

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JULY 9, 2013

+ + + + +

The Regular Public Hearing convened  
in the Jerrily R. Kress Memorial Hearing Room,  
Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington,  
D.C., 20001, pursuant to notice at 9:30 a.m.,  
Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson  
S. KATHRYN ALLEN, Vice Chairperson  
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MARCIE COHEN, Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist  
STEPHEN VARGA, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

TAMAR GLAZER, ESQ.  
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN  
KAREN THOMAS  
MAXINE BROWN-ROBERTS  
MATT JESICK  
ARTHUR JACKSON

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF  
PRESENT:

JONATHAN ROGERS

The transcript constitutes the  
minutes from the Public Hearing held on July 9,  
2013.

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

2 10:04 a.m.

3 CHAIR JORDAN: Okay, 18581.

4 MR. MOY: Okay. We're into the  
5 public hearing cases.

6 Application Number 18581. This is  
7 the application of Jason W. Maroney for a special  
8 exception under Section 223 at premises 14 5th  
9 Street, N.E. Property located in Square 816,  
10 Lot 839.

11 CHAIR JORDAN: All right. This is  
12 a case that I think we're going to have to  
13 reschedule. I was trying to take a last minute  
14 look to see if we can do a work around, but I don't  
15 think we can.

16 Because this property is subject to  
17 1202 for a special exception, this is in the  
18 Capitol Interest Overlay, there were some  
19 referrals that were suppose to happen with this  
20 file and I don't -- we have not had those  
21 referrals to other agencies.

22 One, the file needs to be evaluated

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1 by the Architect of the Capitol and also by DHCD  
2 and that has not happened. There was no  
3 referral to those agencies.

4 So, I want to move this and they have  
5 some substantial responsibilities,  
6 particularly Architect of the Capitol, what  
7 they're suppose to opine on.

8 So, Mr. Moy, can we move this to a  
9 short window?

10 MR. MOY: Short window. I would  
11 suggest, Mr. Chairman, before we break for  
12 August recess, July 30th. That'll allow time  
13 for the agencies.

14 CHAIR JORDAN: So, give the  
15 agencies the opportunity to weigh in and we'll  
16 get out to the agencies.

17 MR. MOY: Yes, sir. Today.

18 CHAIR JORDAN: Today. Yes. We're  
19 sorry. Those agencies should have received a  
20 referral of the filing. Your filing from this  
21 department and according to our record, it has  
22 not happened nor do we have any weigh-in from

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1 those agencies particularly Architect of the  
2 Capitol regarding how it fits into their plans  
3 and DHCD.

4 Ms. Cohen.

5 ZC VICE CHAIR COHEN: Yes, I just  
6 would like to state for the record that again,  
7 this is a matter that was omitted by our staff  
8 and I think that it should be walked through and  
9 I would suggest, although I don't speak for the  
10 Architect of the Capitol nor DHCD, this is really  
11 a simple matter that does not in anyway impact  
12 their jurisdictions negatively.

13 So, I would hope that we can expedite  
14 this as soon as possible.

15 CHAIR JORDAN: Yes. Thank you.  
16 Sorry. We will get to it. Better to have it  
17 done right than to have someone pull a tech on  
18 you later.

19 Thank you. Thank you for your time.  
20 Okay. Okay. We're ready.

21 MR. MOY: All right. The next  
22 application, Mr. Chairman, is Application

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1 Number 18580. This is the application of Salome  
2 Tinker. This is for a variance request from the  
3 lot occupancy requirements under Section 403 and  
4 variance from the rear yard requirements under  
5 Section 404 and from the nonconforming structure  
6 provisions under Section 2001.3. Property  
7 located in the R-4 District at premises 331 L  
8 Street, N.E. Property located in Square 774,  
9 Lot 805.

10 CHAIR JORDAN: Okay. All right.  
11 Would you please identify yourselves for the  
12 record? Just make sure your microphone's  
13 turned on and let me ask before you begin did you  
14 give witness cards to -- two witness cards each  
15 to the court reporter?

16 MR. JOHNSON: Yes, I did.

17 CHAIR JORDAN: Okay. Then please  
18 identify yourself.

19 MR. JOHNSON: Good morning, Mr.  
20 Chairman and Members of the Board. My name is  
21 Edward M. Johnson and on behalf of my firm,  
22 Edward M. Johnson & Associates and my clients Ms.

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1 Salome Tinker and Mr. Christopher Tinker, we  
2 thank you for the opportunity to present today  
3 331 L Street, N.E..

4 CHAIR JORDAN: And you are?

5 MR. TINKER: My name is Christopher  
6 Tinker. I'm an applicant.

7 CHAIR JORDAN: Okay. So, we have  
8 an affidavit of posting that was submitted. It  
9 was untimely. Yes.

10 Was it Mr. Moy?

11 MR. MOY: If it -- I don't have the  
12 file with me, but --

13 CHAIR JORDAN: It looks like --

14 MR. MOY: -- we did not have the  
15 affidavit associated with it.

16 CHAIR JORDAN: But, we will accept  
17 in the record.

18 Let me tell you. We have a --  
19 there's a couple of issues with this case and so,  
20 in your presentation, it's best that you present  
21 to us exactly what we're -- well, you have the  
22 right to present what you want to present. But,

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1 we need you to probably particularly drill down  
2 on those things that raise a concern to the  
3 Board.

4 One, I don't think there's been a  
5 proper examination of the standard necessary for  
6 the relief that you requested. I don't see  
7 where there's the exceptional  
8 circumstances/situation for this. You kind of  
9 talk about it in a broad sweep and we need to know  
10 what that is. You're saying that the property  
11 is small in size, et cetera. But, we don't have  
12 anything in comparison.

13 And then the practical difficulty.  
14 This Board has also rendered in previous other  
15 cases that that argument that you've made has not  
16 been substantial enough to grant relief.

17 So, does the Board have any other  
18 questions that you would like the Applicant to  
19 address particularly?

20 Okay. So, it's on you.

21 MR. JOHNSON: I'd like to submit to  
22 the Board a couple of drawings that we've already

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1 submitted to Planning. Additional drawings for  
2 the record.

3 One is a floor plan of the second  
4 floor of the existing building and a site area  
5 showing the three --

6 CHAIR JORDAN: You're already filed  
7 it?

8 MR. JOHNSON: Yes.

9 CHAIR JORDAN: Then we would have it  
10 if you've already filed it. Anything you've  
11 already filed, we have.

12 MR. JOHNSON: Okay.

13 CHAIR JORDAN: When did you file it?  
14 You filed it with the Office of Zoning?

15 MR. JOHNSON: Office of Planning.  
16 We've been communicating --

17 CHAIR JORDAN: Okay. Then we would  
18 not have it necessarily.

19 MR. JOHNSON: Roberts. Okay.

20 CHAIR JORDAN: We do not have it.

21 MR. JOHNSON: Okay.

22 CHAIR JORDAN: And if you had time

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1 to file it with the Office of Planning, you  
2 certainly had enough time to file it with the  
3 Office of Zoning.

4 MR. JOHNSON: I apologize.

5 CHAIR JORDAN: And this goes for  
6 everyone. You know, the Board as I said before  
7 takes time and effort going through these things  
8 and is really starting to watch very closely the  
9 filings because it's not fair to anyone that we  
10 get last minute filings and we do quick reviews  
11 and matters can simply change substantially.

12 So, we've now received --

13 MR. JOHNSON: We submitted this  
14 because the Office of Planning asked us to  
15 provide additional clarification about the  
16 footprint of the existing second floor of the  
17 building.

18 CHAIR JORDAN: Okay. But, before  
19 we get to the footprint of the building, you need  
20 to tell us the other aspects of why the relief  
21 should be granted.

22 MR. JOHNSON: Okay. May I?

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1 CHAIR JORDAN: Yes, please proceed.  
2 Um-hum.

3 MR. JOHNSON: Right. This  
4 existing building, 331 L Street, N.E., is an  
5 extraordinary application of regulations. It  
6 is exceptionally tiny. the lot is only 13 feet  
7 wide and 45 feet deep. The building is  
8 approximately 35 feet deep, 13 feet wide. So,  
9 we --

10 CHAIR JORDAN: Is it 45 or 35 feet  
11 deep?

12 MR. JOHNSON: The building is 35  
13 feet deep on the first floor and -- yes, 35 feet  
14 deep. The lot is 46 feet deep. So, we exceed  
15 the rear yard requirement under 404.1 and we  
16 exceed the lot occupancy under 403.2 and we've  
17 got a problem with the nonconforming structure  
18 because of the narrowness of the site being only  
19 13 feet wide. Whereas under R-4, the width  
20 should be 18 feet and we are required to have a  
21 20-foot rear yard and unfortunately, this  
22 building was constructed prior to the 1958

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1 enactment of the Zoning Regulations.

2 And so, therefore, because of it's  
3 narrowness and shallowness and configuration  
4 and topography and square footage of the  
5 building which is approximately 350 square feet,  
6 the building only comprises a second-story one  
7 bedroom which is unusual within the District of  
8 Columbia for existing as well as new residential  
9 row structures.

10 The client purchased the property  
11 under the belief that she would be able to add  
12 or they would be able to add a second-story  
13 addition approximately 13 by 15, 150 square feet  
14 and the reasonableness of the request was based  
15 on the fact that the adjacent neighbor had  
16 already done the same thing and this building  
17 also only has a six-foot rear yard.

18 It also only has access to the rear  
19 for a narrow pedestrian path on the east side of  
20 the three buildings as indicated in our  
21 submittals. Three very narrow 13-foot-wide row  
22 buildings that exist between a 6-foot-wide

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1 pedestrian area on the east and a public alley  
2 on the west and the public alley providing access  
3 to the rear of these buildings is only about 5/6  
4 feet.

5 So, it's really unusual in its  
6 physical configuration not only for the single  
7 building, but for all three of them in  
8 combination and the fact that it only has a  
9 6-foot rear yard and the fact that it has a  
10 35-foot footprint, to request to be allowed to  
11 build a second story single bedroom so that this  
12 building can be reasonably occupied by a small  
13 family appeared to be very reasonable in the  
14 client's request and in our request on behalf of  
15 a client.

16 This addition to the rear does not  
17 pose any health, safety or welfare issues to the  
18 adjacent community. As a matter of fact, the  
19 building directly to the south is substantial in  
20 depth. However, the site is also substantial in  
21 depth. So, expanding this building to the south  
22 would not have an impact on the building to the

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1 south facing Third Street because it has a  
2 substantial rear yard and as a matter of fact,  
3 it's --

4 CHAIR JORDAN: Facing Third Street  
5 or Fourth Street?

6 MR. JOHNSON: I'm sorry. Fourth  
7 Street. Excuse me. And as a matter of fact,  
8 the rear client has already built a 10-foot fence  
9 behind this neighbor's property, all three of  
10 these properties. Which is illegal in the  
11 District of Columbia. You can't have a 10-foot  
12 --

13 CHAIR JORDAN: I was going to ask  
14 you for the neighbor next door that did their  
15 addition do you know if they got zoning relief  
16 for that?

17 MR. JOHNSON: I don't know if they  
18 did.

19 CHAIR JORDAN: The head's shaking  
20 you don't know or no, they didn't?

21 MR. JOHNSON: I don't know. It's  
22 there.

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1 CHAIR JORDAN: Zoning cops. No.

2 MR. JOHNSON: It's there and so,  
3 this client is only asking for relief not to  
4 expand the footprint, but to simply add a second  
5 story, one bedroom to the footprint of the rear  
6 of the building allowing them to occupy this  
7 building with a reasonable second bedroom.

8 CHAIR JORDAN: You just want to  
9 raise up from the first floor?

10 MR. JOHNSON: Yes, and as a matter  
11 of fact, if we were to add to the rear under  
12 current regulations, we can only add three feet  
13 and as a matter of fact, if we were to conform  
14 to the strict requirements of the regs, we would  
15 have to tear down much of the back of the  
16 building.

17 CHAIR JORDAN: There you go.  
18 That's the stuff that should have been in the --  
19 you're hitting it right on point.

20 MR. JOHNSON: I'm sorry. And  
21 expand -- we would have to expand the building  
22 to 18 feet which we cannot do --

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1 CHAIR JORDAN: That's what --

2 MR. JOHNSON: -- because of the  
3 configuration of the lot which does not allow the  
4 structure to be expanded 18 feet because the lot  
5 is only I think 13.51 feet wide.

6 So, we have in the District of  
7 Columbia a really unusual configuration for a  
8 row house.

9 CHAIR JORDAN: There you go. You  
10 hit all the little bells and whistles and did a  
11 great job.

12 MR. JOHNSON: Thank you, sir.

13 CHAIR JORDAN: Does the Board have  
14 any questions of the Applicant at this point?  
15 Yes. Mr. Hinkle.

16 MEMBER HINKLE: Just real quick, I  
17 think I read in the report that you had made an  
18 attempt to contact the neighbors adjacent on  
19 both sides, but you were unsuccessful. Is that  
20 the case?

21 MR. JOHNSON: Yes, the client has  
22 submitted certified letters and made phone calls

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1 and got no responses.

2 As a matter of fact, the neighbor to  
3 direct -- adjacent to the west has a sign -- since  
4 we've started the action in support, they have  
5 a sign in front of their property to sell it.

6 MEMBER HINKLE: Great. Thank you.

7 CHAIR JORDAN: Some things are  
8 better left --

9 MR. JOHNSON: And that's the  
10 building on the alley.

11 CHAIR JORDAN: Some things are  
12 better left not said. Well, anyway, okay. Any  
13 other questions of the Applicant?

14 So, let's turn to Ms. Brown-Roberts  
15 from Office of Planning and see if there's  
16 anything in addition to her report that she'd  
17 like to --

18 MS. BROWN-ROBERTS: Good morning.  
19 Good morning, Mr. Chairman and Members of the  
20 Board. Maxine Brown-Roberts for the record.

21 No, I will stand on the record and  
22 our report recommended approval. Thank you.

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1 MR. JOHNSON: Oh, I -- one other  
2 point I forgot to mention, we --

3 CHAIR JORDAN: Don't over talk.

4 MR. JOHNSON: Oh, I'm sorry.  
5 Excuse me, sir.

6 CHAIR JORDAN: Just trying to help  
7 you out. Sometimes people get themselves in  
8 trouble by keeping talking. But, no feel free.

9 MR. JOHNSON: I simply wanted to  
10 mention -- I neglected to mention that we  
11 presented to ANC-6C on the 5th of June and they  
12 unanimously provided support.

13 CHAIR JORDAN: Yes, we have that.

14 MR. JOHNSON: Voted to provide  
15 support.

16 CHAIR JORDAN: Thank you. Yes,  
17 that's a good thing.

18 Does the Board have any questions  
19 for Office of Planning? Does the Applicant have  
20 any questions for Office of Planning?

21 MR. JOHNSON: No, we asked for a  
22 decision.

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1 CHAIR JORDAN: We're not there yet.  
2 Stay with me. Stay with me.

3 MR. JOHNSON: Thank you, sir.

4 CHAIR JORDAN: We don't have a DDOT  
5 report. At least, I did not see one. So, there  
6 isn't one. So, I guess they didn't want to weigh  
7 in.

8 Is there anyone here from ANC-6C?  
9 ANC-6C? We do have a letter of support from  
10 ANC-6C recommending approval to which we will  
11 give great weight in support of this  
12 application.

13 Is there anyone in the audience here  
14 wishing to testify in support of this  
15 application? Anyone here wishing to testify in  
16 support of the application?

17 Is there anyone here wishing to  
18 testify in opposition to the application?  
19 Anyone wishing to speak in opposition?

20 Then let's turn back to the  
21 Applicant for rebuttal. There's no rebuttal.  
22 There's nothing to challenge or if you feel it

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1 necessary to do a closing, you can do a closing  
2 or we can just move on.

3 MR. JOHNSON: Just a couple of  
4 points. As I basically stated because of the  
5 narrowness, the configuration, the shallowness  
6 of the site and the fact that it was constructed  
7 prior to the enactment of the regulations and  
8 only allows for one bedroom, we feel that your  
9 approval would be reasonable to support and as  
10 I mentioned with not being a conflict with the  
11 intent of the regulations and allow this family  
12 to have a reasonable home.

13 Thank you.

14 CHAIR JORDAN: Okay. Thank you.

15 Then let's close the hearing and  
16 let's move to deliberation.

17 Anyone on the Board want to -- got  
18 anything?

19 I believe that the Applicant  
20 certainly has pulled this out and saved it.  
21 Different than the documentation and presented  
22 to the Board substantial evidence for us to

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1 believe that a variance should be granted, that  
2 this property for the reasons cited has an  
3 exceptional condition and therefore, it would be  
4 a practical difficulty for them to meet the  
5 requirements of the Zoning Regulations.

6 And based upon that, I would move  
7 that we grant the relief requested.

8 BZA VICE CHAIR ALLEN: I second.

9 CHAIR JORDAN: Motion made and  
10 seconded. Any further discussions?

11 All those in favor signify by saying  
12 aye.

13 (Ayes.)

14 CHAIR JORDAN: Those opposed nay.  
15 The motion carries. Mr. Moy.

16 MR. MOY: Yes, sir, staff would  
17 record the vote as 4-0. This on the motion of  
18 Chairman Jordan to approve the application for  
19 the relief requested. Second the motion Ms.  
20 Allen. Also in support Ms. Cohen and Mr.  
21 Hinkle. We have a Board seat vacant. Motion  
22 carries Mr. Chairman.

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1 CHAIR JORDAN: Good and we will have  
2 a summary order please.

3 MR. MOY: Yes, sir.

4 CHAIR JORDAN: And then I want to  
5 thank you for your time and presentation. Thank  
6 you very much.

7 MR. JOHNSON: Thank you, sir.  
8 Thank you, Member of the Board. God bless.  
9 Take care. Have a terrific day.

10 CHAIR JORDAN: Thank you.

11 MR. MOY: The next application on  
12 the agenda is Application Number 18579. This is  
13 the application of the Roman Catholic Archbishop  
14 of Washington pursuant to 11 DCMR 3104.1 and  
15 3103.2. This application is in for multiple  
16 variances from lot occupancy under 403, special  
17 exceptions from Subsections 411.3 and 411.5,  
18 roof structure requirements for an addition to  
19 a private school and special exceptions for a  
20 private school and child development center  
21 under Sections 205 and 206 to allow a student  
22 enrollment cap of 350 students and 70 staff in

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1 the R-3 District at premises 3514 O Street, N.W.  
2 Property located in Square 1227, Lot 95.

3 CHAIR JORDAN: Okay. Where am I?  
4 18579. All right. Would the persons at the  
5 table please identify themselves for us please?

6 MR. SCHIESEL: Yes, I'm Robert  
7 Schiesel, Project Manager.

8 CHAIR JORDAN: I'm sorry. The last  
9 name again.

10 MR. SCHIESEL: Schiesel. Project  
11 Manager, Gorove/Slade Associates. We're  
12 transportation planners.

13 MR. HORAK: Mark Horak. I'm Pastor  
14 of Holy Trinity Catholic Church.

15 MS. RODDY: Christine Roddy and I'm  
16 an attorney with Goulston and Storrs.

17 MR. SPACK: And Bill Spack, a  
18 Principal with Cox Graae + Spack Architects.

19 CHAIR JORDAN: Last name again.

20 MR. SPACK: Spack.

21 CHAIR JORDAN: Okay. We have some  
22 housekeeping issues we need to deal with here.

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1           Let's be clear what relief is being  
2 requested here. What is the relief?

3           MS. RODDY: We are proposing two  
4 additions to the school and since this is an R-3  
5 Zone District, that requires special exception  
6 relief for a private school.

7           The additions will include one roof  
8 structure that --

9           CHAIR JORDAN: No. No. I need to  
10 know what relief you're requesting. What  
11 reliefs are you asking the Board to grant?

12           MS. RODDY: Relief under Sections  
13 205, 206, 411 as well as the lot occupancy which  
14 --

15           CHAIR JORDAN: How many students  
16 are there going to be? How many faculty are  
17 there going to be? There's been some question  
18 of --

19           MS. RODDY: Right. So, this is an  
20 unusual case because it's never been before the  
21 Board and does not have an existing cap. It was  
22 a grandfathered use and this is the first time

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1 it's coming before the Board.

2 So, we simultaneously proposed a cap  
3 of 350 students and 70 faculty and staff members.  
4 So, it's actually a reflection of what their  
5 current operations are since there was no cap  
6 previously.

7 CHAIR JORDAN: Okay. So, the 350  
8 students would include the students at the  
9 school and at the --

10 MS. RODDY: Child development  
11 center.

12 CHAIR JORDAN: And the child  
13 development center.

14 MS. RODDY: The school is a  
15 prekindergarten through 8th grade and the child  
16 development center essentially it's  
17 prekindergarten program.

18 CHAIR JORDAN: That's combined.  
19 Okay. Also, I don't believe that -- you don't  
20 have a license from the office of state  
21 superintendent of schools for the child  
22 development center yet.

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1 MS. RODDY: I believe that there is  
2 a discrepancy in the definition of child  
3 development center with the state, the permanent  
4 schools and the Zoning Regulations. This is not  
5 a nursery school program and that's typically  
6 what it would be defined as a child development  
7 center for the OSSE purposes. We are looking  
8 into that obviously and if a license were  
9 necessary, then we would --

10 CHAIR JORDAN: Okay. Yes, you got  
11 to do what you got to do to operate and if it's  
12 not, then -- excuse me just one second please.

13 Yes, thank you for reminding me.

14 Then there's an issue that's been  
15 raised I believe by OP that raises the issue that  
16 a relief from 2001.3 was necessary and I don't  
17 think you made that request, but what's your  
18 position on that?

19 MS. RODDY: If you give me one  
20 moment. I believe that's the nonconforming  
21 relief.

22 CHAIR JORDAN: That's correct.

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1 MS. RODDY: And the school's  
2 actually grandfathered with the nonconforming  
3 lot occupancy because it was an existing  
4 structure. It was constructed in the early  
5 1900s well before the 1958 Zoning Regulations.  
6 So, the existing lot occupancy was  
7 grandfathered.

8 We are proposing to modify that and  
9 so, that is why we're seeking the lot occupancy  
10 relief today.

11 CHAIR JORDAN: And it's your belief  
12 then that relief from 2001.3 is not necessary?

13 MS. RODDY: We would like to request  
14 relief from 2001.3 in concert with the relief  
15 from lot occupancy requirements that we  
16 requested.

17 CHAIR JORDAN: Okay. That's  
18 probably a good move. Okay.

19 Then seeing that we've clarified the  
20 relief granted, let me ask a couple of -- just  
21 some small questions. Wait a minute. One  
22 second.

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1           There's no additional parking  
2 spaces or anything that's going to be required  
3 for this?

4           MS. RODDY: No, as a contributing  
5 structure in the Georgetown Historic District,  
6 parking is not required.

