

GOVERNMENT
OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 13, 1999

+ + + + +

The Board met in Hearing Room 220 south at 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:50 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
JERRY GILREATH	Board Member
ROBERT SOCKWELL	Board Member

OFFICE OF ZONING STAFF PRESENT:

Sheri M. Pruitt,	Secretary, BZA
Beverly Bailey,	Office of Zoning
Mika Dorsey,	Office of Zoning
Paul Hart,	Office of Zoning
John Nyarku,	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Janice Skipper, Esq.

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

9:46 a.m.

CHAIRPERSON REID: Good morning. The hearing will please come to order. This is the September 13th Public Hearing of the Board of Zoning Adjustment. Joining me today is Robert Sockwell and Jerry Gilreath, and we don't have a member of the just one second, please well, let me just wing this, my opening remarks were being redone and they apparently have not been finished properly, so just let me wing it.

Copies of today's agenda are available to you. They are located to my left near the door. All persons planning to testify 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 to the Board, please give both cards to the reporter, who is sitting to my right.

The order of procedure for special exception and variance cases are statement and witnesses of the Applicant, government reports, including Office of Planning, Department of Public Works, the ANC, et cetera, persons or parties in support, persons or parties in opposition, closing remarks by the Applicant. Cross examination of witnesses is permitted by persons or parties who have direct interest in the case. The record will be closed at the conclusion of each case, except for material specifically requested by the Board, and the staff

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1 will specify at the end of the hearing exactly what is
2 expected.

3 The decision of the Board in these contested
4 cases must be based exclusively on the public record. The
5 Board, with any appearance to the contrary, will request that
6 persons present not engage with the Board in conversation.

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

9 The Board will consider preliminary matters.
10 Preliminary matters are those which relate to whether a case
11 will or should be heard today, due to request of postponements,
12 continuance or withdrawal, whether proper and adequate notice
13 of hearing has been given. If you are not prepared to go
14 forward with the case today, or if you believe that the Board
15 should not proceed, now is the time to raise such a matter.
16 Are there any preliminary matters? Please come forward.

17 Does staff have any preliminary matters?

18 MS. PRUITT: Yes, Madam Chair. The first case on
19 your agenda this morning, 16417, in your file there s a request
20 for a postponement to the next first available hearing date.

21 CHAIRPERSON REID: Okay. Lord knows, I have no
22 problem with it.

23 MR. GILREATH: Madam Chair, did they give a
24 reason, are they trying to resolve some design difficulties, I
25 presume it was a good purpose or a good reason.

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1 MS. PRUITT: They sort of explained in the letter
2 the issues that they had. This has been an application, you
3 have not heard it yet, but it s been an application that s had
4 some concerns. It s a non-profit, they originally came in
5 requesting relief, they self-certified, they originally came
6 in, I believe, requesting relief that was not necessary, and
7 not necessarily the correct relief they needed. So, they went
8 back and they actually have counsel now, and they are trying to
9 work to resolve and get everything done, and get a very clean
10 and tight case.

11 MR. GILREATH: Do a little housekeeping of the
12 proposal.

13 MS. PRUITT: Right, clean and tight case before
14 they come.

15 CHAIRPERSON REID: I think they asked for 90
16 days?

17 MS. PRUITT: No, it just says the request, that
18 the above application be rescheduled for the next available
19 Board meeting, public hearing.

20 CHAIRPERSON REID: No, well, wait a minute.

21 MR. SOCKWELL: They asked for 90.

22 CHAIRPERSON REID: Where are you reading from,
23 Ms. Pruitt-Williams?

24 MS. PRUITT: I have a letter dated the 16th.

25 CHAIRPERSON REID: Well, there s a subsequent

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1 letter of September 24th.

2 MS. PRUITT: Well, the first available hearing
3 date, whether it s 90 days or not, is December 8th.

4 MR. SOCKWELL: Yes, but they are asking for 90
5 days.

6 CHAIRPERSON REID: They want 90 days, so then
7 that would put it in January, 2000, would it not?

8 MS. PRUITT: October yes, it should yes, the
9 first available one is December 9th, but we can put it for any
10 time in January that

11 CHAIRPERSON REID: No, okay, they are not asking
12 for the first available, they are asking for a 90-day
13 postponement.

14 Then, yes, from today s date, or the date of the
15 September well, I guess it s from today s date, the date of
16 the hearing, so that would put it at January.

17 MS. PRUITT: January.

18 CHAIRPERSON REID: Year 2000.

19 MS. PRUITT: And, that is available.

20 CHAIRPERSON REID: All right.

21 MS. PRUITT: So, let me verify what dates we have
22 for BZA on that. Well, the first available hearing date in
23 January is the 5th, but that s not 90 days, to be 90 days it
24 would have to be on the 19th. That s your second scheduled
25 meeting.

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1 CHAIRPERSON REID: Okay.

2 MS. PRUITT: So, it s been continued to January
3 19th, the first case on the agenda.

4 CHAIRPERSON REID: Thank you.

5 MS. PRUITT: And, that concludes staff s issues
6 for preliminary matters.

7 CHAIRPERSON REID: All right.

8 Please call the first case, the second case I
9 guess it would be, the first case has now been postponed.

10 MS. PRUITT: Case No. 16493, Application of Exxon
11 Corporation, pursuant to 11 DCMR 3108.1, for a special
12 exception under Subsection 706 to allow the expansion of a
13 formerly operated service station with four new fuel dispensers
14 beneath a canopy with a convenience store on a site in a C-2-A
15 District at premise No. 5 Q Street, N.W. (Square 3100, Lot 48).

16 All those planning to testify, would you please
17 stand and raise your right hand?

18 Please, be seated.

19 CHAIRPERSON REID: Yes, Mr. Collins.

20 MR. COLLINS: Good morning, Madam Chairperson and
21 members of the Board. My name is Christopher Collins with
22 Wilkes, Artis, Hedrick & Lane. With me to my left is Sarah
23 Shaw with Wilkes, Artis, and to my right is Terri Levine, a
24 Market Investment Specialist with Exxon Corporation.
25 Continuing on down the table, Mr. Bob Morris, who is a Traffic

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1 and Transportation Consultant in this case, and finally Mr.
2 Bhoopendra Prakash, who is with The Plan Source, the consulting
3 engineers for this project.

4 This is an application for an expansion of an
5 Exxon gasoline station at the northwest corner of N. Capitol
6 and Florida.

7 CHAIRPERSON REID: Mr. Collins, just one second
8 before you continue. I just want to get an idea as to this
9 case.

10 Is there anyone here in opposition to this case?
11 One person in opposition. And, in support? One person.

12 UNIDENTIFIED SPEAKER: And, I have reservations.
13 I am supporting with reservations.

14 CHAIRPERSON REID: Okay, all right.

15 All right.

16 MR. COLLINS: Thank you.

17 This is an application for expansion of an Exxon
18 gasoline station at the northwest corner of N. Capitol and
19 Florida, N.W., but the expansion is very limited. In this
20 case, as we ll show you later, as we get through the exhibits,
21 the Zoning Administrator has confirmed that the only reason for
22 special exception relief in this gasoline station application
23 is because of the increase in the number of gasoline dispensers
24 from three to four, and that s at page 11 of his statement.

25 The gas station has been a gas station has

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1 been at this site for almost 60 years. The site is currently
2 vacant. It was last rebuilt as an Exxon facility in 1979, or
3 thereabouts, with a canopy, with three gasoline dispensers and
4 an attendant s kiosk, and a small restroom building on the west
5 side of the site.

6 The proposal now is to remove all of those
7 improvements and to build a new facility. There will be a new
8 canopy that is smaller than the existing canopy and the kiosk
9 and, therefore, the Zoning Administrator has determined that
10 that does not constitute an expansion of the station and that s
11 permitted.

12 There s a new convenience store to be located on
13 the west side of the property. The convenience store is a
14 matter of right use in this C-2-A Zone. The Zoning
15 Administrator has confirmed that that s a matter of right.

16 He has determined, as the letter on page letter
17 that he confirmed shows, that the expansion from three pumps to
18 four pumps does require special exception approval.

19 You have the statement before you. We will go
20 through that with our witnesses, but I d just to review the
21 exhibits with you, if I may. The exhibits, Exhibit on pages
22 seven and eight of the statement, show the maps indicating the
23 location of the property at the intersection of N. Capitol and
24 Florida on the northwest corner, page nine shows the zoning map
25 for the area, page ten is the surveyor s plat of the property,

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1 page 11 is the letter that was confirmed by the Zoning
2 Administrator, and if you look at the last sentence of the
3 second full paragraph on the first page of that letter, special
4 exception relief is only required because of the increase in
5 number of fuel dispensers from three to four.

6 The plans for the project are attached at the
7 beginning of page 13. The prior BZA order for the use of the
8 station from 1961 is attached at page 16. Then the testimony
9 of the witnesses begins at page 22.

10 At this time, if there aren't any preliminary
11 questions I'd like to go to the witnesses and their testimony.

12 Any questions? Okay.

13 The first witness is Terri Levine, who is a
14 Market Investment Specialist with Exxon.
15 Whereupon,

16 TERRI LEVINE

17 was called as a witness by Counsel for the Applicant, and
18 having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 MR. COLLINS: Ms. Levine, would you please
21 identify yourself for the record and proceed with your
22 testimony?

23 MS. LEVINE: My name is Terri Levine. I'm with
24 Exxon Corporation, and my home address is 8301 Ashford
25 Boulevard in Laurel, Maryland.

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1 We are proposing reauthorization of the facility
2 at 5 Q Street, and this property, as Chris described, is on the
3 northwest corner of Q, Florida and N. Capitol. We have about
4 18,000 square feet of property at this location, and it s been
5 an Exxon property since the 1930s.

6 Currently, the facility is closed down. It s a
7 kiosk with three fueling dispensers. It s a motor fuel only
8 operation, and we would like to modernize and reopen this
9 facility.

10 Currently, we have a strong emphasis on
11 upgrading our stations in the District of Columbia. We are
12 right now finishing construction at a store on Connecticut and
13 Nebraska Avenue, N.W., and we are beginning construction at
14 another store on Connecticut and Porter Street, also in
15 northwest.

16 Our proposal is for a convenience store,
17 approximately 2,500 square feet, with four fueling dispensers
18 which will have the capacity to fuel eight cars at any one
19 time, and replacement of the underground storage tanks.

20 CHAIRPERSON REID: Is that it?

21 MS. LEVINE: Unless you have any questions.

22 CHAIRPERSON REID: Okay, thank you.

23 Board members, do you have any questions so far?

24 Okay.

25 MR. GILREATH: One additional dispenser, is that

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1 going to increase the number of cars significantly pulling in
2 and pulling out in terms of impacting traffic?

3 MR. COLLINS: That will be addressed by Mr.
4 Morris in his testimony.

5 MR. GILREATH: Very good, thank you.

6 MR. COLLINS: The next witness will be Mr.
7 Bhoopendra Prakash, who is the consulting engineer for the
8 project.

9 Whereupon,

10 BHOOPENDRA PRAKASH

11 was called as a witness by Counsel for the Applicant, and
12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 MR. COLLINS: Mr. Prakash, would you please
15 identify yourself for the record and proceed with your
16 testimony?

17 MR. PRAKASH: Good morning, Madam Chair, members
18 of the Board. My name is Bhoopendra Prakash. I m an engineer
19 representing this project. My home address is 12843 Parapet
20 Way, Oak Hill, Virginia.

21 I request your attention to page 13 of your
22 document. This board represents a blow-up of the store as it
23 exists today, N. Capitol Street northbound, Q Street, Florida
24 Avenue, northwestern quadrant of the intersection.

25 The existing outline of the property is shown in

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1 bold black, showing only one major building, which is the
2 canopy centrally located on site, under which there is a pay
3 phone or a kiosk.

4 As per Terri Levine s testimony, we propose to
5 upgrade with new construction as shown on this color board.
6 The new canopy will be approximately in the existing location,
7 with the convenience store situated on the westerly side, or
8 the rear side of the property. All entrances to the site shall
9 remain unchanged.

10 We propose parking in

11 CHAIRPERSON REID: Excuse me. What you need to
12 do is, if you can kind of turn that in such a way that either
13 turn in such a way that it can be seen here, because I think
14 that this particular citizen had come to get an understanding
15 as to what you were doing, and I don t think she can see. So,
16 if you d like, you can come over here, and then you can see
17 what they are proposing, because it seems like you are
18 camouflaging the view.

19 MR. PRAKASH: Continuing, parking will be
20 situated directly in front of the store, and the pump islands
21 under the new and rebuilt canopy.

22 Keeping the entrances in the existing location,
23 bright lighting will be around the periphery of the site to
24 provide adequate and safe lighting in the interest of improving
25 security.

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1 We further propose that the underground tanks
2 will be reconstructed, new tanks will be installed around the
3 vicinity of the existing location of the tanks, not a
4 significant change. Due to the new configuration, it is
5 essential that the tanks be located or turned somewhat to stay
6 away from the new canopy.

7 There is an existing stand of mature trees
8 between the proposed location of the convenience store and
9 existing homes to the north side of the property. We further
10 proposed to landscape the green space in front of the property
11 at the intersection of N. Capitol and Q Street.

12 We believe this application, as presented
13 graphically in this plan, does meet the intent of Section 726
14 of the Zoning Regulations, namely, the plan was, indeed,
15 submitted and accepted by the Office of Planning. In terms of
16 the required setbacks, the gasoline station component of this
17 development, which is the canopy and dispenser pumps, are,
18 indeed, proposed to be set back 25 feet away from the
19 residential properties.

20 MR. COLLINS: Mr. Prakash, can you refer to the
21 plan which shows the line, in putting the radius, to indicate
22 the 25-foot setback on the proposed construction?

23 MR. PRAKASH: First of all, the property line is
24 identified in the solid black lines to the north of the
25 property, setback 25 feet away from this residential property

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1 line, and this residential property line, both of which are in
2 the northwestern side of the property. A 25-foot setback line
3 identified on sheet 14 of your document creates a setback
4 envelope out of which the canopy and service station operation
5 is set back, and in that regard we believe we do meet the
6 intent of the Zoning Regulations.

7 I would defer to

8 MR. COLLINS: Excuse me, is this the same set of
9 plans that the Zoning Administrator reviewed in making his
10 determination of special exception relief?

11 MR. PRAKASH: Yes, sir, indeed.

12 MR. COLLINS: Thank you.

13 MR. PRAKASH: In terms of design appearance,
14 lighting and screening, we do plan to comply with maintaining
15 the existing screening, increasing and improving the landscape
16 presentation in front of the property, and site lighting will
17 be presented along the periphery in a down lit manner, whereby,
18 lighting is not scattered all over the property or beyond the
19 property.

20 Parking, of course, is accessible to the store,
21 directly in front, in a safe and friendly, customer-friendly
22 manner.

23 With respect to Section 2302 of the Zoning
24 Regulations, again we believe we comply, or this project
25 complies. Honoring the setback requirements of 25 feet from

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1 the residential lot lines, entrances being where they currently
2 exist shall remain effectively more than 25 feet away from the
3 residential properties, entrances are required to be 40 feet or
4 more from the intersection of the street, and we do comply, and
5 there are no grease pits associated with this project.

6 With that, if you have any questions I would be
7 happy to address them.

8 CHAIRPERSON REID: Do you have anymore witnesses,
9 Mr. Collins?

10 MR. COLLINS: Yes, I do, Mr. Morris.

11 CHAIRPERSON REID: Oh, that s right, one more,
12 wasn t he the traffic consultant? Okay.

13 Whereupon,

14 ROBERT L. MORRIS

15 was called as a witness by Counsel for the Applicant, and
16 having been first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 MR. COLLINS: Mr. Morris, will you please
19 identify yourself and proceed with your testimony?

20 MR. MORRIS: Good morning, Madam Chairperson and
21 members of the Board. I m Robert L. Morris, traffic engineer
22 and transportation planner. I have prepared a report, which I
23 believe is in the material in front of you, so I will touch on
24 the highlights, and I ll be happy to expand with any questions
25 you may have.

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1 I ve indicated what the existing conditions are
2 at the subject location, and I have shown what the effect would
3 be of the proposed improvement. I would note that this service
4 station is complementary to an existing Exxon station
5 diagonally across the intersection of N. Capitol Street and
6 Florida Avenue. I say it s complementary for this reason, the
7 existing station draws its traffic principally from northbound
8 on N. Capitol Street and eastbound on Florida Avenue. This
9 service station would draw its customers from southbound on N.
10 Capitol Street and westbound on Florida Avenue. So, to that
11 degree, there s no redundancy in service there, they are
12 complementary.

13 The subject site would generate approximately 35
14 inbound trips and outbound trips in each peak hour. In
15 response to Mr. Gilreath s earlier question, the addition of
16 one gasoline pump would not significantly increase the number
17 of trips. There could be a few more trips because the site is
18 more attractive, but it would not add any traffic onto the
19 streets. As the Board knows I m sure, people go to get
20 gasoline principally as part of another trip purpose. They
21 stop by to get gas on the way to work, or home from work, or
22 some other trip purpose, so the proposed use of this property
23 would have no adverse impact in terms of traffic operations,
24 and from a traffic engineering viewpoint it would be an
25 appropriate use of the property and the expansion of one

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1 gasoline pump would be appropriate.

2 CHAIRPERSON REID: Okay.

3 MR. GILREATH: Do you calculations include, not
4 only the people pulling up to the pumps, but the people who
5 would be going to the convenience store, so your calculations
6 include all of these people coming in?

7 MR. MORRIS: That s correct, sir.

8 MR. GILREATH: Okay, fine.

9 CHAIRPERSON REID: Mr. Sockwell?

10 MR. SOCKWELL: I have one first question. Is the
11 diagonal Exxon station on the southeast corner also a company-
12 owned facility?

13 MS. LEVINE: Yes, sir, that is a company-owned
14 facility, but it is operated by a dealer, it is not operated by
15 Exxon.

16 MR. SOCKWELL: Okay, but it s an Exxon station
17 owned by the company?

18 MS. LEVINE: Yes.

19 MR. SOCKWELL: Okay.

20 And, your name again is?

21 MS. LEVINE: Terri Levine.

22 MR. SOCKWELL: Levine.

23 Ms. Levine, the principal use of this property,
24 bringing it back on line as a gas station, is to be a gasoline
25 service station, am I correct?

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1 MS. LEVINE: That is correct.

2 MR. SOCKWELL: And, the convenience store portion
3 is really a subordinate use to the primary use, which is a
4 gasoline service station, correct?

5 MS. LEVINE: Yes, we consider it to be an
6 ancillary use. It provides additional needs for the customer
7 as they are traveling to our facility.

8 MR. SOCKWELL: On that basis, I have a difficulty
9 with the interpretation of the ordinance by the Acting Zoning
10 Administrator, in that he stated that, in his letter, that the
11 property is apparently used only, it says here, let s see

12 MR. COLLINS: At page 11?

13 MR. SOCKWELL: yeah, let me see

14 CHAIRPERSON REID: This is Mr. Collins letter.

15 MR. SOCKWELL: Oh, no, I m looking for Mr.
16 Lorenzo s letter. Give me just a second.

17 Well, actually, what he did was, he signed he
18 signed I think Mr. Lorenzo confirmed Mr. Collins letter on
19 page 12.

20 CHAIRPERSON REID: Right.

21 MR. SOCKWELL: And, basically, the convenience
22 store is a matter of right in a C-2-A Zone, therefore, a
23 special exception lease is not necessary for the convenience
24 store.

25 On page four of your descriptive, Mr. Collins,

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1 you state that the Acting Zoning Administrator has interpreted
2 this requirement to mean that structures serving only as a
3 gasoline service station may not be located within 25 feet of a
4 residence district, unless separated from the residence
5 district by a street or alley, and that the convenience store,
6 further, is a matter of right use and not required to meet the
7 setback.

8 In the description that Ms. Levine gave, the
9 primary use of the property is for a gasoline service station.

10 The control, and cash registers, and any sale of antifreeze,
11 motor oil, power steering fluid, will take place in the
12 convenience store portion of the facility, which is, in fact,
13 the office and control point for the gasoline station, am I not
14 correct?

15 MS. LEVINE: Yes, you are correct. The cashiers
16 operate inside the convenience store. However, gasoline sales
17 can occur at the pump.

18 MR. SOCKWELL: True, but gasoline sales will also
19 occur, and will be other products generally sold in the
20 convenience store that deal with automobiles, will be sold
21 within the convenience store. And, if the convenience store
22 portion of the operation were to be proven unsuccessful and
23 closed, what would be left would be a gasoline service station,
24 which cannot operate without the part of the facility that is
25 within the building. Am I not correct?

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1 MS. LEVINE: It could be easily adapted to
2 operate without the convenience store.

3 MR. SOCKWELL: But, as it is designed, it is not
4 designed to be adapted, it is designed as presented, am I not
5 correct?

6 MS. LEVINE: That is correct.

7 MR. SOCKWELL: Okay.

8 So, what I m saying is that, if we go to Section
9 2302.2 of the ordinance, no portion of the structure or
10 premises to be used for any of the uses listed in 2302.1 shall
11 be located within 25 feet of a residence district, unless
12 separated from that residence district by a street or alley.
13 The alley actually does not separate the property, it intrudes
14 upon the property, but in reality it doesn t separate the
15 residence district from the property completely. Therefore, I
16 think that it is not effectively a separation.

17 And, I believe that the Zoning Administrator has
18 assumed that the convenience store acts independently of the
19 gasoline station function, which it really does not. It is
20 part of the gasoline station function building that is devoted
21 to convenience store use, that building being the principal
22 point of control of the pump activities.

23 Now, although all pumps allow credit card sales,
24 and some actually allow cash sales, the convenience store is
25 primarily the control building for the facility, and will also

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1 operate for the sale of additional automobile-oriented
2 products, as well as the convenience store elements that would
3 be incorporated within it.

4 And, just to go a little bit further in
5 definition, Webster's Third New International Dictionary states
6 that premises is a can be considered land conveyed by deed,
7 or property and the building on it. And, in Section 2302, the
8 term premises is used specifically within the definition
9 requiring the 25-foot separation. And, on that basis, I have
10 trouble with the Zoning Administrator's interpretation of
11 things, and the design clearly places portions of the building
12 within 25 feet of the residence district. What we don't want
13 to do is have an interpretation of the ordinance that is loose
14 enough to prevent being able to effectively enforce the statute
15 as it is written, in the circumstance where you have a facility
16 that carries a dual purpose, but the primary purpose is in
17 conjunction with the rebuilding of the facility as a gasoline
18 service station. That's my principal comment on that.

19 MR. COLLINS: May I respond, because what you've
20 raised, Mr. Sockwell, are legal points and I would like to
21 respond appropriately.

22 MR. SOCKWELL: I would like for you to.

23 MR. COLLINS: You've raised several issues about
24 the location of the convenience store within 25 feet. If you
25 look at the map at page 14, you will see the outline that Mr.

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1 Prakash has described where we inscribed a 25-foot setback line
2 to allow the make sure that the above-grade improvements met
3 the letter of the regulation.

4 And, there is an alley which separates this
5 property from the adjacent residential area, and we took the
6 using a compass with a 25-foot radius, we drew marks around and
7 connected the arcs to create this 25-foot setback. So, we have
8 done what and the Zoning Administrator has reviewed this, and
9 has reviewed this set of plans, and has made the ruling in the
10 letter that you ve referenced.

11 The convenience store could be built, we could
12 do this in stages, we could build the convenience store today
13 without even coming here, and we could sell auto products, we
14 could sell anything. There s nothing in the regulations which
15 governs what you can sell in a convenience store. We could
16 build that today. We could then come back here for special
17 exception to add one more dispenser to the dispensers we have
18 today and to decrease the without even asking you to decrease
19 the size of the canopy.

20 He has made his ruling that this what we have
21 gone forward with. We have used the certification method for
22 this case, but as we do in all our cases we confirm the ruling
23 with the Zoning Administrator. We must abide by what he tells
24 us.

25 The language in the regulations is the same

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1 language that has existed in the regulations since May 12,
2 1958, and has been interpreted this way since that time. We
3 did attach two other cases for this that allowed the expansion
4 of this station, two post- 58 orders, order Appeal No.
5 626936272, and then Application No. 12916.

6 The relief that we are requesting in here is
7 identical to the special exception relief that we requested, or
8 Exxon requested, back in 1961 and 1979. If, Mr. Sockwell, what
9 you are saying is that because the land is within 25 feet of a
10 residence district then what you are suggesting is that we
11 would also have to apply for a variance, to have a variance
12 from the 25-foot requirement because the land is less than 25
13 feet from a residence district, unless separated therefrom by a
14 street or alley, which some of it is.

15 MR. SOCKWELL: Yes.

16 MR. COLLINS: You ll notice in the 1979 order,
17 there was no request for a variance, and no application for a
18 variance, and no variance relief granted. In 1961, there was
19 also no variance relief requested nor granted, and the
20 application was approved.

21 The interpretation of the regulations has been
22 consistent since that time.

23 MR. SOCKWELL: Mr. Collins, if the regulation
24 states structure or premises, does it not separate the
25 structure and the premises into two elements, not necessarily

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1 being one and the same, but being interpreted as inclusive of
2 both structure and land?

3 MR. COLLINS: The Zoning Administrator is charged
4 by law, it was Reorganization Order No. 55, with interpreting
5 the Zoning Regulations. We must follow what he has
6 interpreted. We have to go with what he said. The regulation
7 for this site has been interpreted consistently since May 12,
8 1958, including the 1961 approval and the 1979 approval.

9 MR. SOCKWELL: Okay. Accepting the Zoning
10 Administrator's statement as being correct, would you, as an
11 attorney, by definition, a land-use attorney, believe that
12 structure and premises mean exactly the same thing?

13 MR. COLLINS: I am bound by the interpretation of
14 the Zoning Administrator.

15 MR. SOCKWELL: Okay.

16 MR. COLLINS: If what you are suggesting

17 MR. SOCKWELL: Okay, that's fine, Chris, you
18 don't have to go any further.

19 MR. COLLINS: let me just go a little beyond
20 that.

21 If you look at the pattern of the location of
22 gasoline stations, they are usually on arterials in Washington,
23 N. Capitol Street, Florida, Georgia, Wisconsin, all the major
24 arterials. All those arterials have a zoning pattern that has
25 the C-2-As, typically it's a C-2-A Zone that's very shallow,

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1 that s one lot deep, with residential behind. It s that way
2 throughout the city.

3 If what you are suggesting is that we need to
4 apply for a variance every time we put a gas station in place,
5 or expand a gasoline station, you d have a pattern of asking
6 for the special exception that was designed to apply to
7 gasoline stations, plus a variance.

8 MR. SOCKWELL: It wouldn t be every single, it
9 wouldn t be applied only to gas stations, but it would be
10 applied to property and designated use. The parking on the lot
11 can t be differentiated between service station uses and
12 strictly convenience store uses, depending upon what one might
13 come there to do, but the way the ordinance is written and,
14 perhaps, the way that it is interpreted, are not necessarily
15 the same, if one tries to take the ordinance in a more liberal
16 interpretation, strictly for the purposes of applying the rule.

17 But, I am just concerned that it tends to allow a use to exist
18 that if changed from the convenience store portion, if the
19 convenience store portion went away, the gasoline station would
20 still be operating out of that building. The cash register
21 would still be there, the pump controls would still be there,
22 and any other necessary equipment that s not located in an
23 independent kiosk, which could be built on the site if the
24 convenience store building were removed or had not existed at
25 all, and all of that is going to take place in a building that

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1 physically extends to within less than 25 feet of the
2 separating alley, if we choose to call it that.

3 MR. COLLINS: I ll be the first to admit that the
4 Zoning Regulations are not a model of clarity.

5 MR. SOCKWELL: True.

6 MR. COLLINS: And, that s really the reason that
7 zoning lawyers exist.

8 MR. SOCKWELL: True.

9 MR. COLLINS: And, here we have consistent
10 interpretation from the Office of the Zoning Administration
11 going back through any number of holders of that position
12 throughout the last 41 years.

13 MR. SOCKWELL: Well, at least the several cases
14 that you cited were consistent with your argument. I don t
15 know that under the Zoning Ordinance in the last 41 years
16 they ve all been decided that way

17 MR. COLLINS: No.

18 MR. SOCKWELL: but I m sure that you know more
19 about that than I.

20 MR. COLLINS: The most recent holder of the
21 position before Mr. Johnson has certainly interpreted it that
22 way. Mr. Johnson has only been in office for about 45 days and
23 has not had, to my knowledge, a case involving a gasoline
24 station.

25 However

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1 MR. SOCKWELL: And, Mr. Lorenzo's primary
2 expertise was that of engineering, not of zoning.

3 MR. COLLINS: However, he was the Acting Zoning
4 Administrator.

5 MR. SOCKWELL: At the time.

6 MR. COLLINS: And, had the authority to make that
7 decision.

8 MR. SOCKWELL: And, as Mr. Johnson, who has been
9 there for hardly any time at all, would be then the designated
10 authority, whether he understood the Zoning Ordinance or not.

11 MR. COLLINS: At the time his decision was made,
12 Mr. Johnson was not with the District of Columbia government.

13 The building let me get back to the building,
14 the building does meet the setback requirement that you have
15 suggested. It is separated by a street or alley from the
16 adjacent residential district.

17 And so if but, I do agree with you if the
18 convenience store were to shut down and Exxon were to build
19 service bays in that building, Exxon would have to come back to
20 this Board, there's no question about that.

21 MR. SOCKWELL: And, even if they didn't build
22 service bays, they just have one big office.

23 MR. COLLINS: They had one big vacant structure,
24 and they had the I don't think, and I can ask Ms. Levine to
25 look into this, but I don't think that if for some reason the

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1 convenience store shut down and became totally vacant that
2 Exxon cash register operation would expand to fill that whole
3 building. I just don t think that would occur.

4 CHAIRPERSON REID: All right.

5 MR. SOCKWELL: Where are the cash registers
6 located within the building, by the way?

7 MS. LEVINE: The cash registers are fairly
8 central to the building.

9 MR. SOCKWELL: Okay.

10 CHAIRPERSON REID: All right. Let me see, you
11 may sit back over there now. All right.

12 Do you want to go back now so that I can bring
13 up the other people?

14 Is there anyone here from the ANC, and I don t
15 think we have any government reports. I don t think so.

16 MR. GILREATH: Madam Chair, if we can anticipate
17 that in the future OP may be able to start giving us reports?
18 I presume this is a result of being short staffed.

19 CHAIRPERSON REID: I hope so, and I ve been
20 assured by the Zoning Director that with the new, more
21 efficient policies, and computers, and people being put in
22 place, that we would be able to start getting them.

23 MR. GILREATH: It would be helpful

24 CHAIRPERSON REID: Yes, it would

25 MR. GILREATH: in cases like this.

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CHAIRPERSON REID: I agree.

Yes, sir.

Whereupon,

JAMES BERRY

was called as a witness by Counsel for the Applicant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. BERRY: Good morning. My name is James Berry, I m the Chairman of ANC-5C. I should say to you that the ANC-5C considered this and other matters on Saturday, October 9th at a public meeting. Unfortunately, we lost our quorum, due to an emergency situation on the part of one of our members just before we were going to vote on this matter.

So, I m not so sure if now is the appropriate time for me to testify on behalf of the ANC, but I wanted to testify for my single-member district and also as the President of Bates Area Civic Association.

CHAIRPERSON REID: Well, at this time well, I guess you can do both at the same, but basically this is the ANC and as a single-member district representative you may testify.

MR. BERRY: Okay.

Well, I wanted to say generally that we had, as I said, ANC-5C considered this matter and we had a good deal of debate about it, and largely our concerns involved the public

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1 safety concerns, lighting, what we thought might be a situation
2 of loitering and those kinds of issues.

3 We were also concerned about the actually, the
4 prospect of alcohol being sold at that location. There were
5 certain concerns raised about that, and we have since that
6 meeting I talked with Mr. Collins and others and we've been
7 assured that those won't be issues.

8 I should also say that about ten years ago I was
9 a part of a group that opposed a similar action on the Exxon
10 station on the southwest corner, southeast corner, the one
11 about which we spoke, and at that time we were concerned about
12 loitering, we were concerned about the drug activities, we were
13 concerned about traffic, we were concerned about economic
14 development, and just a whole range of issues. We lost.

15 But, I must say to you that Exxon was
16 responsible in adhering to all of the commitments that they
17 made to us in terms of maintaining the place, making sure that
18 the lighting was appropriate, making sure that the convenience
19 store, which we thought was going to be an attraction to drug
20 dealers and open to drug users and others with people hanging
21 out, I mean, none of that happened.

22 And, I say that to say that we approach it with
23 the same faith that they will be serious and committed to the
24 goal of making this work, and making it work in a user friendly
25 way, not just for the customers, but for those of us who live

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1 around it.

