

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JUNE 8, 2010

+ + + + +

The Regular Public Hearing
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 9:30 a.m., Meridith H. Moldenhauer,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH H. MOLDENHAUER, Chairperson
SHANE L. DETTMAN, Vice Chairman (NCPC)
NICOLE SORG, Member

ZONING COMMISSION MEMBER PRESENT:

KONRAD SCHLATER, Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
TRACEY W. ROSE, Sr. Zoning Specialist
ESTHER BUSHMAN, General Counsel
JOHN NYARKU, Zoning Specialist

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
KAREN THOMAS

The transcript constitutes the
minutes from the Public Hearing held on June
8, 2010.

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

9:30 a.m.

CHAIRPERSON MOLDENHAUER: This hearing will please come to order.

Good morning, ladies and gentlemen. This is the June 8, 2010 Public Hearing of the Board of Zoning Adjustments of the District of Columbia.

My name is Meridith Moldenhauer, Chairperson.

Joining me today is Vice Chair Shane Dettman, representative of the National Capital Planning Commission; Nicole Sorg, mayoral appointee; and Konrad Schlater, representative of the Zoning Commission.

Copies of today's hearing agenda are available to you and are located to my left in the wall bin near the door.

Please be advised that this proceeding is being recorded by a court reporter and is also being Webcast live. Accordingly, we must ask you to refrain from

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1 any disturbing noises or actions in the
2 hearing room.

3 When presenting information to the
4 Board, please turn on and speak into your
5 microphone, first stating your name and home
6 address. When you are finished speaking
7 please turn off your microphone so that your
8 microphone is no longer picking up sounds or
9 background noise.

10 All persons planning to testify
11 either in favor or in opposition are to fill
12 out two witness cards. These cards are
13 located to my left in the wall bin near the
14 door and on the witness tables in front of me.
15 Upon coming forward to speak to the Board,
16 please give both cards to the court reporter
17 to my right.

18 The order of procedures for
19 special exceptions and variances is as
20 follows: statement and witnesses of the
21 applicant, government reports including Office
22 of Planning and Department of Public Works,

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1 reports of the ANC, parties and persons in
2 support, parties and persons in opposition,
3 and closing remarks by the applicant.

4 Pursuant to Section 3117.4 and
5 3117.5, the following time constraints will be
6 maintained. The applicant, appellant, persons
7 and parties in support except the ANC will be
8 provided 60 minutes collectively. The
9 appellees, persons and parties in opposition
10 except the ANC will be provided 60 minutes
11 collectively. Individuals will be provided 3
12 minutes.

13 These time restraints do not
14 include cross-examinations or questions from
15 the Board. The cross-examination of witnesses
16 is permitted by the applicant and the parties.

17 The ANC within which the property
18 is located is automatically a party in a
19 special exception or variance case.

20 Nothing prohibits the Board from
21 placing reasonable restrictions on cross-
22 examination, including time limits and

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1 limitations on the scope of cross-examination.

2 The record will be closed at the
3 conclusion of each case except for any
4 materials specifically requested by the Board.
5 The Board and the staff will specify at the
6 end of the hearing exactly what is expected
7 and the date that person shall submit the
8 evidence to the Office of Zoning. After the
9 record is closed no other information will be
10 accepted by the Board.

11 The Sunshine Act requires that the
12 Public Hearing on each case be held in the
13 open before the public. The Board may,
14 consistent with its rules and procedures and
15 the Sunshine Act, enter Executive Session
16 during or after the Public Hearing on a case
17 for the purposes of reviewing the record or
18 deliberating on the case.

19 The decision of the Board in these
20 contested cases must be based exclusively on
21 the public record. To avoid any appearance of
22 the contrary, the Board requests that persons

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1 present not engage members of the Board in
2 conversation.

3 Please turn off all beepers and
4 cell phones at this time so as to not disturb
5 these proceedings.

6 The Board will now consider any
7 preliminary matters. Preliminary matters are
8 those relating to whether a case will or
9 should be heard today, such as postponements,
10 continuances, withdrawals, or whether the
11 proper adequate notice of the hearing has been
12 given. If you are not prepared to go forward
13 with a case today or if you believe the Board
14 should not proceed, now is the time to raise
15 such matters.

16 Does the staff have any
17 preliminary matters?

18 MR. MOY: Madam Chair, there are
19 two hearing cases scheduled for the morning
20 session. There are items in each of the two
21 cases that can be considered preliminary
22 matters.

