

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

PUBLIC HEARING

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In the matter of:

Application of Thomas K. Stephenson : Case No. 16160
 Application of Robert and Ann Dixon : Case No. 16226
 Application of James R. Wisman and : Case No. 16221
 Candice Kessel :
 Application of the Carnegie Institute : Case No. 16224
 Application of the GAP, Inc. : Case No. 16223
 Application of the American Associa- : Case No. 16225
 tion for the Advancement of Science :

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Hearing Room 220 South
 441 4th Street, S.W.
 Washington, D.C.

Wednesday,
 April 23, 1997

The above-entitled matter came on for hearing,
 pursuant to notice, at 9:30 a.m.

BEFORE: SUSAN MORGAN HINTON Chairperson
 LAURA M. RICHARDS Vice Chairperson
 MAYBELLE TAYLOR BENNETT
 SHEILA CROSS REID

ALSO PRESENT:

MADELIENE H. DOBBINS
 REGINALD C. LYONS
 TRACEY WITTEN ROSE
 PAUL HART
 JOHN NYARKU
 ALBERTO P. BASTIDA

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

(10:02 a.m.)

VICE CHAIRPERSON RICHARDS: Good morning.

This is the April 23, 1997, public hearing of the Board of Zoning Adjustment of the District of Columbia.

Joining me today are Sheila Cross Reid, and representing the Zoning Commission is Maybelle Bennett. We expect to be joined shortly by our Chairperson, Susan Hinton, and by our other member, Angel Clarens.

Copies of today's hearing agenda are available to you, located to my right near the door. All persons planning to testify, either in favor or in opposition, are to fill out two witness cards. These cards are located on each end of the table in front of us.

Upon coming forward to speak, please give both cards to the Reporter, who is seated to my right.

The order of procedure for a special exception and variance cases will proceed as follows. Statement and witnesses of the applicant; government reports, including Office of Planning, Department of Works, ANC, etcetera; persons or parties in support; persons or parties in opposition; closing remarks by the applicant.

Cross examination of witnesses is permitted for persons or parties with a direct interest in the case.

The record will be closed at the conclusion of each case, except for any material specifically requested by the Board. The staff will specify at the end of the hearing exactly what is expected. The decision of the Board in these contested cases must be based exclusively on the public record. To avoid appearance of the contrary, the Board requests that persons present not engage the members in conversation.

1 At this time, the Board will consider any preliminary
2 matters, those being matters relating to whether a case will or should
3 be heard today, such as request for postponement, continuance, or
4 withdrawal, or whether proper and adequate notice of the hearing has
5 been given.

6 If you are not prepared to go forward with the case
7 today, or if you believe the Board should not proceed, now is the time
8 to raise such a matter.

9 Does the staff have any preliminary matters?

10 MR. LYONS: Yes, Madam Chair. The first
11 application listed on this morning's agenda, application 16143, which
12 would be the rehearing of an application of Eddie Campbell, I spoke
13 with Mr. Campbell yesterday and he does not wish to go forward with
14 the application.

15 We have requested, but have not received, a request
16 for withdrawal. And in the absence of that, I would ask the Board to
17 dismiss the application.

18 VICE CHAIRPERSON RICHARDS: Is it the
19 consensus of the Board to dismiss 16143?

20 MS. BENNETT: It is.

21 MS. REID: Yes.

22 VICE CHAIRPERSON RICHARDS: All right. Then
23 that is done.

24 MR. LYONS: There is one other preliminary matter,
25 Madam Chair, related to the third case of the morning, 16226, the
26 application of Robert and Ann Dixon. The affidavit of posting indicates
27 that the property was posted on April 9th, which would have allowed
28 for the posting to be 14 days before the hearing instead of the 15 days
29 that the Board's regulations require.

1 Is Mr. Dixon present? Would you please come
2 forward? Yes. Would you please have a seat and give your name for
3 the record?

4 MR. DIXON: My name is Robert Dixon.

5 MR. LYONS: Mr. Dixon, if you would pull the mike
6 closer to you, and the button in front of the green light, would you
7 press it until it lights?

8 MR. DIXON: Yes.

9 MR. LYONS: Okay.

10 MR. DIXON: Robert Dixon.

11 MR. LYONS: Right. Could you just indicate to the
12 Board when exactly were the signs posted for this application on the
13 property? The affidavit indicates April 9th, and the requirement was
14 April 8th, that it be posted April 8th.

15 MR. DIXON: Well, I picked them up, I think it was,
16 April 8th. And we posted them on the day that we picked them up
17 from your office.

18 MR. LYONS: Okay. You're saying they were posted
19 on the 8th?

20 MR. DIXON: The day that we picked them up from
21 your office, that's the day they were posted.

22 MR. LYONS: So the indication that April 9th is when
23 they were posted -- the property was posted is not --

24 MR. DIXON: It must have been in error.

25 MR. LYONS: In error.

26 MR. DIXON: Yes.

27 VICE CHAIRPERSON RICHARDS: I find this
28 account credible and find no defect in the posting.

29 MR. LYONS: Okay. So that the Board will hear this

1 application in its appearance on the agenda.

2 VICE CHAIRPERSON RICHARDS: Unless there are
3 views to the contrary. All right. We'll go forward.

4 MR. LYONS: Okay.

5 VICE CHAIRPERSON RICHARDS: Thank you.

6 MR. LYONS: Thank you.

7 The first case of the morning, then, is application
8 16160, a rehearing in the application of Thomas Stephenson. The
9 relief being sought is the same as originally applied for. Mr.
10 Stephenson I believe is here.

11 Mr. Stephenson, would you please come forward?
12 And I would just remind you that you are still under oath as you
13 present your case.

14 MR. STEPHENSON: Good morning.

15 MS. BENNETT: Good morning.

16 VICE CHAIRPERSON RICHARDS: You may
17 proceed.

18 MR. STEPHENSON: Okay. I purchased property at
19 4815 Kansas Avenue approximately about three years ago, and I did
20 a lot of extensive repairs to the property. I applied to 614 H Street in
21 order to get a permit to put a deck in the rear of the property, and I
22 was told that if I do construct the deck that I want to construct that it
23 will cover more than 50 percent of the land. And there is a law within
24 the District of Columbia which states that you can't cover more than
25 50 percent of your land, not unless you come to the Board for a
26 variance.

27 VICE CHAIRPERSON RICHARDS: Right.

28 MR. STEPHENSON: I was here back in October last
29 year in front of the Board, and I stated my case and was granted

1 permission to build a deck, because they stated that if I had only
2 lowered the deck I think one foot or two feet, which would --

3 VICE CHAIRPERSON RICHARDS: I believe you
4 were going to proceed in a matter of right fashion below four feet.

5 MR. STEPHENSON: Right.

6 VICE CHAIRPERSON RICHARDS: And then you
7 were told you needed additional variance relief.

8 MR. STEPHENSON: Right. I then went to 614 H
9 Street again to apply for the permit to build the deck and was told that
10 the Board did not address the issue of the variance for me to build a
11 deck. Therefore, I had to come back in front of the Board again
12 asking permission to look into the variance of me building the deck.

13 VICE CHAIRPERSON RICHARDS: And here you
14 are. Have you read the staff's report prepared in this matter?

15 MR. STEPHENSON: Yes, I have.

16 VICE CHAIRPERSON RICHARDS: Do you concur
17 with its delineation of the nature of your hardship?

18 MR. LYONS: Ms. Richards, if I could just maybe --
19 Mr. Stephenson may not be aware. He may think you are referring to
20 the original Office of Planning report in which we recommend denial.

21 I believe what you are referring to, then, is the Office
22 of Zoning report. There is a second report filed in your case which
23 recommends approval.

24 MR. STEPHENSON: Okay.

25 MR. LYONS: And I wasn't sure that he has seen that.

26 MR. STEPHENSON: No, I did not see that yet.

27 VICE CHAIRPERSON RICHARDS: All right.

28 Perhaps he could be provided with a copy. And do any of the
29 members have questions of the staff?

1 MS. BENNETT: Well, let us walk him through some
2 of that, if we could. The analysis -- and you now have a copy, do you
3 not?

4 MR. STEPHENSON: Yes, I do.

5 MS. BENNETT: And the tests that you will need to
6 meet have to do with the uniqueness of your property, have to do with
7 whether what you want to do will be harmful to the neighborhood, and
8 have to do with whether or not what you want to do will be harmful to
9 the zone plan for the District of Columbia.

10 And when you look at page 2, the uniqueness of your
11 property includes the fact, first, that your dwelling was constructed
12 before the 1958 zoning regulations, and that your structure being 72
13 years old is unable to meet the requirements that we might have in
14 place for this zone district. I'm looking now at -- I guess it's the R-3
15 zone district. So that's one uniqueness.

16 Another uniqueness is that you have a substandard
17 lot size. It doesn't meet what the requirements were that were set
18 forth in 1958 for lot size in this zone district. Your lot is irregularly
19 shaped. I think it's triangular, if I'm not mistaken.

20 MR. STEPHENSON: That's correct.

21 MS. BENNETT: And the layout of your dwelling on
22 the lot creates certain kinds of conditions which make it impossible for
23 you to almost do anything on your lot, as it is, without having to seek
24 some kind of zoning relief. Is that correct?

25 MR. STEPHENSON: That's correct.

26 MS. BENNETT: Okay. The triangular shape of your
27 lot is such that it tapers off in the back. And so when it comes down to
28 looking at the rear yard requirements for your lot, it's going to fall short
29 almost regardless, if I'm not mistaken. Is that correct?

1 MR. STEPHENSON: That's correct.

2 MS. BENNETT: Okay. And these points go on to be
3 elaborated, both at the end of page 2 and at the top of page 3. It
4 further states that it is the only lot in square 3215 -- this is getting to
5 the uniqueness now. I mean, there may be -- if all of the other lots in
6 the area were like this, then it wouldn't be unique.

7 But this lot is the only lot in square 3215 that contains
8 2,162 square feet of land area, I understand. And that the majority of
9 the other lots are substantially smaller.

10 MR. STEPHENSON: That is correct.

11 MS. BENNETT: And that no lot in the subject square
12 can meet the 3,000 square foot requirement that was set forth. And
13 so almost anything you wanted to do would have required some kind
14 of relief.

15 MR. STEPHENSON: That's correct.

16 MS. BENNETT: All right. You are located -- the other
17 points that they make have to do with whether or not what you want to
18 do is likely to be detrimental to someone else. Is it likely to cut off
19 someone else's light in the area? Is it likely to, in some other way,
20 impede other folk from enjoying the use of their properties?

21 And the points that were made here had to do with
22 the fact that you are at the intersection of two public alleys, and so
23 you've got some open space that is available.

24 MR. STEPHENSON: That's correct.

25 MS. BENNETT: And your addition, then, would not
26 clutter up the neighborhood at that end and would not block the light in
27 the area or cause undue overcrowding of the land, which is the next-
28 to-the-last point.

29 And the fact that this, therefore, does not create a

1 detriment and is not in any way destructive of the intent and purpose
2 of the R-3 zone district means, in my judgment at least, though it is not
3 expressly stated here, that it is likely not to be detrimental to the intent
4 or integrity of the zone plan for the District of Columbia.

5 I think that's what that kind of sequence of reasoning
6 is intended to state in this particular report. And I think what the Vice
7 Chair asked you as to whether or not you would agree with the points
8 that were laid out, in an attempt to meet the tests or demonstrate that
9 the tests are met in this case, if you agreed with those.

10 MR. STEPHENSON: Yes, I do.

11 MS. BENNETT: Okay.

12 MR. LYONS: Madam Chair, I'm sorry.

13 VICE CHAIRPERSON RICHARDS: Yes?

14 MR. LYONS: Because the Board had been
15 discussing the staff's report, and we would be certainly inclined to
16 follow the rules that apply to the Office of Planning in submitting
17 reports. The Board does have a waiver before it to accept the Office
18 of Zoning report into the record and --

19 VICE CHAIRPERSON RICHARDS: Yes. There is
20 the outstanding waiver request. Are there any objections to waiving
21 the rule and allowing the report into the record?

22 MS. BENNETT: No.

23 VICE CHAIRPERSON RICHARDS: So waived.

24 So are there further questions by the Board of this
25 applicant? No.

26 And we've heard -- I guess we really have had the
27 sum and substance of the staff's report.

28 Are there other government agencies here? All right.

29 Are there any other persons here who wish to ask

1 questions of this applicant? No.

2 Is the ANC here?

3 MS. REID: Madam Chair, did we get an ANC report?

4 I didn't see it in my packet.

5 MR. LYONS: No, none was received.

6 MS. REID: Okay.

7 VICE CHAIRPERSON RICHARDS: Are there

8 persons in support? Are there persons in opposition?

9 That would appear to bring us to your closing
10 statement, if any, if you have one that you care to make. It is not a
11 requirement.

12 MR. STEPHENSON: Yes. I'd just like to probably
13 ask just one question. How soon could I --

14 (Laughter.)

15 MS. BENNETT: That's fair.

16 MR. STEPHENSON: Because I have been waiting I
17 think over two years now just to --

18 MS. BENNETT: I know. That's right.

19 MR. STEPHENSON: -- just to have permission to
20 build this deck, which I think would enhance the neighborhood and
21 probably send the properties in that area -- the value of the property
22 up. I think I was doing a good thing, and I just don't understand the
23 two years of -- going on three years' wait just to build a deck. I just
24 want to know how soon could I proceed after this hearing.

25 VICE CHAIRPERSON RICHARDS: After we
26 conclude the proceeding, take a vote -- you know, no one ever said
27 it's easy living in the nation's capital.

28 Is the Board inclined to dispose of this matter at this
29 time?

1 MS. BENNETT: We are.

2 VICE CHAIRPERSON RICHARDS: Is there a
3 motion?

4 MS. BENNETT: I move that we approve application
5 16160.

6 MS. REID: I second it.

7 VICE CHAIRPERSON RICHARDS: Is there further
8 discussion? All those in favor, aye.

9 (Chorus of ayes.)

10 Opposed?

11 CHAIRPERSON HINTON: I am going to abstain,
12 since I missed part of the hearing.

13 MR. LYONS: Okay.

14 VICE CHAIRPERSON RICHARDS: All right.

15 MR. LYONS: Staff would then record the vote as
16 being 3-0-1. Ms. Bennett, Ms. Reid, and Ms. Richards to approve;
17 Ms. Hinton abstaining; and Mr. Clarens not present, not voting.

18 VICE CHAIRPERSON RICHARDS: Thank you. The
19 summary order --

20 MS. BENNETT: Now, the how long is no longer up to
21 us.

22 (Laughter.)

23 MR. STEPHENSON: Could I just proceed to 614?

24 MR. LYONS: Not yet. We'll let you know. It will be a
25 short period, a very short period.

26 MS. BENNETT: We've got to write you an order.

27 MR. LYONS: Yes.

28 MS. BENNETT: A summary order, which is a quickie.

29 VICE CHAIRPERSON RICHARDS: It takes a couple

1 of weeks to get that out.

2 MR. STEPHENSON: Okay. Thank you.

3 VICE CHAIRPERSON RICHARDS: All right? Thank
4 you.

5 CHAIRPERSON HINTON: Okay. I apologize for
6 being late. I had a doctor's appointment that -- the doctor was late,
7 and so --

8 MS. BENNETT: Will you live?

9 CHAIRPERSON HINTON: I'm going to live.

10 MS. BENNETT: You're going to live?

11 CHAIRPERSON HINTON: And everything is fine, so
12 I guess that's the good news.

13 So can we call the next case?

14 MR. LYONS: The next case is application 16226 of
15 Robert and Ann Dixon, pursuant to 11 DCMR 3107.2, for a variance
16 from the use provisions of subsection 350.4 to allow retail sales and
17 the offices of a pest control company in an R-5-B district at premises
18 7101 Georgia Avenue, Northwest, square 2695, lot 2.

19 All persons wishing to testify in this application,
20 please rise to take the oath. Please raise your right hand.

21 (Whereupon, an oath was administered to those
22 persons wishing to testify.)

23 Please be seated.

24 MS. REID: Madam Chair?

25 CHAIRPERSON HINTON: Yes? Go ahead.

26 MS. REID: Because I have a real estate company in
27 Northwest, for some time now I have used the services of Mr. Dixon,
28 and I just wanted to disclose that. I don't think that that would in any
29 way impact my ability to be impartial in hearing a case, but just for the

1 record I wanted to let it be known.

2 CHAIRPERSON HINTON: Very good. Thank you.

3 Before we start the case, could I ask from the
4 audience, are there people here in support or opposition to the case?
5 Opposition? Okay. Very good.

6 Could we have your name and home address for the
7 record? The applicant.

8 MR. McLAREN: My name is Douglas McLaren. I'm
9 an attorney representing Mr. Dixon. Address, 1825 Tulip Street,
10 Northwest, Washington, D.C. 20012.

11 CHAIRPERSON HINTON: Very good. You may
12 proceed.

13 MR. McLAREN: Good morning. We are here in
14 support of this application for Dixon's Pest Control for a use variance
15 of a property owned by Mr. Dixon at 7101 Georgia Avenue, for offices
16 to hold a pest control business.

17 As you are aware, this property is located directly
18 opposite to the Walter Reed Memorial Hospital in area currently zoned
19 R-5-B, and which provides for a matter of right development as
20 residential, greenhouse, horticulture, multiple dwelling. The property
21 was substantially rehabbed by the applicant, and it has been rented
22 on and off over the period, over the last five or six years.

23 Mr. Dixon's business is now renting approximately
24 1,500 square feet of office space just north of the particular property,
25 and he needs additional space for his business and that's why he
26 wants to use this property for his business, for his office.

27 The business is basically offices. There won't be any
28 manufacturing or chemical operations conducted at the building,
29 though some of the chemicals will be stored in the basement of the

1 facility. There won't be any actual operations. The chemicals are
2 mixed on site, at a particular site that is going to be treated. So there
3 is very little danger of hazardous chemicals being used at the
4 property.

5 As far as the -- should I proceed through, or do you
6 have any questions at this point? Or should I proceed?

7 CHAIRPERSON HINTON: No, you should proceed
8 through your --

9 MR. McLAREN: Fine.

10 MR. LYONS: Madam Chair?

11 CHAIRPERSON HINTON: -- statement.

12 Yes?

13 MR. LYONS: Just a point.

14 Mr. McLaren, will you be representing Mr. Dixon as
15 legal counsel?

16 MR. McLAREN: Yes.

17 MR. LYONS: And if that would be the case, you
18 would not be allowed to testify. Mr. Dixon would have to present it.

19 MR. McLAREN: Okay. I can still read the statement
20 related to the facts as they have been related to me.

21 MR. LYONS: Right. This would be your introduction.

22 MR. McLAREN: Right. Right. I'm sorry.

23 Basically, the three-part test provided for use
24 variances by the Board -- I'd just like to go through the various items
25 and to say how we relate to them.

26 The three-part test -- essentially, unique
27 circumstances -- that would not -- that would -- the property provides
28 unique circumstances that would, if the variance is not granted, would
29 provide undue hardship to the applicant.

