of the
12 letters and I can--

13 MR. TAYLOR: Which one is that,
14 please?

15 MS. KRAMER: It's a letter dated
16 November 30th, 2003, to Denzel Noble.

17 MR. TAYLOR: Okay. And you also
18 referenced a letter that the then
19 applicants, in 2003, had written to the BZA.

20 Did you happen to bring that
21 letter with you today as well?

22 MS. KRAMER: Yes.

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1 MR. TAYLOR: Would you please
2 provide copies of those letters to Ms.
3 Bailey, so she could make copies for the
4 board.

5 MS. KRAMER: Let me see. I have
6 to find it in here. Chris, do you have any
7 of my documents? Okay. It would be in
8 here. Yes; here it is.

9 MR. TAYLOR: If you'd just--

10 MS. KRAMER: It's the last page.

11 MR. TAYLOR: If you'll just hand
12 those to Mr. Crews and he will take them
13 over to Ms. Bailey for you.

14 Mr. Chairman, that concludes my
15 direct questioning.

16 ACTING CHAIRPERSON ETHERLY:
17 Questions from my colleagues of Mr. Kramer?

18 [No response]

19 ACTING CHAIRPERSON ETHERLY: Any
20 cross examination questions from the
21 Appellant for Ms. Kramer?

22 MS. MADDOX: No.

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1 ACTING CHAIRPERSON ETHERLY: Any
2 cross examination questions from the ANC for
3 Ms. Kramer?

4 ANC COMMISSIONER DYER: No; no,
5 no, no.

6 ACTING CHAIRPERSON ETHERLY: Mr.
7 Taylor.

8 MR. TAYLOR: Thank you very much,
9 Ms. Kramer.

10 The government would next call
11 Barry Johnson. Would you please state your
12 name for the record.

13 MR. JOHNSON: I'm Barry Johnson.

14 MR. TAYLOR: And where is your
15 residence?

16 MR. JOHNSON: 1320 13th Street.

17 MR. TAYLOR: How long have you
18 lived there?

19 MR. JOHNSON: Three and a half
20 years.

21 MR. TAYLOR: Now when during
22 those three and a half years have you had

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1 occasion to view the property at 1312 13th
2 Street?

3 MR. JOHNSON: On a daily basis.

4 MR. TAYLOR: And what is the
5 nature of that opportunity?

6 MR. JOHNSON: I drive by the
7 building every day, going to and from work.

8 MR. TAYLOR: And was there a
9 time--excuse me. What time of day would you
10 do that?

11 MR. JOHNSON: Around 8:00,
12 between 8:00 and 8:30 in the morning, and
13 arrive home anywhere from 6:00 until 11:00
14 at night.

15 MR. TAYLOR: And was there a time
16 during 2005 when you had further
17 opportunities to observe the property?

18 MR. JOHNSON: Yes. At the end of
19 2005 through September of 2006, I was
20 unemployed and at home.

21 MR. TAYLOR: Okay. Now limiting
22 yourself, please, prior to March of 2006,

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1 did you ever see any people in the basement
2 unit of 1312?

3 MR. JOHNSON: No.

4 MR. TAYLOR: Did you ever see
5 anyone walking in or out of that unit?

6 MR. JOHNSON: No.

7 MR. TAYLOR: Did you ever see any
8 movement within that unit?

9 MR. JOHNSON: No.

10 MR. TAYLOR: Did you see any
11 trucks that would have been picking up or
12 delivering materials?

13 MR. JOHNSON: No.

14 MR. TAYLOR: Did you, in those
15 years, ever see the grating over the garage
16 door raised?

17 MR. JOHNSON: No.

18 MR. TAYLOR: Did you ever see the
19 walk-in door open?

20 MR. JOHNSON: No.

21 MR. TAYLOR: Did you ever see any
22 evidence, at all, of any business activity?

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1 MR. JOHNSON: No.

2 MR. TAYLOR: Is it possible that
3 the customers or deliver trucks entered the
4 property from a rear entrance?

5 MR. JOHNSON: No; it's not
6 possible. The building is entirely
7 encircled by other buildings. There's no
8 alley access to any of the buildings that
9 are on the blocks of 13th Street, Vermont
10 Street and O Street.

11 MR. TAYLOR: So, in other words,
12 there's no vehicular access to the rear of
13 the structure?

14 MR. JOHNSON: No; not at all.

15 MR. TAYLOR: During the summer of
16 2006, did you have any communications with
17 DCRA regarding the property?

18 MR. JOHNSON: I've had a number
19 of conversations with people at DCRA in the
20 Zoning Office and in the Building
21 Inspector's Office.