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1 The major one is that the second
2 case in the morning, the applicant is
3 requesting a continuance.

4 CHAIRPERSON MOLDENHAUER: Thank
5 you. I think we can bring up each matter as
6 we call each case.

7 MR. MOY: Very good.

8 CHAIRPERSON MOLDENHAUER: At this
9 time, would all those individuals wishing to
10 testify please rise to take the oath?

11 (WITNESSES SWORN.)

12 CHAIRPERSON MOLDENHAUER: Thank
13 you very much, Mr. Moy.

14 Can we call the first case?

15 MS. ROSE: Yes. The first
16 application is No. 18065, the Application of
17 Shomarka Keita, pursuant to 11 DCMR 3104.1,
18 for a special exception to allow a second
19 story rear addition to an existing one-family
20 row dwelling under Section 223, not meeting
21 the lot occupancy (Section 403), court
22 (Section 406), rear yard (Section 404), and

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1 nonconforming structure (Subsection 2001.3)
2 requirements, in the R-4 District at premises
3 1925 2nd Street, Northwest (Square 3114, Lot
4 83).

5 CHAIRPERSON MOLDENHAUER: Thank
6 you very much.

7 I think we have two preliminary
8 matters in this case right now.

9 If you can just introduce yourself
10 for the record, please?

11 MR. BELLO: Good morning, Madam
12 Chair. My name is Toye Bello. I'm
13 representing the applicant in this case.

14 MR. KEITA: Good morning. I'm
15 Shomarka Keita.

16 CHAIRPERSON MOLDENHAUER: Our
17 first matter is party status application.

18 Anybody wishing for party status,
19 if you could please come forward and take a
20 seat at the table? You can turn on your
21 microphone and then introduce yourself.

22 MS. REED: Kathleen Rand Reed.

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1 CHAIRPERSON MOLDENHAUER: And your
2 home address?

3 MS. REED: 1923 2nd Street,
4 Northwest.

5 CHAIRPERSON MOLDENHAUER: Thank
6 you. You've submitted an application for
7 party status?

8 MS. REED: Yes.

9 CHAIRPERSON MOLDENHAUER: Okay.
10 You understand the difference between party
11 status and providing just testimony in
12 opposition?

13 MS. REED: No.

14 CHAIRPERSON MOLDENHAUER: Party
15 status provides you an opportunity to cross-
16 examine and present evidence on your own.
17 Whereas if you do not wish to be a party in
18 the case, you can provide a 3-minute statement
19 of opposition at the time in which individuals
20 can provide testimony.

21 MS. REED: May I ask a question?

22 CHAIRPERSON MOLDENHAUER: Sure.

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1 MS. REED: The reason that I asked
2 for party status is because there was another
3 person that was more adversely affected, Ms.
4 Walker. And so I had asked for party status
5 so that I could assist her. So I was a little
6 bit confused and you'll have to forgive me for
7 the confusion.

8 CHAIRPERSON MOLDENHAUER: Not a
9 problem. Both you and Ms. Walker could
10 provide 3-minute testimony at the time frame
11 in which that would come up in the hearing,
12 articulate any of your concerns, and the Board
13 would ask you questions, if that's what you're
14 desiring to do. That is separate and apart
15 from obtaining party status where you can
16 actually present your own evidence or do
17 cross-examination.

18 At this point in time I'm asking
19 if you simply want to provide opposition
20 testimony as individuals, or do you clearly
21 still desire to have party status?

22 MS. REED: The party status would

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1 be -- I mean, the underlying premise of party
2 status would be that you -- in other words,
3 the differentiation between party status and
4 the witness status is the opposition for 3
5 minutes? But if you have party status you can
6 actually ask questions of the various and
7 sundry people that are at the -- okay.

8 I would do the 3 minutes of the
9 witness.

10 CHAIRPERSON MOLDENHAUER: You just
11 want to give witness testimony; you're
12 withdrawing your application for party status?

13 MS. REED: No. I'll go ahead and
14 be party status.

15 CHAIRPERSON MOLDENHAUER: That's
16 fine.

17 MS. REED: I'm sorry for the
18 confusion.

19 CHAIRPERSON MOLDENHAUER: At this
20 point in time, Mr. Bello, do you have any
21 opposition to the party status application?

22 MR. BELLO: Yes, we do. We object

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1 to the application because Ms. Reed is not the
2 owner of the property adjacent to Mr.
3 Shomarka.