1 Secondly, extensive and a substantial adverse impact
2 on the neighborhood or community. And granting of the variance
3 would not impair the intended purpose of the regulations. That is my
4 understanding of what --

5 With respect to the unique circumstances, our
6 understanding from Monoco v. BZA is that these circumstances can
7 lead to economic and other considerations, and they need not just be
8 physical circumstances that create a uniqueness. Mr. Dixon does not
9 intend to modify or further -- or to do any changes to the building,
10 physically to the building, to be occupied as is and for offices. There
11 have been no renovations required.

12 This particular lot is much larger than other lots. It's a
13 corner lot, and it's much larger than other lots in the block. Although
14 there are no other commercial enterprises in that particular block, one
15 block on either side there are several commercial facilities, including
16 cleaners, liquor stores, restaurants, a paint store. And as I said
17 earlier, the property directly faces the Walter Reed Hospital.

18 It provides -- with respect to Mr. Dixon's needs, it
19 provides more parking space, which is not available where he is now
20 and closer access to the subway.

21 With respect to the undue hardship it would provide to
22 Mr. Dixon, he has already made substantial investments in the
23 property, and the property was bought intentionally, notwithstanding
24 the original zoning, for him to use for a commercial business.

25 If he was not able to use the property as is, it would
26 be denying him to have best use of the property. There may be
27 alternative uses for it. But as far as he is concerned, this is worth
28 more to him, to operate his property as a business than if it was rented
29 for residential purposes.

1 It also provides opportunity for him to secure small
2 pickup vehicles on the lot, which he is not able to do at this time.

3 CHAIRPERSON HINTON: Could you repeat that? I
4 didn't understand.

5 MR. McLAREN: It provides -- I'm sorry. It provides
6 additional parking spaces on the lot, so he can secure small pickup
7 vehicles on the site, which is not --

8 MS. BENNETT: Madam Chair, I am really -- I am
9 concerned that the attorney here is crossing over the line, moving
10 from an introductory statement into giving us the content of the case
11 himself when that should come from his witness, especially as it
12 relates to the reasons why he purchased the property in the first place,
13 and wanting to use it as the highest and best use in this instance for
14 his business, when clearly the property was zoned residential. I
15 mean, all of those things should be coming from your client.

16 CHAIRPERSON HINTON: Thank you, Ms. Bennett. I
17 think you're right.

18 Could we move in that direction?

19 MR. McLAREN: Fine. Well, I'll just ask Mr. Dixon to
20 continue, then. Is that --

21 CHAIRPERSON HINTON: Great. Sure. Give us a
22 moment to --

23 MR. DIXON: I'll just follow on. My name is Robert
24 Dixon. My wife and I purchased the property at 7101 Georgia Avenue
25 with the hopes that we could house our business at 7101 Georgia
26 Avenue.

27 One of the reasons -- it's a corner lot, and it will give
28 us more space. It would also allow us to park our trucks inside of our
29 garages. In the past few months, where we are now, we have had

1 break-ins. As a matter of fact, on the 19th of this month, we had one
2 of our trucks vandalized. But this would allow us to park the trucks
3 inside of the garages.

4 We purchased this property back in about 1992. Prior
5 to that, the neighbors had all sorts of problems with this property, as
6 they can testify to. The police was there all of the time. There was
7 drug activity, a whole bunch going on. But since we have purchased
8 the property, we have made substantial investments. We have
9 improved the property. We've done painting. We've put in new
10 windows, and I'm certain the neighbors can testify to that.

11 However, financially, this has really handicapped my
12 wife and I. I'll tell you, today is our payroll, and we made payroll. And
13 anyone that has ever owned a business knows how difficult it is to
14 sometimes make payroll, but we continue to make payroll. We
15 continue to pay our taxes. We continue to be a good neighbor.

16 We've been in the neighborhood since 1978. We
17 have been housed in four-unit apartment buildings, where there have
18 been tenants, residential tenants, commercial tenants. We have been
19 moved up and down Georgia Avenue, and it has cost us considerable
20 amounts of money.

21 It is not like we can just go to the bank like some folks
22 and just get a raise, or just get a loan. It's not like that with our little
23 company. It's like every dime that we've got since, you know, we've
24 been in business has come from my sweat and my wife's sweat. And
25 sometimes it's almost like a day-to-day existence, you know, just to
26 hold on, you know, just to be there. And let me tell you, folks, it's a
27 real struggle. And I'm telling you, it's a real struggle just to pay these
28 bills and to stay on board.

29 And currently, at 7101, all of the taxes are paid.

1 Whatever we owe the District Government, that has been paid, and
2 we are good citizens. But we just don't know how long we can just,
3 you know, go on, you know, maintaining this property.

4 What more can I say? I mean, it's just a cost factor.
5 It's a burden at this point in time.

6 I was up there this morning and I watched a tractor
7 going in and out of Walter Reed. We get started in the morning at
8 about 8:15, and we finish in the afternoon at about maybe 5:30. We
9 are open from Monday through Friday.

10 Out of the week, when -- I notice in this thing it says
11 "retail." We might get one or two people that will come to our office to
12 buy some rodenticide or pesticides. That's very rare. Most of our
13 work is done over the telephone. We currently probably go out and
14 service about 99-9/10 of our clients. Very rarely do people come to
15 our office.

16 But I can see the traffic that goes in and out of Walter
17 Reed. Our little minute traffic -- what, four or five people -- would
18 blend right in. I mean, you wouldn't even see us. Currently, if you
19 come to our office at 7416 Georgia Avenue, you don't see us. We're
20 not no high profile people. We are very, very low profile people.
21 You're not going to see us.

22 And let me tell you, we have a real business. We
23 employ people. We employ Washington, D.C. citizens. If you come
24 up there on Georgia Avenue and check out the businesses, they're
25 not like that. I mean, and you'll see the kind of businesses that I'm
26 talking about. We are a real business. We are probably the largest
27 minority pest control company in the nation, and we work at it.

28 My wife and I, sometimes we put in seven days, 15
29 hours a day, and we've been doing this for quite some time. And it's

1 not an easy task. And for us to acquire money and just to stay afloat,
2 you would have to be in business to see this, and you would have to
3 be us or me to understand what it is that we are going through.

4 And I was of the impression that we could just, you
5 know, be good neighbors like we've always been, and work in the
6 neighborhood and be of some service to the neighborhood.

7 I think in terms of maybe working with Coolidge and
8 working with the kids over there and see if we can't develop a
9 scholarship program for maybe an entomologist, or that type of stuff.
10 As a matter of fact, if you look into who the entomologists are in this
11 town, it is not one of the locals. But we have the possibility to develop
12 that.

13 I want to thank the Board for allowing me to come
14 down and testify, and I just feel privileged to be here, to be able to
15 testify. Like I say, we've been in business since 1978. It has been a
16 struggle. We just can't go out and borrow money and get money like
17 some people can. It's like every dime that we get comes from our
18 pure sweat. We work on Saturdays, Sundays, late at night.

19 And if the Board was to grant this -- grant us this --
20 like I say, if you come to our office right now, we are almost invisible.
21 You don't see us. The pesticides that we use are very mild. They are
22 probably a lot milder than the stuff that you have under your kitchen
23 sink. And like I say, we've been housed in apartment buildings, before
24 7306 Georgia Avenue. We had to move. The crime in that block is a
25 nightmare. If you read the papers on Thursday, you will see.

26 We are at 7416 Georgia Avenue. The neighbors and
27 the police hasn't been able to protect us. I mean, we had a break-in a
28 few months back that cost us thousands and thousands of dollars. It
29 gave my wife all kinds of anxiety. But this is what I guess you have to

1 deal with in that area.

2 We was of the impression being in that area would be
3 a whole lot easier, but it's not. And I'm certain the neighbors can
4 testify to it. It's a nightmare in that part of the world, and at certain
5 hours of night and certain times of the day it's creepy.

6 But anyway, we want to stay. We want to be a part of
7 the neighborhood, and we want to prosper. And we want to hire some
8 of the people in the neighborhood, if we're given the chance.

9 Thank you very much.

10 CHAIRPERSON HINTON: Thank you.

11 Are there any questions from the Board members?

12 MS. BENNETT: Yes. You're located now at 7416
13 Georgia?

14 MR. DIXON: Yes, ma'am.

15 MS. BENNETT: And that is a strip, that is a part of a
16 commercial strip, it's commercially zoned property?

17 MR. DIXON: Yes, ma'am.

18 MS. BENNETT: Now, and the problem is that you
19 what? It's running you into a hole trying to maintain both the 7101 and
20 7416? Is that -- do you live at 7101?

21 MR. DIXON: No, ma'am. Not currently, no.

22 MS. BENNETT: Okay.

23 CHAIRPERSON HINTON: Did you used to live
24 there? Have you ever lived there?

25 MR. DIXON: I have never lived there.

26 MS. BENNETT: Let me ask you, I mean -- and I'm
27 sensitive to the hardship of a small business person. And almost no
28 matter where you locate, you know, you're going to run into some of
29 the crime factors and the like.

1 But one of the things that concerns me is the
2 statement -- one of the features of the opening statement from your
3 client -- I mean, your attorney, who said that we'd be denying you the
4 highest and best use of your property if we didn't allow you to locate
5 your business there.

6 And my concern is this: the highest and best use is
7 only that use to which you are permitted to do on the property at the
8 time. The highest and best use of this property is any R-5-B use. You
9 know what I'm saying? And the fact that you may have acquired the
10 property hoping in your heart to be able to locate a business there
11 doesn't make it the right thing to do. You know what I'm saying?

12 You require a use variance, which is the toughest test
13 in the regulations. And while we may be able to acknowledge
14 economic hardship, that's not going to be -- it by itself is not going to
15 carry the day on this.

16 This property is designed to be a residential property.
17 There are a host of uses that are allowed in R-5-B, and this particular
18 use is not one. You've got to come up with something quite
19 compelling, in my judgment, before we could approve this case.

20 And I'm sympathetic, you know. It's not that I am not
21 aware that you are hiring D.C. residents and making payroll is not
22 easy. But those uses must be carried out where they are permitted.

23 Now, where you're located now is the zone district
24 which permits exactly what you're doing apparently. There is not a
25 problem there. You're not surrounded by other stable residential
26 uses. You are located where it is permitted in the zone plan for you to
27 be located. But then, to try to kind of lift that up and put you in a
28 residentially zoned area, you've got to come up with a whole lot more
29 than the heart-wrenching comments that you've given us. And that's a

1 reason -- there's a reason for that. There's a reason why we separate
2 residential uses from certain kinds of commercial uses.

3 And I was also interested to hear you say that you
4 don't generate a lot of traffic, at least on the site, that most of your
5 work you go out to a site to conduct. I'm sensitive to that, and I'm
6 aware of that. But nevertheless, it does not change the character of
7 your business, and that differs substantially from the kind of use to
8 which that property would be put if it is devoted to residential use.
9 You know what I'm saying?

10 And that's the -- I think that is the problem. That's
11 what we see, and I'm sure you or your attorney have had a chance to
12 look at the record in this case. That is the heart of what your
13 neighbors are concerned about -- changing the character of their
14 neighborhood.

15 So I just wanted you to know that you've got a major
16 test to make here. It's got to be compelling. And what I heard was
17 that the uniqueness, as stated at least in the opening statement, of
18 your property has to do with its size, that it's the largest, that it's -- that
19 a lot of money has been put into the business, and that we'd be
20 denying you the highest and best use of the land.

21 That's not carrying this case, at least in my judgment.
22 I'm sorry, and I'll let my other colleagues respond.

23 CHAIRPERSON HINTON: I agree. Let's see if we
24 have any questions first. Do you?

25 MS. REID: When you first the property for your
26 business, were you aware of the zoning problem that you had prior to
27 your purchase?

28 MR. DIXON: Not totally. I was of the impression that
29 we could work with the powers to be and possibly, if there was

1 something to be done as to change --

2 MS. REID: You were led to believe --

3 MR. DIXON: I wasn't totally aware of the fact that it
4 was zoned this way, because every other block on Georgia Avenue,
5 except for this block, is zoned commercial. There is no other block on
6 Georgia Avenue, for whatever reason.

7 Now, I don't know -- I was just of the impression that
8 this block was a commercial block, too, because every other block on
9 Georgia Avenue that I know of is commercial.

10 MS. REID: Were you led to believe, or were you
11 under the impression that if you purchased the property for a business
12 that you could then come to the BZA and get a variance or something
13 to allow you to be able to put your business in that particular building
14 as a commercial business entity?

15 MR. DIXON: That's what I was hoping.

16 MS. REID: No. I'm saying, were you led to believe
17 that by -- were you told that, or did you have some --

18 MR. DIXON: No.

19 MS. REID: So basically, just on your own volition,
20 you felt that if you purchased it, then you could come down and try to
21 get a variance to put your business in there?

22 MR. DIXON: I want to make sure that I understand
23 your question. Are you saying to me, was somebody encouraging me
24 to purchase this property --

25 MS. REID: Let me rephrase it.

26 MR. DIXON: Okay.

27 MS. REID: What compelled you to buy that building?
28 If you were aware of the fact that it was in a residential -- are you
29 saying that you did not know it was residential, you thought it was

1 commercial?

2 MR. DIXON: Well, I thought it was commercial,
3 because everything else on Georgia Avenue is commercial, except
4 that block.

5 MS. REID: Okay. But when you purchased the
6 property, did you check the zoning to make sure it was in compliance
7 with what you wanted to do in the building?

8 MR. DIXON: Not really, no. That was an oversight
9 on my part.

10 MS. REID: Therein --

11 MR. DIXON: Yes.

12 MS. REID: -- lies the problem.

13 VICE CHAIRPERSON RICHARDS: I had one
14 question. Did you buy it with the intent of putting your business in, or
15 did you think perhaps you would offer it for rental, and then later
16 change your mind and decide to put your business in it?

17 MR. DIXON: To answer your question, I bought the
18 property with the intent of putting my business there. We've spent a
19 lot of money with architects and a bunch of other people that work with
20 us. But before we purchased the property, that was our intent, that
21 was our vision.

22 VICE CHAIRPERSON RICHARDS: Thank you.

23 MS. REID: The architect didn't tell you?

24 MR. DIXON: Well, after we purchased the property.
25 We purchased the property --

26 MS. REID: Oh, this is after.

27 MR. DIXON: After the fact.

28 MS. REID: Okay. But still, even when they came in
29 to do the work, did they inform you that you didn't have the right

1 zoning for what you wanted to do?

2 MR. DIXON: After we got into it, yes. That's when
3 they started telling us that we had to do this, we had to do the other.
4 And this has been going on since we purchased the property.

5 MS. REID: How long have you owned it?

6 MR. DIXON: I think since about 1992.

7 MS. REID: And right now, what is the use of the
8 building?

9 MR. DIXON: Well, currently, we have it rented. It's a
10 rental property.

11 MS. REID: You rent it as residential?

12 MR. DIXON: Yes, ma'am.

13 MS. REID: Okay. Thank you.

14 CHAIRPERSON HINTON: Okay. Let's move on.

15 The next is government reports, including -- we have a report from the
16 Office of Planning. Is that right?

17 Yes?

18 MR. McLAREN: Could I just make a very brief
19 correction to our submission -- that you attributed to me, with respect
20 to the highest and best use? I wasn't stating that it was the Board's --
21 was obligated to provide the highest and best use. I was just saying
22 that, under the circumstances, he would not be able to do what he
23 thought was best for him.

24 CHAIRPERSON HINTON: Okay. I think we
25 understood.

26 MR. McLAREN: I wasn't establishing an obligation on
27 the Board to provide that.

28 CHAIRPERSON HINTON: And there is no obligation
29 there, so I think we understand that.

1 MS. BENNETT: Well, there is no obligation to do
2 anything more than what the regulations would allow --

3 CHAIRPERSON HINTON: Exactly.

4 MS. BENNETT: -- vis-a-vis the appropriate use.

5 CHAIRPERSON HINTON: Matter of right.

6 MS. BENNETT: Matter of right.

7 CHAIRPERSON HINTON: Okay. Office of -- do we
8 have an Office of Planning -- no, we have -- but normally, we have a
9 person here.

10 MR. LYONS: Yes. Mr. Bastida is aware of the
11 hearing. I did speak with him this morning, and I'm not -- I don't
12 understand why he's not here at this moment.

13 CHAIRPERSON HINTON: Okay. But we've all read
14 the report, so let me just -- I'll go through it. The Office of Planning is
15 recommending denial.

16 Have you seen the Office of Planning report? Yes,
17 you have?

18 MR. DIXON: Yes.

19 CHAIRPERSON HINTON: Okay. Very good.

20 And the Office of Planning is of the opinion that the
21 applicants have not met the burden of proof relative to establishing a
22 unique condition in this property that creates an undue hardship. And
23 they also believe that their commercial use would have a negative
24 impact on the residential character of the area. So for those reasons,
25 they're recommending denial.

26 The ANC -- we don't have a letter from the ANC. We
27 have a letter from the single member district representative. I think we
28 received it this morning. It was on the table.

29 Okay. And the letter is from Rosemary Harold, the

1 ANC 4B02 Commissioner, and she tells us that the ANC has not been
2 able to get a quorum together to take an official action. But as a
3 single member district representative, she is going on record in
4 opposition to the variance.

5 And her reasons are that she believes that there is no
6 extraordinary or exceptional situation or condition warranting the
7 variance, that a granting of the variance would provide substantial
8 detriment to the public good due to the commercial nature of the
9 business located in a residential district.

10 We have no other reports. Are there any persons or
11 parties in support of the application? Seeing none, are there persons
12 or parties in opposition to the application? There are a number of
13 them.

14 Gentlemen, if you could move back from the table,
15 and we'll ask two people at a time to come up to the microphones.

16 MR. LYONS: Madam Chair, I don't think the applicant
17 was stood for cross examination. I didn't know whether any of the
18 opposition --

19 CHAIRPERSON HINTON: We haven't established
20 any parties.

21 MR. LYONS: That's correct. I don't know if we've
22 inquired of those members whether they did want to be party to --

23 CHAIRPERSON HINTON: Well, we haven't had any
24 requests for party status, have we?

25 MR. LYONS: It's not required to be in writing, a
26 request for party status.

27 CHAIRPERSON HINTON: Okay. Of the people in
28 the audience that are in opposition, are any of you requesting party
29 status? Does anybody know what that means?

1 AUDIENCE PARTICIPANT: No.

2 CHAIRPERSON HINTON: Okay.

3 AUDIENCE PARTICIPANT: Would you please
4 explain?

5 CHAIRPERSON HINTON: Yes. Generally, party
6 status means that you have a particular interest in the case that is not
7 represented by the ANC or by any other parties. If you live within or
8 own property within 200 feet of the subject property, you generally are
9 entitled to party status. If you have some other interest, you need to
10 let the Board know what that would be.

11 So if you could come up to the microphone over here
12 at the lectern, anyone who is interested in having party status.

13 In addition to being able to speak to the Board about
14 your opposition, you also will be notified of any proceedings of this
15 case, and you have the right to appeal the decision if you're a party.

16 MS. BENNETT: You also get a chance to cross
17 examine the witness.

18 CHAIRPERSON HINTON: Right, the applicant, and
19 any of the government reports.

20 Could you give your name and home address?

21 MR. McPHERSON: Good morning. My name is
22 Alpha McPherson. I live at 7125 Georgia Avenue, and I have lived
23 there for a long time. I have a compelling reason to be here.