7           CHAIR JORDAN: How many parking  
8 spaces do you have on the property?

9           MS. RODDY: We have informal  
10 parking in an alley. That's a private alley on  
11 the property. They aren't striped. So, they  
12 wouldn't be zoning compliant. We do lease  
13 spaces at Georgetown Visitation as well as the  
14 Jella School.

15           CHAIR JORDAN: Does the Board have  
16 any questions that they need to ask this  
17 Applicant -- would like the Applicant to address  
18 during their presentation or think one is  
19 necessary? Ms. Cohen.

20           ZC VICE CHAIR COHEN: Yes. I  
21 understand that the parking that is leased is a  
22 mile and more away. So, if you can address that

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1 during your presentation. How anybody gets  
2 from that point -- I mean they could walk  
3 certainly, but not everybody will. So, if you  
4 can explain that, I'd appreciate it.

5 MS. RODDY: Of course.

6 CHAIR JORDAN: Go ahead if you  
7 would.

8 MS. RODDY: Oh. Okay. Well, as a  
9 preliminary matter, we do have Mr. Schiesel as  
10 well as Mr. Spack here that we are offering as  
11 experts. They've both been accepted by the  
12 Board previously.

13 CHAIR JORDAN: We accept them.  
14 They're in the book already. Um-hum.

15 MS. RODDY: Thank you. So, as you  
16 know, in the materials that we submitted, the  
17 school is located on 36th Street between N and  
18 O Streets, N.W. and it has actually been in the  
19 District for nearly 200 years and has been  
20 operating on the site for about 140. So, it's  
21 been here for awhile and it's remarkable that  
22 this is the first work that is done that has

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1 required --

2 CHAIR JORDAN: I'm really good on  
3 all the basic and background. But, that's why  
4 I'm trying to get you to the spot where the Board  
5 has questions.

6 MS. RODDY: Okay.

7 CHAIR JORDAN: Because the Board  
8 would ask questions if they -- in areas -- just  
9 to save you some time and effort.

10 MS. RODDY: Okay. I will jump  
11 ahead and one of the things I'm sure you're  
12 wondering about is that the ANC has supported  
13 this application and they proposed conditions  
14 which we have accepted.

15 The Office of Planning supports this  
16 application and proposed conditions. With the  
17 exception of one, we have accepted and I'll get  
18 to that in a minute and then DDOT has also  
19 supported this application and proposed  
20 conditions which we have accepted.

21 I handed to Mr. Moy at the start of  
22 this hearing a complete list of the proposed

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1 conditions of approval.

2 CHAIR JORDAN: Mr. Moy, can I have  
3 those? Because I need to see those because you  
4 name some I had not had in my record. I just want  
5 to make sure -- so, this list would be an ongoing  
6 rolling list of all of them consolidated?

7 MS. RODDY: That is all of the  
8 conditions consolidated. That includes the  
9 conditions that we proposed in our TMP as well.

10 CHAIR JORDAN: Okay. Some of these  
11 --

12 MS. RODDY: Condition Number 4  
13 actually is not included in any of the materials  
14 that you have before you, but in speaking with  
15 the Office of Planning, we came up with the idea  
16 of the community liaison and added that to the  
17 list.

18 CHAIR JORDAN: All right. So, to  
19 answer Ms. Cohen's question.

20 MS. RODDY: Oh. Sure. If I could  
21 speak quickly though to -- before turning it to  
22 Mr. Schiesel.

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1           The Office of Planning has proposed  
2           a term of five years on this school which we  
3           really do not think is necessary and I'll let Mr.  
4           Jackson speak for himself, but I believe in our  
5           conversations the Office of Planning has come to  
6           a similar conclusion.

7           We are providing a monitoring report  
8           that I think would essentially or a monitoring  
9           program that would address the same concerns  
10          that the Office of Planning noted.

11          I mean the school has been operating  
12          for 140 years and I think to put a five-year term  
13          on a nine-year program would be an onerous  
14          condition on their operations. Not just from  
15          the standpoint of enrollment, but also from  
16          financing as well and given the support that the  
17          community has and if you notice that the ANC's  
18          support was enthusiastic, I think that speaks to  
19          their relationship with the community.

20          And with that, I will turn to Mr.  
21          Schiesel to address the parking question.

22          MR. SCHIESEL:       Yes, regarding

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1 parking, the school does -- the church on the  
2 grounds does have a few informal spaces.

3 In order to get more to the heart of  
4 it though, we did do a full employee survey.  
5 It's documented in our traffic statement and the  
6 on-site parking does only accommodate around 5  
7 percent of the employees who respond to the  
8 survey.

9 So, the rest, yes, are parking at  
10 various spots throughout the neighborhood.  
11 This is usually done through two ways. One, the  
12 school has agreements with Georgetown  
13 Visitation, Jella and that accounts for, you  
14 know, over 40 percent of the employees.

15 They also reimburse employees that  
16 want to park in public garages. There are some  
17 on Bank Street and Prospect Street which are  
18 approximately two blocks away and that  
19 accommodates -- that's another significant  
20 chunk.

21 And then there are some employees  
22 who did mention on their survey that they do park

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1 on street at meters or have a Ward 2 sticker and  
2 park on street and some who actually admitted  
3 that they don't have a Ward 2 sticker and park  
4 on the street.

5 So, there's a breakdown of our  
6 survey results, but that is how people -- how the  
7 employees of the school park.

8 So, yes, one of the spots is a  
9 further distance away, but in order to  
10 accommodate, you know, people who don't want to  
11 walk as far, there is a reimbursement up to \$10  
12 a days for people who park in local garages that  
13 are closer.

14 MS. RODDY: And just to clarify, the  
15 bulk of the spaces that they lease from are from  
16 Visitation and that's about two blocks away.  
17 So, it's considerably less than the mile.

18 ZC VICE CHAIR COHEN: Okay. Thank  
19 you. Because I just -- one of the issues of  
20 sensitivity in that neighborhood is obviously  
21 parking and yes, you're a very old, established  
22 institution, but I just wanted to make sure that

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1       there is opportunities for other development  
2       should it occur.

3                   CHAIR JORDAN:       Yes, parking  
4       everywhere in the District is an issue.

5                   Does the Board have any other  
6       questions of the Applicant? Further drill  
7       down?

8                   No, I think I'm clear and understand  
9       now what the relief is and we clearly understand  
10      the basis of why you need the relief.

11                  Yes.

12                  ZC VICE CHAIR COHEN: Would you just  
13      explain the difference between -- maybe I just  
14      missed it, but the child development you said is  
15      not a nursery school. Is that just an age thing  
16      or --

17                  MS. RODDY: Yes, it is primarily an  
18      age thing. Their prekindergarten program is  
19      generally four year olds.

20                  CHAIR JORDAN: Okay. Is there  
21      anything else you think that you need to present?  
22      Because the Board has probably asked the

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1 questions it believed the application was or the  
2 documentation was short.

3 Certainly, you have a right to  
4 present anything else you want, but I think  
5 you're probably okay at this point.

6 MS. RODDY: Okay. Well, I  
7 appreciate your time and I will be quiet. Thank  
8 you.

9 CHAIR JORDAN: No, you also -- no,  
10 it's your time, but you also can come back in  
11 rebuttal.

12 Then let's turn to Officer Jackson.  
13 You know, you're not going to ever live that  
14 down. Right? I guess it happened about a year  
15 ago is when I called you Officer Jackson.

16 MR. JACKSON: It lives forever, Mr.  
17 Chairman.

18 CHAIR JORDAN: Yes. Go ahead  
19 please.

20 MR. JACKSON: All right. Thank  
21 you.

22 Arthur Jackson, D.C. Office of

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1 Planning.

2           You have the Office of Planning's  
3 report before you. We have -- we went through  
4 our analysis and felt that the Applicant met the  
5 standards for -- generally met the standards for  
6 approval for the special exception from 205, the  
7 special exception from Section 206, the special  
8 exception from the roof structures and the  
9 variance for the lot occupancy given the de  
10 minimus increase that's occurring and as the  
11 Office of Planning illustrated, the increase is  
12 due to the construction of health and safety  
13 facilities essentially bathrooms on the back of  
14 the building.

15           We suggested conditions for  
16 approval and the Applicant -- working with the  
17 Applicant in communications with their client,  
18 we were able to come to agreement on most of them.

19           Of course and also, we'll be working  
20 with the ANC and with Department of  
21 Transportation and forwarded both of their -- a  
22 lot of the transportation requirements that the

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1 community felt were most important into their  
2 conditions.

3 I would note that originally the  
4 Office of Planning had recommended that the age  
5 -- had indicated the age of the children would  
6 be four years old and that would be consistent  
7 with the original application, but the Applicant  
8 explained that some of the children would --  
9 might turn four or might turn five during the  
10 course of the time being there. So, they took  
11 the age off.

12 The Office of Planning also notes  
13 that there might be some conditions where they  
14 have special needs children that would be in the  
15 prekindergarten, but might be older age. So,  
16 there might be several instances where the age  
17 might be a little more than four years. So,  
18 we're -- we have no problem with that change.

19 We had included a Condition Number  
20 4 in anticipation that the Applicant would be  
21 putting in temporary -- putting in  
22 transportation demand management measures that

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1 would need to be tested and changed over time.  
2 But, we -- after seeing the enthusiastic  
3 response from the community to the conditions  
4 that were proposed and contingent on the  
5 Department of Transportation agreement, we're  
6 agreeable with the removal of that condition for  
7 a term and replacement with an actual list of the  
8 conditions that would be implemented.

9 The last concern was that the  
10 Applicant change -- modify the condition for the  
11 after-school activities to include activities  
12 in the multi-purpose room that would be the  
13 school or the church and there was a concern  
14 about the uncertainty of the church activities  
15 in that they would be outside of the school day  
16 and could extend or have additional impact on the  
17 community.

18 In response though, they came up  
19 with the idea of putting in a liaison. So, if  
20 there are any issues that are raised by other  
21 activities outside of the school, that the  
22 liaison could then negotiate. They could

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1 receive the complaints from the community or the  
2 concerns and address them immediately and I  
3 think that's given them the discussions that  
4 were undertaken by the Applicant, the response  
5 from the community and their cooperation with  
6 both the community and the Department of  
7 Transportation.

8 We continue to express our support  
9 and think that the proposed conditions of  
10 approval as presented are reasonable.

11 Thank you. This is the Office of  
12 Planning's report and well, our report.  
13 Comments and we're available to answer any  
14 questions.

15 CHAIR JORDAN: Yes, Ms. Cohen.

16 ZC VICE CHAIR COHEN: Thank you, Mr.  
17 Chairman.

18 Mr. Jackson, why did you recommend  
19 like a short period of time for this approval for  
20 five years?

21 MR. JACKSON: Well, if you go back  
22 to the Department of Transportation study, they

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1 suggested that there were a number of techniques  
2 or strategies that could be implemented as  
3 transportation demand management measures for  
4 transportation demand management.

5           However, this was -- since all the  
6 parking is on the street -- virtually all the  
7 parking is on the street and all the circulations  
8 is in public space, it may take some time to get  
9 -- let's see. You got 300 children and then 600  
10 potential parents. That's 900 and then the  
11 employees a thousand. It might take some time  
12 to get all a thousand people involved with the  
13 school on the same page to make it work.

14           So, that's why we thought the  
15 five-year term would allow them to -- if they  
16 didn't have a set of transportation management  
17 measures now, they could work on it for a short  
18 period of time, test them, alter them and come  
19 back with a final list.

20           But, the Department of  
21 Transportation, not to take away from the  
22 report, but it appears that the ANC and the

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1 Department of Transportation are fairly  
2 confident that with the historical cooperation  
3 between the school, the church and the community  
4 and the real incentive to make this work and be  
5 a community -- continue to be a community asset,  
6 that the -- and the potential for the list of  
7 measures that's been chosen to be successful  
8 that the term may not be needed.

9 ZC VICE CHAIR COHEN: Thank you.

10 CHAIR JORDAN: Okay. All right.  
11 Any other questions from the Board to Office of  
12 Planning?

13 Does the Applicant have a question?

14 MS. RODDY: No.

15 CHAIR JORDAN: Okay. Then let's  
16 turn to the Department of Transportation to see  
17 if there's anything in addition to their report  
18 they want to discuss.

19 MR. ROGERS: Good morning. This is  
20 Jonathan Rogers with the District Department of  
21 Transportation.

22 I have nothing further to add beyond

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1 the report other than to note that we've worked  
2 with the Applicant and their representatives to  
3 address some additional TDM measures that DDOT  
4 suggested and the Applicant has agreed to  
5 include those.

6 CHAIR JORDAN: Let me ask again.  
7 Is it \$15 per day or \$10 a day? Where are we on  
8 the subsidy?

9 MR. SCHIESEL: The transit subsidy?

10 CHAIR JORDAN: Yes.

11 MR. SCHIESEL: Is \$15 a day. It's  
12 -- we're proposing -- currently, they're both  
13 \$10. One of the proposals is up the transit to  
14 15.

15 CHAIR JORDAN: That's -- we need  
16 more people doing that. Okay. Are there any  
17 Board questions for transportation?

18 ZC VICE CHAIR COHEN: Yes, you  
19 should have \$20 to the bike riders.

20 MR. SCHIESEL: I would point out one  
21 of the things that DDOT recommended was  
22 extending the transit subsidy to cover Capital

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1 Bikeshare. So, that has been -- that is entered  
2 into the proposed conditions.

3 CHAIR JORDAN: Does the Board have  
4 questions for the Department of Transportation?

5 Do you have -- are you just getting  
6 ready? Is that what it is? Okay.

7 Does the Applicant have questions of  
8 Department of Transportation?

9 MS. RODDY: No.

10 CHAIR JORDAN: Okay. Is there a  
11 representative of ANC-2E present? ANC-2E? Do  
12 we have the ANC report?

13 MR. MOY: No, sir, I don't have that  
14 indicated in the case file.

15 CHAIR JORDAN: There wasn't an ANC  
16 report?

17 MR. MOY: There was not one.

18 CHAIR JORDAN: The Applicant may  
19 have referenced that there was an ANC report.  
20 Do you have a copy of the ANC report because it's  
21 not in our file?

22 MS. RODDY: I have a copy of the

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1 resolution that was sent to me by the single  
2 member district. It is not the official  
3 resolution.

4 I can submit that with his email.

5 CHAIR JORDAN: The resolution was  
6 the full ANC's resolution?

7 MS. RODDY: Yes. It's not on  
8 official ANC letterhead.

9 CHAIR JORDAN: No. No. No.

10 MS. RODDY: It is what they --

11 CHAIR JORDAN: I'm talking about  
12 the action that was taken. The resolution was  
13 not generated by the single member.

14 MS. RODDY: Oh, I'm sorry. No. It  
15 was voted unanimously in agreement by the ANC,  
16 but unfortunately, what he sent me is not on the  
17 official ANC letterhead.

18 CHAIR JORDAN: And we will take that  
19 representation that they voted to approve it.

20 MS. RODDY: Yes.

21 CHAIR JORDAN: Did they designate  
22 the number of votes or anything in the

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1 resolution?

2 MS. RODDY: No, and I unfortunately  
3 don't have my notes. I want to say that there  
4 were seven people. But, I --

5 CHAIR JORDAN: But, we'll accept  
6 that information for what it's worth in the  
7 record. There is no formal submission by the  
8 ANC that we have in this file at this point.

9 MS. RODDY: Okay.

10 CHAIR JORDAN: It could be in the  
11 system processing around, but we'll accept that.

12 Then is there anyone in the audience  
13 wishing to speak in support of this application?  
14 Anyone wishing to speak in support?

15 Those wishing to speak in  
16 opposition? Anyone wishing to speak in  
17 opposition?

18 Then we would normally move back to  
19 the Applicant for rebuttal, but I don't think  
20 there's been anything said that requires a  
21 rebuttal.

22 Yes, there's a question.

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1                   BZA VICE CHAIR ALLEN:     Thanks.  
2     When I read the public transportation subsidy  
3     back to the \$15, I actually thought it was for  
4     parking. Which you said earlier that you pay  
5     \$10. You reimburse if they do it.

6                   So, are both of them going up? Both  
7     public transportation and parking going to 15 or  
8     just the public transportation?

9                   MS. RODDY:         Just the public  
10    transportation at this point.

11                  BZA VICE CHAIR ALLEN:   So, you'll  
12    still do \$10. Is that about how much it costs  
13    to park? I mean I don't know.

14                  MR. SCHIESEL:     For the closest  
15    garages, it does not cover the entire cost.

16                  BZA VICE CHAIR ALLEN:   So, then  
17    there's a kick-in?

18                  MR. SCHIESEL:     This was a specific  
19    attempt to try to balance trying to encourage  
20    employees to park off street in these garages and  
21    also balancing not encouraging people to drive.  
22    So, that's where that number is generated from

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1 and that's also why showing an imbalance between  
2 the maximum reimbursement per day for  
3 transiting. That's why there's a \$5  
4 difference.

5 CHAIR JORDAN: You can park in the  
6 business areas for less than that if you get in  
7 by 9:00 and out by 5:00.

8 BZA VICE CHAIR ALLEN: I know.

9 CHAIR JORDAN: If they can't do it  
10 down there, they're in trouble.

11 BZA VICE CHAIR ALLEN: Thank you for  
12 that explanation. It actually makes sense.

13 CHAIR JORDAN: I want to come work  
14 for you.

15 Okay. Is there anything? I think  
16 we can close the record based upon what's already  
17 been submitted unless the Applicant has  
18 something else they want to provide.

19 MS. RODDY: No, just thank you for  
20 your time. With all the support this  
21 application has, that we would ask you to approve  
22 this application. Thank you.

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1 CHAIR JORDAN: Then we will close  
2 the record as submitted.

3 Is the Board ready to deliberate?  
4 Then let's move into deliberation.

5 Regarding the conditions, I've made  
6 some changes to the conditions. There are no  
7 substantive change to them, but I've changed the  
8 wording to some of these and I'm going to read  
9 those.

10 One left intact, Number 1 as is.

11 Number 2, I changed that the  
12 prekindergarten program may operate Monday  
13 through Friday from -- may only operate Monday  
14 through Friday from 7:30 a.m. to 6:00 p.m.  
15 Change, drop the shall because we can't make you  
16 operate. If you don't operate, we can't, but if  
17 you do operate, then you must be within that  
18 period of time.

19 May employ a maximum of two  
20 full-time teachers under C. Again, the same  
21 logic.

22 The same thing would be changed in

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1 Number 3. May only operate from Monday through  
2 Friday, 7:30 a.m. to 6:00 p.m. and then may  
3 employ.

4 Under Number 6, the school shall  
5 implement a transportation demand management  
6 program that shall designate a TDM coordinator  
7 that shall encourage student riding matching,  
8 improve upper school afternoon pick up, instruct  
9 all employees to comply. E, reduced it's total  
10 traffic footprint and reduce the number of the  
11 single occupancy vehicles. Participate in the  
12 District safe routes. Provide preferential  
13 consideration. Off one year Capital Bikeshare.  
14 Provide adequate on-site bicycle parking  
15 spaces. Provide a public transportation  
16 subsidy of \$15 per day. Complete additional  
17 traffic study that would be disseminated to the  
18 parties as indicated here.

19 So, those would be my changes. As  
20 you see, they're not substantive and I believe  
21 that you will accept those.

22 All right. That's a little

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1 different because the Applicant doesn't need a  
2 person to be a point of contact. It's not that  
3 they're organizing a committee to do so. Under  
4 Number 4, was a question raised.

5 So, with that, I would move that we  
6 grant the relief requested by the Applicant  
7 including relief from 2001.

8 That would be my motion.

9 ZC VICE CHAIR COHEN: Second.

10 CHAIR JORDAN: Motion made and  
11 seconded. Any further discussion?

12 MEMBER NAGELHOUT: Mr. Chair, you  
13 did want to include those conditions in your  
14 motion.

15 CHAIR JORDAN: Yes, with the  
16 conditions, too. Yes, thank you.

17 All those in favor of the motion  
18 signify by saying aye.

19 (Ayes.)

20 CHAIR JORDAN: Those opposed nay.  
21 The motion carries. Mr. Moy.

22 MR. MOY: Yes, sir, before I give

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1 the vote, did Ms. Cohen second? Okay. All  
2 right. I thought I recognized the voice.

3 Chairman Jordan approved the  
4 application as amended, the amended relief, to  
5 include the amended relief with conditions as  
6 cited. Seconded the motion Ms. Cohen and, of  
7 course, in support, Ms. Allen and Mr. Hinkle.  
8 We have a Board seat vacant. Motion carries on  
9 a vote of 4-0, Mr. Chairman.

10 CHAIR JORDAN: All right. Thank  
11 you. Then the summary order would be  
12 appropriate please.

13 MR. MOY: Yes, sir.

14 CHAIR JORDAN: All right. Thank  
15 you so much. Thank you for the time.

16 All right. We're on 582 I believe.

17 MR. MOY: Yes, sir, that would be  
18 Application 18582. This is the application of  
19 AE Tower, LLC and RE Opal, LLC. This is pursuant  
20 to 11 DCMR 3103.2 for a variance from the  
21 off-street parking requirements, under  
22 Subsection 2101.1 to construct an eight-unit

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1 apartment house in the NO/C-2-A District at  
2 premises 2140 Wisconsin Avenue, N.W. Property  
3 located in Square 1300, Lot 320.

4 CHAIR JORDAN: Okay. Would you  
5 please identify yourselves please?

6 MR. SULLIVAN: Sure. Thank you.  
7 Mr. Chairman, my name is Marty Sullivan with the  
8 law firm of Sullivan & Barros, attorney for the  
9 Applicant.

10 MR. ELYASI: Is it on? Zak Elyasi,  
11 agent for the two LLCs.

12 MR. MARKUS: I'm Rich Markus. I'm  
13 the architect.

14 CHAIR JORDAN: I think this one is  
15 where you really have an exceptional situation  
16 because you don't have alley access and there's  
17 really no place to do any additional parking.  
18 So, I think this is real, real clear. Although  
19 we're real hard on parking relief, but based upon  
20 what's been submitted in the file and the  
21 documentation that you don't have the ability to  
22 put parking or have or allow or any special

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1 off-street parking allowance.

2 So, does the Board have any other  
3 questions they would like to ask this Applicant  
4 regarding this?

5 ZC VICE CHAIR COHEN: Yes. Thank  
6 you, Mr. Chairman.

7 Is it six units or eight units?

8 MR. SULLIVAN: It's six units now.

9 ZC VICE CHAIR COHEN: Okay. That's  
10 what I --

11 MR. SULLIVAN: We submitted revised  
12 plans with the prehearing statement.

13 ZC VICE CHAIR COHEN: Okay. And  
14 what is the distance between the proposed  
15 building you're building and the building to the  
16 -- I think it's the north. I think it's the  
17 north.