4 CHAIRPERSON MOLDENHAUER: The
5 individual does not actually have to own the
6 property. They just have to be adversely
7 impacted in their use. Since she does reside
8 there or use the property there, she can
9 articulate her adverse impact in that regard.

10 MR. BELLO: However that adverse
11 impact is, I think it is probably temporary in
12 nature. Because the applicant will testify
13 that Ms. Reed is under notice to vacate the
14 property within the next 60 days.

15 CHAIRPERSON MOLDENHAUER: That can
16 be brought out, obviously, in your cross-
17 examination of Ms. Reed when she provides her
18 testimony. But again, whether or not she's
19 going to be there for one day or two, right
20 now she currently is there based on her
21 application for party status.

22 I'll look for consent of the Board

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1 to grant party status to Ms. Reed. I'm seeing
2 a nodding of heads.

3 Ms. Reed is granted party status.

4 The next preliminary matter we
5 have before us is the issue of noticing the
6 property.

7 MR. BELLO: What about Ms. Walker?

8 CHAIRPERSON MOLDENHAUER: Ms.
9 Walker did not formally request party status.

10 Ms. Reed, are you trying to join
11 with Ms. Walker for party status?

12 MS. REED: Please.

13 CHAIRPERSON MOLDENHAUER: Okay.
14 Then I think with another consensus of the
15 Board that would be fine. You would just
16 simply be providing -- there would be a
17 consensus where you're testifying on both your
18 and Ms. Walker's behalf.

19 MS. REED: Okay. Thank you so
20 much.

21 CHAIRPERSON MOLDENHAUER: The next
22 issue would be the notice requirement. We

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1 received a document this morning which was the
2 posting.

3 Mr. Bello, it looks as though the
4 affidavit was just signed yesterday. When was
5 the property actually posted?

6 MR. BELLO: The property's been
7 properly posted since 15 days before the
8 hearing.

9 CHAIRPERSON MOLDENHAUER: But we
10 didn't get the affidavit until yesterday?

11 MR. BELLO: That's correct. That
12 would be --

13 CHAIRPERSON MOLDENHAUER: The
14 problem that I have with the affidavit is it
15 doesn't even identify the date. The date for
16 the posting is blank. So I just see 4:00 p.m.
17 but I don't actually see the day in which the
18 posting occurred.

19 Do you have a copy of the
20 affidavit that was filled out?

21 MR. BELLO: No, I don't. That was
22 filled out on my behalf yesterday. But I can

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1 testify to it as a fact that that property was
2 properly posted. In fact, I believe Ms. Reed
3 was present the day that the property was
4 being posted, 15 days prior to the hearing
5 date.

6 CHAIRPERSON MOLDENHAUER: Ms.
7 Reed, can you confirm that the property had
8 been posted and that you saw a large poster on
9 there for about 14 days?

10 MS. REED: I have seen a large
11 poster. However, I saw Mr. Bello at the house
12 and he had a sign. I cannot attest to the
13 fact as to where he put it or what he did with
14 it.

15 CHAIRPERSON MOLDENHAUER: We have
16 a picture that it actually is up. And as long
17 as you saw the poster, I think we can waive
18 that requirement.

19 I would just indicate that,
20 obviously, if you're going to fill out the
21 affidavit, (1) it's late in the affidavit of
22 posting to get to our office, and (2) the date

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1 wasn't filled out so we weren't really on
2 notice as to when it was posted.

3 MR. BELLO: I apologize for that.

4 CHAIRPERSON MOLDENHAUER: At this
5 point in time we can move forward into the
6 merits of the case.

7 If you would like to begin your
8 case?

9 MR. BELLO: Thank you, Madam
10 Chair.

11 The application is for a special
12 exception under Section 223 for a modest
13 addition of a second story addition above an
14 existing first floor porch. The property
15 address is 1925 2nd Street, Northwest.

16 As we know, the Board is
17 authorized to grant special exception where,
18 in the judgement of the Board, the special
19 exception will be in harmony with the general
20 purpose and intent of the Zoning Regulations
21 and the Zoning Map, and would not tend to
22 affect adversely the use of neighboring

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1 property in accordance with Zoning Regulations
2 and the Zoning Map.

3 More specifically, Section 223.1
4 drills a little bit down in the sense that
5 under Section 223.2, the addition or accessory
6 structure shall not have a substantial adverse
7 impact or effect on the use and enjoyment of
8 any abutting adjacent dwelling or property.