22 MR. TAYLOR: Did you ever make

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1 inquiries about the stop work orders on the
2 property?

3 MR. JOHNSON: Yes.

4 MR. TAYLOR: And what were you
5 told?

6 MR. JOHNSON: I called and each
7 time I was told that the stop work orders
8 were still open and at one point was told
9 that a fine was still open.

10 MR. TAYLOR: No more questions.

11 ACTING CHAIRPERSON ETHERLY:
12 Board questions?

13 [No response]

14 ACTING CHAIRPERSON ETHERLY:
15 Cross examination questions from the
16 Appellant.

17 MS. MADDOX: I have none at this
18 time.

19 ACTING CHAIRPERSON ETHERLY: Any
20 ANC cross examination questions. Seeing
21 none, Mr. Taylor.

22 MR. TAYLOR: Thank you. I'd like

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1 to call Elizabeth Blexly. She couldn't
2 stay.

3 I would have liked to call
4 Elizabeth Blexly but I will call David
5 Chianese next. Would you please state your
6 name for the record.

7 MR. CHIANESE: My name is David
8 Chianese.

9 MR. TAYLOR: Okay. Would you
10 please spell it for the court reporter.

11 MR. CHIANESE: It's C-h-i-a-n-e-
12 s-e.

13 MR. TAYLOR: And where do you
14 live?

15 MR. CHIANESE: I live at 1300
16 13th Street.

17 MR. TAYLOR: And what is the
18 physical proximity of your residence to the
19 1312 property?

20 MR. CHIANESE: My building is
21 adjoined to 1312 13th Street, and my
22 apartment actually shares the wall with that

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1 building.

2 MR. TAYLOR: Does your residence
3 have a window looking out on 1312?

4 MR. CHIANESE: No. The window--I
5 can see into the back of the property.

6 MR. TAYLOR: And how long have
7 you lived at that property?

8 MR. CHIANESE: For five years.

9 MR. TAYLOR: And in the past five
10 years have you had occasion to view activity
11 at the rear of 1312 13th Street?

12 MR. CHIANESE: Yes.

13 MR. TAYLOR: Could you describe
14 the nature of that activity.

15 MR. CHIANESE: There was
16 construction activity going on in the back
17 yard. Like I said, my bedroom window
18 overlooks the yard and there was--you know,
19 on weekends, I was woken up by construction
20 activity going on in the backyard--welding.
21 Scaffolding was constructed. At one point
22 there's like a steel structure that was

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1 built back there. So there's various
2 construction activity that I could see going
3 on in the back of the building, and then in
4 the common wall, you could actually hear
5 construction going on in the building.

6 MR. TAYLOR: And roughly what
7 timeframe was this?

8 MR. CHIANESE: This started--it
9 was last spring, it was probably about a
10 year ago that this started, the
11 construction. That I noticed the
12 construction.

13 MR. TAYLOR: Now in the past five
14 years, have you had the opportunity to view
15 the front of the property?

16 MR. CHIANESE: Yes. The parking
17 garage to my building is directly next door
18 to this building, So literally, when you
19 pull in the garage, the stairs to 1312 13th
20 Street are literally right there. So the
21 building is--you see it every time you come,
22 you know, in and out of the garage.

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1 MR. TAYLOR: And how frequently
2 would you do that?

3 MR. CHIANESE: Well, at least
4 once a day going to and from work, if not
5 more.

6 MR. TAYLOR: How about weekends?

7 MR. CHIANESE: The same thing.
8 Weekends, coming in and out of the garage,
9 and also just, you know, leaving the
10 building, just walking by, you know, just
11 walking in the neighborhood.

12 MR. TAYLOR: Prior to the--excuse
13 me, if I didn't ask this. Could you
14 describe the times that you would have
15 driven by there.

16 MR. CHIANESE: Oh, sure.
17 Usually, leaving for work, I usually leave
18 for work probably about, somewhere between
19 7:00, 7:30 in the morning, return between
20 5:30 and 6:30 in the evening.

21 MR. TAYLOR: And during the past
22 five years, not including the time when

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1 construction had begun, did you ever see any
2 people in the basement unit of 1312?

3 MR. CHIANESE: No.

4 MR. TAYLOR: Any people going in
5 or out of that unit?

6 MR. CHIANESE: No.

7 MR. TAYLOR: Any movement within
8 the basement unit?

9 MR. CHIANESE: No.

10 MR. TAYLOR: Any delivery trucks
11 or commercial trucks parked outside?

12 MR. CHIANESE: No.

13 MR. TAYLOR: Did you ever observe
14 the grating over the garage door raised up?

15 MR. CHIANESE: No.

16 MR. TAYLOR: Did you ever see the
17 walk-in door open?

18 MR. CHIANESE: No. I did not.

19 MR. TAYLOR: Did you ever see any
20 evidence, at all, of any business activity
21 there?

22 MR. CHIANESE: No.

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1 MR. TAYLOR: Your residence and
2 the subject property share a party wall, you
3 testified.

