

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 18, 2013

+ + + + +

The Public Hearing convened in
the Jerrily R. Kress Memorial Hearing Room,
Room 220 South, 441 4th Street, N.W.,
Washington, D.C., 20001, pursuant to notice
at 1:00 p.m., Lloyd Jordan, Chairperson,
presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
S. KATHRYN ALLEN, Vice-Chairperson
JEFFREY HINKLE, Board Member

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commission Member

OFFICE OF ZONING STAFF PRESENT:

JOHN NYARKU, Zoning Specialist
TRACEY ROSE, Senior Zoning Specialist
STEPHEN VARGA, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN
PAUL GOLDSTEIN
STEPHEN GYOR
ELISA VITALE

DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

FLEMING EL-AMIN

The transcript constitutes the
minutes from the Public Hearing held on
December 18, 2013.

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

1:15 p.m.

CHAIR JORDAN: All right, good afternoon. Would we please come to order. We're located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W. Today's date is December 18th--I get confused; it's a new date for us today-- 2013. We're here for the public hearing of the Board of Zoning Adjustment. My name is Lloyd Jordan, I'm the Chairperson; to my right is S. Kathryn Allen, Vice Chair; and to her left is Jeffrey Hinkle, Member of the Board.

Please be advised that this proceeding is being recorded by a court reporter; it is also be webcast live. Therefore, I'm going to ask you to refrain from any disruptive noises here in the hearing room, so it would be a really good time if you silenced your cell phones and other things. If you plan on providing testimony and/or being a witness in a case,

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I'm going to ask you to do two things. The first thing is to complete two witness cards per person and prior to testifying, give those witness cards to the court reporter sitting to my right and your left. So that's two cards per person prior to testifying, and please give it to the court reporter to my right.

The second thing is I'm going to ask you to stand at this time if you're going to provide testimony or a statement to the Board, to stand at this time and take the oath or affirmation, which will be given by the Board Secretary.

(Whereupon, the witnesses were duly sworn by the Board Secretary.)

CHAIR JORDAN: Thank you all. As you know, this is our rescheduled date for the hearing that was supposed to take place on December 10, but due to Government being closed down with the snowstorm, the threat of snowstorm, which you never know, we're now here today and appreciate you all taking the time, and I know a lot of people

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readjusted schedules to be here, but it's something that we did not have control over. I think we have an announcement, some preliminary announcements if you would, Ms. Rose.

MS. ROSE: Yes, staff would like to note that case number 18671 of Jemal's TP Land LLC has been postponed to February 11, 2014 at 9:30 a.m. at the request of the applicant.

CHAIR JORDAN: Okay.

MS. ROSE: This is considered the notice for that application. We had two postponement requests; one of them has been withdrawn. In the application of 18673 of Michael Henry, a postponement request was made but later withdrawn, so that case will go forward today. In the application of 18676, Mundo Verde, there's a request from Mr. Waddell, the party status applicant, to change the hearing date from today to after December 26, and a response has been filed by the applicant's counsel.

CHAIR JORDAN: But that's also

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been withdrawn, has it not, that he provided--someone else is supposed to participate for--yes. That was one of the filings that we got today, so we'll work around it.

MS. ROSE: Okay.

CHAIR JORDAN: Thank you very much. I'm going to ask for a representative of the applicant in 18669, and a representative of those who are seeking party status, one person seeking party status for each group. So we have an Alan Hernandez and Mary Rodriguez and Eugene, is it Ohm? If you can come to the witness table, and the applicant representative, please? Please take a seat, let's--don't get too comfortable, because you're not going to provide testimony at this point, it's just we need to do some housekeeping, and then we will recall the cases. But your case is the first case on here. Well, let me do this. We have application for parties; let me have you identify yourselves first, please. Starting to my left, would

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you identify yourself? Make sure your microphone is turned on. There is a button that says "push," would you just push that? Thank you.

MS. SIMONEAU: Michelle Simoneau.

CHAIR JORDAN: Say that last name again?

MS. SIMONEAU: Simoneau. S-I-M-O-N-E-A-U.

CHAIR JORDAN: Next we have--

MR. MITCHELL: Yes, my name is David Mitchell, I'm an architect and I'm also the agent for the owners.

CHAIR JORDAN: Okay. Yes.

MS. LEE: My name is April Lee, Diva Doggy owner.

CHAIR JORDAN: Okay. So we have that in the file? Yes. Make sure--yes, thank you.

MR. OHM: Eugene Ohm at 4843 Reservoir Road.

CHAIR JORDAN: All right.

MS. RODRIGUEZ: Good afternoon, my name is Mary Rodriguez, I'm at 4823

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Reservoir Road, and my husband and I are applicants for party status.

CHAIR JORDAN: Thank you. Two things regarding this. The Board is leaning towards definitely granting party status; however, we will consolidate the two party status requests as one party. Your interests are generally the same and therefore, within the Board's authority, we can consolidate you. So you will need to have conversation as to who's going to go forward to represent the two party status as a single entity. Let me take one step forward. By party status is where you have the opportunity to cross examine witnesses and to put on evidence; is that your intent, that you have witnesses and evidence to present, or do you want to make a statement to the Board?

MS. RODRIGUEZ: We would like to make a statement to the Board; we would serve as witnesses ourselves, since we're the applicants.

CHAIR JORDAN: So you just--so if

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we gave an additional time, you normally have three minutes to provide statements to the Board. If we gave you five minutes, would that allow you the time to put forth your statement to the Board?

MS. RODRIGUEZ: That would be a consolidated statement?

CHAIR JORDAN: No, this would be an individual statement. If you're not planning to call witnesses and presenting other evidence, other than providing a statement. I know sometimes people get confused or just really don't know how we proceed. You have a right, any citizen has a right to present a statement to the Board on any case, and that's up to three minutes. If the Board accepts, and if someone makes a recommendation--excuse me--make a request to be party status, and the Board feels as though they could meet the guidelines for party status, if you receive the status of a party, then you have the right to actually prosecute a case that you want, meaning that you have a right to bring in witnesses,

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experts, cross examine, to be cross examined and all of that. And sometimes people get confused; they really want to come here and just make their statement, make their point to the Board so the Board hears their side of their view on a particular case. So that's what I'm asking you.

MS. RODRIGUEZ: Mr. Jordan, what we would like to do is make a statement, and we would like to offer documentary evidence, which would just be some maps and some photographs.

CHAIR JORDAN: You can do that within your five minutes, yes. Mr. Ohm, what about you? Would that be sufficient for you also?

MR. OHM: Yes. I'm assuming that we'll probably consolidate.

CHAIR JORDAN: Yes, or you still can have your--if you're not going to move to party status, you're going to withdraw your party status, I will give you both individually five minutes to do whatever presentation you would like.

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MR. OHM: Okay.

CHAIR JORDAN: Individually.

Okay?

MR. OHM: Thank you.

MS. RODRIGUEZ: Mr. Jordan, one more question. We still have the opportunity to do cross examination though, is that correct?

CHAIR JORDAN: You would not have, not unless you're a party.

MS. RODRIGUEZ: I see. We would like the opportunity to cross examine.

CHAIR JORDAN: Okay, so you want to remain a party?

MS. RODRIGUEZ: Yes.

CHAIR JORDAN: Okay, and the same for you, Mr. Ohm, or you just want to have your statement?

MR. OHM: My statement's fine.

CHAIR JORDAN: We're going to be consolidating anyway, so you need to go out and decide who is going to represent the party. Now if you're familiar--now to everyone, if you're familiar with how the

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Board's been operating recently, we have found it very beneficial to everyone, and out of fairness and the best interests of the citizens that we've been requiring the applicant and those who seek party status, or those who have party status to confer, meet and confer prior to having your case called. And so I'm going to ask you to do that prior to your case being recalled, to have conversation to see if you can work out any differences.

And trust me, it works, we've had some skeptics who have even been in government who now see that it does work and it works well, and we--believe me, if everybody really comes with a good faith effort, sometimes you can work these things out. And what we find is that there's--a lot of the times, you're neighbors, and at the end of the day, somebody may walk out of here not happy, and you're going to have to live together. But still, there's sometimes we find that people have not even knocked on the door next door to have conversation, and

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it's been really good to see when people come together.

We've had groups as well, I guess 12 is the largest we had, 12 different party status requests, and they went and came back and they had worked it all out. So we're very encouraged by it, and we've now just rendered that into part of the procedures, and we do it within the authority of the Chair, because the Chair can call under the present rules, having conferences among the parties. So that's on the authority of how we're doing this. So I'm going to ask you to step outside, one, decide who's going to represent your joint interests, and two, have conversations to see if you can resolve any differences. Thank you, and we'll call your case back. So if you'll step outside.

Now I'm going to call for those seeking party status in 18673, and a representative of the applicant please come forward. I think the party status request has been made by Bill Manville, and a representative of the applicant. If you'll

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identify yourselves, please?

MR. HENRY: Yes sir, Chairman Jordan, I'm Michael Henry, co-applicant with my wife.

CHAIR JORDAN: Okay.

MR. MANVILLE: I'm Bill Manville, and I'm the neighbor of the 325, and I have four people with me who are the party group.

CHAIR JORDAN: As a party group?

MR. MANVILLE: I'm not sure what the distinction is, but I can lead off, but they'll all have something to say.

CHAIR JORDAN: Let's have conversation for a second here. If we were to grant party status, again, you heard what I--the difference between a party status and--

MR. MANVILLE: Cross examination.

CHAIR JORDAN: --cross examination and putting on evidence. Now, you can remain an non-party and still present to the Board, as well as every--you said the four other people can address the Board, each having up to three minutes to do

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so. Does that fit within what you need, or you need to have the ability to cross examine, et cetera, and to put on other evidence?

MR. MANVILLE: I think most of the evidence is in the file. We have one additional piece here, a chart presentation.

CHAIR JORDAN: Which you can present to us as a non-party. If it's not your intent to cross examine, that's probably the only big difference I think, and the length of time you have the right to put on your evidence. I could grant you additional time if necessary if you can't do it within the time that's been allocated.

MR. MANVILLE: So the only difference is the cross examination? We'd have time to present the case otherwise?

CHAIR JORDAN: Yes, absolutely, and I would give you additional time to do so.

MR. HENRY: Chairman Jordan?

CHAIR JORDAN: Just one second.

MR. MANVILLE: Okay, we'd like to

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reserve the right to cross examine.

CHAIR JORDAN: So then you want to remain party status, and I only have a party status request from one person anyway, and that's you, Mr. Manville.

MR. MANVILLE: Okay.

CHAIR JORDAN: So we will grant you party status, and you're the only one who will have that opportunity as party status to participate; you can call others as witnesses, but it's going to be within the confines of being relevant in the time frame which we set, okay?

MR. MANVILLE: Okay, good.

CHAIR JORDAN: Yes?

MR. HENRY: That was just my only question, Mr. Chairman. I was just going to ask you if combining them made sense, since they've testified at two previous meetings, and it's basically the same message, so I just, in the interest of time, wondered if they could consolidate--

CHAIR JORDAN: It's only one person making a request for party status.

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So similarly, you heard my discussion before. We require you to go out, huddle, have conversation. The applicant and the party status, those in opposition, have meaningful discussions and see if there's something that you can work out. The other day we had someone who walked out, two groups walked out and walked out through one side of the door; they came back in in two minutes, okay. Didn't have meaningful discussion.

And it's better for you if you can work things out than for us to make some decisions, because a lot of times, both parties don't come out happy at all when we make those decisions. So let's see if we can work some things out if you can. If you can't, then that's what we're here for, try to work it out and make sure that the guidelines, the requirements of the law are followed.

MR. HENRY: We appreciate that opportunity.

CHAIR JORDAN: So good, thank

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you, and we will recall your case. Thanks so much, appreciate it. All right, so let's call--I need a representative for the applicant in 18675--this is the party status day--and then the Mr.--is it Mr. Hassell?

MR. HASSELL: That's me.

CHAIR JORDAN: Yes, please come forward, because you're seeking party status. I'm sorry? Oh, you're party status--but you had party status in support. Are you supporting the application or--

MR. HASSELL: Mr. Chairman, with all due respect--

CHAIR JORDAN: Let me have you identify yourself first.

MR. HASSELL: Mr. Chairman, my name is John Hassell, I own the property at 1621 19th Street, next door to the applicants; I'm their neighbor, and I have requested party status, and I'm also signed in as a supporter. With all due respect, it's not clear what the application for party status is when you're trying to keep track of a project that's going through the

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processes here, so I filled out that application because it's a right I had, considering that I own the property next door. So I just leave it to your discretion as Chair whether you think I should continue with this application. I want to stay in the loop on this project because obviously--

CHAIR JORDAN: Oh, absolutely.

MR. HASSELL: --I'm next door.

CHAIR JORDAN: Absolutely.

MR. HASSELL: But I'm not going to oppose it, but I do want to--

CHAIR JORDAN: You support. And party status is usually--well, we--I can't say I've seen a party status in support, but you certainly can participate, you certainly can sit back and make your statement in support thereof, but I'm feeling that party status is not something that you want, and additionally, what you put in your application wouldn't fall within the confines of party status anyway. So I think that would be--

MR. HASSELL: Well I'll follow

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your lead, Mr. Chairman. Thank you very much.

CHAIR JORDAN: Good, good. All right. So Mr. Collins, I think--clearly you know our process, and that what Mr. Hassell is in support, and he just wanted the opportunity to make a statement, which you can do so when it comes to that point.

MR. HASSELL: Thank you, sir.

CHAIR JORDAN: All right, real good. Thanks. So it's not a party status, and so you're not going to be required to huddle, and we'll call you back shortly. You're probably going to be--you may be first up.

MR. COLLINS: That's great.

CHAIR JORDAN: But let me handle the couple of other parties first.

MR. COLLINS: Very good. Thank you.

CHAIR JORDAN: Thank you. Thank you, appreciate it. All right, so let's try 18676, the applicant--oh, we have three potential party status, okay. The applicant

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representative, please and then is there a Mr. Brown, Ms. Klein and Mr. Waddell asked for a continuance; however, today we received notice that he's asking someone to represent him. So okay, got it, I'm caught up with these things. Okay. Please identify yourself.

MS. SCOTCHMER: I'm Kristin Scotchmer, the owner at Mundo Verde Bilingual--

CHAIR JORDAN: Last name again?

MS. SCOTCHMER: Scotchmer.

CHAIR JORDAN: Scotchmer, okay.

MR. AVITABILE: David Avitabile, land use counsel for the applicant. From Goulston and Storrs.

CHAIR JORDAN: Okay.

MR. BROWN: I'm Brian Brown.

CHAIR JORDAN: Brian Brown?

MR. BROWN: 1334, 1336 and 1424, all adjacent properties to the--

CHAIR JORDAN: Got you. Thank you.

MS. KLEIN: Hi, my name is

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Phyllis Klein, and I'm the owner at 1418 North Capitol Street, and I've also received a request from Mr. Waddell to represent him while he could not attend today.

CHAIR JORDAN: Thank you, appreciate that. Yes, I saw that. And so is it--you've heard my spiel about party status; do you still want to remain parties? Is it your intent to do cross examination of witnesses or just to make statements? What do you--

MS. KLEIN: We would like to remain party status.

CHAIR JORDAN: Okay.

MS. KLEIN: And we're happy to be combined as one.

CHAIR JORDAN: Oh, yes, you're going to be combined, so you need to meet and decide who's going to represent your like interests in this one, and so I'm going to ask that the applicant and the joint party group to have conference outside to see if there's something that can be worked out and resolved. Thank you, and we'll call

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your case back.

MR. AVITABILE: If we could do that, thank you.

MS. KLEIN: Thank you.

CHAIR JORDAN: So let's call if we would 18675, 18675 because they don't have any opposition.

MS. ROSE: Application number 18675 of David and Cathy Brooker, pursuant to 11 DCMR §3103.2, for variances from the floor area ratio requirements under subsection 402.4, the lot occupancy requirements under section 403, the rear yard requirements under section 404, the closed court requirements under section 406, and the nonconforming structure requirements under subsection 2001.3, to renovate and make additions to a proposed one-family dwelling and three unit apartment building in the DC/R-5-B District at premises 1617 and 1619 19th Street, N.W. in Square 134, Lots 18 and 19.

CHAIR JORDAN: Let me beg your pardon, and let me ask you to take a step

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back. We have one of the commissioners who particularly wants to be in on four cases and won't be here until--and this is one of the cases, Mr. May, and so I'm going to ask you if you would step back on this one, and I'm going to handle another case before this. I'm sorry, I just didn't see the note. Yes, he's running late and won't be here until 2:00 and particularly wanted to reserve it. Peter May is a member of the Zoning Commission who will sit today as a member of the Board of Zoning Adjustment. I'm sorry you got comfortable; let me--if you take a step back on this one for me, I will recall you. Sorry, I apologize.

MS. ROSE: Okay, now we will call 18672, the application of Cavalier Apartments LP, pursuant to 11 DCMR § 3104.1, for a special exception for a change of nonconforming use under subsection 2003.1, and a special exception from the parking requirements under subsection 2120.6, to allow a retail variety and grocery store on the ground floor of an apartment building in

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the R-5-E District at premises 3500 14th Street, N.W., Square 2688, Lot 43.

CHAIR JORDAN: All right, good afternoon. Would you please identify yourselves?

MR. KEYS: Good afternoon, Mr. Chairman. My name is George Keys, representing the applicant.

MR. RUFFING: James Ruffing with Somerset Development, I'm a representative of the applicant.

MR. AL-MASRY: Mohammed Al-Masry, the tenant.

CHAIR JORDAN: Say the last name again?

MR. AL-MASRY: Al-Masry. A-L-M-A-S-R-Y.

CHAIR JORDAN: Okay. Mr. Keys, this is one I don't know if the Board has a lot of issues, but I think, so you can abbreviate your presentation, I think that you may have already presented enough evidence to receive your special exception request. Let me check with the Board first,

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Mr. Keys, and see if there's something additional that they would like to hear from you. I don't see any opposition from any of the agencies; you have ANC support, and we have not received anything in opposition to that, but let me check with the Board if I may. Is there anything we want to--any issues we have? Okay.

I think the Board is fine with the application. As you know, we spend up to eight to 10 hours before these hearings going through these case files and reviewing all the evidence, and so the Board is very versed in what you've already applied and submitted, and believe that you've met the burden in our eyes in regards to support, pending something not coming up here during this hearing. So it's up to you, Mr. Keys, if you think you want to do a presentation or we can abbreviate it and go on to Office of Planning and go through our regular process, if you want to--

MR. KEYS: Mr. Jordan, we are content with the record. There are only two

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issues I think that would be required for us to address. One is the DDOT report and the request they made of the applicant for providing bike racks in connection with that, and we would like to respond to that.

CHAIR JORDAN: Yes, please do.

MR. KEYS: And the other issue is Office of Planning raised a question as to whether a second special exception related to parking was even necessary, and if it's not, then we won't need it, we won't address it. But I wanted to put forth the explanation for why we thought it was necessary, based on Mr. Legrand's response to my inquiry.

CHAIR JORDAN: The Board doesn't, as you know, provide advice as to how to prosecute your case and the application, so if you feel better safe and having us go ahead and move forward and granting that relief, then that's certainly probably wise.

MR. KEYS: I would prefer to have the relief considered by the Board.

CHAIR JORDAN: Okay. Which as I

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said, we've already think that there's sufficient--

MR. KEYS: And so I think we can move to the agency report--

CHAIR JORDAN: But let me give you the opportunity, if you want to respond about the bicycle racks?

MR. KEYS: Sure. Mr. Ruffing, would you explain your position and who you work for and--

MR. RUFFING: Sure. My name is James Ruffing again, I work for Somerset Development. Somerset is the managing member of the general partner that owns the building. We have no objection to the bike racks that was proposed by DDOT; the one thing that we wanted to put on the record was the building is subject to federal and D.C. historic preservation requirements and guidelines, so we would need to get clearance from both those agencies before putting the bike racks out front.

CHAIR JORDAN: Okay. All right. Appreciate it, thank you. Then let's turn--

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does the Board have questions with that, Mr. Hinkle?

MEMBER HINKLE: Yes, so you're willing to take those steps to try to install those bike racks?

MR. RUFFING: Yes, we are.

MEMBER HINKLE: Okay.

CHAIR JORDAN: Then if we can, with your permission, we'll turn to Office of Planning to see if there's anything they wish to supplement in their report.

MR. GYOR: Good afternoon Mr. Chairman and members of the Board; Stephen Gyor sitting in for Maxine Brown-Roberts with the Office of Planning. The Office of Planning supports the applicant's request for relief and rests on the record. Thank you.

CHAIR JORDAN: Very good. Does the Board have any questions for Office of Planning? Does the applicant have any questions for Office of Planning?

MR. KEYS: No, Mr. Chairman.

CHAIR JORDAN: Then we'll turn to

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Department of Transportation; if there's anything that you need to supplement in the report--

MR. EL-AMIN: No, sir. Fleming Al-Amin with DDOT. Thank you, Mr. Chairman. I would also stand on the record, and just regarding the bike racks, we understood that there would be additional reviews, and also in regards to the public space review, we would determine the most logical location. So we're perfectly fine with what's been stated.

CHAIR JORDAN: Very good, thank you. Any questions from the Board? From the applicant? Is there anyone here from ANC 1A who is on this case? ANC 1A? We do have a letter of support from ANC 1A, to which we would give great weight regarding this case, and they recommend approval of your application. Is there anyone here wishing to speak in support of this application? Anyone wishing to speak in support of the application? Is there anyone wishing to speak in opposition to this

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application? Anyone in opposition? Then we will turn back to you, Mr. Keys to see if there--there's nothing to rebut--to see if you want to do any closing.

MR. KEYS: No, Mr. Chairman. We will rest on the record established.

CHAIR JORDAN: Thank you. Then we'll close the record on this case, and is the Board ready to deliberate? Then I would move that we grant the special exception request of the applicant, subject to the condition as discussed, the applicant to install two short-term, inverted U bicycle racks, with some flexibility based upon the subsequent government--other government agency reviews. That would be my motion.

MEMBER HINKLE: Second.

CHAIR JORDAN: Motion made and seconded; all those in favor of the motion signify by saying aye.

(Chorus of ayes.)

CHAIR JORDAN: Those opposed, nay. The motion carries. Ms. Rose.

MS. ROSE: Staff will record the

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vote as 3-0, with a motion by Mr. Jordan, a second by Mr. Hinkle, and Ms. Allen in support, and one Board member, one seat vacant.

CHAIR JORDAN: Good. Then we can have a summary order, please? Thank you very much.

MR. RUFFING: Thank you.

MS. S. LEE: Mr. Chair, I'm sorry, was there a motion regarding the parking, the relief from the parking that was requested?

CHAIR JORDAN: We did the applicant's request. What do you mean? Did I miss something, Mr. Keys? We approved the applicant's request.

MR. KEYS: We requested both, and they granted both, so we're content that the--

MS. S. LEE: Okay, I just heard the motion for the special exception, not the--it's a variance I assume.

MR. KEYS: It's a special exception.

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MS. S. LEE: Special exception, excuse me. Okay, so it was for two special exceptions?

CHAIR JORDAN: It's for the applicant's request for special exception.