24 CHAIRPERSON HINTON: Is your property within
25 200 feet of the subject property?

26 MR. McPHERSON: Probably.

27 CHAIRPERSON HINTON: You're on the same
28 block?

29 MR. McPHERSON: I'm on the same block.

1 CHAIRPERSON HINTON: Okay.

2 MR. McPHERSON: I'm at 7125. He is at 7101.

3 CHAIRPERSON HINTON: Right.

4 MS. BENNETT: Did you have any questions of this
5 witness, of the applicant?

6 CHAIRPERSON HINTON: Let me -- before you do
7 that, at this time you can ask questions of the applicant, and then later
8 you'll be able to explain to the Board your opposition to the case. So
9 you will get to speak again. And right now, the time is just to ask
10 questions if anything wasn't clear that the applicant has stated.

11 MS. DOBBINS: So this means he is requesting party
12 status at this time?

13 CHAIRPERSON HINTON: Yes.

14 MR. McPHERSON: I guess my question to the
15 applicant is that he was certainly courageous enough to come to our
16 civic association and alert us to the fact that he wanted to make this a
17 business. But I'm still curious about his decision to buy property that
18 he hoped that he could turn into a commercial venture in a block that
19 he clearly has stated was residential when he purchased the property.

20 He could look across the street and see Walter Reed
21 Army Medical Center, recognizing there were patients and people who
22 are ill go back and forth --

23 MS. BENNETT: You're testifying now.

24 MR. McPHERSON: I'm sorry.

25 MS. BENNETT: You've got to ask a question.

26 MR. McPHERSON: Okay.

27 MS. BENNETT: If you have a question. If not, you
28 can reserve those comments for when you come back and give us
29 your statement.

1 MR. McPHERSON: My question now is that when I
2 observed what was going on, I felt that Mr. Dixon was only buying the
3 property for a rental property and not to locate his business. And I
4 would just like to know if that was a misimpression on my part, or
5 whether there's an economic reason that now has forced you to take
6 this position. Thank you.

7 MS. BENNETT: Thank you.

8 MR. DIXON: I don't understand his question.

9 MS. BENNETT: Okay. Could you elucidate?

10 MR. McPHERSON: All right. The property that you
11 purchased has been in a rental status. There have been signs out
12 saying "For Rent" over the last few years. And the community had no
13 idea that you had intended to make this a business venture until you
14 came to our group a couple of months back, I believe a while back.

15 My question to you is: what led you to changing from
16 rental -- this was the understanding your neighbors had, and this is
17 why we said that you were a good neighbor -- to now want to suddenly
18 become a business in a community that has long been zoned
19 residential?

20 MS. BENNETT: That is the question. What made
21 you change your mind turning this property from rental property, rental
22 residential property, to wanting to establish a business there?

23 MR. DIXON: I didn't know. I mean, when I bought
24 the property, I was of the impression that I was going to turn it into a
25 commercial establishment. I didn't lead the neighbors to think
26 anything other than that. It's just that it was rented. I mean, whatever
27 it is that he bought, that's -- those are his thoughts.

28 MS. BENNETT: Okay. That's the answer. And he'll
29 be able to explain a little later how he feels and how his civic

1 association feels.

2 CHAIRPERSON HINTON: Is anyone else seeking
3 party status?

4 Okay. Why don't you come to the microphone and
5 give us your name.

6 MS. DARGAN: Good morning. My name is Dorothea
7 Dargan, and I reside at 7129 Georgia Avenue, and I have been
8 residing there since December 1966. This is also a historical area.
9 It's a part of the planned Tacoma --

10 CHAIRPERSON HINTON: Excuse me. This --

11 MS. DARGAN: -- and my question --

12 MS. BENNETT: Okay. She's getting to her question.
13 That's the question.

14 CHAIRPERSON HINTON: Okay. Right.

15 MS. BENNETT: Are you asking for party status?

16 MS. DARGAN: Yes.

17 MS. BENNETT: Okay. And your question?

18 CHAIRPERSON HINTON: Do you own property
19 within 200 feet?

20 MS. DARGAN: I own the property at 7129 Georgia.
21 Right, same block.

22 CHAIRPERSON HINTON: Same block?

23 MS. DARGAN: Yes.

24 CHAIRPERSON HINTON: Okay.

25 MS. BENNETT: Okay. Your question?

26 MS. DARGAN: My question is: Mr. Dixon, after we,
27 the community, cleaned out 7101 Georgia and you purchased that
28 property, why, then, did you not inform us that these were your
29 intentions to begin with? Because we, the community, were the ones

1 who cleaned out that property before you purchased that about four or
2 five years ago. It's been a little less than that. You never informed us
3 in the community that these were your intentions. And my question to
4 you, sir, is: why would you come into an established residential
5 community and do this?

6 MR. DIXON: The same answer that I gave the last
7 gentleman. That's the same answer.

8 MS. DARGAN: Well, I don't recall what that was.
9 May I hear it, please, sir?

10 MR. DIXON: My intentions were, when I purchased
11 the property, to turn it into a commercial establishment. That is the
12 answer to your question.

13 MS. DARGAN: It was purchased with those
14 intentions, you say?

15 MR. DIXON: It was purchased with those intentions,
16 and I don't see why I have to tell anybody what my intentions were
17 until I decide to. And when I did, I did tell you. I'm going about it the
18 proper way. When you buy a property, I guess you told everyone on
19 Georgia Avenue what your intentions were. I mean, I'm telling you
20 now what my intentions are, and that's why we're having this hearing.

21 MS. BENNETT: Okay. That's his answer. You can
22 respond when it's your turn to testify.

23 MS. DARGAN: Thank you.

24 MS. BENNETT: Thank you.

25 CHAIRPERSON HINTON: Are there any other
26 requests for party status?

27 MS. HENSLEY: Good afternoon. My name is
28 Maretta Hensley, and I live at 7102 9th Street, which is directly in back
29 of Mr. Dixon's property.

1 And my question to you, Mr. Dixon, are you --

2 MS. BENNETT: And you are seeking party status?

3 MS. HENSLEY: Yes. Yes.

4 MS. BENNETT: All right.

5 MS. HENSLEY: I'm sorry. Are you using this
6 property to store chemicals now and maintain your business?

7 MR. DIXON: Currently, we store supplies in the
8 garage. We do not store chemicals there.

9 MS. HENSLEY: You do not --

10 MR. DIXON: We store like ladders, shovels, axes,
11 picks, netting, those kind of things.

12 MS. HENSLEY: Are you parking your vehicles in the
13 lot, in your lot, and on the outside of that lot now?

14 MR. DIXON: Currently, we don't park any vehicles in
15 that lot, in that area whatsoever.

16 MS. HENSLEY: Well, I beg to differ, but I'll have a
17 time to --

18 MS. BENNETT: You will have a time to -- that's right.

19 MS. HENSLEY: Thank you.

20 MS. HARRIS: I'm Lillie Harris, and I live at 7127
21 Georgia Avenue.

22 MS. BENNETT: The same block.

23 MS. HARRIS: Yes.

24 MS. BENNETT: And you're looking for party status?

25 MS. HARRIS: Yes.

26 MS. BENNETT: All right.

27 CHAIRPERSON HINTON: Do you have any
28 questions of the applicant at this time?

29 MS. HARRIS: Yes. Mr. Dixon, when you came to us

1 about the property --

2 MR. DIXON: Yes, ma'am.

3 MS. HARRIS: -- I told you I had just finished paying
4 for my home and I wasn't interested in selling. So why did you think I
5 had changed my mind about it?

6 MR. DIXON: I don't understand your question.

7 MS. BENNETT: Can you restate the question?

8 MS. HARRIS: When Mr. Dixon -- I asked Mr. Dixon
9 that when he came to our meeting and he said that he wanted to
10 establish a business in that area, and I told him I had just finished
11 paying for my home and I wasn't interested, so why should you think
12 that I'm interested now or getting rid of my house?

13 MR. DIXON: I'm not aware of your state of mind. I
14 don't know what you're thinking. I'm just aware of my state of mind.

15 CHAIRPERSON HINTON: That concludes cross
16 examination of the applicant.

17 We had no persons in support, is that right, no one
18 here appearing in support? And I don't recall any information in the
19 record in support.

20 We seem to have all parties, then, in opposition. So if
21 you could vacate the table and let the parties come forward.

22 MR. McLAREN: Could I just -- we had a letter that
23 your advice was sending to you in support from Mr. Morales.

24 CHAIRPERSON HINTON: We will look for it.

25 MS. BENNETT: Madam Chair, we do now have an
26 Office of Planning representative who can stand cross examination
27 based on the report that was submitted.

28 CHAIRPERSON HINTON: Do we have that letter?

29 MR. LYONS: No, Madam Chair. I was just looking

1 and I did not find it.

2 CHAIRPERSON HINTON: We don't have the letter in
3 the record. Can you give a copy of it to our secretary?

4 MR. LYONS: If I can just swear in the OP
5 representative.

6 (Whereupon, an oath was administered to the Office
7 of Planning representative.)

8 CHAIRPERSON HINTON: In your absence, Mr.
9 Bastida, I summarized the OP report. And what I would like to do now
10 is ask the applicant if they have any cross examination questions for
11 the Office of Planning.

12 MS. BENNETT: Let me explain to Mr. Dixon.
13 Because you are the applicant in this case, you are an automatic
14 party, and so anybody who submits a report, like the Office of
15 Planning does, in support of denying what you have -- see, you get a
16 chance to cross examine them, too.

17 You get a chance to ask him questions about the
18 findings that are in the report, if you wish, as do all of the parties. All
19 of the people who have been granted party status get a chance to ask
20 OP questions, if you agree or don't agree with the content of the
21 report. Okay?

22 CHAIRPERSON HINTON: Do you have any
23 questions?

24 MR. McLAREN: Madam Chair, am I allowed to ask
25 Mr. Bastida questions, or Mr. Dixon is the one who has to ask?

26 MS. BENNETT: You are his attorney. He can ask
27 questions. You may ask the questions of the Office of Planning.

28 MR. McLAREN: Mr. Bastida, could you tell me what
29 are the matter of right uses that are available in R-5-B zone districts?

1 MR. BASTIDA: Sure. I would like to consult the
2 regulations to be able to offer those to you.

3 MR. McLAREN: Just in order to expedite this, I don't
4 know if Madam Chairman would allow me -- I have referred to his
5 entire memo, which included a copy of the regulation. And that would
6 facilitate --

7 MR. BASTIDA: So that answers your question.
8 Right? Or you want me to restate it for the record?

9 MR. McLAREN: If greenhouses or horticultural
10 nurseries are allowed in that zoning area.

11 MR. BASTIDA: What is the question?

12 MR. McLAREN: If greenhouses or horticultural
13 nurseries are permitted in that zone?

14 MR. BASTIDA: That is a question that is better
15 answered by the zoning administrator, since it is an interpretation of
16 the zoning regulations. I would be glad to try to answer them by
17 looking at the regulations.

18 CHAIRPERSON HINTON: Those are specifically
19 listed as allowed in the District under 350.4.

20 MR. BASTIDA: Okay. Then they are permitted.

21 CHAIRPERSON HINTON: Yes, they are permitted.

22 CHAIRPERSON HINTON: Do you have any other
23 questions?

24 MR. McLAREN: Are businesses of all nature
25 excluded from this particular zone area?

26 MR. BASTIDA: Are what?

27 MR. McLAREN: Is the operation of any commercial
28 business excluded from the particular zoning area?

29 MR. BASTIDA: Yes, it is.

1 MR. McLAREN: Okay.

2 MR. BASTIDA: It would require -- well, the hotels, if
3 they were pre-established prior to May 16, 1980, they are permitted to
4 maintain -- to be maintained in the area as non-conforming uses.
5 Before 1980, hotels were considered residential use, and it was a
6 matter of right use. But that was changed by the Zoning Commission
7 in 1980.

8 MS. BENNETT: I guess what -- it sounds like what
9 you're getting at is are there not some other kinds of permitted
10 commercial uses that are permitted in the R-5-B zone districts? And
11 the answer, based on what we see right here, is yes, but they are
12 specifically outlined, what they are to be.

13 And Mr. Dixon is not intending to establish a
14 greenhouse or a horticultural nursery, nor is he the owner of a hotel
15 that preexisted prior to 1980. And so, therefore, if those are the
16 commercial uses that are permitted here under these conditions, then
17 that is what is permitted. But pest control business is not among
18 them.

19 So, I mean, I get your point, but --

20 MR. McLAREN: That was just the point.

21 MS. BENNETT: Yes. Okay.

22 MR. McLAREN: I'm not -- I --

23 MR. BASTIDA: Yes. These are only the -- what I had
24 attached to the Office of Planning report were the permitted uses as a
25 matter of right. There are other permitted uses that are a matter of
26 special exception, but I --

27 MS. BENNETT: That's right.

28 MR. BASTIDA: -- to the facility be provided, so they
29 might be considered quasi-commercial. But, in fact, it is only to serve

1 the population or those buildings that, when they are permitted, and
2 no signage, and so on, is permitted, and they still had to come through
3 and be reviewed by the Board.

4 MS. BENNETT: That's right.

5 MR. BASTIDA: And they are usually considered that
6 they will not add vehicular or pedestrian traffic to the area, because
7 the individuals that will be served are already in the area.

8 MS. BENNETT: Right. Like commercial businesses
9 that are on the ground floor of a large apartment complex, for
10 instance.

11 MR. BASTIDA: Right. Like a convenience store that
12 serves the people who live in the apartment building, and solely in
13 those apartment buildings.

14 CHAIRPERSON HINTON: Okay. We need to move
15 along. Do you have any other questions?

16 MR. McLAREN: Just one other question at this point.
17 You said that -- in your report that there would be storage of
18 dangerous chemicals on the site.

19 MR. BASTIDA: That is correct. That was Mr. Dixon's
20 statement to me and Mona Sharee on the day that we met with him.

21 MR. DIXON: That's not the case. We are not going
22 to store any dangerous chemicals there.

23 CHAIRPERSON HINTON: You can address --
24 excuse me. You can address this in closing remarks.

25 MR. McLAREN: I have no further questions.

26 CHAIRPERSON HINTON: Okay. Thank you.

27 MR. BASTIDA: Madam Chairperson, if I may
28 elaborate a little bit on my report, since I wasn't here.

29 CHAIRPERSON HINTON: Only to the extent that it is

1 necessary.

2 MR. BASTIDA: I believe it is necessary. The Office
3 of Planning have a study ongoing on the Georgia Avenue corridor in
4 which the Office of Planning is trying to anchor the residential
5 character of the area. The applicant, I would like to point out, has a
6 business about two or three blocks away on the west side of Georgia
7 Avenue and in a commercial zone district in which he can permit it as
8 a matter of right.

9 The Office of Planning was very concerned, and that's
10 why we decided to provide this report. And you have read the report
11 for the record, and the Office of Planning stands on its report and
12 recommends denial of this application.

13 Thank you.

14 CHAIRPERSON HINTON: Very good. Thank you.

15 If the parties could come forward to the table, two at a
16 time.

17 The issues of this case seem to be pretty narrowly
18 defined, so I'm going to ask the parties if they can put their statements
19 on the record and try to use five minutes or less.

20 MS. REID: And also, I'd like to ask that you not be
21 repetitive. If the point has already been made by previous testimony,
22 then don't reiterate the same thing, so that we can save time.

23 MS. BENNETT: Just give us your special input on it.
24 But if a party has already made a series of points that you agree with,
25 associate yourself with them and then give us your own special
26 insight.

27 Give us your name again.

28 MR. McPHERSON: My name is Alpha McPherson. I
29 live at 7125 Georgia Avenue.

1 My reason for opposing this is that the community that
2 we live in is a residential community. We want to preserve it that way.
3 We believe that the issues that are being addressed here today go
4 beyond zoning, but also has the potential for creating a hazardous
5 situation in our community. And that's why we are here.

6 We have seen on the property, reported by the
7 neighbors, where there are -- appear to be pesticides or chemicals
8 that are accessible, even by children who may wander in from the
9 alley. And we just don't want to have anything like this in our
10 community.

11 We pride ourselves on the fact that it is a residential
12 community on Georgia Avenue, and we are asking the Board here,
13 and other powers, to save and preserve our community.

14 Thank you.

15 CHAIRPERSON HINTON: Thank you.

16 MS. DARGAN: My name is Dorothea Dargan, and I
17 reside at 7129 Georgia Avenue, Northwest, and I have resided there
18 since 1966. It has always been a residential area. I have reared my
19 three daughters in the area, and it will lower our property value if a
20 commercial area is permitted, or if the Dixon Pest Control is permitted
21 to operate. Now, that means someone else will try and open another
22 commercial business within the block.

23 What we would like to do is to maintain our standard
24 of living that we have become accustomed to, and fighting for, in our
25 community -- for drugs, we have cleared out. There are so many
26 things that have been accomplished that I would like to see this area
27 maintained the same way that it has been maintained, and for us to
28 maintain our standard of living without lowering the property value of
29 our homes.

1 Thank you.

2 CHAIRPERSON HINTON: Thank you. Very good.

3 Applicants get to cross examine. Is that right?

4 MS. DARGAN: May I ask one question?

5 CHAIRPERSON HINTON: Yes.

6 MS. DARGAN: May I have a copy of the Office of
7 Planning report?

8 CHAIRPERSON HINTON: Sure.

9 MS. DARGAN: Thank you.

10 CHAIRPERSON HINTON: Before you leave, since
11 you are parties, the applicant has an opportunity to ask questions of
12 you in cross examination.

13 MS. DARGAN: Sure.

14 CHAIRPERSON HINTON: Does the applicant have
15 any questions of these two parties? Gentlemen, do you have
16 questions?

17 MR. McLAREN: No, Madam Chairperson.

18 CHAIRPERSON HINTON: Thank you.

19 Could the next two parties come forward to the table,
20 please?

21 Either of you may start.

22 MS. HARRIS: Can you all hear me?

23 CHAIRPERSON HINTON: Yes.

24 MS. HARRIS: I just have the same question.

25 MS. DOBBINS: Ms. Harris, would you give your
26 name and address before you start your testimony.

27 MS. HARRIS: Oh. Excuse me.

28 MS. DOBBINS: That's okay.

29 MS. HARRIS: My name is Lillie Harris, and I live at

1 7127 Georgia Avenue.

2 I have a problem with people when they are in your
3 neighborhood and see you are doing okay, and things like this come
4 up. I'm telling you the truth, that house that I'm living in is not mine.
5 It's my son's house. But I live there, which I've been there for about
6 six or seven years.

7 And we have had all kinds of trouble around in the
8 neighborhood, but we seem to be recovered because we came to be
9 Orange Caps. And when you come to be an Orange Cap, the drug
10 addicts seem to move away from you.

11 So I just want to keep my home. That's all.

12 MS. BENNETT: Okay. Very good. Thank you.

13 CHAIRPERSON HINTON: Thank you.

14 MS. HENSLEY: My name is Maretta Hensley, and I
15 recently purchased my home in the last year and a half in one of the
16 -- I looked at several neighborhoods in Washington, and I picked that
17 neighborhood because it seemed to be a nice residential
18 neighborhood. And I would like it to stay there.