2 But, I just wanted to lend my support to the
3 efforts, although I know that we didn't meet the minimum
4 requirements with great weight, I wanted to share that
5 experience with you and hope that it might inform your
6 decision.

7 CHAIRPERSON REID: Thank you.

8 MS. PRUITT: Excuse me, sir, could you identify
9 the civic organization you are with again, please?

10 MR. BERRY: I'm sorry, I'm the President of the
11 Bates Area Civic Association.

12 MS. PRUITT: Base?

13 MR. BERRY: Bates, B-A-T-E-S.

14 MS. PRUITT: Bates.

15 MR. BERRY: Bates Civic Association, which is
16 bounded by Florida Avenue, N. Capitol Street, New Jersey Avenue
17 and New York Avenue.

18 CHAIRPERSON REID: And, you are testifying in
19 support?

20 MR. BERRY: Yes, essentially.

21 CHAIRPERSON REID: On behalf of the Bates Civic
22 Association

23 MR. BERRY: Yes.

24 CHAIRPERSON REID: as well?

25 MR. BERRY: Yes.

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1 CHAIRPERSON REID: Now, do you have anything from
2 the association that authorizes you to speak on behalf of that
3 organization?

4 MR. BERRY: I don't have anything in writing, I
5 can do that. I'm the President of the organization.

6 CHAIRPERSON REID: Okay, I would appreciate that,
7 because we need something in writing for the record.

8 MR. BERRY: Sure, we can do that.

9 CHAIRPERSON REID: And, since the next segment
10 would be persons or parties in support, then I guess you just
11 ditto that for the Bates Street Civic Association

12 MR. BERRY: Sure.

13 CHAIRPERSON REID: is that correct?

14 MR. BERRY: Yes.

15 CHAIRPERSON REID: All right, thank you.

16 MR. BERRY: Okay.

17 CHAIRPERSON REID: Any other persons in support
18 of the application, please come forward. I'm sorry, sir, can
19 you please come back up, Mr. Sockwell had a question.

20 MR. SOCKWELL: You are the single-member district
21 representative, ANC single-member district?

22 MR. BERRY: 5C-01.

23 MR. SOCKWELL: 5C-01.

24 And, as your experience the facility at the
25 southeast is more than well run?

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1 MR. BERRY: That s my experience, yes.

2 MR. SOCKWELL: Uh-huh.

3 MR. BERRY: And, I was going to add there, one of
4 the things we were concerned about at that time also was the
5 loss of mechanical services. I mean, that was one of the few
6 places where they had where you could get a tire changed, da,
7 da, da, da.

8 But, they ve really done, I think, an adequate
9 job of maintaining and addressing the concerns that we raised,
10 and previously before the Gasoline Advisory Control Board at
11 that time.

12 MR. SOCKWELL: Okay.

13 That was my only question.

14 CHAIRPERSON REID: Okay.

15 Persons or parties in opposition to this
16 application, please come forward.

17 MS. ROBINSON: I m not speaking for or against,
18 do I just speak after him?

19 CHAIRPERSON REID: You can come up right now and
20 speak, you are in between, so I ll let you speak between the
21 support and the opposition.

22 Whereupon,

23

24 was called as a witness by Counsel, and having been first duly
25 sworn, testified as follows:

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DIRECT EXAMINATION

MS. ROBINSON: Good morning. I am Ms. Florence A. Robinson, a D.C. taxpayer and voter, who have lived on Florida Avenue, N.W., for many years, and will object to Exxon s application to operate a convenience store on Square 31, Lot 48, known as 5 Q Street, N.W., if, and I repeat, if alcohol if Exxon plans to sell any kind of alcoholic beverage.

CHAIRPERSON REID: Ms. Robinson, first give us your address.

MS. ROBINSON: I m sorry, beg your pardon?

CHAIRPERSON REID: Give us your address.

MS. ROBINSON: I m sorry, 45 Florida Avenue, N.W.

CHAIRPERSON REID: Okay.

Now, Ms. Robinson, in looking over your letter, basically, the issue was in regard to them selling alcoholic beverages and I think that the single-member district representative established for us that he had had conversation with Exxon and they had assured them that that would not be the case.

MS. ROBINSON: Right, and my only reason for wanting to bring this directly before you, hearing Mr. Collins say that they could build the could have built the convenience store, and also learning that people have come to you for variance, I want this body to know that I personally,

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1 and those that I spoke with, feel that at no point, not only
2 Exxon, but no establishment should ever be granted the right to
3 sell any type of alcoholic beverage, be it beer, wine, or any
4 name that has alcohol in it, on the same premises.

5 CHAIRPERSON REID: Okay.

6 Now, Ms. Robinson, you are getting into a lot of
7 different things. One is that we are only considering this
8 application and what they intend to do. Okay.

9 Now, as far as subsequent applications are
10 concerned, and for subsequent uses, then that is something that
11 will be taken up at that time, it cannot be taken up here, and
12 then also, I don't know if that issue will probably be
13 presented to the ABC Board, rather than the BZA. So, I think
14 that what I'm hearing is that if there is no alcoholic
15 beverages being sold or transacted by this Applicant than you
16 do not have any objection.

17 MS. ROBINSON: Right, and I also understand they
18 are taking no additional homes. If those two things don't
19 exist, I have no objection whatsoever.

20 CHAIRPERSON REID: Thank you.

21 Thank you very much for your testimony.

22 MS. ROBINSON: And, thank you for hearing me.

23 CHAIRPERSON REID: Thank you.

24 MR. SOCKWELL: Ms. Robinson, if they post if
25 they ever decide to sell alcoholic beverages, the premises will

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1 have to be posted.

2 MS. ROBINSON: Oh, by the ABC Board.

3 MR. SOCKWELL: By the ABC Board. So, there would
4 be notice, and I m sure the ANC would be well aware of it.

5 MS. ROBINSON: Okay, so I would get the same type
6 of application notice that I got on this if they decide they
7 want to sell it.

8 MR. SOCKWELL: Yes.

9 MS. ROBINSON: Okay. Thank you very much.

10 Whereupon,

11 LEE ANTHONY BROWN

12 was called as a witness by Counsel for the Opposition, and
13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 MR. BROWN: Good morning, my name is Lee Anthony
16 Brown. I m a homeowner at 16 Quincy Place, N.W., Lot No. 29,
17 Square 3100. My property adjoins the lot right here.

18 I d like to bifurcate, I guess, my opposition.
19 I do have very grave reservations for the convenience store,
20 but I am totally opposed to an additional fuel dispenser, I
21 guess the 706 exception that Exxon seeks.

22 As I just stated, my house is right next to the
23 lot, and presently I believe that there will basically I have
24 structural soundness concerns, and I do believe the presence,
25 the construction, the proposed construction on the lot,

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1 building the convenience store, demolishing the present
2 asphalt, lifting up the canopy, and certainly rotating the
3 tanks underground, could affect the structure of my house, and
4 certainly the property.

5 And, you know, as it stands I feel that we
6 should, you know, delay granting any sort of exemption until we
7 can determine, and I guess maybe by an independent engineer or
8 some sort of structural examiner, on whether or not my property
9 is going to be affected by the construction that s going to go
10 on there.

11 Also, I have noise pollution concerns. There is
12 already an Exxon in the southwest corner of that intersection,
13 and I don t want another, you know, convenience store and gas
14 station in that area, where you are going to have so many
15 people driving in, driving out, you have these cars, these huge
16 radio sound systems, my house is right next to it, and, you
17 know, I think a neighborhood can only take so many, you know,
18 so many gas stations in the area.

19 Basically, I don t want to be here three years,
20 six years or nine years from now complaining about the noise
21 that this additional convenience store has generated, so I do
22 think that we should, you know, delay granting an exemption
23 until we can find out what s going to go on.

24 I do question Mr. Morris concerns that an
25 additional fuel dispenser would create minimal increase in

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1 traffic to this area. I dispute that wholeheartedly, simply
2 because you have the N. Capitol thoroughfare, you've got
3 Florida Avenue that leads into New York Avenue, which is 50,
4 and that intersection is roughly three quarters of a mile from
5 New York Avenue and 395, as well as all the other sort of
6 commercial development that's leading through U Street and
7 into, you know, other parts of the city.

8 So, that's a problem for me. I just don't want
9 to be here three years from now saying, hey, we let them come
10 here, they had there are a lot of short-term benefits
11 associated with having businesses in our neighborhood, but I
12 think that the Board should exhibit a certain degree of
13 reservation to find out what type of business.

14 As it stands, we have one, two, three, I think
15 four, possibly five, gas stations within a six-block area. I
16 don't think any of you want six gas stations, four gas station,
17 within your homes. And, you know, I understand that they are
18 business, they can do whatever they want on their land, but I'm
19 totally opposed to an additional fuel dispenser.

20 You know, and I do have concerns about the type
21 of construction that's going to occur on that lot and how it
22 could affect the structural soundness of my house, more than
23 anything else.

24 I think that's and that was one thing I really
25 wanted to say, is that I think the City has made a commitment

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1 toward making New York Avenue a technology corridor shall we
2 say, and I certainly believe that an additional gas station in
3 this area would all but, you know, make our neighborhood the
4 petroleum corridor, if you will. And, you know, I m just
5 asking you to delay granting an exemption until we can find
6 out, number one, how much more noise are we going to receive,
7 because we are; and then two, you know well, really, number
8 one, is it going to affect my property adversely, and I m
9 saying yes, it will affect everyone, including Ms. Robinson,
10 including Lee Brown s property, including everyone who has a
11 lot that is adjacent to that sort of construction that is going
12 to go on. Two, I just don t think it s really the right sort
13 of commercial development that this neighborhood is seeking. I
14 think it would entrench the sort of gas station, truck stop
15 mentality that that neighborhood is presently facing. Right
16 now, there s emerging commercial development within that area,
17 and I think the gas station will just, basically, create a here
18 today, gone tomorrow sort of mentality in that area.

19 That s it, really.

20 CHAIRPERSON REID: Okay.

21 MR. SOCKWELL: What is your name again, sir?

22 MR. BROWN: Lee Anthony Brown.

23 MR. SOCKWELL: Mr. Brown.

24 Mr. Brown, which home do you own, and what is
25 your lot number?

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1 MR. BROWN: It s 31 the lot number is 29, and
2 the square is 3100.

3 MR. SOCKWELL: But, your address is

4 mR. BROWN: 16 Quincy Place, N.W.

5 MR. SOCKWELL: Okay, and you about the property on
6 the

7 MR. BROWN: The north side. I don t think I m
8 due north. There s a utility pole I think on the there s a
9 utility pole and I believe that corresponds with Lot No. 27,
10 and then there s Lot No. 28, and then there s Lot No.

11 MR. SOCKWELL: Twenty-nine.

12 MR. BROWN: yes, I think so.

13 MR. SOCKWELL: So, you are the third house along
14 Quincy?

15 MR. BROWN: Yes.

16 MR. SOCKWELL: So, that would make you Lot No.
17 29, okay.

18 MR. GILREATH: Could the witness show on that map
19 approximately, are you north of the buffering area, or behind
20 the

21 MR. SOCKWELL: It s behind the trees.

22 MR. BROWN: Right here.

23 MR. SOCKWELL: So, you are behind, say, the
24 second tree from the right?

25 MR. BROWN: Yes.

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1 MR. SOCKWELL: Which would be approximately where
2 you are by my estimation.

3 And, you have the alley between you and

4 MR. BROWN: Actually, I think we need to
5 establish one thing. There is a phantom alley, a paper alley
6 if you will.

7 MR. SOCKWELL: Well, it s obviously land locked,
8 but

9 mR. BROWN: There s no alley. If there was a
10 land lock easement, it doesn t exist anymore, and it s safe to
11 assume that the previous homeowners, my neighbors, and my
12 predecessor, or someone for them, acquired, they basically
13 assumed access. And so, you basically have Exxon s fence,
14 maybe a few inches, maybe 18 inches, I m not sure, and my
15 fence.

16 I was doing some work in my yard, and I saw, I
17 guess, a cut-down telephone pole in my yard, kind of right
18 along the line with the corner telephone pole, so I guess it s
19 safe to assume that my lot encroaches on that public space.
20 So, when you start talking about that 25-foot radius, maybe,
21 you know, it should be not at the point of my present lot, but
22 at the point of the end of the alley.

23 MR. SOCKWELL: Does your how long have you
24 owned the property?

25 MR. BROWN: I ve owned the property about 45

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1 days, a month and a half, two months.

2 MR. SOCKWELL: Does your deed appear to include
3 does your described plat for your deed show that public space?

4 MR. BROWN: Yes, it does.

5 MR. SOCKWELL: Okay.

6 So, you actually do have an encroachment, and
7 probably some of the other neighbors fences align with your
8 own, which means it s public space, although it may be
9 effectively in your yard, probably still exists.

10 MR. BROWN: Yes.

11 MR. SOCKWELL: Okay.

12 So, as far as from the surveyor s standpoint
13 it s an alley, and it is, therefore, a physical barrier between
14 your property and the Exxon station, regardless of where your
15 fence is.

16 MR. BROWN: Yes, sir.

17 MR. SOCKWELL: The other question is, you ve had
18 the property only 45 days, so you have no experience with the
19 previous gas station use that was there.

20 MR. BROWN: I

21 MR. SOCKWELL: Not as a property owner.

22 MR. BROWN: yes, sir.

23 MR. SOCKWELL: You may have purchased gas there.

24 MR. BROWN: I lived about three blocks away
25 previously for five years.

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1 MR. SOCKWELL: Okay, so it wouldn't have made a
2 difference. All I'm trying to get to is that your two
3 things, your question about the additional fuel dispenser,
4 generally speaking, it would be somewhat difficult to ascertain
5 the increase in traffic that a fuel dispenser would create,
6 because more often than not if a person needs gas he will queue
7 behind whatever cars are at the dispenser, or will go look for
8 another gas station. That may not be a particular problem.

9 The noise issue is one that they apparently have
10 attempted to deal with by leaving the natural buffer of trees,
11 which they might be in a position to enhance with other lower
12 denser vegetation, depending upon how they respond to you.

13 The structural concerns that you mentioned, as
14 an architect I would think the structural concerns that you
15 have are virtually minimal, the reason being that the tanks are
16 well outside of an area of influence if you drew a 45 degree
17 angle from your basement perimeter at the bottom of the
18 basement, so you would find that that is sufficient for WMATA
19 in any construction near metro tunnels and should be consistent
20 with a line of influence for your own property.

21 The building that would be the convenience store
22 is going to be on a mat foundation, that is a slab on grade.
23 They are not going to be digging anything out of there that's
24 going to destabilize your property.

25 Do you have a full basement?

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1 MR. BROWN: Yes, I do. Actually, when I bought
2 the house the inspection was contingent, I mean, actually
3 buying the house was contingent upon them filling a sink hole,
4 and, you know, I m not an architect, I m not an engineer, and
5 that s the reason why I m here. That s simply it, really.

6 MR. SOCKWELL: Those structural concerns probably
7 are minimal.

8 MR. BROWN: Okay.

9 MR. SOCKWELL: Unless they decide to put an
10 office building up there in the future, then you might be very
11 concerned.

12 CHAIRPERSON REID: And, we ll also, since you are
13 not a party to the case, the issue that you raised we ll make
14 sure that when the Applicant comes up for closing remarks that
15 we will further determine the intent and to have them respond
16 to some of the concerns that you have raised.

17 MR. BROWN: Well, I think, since we I don t
18 think we can truly get a grasp on the increase in traffic, but
19 I think we all live in the District of Columbia, and we ve gone
20 in and out of the District of Columbia, and we know I think
21 it s probably best to assume the worst when you are dealing
22 with traffic.

23 So, when you start talking about, you know, allowing for
24 items such as a fuel dispenser that can increase traffic, we
25 are sure to assume the worst. I ve lived in that area for five

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1 years, and traffic at times is ridiculous, and I can see why.
2 Their building an additional station on diagonal lots is
3 because it s extremely difficult to make a left on N. Capitol
4 if you are going southbound or northbound, and I can see their
5 argument that these are complementary stations.

6 For myself, you know, as a homeowner in this
7 area, you are saying to yourself, wow, there s a gas station at
8 P and Florida Avenue, okay, it s Amoco, okay, there s an
9 independent gas station on there s, I think, another Amoco on
10 Florida and Rhode Island and 3rd, there s another one around the
11 corner, and there s another one around the corner, you say, my
12 God, how much gas can you possibly have at your disposal as a
13 homeowner. You know, there are a lot of other people that are
14 coming in and out of this area here, and I m saying, okay,
15 cool, they can do this, you know, as it stands, let them, if
16 they want to build a new convenience store with three fuel
17 dispensers, let them do it, but don t let them, you know, have
18 an exemption for another fuel dispenser. That s all I m
19 saying. That s my opposition.

20 MR. SOCKWELL: mr. Brown, you do not feel that
21 the convenience store itself would be a greater increase
22 would provide a greater increase in traffic than one fuel
23 island?

24 MR. BROWN: Actually

25 MR. SOCKWELL: The convenience store itself

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1 presents an entirely different promotional opportunity and will
2 certainly change the entire appearance of the site from a
3 visible standpoint to oncoming traffic in any direction.

4 MR. BROWN: I think you are totally right, but
5 this hearing isn't about opposing a convenience store, correct?

6 MR. SOCKWELL: No.

7 MR. BROWN: And, I do think

8 MR. SOCKWELL: The convenience store is part of
9 the gas station.

10 MR. BROWN: actually, I do think you raised
11 some very valid points, on point of sale, and, you know, if
12 they are going to, you know, build additional fuel dispensers,
13 and if they don't have the ability to have point of sale at the
14 pumps, then, you know, I think the issue that you raised about
15 structure and premises are very valid.

16 But, I think that the convenience store will
17 increase the number of you know, the number of persons that
18 will come to that lot, and it, of course, will create greater
19 noise for me and my neighbors. However, they are seeking
20 exemption under 706, and that's the number of fuel dispensers.

21 And, as I said initially, I do have grave reservations about
22 what they are doing, but I am totally opposed to the 706
23 exemption.

24 CHAIRPERSON REID: All right, thank you very much
25 for your testimony.

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1 MR. BROWN: All right.

2 CHAIRPERSON REID: Closing remarks by the
3 Applicant?

4 Sir, do you have a question? If so, you can ask
5 staff.

6 MR. CREDIT: Okay, I m sorry, Madam Chair. I
7 just wanted to know if it was possible, I m not one of the
8 noted testifiers, but if I could address the body I would
9 appreciate it.

10 CHAIRPERSON REID: Okay.

11 Well, what are you, in support or in opposition?

12 MR. CREDIT: I would probably have to say it s in
13 opposition, in opposition, but I m open.

14 CHAIRPERSON REID: All right.

15 Mr. Collins, I m sorry, you can come forward.
16 You have a right to speak, yes, definitely.

17 Sir, you have to be sworn in.

18 MS. PRUITT: Raise your right hand.

19 Okay, thank you, please be seated and continue.

20 CHAIRPERSON REID: Okay, now, when you were
21 asking the recorder, what did he say?

22 MR. CREDIT: That I needed to address the body.

23 CHAIRPERSON REID: Right, it s usually to the
24 staff, but okay.

25 Go ahead.

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1 Whereupon,

2 KEITH CREDIT

3 was called as a witness by Counsel for the Opposition, and
4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 MR. CREDIT: Thank you, Madam Chair, and members
7 of the body. As I had mentioned earlier, I was not a noted
8 testifier to this hearing. My name is Keith Credit, and I m
9 with the North Capitol Neighborhood Development CDC. Our
10 office is at 1330 N. Capitol Street, just a half a block north
11 of the intersection of New York Avenue and N. Capitol Street.

12 CHAIRPERSON REID: Were you here for the
13 presentation?

14 MR. CREDIT: No, ma am, I was not.

15 CHAIRPERSON REID: Have you looked at the record?

16 MR. CREDIT: Have I looked at the record?

17 CHAIRPERSON REID: Are you aware of the essence
18 of the presentation that was made by the Applicant this
19 morning?

20 MR. CREDIT: No, ma am, I was not.

21 CHAIRPERSON REID: All right. You can go ahead
22 and testify, unless the purpose of the hearing is, in all
23 fairness, to give everyone an opportunity to be able to
24 present, and it may well have been that some of the testimony
25 made here this morning by the Applicant would have clarified

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1 for you some of the issues that you might have. All right.

2 MR. CREDIT: Thank you, Madam Chair, and I
3 certainly appreciate the concerns expressed in the short time
4 that I was here, and I am aware of Mr. Brown, although he and I
5 have not met we have had a couple of conversations, I m fairly
6 new to North Capitol Neighborhood Development, but it s obvious
7 when one travels north on N. Capitol Street towards the
8 intersection that there is a very strong presence of the
9 Applicant.

10 And, as I had mentioned when you first asked me,
11 was I in opposition, and I maybe waffled a little bit in terms
12 of saying that I am open to some discussion or conversation.
13 And, as you all may know, CDCs in their missions attempt to
14 work with bridging gaps between businesses and residences and
15 the city. And, I would have to say from a personal standpoint
16 I would have a concern about an over abundance of any
17 particular type of use, and, in particular, one such as this,
18 and some of the implications as it would impact on traffic
19 patterns and the environment.

20 However, I would also like to just leave for the
21 record some thoughts or some suggestions for the Applicant and
22 the body, and I mean this in the spirit of trying to work with
23 you and respecting your rights as a property owner and as an
24 obviously large, viable business in this area.

25 And, let me just preface it by saying, I would

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1 have hoped that there had been some background on the impact
2 environmentally and traffic-wise that occurred in the area when

3 I m assuming this now in the past both facilities were
4 operational. And, if there is any empirical data that would
5 make clear what those impacts are, I would hope and assume that
6 that s clearly stated in the record.

7 But, if I were to just look at the two
8 facilities separately, I think there could be an approach that
9 could at least personally satisfy me, and I guess I m just
10 speaking for myself and in part for the organization, and that
11 pertains to with the southeast corner facility, which is
12 currently operational. I had asked a question of someone else
13 here

14 CHAIRPERSON REID: Wait one second, this is the
15 facility.

16 MR. CREDIT: concerning the northwest facility.

17 CHAIRPERSON REID: Right, so we cannot, we
18 cannot, in this particular hearing, be concerned about the
19 other Exxon station on the southeast corner, because this
20 hearing is not for that particular site. We can only, and I
21 mean specifically, deal with the site on the northwest corner
22 for which we are basically addressing at this time, only.

23 MR. CREDIT: I appreciate that, Madam Chair, and,
24 therefore, I could not make any, even an indirect reference to
25 the currently operational facility? I can deal with them

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1 separately on that.

2 CHAIRPERSON REID: All right.

3 MR. CREDIT: But, it takes somewhat away some of
4 the concerns that I would express, so I will just leave this
5 simple thought with the Applicant, in light of the extensive
6 presence that you all have in that specific part of the
7 commercial corridor, would there be, has there been
8 consideration for, perhaps, making available or being open to
9 discussion with the existing businesses, the CDCs and other
10 property owners, means by which that portion of the corridor
11 could be improved from a physical standpoint? And, would you
12 also be open to considering, instead of building a convenience
13 store at the northwest facility, of, perhaps, looking at some
14 of the vacant properties in that block and putting the
15 convenience store there, perhaps, as a joint venture or just
16 stepping out individually?

17 CHAIRPERSON REID: The question that you are just
18 are kind of like throwing out, because obviously you cannot
19 direct the question to this Board, and that is a matter that I
20 would think that I don't think that you were precluded from
21 having been able to discuss that with the Applicant prior to
22 this hearing.

23 MR. CREDIT: Okay.

24 CHAIRPERSON REID: Is that not correct?

25 MR. CREDIT: I would tend to agree, Madam Chair,

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1 and if I m speaking out of order I

2 CHAIRPERSON REID: Before or after, but that is,
3 again, that is not the issue before us today. We are only
4 dealing with the site, the site on the northwest corner, and
5 issues that are germane to that particular site. And, anything
6 else you certainly have a right to discuss with them outside of
7 this hearing, but that does not pertain to the hearing.

8 MR. CREDIT: Okay, and I will certainly take that
9 and hopefully can continue some dialogue with the Applicant,
10 and, again, I appreciate the indulgence of the Commission, and
11 I apologize if I went beyond the scope of the hearing.

12 CHAIRPERSON REID: Thank you.

13 MR. CREDIT: Thank you.

14 CHAIRPERSON REID: Okay.

15 Closing remarks by the Applicant?

16 MR. COLLINS: Madam Chairman and members of the
17 Board, you have heard the testimony of the Applicant,
18 specifically, how the application meets all the enumerated
19 requirements for special exception approval, including
20 everything in Section 706 and Section 2302 from the
21 Regulations.

22 We have spoken, I have spoken and other members
23 of the team have spoken, with Mr. Berry from the ANC by
24 telephone. Also, I want it to be known that Mr. Brown, who
25 spoke earlier, did represent a different position to us on the

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1 telephone. I spoke to him twice on the telephone, and Ms.
2 Levine spoke to him once on the telephone. His opposition is
3 based upon, today, the additional fuel dispenser and the
4 increase in traffic that that might have. That was never once
5 expressed to us in the several conversations that we had. In
6 our conversations with Mr. Brown, he expressed concern about
7 structural integrity of his property, in that he had sink hole
8 in his backyard and was concerned about any excavation that we
9 might have on our property that might have an impact on his
10 property.

11 After checking with Ms. Levine, I called him
12 back and assured him that as Mr. Sockwell mentioned on the
13 convenience store there will only be footers going down several
14 feet, we are not digging a below-grade cellar there. We are
15 replacing and turning the tanks somewhat, but as Ms. Levine
16 mentioned to me, and having checked with her structural people,
17 that anything short of blasting in that area would not have an
18 impact on Mr. Brown s property. I called him back and offered
19 that we would take photographs of his property, like before and
20 after, that we would have the geotechnical people get in touch
21 with him to discuss this issue, that there was an existing
22 chain link fence along the property line there, that we would
23 replace that with a board on board fence to shield the view.

24 I do want to point out several things. This is
25 a major intersection of two major arterials in the City. It is

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1 in a C-2-A Zone, and the definition of the C-2-A in the Zoning
2 Regulations is that the C-2-A Zoning District is designed to
3 provide facilities for shopping and business needs, housing and
4 mixed uses for large segments of the District outside the
5 central core. The C-2-A Districts permit development to medium
6 proportions and are located in the low to medium-density
7 residential areas with access to main highways or rapid transit
8 stops. This is the epitome of a C-2-A Zone.

9 The C-2-A Zone permits a whole host of retail
10 uses, including anything from a dry cleaners, to a car wash, to
11 all sorts of retail uses in the zone. Those could be put as a
12 matter of right without even coming before this Board. There
13 are a number of uses that are more would have more potential
14 adverse impact with no requirement for any type of the
15 treatment that we are providing on this site.

16 The site, as was pointed out, is right down the
17 street from Florida Avenue and New York Avenue, the
18 intersection, another major arterial. This is a major business
19 area of the City. It s a major transportation area of the
20 City.

21 The only issue that would be, I guess, before
22 this Board that Mr. Brown mentioned was the additional fuel
23 dispenser. You have expert testimony in the record on this
24 case from Mr. Morris concerning the lack of adverse impact from
25 traffic. The record indicates, his testimony indicates that,

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1 and in partial response to Mr. Credit s testimony or
2 suggestions, the traffic that is drawn to this station will be
3 principally from southbound N. Capitol and westbound Florida,
4 which is wholly different, entirely different from the traffic
5 that will be drawn to the station diagonally across the
6 intersection.

7 So, there is you have expert testimony on the
8 traffic and transportation issues. You have testimony on all
9 the other sections of the Zoning Regulations and how we meet
10 those sections of the Regulations.

11 Anything that happens on this site will require
12 construction. We are not putting up a camping area. Anything
13 that we do will require some construction. This will require
14 very little below grade construction, replacing tanks and
15 putting footers in.

16 CHAIRPERSON REID: Mr. Collins, how long do you
17 anticipate that taking?

18 You have to come forward and get on the mike,
19 please.

20 MS. LEVINE: Total construction takes typically
21 between three to four months.

22 CHAIRPERSON REID: And, during that time period,
23 are you saying that the disruption or the noise do you seek
24 to minimize that?

25 MS. LEVINE: Absolutely, we do take efforts to

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1 minimize it, do the majority of our louder activities in the
2 afternoon hours, rather than in the morning or evening, when
3 people are trying to get some sleep, or when children are
4 sleeping.

5 CHAIRPERSON REID: What hours well, give me the
6 times, please.

7 MS. LEVINE: Most work, they typically mobilize
8 around 7:00 a.m., and conclude work around 5:00 p.m.

9 CHAIRPERSON REID: I thought you just said not
10 early in the morning.

11 MS. LEVINE: Well, they ll mobilize in the
12 morning, hold their meetings, and then the heavier construction
13 begins typically around 9:00, after people have left for work.

14 CHAIRPERSON REID: Oh, because that s what I
15 wanted to know, the construction part starts at around 9:00?

16 MS. LEVINE: Correct.

17 MR. SOCKWELL: Madam Chair, the Applicant will be
18 bound by the requirements of the building code on hours of
19 construction and would have to apply for evening construction
20 as a separate allowed condition of their permit.

21 CHAIRPERSON REID: You didn t Ms. Levine, did
22 you say evenings? I think you said end at 5:00.

23 MS. LEVINE: Yes, we will not be applying for
24 evening construction.

25 CHAIRPERSON REID: Okay.

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1 MR. SOCKWELL: You said something about not
2 affecting people s sleeping, and that gave the impression that
3 you might be applying for night construction.

4 MS. LEVINE: No. We will not be doing any
5 construction during that time.

6 CHAIRPERSON REID: What other things are you
7 doing to try to mitigate any adverse impact during the
8 construction period?

9 MS. LEVINE: Well, we will be following all
10 regulations. As part of that, we will apply sediment and
11 erosion control to keep the site clean, make sure that our
12 construction is limited to our property, and not imposing on
13 anyone s adjoining properties or the streets.

14 CHAIRPERSON REID: Okay.

15 MR. SOCKWELL: And, all of that is required under
16 the building permit as well, those are not anything that you
17 are offering, those are just your specific requirements to
18 build.

19 MS. LEVINE: That is correct.

20 CHAIRPERSON REID: So, basically, you are going
21 to just be in compliance with the existing municipal
22 regulations in regard to construction, correct?

23 MS. LEVINE: Yes.

24 CHAIRPERSON REID: And, not necessarily offering
25 anything more than that.

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1 MS. LEVINE: We are not offering anything in
2 addition. The regulations in place are fairly strict, and
3 require that we do respect our neighbors.

4 CHAIRPERSON REID: But, you will adhere to that.

5 MS. LEVINE: Yes, ma am.

6 CHAIRPERSON REID: Okay.

7 Mr. Collins, I understand that there has been
8 some discussion with you, and with the ANC, and some of the
9 other neighbors, in regard to alcohol

10 MR. COLLINS: Yes.

11 CHAIRPERSON REID: being sold or made
12 available at that particular site.

13 MR. COLLINS: Yes. As a matter of fact, I met
14 Ms. Robinson for the first time this morning, and she expressed
15 that concern and handed me a copy of her letter, and I
16 mentioned to her that as Exxon has stated in the past they will
17 not be selling alcoholic beverages at this site.

18 CHAIRPERSON REID: Is there any station where
19 there is alcoholic beverages actually sold at the gas station?

20 MR. COLLINS: I m not familiar with any.

21 CHAIRPERSON REID: I mean, Ms. Levine, are any of
22 your stations, that you know of, set up to dispense alcoholic
23 beverages?

24 MS. LEVINE: None that I m aware of.

25 CHAIRPERSON REID: Okay.

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1 Do you have further remarks, Mr. Collins?

2 MR. COLLINS: Madam Chair, we simply state that
3 we have we believe we ve met all the requirements for special
4 exception relief and request approval of the application.

5 Thank you.

6 CHAIRPERSON REID: Did you not say that you had
7 agreed to, you met with Mr. Brown, Mr. Brown, that you had
8 agreed to replace the chain link fence with a wood on wood
9 fence, so as to be able to give greater privacy?

10 MR. COLLINS: I offered that after discussing it
11 with Exxon, in my telephone conversation to him I did offer
12 that. We offered to monitor the property during construction
13 by taking photographs of the property, so you d have a before
14 and after type situation which is not unusual in a construction
15 scenario.

16 CHAIRPERSON REID: And, what was the response to
17 those proffers that you made?

18 MR. COLLINS: Well, my impression from that
19 conversation was that he was satisfied, and then I offered to
20 have Ms. Levine contact him for some specifics, and she did.

21 CHAIRPERSON REID: No, my question was, when you
22 offered to do these things, was that made a part of an
23 agreement, that you are going to, or he didn t say, oh, well, I
24 don t think that s necessary, or what was the outcome of that
25 after you proffered?