18 MR. MARKUS: That's actually --  
19 it's the side yard of the property next door.  
20 It's 15 to 20 feet.

21 ZC VICE CHAIR COHEN: And are you  
22 going to pursue to the excess so that you may be

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1     able to have parking there or deliveries or  
2     anything? I mean are you going to try to  
3     negotiate that?

4                 MR. SULLIVAN: Yes, we're working  
5     on that. Everybody back there has had actual  
6     access. Nobody's tried to restrict it. So, we  
7     have the two parking spaces.

8                 CHAIR JORDAN: So, you're kind of  
9     allowed to use the --

10                MR. SULLIVAN: Yes. Yes, it's just  
11    not formally recorded and in fact, perhaps  
12    there's a quiet title claim there, but I don't  
13    think it would get to that. I think we'll just  
14    negotiate it with the owners.

15                CHAIR JORDAN: Until you said that.

16                Okay. Does the Board have any other  
17    questions on this application? I think it's  
18    pretty straightforward.

19                Anything you want to add, Mr.  
20    Sullivan, or we're probably okay?

21                MR. SULLIVAN: No thank you.

22                CHAIR JORDAN: Then we'll turn to

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1 Office of Planning and see if there's anything  
2 in addition to the report.

3 MS. THOMAS: Mr. Chair, Karen  
4 Thomas for the Office of Planning.

5 Stand on the record and no  
6 additional information.

7 CHAIR JORDAN: Thank you.

8 MS. THOMAS: Thank you.

9 CHAIR JORDAN: Does the Board have  
10 any questions of Office of Planning?

11 Does the Applicant have any  
12 questions of Office of Planning?

13 Anyone here from the Department of  
14 Transportation? We do have a letter of no  
15 objection to the relief requested from the  
16 Department of Transportation.

17 Is anyone here from the ANC? Is it  
18 3B? We do have a letter of support and recommend  
19 approval from ANC-3B which we would give great  
20 weight to.

21 Is anyone here wishing to speak in  
22 support of this application? Anyone wishing to

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1 speak in support?

2 Those wishing to speak in  
3 opposition? Anyone in opposition? Yes.  
4 Opposition?

5 Sir, please come forward please.

6 MR. PIETRANTON: Barely  
7 opposition.

8 CHAIR JORDAN: But, you need to come  
9 forward anyway if you're going to -- so, we can  
10 get you on the record.

11 Take a seat and make sure the  
12 microphone is turned on. It should be a bright  
13 green and did you complete two witness cards for  
14 us?

15 MR. PIETRANTON: I did not. I  
16 will.

17 CHAIR JORDAN: Okay. Push the  
18 microphone button please and did you get sworn  
19 this morning? Raise your hand?

20 MR. PIETRANTON: I did.

21 CHAIR JORDAN: Okay. Then I need  
22 you to -- right after -- state your name.

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1 MR. PIETRANTON: I will.

2 CHAIR JORDAN: And then submit  
3 those cards to the court reporter after you  
4 finish your statement.

5 MR. PIETRANTON: Okay. My name is  
6 Frank Pietranton and I'm the Managing Agent for  
7 Wisconsin Office Park which is the adjacent  
8 property owner and we would just like to see some  
9 plans as to what they intend to build there.

10 We have been contacted by Mr.  
11 Sullivan who says he's going to talk to us about  
12 egress and -- ingress and egress, but we've not  
13 heard anything from them. So, we don't know  
14 what exactly is being proposed and how they  
15 intend to handle the ingress and egress  
16 requirements across Wisconsin Office Park's  
17 lot.

18 CHAIR JORDAN: Okay. Mr.  
19 Sullivan, did you want to respond to that please?

20 MR. SULLIVAN: Sure. At this  
21 point, like I said, we don't have legal access  
22 and so, we are going to enter discussions

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1 hopefully with the condo association.

2 A representative of the condo  
3 association did attend the ANC meeting and was  
4 there for our presentation there. So, I think  
5 they're aware of what the plans are.

6 The intention was to take whatever  
7 access is available. Whether or not that's  
8 passive access by the owner of the lot or not.  
9 I mean if they decide to restrict that, then  
10 that's on us to figure out what to do about that.

11 But, as far as the application's  
12 concerned technically we don't have that legal  
13 access.

14 CHAIR JORDAN: Um-hum. Ms. Cohen.

15 MR. SULLIVAN: We're hopeful that  
16 we'll work out something with the condo  
17 association where we will get that.

18 ZC VICE CHAIR COHEN: I think you  
19 wouldn't mind, Mr. Sullivan, meeting with this  
20 gentleman to kind of give him greater  
21 information.

22 MR. SULLIVAN: No. Of course, not.

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1                   ZC VICE CHAIR COHEN:   Okay.   That  
2   was it.

3                   CHAIR JORDAN:   Good.   Thank you.  
4   Appreciate it.

5                   Anyone   else   in   opposition   or  
6   concern?

7                   Then   let's   turn   back   to   the  
8   Applicant for any rebuttal or closing.

9                   MR. SULLIVAN:    I   have   nothing  
10   further, Mr. Chairman.  Thanks.

11                  CHAIR JORDAN:   Does the Board have  
12   anything additional that they need from the  
13   Applicant?  Okay.

14                  Then we'll close the record in this  
15   matter.

16                  Is the Board ready to deliberate?  
17   Okay.

18                  So, based upon the record in this  
19   case and evidence deduced during this hearing,  
20   I would move that we grant the relief requested  
21   by the Applicant.

22                  ZC VICE CHAIR COHEN:   I second.

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1 CHAIR JORDAN: Motion seconded by  
2 Ms. Cohen.

3 All those in favor signify by saying  
4 aye.

5 (Ayes.)

6 CHAIR JORDAN: Those opposed nay.  
7 The motion carries.

8 MR. MOY: Staff would record the  
9 vote as 4-0. This on the motion of Chairman  
10 Jordan to approve the application for the relief  
11 requested and again, this was amended for a  
12 six-unit apartment house by the Applicant.  
13 Second the motion Ms. Cohen. Also in support  
14 Ms. Allen and Mr. Hinkle. We have a Board seat  
15 vacant. The motion carries Mr. Chairman.

16 CHAIR JORDAN: All right. Thank  
17 you. Then let's have a summary order and we will  
18 stand in recess for ten minutes.

19 MR. MOY: Thank you.

20 (Whereupon, at 10:58 a.m., a recess  
21 was taken until 11:11 a.m.)

22 CHAIR JORDAN: Then, Mr. Moy, would

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1       you call 18584 please?

2                   MR. MOY:    Yes, sir, just a few  
3       seconds for an announcement that --

4                   CHAIR JORDAN:   Okay.   Sure.

5                   MR. MOY:    -- on the agenda for the  
6       recorder -- for the record.

7                   The first announcement is for the  
8       record that Application Number 18459 of Quiton  
9       Cooper has been withdrawn by the Applicant.

10                   Secondly, as to the case in the  
11       morning which is Application Number 18583 of  
12       Oliver Samuels, the staff -- the office has  
13       rescheduled that for a hearing, public hearing,  
14       since it's been pulled off the expedited  
15       calendar and now will be scheduled for September  
16       24th, 2013.

17                   So, with that, I believe the  
18       application that's on deck now is Application  
19       Number 18584.

20                   CHAIR JORDAN:   That's correct.

21                   MR. MOY:    Okay.    This is the  
22       application of -- I think it's pronounced -- how

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1 do you pronounce it? Stjepan Sostaric. I'm  
2 sorry. On behalf of the Greater Washington  
3 Animal Services, Inc., d/b/a City Dogs and for  
4 the record, too, I believe there's a technical  
5 correction to the advertised caption which I  
6 believe -- let me just do a quick reading if I  
7 may, Mr. Chairman and the Applicant or Board can  
8 correct me and this is pursuant to 11 DCMR 3104.1  
9 and 3103.2 for a special exception to allow  
10 animal boarding under Section 735 and a variance  
11 under Subsection 735.2 in the C-2-A District at  
12 premises 1310 Pennsylvania Avenue, S.E.  
13 Property located in Square 1043, Lot 865.

14 CHAIR JORDAN: Okay. For the  
15 record, I want to note that the owner of this  
16 property I have represented some years in the  
17 past. I don't represent and haven't  
18 represented him in a long time, but I have no  
19 present pecuniary interest or relationship to  
20 this owner of this property. I just wanted to  
21 put that on the record and, therefore, move on.

22 So, what are we -- let's see where

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1 we are. Okay. So, the parties please identify  
2 themselves.

3 MR. SULLIVAN: Marty Sullivan with  
4 the law firm of Sullivan and Barros on behalf of  
5 the Applicant.

6 MR. LIEDMAN: David Liedman, the  
7 Applicant.

8 CHAIR JORDAN: David? Again, your  
9 name.

10 MR. LIEDMAN: David Liedman.

11 CHAIR JORDAN: Liedman. Okay.  
12 Thank you.

13 MR. HEIER: And Jesse Heier.

14 CHAIR JORDAN: Mr. Heier, your role  
15 is?

16 MR. HEIER: Applicant as well.

17 MR. SULLIVAN: Mr. Heier and Mr.  
18 Liedman are owners/operators of Greater  
19 Washington Animal Services, Inc. which is the  
20 City Dogs.

21 CHAIR JORDAN: Okay. And Ms. Bray.

22 MS. BRAY: Kinley Bray with the law

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1 firm of Arent Fox on behalf of party status  
2 applicant Andie Moss, Judy Wood and the Moss  
3 Group.

4 CHAIR JORDAN: Okay. Let's get  
5 that list again. So, you got the Moss Group.  
6 Who else?

7 MS. BRAY: Judy Wood and Andie Moss,  
8 the owners of 1312 Pennsylvania Avenue and we'll  
9 get to the fact that we're -- all the other party  
10 status applicants are working together in just  
11 a moment after we introduce Mr. Sandler.

12 CHAIR JORDAN: One second. Okay.  
13 So, we have request for party status of Robert  
14 McMichael. Is he here?

15 MR. SANDLER: Okay. I'm --

16 CHAIR JORDAN: Okay.

17 MR. SANDLER: Mr. Chairman, I'm  
18 Joseph Sandler from the law firm of Sandler,  
19 Reiff & Young here in D.C. representing Mr.  
20 McMichael, but as Ms. Bray indicated, together  
21 we're prepared to present the collective case on  
22 behalf of all the applicants for party status in

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1 a single block of time.

2 But, we're requesting that the  
3 individual request for party status be granted  
4 for the record.

5 CHAIR JORDAN: So, you have Wood and  
6 Moss.

7 MS. BRAY: That's right. I have  
8 Wood and Moss. Patricia Fisher, Manuel  
9 Geraldo, Cassie Andrews-Weller and Bob  
10 McMichael. All five party status applicants  
11 have agreed to work together.

12 CHAIR JORDAN: Patricia Fisher is  
13 included in --

14 MS. BRAY: That's correct.

15 CHAIR JORDAN: Okay.

16 MS. BRAY: She's sitting right  
17 behind me.

18 CHAIR JORDAN: All right. Ms.  
19 Cohen, do you have something?

20 ZC VICE CHAIR COHEN: No. I just  
21 want to make sure that they are all either -- you  
22 know, if it's within 200 --

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1 MS. BRAY: That's correct.  
2 They're all within 200 feet of the proposed  
3 property. Andie Moss, Judy Wood are  
4 immediately adjacent on one side. Dr. Patricia  
5 Fisher is immediately adjacent on the other  
6 side. Mr. McMichael is immediately adjacent in  
7 the rear and Mr. Geraldo and Cassie  
8 Andrews-Weller are within 100 feet of the  
9 subject property. All neighbors. All with  
10 distinct issues which is -- but, that are similar  
11 which is why we decided to work together.

12 CHAIR JORDAN: Yes, they're pretty  
13 similar and I wasn't going to grant party status  
14 to everyone.

15 Just so that you know, we've charted  
16 what the interests were and overall, we just had  
17 things over and over again. The noise, the  
18 odor, health issues. Those things were being  
19 cited. The close proximity to the property.  
20 Except a little difference. You got a business  
21 owner, but still had some of the same things.  
22 So, we would take a consolidated party status as

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1 represented by Ms. Bray.

2 And well, we're not having both of  
3 you guys. Both -- I mean one of you is going to  
4 be doing the presentation and cross examining.  
5 Is that --

6 MS. BRAY: I'll be doing the  
7 presentation. Mr. Sandler's going to assist  
8 with some cross examination.

9 CHAIR JORDAN: All right. You said  
10 what? Mike. Yes. Mr. Sandler, your  
11 microphone. Make sure you turn it.

12 All right. So, where are we in  
13 regards to your discussions? Are we still  
14 apart? I guess if you're sitting at this table  
15 still saying we're representing the other  
16 groups, then we're -- then I understand where you  
17 were.

18 But, I appreciate you taking the  
19 time and effort. You did meet and have  
20 discussions. I do appreciate you taking the  
21 time to do so. To try to talk about working  
22 things out. I always say it's better for you

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1 guys to decide before we decide.

2 That's just the way it is. So,  
3 everybody's not going to be happy.

4 All right. I understand there's  
5 some preliminary matters that need to be  
6 addressed? Anyone? Yes.

7 MS. BRAY: Do I understand that the  
8 Board is by consensus allowing the single party?

9 CHAIR JORDAN: That's correct.

10 MR. SULLIVAN: Okay. Great. We  
11 also understand there's a motion for late  
12 filing. We'd like to address that on the record  
13 as the Applicant speaks to that motion, but we  
14 would also like to move that this application be  
15 considered as a use variance rather than an area  
16 variance.

17 CHAIR JORDAN: It's going to be  
18 considered an area variance. Taken a good hard  
19 look at it. So, I'm just letting you know right  
20 off the top don't make the argument for use  
21 variance. You're on the record now. You can  
22 subsequently if you want to do an appeal make

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1 that argument, but we're moving this on as an  
2 area variance. I understand the issues. So,  
3 just to let you know.

4 MS. BRAY: But, I make that only  
5 because the Applicant due to the timing of the  
6 retaining of counsel would have not been able to  
7 make that argument in writing and I would like  
8 to get it on the record. Perhaps the Board could  
9 leave --

10 CHAIR JORDAN: On the record.

11 MS. BRAY: -- open the -- right, but  
12 you're not allowing me to elaborate on our  
13 argument why this should be considered a use  
14 variance.

15 Perhaps the Board could leave open  
16 the record for a filing on that issue as I --

17 CHAIR JORDAN: I'm saying you  
18 already made a record of it. I think you will  
19 properly protect it from the standpoint of any  
20 appeal you want to take. You've made the  
21 request for it. I've denied that. Said we're  
22 going to handle it as an area variance.

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1           So, I think any other subsequent  
2       submission if you really want to do it. I mean  
3       we've kind of -- trust me, we've gone through  
4       this. Some of the same issues and questions  
5       that you raised and we've kind of drilled down  
6       on this because it did raise an initial question  
7       whether or not there should be -- considered a  
8       use variance or an area variance and especially  
9       -- but, in light of the Zoning Commission's new  
10      regulations and et cetera, as they try to define  
11      what was an area variance or a use variance,  
12      we're clear about what we are on this one. Okay.

13           I just don't want you to, you know,  
14      take any more of your time to have to drill down.  
15      I think the record is clear in regards to what  
16      you believe how this should be evaluated and you  
17      have enough based upon having it put on the  
18      record and having it overruled that you have  
19      enough to do anything else you may want to do with  
20      it.

21           MS. BRAY: All right. Thank you,  
22      Mr. Chairman.

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1 CHAIR JORDAN: So, there's a  
2 request for leave to file a report I understand.  
3 Is there? No? Yes? No?

4 MR. SULLIVAN: Yes, Mr. Chairman.  
5 The acoustic engineer's report was something we  
6 originally didn't intend to file. No doggy  
7 daycare application or animal boarding use  
8 application was ever filed or engaged an  
9 acoustic engineer to my knowledge.

10 But, in discussions with the  
11 Advisory Neighborhood Commission, they  
12 suggested that would be a good idea and I'll note  
13 that the Advisory Neighborhood Commission and  
14 the Office of Planning both have recommended  
15 approval based merely on the commitment.

16 CHAIR JORDAN: I'm sorry.

17 MR. SULLIVAN: Okay.

18 CHAIR JORDAN: I'm just trying to  
19 get a copy of the report because I don't have it  
20 in my file.

21 Have you had a chance to look at this  
22 report and did you --

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1 MS. BRAY: We've had an opportunity  
2 to review it, but I've spoken with Mr. Sullivan  
3 and he doesn't intend to offer as a witness the  
4 person who prepared it. So, we don't really  
5 have an opportunity to meaningful dig into this  
6 report on the record.

7 More importantly though it came in  
8 on Friday after a holiday which was a four-day  
9 weekend for many people and we really haven't had  
10 an adequate amount of time to digest it.

11 So, we would object to it coming in  
12 especially in light of, you know, the  
13 representation that they didn't intend to file  
14 it in the first place. I don't think that it  
15 really does anything to clarify the issues in the  
16 case. It creates more questions for us that we  
17 can't answer because we don't have an expert to  
18 examine.

19 CHAIR JORDAN: Um-hum. And why was  
20 this filed late?

21 MR. SULLIVAN: As noted, it's not  
22 required. It's not customary in animal

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1 boarding use special exception cases. In fact,  
2 it's unprecedented.

3 So, but the ANC suggested because of  
4 the concerns of the neighbors that it might be  
5 a good idea and we agreed to it and the ANC then  
6 went and recommended approval as did the Office  
7 of Planning based merely on our commitment to  
8 undergo this sound study and to engage the sound  
9 engineer and to follow through on whatever  
10 recommendations they may make.

11 So, in a sense, I could have left it  
12 out and just proceeded forwarded based on that.  
13 That we met that commitment in our agreement with  
14 the Advisory Neighborhood Commission.

15 However, since we got it done, I  
16 thought it might be helpful information to the  
17 Board.

18 CHAIR JORDAN: Yes, but in looking  
19 at it, I don't see where it's going to be  
20 probative because it was done -- it's not done  
21 in the situation with the dogs actually there.  
22 It's done at another location. No foundation.

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1 MR. SULLIVAN: Well, actually, they  
2 took a sample from the one location which was  
3 good that they had that. They took a worst case  
4 scenario sample from the other --

5 CHAIR JORDAN: They brought dogs  
6 in?

7 MR. SULLIVAN: -- and brought it --  
8 and brought that noise in.

9 CHAIR JORDAN: They brought the  
10 dogs there.

11 MR. SULLIVAN: They brought the  
12 noise in. They brought the sample noise in and  
13 played the noise and then they also did some  
14 sound reduction studies where you make as loud  
15 a noise as you can and then you measure it from  
16 the distance you want to measure it.

17 CHAIR JORDAN: Okay.

18 MR. SULLIVAN: And then it measures  
19 how much --

20 CHAIR JORDAN: Okay. I got you.

21 MR. SULLIVAN: -- the building  
22 materials reduce the --

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1 CHAIR JORDAN: And we're going to  
2 leave it out. Okay.

3 MR. SULLIVAN: Thank you.

4 CHAIR JORDAN: So, let's proceed.  
5 Is there any other preliminary matters that we  
6 have? Okay.

7 All right. I'll reverse that.  
8 We'll have it because there's questions about  
9 it. I don't really see where it's probative,  
10 but we'll put in it for -- take it for what it's  
11 worth and we'll come back to it during the  
12 presentation. So, we'll take it for what it's  
13 worth. Which I'm just not -- think it's  
14 probative.

15 No, you can ask questions of me.  
16 Don't let me handcuffed, be like that.

17 We got to wait until they get to the  
18 point and he hasn't.

19 All right. So, we understand the  
20 basis of your argument here is that you're saying  
21 that you need the variance relief because of the  
22 fact that what's an exceptional situation or

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1 condition is the fact that you have the 2.3 feet  
2 that abuts a residential neighborhood.

3 MR. SULLIVAN: That's correct and  
4 it's a result of the exceptionally long and  
5 narrow shape of the property.

6 CHAIR JORDAN: Okay. All right.  
7 Why don't you got ahead and hit the exceptional  
8 situation and practical difficulty for the Board  
9 please?

10 MR. SULLIVAN: Thank you, Mr.  
11 Chairman, Members of the Board.

12 Again, my name is Marty Sullivan  
13 with the law firm of Sullivan Barros.

14 What the Applicant is requesting is  
15 special exception relief under Section 735 to  
16 operate an animal boarding use and variance  
17 relief from one of the requirements under  
18 Section 735, 735.2, the prohibition against the  
19 property abutting a residence zone.

20 As you can see from the materials,  
21 the property in the rear northwest corner abuts  
22 a residence zone, the R-4 Zone for about 22 feet

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1 and it's also separated. The building goes back  
2 to about 12 or 15 feet away from the rear of the  
3 property. The area between the rear of the  
4 property and the residence zone is actually  
5 encumbered by a right-of-way for the benefit of  
6 the Iridium Condominium two doors down on  
7 Pennsylvania Avenue for their ingress and egress  
8 of cars to their parking lot and for their  
9 deliveries and trash collection as well. So, we  
10 don't have effective full use of that property  
11 either.

12 The practical difficulty, of  
13 course, is in complying with 735.2 because of  
14 this connection to the R-4 Zone. We could  
15 possibly even subdivide the property and get rid  
16 of it, but that would just violate the spirit of  
17 the rule and that in itself is a practical  
18 difficulty as well.

19 I would also point out that the  
20 degree of the variance requested is very minimum  
21 here because of the small area that it touches  
22 and because the use as you'll find when we

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1 discuss the special exception compliance is  
2 centered to go through the front of the property  
3 and we've agreed to conditions presented by the  
4 ANC that we effectively not use the rear of the  
5 property. Not for dogs. Not for clients. Not  
6 for customers or employees. Only for trash  
7 collection. So, there's not going to be any  
8 activity back in the area near the residence  
9 zone.

10 And there are some modifications  
11 necessary. There's a dilapidated garage door  
12 in the back that would obviously let sound out  
13 and that's going to be replaced and there's some  
14 other repairs that if the acoustic engineer's  
15 report is in that he has recommended as  
16 suggestions for modifying the property for  
17 further sound absorption.

18 So, the building as you know is  
19 located in the C-2-A Zone which permits animal  
20 boarding use by special exception and with me  
21 today now to discuss the special exception  
22 compliance are the owners and operators of City

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1 Dogs David Liedman and Jesse Heier. I'll turn  
2 it over to them now for their testimony unless  
3 there are any questions for me.

4 CHAIR JORDAN: Yes. Proceed.

5 MR. LIEDMAN: I am David Liedman.  
6 This is my partner Jesse Heier and we own and  
7 operate City Dogs.

8 Currently, we have a location in  
9 Dupont Circle on 18th Street. It's been there  
10 for about 14 years and it's primarily a place  
11 where people leave their dogs during the day  
12 while they're at work. So, it's a dog daycare.  
13 It's about 80 percent of our business.