19 And also, I'm concerned about the problem of
20 pesticides and things and trucks. There are enough trucks that go
21 down 9th Street, and there is a sign there that says "No Trucks." And
22 I've seen the trucks parked out there, so I am right in back, so I can
23 look out and I can walk around the corner and see them. So we don't
24 need that. It's already congested with parking.

25 CHAIRPERSON HINTON: Thank you. Could you
26 stay one minute?

27 Do you have any questions of these parties? No.

28 Okay. Very good. Thank you.

29 We have closing remarks from the applicant.

1 MR. McLAREN: Can I just make a very brief
2 statement? Can I make it, or does Mr. Dixon have to make it?

3 MS. BENNETT: No, you can make a closing
4 statement.

5 MR. McLAREN: I'd just like to, you know, thank you
6 for, you know, providing us the opportunity to support our application
7 here this morning.

8 With respect to the application, Mr. Dixon purchased
9 the property in good faith, not really fully examining the zoning
10 required at the time. He has now decided -- well, he had decided from
11 before that that's what he had wanted to use it for. He now sees a
12 need to use it for commercial purposes. There was no attempt for him
13 to deceive anyone in his original decision to purchase the property.

14 With respect to the impact on the community and on
15 the zoning, the intent of the zoning regulations, no dangerous
16 chemicals will be stored on the site, as stated by Mr. Dixon. And it is
17 our understanding that there is very little walk-up or vehicular traffic
18 associated with his business. It's not really a retail outfit, so it will not
19 have a significant impact on traffic in the area, especially because of
20 its location opposite the Walter Reed.

21 It would not change the real character of the
22 immediate neighborhood, since there have been no physical
23 renovations of the property. And on the basis of that, we would
24 appreciate your favor of a consideration of this application.

25 CHAIRPERSON HINTON: Where would the
26 chemicals be stored?

27 MR. DIXON: Where would the chemicals be stored?
28 They would be stored there. But they're not --

29 CHAIRPERSON HINTON: Oh. So they will be stored

1 there, but it's your opinion that they're not dangerous.

2 MR. DIXON: Currently, we are at 7416 Georgia
3 Avenue, and we have residential people that live in the apartment next
4 to us. Are you with me?

5 CHAIRPERSON HINTON: Yes.

6 MR. DIXON: And we have been in the area since
7 1978. Prior to that, we were at 7306. The occupancy people come in,
8 and these chemicals are not like what you think. There is a chemical
9 that we use --

10 CHAIRPERSON HINTON: Are they pesticides?

11 MR. DIXON: They are pesticides.

12 CHAIRPERSON HINTON: I think we understand that
13 they are pesticides.

14 MR. DIXON: Yes. Okay.

15 CHAIRPERSON HINTON: Okay. And they will be
16 stored at the property. That's your intention?

17 MR. DIXON: We have them stored currently at 7416
18 Georgia Avenue. We have a four-unit apartment building, and we
19 have residential tenants that live there.

20 CHAIRPERSON HINTON: I understand that.

21 MR. DIXON: We have been there for about four
22 years.

23 CHAIRPERSON HINTON: If the variance is granted,
24 where will the pesticides --

25 MR. DIXON: 7101 Georgia Avenue, if the variance is
26 granted.

27 CHAIRPERSON HINTON: Very good.

28 MR. LYONS: Madam Chair?

29 CHAIRPERSON HINTON: So when the Office of

1 Planning reported that the chemicals would be stored on site, they
2 were correct in reporting that?

3 MR. DIXON: Except for the dangerous word that he
4 used, he is correct.

5 CHAIRPERSON HINTON: Okay. I think we're clear
6 on that.

7 Yes, Mr. Lyons?

8 MR. LYONS: Madam Chair, I just had a question for
9 the applicant.

10 CHAIRPERSON HINTON: Okay.

11 MR. LYONS: Mr. Dixon, you indicated that the 7101
12 Georgia Avenue is now being rented?

13 MR. DIXON: Yes, sir.

14 MR. LYONS: Does that include the space that you
15 propose to occupy as the commercial business?

16 MR. DIXON: Well, when the lease runs out, then we
17 want the whole building.

18 MR. LYONS: But it is presently being used for
19 residential purposes?

20 MR. DIXON: Yes.

21 MR. LYONS: Okay. Thank you.

22 MS. BENNETT: Let me clarify one other thing. In the
23 application that you submitted, dated December 26, 1996, the present
24 use of the property was listed as vacant.

25 MR. DIXON: It was vacant at that time.

26 MS. BENNETT: It was vacant at that time.

27 MR. DIXON: Yes, ma'am.

28 MS. BENNETT: All right.

29 CHAIRPERSON HINTON: Okay. Are there any

1 other questions from Board members?

2 VICE CHAIRPERSON RICHARDS: No, I have no
3 questions.

4 CHAIRPERSON HINTON: Okay. I am ready to
5 make a decision, if my colleagues are ready --

6 MS. BENNETT: I'm ready.

7 CHAIRPERSON HINTON: -- to make a decision.
8 Why don't we try to do that. Is there a motion?

9 MS. BENNETT: Madam Chair, I move denial of this
10 application. I simply don't believe that the tests have been met. And I
11 guess perhaps a little earlier I misspoke when I said that, you know,
12 you have the right only to do what is allowed as a matter of right. If
13 that's not correct, there are some other uses that you can establish,
14 providing you meet the tests for special exceptions.

15 And in the case of the use variance, you would have
16 the right to establish a change of use, providing you meet the very stiff
17 tests called for in the regulations to do so. And I think in this instance,
18 I have not been convinced that those tests were met, and so I would
19 move denial.

20 CHAIRPERSON HINTON: Thank you. I'll second the
21 motion.

22 Anyone else want to --

23 VICE CHAIRPERSON RICHARDS: No. I think that
24 some of Ms. Bennett's earlier remarks on the analysis and the
25 rationale has been adequately set forth.

26 CHAIRPERSON HINTON: I would agree. I think the
27 analysis of the Office of Planning is right on point.

28 For a use variance, the applicant would need to
29 demonstrate that the property cannot be used for any of the matter of

1 right uses, and there has been absolutely no testimony -- as a matter
2 of fact, we've had testimony that it is currently being rented for
3 residential use. So having said that, I think the Office of Planning is
4 correct in their recommendation.

5 All those in favor?

6 (Chorus of ayes.)

7 Opposed?

8 Did you vote? Very good.

9 MR. LYONS: Staff would record the vote as being 4-
10 0 to deny the application. Ms. Bennett, Ms. Hinton, Ms. Reid, and Ms.
11 Richards to deny; Mr. Clarens, not present, not voting.

12 CHAIRPERSON HINTON: Thank you. Thank you,
13 everybody.

14 MR. LYONS: Thank you.

15 CHAIRPERSON HINTON: Do Board members need
16 to take a five-minute break, or do you want to move on? Five
17 minutes?

18 We're going to take a five-minute break before the
19 next case.

20 (Whereupon, the proceedings in the foregoing matter
21 went off the record at 11:20 a.m. and went back on
22 the record at 11:37 a.m.)

23 CHAIRPERSON HINTON: Let's go back on the
24 record.

25 Could we call the last case of the morning?

26 MR. LYONS: Yes. Madam Chair, the last case is
27 application 16221 of James R. Wisman and Candice Kessel, pursuant
28 to 11 DCMR 3107.2 for a variance from the maximum allowable lot
29 occupancy requirements of subsection 403.2 for an addition to a semi-

1 detached single-family dwelling in an R-2 district at premises 3626
2 Veazey Street, Northwest, square 1896, lot 26.

3 All persons wishing to testify in this application,
4 please rise to take the oath. Would you please raise your right hand?

5 (Whereupon, an oath was administered to those
6 persons wishing to testify.)

7 Please be seated. Will the applicant come forward?

8 CHAIRPERSON HINTON: Okay. And I'll just put on
9 the record, since the applicants are the only people left in the room, it
10 looks like we have no one else that wants to be parties in support or
11 opposition.

12 MR. WISMAN: Good morning, Madam Chair --

13 CHAIRPERSON HINTON: Good morning.

14 MR. WISMAN: -- and members of the Board. First, I
15 would like to thank Mr. Lyons for allowing me to bring the water up,
16 and Ms. Bennett, because my mouth is very dry. So thank you.

17 I would like to address the three exceptions issues for
18 approval. The exception of situation or condition, the hardship
19 difficulties, and the practical difficulties, and whether it's good for the
20 neighborhood or not.

21 Just read it. Thank you.

22 The property at 3626 Veazey Street is exceptional for
23 these two reasons. The property includes both a separate garage and
24 a screened porch, one of only three percent of the homes in the
25 neighborhood. And it is smaller than 85 percent of the lots in the
26 vicinity. These conditions deviate from the usual pattern as Webster
27 defines exceptional.

28 The usual pattern in our neighborhood is not the
29 combination of a screened porch and a detached garage. Many

1 houses have one or the other. But among the 235 houses in the
2 immediate neighborhood, we are one of only eight that had both a
3 separate garage and a screened porch.

4 As a result of this exceptional situation, the lot
5 coverage of 3626 Veazey Street is already 35.7 percent. But that is
6 not because the house is large; it is because nine percent of the total
7 lot occupancy is in non-living space. Six percent is in the garage, and
8 three percent is in the screened porch.

9 Adding to this exceptional situation, we have a 3,504
10 square foot lot -- extraordinary, because 85 percent of the lot in our
11 vicinities are larger. If nine percent of our lot were not already
12 occupied by non-living space, we could build our addition as designed
13 without a variance.

14 Our objective is to add a first floor half bath,
15 reconfigure the kitchen, and provide a sunroom at the back of our
16 house facing south. The house currently has a bath and a half on the
17 second floor and a toilet in the basement. The kitchen is long and
18 narrow. It was designed in 1928 when, traditionally, only one person
19 cooked and worked in the kitchen. That is not the norm of today. In
20 our case, we regularly cook together.

21 What's more, as with many families, the kitchen is the
22 center of activity. My mother, her mother-in-law will be joining the
23 household. It would be a hardship for her and us if the bathroom,
24 reconfiguration of the kitchen, and sunroom cannot be built as
25 planned. Mother will spend most of her time in that area, enjoying the
26 sunshine overlooking the garden. For that reason, the addition
27 includes a lot of glass, both windows and skylights, to bring the
28 outside indoors.

29 To downsize the addition would be both impractical

1 and a hardship. As planned, it exceeds the maximum lot occupancy
2 by 3.2 percent. Yet, 3.2 percent of the lot is 43 percent of the addition.

3 And for the neighborhood, it will enhance the
4 neighborhood. It will increase the value of our property and the
5 houses in the neighborhood. So, therefore, it would be good for the
6 neighborhood and for our city.

7 MS. KESSEL: I'd like to add one thing. You noted
8 that there is no --

9 CHAIRPERSON HINTON: Could you give your name
10 for the record?

11 MS. KESSEL: I am Candice Kessel. I'm a co-owner
12 of 3626 Beazey.

13 Madam Chair, as you noted, there is no one here in
14 person to support our request for a variance. But we do have the
15 support of our neighborhood. We have the support of our ANC, and
16 we have letters from a number of our neighbors, 22 signatures and I
17 believe nine or 10 other letters, all of which have been sent in support
18 of our variance. We also have copies of them here, if necessary, to
19 provide. We are not aware of any opposition.

20 CHAIRPERSON HINTON: Thank you.

21 Does that conclude your statement?

22 MR. WISMAN: Yes, ma'am.

23 CHAIRPERSON HINTON: Very good.

24 Are there any questions from Board members?

25 MS. BENNETT: Yes, I do.

26 Mr. Wisman, could you review for me again, a little
27 more slowly, the items you listed under the uniqueness? You talked
28 about your being one of eight properties where there is both a
29 screened porch and a garage, was it?

1 MR. WISMAN: Yes, ma'am.

2 MS. BENNETT: Separate garage.

3 MR. WISMAN: A separate garage. I'm sorry. That's

4 right.

5 MS. BENNETT: Detached.

6 MR. WISMAN: A detached garage.

7 MS. BENNETT: A screened porch --

8 MR. WISMAN: And a detached garage.

9 MS. BENNETT: -- and a detached --

10 MR. WISMAN: Yes, ma'am.

11 MS. BENNETT: -- garage. Other garages are

12 separate?

13 MR. WISMAN: No, ma'am.

14 MS. BENNETT: Or do not exist?

15 MR. WISMAN: Under the house, or do not exist. I'm

16 sorry. Or do not exist, or are under the house. They are not --

17 MS. BENNETT: And you're saying because you have

18 the two, that that garage is not beneath the house or attached, it

19 occupies lot space that would not normally?

20 MR. WISMAN: Yes, ma'am.

21 MS. KESSEL: Right.

22 MS. BENNETT: Would not, in other instances within

23 the neighborhood, be occupied. Is that correct?

24 MR. WISMAN: No, ma'am. There are other houses

25 with detached garages.

26 MS. BENNETT: Okay.

27 MR. WISMAN: All right. And I did not --

28 MS. KESSEL: And there are other houses with

29 screened porches. What makes our situation exceptional --

1 MS. BENNETT: But you have both.

2 MS. KESSEL: -- we have both.

3 MR. WISMAN: Yes, ma'am.

4 MS. KESSEL: And both on our street, the adjoining
5 streets on both sides, on both sides of the street, we count 235
6 houses, and we're one of only eight out of 235 houses that has both a
7 detached garage and a screened porch, both of which are original to
8 the house by the way.

9 MS. BENNETT: Okay. That was one. What was the
10 second -- you mentioned another unique property, and I forget what it
11 was now.

12 MS. KESSEL: The lot is smaller than 85 percent of
13 the lots in this same square area. So not only do we have the
14 screened porch and the garage, they are situated on a lot that is 3,504
15 square feet.

16 MS. BENNETT: Okay. And there was another
17 uniqueness that you mentioned, or at least -- it may not have been a
18 uniqueness. It may have been a description of a characteristic that
19 you mentioned shortly after you talked about the unique properties.
20 And it had to do with the percentage of lot occupied by non-living
21 space?

22 MR. WISMAN: Yes, ma'am. It is nine percent
23 occupied by non-living space, and six --

24 MS. BENNETT: And what is included in the non-
25 living space? I'm confused.

26 MR. WISMAN: The garage, ma'am, and the screened
27 porch.

28 MS. KESSEL: So we already are at 35.7 percent of
29 the lot space. So to keep it under -- the lot occupancy under 40

1 percent is very difficult, because we have such high occupancy
2 already of the lot. But it is not because the house is large; it's
3 because we have this garage, which we came out of with --

4 MS. BENNETT: I can't use that one.

5 CHAIRPERSON HINTON: Do you have a map or a
6 plan that shows the lots and the houses in this area that you talk about
7 that you counted?

8 MR. WISMAN: Yes, ma'am. May I approach?

9 CHAIRPERSON HINTON: You can give it to the
10 secretary, yes. Absolutely.

11 MR. LYONS: We will waive the rules to accept it.

12 CHAIRPERSON HINTON: We will waive the rules
13 and accept it.

14 MR. WISMAN: Madam Chairperson, this is not a
15 map. This is the tax number and the address and the lot sizes of the
16 235 houses.

17 CHAIRPERSON HINTON: Okay. I need you to
18 submit that to the record.

19 MS. BENNETT: You were looking for a map?

20 CHAIRPERSON HINTON: Yes. The area map.

21 MR. WISMAN: Oh.

22 CHAIRPERSON HINTON: You don't -- if you don't
23 have one, that's fine.

24 MR. WISMAN: No, I do not.

25 CHAIRPERSON HINTON: We can get one from our
26 staff.

27 MR. WISMAN: I took the -- excuse me. I went on
28 both sides of the street, so on Veazey Street, I did Van Ness Street,
29 and I did Warren Street.

1 CHAIRPERSON HINTON: Okay.

2 MR. WISMAN: And I went up, because we back up to
3 UDC. So, therefore, that side I couldn't go. And then I went up -- I'm
4 on 3600. I went up to 3700 and 3800. So I made a rectangle.

5 CHAIRPERSON HINTON: So you did a walking
6 survey of your neighborhood.

7 MR. WISMAN: Yes, ma'am.

8 CHAIRPERSON HINTON: You didn't look at a map.
9 Very good.

10 MR. WISMAN: Yes, ma'am.

11 CHAIRPERSON HINTON: Thank you. Okay. We'll
12 try to get a map from our staff that might show us what that looks like.

13 Were there any other questions?

14 MS. REID: Yes, I have a question.

15 CHAIRPERSON HINTON: Ms. Bennett, were you
16 done?

17 MS. BENNETT: I was done. Thank you.

18 CHAIRPERSON HINTON: Okay. Ms. Reid?

19 MS. REID: When you say that there were eight
20 houses that had both a garage and screened porch, as your does,
21 then how is your house unique if they have eight other houses like
22 yours?

23 MR. WISMAN: Well --

24 MS. REID: That's what I need to understand.

25 MR. WISMAN: -- it's unusual. It's not unique, but it's
26 unusual. And by Webster's definition, it is that --

27 MS. KESSEL: It deviates from the usual pattern. The
28 usual pattern is not to have both of those things. That's one of the
29 definitions of exceptional. The usual pattern is perhaps to have one or

1 the other, and our house has both.

2 MS. REID: But then if you have eight others that
3 have both -- eight or seven?

4 MR. WISMAN: Eight.

5 MS. REID: There are eight others that are just like
6 yours, then --

7 MS. KESSEL: And at least two of those are over the
8 40 percent -- see, I'm not sure that that's relevant, but --

9 MS. REID: That kind of defeats the basis for
10 uniqueness, in my opinion, if you have eight other residences that are
11 like that, like yours.

12 MS. KESSEL: Well, we --

13 MS. REID: Do you see what I'm saying? See, you
14 have --

15 MS. KESSEL: I understand what you're saying.

16 MS. REID: Basically, what you need to be able to
17 demonstrate to us is specifically how your property is unique from the
18 other properties in the neighborhood and not saying that -- necessarily
19 saying that, well, there are eight others just like this. You have to
20 delineate yours from even the eight to makes yours unique.

21 MS. KESSEL: I understand what you're saying. I
22 understand what you're saying. We have looked in the dictionary to
23 see what exceptional actually means. You are correct; we are not the
24 only one.

25 It is only one of eight, but that's eight out of 235
26 houses. I think that's an unusual situation, because it puts us at a
27 disadvantage.

28 CHAIRPERSON HINTON: And we can address this
29 when we discuss, because I think I understand what the dilemma is.

1 MS. REID: I'm clear. I'm clear now --

2 CHAIRPERSON HINTON: Are you clear?

3 MS. REID: -- about that.

4 CHAIRPERSON HINTON: Because there is a
5 difference between what the regulation actually says and the way
6 those regulations have been interpreted by case law. And the
7 uniqueness comes in in the way the D.C. Court of Appeals has
8 interpreted decisions of the BZA. That's where unique comes in, and
9 that's where they tell us how we're supposed to interpret exceptional
10 and extraordinary.