MS. S. LEE: Sorry, I guess I didn't hear that. Thank you.

CHAIR JORDAN: Okay. Not a problem. Thank you, thank you again. Let's do 699, please.

MS. ROSE: This is the application 18669?

CHAIR JORDAN: 669, yes.

MS. ROSE: 18669, of Shiau Feng Chen, pursuant to 11 DCMR § 3104.2, for a special exception to establish a dog boarding establishment under section 735, in the C-2-A District at premises 4824 MacArthur Boulevard, N.W., Square 1388, Lot 25.

CHAIR JORDAN: Are the parties-- are they back, or they're still having conversation? 18669, they may still be out having conversation. Well, that's a good

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thing. We'll take a brief 10-minute recess,
and come back in. 13 minute recess, and
then we'll come back. We'll take a brief
13-minute recess.

(Whereupon, the proceedings in
the above-entitled matter went off the
record at 1:47 p.m. and resumed at 2:00
p.m.)

CHAIR JORDAN: 18673 please, Ms.
Rose? We're back in session.

MS. ROSE: This is application
18673 of Michael K. Henry, pursuant to 11
DCMR §§ 1202.1 and 3103.2, for a variance
from the use provisions to use an existing
one-family dwelling for office uses in the
CAP/R-4 District at premises 325 Maryland
Avenue, N.E., Square 784, Lot 36.

CHAIR JORDAN: The parties for--
the persons for 18673 please come forward to
the witness table. Okay. All right, would
you please identify yourselves, please?

MS. HENRY: There it goes, sorry.
My name is Sarah Henry, I'm the co-applicant
of 18673 I think it is.

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CHAIR JORDAN: Uh huh.

MR. HENRY: Michael Henry, co-applicant and owner of 325 Maryland Avenue N.E.

CHAIR JORDAN: Yes, please. Just push--no, no; it's that one.

MS. CHAPMAN: Thank you. I'm Anne Marie Chapman, 329 Maryland N.E.

MR. MANVILLE: I'm Bill Manville, 327 Maryland Avenue.

MR. KURTZ: I'm William Kurtz, 303 Maryland Avenue; I live 153 feet from the applicant.

CHAIR JORDAN: Very good.

MS. ELSASSER: Kay Elsasser, 319 C Street N.E.

CHAIR JORDAN: Thank you very much. I take it having our conversation didn't get us anywhere, right? Okay, but you did have meaningful conversation?

MR. HENRY: Well, we offered up potential solutions, and they--they're entrenched into being opposed.

CHAIR JORDAN: Well okay, then

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let's move on with the hearing. I do need--
for the record, Mr. Henry, you have an
uphill climb on this one.

MR. HENRY: I do.

CHAIR JORDAN: You have a serious
uphill climb, and so as you know, Office of
Planning has recommended against this, the
ANC has recommended against it, the
architect of the Capitol has--I haven't seen
him recommend against anything. You have an
uphill battle on this, and we just really
have some questions about how you think you
meet the variance test that's required for
that which you're requesting. I just want
to get that out front. And this is a use
variance requirement which is even more
difficult. So have at it; we will allow you
20 minutes to do a presentation.

MR. HENRY: I'll be less than
that.

CHAIR JORDAN: Okay.

MR. HENRY: Thank you Chairman
Jordan and members of the Board of Zoning
Adjustment. My name is Michael Henry, and

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I'm joined today by my wife and co-applicant. On behalf of our family, I want to thank you for the opportunity to apply for a use variance for our home at 325 Maryland Avenue N.E. I have a great deal of faith in this process, and am truly thankful that such a process is available to homeowners who seek reasonable relief from zoning rules.

I submitted a pre-hearing statement on November 25 in order to supply the Board with supplemental information on our application. My goal is to provide a more specific rationale and financial information to assist you in your deliberations. In attending and following several of your proceedings, it was clear that the Board thoroughly reviews applications in advance, and I appreciate your attention to the record in advance of these hearings. Today for my oral statement, my goal is to convey two things to the Board: first, to provide a brief history with the hope of explaining why

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we're seeking a use variance; and second, to summarize the merit of our application with a focus on the technical nature the Board evaluates to determine--evaluate such applications.

Let me begin by saying that we moved into our home in January of 2000. Since that time, we have invested more than \$500,000 in two significant historically-minded renovations. Both projects ultimately converted our home from a flat into a single family home, so both projects turned our house into a single family home from what was once two units. Our home is the first property my wife and I have purchased, and the only property we have ever owned. Both our children were born into our home, and as they have gotten older, we increasingly have considered moving to a home that would provide them with a yard, most likely in northwest Washington, D.C.

This year, we have gotten a little more serious about such a notion. As

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our consideration matured, we had hoped to keep our current home after purchasing a new one. We do not have the financial wherewithal to afford two properties without one generating revenue, so we began exploring the idea of renting our home to a family. In examining that possibility, I sat down with the president of Yarmouth Management, Mr. Buck Waller. Mr. Waller has 30 years of experience in the Capitol Hill real estate market, and has concluded that renting our house to either a family or as a rooming house--a group house, I guess that might not be the proper term, rooming house--would not be economic, as the income would be far less than the tax capital cost, I'm sorry, the after tax capital cost of our home.

I also spoke with his largest competitor, John Formant of John Formant Realty. Mr. Formant held a similar view, and Mr. Waller's full letter and rental rates for both Yarmouth and Formant are included in the record. With these uses

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having been ruled out, we then proceeded to examine other buy-right uses that exist in our CAP/R-4 zone. Ultimately, as my November 25 submission outlines, none are economic or could be achieved without additional approvals.

In many cases, as we discussed options with neighbors, the buy-right uses were actually more objectionable than the limited use variance we are seeking today, and after exhausting the buy-right uses and considering the desires of our neighbors, we began to explore the use variance process by sitting down with Mr. Nero. I just want to take a second to add that Mr. Nero is a true professional, he's been a pleasure to work with and just a constant wealth of information; you're very lucky to have him on your staff.

And so in the end, what we've ultimately done is we've applied for a use variance as you've pointed out, which we recognize is a challenge, but we've asked for it in a way that we hoped would be more

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appealing to our neighbors by limiting it to the professions that both my wife and I currently hold; she's a photographer, and I'm a Capitol Hill lobbyist. Our goal is to have the ability to rent our home in the near term if we were to buy a new home, in a manner consistent with actually two existing uses on our block. We believe that these uses will allow us to maintain the uses we've asked for, will allow us to maintain ownership of our home, and could provide the future flexibility of our personal use as an office.

As you know, our application enjoys 20 individual letters of support. These letters represent 16 of the 35 homes on the 300 block of Maryland Avenue, and our true support is larger, as several neighbors have expressed support, but did not want to submit a letter. In contrast, opponents, who are seated to my left and your right, have submitted a petition which has been misrepresented, in my view, as far as how many signatures it holds and where these

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signatures actually come from. In fact, only 11 homes on the block are represented by their petition. I repeatedly have offered to sit down with Mr. Manville and the neighbors; I've knocked on every door in our neighborhood within the 200 foot radius, and tried to work with all of our neighbors, and just as they did in the hallway a few minutes ago, they don't have any desire to work through legitimate concerns such as parking, occupancy, residential elements, things like that.

I feel that this vocal minority was a key factor in moving both our individual commissioner and ANC 6 into a position of opposition. Before we applied, Commissioner Wirt actually came to our home to discuss our plans, and after that meeting she expressed support for our application and suggested that we garner neighbor support. I feel that we have generated significant neighbor support, and I'm disappointed that our ANC did not even attempt to act as a facilitator, such as you

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did today, in working with what I perceive is a vocal minority of those opposed in order to work through their legitimate concerns in order for us both to kind of be happy here and find a common outcome. Nor do I believe that any of the commissioners actually worked through our neighborhood to seek the opinions of our neighbors because several of them we talked to said well, why would anyone care about this and things like that. That was a fairly common answer.

All that being said, we have applied for a use variance exactly as we've explained it throughout the process; very limited with an openness to constrict it as needed to satisfy the concerns of our neighbors. We enjoy considerable support, and if the petition the opponents have submitted weighs heavily on your mind, given more time, we would be happy to provide a petition with even more support. Instead, we hope the Board considers the merits of our application on its technical basis and recognizes specific and different views that

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are articulated within each of the 20 letters of support that we have.

CHAIR JORDAN: Are you aware-- just so you know, as I said, the use variance requires--there are certain prongs and tests that you need to meet. Everybody on your block, and then everybody on the corner could agree to want this to happen; that's not the criteria. So in focusing your presentation on the neighbors or those who are opposed doesn't really help you because regardless, you have to meet the legal requirements. Even if we wanted to give it to you--

MR. HENRY: That's why I've looked forward to today, sir. Yes, sir.

CHAIR JORDAN: --so that's what we're asking you to present to us as we said, those things that's going to show that this property is unique or has an exceptional condition, that there's undue hardship for you to be able to use that property within the zoning regulations.

MR. HENRY: I'm sorry, sir. You

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gave a gentleman that talks for a living a green light and a microphone, so I went--I talked too much about the background, but I think it was important for you to know that we've run some due diligence, we've talked to our neighbors, and that we're not just coming to you with this wild, crazy application and brought some props along to pretend like we've done due diligence. We've worked hard at this and have tried to put forward an application that makes sense and does meet those, and I was just--

CHAIR JORDAN: Okay.

MR. HENRY: --it's a perfect segue and sorry again for belaboring the earlier points; that's actually about half of what I wanted to say.

CHAIR JORDAN: Very good. Okay. Proceed; it's your show.

MR. HENRY: Well, I don't want to make it a long show; I don't want people to have to go and get popcorn in the middle.

CHAIR JORDAN: We won't.

MR. HENRY: All right, so burden

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of proof. With respect to the technical nature of our application, I just want to run through what I perceive is our merit within each of the tests that the Board utilizes in your decision-making process. In appreciation that each application must stand on its own, I've resisted citing precedence and things like that in both our application and things that we've submitted following our application. However, I think today it would make some sense to cite some of the legal precedent and prior cases as an example before the Board, and let me just say at the outset I'm not an attorney, so some of my citations might--

CHAIR JORDAN: You can do that if you want; I'm going to give you my last advice. Each case stands on its own bottom.

MR. HENRY: I got you. Yes, sir.

CHAIR JORDAN: Okay.

MR. HENRY: So if you'll indulge me, just consider them examples maybe of ideas that we've had. So I contend that our application meets the first element, that it

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is an exceptional situation or condition, the uniqueness test. The element that I think makes our particular property especially unique is the fact that we have an original building permit, in May 25, 1880, was for a commercial building. There aren't--that's a unique aspect of our property, I don't think it's replicable by many others, and I think that *Russell v. D.C. Board of Zoning Adjustment* kind of asserts that the uniqueness requirement, to get around this notion that someone that would want to do something like what we're doing is just a de facto amendment to the zoning laws. You actually have to have this particular uniqueness to your property, not just want to do something willy-nilly. I think the fact that our original building permit was for a commercial property is that unique quality.

But probably more importantly than that, we've expressed economic hardship that has been created by the fact that our improvements have made our property

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uneconomic in the other uses, the other reasonable uses that exist within our R-4 zone. And--sorry, I'm battling a cold as well. While this may be an unusual provision, I think it is unusual, as I've done a little bit of research to D.C. and the case precedent; again, I appreciate your indulgence, *Tyler v. D.C. Board of Zoning Adjustment*. It appears to be your basis for taking in economic considerations, and this being one of them. I tried to lay out pretty clearly in our November 25 and without citing the other several cases that go into the issue of the economic conditions and factors associated with the house.

I mean these are all self-imposed things we've done. No one made us put this money into our house, but nonetheless, I believe that there's precedent for the Board to recognize that the situation of our home is what it is, and that's, you know, there's a big investment in our house, and that investment isn't able to be sustained I guess through the R-4 uses or the others

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that are impractical. I'm just trying to skip ahead so I don't read all the precedents I put on here, but--and I guess I'll just move to the second element, and that's public good.

There's several cases, again, that hold similarities to our application, the aesthetics, including many that were opposed by the ANC and Planning and others. I think that there's numerous examples. I think there's one in particular I just want to read from because I think it's interesting that BZA application 15213, the Board concluded "The office use is less of a burden on parking in the area than the office use would not be a substantial detriment to the public good," that it also was a benefit that office tenants bring added security to a neighborhood in that case as well.

I also just want to make the point that *Williams v. D.C. Board of Zoning Adjustment* finds that the Board may also consider the potential hardship if the

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public variance is not granted. I think this is an interesting one, given our case; it appears an unusual one for me to cite, but I feel the preservation of our block is something that we and our supporters and the opponents actually share. We have all invested in our neighborhood; we'd like a make up that protects single family dwellings at lower density, but if we're forced to sell our home, there would be no protection from these owners, or neighboring owners, from our property being turned into an embassy, a dormitory, an office building, or heaven forbid, a lobbying office if the person who bought our house happened to be a lobbyist and wanted to office out of it.

I think my point here is in using *Williams*, the Board could approve our application on the basis that the public good is better served by keeping the density on our block at its current level, and I think there are other cases that kind of follow along. I just I guess want to make one quick point on great weight. Great

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weigh is the thing that's plagued me, Mr. Gyor and I have had numerous conversations, as well as with the ANC, and I just want to make the--I guess that great weight isn't handcuffs on the Board.

The Board in past BZA application 17960 actually said that the great weight is simply an acknowledgment of the issues and concerns of the two entities, and an explanation of why the Board did or did not find their views persuasive. So I guess to your point, Chairman Jordan, I just want to make the case that great weight is what it is, but hopefully, the merits of our application can stand on their own, and other Board members as well.

And then finally, I should say on the third test, our application will not be inconsistent with the general intent and purpose of the zoning regulations. I've prepared a map of our neighborhood that should be up on the displays; I think that map is compelling in its visual demonstration of our neighborhood. First,

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as you can see, there's a large area that crescents around our block; it's the area that's depicted in red. It's a commercial zone that has everything from office to bars and barber shops. I think the fact the zone is as close to 44 yards to our property is compelling towards the notion that our limited use variance will not be inconsistent with other activities in our neighborhood.

Further, as the map depicts, we have two current uses that are similar to what we've applied for; those properties are shown in green. As I've spoken to residents of our block, the vast majority of neighbors, including several opponents of our application, have said they do not have any concerns with the activities that are ongoing at those two properties, or at either property. The houses shown in bright blue, are properties that are not listed as receiving the homestead deduction. I think in a little bit we're going to hear about Mr. Kurtz's letter that he filed on December

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9 that kind of attacks the figures that we use.

And I'm not sure how the information in that submission could even be acquired; specifically, how each property is used and how many people live there. I just--it seems herculean to be able to know that. I also noted several errors on his letter, namely the exclusion of one of the houses on our block. There are 35 houses; he only lists 34. 312 Maryland Avenue is not there. And irrespective of attacking us and the errors, I'm not sure that that information is even really relevant in this process. The Board, as you just pointed out I guess I should say Mr. Chairman, the Board should know that I used, however, the Office of Tax and Revenue's homestead deductions for each property on our block as a measure of who lives there in kind of making the map that you see before you.

As the Board knows, the third element of this deduction requires the property be the principal residence of the

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owner, a.k.a. domicile. I suppose some properties might be erroneously listed in the tax database for many reasons, but I doubt there's any intent to be misleading here, and I just tried to keep it simple. Finally, the map also shows on each property the support we have with a gold star. Ours is the blue star, and I just want to say for the record that we also support the application.

In summary, the map is provided with the intent to show that we have a variety of uses on our block, and our proximity to the existing commercial zone. We have condos, flats, rooming houses, lobbying offices, all with current uses on our block. As Mr. Kurtz's letter points out, single family homes are actually a minority on our block. Using the Office of Tax and Revenue data, only 45% of the homes on our block are owner occupied; more specifically, the domicile of the owner. That is unusual as the neighboring blocks, the 100 block of 4th Street and the 300 block

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of Constitution Avenue, both have owner occupancy exceeding 63%. Put simply, our neighborhood has comfortably lived with mixed uses for decades, and our limited use variance would not create an inconsistency.

In closing--I'm sure you've all been happy for me to get to this point--I just want to sum up my remarks by saying that we love the 300 block of Maryland Avenue; that's why we're here today. Our home is the first and only home we've ever owned, and we've put considerable time and money into improving it, and our neighborhood as a result. We believe we have a strong argument that would allow the Board to grant our application on technical merits, and in addition, we have an impressive level of neighborhood support, I would contend the majority of the homes on our block.

In addition to the cases I cited and probably shouldn't have, I've been following the most recent BZA application, the 18629, the fitness center up the street

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not too far from our home, and I hesitate even doing it, because I know that you had to grapple with many of these issues, and it was a difficult case for the Board. However, I think there's some similarities, and I just want to say that I was appreciative that you worked with the applicant in the way you did to find a positive outcome with that case, and hope ours has a similar result. Thank you for your time.

CHAIR JORDAN: Thank you. Board, any questions of the applicant? Mr. May?

MEMBER MAY: Yes, I was confused by one statement you made, which is that if you were to sell the property, there would be no protection against the property becoming an office building? I mean, you mentioned a number of uses; one of them was an office building?

MR. HENRY: Office, yes. As you know, a buy-right use is a owner-occupied--

MEMBER MAY: Home office.

MR. HENRY: --home office,

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correct.

MEMBER MAY: Home office, right,
very different from an office building.

MR. HENRY: Right.

MEMBER MAY: Okay. That's it.

CHAIR JORDAN: And it's my
understanding that you're claiming the
economic hardship is the fact that the
amount of money that you've put into your
house, and now you need to try to offset to
try to be able to make ends meet; is that
basically it?

MR. HENRY: Essentially, but also
that the property's value is of a level that
the rent income generated wouldn't make it
an economically viable property for anybody.
I mean, the rent is too low to justify the
capital it would cost to own the house,
irrespective of our--

CHAIR JORDAN: Yes, but you
presently have use within the zoning
regulations that are not hindered in any
way; isn't that correct?

MR. HENRY: I'm sorry?

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CHAIR JORDAN: Your use of the property is within the zoning regulations, and it's not being hindered?

MR. HENRY: Well, we could personally use it as a home, but we couldn't use it as anything else, and I think that our argument is if that's the standard, then there should almost never be a variance granted, right, because the owner always has the right to sell; theoretically, a house purchased at market value could be sold at market value. And so what we're asking for is, you know, if it's a question of can you use it as you have, I guess the point I'm trying to make is that we can use it as we have been using it, or we can sell it; there aren't additional uses that are practical or economic that are available to us in the R-4 District. We couldn't keep it and rent it out; we could stay living in it or sell it is really our choices without a variance.

CHAIR JORDAN: Board, any other questions for this applicant? Mr. May, sure, please.

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MEMBER MAY: Yes, you just mentioned, you know, you could live there or you could sell it, right? So when you were talking to the real estate agents who do rentals, they also do sales; did you talk to them about the sales value of your property and would it be economic for you to sell it at this point?

MR. HENRY: We didn't talk to them about that; I mean our whole goal is to keep the property--

MEMBER MAY: I understand that, but I mean you're trying to prove to us that there's no--that you're in a box that you can't get out of without doing this use, and if one of the ways out of the box is to sell the property to somebody else and recoup your investment, it's not as much of a box. So--but you're not making the argument that you can't sell it; you could sell it and you could--

MR. HENRY: Well we don't know the answer, but we're not making that argument, no sir. I mean we assume that we

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could sell our home, I just--to me, the idea that it's either--either that's a false choice then I guess in my mind, and maybe I'm wrong in this, but I just haven't seen ever a variance request say well, can you do something else in the way of selling it, right, because the list of R-4 uses or whatever use they're in--

MEMBER MAY: Right, but I mean this is an unusual argument you're trying to make to begin it; it might have been worth making--I don't know, I mean I've been sitting on BZA on and off for 10 years, and not heard an argument like this, so--

CHAIR JORDAN: Yes, but we do require alternative financials of different scenarios in regards to value, recoupment of investment, et cetera. So that's not unusual for the Board to, you know, what would be in regards to different types of uses or sales, et cetera, fair market value, all that.

MR. HENRY: I guess my issue is that we're stuck in this use; our living in

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it is the only use available to us, and we have a right to enjoy and use our property right? If not a right, but an implied right, and we can't do that within the constraints of the R-4 zone, which is why we've asked for a limited variance.

CHAIR JORDAN: Okay. Board, any other questions? Then let's turn to our party status representative, is it Mr. Manville?

MR. MANVILLE: Yes.

CHAIR JORDAN: Is there any cross-examination questions you would like to ask of the applicant?

MR. MANVILLE: Yes. How much do you think you could get for your house if you sold it? Million and a half?

MR. HENRY: I would hope that high, but we really haven't talked to a realtor; I mean have you talked to a realtor specifically about our house?

MR. MANVILLE: No I haven't, and why are you in such financial straits when you can send your children to Beauvoir

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School? That must be about \$80,000--

CHAIR JORDAN: That's--I'm not going to find that relevant; you can ask another question, please.

MR. HENRY: We're not claiming impoverished.

MR. MANVILLE: What are you claiming?

MR. HENRY: The economics of our home as a rental property or as other uses.

MR. MANVILLE: Okay.

CHAIR JORDAN: Any additional questions?

MR. MANVILLE: No, not at the moment.

CHAIR JORDAN: Then let's turn to the--Board, any additional questions? Let's turn to the Office of Planning, please.

MR. GYOR: Good afternoon Mr. Chairman and members of the Board. Stephen Gyor with the Office of Planning. The Office of Planning recommends denial of the requested use variance, as the applicant did not establish that the conditions involving

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the subject property rise to the level of an undue hardship. To update our report, we note that several letters in support as well as in opposition have been submitted to the record, but our view is that the proposal would introduce a non-residential use in a residential zone, and would contravene the zone plan. Thank you.

CHAIR JORDAN: Board, any questions for the Office of Planning? Yes, Ms. Allen?

VICE CHAIR ALLEN: Hi. The applicant stated that there were several commercial establishments in that neighborhood; did you find that as well or--

MR. GYOR: I did visit the subject property; according to the applicant, there are two other office use non-conforming uses. I didn't find a record of variance relief for those properties.

CHAIR JORDAN: So the interpretation "I didn't find a record," then it appears, since you didn't find a record, they may be illegal uses, possible

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illegal uses?

MR. GYOR: It's possible.

CHAIR JORDAN: Because normally--
where did you look?

MR. GYOR: I looked in the Office
of Zoning records.

CHAIR JORDAN: So you didn't find
proper certificates of occupancies and et
cetera?

MR. GYOR: Well, I looked at the
square, and looked for records of relief for
that square; I did not locate any.

CHAIR JORDAN: Mr. Hinkle, did
you--

MEMBER HINKLE: Yes, thank you
Mr. Chair. So I'm just reading your report,
and so you don't find any specific
uniqueness to this property in terms of its
physical condition or size of the lot or
anything?

MR. GYOR: I did not, no. There
are, as you know, Capitol Hill has several
star properties; the fact that there were
renovations made does not constitute a

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unique condition in our view. And as far as the lot is concerned, the lot is typical for the square for the area, so we did not find an unique condition.

MEMBER HINKLE: Thank you.