4 MR. CHIANESE: Correct.

5 MR. TAYLOR: In these last five
6 years, have you ever heard any evidence of
7 business activity?

8 MR. CHIANESE: No.

9 MR. TAYLOR: No more questions.

10 ACTING CHAIRPERSON ETHERLY:
11 Board questions?

12 [No response]

13 ACTING CHAIRPERSON ETHERLY:
14 cross examination questions from the
15 Appellant?

16 MS. MADDOX: No.

17 ACTING CHAIRPERSON ETHERLY: ANC?

18 ANC COMMISSIONER DYER: No.

19 ACTING CHAIRPERSON ETHERLY: Mr.
20 Taylor, you're on a roll.

21 MR. TAYLOR: Mr. Chairman, this
22 concludes the Government's case.

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1 ACTING CHAIRPERSON ETHERLY:

2 Excellent.

3 MR. TAYLOR: Okay. Just a
4 question regarding procedure, Mr. Chairman.
5 Will you be having a time for final remarks
6 by all parties?

7 Will you be requesting proposed
8 findings of fact and proposed conclusions of
9 law, or anything of that nature?

10 ACTING CHAIRPERSON ETHERLY: It
11 would be my intention to--it would have been
12 my intention to deal with most of those
13 questions at the outset. For purposes of
14 the question as it relates to the District's
15 case, this would be your final opportunity
16 to make your closing remarks. Appeals end
17 typically with rebuttal and closing
18 statement from the Appellant, and that would
19 conclude the proceeding.

20 Of course after our ANC
21 presentation. I haven't forgotten you,
22 Commissioner Dyer. But for the purposes of

1 the appellee's case, in this case, DCRA,
2 this is your final shot. So if there is
3 essentially a summation type of statement
4 that you want to make, this would be your
5 opportunity to do so as you close your case.

6 MR. TAYLOR: Thank you very much,
7 Mr. Chair.

8 ACTING CHAIRPERSON ETHERLY: And
9 what I would suggest is--I haven't queried
10 my colleagues yet, in terms of whether
11 there's a desire for a submittal of findings
12 of fact and conclusions of law. I'd perhaps
13 like to just hold off on making that
14 decision until we get to the close of the
15 case.

16 MR. TAYLOR: Yes, Mr. Chairman.

17 The government set out to show
18 three things in regard to this property.

19 First of all, being that this was
20 an attempt to operate a commercial business
21 in an elementary school zone, where it did
22 not allow commercial enterprises as a matter

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1 of right. The government believes it has
2 met that burden through just a clear reading
3 of the zoning regulations.

4 The government set out to prove
5 that there was no grandfathering, as
6 contemplated under the regulations, of a
7 nonconforming use. Specifically, that in
8 the 1970's, and for a majority of the
9 1980's, that the property had been used in
10 full conformance with the zoning
11 regulations.

12 The government, through the
13 certificates of occupancy that were issued
14 in the '70s, showing the entire building
15 being used as rental, residential housing,
16 demonstrates that point.

17 The government also intended to
18 show that in the three years prior to the
19 issuance of the most recent certificate of
20 occupancy, in December of 05, therefore show
21 that from a point in December 2002, that
22 there had not been a laundry in operation at

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1 that address. The certificates of
2 occupancy, regardless of the proprietor
3 listed, the trade name listed, up until a
4 point of time in 2005, stated that the
5 property was being used as a laundry.

6 The government has shown not only
7 through the testimony of the neighbors, the
8 Zoning Administrator, the report of the
9 Office of Planning, but through the
10 testimony of the Appellant himself, that
11 there was no laundry in use there.

12 In fact, prior to September 12 of
13 2006, there was no dry cleaning collection
14 pickup business activity at that location.

15 In defending itself, himself or
16 themselves, the applicants have really
17 raised two arguments.

18 One, that the government should
19 be barred from enforcing the zoning
20 regulations through this revocation of the
21 certificate of occupancy under the doctrine
22 of estoppel.

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1 Without going through all six
2 elements of estoppel, the basic framework
3 would be that there was a good faith
4 reliance on an action by a government
5 official, again upon which the Appellant
6 relied, to the detriment of the Appellant,
7 and that the equities would favor that the
8 government not be allowed to carry through
9 with its action.