11 MS. KESSEL: Okay.

12 CHAIRPERSON HINTON: Okay? So we'll get to
13 that.

14 Ms. Richards, do you have any questions?

15 VICE CHAIRPERSON RICHARDS: No questions.
16 Thank you.

17 CHAIRPERSON HINTON: No?

18 VICE CHAIRPERSON RICHARDS: No. I think I'm
19 clear.

20 CHAIRPERSON HINTON: Okay. Let me move to
21 the Office of Planning report.

22 MS. DOBBINS: Office of Zoning report?

23 CHAIRPERSON HINTON: I'm sorry.

24 (Laughter.)

25 MS. DOBBINS: That's okay. Madam Chair,
26 members of the Board, Mr. Lyons has gone to get a map of this area
27 for you, so that you can see the houses.

28 CHAIRPERSON HINTON: Okay.

29 MS. DOBBINS: But the Office of Zoning report will be

1 presented by Mr. Paul Hart, and we would first request that you allow
2 this to come into the record. There was a waiver request for this one
3 also. I think probably for all of them.

4 CHAIRPERSON HINTON: There is a waiver request.
5 Do we need to grant them per case, or can I grant them --

6 MS. DOBBINS: Well, you probably want to grant the
7 afternoon ones with the afternoon cases.

8 CHAIRPERSON HINTON: In the afternoon. Very
9 good. Then we will receive this report.

10 MS. DOBBINS: Thank you.

11 CHAIRPERSON HINTON: Thank you.

12 MS. DOBBINS: Mr. Hart?

13 CHAIRPERSON HINTON: I think Mr. Hart was out of
14 the room when people were sworn in. Would our staff be sworn in or
15 not, because --

16 MS. DOBBINS: Yes, I guess. You're testifying. We
17 swear in the Office of Planning staff, but -- that's interesting.

18 All right. I'll swear you in as staff. Stand and raise
19 your right hand.

20 I have to make some determination about whether we
21 actually have to do this, but today we'll do it.

22 CHAIRPERSON HINTON: Okay.

23 (Whereupon, an oath was administered to the Office
24 of Zoning representative.)

25 MR. HART: Application number 16221 of James
26 Wisman and Candice Kessel is proposing to construct a sunroom and
27 a kitchen as a rear addition to the existing semi-detached single-family
28 dwelling in an R-2 district at premises 3626 Veazey Street.

29 The property contains 3,504 square feet of land and is

1 developed with a two-story single-family semi-detached dwelling and
2 an accessory one-car garage in the rear yard. The total lot occupancy
3 of the property is 1,252.3 square feet, which is 35.7 percent of the
4 allowable occupancy.

5 The areas around this site are characterized by two-
6 story semi-detached single-family homes. The applicants are
7 requesting a variance from subdivision 404.1, to allow the construction
8 of a one-story sunroom and kitchen at the rear of an existing two-story
9 detached single-family dwelling.

10 The area of variance requested in this case must
11 meet three tests for zoning relief for the application to be granted. All
12 three tests must be met. The proposed addition would have a surface
13 area of 261.4 square feet, and would not project outside of the
14 parameters of the existing building as it would be situated between the
15 southern boundary of the building and the garage.

16 The approval of the requested variance is predicated
17 on the existence of an extraordinary or exceptional situation or
18 condition that is inherent in the physical characteristics of the property.

19 The Office of Zoning has determined that there are no
20 unique qualities to support the application for a variance which would
21 allow for an area of variance of 3.2 percent over the allowed 40
22 percent of the lot occupancy. The existing lot occupancy, which is
23 35.7 percent, would allow a small addition which would be within the
24 matter of right allowed occupancy of 40 percent.

25 The Office of Zoning has not been able to establish
26 that a practical difficulty exists in the applicant's ability to reasonably
27 use the property if the renovations are strictly applied. Although the
28 Office of Zoning believes that this proposal would not adversely
29 impact the surrounding neighborhood, the proposed addition of a

1 kitchen and sunroom, combined with the existing dwelling, would
2 exceed the allowed lot occupancy of 40 percent in the R-2 zone by 3.2
3 percent.

4 Although minor, the addition would not be in
5 compliance with the R-2 zone district regulations regarding lot
6 occupancy. In the Office of Zoning's opinion, this situation would
7 impair the intent, purpose, and integrity of the R-2 zone regulations.

8 The Office of Zoning is of the opinion that the
9 applicants have not met the burden of proof relating to the zoning
10 relief being sought in this case. The Office of Zoning has determined
11 that there are no unique qualities to support the application for a
12 variance, and the owner will not suffer practical difficulties.

13 For these reasons, the Office of Zoning recommends
14 denial of this application.

15 CHAIRPERSON HINTON: Thank you, Mr. Hart.

16 Are there any questions from Board members?

17 VICE CHAIRPERSON RICHARDS: I have one that
18 refers to the narrow galley-type kitchen referred to, I believe in the
19 Brown letter. Did you happen to, you know, form any views about the
20 inadequacy of the kitchen and the way the proposed addition would I
21 guess increase its proportions to modern standards? It was thought
22 by the narrowness of the existing kitchen and the proportions of the
23 addition, and that they're small, the argument was put forward that
24 changing the proportions would destroy the, I guess, artistic
25 pleasingness of the kitchen.

26 MR. HART: No. I didn't look at the argument about
27 the existing kitchen, because I was more focused on the fact that you
28 want to add a kitchen, you know, which it seems to be two separate --

29 VICE CHAIRPERSON RICHARDS: Okay. Thanks.

1 CHAIRPERSON HINTON: There is a note on our file,
2 Ms. Dobbins, that says "plans on file." What does that mean?

3 MS. DOBBINS: It means that the set of plans are
4 separate and apart. They're probably big plans in another file. You
5 need the plans?

6 CHAIRPERSON HINTON: I think so, because we -- I
7 don't have anything in the record that shows the interior layout. And if
8 this kitchen issue is --

9 MS. DOBBINS: Let me get the plans.

10 CHAIRPERSON HINTON: Thank you.

11 MS. BENNETT: Let me ask Mr. Wisman, while we're
12 waiting -- and I know we are dealing with OZ testimony -- but of the
13 eight houses that have both a screened porch and a detached garage,
14 how many of those eight have lots the size of yours or smaller?

15 MR. WISMAN: One -- my next door neighbor has the
16 same size. It's 3,504. And that one, it covers 42.2 percent of the lot.
17 The one across the street and on the alley is smaller.
18 It is 29 -- it is down to 2,900 and some square feet. So it is a smaller
19 one, and that covers about 44 percent.

20 And the other six all -- other five -- are on lots that,
21 unfortunately, I did not -- but I can tell you in just a moment, because I
22 have the addresses of the houses, and I have their lot sizes.

23 MS. BENNETT: Okay. We may or may not need
24 that. But I'm glad that you have it here.

25 CHAIRPERSON HINTON: Ms. Bennett, did you want
26 to see this?

27 MS. BENNETT: I would.

28 CHAIRPERSON HINTON: May I ask a question
29 about --

1 MR. WISMAN: Yes, ma'am.

2 CHAIRPERSON HINTON: -- about the plans? It
3 looks like there is an existing kitchen, and you are extending that out
4 into the addition. Is that right?

5 MR. WISMAN: Yes, ma'am.

6 CHAIRPERSON HINTON: Okay. So how much
7 longer -- but there are dimensions on the plan. How much longer is
8 the kitchen going to be?

9 MR. WISMAN: It is going to go out 12 feet, and then
10 it is going to circle -- is that the right word?

11 CHAIRPERSON HINTON: Go out for a total of 12,
12 right?

13 MR. WISMAN: Yes, ma'am. A total of 12. The
14 maximum distance out would be 12 feet.

15 CHAIRPERSON HINTON: So it looks like now it's
16 about seven feet or eight maybe. And it's going to go out to 12?

17 MR. WISMAN: Yes, ma'am.

18 CHAIRPERSON HINTON: Okay.

19 MS. KESSEL: But in addition to pushing the kitchen
20 out, we're putting the half bath there. There is not a half bath on the
21 first floor. So where the kitchen is, we're kind of pushing the kitchen
22 out and inserting the half bath. There is not a bath on the --

23 CHAIRPERSON HINTON: So the kitchen now is
24 where the bath is? What is --

25 MS. KESSEL: There is no bath.

26 MR. WISMAN: There is no bath. There will -- part of
27 the thing is to add a half bath because if my mother comes to live with
28 us --

29 CHAIRPERSON HINTON: Okay.

1 MR. WISMAN: -- she is going to need it.

2 CHAIRPERSON HINTON: What is in the area where
3 the bath is going to be? What is there now?

4 MS. KESSEL: The beginning of the kitchen. It's the
5 kitchen --

6 CHAIRPERSON HINTON: So the kitchen goes from
7 here to --

8 MR. WISMAN: Yes, ma'am.

9 MS. KESSEL: It's a bowling alley.

10 MR. WISMAN: Yes, ma'am. It's a bowling alley.

11 CHAIRPERSON HINTON: So the kitchen is not
12 getting any bigger.

13 MR. WISMAN: Yes, ma'am.

14 MS. KESSEL: Yes, it is.

15 MR. WISMAN: Yes, ma'am. Well, no, it's not getting
16 any bigger.

17 CHAIRPERSON HINTON: It will be longer in the
18 bowling alley part.

19 MS. KESSEL: And it's getting -- but it's getting wider.

20 MR. WISMAN: We're putting a half bath in, yes.

21 MS. KESSEL: The kitchen will be wider in the
22 addition part. We're not moving the wall of the current kitchen, so the
23 beginning of the kitchen, which is now the old kitchen, will be the
24 same width. In the new part, it will be -- it will go up to I think 11 feet
25 wide.

26 CHAIRPERSON HINTON: It says 9'8".

27 MR. WISMAN: Right now?

28 CHAIRPERSON HINTON: On the outside of the --

29 MR. WISMAN: That has to be -- yes, that has to be

1 the exterior, because it's not -- it is not nine -- what we have now is not
2 nine feet. No, ma'am.

3 CHAIRPERSON HINTON: This is showing that what
4 you will -- the --

5 MR. WISMAN: Yes.

6 CHAIRPERSON HINTON: -- the widened kitchen,
7 the new part of the kitchen will be 9'8" wide.

8 MR. WISMAN: Yes.

9 CHAIRPERSON HINTON: The new part.

10 MR. WISMAN: Yes.

11 CHAIRPERSON HINTON: Okay. I think I understand
12 the plans.

13 Where were we?

14 MS. BENNETT: Well, I went on a fishing expedition
15 for the uniqueness --

16 CHAIRPERSON HINTON: Okay. I won't ask if you
17 caught anything or not.

18 I think -- let's see if -- do we have any other questions
19 of the Office of Planning? I think that's where we ended up. Office of
20 Zoning. Sorry.

21 I don't have any questions. Do you have any cross
22 examination questions of the Office?

23 MR. WISMAN: No, ma'am. I do not have cross
24 examination, but I would like to make a statement.

25 CHAIRPERSON HINTON: You'll be able to make a --
26 you have closing remarks. Will you be able to make your statement
27 then?

28 MR. WISMAN: Yes, ma'am.

29 CHAIRPERSON HINTON: Okay. Good.

1 ANC report? I have no ANC report in my packet.

2 Does anyone else?

3 I think the applicant mentioned that they have the
4 support of the ANC.

5 MR. WISMAN: Yes, ma'am. And that was mailed in.
6 May I approach the bench?

7 MS. BENNETT: You may approach.

8 CHAIRPERSON HINTON: If you have a copy, you
9 may give it to the secretary.

10 MR. WISMAN: Oh. Well, I have a copy of all of the
11 letters.

12 CHAIRPERSON HINTON: You might want to give
13 them all, because you talk about more letters than we have received
14 in our packets.

15 MS. BENNETT: Don't talk off of -- we're recording
16 and we have to make sure all of your comments come on the --

17 MR. WISMAN: Yes, ma'am.

18 CHAIRPERSON HINTON: We have a copy from
19 ANC, Commission 3F, over the signature of Scott Strauss, Chairman.
20 And it says, "At the ANC 3F public meeting held on March 24, 1997,
21 the Commission heard testimony from the applicants. After reviewing
22 the blueprints and the plans, the Commission also heard testimony
23 from adjacent and adjoining neighbors as well, and all of the testimony
24 was favorable to granting the request and wholly supportive of the
25 applicants.

26 "In light of the testimony and the Commission's review
27 of the proposed addition plans, ANC 3F fully supports the granting by
28 the BZA of the requested variance." And the vote was 5-0-1.

29 Very good. So you have the support of the ANC.

1 MR. WISMAN: Yes, ma'am.

2 CHAIRPERSON HINTON: Okay. And I understand
3 you've probably given us some other letters in support that we hadn't
4 read.

5 MR. WISMAN: Yes, ma'am. I believe there are six or
6 seven individual letters, and then there is a petition that has --

7 CHAIRPERSON HINTON: Okay. We haven't --

8 MR. WISMAN: -- 19 -- like 13 or 17 names on it, but
9 it's another eight households, because some households two people
10 signed.

11 CHAIRPERSON HINTON: Okay.

12 MR. WISMAN: So it's a total of about 20 households.

13 CHAIRPERSON HINTON: Very good. Thank you.

14 And there is no opposition? There was none in my
15 file. Okay.

16 And there are no persons in support or opposition in
17 the room.

18 Closing remarks by the applicant?

19 MS. KESSEL: I would just like to reiterate the five
20 reasons for granting this exception. The opportunities to expand the
21 house presents a serious practical difficulty currently, because 35.7
22 percent of the lot is already occupied. The property includes a
23 screened porch and a detached garage, non-living space, which eats
24 up nine percent of our total lot coverage.

25 The lot is smaller than 85 percent of the lots in the
26 neighborhood. So because of the garage and screened porch, the
27 potential for expansion without a variance is not practical. We have
28 spent nine years improving the property. Tearing down the garage or
29 porch would decrease the value of our property, which is not our

1 objective.

2 Our family would suffer an undue hardship if the
3 addition could not proceed as planned. Our goal is to provide a more
4 livable home and a pleasant environment for our mother, Jim's
5 mother, my mother-in-law, to spend her last years. The addition
6 cannot be simply scaled back because it is not large to begin with.

7 The exception is supported by all of our neighbors as
8 far as we know, including those adjacent to 3626 Veazey Street. As
9 you just read, our ANC 3F also fully supports it.

10 The planned addition will enhance the neighborhood,
11 improve property values, and demonstrate the benefits of improving
12 property in the District.

13 Finally, relief can be granted without substantially
14 impairing the intent, purpose, and integrity of the zone plan, because
15 our circumstances, we believe, meet the test of exceptional situation,
16 practical difficulty, and undue hardship.

17 Finally, our addition is good for the public and the city,
18 strengthening the important middle class tax base.

19 MR. WISMAN: May I make a comment, or do we only
20 have one?

21 CHAIRPERSON HINTON: You may also.

22 MR. WISMAN: Thank you.

23 First of all, I'd like to say that I did not, even though it
24 was spelled out very, very plain on this form that you gave us which
25 advised me to have all information into the Board of Zoning 14 days in
26 advance, I did not do that. And that was my mistake, and so Mr. Hart
27 did not have -- I did not furnish to him the reasoning that I have
28 presented here today, which I know I should have. I mean, I can read,
29 but I do not understand sometimes well.

1 And so he could come up with no other -- without any
2 other information, well, there is no other judgment but to, you know,
3 vote for denial of it. Plus, I'd like to say that we have lived in the
4 neighborhood for nine years. We bought the house nine years ago,
5 and we have put a tremendous amount of work into the house, and we
6 plan on staying there for the rest of our lives.

7 When we bought the house, we did not foresee that
8 my mother -- my father was still alive. He died five years ago, and we
9 did not think that far ahead that the time would come to where my
10 mother would hopefully join us. And that time is fast approaching, and
11 we want to have a nice place for her and for us.

12 I thank you for your time.

13 CHAIRPERSON HINTON: Thank you. Well, that
14 helps, to know that some information came in late. And to the extent
15 that a waiver is needed, it is so granted.

16 VICE CHAIRPERSON RICHARDS: Well, I am
17 prepared to move today to grant the application, if there is a second.
18 And I'll set forth my reasoning.

19 CHAIRPERSON HINTON: Is there a second?

20 MS. BENNETT: I'll second it. I'd like to hear the
21 reasoning.

22 VICE CHAIRPERSON RICHARDS: I understand,
23 first of all, that unique is something that the courts have -- you know, a
24 standard that we find in our precedent rather than according to the
25 letter of our regulations. And I believe that, you know, neither the
26 court nor Webster's, as cited by the applicant, requires unique to
27 mean one of a kind. I think departure from the norm satisfies it.

28 I think that the statistical survey that he reproduced of,
29 you know, the combination of the screened porch and the separate

1 garage -- the low incidence of this combination of factors and its
2 impact on lot occupancy I think satisfies the uniqueness criterion,
3 insofar as we, you know, look to precedent.

4 And, you know, I don't think that -- we have never
5 required people to let us say, well -- deprive themselves of what they
6 have in the sense of like tear down your garage, or chop off your, you
7 know, sun porch, to achieve your end. I know the proposal was do
8 something -- make an addition within matter of right.

9 And having looked at the interior design plan, I can
10 understand the argument against it. It's not -- in addition to the
11 aesthetics, it is just laid out -- the proposed addition is laid out in a way
12 that it is not just kind of like a rectangular box. You make it a little
13 smaller.

14 To I think make it smaller would send them back to
15 the drawing board, and I think the layout of the kitchen -- this layout
16 and shape of the existing kitchen sort of makes it difficult to do much
17 else in that direction.

18 So I think that they've got a combination of unique
19 factors with the enclosed porch, the layout and location of the existing
20 kitchen, and the garage. So I would grant it, especially since it is such
21 de minimis relief, and, you know, the quantum of relief is a fact that we
22 are allowed to consider.

23 MS. BENNETT: May I just amend, since I was the
24 seconder. I think the combination ought to include not just the fact
25 that they are one of eight properties with both a screened porch and a
26 detached garage, but that combined with the fact that the lot is smaller
27 than 85 percent of the lots in the same area.

28 You then begin to whittle down the universe of
29 properties that are similar, together with the other factors that you

1 cited, the layout of the kitchen and the like.

2 CHAIRPERSON HINTON: Ms. Reid, do you have
3 anything? Nothing?

4 MS. REID: I will concur with what has been said
5 previously. The addition is modest, and I certainly see no opposition.
6 And I can see no basis for it in any way, in my opinion, differing from
7 the intent of the -- substantially differing from the intent of the zoning
8 regulations. So I would vote approval.

9 Okay. Just briefly, I concur.

10 CHAIRPERSON HINTON: Well, I hate to be
11 disagreeable, but you know how I hate to --

12 I'm not unsympathetic to everything that you've said,
13 but I guess I more closely align myself with the reasons that are in the
14 Office of Zoning report. And when I look at the map, which our staff
15 has provided to us, of the lots that are in the neighborhood, I find your
16 lot to be not dissimilar to many of the other lots in the area.

17 And I guess what troubles me about the discussion
18 that we've had -- in the regulations, lot occupancy, in my view,
19 attempts to control the amount of lot -- how much of the lot is covered
20 by built structure and how much of the lot is left open. And it doesn't
21 differentiate between houses and garages and other things.

22 It really is -- it's just a number. It's 40 percent or 60
23 percent. And in my view, it's an attempt to keep enough open space
24 in the neighborhood so that they're not overly dense.