14 We're also -- we do overnight  
15 boarding. Which is about 15 to 20 percent and  
16 we have a few other things like accessory  
17 bathing. That's just to mix up a couple of  
18 percent of our business.

19 Our clients are nearly all residents  
20 in the surrounding neighborhoods. So, it's a  
21 very neighborhood-oriented business and it's  
22 used by, you know, people that we see every day

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1 in the neighborhood and our own neighbors and  
2 it's a need that's been growing in D.C. as it's  
3 been a growing city and it's been increasingly  
4 more dog friendly. There's a growing need for  
5 dog-related services and so, we noticed that  
6 need and have thus been looking for the second  
7 location which is here on 13th and Pennsylvania  
8 Avenue, S.E.

9 So, we were looking for over a year  
10 for a suitable space for our new location and one  
11 that would obviously meet the zoning criteria  
12 being in a commercially-zoned space, C-2 or  
13 above and so, we looked at many buildings and  
14 it's actually pretty difficult.

15 It's a low inventory in the city and  
16 this was a space that we thought was ideal. It  
17 is, you know, entirely in a C-2-A Zone except for  
18 the less than 3-foot space in the back which upon  
19 visiting the space you'll see that it looks more  
20 like an alley or a driveway in that -- in that  
21 small little abutting space. It's not actually  
22 -- it doesn't appear to be part of the property

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1 when you go there.

2 So, we thought it appeared to be an  
3 excellent location. It's -- the property's  
4 composed of two parts. It's more of a -- your  
5 typical retail rowhouse type of building in the  
6 front and then a large warehouse in the back that  
7 is -- I think it takes up 2/3rds of the lot and  
8 so, we thought that the warehouse would be the  
9 perfect space to have the dog play area. It's  
10 currently been used as a construction storage  
11 space for a construction company.

12 Let's see here and other criteria  
13 that we thought were really good about this space  
14 were the cement block and masonry construction  
15 which is, you know, part of the code, the zoning  
16 code. There are no windows in the warehouse  
17 space. Which is the space that we intend to use  
18 for the dogs and the warehouse doesn't touch the  
19 other buildings nearby. I think it may touch  
20 maybe about a couple feet of a section on the back  
21 of one neighboring property, but essentially,  
22 it's separated from the neighboring properties.

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1           We intend to use the front of the  
2           space as reception, a light amount of retail of  
3           dog accessories and accessory grooming. As I  
4           mentioned, traditionally, it's been under 5  
5           percent of our business.

6           Do you have anything further?

7           MR. HEIER:     No, I don't have  
8           anything.

9           MR. LIEDMAN:   Okay.

10          MR. SULLIVAN:   Yes, Mr. Heier, do  
11          you want to go through the special exception  
12          requirements briefly please.

13          MR. HEIER:     Sure can.

14          CHAIR JORDAN:   Let me ask a question  
15          though.

16          MR. HEIER:     Sure.

17          CHAIR JORDAN:   But, this building's  
18          going to be -- what's on your left side of your  
19          building? I don't know. The address is like  
20          1308. What's in 1308?

21          MR. SULLIVAN:   Thirteen zero eight  
22          is a row dwelling occupied by Dr. Fisher. She

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1 converted it to residential use four years ago  
2 I believe. So, it was previously a commercial  
3 use.

4 I have a perhaps helpful handout if  
5 you'd like to see of the property. I'm not sure  
6 that the materials I filed so far is illustrative  
7 enough. If I could bring this up please.

8 CHAIR JORDAN: So, what is it?  
9 It's a --

10 MR. SULLIVAN: It's just a one-page  
11 diagram showing the property and the building  
12 and the area of the additional in relation to the  
13 neighboring properties.

14 CHAIR JORDAN: Okay. Give it to  
15 Mr. Moy and be sure that opposing counsel has it.  
16 So, what's at 1312?

17 MR. HEIER: That's the Moss Group  
18 building.

19 CHAIR JORDAN: That's the Moss  
20 Group and what happens at 1312? What is that  
21 building being used for? To your knowledge.

22 MR. HEIER: It's an office building

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1 to my knowledge and what we've been told and what  
2 we've seen when we've been there is they -- they  
3 say they have conference calls and webinars.

4 ZC VICE CHAIR COHEN: Okay. You do  
5 operate another doggy daycare in a residential  
6 neighborhood. How different is it? I mean how  
7 close are the neighbors to that doggy daycare?

8 MR. HEIER: We have a condo building  
9 on the left of our building at our current  
10 location and then on the other side of the alley,  
11 there's residences and in the rear of the  
12 property, they've constructed some additional  
13 condos.

14 So, we are clearly in -- it's zoned  
15 commercial, but there are definitely neighbors  
16 in that area. It's right across from Lauriol  
17 Plaza if that helps you visualize that location.

18 ZC VICE CHAIR COHEN: I lived in  
19 Dupont Circle. So, I'm somewhat familiar, but  
20 for the record, I want --

21 CHAIR JORDAN: So, the condo --  
22 you're sharing a common wall with a condo

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1 association?

2 MR. HEIER: Yes.

3 ZC VICE CHAIR COHEN: Are you  
4 willing to undertake the cost to do what was  
5 recommended by the acoustic engineer? Will you  
6 do that --

7 MR. HEIER: Yes.

8 ZC VICE CHAIR COHEN: -- to add to  
9 the -- okay.

10 MR. HEIER: It's in our best  
11 interest because we want the dogs to be  
12 comfortable and, you know, if they bark and the  
13 noises absorb, they're much more relaxed.

14 ZC VICE CHAIR COHEN: And how do you  
15 dispose of the excrement? The poop.

16 MR. LIEDMAN: Yes, if there's an  
17 accident inside, it's individually bagged and  
18 then you tie the bags shut. There's a trash  
19 receptacle and then that receptacle gets emptied  
20 out a couple of times per day and then we have  
21 trash collection a few times per week.

22 ZC VICE CHAIR COHEN: But, let's say

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1     you get -- you know, put them in receptacle --  
2     you know, the bags and where does it go? Is it  
3     outside that you're saving it for pick up or --

4             MR. HEIER: In our new location, it  
5     will inside. At our current location, it's  
6     outside in a trash bin.

7             ZC VICE CHAIR COHEN: Okay. What  
8     type of ventilation will you have so that the  
9     odors do not permeate the neighborhood?

10            MR. LIEDMAN: We have -- on our  
11    central system, we have dual HEPA filters and we  
12    have a fresh air intake and so, there's  
13    constantly turning the air over and filtering  
14    the air and, of course, sanitizing the surfaces  
15    constantly.

16            ZC VICE CHAIR COHEN: And how many  
17    employees do you usually have per animal and not  
18    only indoors, but exterior walking them?

19            MR. LIEDMAN: Generally, we'll have  
20    probably four employees and averages probably  
21    anywhere from 45 to 55 dogs.

22            MR. HEIER: But, it is staffed 24/7.

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1 Someone's there all night sleeping with the  
2 dogs. But, then there's a person at the front  
3 desk and then one or two people or two people in  
4 the playroom at our current location and we'd  
5 anticipate two people in the playrooms at our new  
6 location.

7 ZC VICE CHAIR COHEN: Do you have  
8 written policies about dogs that happen to be --  
9 misbehave continuously?

10 MR. LIEDMAN: We have an acceptance  
11 criteria for new clients. We don't take new  
12 clients in as walk-ins. They fill out  
13 information about the behavior of their dog on  
14 our form. We contact them. We may ask  
15 questions related to their answers and then we  
16 schedule an evaluation day and that's kind of our  
17 chance to determine if this is going to be a dog  
18 that's going to do well in a daycare. So, at the  
19 end of the evaluation day, we let them know.

20 You know, our primary concern is are  
21 they getting along with the other dogs and  
22 secondarily, you know, we also like to let them

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1 know if this is something that they're  
2 particular dog seems to enjoy or so, just kind  
3 of letting them know if we accept them and then  
4 letting them know how -- you know, how well their  
5 dog did that day.

6 And it's -- we provide feedback  
7 during every visit to daycare. We have report  
8 cards and so, if there are -- is misbehavior of  
9 any sort, we record that and if there is multiple  
10 offenses, we will tell them that this is not a  
11 suitable environment for their dog.

12 ZC VICE CHAIR COHEN: Every dog has  
13 to have the appropriate shots to even attend.  
14 Is that correct?

15 MR. LIEDMAN: Yes, there's three  
16 vaccinations that are required, rabies,  
17 distemper, bordetella and so, those are kept on  
18 file and kept up to date so we have a record for  
19 every dog.

20 ZC VICE CHAIR COHEN: Of the support  
21 letters, the 27 support letters, where are the  
22 locations of the people who support you?

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1 MR. HEIER: The support letters are  
2 the -- I think they're -- the survey -- I live  
3 in the neighborhood. I live a block from the new  
4 location and I walk my dog and I know folks. So,  
5 I just walked -- when I took my dog out, I told  
6 people hey, we're looking to open up City Dogs.  
7 Are you interested in signing our letter of  
8 support?

9 So, I think they're all -- when you  
10 go to Lincoln Park, when you go to Stanton Park,  
11 they're all from that -- from Capitol Hill area.  
12 I mean I know -- I recognize a lot of folks. So,  
13 it was pretty easy to collect.

14 ZC VICE CHAIR COHEN: But, you  
15 didn't have any letters from your prior -- your  
16 existing --

17 MR. SULLIVAN: I think --  
18 clarification. There's some letters from  
19 current neighbors, from the current site and  
20 then there's a petition or evidence of a petition  
21 that was more widely subscribed to including  
22 some residents of Capitol Hill.

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1                   ZC VICE CHAIR COHEN: Thank you.  
2           Those are my questions, Mr. Chairman. Thank  
3           you.

4                   CHAIR JORDAN: But, what about the  
5           neighbors that are in that immediate block? Do  
6           you have letters of support from those  
7           neighbors?

8                   MR. SULLIVAN: They're all here.

9                   CHAIR JORDAN: Okay. They're all  
10          here. They're here in opposition. Is that  
11          what you're telling me? So, the answer to my  
12          --

13                  MR. SULLIVAN: Well, yes.

14                  CHAIR JORDAN: -- question is no,  
15          you do not have letters of support from them.

16                  MR. SULLIVAN: And we've -- we do  
17          not have letters of support.

18                  CHAIR JORDAN: So, the people who  
19          are living on that block and not throughout  
20          Capitol Hill --

21                  MR. SULLIVAN: Well, the only two  
22          people living on that block are here today as

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1 potential party opponents. Everything else is  
2 a business. Other than the condominiums.  
3 Which I don't believe anybody's here from the  
4 condominiums.

5 CHAIR JORDAN: Do you have any  
6 support from people in the condominiums?

7 MR. SULLIVAN: Not unless they  
8 signed the petition.

9 CHAIR JORDAN: Okay. Just let me  
10 finish. The other thing I think you said, Mr.  
11 -- is it Heier? About that you try to make them  
12 comfortable. When we're asking these  
13 questions, we're trying to make it comfortable  
14 for the residents and the community as priority  
15 for what we do here and so, wanted to understand  
16 what was going to be implemented that was going  
17 to reduce any impact on the neighborhood. The  
18 community right around the property.

19 So, what is that? Not what's going  
20 to make the dogs comfortable, but what about the  
21 people who are living --

22 MR. HEIER: Oh, see -- well, there

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1 are sound -- well, first of all, we -- the door  
2 Marty mentioned is -- I mean the back of the  
3 building is in pretty poor disrepair. So, we  
4 fixed the -- fix both doors. There's an open  
5 chimney. There's some holes in the building  
6 right now which birds go in. We'd fix those and  
7 then there's a bunch of acoustic-type materials  
8 you can put on the walls that absorb the sound  
9 as well.

10 So, those are the types of things  
11 that we would do and I think also on the diagram  
12 that was submitted there is -- there's a large  
13 wall between the warehouse and the front of the  
14 building and now, there's a portion of the  
15 bathroom that opens up or the wall opens up to  
16 allow to go into the bathroom. We'd seal that  
17 portion of the wall so that wall becomes even  
18 further sealed to even reduce some -- any other  
19 noise coming from that warehouse to the front of  
20 the building.

21 CHAIR JORDAN: Ms. Allen.

22 BZA VICE CHAIR ALLEN: Thank you,

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1 Mr. Chairman.

2 I just have two questions. So, I  
3 wasn't sure when you said 45 to 55 dogs whether  
4 that was in your existing location or that's what  
5 you plan for the new location.

6 MR. LIEDMAN: That is what we've  
7 experience on 18th Street. We've been there for  
8 14 years or so and that is --

9 BZA VICE CHAIR ALLEN: So, that is  
10 what you're planning?

11 MR. LIEDMAN: Yes.

12 BZA VICE CHAIR ALLEN: That type of  
13 facility?

14 MR. LIEDMAN: Yes, I imagine it may  
15 not be from day one, but --

16 BZA VICE CHAIR ALLEN: Right.

17 MR. LIEDMAN: -- a long-term goal.

18 BZA VICE CHAIR ALLEN: Okay. And  
19 then, Mr. Sullivan, you keep referring to the  
20 petition. I just don't understand what that  
21 means? What is the petition?

22 MR. SULLIVAN: I believe we

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1 filed --

2 CHAIR JORDAN: The 25 names or 27  
3 names that --

4 MR. SULLIVAN: Yes, it's 27.

5 BZA VICE CHAIR ALLEN: But, what is  
6 it? I'm sorry. I just -- I must have missed it,  
7 but what does it say? I mean is there a petition  
8 to say that we want this facility here? Is that  
9 what you mean? Okay. That's it. I just  
10 wanted to clarify. Thank you.

11 CHAIR JORDAN: Any other questions  
12 of the Applicant?

13 Well, since we did accept this sound  
14 document, turning back to it, what was the noise  
15 level of the measurements from inside your  
16 present location for the dogs? Because I don't  
17 see that in this document. Maybe I missed it.

18 MR. SULLIVAN: I don't think it says  
19 what the level was. I think it just says that  
20 they replicated that noise.

21 CHAIR JORDAN: Right.

22 MR. HEIER: And what they did was

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1       --

2               CHAIR JORDAN: But, to use it as an  
3       example in this document that the noise level  
4       evidently at the Dupont location is acceptable  
5       within a range, but there's no measure of the  
6       noise. I mean am I missing something?

7               MR. SULLIVAN: Well, I think -- and  
8       maybe the report can be accepted for limited  
9       purposes. But --

10              CHAIR JORDAN: No, we already got  
11       the report. So, let's deal with the report.

12              MR. SULLIVAN: The reason I filed it  
13       was to show that we're complying with the ANC's  
14       request.

15              CHAIR JORDAN: I got you, but it's  
16       in front of us now. So, the, you know, top is  
17       off.

18              What was -- so, there was no measure  
19       of the noise level of the dogs at the present  
20       location?

21              MR. HEIER: What they did is they  
22       took a sound meter into the room and whenever

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1 someone new goes into the room, you know, someone  
2 they don't know, the dogs get -- you know, they  
3 get all excited because, you know, someone new.  
4 So, that's what they did in the test. They took  
5 a new person. He went in the dog room, measured  
6 that level of noise and that is not the typical  
7 level of noise. That's what we term the worst  
8 case scenario and then they took that level and  
9 then took it over to the new location with a bunch  
10 of big speakers and cranked the speakers up to  
11 the same level of noise to see what you could hear  
12 from --

13 CHAIR JORDAN: Really now. That's  
14 how. You're going to present that to us as the  
15 basis of a scientific review of what noise is  
16 going to come out of this facility? Come on now.

17 First of all, you don't have a  
18 measurement reading that you're presenting to us  
19 in this report. Whether or not it's 60 decibel  
20 levels or 65, but you have these other projected  
21 decibel levels throughout this document that --  
22 what's suppose to happen at this present

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1 location, but not one at the present location  
2 which you use as an example. I don't understand  
3 that.

4 And then you walk somebody in the  
5 room to -- what room is this? Where all the dogs  
6 play? Is that the same room? Is that what  
7 you're saying?

8 MR. LIEDMAN: Yes.

9 CHAIR JORDAN: Okay. As I said --  
10 okay. All right. We'll take it for what it's  
11 worth. I just don't understand this at all.

12 Any other questions of the  
13 Applicant? Okay.

14 And we have nothing from -- did you  
15 go meet with the condominium association two  
16 doors down?

17 MR. SULLIVAN: No, we did not.

18 CHAIR JORDAN: Okay. All right.  
19 I'm certain I know they received the  
20 notification. All right. Is there anything  
21 else, Mr. Sullivan, before we -- the Board's  
22 already asked questions. Anything else you

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1 want to present to us at this point before we go  
2 to cross examination?

3 MR. SULLIVAN: No, not at this  
4 point.

5 CHAIR JORDAN: Cross examination  
6 please.

7 MS. BRAY: Thank you, Mr. Chairman.

8 My questions are directed to both of  
9 you. So, feel free either of you to answer.

10 Can you tell me what the zoning of  
11 your existing location is?

12 MR. LIEDMAN: It's C-2-A. The same  
13 zoning.

14 MS. BRAY: And do you operate by  
15 special exception there?

16 MR. LIEDMAN: We -- we did not have  
17 to get a special exception because we were in  
18 existence prior to 2006. Which was the date  
19 that the Zoning Regulations --

20 MR. SULLIVAN: The change of the  
21 regulations.

22 MS. BRAY: Um-hum. Since then have

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1 you been subject to any zoning or health  
2 inspections?

3 MR. LIEDMAN: We -- we have  
4 occasionally had inspections. It's -- it's not  
5 a matter of practice, but they do occasionally  
6 just come. It's not -- it's not regulated in the  
7 same way the restaurants are where there's more  
8 of a detailed list of things that they check off.  
9 It's just they -- they come in and they check  
10 general sanitation.

11 MS. BRAY: And in these  
12 inspections, have you ever received an  
13 unfavorable report?

14 MR. LIEDMAN: No.

15 MS. BRAY: Have you ever received a  
16 notice that you should correct anything?

17 MR. LIEDMAN: We have not received  
18 any notice that we had any kind of infractions.  
19 I think the only thing that we've ever received  
20 a few years ago was related to there was  
21 recyclable materials inside of the trash  
22 container. That -- that is the only actual

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1       infraction that we ever had to correct.

2                   MS. BRAY: Are you familiar with a  
3       notice of -- actually, notice of violation dated  
4       June 20th, 2013 from the Department of Health on  
5       1832 18th Street?

6                   MR. LIEDMAN: I am familiar with the  
7       visit and form. I was there when the -- when the  
8       woman came. She said she didn't have a form that  
9       said notice of inspection. So, she used a form  
10      that said notice of violation. She scratched  
11      out the word violation and she wrote in  
12      inspection because there were no violations.

13                  MS. BRAY: But, that report said  
14      that feces disposal must be addressed to reduce  
15      smell at trash area by either using lime powder  
16      or use of desiccator equipment. Is that  
17      correct?

18                  MR. LIEDMAN: She had some  
19      suggestions. She said that these were newer  
20      things that -- that we could potentially do.  
21      So, I -- I did ask a lot of questions about it  
22      because it's not something that the other

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1 daycares are using to my knowledge. I've heard  
2 their testimony here before.

3 I offered to visit the city shelter  
4 to see if they were using these methods. I  
5 would, you know, gladly adopt something new, but  
6 she did say that -- that it's not being used at  
7 the city shelters. So, she didn't have any  
8 concrete examples for me to actually follow.

9 I did request for some materials,  
10 some information. She -- she did email me and  
11 she said that she couldn't provide any links to  
12 this desiccator equipment. Which I had a hard  
13 time finding anything related to dog daycares or  
14 kennels and the use of such equipment.

15 I -- I've heard it use in a medical  
16 setting for keeping medical materials, but not  
17 -- not for any sort of waste.

18 MS. BRAY: So, you're not proposing  
19 at this time to install it at either location?

20 MR. LIEDMAN: I -- we don't have any  
21 plans to change something, but if -- if there's  
22 something new that comes along, we would gladly

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1 take the suggestion.

2 But, I have been in communication  
3 with this particular inspector and so far, she's  
4 been unable to give me an exact product that we  
5 would use.

6 MS. BRAY: But, since you spoke with  
7 her, can you tell me what the genesis of the  
8 comment that something needed to be done about  
9 the feces stored on the property was?

10 CHAIR JORDAN: I think we can move  
11 on. I think we understand there's some type of  
12 citation issued that the D.C. Government had and  
13 saying look, they need to do something about it  
14 and right now, there has not been a response to  
15 that.

16 If that's the gist of what you're  
17 trying to get.

18 MS. BRAY: I was actually getting at  
19 where the feces was stored. Was it inside or  
20 outside?

21 MR. LIEDMAN: It was inside in the  
22 inside trash cans.

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1 MS. BRAY: Okay. You state in your  
2 application an average up to 45 dogs will be  
3 served on the premises. Is that 45 dogs at one  
4 time or 45 dogs coming and going over the course  
5 of a day? So, what's the full-time occupancy  
6 equivalent?

7 MR. LIEDMAN: Generally -- if you  
8 take the date -- well, primarily, we're daycare.  
9 So, if you take the average number during the day  
10 when we're the busiest, it's going to be that  
11 number, 45 to 50.

12 We are less busy at night. We tend  
13 to be more in the range of maybe ten to 15  
14 overnight.

15 So, we're kind of giving the maximum  
16 average not -- not taking into account the slow  
17 period at night or -- or the weekend.

18 MS. BRAY: But, basically all 45  
19 dogs are there for that same period of time  
20 throughout the day for doggy daycare?

21 MR. LIEDMAN: Yes, they're there  
22 while their owners are at work and then they get

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1 picked up afterwards.

2 MS. BRAY: Would you say that the  
3 drop off and pick up is concentrated into a  
4 certain period of time during the day?

5 MR. LIEDMAN: Yes, it -- it  
6 corresponds to when people are going/coming to  
7 work. So, generally, they're dropping off on  
8 their way to work. Which is usually -- we open  
9 at 7:00. The busy period kind of ends at around  
10 9:30 and then people basically drop dogs off.  
11 It takes under one minute to drop their dog off  
12 usually and they're on their way to work.

13 It's something that a lot of them use  
14 everyday. So, they're not looking to spend, you  
15 know, ten/15/20 minutes there. They're  
16 generally just walking in, handing us the dog and  
17 leaving. So, the amount of time -- a lot of --  
18 a lot of our people walk, but anybody that does  
19 drive their car is generally parked no more than  
20 five minutes.

21 MS. BRAY: But, when you have people  
22 coming and going into your building, there's a

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1 potential for a great number to be arriving at  
2 about the same time. Is that right?

3 MR. LIEDMAN: I wouldn't say a great  
4 number. I'd say at the -- you know, usually,  
5 they just come one at a time. Maybe -- maybe two  
6 people will come at the same moment. You know,  
7 it's kind of random probability. Occasionally  
8 five people may show up with their dog at the same  
9 time, but generally, it's one at a time or maybe  
10 two at the same time. They're there for about  
11 a minute.