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1 MR. COLLINS: My impression was that he accepted
2 that offer and we were simply going to follow up. There was
3 nothing in writing. There were several conversations, and my
4 impression from the second conversation was that he was
5 satisfied with what I told him.

6 CHAIRPERSON REID: Well, I guess, Mr. Collins,
7 what I m trying to get to is, do you intend to, is that your
8 intention, is that part of your plan, to replace the chain link
9 fence with a wood on wood fence on the back perimeter, so as to
10 give additional camouflage, I guess, to the privacy to the
11 persons or people whose properties their backs about the subject
12 property?

13 MR. COLLINS: Yes, we offered it, and we will not
14 rescind the offer.

15 CHAIRPERSON REID: Okay.

16 And, are you also going to take pictures, do you
17 think that s necessary?

18 MR. COLLINS: Only if we can only do it if he
19 thinks it s necessary we ll do it, but we can t do it unless he
20 lets us on his property.

21 MR. SOCKWELL: Mr. Collins, one question, on the
22 what is the exact width of the alley or public space behind?

23 MR. COLLINS: I believe let me just check, I
24 think I know but I don t want to hazard a guess.

25 MR. SOCKWELL: Sure.

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1 It looks like somewhere between eight and ten
2 feet, maybe.

3 MR. COLLINS: I think that s correct. I m
4 checking, I m looking at the maps attached to the application
5 from pages eight and nine, but it appears to be somewhere
6 between eight and ten.

7 MR. SOCKWELL: Yes, but the issue is really that
8 Mr. Brown s fence and Mr. Brown s actual separation from your
9 property are two different items, because he said his fence is
10 about 18 inches off of your property, but his property actually
11 ends maybe ten feet away from your property.

12 MR. COLLINS: That s right.

13 MR. SOCKWELL: So, there may be a use issue with
14 regard to its proximity, but the actual proximity is greater
15 than it appears.

16 MR. COLLINS: Yes.

17 MR. SOCKWELL: The distance is greater than it
18 appears.

19 MR. COLLINS: That s correct. The fence that we
20 spoke of we will put on our property line.

21 CHAIRPERSON REID: In addition to that, you also
22 have indicated those four trees, or four shrubbery, are they
23 trees, what exactly are those going to be?

24 MR. COLLINS: Those are existing trees.

25 CHAIRPERSON REID: Oh, I see, they are already

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1 there.

2 MR. COLLINS: Yes.

3 CHAIRPERSON REID: Those trees also help to kind
4 of buffer the impact, I would assume.

5 MR. COLLINS: Yes.

6 MR. SOCKWELL: Are they that substantial as Mr.
7 Prakash has shown, or are they, you know yes?

8 MR. PRAKASH: My estimate is from my visual
9 inspection, is that the trees are in the order of 25 feet high.

10 MR. SOCKWELL: Okay.

11 CHAIRPERSON REID: Okay.

12 MR. GILREATH: The height of the fence, assuming
13 that the other party agrees to it, would that be a stockade
14 fence, about eight feet, or will that be negotiated with him
15 what the height will be?

16 MR. COLLINS: We are talking about a six-foot
17 fence. The limitation in the building code does not allow an
18 eight-foot fence.

19 MR. GILREATH: It will go six feet, okay.

20 MR. SOCKWELL: But, the building code will allow
21 seven on the property line, ten, or anything more than ten feet
22 in from the property line or an interior lot line, you can have
23 that s more than ten feet off the lot line, can be of any
24 height.

25 MR. COLLINS: Right. We are fairly limited on

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1 how far we can go.

2 MR. SOCKWELL: Right, so you can give him seven
3 if you have to?

4 MR. COLLINS: If we have to.

5 CHAIRPERSON REID: You don t have to, I mean,
6 it s up to

7 MR. SOCKWELL: If you want to.

8 CHAIRPERSON REID: if you want to. You don t
9 have to give them seven if you don t want to, we just have to
10 ascertain the height of the fence.

11 MR. COLLINS: The terrain goes up at that point,
12 and there are some retaining walls in that area that
13 essentially would on top, where the retaining walls exist the
14 fence would be on top of that.

15 CHAIRPERSON REID: So, we are saying six?

16 MR. COLLINS: And, we thought six was sufficient.

17 MR. SOCKWELL: So, six feet of crude oil stays
18 high, or seven feet of crude oil prices stay high, six feet if
19 it goes down.

20 MS. PRUITT: Excuse me, Madam Chair, just for
21 point of clarification. Would the fence go along all the
22 property owners along that side or just Mr. Brown s?

23 CHAIRPERSON REID: I thought that we indicated,
24 my question was, the lot lines

25 MS. PRUITT: Well, I wasn t clear, that s why I

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1 wanted to be sure.

2 CHAIRPERSON REID: my understanding was it was
3 to be the lot lines that abutted the neighbors whose backs were
4 at the property line, and maybe we need to clarify exactly how
5 far the existing fence, whatever the existing fence is what
6 you were saying you d replace, right? And, the existing fence,
7 looking at the page, what is it, 13?

8 MR. SOCKWELL: That s correct, page 13.

9 MR. COLLINS: Seven gives you a good idea of the
10 properties.

11 CHAIRPERSON REID: Page seven? Okay, page seven.

12 MR. COLLINS: Well, Mr. Sockwell, page 13 shows
13 the existing condition plans.

14 MR. SOCKWELL: Okay.

15 MR. COLLINS: And, I m sorry for interrupting,
16 but what we are doing is replacing all the chain link with
17 stockade.

18 CHAIRPERSON REID: And that is, where is the
19 chain link fence?

20 MR. COLLINS: If you look on page 13, you ll see
21 on the western property line, on the left-hand side of the
22 page, you ll see, and, Mr. Sockwell, if you could assist with
23 your expertise here, you ll see the location of the chain link
24 fence going north.

25 CHAIRPERSON REID: Right.

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1 DOCTOR CARSON: And then, going east along the
2 line.

3 CHAIRPERSON REID: That s what s going to be
4 replaced.

5 MR. COLLINS: Yes, that s right.

6 CHAIRPERSON REID: All right.

7 MR. SOCKWELL: And then, runs to there, but it
8 doesn t go all the way to here.

9 CHAIRPERSON REID: Okay, so then, basically, it
10 is it will be replaced as reflected, as the chain link, you
11 will replace the chain link as reflected on page 13 in your
12 drawings.

13 MR. COLLINS: Exhibit E, page 13.

14 CHAIRPERSON REID: Exhibit E, okay. All right,
15 good enough.

16 So, do you want a summary order, bench decision,
17 is what you are asking, Mr. Collins?

18 MR. COLLINS: Yes, please.

19 CHAIRPERSON REID: Okay.

20 MR. GILREATH: Madam Chair, I think that the
21 Applicant has adequately met the burden of proof. We are
22 certainly appreciative of the concerns of the property owners.
23 However, I feel the trees and the stockade fence and so forth,
24 plus this theoretical alley and what have, is sufficient to not
25 pose any real hardship. This property has been used as a

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1 filling station before and so forth, it s major arterial, and
2 the zoning and so forth, I feel that we can allow this
3 additional dispenser, because that s really what the other is
4 a matter of right, as I understand it, so I recommend that we
5 approve the application.

6 CHAIRPERSON REID: All right.

7 Mr. Sockwell?

8 MR. SOCKWELL: While I have my reservations as
9 regards the Zoning Administrator s interpretative powers in
10 this issue, I will not disagree with the fact that the
11 neighborhood has been previously impacted for many years with
12 both gas stations, that having used the Exxon station to the
13 southeast I know that Exxon Corporation has apparently, at
14 least through its dealer at that station, kept it very much
15 clear of undesirable traffic and issues.

16 I think that one additional fueling island is
17 not going to make or break any traffic continuums, and I do
18 believe that the neighborhood impacts will be minimized
19 visualized by the stockade fence, which will certainly provide
20 a light barrier.

21 I think that the Applicant has met the
22 requirements to be able to establish or reestablish the
23 gasoline station use with the convenience store.

24 CHAIRPERSON REID: Were you going to second?

25 MR. SOCKWELL: Yes, I ll second.

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1 CHAIRPERSON REID: I concur with my colleagues.
2 I feel that they have met the burden of proof, and that while
3 we have been proffered today with concerns by community members
4 I feel that the Exxon Corporation, the Applicant, has moved to
5 tried to dispel the perception of adverse impact in regard to
6 noise or trash, litter, loitering around the facility. The
7 aspect that they are not serving any alcohol, or selling any
8 alcohol, has been established that they will not, nor does any
9 Exxon station actually sell alcoholic beverages, and I think
10 that we can, within the aspect of the application and order, we
11 can then condition it so that the construction would be in
12 compliance with the typical D.C. construction, is it code, and
13 that, now the hours we can I don t think that okay, so then
14 we can basically condition the construction hours to be from
15 9:00 to 5:00 Monday through Friday?

16 MR. COLLINS: I think Ms. Levine mentioned that
17 they arrive on the site at 7:00, and that the heavy
18 construction

19 CHAIRPERSON REID: No, no, I said construction.
20 Now the meeting time, I was not adding that as construction
21 time. My understanding from Ms. Levine was that they would
22 mobilize at 7:00, and have meetings, what have you, but the
23 actual construction itself, the construction work itself would
24 not start until 9:00, and that s what I was specifically trying
25 to address.

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1 MR. COLLINS: I just want to make sure that
2 there s no future misinterpretation if there s a condition in
3 the order that says construction between 9:00 and 5:00, that if
4 they mobilize at 7:00 someone might say that, no, that means
5 you can t be here until 9:00.

6 MR. GILREATH: Madam Chair, I think that can be
7 clarified by saying heavy construction will not begin until
8 9:00.

9 CHAIRPERSON REID: Okay.

10 MS. PRUITT: Madam Chairman, you have the
11 building code permit that will supercede, so in one sense I
12 believe it s already taken care of, and if we start
13 conditioning it it makes it a little bit more confusing and
14 difficult.

15 MR. SOCKWELL: Yes, under the building code, I
16 believe that the end of construction would be 6:30 p.m., and
17 you would have to apply separately for night construction. I
18 think the beginning construction is probably allowed at 7:00
19 a.m., it s either 7:00 or 8:00 a.m.

20 MR. COLLINS: It s 7:00.

21 MR. SOCKWELL: Yes, so you d be bound under the
22 building code, but if you wished to be neighbor friendly you
23 would probably want not to initiate excavation and heavy noise-
24 making construction before at least 8:00 a.m.

25 CHAIRPERSON REID: Well

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1 MR. SOCKWELL: And, 9:00 a.m., would be preferred
2 probably, but we don't want to I don't know that we can
3 condition that, because the building code does bind them under
4 the permits that are issued, unless we change that.

5 CHAIRPERSON REID: Previously, we have had
6 construction plan where the Applicant has proffered to us what,
7 in fact, they would be amenable to doing, particularly in an
8 environment where there's opposition. And, even though they
9 are allowed to start at 7:00, if they willingly agree to not
10 start heavy construction until 9:00, I don't think there's a
11 problem with putting that as a condition.

12 MS. PRUITT: The concern is not to have too much
13 ambiguity, and what Mr. Collins raised, that the community may
14 say, well, I've read the you know, you say this, and you are
15 here earlier, and it may cause more problems.

16 CHAIRPERSON REID: Right, heavy construction not
17 to start before 9:00, and you said you would terminate at 5:00,
18 even though you can terminate at 6:30, that's certainly would
19 signal to the community that you are making accommodations to
20 them, you know, to be good neighbors, and I think that would be
21 great if you are agreeable to that.

22 And, the other issue was the chain link fence,
23 that you would install, you would replace existing chain link
24 fence with a six-foot wood on wood fence, as reflected on page
25 13 of Exhibit

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1 MR. COLLINS: E.

2 CHAIRPERSON REID: E.

3 Now, with regard to the pictures before and
4 after, I don't think that I will I would suggest putting that
5 as a condition, that's up to you if you want to do that, or if
6 Mr. Brown wants you to do that, you'll have to work that out,
7 but I don't want to make that a condition of this order.

8 Anything else?

9 Okay, all in favor?

10 (Ayes.)

11 CHAIRPERSON REID: Opposed?

12 MS. PRUITT: Staff will record the vote as 3/0 to
13 approve, motion made by Mr. Gilreath and seconded by Mr.
14 Sockwell.

15 Is this a summary order, Madam Chair?

16 CHAIRPERSON REID: Summary order, you should have
17 it, your order out in about two weeks or three weeks.

18 MR. COLLINS: Thank you.

19 CHAIRPERSON REID: Next case, please.

20 MS. PRUITT: The next application is 16494,
21 application of Exxon Corporation, pursuant to 11 DCMR 3108.1
22 for a special exception under subsection 706 to allow the
23 expansion of a gasoline service station with convenience store
24 on a site in a C-2-A District, at premise 5515 South Dakota
25 Avenue, N.E., Square 3760, and Lots 812 and 814.

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1 All those planning to testify would you please
2 stand and raise your right hand?

3 Please, proceed.

4 CHAIRPERSON REID: Is there anyone here to
5 testify in opposition to this case? Are there persons here in
6 support of the case? Okay.

7 Mr. Collins, in this particular case, you are
8 it, just the Applicant is here today, so we can basically
9 expedite and you can give us the highlights of your
10 application, and we ll ask questions. Basically, we ve read the
11 materials that have been submitted, and if there is anything
12 that we need to clarify we ll just question the witnesses.

13 MR. COLLINS: Thank you, Madam Chairperson and
14 members of the Board. My name is Christopher Collins with
15 Wilkes, Artis, Hedrick & Lane. Seated behind me is Sarah Shaw,
16 also of our office. To my right are the three witnesses in
17 this case, Terri Levine, a Market Investment Specialist with
18 Exxon, Bob Morris who is our traffic and transportation expert
19 witness, and mr. Bhoopendra Prakash from the Plan Source, who
20 is the consulting engineer in this application.

21 Being mindful of your opening statement, Madam
22 Chairperson, we will attempt to move this along as quickly as
23 possible. This is an expansion of an existing Exxon service
24 station. This expansion will include the acquisition of
25 adjacent property that was originally built as a fast-food

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1 restaurant and it was converted subsequently to a veterinary
2 clinic, and is presently vacant. That site is around the same
3 size of the existing site, a little bit smaller. Exxon was
4 given the opportunity to purchase that site to expand their
5 existing location, and this is all at the corner of South
6 Dakota Avenue and Kennedy Street, N.E.

7 The site was zoned C-1, and then through the
8 Comprehensive Plan and the zoning Consistency Project from the
9 Zoning Commission it was rezoned to C-2-A. It presently is a
10 C-2-A Zone.

11 There s an existing three-bay facility at the
12 corner, and then to the north of the site is the vacant
13 building I mentioned, the veterinary clinic. The idea is to
14 consolidate both sites, to remove all improvements and to build
15 a matter of right convenience store with a canopy and six
16 dispensers.

17 The special exception approval is necessary
18 because of three things. We are expanding the site of the gas
19 station. We are expanding the number of dispensers from four
20 to six, and we re putting up a canopy where there presently is
21 none.

22 Unless there are any specific questions of me,
23 I d like to go to our first witness, Ms. Levine.

24 Whereupon,

25 TERRI LEVINE

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1 was called as a witness by Counsel for the Applicant, and
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 MR. COLLINS: Ms. Levine, would you please
5 identify yourself for the record and briefly summarize your
6 testimony?

7 MS. LEVINE: My name is Terri Levine. I m with
8 Exxon Corporation. My home address is 8301 Ashford Boulevard in
9 Laurel, Maryland.

10 Madam Chairperson and members of the Board, as
11 Chris described we are proposing to modernize our facility at
12 the northwest corner of South Dakota and Kennedy.

13 Our current property is approximately 16,000
14 square feet with a three-bay facility and four multi-product
15 dispensers. We ve recently acquired the additional property,
16 which is an additional 14,000 square feet, giving us a total of
17 approximately 30,000 square feet.

18 We d like to utilize this property to modernize
19 our facility with a new convenience store, approximately 3,200
20 square feet, and six new dispensers under a canopy which is not
21 on the site currently. We plan to reuse our existing
22 underground tanks. They were recently upgraded in 1990 and
23 replaced.

24 Mr. Bhoopendra Prakash will give you some
25 further description of our site plan. If you have any questions

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1 I d be happy to entertain them.

2 CHAIRPERSON REID: Ms. Levine, what would be the
3 hours of operation?

4 MS. LEVINE: We are requesting 24-hour operation
5 at this site.

6 CHAIRPERSON REID: Okay, is that in this
7 application, hours of operation?

8 MR. COLLINS: It does not mention that.

9 CHAIRPERSON REID: Okay, and, as well, to refer
10 back to the previous case, it didn t specify there either.

11 MR. COLLINS: No, that s correct.

12 Exxon is prohibited by law from dictating the
13 hours of operation to its dealers.

14 CHAIRPERSON REID: I thought that was a station
15 that was owned by Exxon.

16 MR. COLLINS: Exxon owns all the facilities, but
17 the dealer owns the business, and that s governed by a specific
18 law in the City. Companies are not allowed to own stores in
19 Washington, D.C.

20 CHAIRPERSON REID: Oh, okay.

21 MR. SOCKWELL: So, that means Exxon has no
22 control.

23 MR. COLLINS: Of the hours of operation?

24 MR. SOCKWELL: Or anything else of an operational
25 nature.

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1 MR. COLLINS: That s correct.

2 MS. LEVINE: If I can address that.

3 MR. SOCKWELL: Yes.

4 MS. LEVINE: We own the properties. We have a
5 lease agreement with the dealer that operates the facilities,
6 so that we are not both an owner and an operator of the
7 property.

8 However, we are under contract with our dealers,
9 and we do have some legal rights to maintain high operational
10 quality of the site. We have yearly audits that we participate
11 in to make sure that the sites are being maintained, they are
12 being operated properly. We have a regional territory manager
13 that acts as a counselor to each one of our dealers in the
14 District.

15 MR. SOCKWELL: But, that is primarily for the
16 maximization of revenue, is it not?

17 MS. LEVINE: It s for brand consciousness, to
18 maintain quality facilities, clean facilities. It is not
19 simply to receive rent, it is an actual counselor for
20 operations.

21 CHAIRPERSON REID: So, this facility is wanting a
22 24-hour operation, and the previous one was as well?

23 MS. LEVINE: Yes, ma am.

24 MR. SOCKWELL: Excuse me, the South Dakota and
25 Kennedy facility was a 24-hour operation?

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1 MS. LEVINE: I believe it is.

2 CHAIRPERSON REID: No, no, I m sorry, Mr.
3 Sockwell, what I was referring to was the previous application,
4 the one on N. Capitol and Q Street, that that was also and,
5 it dawned on me when I was asking about this particular
6 application and its hours of operation that I did not remember
7 hearing any specification as far as the hours of operation on
8 the previous one, and she just basically answered that in both
9 instances they are 24-hour operations.

10 MR. SOCKWELL: I didn t ask the question on the
11 previous one, because I assumed it to be 24 hour, it had been
12 in the previous operation, and as is the southeast corner
13 operation there.

14 CHAIRPERSON REID: Okay. All right.

15 MR. SOCKWELL: It was not a concern for that
16 location.

17 CHAIRPERSON REID: So, this is a proposed 24-hour
18 operation of the gas station.

19 Is there, let s see, I m trying to think of that
20 intersection, is there another any other 24-hour gas station
21 there on Riggs Road across the street?

22 MR. COLLINS: Riggs Road is up. This facility is
23 actually at the beginning of the ramp if you are going

24 CHAIRPERSON REID: Right, I know where that
25 veterinarian hospital was sitting there for many years.

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1 MR. COLLINS: Right.

2 CHAIRPERSON REID: That s where it is.

3 MR. COLLINS: Right, exactly.

4 CHAIRPERSON REID: Yeah, I know where it is, but
5 it seems to me that there was, right on that diagonally across
6 there s a shopping center, and I thought that I remembered
7 there being a gas station right there.

8 MR. SOCKWELL: There s one right at the line, at
9 Riggs and Eastern.

10 MR. COLLINS: Yes, there s one at Riggs and
11 Eastern. That s a Gulf station.

12 CHAIRPERSON REID: Just a little further up.
13 Okay. All right.

14 MR. COLLINS: At least it was a Gulf Station.

15 MR. GILREATH: I need a little clarification. You
16 said something about four bays, do you mean automotive repairs
17 take place there, too?

18 MR. COLLINS: A three bay, right, automotive
19 repair, right.

20 MR. GILREATH: So, there will be repairs.

21 MR. COLLINS: No, there will not be repairs.

22 CHAIRPERSON REID: The bays are for what?

23 MR. COLLINS: We re eliminating the repair bays.

24 MR. GILREATH: Oh, they are being eliminated?

25 MR. COLLINS: Yes.

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1 MR. GILREATH: So, it s just gas dispensing and
2 the convenience store.

3 MR. COLLINS: Exactly.

4 MR. GILREATH: Very good.

5 CHAIRPERSON REID: Oh, okay. All right.

6 Go ahead, proceed.

7 MS. LEVINE: To reply to one of Mr. Sockwell s
8 additional comments, we also have a program called Commitment
9 Tax Lots, where we offer our dealers a rebate, a reimbursement
10 program for high-level performance in the neighborhoods,
11 additional landscaping, plantings, cleanliness, lighting, noise
12 control, any sort of recommendations that they receive from
13 their local neighbors in addition. So, we do have a program
14 actually to encourage, not just to enforce, good behavior on
15 our sites.

16 CHAIRPERSON REID: Okay.

17 MS. LEVINE: Are there any additional questions
18 at this time?

19 CHAIRPERSON REID: I have none.

20 MR. SOCKWELL: Nothing further.

21 MR. COLLINS: The next witness is Mr. Bhoopendra
22 Prakash, who will review quickly for you the existing and
23 proposed conditions.

24 Whereupon,

25 BHOOPENDRA PRAKASH

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1 was called as a witness by Counsel for the Applicant, and
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 MR. PRAKASH: Madam Chairperson and members of
5 the Board, my name is Bhoopendra Prakash. I live at 12843
6 Parapet Way, Oakhill, Virginia, engineer representing the
7 project.

8 The site being located in the northwestern
9 quadrant of the Kennedy Street/South Dakota intersection, there
10 are two principal buildings on site separated by a lot line.
11 We propose to reconstruct the site with a canopy and fuel
12 islands on the easterly side of the property, with a
13 convenience store I the order of 3,000 square feet situated on
14 the northwesterly side of the store.

15 Entrances along South Dakota Avenue will be
16 modified. There are currently four entrances, two of which
17 shall be consolidated into one to provide, I believe, a safer
18 access to the station.

19 Landscaping will be improved at the intersection
20 for better visibility. The store will be constructed of glass
21 in front for visibility and safety, peripheral down lit, down-
22 focusing yard lights will be placed for a better appearance,
23 and safety, and security. Setbacks will be honored from the
24 residential zone, in the order of 25 feet.

25 In summary, in terms of filing with the Office

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1 of Planning, honoring the setbacks, presenting a better
2 coordinated plan for design appearance, some screening and
3 lighting, maintaining entrances set back safety from
4 intersections and residential areas, I believe this project
5 meets the intent of the Zoning Regulation, Section 726, as well
6 as Section 2302.

7 I thank you. If you have any questions, I ll be
8 happy to answer them.

9 MR. COLLINS: I have one question, Mr. Prakash.
10 Will there be any grease pits or hoists associated with this?

11 MR. PRAKASH: There will be no grease pits
12 associated with this project.

13 MR. SOCKWELL: Mr. Prakash? Mr. Prakash?

14 MR. PRAKASH: Yes, sir.

15 MR. SOCKWELL: The building to the right, to your
16 right, that one, what is in there?

17 MR. PRAKASH: This is a canopy.

18 MR. SOCKWELL: That s just a canopy.

19 MR. PRAKASH: Aerial in nature, with pumps under.

20 MR. SOCKWELL: Okay, so that s just a canopy.

21 The previous gas station was oriented so that
22 all of the activity and the principal illumination was along
23 the South Dakota Avenue frontage, and the service bays were
24 entered to the left side of the the service bays for the
25 operation, yeah, were entered to the left side of the building,

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1 or in that case I guess that s facing north or something,
2 anyway, yeah, they were in this corner over here of the
3 building, and most of the parking was done along the left edge
4 or along the right side there.

5 Now, your new facility design first, and also
6 the lighting was fairly limited in intensity, and the facility
7 was not operated as a 24-hour facility, in fact, at night I
8 think it closed probably at 9:00 p.m. Does that sound pretty
9 reasonable to your recollection, Ms. Levine?

10 MS. LEVINE: Yes, it does, the bays were not open
11 24 hours.

12 MR. SOCKWELL: Right.

13 And, it almost invariably had two or three MGBs
14 or a Triumph TR-6 under repair at any given time.

15 The new facility, as shown in your photograph,
16 is going to be oriented to present a lot of light in the
17 direction of the residential homes on the opposite side of
18 Kennedy Street, as well as it may tend to bleed a great deal of
19 light toward the residential properties in the I guess that s
20 the south, southern, eastern, whichever, where is your north
21 arrow.

22 MR. PRAKASH: Northeastern.

23 MR. SOCKWELL: Yes, northeastern direction then,
24 and you mentioned that down-facing lights would be provided.
25 What type of fencing are you providing at the perimeter of the

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1 site?

2 MR. PRAKASH: Because the residential property is
3 higher

4 MR. SOCKWELL: Which it is.

5 MR. PRAKASH: then the this property, an
6 opaque fencing, in my opinion, is not necessary, and

7 MR. SOCKWELL: You don t think that the visual
8 impact of a gasoline station, as one looks across one s
9 property, is a significant change to the view of the rear of a
10 building, which is what was generally the view previously, and
11 a much smaller facility, in fact.

12 MR. PRAKASH: Mr. Sockwell, I believe because the
13 line of site is going to be higher than a six or an eight-foot
14 fence, from the residential property, I believe opaque fencing
15 is not as important as the need for a regular fence that
16 prevents pedestrian access between the two sites, or the two
17 sets of properties.

18 CHAIRPERSON REID: Thank you.

19 MR. PRAKASH: Thank you.

20 MR. COLLINS: The next witness is Mr. Morris.

21 Whereupon,

22 ROBERT L. MORRIS

23 was called as a witness by Counsel for the Applicant, and
24 having been first duly sworn, testified as follows:

25 DIRECT EXAMINATION

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1 MR. COLLINS: Mr. Morris, will you please proceed
2 with your testimony?

3 MR. MORRIS: Good morning, Madam Chairperson,
4 members of the Board. I am Robert L. Morris, traffic engineer
5 and transportation planner. My home address is 9109 Rouen
6 Lane, Potomac, Maryland 20854.

7 I have prepared a traffic analysis, which I
8 believe you have in front of you.

9 CHAIRPERSON REID: Mr. Morris, before you
10 continue, did you have a replacement for the page 23 that gave
11 basically your no, I m sorry, your page four, that outlined
12 your conclusions, because they are blurred.

13 MR. MORRIS: Oh, dear.

14 MR. COLLINS: Oh, yeah.

15 CHAIRPERSON REID: I couldn t garner what, in
16 fact, you were laying out for us, the effect of the
17 improvement.

18 MR. MORRIS: I have the original here. I can
19 if somebody can copy that, or I can read it to you, it s very
20 short.

21 CHAIRPERSON REID: Well, I ll tell you what, why
22 don t you just highlight it and then give it to staff so that
23 we could have a clear copy for the record.

24 MR. MORRIS: I d be happy to do that, certainly.

25 CHAIRPERSON REID: Thank you.

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1 MR. MORRIS: What I have shown there is that
2 typically with the improvement that is proposed on this site,
3 that you could expect about five to seven more cars entering
4 the site during the peak hours, and I have noted that the great
5 majority of trips coming to a gasoline service station are
6 pass-by trips, and that, therefore, the additional five to
7 seven trips wouldn't have any impact on existing conditions,
8 and even if they were all new trips you would still have an A
9 level of service at the intersection of South Dakota and
10 Kennedy, and the bottom line was that from a traffic
11 engineering viewpoint that would be an appropriate use of the
12 property.

13 And, I'll be happy to supply this for copies to
14 be made.

15 I would note further, Madam Chairperson, that
16 while there could be additional trips coming to the site, as I
17 mentioned, these will probably be all or the great majority
18 pass-by trips. The previous use as a veterinary clinic, would
19 have had all primary purpose trips, so actually the proposal
20 that's before you represents a net trip reduction from what
21 existed in the past with the veterinary clinic.

22 CHAIRPERSON REID: Repeat that again, please.

23 MR. MORRIS: The veterinary clinic that existed
24 on the lot where the convenience store will now be located,
25 would have had all primary purpose trips. People don't just

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1 happen to stop in a veterinary clinic because they are passing
2 by.

3 CHAIRPERSON REID: Right.

4 MR. MORRIS: Whereas, with the convenience store
5 they will. So, that on the proposed use would represent a net
6 reduction in total trips.

7 CHAIRPERSON REID: I understand.

8 MR. SOCKWELL: So, you are saying that there
9 would be fewer people coming to the convenience store than
10 would have come to the veterinary clinic?

11 MR. MORRIS: No, I didn't say that, sir.

12 MR. SOCKWELL: What are you saying?

13 MR. MORRIS: I said that the trips going to the
14 veterinary clinic would all be primary purpose trips, that
15 people

16 MR. SOCKWELL: Right, I understand what you
17 meant.

18 MR. MORRIS: would be added to the street
19 system because they are going there. People going to the
20 convenience store, they stop by, they get gas, and as they are
21 getting gas they pick up whatever purchase, a loaf of bread or
22 whatever it may be, get back in their car and leave. People
23 don't normally drive from home to go to a convenience store in
24 a service station and then go back home again. It's not a
25 primary purpose trip. So, it doesn't add traffic to the street

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1 system.

2 MR. SOCKWELL: That s interesting because I do,
3 and

4 MR. MORRIS: You are the exception.

5 MR. SOCKWELL: No, I m not, and my neighbors do.

6 MR. MORRIS: And, you don t get gas at the same
7 time?

8 MR. SOCKWELL: No, go there specifically for two
9 purposes. This convenience store, one of the purposes I m sure
10 you are going to have in your convenience store is you are
11 going to operate a lottery ticket facility, will you most
12 likely, or your dealer will. Almost every Exxon station has
13 one, which means that you suddenly become a primary purpose
14 facility for the purpose of picking up lottery tickets. As
15 well, you will be selling milk, bread and certain other staples
16 which make that facility a primary purpose facility.

17 Not necessarily can you just arbitrarily assume
18 that all customers are coming to that facility for gas and
19 occasional essentials, as they come for gas. You can t do
20 that, because you have to know what s going in there.

21 MR. MORRIS: May I respond, sir?

22 MR. SOCKWELL: Please.

23 MR. MORRIS: I did not arbitrarily assume it.

24 MR. SOCKWELL: Did Ms. Levine give you the
25 specifics of what would be operated there?

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1 MR. MORRIS: No, sir.

2 MR. SOCKWELL: So, you took a general case.

3 MR. MORRIS: Based on experience, I have dealt,
4 in the past 40 years that I've been in business, I've with
5 many, many gasoline stations, and I talk to gasoline service
6 station operators and owners, and this is what they tell me.

7 They tell me that typically if you put in a
8 convenience store, you will increase your patronage by ten to
9 15 percent.

10 MR. SOCKWELL: Have you ever stopped at a gas
11 station at 7:50 p.m., or at 8:50 p.m., on a weeknight?

12 MR. MORRIS: I'm sure I must have.

13 MR. SOCKWELL: At those times, those are the
14 times when the lottery closes its drawings, that's when all the
15 cars are parked around the convenience store, none of them at
16 pumps, all of those people are lined up inside the store for
17 one purpose, and one purpose only, and that's to get their
18 last-minute lottery tickets.

19 MR. MORRIS: It's also not the peak hour.

20 MR. SOCKWELL: It can be a peak hour for their
21 activity, but what you basically stated is that you've
22 discounted that there's any primary purpose there, that's all,
23 and I don't believe that that is a fair assumption. And, the
24 other thing is that it's, the convenience store is located in a
25 residential neighborhood, where the convenience becomes very

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1 important.

2 CHAIRPERSON REID: Thank you, Mr. Morris.

3 All right, Mr. Collins, does that conclude your
4 presentation?

5 MR. COLLINS: Yes, it does. I d just like an
6 opportunity for closing remarks.

7 CHAIRPERSON REID: Okay, there does not appear to
8 be anyone here. I don t think that we received a letter from
9 the ANC.

10 MR. GILREATH: We received a letter from someone.

11 CHAIRPERSON REID: We have some letters of
12 opposition, and I m going to get to that, but right now the ANC
13 did not weigh in on this particular application, so when they
14 don t we conclude that they have no objection, because if so
15 they would be here, or they would write and let us know.