CHAIR JORDAN: And what other uses --is there other possible uses for the property other than what--

MR. GYOR: Well, the applicant could of course use it as a single family residence, which it has been used as. I looked at Sanborn records dating back to 1904, which recorded the property as a dwelling. It could be used as a flat, and the applicant has mentioned several other non-residential uses, but office use would not obviously be one of those.

CHAIR JORDAN: Okay. Any additional questions from the Board to the Office of Planning? And this is an R-4; correct?

MR. GYOR: That's correct.

CHAIR JORDAN: And it sits adjacent to a commercial district?

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MR. GYOR: I believe it's something like 45 feet away from the commercial district.

CHAIR JORDAN: So are the other commercial uses that were referred to, are they within the R-4 or the other commercial district?

MR. GYOR: I believe they're in the subject square, the same square. I think they would be in the R-4 as well.

CHAIR JORDAN: Okay. Then does the applicant have any questions for Office of Planning?

MR. HENRY: I do. I was just going to ask Mr. Gyor if it's unusual to have a building permitted where other properties in our area, did they also have commercial building permits, as far as their initial construction permit, or is that unique to us?

MR. GYOR: I don't know. I would not know.

CHAIR JORDAN: Can you rephrase that question? I don't think I understood

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it.

MR. HENRY: Well you know the original building permit for our house is for a commercial purpose, and so I just wondered if there were other houses in our neighborhood that also had commercial purposes as the purpose for their construction, or if that was a feature that was unique to our property?

CHAIR JORDAN: Okay, and--

MR. GYOR: And I would need to do some research on that; I don't have an answer at the moment.

CHAIR JORDAN: Okay. Any additional questions? Mr. Manville, any questions for the Office of Planning?

MR. KURTZ: Yes. Am I correct that the two properties in question, 300 and 330, which I suspect are non-R-4 uses, that there are not valid variances or documents on that?

MR. GYOR: I was unable to locate a variance record for those properties in the system.

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CHAIR JORDAN: Let me caution you, I'm giving just a little leeway, but Mr. Manville is the person with the party status and the ability, so if you--really, the way we proceed, you would provide him questions to ask. Any additional questions? You want to huddle just a second and--in the interim--

MEMBER MAY: Yes, Mr. Gyor, I just have a follow up question on that. So is it possible that any other commercial use within the R-4 district might have been a grandfathered use, and therefore would not show up under your relief?

MR. GYOR: It's possible, yes. It could be pre-1958.

MEMBER MAY: Right.

CHAIR JORDAN: Okay, Mr. Manville, do we have a--

MR. MANVILLE: Yes, we make the point that 325--

CHAIR JORDAN: Are you asking a question of the Office of Planning?

MR. MANVILLE: Oh, no. I'm

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sorry.

CHAIR JORDAN: Okay.

MR. MANVILLE: I think he's answered that question.

CHAIR JORDAN: Good. All right. If there's no other questions of the Office of Planning, do we have a representative from the Department of Transportation here for this case? We do have a letter of no objection from the Department of Transportation. Is there a representative of the architect for the Capitol? We have a letter from the architect of the Capitol that is in opposition and recommends that we do not approve this request for relief.

Is there a representative here from ANC 6C with the authority to speak on this case? Representative of ANC 6C who's been authorized to speak on this case? We do have a letter from ANC 6C recommending the denial of the application, to which we would give great weight on this matter. Is there anyone here wishing to speak in support of this application? Anyone here

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wishing to speak in support? Then let's turn to you, Mr. Manville to put on any opposition that you may wish to, and we want the clock--actually, we initially said that the applicant was going to have 20 minutes, but he actually took about 17 minutes, so can we make sure the clock is at 17 minutes? All right, thank you.

MR. MANVILLE: Okay, thank you. First of all, I'd like to say I'm a native Washingtonian; I've lived here my whole life. I've seen a lot of history happen, neighborhoods come and go. I've lived in three of the quadrants of the city during my lifetime, and I moved to Capitol Hill 29 years ago. Many of my neighbors have been there much longer than that, 30, 40, 50 years. Our concerns are the fabric of the neighborhood, and any kind of encroachment by commercial or business properties is not agreeable to us; we think it threatens the fabric of our neighborhood, and we take our neighborhood very seriously. We've all rescued houses from the brink of disaster,

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put lots of money into them; we don't expect that to be a business deal and take money out of the neighborhood if we were to go.

So it's a dangerous precedent, we don't want to see it happen. It could affect property values; in my own personal case, and I think many of my neighbors feel the same way because they have signed the petition saying we've watched Capitol Hill flourish over the years. 29 years ago, it was a different place from what it is today. There are children on the streets, they're in the schools, it's a mixed neighborhood, we have one of everybody on it, we love the neighborhood and we do not want to see it change. We're happy there, and I think this kind of thing would set it back rather than let it continue in its same direction, which is going up. The whole Hill is going up.

So I guess that's really all I need to say. I don't know about past zonings and all that sort of thing; I'm just talking about now and in the future, and I

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think the future is looking really good for Capitol Hill and we want to keep it that way, and we want to be protected by this R-4. I mean, we are the residents, we live there, we are the life of the neighborhood. That's what I thought R-4 was for, and we want to see that happen, and my neighbors agree to that premise. I'd like to call on--may I call somebody?

CHAIR JORDAN: Yes, you may. Well let me know--let me stop you one second. I'm going to ask does the Board have any questions for Mr. Manville? I'm sorry? You can ask, yes.

VICE CHAIR ALLEN: It's a little bit silly, but so which is the ward you haven't lived in?

MR. MANVILLE: Well I don't know the wards. Well, I've lived in Northwest--

VICE CHAIR ALLEN: I mean the--yes, the quadrant.

MR. MANVILLE: I was born in Northwest, I've lived in Northeast, Brookland, and moved back to Northwest, and

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then when my last child was a senior in high school, we moved to Capitol Hill. My other three children have already gone off to college.

VICE CHAIR ALLEN: Thank you. I just wanted to fill the story. Thank you.

CHAIR JORDAN: Any other questions from the Board? Does the applicant have any questions of Mr. Manville?

MR. HENRY: I do. Do you want me to ask those now, or wait until other people have made their presentations and ask them all at once?

CHAIR JORDAN: You can--well, you can reserve it, and we can ask them all at once.

MR. HENRY: I think it would be faster that way, if you don't mind.

CHAIR JORDAN: And you had other witnesses that you would like to--

MR. MANVILLE: Yes, I would like to call Mr. Gary Peterson from the Capitol Hill Restoration Society.

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CHAIR JORDAN: Sure.

MR. PETERSON: Mr. Chairman, I think I'm going to testify--

CHAIR JORDAN: Please identify yourself.

MR. PETERSON: Oh, my name is Gary Peterson, I'm Chairman of the Capitol Hill Restoration Society Zoning Committee; I live at 810 Massachusetts Avenue, N.E. I would say I'm going to testify as an organization in opposition, and I think I would prefer to hold my testimony until that time.

CHAIR JORDAN: I don't know if I had any notice that you were going to do so, but we--

MR. PETERSON: I'm not asking for party status, I'm just--

CHAIR JORDAN: But I--okay, so you will have your five minutes at that point, then.

MR. PETERSON: Right, and unless they need to ask me some questions or something.

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CHAIR JORDAN: Well, let's just hold that; they will have the opportunity to do that once you do your presentation. Is there any other witnesses that you have, Mr. Manville?

MR. MANVILLE: Yes, I'd like to--

CHAIR JORDAN: Yes, go ahead please.

MR. KURTZ: Yes, I'm William Kurtz--

CHAIR JORDAN: Make sure your microphone is on, please.

MR. KURTZ: Can you hear me?

CHAIR JORDAN: Yes; see if you can pull it closer to you.

MR. KURTZ: How's that? Is that better?

CHAIR JORDAN: I don't think you're on.

MR. KURTZ: Oh there you are. Okay, I'm sorry. I'm William Kurtz, I live 153 feet west of the applicant at 303 Maryland N.E. I just wanted to set the record straight on what our block really

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looks like, and I have a chart here. Can I put that upon the screen somehow, or just hold it up? Thanks. And I have this to give to the secretary as well. And we have-I counted 34, Mr. Henry counts 35; one way or the other this is not a tight census, it's perhaps 90, 95% I hope correct, and we find that of the 34 or 35 addresses on the block, there are in fact 73 living units. 71 units are actually valid R-4 uses; they're either single family occupancy, English basements, valid rental apartments, what are termed as group houses, which there are five on the block, even though Mr. Henry I think has claimed there are as many as 13. There are two that have been mentioned, 300 and 330, that I found have doubtful R-4 uses; this is the FedEx Government Relations Office, and 330 is a mystery; we don't really know what or who is using that building.

Just to touch briefly on parking, we have 38 on-street parking spots for an estimated 117, 133 residents on the block,

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and then there's seven off-street spots here and back here. So there's not an excess of parking at this point; in fact, it's reasonable, but it would be stressed with an additional office situation where people would be presumably coming and going both for work and for visiting. But in the end, what I found, I've lived on the block for 30-some years, and know the block backwards and forwards, as Bill does and these other folks do, and this I think is a pretty accurate representation of our residential block. Thank you.

CHAIR JORDAN: Questions from the Board? And you're holding your questions. Any other evidence, Mr. Manville?

MR. MANVILLE: Not at this time.

CHAIR JORDAN: Okay. Then is there anyone wishing to speak in opposition to this application? Yes, please. I'm sorry? Oh, I'm sorry, I've got to give the opportunity to cross. Your cross examination, please.

MR. HENRY: Do you want me to do

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that now? Okay.

CHAIR JORDAN: Yes.

MR. HENRY: I guess I just wanted to stick to--as you pointed out, Chairman Jordan, I think that the facts of our case are more important in support, and so I'll try not to ask some of those questions, but at one point, Mr. Manville, you talked about a use, kind of the next neighbor over, right--Anne Marie is sitting here next to you--where James Carville kind of famously put into a movie later, The War Room. He started Bill Clinton's 1992 presidential campaign in Anne Marie's basement; again, the other unit--we bookend you, Anne Marie and I do, on the property. I recall us speaking about that, saying that you didn't have substantial issues with the office activities that were going on there, and now you're claiming you do. And so I'm just trying to understand how what I perceive to be a more intrusive use than what we've applied for was fine just a couple of months ago when we talked about it, and now there

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are all these concerns. So I just wanted to--was that fine?

MR. MANVILLE: It wasn't fine a couple of months ago. Again, you're putting words in my mouth. It's never--the variance has never been fine. When Anne Marie's--Mr. Carville was in the basement, I was deep in my career, a widower, I didn't pay any attention to what was going on anywhere. I am now have decided to age in place, I want the neighborhood to be a good one. I've never been in favor of a variance, and I had nothing to say--and there was no variance on her property.

MR. HENRY: Correct, but was the use--I'm asking I guess was the use impactful to you? Did it impact your quality of life, did it create a hardship on the block, things like that?

MR. MANVILLE: I wasn't even thinking about it at that time to be honest. I was busy working.

MR. HENRY : Is that no?

MR. MANVILLE: I live there alone

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and--

MR. HENRY: It did or didn't impact you?

MR. MANVILLE: It sometimes impacted me when there were big parties and the back was blocked by cars and limousines and stuff. Yes, it did.

MR. HENRY: Okay. I guess I wanted to go back to your point that you made, kind of the fabric of the neighborhood where you said that we kind of have one of everybody. It was a choice of words I guess, and we actually have two existing similar commercial uses, not just one but two; do you think either of those uses currently impact your quality of life? Illegal, not illegal or whatever, but speaking to do the uses impact you; do either of those create a hardship for you now?

MR. MANVILLE: Well, the parking does, and the trash across the street, the one we don't know about. Those neighbors over there have more of an issue; I'm not

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right beside them, but there are issues with their existence. The one on the corner, the United--the express or whatever it is--

MR. KURTZ: FedEx.

MR. MANVILLE: FedEx, that was done a long time ago, I wasn't even aware who owned the property, and it was an abandoned grocery store for 20 years. Everybody I think was probably just grateful to have it fixed up.

MR. KURTZ: Impacts on us.

CHAIR JORDAN: Bill's--

MR. MANVILLE: Can I call him to respond?

CHAIR JORDAN: Any--yes, you can respond; you can defer that.

MR. KURTZ: We live directly across from the FedEx office, they have parties once a month perhaps on the patio and sometimes inside, usually on the patio with I'd say between 40, 50 people, and that's an estimate. They have valet parking, which impacts definitely on our block. They're not bad neighbors; their

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landscapers create a considerable amount of noise with their leaf blowers and so forth that probably wouldn't happen if it was residential. So yes, they impact us and I think the people that are next to them considerably.

MR. HENRY: But having--I just want to make it clear--having occasional parties is --anyone can do that, right? Any use in our zone, we could have a monthly party celebrating the 12th or whatever date we picked; what specifically has their use done to kind of impact your quality of life or what happens, what specific things that are distinct from what anyone could do?

MR. KURTZ: Well sometimes they bus people in, there are busses parked out there, they idle despite the prohibition against idling. They double park despite the prohibition against double parking, the idling vibrates the houses, which as everybody knows, these old houses don't take too well to that, and yes, neighbors have parties, 10, 12, maybe 20 people, but not 40

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or 50, and not with valet parking.

MR. HENRY: So do you think the traffic out there is because of FedEx and the other commercial uses, or is it just the fact that we're a block away from the Capitol with office uses all around us?

MR. KURTZ: Well, that's another issue which I don't think is relevant to this particular case.

CHAIR JORDAN: I agree; it's not relevant. Let's move on to your next question.

MR. HENRY: And then we could get into the census kind of, of the block. I don't think it's--you've made it clear, I think I've heard you clearly that support and kind of going through all that stuff is just going to be a waste of your time, but I don't believe it's accurate and instead, we've relied upon how many homes there are--

CHAIR JORDAN: Are you asking a question?

MR. HENRY: Sorry. How did you generate the information in your submission

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to the Board?

MR. KURTZ: From first-hand knowledge, and as I say, it's not a formal census, it's a neighborhood thing, and I would say that perhaps it's in the 90% accuracy bracket from first-hand knowledge of who lives where and how many people are living in the various apartments and so forth.

MR. HENRY: Fair enough.

CHAIR JORDAN: Any additional cross examination?

MR. HENRY: No.

CHAIR JORDAN: Then persons in opposition, whoever wants to speak in opposition, and--now, yes.

MS. CHAPMAN: Opposition.

CHAIR JORDAN: Yes, come to the table, please.

MS. ROSE: How much time, Mr. Chair?

CHAIR JORDAN: About five minutes.

MR. PETERSON: Thank you, Mr.

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Chairman. For the record again, I'm Gary Peterson, I'm Chairman of the Capitol Hill Restoration Society Zoning Committee, and I live at 810 Massachusetts Avenue, N.E. First a little bit about the history of use variances. The use variance was created to avoid there being a taking of someone's property. Originally that's--in other words, the zoning left them with no economic use of their property. But what we have, the gist of the argument here is they can't afford to own two properties unless they're allowed to change the use of this. That doesn't really constitute any type of taking, or there's no economic use for the property.

The other thing, applying the test strictly, this property contains 1808 square feet, the house occupies a typical amount of the property. There is an addition; however, if you look at the plat-- I don't know, can you hold that plat up? The house immediately to the left actually has a larger footprint on the property than

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the subject property. So there's nothing unusual about either the size of the lot or the size of the property; it's a rectangular piece of property. Whether a building permit issued in the 1870s allowed a commercial use or not, there was no zoning then, so the building permit didn't control zoning; there was at that time period, and clearly at some point it was converted to residential.

The other thing is that they claim that the property would be uneconomic as rental, except they sort of shot themselves in the foot because they added the addition that now they claim makes it uneconomic for rental, but they aren't arguing that it's uneconomic for actually the sale of the property, and the sale of the property for an R-4 use. So there is no reason to grant this use variance, the property can continue to be used economically as an R-4 residential use. They do have the right, and I think at one point when they owned the house, they did

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have a basement apartment; they would have the right to have this turned into a flat.

The other point I'd like to make is there is lots of C-2-A property in the neighborhood that can be used as office. In other words, there is no shortage of property that can be used for office space. There's more office buildings being built immediately to the north and slightly east of Union Station; there's the project at Heinz School; there probably is going to be a project at 11th and Pennsylvania Avenue where Frager's Hardware burned down, but allowing office in this location actually does damage, economic damage to the people who own C-2-A property and who are trying to rent it, and for that reason I think this does violence to and is against the policy of zoning. I think I pretty well covered the points I wanted to make. Thank you.

CHAIR JORDAN: Thank you. Board, any questions for Mr. Peterson? Does the applicant have any questions for Mr. Peterson?

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MR. HENRY: Just three quick ones. Has your group met to discuss our variance, or are you just speaking on behalf of them today?

MR. PETERSON: The Board met last night and reviewed a report on this, and approved of the testimony being given today.

MR. HENRY: Okay, I didn't get any notice to that. I'm also curious about the group generally--

CHAIR JORDAN: Well let me go back on that, because as you know, you've been before us many times; it requires the authorization and the Board's official action, but we certainly give you some deference to do so, but you know how we generally proceed.

MR. PETERSON: Well yes, I can provide that because I provided it many times in the past.

CHAIR JORDAN: Right, right.

MR. HENRY: And that is a good way to ask my second question; does your group deal with uses typically, or is it--I

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understood that the Restoration Society was focused on facades. Do you get involved with uses typically as a group?

MR. PETERSON: Yes, we do. We have a historic preservation committee that reviews the historic aspects of a structure, and we have a zoning committee that considers the zoning issues, which includes uses.

MR. HENRY: And then you said something at the beginning, talking about the dimensions of a property. Do you recognize that there's lots of case law out there that talks about variances not solely being tied to the property itself, but improvements and other structures as being an issue where one could seek, you know, as an impact upon the owner? Not just a--

MR. PETERSON: Yes, that's correct, and that's why I made reference to the property immediately adjacent to you to the west of having a footprint actually larger than your home.

MR. HENRY: Sure, but you would

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agree that their economics could be completely different than ours, not knowing when their improvements were made and not knowing is that a house or condos or--

MR. PETERSON: Well I think every person's economics is different, so I would be hard pressed to say anybody is identical to your economics or to my economics. The question isn't whether or not you could make a profit doing something; it's clear that other people could buy this house and use it as a residence.

MR. HENRY: I think except for that last part, you found two guys from Fairbanks, Alaska that agree.

CHAIR JORDAN: Are you asking a question?

MR. HENRY: No sir, I'm done.

CHAIR JORDAN: I didn't think you were. Thank you.

MR. HENRY: I was trying to be agreeable. Sorry, Mr. Chairman.

CHAIR JORDAN: I know you just got a little happy with that; I understand.

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Additional in opposition? You have three minutes, three minutes--just hold one second, let me make sure we get the clock going. We're going to be tight on the clock today.

MS. CHAPMAN: Okay. This is a residential street with families with children, and we would really like to keep it for families. I live with my daughter, she has two children, they've gone from Peabody up through School Without Walls, and there is other kiddies on the neighborhood. I have to tell you that I really like Michael and Sarah on a personal level, so this is not personal, but this would set a precedent. A man across the street owns five houses and he rents to the kids who work on the Hill, and that's fine.

But if this variance were to go through, it would be a lot more lucrative for him to just rent his house out to lobbyists. And one of the houses he has, he rents to a lobbyist, or rents to somebody, and they come with limousines all day long

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and go up into the house, it's like an open house, congressmen, movie stars. They leave the limos or the SUVs running, and in the summertime, I have to go out and ask them to turn the limos off because of the gas that they're generating out the back. And they say well, they need to have the air conditioning going because they have somebody, you know, sitting in the limo waiting for them to come out. And so it would set a precedent for people who own houses who now rent them out to either one family or to kids to then turn it into office because it would be much more lucrative, and it would take away the neighborhood status that we have now. Thank you.

CHAIR JORDAN: Thank you. Board, any questions? Did you identify yourself, I'm sorry, before you gave your testimony?

MS. CHAPMAN: Excuse me?

CHAIR JORDAN: Did you identify yourself?

MS. CHAPMAN: Anne Marie Chapman-

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CHAIR JORDAN: Thank you.

MS. CHAPMAN: --329 Maryland
Avenue N.E.

CHAIR JORDAN: Any other
questions, Board? The applicant, any
questions? Mr. Manville, any questions?

MR. MANVILLE: Of anybody?

CHAIR JORDAN: No, no; any
questions of--

MR. MANVILLE: No questions.

CHAIR JORDAN: Any other person
wishing to testify in opposition? Then we
will turn back to the applicant for any
rebuttal, and we give you five minute
rebuttal, please? Let me make sure the
clock is straight. All right, there you go.

MR. HENRY: I have an opportunity
to close, right?

CHAIR JORDAN: Yes.

MR. HENRY: Separate from the
rebuttal--

CHAIR JORDAN: So you can just
skip your rebuttal and go into closing.

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MR. HENRY: All right, I don't need to take your time with rebuttal.

CHAIR JORDAN: All right, now let's give you three minutes on a close.

MR. HENRY: Maybe I should have taken the five in the first place right? I just lost two minutes.

CHAIR JORDAN: You know, it's just like if you're watching a football game or a basketball game, because what we have today, we're calling it tight. We're not giving any hand checks, we're not letting it go today.

MR. HENRY: Well I'll be easy on you. I had actually written up a few paragraphs to talk about as a close; I don't need to belabor the point, there's people waiting behind us. I just want to make-- what you've heard is manufactured support on our side, right? We've generated the support we've generated, we've made the arguments we've made; the opponents have manufactured their opposition, they've organized and gotten folks to do this or

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that. At the end of the day in my mind, there are two things that kind of happened in our case organically. There's a letter from Spencer Bachus, who's a neighbor, who's a former chairman of the House Financial Services Committee; he wrote basically with legitimate concerns about parking and actually, but in the end, supported our application hoping that you would work on parking.

I think the Department of Transportation, I can speak for myself, we didn't go talk to DDOT, we just figured that it wasn't probably necessary in the step. I don't want to assume anything, but want to guess that they probably didn't either. Both those letters have come in fairly reasonably minded in support of our application. We think we've laid out an unorthodox case; we're a square peg looking for a round hole. But at the same time, I think that we have made our case on the merits of what our specific property does; I think we're a unique property in a unique

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situation.

We've tried, as we've set our application forward, to be responsive to our neighbors. We've--I've knocked, as I said, knocked on every door, looked my neighbors in the eyes, been very forthright and sincere about what we're trying to do, not trying to hide anything here. We sit here before you today, our third step in the public process of this, trying to do what we think is right for not only us and our home, but for the neighborhood. And so, just thank you for the opportunity to be before you today; you really are kind of our means of last resort to keep our home we love, and hope that you will approve our application.

CHAIR JORDAN: Good, thank you. Then we will--Board, any other questions? Then we'll close the hearing based upon the evidence already received. Is the Board ready to deliberate, or do you--okay, so then we'll move into deliberations. First, let me say I appreciate everybody coming here today, taking time away from your busy

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days to do so. As I said initially, when things can't get worked out, we have to work it out for you, and sometimes people are not happy by that, but that's what we're here for and volunteer our time to do. So we're going to move into deliberations; anyone has anything they want to say? Mr. May?