9 The application we believe
10 complies and meets the provisions of 223 as
11 follows. Under 223.1, the subject property
12 has a single-family dwelling; it's a row
13 dwelling. And the relief that's being sought
14 is under Section 403 for lot occupancy which
15 is a pre-existing, nonconforming condition.
16 Also, under the open court provisions of
17 Section 406.

18 The addition does not increase the
19 existing nonconformity of lot occupancy. So
20 regardless of what the applicant does, any
21 addition would require some kind of relief
22 before the Board of Zoning Adjustments.

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1 Under Section 223.2, Subsection A,
2 the light and air available to the neighboring
3 property shall not be unduly affected. The
4 subject property is located in an R-4 Zone
5 that allows three stories. This addition
6 would only increase the rear porch by one
7 story to a second story.

8 The adjacent property to the south
9 is a corner lot and opens onto Thomas Street,
10 so it has ample light and air from Thomas
11 Street. And the potential impact of this
12 addition is limited from the north of this
13 property.

14 Subsection B, the privacy, use,
15 and enjoyment of the neighboring property
16 shall not be unduly compromised. The
17 adjoining properties would be 1923 2nd Street,
18 1927 2nd Street, and the property that abuts
19 the rear of the subject property on Thomas
20 Street.

21 We have letters of no objection
22 from the property owner on Thomas Street. We

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1 also have a letter of no objection from the
2 property owner of 1927, which is the property
3 that immediately abuts this property to the
4 north.

5 We have conflicting information as
6 to the position of the property owner of 1923,
7 where Ms. Reed resides. However, in response
8 to the Office of Planning's recommendation,
9 the window that overlooks an existing rear
10 deck of the property on 1923 has been
11 eliminated. And I have revised plans that I
12 can submit to the records.

13 Subsection C, the addition or
14 accessory structure together with the original
15 building as viewed from the street, alley, or
16 other public way shall not substantially
17 visually intrude upon the character, scale,
18 and impact on houses along the subject street
19 frontage. This property only has street
20 frontage on 2nd Street. Although the addition
21 may be viewed from a line of vision from
22 Thomas Street, this property does not abut

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1 Thomas Street.

2 Quite frankly, the addition does
3 not increase the existing footprint of the
4 building. So the vertical addition has a
5 limited adverse impact on the line of vision
6 of any property in this block of 2nd Street.

7 If I may, I would like to submit
8 to the record the revised elevations that were
9 requested by the Office of Planning.

10 CHAIRPERSON MOLDENHAUER: Yes,
11 please. Thank you. Please continue, Mr.
12 Bello.

13 MR. BELLO: Thank you. The
14 proposed addition is a modest 54 square feet
15 in area. There will be a facing line wall on
16 the north property line, and that wall does
17 not have any fenestration, no window on that
18 wall.

19 The only proposed window for this
20 addition will be facing the rear of the
21 property, and faces the property on Thomas
22 Street where no fenestration exists on the lot

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1 line wall to the east.

2 Under Section 223.3, the lot
3 occupancy of all new and existing structures
4 on the lot shall not exceed 50 percent. In
5 this case we are in the R-4 Zone so 70 percent
6 would be the bench mark. The existing lot
7 occupancy is approximately 68 percent, and
8 this is a pre-existing condition prior to May
9 12, 1958. The addition does not increase the
10 percentage whatsoever.

11 Under Section 223.4, the Board may
12 require treatment in the way of designs,
13 screening, exterior or interior light,
14 building materials, or other features for
15 protection of adjacent or nearby properties.
16 In response to the recommendation by the
17 Office of Planning, the cladding for the
18 exterior wall would be hardy plants. The
19 applicant is not adverse to any other
20 suggestions for treatment that the Board may
21 have.

22 The last provision, 223.5, the

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1 section may not be used to permit the
2 introduction or expansion of a nonconforming
3 use. The property does not contain a
4 nonconforming use.

5 We have read most of the
6 submissions of the opposition. I think that
7 those submissions can be categorized into two
8 areas. One would be the concern with what is
9 deemed to be illegal construction of a second
10 story addition.

11 The other would tend to deal with
12 the movement of air on the property and how
13 the opposition believes that the second story
14 addition would substantially affect the
15 movement of air for the entire neighborhood.
16 Not so much for the immediately abutting
17 property, which I think the Section 223 speaks
18 more specifically to.

19 There was also some concern
20 expressed about the integrity of the
21 construction. So in response to that, we have
22 commissioned a structural engineers report to

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1 basically refute any concern in that
2 direction. I would also submit that to the
3 record, if you will.