16 No government reports. We did receive no
17 letters of support, but we did receive two letters of
18 opposition, and the issues that were raised primarily were
19 those of an anticipation of noise and traffic, and a problem
20 with there being an increased probability of there being
21 traffic accidents, and specifically this was cited from Ms.
22 Herman Beecher and Inez I m sorry, Belcher. Can you address
23 those concerns?

24 MR. COLLINS: Mr. Morris, I m handing you a copy
25 of the letter from Mr. & Mrs. Belcher, would you just take an

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1 opportunity to scan that letter and provide any comments you
2 might have?

3 And, while he s doing that, I d just like to
4 state for the record that in terms of the ANC, we did reach out
5 and contact each of the ANCs, there s more than one involved in
6 this application, several across the street, and we received no
7 response. At what point, someone did mention that they would
8 contact the appropriate person and get back to us, but we did
9 do what we could do.

10 CHAIRPERSON REID: But, to your knowledge, Mr.
11 Collins, the ANC did not object.

12 MR. COLLINS: We don t know, if anything, the ANC
13 took any action at all. We tried to contact them and, you
14 know, get on their agenda, and we never received any word from
15 them one way or the other.

16 CHAIRPERSON REID: Okay.

17 MR. MORRIS: The comments here refer to the
18 increase in traffic that would be generated by the proposed
19 facility, and the dangerous condition of the existing
20 intersecting of South Dakota and Kennedy Street. As I
21 testified previously, the service station draws its customers
22 principally from people passing by. The same would hold true
23 for the convenience store. I don t argue with Mr. Sockwell on
24 that issue, I merely point out that experience has shown that
25 most of the people going to the convenience center are pass-by

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1 trips, whereas, the previous use were all, not most, but all
2 primary purpose trips, and I cannot quantify the difference
3 between the primary purpose trips that Mr. Sockwell refers to
4 for the convenience store with the number of trips going to the
5 veterinary clinic, but I would submit that the very slight
6 increase in traffic that would be generated by this proposed
7 use, which as I say ten to 15 percent, is not going to
8 aggravate the existing conditions. And, my bottom line holds
9 that this is an appropriate use of the subject property from a
10 traffic engineering viewpoint.

11 MR. SOCKWELL: One thing that I might say is that
12 the fact that no business has lasted in that adjacent building
13 for more than year, as long as I ve lived in Washington, from
14 Bar and Q back in the 70s, the trips obviously were very
15 insignificant for that particular building, over most of its
16 life.

17 CHAIRPERSON REID: I think there was a KFC at
18 that building at one time, too.

19 MR. SOCKWELL: It didn t last a year.

20 CHAIRPERSON REID: Yes, I remember.

21 Mr. Morris, to your knowledge, and when you do
22 your research of a particular site, is there an indication of
23 there having been traffic accidents there, several, an
24 unusually high amount of traffic accidents?

25 MR. MORRIS: This is not one of the high accident

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1 locations that is published by the Department of Public Works
2 periodically, but I don't question what the neighbors say, that
3 there are accidents that occur at this intersection.

4 The point I make is that there's no significant
5 increase in traffic as a result of this proposed use, and
6 there's no reason why there should be any increase in
7 accidents. There is certainly

8 CHAIRPERSON REID: But, wait a minute, Mr.
9 Morris, if you are aware of the fact that there is a high
10 probability of accidents being there, would you not make
11 recommendations in your report to methodologies that would
12 help to abate that kind of occurrence, in that it would occur
13 to me that from the applicant's standpoint it would certainly
14 increase their liability, that corner. And so, if there are a
15 lot of accidents, I'm not a traffic analyst, but if there are a
16 lot of accidents on any particular given corner, then there's
17 typically something that's driving that. Has any research that
18 you delve in trying to find out what may have been causing that
19 problem, and to make suggestions to the Applicant as to what
20 they can do to try to mitigate that particular adverse impact,
21 location-wise?

22 MR. MORRIS: Well, obviously, I can't answer your
23 question with any specificity, because I haven't made an
24 analysis of what causes what the reasons are for the
25 accidents.

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1 I think I can state with confidence, without
2 getting specific data, that you have a whole lot more accidents
3 at the intersection of N. Capitol Street and Florida Avenue
4 than you have at this location.

5 I, frankly, don't know what a gasoline service
6 station could do to mitigate accidents at an intersection,
7 unless there is some indication that the accidents are caused
8 by vehicles entering or leaving the gasoline station, and
9 that's normally not the case. The accidents that typically
10 occurred at intersections are between vehicles colliding going
11 on different paths on the intersecting streets.

12 MR. SOCKWELL: Mr. Morris.

13 MR. MORRIS: Yes.

14 MR. SOCKWELL: With great respect for your
15 abilities and long years of involvement, I can tell you from
16 personal experience what may cause the accidents in that
17 vicinity. Coming off of Riggs Road, turning south from the
18 eastern direction, most cars exceed the speed limit coming down
19 the ramp onto South Dakota Avenue by, I would say, ten to 20
20 miles per hour.

21 Now, should someone want to stop at the bottom
22 of the ramp to make a left turn, to get into the gas station,
23 because of the convergence of lanes there's a good chance that
24 an accident could occur, especially in a much more well-lit gas
25 station with a convenience store.

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1 On the other side going in the north direction
2 on South Dakota Avenue, because there is a left-turn light to
3 take you onto Riggs Road going west, people tend to speed up to
4 make that light before it changes, which means that because
5 they are accelerating for someone to slow down to try to get
6 into the gas station could cause accidents at that
7 intersection. These are things that have been going on for
8 many years, and it is a condition of the down slope going to
9 the south and the fact that people want to get through the
10 lights that are further down the street, and on the fact that
11 the left-turn light, which is to control for people going on to
12 Riggs Road west, is a factor.

13 The possibility would be, and it has been
14 proposed in other projects seeking to build more intensive use
15 facilities with turnouts, is that an evaluation could be done
16 at the end of a given period and signalization would be one of
17 the solutions that could be recommended, i.e., if there are
18 accidents if the accidents increase, then signalization would
19 be the solution, signalization would normally be paid for by the
20 Applicant and not by the City, based on their previous history,
21 but that's what's been recommended and has occurred in several
22 instances.

23 MR. MORRIS: Mr. Sockwell, with great respect I
24 disagree with you.

25 MR. SOCKWELL: Well, I can give you some cases.

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1 MR. MORRIS: Well, if you will permit me to
2 respond. Traffic signals can reduce accidents between vehicles
3 going across paths, they increase accidents with rear-end
4 collisions. And, when you are talking about people speeding up
5 to make a green light when they want to make a left turn at
6 Riggs Road, that s where you get the accidents. People try to
7 go too fast and then suddenly stop and the car behind them hits
8 strikes them.

9 So, your solution to the accident situation is
10 not necessarily addressed by a traffic signal.

11 MR. SOCKWELL: So, you don t believe that staged
12 traffic signalization has any impact on accidents?

13 MR. MORRIS: I m sorry, staged?

14 MR. SOCKWELL: Yes, traffic signals are usually
15 coordinated.

16 MR. MORRIS: Oh, you are talking about
17 interconnected signals?

18 MR. SOCKWELL: Yes. You don t believe the
19 traffic signals would have any impact on that, you don t think
20 that stop signs would have any impact on that?

21 MR. MORRIS: You have a stop sign on Kennedy
22 Street, obviously.

23 If you installed a signal and interconnected it,
24 as you are suggesting, you know, we are dealing with
25 hypotheticals, neither you nor I know what the accidents are at

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1 this intersection, what causes the accidents.

2 MR. SOCKWELL: Right.

3 But, the question would be raised, if an
4 approval of the proposed project had a stipulation in it that
5 the number of accidents occurring at that intersection
6 increased significantly over the period of, say, 12 months,
7 that the Applicant would be bound to look into specific
8 solutions, such as traffic signalization.

9 MR. MORRIS: It would depend on what kind of
10 accidents, if the accidents are coming in or out of the
11 gasoline station.

12 MR. SOCKWELL: Yes.

13 MR. MORRIS: I would note, Mr. Sockwell, that we
14 are improving the safety conditions by eliminating one of the
15 driveways into this site.

16 MR. SOCKWELL: But, the driveway is being
17 eliminated because of the change in the site plan. It has
18 absolutely nothing to do with anything else. The site plan for
19 the original building allowed a way in and a way out, and a way
20 to wrap around that building.

21 In this case, your change is really based upon
22 the site plan. I wouldn't want to try to put a very good site
23 planning design to scrutiny for some obviously unrelated
24 reason.

25 MR. MORRIS: Of course, access relates to the

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1 site plan. The point is that instead of four places of
2 conflict you would now have three, and that clearly is a safety
3 improvement.

4 As far as putting a traffic signal in, as I m
5 sure you know there s a Manual on Uniform Traffic Control
6 Devices which state what the warrants are for a traffic signal,
7 having to do with accidents, and the mere fact that you have a
8 certain number of accidents does not warrant the installation
9 of a traffic signal. It s only warranted when the traffic
10 signal would actually reduce the number of accidents because of
11 the types of accidents.

12 MR. SOCKWELL: Or might prevent accidents, or
13 might better channel the traffic.

14 MR. MORRIS: No. No, sir, I m sorry, those would
15 not be warrants according to the manual that the Department of
16 Public Works specify.

17 MR. SOCKWELL: No, they didn t go by it in other
18 cases, that certainly doesn t mean that it s the panacea for
19 solutions.

20 MR. MORRIS: Okay.

21 MR. GILREATH: Madam Chair, I certainly safety
22 is something that we should be mindful of, but I m not sure
23 that we should burden the Applicant. If, indeed, there s some
24 kind of potential safety problem there, this DPW, there s some
25 kind of the City after the analysis making a determination. To

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1 simply say they are responsible, I think maybe that we are
2 exceeding appropriate limits. They can certainly cooperate
3 with the City in studying it, but

4 CHAIRPERSON REID: Well, at this point, I think
5 we are just putting it out on the floor. We have not made any
6 motions or anything.

7 MR. GILREATH: Well, as long as we don't unduly
8 burden them saying it's their responsibility, the safety of
9 this intersection.

10 CHAIRPERSON REID: Well, no, we have not gotten
11 to that point.

12 MR. SOCKWELL: This is just a discussion of
13 whether the use itself may or may not.

14 MR. GILREATH: Okay.

15 CHAIRPERSON REID: Just, basically, addressing
16 the concerns from one of the letters of opposition that I guess
17 Mr. Sockwell wanted to try to find out, and I did too, if, in
18 fact, this could be addressed, are there any means or ways to
19 be able to try to mitigate the problem, or just to kind of get
20 an idea where his mind was in regard to this issue.

21 The other letter

22 MS. PRUITT: Excuse me, Madam Chair, may I follow
23 up with a question?

24 CHAIRPERSON REID: Sure.

25 MS. PRUITT: Mr. Morris, what's the level of

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1 service at the nearest intersection?

2 MR. MORRIS: A.

3 MS. PRUITT: A, and will that change as a result
4 of the gas station, do you believe?

5 MR. MORRIS: No, it will not.

6 MS. PRUITT: Thank you.

7 CHAIRPERSON REID: Okay.

8 The other letter was in regard to trash, and
9 litter, and loitering, and I think that this is basically an
10 anticipation of the gasoline station being put there and
11 probably they are not aware of the track record that Exxon has
12 as far as what we have heard here today in regard to the manner
13 in which they keep their facilities in terms of cleanliness,
14 and in terms of trash removal, or discouraging loitering. So,
15 I don t think that that is something that is of paramount
16 importance in this issue. But, nonetheless, it had been raised
17 so we thought that we would bring it to your attention, that
18 this was something indicated by Ms. Shirley Bryant, and if you
19 could just, for the record, indicate what you know, what your
20 usual procedures are then that would address that particular
21 issue.

22 MS. LEVINE: Madam Chairperson, in response to
23 the issues of trash and collection on site, the first thing I
24 would bring to your attention is that with the current bay
25 facility we have a lot of storage of cars, storage of tires,

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1 used auto parts, and by removing those service bays that
2 storage will no longer be necessary.

3 So, the trash that we are now really talking
4 about is more going to be related to wrappers, some packaging,
5 that might be disposed of, quickly consumable items on the
6 property, soda bottles, candy bars. To that end, what we do is
7 we will provide trash receptacles outside of the convenience
8 store, inside of the convenience store, and at every fueling
9 dispenser, so that we provide a lot of opportunities for the
10 customer to go ahead clean up after themselves and throw out
11 their trash in an appropriate manner.

12 CHAIRPERSON REID: Is the site monitored
13 periodically to make sure that the customers are you've
14 probably seen, as I have, somehow throw a candy wrapper right
15 beside a trash can.

16 MS. LEVINE: And, I understand that as well, but
17 the sites are monitored. One thing that

18 CHAIRPERSON REID: How often?

19 MS. LEVINE: they are monitored throughout the
20 day by the cashiers and by the operators of the facility. On a
21 global basis, Exxon does, as I previously mentioned, audit the
22 stores to make sure that that's being maintained.

23 CHAIRPERSON REID: Continuously monitored.

24 MS. LEVINE: To make sure that that's being
25 maintained, we offer incentive programs to encourage that type

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1 of compliance, but we really do employ quality operators that
2 understand that they need to respect their neighbors, that
3 understand the image that Exxon would like to portray to the
4 community. And, as a result, we do typically have daily
5 monitoring, constant monitoring, of our sites.

6 MR. SOCKWELL: Madam Chair, to the best of my
7 knowledge Exxon has always had clean stations.

8 CHAIRPERSON REID: Okay.

9 MR. SOCKWELL: At least the ones that I've been
10 to have always been clean.

11 CHAIRPERSON REID: All right.

12 So now, we have closing remarks from Mr.
13 Collins, please.

14 MR. COLLINS: Thank you, Madam Chairperson,
15 members of the Board. We do believe that we have met all of
16 the requirements for special exception approval. We have gone
17 through, by testimony and by written submission, all of the
18 requirements for special exception approval for this gasoline
19 station. It is in the C-2-A zone.

20 We are removing, by consolidating two sites into
21 one, we are removing, for the life of this gas station, an
22 opportunity for someone else to develop the adjacent site where
23 the veterinary clinic was, into some other use which itself may
24 become, or might have been otherwise, a primary trip generator.
25 We are removing the additional curb cut along South Dakota

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1 Avenue that otherwise might have served that other use, so that
2 we are consolidating the number of curb cuts along South Dakota
3 from three to two.

4 Mr. Morris has testified that there will be an
5 increase of approximately five to seven cars in the peak hour,
6 and if the peak hour is 60 minutes that means one additional
7 car every nine to 12 minutes, which is not a significant
8 increase in the number of vehicles. He had testified that the
9 level of service at this intersection would remain at level of
10 service A, which it is right now, which is the lowest level of
11 service measurable.

12 In terms of trash, you have heard Ms. Levine
13 just now talk about all the measures that Exxon can take, and
14 will take, and has taken in all its other stations to make sure
15 and ensure that its stations are very clean and orderly. The
16 point that this will be a change from a bay facility with the
17 repairs to a non-bay facility will significantly increase the
18 cleanliness of the site. Also from an environmental protection
19 standpoint, you will not have cars dripping petroleum products
20 on the surface, which may get washed into the streets while
21 they are awaiting repairs, and otherwise rusting, and otherwise
22 cluttering of the site.

23 So, for all the reasons we think this will be an
24 improvement over the existing condition on both properties. It
25 will return the now vacant lot to a productive use in the

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1 neighborhood, and it represents a significant economic
2 investment by Exxon on this site. And, for all those reasons,
3 and the reasons we stated in our testimony, we would request
4 that you approve this application.

5 Thank you.

6 MR. SOCKWELL: Mr. Collins?

7 MR. COLLINS: Yes, sir.

8 MR. SOCKWELL: You approached the Advisory
9 Neighborhood Commission you said, who was the ANC Commissioner
10 that would be the chair of that ANC that you submitted to?

11 MR. COLLINS: Actually, it was Ms. Shaw who
12 called the ANC offices, and alerted them. You look in the
13 phone book, you look at the ANC, we don't call the chair, we
14 call the office, and the ANCs were all contacted, and in one of
15 the ANC s, please forgive me, I have a memo to the file which I
16 can refer to. Excuse me for a second it was ANC-4B, which is
17 the primary ANC, Ms. Shaw left a message with the SMD, Single
18 member District Commissioner, Amy Hatcher, on the 27th of
19 September, and then also spoke with Mr. Frank Jackson on that,
20 and they informed us that actually, Mr. Jackson mentioned
21 that he does not see that this would be a problem, thinks it
22 would be an improvement to the site, and he said the ANC might
23 not even need to consider it. That was on the 27th of
24 September.

25 MR. SOCKWELL: Thank you.

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1 CHAIRPERSON REID: Mr. Collins, again, are you
2 looking for a bench decision, summary order?

3 MR. COLLINS: Yes, please, Madam Chairperson.

4 CHAIRPERSON REID: All right.

5 MR. GILREATH: Madam Chair, this is somewhat
6 similar to the other case in terms of the use and so forth. I
7 feel the Applicant has adequately met the burden of proof. I
8 think that by eliminating the automotive repair, the grease
9 pit, the parked cars and so forth, it probably is an
10 improvement, and the building that was there before this clinic
11 was a vacant building, I presume, so that will be eliminated.

12 So, overall, I think the situation would be
13 better. In terms of the lottery use, I agree with Mr.
14 Sockwell, I think that will increase a bit but will not be
15 during peak hours. This seems to occur, as I understood Mr.
16 Sockwell, in the evening, so that does not really impact the
17 traffic, and I feel that they've adequately met the burden of
18 proof and that I recommend that we approve the application.

19 MR. SOCKWELL: Let me ask one more question
20 briefly, that is, telephones outside of the convenience store
21 and/or along the site, where are they to be located and how
22 many?

23 MR. PRAKASH: As proposed, two telephones are to
24 be located in northeastern side of the property, shown by that
25 outline.

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1 MR. SOCKWELL: The telephones are usually the
2 point at which any illicit activity will take place, especially
3 if they are placed remotely from a control point. Is it
4 possible that the telephones could be relocated to the left or
5 right front of the convenience store building where they would
6 be more in a controlled location, more visible, where the
7 activity that takes place at those phones would be more
8 visible?

9 MS. LEVINE: Yes, sir, we d be willing to
10 relocate the telephones, if that was a request of the Board.

11 CHAIRPERSON REID: Okay. That was one of the
12 issues that was also raised, that I failed to mention, in one
13 of the letters, I think the Belcher letter, that they were
14 concerned about the telephones attracting illicit activity and
15 loitering.

16 MR. GILREATH: Madam Chair, one of the things I
17 failed to mention, I gather that, perhaps, there is a safety
18 problem in this area, I m not sure who takes the initiative,
19 whether the ANC, is DPW the appropriate body that investigates
20 areas where they have a high rate of accidents? I think it
21 should be looked at by the appropriate governmental authorities
22 of the District of Columbia, but we should not put the burden
23 on them, but hopefully they would cooperate in any kind of
24 analysis and so forth and any measures that could reasonably be
25 taken to reduce the accident rate there, if, indeed, there is.

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1 We don t even know that.

2 MR. SOCKWELL: Well, the police department would
3 probably have reports on the collision accidents, those that
4 had been reported, and pedestrian or other, or injury
5 accidents.

6 MR. GILREATH: Well, is there somebody or some
7 office whereby ANC or if, indeed, Exxon felt that there was
8 undue safety problems there, they could request an analysis be
9 made? Someone has to be able to come out, analyze, dig up the
10 data, and determine whether or not there s a real problem, if
11 there is, what measures should be taken to alleviate it.

12 MR. SOCKWELL: Mr. Morris, that would probably be
13 Bureau of Traffic Services, wouldn t it?

14 MR. MORRIS: Yes, sir, it would.

15 MR. GILREATH: Now, who should take the
16 initiative I don t know, but maybe the ANC, or you could use
17 your good auspices to encourage them. First of all, we need to
18 determine, I guess, whether or not there s a real accident
19 safety problem. Maybe it would be analyzed and say it s no
20 worse than the others, it s within acceptable limits,
21 everything considered. How that should be addressed, I don t
22 know, but ideally someone should look into it.

23 MR. SOCKWELL: Since we don t have any data, and
24 apparently none was presented as to any accident history in the
25 vicinity of the inter

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1 CHAIRPERSON REID: Did you second this motion?

2 MR. SOCKWELL: yes. Well, I can.

3 CHAIRPERSON REID: Please, do.

4 MR. SOCKWELL: I ll second the motion.

5 CHAIRPERSON REID: Okay.

6 I concur with my colleagues. I feel that the
7 Applicant has met his burden of proof. They have shown how
8 they are in compliance with Section 706 and Section 2302 of the
9 Zoning Regulations. I feel that granting them relief is in
10 harmony with the general purpose and intent of the Zoning
11 Regulations and map, and that it would not adversely affect the
12 use of the neighboring property.

13 All in favor?

14 (Ayes.)

15 CHAIRPERSON REID: We didn t want any conditions.

16 MS. PRUITT: I was just going to ask, was there a
17 condition that telephones be relocated to the front?

18 MR. SOCKWELL: Yes, the condition is that the
19 telephones be relocated to the face of the

20 MS. LEVINE: Convenience store?

21 MR. SOCKWELL: convenience store building.

22 MS. PRUITT: Will those phones also be outgoing
23 calls only, or

24 MR. SOCKWELL: No, they are probably going to be
25 either Bell or somebody, whoever pays them the most to put them

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1 up there.

2 CHAIRPERSON REID: Well, when you say outgoing
3 phones, there

4 MS. LEVINE: There are some public phones that
5 don t allow you to receive calls.

6 CHAIRPERSON REID: well, I think that would
7 probably be helpful.

8 MS. LEVINE: And, the reason they don t do that
9 is so that you don t have people hanging

10 CHAIRPERSON REID: Hanging around waiting for
11 calls.

12 MS. LEVINE: Right.

13 MR. SOCKWELL: The restriction would be a revenue
14 issue, albeit it minor, to Exxon, but I don t know whether we
15 can restrict them from outgoing.

16 MS. PRUITT: Well, I know there s a lot of gas
17 stations and a lot of public telephones do have that
18 restriction.

19 CHAIRPERSON REID: Do you have any problem with
20 that, Ms. Levine?

21 MS. LEVINE: I would appreciate the opportunity
22 to allow incoming calls.

23 CHAIRPERSON REID: All right, well, let s see
24 what we can do to compromise here, you have a complaint about
25 the incoming I mean, about the telephones, and the loitering,

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1 and the attraction of illicit behavior, illicit activity, you
2 have two telephones, we have two telephones, right, so what
3 about having one telephone, if you are going to allow incoming
4 calls, and why, what s important to you about the incoming
5 calls because it seems to me that if in Washington this is a
6 method by which property owners and proprietors have been able
7 to dissuade illicit activity, you know, them coming to the site
8 and using that as their outpost of their office to receive
9 calls or conduct business, I m speaking of the illicit drug
10 people, or prostitutes, or whatever, then is there some reason
11 why you specifically would like to have incoming calls at a
12 telephone booth?

13 MR. SOCKWELL: It s a revenue issue, I m sure.

14 CHAIRPERSON REID: I don t think that Exxon is
15 really hurting in terms of one telephone.

16 MR. SOCKWELL: Madam Chair, let me just say this,
17 we live in the day of the beeper, and virtually every
18 individual that we would want to restrict from using the
19 incoming call privilege would probably have a beeper available
20 to him or herself, and I think that it really is a limited
21 value restriction today.

22 CHAIRPERSON REID: What, having incoming calls?

23 MR. SOCKWELL: Not having taking the incoming
24 call capability away from the phone, because all they have to
25 do is get their beeper and then call from wherever.

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1 CHAIRPERSON REID: Oh, a cell phone, most
2 everyone today has a cell phone.

3 MR. SOCKWELL: If they can call out, once they
4 know who to call, they can call back out using the phone.

5 CHAIRPERSON REID: Yeah, I just wanted to find
6 out what rationale you had for wanting to have the incoming
7 calls.

8 MS. LEVINE: As Mr. Sockwell said, we do live in
9 an age of technology right now, and most people do own beepers,
10 and cellular phones. However, for the customer that does not,
11 in the event that they needed to page someone, for example, and
12 receive a return call that might not have a cellular phone, or
13 whose battery might have run out, it does provide a service to
14 allow that phone call to come in.

15 You know, again, we are not offering service
16 facilities other than those that might be minor in nature that
17 a cashier could help with, and in the extent that they might
18 have to call AAA and wait for a return call, their battery
19 died, their cell phone is not working, it just provides an
20 additional service. It really is not a revenue stream.

21 MR. SOCKWELL: Well, sometimes, it depends on who
22 you are renting from.

23 CHAIRPERSON REID: What about one phone, rather
24 than two phones.

25 MS. LEVINE: I would be acceptable to one phone.

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1 We would just like to have the service available to our
2 customers.

3 CHAIRPERSON REID: All right, then why don t we
4 condition it to move the phones to the front of the convenience
5 store, one, and two, one phone rather than two.

6 MR. GILREATH: Madam Chair, I can visualize a
7 situation whereby that it s raining and one person is trying to
8 use one person is using the phone, and you are standing there
9 waiting and this person has a long conversation and what have
10 you. It seems maybe one or two, I don t think is really that
11 significant, I think two provides some convenience to give the
12 second person an opportunity.

13 If you have a situation whereby you are at a
14 filling station waiting to use the phone

15 CHAIRPERSON REID: I agree, but then you can also
16 envision two phones, two people on the phones and someone
17 standing in the rain waiting in long conversations, but I think
18 that what I m concerned about is that particular area, Mr.
19 Gilreath, is one that is generally notorious for illicit
20 activities. Right there coming off Kennedy Street is one of
21 the most notorious in the City, and I think that s where the
22 apprehension of the neighbors is coming from, they don t want
23 to give these

24 MR. GILREATH: People.

25 CHAIRPERSON REID: people, give these persons

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1 license to then take up right there at that gas station,
2 because it s a new place, it gives them another place to be
3 able to hang out, and that s what I was just trying to see, if
4 we could mitigate that. And, even though it may cause
5 situations where there are two people standing, or another
6 person standing, and a person is on the telephone, I think that
7 that s better than having those people take up at that
8 particular gas station, and they will.

9 MR. GILREATH: Okay, as long as Ms. Levine has no
10 problem with it, and as I understand it you are talking in
11 terms of public safety and so forth

12 CHAIRPERSON REID: Right.

13 MR. GILREATH: so, I will go along with that.

14 CHAIRPERSON REID: Right. I think that s the
15 only reason why, other than that there would be no reason to
16 limit the telephone to one, and I highly don t agree with the
17 idea of not allowing any incoming calls, so I ll go along with
18 incoming calls if it s only one telephone.

19 MR. GILREATH: I accept that.

20 MR. SOCKWELL: Since we got on public safety, we
21 might as well take it to the limit. In some of your stations I
22 know you have a, or at least some companies, I believe that
23 Exxon does it, has sort of a special police department decal
24 for them to know that they can use that station for certain
25 things, community services type connection, how do you work

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1 that?

2 MS. LEVINE: It is typically up to the individual
3 operator, in all honesty. That s not something that we
4 enforce, it is something we encourage. Often times, we ll have
5 basic office center facilities available inside the store, a
6 fax, a copy machine, and we will typically even encourage the
7 local police to come in, use the facilities, offer them a cup
8 of coffee or a glass of soda, so that they can have a presence
9 on the site, but it s not something that we enforce, it s
10 really done on a store-by-store basis.

11 MR. SOCKWELL: And, it s all dealer controlled?

12 MS. LEVINE: Correct. It s not something we can
13 require our dealers to do, but it is something we encourage,
14 and if the local police are in favor of it, and they would like
15 to, you know, have those facilities available to them, we do
16 offer that up.

17 MR. SOCKWELL: It sounds like being an Exxon
18 dealer gives one a lot of freedom to operate one s facility as
19 one sees fit.

20 MR. COLLINS: In accordance with the agreements.

21 CHAIRPERSON REID: All in favor?

22 (Ayes.)

23 CHAIRPERSON REID: Opposed?

24 MS. PRUITT: Staff would record the vote as 3/0
25 to approve, motion made by Mr. Gilreath, seconded by Mr.

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1 Sockwell, with the condition that one telephone be relocated to
2 the front of the convenience store.

3 CHAIRPERSON REID: Okay.

4 Next case, please.

5 Mr. Collins, your order should be out within
6 about two, two or three weeks, hopefully, about two weeks.

7 MR. COLLINS: Great, thank you very much.

8 MS. PRUITT: The next case on the agenda is
9 16495, application of Alma Newsome, pursuant to 11 DCMR 3108.1
10 for a special exception under subsection 333.1 for the
11 construction of a new principal storage structure on an alley
12 lot of an existing structure in an R-4 District at premises
13 1140 Morse Street, N.E. (Square 4065, Lot 802).

14 All those planning to testify would you please
15 stand and raise your right hand?

16 Please, be seated, sir.

17 Whereupon,

18
19 was called as a witness by Counsel for the Applicant, and
20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 MR. WASHINGTON: Good morning, Madam Chair and
23 members. My name is William Washington. I m acting as the
24 agent for my client. My address is 10101 Lintford Terrace, and
25 that s Lanham, Maryland.

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1 Madam Chair, my client, Ms. Alma Newsome, she
2 lives at 1140 Morse Street, N.E., and at the rear of her
3 property she owns a lot, and which is called an alley lot, and
4 at the rear of that property, when they first purchased, her
5 and husband, there was a garage there. And, after several
6 years, the garage had erosion and was falling down.

7 In lieu of that, her husband built a storage
8 shed. Now, I grant you Ms. Newsome's husband did not follow
9 the procedure and get a permit for that, but prior to that Ms.
10 Newsome, she'd been getting several letters and complaints from
11 an inspection board. They've been coming by saying that you
12 have to get a permit for the shed that they erected in the back
13 of her property.

14 And, you know, today we just want to know if we
15 can have favor, or if we can be granted to proceed with the
16 process to get a permit so she can be issued the storage shed.

17 And, we have a letter from neighbors, you know,
18 concerning this issue, and we have a list of 17 nearby property
19 owners signing this document, you know, stating that, you know,
20 they signed and they agreed that the shed is in the back of her
21 property, it is not a nuisance. By the way, she has the area
22 fenced off, and she grows vegetables and all kind of stuff back
23 there, so we just want to know if, you know, the Board would
24 grant her wish that she can proceed with the permit for a shed.

25 CHAIRPERSON REID: The petition that you said

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1 that you had, did you submit that as part of the record,
2 because I didn't see it.

3 Those are from property owners?

4 MR. WASHINGTON: Yes.

5 CHAIRPERSON REID: Give it to staff, property
6 owners who are in support of your application.

7 MR. WASHINGTON: Right.

8 CHAIRPERSON REID: Okay.

9 And, you say that she wants she also has a
10 garden on this land?

11 MR. WASHINGTON: Yes, there's a garden.

12 CHAIRPERSON REID: And, she wants to convert this
13 now to a

14 MR. WASHINGTON: Storage shed.

15 CHAIRPERSON REID: a storage shed.

16 Here's my question, I'm a little confused here
17 because it looks like you have steps, and a window, and a door,
18 and does anyone live there?

19 MR. WASHINGTON: No.

20 CHAIRPERSON REID: Has anyone ever lived there?

21 MR. WASHINGTON: No.

22 MR. GILREATH: Is there an air conditioning unit
23 there? Is this used for a work area as well?

24 MR. WASHINGTON: The Applicant, it was a storage
25 shed, but he also did some office work in there too, so he had

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1 a chair and table and all that kind of set up in the storage
2 shed, too.

3 MR. SOCKWELL: Mr. Washington, is there any
4 plumbing in this building?

5 MR. WASHINGTON: No, it s not.

6 MR. SOCKWELL: So, there s no running water?

7 MR. WASHINGTON: No, it s not.

8 CHAIRPERSON REID: No heat?

9 MR. WASHINGTON: Yes, it s got heat.

10 CHAIRPERSON REID: Air conditioning. Heat and
11 air conditioning.

12 MR. WASHINGTON: Yes.

13 CHAIRPERSON REID: Okay.

14 So, you are asking for a storage shed, but the
15 use is actual for other than storage, is that what I m hearing?

16 MR. WASHINGTON: Well, no, we are asking for a
17 storage shed.

18 MR. GILREATH: You are saying it was previously
19 may I ask, is the, I guess if you will, the husband is deceased
20 now, he used it and this lady here is simply saying she now
21 wants to use it solely for storage, is that what you are
22 asking?

23 MR. WASHINGTON: Right, that s correct.

24 MR. SOCKWELL: When was it constructed?

25 MR. WASHINGTON: It was constructed, she told me,

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1 ten years ago.