MEMBER MAY: Sure, I'll start things off. I appreciate the earnestness with which you have pursued this; however, I do not find any of the elements of your case compelling. I mean, the original building permit is not a unique feature; it is a common feature, I have it in my house. It wasn't built that way, but it was commercial for awhile; it's not commercial now, and all over the city this happens. It doesn't make it, in itself does not make it a unique circumstance. There is really little else about this that's unique; there's also no case that's been made that you cannot make use of the property as it is. That's really what variances are about, especially a use variance. It's an avenue of last resort;

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there's no other economic use for it. That's the case here. You could stay there, you could sell it, and you could still be in reasonable shape; at least you haven't made the case that you would be significantly harmed by this.

What it comes down to here is that living in a neighborhood like this has certain constraints and certain benefits, and I'm sure you've availed yourself of the benefits, and if at this point it doesn't fit your needs, there is not an inherent right for you to convert it; I simply don't believe that that's the case. In this circumstance for us, in addition to our examination of the merits of the case, we have ANC in opposition, we have the Office of Planning in opposition, both of which get great weight; in addition, we have the architect of the Capitol speaking out against it, which again is an unusual thing; they usually don't weigh in on cases like this, or it's usually cases that are not a concern to them. Council member wrote us a

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letter in opposition, and there is substantial neighborhood opposition. There may well be some neighborhood support, but it's not--zoning is not about popularity; it's about a very specific set of rules that are designed to preserve neighborhoods the way they are, or to send them in a direction where the City believes they should go, and clearly, I do not see a reason why we should be granting a variance.

CHAIR JORDAN: Is there a motion?

MEMBER MAY: I would make a motion that we deny application number 8673--let me get my--18673. Do I need to say anything more? I usually give a little--

CHAIR JORDAN: No, you already--second anyone? Mr. Hinkle?

MEMBER HINKLE: Yes, thank you Mr. Chair. I tend to agree with Mr. May's comments.

CHAIR JORDAN: So you're seconding and you want to follow up? Okay.

MEMBER HINKLE: Well yes, I will second.

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CHAIR JORDAN: I just want to make sure for the record.

MEMBER HINKLE: Right. That's all.

CHAIR JORDAN: And you agree with the comments. Any additional deliberation or comments?

VICE CHAIR ALLEN: Again, thank you all for coming; this is what we do, and we appreciate that you took the time to share your thoughts and your testimony. I really sympathize with you, and I really was listening hard to hear you make the requirements of the variance. I could almost get there with maybe the hardship and really, that was about it. The unique physical aspect or other extraordinary situation, I just could not--there was nothing that you really presented that really was able--that I really need to hold my hat on that one, and I think that there has been lots of testimony, lots of substantial information regarding the harm to the public good and to the zone plan, so

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I would have to support the motion.

CHAIR JORDAN: Any other discussion? Seeing none, all those in favor of the motion signify by saying aye.

(Chorus of ayes.)

CHAIR JORDAN: Those opposed, nay. The motion carries.

MS. ROSE: Staff would record the vote as 4-0 to deny the application with a motion by Mr. May, seconded by Mr. Hinkle, with Mr. Jordan and Ms. Allen in support, and one board seat vacant.

CHAIR JORDAN: Thank you all, appreciate it. Thank you for taking the time for coming and really putting forth-- this is the things that make it hard.

MR. HENRY: Thank you.

CHAIR JORDAN: I would say that's why we get the big bucks, but we don't, so--
(Off the record comments.)

CHAIR JORDAN: Are we back for 18699--669, I keep doing that. Are the persons back for 18669? Can't have conversation, I'm sorry. Okay, while you're

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gathering we're going to--get yourselves situated, we're going to take three minutes or so, but just get yourselves situated.

(Whereupon, the proceedings in the above-entitled matter went off the record at 3:04 p.m. and resumed at 3:09 p.m.)

CHAIR JORDAN: All right, did we call 18669? We're back in session. 18669.

MS. ROSE: Did you want me to call it again, sir?

CHAIR JORDAN: Yes.

MS. ROSE: Application number 18669 of Shiau Feng Chen, pursuant to 11 DCMR § 3104.2, for a special exception to establish a dog boarding establishment under section 735, in the C-2-A District at premises 4824 MacArthur Boulevard, N.W., Square 1388, Lot 25.

CHAIR JORDAN: All right, thank you. Would you please identify yourselves? Starting left from right, let's go again.

MS. SIMONEAU: Michelle Simoneau, I live at 4840 MacArthur Boulevard.

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CHAIR JORDAN: And in regarding this application, what's your relationship?

MS. SIMONEAU: I have a dog, and I've used the--

CHAIR JORDAN: So you're supporting, is that what's--

MS. SIMONEAU: Yes, I'm supporting.

CHAIR JORDAN: Okay, next?

MS. LEE: My name is April Lee, I'm Diva Doggy owner.

CHAIR JORDAN: The last name again?

MS. LEE: April Lee.

CHAIR JORDAN: Okay, and you are owner?

MS. LEE: Diva Doggy owner, Yes.

CHAIR JORDAN: Yes, and next we have?

MR. MITCHELL: Yes, I'm David Mitchell, 4836 MacArthur Boulevard, I'm the applicant owner--not owner, applicant agent.

CHAIR JORDAN: Okay. Yes?

MR. OHM: Hello, my name is

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Eugene Ohm, I live at 4843 Reservoir, and I'm a party in opposition.

CHAIR JORDAN: Okay.

MS. RODRIGUEZ: Good afternoon again, my name is Mary Rodriguez, and I live at 4823 Reservoir Road, N.W., I'm a party in opposition.

MR. HERNANDEZ: My name is Alan Hernandez, I live at 4823 Reservoir Road, N.W., also in opposition.

CHAIR JORDAN: Okay, and who is representing the opposition group? Did you decide?

MS. RODRIGUEZ: I am, Mr. Chairman.

CHAIR JORDAN: Did you have a chance to talk about it? Did we reach any conclusions or--I'm thinking not, right?

MS. RODRIGUEZ: We discussed it, and we weren't able to come to a consensus. Our proposal was that we would not object to off-site dog boarding overnight, but that was not something they were willing to consider.

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CHAIR JORDAN: Got you. Okay.
That's what we're here for. As I said,
sometimes people don't leave out happy, but
we will deal with the issue. We're well
aware, Mr. Mitchell, of what's in the
application, it doesn't necessarily require
you to, unless you want to repeat all the
things that you've already submitted. But
there's some issues, as you know. The ANC
has voted it in disapproval, and there's
persons in opposition. The Board--I have
concerns about the amount of noise and sound
that might be generated from the property,
so your presentation should also address
that. I don't know if there's anything else
the Board particularly wants to hear, but
that would be one of my concerns in your
presentation as you do your presentation.
Yes, so--

MR. MITCHELL: Ready?

CHAIR JORDAN: Uh huh.

MR. MITCHELL: I guess I'd like
to summarize what's been done in regard to
the application, and to--

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CHAIR JORDAN: Let's do 15 minutes; why don't you give us a 15-minute presentation.

MR. MITCHELL: Okay, regarding the application and outlining efforts. It's my hope and intent to provide dog boarding as a convenience to customers. The nature of the services is truly small-scale, or what I'd call boutique boarding. This would normally four, five, six maximum dogs in the building for boarding purposes, and as I say, this is far fewer than the number of dogs living on any particular block in the Palisades. Our Palisades is quite dog-friendly and tends to have as many as one dog for every other house.

Diva Dogs has applied for the special exceptions and fully intend to meet requirements as well as several commitments related thereto. The property does not abut a residential zone, there's an alley between the residential zone and the commercial zone, and that was run past the zoning administrator, who concurred with the fact

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that they're not abutting. The building is a substantial brick construction, and since the application was made, they've used many sheets of foam. This is an example; it comes in colors and so on, and this is on the walls of the rear--

CHAIR JORDAN: Why don't you describe what that is, and is that one of our exhibits?

MR. MITCHELL: This is a sound foam.

CHAIR JORDAN: You make reference to a sound foam in your pleadings, in your documents.

MR. MITCHELL: And this is just a small sample.

CHAIR JORDAN: Okay.

MR. MITCHELL: And it comes like in 4x6 I believe sheets, and so the walls of the inside--

CHAIR JORDAN: So--excuse me, it's sound and not egg something, I think it was referenced as--

MR. MITCHELL: They call it egg

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grate because of the configuration.

CHAIR JORDAN: Okay, but it's sound foam. Thank you. Okay.

MR. MITCHELL: It's sound foam, and this is a brochure I believe, from the company that manufactures it. But they've got this on the rear walls of the rooms to be used for boarding, and also the rear walls of the grooming area now, to cut down on any sound getting out. The rear yard will not be used for dogs; the windows and doors will remain closed as called for in the code. Also, odor will be controlled by an odor-free suite 700 commercial grade ozone machine. All the animal waste will be taken away by a nationally-recognized waste control company, and they've done everything possible I would have to say to respond to request of reviewers in the community.

There are 40 signed support slips from neighbors; the Office of Planning has recommended approval, and the ANC voted against it, but I believe that the application was confused in that there's

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concern from the opposition of the proximity of the property to property. There's only the alley between them. And all dogs will exit and enter the building from the front door, and the dogs will not be walked, because of concern from opponents, on Reservoir Road, where the people assembled here tend to live. But I think that's about as far as we can go in discussing it; it seems that the opposition only wants to hear about boarding elsewhere; they were not willing to discuss the numbers, and we thought the number of six dogs with someone there with them 24/7 would be appropriate as a convenience to the neighbors and the people who are using the dog grooming business. But you know, it's our hope that they could have just a small-scale, convenient boarding situation. And that's not a kennel, it's not a large-scale thing, it's sort of almost a home environment.

CHAIR JORDAN: Okay. All right. So you used about four minutes or so--

MR. MITCHELL: That's enough.

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CHAIR JORDAN: --and that's what the opposition will have. Let me ask you, has there been any sound testing done?

MR. MITCHELL: No testing has been done, but you know, I think they would welcome it, and we could see what occurs. But I think one of the concerns that the opposition has is the fact that there's no real control. If you were to grant this special exception, how do they control it? How do they know that there aren't seven or eight dogs or 10 dogs or whatever; they don't know, and I don't know if there's any means or mechanisms in the District laws that call for that. But I think that in good faith, the owners have come forth and said that they would maintain thing above and beyond the requirements.

CHAIR JORDAN: And currently, it's a groom salon for dogs, correct?

MR. MITCHELL: Yes, that's the business existing.

CHAIR JORDAN: Yes, and how many dogs do you normally have at any one time

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during the grooming?

MS. LEE: Only two or three.

CHAIR JORDAN: At any one time?

MS. LEE: Yes.

MR. MITCHELL: And so then what happens is there's a desire on some of those people, well I can't get back from work, so then technically if you keep it for an extended period of time, well you're in effect boarding. And so that's what we want to get past, have that settled and solved.

CHAIR JORDAN: Board, any other questions? Yes, Ms. Allen?

VICE CHAIR ALLEN: Thank you, Mr. Chairman. You said that the dogs would not be taken out in the yard to waste--

MR. MITCHELL: They cannot go in the backyard by the code.

VICE CHAIR ALLEN: Okay, so where are they going to--

MR. MITCHELL: They'll walk the street just like any neighborhood dog would do if they need to go out.

MS. SIMONEAU: It's in relation

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to the front of the building.

CHAIR JORDAN: Is that where you take them now?

(No audible response.)

CHAIR JORDAN: Any other questions? Mr. Hinkle?

MEMBER HINKLE: Yes, thank you Mr. Chair. I know there's some people representing the residences behind you; are there residences on MacArthur Boulevard, near the shop?

MR. MITCHELL: The whole strip, there is townhouses as you can see on the zoning map. It was once residential; they're all a similar construction to what's back on Reservoir Road, but they've all since been converted over the years to office use by and large, and some commercial.

MEMBER HINKLE: So there's no more of the residential fronting onto MacArthur Boulevard?

MR. MITCHELL: Right at the end of the townhouses, there's an apartment

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building.

MEMBER HINKLE: Okay.

MR. MITCHELL: Where Ms. Simoneau lives.

MEMBER HINKLE: Okay.

MR. MITCHELL: So that's the residential.

MEMBER HINKLE: Have you talked to them? I understand you live there; have you talked to others in that building? Do they have concerns about the boarding?

MR. MITCHELL: Not that I'm aware of.

MEMBER HINKLE: Okay. Thank you.

MR. MITCHELL: We've got about I guess 40 slips of people signing support.

MS. SIMONEAU: I would say that perhaps one out of three tenants in that building own a dog, so it's a very dog-friendly neighborhood.

MEMBER HINKLE: Okay, thank you.

CHAIR JORDAN: Any additional questions? Mr. May?

MEMBER MAY: So the case to allow

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the grooming operation was decided by the BZA in June?

MR. MITCHELL: Yes, and they opened shortly thereafter.

MEMBER MAY: Okay, so I have two questions relating to that. One is, was this use not contemplated at that time? Because it's sort of unusual to get these things in rapid succession.

MR. MITCHELL: It was late in the proceedings, but we'd already applied, and so then we don't want to upset that application, and so they weren't together, which would have been nice for of us.

MEMBER MAY: Okay. So then the next question I have is since you've started the operation, have you had complaints from neighbors because of the noise or smell from the dogs in just the grooming operation?

MR. MITCHELL: Not that I'm aware of. Any complaints from noise?

MS. LEE: No, nobody.

MEMBER MAY: Okay, thanks.

MR. MITCHELL: I think that April

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and her family who have the business run a pretty tight ship as far as keeping things in order.

MEMBER MAY: Okay. Thank you.

MS. SIMONEAU: It's certainly the cleanest facility that I have used quite a few.

MEMBER MAY: My question has been answered, so I appreciate that. Thank you.

CHAIR JORDAN: Now the closest residence to you, living facility, what is it, 40 feet, the closest?

MR. MITCHELL: The closest residence? Well, the distance from building to building is about 70 feet, and so what gets talked about and I think that the ANC stumbled on was the fact that it was emphasis that evening on the 16 feet, which is the actual dimension of the alley, which is property line to property line. The other thing being that in the building which we're wanting to use for boarding, that the back room in the two levels to be used for boarding are not part of things; they're

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going to be closed off. So you have like a sound block or a building block between that and the residential purposely.

CHAIR JORDAN: But--so you mean by--on the other side of the alley?

MR. MITCHELL: Yes, that's where Mary and the other people live that are concerned about the sounds. We've been talking the alleyway; they basically would like to hear zero dogs and have them transported elsewhere. And what's being done or hopefully being done is to make a place where you can at the last moment or whatever, if you're in the neighborhood, that you have a place to go without going many miles to find a facility.

CHAIR JORDAN: All right. Board, additional questions? Yes?

MEMBER MAY: One quick one. When the case came through and was decided in June, was there opposition at that time?

MR. MITCHELL: No.

MEMBER MAY: Okay, thanks.

CHAIR JORDAN: Ms. Rodriguez, do

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you have any cross examination you would like to ask?

MS. RODRIGUEZ: Yes I would, Mr. Chairman. Thank you. I would like to direct it to Mr. Mitchell. Mr. Mitchell--or actually, I'll start with Ms. Lee. Ms. Lee, you own several dogs yourself, don't you?

MS. LEE: I have three dogs, but they stay home. I bring two, sometimes I bring two, but they're going to hospital. Sometimes I bring two, but not all the time.

MS. RODRIGUEZ: So it's your testimony today that you own three dogs, and those dogs are kept overnight at 4824 MacArthur Boulevard?

MS. LEE: Well, one--

CHAIR JORDAN: Is that the applicant's--is that--no, that's not what she said. She said she sometimes--she has three dogs; sometimes she brings two there, only if they have to go to the vet or some other place, but she keeps them generally at home. I thought that was what the testimony was, correct?

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MS. LEE: Yes.

MS. RODRIGUEZ: Do you--so, isn't it true though that you and your husband have testified in prior hearings at the ANC that you own four dogs, and those four dogs spend the night at 4824 MacArthur Boulevard?

MS. LEE: No.

MS. RODRIGUEZ: So you never have your dogs sleep over at 4824 MacArthur?

CHAIR JORDAN: Let's go to your next question; she--you've asked her like three different ways. You said sometimes?

MS. LEE: Yes, sometimes, you know I--

CHAIR JORDAN: Well she asked you, and you said no.

MS. LEE: Sometimes, but I have business next door, it's a nail salon, so sometimes very late to close sometimes. Sometimes my doggy--I sleep there, and the one doggy--

CHAIR JORDAN: Next door?

MS. LEE: Yes.

CHAIR JORDAN: But not in your

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place, not at 40--where are we?

MS. RODRIGUEZ: 4824--

CHAIR JORDAN: --4824 MacArthur.

MS. LEE: 4824.

CHAIR JORDAN: Do the dogs spend the night at 4824 at any time?

MS. LEE: Not any time.

Sometimes my dog sometimes. Not any time. I live in Virginia.

CHAIR JORDAN: Okay. Okay.

MS. RODRIGUEZ: So your testimony is that your dogs do spend the night there sometimes?

CHAIR JORDAN: No--yes, just as long as it wasn't any time.

MS. RODRIGUEZ: All right, I'll move on. So Mr. Mitchell, you testified that the house is a substantial brick structure, and you testified that they keep the windows closed?

MR. MITCHELL: By code, they have to.

CHAIR JORDAN: Let's make sure you're on the record; speak into the

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microphone, please.

MR. MITCHELL: Yes, they keep the windows closed and the doors closed and that's part of the code, that you have to do that. The other thing being that there are a lot of dumpsters that shouldn't be in the alley--

CHAIR JORDAN: Let's just answer her question.

MR. MITCHELL: All right.

MS. RODRIGUEZ: Mr. Mitchell, those windows that are in that building are original 1930s windows; they haven't been updated, have they?

MR. MITCHELL: You know, I haven't looked at them; I'm not sure. I would say probably not, but remember those two back rooms are not used at all for boarding, so you have a whole room that's shut off from the outside with this foam that's between there and you.

CHAIR JORDAN: The question was have the windows been replaced--

MR. MITCHELL: Not to my

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knowledge.

CHAIR JORDAN: Okay.

MS. RODRIGUEZ: And Mr. Mitchell, have you done any--do you know the decibel level of the sound of the dogs in that building?

MR. MITCHELL: No. I believe Colin, the owner, is aware of that sort of thing, but I am not.

MS. RODRIGUEZ: Do you have any information or any knowledge on decibel levels of a single barking dog?

MR. MITCHELL: No, but we said we were willing to have some sound testing done if that's necessary, because they're intent upon making it right.

MS. RODRIGUEZ: And--well I have some questions for the Office of Planning, but Mr. Mitchell, you are--you were the applicant's agent for the dog grooming special exception application, weren't you?

MR. MITCHELL: Yes.

MS. RODRIGUEZ: And we had conversations subsequent to that application

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and to this application where you clearly indicated that there was a 16-foot distance between the dog boarding or dog grooming establishment and the alley and our residence; isn't that true?

MR. MITCHELL: The alley is 16 foot right-of-way.

MS. RODRIGUEZ: Okay, so there is a 16-foot distance between the applicant's property and our property, which is the R-1-B district; isn't that correct, sir?

MR. MITCHELL: Yes.

MS. RODRIGUEZ: Okay, and their property, which is in a C-2-A district and our property, which is in an R-1-B district are separated only by a 16-foot alley; isn't that true, sir?

MR. MITCHELL: Yes.

MS. RODRIGUEZ: And isn't it true, sir, that according to the District regulations, 11 DCMR 107.5, District boundary lines are intended to follow existing lot lines, and including the center of street alleys, which would then--the

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center lines of streets and alleys, which would show that the C-2-A zone and the R-1-B zone are indeed abutting zones?

MR. MITCHELL: we took that issue to the zoning administrator, and he said that they were--the 16 feet supplied the necessary separation.

MS. RODRIGUEZ: I don't believe you answered my question, sir.

MR. MITCHELL: I'm not going to answer that question, I just--

CHAIR JORDAN: Give me the question again. Give me your question one more time, please.

MS. RODRIGUEZ: According to DC Zoning Regulations 107.5, District boundary lines are divided, or are basically intended to follow existing lot lines, and including the center lines of streets and alleys. So that, the separation between C-2-A and R-1-B is down the center of that alley.

CHAIR JORDAN: And so the question was asked--she was asking basically your interpretation, which is a very germane

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issue because I--it's an issue that raised even by myself during--what the definition is, because 199 does not define what abutting is, and if you look at the cases, it's all over the place as to natural barriers, alleys, and et cetera, and I think that's one of the things that the Board's going to draw a line upon, to make a decision. We don't really have any precedents, even by decisions of this Board in regards to that. So her question was what, in your opinion, would that be abutting? That was her question to you.

MR. MITCHELL: I went through that early on with the grooming, and got a ruling back from the zoning office that it was not abutting, and then after our discussions at the ANC, I went back and talked to the Office of Planning and to the zoning administrator, and he once again said that was the right interpretation.

CHAIR JORDAN: Okay. Next question.

MS. RODRIGUEZ: And Mr. Mitchell,

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do you have a copy, or do you have anything
do verify that determination from the zoning
administrator?

MR. MITCHELL: Just my notes, and
the name of the person that I talked to
about it.

MS. RODRIGUEZ: And do you have a
copy or any documentation to show that
determination having been made during the
earlier application for the pet grooming
establishment?

MR. MITCHELL: I didn't go
through the file.

MS. RODRIGUEZ: Mr. Mitchell, is-
-with regard back to--you've reviewed the
file from the Office of Planning for the
grooming establishment application; is that
correct, sir?

MR. MITCHELL: Yes.

MS. RODRIGUEZ: And you've also
reviewed the file for the--or the memorandum
for the Office of Planning for the dog
boarding establishment that is currently
before the Board; isn't that true, sir?

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MR. MITCHELL: Yes.

MS. RODRIGUEZ: And isn't it true, sir, that there is an incongruence in the measurement of the lot lines in both applications? In the pet grooming establishment, the lines are demarcated by lot lines; however, in the dog grooming application establishment Office of Planning report, we're going back now and not considering lot lines, but going back to actual physical buildings. Isn't that true, sir?

MR. MITCHELL: I don't know, I think you're going to have to take those questions to the Office of Planning.

CHAIR JORDAN: Okay, so he's saying he doesn't know, and I think they're drawing more upon some legal arguments that he's not prepared or have the ability--he simply said he doesn't know. We get your point, but--any additional questions?

MS. RODRIGUEZ: Just one question for the party who's here in support. Madam, you live at, you testified at 4840 MacArthur

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Boulevard, and that is an apartment building?

MS. SIMONEAU: Yes.

MS. RODRIGUEZ: What apartment number is that, ma'am?

MS. SIMONEAU: It's 301.

MS. RODRIGUEZ: 301? And there are a number of apartments and buildings in between your building and the proposed dog grooming establishment at 4824; isn't that correct, ma'am?

MS. SIMONEAU: Yes.

MS. RODRIGUEZ: Thank you. I've concluded sir, thank you.

CHAIR JORDAN: Thank you. Well, does the Board have any additional questions they would like to ask the applicant? All right, then let's turn to the Office of Planning and hear the report.