4 CHAIRPERSON MOLDENHAUER: Let's
5 not accept anything to that effect. Our job
6 under the Zoning Regs is not to look at the
7 structural integrity of a building. The only
8 thing that our review is on is in regards to
9 the privacy and enjoyment of the neighborhood,
10 and in regards to the light and air of
11 adjoining properties.

12 So I don't think that we're even
13 going to address that issue. We'll move on to
14 any additional comments you have in your
15 presentation.

16 MR. BELLO: Well, in that case, I
17 think we've sort of addressed those specific
18 concerns that may affect privacy or views of
19 property.

20 The adjoining property to the
21 south, which would be 1923 2nd Street,
22 features an open deck which appears to have

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1 been added at some point in recent years. The
2 window that would have been overlooking this
3 open deck has been eliminated from the south
4 elevation.

5 That will be the limits of our
6 presentation. Thank you.

7 CHAIRPERSON MOLDENHAUER: Thank
8 you very much, Mr. Bello.

9 If the applicant has concluded
10 their statements, at this point in time we'll
11 move on to the Office of Planning's report.

12 MS. JACKSON: Good morning, Chair
13 and members of the Board. For the record, my
14 name is Arlova Jackson with the Office of
15 Planning.

16 The Office of Planning recommends
17 approval of the requested special exception at
18 1925 2nd Street, Northwest, which would permit
19 lot occupancy of 68.3 percent, and an open
20 court with a 4.58 feet in width. The property
21 is existing nonconforming with regard to lot
22 width and size.

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1 I'll just note that the report
2 states the lot width is 18 feet wide,
3 erroneously. It's actually only 15 feet wide.

4 The property is also nonconforming
5 with regard to lot occupancy and court width.
6 The requested addition, as mentioned, would
7 not increase the building footprint and
8 consists of building over an existing rear
9 porch.

10 OP finds that the project meets
11 the standards for approval found in Section
12 223.

13 I won't address the construction
14 in regards to your last comment.

15 We are aware that the upper level
16 tenant in the adjacent building to the south,
17 as well as several residents in the area, are
18 not in support due to its potential impact on
19 light and air.

20 However, the addition would only
21 be 5.17 feet in depth, not extend any further
22 into the rear yard than the existing

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1 structure, and not increase the height of the
2 building. In addition, the project would
3 slightly increase existing open court width
4 along the south property line.

5 With regard to privacy of use and
6 enjoyment, the proposed addition would not
7 have windows along the north side. And the
8 adjacent property to the rear has no windows
9 on the facade that would be most impacted by
10 the addition. OP has suggested and the
11 applicant has responded to remove the window
12 on the south facade to help ameliorate any
13 privacy issues for the adjacent neighbor to
14 the south.

15 Finally, the proposed addition is
16 modest in scale and would not be a significant
17 departure from the established building
18 pattern in this area. The building has a
19 similar footprint as the neighboring building
20 to the south. And while the addition is
21 visible from Thomas Street, we find that it
22 wouldn't substantially intrude upon visual

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1 character, and continues to maintain the
2 existing open 19-foot deep rear yard.

3 OP requested an additional
4 elevation drawing to gain more information
5 about the relationship between the proposal
6 and the property to the north, but overall
7 finds the submittal to be acceptable with
8 regard to the provided drawings and
9 photographs.

10 To conclude, OP finds the project
11 is consistent with the intent of the Zoning
12 Regs, as it would maintain a row house within
13 an R-4 Zone and would not adversely impact
14 neighboring properties, as addressed in our
15 report. Therefore we recommend approval of
16 the special exception request.

17 We'll take any questions you have
18 at this time.

19 CHAIRPERSON MOLDENHAUER: Thank
20 you very much.

21 Mr. Bello, do you have any
22 questions of OP?

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1 MR. BELLO: No, ma'am. Thank you.

2 CHAIRPERSON MOLDENHAUER: Ms.

3 Reed, do you have any questions for the Office
4 of Planning?

5 MS. REED: I just have one
6 question. Well, one question of OP. And that
7 is, were there any studies done or are there
8 any instruments done in terms of sun or
9 shadows? I mean, how was the aspect of
10 enjoyment -- how did you come about that; was
11 it subjective or was it quantitative?

12 MS. JACKSON: Shadow studies are
13 usually done to address the impact of light on
14 neighboring properties. We did not conduct a
15 shadow study.

16 MS. REED: So am I to assume from
17 that that the approval based on the enjoyment,
18 the light, the air, space, and view was more
19 of a subjective fundamental as opposed to
20 quantitative or through instrument?