2 CHAIRPERSON REID: See now, just one second, give
3 me one second what we were looking at, Mr. Washington, is on
4 your computation sheet, this sheet right here

5 MR. WASHINGTON: Uh-huh.

6 CHAIRPERSON REID: - can you pull it out,
7 please?

8 MR. WASHINGTON: I don t have that before me. I
9 don t have it.

10 CHAIRPERSON REID: You don t?

11 MR. GILREATH: He can use mine, if he wants.

12 CHAIRPERSON REID: Okay.

13 MR. WASHINGTON: Thank you.

14 CHAIRPERSON REID: Okay. Your application says
15 storage building right here.

16 MR. SOCKWELL: but, it says, Proposed: one
17 dwelling unit, and that would mean that you are asking for a
18 residential unit as that storage building.

19 CHAIRPERSON REID: Who filled this out?

20 MR. WASHINGTON: That must have been a mistake.

21 MS. PRUITT: That s what is submitted to DCRA,
22 which then triggers it to us.

23 CHAIRPERSON REID: No, but who filled it out is
24 my question.

25 MS. PRUITT: Oh, I m sorry, I didn t hear that.

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1 CHAIRPERSON REID: Did you fill it out, Mr.
2 Washington?

3 MR. WASHINGTON: Let me see.

4 CHAIRPERSON REID: Come and take a look at it.

5 MS. PRUITT: It s the application you gave to
6 DCRA.

7 MR. SOCKWELL: It s this, that yellow part, he s
8 asking for a dwelling unit.

9 MS. PRUITT: I know, I read that, I understand
10 exactly your concern.

11 CHAIRPERSON REID: Did you fill that out?

12 MR. WASHINGTON: No, I didn t fill it out, but I
13 was there present when I tried to submit this for permit.

14 CHAIRPERSON REID: So, were you aware of the fact
15 that they had put in here that

16 MR. WASHINGTON: No, I didn t, I wasn t aware
17 that they put down one dwelling.

18 MR. SOCKWELL: Okay, it makes it seem that the
19 storage building is being requested as a residential unit,
20 rather than as a non-residential storage building.

21 MR. WASHINGTON: Well, that was an oversight on
22 my behalf, but it s not used as a dwelling.

23 CHAIRPERSON REID: Okay.

24 Mr. Washington, your application is being
25 submitted under Regulation, I think it s 333, 331.1, did you

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1 I did not see in your application where you addressed that, how
2 you comply with 333.1. Are you familiar with that regulation?

3 MR. WASHINGTON: No, I m not.

4 CHAIRPERSON REID: All right, then let s take a
5 look at it. All right, here, come forward and look at 333.1,
6 each section, you have one, two, three, four and five, and look
7 at each one and then tell us how you or if you are in
8 compliance with that particular subsection.

9 MR. WASHINGTON: I think we followed all the
10 agreements on it, sections on here.

11 CHAIRPERSON REID: Mr. Washington, what I m
12 asking you to do, first of all, it should have done before you
13 came, okay, so what we are trying to do is to assist you in
14 making your case, and what I need you to do, I will give you
15 the regulations, look at each one, and tell us how you comply
16 with each one of those four or five that I just gave you, after
17 reading each one, and tell us about it.

18 MR. WASHINGTON: I need some time to look at this
19 so I can state the case. I need some time to review each one
20 of them and look at my file and see how it presents that case,
21 because I can t just go before and read this.

22 CHAIRPERSON REID: We can do it now.

23 MR. WASHINGTON: Okay.

24 CHAIRPERSON REID: It s not as complicated as you
25 might think. Basically, it s asking you, 333.1, storage of

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1 wares or goods, parking lot, parking garage or public storage
2 garage not otherwise permitted under provisions of the chapter,
3 or an alley lot, so referred on the records of the lender,
4 reported on the records of the District Finance Office, on or
5 before November 1 shall be permitted in the R-4 District if
6 approved by the BZA. You are here, so you are complying with
7 that, correct?

8 MR. WASHINGTON: Right.

9 CHAIRPERSON REID: Number two, 333.2, no storage
10 use authorized in the section shall be located in a building
11 containing more than 2,500 square feet of gross floor area.
12 Does your building contain more than 2,500 square feet?

13 MR. WASHINGTON: No, it s less than 2,500.

14 CHAIRPERSON REID: All right.

15 MR. SOCKWELL: I think it s approximately 400
16 square feet.

17 CHAIRPERSON REID: Four hundred, so it s no where
18 near, okay, so you meet that requirement.

19 MR. WASHINGTON: Okay.

20 CHAIRPERSON REID: Number 333.3, any use
21 authorized in the section shall not be likely to become
22 objectionable because of noise, traffic or number of employees.
23 You submitted the petition, basically from your neighbors, so
24 it s saying they have no objection, as a matter of fact they
25 support your application.

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1 MR. WASHINGTON: Okay.

2 CHAIRPERSON REID: So, you comply with that.

3 Then 333.4, the alley upon which the use is to
4 be located shall be readily negotiable by any trucking
5 necessary for the proposed operation.

6 MR. SOCKWELL: You ve got 20 foot and 15 foot
7 alleys all around it.

8 CHAIRPERSON REID: So, he complies with that.

9 MR. SOCKWELL: So, he complies with that.

10 CHAIRPERSON REID: 333.5, the hours of active
11 operation shall be arranged so as not to prove disturbing or
12 otherwise objectionable to persons residing around the
13 perimeter of the square in which it is located.

14 MR. SOCKWELL: And, what is Ms. Newsome going to
15 do in the building, basically?
16 Whereupon,

17 ALMA NEWSOME
18 was called as a witness by Counsel for the Applicant, and
19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 MS. NEWSOME: Just store

22 CHAIRPERSON REID: Give your name and your
23 address, ma am.

24 MS. NEWSOME: oh, my name is Alma Newsome, and
25 I live at 1140 Morse Street, N.E.

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1 We are just going to store like household stuff
2 that we got rid of, getting ready to throw out, stuff like
3 that.

4 MR. SOCKWELL: And, you ll probably because you
5 have an air conditioning unit in there, you ll

6 MS. NEWSOME: Well, at that time when my husband
7 put the air conditioning unit it, because he used to be out
8 there, but he s dead and gone so nobody is out there now.

9 MR. SOCKWELL: Okay.

10 CHAIRPERSON REID: Okay.

11 MR. GILREATH: Just a hypothetical, but suppose
12 that one of your children or your grandchildren wanted to move
13 in with you and wanted to use this as an office, should we
14 place some kind of restriction, say this is just a storage
15 area?

16 CHAIRPERSON REID: We can do that.

17 MR. GILREATH: As long as it s used for storage,
18 I have no problem with it.

19 MR. SOCKWELL: Storage and related activities.

20 MR. GILREATH: Okay, fine.

21 MS. NEWSOME: Basically, that s what I want it
22 for, just for storage. It s not going to be used for an
23 office.

24 MR. SOCKWELL: We are not going nobody is going
25 to be upset if you want to move your sewing machine out there.

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1 MS. NEWSOME: No.

2 CHAIRPERSON REID: All right.

3 So, moving on, the ANC has not submitted a
4 report, so we

5 MR. GILREATH: Yes, they did.

6 CHAIRPERSON REID: they did?

7 MR. GILREATH: It s right here. They have no
8 objections.

9 CHAIRPERSON REID: Okay, we are just hot off the
10 press, we ll just have to waive our record to accept this into
11 the record, will this go by consensus?

12 MR. SOCKWELL: Yes.

13 CHAIRPERSON REID: All right, then the ANC-5B is
14 saying that there was a unanimous decision on the application,
15 there was no opposition, and let s see if there was a quorum
16 present well, it says a unanimous decision, but it doesn t
17 say there was a quorum present, but, nonetheless, obviously
18 they are in favor of your application. Okay.

19 MS. PRUITT: Excuse me, Madam Chair, they do say
20 proper notice on D it says, Six members of the ANC
21 constitute a quorum.

22 CHAIRPERSON REID: Oh, I m sorry, there was a
23 quorum present.

24 MS. PRUITT: Okay, so you can give it great
25 weight.

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1 CHAIRPERSON REID: And so, therefore, your
2 application will be given the great weight to which it is
3 entitled.

4 And, Mr. Washington, don t leave without giving
5 us back our page, okay?

6 MR. WASHINGTON: Okay.

7 MR. SOCKWELL: Yes, that s my personal page.

8 DOCTOR WASHINGTON: Okay, thank you very much.

9 CHAIRPERSON REID: And, there are no letters of
10 opposition, but we do have support. We have a petition with 27
11 signatures, 17 signatures of neighbors who are in support of
12 the application.

13 No persons have appeared here in support nor in
14 opposition. So, we are getting down to closing remarks by the
15 Applicant. At this time, basically, you have an opportunity to
16 give us your last remarks.

17 MR. WASHINGTON: Okay.

18 First of all, we received a letter from a
19 neighbor, they said, due to the Newsome s property in the back,
20 with the fence around it, it s been keeping old cars,
21 loitering, people drinking, because she has that area
22 surrounded fenced in, and they feel as though with the shed in
23 the back it s not causing any kind of nuisance to the area.

24 And, given granted that we can have this, you
25 know, apply for this permit for the shed, I think Ms. Newsome

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1 would be very appreciative, because it seems like she s been
2 going through an ongoing battle trying to acquire this permit
3 so she can have the shed in the back.

4 And, I think it would be a memorial type thing,
5 since her husband built it, and it s something, a memory left
6 from him.

7 So, I would just thank the Chairperson for
8 giving us a grant so we can proceed with the permit process.

9 CHAIRPERSON REID: Okay, all right, thank you
10 very much. Excuse me one second.

11 All right. Would you like to have a bench
12 decision, summary order, which means you get a response today?

13 MR. WASHINGTON: We d like to get a response
14 today.

15 CHAIRPERSON REID: Okay.

16 Board members, I would move that we approve this
17 application. I think that the Applicant has demonstrated that
18 they have met their burden of proof under Subsection 333 of the
19 Zoning Regulations. There does not appear to be any adverse
20 impact. The community has basically supported them with a
21 petition. The ANC is also in support of this application. I
22 think that the only we can condition the special exception
23 with a stipulation that it be used for storage only

24 MR. SOCKWELL: And related uses.

25 CHAIRPERSON REID: and related uses, and I

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1 feel that it does not impair the intent or harmony of the
2 Zoning Regulations or map.

3 Did I hear a second?

4 MR. GILREATH: I second the motion, and if at
5 some future time, here again, if your grandchildren, one of
6 them wanted to open it and make this be used as an office,
7 they d have to come back in and get a special exception. So,
8 it would have to be used for storage and related uses. And,
9 any kind of office use, would that be correct, Ms. Pruitt,
10 that if, indeed, there was the intent to use this for an office
11 at some other time it would be necessary to come back in and
12 ask for relief from us.

13 MR. WASHINGTON: Okay.

14 MR. GILREATH: I second the motion.

15 CHAIRPERSON REID: All in favor?

16 (Ayes.)

17 CHAIRPERSON REID: Opposed?

18 MS. PRUITT: Staff would record the vote as 3/0
19 to approve, motion made by Ms. Reid and seconded by Mr.
20 Gilreath, with the condition that it be used for storage and
21 related uses only.

22 CHAIRPERSON REID: Okay, thank you, and you
23 should have your response, your order back, in about two weeks.

24 MR. SOCKWELL: Don t forget to go for that
25 building permit and continue that process.

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1 MR. WASHINGTON: Oh, yes, so I m going to have to
2 get the order from you all first.

3 MR. SOCKWELL: Right.

4 MR. WASHINGTON: Okay.

5 MS. PRUITT: Correct, so once the order we will
6 actually mail it to Ms. Newsome, and then from there we then
7 send the file to DCRA so that you can get your permit.

8 MR. WASHINGTON: Okay.

9 CHAIRPERSON REID: That concludes the morning
10 session for the Board of Zoning Adjustment for September 13,
11 1999.

12 MR. GILREATH: What time are we going to
13 reconvene?

14 CHAIRPERSON REID: We will reconvene at

15 MR. GILREATH: 1:15 maybe?

16 CHAIRPERSON REID: That s fine with me.

17 1:15, is that Ms. Pruitt-Williams, Mr. Hart?

18 MS. PRUITT: That s certainly your call.

19 CHAIRPERSON REID: Okay, we ll resume at 1:15.

20 Does that give you enough time? John?

21 MR. SOCKWELL: The sooner we get out of here this
22 afternoon the happier I ll be.

23 MR. GILREATH: I ll go along with that.

24 (Whereupon, the hearing was recessed at 12:44
25 p.m., to reconvene at 1:15 p.m., this same day.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:30 p.m.

CHAIRPERSON REID: Good afternoon, ladies and gentlemen. The hearing will please come to order. This is the October 13th Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Sheila Cross-Reed, Chairperson. Joining me today are Robert Sockwell and Jerry Gilreath, representing the National Capitol Planning Commission.

Copies of today s hearing agenda are available to you. They are located to my left 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. When 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 special exception and variance cases are, one, statement and witnesses of the Applicant, two, government reports, including Office of Planning, Department of Public Works, ANC, et cetera, three, persons or parties in support, four, persons and parties in opposition, five, closing remarks by the Applicant.

Cross examination of witnesses is permitted for

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1 persons or parties with direct interest in the case.

2 The record will be closed at the conclusion of
3 each case, except for any materials specifically requested by
4 the Board and the staff will specify at the end of hearing what
5 is expected.

6 Decision of the Board in these contested cases
7 must be based exclusively on the public record. The Board,
8 with any appearance to the contrary, the Board requests that
9 persons present not engage members of the Board in
10 conversation.

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

13 The Board will now listen to any preliminary
14 matters. Preliminary matters are those which relate to whether
15 a case will or should be heard today, such as request for
16 postponement, continuance or withdrawal, or whether proper and
17 adequate notice of the hearing has been given, if you are not
18 prepared to go forward with a case, or if you believe that the
19 Board should not proceed, now is the time to raise such a
20 matter. Are there any preliminary matters? Does staff have
21 any preliminary matters?

22 MS. PRUITT: Yes, Madam Chair, the staff has two.
23 We ll start with the easy one, 16499. You have before you a
24 letter from the Applicant withdrawing this application.

25 CHAIRPERSON REID: We do?

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1 MS. PRUITT: Yes, it should have been given to
2 you this morning, it came very late last night from Mr. Gell.

3 We can get you an extra copy if you can t find
4 your s.

5 CHAIRPERSON REID: Do you have it, Mr. Sockwell?

6 MR. SOCKWELL: No.

7 MR. GILREATH: I don t have it either.

8 CHAIRPERSON REID: We don t have it. We have not
9 been given it yet.

10 Steven Gell, is he here?

11 MS. PRUITT: No, Mr. Gell is not here.

12 CHAIRPERSON REID: The attorney is not here?

13 MS. PRUITT: No.

14 CHAIRPERSON REID: All right, this is a request
15 for withdrawal on an application for two special exceptions for
16 the Jewish Primary Day School at 5000 14th Street, to permit a
17 private elementary school and a child development center, and
18 that s it. This is a withdrawal.

19 MS. PRUITT: Correct, that s what I stated, we
20 have a question of withdrawal.

21 CHAIRPERSON REID: Oh, I thought I don t know
22 why I was thinking you meant a postponement.

23 MS. PRUITT: No, we get so many of them, I know.
24 This is very simple, it s a request for withdrawal.

25 CHAIRPERSON REID: So, do we have to move to

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1 accept the withdrawal?

2 MS. PRUITT: I believe, I m not sure if this man
3 is speaking in reference to this case.

4 CHAIRPERSON REID: Are you in reference to this
5 case, No. what s the case number?

6 MS. PRUITT: 16499.

7 CHAIRPERSON REID: Okay.

8 So, there s no one here that is involved with or
9 has had any participation with that particular case? All
10 right, there are residents here who came to testify in regard
11 to the

12 MS. PRUITT: It s the Jewish Primary Day School.

13 CHAIRPERSON REID: the World Affairs Executive
14 Council/Jewish Primary Day School, this case has been
15 withdrawn.

16 The only information that we have, ma am, is
17 that there is a request for withdrawal. There is nothing else,
18 there is no we don t know anything more than that. So, any
19 questions I suppose would be directed directly to them, and we
20 move to accept their withdrawal.

21 MR. SOCKWELL: I second the motion.

22 CHAIRPERSON REID: All in favor?

23 (Ayes.)

24 CHAIRPERSON REID: Opposed?

25 MS. PRUITT: Thank you.

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1 CHAIRPERSON REID: Please call the next case.

2 MS. PRUITT: Actually, there s another item.

3 CHAIRPERSON REID: All right.

4 MS. PRUITT: I took the easy one first.

5 CHAIRPERSON REID: Okay.

6 MS. PRUITT: Silly me.

7 On the first application, 16496, it s really
8 more of a clarification, and the notice was written a little
9 confusingly because we got some very confusing information from
10 the Zoning Administrator.

11 CHAIRPERSON REID: Okay.

12 MS. PRUITT: It is advertised, we have advertised
13 for a special exception and a variance both, so in the case of
14 notice that we are adequate and okay with that, it s just that
15 you are looking for a special exception from 354.1 and a
16 variance from 354.4.

17 MR. GILREATH: Has the Applicant expressed any
18 do we have to use both of these, or we can approve only one?

19 MS. PRUITT: Yes, you have to approve both of
20 them.

21 MR. GILREATH: Oh, I see, both are required.

22 MS. PRUITT: Both are required. You have two
23 letters from Mr. Nunley, the Zoning Administrator, stating that
24 one was only required, subsequent to that he sent another one
25 stating it could be done in the alternative.

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1 After actually talking with Corp. Counsel, it is
2 believed, and I think the Applicant will concur, that they have
3 no problem with the special exception end of it, special
4 exception for the use, and a variance from the frontage I m
5 sorry, I don t have my regs directly in front of me.

6 CHAIRPERSON REID: The window.

7 MS. PRUITT: The window, yes, so that s how this
8 case should be proceed.

9 MR. SOCKWELL: By the way, the first letter was
10 actually signed for Mr. Nunley by Mr. Bello.

11 MS. PRUITT: Right.

12 MR. SOCKWELL: So, that may have had something.

13 MS. PRUITT: Yes, I m not sure, we weren t able
14 to track that down, but it s, for the most part, clear as mud
15 right now.

16 CHAIRPERSON REID: Are you referring to this July
17 15th letter, because that letter specifies there to be a special
18 exception and a variance, from Nunley, the Nunley letter.

19 MS. PRUITT: Right.

20 Staff had several communications with that
21 office, and a couple of letters, so what I just wanted to be
22 clear is that what has been advertised for is acceptable and we
23 can correct the application to reflect the exact sections that
24 are needed. But, a special exception and a variance are both
25 needed, just not the ones that were initially cited.

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1 CHAIRPERSON REID: Okay.

2 MS. Pruitt, I m sorry, Mr. Sockwell was talking
3 to me, we are going to this case will involve a special
4 exception under 350.4.

5 MS. PRUITT: Correct.

6 CHAIRPERSON REID: And a variance under 354.4.

7 MS. PRUITT: Correct.

8 CHAIRPERSON REID: All right, we are all on the
9 same page then. Okay.

10 MS. PRUITT: Right.

11 CHAIRPERSON REID: All right.

12 MS. PRUITT: That concludes staff s preliminary
13 matters. Thank you.

14 CHAIRPERSON REID: Do you want to call the case,
15 please?

16 MS. PRUITT: Yes.

17 The first case on the agenda is 16496,
18 application of H and M Enterprises, pursuant to 11 DCMR 3108.1,
19 for a variance from Subsection 354, and a variance under 3107.1
20 under Subsections 354.4 to allow a retail florist shop within
21 an apartment house in an R-5-D District at premises 1629
22 Columbia road, N.W. (Square 2589, Lot 476).

23 All those planning to testify, please stand and
24 raise your right hand.

25 Please, be seated and start.

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1 CHAIRPERSON REID: Give your name and address,
2 please.
3 Whereupon,

4 PATRICIO LAVERDY
5 was called as a witness by Counsel for the Applicant, and
6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 MR. LAVERDY: The address is 1629 Columbia Road,
9 N.W. My name is Patricio

10 mS. PRUITT: No, we need your home address and
11 your name.

12 MR. LAVERDY: Oh, okay. My name is Patricio
13 Laverdy, the address is 9916 Hemlock Woods Lane, Burke,
14 Virginia 22015.

15 CHAIRPERSON REID: Okay, go ahead.

16 MR. LAVERDY: We are here to request the approval
17 from the Board of Zoning and Adjustment so that I may operate a
18 retail flower shop on the lobby level of this apartment
19 building on 1629 Columbia Road, N.W.

20 I have been told by the Zoning Review Branch
21 that I may not get Certificate of Occupancy unless BZA approves
22 a special exemption to allow a commercial use in an apartment
23 building, Section 354, and a variance to allow the commercial
24 end use to be visible from the sidewalk.

25 The building that is called the Park Plaza has

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1 eight floors and five sections and 276 apartment units. The
2 central section, first floor has the lobby, and on the left
3 side are administrative offices for the building. On the right
4 side is a small 280-square foot room in which I hope to have my
5 flower shop. This is a good location for my business there,
6 because there are so many people living there in the building.

7 Most of my customers will come from the building, and though I
8 hope that some people on the outside will come and use my
9 business. I also want to get my business license so I can be
10 part of the FTD system.

11 I include a map of the building to show my
12 space. The room I want to use is a very small room, it could
13 not be used for an apartment. It could be used as an office,
14 but H and M Enterprises, the owner and manager of the building,
15 already had an office there in the lobby so it s not necessary.

16 The room is a good place for business with not many customers
17 going in and out of there, and I do not think that this
18 business will hurt the building or the community. It is
19 something that we need, and we will provide good service.

20 My flowers come from Ecuador, and they are roses
21 and lilies of many unusual types that you cannot get everywhere
22 in the City. It is true that my business has a window that
23 faces the street and is visible from the sidewalk, and it looks
24 like it s a window of a large apartment building, it is hard to
25 see into the window because of the reflection and things cannot

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1 be seen from the outside, so I do not think this is a very big
2 problem.

3 The variance will not be necessary if I cover
4 the window, but what will not look good inside, the outside
5 would not look good of the building. The photos that are with
6 the statement show that you cannot see from the window that
7 much.

8 Some other businesses have been approved by the
9 Board of Zoning Adjustment to operate in a building. There s a
10 retail pet food store there, the number is, the BZA number is
11 16381, a processing and dry cleaning station was approved, BZA
12 number 8550, and a deli is there, the approval is number 8527,
13 and I included copies there of these orders, and I hope that
14 you can approve my flower shop business.

15 Also, this is work that I can do very well to
16 support my family, and this is good for the neighborhood, and I
17 will not cause any harm.

18 Thank you.

19 CHAIRPERSON REID: Questions?

20 MR. SOCKWELL: Mr. Laverdy, you stated that the
21 building has 276 apartment units and is an eight-story
22 building, and you expect to derive most of your business
23 service from the residents of the building.

24 MR. LAVERDY: Yes, sir.

25 MR. SOCKWELL: In providing the service to your

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1 shop, in other words, flowers and accessories entering and
2 exiting in bulk as you stock your shelves, where will that come
3 from?

4 MR. LAVERDY: There is a large sized alleyway in
5 the back of the building, as you can see on the illustration
6 there, there s plenty of room there, and we do have a parking
7 space and there s a service elevator going up there.

8 MR. SOCKWELL: Thank you.

9 MR. GILREATH: One question, you said the
10 building has had other businesses, the only other commercial
11 activity now is the pet shop, these other uses occurred
12 earlier? So, if I were to go in the building now, what retail
13 activities would I see other than the pet shop?

14 MR. LAVERDY: Right now, if you go there, there s
15 a deli store down the bottom, down in the basement, and the pet
16 shop is there, and the dry cleaning there.

17 MR. GILREATH: Dry cleaning, all three of those
18 then.

19 MR. LAVERDY: There s three up there.

20 MR. GILREATH: Okay, fine, thank you.

21 CHAIRPERSON REID: For your variance, what you
22 need to do is to be able to demonstrate that you have met your
23 burden of proof in regard to a three-prong test, such that you
24 would be granted a variance, and I don t think I ve heard that
25 so far. What is it about your property that is unique or

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1 different, such that it would cause you a practical difficulty
2 to comply with the existing Zoning Regulations?

3 MR. LAVERDY: Well, we require the business
4 license, so we need to go through paperwork with the City. Is
5 that what you are asking?

6 CHAIRPERSON REID: Well, what is it no, what is
7 it that is unusual about your property, this particular site,
8 that it could not be used for a matter of right use?

9 MR. LAVERDY: Well, it can t be an apartment,
10 because it s too small. They have a management company there,
11 they have these offices there, they have two offices instead of
12 one.

13 CHAIRPERSON REID: That s what they had?

14 MR. LAVERDY: They had right there next to the
15 next to at the other side of the building in the same lobby
16 here there is two offices there. So, the place, I don t think
17 they can use it as an office, because it s a very small place.

18 CHAIRPERSON REID: Okay.

19 MR. SOCKWELL: I think what staff is getting
20 ready to say is that, Mr. Laverdy, you stated that you would
21 not need the variance if you covered your window, the window
22 that faces the outside of the building, correct, because your
23 entrance

24 MS. PRUITT: And, it s existing.

25 MR. SOCKWELL: and it s existing your

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1 entrance, or the entrance to your shop, is from the interior
2 lobby of the building.

3 MR. LAVERDY: Yes, sir.

4 CHAIRPERSON REID: Well, wait a minute, let me
5 understand this. Even though he is saying that he doesn't
6 think he needs a variance, I think that

7 MS. PRUITT: But, it's a variance from this one
8 particular part, which is that no part of the adjunct or
9 existing entrance to the adjunct shall be visible from the
10 sidewalk.

11 CHAIRPERSON REID: I'm sorry, just one second,
12 please.

13 Okay, MS. Pruitt-Williams, help us out here,
14 because in the agenda it says a variance from Subsection

15 MS. PRUITT: that's what I said, don't look at
16 that, because it was confusing, that was done 40 days ago, or
17 more than 40 days ago, when we had cursory information from the
18 Zoning Administrator. So, what you need to look at is, it's a
19 special exception from Section 354.1, which states, Sale of
20 the following convenience, commodities and services as
21 accessory uses and appropriate adjuncts to an apartment house
22 which are designed to serve tenants' daily living needs shall
23 be permitted in an R-5 District if approved by the BZA.
24 That's your special exception section.

25 The variance is from Section 354.4, No part of

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1 the adjunct or the entrance to the adjunct shall be visible
2 from the sidewalk.

3 CHAIRPERSON REID: Okay, so, basically, the
4 agenda is incorrect and should say special exception.

5 MS. PRUITT: Yes, that was the whole preliminary
6 issue I was trying to address.

7 CHAIRPERSON REID: All right, but, you know what,
8 I didn't

9 MS. PRUITT: It's very confusing, I agree.

10 CHAIRPERSON REID: Yes.

11 Okay. Now, so we don't need right here we
12 just need a special exception.

13 MS. PRUITT: You need a special exception from
14 Section 354.1 and a variance from Section 354.4.

15 CHAIRPERSON REID: Okay.

16 The variance from 354.4

17 MS. PRUITT: And, that states that, No part of
18 an adjunct or entrance ...

19 CHAIRPERSON REID: That's what we need to
20 address.

21 MS. PRUITT: Right.

22 CHAIRPERSON REID: However, Mr. Sockwell just
23 pointed out that the Applicant has stated that he didn't feel
24 he needed a variance.

25 MS. PRUITT: I believe his statement was he

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1 didn't need a variance if he covered the window, but he would
2 prefer not to for aesthetic, and business, and

3 CHAIRPERSON REID: But, the point I'm making is
4 that, here what we have before us is a variance, so

5 MS. PRUITT: I'm sorry, I'm not meaning to speak,
6 but I believe that he's stating that if he were to cover it he
7 wouldn't even be here, but he wants to leave it open.

8 CHAIRPERSON REID: Okay.

9 MS. PRUITT: So, therefore, he needs a variance.

10 CHAIRPERSON REID: All right.

11 MS. PRUITT: Is that correct, sir?

12 MR. LAVERDY: Yes, ma'am.

13 CHAIRPERSON REID: All right.

14 MR. GILREATH: Can we take this in two parts,
15 dealing with the special exception first, then the variance?

16 CHAIRPERSON REID: Sure.

17 MS. PRUITT: I believe you've dealt with the
18 special exception.

19 MR. GILREATH: Oh, we already dealt with it.

20 MS. PRUITT: And now you are moving on to the
21 variance.

22 CHAIRPERSON REID: Well now, at first we were
23 doing 350.4 as a variance, but now with that clarified here, I
24 guess we can deal with the first relief that's being requested,
25 and that is the 350.4 special exception.

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1 All right. Now

2 MR. GILREATH: I think we should try to get
3 through that and then see where we come out on the other one.

4 MR. SOCKWELL: It s 354.4.

5 CHAIRPERSON REID: No, 350.4 is the special
6 exception.

7 MS. PRUITT: 354.1.

8 MR. SOCKWELL: 354.1.

9 CHAIRPERSON REID: No.

10 MS. PRUITT: Yes.

11 CHAIRPERSON REID: As the special exception?

12 MS. PRUITT: Yes.

13 MR. SOCKWELL: Yes, 354.1.

14 MS. PRUITT: 354.4 is the variance.

15 CHAIRPERSON REID: Okay, 354.4 is the variance
16 and the special exception is 3

17 mS. PRUITT: 354.1.

18 CHAIRPERSON REID: I see, so we are not dealing
19 with 350 anything.

20 MS. PRUITT: Correct.

21 CHAIRPERSON REID: Oh, all right.

22 MR. GILREATH: It seems to me the special
23 exception will require less weighty proof and we are ready to
24 deal with that, and get through that, we get through that
25 successfully, then we can go on to the other.

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1 CHAIRPERSON REID: Okay, all right.

2 So, he demonstrated that the use is an adjunct
3 use, and that this is why you are here before the Board of
4 Zoning Adjustment.

5 Okay. Now, for the variance, for the 354.4, and
6 I think that specifically for the one that relates to the
7 signage, right?

8 MR. LAVERDY: Right.

9 CHAIRPERSON REID: You want to keep the signs,
10 keep the window.

11 MR. LAVERDY: Yes, ma am, that would help a great
12 deal.

13 MR. GILREATH: Do you want to put some kind of
14 sign in the window that says florist shop, so people can see
15 this from the street?

16 MR. LAVERDY: That would help, yes, sir, that
17 would help for the people in the building, you know, and

18 MR. GILREATH: Well, is your preference then, you
19 would like, ideally, rather than covering the window, what have
20 you, to actually have a sign there that says your florist shop,
21 so people walking by the sidewalk say I can go in there and buy
22 flowers, is that what you are or can you forego any kind of
23 sign in the window?

24 MR. LAVERDY: No, yeah, hopefully, we can put up
25 a small, very small sign there, at least for the wiring system,

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1 the FTD system, that s all we are required.

2 MS. PRUITT: Excuse me. Mr. Laverdy, this window
3 is not the primary, on the same side as the primary entrance to
4 the building, is that correct, is not?

5 MR. LAVERDY: No, it s not.

6 MS. PRUITT: Okay, I just wanted to ask for
7 clarification, it s on the side street.

8 And, it s an existing window?

9 MR. LAVERDY: Yes, ma am.

10 MS. PRUITT: And, is it covered now? I mean,
11 what is in that space now?

12 MR. LAVERDY: Well, just office stuff.

13 MS. PRUITT: So, it s exposed now and it s like
14 an office?

15 MR. LAVERDY: Yeah, it is, this building has been
16 there since

17 CHAIRPERSON REID: Okay.

18 Now, in order for us to grant you this variance,
19 the special exception I don t think we have a problem with, I
20 think that we ve kind of agreed with that, but the variance
21 aspect of it, in that you want your window is visible from
22 the sidewalk, one, and two, you have not I have not heard yet
23 you demonstrate to us how what it is about your particular
24 store, that particular parcel at that particular, is it an
25 apartment now?

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1 MR. LAVERDY: Well

2 CHAIRPERSON REID: What is it about the space
3 that is unusual or unique such that it would cause you some
4 type of practical difficulty to comply with the existing Zoning
5 Regulations, in other words, for a matter of right use?

6 MS. PRUITT: It s not a use.

7 MR. LAVERDY: It s not a use.

8 MS. PRUITT: This is an area variance, it s
9 considered an area, it s not a use variance, so it s a
10 different standard.

11 CHAIRPERSON REID: Okay.

12 Did I say area?

13 MS. PRUITT: No, you said use, and use, the
14 criterion for a use variance is different.

15 CHAIRPERSON REID: I don t mean use, I mean area.

16 MS. PRUITT: Right, exactly, but I just wanted to
17 clear the record.

18 CHAIRPERSON REID: Okay.

19 MR. SOCKWELL: Would you restate the

20 CHAIRPERSON REID: But, he still has to
21 demonstrate how

22 mS. PRUITT: The practical difficulty of how the
23 window poses a practical difficulty, that s what he needs to
24 address.