MR. GOLDSTEIN: Good afternoon Mr. Chairman and members of the Board. My name is Paul Goldstein with the D.C. Office of Planning. As you saw in our report, we recommended approval of the application

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subject to conditions. The conditions included the applicant providing more testimony about their noise attenuation and their odor control, and also commitment to only use the front door facing MacArthur Boulevard for animals to enter and exit, and also, and I think you've heard some testimony about this, that the back rooms in the basement and second floor, which is where the boarding is planned to take place, that they not be used for animal use, and I believe that's what the applicant testified here to.

Regarding two issues that have been raised, I'd rather just directly address them. The issue of abutting was, I understand, what does abut mean. So I went to two places to try to understand it; the first, as the applicant also did, I went directly to the zoning administrator, asked him what his interpretation is of it. He said that this would not be considered abutting, it's considered confronting. He makes a distinction that the alley separates

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the properties, the residential properties from the commercial properties, and they are not considered abutting specifically for this provision.

I also went and talked to one of my colleagues who was instrumental in the authoring of the dog boarding regulation and asked him what his intent was. And his intent, according to him, was that an alley would separate uses from abutting. I'm not sure what else to offer you in that respect, but those are the two places I tried to get an answer to.

CHAIR JORDAN: That was after you looked at 199 you mean, right?

MR. GOLDSTEIN: I didn't look specifically at 199.

CHAIR JORDAN: Oh, okay.

MR. GOLDSTEIN: I looked at the regulation, and I contacted some of the authorities. I assume those authorities have looked at 199.

CHAIR JORDAN: Okay.

MR. GOLDSTEIN: The second thing

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is about the measurement of the property. I did it--to me it seemed that--just give a few different measurement ways. I mean there are different ways to mention it. One, the properties are separated by 16 feet, by a public alley; that's incontrovertible. That's true. I also gave the measurement from the back of their building to the nearest neighbor property lines. For the purpose of this case, animals are not allowed in the back yard, so in some ways it makes sense to say from the building to the back of their property, that's a distance. Another is to say from the back of the building to the back of the nearest building, so I just gave those measurements. There's not a magic to the way it's done; I used GIS mapping to help determine it, I looked at the plan, the plats that were submitted, and also the fact that R-1-B zones typically have 25-foot rear yards. I wasn't aware of any relief being given for these properties in zoning, so that's how I came up with some of the

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estimated distances.

CHAIR JORDAN: All right, any other questions for the Office of Planning by the Board? Did you take a look at the windows? Did you go out there?

MR. GOLDSTEIN: I did go out there, but I did not specifically look at the windows.

CHAIR JORDAN: Mr. May?

MEMBER MAY: On the abutting versus confronting question, do you actually have anything in writing from the ZA?

MR. GOLDSTEIN: I have an email.

MEMBER MAY: Okay, can you submit that for the record?

MR. GOLDSTEIN: I sure can.

MEMBER MAY: Okay, and is there-- I mean is there other recent past experience? I mean it's sort of--in some ways, it doesn't make sense to me. I mean certainly when I read the report initially, I wasn't--I couldn't understand why it would not be considered abutting, but the zoning administrator is in charge of making these

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sort of interpretations, so--and it should be based on the regulations that the Zoning Commission has written, so there should be clarity on something like this. So maybe it's clear in the ZA's mind, but--do you have that email with you by any chance?

MR. GOLDSTEIN: I have it on my phone.

MEMBER MAY: On your phone.

MR. GOLDSTEIN: I can pass my phone around if you'd like.

MEMBER MAY: No, but perhaps you could email it to someone on staff who could print it out for us? Can you email it to Mr. Varga perhaps? Is he available to print it out for us? Okay.

CHAIR JORDAN: It becomes a real question, something I also did research and did the digging into it, and if you look at the various other jurisdictions, depending on which jurisdiction, how that term is utilized, and it's not with any of our previous decisions and nor the D.C. Court of Appeals has decided it for us, but we'll get

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to it. We'll get to it. Any other questions for the Office of Planning? Does the applicant have questions for the Office of Planning?

MR. MITCHELL: No, just thank you for your support.

CHAIR JORDAN: Ms. Rodriguez, any questions for Office of Planning? I know you said you had two; I heard you before.

MS. RODRIGUEZ: And I'll try to keep those limited sir, thank you. Mr. Goldstein, were you the one who actually drafted the report that was submitted in this case for--to the Board of Zoning Adjustment? It does have your name on it.

MR. GOLDSTEIN: Yes.

MS. RODRIGUEZ: And you actually drafted it. Can I direct--do you have it in front of you?

MR. GOLDSTEIN: Yes, I do.

MS. RODRIGUEZ: Can I direct your attention to page 4, and if you go down to the middle of the page, when you're drafting the section that talks about Section 735; do

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you see that?

MR. GOLDSTEIN: Yes, I do.

MS. RODRIGUEZ: Then when you have the actual citation from the regulation, which is 735.2, the animal boarding you shall not abut a residence zone, I take it that the next line is your response to that?

MR. GOLDSTEIN: That's correct.

MS. RODRIGUEZ: That's correct? And so your response is "The property does not abut a residence zone." And then the next sentence is "The nearby R-1-B district is across an alley," is that what you drafted, sir?

MR. GOLDSTEIN: Yes, that's what it says.

MS. RODRIGUEZ: And would you say then, sir, that you consider the R-1-B district, which is half way down the alley, to be nearby?

MR. GOLDSTEIN: I'm sorry, ask that again please.

MS. RODRIGUEZ: So when you're--

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can you explain what you mean by the word nearby?

MR. GOLDSTEIN: Sure. In this context, nearby is across the alley.

MS. RODRIGUEZ: Okay, but that word can also mean nearby like Maryland is nearby to D.C., isn't that correct, sir?

MR. GOLDSTEIN: I'm not sure. In this context, it meant across the alley.

MS. RODRIGUEZ: Okay, but it is an imprecise word, is it not sir?

MR. GOLDSTEIN: Only imprecise in the fact that you're questioning it.

MS. RODRIGUEZ: I think that is a yes, but anyway--

CHAIR JORDAN: But we understand, you can move on.

MS. RODRIGUEZ: The other question, Mr. Goldstein is you determined that the applicants for the dog boarding establishment use the alley to remove the dog waste from the facility, isn't that correct sir?

MR. GOLDSTEIN: I'm sorry, did

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you ask if I proposed that?

MS. RODRIGUEZ: No, no; that's something that their proposal--

MR. GOLDSTEIN: Okay.

MS. RODRIGUEZ: --includes, and you've written in your report that the alley is used to remove dog waste from the rear of the property?

MR. GOLDSTEIN: I think my report only said that I wanted to confirm that the waste pick up would occur at least weekly. It was my understanding though that it would be picked up from the alley, that's correct.

MS. RODRIGUEZ: So in your understanding then, they are using the rear alley for their dog business establishment?

MR. GOLDSTEIN: That is my understanding.

MS. RODRIGUEZ: One other question, sir. So you made a recommendation that the applicant should not use the second floor of the facility to board dogs?

MR. GOLDSTEIN: I don't think that's quite accurate; the back rooms of the

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second floor and the basement should not be used for boarding dogs.

MS. RODRIGUEZ: Can you point to me specifically where it is in your report that you actually have that precise language?

MR. GOLDSTEIN: Sure. I think I have it in two places; first is on page 1 under OP's conditions. Number 2, the second half of number 2 said that "the rear facing rooms in the building space on the second floor would not be occupied by animals." And on page 5, it says that 735.5, the second sentence, "additionally, OP recommends that the rear facing rooms in the basement and second floor would not be occupied by animals in order to minimize any sound impacts on neighbors."

MS. RODRIGUEZ: So what is your understanding of where they actually will be boarding the dogs then?

MR. GOLDSTEIN: My understanding would be that they would be in the non-rear facing rooms, which are the front facing

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rooms.

MS. RODRIGUEZ: And that would be only the two rooms facing MacArthur Boulevard?

MR. GOLDSTEIN: Based on the site plans I believe, yes, there's only two rooms, so it would be the ones facing MacArthur Boulevard.

MS. RODRIGUEZ: And they should not be using the basement?

MR. GOLDSTEIN: They should not be using the rear facing room of the basement.

MS. RODRIGUEZ: Okay. Thank you.

CHAIR JORDAN: Is there any additional questions, Board or anybody else for Planning? Okay. Is there anyone here from the Department of Transportation who is on this particular matter? Department of Transportation? We do have a letter of no objection from the Department of Transportation. Is there a representative here from ANC 3D who is authorized to speak on this case? Yes, please come forward.

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Take center seat and make sure your microphone is on, and identify yourself for us, please.

MR. THOMAS: Good evening.

CHAIR JORDAN: Make sure--is it on?

MR. THOMAS: It's on. It's on.

CHAIR JORDAN: There you go.

MR. THOMAS: All right. I'm William Philip Thomas, ANC 3D05 is in my district.

CHAIR JORDAN: Okay.

MR. THOMAS: And to read the letter that we wrote you is "In the regular scheduled public notice meeting on December 4 held at the American University School of International Service, with a quorum present at all times, ANC 3D considered the application from Diva Dogs, BZA 18669, for a special exception to board dogs at its current dog grooming establishment at 4824 MacArthur Boulevard, N.W. The property is located in a C-2-A zone. The Commission voted 6-3-1 to deny the application for a

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boarding establishment at this location."

"Background and ANC 3D action; on its June 5, 2013 meeting, ANC 3D approved the application for BZA 18572 of Diva Dogs for dog grooming business operated by tenants John C. Kim and April Lee at this location. The BZA approved the application on June 28, 2013. In September 2013, Diva Dogs filed an additional application with BZA for a special exception to add dog boarding to their dog grooming business. Diva Dogs also appeared before the ANC on its November 6, 2013 meeting. Several residents which are here today also live behind the 4824 MacArthur Boulevard building, had objected to the boarding establishment at this location. They maintain that the addition of dog boarding would create an unregulated dog kennel adjacent with the properties that would create the condition for the neighborhood of animal noise, odor and waste."

CHAIR JORDAN: Okay.

MR. THOMAS: "Diva Dogs also

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stated that they have addressed these items and submitted a petition in support from neighbors. Diva Dogs offered not to walk any of their boarding animals on Reservoir Road near the homes of the opposing neighbors. Diva Dogs also stated that they would be willing to limit the number of boarding dogs to six. The opposing neighbors stated that they did not want any dogs boarding at this location. The Office of Planning recommended approval of the application subject to condition one, that the applicant provide additional information in regards to noise--"

CHAIR JORDAN: If you don't want to, you don't have to read the letter, you can just--

MR. THOMAS: That's perfect. All right, well we just took a vote 6-3-1 to deny the application.

CHAIR JORDAN: All right, is there any question for the Board? Board, any questions for Mr. Thomas? Mr. Thomas, we appreciate you coming. Does the

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applicant have questions for Mr. Thomas?

MR. MITCHELL: No, I think we've gone through it all. We're fine.

CHAIR JORDAN: Ms. Rodriguez?

MS. RODRIGUEZ: No I do not, thank you sir.

CHAIR JORDAN: Well we thank you for your input on this matter. Is there anyone wishing to testify in support of this application? Anyone wishing to testify in support?

MS. SIMONEAU: Well I would just like to say that--

CHAIR JORDAN: Well you need to identify yourself again as you give your statement.

MS. SIMONEAU: Michelle Simoneau at 4840 MacArthur Boulevard. I moved into the neighborhood in September, and I must say that it's easy to recognize the need for that kind of service in the area, considering the number of dog owners in the area. My dog is 12 years old and I would certainly personally benefit from the

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service, because my dog needs to be boarded at that age when I leave for work. So this property, when I compare it to all of the other services I've used, is certainly beyond anything I've seen in terms of the cleanliness and the service that I had the privilege to use and to benefit from.

CHAIR JORDAN: Okay. Any questions, Board for the witness? Does the applicant have any questions of the witness? Do you have any questions, Ms. Rodriguez? Do you have any questions?

MS. RODRIGUEZ: No, Mr. Chairman.

CHAIR JORDAN: Okay. Is there anyone else wishing to speak in support of the application? All right, then let's turn now to the party status case, and we use-- the applicant only used four and a half minutes, but we'll go ahead and give you a full five.

MS. RODRIGUEZ: Thank you, Mr. Chairman and members of the Board. We are the owners and occupants, along with our two school-age children, Mary Rodriguez and Alan

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Hernandez. We recently purchased our home at 4823 Reservoir Road. We moved to the Palisades area to be closer to our children's school, and because we liked the area; it was very quiet, peaceful, very nice, and we were very happy since we moved in. In November, we did a number of renovations to the house, and were out during the summer, and have moved recently back in after Thanksgiving. We've expended a substantial amount of money into the house and into the renovations; we're looking forward to continuing there for some time.

And our concern is when we saw the application for the dog grooming, we did not have any objection to it, we thought it was a good thing to have a business in the adjoining neighborhood, in the adjoining block, but we did become very concerned when we got notice that there was a proposal to board dogs, primarily because the property is only 16 feet from our home. And we are concerned that having a dog boarding establishment--a kennel, essentially--will

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really affect the enjoyment and quiet, the quiet and peaceful enjoyment of our home, not just within the four walls of our home, but also on our deck and our ability to enjoy the outside. We have some photographs we'd like to offer to the Board that we took to show the distance and how close the building is from our home. I don't know what the procedure is here, Mr. Chairman, to introduce the photographs. I have copies--

CHAIR JORDAN: Yes, would you give them to the secretary, please? And then make sure that the applicant has copies and--do you have enough copies for everyone? Part of the problem--

MS. RODRIGUEZ: They're not marked, is that--

CHAIR JORDAN: Yes, part of the problem with this is that we, you know, it's one of the recommendations I made in ZRR when we have people apply for party status, they also should get their evidence in so they can get properly marked and things don't become surprise to the applicants when

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they just get these. But I'll accept this in the record, but let's mark this as an exhibit. What exhibit number are we on?

MR. VARGA: One moment, let me--
This would be Exhibit 35.

CHAIR JORDAN: 35?

MR. VARGAS: Excuse me, 36. That email will be 35.

CHAIR JORDAN: So let's make this Exhibit 36.

MR. VARGAS: That's right.

MS. RODRIGUEZ: And if I may assist the Board, I would submit if we could have Exhibit 36A for the photograph that's depicting the vehicle and the fence; Exhibit 36B for the photograph that shows the rear of properties, and then Exhibit 36C for the photograph that shows the alley.

CHAIR JORDAN: Got it, okay.
Then let's make sure we have the clock going and let's proceed.

MS. RODRIGUEZ: And as I mentioned earlier Mr. Chairman, is these photographs were taken from the rear of our

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home just to demonstrate the proximity of the location of the proposed dog kennel to our home. Exhibit 36A is taken from the fence of our home, and it shows how close the rear of the Dog Diva's establishment is, which basically if we're having dog waste removal taking place from there, it is going to be this close to our home. And if we're on the deck or in the backyard, if our children are playing in the back yard, they will be affected by that.

The Exhibit 36B, which is the rear of the properties, this was taken from the back bedroom of our children, to show also how close the property is to our home. And then Exhibit 36C shows how narrow this alley is. Only one car can go through at one time, and it is a 16-foot alley which is basically less than the distance of this room. So I mean our concerns are, as I've said before, the proximity, the noise, the waste, the odor, and the fact is that when we bought this property, and even when we did not object to the dog grooming

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establishment, we did not sign up to have a kennel 16 feet behind our property.

Our other concern is the fact that this Board has recognized a number to times, going back to BZA Appeal number 17096, which is the Wagtime One case that led to the change in the zoning regulations, that dog boarding is not regulated by any agency in the District of Columbia. So it's basically an unregulated kennel, there's no one to come in to do inspections, no one to come in to check on the condition of the-- where the dogs are being kept, whether the dogs are vaccinated, how many dogs they have or anything like that. And so that is one of the areas why we're deeply concerned about having something like this. These are very nice people we understand, but we don't want to have to be in the position of having to police how many dogs they have so close to our home and whether they're actually complying with all of the conditions that this Board would set.

CHAIR JORDAN: Let me ask, Ms.

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Rodriguez, do you know what--on the picture of 36A, what's to the left and to the right of the subject property? Do you know what that is?

MS. RODRIGUEZ: At 36A, to the left is another business that's owned by the applicant here, which is I believe a nail salon.

CHAIR JORDAN: Okay.

MS. RODRIGUEZ: And at 36B is a restaurant; I believe it's Makoto, the Japanese restaurant; I'm not positive.

CHAIR JORDAN: Okay, thank you. Board, any questions? Yes, Mr. Hinkle.

MEMBER HINKLE: Yes, just a quick question. You live directly across from the subject property from the alley; I was just wondering where Mr. Ohm, where your residence is.

MR. OHM: I'm about--

CHAIR JORDAN: On the mic.

MR. OHM: I'm sorry. I'm about 180 feet from the building and directly down Reservoir from Ms. Rodriguez.

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MEMBER HINKLE: Okay, thank you.

MR. OHM: 4843 Reservoir.

MEMBER HINKLE: Great, thank you.

CHAIR JORDAN: Any additional questions? Do you, Mr. May?

MEMBER MAY: Yes. So have you had any circumstances where the existing operation has had a direct impact? I mean, do you hear dogs barking now?

MS. RODRIGUEZ: We heard dogs barking earlier; I'm not home--

MEMBER MAY: What do you mean earlier?

MS. RODRIGUEZ: Earlier when we first received the application in October.

MEMBER MAY: Uh huh.

MS. RODRIGUEZ: I am not home during the day, and I'm at work and my children are at school. At night, we've heard some barking, but at this point I couldn't tell you that it's exactly coming from there or not, and I know that they have taken measures since the application, since they noticed that we were objecting to it,

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that they were previously boarding dogs. They're not boarding them now is my understanding, but I made a phone call shortly after I received the notice of the proposal, and spoke with an employee named Han who told me that they were boarding. And there was also information on a website, Yelp, where people have said they've been keeping their dogs there. So that gave us a greater concern, especially since at the first ANC meeting, Mr. Lee said that he wanted to board as many dogs as possible. Since then, we've heard a number of different amounts of dogs that'll be boarded there.

MEMBER MAY: Okay, so you're alleging that they were boarding dogs there at some point, and then they stopped, and also you made the point that the owner sometimes has her dogs there, but maybe not frequently. But it doesn't sound like there's been a tremendous impact from that based on what you're saying.

MS. RODRIGUEZ: Well we have--we

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weren't in the home during most of the summer, so we didn't use our deck, and we didn't move back in until November. So we haven't been outside in our deck using it on a regular basis because of the weather. We fully intend to do that and fully intend to change the landscaping and things like that. So as far as the impact right now, is the employees have been walking their dogs on our street, and the dogs have been using obviously our street and our gardens as part of their area to remove their waste.

MEMBER MAY: You mean the gardens in the public space of the street; is that what you're talking about?

MS. RODRIGUEZ: No, we have actually in the--

MEMBER MAY: What do you mean by your garden? Are they going onto your lawn or your property and using your gardens to go to the bathroom?

MS. RODRIGUEZ: In the 4800 block of Reservoir Road, there is a sidewalk, and then there is a section right next to the

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sidewalk where each resident has the opportunity to landscape and put a little garden area in between the curb and the sidewalk. That area is--it's a grassy area, and some people have just grass, some people have trees, shrubs, things like that. We must walk from that area, from where we park our cars, which is right on the curb, through the grassy area, across the sidewalk to go up to our homes. So that grassy is actually a prime--

MEMBER MAY: Between the curb and the sidewalk?

MS. RODRIGUEZ: Yes, but it's approximately four to five feet wide.

MEMBER MAY: Right. Okay, so it's commonly referred to as a tree box or something like that, right?

MS. RODRIGUEZ: Something like that.

MEMBER MAY: All right, and that's a common circumstance; many neighborhoods have that, and many neighborhoods have dogs, and they use that

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area, and I assume that if you ever saw--I mean have you ever seen dogs that were under the care of this operation actually using the tree box of the sidewalk or the curb, and not picking up?

MS. RODRIGUEZ: I have seen an employee from Diva Dogs walking a dog and using that area, that is the grassy area in front of our homes--I can't remember if it was my home or the neighbor's home--to urinate and to defecate. Obviously, they picked up the--

MEMBER MAY: Well that's what I was asking, if they're not--

MS. RODRIGUEZ: Yes, they picked it up; obviously the urine can't be picked up, but it is still something that we will step on as we walk through.

MEMBER MAY: I understand that, but I mean this is a circumstance that occurs with --in many neighborhoods with many dogs, and--

MS. RODRIGUEZ: Right, and that's true, and I think Mr. Mitchell's point that

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dogs, there are a lot of dogs in that area, that's true. But what our concern is that the introduction of a large number of dogs, or even an unspecified number of dogs, up until just maybe last week, we hear that they were actually willing to--

MEMBER MAY: Well the only thing that's on the table for us is six, so it doesn't make any sense to be talking about large numbers of dogs. We're talking about six dogs.

MS. RODRIGUEZ: Well that's what we hear, and we also understand that there's no one here who can enforce that it'll be six dogs.

MEMBER MAY: Well no, that's not true. I mean, it becomes a condition of the order that they're limited to six dogs, then it could be something that would be up to the zoning administrator to enforce. I can't tell you that they'd be very effective at it, but it does fall under their arena if it's the subject of an order that we make.

MS. RODRIGUEZ: I understand, but

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that would mean then that we would have an introduction of additional dogs in our area.

MEMBER MAY: Right. Okay.

Thanks.

CHAIR JORDAN: Okay, I lost turn. Did I say--did the applicant have the opportunity to cross examine? Do you have any cross examination questions, Mr. Mitchell?

MR. MITCHELL: No, I just wondered how you tell the difference between the barking dog of the neighbor and Diva Dogs, whose dogs are all--

CHAIR JORDAN: I think that was not her testimony; in fact, she said she heard the dogs barking, but she cannot say that they were Diva Dogs.

MR. MITCHELL: That's good with me.

CHAIR JORDAN: Okay. Any additional questions?

MR. MITCHELL: No I didn't get all the photographs; this one that I got is only of the rear of the subject property.

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CHAIR JORDAN: Where are you going?

MS. ROSE: I'm sorry, I was going to get--

CHAIR JORDAN: Get what? No, just hold tight. Did you have an additional cross examination question?

MR. MITCHELL: No sir. Thank you.

CHAIR JORDAN: All right. Anyone else wish to speak in opposition? Mr. Ohm, you want to speak in opposition? You have three minutes.

MR. OHM: I would just like to thank you for the opportunity, Mr. Chairman and the committee, to speak in opposition to the dog kennel which would be within 200 feet of my home. We're new residents to the District, we're very excited about that. We're owner/occupants in what is a very nice area. We are concerned that with so few regulations in the District on dog kennels, that this would be carried into perpetuity and affect our home in terms of dog waste,

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excessive noise.

We have a 10-year-old; particularly at night we have heard dogs barking there and from that area. We're mindful that the applicant has kenneled dogs overnight there already. The fact that we have our main protection is the current zoning laws that prohibit this abutting a residential neighborhood like this and that again, we would like to just voice our opposition to this because we believe we'll suffer loss over it. And simply, thank you very much.