12 MS. BRAY: Okay. Have you been on  
13 the roof or seen pictures of the roof of the  
14 warehouse portion or the addition portion as you  
15 refer to it in your application materials?

16 MR. HEIER: Yes, we have.

17 MS. BRAY: And your application  
18 states that the addition contains only one  
19 inoperable glass block window, but there are  
20 several skylights on the roof. Aren't there?

21 MR. HEIER: Um-hum.

22 MS. BRAY: And are those skylights

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1 just independent glass installations or do they  
2 have vents or any structure associated with  
3 them?

4 MR. HEIER: I am not an expert on  
5 skylights. I know they are -- they're faulty.  
6 They need to be replaced. Whatever. Water  
7 gets in there. So, whatever is up there is --  
8 is clearly not acceptable for -- for our use.

9 MS. BRAY: And would you replace  
10 them with the same type of vented structure or  
11 with a single skylight? There's no indication  
12 in your application of what work you intend to  
13 do to the building.

14 MR. HEIER: I would -- I would  
15 assume -- I mean I haven't looked at -- yes, I  
16 haven't looked at what skylights are. But, like  
17 -- probably like what I have in my house. It's  
18 -- I can't open. It just sits right there and  
19 the sun comes in and -- and all that good stuff.

20 MS. BRAY: Looking at the document  
21 that your attorney submitted into the record  
22 showing the map of the neighborhood, the

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1 building at 1310 Pennsylvania as depicted on  
2 this map, have you stood in the rear of that  
3 building on that property?

4 MR. LIEDMAN: Yes.

5 MS. BRAY: And is there not a  
6 carriage house adjacent to the warehouse  
7 structure in that location?

8 MR. HEIER: There is. The Resource  
9 Center.

10 MR. LIEDMAN: I'm not sure. Could  
11 you explain?

12 MS. BRAY: No, at 1312 Pennsylvania  
13 Avenue.

14 MR. SULLIVAN: Right here.

15 MR. HEIER: There's a --

16 MR. LIEDMAN: It's -- there -- it's  
17 --

18 MR. HEIER: Yes. Yes, when I -- we  
19 saw -- it's interesting it's not on that map, but  
20 when I did -- several weeks ago, I did -- they  
21 did point out there was a Resource Center back  
22 there.

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1 MS. BRAY: What do you mean by  
2 Resource Center?

3 MR. HEIER: that would be a question  
4 for them. They called it the Resource Center.  
5 I -- that's what they called it. The Resource  
6 Center.

7 MS. BRAY: Who is they?

8 MR. HEIER: One of the owners that  
9 was there.

10 MS. BRAY: But, there --

11 MR. SANDLER: Your client.

12 MS. BRAY: You can see that there's  
13 a building in that location. It's not an empty  
14 yard as depicted on your map. Okay.

15 MR. HEIER: Yes, small building.

16 MS. BRAY: And are you familiar with  
17 -- you mentioned a petition in favor of the  
18 application, but are you familiar with the  
19 petitions that have been submitted to the ANC and  
20 to this Board against you locating in this  
21 property?

22 MR. HEIER: Um-hum.

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1 MS. BRAY: And isn't it true that  
2 all of the owners that front in the vicinity of  
3 the property on G, on Pennsylvania and 13th  
4 Street have signed that petition in opposition?

5 MR. HEIER: I mean I've seen the --  
6 I haven't checked everybody off, but I've seen  
7 the list.

8 MS. BRAY: Scantech has made -- in  
9 your report has made several recommendations  
10 regarding features that might be installed on  
11 the premises to mitigate sound. Have you  
12 committed to installing any of them and have you  
13 reviewed with them the cost of doing so?

14 MR. HEIER: We haven't discussed  
15 the cost, but -- you know, the exact cost, but  
16 when we talk with them, they said these are all  
17 easily doable.

18 The thing that they were most  
19 impressed with about that building was that it  
20 was made of concrete block. They said that is  
21 the number one thing that's most in this -- in  
22 this building. That, you know, you can't get

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1 something better than this unless you have, his  
2 quote, "two rows of concrete block."

3 So, all of these things that we saw  
4 on the list are -- are things that we would --  
5 we would do in the normal renovation anyway.

6 MS. BRAY: At your location on 18th,  
7 in addition to the boarding and daycare  
8 facilities, you offer classes. Is that  
9 correct?

10 MR. LIEDMAN: Yes, once a week  
11 training classes. We have about six people  
12 enrolled per class. It's an hour long class.

13 MS. BRAY: And what time does it  
14 start?

15 MR. LIEDMAN: Seven thirty.

16 MS. BRAY: And how many classes or  
17 how many weeks of the year does this go on?

18 MR. LIEDMAN: Let's see here.  
19 Probably half of the time we have a class and half  
20 of the time we -- we have no classes. So -- so,  
21 potentially in the range of 26 weeks per year.

22 MR. HEIER: But, it's not every

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1 night.

2 MR. LIEDMAN: It's -- it's one night  
3 per week for -- for one hour.

4 MS. BRAY: And in addition to your  
5 boarding clients, City Dogs operates a rescue  
6 operation. Do they not?

7 MR. LIEDMAN: We -- we don't operate  
8 a rescue operation. I happen to have founded a  
9 nonprofit rescue group, but it is not -- it is  
10 not the same business. We're -- we're just a  
11 boarding and daycare business. There -- there  
12 is, you know, as I said, the rescue which is a  
13 nonprofit that I help founded and that is -- that  
14 is a rescue where -- where we have volunteers  
15 that bring rescue dogs into their homes --

16 MS. BRAY: And they never come on  
17 the premises?

18 MR. LIEDMAN: We -- we occasionally  
19 board them just like any other boarding client.  
20 So, if there's a need to board a foster dog  
21 temporarily, we -- we make a boarding  
22 reservation in the same way as many other

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1 clients. So, we basically consider the rescue  
2 is just one of our clients that occasionally may  
3 have a need to board a dog.

4 MS. BRAY: And on average, how many  
5 dogs and for how long are they boarded on the  
6 premises?

7 MR. LIEDMAN: Are you still  
8 speaking about the rescue?

9 MS. BRAY: The rescue.

10 MR. LIEDMAN: There's a limit of  
11 four. So, we -- we'll never -- we don't take  
12 more than four of the dogs at any time.

13 MS. BRAY: Is that in your  
14 application?

15 MR. LIEDMAN: I'm sorry.

16 MS. BRAY: Is that information in  
17 your application?

18 MR. LIEDMAN: I don't know if that's  
19 a relevant piece of the application. It's --  
20 it's just a -- a boarding client that we take.

21 MS. BRAY: Right. The reason I ask  
22 is that I'm -- I've got a printout from your

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1 website.

2 CHAIR JORDAN: Well, what are you  
3 trying to get to with this question? This line  
4 of questioning.

5 MS. BRAY: The website shows that  
6 there's I think over 40 dogs currently available  
7 for adoption and approximately three that are  
8 not fostered at this time.

9 Is that correct?

10 MR. LIEDMAN: That's --

11 CHAIR JORDAN: Address my question  
12 please. My question was to you. What are you  
13 trying to get at with the line of questioning.  
14 You were asking about --

15 MS. BRAY: My --

16 CHAIR JORDAN: You asked whether or  
17 not they had included this on their application.

18 MS. BRAY: Right. Because I don't  
19 think these numbers are reflected in the number  
20 of dogs that will be housed on the premises.

21 CHAIR JORDAN: That's what you mean  
22 by that question?

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1 MS. BRAY: Yes. Um-hum.

2 CHAIR JORDAN: Because I didn't  
3 understand it. So, maybe they didn't  
4 understand it.

5 MS. BRAY: Yes.

6 CHAIR JORDAN: So, why don't we ask  
7 them that directly?

8 MR. HEIER: So, are you saying  
9 there's 27 --

10 MS. BRAY: Are you including up to  
11 four dogs in addition to your regular boarding  
12 clients?

13 MR. LIEDMAN: Right. So, up -- up  
14 to four --

15 MR. HEIER: They are a client.

16 MR. LIEDMAN: A maximum of four of  
17 these adoptable dogs would -- would ever be  
18 present because there's a temporary need for the  
19 rescue. We -- the rescue boards dogs a number  
20 of different places where there is a temporary  
21 need for a place for a dog, but for example, this  
22 packet, every dog here is in an individual

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1 person's home except the dogs that say need  
2 foster and they were -- there were just times  
3 where the -- the foster person they -- it didn't  
4 work out between them and the dog and so, for  
5 whatever reason or they may have gone out of town  
6 or something. So, we board that dog for them and  
7 then they find a new foster home.

8 So, this -- most of dogs -- 95  
9 percent of the dogs on this list are never in the  
10 building.

11 MR. HEIER: And I think this past  
12 weekend we had one -- we had two foster dogs.  
13 Client or folks that were boarding a dog. They  
14 were going out of town for the 4th of July. They  
15 -- they brought the dog in and boarded it with  
16 us.

17 MS. BRAY: Okay. I have no further  
18 questions.

19 CHAIR JORDAN: Okay. Board, any  
20 addition question of the Applicant?

21 Then let's turn now to the Office of  
22 Planning.

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1                   That's what I said. Talking about.  
2 Talking about. I said does the Board have any  
3 additional questions of the Applicant. Do you  
4 have questions?

5                   Okay. Okay. Office of Planning.

6                   MR. MORDFIN: Good morning. I'm  
7 Stephen Mordfin with the Office of Planning.

8                   And the subject application is in  
9 conformance with the provisions for the granting  
10 of the special exception to permit an animal  
11 boarding use because the use would take place  
12 entirely within a masonry building capable of  
13 soundproofing use with windows and doors kept  
14 closed.

15                  The animal boarding would take place  
16 at the rear of the structure within the one-story  
17 warehouse addition. The portion of the  
18 building that does not abut the residence to the  
19 west.

20                  A HEPA filtration system would be  
21 installed. Floors would be cleaned with a water  
22 chemical mixture to break down urine.

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1 CHAIR JORDAN: We've read your  
2 report. Are you reading your report or are you  
3 highlighting certain parts of --

4 MR. MORDFIN: I was just  
5 highlighting certain parts.

6 CHAIR JORDAN: Okay.

7 MR. MORDFIN: Basically, now, okay.

8 CHAIR JORDAN: Yes.

9 MR. MORDFIN: We stand on our report  
10 and would recommend that the Board approve the  
11 application subject to the conditions within the  
12 report and also subject to the conditions that  
13 are contained within the acoustical study that  
14 the Applicant has since submitted.

15 CHAIR JORDAN: Okay. A couple of  
16 questions for you.

17 I didn't see in your report -- oh,  
18 first, did you go out to the location?

19 MR. MORDFIN: Yes, I did.

20 CHAIR JORDAN: And I didn't see in  
21 your report why you say there's no detriment to  
22 the surrounding community. I mean how do you

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1 arrive? Did you --

2 MR. MORDFIN: I arrived at that --  
3 the boarding -- the animal -- where the animals  
4 will be kept is in the rear of the structure not  
5 in the original rowhouse portion at the front.  
6 In the back. Which is of masonry construction  
7 and from having conversations with architects  
8 and this is what we've done in the other animal  
9 cases, they've told me that masonry construction  
10 will soundproof the use.

11 One thing that we always say is that  
12 all windows and doors must be kept closed and  
13 that's a condition that they would have to follow  
14 whether the new skylights open or not. They  
15 would not be permitted to open them based on our  
16 evaluation.

17 So, that is why we said that it was  
18 not going to adversely affect because the  
19 animals will come in through the front, typical  
20 of other uses and they would be kept in the back  
21 away from the residential uses and away from the  
22 adjoining structures, the adjoining rowhouse or

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1 former rowhouses that are -- well, one is  
2 currently a rowhouse. So, that is why we  
3 concluded that it would not adversely affect.

4 It would have the system in place for  
5 removing the animal waste. They would have the  
6 system in place for odor. Whether that be how  
7 they're treating the floors, the air filtration  
8 systems. So, that was why we concluded that it  
9 would adversely affect the adjoining properties  
10 or the surrounding neighborhood.

11 CHAIR JORDAN: And what are you  
12 saying is practical difficulty for allowing this  
13 variance?

14 MR. MORDFIN: For the variance, I  
15 think it is an unusual situation the way this  
16 subject property -- it goes back towards that  
17 alley. Basically, front -- well, the rear of it  
18 basically abuts the public alley at the rear, but  
19 it's kind of unusual the way just a corner of the  
20 R-4 District there which is improved with the  
21 rowhouses, used residentially, abuts it. So,  
22 we thought that that was an unusual situation

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1 just the way it angles up that way and then hits  
2 the corner of that property.

3 CHAIR JORDAN: From the corner of  
4 that property to the next residential building  
5 is how far?

6 MR. MORDFIN: From the corner to the  
7 house that's on that property?

8 CHAIR JORDAN: Portion of the  
9 property where they're going to house the dogs.  
10 How far is that to the next residential building?

11 MR. MORDFIN: From the rear of the  
12 building to the closest residential-use  
13 structure?

14 CHAIR JORDAN: Yes. From any side.  
15 Let's say any side from where the dogs are being  
16 housed.

17 MR. MORDFIN: I did not scale that  
18 off. I don't know the distance from the rear of  
19 that building to the closest residential-use  
20 structure.

21 CHAIR JORDAN: Let me ask the  
22 Applicant. How far is that? How far --

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1 MR. SULLIVAN: Just the -- the  
2 structure here, Mr. McMichael's structure is  
3 fronting on 13th Street. I think he noted it was  
4 about -- well, maybe -- I'm not sure if he did.  
5 It's about 100 feet I'd think. It's from this  
6 -- to the structure.

7 CHAIR JORDAN: Well, it would be  
8 closer to the back --

9 MR. SULLIVAN: I could be wrong, but  
10 it's --

11 CHAIR JORDAN: It would be closer to  
12 1308 and 1312.

13 MR. SULLIVAN: Yes. Yes, that's --  
14 yes, we're just talking the area where it abuts  
15 the residential zone.

16 CHAIR JORDAN: Okay. Because the  
17 dogs go in the back, but still --

18 MR. SULLIVAN: I thought you were  
19 just talking about the variance.

20 CHAIR JORDAN: -- I just need that  
21 distance. Was that 50 feet? No, 20 -- it says  
22 right here. Well, from here to here. So, the

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1 dogs will be -- from where the actual warehouse  
2 location is where the dogs are going to be housed  
3 to the residential. Any of the closest -- what  
4 is the closest residential or building being  
5 used residentially? How about that? Not  
6 residential district.

7 MR. SULLIVAN: Yes, it's 1308. The  
8 building. The 1308 is a residence.

9 CHAIR JORDAN: And is that like 30  
10 feet from where the back portion? What is that?

11 MR. SULLIVAN: Well, if you count  
12 the court -- the open court, probably not quite  
13 that much. Just eyeballing it, but there's an  
14 open court here. So, yes, it's on line with the  
15 back of the building minus the open court.

16 CHAIR JORDAN: Let me turn to the  
17 opposition. How far is it? What's --

18 MS. BRAY: It's immediately  
19 adjacent.

20 CHAIR JORDAN: The warehouse where  
21 the -- I thought the dogs were being housed  
22 further back away from --

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1 MS. BRAY: The beginning of the  
2 warehouse addition is in line with the rear plane  
3 of Ms. Fisher's home --

4 CHAIR JORDAN: Got ya. Okay.

5 MS. BRAY: -- at 1308 Pennsylvania  
6 Avenue.

7 CHAIR JORDAN: Right after the  
8 court.

9 MS. BRAY: So, there's a small open  
10 court that --

11 CHAIR JORDAN: The court.

12 MS. BRAY: -- separates them.

13 CHAIR JORDAN: And the dogs are  
14 going to be housed in that front portion of the  
15 warehouse or another portion of the warehouse?

16 MR. HEIER: The original houses are  
17 all the same. There's some infill in both 1310  
18 and 1312. So, if you see the -- the shape of --  
19 there was -- that breezeway there. So, the dogs  
20 -- the portion where the dogs are being held  
21 starts at the end of that breezeway. Not at the  
22 beginning, but the end.

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1 CHAIR JORDAN: Right.

2 MR. HEIER: The end being farther  
3 from the street.

4 CHAIR JORDAN: So, the dogs will be  
5 kept right up at that portion to the rear of the  
6 --

7 MR. HEIER: No, because that  
8 breezeway starts -- the breezeway starts --

9 CHAIR JORDAN: I understand that.  
10 I see where the end -- end of the court at the  
11 rear of the house is where the warehouse begins.

12 MR. SULLIVAN: It's three  
13 sections --

14 CHAIR JORDAN: Okay.

15 MR. SULLIVAN: -- of that. There's  
16 three separate rooms I believe. Is that right?  
17 Jess, you want to explain how there's three rooms  
18 in the --

19 MR. HEIER: Well, yes, three  
20 sections. Yes.

21 MS. BRAY: And if I can just  
22 clarify, Mr. Chairman, in addition to being in

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1 line with the rear plane of 1308 Pennsylvania,  
2 it's also in line with the rear plane of the main  
3 structure at 1312 Pennsylvania and immediately  
4 adjacent to the carriage house which extends to  
5 the rear of 1312 Pennsylvania.

6 CHAIR JORDAN: All right. Because  
7 I thought from OP's presentation that we were  
8 going to be back towards the alley portion, but  
9 that's now what I'm understanding. Is that what  
10 your --

11 MR. MORDFIN: What I meant was it's  
12 the rear portion of the building. There's the  
13 front portion that's the original rowhouse.  
14 That is not the portion with --

15 CHAIR JORDAN: Yes. Correct.

16 MR. MORDFIN: -- the animal  
17 boarding. But, there's the warehouse addition  
18 that was built onto the rear of the structure and  
19 that is -- what I meant to say was where the  
20 animal boarding would take place. Within the  
21 warehouse portion that was constructed onto the  
22 rear of the rowhouse.

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1 CHAIR JORDAN: Yes, maybe I took it  
2 further because I thought you were using -- they  
3 were just going to be using the rear portion of  
4 that closest to where that alley would be and  
5 near the -- so, you're going to use that whole  
6 space. Got it.

7 MR. MORDFIN: All right. I'm  
8 clear. I'm clear.

9 CHAIR JORDAN: We got there. I'm  
10 just a little slow. But, I understand where we  
11 are. Okay. I'm sorry.

12 Any other questions of Office of  
13 Planning? Yes, Ms. Cohen.

14 ZC VICE CHAIR COHEN: Yes. Can you  
15 just remind me why you're indicating a five-year  
16 approval?

17 MR. MORDFIN: The five-year  
18 approval is in there because there are some  
19 issues that the neighborhood has brought up  
20 saying that they are concerned about the  
21 potential for noise. By putting -- noise and  
22 odor and other affects on the neighborhood.

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1           The purpose of putting the five-year  
2       restriction on there is that this gives them the  
3       opportunity that should this not be run properly  
4       that they would have to come back again to the  
5       Board to -- well, whether it's run properly or  
6       not, they would have to come back to the Board  
7       in five years to be reevaluated.

8           If it's not being run properly, then  
9       the community would have their say as to what  
10      they thought of the application and this is just  
11      to make sure that the Applicant does run the  
12      business the way they have told us that they are  
13      going to.

14           ZC VICE CHAIR COHEN: Is that common  
15      for this type of use then? To put a five year.  
16      Since you -- you do have some experience with  
17      facilities where the -- you know, hospitals or  
18      anything. Is that common to limit?

19           MR. MORDFIN: We've done it for  
20      other types of uses where there has been some  
21      concern whether or not there would be an adverse  
22      impact or the neighborhood has been concerned

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1 about it.

2 I don't think we've done on any other  
3 animal uses. I'm not positive about that. I  
4 don't think we've done it for any other animal  
5 uses.

6 We've done -- the other conditions  
7 in there, many of them are similar or pulled from  
8 other ones.

9 ZC VICE CHAIR COHEN: Okay.

10 MR. MORDFIN: Like the Liaison  
11 Committee. That's similar to what we did for  
12 9th Street -- Wagtime on 9th Street.

13 ZC VICE CHAIR COHEN: That's right.  
14 That's one of the ones that I didn't sit on, but  
15 I recall.

16 MR. MORDFIN: What I don't recall is  
17 whether we put a time limit on that one. So, I  
18 can't say for sure.

19 ZC VICE CHAIR COHEN: As part of  
20 your due diligence, did you visit what they have  
21 done on 18th Street?

22 MR. MORDFIN: I didn't go to 18th

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1 Street because that's not the site of this one.

2 ZC VICE CHAIR COHEN: Yes. Yes.

3 Yes, and I -- I don't want to put you on --

4 MR. MORDFIN: So, I visited this  
5 site just to see what was there.

6 ZC VICE CHAIR COHEN: Sure. All  
7 right. Because they did say -- I think you've  
8 been operating there for 18 years or something  
9 like that. I mean 14 years.

10 So, I just wanted to understand, you  
11 know, that five-year limit. It's a business,  
12 you know, and I appreciate the fact that we want  
13 to protect the neighbors especially if we do move  
14 ahead with this. So, thank you for your  
15 answers.

16 CHAIR JORDAN: Mr. Mordfin, I  
17 didn't see in your conditions, and maybe I missed  
18 it, where you required an acoustical treatment  
19 of the property. Did I miss it?

20 MR. MORDFIN: No, I did not yet have  
21 the copy of the acoustical report, but I have.  
22 So, after this was filed, after our report was

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1 filed, that acoustical report came in and so,  
2 that's why I added that into my presentation  
3 here. Is that the conditions that are contained  
4 within there should be included as part of the  
5 conditions of approval.

6 CHAIR JORDAN: Any other questions  
7 from the Board to the Office of Planning?

8 Then the Applicant, any questions?  
9 Any questions to the Office of Planning?

10 MR. SULLIVAN: Just one question.  
11 You did include a condition, however, that we  
12 replace the rear garage door. I believe that  
13 was a noise-related condition. Correct?

14 MR. MORDFIN: Yes, that's true.

15 MR. SULLIVAN: Thank you.

16 CHAIR JORDAN: Opposition?

17 MS. BRAY: Mr. Mordfin, looking at  
18 your recommended conditions with respect to the  
19 Liaison Committee, if, indeed, that ANC or the  
20 Liaison Committee finds that conditions of  
21 approval are not being met, they would --

22 CHAIR JORDAN: Let me say this. We

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1 can stay away -- this Board will not require a  
2 Liaison Committee. We've said over and over  
3 again about us forcing residents to do things and  
4 we don't have control and power to do that.

5 So, something that might be agreed  
6 to on the side with the ANC on that regard or  
7 something that you guys had before, I don't want  
8 you to take your time to drill in on the --

9 MS. BRAY: I appreciate that.

10 CHAIR JORDAN: -- on that  
11 committee.

12 MS. BRAY: Mr. Mordfin, on what  
13 evidence do you base your conclusion that the  
14 building is capable of being soundproof?