10 The government has developed
11 evidence for you, questioning, first of all,
12 the good faith of the Appellants. During
13 the time that they have owned that property,
14 they have submitted seven applications for
15 certificates of occupancy.

16 Now in two of those applications,
17 they were signed at the bottom by Mr. Floyd
18 Smith, Sr. However, the handwriting on the
19 application matches that of other
20 applications. In fact one of the
21 applications in the record has some
22 corrections made on it that were initialed

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1 by one of the applicants, Ms. Dao.

2 In those seven applications, each
3 one of them has listed one of two uses to
4 which the address has already been put, a
5 laundry, or in the latter two, a dry
6 cleaning collection pickup. Yet we have
7 heard today that at no time that the
8 Appellants owned the property was there a
9 laundry in operation there, and at no time
10 prior to any application submitted was there
11 a dry cleaning or pickup operation operating
12 there.

13 Those were incorrect. They had
14 to know those were incorrect. The good
15 faith does not apply--they do not have clean
16 hands coming into this. Clean hands is a
17 fatal flaw in--or failure to have clean
18 hands is a fatal flaw in making an estoppel
19 argument.

20 Similarly, while the government
21 concedes, as it must, that the Appellants
22 have expended funds preparing the location

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1 for their commercial activity, the
2 government still would argue that the
3 equities favor the revocation. This board,
4 in looking at equities, has to look not only
5 at the position of the Appellants, but must
6 look at the community and, indeed, the
7 District as a whole. It is well settled, in
8 the District of Columbia, that estoppel is
9 not a favored remedy when it comes to the
10 enforcement of zoning regulations.

11 Those zoning regulations have
12 been in place for quite some time. They
13 were put into effect, with great thought for
14 the purposes of an orderly regulation of the
15 life here, providing space that would be,
16 indeed, completely residential, providing
17 some mixed-use space, providing commercial
18 space, all of which designed for the
19 betterment of the entire community.

20 With all due respect to the
21 testimony we have heard about the mortgage
22 holder in this situation, this is not a

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1 mixed-use commercial/residential zone. This
2 is a residential zone and commercial
3 activity within that zone is going to
4 negatively impact on the community.

5 The benefits to the community are
6 really minimal, as has been brought to your
7 attention today, one only needs to go to the
8 next block to find another dry clean
9 collection pickup location, that is not a
10 great impediment to people who are living in
11 this community.

12 The Appellants have also argued
13 that part of their good faith stems from the
14 fact that they were given incorrect
15 information by some persons down at the
16 Office of Zoning. However, there's been no
17 evidence provided in that regard. They did
18 not subpoena any people who worked down
19 there to come and testify to what they told
20 the Appellants. All we have is the
21 Appellant's work. Once you have examined
22 the record, you will have to conclude, in

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1 comparing the testimony today with documents
2 already in the record, that Appellant's word
3 is not always correct. Mistakes can be, in
4 recollection are made, and the Appellant has
5 not met a burden of proof that conclusively
6 dictates, say, a decision on your part, that
7 it was at DCRA's direction that all these
8 applications were improperly filled out.

9 Finally, the Appellants make the
10 argument of latches, saying that the
11 government had plenty of time to revoke the
12 certificate of occupancy and chose not to.

13 The government respectfully
14 disagrees with that position, and a review
15 of the timeline would support that
16 disagreement.

17 This certificate of occupancy was
18 issued December of 2005. Nothing happened
19 at that property to bring that property to
20 the city's attention until the spring.
21 Somewhere in March or April, you've heard
22 testimony that complaints began to be raised

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1 about what was happening there.

2 The city, without delay,
3 undertook a very thorough investigation. IN
4 fact the city went so far as issuing two
5 stop work orders, which you have heard in
6 testimony, that are still active and apply
7 to that property.

8 The city interviewed neighbors,
9 it researched the entire history of the
10 property, it brought in Appellants to
11 discuss the property, gave the Appellants
12 the opportunity to provide documentation
13 that would support their allegations.

14 Finally, in late August, early
15 September, that investigation concluded and
16 a decision was made to revoke the
17 certificate of occupancy, the letter was
18 drafted, sent out and received on September
19 12th of 2006.

20 The case law does not have
21 specific guidelines as to what is too long
22 to wait, but the government would submit

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1 that it acted in a very timely manner, after
2 becoming aware that things were not as the
3 paperwork submitted to the government would
4 have us believe, and following a thorough
5 investigation promptly took action.