CHAIR JORDAN: Board, any questions? The applicant, any questions?

MR. MITCHELL: No, sir.

CHAIR JORDAN: Ms. Rodriguez, any questions of Mr. Ohm?

MS. RODRIGUEZ: No, sir.

CHAIR JORDAN: Okay. Any other person wishing to testify in opposition? Any other opposition? Then we will turn back--

MR. HERNANDEZ: I would like to

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Speak, Mr. Chairman.

CHAIR JORDAN: All right, you just got under the wire. Okay.

MR. HERNANDEZ: Okay thank you. Thank you very much. There are--

CHAIR JORDAN: Identify yourself, please?

MR. HERNANDEZ: My name is Alan Hernandez, 4823 Reservoir Road, N.W. There are a number of points that we discussed so far--

CHAIR JORDAN: Let's make sure we're on the clock. The clock needs to stay with me. Three minutes on the clock for the testimony.

MR. HERNANDEZ: There are a number of points that have been--

CHAIR JORDAN: Give me one second, please. Okay, thank you.

MR. HERNANDEZ: Okay. A number of points have been discussed, I just want to add some more texture and context for some of these questions if I may. One of which, Chairman, you asked the fair

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question, in one case some years ago about what does abutting mean, and I think that one of the--an expert, to the extent that it's an expert, on page one of the book, the so-called book --

CHAIR JORDAN: I'm sorry, you're referring to what?

MR. HERNANDEZ: An expert by the name of Steven Sher of the law firm of Holland and Knight was asked that question, and he provided the following response--

CHAIR JORDAN: Don't duck down now--

MR. HERNANDEZ: I believe he's actually in the room--

CHAIR JORDAN: No, go ahead. You want to pull it back so you're not that close to the microphone.

MR. HERNANDEZ: All right, can you hear me now?

CHAIR JORDAN: Yes.

MR. HERNANDEZ: All right, very good. So the case was the Wagtime case, in which you posed that very same question,

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Chairman, the issue of what is abutting. And his response was the following: "My understanding of the use of the term abutting would mean immediately contiguous, touching in the neighborhood, or within 200 feet, obviously." He goes on to say "it doesn't necessarily mean touching, but within proximity of the four corners of the property." It's clear as a matter of law, we contend, that the zone where the boarding establishment is expected to be--is proposed, abuts our property. But that is an issue of law.

But beyond that, we'd also, as we said before, the issue--16 feet is a very short distance. It is, if I may say so, perhaps the distance between me and you in the room. It is of such short distance that the sound of a barking dog can travel, and when you have windows that are not--that are the original windows from the 1930s in the building, and when you allow, as the Office of Planning proposes, or as indicated, that part of the second floor would be used for

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part of the dog business, and in addition the fact that the applicant has said that they intend to have cageless boarding, it's very difficult with a dog roaming, whether the dog is in front part of the building on MacArthur, or the back part of the building, in the alley abutting our lot.

And so it would be very difficult for us certainly to police at any given day, and I even contend that it would be very difficult for the applicant herself and her family to police that. There's also the issue that all you really need, going to the issue of the limit, all you really need is one dog barking at night, because that dog is crying because it misses its owner, to wake up someone who lives 16 feet away and behind a window, as both the children have their bedrooms in the back. It faces, as you can see from the picture, it faces and is very close to their building. The idea of having them woken up with only one dog barking in the middle of the night because that dog misses its owner would really be at

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a level of frustration and difficulty. And our children are 16 years old and 11; I'd hate to have them be woken up by barking dogs, or even a barking dog.

There are a couple of points I also want to raise. In fact, as we've said, the alley's very small; we both use the alley. We use the alley as part of residential use, and they will be using it as well. We have stated already that we don't have an objection to their dog grooming establishment. What we do object, however, is the keeping of dogs, the boarding of dogs for an extended period of time, and particularly overnight, that would keep us possibly awake at night. I'll also say that there are many things in the report from the Office of Planning in terms of conditions that the applicant has not spoken to. They have recited some of the points that are in the memo, but as the Office of Planning has asked for further information about certain things, information has not yet been provided.

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For example, the Office of Planning asked for clarification of how the existing system can take on the additional use with dog boarding; information is not provided to that fact. A reference to ozone system was made by Mr. Mitchell in his testimony, and that's the same reference that was in the Office of Planning memo. More information about what that means, can it take on even a few more dogs much less perhaps more dogs, has not been provided.

And so in sum, we contend that a number of elements of the zoning regulations, which as we all know are intended to protect residents, have not been met, and moreover, many of the conditions that the Office of Planning has indicated in its memo have not been also--information has not been provided. And lastly, I would say that any conditions to the use of the facility would be very difficult to police, and the idea of having to go and complain to the zoning administrator every time we hear a barking dog at 3:00 in the morning is not

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something that we relish. Thank you.

CHAIR JORDAN: Thank you. Any questions from the Board? Any questions from the applicant?

MR. MITCHELL: No, sir.

CHAIR JORDAN: Okay, Ms. Rodriguez, do you have any questions?

MS. RODRIGUEZ: No, Mr. Chair.

CHAIR JORDAN: Yes, I would like to see you cross examine him, but--

MR. MITCHELL: They do that at home.

CHAIR JORDAN: I appreciate that. Is there anyone else wishing to speak in opposition? Any other opposition? Then we will turn back to the applicant for a three minute rebuttal. Three minute rebuttal. Go ahead give me one second. Three minute on the rebuttal. Any rebuttal or--

MR. MITCHELL: Just briefly.

CHAIR JORDAN: --or are you going to close or rebuttal? Whichever you want to do. Go ahead.

MR. MITCHELL: Okay, I just want

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to say that from everything I've been able to work with, that April and her family, they've been forthright and stand up behind what they way, and I'm just hoping this continues and that they can have a successful operation there.

CHAIR JORDAN: Okay.

MR. MITCHELL: Thank you.

CHAIR JORDAN: Board, any additional questions?

MEMBER MAY: Yes.

CHAIR JORDAN: Yes, Mr. May?

MEMBER MAY: Yes, I just want to clarify one thing. Looking back at the plans, I wanted to understand where the dogs would be at any given time, and the thing that's unclear to me is that on this--well, it's clear that the area you're identifying for boarding is the front room of the "basement;" it's really a cellar because it's completely below grade--

MR. MITCHELL: Right.

MEMBER MAY: --but it's--that's where the boarding will occur. The second

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floor is indicated as pick up and waiting, and there are two rooms up there; one is labeled pick up and waiting, and day care. So there will be dogs there during the day before or after appointments or things like that? Is that what's happening there?

MR. MITCHELL: That's basically what's going to happen.

MEMBER MAY: Right.

MR. MITCHELL: And also, what happens in the second floor, you have a back room and a front room basically.

MEMBER MAY: Right.

MR. MITCHELL: The back room is for office purposes, so anything that happens in the way of boarding would be in the front. The intent would be that the boarding occurs in the basement in that front room, not in the back; the back is mechanical. And so that it depends, you never know what size and shape the dogs are going to come in, so if they need to be separated for any reason, why then they would go to that second floor. But the

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first floor is all grooming.

MEMBER MAY: Got it. Okay, I just wanted to clarify what's going to happen on that second floor, because it implies that there could be dogs there for a few hours.

MR. MITCHELL: In the front, just in the front.

MEMBER MAY: Right. Right, but nonetheless on the second floor, right? Okay. That was my question.

CHAIR JORDAN: Okay. We'll close the record, except I would like to leave the record open and move this for a decision on a different date. I would like to have a sound study produced by the applicant, and certainly the opposition can provide one themselves; I'd want to know what the sound impact. Just would like to see some pictures of the window and know about the acoustical level of the windows that are there on the property. Does the Board need anything else regarding this? Yes, no? And so let's put this for decision; what are we

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looking 30 days out? Let's back into it.
So to do a sound study, how long do you
think it will take?

MR. MITCHELL: Well we're getting
stuck with holidays--

CHAIR JORDAN: Okay.

MR. MITCHELL: --people being off
and--

CHAIR JORDAN: So let's look for
this sometime in February or March.

MS. ROSE: Okay. We could do
February 25th, and the submission would be
due February 11th, with a response on the 18th
if you need responses.

CHAIR JORDAN: That would be
fine. Okay.

MR. MITCHELL: Okay, so you have
the submission by the 11th?

MS. ROSE: Yes, February 11th
would be the submission, and February 18th
would be the response, and the Board would
consider a decision on February 25th at 9:30
a.m.

MR. MITCHELL: And what is the

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nature of the response as far as--

CHAIR JORDAN: The response would be from the party in opposition to respond or to submit their sound studies to look at.

MR. MITCHELL: Okay.

CHAIR JORDAN: Yes.

MS. ROSE: Each party should serve the other with the documents.

CHAIR JORDAN: With their sound studies.

MR. MITCHELL: Share the documents, yes.

CHAIR JORDAN: Okay. Okay, so that's what we'll do, and so the decision will be on that date as indicated, with the parties to provide the information requested. All right, so then thank you. We will conclude this particular hearing, keep the record open for just those documents, and then we'll put it on for decision, was it February--

MS. ROSE: 25th.

CHAIR JORDAN: 25th, okay. Thank you, we appreciate your time and effort

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coming.

(Whereupon, the proceedings in the above-entitled matter went off the record at 4:17 p.m. and resumed at 4:26 p.m.)

CHAIR JORDAN: Okay, let's go back on the record. It's my understanding that 18638, we need to move that case, and so we'll move that case; it will be continued to January 7, 2014, beginning on that--well you know, we have an ongoing rolling docket starting at 9:30, so we're moving 18638 and I think that's with the consent of the applicant to do so. So we'll move that to January 7, 2014. All right, so now let's move further into our docket. Our next case up, please?

MS. ROSE: Do you want 675, 18675?

CHAIR JORDAN: Yes, that's our next one, right?

MS. ROSE: Yes. Application number 18675 of David and Cathy Brooker, pursuant to 11 DCMR § 3103.2, for variances

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from the floor area ratio requirements under subsection 402.4, the lot occupancy requirements under section 403, the rear yard requirements under section 404, the closed court requirements under section 406, and the nonconforming structure requirements under subsection 2001.3, to renovate and make additions to a proposed one-family dwelling and three unit apartment building in the DC/R-5-B District at premises 1617 and 1619 19th Street, N.W., Square 134, Lots 18 and 19.

CHAIR JORDAN: It's been one of those days, Mr. Collins. Would you again identify yourself for the record?

MR. COLLINS: Certainly. My name is Christopher Collins with the law firm of Holland and Knight, and I've been requested to assist the agent in this case, Mr. Dennis Lee, in the presentation.

CHAIR JORDAN: Okay. Let's finish identification and let me find out what this is.

MR. LEE: Okay, my name is Dennis

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Lee, and I'm representing the Brookers.

MS. SCHLABAUGH: Meghan Schlabaugh, also representing the Brookers.

CHAIR JORDAN: Mr. Hassell, you are actually going to be speaking in support, so we can get you--just identify yourself now. Go ahead.

MR. HASSELL: Thank you Mr. Chair. My name is John Hassell, I'm the property next door to the property in question.

CHAIR JORDAN: Okay.

MR. BROOKER: Good afternoon, my name is David Brooker, I am the owner along with my wife of 1617 and 1619 19th Street.

MS. BROOKER: Cathy Brooker, I'm here with my husband David, we're the owners of 1617 and 1619 19th Street.

CHAIR JORDAN: Now we just were handed something; what is this? Is this--

MR. LEE: I believe that that is an updated form where there were two numbers that were inappropriately put in there.

CHAIR JORDAN: Okay, so the same

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relief is being requested?

MR. LEE: Yes.

CHAIR JORDAN: There's no change; there's just that you had some--

MR. LEE: It's actually correct in the statement; this exhibit just had a typo in it.

CHAIR JORDAN: Okay. All right, this is a matter as you know, Office of Planning--are you still in opposition? Is Planning still in opposition or are you now--
-

MR. COCHRAN: Mr. Chair, we cannot recommend approval.

CHAIR JORDAN: Got it, okay. Even in light of the changed plans, correct?

MR. COCHRAN: That's correct.

CHAIR JORDAN: Okay. All right. Great, so let's go ahead and proceed, please.

MR. COLLINS: Thank you, Mr. Chair. This is a case where as was said earlier today, zoning is not a popularity contest, but by the same token, it's

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important to note that this application has the support of the community. The Advisory Neighborhood Commission, the Dupont Circle Conservancy and the neighbors; also the plan has been supported by the Historic Preservation Review Board and the L'Enfant Trust. Several of the neighbors are here to speak in support of the application, and we are unaware of any opposition.

In a nutshell, unlike the majority of the neighboring properties along this block of 19th Street, the two-story carriage houses behind these two properties were removed from the property some time ago. It is clear from the Historic Preservation report in support of the project that two-story carriage houses are a character-defining feature of this alley. These two-story carriage houses cannot be put back on the property without this variance relief that we're requesting today, and at this point, Mr. Lee can go through in more detail the presentation.

MR. LEE: Great, thank you. My

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name is Dennis Lee, I'm the president of Capital Design Group, Incorporated; we're a Washington D.C. based business and we've been working here in the District for over 15 years. We specialize in this exact type of project, ground-up new construction or renovation. This is our second project with the Brookers, so we're very familiar with them and what they're trying to build here. The first step that we took when we started getting into this project was to go to the community outreach, and I think that was one of our strongest sets. We started--well actually if you don't mind, I'll back up and go to the description--

CHAIR JORDAN: Let me try to help you out; why don't you get to meeting the provisions of the test?

MR. LEE: Just straight over? Okay. So with the provisions of the test, with the exceptional situation, we strongly believe that that situation is created by the change in the zoning laws in 1958, which then disallowed the carriage houses to be

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reconstructed. The carriage houses existed; they were back, and they were there, and they disappeared sometime between 1917-1920, so they were a vital part of that property. When they were torn down, which was prior to the 1958, whoever tore them down I'm sure didn't anticipate that they couldn't put them back. So we think that that's the exceptional situation with this property.

Now with the practical difficulties, because of that, there's several things that arise. The first detriment would be in order to adhere to the exact letter of the zoning, and we wanted to put the garages by the carriage houses back in place, that would leave us no choice but to have to modify the main homes and reduce the property in the main houses. And we've explored that in a couple of different scenarios, which we'll get to in actual detail and square footage, but what that does is it essentially renders them impractical to use, they'd have to take so

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much off of there.

In 1619, they would take out the kitchen, they would knock out the living room down to a 10x10 space; you'd have a very small dining nook, and it takes out a bedroom on the second floor, it takes out a bedroom on the third floor. So it really creates a practical difficulty with that, and also an economic hardship. With 1617, that is a rental property; there's three rental units in that building, and right now there's a one bedroom on the first floor, two two-bedrooms on the second floor. If we had to take back the square footage on the top of those in order to accommodate the garage, then those would all end up being efficiency apartments, which clearly that's an economic hardship there.

Another practical difficulty with that scenario is that it is a historic property. So while in one hand we're restoring back the historic integrity by putting the garages back, which we've had great support from HPRB, they've actually

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encouraged us to push through with this, then having to take that substantial amount of space off the houses, that affects the historic nature of it there. So we're taking on, putting another on. I think one of the--the impetus for this whole endeavor comes from the Brookers' making a decision a few years ago that they wanted to age in place. They've lived here in the city for 12 years, they've lived in this place for five, six years. They've been sort of playing back and forth with whether they would be able to stay here or not, and through that course they evaluated well yes, they want to age in place. They made a commitment, but in order to do that, they need the carriage houses back.

This property being so close to DuPont Circle, it's 19th Street right there at Corcoran, it's right off the Metro there, it's a very active area. They have a lot of transients coming through the alley, they've had their cars vandalized, they've had bikes stolen, a lot of different things, so

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they've determined that the security of a closed garage is very important, and also for personal safety as they age. I think they'll be less likely to be able to wrestle a robber, but--so the safety is a big issue, and also for their tenants next door. Because right now, it's open to the back of their home.

Another large issue is the storage, particularly for the rental units, because the units are already very small, so above the carriage house, the second floor of this one, they would accommodate storage for them. Another detrimental effect is that they really don't have any private outdoor space. The front yard of these properties are public space, which they maintain; but in the back, everything is hard scape right now, it's just a garage and a landing platform. So by putting these garages, they'll be able to create a garden in between the two. And along those same lines, we get to some things that we've worked on, some additional benefits. One is

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a green roof, we're going to put a green roof on top of the carriage houses, which will help with--get rid of some of the impervious surface because actually, I would say 98% of the two of these combined is concrete. There's a little bit of landscape in the side yard of 1617, but it's almost all concrete. So by putting the garden in the center, that will have a mix of hard scape and landscape, but then the top will be a green roof.

We also have an issue with excessive cost if we are required to cut back the back of the house. As is right now, if we were just able to construct the carriage houses, that cost would be approximately \$236 per square foot, which is typical for D.C. right now, so that would be under \$300,000. If you were to take the cost of having to cut back the building and add that into the construction costs of the carriage house, you're up in almost \$900 per square foot. So that's certainly a detriment.

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So then on the third test, where it talks about no substantial detriment to the community, we've gone through and we've charted on page--in the packet--page 37, Exhibit F, we did an overlay of the immediate area and looked at the sizes of the houses and the lots, and we took 50 of the properties there and estimated the size of the lot coverage that they're using and found that 40 of those 50 are nonconforming above 60%. Of that 40, we have 18 of those that are above 90%. So we're not proposing anything that's out of context for what's in that area. On this same block here, at one point all of these town homes had carriage houses, and we determined that from base maps that HPRB was able to help us get a hold of. So it looks like the three on the end were taken down at one point, but everything south of that is built directly onto the alley. I think there's some nice photos in the package that show you that. So we're really just putting back exactly what was there. We're putting the same

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context of the finishes, the windows, so there's no historic affect, no architectural affect.

I also believe that there's been several other cases that I think Mr. Collins will speak to that the Board of Zoning has approved for very similar reasons that we proposed here. I think also the visibility of this project from the front of 19th Street, what we're proposing, you don't see it at all. From the Corcoran side, if you look at your photographs, the view from Corcoran is pretty bad. The texture of the additions on the back of the alley now, the window changes, there's a solarium, there's stucco additions. I think that this is going to be a pretty big improvement to that vista from Corcoran Street. So I think that's the tests. Would you like me to run through the individual variances that we're looking for?

CHAIR JORDAN: If you made any changes, yes, but I don't--

MR. LEE: No, there's no changes.

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CHAIR JORDAN: All right. Are you finished? Do you have any other evidence that you want--

MR. LEE: I could talk for a while longer, but--

CHAIR JORDAN: So what's--where the carriage houses are, what's going on with them now?

MR. LEE: It's just a paved, concrete flat surface. The entire back of the houses from the house back are paved concrete. I think it's also notable that we are demolishing a fairly substantial amount of the main houses as it. There was an addition put on to 1617 at some point that we'll be taking off, and then also there's a carport, a large carport on 1619 that has a deck above it that we'll be removing.

CHAIR JORDAN: Yes, go ahead.

VICE CHAIR ALLEN: I thought you said--I'm sorry, I thought you said that there was no garage-like apparatus there now, that it's just pavement, or I read it somewhere, I--but you just said there is a

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carport?

MR. LEE: Well they have a large deck off the back, which is considered part of the lot covering, so they can get the very front of their car underneath that deck. It's not necessarily a carport, but there's a deck on the second level.

CHAIR JORDAN: Any other questions?

MEMBER MAY: Yes, I have a question. So you described a practical difficulty that is associated with the applicant's desire to construct a carriage house. What is the practical difficulty that the applicant is faced with now that necessitates this construction? What is the practical difficulty in the use of the property as it is now, because that's what the test is. It's not if I want to do this, this is the practical difficulty. It is what is the practical difficulty now?

MR. LEE: The practical difficulty right now is the safety issue, that's the primary--

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MEMBER MAY: Is there a fence at the back of the property now?

MR. LEE: No, there's not.

MEMBER MAY: Okay, and is zoning relief required in order to put a fence or a roll up door or something like that that people often use to protect their cars?

MR. LEE: Well the complication there is it's a very narrow alley; it's only 10 feet wide. So you start putting fences and gates--

MEMBER MAY: How is that any different from having a carriage house in terms of the ability to navigate a vehicle into a garage on a 16-foot wide property off a 10-foot alley?

MR. LEE: It would be that the swing of the doors would be--

MEMBER MAY: How is a gate or a roll up door any different from a garage door on a carriage house?

MR. LEE: Well a roll up door could be possible, but even in our discussions with HPRB, and even with Mr.

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Cochran, we didn't think that that was a very sightly thing to have on the back--

MEMBER MAY: I've seen it done in ways that are not objectionable, but that really isn't even the point. I mean security is not--there's an awful lot of hoops to jump through. Is there anything other than security?

MR. LEE: Yes, there is.

MEMBER MAY: Okay, what is that?

MR. COLLINS: Mr. May, may I just make a point here that the test for practical difficulty, strict application of the zoning regulations would impose a practical difficulty to the applicant, that isn't just limited, in my experience, that test is not simply limited to what the existing condition is, but it's also applied to what would be the condition if you try to do what you're doing here. Here, we're trying to--

MEMBER MAY: Well if it's necessary to make reasonable use of the property--

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MR. COLLINS: Right.

MEMBER MAY: --and there isn't an argument here that it's necessary to make reasonable use of the property.

CHAIR JORDAN: Let me--can I help phrase that, because I'm with you, Mr. May. What is your practical difficulty in being able to use the property now within the zoning regulations?

MR. LEE: Right, the second part above the security becomes that they need the carriage house space.

CHAIR JORDAN: What's the practical difficulty now that you cannot use the property within the zoning regulations?

MR. LEE: I mean their goal is to create this project so that they can age in place, and in order to do that, they need to have the additional care giver space above the top, or for a mother-in-suite. They recently had one of their parents pass away, so they're creating this plan for the future so that they can have this home and age in place in a safe way, and that location makes

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it very difficult with all the traffic and transient--

MEMBER MAY: So if I'm going to understand correctly from the application, the existing home, one of the two, is 2800 square feet? Is that right? Actual built space?

MR. LEE: Yes, correct.

MEMBER MAY: And the other one is 3300, roughly?

MR. LEE: Correct.

MEMBER MAY: So this applicant has the luxury of owning two adjacent properties, one of which includes apartments, and you are arguing that they need to have a carriage house so that they can have a separate apartment?

MR. LEE: Well--

MEMBER MAY: Is that--am I capturing that correctly?

MR. LEE: Well I understand how you can interpret it that way, but it's actually not the reality.

MEMBER MAY: All I'm doing is

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stating the facts. One house--they own two; one house is a house, and one is three apartments, and they're next to each other, and you're arguing that they need a fourth apartment, and not having that fourth apartment is a practical difficulty?

MR. LEE: On the 1617, on the rental income property, they're not going to put an additional apartment. They're actually cutting off the back of the old extension so that they can have a backyard--

MEMBER MAY: But they own both properties. They own three apartments and a house, and they're arguing they need a fourth apartment or else they cannot realistically make good use of the property? Reasonable use--

MR. LEE: Well if you put yourself in their shoes, and they want to age in place--

MEMBER MAY: I understand their desire to age in place, and what you've said is that implies a need for an apartment use, and they have one. They have three. Why is

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the fourth one critical?