15 MR. MORDFIN: It's based on that  
16 it's a masonry structure and from having  
17 previous conversations with architects, I've  
18 been informed that because it's a masonry  
19 structure that would create -- you can create a  
20 soundproof building.

21 MS. BRAY: But, you haven't been  
22 provided with any opinion with respect to this

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1 building that indicates that it's capable of  
2 being soundproofed or is, in fact, soundproof.  
3 Is that right?

4 MR. MORDFIN: No, just because it's  
5 a masonry -- of masonry construction.

6 MS. BRAY: In reviewing the request  
7 for a variance, you conclude that the property  
8 is exceptional. Can you explain precisely what  
9 is exceptional about this property relative to  
10 the other properties in this square or in the  
11 surrounding vicinity?

12 MR. MORDFIN: I think -- well, I'm  
13 assuming you're referring to the variance.

14 When we looked at that -- when you  
15 look at the way the subject property is shaped  
16 and the way it abuts the adjoining properties,  
17 it comes back -- you know, it goes back from  
18 Pennsylvania Avenue, but it goes off on an angle  
19 and it primarily abuts the public alley at the  
20 rear as I said before and just a corner of it  
21 abuts a corner of the R-4 lot that fronts on 13th  
22 Street and that's what we were using as -- the

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1 unusual situation is the way it abuts the  
2 adjoining property.

3 MS. BRAY: But, there are lots of  
4 other long and narrow lots in this square. Are  
5 there not?

6 MR. MORDFIN: There are.

7 MS. BRAY: And I am not familiar  
8 with, perhaps you are, are you familiar with a  
9 Board of Zoning Adjustment case that has  
10 determined that the location of a zoned district  
11 boundary is in itself an exceptional condition?

12 MR. MORDFIN: Well, it's not the  
13 location of it. It's the way this piece of  
14 property abuts. Heads back and primarily faces  
15 the alley at the rear. But, it's -- I concluded  
16 that it was unusual just the way the other  
17 property comes into it. Not that it abuts an R-4  
18 property, but just the way this property which  
19 is zoned commercially abuts commercial-zoned  
20 districts. But, just the way from the corner it  
21 comes in is an R-4 District and that's how we  
22 concluded that this was an unusual situation.

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1 MS. BRAY: Does Section 735 of the  
2 Zoning Regulations prescribe any minimum  
3 distance from which the subject property must be  
4 set back from residential zones?

5 MR. MORDFIN: I don't believe so.

6 MS. BRAY: It just says shall not  
7 abut a residence district. Is that correct?

8 MR. MORDFIN: That's correct.

9 MS. BRAY: What other uses are  
10 permitted in a C-2-A Zone as a matter of right?

11 MR. MORDFIN: What other uses?

12 MS. BRAY: Give me a couple of  
13 examples.

14 MR. MORDFIN: Other uses, they  
15 could have retail. They could have an office  
16 space. They could have other service  
17 commercial uses.

18 MS. BRAY: Did the owner represent  
19 to you in your conversations that there are no  
20 other uses that could be made of the subject  
21 property?

22 MR. MORDFIN: No.

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1 MS. BRAY: Did the contract  
2 purchaser discuss that with you?

3 MR. MORDFIN: No.

4 MS. BRAY: Relative to other cases  
5 that you've reviewed, would you describe the  
6 practical difficulties in complying strictly  
7 with the Zoning Regulations as significant in  
8 this case?

9 MR. MORDFIN: As significant? The  
10 practical difficulty for -- well, I'm not sure  
11 that -- well, the test is whether or not it's an  
12 exceptional situation and whether that results  
13 in a practical difficulty to the Applicant. So,  
14 as for the practical difficulty part, just  
15 because it's unusual the way it abuts, it just  
16 makes it difficult to use the property as they  
17 have, you know -- it's unusual.

18 MS. BRAY: For this specific --

19 MR. MORDFIN: Because it's a  
20 commercial use that kind of --

21 MS. BRAY: -- special exception  
22 use.

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1 MR. MORDFIN: -- it makes it -- it's  
2 an unusual situation. Results in a practical  
3 difficulty because it's basically -- it's a  
4 commercial property that abuts commercial  
5 properties, that abuts an alley at the rear that  
6 abuts industrial and other commercial  
7 properties and just this one corner. So, just  
8 because of that, it just made an unusual  
9 situation that results in the practical  
10 difficulty as to how this property can be used.

11 MS. BRAY: I have no further  
12 questions.

13 CHAIR JORDAN: So, let's turn to  
14 Department of Transportation. There's no  
15 Transportation. We have a report from the  
16 Department of Transportation and they have no  
17 objection to the requested relief.

18 Is there anyone here from ANC-6B?  
19 Anyone from ANC-6B?

20 We have a recommended approval from  
21 ANC-6B which we'll give great weight to in  
22 support of this application.

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1           We do have 27 form letters in the  
2           file from neighbors or use the word neighbors in  
3           a broad sense. Well, from people who write in  
4           support of this application.

5           Are there any others in the audience  
6           here wishing to testify in support of this  
7           application? Anyone wishing to testify in  
8           support?

9           Then let's turn to the parties in  
10          opposition for their presentation that they have  
11          20 minutes to present or less.

12          How much did we take on -- we didn't  
13          take 20 minutes. Did we? On --

14          MR. MOY: Yes, we started with 20  
15          minutes, Mr. Chairman.

16          CHAIR JORDAN: Yes, but they didn't  
17          use 20 minutes.

18          MR. MOY: No, they did not.

19          CHAIR JORDAN: Well, how much did  
20          they use?

21          MR. MOY: Sixteen. They have  
22          sixteen minutes and 14 seconds to go. Remaining

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1 of their 20.

2 CHAIR JORDAN: They only used four  
3 minutes for their presentation. Really?

4 MR. MOY: Well, they're --

5 CHAIR JORDAN: Okay. Well, you got  
6 ten minutes for your presentation adding some in  
7 for you.

8 MS. BRAY: Could I ask the Board's  
9 indulgence for just a moment to consult on how  
10 we best use our time given? Thank you.

11 CHAIR JORDAN: So, the party in  
12 opposition will have 15 minutes. We got the  
13 clocks coordinated.

14 Okay. Are we back? Are we ready to  
15 go?

16 MS. BRAY: Yes, we are, Mr.  
17 Chairman. I thank you for the time to rearrange  
18 our presentation in light of the very short  
19 presentation by the Applicant.

20 Just briefly, we will rely on the  
21 rewritten statements of the party status  
22 applicants who are residential neighbors

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1 because those have been fully elaborated in  
2 their filings.

3 I'd like to present Andie --

4 CHAIR JORDAN: And they have been  
5 read. Trust me.

6 MS. BRAY: Thank you. I'd like to  
7 introduce Andi Moss from the Moss Group which is  
8 the business owner immediately adjacent to  
9 describe her property and the impact that she  
10 will have as a business owner because they were  
11 fully addressed in her party status application  
12 as a statement in opposition.

13 And then we'd like to present Ellen  
14 McCarthy as an expert in planning land use and  
15 zoning in the District of Columbia and I have Ms.  
16 McCarthy's bio. She's been accepted by this  
17 Board many, many times as an expert in this  
18 field.

19 And so, the majority of our  
20 presentation will be relying on Ms. McCarthy's  
21 testimony.

22 CHAIR JORDAN: Okay. And we

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1 certainly have already accepted her numerously.

2 MS. BRAY: Thank you. I'll put her  
3 bio in for the record.

4 CHAIR JORDAN: We don't need it.

5 MS. BRAY: Okay.

6 CHAIR JORDAN: Do we need it for the  
7 record? No, we already have it as part of our  
8 official documentation. So.

9 MS. BRAY: Okay. So, with that,  
10 Ms. Moss is going to testify and I have a copy  
11 of her testimony provided to the ANC with some  
12 photographs that she's going to refer to and I'll  
13 provide that to the Applicant's counsel and to  
14 the Board's staff.

15 CHAIR JORDAN: Yes. Your mike is  
16 not on. There we go.

17 MS. MOSS: Okay. Thank you.

18 Mr. Chairman and Members, thank you  
19 for not only the time today, but your service to  
20 the community. I can see that it's challenging  
21 at times.

22 CHAIR JORDAN: Thank you.

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1 MS. MOSS: I'm Andie Moss. I'm  
2 President of the Moss Group, a criminal justice  
3 consulting firm.

4 Judy Wood and I own the building  
5 together and I'd like to describe our business  
6 and indicate our concerns.

7 We are a criminal justice consulting  
8 firm that works all over the country. We are  
9 consultants to jails and prisons. We made a  
10 decision. We had -- well, let me just say we  
11 have eight staff members in the building. We  
12 have five remote locations and we have over a  
13 hundred independent consultants that work  
14 throughout the country. We work diligently in  
15 the District at the jail down the street from us.

16 Judy and I invested in this property  
17 making a commitment to the District of Columbia  
18 specifically to have our home and our business  
19 here.

20 Judy is an active member of the  
21 business community on Capitol Hill and has  
22 volunteered countless hours to the Association

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1 of Merchants and Professionals, Chance. She  
2 works directly with many other nonprofit  
3 organizations on the Hill and throughout the  
4 city as a CPA and has been instrumental in the  
5 development of business throughout the  
6 District.

7 We looked for a building for over two  
8 years that would be located near Metro and  
9 provide our staff with a special work  
10 environment. Our experience in renovating the  
11 building was a nightmare conducting business  
12 with lost files from DCRA and many  
13 complications.

14 How our property is used I think will  
15 be helpful for you to understand. In the front,  
16 the front conference room is in front adjacent  
17 to the proposed retail counter and intake area  
18 of City Dogs and I'd like, if I can, to ask Judy  
19 to hold up a photograph that I think would be  
20 helpful for you to see. It also shows Dr.  
21 Fisher's property.

22 The conference room is used for

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1 webinars and is produced and broadcast for us to  
2 a thousand participants. Staff offices are in  
3 the open area downstairs adjacent to the  
4 warehouse where the dogs will play.

5 My offices are on the second floor  
6 and our senior staff is on the second floor and  
7 there's a courtyard and a carriage house  
8 adjacent to the warehouse as well. There are  
9 many surfaces for sound to bounce off of adjacent  
10 to many previous surfaces in the warehouse  
11 building including vented skylights in the  
12 warehouse roof.

13 The building in the rear of our  
14 property is used as office space. It was  
15 referred to as the Resource Center because  
16 originally that was where our library was and  
17 resource center. We produce videos and  
18 toolkits for training. Because of our  
19 expansion, we've moved staff back there. So,  
20 there are two staff members in that Resource  
21 Center.

22 It directly abuts the warehouse area

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1 to be used by the dozens of dogs.

2 The current owner of the property  
3 complained early in our existence there because  
4 of noise levels for basic conference calling and  
5 -- within the first three months. So, clearly,  
6 there's a noise factor between -- already.

7 We choose to do business in the  
8 District and have made significant investment in  
9 our property in order to do so as a matter of  
10 right.

11 The granting of a special exception  
12 immediately adjacent to our offices will  
13 significantly and adversely impact our ability  
14 to use our property as permitted in this zone as  
15 a matter of right.

16 Since 1997, living and working on  
17 the Hill and staying committed to our vision has  
18 had its many challenges. In the work arena, I  
19 have had one staff member mugged walking home  
20 from work on 9th Street. One recently harassed  
21 and followed outside the building. I've had  
22 another staff member recently mugged and her

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1 husband pistol-whipped in the District. I've  
2 had a family member mugged, a renter mugged.  
3 The same family member was seriously sexually  
4 assaulted within the District. Additionally,  
5 I've had my car stolen twice and windows of my  
6 cars bashed in four times.

7 Yet, it is my personal and business  
8 commitment to be in the District.

9 Finally, I'm an employer of  
10 returning citizens from our criminal justice  
11 system and have a strong stated value about being  
12 an active community leader and being a good  
13 neighbor.

14 I am discouraged. I only ask that  
15 you consider your mission and fairly reflect on  
16 the reason for current Zoning Regulations. If  
17 in your assessment you feel that City Dogs is a  
18 valuable business that does not cost serious  
19 disruption to my business and other parties  
20 here, then I will at last have to reassess the  
21 vision of continuing business in the District.

22 Thank you.

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1 MS. BRAY: Ms. Moss, I just have one  
2 question about what you said.

3 Did you say that the current owner  
4 of the subject property complained to you about  
5 your noise levels?

6 MS. MOSS: Yes.

7 MS. BRAY: And what activities were  
8 you conducting that were generating noise?

9 MS. MOSS: Well, it was within the  
10 first three months and I think that I -- I  
11 honestly don't recall if it was -- it was not  
12 during the construction period. We were having  
13 a conference meeting. There were probably  
14 several people there and I'm not sure exactly  
15 what the issue was. We went over and talked to  
16 him and apologized and said we would try to be  
17 more conscious of it.

18 MS. BRAY: And this was on the  
19 interior of your building?

20 MS. MOSS: Yes.

21 MS. BRAY: Okay. Thank you. With  
22 that I'd like to turn to Ms. McCarthy unless the

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1 Board has questions for Ms. Moss.

2 CHAIR JORDAN: No. Any questions?

3 No.

4 Does the Applicant have any  
5 questions for Ms. Moss?

6 MR. SULLIVAN: Yes, I do.

7 Ms. Moss, this location of  
8 Pennsylvania Avenue has six lanes of heavy  
9 traffic and four major bus lines outside that  
10 front room where you do your webinars. Do these  
11 noises like this and other noises from  
12 Pennsylvania Avenue impact your webinars and  
13 conference calls?

14 MS. MOSS: Absolutely.  
15 Absolutely, it's problematic and we struggle  
16 with it and so, we -- we have done our best with  
17 that, but to add yet additional noise will --  
18 will, in fact, really create a reassessment.

19 MR. SULLIVAN: Okay. The  
20 Applicant's acoustic engineer offered to enter  
21 your property and take sound measurements from  
22 inside your property. Did you decline that

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1 offer?

2 MS. MOSS: I did because I knew that  
3 we were -- had not yet presented to this Board  
4 and I asked my attorney for advice on that. We  
5 are -- we would welcome that if that's the  
6 process that we've -- that we move into. But,  
7 I felt and I talked to Jesse about it. I felt  
8 like I needed to be very procedural in what I was  
9 doing.

10 MR. SULLIVAN: Okay. Thank you.  
11 Did you also decline an opportunity to tour the  
12 1310 property?

13 MS. MOSS: The 1310 property?

14 MR. SULLIVAN: Yes, the subject  
15 property. The property that's the subject of  
16 the application. Did you or --

17 MS. MOSS: Did I decline?

18 MR. SULLIVAN: Did you or Ms. Wood  
19 decline an opportunity to visit and tour the  
20 inside of that property?

21 MS. MOSS: I did not decline. I was  
22 asked right after the ANC if I would -- would like

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1 to go to their property and I said I would prefer  
2 they come to our property, but I had not declined  
3 that I would -- and that was the Dupont property.  
4 I've never been asked to tour 1310.

5 MR. SULLIVAN: You mentioned that  
6 your sound was heard by the current owner --

7 MS. MOSS: Right.

8 MR. SULLIVAN: -- through the walls  
9 in the front of the building.

10 MS. MOSS: Right.

11 MR. SULLIVAN: What use would you  
12 prefer go into the property at 1310?

13 MS. MOSS: Well, I -- I don't -- I  
14 don't have a preferred use. I -- I just don't  
15 want the disruption.

16 MR. SULLIVAN: Would you prefer no  
17 use take place in there?

18 MS. MOSS: No, I don't. No. I'm a  
19 business person. I welcome business and we're  
20 very pro-business and I -- I would welcome other  
21 office space. I -- I think that there's a vast  
22 difference between running office space

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1 commercially without dogs and with dogs.

2 MR. SULLIVAN: Are you aware that  
3 restaurant and bar use is permitted in that  
4 location as a matter of right?

5 MS. MOSS: I am. I am.

6 MR. SULLIVAN: And a dry cleaning  
7 facility is permitted as a matter of right in  
8 that location?

9 MS. MOSS: I am.

10 MR. SULLIVAN: So, you're aware  
11 that any retail use, general retail use is  
12 permitted.

13 MS. MOSS: Yes.

14 MR. SULLIVAN: And would you expect  
15 that you would hear noises of people coming and  
16 going if there was a busy retail use at the  
17 property at 1310?

18 MS. MOSS: I am not unaware that  
19 noises would be there, but I certainly don't  
20 compare them to 45 dogs coming out twice a day.  
21 Ninety dogs coming in and out.

22 MR. SULLIVAN: Have you taken any

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1 soundproofing measures in your sound room where  
2 you do your webinars and conference calls?

3 MS. MOSS: No, I have not.

4 MR. SULLIVAN: Thank you. I have  
5 no further questions.

6 CHAIR JORDAN: Okay. Board, any  
7 other questions? Then your next witness  
8 please.

9 MS. BRAY: Thank you, Ms. Moss.  
10 Ms. McCarthy.

11 MS. MCCARTHY: Good morning, Mr.  
12 Chair and Members of the Board. I'll try to be  
13 very brief in my remaining eight minutes.

14 Let me start just with a brief  
15 overview about the regulations that we are  
16 looking at today because I was the Deputy  
17 Director of OP when these regulations were  
18 prepared as a result of the controversy over the  
19 negative impact of Wagtime.

20 After that appeal was upheld, by the  
21 Board and they determined that Wagtime did have  
22 an adverse impact and had been improperly

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1 granted a Certificate of Occupancy, the Zoning  
2 Commission then or the neighbors who had  
3 undertaken that appeal then brought their  
4 concerns to the Office of Planning. We proposed  
5 the regulations.

6 The Commission heard compelling  
7 evidence that dog boarding could create serious  
8 issues particularly with respect to noise, odor  
9 and disposal of dog waste. They found the  
10 potential for adverse impacts was serious enough  
11 that such establishments were prohibited not  
12 only from residential zone, but also in  
13 commercially-zoned areas which merely abutted a  
14 residentially-zone parcel and the Commission  
15 determined that all animal boarding uses  
16 required a special exception even in industrial  
17 areas.

18 On the second page of my testimony,  
19 you see a quotation from Ms. Dowdy who was one  
20 of the leaders of the Q Street Group and --

21 CHAIR JORDAN: Your testimony was  
22 -- Mr. Moy, I think you have it for distribution.

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1 MS. MCCARTHY: So, the proposal  
2 that dog boarding uses were not appropriate to  
3 abut residential zones was specifically  
4 discussed at the hearing and was adopted as part  
5 of the regulations by the Commission.

6 So, let me hit briefly the special  
7 exception criteria. Yes, 735.2 cannot abut a  
8 residence zone. They don't meet that  
9 requirement. They've asked for the variance.

10 The fact that the animal boarding  
11 should take place within an enclosed and  
12 soundproofed building, this is clearly an  
13 important issue in this case. The Applicant has  
14 the burden of proof to show that indeed they can  
15 provide the basic requirement, operating  
16 without a negative effect on neighboring  
17 property. They have not met that burden.

18 Despite the fact that 735 clearly  
19 says the activity has to take place within a  
20 soundproof building, the acoustic report did not  
21 have any findings about the soundproof quality  
22 of the building despite the way Mr. Sullivan

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1 summarized it. You'll see on page 2 of the  
2 acoustic report they estimated the noise  
3 reduction for the party walls which separate  
4 1310 from Dr. Fisher's house and the Moss Group  
5 based on "historic data from the transmission  
6 loss of three layers of brick was used to predict  
7 the noise level of the dogs in the adjacent  
8 spaces."

9 So, there never was any measuring of  
10 just how soundproof the bricks were. We've all  
11 been talking about the masonry structure in the  
12 back, but remember the front part of this  
13 building which is where every dog will enter and  
14 exit, where dogs will presumably be barking  
15 because they're excited to come and use the  
16 facilities, where on the second floor there will  
17 also be grooming taking place, this front part  
18 of the building direct -- is a party wall with  
19 two of the opponents that are here today and  
20 there hasn't been any discussion of any  
21 soundproofing of that facility and that's where  
22 the Moss Company is conducting its conference

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1 calls.

2 And there also was no discussion by  
3 the Applicants of where these vents for the HEPA  
4 filters are going to be. You saw from some of  
5 the pictures where the locations were for the  
6 skylights. All of those penetrations of the  
7 masonry walls constitute a place where the sound  
8 can leak out and we have -- you have seen from  
9 the letters that have been submitted that people  
10 not only occupy inside their houses, these  
11 neighbors, they also occupy the outdoor spaces.

12 Let me try to skip to the variance.  
13 The Applicant and the Office of Planning say that  
14 the exceptional circumstance is that the lot is  
15 long and narrow and pointed at the end. As you  
16 can see from the exhibit which is attached to my  
17 testimony, there are many lots which are  
18 similarly long and a lot right across the street  
19 which is also pointed at the end. They conclude  
20 from that that the nexus between this  
21 exceptional circumstance and the serious  
22 practical difficulty relates only to if the

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1 property owner desires to use it for a dog  
2 boarding facility because of the way the back  
3 property abuts a residential zone.

4 That's not the test. The test is is  
5 there something about this property that makes  
6 it a serious practical difficulty for the owner  
7 of the property to use it in conformance with a  
8 strict application of the Zoning Regulations.  
9 It's C-2-A. It's a block from the Metro. It's  
10 across from the Harris Teeter. There are any  
11 number of other uses which could go into this  
12 building. There is no reason to approve a use  
13 which has the potential for such serious adverse  
14 impacts.

15 And how adverse can these be? I  
16 looked at a number of experts who quantified the  
17 noise impact of barking dogs which ranged from  
18 a low of 72 decibels to more than 118. By  
19 contrast or by comparison, an amplified rock  
20 music performance is 121 decibels. So, we are  
21 talking about noises that can be very  
22 substantial.

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1           With respect to the last test of the  
2           variance, the detriment to the public good, the  
3           testimony of the various neighbors and what they  
4           submitted makes clear that the variance request  
5           doesn't comply with the standards establish by  
6           the regulations for granting relief.

7           Without the requested relief, the  
8           Applicant hasn't complied with the requirements  
9           of Section 735.2 because the Applicant can't  
10          comply with that requirement because in my  
11          professional opinion the Applicant has not met  
12          its burden of proof to demonstrate there won't  
13          be serious adverse impacts. Therefore, this  
14          application must be denied.

15          CHAIR JORDAN: Does the Board have  
16          questions? Ms. Cohen.

17          ZC VICE CHAIR COHEN: Yes, I do.

18          CHAIR JORDAN: Please.

19          ZC VICE CHAIR COHEN: Thank you.

20          Ms. McCarthy, you mentioned  
21          something with regard to the acoustical report  
22          on page 2 which I also now am looking at under

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1 noise level from dogs. Which states "While the  
2 proposed location will be set up differently and  
3 will have more acoustical absorption to reduce  
4 the noise level, the Dupont Circle location can  
5 be used as a basic for analysis" and they go on  
6 to say how they deliberately set the dogs into  
7 barking motion I guess.