6 Therefore, latches would be inappropriate.

7 I thank you very much for this
8 opportunity, and with this, the government
9 officially concludes.

10 ACTING CHAIRPERSON ETHERLY:

11 Excellent. Thank you very much, Mr. Taylor.

12 Any closing questions from our
13 board members for DCRA?

14 [No response]

15 ACTING CHAIRPERSON ETHERLY:

16 Excellent. Commissioner Dyer, we are
17 finally at that time where I get to say it's
18 time for the presentation of the ANC's case.

19 I will not hold you to the fact
20 that you indicated you needed only a minute.
21 ANC's are not time-limited in the case of
22 appeal, so take as much time as you need

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1 but--

2 ANC COMMISSIONER DYER: Well, I
3 thought it was going to take a minute and
4 then I actually--

5 ACTING CHAIRPERSON ETHERLY: No
6 problem.

7 ANC COMMISSIONER DYER: I
8 violated your rule about using a Blackberry,
9 I have to say, so that I could have my Chair
10 e-mail the actual letters, so we can submit
11 these into the record for you.

12 ACTING CHAIRPERSON ETHERLY: And
13 those would be the ANC letters.

14 ANC COMMISSIONER DYER: The ANC
15 letters.

16 ACTING CHAIRPERSON ETHERLY: If
17 you could, if you want to provide that to
18 Ms. Bailey, I think that would be helpful.

19 ANC COMMISSIONER DYER: Sure. I
20 will in a minute, but I want to read from
21 one of them. I want to read from the
22 conclusion; just to give you some

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1 background.

2 ACTING CHAIRPERSON ETHERLY:

3 Okay.

4 ANC COMMISSIONER DYER: And I
5 know it's inelegant. But we had the first--
6 my recollection is that around May--

7 MS. MADDOX: I'm sorry. Do you
8 have another copy that we can have.

9 ANC COMMISSIONER DYER: Sure.

10 MR. TAYLOR: If you have a copy,
11 I would volunteer to take it over to Ms.
12 Bailey, or whomever still is hanging out
13 over there.

14 ANC COMMISSIONER DYER: In fact
15 you can take everything over. I'll just
16 keep everything. My recollection is that we
17 had--

18 MS. MADDOX: One more thing. Is
19 that a copy of all the letters that you're
20 going to introduce?

21 ANC COMMISSIONER DYER: Just two.

22 MS. MADDOX: Just two of them?

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1 ANC COMMISSIONER DYER: Yes.

2 MS. MADDUX: Okay. I have one,
3 then.

4 ANC COMMISSIONER DYER: Oh, I'm
5 sorry. Here's the other one.

6 MS. MADDUX: Thank you.

7 ANC COMMISSIONER DYER: My
8 recollection is is that around May of 2006,
9 a neighbor, and I believe it was David,
10 appeared before our ANC, very incensed, and
11 said that there was some potential
12 commercial development on 13th Street, and
13 our response was to go slightly ballistic,
14 because it was our understanding--or my
15 response was, because it's my understanding
16 of course that 13th Street is zoned
17 commercial--I mean residential. We know
18 this for a fact.

19 It's one of the holy grails. In
20 fact we had a CDC case i which someone
21 wanted to establish a commercial property
22 and we turned them down pretty flatly.

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1 And I recall that in July, we
2 also had another person come in to ask us
3 for an update, and when we interrogated our
4 Lt. Smith from the MPD, he reported on
5 occasion that they had difficulty delivering
6 the stop work orders because no construction
7 workers are on the premise.

8 I say that just to prove that the
9 government was I think responsive, once we
10 brought this to their attention, that this
11 activity was happening.

12 I also want to say that we
13 invited the Rooths to present themselves,
14 present their case in front of our Community
15 Development Committee. Our ANC has a
16 Community Development Committee that hears
17 these cases and then makes a recollection to
18 the full ANC, and our CDC members are not
19 content experts but some of them actually
20 have a pretty good understanding of
21 development, and I've learned a little bit
22 about zoning law since I started two years

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1 ago. That's a total aside.

2 But we basically had them up here
3 and they very graciously appeared before our
4 CDC and we had about a 30 minute hearing in
5 which we asked questions, because I wanted
6 to make absolutely sure that there was no
7 evidence of prior commercial activity that
8 would allow them to grandfather their
9 business into 13th Street, because I thought
10 that there had been some concerns raised in
11 the neighborhood and I wanted to make
12 absolutely sure that the decision and the
13 advice we were giving you, as the BZA, was
14 accurate and to the best of our knowledge,

15 And during that hearing,
16 Commissioner Kramer, or former Chairman
17 Kramer, who was on the committee testified.
18 We also heard testimony from Bob Mathen
19 who's a resident of the neighborhood for 30
20 years, who testified at that hearing that he
21 saw no evidence of commercial activity on
22 the property.