MR. LEE: Well the apartments that are in 1617, that would eventually be their income that will get them through retirement, so that's their plan with that property. For them to have their immediate family, an ailing parent, they would want them to have either a place within their house, which we're actually proposing to put an elevator that would have them in the house, and then the care giver living above the carriage house at 1619. That's the current plan. So you know in the long term, I can understand the necessity of it; it's a quality of life issue.

MR. COLLINS: May I just jump in here again? I just--I need to reiterate something. It sounds like the discussion is going toward more a use variance standard than an area variance standard. The strict application of the regulations would impose a practical difficulty on the applicant. The applicant is entitled to have a garage on their property. That's not--

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MEMBER MAY: I'm sorry, where is that in the regulations that an applicant is entitled to a garage on their property? I do not see that in the regulations.

MR. COLLINS: I misspoke; a garage is a permitted use; an accessory garage is--

MEMBER MAY: Yes, it is a permitted use.

MR. COLLINS: Yes.

MEMBER MAY: Right. Provided there is space and provided there's a rear yard, or provided it's existing.

MR. COLLINS: Exactly, and it can either be in the main dwelling, or it can be an accessory building. The practical difficulty that we have in this case is that it's--in order to put that garage in the rear of the property would require a significant additional portion of the main house to be removed in order to achieve that.

MEMBER MAY: As is the case in dozens, hundreds, maybe thousands of

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properties across the city, right? And there was at least--it has to be in the hundreds, where there was a garage, and it was demolished, sometimes demolished so that they could make--they could have sufficient lot occupancy to put an addition on the house, right? And then people are interested later in restoring the garage, but they can't because they'd have to demolish part of the house. Sometimes people take off part of the house to do it. It's a back and forth, it's changing needs over the years. I don't understand how this is unique, or that there's a difficulty.

MR. COLLINS: Well in this case, going back to the R-5-B zoning placed in 1958, this was--R-5-B zoning was placed in this neighborhood because it was the only thing that came closest. And when it was put in, all these properties became nonconforming as to lot occupancy. So these properties, most of the properties, we have a chart that shows most of the properties are already nonconforming as to lot

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occupancy. That--

MEMBER MAY: So in other words, it's not unique?

MR. COLLINS: No, no, no; that's not the point. The point is on this site, that what we're trying to do--

MR. LEE: -- to what we want to provide.

MR. COLLINS: What's unique about this property is that unlike their neighbors, these two carriage houses were removed at some point, unfortunately removed at some point, and they can't be put back because of a change in the regulations. I dare say that if these carriage houses existed today, they couldn't be demolished because they would be, like their neighbors to the south, contributing features to the character of the historic district, as they wouldn't be able to be demolished. The fact that we--

MEMBER MAY: Well you're assuming that they would be contributing features; that's not automatic.

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MR. COLLINS: Well, the ones that are to the south are contributing features. And so this neighborhood and the Historic Preservation Office recommendation in support spoke about the fact that--not these exact words, but two-story carriage houses are a character-defining feature of this alley. And so that's why they were in support of the restoration of these two carriage houses in conjunction with the rest, to help restore or improve on the historic character of these properties. To put those carriage houses there, there would be the need to remove more of the existing buildings than would be practical to do so. As Mr. Lee pointed out, just to how much of the buildings would have to be removed to do that.

The fact that they're two stories, a two-story carriage house cannot be built in this zone as an accessory building. So in order to do it, there has to be a connection to the main building. When making the connection to the main

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building, it removes the rear yard from the back of the house where it is now, and puts it out at the back of the carriage house on the lot line so there's zero rear yard. By putting--the space is the same, it's still a rear yard there; it's called something else under the zoning regulations.

Having the connection between the main house and the carriage house to have that single building on a 16-foot wide lot reduces the area of the closed court to less than 15 feet, which drive a variance from the closed court requirement. The lot occupancy of these buildings includes a substantial portion of open and closed courts that are counted in building area. And so it's not--when you see the lot occupancy number, it's not footprint of building, it's the buildings and open courts and closed courts that combine together to form that. So with all these combinations of factors--I'm just reading my notes, excuse me--plus we haven't spoken about the FAR. The FAR that's proposed is very

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similar, in one instance a little bit less than the FAR that's permitted in the R-5-B for projects that have inclusionary zoning. Now these don't have inclusionary zoning, so we're not claiming that they do, but what we're saying is that the density that's proposed is not out of character with the R-5-B zone.

So all these factors are joining together, conspiring if you will, to create this exceptional situation or condition, and the strict application of the regulations to allow a garage to be placed in the back of the property creates that exceptional situation. All these unique situations create this exceptional situation, and we believe that the relief can be granted without substantial detriment to the public good because these two-story carriage houses will be the same or similar in character to the ones immediately to the south, the other carriage houses in the alley; that the rear yard that is now a rear yard will remain as a rear yard practically speaking, but it's

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going to be called something different.
It's going to be called a closed court, but
that open space will remain.

The permeable space, the
permeable surface will increase because
we're putting a green roof on where there's
now a slab for parking. The closed court,
again, it's a rear yard, it's not--it
doesn't meet the lot area--I'm sorry, the
diameter requirement for a closed court, but
it's a space that's there. So we think that
when looked at as a whole, that this is a
reasonable proposal that we have found has
the support of the community, which you
haven't heard from yet, but this is what I
understand that they will say, that they
support the application, and this was in
character and keeping with the other
properties in the block and in the area.

MEMBER MAY: Okay, I think you've
answered any questions I have.

MR. COLLINS: Thank you.

MEMBER MAY: You have questions?

CHAIR JORDAN: No, I'm good. Any

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other questions from the Board? Is there any other evidence you would like to present before go to OP?

MR. LEE: No, I think we're fine.

CHAIR JORDAN: Okay. Mr. Cochran? Make sure you're on.

MR. COCHRAN: Thank you, Mr. Chair. First I'd like to explain the sheet of paper dated December 18th that OP just submitted.

CHAIR JORDAN: Did the applicant get a copy?

MR. COCHRAN: Yes, and this just takes into account relatively minor changes that the applicant made to the application, some of which were at our suggestion, and it updates the numerical figures to correspond with the latest revision by the applicant. In addition, we note that ANC 2B voted to support the proposed relief and we got it wrong, the applicant lives at 1619, not 1621 21st Street--excuse me, not 1617 19th Street.

Anyway, all that notwithstanding, OP feels that between what we've said on

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page 4 of our December 3rd report and a lot of the submissions that you see in the record, it's clear that the relief could be granted without a substantial detriment to the public good or substantially impairing the intent, purposes and integrity of the zoning regulations, and I'd be happy to go into that more if you want to ask any questions about that. However, the applicant has not demonstrated a specific uniqueness with respect to the property or a practical difficulty that results from that uniqueness. And again, we'd be happy to go into that if you wish during the question period.

But all that said, OP would stand on the rest of its report that's been submitted to the record, and we cannot support the recommendation. It's late. We cannot support the application. Thank you.

CHAIR JORDAN: Board, questions for Office of Planning? Mr. Cochran, what can they use that property for now as it exists? That back portion where the

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carriage house was?

MR. COCHRAN: Where the carriage house was? It could be used as a rear yard, it could be jackhammered up and made into a garden, it could conceivably be jackhammered partially and made into a parking space and a garden. There are many lots in properties in DuPont Circle that have had their carriage houses removed, and that use the space back there for parking, recreation, or some combination thereof.

CHAIR JORDAN: And you don't find the--well, I guess the restriction thereof for the loss of the carriage house and the need to demolish any part of the building to balance out the FAR as exceptional for them to do an accessory garage?

MR. COCHRAN: No.

CHAIR JORDAN: Okay, why is that?

MR. COCHRAN: The applicant is able to use its property right now for its own living purposes or a substantial income from the rental unit. The zoning regulations, for better or worse, do not

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guarantee that an applicant can use the property as they wish. There have been many other applications where actually OP wished that it could have supported it because the project was a reasonable project that would not have had negative impact on the neighborhood. But the regulations are the regulations, and the applicant hasn't demonstrated that its lack of the carriage houses--and I note that the carriage house at the property immediately to the north has already been removed in about the same time frame that applicants were--that that impacts their living in the property.

I believe we've all seen examples, as one commissioner just mentioned, of roll up doors, even in historic districts, that are used for security purposes. With respect to aging in place, I would hope that the applicants will have many years of good health, but they don't seem to be in danger of aging, in the term that we use aging in place, for the next couple of decades. They haven't

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explored whether an elevator could be fit into the property. But they just haven't explored other ways in which to accommodate an in-law, a care giver, et cetera. If they had explored these and demonstrated these things, then maybe OP could have supported it. But we just cannot find a practical difficulty stemming from an exceptional condition on the property. And I'd refer you to some additional details in our arguments on page 4.

CHAIR JORDAN: Is there any other questions for Office of Planning?

MEMBER HINKLE: No, sir.

CHAIR JORDAN: From the Board? Then the applicant, questions for Office of Planning, please. The applicant, any questions for the Office of Planning?

MR. COLLINS: No, I'm sorry I thought that question was to me. No.

CHAIR JORDAN: Then let's move to the Department of Transportation; is there someone here for the Department of Transportation? We do have a letter,

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Exhibit 27, of no objection from the Department of Transportation. Is there anyone here with authorization to speak on behalf of ANC 2B? ANC 2B, please come forward. We do have a letter from ANC 2B, but certainly feel free to--after you identify yourself.

MS. MALTZ: So my name is Stephanie Maltz, I'm the ANC Commissioner for 2B03, and the Brookers would be my constituents. Since you already have the ANC letter, I'm not going to read the whole thing for you; I will just let you know that the ANC supported the variance request for 1617 and 1619 19th Street N.W. We also supported it when it went before HPRB.

CHAIR JORDAN: Okay. Does the Board have any questions of the ANC representative? Mr. May?

MEMBER MAY: Yes, I have a question. The--you know we seek testimony from a number of ANCs from across the city, and some are very careful and thorough to measure their support for particular

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proposals based on the zoning regulations, and compare it to the prongs of the test for a variance. Did your ANC actually evaluate the prongs of the test for the variance, or is it more--is your support based primarily on support that you had given to the project from a historic preservation point of view or something like that?

MS. MALTZ: So our HPRB, I mean our zoning preservation development chairman, Leo, stepped outside. I think we did this more in terms of--

MEMBER MAY: I think he's stepping back.

MS. MALTZ: --he stepped back. He would be the better person to ask that question. I think that we, when we looked at this case from the HPRB's perspective, we also knew that it was going to come before a zoning variance, so we gave it similar recommendations, but--

MEMBER MAY: Right. So the question--I mean maybe you didn't hear my question, but the question was whether you

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actually looked at the test for a zoning variance as opposed to looking at it primarily from a historic preservation point of view.

CHAIR JORDAN: And I need you to identify yourself.

MR. DWYER: Yes. Hello everyone, commissioners. My name is Leo Dwyer, I'm the ANC Commissioner for 2B07, and the chair for the Subcommittee on Zoning Preservation Development for ANC 2B. I do apologize for stepping out, I was calling HPO regarding something for tomorrow.

CHAIR JORDAN: That's okay.

MR. DWYER: So I do apologize for that. In regards to your question, Commissioner May, we did look into it, but not extensively. I'm fairly familiar with zoning, I have a degree or two degrees in the field, but I figured I'd leave it up to you guys. We did review a lot of the components; my meetings are fairly exhaustive, not as exhaustive as yours can be. In general, we reviewed it at an HPRB

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meeting, and then when they came back for their BZA hearing, we reviewed it again probably for about 45 minutes, and fairly in depth regarding the issues.

I thought that this was definitely not going to be a very easy task for them, but based on the merit of the project, the design, you know, every project is dependent on the situation, and this is how the field of architecture and construction is; it's always dependent on the situation. I felt it was a very good adaptation of the space, and that it would be benefitting the neighborhood and benefitting not just the applicants, but the area as well. Increasing density, but not at an extreme level, but at a minor level of adding additional space where you're very limited, as we're a very developed area as is, and we do have the benefit of having several historic overlays to protect our beautiful neighborhood.

It is unfortunate that at one point in time, the carriage houses

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disappeared; I'm definitely a fan of having carriage houses, so in all aspects, I thought it was a great project with great merit, and it's been very well vetted from the applicants to their neighbors, the process, their documents, et cetera and so I--

MEMBER MAY: Thank you, I think you answered my question thoroughly.

CHAIR JORDAN: All right. Board, any additional questions? Does the applicant have any questions--excuse me, Board, any additional questions? Does the applicant have any questions of the ANC representatives?

MR. COLLINS: No, sir.

CHAIR JORDAN: Is there anyone in the audience wishing to speak in support of the application? Yes, just identify yourself again on the record, and you have three minutes for a statement, please.

MR. HASSELL: Thank you Mr. Chair and commissioners. My name is John Hassell, I own the property at 1621 19th Street, next

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door to the Brookers. They're good neighbors, they approached me in July. I'm here to support the project; however, I hope you have a letter from me that was submitted a while ago. I have a couple of concerns. During the construction process, the Brookers have assured me, as well as their representatives, that they would do their best to mitigate any common disturbances to the neighborhood that would occur through a construction process, such as dust and noise and so forth.

And the second issue that I'm concerned about is the temporary risk to security when the fence, which is on their property, is replaced by a better structure, that the tenants that are currently in my home that I've leased my house to, will those security issues be mitigated in a fashion that keeps the risk of crime and that kind of thing to a minimum. So with those conditions, I would like to offer my support, and I appreciate the Brookers coming to me a while ago to tell me their

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intentions to improve the property. And I will say that I think it's a good project, I agree with my ANC commissioners that it will add value to the neighborhood in the long term. Thank you very much for allowing me this opportunity.

CHAIR JORDAN: Thank you. Board, questions? Mr. May?

MEMBER MAY: Yes, I'm sorry, do you--is your property directly north along Corcoran, or is it to the south?

MR. HASSELL: It's north, sir. It's the house on that picture up there that's covered by the tree to the left.

MEMBER MAY: I'm sorry, covered on the left at the top picture?

MR. HASSELL: Yes, sir.

MEMBER MAY: Got it. Okay. Do you have a carriage house now?

MR. HASSELL: No, sir.

MEMBER MAY: Okay, thanks.

CHAIR JORDAN: Additional questions, Board? Applicant?

MR. COLLINS: No, sir.

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CHAIR JORDAN: Is there anyone wishing--any other person wishing to speak in support? Yes, please, let's give you a space.

MR. FLETCHER: I'm going to be short so I can--

CHAIR JORDAN: Would you identify yourself, please?

MR. FLETCHER: I am Whit Fletcher, 38-year owner and resident of 1611 19th Street, I'm three houses away. I believe this is a good project for the neighborhood, and I also believe that it's an excellent project for security, not only for the Brookers, but for their neighbors. The rear of their property is now open and the rear properties--rear yards of their neighbors can be accessed, and with these two-story buildings, it would tremendously help the security of not only their yard, but their neighbors' yards. Thank you.

CHAIR JORDAN: Board, any questions of the witness? The applicant? No?

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MR. COLLINS: No, sir.

CHAIR JORDAN: Any other person wishing to speak in support of this application, as we're beginning to wear down here? Anyone wishing to speak in opposition? Anyone wishing to speak in opposition? Then let's turn back to the applicant for any rebuttal.

MR. LEE: Thank you, I think my only comment would be just to talk about what Mr. Cochran brought up about not supplying various scenarios. We've been working with the Brookers on this for over three years, as soon as they started getting the idea that they would want to live in the city for the rest of their lives. We played with many different ways to try to get parking in the back and also allow some outdoor space back there. I mean, we explored digging down so that they could pull into a basement, but the gap between the alley and the house is just too narrow.

We have done multiple interior schematic designs, we spent a considerable

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amount of time trying to figure out how to do this, and this plan that we're presenting here is three years' worth of trying different scenarios. So it wasn't just random.

CHAIR JORDAN: Are there any accessory permitted uses that you can do that doesn't require you to--wouldn't require the house to meet the FAR?

MR. LEE: Unfortunately, I don't believe so; Mr. Collins could probably answer that better, but we were trying to do an accessory house at one point, but that was not allowed, so that's how we ended up with the covered walkway connecting the two.

MR. COLLINS: When you say accessory permitted uses, what--

CHAIR JORDAN: Anything that you can do as a matter of right back there might be an accessory use to the main building that doesn't require you to do anything to the main building to meet FAR requirements.

MR. COLLINS: You mean like an accessory structure?

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CHAIR JORDAN: Yes, whatever.

MR. COLLINS: Well the thing is, if you put one square foot of additional space on the house, it's already nonconforming in terms of lot occupancy, so you're already here for 2001.3, and then whatever additional that you have. The FAR existing is right about at the limit, the lot occupancy is exceeded, the rear yard is there, it's somewhat greater than the 15 feet that's required, but in order, for instance, to put this garage in, because a car parking space is required to be 9'x19' inside the carriage house, then the carriage houses by definition has to be at least 20 feet long with walls on both ends. And so that kind of drives everything else that we're doing, pushing everything else back to create a court, a 15-foot court between the carriage house and the main building, which causes us to take things down in the carriage house. So there's really nothing there. I suppose you could go to Home Depot and buy a tool shed and put it on the slab,

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but that's about it.

CHAIR JORDAN: Okay. Any--I didn't mean to cut off your rebuttal. Anything else that--

MR. LEE: Oh no, no; that was my primary comment, I think I'll--

MR. COLLINS: Address his concern.

MR. LEE: Well yes, okay. So Mr. Hassell, I think we met early on when we were going through the first steps of the community outreach, and explained to Mr. Hassell that our company is very successful at managing these urban projects. I mean, we take great care in communicating with the neighbors, making sure it's secure. We secure the sites not only for our neighbors, but also for ourselves. So security is not an issue.

We'll have constant meetings with the tenants, we'll make sure they're apprised of whatever new work is coming down, we keep the sites clean, we'll keep your deck clean. I mean it's just standard

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courtesy because we rely on your neighbor to facilitate our project so, and we've been doing it for over 15 years here in the city without a problem. So I think that should satisfy you. That's all, thank you.

CHAIR JORDAN: Is there any additional closing you want to do, or is that it?

MR. COLLINS: Yes, sir. Yes, sir. I just want to point out that Exhibit C to the package includes--

CHAIR JORDAN: Exhibit C to--what exhibit are we speaking of?

MR. COLLINS: Exhibit C to the applicant's statement, which is--

CHAIR JORDAN: I think it's 27.

MR. COLLINS: --Exhibit 26.

CHAIR JORDAN: 26, okay.

MR. COLLINS: Exhibit C to Exhibit 26, the support letters of various neighbors, and the cover sheet shows the addresses and where they're located; they surround the property on all sides. Just to reiterate the exceptional situation is

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because the carriage houses, unlike their neighbors to the southeast, carriage houses were taken down sometime in the past, and due to the change in regulations, they're not allowed to be replaced. In terms of practical difficulty, certainly there's been some discussion, can the applicant use the property now? Yes, they can, of course they can, they live there.

But there have been many applications before this Board to seek approvals for variances or additions to houses or other buildings where the building is perfectly usable; the point is that you're seeking a variance because the strict application of the regulations as applied to that proposed addition would create a practical difficulty, and that's why we're here. It's not just tied to the existing building; it's tied to what you're proposing to do. And that's our position, and that's the position of many prior applicants who've come before this Board over the years, that there is no requirement that the applicant

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show that the existing building cannot be used without the area variance. That's more like a use variance test than an area variance test, and that's not where we are.

In terms of the FAR that's proposed here, in the R-5-B zone, the FAR permitted under the IZ regulations is 2.16, and we're pretty close to that and under that in one situation. So in terms of the FAR, it's not totally out of the realm of what has been deemed compatible by the Zoning Commission in the R-5-B zone when they passed the IZ regulations.

The ZRR proposal would make the lot occupancy and rear yard variances go away. They would become special exception, much like the same test under section 223, the homeowner special exception under 223. So those would not be--there would not be a need to show the kind of tests that we're showing under the variance test today. In the neighborhood, we talked about many nonconforming structures; the chart shows that. The FAR that's proposed the court,

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the closed court, the lot occupancy would be imperceptible from outside the property once these carriage houses are built.

The rear yard, again, this rear yard would be measured at the back of the carriage houses that abuts the lots because of the connection between the carriage house and the main building, which is necessary in order to make that carriage house a two-story building. Every other carriage house down the block, their rear yard is behind the carriage house, between the carriage house and the main building; we have that same space, but under this zoning regulations, it's called something else. It's called a closed court, but the space is still there; it's the same space as everybody else has, we just have to call it something different. The same configuration, the carriage house will sit on the lot on the alley just like all the other carriage houses will sit on the alley.

Exhibit I to Exhibit 26, what we put together there is just randomly selected

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eight other BZA orders that are all summary orders where this Board has granted similar relief from FAR lot occupancy, court requirements, nonconforming structures. You can leaf through them; we thought it was sufficient. If you'd like, we can get many, many more. These are all--some are in the same area, a number are in DuPont Circle; in fact, most are in the northwest area, but this Board has granted similar relief for other similarly situated properties in the recent past, and we're just asking that you do that in this case as well. And we thank you for your time.

CHAIR JORDAN: Board, any additional questions that you would like to ask of anyone? Well then we will close the record and close this record. Is the Board ready to deliberate, or do you want more--so let's move to deliberation. Mr. May?

MEMBER MAY: Okay, so first I would like to say that I support the idea of carriage houses; very attractive thing, very desirable, exist in many neighborhoods

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throughout the city, a lot of people love them. Not everybody, but a lot of people do, especially in the historic districts. It's certainly an attractive addition in the neighborhood, it's understandable why the ANC would support it and why neighbors would support it; there are good reasons to support it.

Unfortunately, zoning regulations in my mind clearly do not. I mean, this is not even close in my mind. There is no practical difficulty that exists with the current property and the owners' use of that property. You know, I understand that it's not just about the existing use and the ability to make use of it as the structure exists; it also has to do with the ability to make use of the property for something that's allowed, right? I can understand that. I mean, if this were a very--if the site were configured differently, and the difficulty of constructing this were driven somehow by other site constraints, it might be understandable as a practical difficulty.

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But it is clearly not; it is driven by a property owner who has a house and three apartments, and wants a fourth apartment, and the best way to do it is a carriage house. It makes sense, I mean I understand it. It's a desirable thing to do. It does not make a practical difficulty; it does meet the test for a variance. You know, I appreciate the ANC's support and their study of this. Again, good reasons to want to support it, but it doesn't meet the variance test, and as you said when you opened your remarks, zoning is not a popularity contest, even when the ANC is weighing in in support. We need to give them great weight, but we also need to make our decisions based on the regulations.

Accessory apartments are not an entitlement, nor are garages. They have to fit with the site that you have, or there as to be a reason for granting relief in order to allow them, and I simply do not see the argument here why this is necessary. So I would move for disapproval of this

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application and the associated relief. It's too many to go through.

VICE CHAIR ALLEN: Second.