25 CHAIRPERSON REID: Okay, all right, that s better

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1 wording than just how is it that it poses a practical
2 difficulty.

3 MR. LAVERDY: Well, I would think that to comply
4 with the Zoning Board we would, you know, put up a small sign,
5 I don't know, it would be helpful for us to it's a very small
6 place, and there's a door that faces to the lobby, and just a
7 window there. The window is outside, it's been there for
8 years, if we can put the small sign that would help.

9 CHAIRPERSON REID: It would help what?

10 MR. LAVERDY: It would help on our business. The
11 primary is serving to the people in the building.

12 CHAIRPERSON REID: Right.

13 MR. LAVERDY: And, you know, people from the
14 outside on Columbia Road, if they wanted to buy flowers from
15 our flower shop, they are welcome too. So, that's not, you
16 know

17 MR. GILREATH: It sounds like the Applicant
18 really is wanting a little bit of advertising, this FTD sign in
19 the window, to let potential patrons outside know about it and
20 would come in, so we are really talking about an advertising
21 sign in the window.

22 MR. SOCKWELL: Mr. Laverdy?

23 MR. LAVERDY: Yes, sir.

24 MR. SOCKWELL: What in part you are saying is
25 that you have a window in your space, that window just happens

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1 to be part of your space.

2 MR. LAVERDY: Yes.

3 MR. SOCKWELL: It s also the way that you will
4 get natural light, and if necessary, is it an operable window?

5 MR. LAVERDY: Yes, sir.

6 MR. SOCKWELL: You could possibly get ventilation
7 at some time if it didn t negatively affect things, and if you
8 use the window for its accepted purpose it will provide some
9 visibility into your shop, because you would have to open the
10 blinds in order to get the benefit of the light, and you would
11 have to at least open the window to get the benefit of the
12 ventilation.

13 So, if all of those things are true, what you
14 are hoping is that you would be allowed to use the window for
15 its intended purpose, and gain some minor added benefit from
16 having access to a sign in that window. Is that pretty much
17 what you are saying?

18 MR. LAVERDY: Exactly, yes, sir. Yes, sir,
19 exactly.

20 MR. SOCKWELL: Thank you.

21 CHAIRPERSON REID: So, the practical difficulty
22 is okay, you are saying that the practical difficulty is, if
23 you don t have the window you don t have air?

24 MR. LAVERDY: Well, you know

25 CHAIRPERSON REID: Or circulation?

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1 MR. LAVERDY: right now, for example, the
2 building, the heat is not on so we have pretty warm weather,
3 and sometimes we can use light.

4 CHAIRPERSON REID: Okay, well that s what we
5 just need to establish the need for the window, I guess.

6 MR. SOCKWELL: So, the practical difficulty is
7 that if you have a window it s difficult not to use it for its
8 intended purpose, which is to let light into the space.

9 MR. LAVERDY: Exactly.

10 CHAIRPERSON REID: And air.

11 MR. SOCKWELL: And air, and if it s difficult not
12 to use the window for its intended purpose, it s certainly
13 difficult to be completely invisible as a flower shop that has
14 a window that would be used for its intended purpose.

15 MR. LAVERDY: Yes.

16 CHAIRPERSON REID: And, the size of the space is

17

18 MR. LAVERDY: It s 280 square feet.

19 CHAIRPERSON REID: which is substandard for
20 other units in that building.

21 MR. LAVERDY: If you are referring to the size of
22 the apartments they have there.

23 CHAIRPERSON REID: Well, yes, I m referring to
24 other units.

25 MR. LAVERDY: No, that would be the size of a

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1 kitchen in a regular apartment.

2 CHAIRPERSON REID: That s the whole point I m
3 making, is that the size of this space is substandard in
4 comparison to the other units in the building.

5 MR. LAVERDY: Yes, ma am.

6 CHAIRPERSON REID: Okay.

7 MR. GILREATH: Well, Madam Chair, I can see the
8 window, he needs that for lighting and ventilation, so I can
9 see keeping the window available and open and so forth, but I m
10 having a problem with also putting an FTD sign in the window,
11 which to me crosses the line over into advertising. So, he s
12 advertising from the window.

13 CHAIRPERSON REID: Well

14 MR. GILREATH: If he just didn t advertise, as
15 far as I m concerned the window isn t a difficulty, and I think
16 he could go ahead and do. But, the advertising is what s
17 causing the problem for me.

18 CHAIRPERSON REID: Well, look at other things, I
19 wanted to ask MS. Pruitt-Williams, under this 354.4 and .5,
20 that does not take into account the aspect of the business
21 being used by the tenants in the building only?

22 MS. PRUITT: I m sorry, can you repeat that?

23 CHAIRPERSON REID: Okay.

24 Under 354.4 and .5, that we are talking about a
25 variance from those two subsections of the section.

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1 MS. PRUITT: Actually, the Zoning Administrator
2 didn't cite 354.5, so you are really only looking at 354.4
3 only.

4 CHAIRPERSON REID: Oh, so we are not even dealing
5 with a sign at all.

6 MS. PRUITT: Correct.

7 CHAIRPERSON REID: So, we can't even entertain
8 that.

9 MS. PRUITT: Well, I guess the point is, when the
10 Zoning Administrator looked at it, there was no indication that
11 signage would be in the window, so there was no need for him to
12 then look to seek a variance.

13 CHAIRPERSON REID: When you applied, when you
14 sent in your application, sir, did you indicate that you wanted
15 to put that little sign in the window?

16 MR. LAVERDY: No, I did not. I didn't indicate
17 anything.

18 CHAIRPERSON REID: Okay, so since you didn't ask
19 for it, then he didn't indicate that you needed to have a
20 variance from the subsection as well, and verbally you are
21 asking us to allow that, but we can't.

22 MR. GILREATH: What would be the problem with
23 having advertising?

24 MS. PRUITT: Well, you can amend a Janice and
25 I, our Corp. Counsel and I, were speaking about this earlier,

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1 you can amend, at least the regs allow you to amend appeals,
2 and we were still trying to get a determination on the actual
3 application.

4 MS. SKIPPER: Well, the particular provision does
5 not cover applications, it was you have the ability to amend
6 appeals, and this is not an appeal. I would say at this point
7 it should not be accepted.

8 CHAIRPERSON REID: Well, in other words, if the
9 sign is important to you, then you are going to have to go back
10 and get a read from the Zoning Administrator, at least in
11 regards to if you can get a variance from the provisions of
12 Subsection 354.4, that pertains to signage. That s not what
13 you are appearing today for.

14 MR. LAVERDY: No.

15 CHAIRPERSON REID: That s not even

16 MR. LAVERDY: The sign is not it will help, but
17 it s not really important. It will help for the

18 CHAIRPERSON REID: Okay, well, we can t deal with
19 the sign at all.

20 MR. LAVERDY: Okay.

21 CHAIRPERSON REID: Now, your services are going
22 to be primarily for the tenants in the building.

23 MR. LAVERDY: Yes, ma am.

24 CHAIRPERSON REID: Okay, but you also stated here
25 today that you intend to, or you d like to try customers other

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1 than those that reside in that building, right?

2 MR. LAVERDY: Yes, ma am, yes.

3 CHAIRPERSON REID: Okay.

4 MR. GILREATH: Madam Chair, the Zoning
5 Administrator, he said he wanted the sign, and the Zoning
6 Administrator quoted the other if he had told the Zoning
7 Administrator he wanted a sign in the window, what within the
8 provision part of that, there s no point in him going back.

9 CHAIRPERSON REID: 354, that s not what this is
10 referring to.

11 MR. GILREATH: What does it say, because there s
12 no point in going back

13 CHAIRPERSON REID: It says, No sign or display
14 indicating the existence of the adjunct shall be visible from
15 the outside of the building.

16 MR. GILREATH: Well, that requires a variance
17 now? Can you read that again, make sure what I m saying is,
18 there s no point in him going back to the Zoning Administrator
19 and getting it if we felt we could not respond favorably. That
20 would just be an exercise in futility.

21 CHAIRPERSON REID: Then he has another one
22 regarding the 354.8, where he s saying that he would stipulate
23 that the adjuncts authorized under this section are intended to
24 supply tenants of the apartment house with commodities or
25 services supplementary to those established in commercial

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1 districts, but in order to protect the value and stability of
2 these visitors the Board shall give consideration to the
3 following: for extending to the commercial district, adequacy
4 and convenience of parking spaces, adequacy and scope of
5 commodities and services provided with those commercial
6 districts, and the size compared to the apartment house, since
7 the tenants of the apartment house will be expected to furnish
8 potentially all of the financial support of the requested
9 adjunct.

10 But, what I m saying is that, he s testifying
11 here today that he intends to go outside of the building, so
12 he d have to have a variance from that subsection as well.

13 MR. SOCKWELL: Well, the sections are not so
14 specific that they don t allow

15 CHAIRPERSON REID: You can?

16 MS. PRUITT: Yes.

17 MR. SOCKWELL: yeah, the only

18 MS. PRUITT: It s an adjunct, it s in addition to
19 the commercial district, it s supposed to supplement it. I
20 mean, it s not to say that he can t draw people from the
21 surrounding community, but should primarily serve as or be a
22 convenience to the apartment building, but you cannot limit it
23 only to people within the apartment building. There are quite a
24 few apartment buildings in that area that have services on
25 their first floors like that, little delis, dry cleaners, I

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1 mean very convenient stores that are servicing that apartment
2 building but are used by other people.

3 MR. SOCKWELL: Yes. I mean, Section D under
4 354.8 specifically states that the size of the apartment
5 building is a factor. We are talking about a 274-unit
6 apartment building, which is by almost all standards a very
7 large building. And, while it might not be able to support his
8 business 100 percent, it s a lot larger than a ten, a 15, or
9 20, or 50 or 100-unit building.

10 CHAIRPERSON REID: And also it says, ... or
11 substantially all of the financial support of the requested
12 adjunct.

13 MR. SOCKWELL: Right.

14 CHAIRPERSON REID: So, perhaps, the operative
15 word here is substantially.

16 MS. PRUITT: And, these are commodities and
17 service supplementary to those established in commercial
18 districts. So, it s not that it can t it s exclusive of it,
19 it s supplementary to the district.

20 CHAIRPERSON REID: Okay.

21 MS. PRUITT: So, you know, if you have one in
22 there it doesn t mean you can t have another somewhere else.

23 MR. SOCKWELL: And, Madam Chair, if we refer to
24 the matter of right aspects of convenience stores in
25 apartments, since you didn t ask for a variance from 354.5,

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1 which states that, No display or sign advertising your
2 business shall be visible from the outside of the building, you
3 would be forced to comply with that anyway, so you are really
4 restricted on your outside advertising. I mean, it doesn't
5 restrict you from putting flyers on cars, or meeting with the
6 adjacent establishments that might use your business, but it
7 does state that you can't show from the outside of the building
8 that your business exists within the building in a sign or
9 display manner.

10 CHAIRPERSON REID: Visible from the outside.

11 MR. SOCKWELL: Visible from the outside. It just
12 specifically states that.

13 CHAIRPERSON REID: But, he can have an interior
14 sign

15 MR. SOCKWELL: To the lobby, or whatever is
16 allowed by your management, and certainly you can use any other
17 means of advertising your business that isn't a display or sign
18 that would not affect the specifics of the regulations, which
19 are that you can't have anything showing that's like a display
20 sign, placard, billboard, et cetera.

21 MR. GILREATH: So, actually what we are saying
22 that you would not be able to put that FTD sign in your window,
23 it would have to go elsewhere, not an exterior sign. Do you
24 have any alternative, can you do it in the lobby or some other
25 place other than the window?

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1 MR. LAVERDY: No, sir.

2 CHAIRPERSON REID: Well, the people in your
3 building would know, one, and then I guess as Mr. Sockwell
4 said, I guess you would be confined to flyers, or paper, can he
5 advertise in the paper?

6 MS. PRUITT: Yes.

7 CHAIRPERSON REID: Newspaper advertising, or
8 local store I mean, local advertising like at the Safeway,
9 or, you know, various grocery stores, they have, you know,
10 billboards and bulletin boards and things of that nature. But,
11 you just couldn't put a sign you'd just have to find a more
12 creative way of letting people know where you are.

13 MR. LAVERDY: Yes, well, my guests will do, yes,
14 ma'am.

15 CHAIRPERSON REID: Okay.

16 Now, the other thing is, adverse impact, would
17 approving your application cause any adverse impact in regard
18 to noise, traffic, any type of nuisance whatsoever to the
19 surrounding tenants in the building, I guess?

20 MR. LAVERDY: No, ma'am, peoples in the building
21 they are happy that we're there.

22 CHAIRPERSON REID: So, you haven't gotten any
23 complaints?

24 MR. LAVERDY: No, ma'am.

25 CHAIRPERSON REID: Okay.

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1 MR. SOCKWELL: What will your hours of operation
2 be and days?

3 MR. LAVERDY: It will be from 9:00 to 6:00 Monday
4 through Friday, and 9:00 to 4:00 on Saturdays. We probably
5 will be closed on Sunday.

6 MR. GILREATH: When you go into the lobby of your
7 building, is there a sign that says there s a delicatessen in a
8 certain place, and a pet shop, is there kind of indication so
9 that the tenants of the building will know where to go for this
10 service?

11 MR. LAVERDY: In the lobby entry to the building,
12 no, there are not, sir. There are huge signs on the Harbor
13 Street side of the building, there s a deli, and a large
14 grocery store there, and the pet food shop there, the dry
15 cleaners, the same building. So, what happened is, it happened
16 that a little spot up there is in the lobby area, so that s why
17 all this trouble is coming.

18 MR. GILREATH: Well, do you know at this point
19 whether the owner of the building or the manager would permit
20 you to have some kind of sign in the lobby so that all the
21 tenants in the building would know that you provide that
22 service?

23 MR. LAVERDY: Oh, certainly, yes, Mr. Bernstein
24 has been, the owner, has been very, very nice to us, and, you
25 know, give us the opportunity to be there.

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1 MR. GILREATH: Well, do you think if, indeed, you
2 kept the sign to someplace in the interior of the building and
3 using advertising, say in the neighborhood newspapers or
4 whatever, this would be viable, you would make it a viable
5 thing? We don't mind, at least I have no problem approving
6 this, on the other hand if you feel that your business would
7 not be viable I'm not sure you want to go forward unless you
8 have if you have to have that FTD sign in the window there,
9 you know, I could not support that, but if you feel your
10 business can make a go of it without that, then I, for one, am
11 supportive.

12 CHAIRPERSON REID: You know, what occurred to me
13 is, and Mr. Sockwell you probably know the answer to this
14 better than I, the sign that stated florist, or whatever
15 what's the name of your florist shop?

16 MR. LAVERDY: Park Plaza Florist.

17 CHAIRPERSON REID: Park Plaza Florist, okay, so
18 isn't a sign typically a business sign? Now, the FTD, is that
19 like a little decal?

20 MR. SOCKWELL: It's a flying Mercury guy.

21 MR. LAVERDY: It's a Mercury guy.

22 CHAIRPERSON REID: Yeah, isn't it like a decal?
23 It's not a sign.

24 MR. SOCKWELL: It can be a sign illuminated, or
25 it can be a decal.

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1 MR. GILREATH: They often are neon, at night you
2 can see it from the window with different colors, it catches
3 your eye.

4 CHAIRPERSON REID: Because I m wondering if, like
5 I said, I don t know, but if it s a decal that could be put on
6 the window, and this is not a business sign, it s a decal, FTD
7 decal

8 MR. LAVERDY: May I say something?

9 CHAIRPERSON REID: Yes.

10 MR. LAVERDY: Yeah, it sure is a small decal
11 there, but if I don t I don t really have to have that, you
12 know. I don t really have to have that logo there.

13 CHAIRPERSON REID: I don t have a problem with
14 that. We are not saying that we would give you permission to
15 do that, but I m just saying I personally don t have a problem
16 with that.

17 MR. GILREATH: Well, I think a decal is still
18 advertising, and it s making an appeal to the people on the
19 street. But, if he can put some kind of interior sign in the
20 lobby or what have you for the tenants of the building, it s a
21 very large building, and that would keep most of the business,
22 and then advertising and letting people know about it, I
23 wouldn t have any problem with something like that.

24 MR. SOCKWELL: I think maybe, because we can t
25 override the regulation in an effective way, and certainly we

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1 want to help you with what you are doing, but I think that your
2 best and most likely opportunity is to put something very
3 attractive as a floral display in the window, and along with
4 the other things that you put out as flyers, and leaflets, and
5 advertising other than signs and billboards, you ll be getting
6 people to look to see where in the building this florist shop
7 is. And, when they see your floral display in the window,
8 they ll probably make that assumption. We would hope so, but
9 we can t grant you a sign.

10 MR. LAVERDY: Well, that will be fine. I ll
11 agree with you on that matter. I will put something in the
12 lobby, you know, for that. We have a very small budget, so
13 hopefully this takes off.

14 CHAIRPERSON REID: Okay.

15 MR. GILREATH: I agree with Mr. Sockwell, that
16 the window, there s nothing to prohibit you from putting
17 several types of flowers, I mean, as long as you don t say what
18 it is, this would be your own interior decoration.

19 CHAIRPERSON REID: Floral arrangements.

20 MR. GILREATH: Any kind of floral arrangement, as
21 long as there is nothing to say you are advertising. As far as
22 you are concerned, it is just interior decoration, but you are
23 free to put any kind of floral display in there as long as
24 there s nothing to indicate you are soliciting business from
25 the outside.

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1 MR. LAVERDY: Sure.

2 CHAIRPERSON REID: Okay.

3 Thank you.

4 Is there anyone else here today who is here for
5 this particular case, 16496? Okay.

6 Do we have a letter from the ANC? I don't
7 remember seeing one. The ANC, it's 1C, I think, did not, to my
8 knowledge, has not submitted anything, so typically we assume
9 that they don't have any objection.

10 And, we don't have any government reports, no
11 one is here in support, no one is here in opposition, so could
12 we have your closing remarks, sir?

13 MR. LAVERDY: I would thank you for what you are
14 doing, and also just to show you the faith these people had in
15 us, we collected some signatures there, mostly the people in
16 the building that signed it all.

17 MS. PRUITT: That was submitted earlier and was
18 copied.

19 CHAIRPERSON REID: Oh, okay.

20 MS. PRUITT: It was just submitted today, this
21 morning.

22 CHAIRPERSON REID: Okay. Well, we'll make note
23 of the fact that you do have a petition from these are people
24 who all live in the Park Plaza who are in support of your
25 particular application?

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1 MR. LAVERDY: Yes, ma am.

2 CHAIRPERSON REID: Okay. All right.

3 Would you like to have a summary order, bench
4 decision, which means that you get your response today?

5 MR. LAVERDY: Oh, certainly, go ahead.

6 CHAIRPERSON REID: All right.

7 MR. GILREATH: Madam Chair, I feel the Applicant
8 has made his case that this florist enterprise can function
9 appropriately without any kind of detriment or conflict with
10 the regulations and so forth, as long as he does not put
11 advertising in the window and, therefore, I recommend that we
12 approve his application.

13 CHAIRPERSON REID: Both, the special exception
14 and for the variance, correct?

15 MR. GILREATH: Well, what s the variance for?

16 MR. SOCKWELL: The variance is a visibility issue
17 with regard to the window.

18 MR. GILREATH: Oh, just the window, okay.

19 CHAIRPERSON REID: Right.

20 MR. GILREATH: Okay. My motion includes both the
21 proposed special exception and the variance.

22 MR. SOCKWELL: Second.

23 CHAIRPERSON REID: Okay. I agree, I think that
24 the Applicant has met his burden of proof, that he s
25 demonstrated that his particular application could be approved

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1 without any adverse impact, and as a matter of fact he has
2 quite a bit of support from the tenants who live in the
3 building, and that he has shown that there s a practical
4 difficulty predicated upon the size of the space that he would
5 like to use for the florist shop, and that giving the relief
6 would not impair the intent or purpose of the Zoning Map or the
7 Zoning Regulations.

8 All in favor?

9 (Ayes.)

10 CHAIRPERSON REID: Opposed?

11 MS. PRUITT: Staff would record the vote as 3/0
12 to approve, motion being made by Mr. Gilreath, seconded by Mr.
13 Sockwell, with hours of operations from 9:00 to 6:00 p.m.,
14 Monday through Friday, and 9:00 to 4:00 on Saturday.

15 MR. LAVERDY: Yes, ma am.

16 CHAIRPERSON REID: Okay.

17 Before the next case, we need to take a short
18 three-minute recess.

19 (Whereupon, at 2:18 p.m., a recess until 2:21
20 p.m.)

21 MS. PRUITT: The next case on the agenda is
22 16497, application of 2125 S Street, LLC., pursuant to DCMR
23 3107.2, for a use variance under Section 320.3 to allow the
24 renovation and conversion of a vacant private school and church
25 into an eight-unit condominium which exceeds the lot occupancy

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1 requirements; and an area variance from Section 2001.3(a)(b)(c)
2 to allow an enlargement and an addition to a nonconforming
3 structure in an R-3 District at premises 2125 S Street, N.W.
4 (Square 2532, Lot 49).

5 All those planning to testify, could you please
6 stand and raise our right hands?

7 Thank you, please be seated.

8 CHAIRPERSON REID: How many people are here that
9 are in opposition to this application? How many are in support
10 of the application? All right, thank you.

11 MR. COLLINS: Good afternoon, Madam Chairperson
12 and members of the Board. My name is Christopher Collins with
13 Wilkes, Artis, Hedrick and Lane. Seated to my left is Sarah
14 Shaw from our firm. To my right is Larry Smith from Cranberry
15 Hill Associates, who is a developer for the project, and to my
16 far right is Rachel Chung with the firm of Sorg and Associates,
17 the architects for the project.

18 This is an application for use variance and area
19 variance relief to convert a former school building to a
20 condominium apartment building in an R-3 Zone. While the
21 relief may appear complicated and certainly our statement is
22 fairly thick, the case is quite simple. The relief is
23 necessary for two main reasons. Number one, we are turning an
24 old school building into an apartment house in an R-3 Zone
25 where apartment houses are not located, but where there are

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1 other apartment buildings, and we ll talk about that a little
2 bit later. Secondly, there are two additions to the building
3 that are being added in order to allow this building to be used
4 as an apartment house with on-site parking, and the addition of
5 these two improvements, these two small minor additions,
6 generates several different variance requirements. The
7 building is a nonconforming structure and certain conditions
8 are permitted, but because this building is nonconforming in so
9 many respects these small additions generate variances from
10 each one of those subsections, 2001.3(a)(b)(c).

11 The building was built in 1905 as the Holton
12 Arms School, the original site of the Holton Arms School, a
13 school for girls, and was used as such until 1963. In 1966 it
14 was occupied by the Institute for Modern Languages, until 1973,
15 and then in 1974 through 1995 was owned and occupied by the
16 founding Church of Scientology. The Church of Scientology
17 moved out in 95, and relocated to a site just off Connecticut
18 Avenue on R Street.

19 This is an application for variance relief, and
20 the tests for variance relief are set forth in our statement.
21 The building has a unique or exceptional situation or
22 condition, it is the first school building built in the
23 Sheridan-Kalorama area specifically for school use. The strict
24 application of the use regulations would impose an undue
25 hardship, and strict application of the area regulations would

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1 impose a practical difficulty, our witnesses will go through
2 that in a bit. And, we believe that relief can be granted
3 without substantial detriment to the public good.

4 I d like to review quickly the exhibits with you
5 that are attached to our statement. At pages ten and 11 of our
6 statement are the based and Sanborn maps. You can see the site
7 is just west, approximately half a block west of Connecticut
8 Avenue on the north side of that street. The zoning map on
9 page 12 indicates the property in the R-3 Zone. Page 13 has a
10 1919 photo of the site when it was the early days of the
11 school. Page 15 is the rendering o the building, also on the
12 easel before you now is that same rendering.

13 The prior certificates of occupancy for the
14 building are at pages 16 through 27. You can see that it was,
15 in addition to the school, the Institute for Modern Languages.
16 George Washington university had a certificate of occupancy
17 for use of the building for about six months, then the Church
18 of Scientology had it for the most recent occupant.

19 There was a BZA Order No. 11872, dealing with an
20 appeal challenging the Church of Scientology s occupancy of the
21 building, that was determined in favor of the Church of
22 Scientology. I simply add that for your informational
23 purposes.

24 There was a fire in the building in early 1996,
25 which created half a million dollars of damage, and we include

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1 the fire investigation report, page 40 to 42.

2 This case has also been before the Historic
3 Preservation Review Board on several occasions, and the most
4 recent HPRB staff report dated July 22, 1999, appears at pages
5 43 and 44.

6 The Sheridan-Kalorama Historic District
7 nomination form appears in pertinent part at pages 45 through
8 47, and that is the part which indicates that the building was
9 the original Holton Arms School and it was the first school
10 building built for school purposes in the Sheridan-Kalorama
11 area.

12 I did mention that there are other apartment
13 houses in this R-3 Zone. This north side of S Street in the R-
14 3 Zone is quite unusual, in that the majority of the uses on
15 the north side of S Street are not single-family, row-dwelling
16 uses. The majority of them are uses that are either use
17 variance uses or uses permitted by special exception. There
18 are several schools, the Kingsbury School, the Institute for
19 Modern Languages, and there are three apartment buildings, the
20 BZA orders in include three apartment buildings to the east,
21 the immediate east of this site, all having gone through this
22 Board seeking the same type of approval, including one building
23 that was formerly a school building.

24 Pages 71, 72 and 73 are the outlines of
25 testimony of our three witnesses. I did introduce two, we have

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1 a third witness who will appear through affidavit. He is
2 currently in California, and I would like at the appropriate
3 time to introduce that affidavit.

4 And, unless you have any questions, at this time
5 I d like to go to the witnesses.

6 CHAIRPERSON REID: Questions?

7 MR. COLLINS: Okay. The first witness, I d like
8 to introduce the affidavit of Mr. Lee O Hara. Mr. O Hara is
9 the or was the real estate agent working on behalf of the
10 Church of Scientology, and if you could please we just
11 submitted ten copies of that affidavit right now, and if you
12 could just please take a minute to review that affidavit and
13 I d be happy to attempt to answer any questions of the other
14 members would be happy to attempt to answer any questions you
15 might have.

16 MR. GILREATH: Do we need some kind of response
17 on this, or do we say we accept it?

18 CHAIRPERSON REID: No, unless you have any
19 questions.

20 MR. GILREATH: I don t have any questions on it.

21 CHAIRPERSON REID: All right.

22 Okay. Now, are you going to make any statement
23 or are you just basically submitting this as your testimony?

24 MR. COLLINS: That is the testimony of Mr.
25 O Hara, who is not able to be with us today. He s in

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1 California.

2 CHAIRPERSON REID: Oh, okay, I m sorry, I thought
3 that this was Lee O Hara.

4 MR. COLLINS: No, no, Mr. Lee O Hara, I m sorry
5 this is Sarah Shaw from our office.

6 CHAIRPERSON REID: Oh, okay, all right, so this
7 is the reason why you okay, he s not here.

8 MR. COLLINS: He is not here.

9 CHAIRPERSON REID: Okay.

10 I had a couple of questions of him.

11 MR. COLLINS: Although it wouldn t be testimony,
12 perhaps I could answer the questions. I did speak extensively
13 with him.

14 CHAIRPERSON REID: Well, I wanted to know, it was
15 indicated there were five contracts on the property, and I
16 wanted to ask him what happened to those contracts.

17 MR. COLLINS: After the study periods they
18 determined not to move forward.

19 CHAIRPERSON REID: Why, that s what I wanted to
20 find out, what was it about I mean, five contracts and all of
21 them to peter out, it just struck me as unusual and I wondered
22 what was it about the due diligence period that caused them to
23 pull out?

24 Yes, give your name and your address, please.

25 Whereupon,

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LAWRENCE SMITH

was called as a witness by Counsel for the Applicant, and
having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. SMITH: My name is Lawrence Smith from 328
Border Road, Concord, Massachusetts. I m the developer for
this project. I ve been a licensed real estate broker since
1977 and a developer since 1980. I ve testified before the
Board on the Phillips Road, our other project in Georgetown,
rear yard variance and conversion of the Phillips School to
condominiums in Georgetown.

I do know that the other contracts were all
contingent on zoning. Our s was the only contract that did not
require the contingency of zoning approval, so we purchased the
property and that s why the Church of Scientology went forward
with our s versus the others.

CHAIRPERSON REID: Thank you. Okay.

MR. COLLINS: If there are no questions based on
the affidavit, I d like to then go to our next witness, Mr.
Lawrence Smith.

Mr. Smith, would you continue, you ve identified
yourself for the record, would you please proceed with your
testimony?

MR. SMITH: Yes.

In 1998, I was asked to take a look at the

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1 Holton Arms School as a potential acquisition for a company
2 called the Ibis Company, which is a Dutch real estate
3 developer. The property was we performed our due diligence,
4 we purchased the property in July of 98 under 2125 S Street
5 LLC. We initially looked at the we hired the firm of Sorg
6 and Associates and initially looked at the possibility of
7 converting the structure to the home or the headquarters of Phi
8 Beta Kappa, which would be by special exception.

9 We took that proposal before the ANC, the ANC
10 overwhelmingly denied that use. They did not want to see a
11 commercial use. They did not want to see anything that was
12 non-residential use. That was one setback. We also found that
13 in the inspector s report, or the fire report in 1996, there
14 was a supplement from the inspector that basically would
15 require any upgrading of the facility to commercial code
16 application, so the structure, the electrical, the life safety,
17 everything would have to be brought up to the current code, and
18 he even referenced the ADA requirements.

19 Any commercial use, therefore, was going to
20 require the floor loading structure to be double joisted up and
21 significant improvements, an elevator put in, handicap
22 accessibility, et cetera, and it basically made the commercial
23 undertaking almost uneconomic in this project.

24 So, after hearing from the ANC as far as the
25 use, and looking at the economics, we pursued a residential

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1 conversion of the structure to condominiums.

2 I might add, we did look at the possibility of
3 selling it as a single-family residence, but it s just not what
4 the market would evolve. This is a 16,000 square foot
5 structure, the market doesn t have any indication that houses
6 or single-family units over 6,000 square feet would be at all
7 marketable.

8 We looked at some of the other matter of right
9 usages and felt that they were not feasible for a return on the
10 investment.

11 We then proceeded to have Sorg and Associates
12 design the building for the maximum number of units that we
13 could get with compensatory parking. We ve come up with eight
14 units, we have five parking spaces. There are five two bedroom
15 units and three one bedroom units. We ll be marketing the two
16 bedroom units with a parking space in the structure.

17 I might add that there is not a parking
18 requirement in this district.

19 We met four times with the ANC. We brought the
20 residential project back to the ANC actually three times, and
21 we ve just gotten the ANC to well, they ve submitted a letter
22 which speaks for itself, but we feel that the ANC was in
23 support of our project.

24 The HPRB has reviewed the plans and they have
25 approved our project as we ve presented it.

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1 I would like to address the letter that the ANC
2 submitted. The first two pages of the ANC letter, you know,
3 we ve agreed to everything that was referenced that we ve been
4 in agreement with. On the third page of the ANC letter it
5 talks about the two issues that were subject to or that we had
6 not agreed to. I d like to address those two points now.

7 The first point dealing with the removal of
8 trees and planting of trees in the area, we are in agreement
9 that that would be acceptable, but it is subject to the D.C.
10 Public Space Department, so Mr. Beck, who basically tells us
11 where he wants us to plant our trees, it s really subject to
12 his approval. I suspect with this letter he would allow us to
13 do that, so, again, it would be subject to a D.C. Public Space
14 permit.

15 Closing the alley, point two, I talked with our
16 contractor and we don t have any problem with everything that s
17 written here, with the exception is we wanted to allow five
18 days notice as opposed to ten days notice. Five days is a
19 little bit more reasonable when you are with a contractor, ten
20 days is an awfully long time to schedule work out ahead. So,
21 they just amended that to or we d like to amend it to, say,
22 five days.

23 Everything else in the letter is acceptable,
24 and, you know, we ve appreciated the dialogue we ve had with
25 the ANC.

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1 Finally, I d just like to add that, you know, we
2 are ready to proceed. We are anxious to proceed, as are the
3 neighbors, with the conversion of this building. It s really
4 been sitting since 1986, since the fire, and it s in poor
5 condition and we d like to see it under construction as soon as
6 possible.

7 CHAIRPERSON REID: Questions from Board members?

8 MR. SOCKWELL: I was looking for the statement
9 about trees that you said was contained within the ANC.

10 MR. SMITH: Yes, the third page.

11 MR. SOCKWELL: Third page, yeah.

12 The trees that you are removing are curb trees
13 or trees behind the sidewalk?

14 MR. SMITH: They are behind the sidewalk but they
15 are in public space, so, again, even that is subject to

16 MR. SOCKWELL: Generally, Bill Beck doesn t have
17 any jurisdiction to discuss with regard to trees behind the
18 sidewalk. Trees that are maintained by the City are generally
19 the ones that are the curb trees.