21 MS. JACKSON: Part of our analysis
22 is looking at the project's compliance with

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1 the bulk and height requirements, which are
2 also used to ensure that properties have
3 adequate access to light and air.

4 The project is not reducing the
5 rear yard, which is a 19-foot deep area that
6 ensures light and air to that property as well
7 as the adjacent property. It wasn't impacting
8 that at all.

9 It's maintaining the same building
10 footprint and it's not getting any taller,
11 which also would be something that would have
12 an impact on light and air.

13 So because the addition was just
14 limited within the footprint of the existing
15 structure, not getting any taller, and not
16 decreasing the rear yard, we felt that
17 although there will be some impact, it wasn't
18 substantial.

19 MS. REED: Okay. I'm opposed to
20 that, but I can talk about that later.

21 CHAIRPERSON MOLDENHAUER: At this
22 point it's an opportunity to ask questions.

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1 MS. REED: Exactly. Thank you so
2 much.

3 CHAIRPERSON MOLDENHAUER: At this
4 point, Ms. Reed, do you have any questions for
5 the applicant in regards to Mr. Bello's
6 statements?

7 MS. REED: Given that you're not
8 doing integrity of the property but the
9 enjoyment, air, and light, at this particular
10 time I don't. But may I reserve the right to
11 ask at another time?

12 CHAIRPERSON MOLDENHAUER: This is
13 the opportunity for you to cross Mr. Bello in
14 regards to his statements. If you have any
15 questions in regards to what he testified to
16 for the applicant?

17 MS. REED: Yes, I do, actually.
18 He mentioned that 1927 which is directly next
19 to 1925, that evidently they had some --
20 something from that. But 1927 is vacant and
21 has been vacant for some time. As far as
22 conflicting --

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1 CHAIRPERSON MOLDENHAUER: Is this
2 a question?

3 MS. REED: I'm sorry. Okay.

4 CHAIRPERSON MOLDENHAUER: If you
5 have a question for him specifically, you can
6 ask him specific questions.

7 MS. REED: Okay. Let me do it
8 that way.

9 Mr. Bello, when did you receive
10 any information that you entered into the
11 record for 1927; what dates did you have that
12 information from?

13 MR. BELLO: I think I would let
14 the applicant speak to that, who engaged the
15 owner of the property. We do have a copy of
16 the list of signatures.

17 MS. REED: Mr. Keita, could you
18 give the dates that you received the
19 information from 1927?

20 MR. KEITA: The exact date I do
21 not have. The property owner who speaks on --
22 the person who speaks on behalf of his

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1 daughter who owns the property, their co-
2 owner, is Mr. Frederick D. Matthews. The
3 signature was obtained early in May.

4 Right now the house is vacant
5 because the lady who lived next door there has
6 passed away and her family moved. This was
7 Ms. Johnson. But the signature was obtained
8 from the homeowner.

9 The people living next door, the
10 Johnson family and extended family -- kids,
11 grandkids, etcetera -- were not the
12 homeowners. And the signature that I have is
13 from the person who owns the home with his
14 daughter. His name is Mr. Frederick Matthews.

15 MS. REED: Thank you. You had
16 mentioned earlier that you had information --
17 but I guess this is a moot issue now -- as to
18 my being there. In other words, my status is
19 being --

20 CHAIRPERSON MOLDENHAUER: That's
21 already been addressed.

22 MS. REED: That's a dead issue?

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1 CHAIRPERSON MOLDENHAUER: Yes.

2 MS. REED: Okay. Then at this
3 particular time -- hold on one second.

4 Will Ms. Walker have an
5 opportunity to give testimony?

6 CHAIRPERSON MOLDENHAUER: You will
7 have the opportunity to testify on her behalf
8 since you both have been joined together.

9 MS. REED: Okay.

10 CHAIRPERSON MOLDENHAUER: When we
11 come to that point in time I will let you know
12 that you can provide testimony.

13 MS. REED: Okay.

14 CHAIRPERSON MOLDENHAUER: Okay.

15 MS. REED: Thank you so much.

16 CHAIRPERSON MOLDENHAUER: Thank
17 you.

18 At this point in time we move to
19 the ANC.

20 Is somebody here representing ANC-
21 5C?

22 Do you want to step forward?

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1 Thank you.

2 MR. SALATTI: Good morning. My
3 name is John Salatti. I am the Commissioner
4 in ANC-5C04, where 1925 2nd Street is located.
5 My address is 131 U Street, Northwest.