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1 So after we had this discussion
2 and after we had this hearing, we did listen
3 and factor in the decisions that were made.
4 We came to the following conclusion, and I
5 would like to read the letter to you,
6 briefly.

7 "At a duly noted public meeting
8 on March 7th with a quorum present, Advisory
9 Neighborhood Commission 2F voted five to
10 nothing to advise your board to affirm the
11 Zoning Administrator's revocation of a
12 certificate of occupancy with respect to
13 property at 1312 13th Street, and an appeal
14 under 11 DCMR 3112 from that decision by the
15 owners of the property who would seek a
16 certificate of occupancy to permit a
17 business to operate in an area that is zoned
18 as residential.

19 "The Applicant, represented by
20 attorney Sandra Maddox and Jeanett Henry,
21 appeared before this ANC's Community
22 Development Committee seeking ANC 2F support

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1 of the appeal of a BZA denial of an issuance
2 of a certificate of occupancy to permit a
3 business to operate in an area that's zoned
4 as residential.

5 "After a thorough discussion on
6 this matter in which committee, and members
7 of the community were also heard, the
8 committee unanimously recommended to the ANC
9 that we oppose the appeal. The matter was
10 subsequently reviewed by the Commission
11 which unanimously accepted the recollection.

12 "The Zoning Administrator's
13 decision rests, in part, on testimony of
14 area residents that Appellants have in fact
15 operated commercial uses on this property in
16 violation of its zoning.

17 "Moreover, this ANC has
18 determined that the commercial use of this
19 property would be detrimental, mounting, in
20 effect, to spot zoning, that in this
21 instance confers absolutely no benefit to
22 the community.

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1 "There are significant and
2 strongly-held views within the community
3 that this property should not be allowed to
4 be occupied for commercial purposes
5 inconsistent with a home occupation or other
6 uses allowed under the zoning code.

7 "This ANC has consistently
8 opposed the issuance of a certificate of
9 occupancy for this property by owners and
10 Appellants who have previously acted
11 illegally."

12 And this is my chairman's
13 editorial comment. "In an arrogant
14 disregard of the zoning regulations, and we
15 have previously expressed these views in
16 prior communications with the board.

17 "Accordingly, ANC 2F recommends
18 that the board uphold its decision to revoke
19 the certificate of occupancy because the
20 presenters failed to prove that a valid
21 prior commercial establishment existed on
22 this property. And furthermore, there are

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1 no grounds for variance to be issued for
2 commercial use in this residential area.

3 "We request that the board give
4 great weight to our advice herein expressed,
5 as provided by code 1309-10 of the District
6 of Columbia Code, and 11 CDRC 3115.2 of the
7 board's regulations."

8 And that's pretty much it.

9 ACTING CHAIRPERSON ETHERLY:

10 Excellent, Commissioner.

11 ANC COMMISSIONER DYER: And I
12 thank you guys for hanging out an hour and
13 15 minutes late, beyond 6:00 o'clock to hear
14 this case.

15 ACTING CHAIRPERSON ETHERLY: No
16 problem; we appreciate that. But we
17 definitely appreciate your time and your
18 presentation. Are there any questions from
19 my colleagues of the ANC, of its
20 presentation?

21 [No response]

22 ACTING CHAIRPERSON ETHERLY: Any

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1 cross examination from the Appellant of the
2 ANC's presentation?

3 MS. MADDUX: No.

4 ACTING CHAIRPERSON ETHERLY:

5 Cross examination by DCRA?

6 MR. TAYLOR: No, Mr. Chair.

7 ACTING CHAIRPERSON ETHERLY:

8 Okay. With that, I think it is appropriate
9 that we are now at the point for rebuttal
10 and closing statement by the Appellant.

11 MS. MADDUX: I'm going to do the
12 closing statement right now.

13 I wanted to bring your attention
14 to two Court of Appeals cases, the **District**
15 **of Columbia v. Cahill** and **Paul Wieck v.**
16 **District of Columbia Board of Zoning**
17 **Adjustment.**

18 In **Cahill**, the court--excuse me.
19 the court in **Cahill** found that trusting of
20 the officials' affirmative acts--excuse me--
21 trusting in the official affirmative acts of
22 the inspector, who allowed the nonconforming

1 use of a garage to continue, was--excuse me.
2 The appellee was induced to expend a large
3 sum of money upon the building and to enter
4 into several five year leases on the
5 premises for garage purposes.

6 Neither the appellee nor the
7 lessees would have entered into such leases
8 except for the official permits and
9 certificates issued.