CHAIR JORDAN: There's a motion made and seconded; any further discussion? I find this one real difficult for me to take a look at it because I think, you know, if he does anything with this property, it requires to some extent, relief. But I am persuaded by Mr. May's argument, bottom line. So let me just call for any other unreadiness discussion, Mr. Hinkle?

MEMBER HINKLE: No, I tend to agree. I'm having difficulty finding that there's a uniqueness to this property that would lead to a practical difficulty. I think the Office of Planning made a good case for that, and I tend to agree with their report.

MEMBER MAY: I would second that. The Office of Planning I think looks at this carefully, and I know that the Office of Planning, like many of us, see the value of carriage houses and the value of accessory

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apartments and encourage those kind of density in many areas of the city and are looking at this very carefully in the zoning regulation we write. But clearly, like us, they have to look at this in terms of what the regulations allow. So I appreciate the report of the Office of Planning.

CHAIR JORDAN: The other thing I want to say, I think we need to be more consistent about how we apply these regulations as we've talked about it from day one, so people can build in some level of understanding of where we are, and I think you can kind of look all over sometimes as has been indicated here during the applicant's case, that there's other cases that we might have done something else, and that's something that's always troubled me. So let's move the motion. All those in favor of not approving--denying the requested relief signify by saying aye.

(Chorus of ayes.)

CHAIR JORDAN: Those opposed, nay. Nay. Poll the Board please, Madam

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Secretary.

MS. ROSE: Staff will record the vote as 3-1 to deny the application, with a motion by Mr. May, second by Ms. Allen, in support of the motion is Mr. Hinkle and opposed is Mr. Jordan.

CHAIR JORDAN: Okay. I think we can use a full order, please? Full order.

MS. ROSE: Yes. You're opposed, right?

CHAIR JORDAN: Yes, absolutely. So full order, please.

MS. ROSE: Full order, yes sir.

CHAIR JORDAN: Thank you for your time. We're going to take five minutes and then--how many more cases do we have for today?

(Whereupon, the proceedings in the above-entitled matter went off the record at 5:24 p.m. and resumed at 5:33 p.m.)

CHAIR JORDAN: Okay, can we call 18--what's the last case for today, for tonight I think?

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MS. ROSE: That would be application 18676, application of Mundo Verde Public Charter School, pursuant to 11 DCMR § 3103.2, for a variance from the requirement to provide additional parking spaces to increase the intensity of the use under subsection 2100.02, and a variance from the requirement to maintain existing required parking spaces under subsection 2100.10, to allow the reuse and expansion of a former public school building as a public charter school in the R-4 District at premises 44 P Street, N.W., in Square 616, Lot 873.

CHAIR JORDAN: Okay, would you please identify yourselves, please?

MR. AVITABILE: David Avitabile, land use counsel, Goulston and Storrs, for-- land use counsel for the applicant, Mundo Verde.

MS. SCOTCHMER: Kristin Scotchmer, Executive Director of Mundo Verde.

CHAIR JORDAN: Your last name

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again?

MS. SCOTCHMER: Scotchmer.

CHAIR JORDAN: Okay. Ms. Klein,
yes.

MS. KLEIN: I'm Phyllis Klein,
and I'm one of the parties of record for,
also representing Brian Brown and Peter
Waddell.

CHAIR JORDAN: Okay. We had--
earlier had discussion about party status
and et cetera; is that where we still are?
Did you guys reach any conclusions?

MR. AVITABILE: We did; we
reached an agreement. We submitted joint
conditions and a annotated site plan to you
all.

CHAIR JORDAN: Oh, okay.

MR. AVITABILE: We put that time
to good use.

CHAIR JORDAN: See how it works?

MR. AVITABILE: It does work.
Actually we put it to good use, and then we
got to sit for the last hearing and a half,
so.

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CHAIR JORDAN: And you can see
how --

MR. AVITABILE: We see why it's
useful.

CHAIR JORDAN: Right. It's that
pay me now or pay me later. But it just
works out better.

MR. AVITABILE: Absolutely.

CHAIR JORDAN: People have to
live next door or around the corner or up
the street, and you'd be surprised what
happens. Where is the conditions? Oh, here
it is. Okay. All right. Okay. And so Ms.
Klein, you're just--now you're in support?

MS. KLEIN: Right. So with the
acceptance of these conditions as part of
the formal Board order, along with the plan,
the parties in opposition would be willing
to change their position to support.

CHAIR JORDAN: Okay. Is Mr.
Vargas around here? He's my conditions
reviewer guy. Well let's go ahead and
proceed with the hearing, but let's have
Mr.--well Mr. Vargas will look at the

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conditions and et cetera, make sure we're dotting our I's and cross our T's and all that.

MS. ROSE: He brought them.

CHAIR JORDAN: I know, but I don't know if he reviewed them to dot the I's and cross the T's. So, all right, let's see where we are.

MS. SCOTCHMER: Mr. Chair, I was told that Mr. Vargas had to leave.

CHAIR JORDAN: Okay. So then we'll do it. I was just trying to take a late night route to get this done.

MS. KLEIN: And we had emailed it to him, so--

CHAIR JORDAN: And he's been busy running around like a chicken with his head cut off today. Okay, Board, do we have any issues with this one? Anything we need to drill down on, Board?

VICE CHAIR ALLEN: I'm looking at your conditions, and I just want to make sure I understand where is the drop off, because you're saying that they won't clog

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the alley, and that they won't use the four spaces as drop off that you've added, correct?

CHAIR JORDAN: Oh no, turn that off; we need to do it on the record, and we need to get back off--we do have a pointer--

MR. AVITABILE: We've got a point, great, thank you.

CHAIR JORDAN: You brought your own, so you didn't trust our pointer. And the microphone is near the pointer.

MR. AVITABILE: Great, thank you. So here's the site plan, and just to orient, we'll see if the pointer actually works.

CHAIR JORDAN: Don't put it in your eye.

MR. AVITABILE: Yes. It's not working. All right, well--

CHAIR JORDAN: Oh, just give us one second.

MR. AVITABILE: That's fine. I'll do it the old-fashioned way and pretend like I'm an architect. So here's the school site, just to orient--

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CHAIR JORDAN: Or do it like Vanna White or something.

MR. AVITABILE: That's right. This is P Street, here's the ally that we've been talking about, it's a public alley, it's 15 feet wide. The school is located towards the rear of the site. We have a total of 10 zoning parking spaces and 16 total parking spaces. There are nine stacked spaces here; only the first three count under zoning for zoning purposes, then there are three parking spaces here. And then the spaces that we're talking about in those conditions are these four parking spaces here along the alley. They're on our private property; they're adjacent to the alley; you'd parallel park in them just as you would if you were parallel parking on the street. So those are the four spaces that the conditions are focused on.

CHAIR JORDAN: And what's supposed to happen with those four spaces?

MR. AVITABILE: They will be used for staff parking and if it turns out we

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don't need them for staff parking, the parties have agreed that we can use them for short term parking, but only between 9:30 and 3:00. So that is after school has started and before school gets out. What the parties asked us to avoid is this becoming an area where students are dropped off at the beginning or the end of the day.

CHAIR JORDAN: Okay. So Vice Chair Allen asked where is the drop off?

MR. AVITABILE: The drop off will be along P Street.

CHAIR JORDAN: Along P Street?

MR. AVITABILE: Along P Street. It'll be--there's currently, when this was a school, there was a no parking zone; it's now become basically unsigned free parking for Maryland commuters. We haven't yet--

CHAIR JORDAN: For Maryland commuters.

MR. AVITABILE: We haven't yet gone through the public space process to confirm how this will be allocated; we will do that as a part of the permit process, and

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in that process we'll coordinate with DDOT on exactly how the space will be designated. It will likely be a combination of areas where there will be no parking, that's very common for all District schools, both public and charter and also many private schools. We will ask DDOT to consider an area for short-term parking as well, particularly for the younger kids, getting them out sometimes takes a little bit of time. DDOT has a safe rides to school program, and one of the things that they do is they work with schools to figure out how to set up the public space so that it will allow for an efficient drop off and pick up of students.

CHAIR JORDAN: Now has an assessment been made of how many staff people will drive to this new facility?

MR. AVITABILE: Yes. I'm going to go ahead and sit down. I think some of this information was in our pre-hearing statement. The current school--

CHAIR JORDAN: No, not current school; an assessment of how many people are

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going to come to the new facility?

MR. AVITABILE: Right.

CHAIR JORDAN: Because I saw the old facility, you know, present facility, but I didn't see anything that they did.

MR. AVITABILE: Right. Kristin, if you want to speak to that?

MS. SCOTCHMER: We have spoken to our current staff about their intentions, and their intentions is to continue--in the main, to continue to use the same modes of transportation that they're using.

CHAIR JORDAN: Even though it's not as easy or convenient as the present location?

MS. SCOTCHMER: Correct. I mean I have staff coming from Virginia and Maryland and in many cases, biking or using public transportation out of partially their commitment to the school is an interest in sustainability, and they're dedicated to that. And many of them continue--so currently, we have three out of the 50 part-time and full-time staff that are driving

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regularly, and out of that, we have at least six that would drive to the new location. We are going to be expanding our staff, and so that's a question in terms of how many of the staff that we have not yet hired; however, it is part of our hiring process to really emphasize the interest in public transportation and alternative forms of transportation.

CHAIR JORDAN: Because one of the concerns, I mean the access to Metro is a lot further than where your present location is.

MS. SCOTCHMER: It's not substantially--the access to the Red line is approximately a few blocks further than the Green line is currently to our current location.

CHAIR JORDAN: Is that right? Because I thought it was going to be like a half mile away.

MS. SCOTCHMER: The New York Avenue is about a half mile, and we're about a quarter of a mile from the Green line

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currently.

CHAIR JORDAN: You're a quarter of mile now?

MS. SCOTCHMER: Uh huh.

CHAIR JORDAN: What's that, a couple, two blocks, three blocks? And then you're going to be now about--all right.

MS. SCOTCHMER: Yes, that's slightly further to the New York Avenue metro than we are currently to the Green line, but not substantially.

CHAIR JORDAN: Okay. Board, any other questions you have of this applicant? Yes, Mr. May?

MEMBER MAY: Yes, we received a different site plan; did just the notes change, or did actually the buildings change?

MR. AVITABILE: It's literally just the notation that the four parking spaces on the east along the alley will be used per the conditions of the order.

MEMBER MAY: Okay, so the earlier version of this that I had, it didn't even

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look like there were four parking spaces over there. Were they just not--was that a drawing error?

MR. AVITABILE: They always were there, just the plans probably weren't as clear as they could have been, and so we've improved that clarity.

MEMBER MAY: Okay, and it didn't--I mean the building didn't shift or anything like that?

MR. AVITABILE: No.

MEMBER MAY: Okay.

MR. AVITABILE: And as you know, I think this is in the record, but the Commission of Fine Arts reviewed and approved the concept design for this.

CHAIR JORDAN: Any other questions, Board? Is there anything else that the applicant wishes to present?

MR. AVITABILE: No. No, Mr. Chairman.

CHAIR JORDAN: Well I didn't ask, are you formally withdrawing your party status request? I need to have that for the

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record. You're formally withdrawing your party status request?

MS. KLEIN: Are the conditions agreeable?

CHAIR JORDAN: Well, that's--

MS. KLEIN: I mean, we're withdrawing based on the acceptance of those conditions.

CHAIR JORDAN: All right, give me a second.

MEMBER MAY: The applicant has accepted those conditions, right? They have proffered those conditions?

CHAIR JORDAN: Yes, so you can--

MEMBER MAY: So if we were to approve it, it would be based on what the applicant has proffered.

MS. KLEIN: So it would then become part of the approval order?

MEMBER MAY: That's correct.

CHAIR JORDAN: There were three. Applicant shall construct the project in accordance with--okay, construct is what threw me, you don't mean the literal meaning

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of construct?

MS. KLEIN: Build.

MR. AVITABILE: Build.

CHAIR JORDAN: Well, okay, just that they'll follow these conditions is what you mean, with those guidelines. You know, we get into--when I first saw this talking about construction and shall construct, and I--we can live with these, yes. Mr. May?

MEMBER MAY: Yes, Ms. Klein just pointed out that we've got to clarify that the reduced number of staff parking spaces, the number of 16 refers to some that are stacked?

MR. AVITABILE: Correct.

MEMBER MAY: And so the only zoning compliance basis really is just five or six?

MR. AVITABILE: It's 10, 10 total that count for zoning.

MEMBER MAY: 10, oh I'm sorry, 10. Got it. So we are clarified, 10.

MR. AVITABILE: Sure.

MEMBER MAY: And then an

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additional note that there are an additional 6 that are stacked spaces?

MR. AVITABILE: Correct.

CHAIR JORDAN: Well, that's a whole another issue. I was aware of that. Okay, we're going to have to work with some of this wording, but so anyway, the question is, so are you withdrawing the party status?

MS. KLEIN: We're withdrawing-- forgive me, I may not understand this correctly. We still want to be parties to this, right, but we're withdrawing our opposition. Is that right?

CHAIR JORDAN: Okay, well--

MS. KLEIN: So we still then get notices and we still have status.

CHAIR JORDAN: Okay.

MS. KLEIN: So, but you know the language is very important to us, so we would like to see how it comes out.

CHAIR JORDAN: All right, then we'll do that. So okay, any other testimony you have for us, any other evidence you want to present to us?

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MR. AVITABILE: I don't--we're happy to rest on the record, but if the Board has additional questions, we're also happy to supplement.

CHAIR JORDAN: All right, let's go to Office of Planning, see if there's anything that they want to add.

MS. VITALE: Good evening Mr. Chair, members of the Board. Elisa Vitale with the Office of Planning. The Office of Planning is happy to rest on the record in support of the requested relief. As indicated by the applicant, that would be providing the 10 zoning compliant spaces. The staff report had indicated 11 spaces, but that has since been modified through the revisions to the plan. But Office of Planning is in support, and I can answer any questions you might have.

CHAIR JORDAN: Any questions for the Board for Office of Planning? Does the applicant have any questions?

MR. AVITABILE: No.

CHAIR JORDAN: Is there a

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representative from the Department of Transportation here to speak on this case?

MR. EL-AMIN: Yes. Fleming El-Amin with DDOT again. Just wanted to also state that DDOT does not object to the requested relief. Our report also stands on the record, and I'd be happy to answer any questions.

CHAIR JORDAN: Any questions for Department of Transportation? Yes.

MEMBER HINKLE: Yes, thank you. In your report, you have six recommended conditions related to the TDM strategies; are those conditions that you would like to see within the order?

MR. EL-AMIN: Oh yes, the Traffic Demand Management. No, those were things that we had indicated that we thought would be important, but that we could work with the applicant outside of this process. We also indicated that they did actually have several that we were in support of, so we were not--we were actually endorsing what they had proposed, and we also indicated

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that we would work with them after this--we weren't asking for additional conditions related to the TDM plan.

CHAIR JORDAN: But the traffic demand measures are proffered by the applicant?

MR. EL-AMIN: Correct.

CHAIR JORDAN: And that's something that we will make that a condition of the order.

MR. AVITABILE: That's fine, we're agreeable to that.

MR. EL-AMIN: Yes, I was just stating we weren't asking for anything additional, other than what was proffered.

MEMBER HINKLE: Thank you.

CHAIR JORDAN: Any other questions of the applicant? Any questions of the Department of Transportation?

MR. AVITABILE: No.

CHAIR JORDAN: Is there anyone here from ANC 5E speaking on this? We do have a letter, which we give great weigh, submitted by the ANC 5E, who voted

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unanimously to support this request. Is there anyone else in the audience wishing to come forward and speak in support of this application? Speak in support? You really don't have to, but you can if you want. Don't make them force you to do something, but if you want, please sit down and--and state your name for the record, please.

MS. PIERCE: I'm Danielle Pierce-

-

CHAIR JORDAN: Just make sure your microphone is on.

MS. PIERCE: Okay. I'm Danielle Pierce, and I'm a parent of a Mundo Verde student, and I'm also in charge of the Parent Committee's New Building Task Force. And I just wanted to say that although the school is often viewed as a--more as a Spanish immersion school, the diversion to sustainability is extraordinarily important, and that is the reason why so many people chose to go to the school. It's certainly the reason why, one of the main reasons why we chose to send our child there. I try to

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drive as infrequently as possible; right now the school is all the way in Columbia Heights, but I don't drive to get there, I bike or run or walk or use the Metro, whatever's most convenient on that day.

But I think that that same feeling is prevalent throughout the school, both in terms of the students and the parents and in terms of the staff. It wouldn't really make sense to work at the school if you didn't hold those beliefs and think that that's an important thing. I mean of course life gets in the way sometimes, but it is an important aspect, and to that end, the school is trying as hard as the can to facilitate an easy transition of that concept to the new building in the formation of the New Building Task Force, and we are trying to create easy transportation solutions for the students and possibly the staff, including-- most likely we're doing a transportation survey right now, but most likely it's going to include charter buses that go from the

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locations that most of the students are located right now.

A lot are from Columbia Heights, because that's where the current school is located. And so there will be charter buses that will likely be able to bring the students and possibly some of the staff to the school and away from the school, and also different methods of trying to shorten the distance in some ways, at least for the students, from the Metro to the school by doing walking chains, where you can kind of take turns in walking, or possibly some kind of group biking type thing. We're looking into a few different options, and then also to formalize a carpool plan.

So I mean the issue of limiting the parking spaces isn't even the typical one of just not needing this many; this school really does have an emphasis on the limiting of driving, and the space would much better be used for kids to play in or for them to garden.

CHAIR JORDAN: Okay. Any other--

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thank you. Any questions for this witness?
Any other person wishing to speak in
support? Just pull up the microphone and
state your name, please.

MR. HAGOOD: Mr. Chairman and
members, thank you. I'll just take a couple
of minutes I guess. My name is John Hagood,
and I live at 71 P Street, about 50 yards,
50 paces from the school site, and I'm just
here as literally a witness to what goes on
at that end of the street. Right now, as
someone mentioned, it's--every morning I go
out and I see those parking spaces that are
being jeopardized, really are 100% Maryland
commuters who we watch get out of their cars
and walk to the NoMa Metro station, which is
about--

CHAIR JORDAN: We can't have
that, can we?

MR. HAGOOD: It's just that's who
you're going to be--those are the only
people who are going have a new burden put
upon them. The biggest parking day in our
neighborhood is Sunday mornings, of course,

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because it's part of Shaw, and no one parks at that end of the street. No one even uses the 144 space parking lot that was put up by Metropolitan Baptist Church without any permitting. So I'm just here to say that I think traffic is going to certainly not be harmed; it's going to improve, and we--the Bates Area Civic Association voted unanimously the night that Kristin came and--one of the many nights she came and presented.

We've heard a lot, we've had a lot of interaction, they've definitely won our hearts and our good will, and even today, we've witnessed their graciousness and their fidelity to being good neighbors. So we strongly support that school, and we've been there long enough to see a few other proposals come and go for the J.F. Cook school, and this is by far the best and we would love to see it, with all the parking provisions be approved. Thank you.

CHAIR JORDAN: Okay. We appreciate you, both of you coming down and

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taking the time. Any questions for this witness from the Board? The applicant, questions? Party status, questions of any witness? Okay. Anyone else speaking in support? Going once, going twice, going a third time. Gone. Anyone wishing to--well, you still have party status, but you're actually in support now, so you're not in opposition, and we're at the opposition point, so anyone wanting to speak in opposition to the application?

MS. KLEIN: Well, I guess I'm just wondering what the process is. You've already approved, or you just--I know there's a typo or two; you're just going to clean up and this will be accepted?

CHAIR JORDAN: I've been running through my head, because I've been trying to read it quickly, and there's some other things that need to happen with it, but we're going to approve it in concept, subject to some syntax corrections and order form, which we will turn it over to the Office of Zoning and OAG to tighten that up.

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MS. KLEIN: And so then we'll receive a copy, or how does that work?

CHAIR JORDAN: When the order comes out, yes, you'll receive a copy of the order.

MS. KLEIN: Okay, well we turn it over to you, we hope--

CHAIR JORDAN: It's already on the record, we already are going to do that, we're going to put that in our motion--

MS. KLEIN: Oh no, I understand that, I just hope that you know, that the conditions that we need to relinquish our opposition will be carried forward.

CHAIR JORDAN: Right, I just said they're going to be incorporated into our order, as well as a few other things, and that would be the order. But you have to watch and make sure it happens, and then if they don't, then you have to report it, so that's all we can do, all right?

MEMBER MAY: Mr. Chairman?

CHAIR JORDAN: Yes?

MEMBER MAY: The custom of the--I

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mean once the order is issued, I don't know what the time frame is, but there is time if you have something objectionable in it, you can appeal the order, but there is a time, there's a clock that starts once the order is issued, and the staff can help you with that, but usually, it's a rare thing that something would come to us and that we work out conditions conceptually here, and then they would not be rendered to the satisfaction of the parties involved. So we usually have a pretty good track record for delivery.

MS. KLEIN: Okay, so I work with Ms. Rose on that to follow up?

CHAIR JORDAN: You're going to get--all right, let's do this. You're going to get in the order, we've talked about what you've submitted, it's just going to be changed for maybe some syntax or something like that, some grammatical, make it in a proper order form. So we're already going to do that. I can't give you any more assurances of that--

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MS. KLEIN: Oh no, no, I was just wondering about procedures. Thank you.

CHAIR JORDAN: --so you'll get a copy of the order and then we'll work it that way, okay?

MS. KLEIN: Thank you.

CHAIR JORDAN: So then we will turn back to the applicant; there's really nothing to rebut, and there's really nothing to close, right?

MR. AVITABILE: Correct, there's nothing to close; we would just--I respectfully request based on the unanimous support for the project in the record, if the Board's so inclined at this late hour to give us a bench decision and a summary order. Thank you.

CHAIR JORDAN: Okay. Then we'll close the record on this, and accept into the record the documents that have been submitted here today. I would move that we grant the relief requested by the applicant, that the conditions of the Traffic Demand Study as tendered by the applicant be

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included in the order, as well as the agreement reached here today and that has been submitted with three conditions, that's been submitted for the record by the party status parties in opposition and status in agreement with the applicant, and that subject to being cleaned up for syntax purposes only. So that would be my motion.

VICE CHAIR ALLEN: Second.

CHAIR JORDAN: Motion made and second; all those in favor--excuse me; any discussion? All those in favor signify by saying aye.

(Chorus of ayes.)

CHAIR JORDAN: Those opposed, nay. The motion has it. Let's have a summary order, and let's be sure we get the conditions added to the summary order. So let's poll the Board, please.

MS. ROSE: The staff will record the vote as--you all voted, right?

CHAIR JORDAN: Yes.

MS. ROSE: The staff will record the vote as 4-0 with a motion by Mr. Jordan,

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second by Ms. Allen, support of the motion we have Mr. Hinkle and Mr. May, with conditions as stated.

CHAIR JORDAN: All right. Then that's it. We thank you all, thank you for staying with us, this was a very trying day, but we got to it, and you should be glad that one of the bumped out, because we would still have been here, because that was going to be a heck of a case, right? No, you would have went--I think you went before them.

MS. SCOTCHMER: Thank you very much.

CHAIR JORDAN: Very good. Thank you.

(Whereupon, the proceedings in the above-entitled matter were concluded at 5:59 p.m.)

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