25 And although the variance needed for this addition is
26 relatively small in percentage, it's only -- it would be a 43 percent,
27 which 40 is the maximum allowed. Nevertheless, I'm concerned with
28 the precedent that if we would grant this variance, we have to grant
29 every other variance that would come in and say all that -- the 15

1 percent of the other lots that are smaller than yours, they would all
2 have to get a variance, because we've granted this one. And anyone
3 else who might have a garage and something else --

4 MS. BENNETT: A screened porch.

5 CHAIRPERSON HINTON: -- a screened porch, or a
6 garage and a -- maybe a bigger garage than yours, or a bigger house
7 than yours and a screened -- I mean, it just sort of snowballs from
8 there. So, in my opinion, you haven't met the burden of proof in
9 establishing what I believe case law tells us has to be unique, not just
10 unusual, because if it's just unusual that means 49 percent. And I
11 think it's really higher than that. But nevertheless, that's why I'll be
12 voting the way I am.

13 Are there any other comments?

14 VICE CHAIRPERSON RICHARDS: Just one. I think
15 that the adverse impact -- there seems to be consensus that there is
16 no adverse impact. But I think that one factor to take into account,
17 and that it's influencing my vote, is the testimony of the neighbors that
18 the abutting alley is considered social space here. That's the unique
19 element of this neighborhood that affects the second and third parts of
20 the showing. I don't address that aspect of uniqueness as going to
21 the first element at all.

22 And so, essentially, it enlarges what we're talking
23 about as to space. And the fact that this is kind of a glassed in area
24 as opposed to like a brick wall -- you know, if somebody decided "I'm
25 going to put up a brick wall" or something that is going to close off --
26 so I think the design elements and the social space of this particular
27 alley are factors influencing my decision.

28 CHAIRPERSON HINTON: Very good.

29 Let me call the question. All those in favor?

1 (Chorus of ayes.)

2 And I will vote opposed.

3 MR. LYONS: Staff would record the vote as being 3-
4 1 to grant the application. Ms. Richards, Ms. Bennett, and Ms. Reid to
5 approve; Ms. Hinton opposed to the motion; Mr. Clarens, not present,
6 not voting.

7 CHAIRPERSON HINTON: Do we have a summary
8 order?

9 MR. LYONS: Yes.

10 CHAIRPERSON HINTON: Very good. Thank you.

11 MR. WISMAN: Thank you very much.

12 CHAIRPERSON HINTON: We're adjourned for the
13 morning?

14 MR. LYONS: Yes.

15 CHAIRPERSON HINTON: Very good.

16 (Whereupon, the proceedings in the foregoing matter
17 went off the record at 12:23 p.m.)

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(2:05 p.m.)

CHAIRPERSON HINTON: This hearing will please
come to order.

Good afternoon, ladies and gentlemen. This is the
April 23rd hearing of the Board of Zoning Adjustment of the District of
Columbia. I am Susan Morgan Hinton, Chairperson. Joining me
today are Sheila Cross Reid and Maybelle Taylor Bennett,
representing the Zoning Commission.

Copies of today's agenda are available to you. They
are located to my left near the door. All persons planning to testify,
either in favor or opposition, are to fill out two witness cards, located
on each end of the table in front of us. Upon coming forward to speak
to the Board, please give both cards to the Reporter, who is sitting to
my right.

The order of procedure for a special exception and
variance cases will be as follows. 1) statement of witnesses of the
applicant; 2) government reports, including the Office of Planning, the
Office of Zoning, Department of Works, and the ANC; 3) persons or
parties in support; 4) persons or parties in opposition; and, 5) closing
remarks by the applicant.

Cross examination of witnesses is permitted for
persons or parties with a direct interest in the case.

The record will be closed at the conclusion of each

1 case, except for any material specifically requested. The Board and
2 the staff will specify at the end of the hearing exactly what is expected.

3 I'm missing a few words here. Let me try to find them.
4 Okay.

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

9 At this time, the Board will consider any preliminary
10 matters. Preliminary matters are those which relate to whether a case
11 will or should be heard today, such as a request for postponement,
12 continuance, or withdrawal, or whether proper and adequate notice of
13 the hearing has been given.

14 If you are not prepared to go forward with a case
15 today, or if you believe the Board should not proceed, now is the time
16 to raise such a matter.

17 Does the staff have any preliminary matters?

18 MR. LYONS: Staff has none, Madam Chair.

19 CHAIRPERSON HINTON: Does the audience have
20 any preliminary matters? Seeing none, let's proceed with the first
21 case.

22 MR. LYONS: The first case is number 16224 of the
23 Carnegie Institute, pursuant to 11 DCMR 3108.1 for a special
24 exception under Section 210 for modification of an approved campus
25 plan and the further processing under the amended plan to allow
26 modifications to an existing cyclotron building in an R-1-A district at
27 premises 5241 Broad Branch Road, Northwest, square 2288, lot 813.

28 All persons wishing to testify in this application,
29 please rise to take the oath. Please raise your right hand.

1 (Whereupon, an oath was administered to those
2 persons wishing to testify.)

3 Please be seated.

4 CHAIRPERSON HINTON: Why don't we start with
5 name and home address for the record, and then go ahead with your
6 case.

7 MR. FARMER: Madam Chairperson, I'm Jonathan
8 Farmer of Wilkes Auto, Sedwick Lane, appearing on behalf of the
9 Carnegie Institution.

10 DR. SOLOMON: I am Sean Solomon, the Director of
11 the Department of Terrestrial Magnetism of the Carnegie Institution,
12 located at 5241 Broad Branch Road, Northwest.

13 CHAIRPERSON HINTON: Okay.

14 MS. ADAROLA: I am Lynne Adarola of Arkia Studio
15 at 3417 Shepherd Street, Chevy Chase, Maryland, the architect for
16 the project.

17 CHAIRPERSON HINTON: Very good. Okay.

18 MR. FARMER: And with us, Ms. Chairperson, is Rick
19 Nero, the urban planner for this particular project.

20 CHAIRPERSON HINTON: Okay.

21 MR. FARMER: If I may begin?

22 CHAIRPERSON HINTON: I'm sorry to interrupt. For
23 the afternoon cases, we have received a number of reports from the
24 Office of Zoning, and we have a request to waive the seven-day
25 requirement, which we will do now, for all of the cases. Okay.

26 MR. FARMER: Madam Chairperson, members of the
27 Board, on behalf of the Carnegie Institution, we are here seeking a
28 minor modification to an approved campus plan -- namely, what's
29 called in our statement an addition to the existing cyclotron building in

1 the Carnegie Institution campus located at 5241 Broad Branch Road.

2 As the project architect will describe, in essence, what
3 we are building here is a low lying vault. It is technically an addition to
4 an existing building. The architect will have drawings which will
5 basically explain the structure itself.

6 The Carnegie Institution is a nonprofit research and
7 educational institution, which conducts basic research and training in
8 the natural sciences, such as earth and planetary sciences,
9 astronomy, developmental biology, and plant biology. The current
10 campus is the site of the Department of Terrestrial Magnetism, which
11 engages in a wide variety of studies in astrophysics, geophysics,
12 geochemistry, and planetary physics.

13 The Carnegie Institution has another campus, which
14 is located at 2801 Upton Street, which is a branch which studies
15 physical/chemical studies on geological problems.

16 The Carnegie Institute's purpose is to promote the
17 development of interdisciplinary science with the collection of
18 scientists at the same campuses designed to encourage interaction
19 across several disciplines of the earth and planetary sciences. The
20 site in question today is used primarily as a research facility and for
21 post-doctoral education.

22 The purpose of this particular application is to further
23 enhance the physical plan of the campus in order to provide first-class
24 research and educational facilities, and to permit increased interaction
25 among the scientists in the different disciplines. The particular
26 structure in question is going to be used primarily for storage of
27 scientific equipment.

28 In order to pursue this particular development, we are
29 seeking this special exception for further processing on an existing

1 campus plan by making this minor addition, i.e. the vault, to the
2 existing cyclotron building. The addition involves the construction of a
3 new garden wall at the terrace over an existing underground storage
4 structure, and the construction of a new patio and a walkway to join
5 the building to an existing parking lot.

6 The subject site is zoned R-1-A, and it is irregular in
7 shape and contains approximately 8.8 acres of land area. This is the
8 campus at hand. It has already been approved pursuant to a further
9 modification in 1988, including the main building which was renovated,
10 a new research building, a renovated experiment building. And the
11 cyclotron building, which is the subject of this application, also
12 underwent renovation in 1988.

13 There is also an accelerated building and several
14 smaller structures on the campus. The site can geographically be
15 divided into two areas. The first area contains the main building and is
16 dominated by a knoll, which crests at 275 feet above sea level. This
17 knoll slopes downward with gradients of three to 17 percent towards
18 the southwest corner of the site and has an elevation of 203 feet
19 above sea level.

20 The second area of the site is to the north of the main
21 building and contains the experiment building, the research building,
22 the cyclotron building, the accelerator, and some smaller incidental
23 buildings, as well as the parking lot.

24 The site itself is actually located across from Rock
25 Creek Park at the corner of Broad Branch Road and 32nd Street. The
26 main entrance to the building is off of 32nd Street. That entrance
27 continues through the campus, loops around, and becomes an exit on
28 Broad Branch Road.

29 The campus is characterized by low buildings and low

1 building density, and it has a well maintained, landscaped open space.
2 The existing buildings are well buffered from the surrounding streets
3 by this setback, and they have carefully maintained lawn, specimen
4 trees, and ornamental plantings that create a strong visual impression
5 as a park.

6 This impression is reinforced by the grouping of the
7 buildings around the knoll of the hill high and well back from Broad
8 Branch Road, and the grouping itself is also well set back from
9 Jocelyn Street. We have residential neighbors across 32nd Street,
10 and the other three sides of the site are surrounded by other
11 institutional users, which are the Presbyterian Home, Temple Sinai,
12 and the Embassy of Tunisia.

13 We believe we are entitled to this special exception
14 relief under 3108.1 of the zoning regulations. The applicant, as I
15 previously stated, is an academic institution of higher learning, which
16 complies with Section 210.1. It is used for post-graduate study and
17 research. It has -- there are approximately 95 employees on the
18 campus, 31 of whom are post-doctoral fellows.

19 By this application, we are not seeking any increase
20 in the number of people on campus or any increase in the number of
21 parking spaces needed. There are 88 parking spaces there, which
22 are more than adequate to serve the needs of the present staff.

23 The proposed use itself is not likely to become
24 objectionable to the neighboring property because of noise, traffic,
25 number of students, or other objectionable conditions. Again, we are
26 building about 1,000 square feet. The construction is primarily
27 underground. It will have no adverse impact on the surrounding
28 community.

29 Traffic circulation patterns will remain the same.

1 Again, we're not anticipating any new road building or anything of that
2 nature.

3 The total bulk that is being added to this particular site
4 amounts to a .002 FAR. Under the zoning regulations, we are allowed
5 a 1.8. The site is currently built out to a .88 FAR. So, again, it's a
6 minuscule addition that's being added to the overall site.

7 We have submitted to the Board a plan for developing
8 the campus as a whole, and we have been consistent with that plan
9 over the last years. We have been in place since the early part of this
10 century, and there hasn't been a whole lot of radical change to the site
11 or to the overall plan of development of this particular building.

12 We're not going to use any interim land while this
13 construction is going on. Again, most of the work will be done not by
14 an outside contractor but by the Carnegie staff itself, because it is
15 such a small addition.

16 I'd like to turn it over at this point to Dr. Solomon to
17 address the Board.

18 DR. SOLOMON: Good morning, Madam Chairperson
19 and members of the Board.

20 Mr. Farmer gave a very nice description of the
21 Carnegie Institution and its purposes as a basic research and
22 educational institution. I might add that the institution has been sited
23 at this Broad Branch Road campus since the early 1900s. We're
24 looking forward to marking nearly a century at that site.

25 The reason we're before you is to request a minor
26 modification that Lynne Adarola will describe at greater length to an
27 existing structure. We call it the cyclotron vault. It's entirely
28 underground. It is 60 years old. And it was built to house a nuclear
29 physics facility known as the cyclotron, and that's the reason for the

1 name. They did a lot of interesting science in the 1930s and 1940s.

2 But now the upper floor that we'd like to excavate is
3 going to be primarily used for storage, as Mr. Farmer mentioned.
4 We're going to excavate only one side about partway down. So there
5 will be an exposed wall that will be at terrace level, and you will hear
6 that described by the architect. There will be a sidewalk that connects
7 a doorway which we'd like to open to an adjacent sidewalk.

8 As Mr. Farmer said, I want to reiterate, we are not
9 going to be changing the population on the campus, number of
10 parking places, anything having to do with the surrounding street
11 system in any way. Mr. Farmer also mentioned that the campus floor
12 area ratio would be modified only to a very minor degree.

13 I can report that we had a very collegial meeting of
14 the Advisory Neighborhood Commission 3G last month.
15 Representatives of that Commission toured our facility one Saturday --
16 a very nice day -- and they voted recently to approve our application.
17 And I'm sure you have that in your files.

18 At this time, I'm going to turn the remarks over to
19 Lynne Adarola, who will go over the plans in more detail. But I want to
20 mention that I would be happy to answer any questions that you have
21 afterwards.

22 CHAIRPERSON HINTON: Thank you.

23 MS. BENNETT: Madam Chair, may I just interrupt
24 while Ms. Adarola is going up to the microphone?

25 What is a cyclotron? It sounds like something straight
26 out of Star Trek.

27 DR. SOLOMON: With good reason. A cyclotron is a
28 particle accelerator. We don't have the cyclotron anymore, but there
29 was a giant magnet -- it weighed over 200 tons at one time. It was

1 subsequently removed to make room for the storage space.

2 This magnet and the electric field that was powered
3 around it could accelerate electrons and protons, nuclear particles, to
4 very high energies. And the device was used in the '30s and '40s to
5 make special isotopes of elements that are used in medical research,
6 the kinds of things that would be used as tracers in medical
7 applications.

8 MS. BENNETT: Okay. Thank you.

9 CHAIRPERSON HINTON: So this is still called the
10 cyclotron building, but the cyclotron is gone?

11 DR. SOLOMON: This is a vault. This is the cyclotron
12 vault, which is adjacent to an above-ground structure which we also
13 call the cyclotron building. The cyclotron is gone. But for historical
14 reasons, because scientific traditions die hard, we still use --

15 (Laughter.)

16 -- that term.

17 MS. REID: And could you reiterate for me your title?

18 I didn't hear it.

19 DR. SOLOMON: The title of the institution?

20 MS. REID: No, no. Your title.

21 DR. SOLOMON: My title is Director of the
22 Department of Terrestrial Magnetism, which is one of two scientific
23 departments that share the Broad Branch Road campus. But both of
24 us are part of the Carnegie Institution of Washington.

25 MS. ADAROLA: The point of the difference between
26 the building and the vault is an important one. The drawings call this
27 the cyclotron building because the vault is attached underground to
28 the existing building above grade, but truly the vault is what's
29 underground, like a vault would be.

1 And technically, it's not an addition, because the
2 structure exists and what we're going to do -- and in this illustration of
3 the site, I don't know if you can see this, but Jocelyn Street is the
4 neighborhood street, so the residential area is on this side, the north
5 side of the property.

6 Currently, the sloping of the grade comes up to a
7 point, and then it is back down like this. So the building that is there
8 we're going to carve out just enough so that we can access the
9 second half, not the whole building -- the finished floor of the first level
10 is down here -- but just enough to come in at the middle level for the
11 storage that's there.

12 And then, when we do that, because the building was
13 constructed in a fashion with what are called upset beams, the beams
14 are above the space, it meant that the structure was exposed there.
15 We made that into a patio because, regardless, that would be -- the
16 concrete would be exposed.

17 What it does offer is that because this is south facing,
18 and as you can see a person is below the height of the garden wall
19 that would be up here, nothing on this side of the building can affect or
20 be visible from the neighborhood side. So that while anyone on this
21 side in a car or walking, you really couldn't see what has been carved
22 out.

23 But what it does provide -- and this is the drawing of
24 the front facade. As you can see, it's just being sculpted out. So the
25 existing structure is not very large. This whole space across -- I forget
26 the dimensions now -- but as you can see, if that's a three-foot door,
27 that's very tiny. But it does get people and materials in and out for
28 access, and some natural light to make that a little more useable.

29 But it does give a nice space as you're coming in and

1 out, if you wanted to sit in the sun to have lunch. There is a little
2 sidewalk connection to the existing sidewalk. That is tied into existing
3 storm drains. So nothing on the site changes, other than the facade of
4 an existing structure is being exposed.

5 The funny part about it is is that, technically, the
6 building didn't exist until it was excavated, and the only portion that is
7 being excavated is this eight-foot wide patio. And then this is just a
8 sheer wall.

9 The materials are going to match the existing
10 cyclotron building, colors and material there. But it is so low -- and the
11 existing trees that are there are going to be maintained as much as
12 possible. I know that Mr. David Carnegie has been working to make
13 sure that all of those are there and that others will be planted, so
14 nothing on the treescape is going to be modified greatly either.

15 Any questions or --

16 CHAIRPERSON HINTON: Are there any questions?

17 MR. LYONS: One. Could you identify where the
18 thousand square feet would be --

19 MS. ADAROLA: That is this level up here. The plan
20 above this -- I don't know if you can tell. This is the lower level. You'd
21 be here. There is this distance by that coming across, and then there
22 is a small portion of the paving here. But that is really what is being
23 exposed, because this beam -- if you can look on the section below, a
24 thousand is high. This is where the existing beam is that comes
25 across. So it's just that portion there.

26 Up here, this will be planted and there will be a
27 retaining -- you know, a garden wall so people don't fall over it. But
28 that is the portion that is being exposed, and then whatever little bit
29 they're counting as the sidewalk extension.

1 CHAIRPERSON HINTON: And because it is being
2 exposed, it now counts for FAR.

3 MS. ADAROLA: As a building. Right. If they did
4 nothing, they could -- but they couldn't use that storage. Because now
5 that the magnet is gone, you have to come in through the other
6 building, through the lower level. This is right off the street inside the
7 campus. So just to expose that little portion of the building, now all of
8 a sudden it shows up in a plan view, bird's-eye view, so now it's a
9 building, whereas before it was below grade.

10 CHAIRPERSON HINTON: Right.

11 MS. ADAROLA: So it hasn't changed any structures
12 on the property. It is just access to the structures.

13 CHAIRPERSON HINTON: Right. Okay.

14 Are there any questions from the Board members?

15 No. Very good.

16 Does that conclude --

17 MR. FARMER: That concludes our presentation.

18 CHAIRPERSON HINTON: Okay. Thank you.

19 Now, do we have an Office of Zoning report?

20 MS. ROSE: Yes. Good afternoon, Madam

21 Chairperson and members of the Board. I am Tracey Rose with the
22 Office of Zoning.

23 The Office of Zoning recommends conditional
24 approval of the application. The applicant's presentation described
25 the proposal in detail. Therefore, I will go on to address the basis of
26 our recommendation.

27 The analysis in the report is based on the applicable
28 provisions of the zoning regulations. The first provision, subsection
29 210.1, requires that the applicant be an academic institution of higher

1 learning. And based on the stated purpose of the Carnegie Institution,
2 the Office of Zoning believes that this provision is met.