8 So, there are some other facts that  
9 seem to contradict some of the points you're  
10 making. So, I think that, you know, we can argue  
11 over this acoustical report whether it's  
12 sufficient or not.

13 The one thing, is Wagtime  
14 operational now? Do you know?

15 MS. MCCARTHY: It's not in the  
16 original location, but it is in a new location  
17 which did go before the Board for approval.

18 ZC VICE CHAIR COHEN: Okay. I  
19 guess my concern is, Mr. Chairman, and maybe OP  
20 can help us out, I want to make sure there's a  
21 level planning field. That we're not holding  
22 this particular business or location to a higher

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1 standard than other -- you know, I understand  
2 there is a lot of noise when it comes to dogs.  
3 They react always with a bark.

4 So, I'm just not comfortable in  
5 anyway making a decision today because frankly  
6 I'm not familiar with Wagtime. I'm not familiar  
7 with -- I am familiar with the Dupont. I happen  
8 to live in that neighborhood. So, you know, and  
9 it doesn't seem to disrupt or disturb, but this  
10 is a special location and I understand that there  
11 is a lot of opposition. I -- I know that there's  
12 a lot of support for this and possible need.

13 So, I just wanted to express to you  
14 that right now I would like to study or get more  
15 additional information from the acoustical  
16 people because they are stating that this  
17 particular location will have more noise  
18 attenuation measures. So, that's where I am.

19 Thank you.

20 MS. MCCARTHY: And, Ms. Cohen, I  
21 would add that the current Wagtime location is  
22 in a standalone building. I believe Dogma is

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1 also in a standalone building. So, there are  
2 opportunities or there have been decisions made  
3 by other dog boarding operators to locate in  
4 places where the opportunity for adverse impact  
5 is less severe.

6 I also note that in that same section  
7 you refer to on page 2 there is no distinction  
8 made by the acoustical consultant on whether  
9 he's talking about the party walls that exist  
10 between the two buildings or whether he's  
11 talking about the masonry structure in the rear  
12 and I think both have the opportunity for noise  
13 escapes and for adverse impacts. But, the party  
14 walls, I would think are particularly  
15 potentially problematic.

16 ZC VICE CHAIR COHEN: Thank you.

17 CHAIR JORDAN: Any other questions  
18 for this witness? Questions by the Applicant?

19 MR. SULLIVAN: Yes, I do, Mr.  
20 Chairman.

21 Ms. McCarthy, has this Board to your  
22 knowledge approved animal boarding use special

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1 exceptions in the past without the benefit of an  
2 acoustic engineer's report?

3 MS. MCCARTHY: I don't know and I  
4 don't know if any of the ones that have been  
5 approved also had party walls or had a similar  
6 situation.

7 MR. SULLIVAN: Okay. Thank you.  
8 You answered the question.

9 In order to be unique, must a  
10 property be the only property within the block  
11 to have that characteristic or is it a judgment  
12 call for the Board involving more circumstances  
13 than that?

14 MS. MCCARTHY: It's a judgment call  
15 from the Board as to just how unique the  
16 situation is and whether there's a nexus between  
17 that uniqueness and the serious practical  
18 difficulty in using the property in conformance  
19 with the Zoning Regulations.

20 MR. SULLIVAN: Thank you. Would  
21 you say based on this -- would you say that this  
22 property is uniquely shaped among the properties

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1 in this general area here depicted on this  
2 diagram?

3 MS. MCCARTHY: I would say right  
4 across the street is a dental clinic which is  
5 virtually the same shape and size.

6 MR. SULLIVAN: So, I guess the  
7 answer is no because that's not on this diagram.  
8 That's across the street.

9 MS. MCCARTHY: Not on that diagram.

10 MR. SULLIVAN: Thank you. For  
11 practical difficulty, the tests --

12 MS. MCCARTHY: But, there are  
13 similarly narrow and deep --

14 MR. SULLIVAN: I understand.

15 MS. MCCARTHY: -- lots all down the  
16 --

17 MR. SULLIVAN: Yes, in the  
18 residential zone. Right?

19 So, for practical difficulty, the  
20 test for an area variance is -- you mentioned  
21 that this property can find other uses. Other  
22 uses could go in here.

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1           Is the test for an area variance that  
2           the property not be able to be used for any other  
3           use or is that the use variance test?

4           MS. MCCARTHY: No, the test for the  
5           variance in Section 3103 is that there has to be  
6           a nexus between the factors which make the  
7           property unique and the determination that  
8           strict compliance with the Zoning Regulations  
9           would constitute either peculiar and  
10          exceptional practical difficulties or to  
11          exceptional and undue -- well, undue hardship is  
12          the use variance.

13          But, that there would have to be  
14          peculiar and exceptional practical difficulties  
15          in using the property in strict conformance to  
16          the Zoning Regulations.

17          MR. SULLIVAN: Right. I  
18          understand and so, you mentioned there's a  
19          Harris Teeter and there's other things and this  
20          is a thriving area and any other use could  
21          possibly go here. Many other uses could go  
22          here.

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1                   Is the test for an area variance that  
2                   the property not be able to be used for any other  
3                   use?

4                   MS. MCCARTHY: I didn't say not be  
5                   able to be used for any other use, but the -- for  
6                   example, the use that was in this building before  
7                   was a construction office with a warehouse out  
8                   back. There's -- the test is whether there's an  
9                   undue and practical difficulty in operating in  
10                  conformance with the Zoning Regulations.

11                  Would this --

12                  MR. SULLIVAN: But, it doesn't --  
13                  what I'm getting -- it's not a use variance. If  
14                  it's not -- as the Board stated, it's not a use  
15                  variance test.

16                  Wouldn't the use variance test be  
17                  that the property cannot reasonably be used for  
18                  any other use? Would that be an accurate  
19                  description of analysis for a use variance?

20                  MS. MCCARTHY: yes.

21                  MR. SULLIVAN: Thank you. No  
22                  further questions.

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1 CHAIR JORDAN: All righty now.  
2 Back to the opposition. Any additional  
3 testimony that you wish to present? You have  
4 another --

5 MS. BRAY: I'm just determining.

6 CHAIR JORDAN: Is that a minute 38  
7 seconds, Mr. Moy? Mr. Moy? Mr. Moy, is that a  
8 minute 38 second left?

9 MR. MOY: Yes, sir.

10 CHAIR JORDAN: Okay.

11 MS. BRAY: We have no additional  
12 testimony, but I would like to ask Ms. McCarthy  
13 a question on redirect.

14 CHAIR JORDAN: Sure.

15 MS. BRAY: Ms. McCarthy, you spoke  
16 about the difference between the test of area  
17 variance and use variance. The Board has  
18 determined, although we disagree, that this  
19 should be treated as an area variance.

20 Is it your conclusion that using the  
21 appropriate standard for an area variance that  
22 the Applicant has still not met its burden?

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1 MS. MCCARTHY: Yes, that is  
2 definitely my conclusion. There's three tests  
3 to go with the area variance and I don't believe  
4 the Applicant has met any of the three.

5 MS. BRAY: Thank you. No further  
6 questions.

7 CHAIR JORDAN: Okay. Any recross?

8 MR. SULLIVAN: No, Mr. Chairman.

9 CHAIR JORDAN: Okay. Now where am  
10 I? Okay. All right. Then is there anyone  
11 who's not a party -- who's been included as a  
12 party status wishing to speak in opposition to  
13 this application? Anyone that's not included  
14 as a party status person wishing to be included  
15 to speak in opposition?

16 MR. GERALDO: Mr. Chairman.

17 CHAIR JORDAN: Yes.

18 MR. GERALDO: I don't know if I've  
19 been granted party status.

20 CHAIR JORDAN: And you are?

21 MR. GERALDO: Manuel Geraldo.

22 CHAIR JORDAN: Yes, you're part of

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1 the party status group. Thank you. Okay.

2 Anyone else? All right.

3 Then let's turn back to the  
4 Applicant. Oh, I did support earlier. Come  
5 on, guys. I got this chair.

6 Applicant, for any rebuttal or  
7 closing?

8 MR. SULLIVAN: Thank you. I'd just  
9 like to ask a question of Mr. Heier or Mr.  
10 Liedman.

11 The notice of inspection that was  
12 offered by the opposition, if you could read for  
13 me what it says at the top where it says notice  
14 of --

15 MR. HEIER: Okay. It says --

16 CHAIR JORDAN: What are you  
17 referring to so that we are with you?

18 MR. SULLIVAN: It was an email from  
19 Philip Husband to Dr. Fisher and behind it was  
20 a notice of inspection from the Department of  
21 Health.

22 CHAIR JORDAN: Okay. All right.

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1 MR. LIEDMAN: Okay. It's a June  
2 20th notice of inspection for our business. It  
3 gives the name and address and phone number and  
4 my name.

5 MR. SULLIVAN: Is the word  
6 violation crossed out and the word inspection is  
7 written in?

8 MR. LIEDMAN: That is correct.

9 MR. SULLIVAN: Could you read the  
10 first sentence in the description underneath  
11 that?

12 MR. LIEDMAN: Okay. Where the  
13 inspector has written "The facility is kept  
14 clean and sanitized through the day. There are  
15 53 dogs on inspection day. Noise of barking is  
16 contained and closed in."

17 MR. SULLIVAN: Thank you. Were you  
18 aware or do you have any knowledge of any  
19 specific credentials of this particular  
20 inspector regarding dog feces?

21 CHAIR JORDAN: Huh? What did you  
22 say?

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1 MR. SULLIVAN: The inspector and  
2 the opponents have made an issue of this report  
3 giving recommendations on how to treat dog feces  
4 --

5 CHAIR JORDAN: So, you're asking  
6 does he know the background of the inspector?

7 MR. SULLIVAN: I'm asking if he --  
8 right. If he knew the background of this  
9 inspector such that you would take their word for  
10 it or would you investigate further before you  
11 just took whatever they said.

12 MR. LIEDMAN: After the inspection,  
13 actually, I did have some serious questions as  
14 to the advice written here. Because actually  
15 before she even left, I began searching on my,  
16 you know, iPhone for the piece of equipment  
17 called desiccator and I -- I couldn't find one  
18 for any remotely similar usage and further, the  
19 -- I offered to visit the shelter, you know, the  
20 D.C. shelter and I said if they're using this,  
21 I would gladly accept, you know, start using  
22 anything new that other people are using.

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1           To her knowledge, she didn't know of  
2           anybody using it. She did email me after, a few  
3           days later and she was not able to provide any  
4           links to such a piece of equipment.

5           So, I -- and additionally, the other  
6           measures that she spoke of with the using of the  
7           lime, I had a lot of questions as to how this  
8           could be an improvement. She mentioned that --

9           CHAIR JORDAN: I do not think those  
10          are rebuttal. In fact, we've crossed this in  
11          the first -- in your direct. So, this is no  
12          rebuttal.

13          MR. SULLIVAN: Well, it was --

14          CHAIR JORDAN: It was not a  
15          rebuttal. It's cross examination that this was  
16          raised. It was not presented in the party in  
17          opposition's case in chief. So, let move on.

18          MR. SULLIVAN: Okay. Have you ever  
19          up until a month ago ever been visited by the  
20          Health Department?

21          MR. LIEDMAN: Not of that -- no, we  
22          have not had a health inspection. We've had

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1 other people from the city come. Like maybe  
2 from the shelter and animal control and that sort  
3 of thing, but --

4 MR. SULLIVAN: Nobody from the  
5 Health Department?

6 MR. LIEDMAN: Never had a Health  
7 Department inspection.

8 MR. SULLIVAN: Thank you. I would  
9 like to do a short close if I may if this is the  
10 time to do it.

11 CHAIR JORDAN: Yes. We have three  
12 minutes on the close if you need that long.

13 MR. SULLIVAN: Just a quick  
14 summary. I want to acknowledge the neighbors'  
15 concerns and the Applicant has been focused on  
16 addressing those concerns directly and I think  
17 we've had some great advantages to start with.

18 First of all, we're working with an  
19 Advisory Neighborhood Commission that's very  
20 diligent.

21 CHAIR JORDAN: Okay. Go ahead  
22 please.

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1                   MR. SULLIVAN: We're working with  
2                   an Advisory Neighborhood that's very diligent  
3                   and they had a case like this just a year ago at  
4                   the Wagtime at 900 M Street where the property  
5                   was abutting a residential property.

6                   They formed their conditions,  
7                   requested conditions based on their experience  
8                   with that property and, in fact, the Single  
9                   Member District Commissioner who's in the  
10                  Wagtime District said that that agreement and  
11                  those conditions have worked excellently and  
12                  that they have had no complaints from Wagtime at  
13                  900 M Street.

14                  So, another advantage, of course, is  
15                  this building. This building was -- the  
16                  addition part of it was made to have a dual use  
17                  like this where we have an administrative or  
18                  office use that's permitted in the front and an  
19                  animal boarding use in the back.

20                  Whereas, the Office of Planning said  
21                  it's very likely to be soundproof and able to be  
22                  soundproof and able to be modified as well.

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1           So, regarding noise, we have  
2 submitted for what it's worth the acoustic  
3 engineer's report and we're willing to flush  
4 that out further if the Board requires.  
5 Nobody's ever required it before.

6           We submitted it as our evidence of  
7 compliance with the ANC's condition because that  
8 was good enough for them based on their  
9 inspection of the building and I would note three  
10 ANC Commissioners actually visited the site and  
11 toured this. So, they were very active in this  
12 and it was a unanimous vote from the Commission.

13           Regarding odor, the trash is inside  
14 and that's it. Until the truck comes to pick it  
15 up, it's inside. Nobody's doing that. No  
16 other permitted matter of right use would do  
17 that. I imagine the neighbors don't even do  
18 that. So, odor's not going to be an issue.

19           So, with all due respect to the  
20 neighbors, they've argued conclusions.  
21 They've said this is not true. It's not true.  
22 You haven't met the burden. You haven't met the

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1 test. Your report's wrong. But, they haven't  
2 really submitted any evidence or any proof of  
3 that.

4 I suspect and I understand their  
5 concerns are about their property value and the  
6 perception of having an animal boarding use next  
7 door. I get that. But, the use is permitted in  
8 the C-2-A.

9 Notwithstanding the Zoning  
10 Commission and the Board of Zoning Adjustment's  
11 concerns about animal boarding use, they still  
12 went forward and said in the C-2-A Zone this use  
13 if permitted provided it meets the special  
14 exception requirements.

15 And I would note that compared to  
16 other approvals for animal boarding use, nobody  
17 else has submitted an engineer's report. I mean  
18 some have been approved based on the  
19 representation that our dogs don't bark and so,  
20 the standard hasn't been this intense. But, I  
21 understand we have neighbors' concerns and  
22 that's why we went and got some advice from our

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1 sound engineer.

2 The recommendations in that report  
3 are done. They're going to be done. So,  
4 there's not a question about whether or not --  
5 and it's a requirement of the ANC's approval as  
6 well and I'm not sure if it's in the Office of  
7 Planning's report yet, but it is with the ANC.

8 So, for those reasons, we meet the  
9 special exception test and as stated earlier,  
10 the area variance test.

11 So, I'll close now. If there's any  
12 further questions.

13 CHAIR JORDAN: Thank you. Then we  
14 would close the record based upon the evidence  
15 -- well, we will close this hearing and leave the  
16 record open. I know we talked about there's a  
17 need for additional information.

18 I would ask that you have your  
19 acoustical engineer to supplement this report  
20 with the measurements that are missing, one, at  
21 the present location. Two, I don't even  
22 understand how they really measured this noise

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1 from the location where you're proposing to  
2 operate. I've kind of gone over this several  
3 times and --

4 MR. SULLIVAN: We had more  
5 technical details in an earlier draft that we  
6 thought might not be --

7 CHAIR JORDAN: Well, maybe you need  
8 to submit that.

9 MR. SULLIVAN: So, we'll --

10 CHAIR JORDAN: Ms. Cohen, something  
11 else you wanted to see?

12 ZC VICE CHAIR COHEN: I just want to  
13 make sure that again we're consistent in our  
14 application of relief and so, maybe OP can  
15 provide additional information to reassure me  
16 that we're not, you know, using different  
17 standards. That's all.

18 CHAIR JORDAN: And I guess to know  
19 from OP's perspective the recommendations -- now  
20 that you have the recommendations from the  
21 acoustical engineer, it's affect upon -- if this  
22 thing was granted, the effect upon the noise

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1 issue here.

2 I would strongly encourage the party  
3 in opposition to, if requested, certainly, it's  
4 voluntary, allow measurements to be made from  
5 your property if you really want to. But, I  
6 can't say that that's what we have to require.  
7 But, certainly, I would encourage it. It'll  
8 probably help us. It would probably maybe even  
9 help you overall with the noise mitigation  
10 issue.

11 Does the Board have anything else  
12 that they would like to have?

13 Then we would like to have the  
14 additional information by August 13th.

15 MS. BRAY: Chairman Jordan?

16 CHAIR JORDAN: Yes.

17 MS. BRAY: Will the parties in  
18 opposition have an opportunity to respond to the  
19 final supplemental report of the acoustic  
20 engineer?

21 CHAIR JORDAN: See. See. You  
22 didn't let me finish because I was getting to

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1 that.

2 So, we would want the report in by  
3 August 13th and then having -- well, Mr. Moy, we  
4 were giving them seven days for a response.  
5 Right? That may not be fast enough for them to  
6 get their engineer or someone to look at --

7 MR. MOY: I thought I had built in  
8 two weeks. Unless I was wrong.

9 CHAIR JORDAN: From the 13th to --  
10 that's two weeks. I'm sorry. From the 13th to  
11 27th. Yes, so -- oh, I'm sorry. I thought that  
12 was your decision date.

13 So, no, August 27th would be the  
14 responses due from the party in opposition and  
15 then we would have this set for a hearing -- for  
16 a decision September 10th.

17 Okay. We thank you, all and hope  
18 that you can continue to have dialogue.

19 MR. SULLIVAN: A question, Mr.  
20 Chair. Sorry. Board Member Cohen asked the  
21 Office of Planning to weigh in on the standard  
22 essentially. Will we have a chance to respond

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1 to that or --

2 CHAIR JORDAN: No. No, August 27,  
3 too, because you'll get the report and you get  
4 two weeks to work it up, too. August 27. No,  
5 you won't. We're not doing that kind of give and  
6 take.

7 MR. SULLIVAN: Thank you.

8 CHAIR JORDAN: Okay. You take your  
9 shot with your up-front portion.

10 Thank you, all. Appreciate it.

11 MS. BRAY: Thank you very much, Mr.  
12 Chair.

13 CHAIR JORDAN: Let's be good  
14 neighbors. Let's try to work together. Can't  
15 we all get along. Now, this is what we don't get  
16 paid big bucks for.

17 Thank you again though.

18 All right. Take a brief five  
19 minutes and get back. I know you got to go. Oh.  
20 Oh. Wait a minute. We're going to have to --  
21 you need -- you want ten. You want to get  
22 something -- yes, grab ten minutes and we'll come

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1 back for the next case.

2 (Whereupon, at 1:06 p.m., a recess  
3 was taken until 1:20 p.m.)

4 CHAIR JORDAN: Okay. Let's call  
5 the 18576 please.

6 MR. MOY: Yes, sir, Mr. Chairman.  
7 That would be as you say Application Number 18576  
8 of Fort Lincoln Banneker Townhouses, LLC. As  
9 the Board is aware, this is in for a request for  
10 a special exception to construct more than one  
11 building on a record lot under Section 2516 as  
12 well as variances from the front yard  
13 requirements under 2516.5, to allow as  
14 originally captioned to construct 42 townhouses  
15 in the R-5-D and C-2-B Districts along Fort  
16 Lincoln Drive, N.E. and Banneker Drive, N.E.

17 CHAIR JORDAN: All right. Thank  
18 you. Did the Applicant and OP have a chance to  
19 talk about their issues and straighten it out or  
20 you still got concerns? You still have?

21 MR. JESICK: Good afternoon, Mr.  
22 Chairman, Members of the Board. My name is Matt

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1 Jesick.

2 We did converse earlier. The  
3 Applicant provided me with an updated set of  
4 plans and they have addressed our issues  
5 regarding a special exception.

6 CHAIR JORDAN: Good. Okay. And  
7 are you still keeping a recommendation not to --  
8 continuing your recommendation not to approve?

9 MR. JESICK: I believe with the  
10 updated information the Office of Planning can  
11 recommend approval of the special exception.

12 CHAIR JORDAN: See that. See how  
13 we -- can't we just talk it out. Well, I  
14 appreciate it. Thank you, both, for doing that.

15 Then we have a request for Fort  
16 Lincoln Civic Association and are they present?  
17 Please come forward.

18 Okay. Would you please identify  
19 yourselves?

20 Make sure the microphone is turned  
21 on. Are the mikes turned on a bright green?

22 MS. JAMES: Yes.

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1 CHAIR JORDAN: And you already got  
2 sworn in and all that.

3 MS. JAMES: No, we didn't get sworn  
4 in, but we did fill out one of these cards.

5 CHAIR JORDAN: Okay. I need you to  
6 fill out two cards each, but I'm also going to  
7 ask you to raise your hand and be sworn in.  
8 Stand if you're able. If you're not able, don't  
9 do so and Mr. Moy's going to -- just raise your  
10 hand to get sworn in please. If you can -- yes,  
11 if you would.

12 MR. MOY: Yes. Do you solemnly  
13 swear or affirm that the testimony you're about  
14 to present in this proceeding is the truth, the  
15 whole truth and nothing but the truth?

16 MS. JAMES: Yes, we do.

17 MR. MOY: Thank you.

18 CHAIR JORDAN: Good. Good. Now,  
19 please identify yourselves.

20 MS. GRIFFIN: I'm Lillie Griffin.

21 CHAIR JORDAN: Okay. Give it to me  
22 again.

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1 MS. GRIFFIN: Lillie Griffin.

2 CHAIR JORDAN: Her mike's not on.

3 MS. GRIFFIN: Oh, it's not on. Oh.

4 Okay.

5 CHAIR JORDAN: Okay.

6 MS. GRIFFIN: Lillie Griffin.

7 CHAIR JORDAN: Okay.

8 MS. GRIFFIN: Fort Lincoln Civic  
9 Association, President.

10 CHAIR JORDAN: Thank you. Well,  
11 welcome.

12 MS. JAMES: Emma James, Fort  
13 Lincoln Civic Association, Planning and Zoning  
14 Committee Chairperson.

15 CHAIR JORDAN: Okay. I know that  
16 you have made a motion to intervene which is not  
17 appropriate for this hearing. We don't do  
18 interventions in applications and also, the  
19 request would have been late and out of order and  
20 out of time, but I also don't think that you  
21 really want party status. You really want the  
22 right to speak and say what's on your mind.

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1 MS. JAMES: Correct.