10 The court found that there are
11 cases where, under the circumstances, to
12 assert a public right would be to encourage
13 and promote a fraud, where a party acting in
14 good faith under affirmative acts that the
15 city has made such expensive and permanent
16 improvements, that it would be highly
17 inequitable and unjust to destroy the
18 rights. The doctrine of equitable estoppel
19 is applied.

20 In this case, the Office of
21 Zoning staff affirmative acts created a
22 situation that has ultimately resulted to

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1 the Rooths detriment. They not only issued
2 their certificates of occupancy, converting
3 the conforming use of the premises to
4 nonconforming use back in 1989. They
5 continued to issue the certificates of
6 occupancy for nonconforming commercial use
7 for 16 years, up until 2005.

8 Furthermore, each time the Rooths
9 went to fill out their application for a new
10 certificate of occupancy, they received
11 items from the Zoning Administration staff,
12 including, who Mr. Rooths knew to be Frank
13 Moody, the supervisor.

14 The explanation that he received
15 from staff was that he should continue to
16 write "pickup laundry" for "Previous Use,"
17 in order to maintain the right to use it as
18 such, if they choose to do so.

19 It is not true that they did not
20 have clean hands in filling out this
21 application. They were following the
22 guidance of the BZA staff. The Rooths acted

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1 in good faith, in fact, when they were
2 filling out these applications. They asked
3 for guidance from the Office of Zoning
4 Administration, OZA staff, and that guidance
5 was provided in honesty, and in good faith,
6 as it is undoubtedly provided to all people
7 who are applying for certificates of
8 occupancy.

9 The Zoning Administration not
10 only issued their certificates of occupancy
11 for the nonconforming use back in 1989, but
12 when the Rooths obtained their property in
13 2000, the Zoning Administration continued to
14 issue the certificates of occupancy, again,
15 as stated, and provided guidance on how to
16 fill them out until 2005.

17 Because of these affirmative acts
18 of giving out the certificates of occupancy
19 from '89 to 2005 by the Zoning
20 Administration, the Rooths purchased the
21 property, leased it out, and incurred over
22 \$20,000--excuse me--and invested over

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1 \$20,000 into this property for commercial
2 purposes, that fit the nonconforming use.

3 Now, because of some complaints
4 from neighbors, the Office of Zoning
5 Administration wants to just revoke their
6 certificates of occupancy with absolutely no
7 regard to the detriment of the Rooths.

8 The OZA's argument that this CO
9 should be revoked, because a CO was
10 improperly issued back in 1989, dreadfully
11 fails. To revoke the certificate of
12 occupancy would be to encourage and promote
13 a fraud. The Rooths have acted in good
14 faith, and under the affirmative acts of
15 Office of Zoning Administration, they made
16 expensive and permanent improvements, and
17 investments. It would be highly inequitable
18 and unjust to destroy the rights acquired,
19 and the doctrine of estoppel should be
20 applied in this case. Now, if you find that
21 the doctrine of estoppel does not apply in
22 this case, the doctrine of latches certainly

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1 does.

2 In **Wieck v. District of Columbia,**
3 BZA, the court defined latches as the
4 omission to assert a right for an
5 unreasonable and unsatisfactorily explained
6 length of time, under circumstances
7 prejudicial to the party asserting latches.

8 It is often claimed where the
9 inactivity of the officials charged with the
10 enforcement of the doctrine has misled the
11 owner into acts in violation of the
12 ordinance, or has misled persons into
13 purchasing a property in ignorance of the
14 illegality of the use of the structure.

15 In our case, the Rooths were
16 specifically looking for a commercial or
17 mixed property to purchase. If at any time
18 prior to January 2000, when Mr. Rooths and
19 Mrs. Dao bought the property at 1312 13th
20 Street, the zoning officials had followed up
21 on the certificates of occupancy issued from
22 1989 to December 2000, the Rooths would not

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1 have purchased the property, knowing that it
2 was not--or it was in violation of the
3 zoning ordinance.

4 The Rooths showing of injury from
5 the loss of this income-producing property,
6 the value of which was indubitably reflected
7 in the purchase price, is sufficient to find
8 substantial prejudice to the Rooths as a
9 result of the zoning officials inexcusable
10 delay.

11 In addition, Mr. Rooths testified
12 that he spent well over--again, as stated,
13 he spent well over \$20,000 in repairs and in
14 preparation to open this business. The
15 substantial prejudice that would be imposed
16 also includes his inability, Mr. Rooths
17 inability to get a commercial loan for the
18 location--excuse me--to get a residential
19 loan for the location, and the high price of
20 commercial utilities that he must pay now.