3 The next provision, it's two of them. Basically, we put
4 together subsections 210.2 and 3108.1, objectionable conditions that
5 are a substantial detriment to the public good. The Office of Zoning
6 examined a map of the area and noted that the cyclotron building is
7 located closest to Jocelyn Street and 31st Street, Northwest.

8 The property nearest to the proposed construction
9 area contained the Temple Sinai Synagogue and School in square
10 2289, across Jocelyn Street, and the Presbyterian Home in square
11 2285, across 31st Street. We noticed that there is a significant
12 distance between the subject structure and these two institutional
13 facilities.

14 There are also two single-family dwellings across
15 Jocelyn Street. However, these houses are not located closest to the
16 portion of the cyclotron building where the construction will take place.
17 Because of the distance between the area of the proposed addition
18 and nearby properties, the Office of Zoning does not believe that the
19 addition will be objectionable or detrimental in terms of visual effects
20 or noise.

21 Subsection 210.3 provides for the maximum bulk.
22 The Office of Zoning concludes that the applicant meets this provision.
23 The total FAR after the proposed addition would be only .882, where a
24 1.8 FAR is allowed.

25 The applicant has met subsection 210.4 by submitting
26 a campus plan to the Board and application number 14831.

27 The provisions of subsection 210.5 do not apply,
28 given that the applicant does not need for the Board to grant the
29 interim use of land or improved property for this application. Referrals

1 have been made to the Office of Planning and the Department of
2 Public Works, in accordance with subsection 210.6.

3 Subsection 3108.1 requires the proposal to be in
4 harmony with the zone plan. The Office of Zoning is of the opinion
5 that granting the relief requested will be in harmony with the intent and
6 purpose of the zone plan, because special exceptions are deemed
7 compatible with the zone district. And the proposed amendment to
8 the campus plan is minor in nature.

9 Finally, the Office of Zoning recommends four
10 conditions to approval: 1) construction shall be in accordance with the
11 plan submitted into the record; 2) the maximum floor area ratio for the
12 campus shall not exceed .882; 3) excavation and construction shall
13 occur on days and during hours that are required by other codes and
14 regulations of the District of Columbia; and, 4) the conditions in BZA
15 Order Number 14831 shall remain in effect, to the extent that they are
16 not inconsistent with the instant application if it is approved by the
17 Board.

18 And that concludes my statement. I would be happy
19 to answer any questions.

20 MS. BENNETT: Well done, Ms. Rose.

21 (Laughter.)

22 MS. ROSE: Thank you.

23 CHAIRPERSON HINTON: Very good.

24 MS. BENNETT: Very good.

25 CHAIRPERSON HINTON: I have a question about
26 condition number 2. The maximum FAR for the campus shall not
27 exceed .882. This project would bring it to .822.

28 MS. ROSE: Yes.

29 CHAIRPERSON HINTON: Is that right?

1 MS. ROSE: Yes.

2 MR. FARMER: Right.

3 CHAIRPERSON HINTON: So this condition is solely
4 for this project.

5 MS. ROSE: It is the combination of this project with
6 what is currently existing.

7 CHAIRPERSON HINTON: Okay. But --

8 MS. ROSE: But what is allowed is higher.

9 MR. FARMER: What's allowed in the zoning
10 regulations is 1.8. The current state of construction brings it to .88.
11 This addition brings it to .882.

12 CHAIRPERSON HINTON: And I guess that is what is
13 confusing me. If we put a condition about .882 --

14 MS. DOBBINS: You might want to put the condition --
15 you may want to restate the condition to say the maximum floor area
16 ratio for the campus shall not exceed .882 until such time as any other
17 special exception or further processing comes before the Board.

18 MR. FARMER: Right. That would be the intention of
19 the Institution. I think the confusion arises from the original order,
20 which had a .88 as a condition.

21 MR. LYONS: And that's where this followup
22 condition, carrying through with this increase to the plan, adding the
23 .002.

24 MS. DOBBINS: So the Board has the opportunity to
25 clarify it in this order.

26 CHAIRPERSON HINTON: Okay. That would be
27 great, if we could just add that language on the end to make sure. I
28 don't want you to be limited in the future, based on a
29 misunderstanding of a condition.

1 Are there other questions from the Board members?

2 Mr. Farmer, do you have any questions of the Office
3 of Zoning?

4 MR. FARMER: No. No, we don't.

5 CHAIRPERSON HINTON: Okay. Is there anyone
6 here from the ANC? There is not.

7 We have a letter from the ANC in the file. Let me find
8 it. I have a note here to --

9 MS. BENNETT: Madam Chair?

10 CHAIRPERSON HINTON: Do you have it?

11 MS. BENNETT: I have it before me. It is dated
12 March 26, 1997, and it is here over the signature of Ann Renshaw,
13 who is the Chair. It says that the Chevy Chase Advisory
14 Neighborhood Commission, ANC 3G, met in public session on March
15 24, 1997. That at that public meeting, the ANC voted 5-0, a quorum
16 being four members present, to approve BZA application number
17 16224 for the Carnegie Institute. And she leaves the office number
18 and says "thank you for your consideration."

19 CHAIRPERSON HINTON: Very good.

20 I noted in the Office of Zoning report that referrals had
21 been made to the Office of Planning and the Department of Public
22 Works, and I have seen no response from them in the file.

23 Persons in support? Persons in opposition?

24 Closing remarks by the applicant?

25 MR. FARMER: Madam Chairperson and members of
26 the Board, the Institution would like to request a bench decision. Due
27 to budgetary considerations, we need to start construction as soon as
28 possible. And if it would be possible to get a bench decision today, we
29 would much appreciate it.

1 CHAIRPERSON HINTON: Very good.

2 Board members, do I have a motion?

3 MS. BENNETT: You do. Madam Chair, I move
4 approval of application 16224. I think the Institute has met all of its
5 tests, with conditions.

6 CHAIRPERSON HINTON: With conditions. I'll
7 second it.

8 MS. BENNETT: As modified.

9 CHAIRPERSON HINTON: Very good. I'll second
10 that.

11 And since the Office of Zoning report was so thorough
12 in the way that it addressed each condition of the zoning regulations, I
13 would just like to say that for the reasons listed in the report --

14 MR. FARMER: Would it be possible, Madam
15 Chairperson, to get a summary order?

16 CHAIRPERSON HINTON: Absolutely. Yes.

17 Why don't we call the question. All those in favor?

18 (Chorus of ayes.)

19 Opposed? Hearing none, a summary order, please.

20 MR. LYONS: Staff would record the vote as being 3-
21 0 to approve the application. Ms. Bennett, Ms. Hinton, and Ms. Reid
22 to approve; Ms. Richards and Mr. Clarens, not present, not voting.

23 CHAIRPERSON HINTON: Okay. Thank you.

24 MR. FARMER: Thank you very much.

25 CHAIRPERSON HINTON: We're ready for the next
26 case.

27 MR. LYONS: The next case is application 16223 of
28 the GAP, Incorporated, pursuant to 11 DCMR 3108.1, for a special
29 exception under paragraph 400.7(b) to allow a stairway penthouse to

1 setback from all exterior walls a distance less than its height above the
2 roof of a structure in a D/C-2-A district at premises 3200 M Street,
3 Northwest, square 1200, lot 840.

4 All persons wishing to testify in this application,
5 please rise to take the oath. Please raise your right hand.

6 (Whereupon, an oath was administered to those
7 persons wishing to testify.)

8 Please be seated.

9 Will the applicant come forward?

10 CHAIRPERSON HINTON: We need your name and
11 home address for the record. Then you can get started.

12 MR. STEDHAM: Good afternoon, Madam
13 Chairperson, members of the Board. My name is Don Stedham. I
14 represent the GAP, Incorporated, owners of Banana Republic, located
15 at 3200 M Street. My address is 9745 Vale Road, Vienna, Virginia
16 22181.

17 We are here to request from you, as Mr. Lyons had
18 said, a special exception under Section 400.7(b) to construct a
19 stairway penthouse on the top of our existing store -- on the top of our
20 existing building, with a setback less than its height from the exterior
21 wall.

22 The purpose of our request lies in that in order for us
23 to utilize the second and third floors of the building, we have to bring
24 that building up to current code requirements. Specifically, the egress
25 requirements for fire safety is the major concern. So to do that, we
26 have to install two code compliant stairways. The penthouse structure
27 encloses those code compliant stairways.

28 We have worked closely with the Commission of Fine
29 Arts, Mr. Jose Martinez, in order to maintain the historical nature of

1 our building within the Commission's district. He has helped us along
2 the way and has provided conceptual approval when we applied for
3 that back in June of 1996.

4 We have also met with the local Advisory
5 Neighborhood Commission, 2E, earlier this month, and they have
6 voiced their support and enthusiasm for the project as well.

7 At this time, I'd like to introduce our architect who flew
8 in from San Bruno, California, Steve Schacher, to address the details
9 of the structure.

10 MR. SCHACHER: Good afternoon, Madam
11 Chairperson and members of the Board.

12 Don has reviewed -- basically gone through what we
13 are submitting here for your approval today. Basically, our wishes are
14 to be able to renovate the existing building, which we lease entirely, to
15 bring it up to local city codes -- codes that apply to today's standards,
16 so that we can basically occupy the entire building.

17 Currently, we occupy only the first floor and the
18 basement, and the second floor and third floor was, until not long ago,
19 used by a bar establishment. It is no longer there, and we'd like to be
20 able to expand into the upper part of the building. To do this, we need
21 to -- we are going to do quite a bit of renovation to bring the building
22 up to code, which will be handicap accessible, and part of which will
23 include two new egress stairs, an elevator, and a monumental stair for
24 our sales access.

25 And in doing so, we need to get up to the third floor,
26 and that will include a stair enclosure, which will be our second egress
27 stair to the street.

28 MR. STEDHAM: Do you want to show --

29 MR. SCHACHER: Yes. This is the existing building

1 here at M Street and Wisconsin, and to the north Wisconsin, this
2 street here. Currently, again, we occupy the first floor level, and we
3 will be expanding and would like to expand up to the upper levels.

4 CHAIRPERSON HINTON: Is that a rendering of the
5 existing condition or the --

6 MR. SCHACHER: The existing building is -- it's a
7 painted brick building. It's actually black with white trim, and we're
8 planning to restore it to historical photographs, which are the white
9 field and the black trim.

10 And we have approached, as Mr. Stedham
11 mentioned, last summer, the Commission of Fine Arts, and they have
12 approved a concept review. These drawings represent those.

13 This is a site section through the building. To give
14 you an idea, a site line, this is Wisconsin Avenue. And the two-story
15 part of the building is to the rear, and this will be the new stair
16 enclosure which will house our egress stair.

17 As you see, from a person standing across the street,
18 a site line going to the top of the existing parapet, will go up quite high.
19 And, therefore, you will not see the new enclosure. The wall beyond
20 here is the wall of the third floor existing portion.

21 Let me go to the floor plan. That might help you to
22 see that a little better.

23 This is the first floor plate of the second floor -- again,
24 reflecting our design renovation. This is the third floor level. This is
25 the floor plan right now that exists, and we are adding this area for the
26 second egress stair. This will remain as roof level.

27 Again, just to reiterate, we are planning to get the
28 building and bring in all new stair and vertical circulation to the building
29 -- these two stairs being the new egress stairs, the elevator, and our

1 sales stair.

2 As Mr. Stedham mentioned, we did have a review by
3 the ANC earlier this month, and that went through with approval. I
4 might just address a couple of comments that came up in that
5 meeting, concerns from the neighborhood about mechanical rooftop
6 units.

7 Currently, this is all one roof and has a lot of
8 mechanical rooftop units and a lot of ductwork everywhere. So in our
9 renovation scheme, we will be cleaning that up considerably. And if I
10 can go back to the site section, you'll see, again, the site line, the
11 existing parapet, on the second roof, second floor roof.

12 And dashed in here is an example of the new
13 mechanical rooftop units -- are designed to be held to the height of the
14 existing parapet or below. So --

15 CHAIRPERSON HINTON: Do you have a roof plan
16 that shows that?

17 MR. SCHACHER: Yes. You'll see these units here.

18 CHAIRPERSON HINTON: And the height of the
19 parapet is currently what above the roof?

20 MR. SCHACHER: The height of the parapet -- let me
21 refer to some drawings here. Well, relative to the other heights, it is
22 about four and a half feet. This dimension here is 12-1/2, plus or
23 minus. This is 12 feet. So it's about four and a half feet.

24 CHAIRPERSON HINTON: And so the roof plan was
25 showing three different pieces of mechanical equipment, is that right,
26 that are not enclosed in the penthouse?

27 MR. SCHACHER: No. The mechanical rooftop units
28 are sitting on the roof outside. And the height of them will not exceed
29 the existing parapet height.

1 CHAIRPERSON HINTON: Okay. Are you done?

2 MR. SCHACHER: I am, yes.

3 CHAIRPERSON HINTON: I have one other question.

4 If you're gutting the interior and putting in new stairs, why can't you
5 comply with the regulations and put them interior to the building so
6 that they do meet the setback requirements?

7 MR. SCHACHER: Right. As you'll notice, the third
8 floor is quite small. It does not -- they did not build out the full floor
9 plate as down on the second floor. So to put in another stair in this
10 small floor plan would not make the third floor usable as any
11 commercial space. But we are, by code, required to have two egress
12 stairs.

13 CHAIRPERSON HINTON: Okay. Very good.

14 Are there other questions from Board members?

15 MS. BENNETT: I have none.

16 CHAIRPERSON HINTON: Okay. Let's move to the
17 Office of Zoning.

18 MR. NYARKU: Good afternoon, Madam Chairperson
19 and other members of the Board of Zoning Adjustment. My name is
20 John Nyarku, a zoning specialist at the Office of Zoning.

21 The applicant, through BZA application 16223, is
22 proposing an addition of an enclosed stairway roof structure to an
23 existing second and three -- two- and three-story building at 3200 M
24 Street in a D/C-2-A district.

25 The applicant is requesting a special exception under
26 subsection 3108.1, paragraph 400.7(b) of the zoning regulations. And
27 at this point, it should be noted that the applicant should have included
28 Section 411, which provides authority to the Board to hear the
29 application as a special exception, particularly subsection 411.11.

1 The applicant, as I said, is proposing to construct a
2 penthouse addition to the third floor of a building to satisfy a code
3 requirement on egress stairs. The existing stairway to the second and
4 third floors does not meet current egress code requirements. The
5 proposed stairwell will be a brick and glass structure to be located on
6 the roof of the second floor, and will occupy 570 square feet of space.

7 The special exception requested in this case must
8 comply, as I said, with the provisions of Section 3108.1, Section
9 411.11, and paragraph 400.7(b) of the zoning regulations.

10 The zoning administrator's computations indicate that
11 the penthouse will require a setback measuring 14.5 feet from the
12 exterior wall to the west. The applicant does not meet the zoning
13 requirements, because subsection 400.7(b) stipulates that if a
14 stairway or elevator penthouse is provided on the roof of a building or
15 a structure, it must set back from all exterior walls a distance at least
16 equal to its height above the roof upon which it is located.

17 The applicant is also seeking relief from subsection
18 411.11, where, as a result of other conditions relating to the building or
19 surrounding areas, that will tend to make full compliance with the
20 zoning regulations unduly restrictive, prohibitively costly, or
21 unreasonable.

22 The Board shall be empowered to approve the
23 location, design, number, and all other aspects of the structure, even if
24 such structures do not meet the normal setback requirements of
25 subsection 400.7(b), provided that the intent and purpose of the
26 zoning regulations are not impaired by the structure, and the light and
27 air of adjacent buildings are not affected adversely.

28 In order for the applicant to use the second and third
29 floors for retail sales, the applicant has to meet code requirements by

1 modifying and enclosing the stairway in a penthouse structure. The
2 applicant states that the renovation or upgrade of subject property to
3 current building codes for safety and efficiency of space will enhance
4 the immediate neighborhood's character and vitality.

5 The Office of Zoning is of the opinion that granting the
6 special exception request would not substantially impact the intent,
7 purpose, and integrity of the zoning regulations and maps.

8 Furthermore, the proposal will not adversely affect the views of
9 neighboring properties and will be in harmony with the zoning
10 regulations.

11 The proposal to include a penthouse appears
12 unobtrusive and will be located at the rear of the third floor where the
13 exterior wall to the west abuts the neighboring commercial
14 establishments. Therefore, it will not be visible at all from the
15 Wisconsin Avenue commercial corridor, and thus will not impede the
16 light and air of the existing commercial properties.

17 The unobtrusive location of the proposed penthouse
18 addition, the applicant's renovation to upgrade the existing building to
19 current building codes for safety and efficiency of space, and the
20 applicant's plans to restore the exterior walls of the building to the
21 original color, are elements that support the applicant's special
22 exception request.

23 The Office of Zoning, therefore, recommends
24 approval of its application. And that concludes my testimony.

25 CHAIRPERSON HINTON: Thank you.

26 Are there any questions?

27 MS. BENNETT: I have none. Again, an excellent
28 report.

29 CHAIRPERSON HINTON: Yes, a very good report.

1 I have no questions.

2 Does the applicant have any questions of the Office of
3 Planning, any cross examination?

4 MR. STEDHAM: No, not at this time.

5 MS. BENNETT: Office of Zoning.

6 CHAIRPERSON HINTON: Zoning. Sorry.

7 (Laughter.)

8 MR. STEDHAM: I don't know, Madam Chairperson, if
9 it's appropriate at this time to ask for a bench decision, or should we
10 wait until --

11 CHAIRPERSON HINTON: In your concluding
12 remarks would be a good time to do that.

13 MR. STEDHAM: Thank you.

14 CHAIRPERSON HINTON: Okay.

15 MS. BENNETT: But that remark was noted.

16 (Laughter.)

17 CHAIRPERSON HINTON: Okay. We have an ANC
18 letter in the file, and ANC 2E is recommending approval.

19 Is there anyone from the ANC in the audience? No.

20 The letter from ANC 2E is dated April 9, 1997. "On
21 April 1, 1997, ANC 2E held its regularly scheduled, duly announced
22 monthly meeting and discussed the case of the Banana Republic,
23 which seeks a special exception to build a stairwell penthouse.

24 "It was moved and seconded and unanimously voted
25 to send the BZA our approval of this application." Over the signature
26 of Fran Goldstein, Chair.

27 We have no other reports from other government
28 agencies.

29 Are there persons in support? Persons in opposition?

1 Closing remarks by the applicant?

2 MR. STEDHAM: Madam Chairperson, yes. We
3 would request of the Board a bench decision with summary order.

4 CHAIRPERSON HINTON: Okay. Board members,
5 any motions?

6 MS. BENNETT: I move approval.

7 CHAIRPERSON HINTON: Very good.

8 MS. REID: I'll second.

9 CHAIRPERSON HINTON: Okay. Discussion?

10 MS. BENNETT: I have none.

11 CHAIRPERSON HINTON: Okay. The Office of
12 Zoning report pretty thoroughly discusses the application and the relief
13 that is being requested. And for the reasons listed there in the
14 recommendation, I would also be in support.

15 All those in favor?

16 (Chorus of ayes.)