2 CHAIR JORDAN: Why don't we work  
3 that out for you and give you as an organization  
4 five minutes to give us your spill, your input  
5 and don't worry about the party status. We can  
6 do it that way with an accommodation.

7 MS. JAMES: Thank you.

8 CHAIR JORDAN: Does that work for  
9 you?

10 MS. JAMES: Sure.

11 CHAIR JORDAN: Good. Okay. We'll  
12 do that.

13 And so, then let's turn to -- before  
14 we turn to the Applicant, I think Board Member  
15 -- Vice Chair has a declaration that she made  
16 once before here. Yes.

17 BZA VICE CHAIR ALLEN: Right. I  
18 have -- as I stated in the initial hearing, I have  
19 recused myself from this hearing. I will be  
20 sitting today as part of the quorum, but I will  
21 not be participating or voting on the --

22 CHAIR JORDAN: Application.

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1 BZA VICE CHAIR ALLEN: --  
2 application. Thank you.

3 CHAIR JORDAN: Got you. Okay.  
4 So, then now, let's turn to the Applicant and  
5 let's identify who's with the Applicant.

6 MR. TUMMONDS: Great. Thank you  
7 very much. For the record, my name is Paul  
8 Tummonds with Goulston and Storrs.

9 MR. OLIVER: My name is Kyle Oliver.  
10 I'm with VICA Capitol, Civil Engineer.

11 MR. BERNARDINO: Cell Bernardino,  
12 Vice President of Fort Lincoln New Town  
13 Corporation which is the majority partner in the  
14 Fort Lincoln Banneker Townhouse, LLC.

15 MR. COLLINS: My name is William  
16 Collins and I am one of the managers of Fort  
17 Lincoln Banneker Townhouse, LLC.

18 CHAIR JORDAN: Okay.

19 MR. COLLINS: Good morning.

20 CHAIR JORDAN: So, let's see where  
21 we are here. If there is any deficiencies. So,  
22 I think the Board has really had an opportunity

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1 to look at this thing. As we said, we put in some  
2 hours. Okay. Party status an issue.  
3 Recommendations for -- I mean I think that -- I  
4 don't see anything I need to drill down on  
5 especially in light of the discussion with OP and  
6 OP has taken away the issue.

7 If you would, just give us a response  
8 to Fort Lincoln's concern and --

9 MR. TUMMONDS: And what I may do is  
10 I may discuss the information that we are  
11 submitting that was the basis for OP's change.

12 CHAIR JORDAN: Yes. Please do  
13 that. Um-hum.

14 MR. TUMMONDS: Great. So, as we  
15 noted, in response to Office of Planning's  
16 report, we've revised the proposed theoretical  
17 lots so that we are no longer requesting the side  
18 yard relief. That will show up in the plans that  
19 you are being provided. As well as we have also  
20 provided additional renderings that you see here  
21 that are also included in this submission and  
22 those renderings address the Office of

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1 Planning's request with regards to the special  
2 exception relief that is requested.

3 Finally, the Office of Planning  
4 requested two conditions. One regarding the  
5 removal of trash bins on the interior street  
6 within an appropriate amount of time and two, a  
7 prohibition on the parking of cars in the  
8 driveways if such parking would impede the  
9 sidewalk or the street and you will see in our  
10 submission today we have proposed two conditions  
11 whereby the homeowner association bylaws will  
12 include those prohibitions.

13 CHAIR JORDAN: Okay. Let me cut  
14 your for a minute. I was remiss. We do have a  
15 request from the ANC.

16 Is a representative from the ANC  
17 here? ANC-5C. Then they're not here and we  
18 actually did have a delay and a continuance for  
19 that, but they're not here.

20 So, I'm sorry. Go ahead. Proceed  
21 on.

22 MR. TUMMONDS: Yes. So, that

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1 concludes our presentation regarding the  
2 substantive issues related to the variance  
3 relief we were requesting for the front yard and  
4 the special exception relief.

5 We have, as we noted, our witnesses  
6 here able to answer any questions you may have.

7 With regards to the request of Fort  
8 Lincoln Civic Association for a continuance of  
9 this case until October, I would note that we  
10 submitted on --

11 CHAIR JORDAN: We're okay because  
12 it's denied.

13 MR. TUMMONDS: Good.

14 CHAIR JORDAN: They're not here to  
15 make that request.

16 MR. TUMMONDS: So, I think what we  
17 tried to show in that July 2nd submission is that  
18 there has been extensive outreach by  
19 representatives of the Applicant to the ANC  
20 Single Member District Commissioner Bob King.  
21 Mr. King properly notified his fellow ANC  
22 Commissioners that he was --

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1 CHAIR JORDAN: We've already dealt  
2 with that issue by me saying that they're not  
3 here and we're not continuing and I don't -- I  
4 understand your argument. I wouldn't agree  
5 with your argument, but they're not here and we  
6 would also -- I've already ruled on that.

7 MR. TUMMONDS: Great. I think then  
8 we are available to answer any questions you may  
9 have.

10 CHAIR JORDAN: I think that the  
11 record here was pretty straightforward. I  
12 wanted you to be sure to address Fort Lincoln  
13 Civic Association's concerns because that's  
14 important to us and all the items and issues that  
15 they raise.

16 So, let's do this. Ms. Cohen  
17 doesn't have any additional questions. I don't  
18 have any additional questions.

19 Anything that the Office of Planning  
20 needs to chime in on?

21 MR. JESICK: No, sir.

22 CHAIR JORDAN: Okay. And

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1 Department of Transportation? What do I have  
2 from them. They have a letter of no objection,  
3 Exhibit 26.

4 We have no recommendation from  
5 ANC-5C although they did meet, but they  
6 requested a continuance. But, we did pass that  
7 time on as we reset this date already.

8 Any other persons here that want to  
9 speak in support of this application?

10 Anyone wishing to speak in  
11 opposition? Now, I would like for Ms. Griffin  
12 --

13 MS. GRIFFIN: Yes.

14 CHAIR JORDAN: -- President of Fort  
15 Lincoln Civic Association or Ms. -- uh oh, I  
16 can't read my writing.

17 MS. JAMES: James.

18 CHAIR JORDAN: Ms James? James.

19 You have up to five minutes to let  
20 us know -- we've read what you've submitted.  
21 We've read and understand and we saw the pictures  
22 and the crackings and all that. I think there's

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1 just some settling issues going on in the  
2 neighborhood, but how this affects the Fort  
3 Lincoln Civic Association? This development  
4 will. You have five minutes if you would to tell  
5 us about it.

6 MS. GRIFFIN: Thank you, Chairman.

7 CHAIR JORDAN: Do we a big favor  
8 because your voice is softer than mine? Yes,  
9 there you go.

10 MS. GRIFFIN: Oh. Okay.

11 CHAIR JORDAN: If you kind of ease.  
12 We do give you much cord. Do we?

13 MS. GRIFFIN: Just --

14 CHAIR JORDAN: Yes, there you go.

15 MS. GRIFFIN: Okay. Okay.

16 CHAIR JORDAN: Thank you.

17 MS. GRIFFIN: Okay. Yes, on June  
18 1, it was a meeting called by the ANC and the  
19 developer and the meeting wasn't widely  
20 publicized and most of the people who were there  
21 was the senior people from the senior building  
22 and -- and the people weren't there to -- to voice

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1       their opinion about -- about these homes.

2               So, what -- what we're wanting, we  
3       want the developer to come to a meeting and --  
4       and tell the -- the community, you know, what  
5       they're bringing to the community and then we'll  
6       -- you know, we'll expect what they're bringing  
7       to our community.

8               And so, we want -- want them to delay  
9       the -- the project until October when the civic  
10      association come back off of vacation.

11              CHAIR JORDAN:   Okay.

12              MS.   GRIFFIN:       Yes,   we're   on  
13      vacation July and August.

14              CHAIR JORDAN:   I was with you to a  
15      point, but I hear what you're saying.   I heard  
16      you.

17              MS.   GRIFFIN:   Yes,   in September,  
18      we'll have our first meeting from our vacation  
19      and then we would like for the developer to come  
20      to our October meeting.

21              CHAIR JORDAN:   Okay.   Is there  
22      anything else you wanted to talk to us about?

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1 MS. GRIFFIN: Not -- not just at  
2 this time. I'll probably come back.

3 CHAIR JORDAN: Ms. James, is there  
4 something you wanted to add?

5 MS. JAMES: Yes. Because our  
6 adjacent communities Summit Village and  
7 Hillside have absolutely no knowledge of this  
8 project, they weren't publicized by Bob King,  
9 the ANC Commissioner --

10 CHAIR JORDAN: Okay. What is it?  
11 Summit Village.

12 MS. JAMES: Summit Village which is  
13 Fort Lincoln 3 and Hillside which is Fort Lincoln  
14 2.

15 CHAIR JORDAN: How close are they to  
16 this development?

17 MS. JAMES: Immediately adjacent on  
18 both the north and south sides.

19 CHAIR JORDAN: So, they're within  
20 200?

21 MS. JAMES: Yes, and they all got  
22 notices.

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1 CHAIR JORDAN: So, they got  
2 notices. Okay.

3 MS. JAMES: And that's the only  
4 publication that they received.

5 CHAIR JORDAN: Okay. That's the  
6 part that got me. I just wanted to make sure  
7 that we were doing what we were suppose to do.

8 MS. JAMES: Right.

9 CHAIR JORDAN: Okay.

10 MS. JAMES: Right. This is in  
11 regards to an ANC Commissioner being able to  
12 publicized and educate the audience as far as  
13 what to expect and get a chance to ask questions.

14 I've taken it upon myself to educate  
15 some people by going door-to-door and signing  
16 petitions and answer their questions and what  
17 I've discovered is a few of their issues which  
18 is the draining issues, the cracks in the  
19 foundations and rodent population, you know,  
20 leaving the habitat when it's being developed.

21 So, those are some of the general  
22 issues that we --

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1 CHAIR JORDAN: You mean potential  
2 cracks in foundations?

3 MS. JAMES: Yes, potential.

4 CHAIR JORDAN: Although we got some  
5 pictures of cracks of foundations, they could  
6 not have been responsible for. Right?

7 MS. JAMES: No. No. No. This  
8 was cracks that were due to the --

9 CHAIR JORDAN: Settling.

10 MS. JAMES: -- soil settling and the  
11 earthquake that we had not too long ago which  
12 greatly increased the crack size and added more  
13 cracks to our buildings.

14 So, those were the general issues  
15 that I found in going door-to-door to both of our  
16 communities and they wanted a chance to express  
17 their concerns and so, as the Planning and Zoning  
18 Commission Chairperson, I would want to delay  
19 this hearing to October so that we can have a  
20 chance to further educate the community members  
21 and address those issues directly with the  
22 developers.

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1 CHAIR JORDAN: Okay. Any other  
2 comments you have?

3 MS. JAMES: Yes, also, I also took  
4 it on my behalf to explain some of the history  
5 of the Fort Lincoln community and how it was  
6 developed. First being Federal land given to  
7 the African American minority groups in 1976 by  
8 President Johnson with the affirmative action  
9 goal of promoting and empowering D.C. residents  
10 and one of the stipulations in that LDA agreement  
11 was that the developers would give a part of  
12 their profits and stocks to the civic  
13 association and this has not been enforced by the  
14 D.C. Government and as such, it is going, you  
15 know, unregulated and unenforced.

16 So, also, I asked these questions  
17 and educated the Hillside and Summit Village  
18 communities about this and they're all in  
19 agreement that this is something that should be  
20 rectified.

21 CHAIR JORDAN: Yes, but that's not  
22 something that this Board can do. That would be

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1 something that you need to take to higher powers.

2 MS. JAMES: It has gone to Mayor  
3 Gray.

4 CHAIR JORDAN: Okay. Good.  
5 Anything else? Well, I really appreciate you  
6 taking the time to come down to speak with us.

7 The Board, any questions? Ms.  
8 Cohen.

9 ZC VICE CHAIR COHEN: I'm not sure  
10 -- well, these are questions more for the  
11 developer.

12 CHAIR JORDAN: Oh, well --

13 ZC VICE CHAIR COHEN: Want me to  
14 just ask?

15 CHAIR JORDAN: If there's no  
16 questions you want to --

17 ZC VICE CHAIR COHEN: Oh. All  
18 right. What is your normal relationship with  
19 the ANC? Because when I read your submissions,  
20 I was wondering, you know, you almost wanted to  
21 be the ANC and get great weight for your -- so,  
22 I just wanted to know what your relationship is.

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1 MS. JAMES: I'm the Committee Chair  
2 for the Planning and Zoning Committee of the FLCA  
3 and in this position, I'd like to work with the  
4 ANC in helping further his legal obligation to  
5 educate and inform the residents of Fort Lincoln  
6 on these developing projects.

7 ZC VICE CHAIR COHEN: So, you don't  
8 feel that they did a sufficient job in promoting  
9 this or having residents from their own  
10 neighborhood come to the meeting. Is that what  
11 you're claiming?

12 MS. JAMES: Absolutely not. The  
13 residents in participation were those on  
14 Banneker Drive in the Section 8 housing, the  
15 senior citizens and no one from Hillside, Summit  
16 Village, Pineview or the Maple View communities  
17 know about this project and so, the FLCA members  
18 had to individually take it upon themselves to  
19 alert people and inform them about when the  
20 meeting was held. Which I got notice of on June  
21 1st at 9:30 in the morning and luckily, it was  
22 only 50 feet away from my residence. So, I could

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1 attend.

2 ZC VICE CHAIR COHEN: So, the ANC  
3 doesn't advertise their meetings? I just don't  
4 --

5 MS. JAMES: No sufficient so that  
6 the people who are immediately involve have  
7 awareness and we think that this is done  
8 intentionally.

9 MS. GRIFFIN: Oh, and then, too,  
10 they didn't bring it to our civic association.  
11 The civic association represents all the housing  
12 cluster in Fort Lincoln. So, if they had come  
13 to the civic association, they would have, you  
14 know, known about it.

15 And -- and the way the ANC put out  
16 the notice is, you know, he had someone to put  
17 out flyers and I guess they put them out where  
18 they wanted to put them out, you know. So, he  
19 didn't check to see how far he went with them.  
20 So, he didn't know, you know, who all was  
21 notified and who weren't.

22 But, the civic association have a

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1 website. So, it could have gone on the website  
2 and people could have seen it.

3 CHAIR JORDAN: Well, we can't solve  
4 the ANC issue and notice issue here.

5 Is there any other questions we want  
6 to ask the Fort Lincoln? Does the Applicant  
7 have any questions they would like to ask the  
8 Fort Lincoln Civic Association?

9 MR. TUMMONDS: No questions.

10 CHAIR JORDAN: Okay. Did I allow  
11 -- no. No, we didn't have cross examination.  
12 We came back over here. We also have support.  
13 Yes.

14 MR. BERNARDINO: I would like to  
15 comment. I'd like -- I'd like to -- to point out  
16 that the Fort Lincoln Civic Association is in  
17 active litigation with the majority partners  
18 development and --

19 CHAIR JORDAN: Yes.

20 MR. BERNARDINO: -- the issues that  
21 were raised are the subject of that litigation.

22 CHAIR JORDAN: Okay. All right.

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1 Thanks. Okay. So, then we will -- any other  
2 persons or parties in opposition wishing to  
3 speak? Any other persons or parties in  
4 opposition wishing to speak?

5 Then we would -- normally, we would  
6 turn back to the Applicant for rebuttal, but  
7 there's really nothing to rebut.

8 So, we would close the record.

9 ZC VICE CHAIR COHEN: Maybe I'm just  
10 awfully hungry, but you have a construction  
11 management plan for this development where  
12 you'll be able to deal with some of the concerns  
13 that have been uncovered such as rodents.

14 MR. BERNARDINO: I'm sorry. Can I  
15 be clear about this? The concerns that are  
16 being raised are -- have no relation to this  
17 project. They relate to properties that  
18 residents purchased many years ago for which we  
19 are not responsible for the upkeep. They have  
20 condo associations. You know, to this day, we  
21 have no received any specific issues or concerns  
22 from the civic association related to this

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1 project.

2 ZC VICE CHAIR COHEN: Okay. But,  
3 my question is still -- I still would like an  
4 answer. Yes.

5 MR. BERNARDINO: Yes.

6 MR. COLLINS: Yes. Yes, the issues  
7 raised which were, one, stormwater management.  
8 I believe that was raised as well as rodents as  
9 well as potential settlement. We do have a  
10 construction plan in terms of any settlement.  
11 At our project at all times during excavation,  
12 clearing and excavation, we do have a  
13 geotechnical engineer on-site doing daily  
14 inspections. There -- there during hours of  
15 construction to insure not only that we're  
16 building correctly, but that we don't have any  
17 surrounding settlement.

18 As far as stormwater management is  
19 concerned, we will have a -- as you know, before  
20 DCRA approves this, we have sediment and erosion  
21 control and we have to meet the stormwater  
22 management guidelines.

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1           In terms of rodents, as I addressed  
2           in the June 1st meeting that we had with the ANC,  
3           we will be vigilant in terms of at the time the  
4           clearing is done on this property that we have  
5           an active infestation mitigation plan.

6           We don't want -- we want to be good  
7           neighbors and we've had good relationships in  
8           terms of the projects that we've done to date and  
9           will continue to have.

10          So, yes, there will be a very active  
11          daily oversight of the construction process.

12          MR. BERNARDINO: And if I can just  
13          add, this is something that we do as a matter of  
14          routine with all projects. As you know, we've  
15          developed Fort Lincoln over some 30 years. We  
16          just completed the first Costco in the District  
17          of Columbia and so, these kinds of measures are  
18          what we do when we build any project out there.

19          CHAIR JORDAN: Okay. So, then that  
20          concludes our rebuttal and closing. We've --  
21          something -- no, we're beyond that point at this  
22          point.

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1           So, this is what we do. We're going  
2           to close the hearing based upon -- we're going  
3           to close this file and hearing based upon the  
4           record. We're going to continue this for a  
5           decision date. One, because we need to  
6           participate -- another participant to do so  
7           because you have to have at least votes to  
8           approve.

9           And in the interim, I would like for  
10          the Applicant to meet with the Fort Lincoln Civic  
11          Association, but, however, we need a date that's  
12          not going to be drug out until October. I just  
13          think that that's just unreasonable.

14          I think you're going to have to put  
15          out a notice. You're going to have to have a  
16          special meeting or a committee meeting where the  
17          Applicant can come and do its presentation.

18          Trying to drag this out to October  
19          for a huge meeting -- it's important to everyone.  
20          So, everyone's going to have to kind of give,  
21          take and step up.

22          So, I'm going to say -- what would

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1 be a date for a decision? I'm going to give the  
2 -- what's that September 20-something date?

3 MR. MOY: It would be as early as  
4 September 10th or as late as September the 17th.  
5 Unless you want to go beyond September 17th.

6 CHAIR JORDAN: No, I don't want to  
7 drag this out, but I do want the Applicant to meet  
8 with the Fort Lincoln group.

9 MR. BERNARDINO: I'm not clear. To  
10 meet on what? Again --

11 CHAIR JORDAN: Just to --

12 MR. BERNARDINO: -- we have  
13 received no substantive --

14 CHAIR JORDAN: Well, let me say.  
15 If you don't want to meet, then we can just make  
16 a decision the way we need to make a decision when  
17 we get back, but I'm asking you to do so. To  
18 reach out to make a -- to try to coordinate a time  
19 schedule if you can.

20 Okay. And we're going to move this  
21 for a decision on September 17th.

22 MR. MOY: Yes, sir, the 17th then.

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1 CHAIR JORDAN: Okay.

2 MS. GRIFFIN: Mr. Chairman?

3 CHAIR JORDAN: Yes.

4 MS. GRIFFIN: Could I? Our leader  
5 -- I guess we can -- you know, it's kind of --

6 CHAIR JORDAN: You can pull  
7 everybody together. Put out notices.

8 MS. GRIFFIN: Right. Right. But,  
9 our meeting is the third Thursday and it's --

10 CHAIR JORDAN: I know. Ask you to  
11 probably put a meeting in. Just put out notices  
12 whichever way you do and try to get people in,  
13 but coordinate with the Applicant.

14 MR. TUMMONDS: And I think maybe it  
15 would be helpful knowing the concerns that have  
16 been raised. If you would give guidance to make  
17 sure the issues that would be addressed in that  
18 meeting would solely be related to these 42  
19 townhouses. I think that has been somewhat the  
20 problem.

21 CHAIR JORDAN: Well, that's all  
22 that we're concerned about for this application

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1 and I would recommend that this is a meeting  
2 which can be controlled by the President and the  
3 Chairman of the Committee. That your germane to  
4 this presentation. That they're going to do a  
5 presentation and that's all we're requesting --  
6 asking you to do is do a presentation.

7 MR. TUMMONDS: Appreciate that.  
8 Thank you.

9 CHAIR JORDAN: Good. So, what's  
10 the date?

11 MR. MOY: The decision on September  
12 17th, Mr. Chairman and the question of the staff  
13 is whether or not the Board had wanted any  
14 further --

15 CHAIR JORDAN: There's no other  
16 supplement needed. Just --

17 MR. MOY: Just wanted to be sure.

18 CHAIR JORDAN: No, we're good. So,  
19 then we will conclude this hearing and this  
20 record based upon what we have. I really  
21 appreciate it. Thank you.

22 Mr. Moy, any other business?

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1 MR. MOY: Not from the staff, sir.

2 CHAIR JORDAN: I do know that I  
3 guess we need to discuss -- I've been getting  
4 beat up by, I know he's looking, by the Zoning  
5 Commission Chair about relaxing dress standards  
6 during the summer, whatever that means, for the  
7 Board and so, it's up for discussion if the Board  
8 --

9 ZC VICE CHAIR COHEN: I actually  
10 support that because I think it just makes it  
11 more comfortable and relaxed in this very hot,  
12 humid weather and so, take off your tie and let  
13 down your hair.

14 CHAIR JORDAN: I just think this --  
15 but, the difference between the Zoning  
16 Commission meeting and this meeting, you guys  
17 meet at night after hours and we will leave from  
18 here going to work or going to other meetings.  
19 That's the only concern.

20 But, certainly, I think that if it's  
21 okay with the Board that you wear what you want  
22 to wear during the summertime. Okay. Make

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1 sense?

2 And staff, too. Whoever. Wear  
3 what you want to wear.

4 MR. MOY: Thank you very much, sir.  
5 I'm doing the --

6 ZC VICE CHAIR COHEN: Over the  
7 majority of your body.

8 CHAIR JORDAN: Please cover the  
9 majority of your body. All right. So, are we  
10 good?

11 MR. MOY: Yes, sir.

12 CHAIR JORDAN: Then we can say we're  
13 in adjournment?

14 MR. MOY: Yes, sir.

15 CHAIR JORDAN: Thanks, everybody.  
16 Thanks for your time, coming and patience.

17 (Whereupon, at 1:45 p.m., the  
18 hearing was adjourned.)  
19  
20

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