20 MR. SMITH: Okay.

21 MR. SOCKWELL: The ones behind the sidewalk are
22 generally the maintenance responsibility of the property owners
23 that abut the public sidewalk. And, Chris, you can respond to
24 that, I mean I deal with Bill Beck a lot, but you may want to
25 add something.

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1 MR. COLLINS: We will do whatever he tells us to
2 do on this one.

3 MR. SOCKWELL: Yeah, and he may not tell you to
4 do anything.

5 MR. COLLINS: Right.

6 MR. SOCKWELL: He may give you carte blanche on
7 the trees behind the sidewalk, he usually does. So, it may be
8 more your responsibility than you think.

9 MR. COLLINS: Okay.

10 MR. SMITH: Well, maybe I can convince him that
11 the Georgetown trees that we took down we could plant them up
12 on S Street.

13 MR. SOCKWELL: That might work.

14 CHAIRPERSON REID: Next witness.

15 MR. COLLINS: Any other questions?

16 CHAIRPERSON REID: No.

17 MR. COLLINS: Thank you.

18 The last witness is Rachel Chung, who is with
19 the firm of Sorg and Associates.

20 Whereupon,

21 RACHEL CHUNG

22 was called as a witness by Counsel for the Applicant, and
23 having been first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 MR. COLLINS: MS. Chung, would you please

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1 identify yourself for the record and proceed with your
2 testimony?

3 MS. CHUNG: Good afternoon. My name is Rachel
4 Chung, 7500 Buena Vista Terrace, Derwood, Maryland 20855. I m
5 an associate at Sorg and Associates, and as Larry has mentioned
6 he has contracted us to do the design and construction of 2125
7 S Street.

8 At this time, I d like to briefly describe the
9 existing building. Lot 49 consists of this area, and the main
10 building was built, like Chris Collins has stated, 1905 by
11 Whitey Wood in this area. Subsequent to that, there were many
12 additions to the rear. This T-shaped building acted as a
13 gymnasium. This three-story addition actually on Lot 12 was a
14 garage and laboratory, and there were small wood frame
15 structures that connected the main building with the T building
16 that were two story or one and a half stories. The main
17 building is a five-story masonry, wood frame construction. The
18 majority of the add ons are wood frame.

19 Like I said, this is a five-story structure that
20 was housed to be originally for the Holton Arms School s
21 educational facility mainly for women, or only for women.

22 Right now I d like to quickly go over the
23 proposed design. This is a rendering of the original building.

24 What we propose to do is restore the exterior and design a new
25 front facade to match the original door that was originally

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1 designed by Whitey Wood, and when we go into the interior, the
2 entire facility will consist of eight units. Five of the units
3 will be two bedroom and three of the units will be one bedroom,
4 and the two bedroom units will have the parking spaces in the
5 rear. When you enter the first level, there are two units in
6 either side. One will be a one bedroom unit and the other will
7 be a two bedroom unit. The main connector building that houses
8 the vertical circulation, the elevator and the means of egress
9 stairs is a new structure, and the existing structure in the
10 rear will house five parking spaces.

11 MR. COLLINS: Before leaving that, can you
12 describe, is it correct that the floor plan on the left is the
13 lower level?

14 MS. CHUNG: Yes, I m sorry. This is the lower
15 level, which is the lower level of the second unit, which is a
16 two bedroom unit. The lower level will also have the services
17 coming in and additional storage to the rear for the eight
18 units.

19 On the second and third floor, relatively the
20 same. The main portion of the building will house two bedroom
21 units, and the rear portion will be a one bedroom unit. This
22 will become like a penthouse, the entire floor will be devoted
23 to one unit.

24 MR. COLLINS: And, that s true for both the
25 second and third floors?

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1 MS. CHUNG: Yes.

2 And, the last two floors, the fourth floor has
3 two units, both are two bedroom units, and the fifth floor is
4 actually part of the fourth floor units, in that they have
5 lofts into those spaces.

6 MR. COLLINS: So, on the fourth and fifth floor
7 there s two units, each of which are two stories?

8 MS. CHUNG: Yes.

9 The variances that we are trying to get today,
10 as Chris has mentioned, the first one is our use variance. It
11 does meet a special exception. It was built originally as a
12 school facility, and it was, I believe, the first school
13 facility in the Sheridan-Kalorama neighborhood. The existing
14 structure, the load bearing walls and the way that it is laid
15 out implies that it was something other than a residential use.

16 There are large rooms, there is large assembly spaces,
17 classrooms and things like that, that because of the fire and
18 also the load occupancies, the live load and dead load, if we
19 were to design something that was a matter of right we would
20 have to either increase substantially the structure or remove
21 the floor framing system entirely and replace it with new.
22 That s one thing. The other thing, which we did look at that
23 scenario initially, and when we met with ANC they were
24 adamantly opposed to a use besides residential. But, that s
25 the first variance we are looking for.

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1 The second variance encompasses basically two
2 things, it s an area variance. Because we are removing these
3 two stories and one and a half story elements, and providing a
4 new connector building that will house vertical circulation,
5 i.e., the stairs and the elevator, any hallways leading to both
6 levels on either side. We are removing this portion of the
7 building and creating an open court.

8 Because we are creating an open court, and what
9 is required for the height or actually the width of an open
10 court, we are exceeding the height limit or we are not meeting
11 the width limit of the open court. If we were to meet the
12 width of the open court that connector building would only go
13 up to the third floor and not the fourth floor, and that would
14 go against building code, not having an egress stair for all
15 the floors to serve. That s one.

16 Also, the other area variance that is in the
17 rear, right now the building, existing rear building on the
18 first level we are proposing five parking spaces. Because the
19 clear space in between only allows for 17 feet, and the
20 District requires 19 feet for parking, we need to increase that
21 area just on the lower level for maneuverability, for parking
22 space, and for security for these garages that we re providing
23 in the lower level. So, what that will mean is we are removing
24 the alley wall and providing, basically, a shed roof on the
25 first level, and that building, that exterior wall of the shed

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1 roof will act as the garden wall that was originally there.
2 That garden wall, or that shed roof, would be not very visible.
3 It will be part of the alley wall that was originally there.

4 The height of the connector building requires us
5 to have it go up to the fourth floor because of the stair we
6 have. We need to means of egress in this building. We have
7 one here servicing this area, and we have another here
8 servicing this area. If it didn t go up to the fourth floor we
9 couldn t reach the fourth floor apartment, and they would only
10 have one means of egress, and they are required to have two.

11 So, if we were to only go up to the third floor,
12 which we would meet the area open court width requirement, we
13 would not meet building code.

14 I can briefly talk to you about we ve done
15 studies to see if we can design the facility in a matter of
16 right use or special exception use, and on page five of the
17 statement it lists the matter of right and special exception
18 uses, and I ll briefly talk about a few of those and the
19 impracticality and hardship that we would face to meet these
20 requirements.

21 CHAIRPERSON REID: We ve read this.

22 MS. CHUNG: Okay.

23 CHAIRPERSON REID: So, if you could just
24 highlight it.

25 MS. CHUNG: Briefly, as Larry Smith has

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1 mentioned, a matter of right single-family row house, quite
2 honestly the 16,000 square feet is extremely large for a
3 single-family dwelling. There are estates, but usually they
4 have grounds, they have drop offs, they have large areas of
5 parking for large vehicles, it doesn't make sense to have
6 something, a single-family dwelling in a row-house situation
7 that has 16,000 square feet.

8 Regarding converting it back to a school,
9 although currently the structure or the building is laid out in
10 these large assembly spaces or classrooms, the building does
11 not meet code. The floor loads, the dead and live loads, would
12 have to be looked at. More than likely, it would be more
13 economical probably to replace the floor system instead of
14 beefing them up. And, frankly, the way that schools, current
15 school systems work, with their high tech, their AV equipment,
16 the way that this building is situation it is not suitable for
17 the type of school that we are currently looking at to be
18 housed here.

19 Regarding child care centers, Sorg and
20 Associates has designed and built numerous child care
21 facilities, and it is very impractical to expect children,
22 infant age to preschool, kindergarten age, to go up and down
23 elevators to go to the different classrooms, the play areas.
24 There is no exterior play area here. There is no drop off for
25 the parents, so we feel it's very impractical to have a child

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1 care development center here.

2 MR. COLLINS: Do you have a similar conclusion
3 with regard to all of the other matter of right and special
4 exception uses, that they are impractical for conversion and
5 wouldn't, in your professional opinion as an architect,
6 wouldn't be a viable use, wouldn't be economically feasible?

7 MS. CHUNG: Correct. Not only is it not
8 economically feasible, just constructability at this particular
9 setting, it seems very impractical to put anybody but multi-
10 family dwellings here.

11 MR. COLLINS: Referring to pages three and seven
12 of the statement of the Applicant that was submitted, is it
13 correct that you incorporated in your testimony that these, in
14 fact, are the areas of relief and the reasons that we need
15 these areas of relief, looking first at page three, or the
16 listed variance reliefs there, and then looking at page seven,
17 at the top of the page, to indicate what is required for these
18 different areas of area variance relief?

19 MS. CHUNG: Yes, I concur.

20 DOCTOR CARSON: All right, thank you.

21 You've spoken about the uniqueness of the
22 building, the exceptional situation or condition, you've spoken
23 about the undue hardship which would support the use variance,
24 you've spoken about the strict application of the regulations
25 imposing impractical difficulty if we were not able to add

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1 these two small additions to the building. In terms of the
2 width of the open court and the roof extension of the garage,
3 do you have an opinion about whether this would belief in
4 your professional opinion as an architect, would cause any
5 potential detriment to the public good?

6 MS. CHUNG: No, I wouldn't. If I can refer back
7 to the prospectus, in the building facade we are proposing to
8 restore it, restore the masonry exterior walls, replace the
9 wood double-hung windows with wood double-hung windows, and
10 repair the roof as necessary.

11 In the rear, the existing masonry structures
12 that are going to remain, we also intend to restore the
13 exterior facade. The new connector building that you see in
14 gray at the bottom of this area, will not be seen from
15 obviously the front street scape, as well the rear. If you
16 were the neighbor, you might be able to see it, or if you were
17 coming in this courtyard area you will be able to see it, but
18 from the rear facade you probably wouldn't see that either.

19 Regarding the rear garage extension, we tried to
20 incorporate that with the rear alley. It would all be brick,
21 and within that alley you would see many garages abutting the
22 alley in numerous other properties. So, no, I don't think it
23 will have an adverse effect and, actually, what we are
24 proposing I think will bring that area up to you know, it
25 will be kind of wonderful because right now it's vacant, it has

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1 a lot of damage.

2 MR. COLLINS: Do you have any elevations which
3 might indicate how those things would not be readily visible
4 from public space?

5 MS. CHUNG: This side elevation, which we are
6 looking in this corner, if you can see this key plan.

7 MR. COLLINS: Looking from the west toward the
8 building?

9 MS. CHUNG: Looking from the west, correct, on
10 this side is the main building. Excuse me, this side is the
11 main building and this side is the key building where we were
12 housing the single units and the garages below.

13 On one facade, where the hallway and corridor
14 was, we had a curtain wall system which would let light in
15 through that narrow areaway, or the narrow courtyard, and the
16 other side would be masonry.

17 It is in the same plane and same elevation as the T building in
18 the rear, so we are protruding above that.

19 And, regarding the garage, we have an extension
20 on the rear. This would be, the exterior facade of the garage
21 would act as the garden wall or alley wall that was originally
22 there.

23 And, this is the rear elevation, and you would
24 barely see, actually at street level you would barely see the
25 roof. At the straight-on elevation, what you see is some roof,

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1 but when you are walking down the street, or if you are driving
2 down the street, it would be very difficult to see the roof.

3 MR. COLLINS: All right, thank you.

4 MR. SOCKWELL: MS. Chung, you are licensed to
5 practice in the District of Columbia?

6 MS. CHUNG: I am actually working on my
7 licensing.

8 MR. SOCKWELL: You made some assertions about the
9 structural issues and beefing up the structure. Quite often,
10 these older buildings, because they use a larger dimension of
11 lumber in their floor systems, actually have a higher
12 structural load capacity than would a modern building.

13 MS. CHUNG: Correct. We have a structural
14 engineer consultant on board. They are, you know, 2 x 12s or
15 2 x 14s, and they are larger members. However, live load
16 combination of live load and dead load for residential and
17 commercial is almost twice as much. Now, to get the quality of
18 the type of units that we are designing, and Larry Smith is
19 trying to sell, we are even beefing up the joists, the existing
20 joist as it is, because of sound, or any creaking, but there is
21 a chance, we have not gone into that investigation, thorough
22 investigation to see extensively how much it would take to
23 bring those up to code.

24 MR. SOCKWELL: So, you are saying that a
25 residential live load would be greater than the live load of

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1 MS. CHUNG: No, no, what I m saying is,
2 commercial live load plus dead load. Dead load, it s similar,
3 but actually the live load is almost twice in certain
4 instances. I know that bedroom areas and, you know, dwelling
5 areas, and corridor areas are slightly different, but
6 generally, on average, it s almost twice as much in a
7 commercial.

8 MR. SMITH: A hundred pounds.

9 MR. SOCKWELL: Versus 40 or

10 MR. SMITH: A hundred pounds versus 40, or, you
11 are right, in fact, a lot of the structure does hit almost 60,
12 but it doesn t meet the 100 pound live load for commercial.

13 MR. SOCKWELL: To what extent is your court
14 deficiency in percentage of what would be required, based on
15 that?

16 MS. CHUNG: Because we remove that addition and
17 created the new connector building that goes up to the fourth
18 floor, what s required for the width is four inches a foot of
19 height, but not less than, I believe it s six feet. However,
20 we only have about 13 12 feet, 7, and what would be required
21 is 18.5 feet.

22 Now, like I was saying earlier, we would meet
23 the width requirement if it only went up to the third floor.

24 MR. SOCKWELL: The adjacent property on the court
25 side, where you have your deficiency, is how close to the

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1 property line?

2 MS. CHUNG: It s

3 MR. SOCKWELL: Is it abutting?

4 MS. CHUNG: Yes.

5 MR. SOCKWELL: Totally abutting.

6 MS. CHUNG: It s their party wall.

7 MR. SOCKWELL: But, it s a separate lot.

8 MS. CHUNG: Yes.

9 CHAIRPERSON REID: And, you own the sites on both
10 sides.

11 MS. CHUNG: Yes, we actually own

12 MR. SMITH: Yes, we have no objection.

13 MR. SOCKWELL: That really wasn t the reason for
14 the question. The question was basically looking at the
15 adjacencies and whether or not that affects significantly light
16 and ventilation, privacy issues, for your units.

17 MS. CHUNG: Right now, the proposed design for
18 this adjacent lot to the east is basically restoration. Because
19 we are removing that, this court will be sharing a court or
20 another open space on either side, so we are not, you know,
21 narrowing that court even more. So, it actually works in our
22 favor, that this is kind of an open court and this is kind of
23 an open court, so there s light coming in.

24 MR. SOCKWELL: From a fire separation distance
25 standpoint, that doesn t cause you any problems with code?

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1 MS. CHUNG: No. This no.

2 MR. SOCKWELL: Remember, you are only allowed, by
3 code, to take the property line, you can't take necessarily the
4 fact that your building adjacent is pulled back. That's not

5 MS. CHUNG: Yes, this area you are talking about.

6 MR. SOCKWELL: Yes, I'm talking really at the
7 property line, between the property line and your interior
8 wall, which is perpendicular to the which is parallel to the
9 property line, that wall, yes.

10 MS. CHUNG: Right, correct.

11 MR. SOCKWELL: Which is the back edge of your
12 elevator shaft wall?

13 MS. CHUNG: Yes, and that's almost 13 feet away.

14 MR. SOCKWELL: Okay.

15 And, you spoke to the impracticality of other
16 uses, although the other uses were not something that you
17 studied, I'm sure, because you intended to convert this to
18 condominiums from the outset.

19 MS. CHUNG: Well, originally we were contracted,
20 as Larry Smith has stated, the Phi Beta Kappa with the Church
21 of Scientology, to study that use. It was mainly a non-profit
22 office use, and we met along with Larry Smith, and the ANC, and
23 we were adamantly or, they adamantly rejected our proposal
24 for anything but residential.

25 MR. SOCKWELL: To what extent was the fire damage

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1 to the structural systems of the building?

2 MS. CHUNG: I believe I know that it was the
3 third floor, or the rest of the roof on the main portion of the
4 building, because there was fire damage, there was water
5 damage, a lot of the roof was exposed, a lot of water damage
6 obviously went all the way to the lower floors. Currently,
7 they've rebuilt it, but it's basically temporary, it's not a
8 final they did not rebuild it to meet the building code, I
9 don't think.

10 MR. SOCKWELL: Nor was it properly quite an in-
11 kind rebuild?

12 MS. CHUNG: Regarding the roof, the actual finish
13 of the roof, it probably was, but the structure, the framing,
14 and the roof framing system, no.

15 MR. SOCKWELL: You said that you have five two
16 bedroom units with parking, and three one bedroom units, I
17 assume, without parking.

18 MS. CHUNG: Correct.

19 MR. SOCKWELL: And, let's see here, in that area,
20 since you made a statement specifically that it does not make
21 sense to make a 16,000 square foot single-family dwelling, what
22 is the square footage of the dwellings that are adjacent in the
23 surrounding neighborhood?

24 MS. CHUNG: There is, actually, a single-family
25 dwelling adjacent at Lot 9, it's about 4,000, 5,000 square

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1 feet.

2 MR. SOCKWELL: And, you and your client have
3 decided determined that through investigation that you cannot
4 make a financially viable project with matter of right zoning
5 as your restriction.

6 MR. SMITH: Yes.

7 MR. SOCKWELL: And the other restrictions that
8 would be imposed upon you.

9 MR. SMITH: Yes, both matter of right and special
10 exception.

11 MR. SOCKWELL: What s the approximate square foot
12 sales price of these units, as you ve proposed them?

13 MR. SMITH: Approximately, \$400 a square foot.

14 MR. SOCKWELL: Which is pretty close to the
15 market seems to be ranging \$350.00 to \$500.00, so you are on
16 the upper side.

17 Okay, I don t have any other questions. Thank
18 you.

19 MR. COLLINS: That ends our presentation. I d
20 like to have an opportunity for a closing statement.

21 CHAIRPERSON REID: Sure.

22 Government reports, we had a letter that was
23 submitted from the D.C. Historic Preservation Review Board in
24 support of the application, a letter dated, huh, I don t see a
25 date on it, February 13th? No, no, no, this is 89, this is an

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1 older one, but we had one I think we had one for 99.

2 MR. GILREATH: Page 43.

3 CHAIRPERSON REID: Page 43, right, which was the
4 most recent one, and that was dated July 25, 1999, and
5 basically, in essence, it states that it s in approval of this
6 application.

7 The ANC submitted a letter, ANC-1C, and in their
8 letter they come out in support of the application. There was
9 a quorum present, vote taken, and they state that it s our
10 understanding that at the September 22, 1999 meeting the
11 developer agrees to the following request. These are requests
12 in regards to hours of construction and noise abatement,
13 parking, rat abatement, dumpster for construction and removal
14 of the trees.

15 Now, also closing the alley, was there an
16 agreement drawn up to these issues that were signed by the ANC
17 and the developer?

18 MR. COLLINS: There is no formal written
19 agreement. We simply agreed on the record to abide by those.
20 The letter reflects that everything on page two is agreed to,
21 and the letter reflects on page three that there were things
22 that were not agreed to, although Mr. Smith testified today
23 that he has agreed to the items on page three as modified by
24 his testimony.

25 Specifically, on the issue of the trees we said

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1 that we would Mr. Smith said that he would agree with
2 paragraph number one on page three of the letter, but that
3 would be subject to whatever DPW tells us we need to do.

4 CHAIRPERSON REID: Sure.

5 MR. COLLINS: And then on the second item, he
6 agrees with that, but requested the ability to give five days
7 notice instead of ten because of the vagaries of the
8 development process.

9 CHAIRPERSON REID: Okay.

10 Well, basically, this will be made a part of the
11 order, not as a condition, just reflected in the order, the
12 conditions that the terms of the agreement can be

13 mS. PRUITT: Can be made conditions, yes.

14 CHAIRPERSON REID: This is a variance.

15 MS. PRUITT: You can reflect it in the order,
16 yes.

17 CHAIRPERSON REID: Reflect it in the order.
18 Okay.

19 All right, thank you.

20 And, there s no one from the ANC here? Oh, I m
21 sorry, please, come forward. I thought I had asked earlier.
22 Okay, were you sworn?

23 MS. BUMBALO: Yes.

24 CHAIRPERSON REID: Okay.
25 Whereupon,

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LINDA BUMBALO

was called as a witness by Counsel for the ANC, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. BUMBALO: My name is Linda Bumbalo, I live at 2103-1/2 F Street, N.W., Washington, D.C., 20008. I am ANC chair for the Sheridan-Kalorama ANC-1D and also the single-member district in which this is located.

I won't read the whole letter, but as you noted we did have a duly noticed public meeting with a quorum, two of the two commissioners present.

The second paragraph of the letter requests that the record be corrected. The record states that this property is in ANC-1C and it is not, it is in 1D, so I would ask that that be done.

And, it was motioned and passed to support the application only if all of the conditions outlined in the letter were agreed to by the developer, and today I believe I have heard that these things are agreeable.

There is one modification that I would ask for in terms of the alley closing, that the notice be five business days, and you will see that also there are two requests actually in that, one is the notice and one is that the developer provide for trash collection, receptacles on his property when the trash cannot be collected.

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1 I would ask that this agreement be in writing
2 between the parties. I would like that to be done.

3 CHAIRPERSON REID: Well, that would be a request
4 to the Applicant.

5 MR. BUMBALO: Okay.

6 CHAIRPERSON REID: And then, that could be once
7 it is drawn up and then it s signed by both entities, it can
8 then be made a part of the record.

9 MR. BUMBALO: Part of the record, yes.

10 MS. PRUITT: Yes, but I guess I would just
11 caution that any of the conditions you have to think about how
12 they would be enforced.

13 CHAIRPERSON REID: Well, we are not putting any
14 conditions in.

15 MS. PRUITT: Okay, in that sense then

16 CHAIRPERSON REID: Yeah, we are not putting any
17 conditions in.

18 MS. PRUITT: this would be a private agreement
19 between

20 MR. BUMBALO: Rather than conditions as part of
21 the order?

22 CHAIRPERSON REID: Well, it s a variance, and we
23 can t

24 mS. PRUITT: We generally don t.

25 CHAIRPERSON REID: generally can t condition a

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1 variance, so if you have an agreement that s drawn up between
2 the two entities, then

3 mS. PRUITT: It can be made part of the record.

4 CHAIRPERSON REID: yes, we will make it a part
5 of the record, and then, of course, if there s a breach then
6 you have other recourse.

7 MR. BUMBALO: If it s not part if it s not a
8 written agreement between the two of us, then would it be
9 conditions of the order?

10 MS. PRUITT: I m sorry, I m not sure I
11 understand.

12 MR. BUMBALO: Well, I thought you said you were
13 going to make conditions part of the order.

14 CHAIRPERSON REID: No, what I said was, what we
15 said was, we would have these issues reflected in the order,
16 and then you came forward and you said that you d like to have
17 a separate agreement drawn up. And, I was saying to you that
18 that s not we would not basically stipulate that you had to
19 do that. If the two entities decided they wanted to do it,
20 sure, you certainly can do that, and that can be submitted as a
21 part of the record. And, if, in fact we cannot condition, we
22 cannot impose that on the Applicant, however, the idea is, an
23 agreement is an agreement, and if it s written and signed by
24 both entities then you do have recourse in the event there is a
25 breach.

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1 MR. BUMBALO: No, my question was, if there is no
2 written agreement, then what happens to these conditions?

3 CHAIRPERSON REID: There are not conditions. You
4 didn't as a matter of fact, they are not even presented to us
5 as conditions. These are it says that the developer has
6 agreed to the following requests, it did not say that we want
7 to condition the order.

8 MR. BUMBALO: Well, I said, in the last sentence,
9 there was a motion passed to support the application only if
10 all of the conditions outlined above are agreed to by the
11 developer. That was part of our resolution.

12 CHAIRPERSON REID: Oh, I see, I didn't really
13 note that. Nonetheless, still the fact remains that with a
14 variance we do not have the authority to condition a use
15 variance.

16 MR. BUMBALO: Well, I'll have to take your word
17 for it.

18 CHAIRPERSON REID: Special exceptions we can.

19 MR. BUMBALO: Okay.

20 CHAIRPERSON REID: But not a variance.

21 MR. BUMBALO: Okay.

22 Well, I would like to go over those, I would
23 like to point out, the drawing of the front of the buildings,
24 there is no building actually at the current time to the west.
25 That's an empty lot that belongs to the developer, and the

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1 other side is a townhouse that he intends to renovate. So, as
2 I pointed out in my letter, this probably is at least a three-
3 year project that the neighborhood would be disrupted, maybe
4 longer, I don't know, because I'm not quite sure what the
5 scenario is for the development of this.

6 But, as I said, we asked for hours of
7 construction and noise abatement be strictly adhered to, and a
8 condition be imposed by the developer on the contractor to
9 prevent any noise whatsoever by trucks or contractors outside
10 of these hours at the site, and on the street, and in the alley
11 by any persons connected with the application, and that there
12 be provision on site for locked work boxes for the construction
13 workers, so that they do not need access to their trucks, to
14 their vehicles, they can be parked off site and we would
15 encourage that to be a universal garage or any other private
16 garage nearby.

17 The developer, I believe, has already begun rat
18 abatement and has agreed to continue that. The dumpster would
19 be placed within a fenced area, because he intends to close off
20 the sidewalk and fence in the front of it. It would be covered
21 tightly and secured during non-construction hours and be
22 emptied as soon as it is full.

23 And then the trees, we've talked about those.
24 Three trees are between the sidewalk and the building, and
25 closing the alley is the major, major issue. There are six to

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1 seven different trash private collectors in the city come down
2 that alley, and there are approximately 40 to 50 garages and
3 open parking spaces back there, you know, it is essential that
4 we be given adequate notice, and that provision be made where
5 trash cannot be collected, that the contractor take care of
6 that, or the developer take care of that, by providing
7 receptacles on his site. We are willing to walk there to take
8 our garbage.

9 Also, subsequent, which is the third to last
10 paragraph, subsequent to the ANC meeting it was learned that
11 Bell Atlantic actually has some kind of relay box or whatever
12 the technical term is located inside the building, and it
13 provides, I checked with the public utilities, and it serves
14 the buildings located at 2119, 2121, which is actually the
15 developer s property, and 2129 S Street, and I just request
16 that there will be no disruption in service or at least that
17 the developer give those people notice if there is going to be
18 disruption.

19 MR. SOCKWELL: Well, the phone company actually
20 would not want there to be a disruption in service, because to
21 the best of your knowledge those are the only properties served
22 by that

23 MR. BUMBALO: The Office of the People s Counsel
24 investigated that for me, and that s what they the
25 information that they got from Bell Atlantic.

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1 MR. SOCKWELL: Yes, well you do want to make sure
2 that that s taken care of, because I live in a similar
3 situation where the box is on somebody else s property, and it
4 serves a lot of units.

5 CHAIRPERSON REID: Okay.

6 Any other questions for this Applicant, witness?

7 MR. GILREATH: The witness said that she
8 estimated the construction time to be three years. For the
9 developer, is that a reasonable time, or do you think you ll be
10 doing less time than that?

11 MR. SMITH: We re hoping to start as soon as we
12 can get the order, actually the demolition center. On the two
13 side lots we ve just filed to this Board for two variances on
14 the vacant property, one of them being a height variance, it s
15 a three-story neighborhood and surrounded by four and five
16 story buildings. And, the matter of right renovation on Lot 9,
17 we planned on going forward subsequent to this.

18 So, it s timetable to be complete by December of
19 the year 2000, so we ve got a one-year horizon, it s really
20 just dependent upon how long it takes to get the use variance
21 for the surrounding lot.

22 MR. GILREATH: That s good to hear, that would
23 reduce the amount of inconvenience then.

24 MR. BUMBALO: Yes. We were not clear of the
25 sequence or whether they are sequential, or consecutive, or

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1 concurrent or what.

2 CHAIRPERSON REID: I think those are the tweaking
3 details that you need to sit down and work out with the
4 developer and to make sure that you have them all contained
5 within the agreement.

6 MR. SOCKWELL: MS. Chung, how far along is Sorg
7 and Associates with construction documents on this?

8 MS. CHUNG: We are actually in the process of,
9 I d say about 75 percent of the permit drawings. So, as Larry
10 Smith has purchased the property, not contingent on getting the
11 variance, we ve also proceeded with our design and construction
12 documents to this date.

13 MR. SMITH: We do have demolition plans that are

14

15 MS. CHUNG: Yes, we have demolition plans that
16 are ready to go to the permit office to get a demolition permit
17 this week.

18 MR. SOCKWELL: And, your

19 MS. CHUNG: For the main building.

20 MR. SOCKWELL: for the main building.

21 MS. CHUNG: Yes, or actually, this lot.

22 MR. SOCKWELL: Yes, so your construction
23 documents are 75 percent complete.

24 MS. CHUNG: Yes.

25 MR. SOCKWELL: And, on the adjacent lot that s

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1 been

2 MS. CHUNG: Both, all three lots, Lot 12, 49 and
3 9, they are approximately 75 percent complete.

4 MR. SOCKWELL: Okay.

5 So, you are well beyond the schematic and design
6 development.

7 MS. CHUNG: Yes.

8 MR. SMITH: And, we ve already retained a
9 contractor for the work as well.

10 MR. SOCKWELL: And, the contractor will be
11 amenable to the agreement requirements desired by the ANC?

12 MR. SMITH: I faxed him a letter as soon as I got
13 it. He is, he is amenable.

14 MR. SOCKWELL: Okay, thank you.

15 CHAIRPERSON REID: All right, thank you.

16 Persons or parties in support of the
17 application, please come forward.

18 Persons or parties in opposition to the
19 application?

20 Closing remarks by the Applicant.

21 MR. COLLINS: Just a few points, Madam
22 Chairperson, members of the Board. This will be, we think, the
23 best solution for this building. It s a residential use, in a
24 residential zone, in a residential neighborhood. The building
25 has had a history of non-residential use, it s been vacant for

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1 a number of years, it s boarded up, it s an eye sore, and this
2 is an appropriate solution to bring this property back to a
3 productive use in the future.

4 The apartments are generous in size and they are
5 logical in layout. As you ve seen through MS. Chung s
6 testimony, there is on-site parking. Parking is not required
7 for this building because it s in a Historic District, it s a
8 change of use. We are providing parking, which is something
9 that is value off-site parking is valued very highly in that
10 neighborhood. There s a lot of competition for on-street
11 parking.

12 The additions that we ve planned for the
13 building are not readily visible from public space, as MS.
14 Chung mentioned, including the new connector building between
15 the front and rear buildings, and the small extension of the
16 parking garage at the lower level at the rear.

17 You ve heard about the impracticality of other
18 uses, the practical difficulty of other uses, both from a
19 marketing standpoint through the affidavit of Mr. O Hara, from
20 a design standpoint through the testimony of MS. Chung, and
21 from a development standpoint through the testimony of Mr.
22 Smith. We think for all the reasons stated in our presentation
23 that we meet the requirements for variance relief in this case
24 and we respectfully request that you grant the application.

25 Thank you.

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1 CHAIRPERSON REID: Mr. Collins, in regard to the
2 affidavit that was submitted by the real estate broker?

3 MR. COLLINS: Yes.

4 CHAIRPERSON REID: You were submitting him
5 proffering him to us as an expert witness to the affidavit?

6 MR. COLLINS: Submitting through affidavit, I did
7 not request that he be submitted as an expert, but if you

8 CHAIRPERSON REID: I d like a resume background
9 on his to reflect his experience with the District of
10 Columbia. The affidavit was signed in New York, and I d just
11 like to get some information pertaining to his ability to
12 testify as to the real estate market and his experience here in
13 the District of Columbia.

14 MR. COLLINS: Sure. He was not proffered as an
15 expert, and he s experienced with real estate worldwide. He
16 does work for he s not with the Church of Scientology, but he
17 does work for the Church of Scientology around the world.

18 CHAIRPERSON REID: I understand, but I d just
19 like I would like to see that, if you wouldn t mind having
20 this submitted to the record.

21 MR. COLLINS: All right.

22 CHAIRPERSON REID: Okay.

23 MR. SOCKWELL: Another question, Mr. Collins, you
24 said that because of the historic status of the building no
25 parking is required for this use, pursuant to Section 2100.5?

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1 MR. COLLINS: Yes, sir.