17 Opposed?

18 MR. LYONS: Staff would record the vote as being 3-
19 0 to approve the application. Ms. Bennett, Ms. Reid, and Ms. Hinton
20 to approve; Ms. Richards and Mr. Clarens, not present, not voting.
21 And, I assume, a summary order.

22 MS. BENNETT: Yes. Summary order, Madam
23 Chair?

24 CHAIRPERSON HINTON: Summary order, yes.

25 Thank you very much.

26 Call the next --

27 MR. LYONS: The next case is application number
28 16225 of the American Association for the Advancement of Science,
29 pursuant to 11 DCMR 3107.2 for a variance to allow more than 40

1 percent of the maximum required parking spaces designated as
2 compact parking spaces under subsection 2115.2, as accessory
3 parking spaces of an office building in a C-4 district at premises 1200
4 New York Avenue, Northwest, square 287, lot 38.

5 All persons wishing to testify in this application,
6 please rise to take the oath. Please raise your right hand.

7 (Whereupon, an oath was administered to those
8 persons wishing to testify.)

9 Please be seated.

10 CHAIRPERSON HINTON: Go ahead.

11 MS. VALLOT: Good afternoon, Madam Chair,
12 members of the Board. For the record, my name is Angela Vallot of
13 the law firm of Arent Fox. I'm here on behalf of the applicant, the
14 American Association for the Advancement of Science.

15 We are requesting an area variance today in order to
16 increase the number of compact parking spaces allowed in the garage
17 of the headquarters building of this organization. I'd like to just note
18 for the Board that we, indeed, do meet the requirement in terms of the
19 number of parking spaces. Eighty parking spaces are required, and
20 we have provided 81 parking spaces. So we comply with, and in fact
21 are above, the required number of spaces. The only issue here is the
22 mix of spaces in terms of the mix between standard size and compact
23 spaces.

24 We have two witnesses today. Mr. Phil Blair, whom
25 you'll hear from first, he is the Chief Financial Officer of American
26 Association for the Advancement of Science, which we refer to as
27 AAAS. And we also have with us Tom Wilbur from the John Ackridge
28 Company. They are the developers of the building.

29 I'd like to also note, Madam Chair and members of the

1 Board, before we begin, that we are aware that the staff has reviewed
2 this application and recommended a denial, based on a review of the
3 application. We are pleased to say that since the time we filed the
4 application, we have obviously done a lot more work. We had to just
5 sort of go back and revisit history and figure out how the discrepancy
6 came to our attention.

7 And we'd like the staff to know, and, of course, we
8 hope that the Board will find that we have met our burden of proof, as
9 we think we have, and that you will hear in the forthcoming
10 testimonies.

11 I'd like to now introduce Mr. Phil Blair.

12 MR. BLAIR: Thank you.

13 Good afternoon, Madam Chairperson and members
14 of the Board. As stated, I am Phillip Blair, the Chief Financial Officer
15 of the AAAS. I reside at 3511 Duff Drive in Falls Church, Virginia.
16 And I am pleased to be here today to talk with you. And, as noted,
17 Tom Wilbur, who is with the John Ackridge Company and was the
18 developer of the building, will talk after my initial remarks. And he
19 brings extensive history and knowledge of the project to the subject.

20 A little background on AAAS, as some lead-in
21 comments, AAAS was founded in 1848 as a nonprofit organization. It
22 moved to the District of Columbia in 1907. We will be celebrating our
23 150th anniversary next year, and 90 of those years have been here in
24 Washington, D.C.

25 Prior to building our new building on 1200 New York
26 Avenue, we were in a rental space at 1333 H Street. In the early
27 1990s, we looked at several options about either moving outside the
28 District or building, and I was very pleased that our board made the
29 decision to stay in the Washington, D.C. area. That was done through

1 a combination of financing, tax exempt bonds, working closing with the
2 D.C. Tax Exempt Department in that effort.

3 AAAS is the largest multidisciplinary scientific society.
4 We have over 140,000 members throughout the world. We also have
5 many programs and activities that have been implemented here in the
6 District. For example, we have the AAAS black church project,
7 science linkages in the community, kinetic city super crew, which
8 includes a partnership with the Duke Ellington School of the Arts,
9 AAAS-D.C. Science Library Institute, and various teacher training
10 programs. We pride ourself on being an active participant and citizen
11 in the D.C. community.

12 Again, I thank you for letting me have these opening
13 comments, and I'm going to turn it over to Tom to get into the details
14 of our application.

15 MR. WILBUR: Thank you.

16 Good afternoon, Madam Chair and members of the
17 Board. Again, I am Tom Wilbur. I am a Senior Vice President with the
18 John Ackridge Companies. My company was the developer of the
19 AAAS headquarters building, and I was the project manager in charge
20 of that work.

21 I am here to talk to you today about kind of the
22 circumstances around this variance request.

23 First of all, I would like to reiterate again, also, that we
24 are -- one thing that we are not requesting is any variance on the
25 number of total parking spots in the garage, that we did satisfy that.
26 Actually, we're a little bit above the requirements for that. And the
27 issue that we're really addressing here is the mix between the
28 compact and the standard size parking spaces.

29 The AAAS headquarters building was completed last

1 year, in March of 1996. The discrepancy in the mix of the parking
2 spaces between compact and standard was discovered by the zoning
3 inspector when we were going for our C of O March 25, 1996. At that
4 time, we discovered that we had 25 more compact spaces than were
5 allowed under the regulations.

6 The garage was built in accordance with our permit
7 plans, which did show this discrepancy, but it was not picked up by the
8 zoning office at the time. Obviously, our architect mistakenly included
9 an incorrect mix of compact and standard spaces, and the error was
10 simply just not noticed by zoning at the time.

11 After the discrepancy was brought to our attention by
12 the zoning inspector, we worked with the zoning inspector, with the
13 architect and the contractor, over a two-week period, to try to solve
14 this issue. I'm pleased to say that we were able to reduce the effect of
15 this variance by two-thirds, essentially brought down the number that
16 we were out of compliance with from 25 down to nine spaces, which
17 we're at right now.

18 We brought this to the attention of the zoning
19 administrator's office at that time, after we had worked this out, and at
20 that point she agreed to allot of a conditional certificate of occupancy
21 so that the AAAS could move into the building on schedule. And then
22 we at that time agreed that we would pursue this variance.

23 The application complies with -- this application
24 complies with the requirements of Section 3107.2 of the zoning
25 regulations for granting an area variance. There are three criteria, of
26 which you are well aware. And I'm going to address each one of
27 those criteria.

28 Under the first criteria, this is a unique situation,
29 because we did not discover the discrepancy in the mix of parking

1 spaces until after the AAAS building was already completed. We did
2 everything we could to rectify the situation. As I mentioned, we had
3 spent two weeks working with the architect to reconfigure the garage
4 and maximize the number of spaces available. We even looked at
5 cutting down the size of the drive aisles to come up with needed
6 spaces.

7 In the end, the new plan was approved by the zoning
8 inspector, and it was agreed that it was the best possible plan under
9 the given circumstances -- again, having to reduce the total number of
10 the variance by two-thirds.

11 The situation we're in also is unique in that this
12 building was built on top of the Metro service tunnels. As a result, we
13 had to go through a considerable amount of scrutiny from Metro in
14 order to even get our approval to excavate on the site. And there was
15 no option of going any deeper with our excavation on this building.

16 Under the second criteria, it would cause undue
17 hardship and practical difficulty to comply with the strict application of
18 the parking regulations. As just indicated, there really are no solutions
19 that we've been able to figure out short of excavating and adding
20 another level of parking, which just is not possible because of Metro.

21 It is simply not possible to squeeze any more spaces
22 in the garage without eating into the drive aisles, which would create
23 another non-compliance problem and would cause more problems
24 than we have right now.

25 Under the third criteria, the increased number of
26 compact spaces -- and, therefore, the granting of an area variance --
27 really does not harm the tenants of the building. The building is strictly
28 used by the tenants of the building and their visitors. It's not open to
29 members of the general public.

1 As a matter of fact, the tax exempt bond financing that
2 was utilized for this project really precludes us from using it as a
3 parking garage for the public, due to the restrictions put on that. So,
4 again, it is not open to the general public.

5 Given the popularity of compact cars today, especially
6 in metropolitan areas such as this one, the increase in the compact
7 parking spaces will not cause substantial detriment to the public good,
8 nor will it impair the intent, purpose, and integrity of the zoning plan as
9 embodied in the zoning regulations and the map.

10 Furthermore, this building was designed utilizing
11 state-of-the-art principles of Green architecture. Energy efficiency and
12 resource conservation were prime goals of the AAAS. Accordingly,
13 AAAS, and most of the occupants of the building, utilize public
14 transportation. Consequently, the garage right now, even though the
15 building is totally occupied right now, the garage is not totally utilized.
16 Plus, the parking currently available is more than adequate to handle
17 the demands of the building.

18 I will add that this building was designed by the
19 architectural firm of Pei Cobb Freed out of New York, a world-class
20 architect, and we also had hired a special architect to handle the
21 environmental aspects of this building. And we designed a building
22 that, as of the date of completion of the building, is really I think
23 unsurpassed in the United States as far as its compliance with
24 resource utilization and also energy efficiency and reduction in the
25 amount of pollution that would be given off by the building.

26 They actually had done a study, called a DOE-2
27 study, which really looked at the amount of pollution that would be
28 generated by this building not only at the building but then also with
29 the source of where the power would come for the building. And we

1 selected our air conditioning system based on that.

2 In addition, we have no CFCs in this building. There
3 are no refrigerants that include CFCs at all, which is well beyond what
4 the laws require. Again, this was a very much above code
5 requirement that was selected by AAAS in order to both respect the
6 environment and also that went along with the basic mission of their
7 organization in furthering science.

8 This application requests an area variance from the
9 strict requirements of Section 2115.2 of the zoning regulations to
10 permit an increase in the mix of compact to standard size spaces in
11 our garage, so that nine additional compact parking spaces are
12 allowed in the garage of our building.

13 The application meets the requirements of Section
14 3107.2 of the regulations, and the request relief can be granted in
15 harmony with the general purpose and intent of the regulations, and
16 will not tend to adversely affect the use of neighboring property.

17 Accordingly, we respectfully urge the Board to grant
18 this application. Thank you.

19 CHAIRPERSON HINTON: Thank you.

20 Are there any questions from the Board members?

21 MS. BENNETT: Yes.

22 I guess sequence of events. Your architects erred.
23 Our folks erred, because they issued a building permit. I guess what
24 I'm trying to ferret out here are extraordinary circumstances.

25 (Laughter.)

26 That's where I'm going, because a couple of folks fell
27 asleep at the switch is what happened. And they combined to cause a
28 problem, which we are now trying to deal with.

29 What is involved? You mentioned that the garage is

1 not currently fully used. What is involved in trying to -- if we were to
2 try to fix this physically, it's more than, I gather, a matter of restriping
3 overnight.

4 MR. WILBUR: That is correct, because we did that.
5 (Laughter.)

6 MS. BENNETT: I'll bet you did.

7 MR. WILBUR: And actually, it was -- and, again, we
8 were pretty successful. And I think what you find out is when you
9 design something, you obviously have it on paper. And then, once it
10 gets constructed, there is obviously some variations in what the size of
11 the building is and how it kind of breathes a little bit.

12 And in this particular case, I think we were fortunate in
13 that we were able to kind of squeeze out, you know, a few inches here
14 and there and be able to make some of those parking spots that were
15 basically shown on the drawings as compact spaces, that they really
16 did conform to standard size requirements. So that we were able,
17 through that restriping process, to be able to really minimize the effect
18 of this variance.

19 I will tell you that during that two-week period, we
20 were looking at just about every possibility. We were thinking of
21 everything that could be done in order to try to get ourselves in strict
22 accordance with this.

23 We even looked at the possibility -- and there is still
24 the ability to do tandem parking, where you could have people who
25 are essentially buddy-parking, parking in one spot and then another
26 one could be behind it. And they'd either arrange them to make sure
27 that the person left that was blocking their space leave early, or else
28 leave their keys in the parking garage. Those sort of things.

29 We also looked at the issue of making it attended

1 parking, so we'd just have people park it -- you know, park the cars,
2 which is really done in a lot of the parking garages that are open to the
3 public. It wouldn't be something that would normally be done for this
4 sort of a garage.

5 But we looked at all of those sort of things, and just
6 nothing quite did it, you know? And really, we come down to the
7 physical configuration of the building and kind of where the concrete
8 has been poured.

9 MS. BENNETT: Right.

10 MR. WILBUR: And the fact that all of the columns
11 that really, you know, support the building all the way up above, which
12 is a complex structure in itself, and the fact that down below us we've
13 got these two Metro tunnels -- which Metro has very often reminded
14 us that are only about a quarter inch thick, each one of these tubes,
15 and that they were, you know, very concerned about how the loading
16 was on that and how close we would get to their construction.

17 Of course, there is an easement that is set up that
18 really restricts us from getting too close to those tunnels anyway.

19 So we had two architectural firms working on this.
20 We had the developer. We had the owner and the very strong
21 owner's rep. that was working on it. We had Diplomat Parking, who is
22 a real pro in the parking business, to find every way to meet it
23 technically. And we just -- we couldn't quite get there.

24 MS. BENNETT: Okay. So then, in fact, the first two
25 errors, plus now the building structure itself, causes a difficulty in that
26 you can't modify it in any way to create the spaces that you need. Is
27 that --

28 MR. WILBUR: That is correct, which basically
29 wouldn't be creating new spaces, what we need. We just -- all we

1 would need to do is take some of the small ones and try to stretch
2 them and make them bigger. But we just -- we're constrained by the
3 column spacing in the basement and the location of the foundation
4 walls, which do go right up to our property line, in being able to satisfy
5 this.

6 MS. BENNETT: Okay.

7 CHAIRPERSON HINTON: And without a variance,
8 you would only be able to occupy that portion of the building that can
9 be supported by the number of parking spaces that you have. Is that
10 right?

11 MS. VALLOT: To be honest with you, that was not
12 made entirely clear. When we met with the zoning administrator and
13 she was willing to issue a conditional certificate of occupancy in order
14 to allow the organization to move into the building, there was never
15 any discussion about what would happen if the variance were not
16 granted.

17 CHAIRPERSON HINTON: So it's possible that you
18 wouldn't be able to occupy any part of the building without --

19 MS. VALLOT: I guess in the worst case scenario, or,
20 as you suggested earlier, perhaps a portion of the building that
21 complied with, you know, the strict application of the parking
22 regulations.

23 CHAIRPERSON HINTON: Now, the number of
24 spaces, I think you're required to have 80. Is that based on square
25 footage of the building?

26 MS. VALLOT: Yes.

27 CHAIRPERSON HINTON: Okay.

28 MS. VALLOT: Yes. And we have 81.

29 CHAIRPERSON HINTON: You have 81. Very good.

1 Are there other questions?

2 MS. BENNETT: I have none.

3 CHAIRPERSON HINTON: Okay. Now, I'm going to
4 get it right this time.

5 (Laughter.)

6 A report from the Office of Zoning --

7 MS. BENNETT: Mr. Hart.

8 CHAIRPERSON HINTON: -- Mr. Hart.

9 MS. DOBBINS: Well, he's looking at this -- he's
10 looking in my direction.

11 CHAIRPERSON HINTON: Okay.

12 MS. DOBBINS: The Office of Zoning made an initial
13 recommendation in this application based on what was provided in the
14 record. And if you'll look at the recommendation, on the last page,
15 you'll see we let ourselves an out.

16 MS. BENNETT: Yes.

17 MS. DOBBINS: And that was after speaking with the
18 applicant and there being some indication that they would provide
19 some information that would at least go to the burden of proving. And
20 leaving ourselves an out, we are revising our recommendation to
21 recommend approval, based on the testimony or the evidence they
22 presented this afternoon.

23 They have provided the burden of proof -- or met the
24 burden of proof required. They have indicated the practical difficulty,
25 the public good, and the zone plan requirements here. So we are
26 recommending -- we are revising our recommendation to recommend
27 approval based on the information they provided. I think they've met
28 the test.

29 CHAIRPERSON HINTON: Very good.

1 I do not see -- well, I don't see anyone here from the
2 ANC, and I don't think I have a report from the ANC.

3 MS. BENNETT: I have no report, Madam Chair, from
4 the ANC.

5 CHAIRPERSON HINTON: Has the applicant had any
6 contact with the ANC?

7 MS. VALLOT: We have not, Madam Chair.

8 CHAIRPERSON HINTON: No?

9 MS. BENNETT: Do they have any questions?

10 CHAIRPERSON HINTON: I'm sorry?

11 MS. BENNETT: You might want to ask if they have
12 questions.

13 CHAIRPERSON HINTON: Oh, I'm sorry.

14 Did you have any questions of the Office of Zoning?

15 MS. VALLOT: No, we don't. We'd like to just thank
16 you for taking in the new evidence and revising your report.

17 CHAIRPERSON HINTON: Okay. Very good.

18 Persons in support? Persons in opposition?

19 Closing remarks from the applicant?

20 MS. VALLOT: Thank you very much, Madam Chair.
21 We would like to recommend that you guys continue on the roll that
22 you're on this afternoon and perhaps go three for three.

23 (Laughter.)

24 CHAIRPERSON HINTON: All right. Do I have a
25 motion? Anybody? I'll move approval of the application.

26 MS. BENNETT: Second.

27 CHAIRPERSON HINTON: What do I want to say
28 here? It's clear to me that there were mistakes made, and the
29 information that we have says that those were inadvertent mistakes in

1 sizing the parking spaces. The building is built. The building is
2 occupied, and there seems to be more parking than is needed, so it
3 seems that this is not going to harm anybody if the variance were
4 approved.

5 Because there were errors both on the architect and
6 the District of Columbia in allowing the permit, we have case law that
7 says that those -- that situation can be considered to be extraordinary
8 or exceptional, and can be used as a basis for approving a variance.
9 So --

10 MS. DOBBINS: And also, I think at this point the
11 inability to excavate is also an additional point.

12 MS. BENNETT: That's right.

13 CHAIRPERSON HINTON: Right. Because of the
14 constraints of the site and Metro, and the inability to make any
15 changes that would ease the situation.

16 Any other discussion? All those in favor?

17 (Chorus of ayes.)

18 Opposed? None.

19 MR. LYONS: Staff would record the vote as being 3-
20 0 to approve the application.

21 MR. WILBUR: Thank you.

22 MR. LYONS: Ms. Hinton, Ms. Bennett, and Ms. Reid
23 to approve; Ms. Richards and Mr. Clarens, not present, not voting.
24 And issuance of a summary order, Madam Chair?

25 CHAIRPERSON HINTON: Yes. Summary order.

26 Thanks. That concludes our business?

27 MS. DOBBINS: No.

28 CHAIRPERSON HINTON: No. Okay.

29 MS. DOBBINS: I just wanted to put on today's record

1 that this was the debut of the Office of Zoning in presenting reports to
2 the Board for their use. And I'd like to say, as the Director of the
3 Office, I'm very proud of the staff.

4 (Applause.)

5 CHAIRPERSON HINTON: Yes.

6 With that, meeting adjourned.

7 (Whereupon, the proceedings in the foregoing matter
8 went off the record at 3:18 p.m.)