21 Furthermore, he has told you that
22 the cost to convert the residential property

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1 is prohibitive. There is no adverse impact
2 on the community. Any conceivable harm to
3 the general public interest from not
4 enforcing the zoning regulation in this case
5 is not sufficient to outweigh the inequity
6 of substantial prejudice to Mr. Rooths and
7 Mrs. Dao.

8 Therefore, the Office of Zoning
9 Administration's revocation of the
10 certificate of occupancy should be reversed.

11 With regard to the six month time
12 period that the OZA cites in their letter,
13 the Rooths were issued the certificate of
14 occupancy on December 22nd, 2005, and were
15 required to open by June 22nd of 2006.

16 During that six month period, the
17 Rooths were issued several stop work orders
18 between OZA and BLRA, that took several
19 months to lift as far as--which is what Mr.
20 Rooths and Mrs. Dao's understanding was.

21 The Rooths testified--Mr. Rooths
22 testified that he was issued a stop work

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1 order on March 22nd, 2006, and it was not
2 lifted, based on his understanding, until
3 May of 2006, after no violations were found.

4 Now BZA states that those two
5 stop work orders are still in effect, but it
6 does not make sense that two stop work
7 orders would be in effect simultaneously.
8 One would have been sufficient to stop the
9 work. So the first stop work order must
10 have been lifted to rationalize the issuance
11 of the second stop work order.

12 Now when the first stop--after
13 the first stop work order was issued March
14 22nd, 2006, Mr. Rooths only had to put up
15 his sign and obtain a clothing rack, to open
16 by June 22nd of 2006.

17 However, he was issued another
18 stop work order on June 14th, that he
19 learned was not in effect, via a telephone
20 conversation with a staff member at DCRA in
21 July of 2006. In addition, there was
22 another stop work order issued by BLRA on

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1 June 28th, 2006, for allegedly not having a
2 permit to erect a sign, when Mr. Rooths did
3 in fact have a permit on the building for
4 the sign.

5 But by this time the public, and
6 the representatives from OZA, were
7 successful in preventing Mr. Rooths from
8 opening his business by June 26th of 2006
9 deadline. After making it impossible for
10 the Rooths to open on time, the OZA now
11 wants to penalize the Rooths for not opening
12 the business by using this as one of the
13 bases for revoking their certificate of
14 occupancy.

15 Under these circumstances, we ask
16 you to reverse the Office of Zoning
17 Administration's decision to revoke their
18 certificate of occupancy and bar them from
19 enforcing the zoning regulations against Mr.
20 Rooths and Mrs. Dao. Thank you.

21 ACTING CHAIRPERSON ETHERLY:
22 Excellent. That would at this time conclude

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1 our hearing on Appeal No. 17581. Here's
2 what I'd like to suggest in terms of our
3 proceeding forward.

4 I think the record is fairly
5 full, but I think it would be appropriate
6 for the board to take into its receipt
7 proposed findings of fact and conclusions of
8 law.

9 So what I'd like to suggest, if
10 my colleagues are amenable, is that we set
11 this for decision making on May 1st. That
12 would be our May 1st public hearing. There
13 would be no other testimony at that time but
14 the board would like to request proposed
15 findings of fact and conclusions of law.

16 Those proposed findings of fact
17 and conclusions of law would be due to the
18 board by Tuesday, April the 24th.

19 That would give the board enough
20 time, obviously, to receive the submittals,
21 and review them in time for our decision
22 making hearing on the first of May.

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1 Those submittals should be served
2 on both parties and the ANC. It is normally
3 not the custom of the board to inviter
4 responsive submittals in response to those,
5 so we will essentially be simply looking for
6 the proposed findings of fact and
7 conclusions of law, and then that would be
8 it.

9 My colleagues have any concerns
10 or any need for additional information?

11 [No response]

12 ACTING CHAIRPERSON ETHERLY:
13 Everyone clear and comfortable with the
14 timeline that's been laid out?

15 Excellent. I thank you all very
16 much for your time. It's been a long day
17 but I think a very productive one as we've
18 gone through what is a very complicated
19 factual record and we appreciate everyone's
20 time.

21 Mrs. Bailey, is there any further
22 business before the board on our March 20th

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1 public hearing day.

2 MS. BAILEY: Not today, Mr.
3 Chairman.

4 ACTING CHAIRPERSON ETHERLY:
5 Excellent. The Board of Zoning Adjustment's
6 public hearing of March 20th, 2007, stands
7 adjourned. Thank you to my colleagues.

8 [Whereupon, at 7:21 p.m., the
9 public hearing was adjourned]

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