2 MR. SOCKWELL: And so, the proper request for
3 waiver of parking and loading

4 MR. COLLINS: Will happen during the building
5 permit application process, but these things are typically
6 it s simply a notation more than it is an approval. We are
7 entitled to it under Section 2100.5 and the paper work will be
8 submitted with the application.

9 CHAIRPERSON REID: That s a Historic District.

10 MR. SOCKWELL: Yes.

11 If you would submit a copy of that document to
12 the record when you when it s been filed?

13 MR. COLLINS: Sure.

14 MR. SOCKWELL: Thank you.

15 CHAIRPERSON REID: Okay.

16 Any further questions?

17 MR. GILREATH: No further questions.

18 CHAIRPERSON REID: No more questions. Okay.

19 All right, Board members, I think that I d like
20 to move that this application be approved. I think that the
21 applicant has demonstrated that he s met the burden of proof
22 and that he s in compliance with the regulations under the
23 District of Columbia as they pertain to a variance.

24 He cited that the unusual and unique conditions
25 apparently stems from the fact that after a number of years of

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1 trying to market the property and to find a user for the
2 property, it was a very difficult endeavor, and that of the
3 five contracts that they received on the property they were not
4 able to get past the due diligence and the contingency for the
5 zoning. And, that is the practical hardship that they
6 proffered to us.

7 The adverse impact aspect stems from the letter
8 that we got from the ANC, in which they basically stipulated
9 that certain conditions be met before they would give their
10 approval. However, the Applicant and the ANC have met and have
11 basically come to a meeting of the minds as to this agreement,
12 that they will then submit to the record. It will not be
13 conditioned. We are not allowed to condition the order itself
14 as such, but the issues that were raised will definitely have
15 been addressed and they will be reflected therein.

16 There were no other persons that appeared to
17 voice any opposition.

18 I don't feel that granting this particular
19 application, relief of this application, will impair the intent
20 or the integrity of the Zoning Regulations and maps.

21 MR. GILREATH: Madam Chairman, I concur. I feel
22 that much of this variance relief is a result of the
23 nonconforming use of a very old building, and to be able to
24 restore this, which is in disrepair now, actually is to the
25 betterment of the neighborhood, and I think they've made their

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1 case very convincingly, and I second the motion that the
2 application be approved.

3 CHAIRPERSON REID: Okay.

4 MR. SOCKWELL: I feel that the application, from
5 the visual elements, will be a retention of the character of
6 the neighborhood, without substantial impacts from the street
7 side, and with noticeable, but seemingly appearance from the
8 non-street facades of the building.

9 I do feel that the ANC s issues tended at the
10 conclusion of their negotiations with the developer to be more
11 construction sequence related issues than substantive building
12 issues, and that s a good sign that the neighborhood is in
13 general concurrence with the design that s been presented.

14 So, I have no concerns about it.

15 CHAIRPERSON REID: And also, I don t know if I
16 said when I made the motion, that in regard to the uniqueness,
17 that the building had been built specifically to house a school
18 or an academy, and did not, therefore, lend itself to many
19 other uses.

20 MR. GILREATH: No further comments.

21 CHAIRPERSON REID: All in favor?

22 (Ayes.)

23 CHAIRPERSON REID: Opposed?

24 MS. PRUITT: Staff would record the vote as 3/0
25 to approve, motion made by MS. Reid, seconded by Mr. Gilreath.

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1 And, I just wanted to verify that you are
2 requesting that the Applicant submit a copy of documentation of
3 historic designation and, therefore, no parking required for
4 the record, and a copy of I m sorry, I didn t catch the
5 person s name, resume?

6 MR. COLLINS: Mr. O Hara, Lee O Hara.

7 MS. PRUITT: O Hara, okay. Thank you.

8 CHAIRPERSON REID: Mr. Collins, you did pretty
9 well today, didn t you?

10 MR. COLLINS: Yes.

11 CHAIRPERSON REID: You are batting 100, aren t
12 you?

13 MR. COLLINS: Right, right, I hope the Red Sox do
14 that well tonight.

15 Thank you.

16 CHAIRPERSON REID: He asked for a summary order,
17 bench decision.

18 MS. PRUITT: I m sorry, and it will be a summary
19 order.

20 CHAIRPERSON REID: Yes.

21 MS. PRUITT: I just wanted to verify so that

22 MR. COLLINS: Yes, thank you.

23 CHAIRPERSON REID: You are quite welcome.

24 Excuse me, with that agreement, do you think we
25 should have a full order?

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1 MS. PRUITT: Excuse me?

2 CHAIRPERSON REID: I said, with that agreement,
3 with those conditions reflected, don t you think we should have
4 a full order?

5 MS. PRUITT: That s why I was asking.

6 CHAIRPERSON REID: Okay.

7 Mr. Collins, in view of the fact that we
8 discussed the agreement, and that was going to be reflected in
9 the order, then that would have to be a full order rather than
10 a summary order, correct?

11 MR. COLLINS: We could do that, or we could do a
12 summary order and at the provision where you have the ANC
13 discussion, that could be a full discussion of the ANC issue.

14 CHAIRPERSON REID: Okay.

15 MR. COLLINS: And, the Board has done that in the
16 past.

17 CHAIRPERSON REID: You would like that? All
18 right, okay, fine. I just wanted to make sure that we

19 mS. PRUITT: We will early expedite everything.

20 CHAIRPERSON REID: Okay.

21 MR. COLLINS: And, let the record reflect as my
22 partner said, that I m not batting 100, I m batting 1,000. If
23 I was batting 100, I guess I d have a problem.

24 CHAIRPERSON REID: Okay.

25 Please call the last case of the day.

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1 MS. PRUITT: Yes, the last case of the day is
2 16498, application of 800 8th Street, N.W., LLC, and the Chinese
3 Consolidated Benevolent Association, pursuant to 11 DCMR 3108.1
4 for special exceptions under Section 774.2 to waive the rear
5 yard requirements; Sections 411.11 to approve the elevator
6 machine room which does not meet the normal setback
7 requirements; and pursuant to 11 DCMR 3107.2 for variances from
8 Section 773.7 to have residential recreation space on a roof
9 with a dimension less than twenty-five feet; and Section 2101.1
10 to have fewer than the minimum number of required parking
11 spaces; and Section 2117.4 to provide parking access by a car
12 elevator rather than an improved driveway, and finally, Section
13 2205.3 to have less than the one required loading berth in a
14 DD/C-3-C District at 800 8th Street, N.W., (Square 404, Lots 800
15 and 801).

16 All those planning to testify would you please
17 stand and raise your right hands?

18 Please, be seated.

19 MR. GILREATH: MS. Pruitt, where it says a
20 variance from 773.7 to have residential recreational space on
21 the roof, that has been dropped, has it not?

22 MR. GLASGOW: Yes, it has been dropped.

23 MR. GILREATH: That s my understanding.

24 MR. GLASGOW: That has been dropped, Mr.
25 Gilreath.

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1 MR. GILREATH: Did you get that?

2 CHAIRPERSON REID: No, I didn't.

3 MR. GILREATH: The requested variance for
4 residential recreation space on the roof, et cetera, of less
5 than 25 feet has been dropped. They are not going to put any
6 kind of residential use up there.

7 CHAIRPERSON REID: Oh, when did that happen?

8 MR. GILREATH: It was something I saw it in one
9 of the letters, I think one that was passed out today.

10 CHAIRPERSON REID: Oh, it was, I don't have it
11 here.

12 Mr. Sockwell?

13 MR. GILREATH: I saw it someplace, it was in the
14 material, I'm quite sure.

15 CHAIRPERSON REID: I don't think we got anything
16 today from this Applicant.

17 MR. GILREATH: Reading through, I came across
18 that, it's one of the letters.

19 CHAIRPERSON REID: Mr. Glasgow, hi, good morning, or good
20 afternoon, how are you?

21 MR. GLASGOW: Good afternoon.

22 CHAIRPERSON REID: You are the last case of the
23 day. Thank you for your indulgence.

24 Mr. Gilreath said that you had withdrawn one of
25 the variance requests?

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1 MR. GLASGOW: Yes, that request is no longer
2 necessary.

3 CHAIRPERSON REID: Okay, that was for the
4 recreational space.

5 MR. GLASGOW: Residential recreation space.

6 CHAIRPERSON REID: Okay, so we are dealing with
7 how many now, three?

8 MR. GLASGOW: We have two special exceptions and
9 three area variances. We have a roof structure setback special
10 exception, rear yard waiver special exception, number of
11 parking spaces variance, access to parking space variance, and
12 loading berth variance.

13 CHAIRPERSON REID: Okay.

14 You don't there does not appear to be any
15 opposition to your application. I didn't note any in the file,
16 any letters of opposition, so if you'd like you can expedite
17 your presentation.

18 MR. GLASGOW: Sure, we'd be happy to.

19 CHAIRPERSON REID: Yes, and we can get through it
20 relatively quickly. And, I suppose you will present it in such
21 a fashion that you can capsule the special exceptions and the
22 variances and demonstrate how you are in compliance with them,
23 and how you meet the burden of proof.

24 MR. GLASGOW: Sure. I think we can do that in a
25 fairly brief fashion. I assume everyone has a copy of our

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1 statement of Applicant that we filed.

2 CHAIRPERSON REID: Yes.

3 MR. GLASGOW: Thank you.

4 With respect to the first, we ll start with
5 the two special exceptions and in the statement, all fo the
6 special exceptions and variances are discussed in the statement
7 of the Applicant in pages one through 19. We just wanted to
8 make sure that we had covered all of those for the record, and
9 I will have one of the witnesses just adopt that as his
10 statement.

11
12 We have a plat of the property. This case
13 really stems from the small size of the site and the dimensions
14 of the site, and that is going to also go to the uniqueness of
15 the property. We have a C-3-C site that is slightly over 4,000
16 square feet in size. We have a very small building for the
17 size of the building that we have, it s 120 foot tall building
18 which is only 34,000 square feet in gross floor area, and in
19 looking at the size of the site, which is only 47 feet wide,
20 when you look at the roof structure and the requirements for a
21 roof structure setback we ve had several cases that have been
22 before this Board historically, and once you get below about 60
23 feet in width it is extremely difficult to not request a roof
24 structure setback. And so, we have made the determination that
25 the most appropriate portion of the site for the roof structure

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1 to be pushed to is the western frontage, where it butts up
2 against another substantial building, which is the building
3 where the U.S. Mint is located.

4 We set back from the south, north and east
5 frontages more than the required setback, so it s only that
6 western frontage where we have the roof structure setback for
7 that special exception.

8 Then, with respect to the rear yard waiver,
9 there s a series of requirements in the requirements, most
10 dealing with window separation from habitable rooms in
11 residential buildings. There are no residential buildings
12 around us that we impact, and that will be testified to by the
13 architect.

14 With respect to the variances, what we ve
15 determined to try to do, that even normally with this size of
16 site we come in and we ask for a waiver from the parking
17 requirements because it is very difficult to build any type of
18 in fact, it is economically not feasible to build a ramping
19 system to access the parking spaces, so that instead of just
20 coming in and saying we don t want to provide any parking, we,
21 because of the small size of the building, we do believe that
22 an elevator system is reasonable, we provide two levels of
23 parking, we actually, with the vault space that we have,
24 provide the required number of spaces, more than the required
25 number of spaces, but we do not have the access to them, we do

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1 not have the required number of spaces on our own site, so that
2 we need those two variances.

3 The third is the loading berth, putting a
4 loading berth in a building of this small size is extremely
5 difficult, and it s not practical. What we do have is, we have
6 you can have loading zones and commercial zones. With a
7 loading zone for this size building we believe that we can
8 readily accommodate any loading that we have with a loading
9 zone at the front door, which is very common in the downtown
10 area and in the commercial districts.

11 Also, if you look at the rear yard, if we were
12 required to provide a rear yard, depending upon whether we
13 provided the rear yard on the north or the west side of the
14 building, you would lose somewhere around 28 or 21 percent of
15 the entire building area, and given a 34,000 square foot
16 building we do not have 28 or 21 percent to spare.

17 With that brief overview, what I d like to do is
18 call our one witness and introduce the compatriots up here on
19 the table, Mr. Dennis Hughes, of the law firm of Wilkes, Artis,
20 Hedrick & Lane seated to my left, Mr. Glenn Golonka, who is the
21 developer of the project seated to my immediate right, and on
22 my far right is Mr. Eric Colbert.

23 I d like to call Mr. Eric Colbert as a witness.

24
25 Whereupon,

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ERIC COLBERT

was called as a witness by Counsel for the Applicant, and
having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. GLASGOW: Mr. Colbert, have you had an
opportunity to review the statement of Applicant?

MR. COLBERT: Yes, I have.

MR. GLASGOW: All right, and do you adopt the
statement of Applicant as your testimony with respect to the
burden of proof and its description of the areas of relief?

MR. COLBERT: Yes, I do.

MR. GLASGOW: All right.

With that, Madam Chair, we can either go through
a brief description of the project or if there are questions of
the Board members, answer the questions of the Board members.

CHAIRPERSON REID: I think that I d like to do
both, a brief description of the project, and then we ll the
Board members will now have an opportunity to ask questions.

MR. GLASGOW: Mr. Colbert?

MR. COLBERT: Hello, Madam Chairperson and
members of the Board. My name is Eric Colbert, and I live at
3829 Fessenden Street, N.W., and I m very happy to be able to
present this drawing today because my firm has had a very
successful relationship with Ms. Wong, the developer, and
Glenn, and we did the other very handsome development with them

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1 at 7th and A Street, and Ms. Wong has been very active in the
2 community, you know, improving Chinatown and trying to do a
3 good job of that. And, I think this is a very important project
4 because as you can see, you know, development is encroaching
5 from the west, and the photos I have here show the orientation
6 of the currently being completed Mint building, and as you can
7 see the Mint building has a blank wall that s made out of and
8 is facing our property. And, we feel very confident that

9 CHAIRPERSON REID: I m sorry, Mr. Colbert, what
10 did you say, a blank wall that s what?

11 MR. COLBERT: This is the end of the Mint
12 building that s currently being completed, and that s the wall
13 that we are going to be going up against with our proposed
14 development.

15 CHAIRPERSON REID: Okay.

16 MR. COLBERT: And, this is a drawing showing the
17 Mint building coming up to this point, and then this is our
18 building here. So, I think that it s a very friendly business,
19 in the sense that it articulates, you know, provides an end to
20 that block, and is very in keeping with the scale and yet it s
21 actually a diminutive version of the large Mint building. It s
22 different articulated, but the massing of it I think helps to
23 complete the block.

24 Our penthouse here is lower than the Mint
25 penthouse, and actually our permitted 120 foot height is based

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1 on the width of 8th Street, and that s to the bottom of the
2 penthouse, but actually the way we have it designed the 120
3 foot height is actually to the top of the penthouse. So, we
4 are not asking for any variance in terms of height
5 consideration. As a matter of fact, the building is actually
6 lower than permitted.

7 This is a drawing of our proposed building, and
8 we ve designed this with rich materials, we are going to have
9 cast stone banding to give it a historic look, but with some
10 very subtle Oriental suggestions, but we want the building to
11 have a wide appeal so we ve given it a kind fo classical look
12 that we think will fit in with the Mint building and the other
13 older buildings in the area.

14 This is a site plan, and this is our proposed
15 building. There s considerable yard here that in the future
16 may be developed as different options for public space,
17 including possibly a sidewalk café, but at this point, you
18 know, there is a lot of openness around the building, and then
19 there s an alley here that separates us from the existing
20 church.

21 And, the restaurant entrance will be on the
22 corner, and then the office building, I guess, will be on the
23 west side of the building.

24 As this is a facade that s facing north toward
25 the church, and we fully articulated this, we don t have any

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1 facades on the building that we are going to consider to be
2 minor facades that we are not going to articulate. We have
3 windows, and brick, and cast stone on all our orientations.

4 This is a plan of the garage level. We have two
5 levels. And, as Chip correctly pointed out, even though we are
6 asking for a consideration with regard to parking, we actually
7 provide the required number. This is the edge of our property,
8 and so what we are doing is vaulting so that we are going to
9 create ten spaces per level to provide a total of 20 spaces,
10 and the zoning requirement here is 18, given the current uses.

11 This is the typical floor plan oh, this is the
12 first floor plan, I m sorry, this is the entrance lobby, and
13 then the plan is to have a restaurant that will occupy the
14 remainder of the first floor and also the second floor, and
15 we re going to have an opening so that there will be we are
16 intending to have one restaurant and there will be openness
17 from the first floor to the second floor, and actually I would
18 like to point out that the Starbucks that is also in the other
19 building that they ve just completed a two-story restaurant
20 there, and they ve been very successful with that.

21 This typical floor plan I think can tell you,
22 you know, give you an idea of why it s important for us to have
23 the core on one side. This is we don t have any opportunity
24 for windows here, and to make you know, we are only 47 feet
25 wide, to make an office building work you need to have a layer

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1 of offices and then a layer for corridors and support staff and
2 so forth. So, if we were required to push the core to the
3 middle of the building we would probably even need a zoning
4 relief for that, because we probably couldn't get the one-to-
5 one setback required because of the narrowness of the building,
6 and it makes sense to have it on the west side because we are
7 abutting a larger structure and we think that that will be the
8 least impact.

9 The main visibility for this building is going
10 to be, probably one of the most important vistas is as you come
11 out of the Metro station, people that are going to the MCI
12 Arena and the new gallery, you know, development in that area,
13 and from the Metro you come up and you'll see this, so from
14 that perspective it is important for us to have these elevators
15 set back as much as possible.

16 This is in order to not make the building, you
17 know, to help ease the scale of the building, the top floor, as
18 Chip mentioned, is going to be set back, so we are going to
19 have a balcony all the way around, and that will help us rehab
20 an alignment here with the Mint. They have a strong cornice
21 line here, and we will also, and then this floor will be set
22 back to kind of reinforce some of the important architectural
23 lines that are created on the block.

24 CHAIRPERSON REID: Mr. Colbert, going back to the
25 parking, did you say, how many spaces did you say that you are

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1 going to be providing?

2 MR. COLBERT: Twenty, but some of them aren't
3 don't qualify as zoning required parking because they are
4 actually public spaces.

5 CHAIRPERSON REID: Oh, okay. All right.

6 MR. COLBERT: Because they are in the vault.

7 CHAIRPERSON REID: Okay.

8 MR. SOCKWELL: If I might interject, you said
9 that you were providing 18 you said something about 18
10 spaces.

11 MR. COLBERT: And, I'm saying that the zoning
12 computations for this building would require a total of
13 approximately 18 spaces, and we're providing 20, so we feel
14 that from a practical perspective we are providing a ratio.
15 And, if this weren't in the C-3-C Zone, if this were in the C-4
16 Zone for a lot under 5,000 square feet, zero parking would be
17 required. So, we feel very confident about the actual number
18 of parking that we are providing, in terms of its adequacy with
19 the zoning requirements.

20 MR. SOCKWELL: All right, because under zoning,
21 as you know, required spaces cannot be provided in a vault.

22 MR. COLBERT: That's correct.

23 CHAIRPERSON REID: Right.

24 MR. COLBERT: That's why we need the relief.

25 CHAIRPERSON REID: And, if I understand you

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1 correctly, to comply with the Zoning Regulations with regard to
2 the parking, there s not enough space there to permit you to
3 comply with

4 MR. COLBERT: Yes.

5 CHAIRPERSON REID: with being able to
6 provide the parking in the building on the designated site,
7 that s my understanding of basically your variance request.

8 MR. COLBERT: Yes. What happens is, this is a
9 drawing of our garage level, and what we are doing here is, we
10 are providing an elevator for the cars. Unfortunately, because
11 of the ramping, it would be virtually impossible for us to
12 provide a ramp in this building that would allow us to serve
13 two levels of parking, because by the time we are able to
14 provide the ramp itself there would literally be no space left
15 over for parking.

16 CHAIRPERSON REID: Right.

17 MR. SOCKWELL: Unless it s motorcycles.

18 MR. COLBERT: Yeah, exactly. I mean, this is an
19 obviously much more expensive solution than building a ramp, so
20 the owner is not necessarily trying to take the cheap way out.
21 They are really going the extra step to try to, you know, be a
22 good neighbor for the community.

23 MR. GILREATH: You said that some of the parking
24 would be in public space, I guess in vaults or what have you,
25 do you have to have permission or does this belong to the D.C.

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1 government, you say public space, what do you mean public
2 space?

3 MR. COLBERT: Yes, we have to the parking will
4 be underground, but it will be underneath what appears to be a
5 side yard to the building, but it s actually public space, and
6 we will have to rent that from the city, and to make a
7 determination that it was feasible to do that we had a surveyor
8 go there and check the location of the utilities to make sure
9 that there were no utilities in that area so that we could do
10 that.

11 And, 8th Street is kind of unusual, because the
12 street itself is not extremely wide, but there s a lot of width
13 between the curb and the building property line, so that s what
14 allows us to get this extra space underneath.

15 MR. SOCKWELL: And, Mr. Gilreath, that s because
16 8th Street is a vista street.

17 MR. GILREATH: What kind of street?

18 MR. SOCKWELL: It s a vista street.

19 MR. GILREATH: Oh, yes, okay.

20 MR. SOCKWELL: We had a lot of problems at Tech
21 World.

22 CHAIRPERSON REID: In regard to the variance
23 relief request under Section 2117.4, which requires that there
24 be accessibility of parking spaces from improved streets or
25 alleys, and instead you are going to provide a car elevator

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1 rather than a driveway.

2 MR. SOCKWELL: That actually it s still,
3 there s accessibility from the streets, but it s not a ramp,
4 it s an elevator, so they ll drive into the elevator from the
5 private street from the public street, and then be dropped
6 down to the level of parking, or the two levels of parking.

7 CHAIRPERSON REID: Thank you, Mr. Sockwell.

8 MR. SOCKWELL: But, it is accessible from the

9 CHAIRPERSON REID: But, that s not my question.

10 MR. SOCKWELL: Oh, I m sorry.

11 CHAIRPERSON REID: A car elevator, what s that?

12 MR. COLBERT: The way it will work is

13 CHAIRPERSON REID: I m not familiar with that.

14 MR. COLBERT: the people that I think
15 there s one at Ford s Theatre, the people that have these
16 spaces, and this is not my understanding is this won t be
17 open to the public like a typical garage where, you know, it s
18 operated by one of the larger parking places, the folks that

19 CHAIRPERSON REID: I m just not familiar with a
20 car elevator.

21 MR. COLBERT: Right. The folks that will be
22 there will have like monthly contracts, and they ll have a
23 clicker, like you have for like a garage door, like a remote
24 thing, and so as they are approaching it they ll push the
25 button and it will call the elevator and open the doors, and

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1 then they ll have another button that they can press that will,
2 you know, whether they want to go on the lower level or the
3 upper parking level, it will automatically take them to that
4 level and then the doors will open and they can drive to their
5 parking space.

6 CHAIRPERSON REID: Oh, okay, interesting.

7 MR. SOCKWELL: Madam Chair, there are parking
8 elevators primarily in buildings that were designed as parking
9 structures, rather than as residential buildings or as office
10 buildings. And, you just drive on and it takes you up to the
11 floor, it s just a big it s like a huge hospital elevator,
12 about the same shape.

13 Mr. Colbert, I need to ask you one question
14 about the vault. Will you go back to the plan that shows the
15 vaulting? Yes.

16 Now, that vault area is under what?

17 MR. COLBERT: This is our property line.

18 MR. SOCKWELL: So, you are vaulting under what
19 would really be what we call parking in the public space?

20 MR. COLBERT: That s correct.

21 MR. SOCKWELL: Okay. All right, I wasn t quite
22 sure, I just didn t catch it when you showed it.

23 MR. COLBERT: Yes. This is our site plan, this
24 is the building itself, and you can see we ve got all this area
25 between our building and the sidewalk.

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1 MR. SOCKWELL: Right.

2 MR. COLBERT: And, it won't extend out beyond
3 that.

4 MR. SOCKWELL: I used to know the numbers by
5 heart, not anymore, the two component numbers of your public
6 space.

7 But, okay, so now I understand exactly where all
8 that goes. Okay.

9 Thank you.

10 CHAIRPERSON REID: All right.

11 MR. GILREATH: Can you address the loading berth,
12 there's a question, I think, you are proposing you have a sign
13 in front of the building which would say no parking, loading or
14 something, that's kind of the material and so forth for the
15 building would be unloaded?

16 MR. COLBERT: Well, most it's my understanding
17 that most office buildings, when people move in and out, they
18 go through the front door in any case, and so what we propose
19 here is that along the street we would just have a no parking,
20 loading zone permanently, and so that in instances where that
21 occurs that, you know, trucks would be there on a daily basis,
22 you know, Federal Express, which comes to the front door of the
23 building anyway, would go to that location.

24 MR. SOCKWELL: The one area about having a
25 curbside loading condition is that it requires public sidewalk

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1 to be crossed with the heavier aspects of in and out movement
2 to the building, and that s one of the reasons why loading
3 would be normally pushed to the rear of the building, alley
4 access, loading docks, et cetera. And, while you are quite
5 right that very often offices are moved primarily at night,
6 directly out the front doors, evidenced by K Street and just
7 about everyplace else you can imagine, it does on that that
8 is going to be a very strong pedestrian street in the future,
9 with the new buildings that are going up all around you. And,
10 it is something that you would want to be very careful, or the
11 owner would want to be very careful to control in terms of the
12 time of major loading for in and out movement of tenants and
13 material.

14 MR. COLBERT: That s correct.

15 One thing I d like to point out is that we have
16 a designated trash area here, there is an alley behind our
17 building, and we are going to have this driveway to the
18 elevator, so a trash truck can back up here and they can gain
19 easy access to the trash area without disturbing the public.

20 MR. SOCKWELL: Now, there won t be a rollaway
21 dumpster back up in there, will there?

22 MR. COLBERT: No.

23 MR. SOCKWELL: Okay.

24 That s not a through alley as I recall, is it,
25 or is it?

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1 MR. COLBERT: It s a private alley.

2 MR. SOCKWELL: It s a private alley, okay.

3 And, it s designated, Mr. Glasgow, for the use
4 of the adjoining property owners, both, rather than just one?

5 MR. GLASGOW: I believe it s just for you all?

6 MR. COLBERT: It s for all three properties.

7 MR. GLASGOW: For all three properties, the Mint
8 that s located to the west

9 MR. SOCKWELL: Usually private alleys are derived
10 of the adjacent properties, not always all of them, but almost
11 always through some agreement, usually dating back to the
12 1800s, would be designated for the use of certain property
13 owners and not necessarily for certain other property owners.
14 So, you do have access to it?

15 MR. GLASGOW: Yes.

16 MR. SOCKWELL: That s all that matters.

17 MR. COLBERT: There are required emergency egress
18 doors here, so this would always have to remain open.

19 MR. SOCKWELL: Where?

20 MR. COLBERT: Back here from the other building.

21 MR. SOCKWELL: Okay, very similar to a condition
22 on 18th Street that we are dealing with.

23 CHAIRPERSON REID: Okay.

24 Any other questions?

25 MR. GILREATH: No questions.

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1 CHAIRPERSON REID: Did we receive a letter from
2 the ANC on this particular application?

3 MS. PRUITT: I don t believe so. You have the
4 original file, I have none in mine.

5 CHAIRPERSON REID: I didn t see one. Let s see,
6 they were noticed in July, and it doesn t appear that we
7 received anything.

8 MR. GILREATH: I don t recall seeing a letter
9 from the ANC.

10 CHAIRPERSON REID: Okay. Well, when we don t
11 hear from the ANC we assume that they are

12 MR. SOCKWELL: Chinese Consolidated Benevolent
13 Association has written a letter.

14 CHAIRPERSON REID: that they are not opposed
15 to the application, and I don t think we have any other
16 government reports.

17 There s no one here to testify in support of the
18 application, nor is anyone here to testify in opposition.

19 What letter were you referring to, Mr. Sockwell?

20 MR. SOCKWELL: There s a letter in the file from
21 the Chinese Benevolent Chinese Consolidated Benevolent
22 Association at 803 H Street, N.W., stating that this is to
23 oh, this is just authorizing Wilkes, Artis to represent them.

24 CHAIRPERSON REID: Oh, okay.

25 MR. SOCKWELL: Okay.

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1 CHAIRPERSON REID: That s your client.

2 All right.

3 Closing remarks by the Applicant.

4 MR. GLASGOW: I believe we ve submitted testimony
5 and evidence to meet our burden of proof, and we would like to
6 have a bench decision if we could, with a summary order.

7 CHAIRPERSON REID: Okay.

8 MR. SOCKWELL: I d like to say, this must be a
9 very important building for Chinatown, because it s a very
10 constrained site, and it s a very limited floor plate. It s
11 requiring numerous unusual and not necessarily inexpensive
12 adjustments to meet your goal, and while at its height it s a
13 very compact building, so obviously the client has a very
14 strong feeling about making a statement in Chinatown for a
15 modern and useful building.

16 CHAIRPERSON REID: Mr. Sockwell, are you making a
17 motion?

18 MR. SOCKWELL: I move that we approve the
19 application as submitted.

20 CHAIRPERSON REID: Okay, and would you speak to
21 how he s met his burden of proof?

22 MR. SOCKWELL: He appears to have met the
23 requirements, I guess I should go down

24 CHAIRPERSON REID: For the special exceptions.

25 MR. SOCKWELL: for the special exceptions, I

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1 should go down through the specifics. Waiving the rear yard
2 requirements seems to be a reasonable allowance, based on the
3 particular constraints of the site.

4 CHAIRPERSON REID: And, that s one of the two
5 special exceptions that they are asking relief on.

6 MR. SOCKWELL: Yes.

7 The elevator machine room not meeting normal
8 setback requirements, again, would be consistent with the
9 narrowness of the site, and the intention to push it as far and
10 as unobtrusive a location as possible seems to be, without
11 question, a reasonable request.

12 The variance to have fewer than the minimum
13 number of required parking spaces, based on the difficulty of
14 achieving a typical access route from the street, with the
15 narrowness and small size of the site, which creates particular
16 constraints seems to have been proven as a particular hardship
17 request, and one that has no practicable solution other than an
18 elevator.

19 The variance regarding access to the required
20 spaces, again, would not be inconsistent with the variance for
21 the number of cars, based on the constraints of the site.

22 CHAIRPERSON REID: Isn t that being accomplished
23 by that car elevator?

24 MR. SOCKWELL: Yes, and that the car elevator is
25 an acceptable means of reaching those spaces in this situation,

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1 I can believe that they have met the burden of proof, that an
2 elevator is the only practical method of achieving access.

3 The variance to have less than the one required
4 loading berth, while a more difficult one to deal with for me
5 is proven by the fact that the number of square feet in the
6 floor plate, especially at the first floor, and the fact that a
7 loading berth might even exceed, I don't know what your
8 what's your floor to floor from the first to second?

9 MR. COLBERT: Eleven feet.

10 MR. SOCKWELL: Eleven feet, pushes the capability
11 of actually getting a truck of any size underneath the
12 structure at that level to a rather interesting feat, perhaps,
13 and I think that all of this is based upon what you have to
14 work with and trying to maximize the amount of space that you
15 can put in the building, keeping the floor plate, floor to
16 floor heights as high as possible, but reasonable enough to get
17 a square footage that gives you an economically feasible
18 building.

19 So, I agree with all of these.

20 CHAIRPERSON REID: I would second the motion. I
21 think that also there does not appear to be any adverse impact,
22 which is evidenced by the fact that we don't have any letters
23 of opposition or anyone who appeared here opposed to the
24 application today. So, adverse impact in regard to parking,
25 traffic, noise, lights, or any other nuisance does not appear

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1 to be apparent, and I feel that granting the application will
2 not impair the intent and integrity of the Zoning Regulations
3 or the maps.

4 MR. GILREATH: I would like to commend the
5 Applicant, I think that they've come up with a very imaginative
6 solution to this. I think the compatibility with the adjacent
7 building and so forth, in terms of the architectural style, is
8 very impressive and very compatible, and I would just like to
9 commend them, and I feel that the variances and special
10 exceptions required are reasonable, and that they are fully
11 justified given the unique narrowness of the lot area and so
12 forth, that they've really done a superb job and I fully
13 support the application.

14 CHAIRPERSON REID: All in favor?

15 (Ayes.)

16 CHAIRPERSON REID: Opposed?

17 MS. PRUITT: Staff would record the vote as 3/0
18 to approve, motion made by Mr. Sockwell and seconded by Ms.
19 Reid.

20 CHAIRPERSON REID: All right, thank you.

21 MS. PRUITT: And, summary order.

22 CHAIRPERSON REID: Summary order, and you should
23 have your order in about two weeks.

24 Okay, and that concludes the day's hearing of
25 the Board of Zoning Adjustment.

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Thank you.

(Whereupon, the hearing was concluded at 4:10

p.m.)

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