6 CHAIRPERSON MOLDENHAUER: I'm
7 sorry. Your name is Mr. Salani?

8 MR. SALATTI: Salatti.

9 CHAIRPERSON MOLDENHAUER: Salatti?
10 Are you here on behalf of the entire ANC or
11 just on behalf of 5C04?

12 MR. SALATTI: I'm just here on my
13 own because the ANC has not heard this matter.

14 CHAIRPERSON MOLDENHAUER: Okay.
15 This is the point in time actually for the ANC
16 as a whole. If you would like to testify as
17 a 3-minute witness on behalf of ANC-5C04, you
18 can. We can go ahead and take that testimony
19 right now.

20 MR. SALATTI: All right. Fine.

21 As I said, the ANC has not heard
22 this matter. I guess this is part of what

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1 I've had to come here to do. I'm trying to
2 think where to start.

3 From my perspective, the issues
4 with this have been not so much necessarily
5 about the addition in and of itself. It's
6 mainly been a process issue, so my concerns
7 are probably beyond the kinds of things that
8 you're looking at today.

9 All I can simply say, then, given
10 the parameters of what the Board is looking
11 at, is simply to say that this matter has not
12 yet appeared before the ANC and the ANC has
13 not spoken on it.

14 CHAIRPERSON MOLDENHAUER: Do you
15 know when the ANC plans on meeting as a whole
16 to discuss this matter or if it's going to be
17 on the agenda?

18 MR. SALATTI: Well, the first
19 request -- this has been one of the concerns
20 I've had. I mean, obviously I got the
21 submissions from you all probably in December-
22 January, and Mr. Bello wrote to me just before

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1 our May meeting. Our May meeting was the
2 third Tuesday in May.

3 The previous Friday, I received a
4 note from him asking to be on the agenda. I
5 said, "Well, I will ask the Chair to see if we
6 can put you on. That's the best I can do at
7 this point." But I did inform them that they
8 did get a place on the agenda.

9 I was in Chicago on the 18th so I
10 was actually not present. But I have been
11 told that there was no presentation made at
12 the May meeting.

13 We meet again on the 15th of this
14 month and another request has come in to
15 appear before us this month. I have submitted
16 that to the Chair and have not yet heard back
17 from her as to whether or not this will make
18 it to our June agenda.

19 CHAIRPERSON MOLDENHAUER: Okay.
20 Thank you for that summary of facts. At the
21 end of the case we may leave the record open
22 to have an ANC letter submitted following a

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1 June 15 meeting.

2 If we do decide to leave the
3 record open following the conclusion of the
4 hearing today, how long do you think it would
5 take for the ANC to provide a letter that we
6 would be able to give great weight to,
7 following the June 15 meeting?

8 MR. SALATTI: I suspect we can get
9 something to you, depending on the form -- in
10 other words, I suspect something could be
11 emailed before the end of the week. If it
12 needed to be in hard copy form I would suspect
13 it could be mailed. We meet on Tuesday. I
14 suspect something could be mailed before the
15 end of the week.

16 CHAIRPERSON MOLDENHAUER: Thank
17 you. I'm just trying to get an idea if that's
18 something that the Board feels is necessary.
19 Thank you very much for your testimony.

20 At this point in time we'll move
21 to any persons or parties in the audience in
22 support of the application?

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1 Seeing none, we'll move to persons
2 or parties in opposition.

3 You're in support of the
4 application? Okay. If you want to come
5 forward and identify yourself? I don't
6 believe you were sworn in, so if you need to
7 be sworn in -- would you like to come up and
8 testify? Okay. Then you need to be sworn in.

9 (WITNESS SWORN.)

10 CHAIRPERSON MOLDENHAUER: Please
11 come forward and you can state your name.
12 I'll provide you with 3 minutes to testify.

13 MS. KEITA: My name is Caroline
14 Keita. I'm Dr. Keita's wife. Obviously, I
15 support my husband and the extension.
16 Hopefully, you know, you can give us an
17 exception on the project.

18 CHAIRPERSON MOLDENHAUER: Thank
19 you.

20 At this point we'll move to the
21 party in opposition. You can present your
22 statements.

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1 MS. REED: May I bring Ms. Walker
2 up?

3 CHAIRPERSON MOLDENHAUER: Yes.

4 MS. REED: Her mic is on, Ms.
5 Moldenhauer.

6 CHAIRPERSON MOLDENHAUER: Okay.

7 MS. REED: This is Ms. Ella
8 Walker. Ms. Walker lives at 1929 2nd Street,
9 Northwest. Her back balcony and her bedroom
10 upstairs on the second floor directly face the
11 property that would be on Thomas Street, the
12 first building on Thomas Street. And prior to
13 the addition, her view was also toward the
14 side of Mr. Keita's property.

15 Because of the columns that were
16 built, these brick columns, and because of the
17 second story addition, windows or no, the
18 addition and the columns extend out in such a
19 way to completely cut off her view.

20 Ms. Walker is 84 years old. She
21 is a retiree. And I will let her tell you
22 about her experience in that home since 1925

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1 and what it has been like since her complete
2 view has been cut off.

3 So at this time I'd like to
4 introduce Ms. Ella Walker.

5 MS. WALKER: Hello, everyone. I
6 was born at 1929 2nd Street in 1925. I have
7 lived there all my life. I was a kid playing
8 out in the yard. The Graysons owned the house
9 at 1925.

10 I had a good view on Thomas
11 Street. Whenever I played, my parents could
12 always come out the back and look and yell,
13 "Baby sis, come on home." Okay. I've lived
14 there all my life.

15 I was not told that they were
16 going to add to the house at 1925. Just like
17 I said, I've lived in that neighborhood all my
18 life and I'm the oldest person in that
19 neighborhood now. I have seen the changes and
20 what have you. I was not told that they were
21 going to have an addition to the house. I was
22 not told anything.

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1 Now, my view is so wherein I
2 cannot see hardly anything on Thomas Street
3 now. I have got a lot of good memories as a
4 child, my parents and what have you, and the
5 people in the neighborhood. I knew everyone
6 that lived there.

7 So I'm just very upset about the
8 whole thing. I was never told about any
9 adding on. And I thought when they were going
10 to work on the house, the porch that was there
11 was very small. I did not know that they were
12 going to add another addition to the house.

13 That's all I want to say.

14 CHAIRPERSON MOLDENHAUER: Thank
15 you very much, Ms. Walker, for your testimony.

16 Ms. Reed, do you have any further
17 testimony you'd like to present?

18 MS. REED: At this particular
19 time, I want to just say something that I
20 think needs to be said from a party status and
21 from a citizen status at this time.

22 I have heard a lot of technical

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1 information today. And I appreciate Ms.
2 Jackson and the job that she does in terms of
3 attempting to do the things that are
4 necessary, to find a way that when people want
5 special exceptions on property that they can
6 modify or they can fit, you know, and do the
7 kinds of things that I heard you talking
8 about, you know, with the N Street Follies for
9 instance, is there some way that this could be
10 salvaged or some way that this could be done.

11 But as Mr. Salatti mentioned, this
12 is beyond the scope of the fine narrowness
13 that you have in terms of 223(a), (b), and (c).
14 It may very well be that this whole issue
15 should be brought before the ANC of the home.

16 Because as I understand it, the
17 great weight that the ANC does bring forth in
18 terms of your deliberations and these
19 hearings, it may be appropriate that those
20 things that you cannot hear that are beyond
21 your scope need to at least be addressed so
22 that the ANC has the opportunity to weigh in

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1 on this in terms of the whole community.

2 I would say that there are things
3 that at the end of the day go totally beyond
4 the scope of technical, and can you fit a
5 property into an occupancy or a lot or what
6 have you. There is a community. There is the
7 subjective aspects of enjoyment of that
8 property. There are things like little old
9 ladies that want to take the last days of
10 their winter years and look out their window
11 and see birds and trees.

12 That may not fit politely inside
13 of the technical aspects of what you're
14 supposed to be doing. But for those of us who
15 are the citizens and other people in the
16 community, they matter to us. So when
17 something comes out and disturbs the community
18 such that it just takes the character away,
19 and especially if it's done illegally as a
20 failure to comply, it affects all of us.

21 So I ask that you leave the record
22 open to give us the opportunity to take this

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1 before the ANC. And that at some point, you
2 look beyond just the technical, and you look
3 to the citizenry and the people that have
4 lived in the community for a very long time
5 and their feelings. That, to me, is true
6 quiet enjoyment of their property.

7 Thank you.

8 CHAIRPERSON MOLDENHAUER: Thank
9 you very much, Ms. Reed.

10 Do any Board Members have any
11 questions for Ms. Reed or for Ms. Walker?

12 ZC VICE CHAIR SCHLATER: I have a
13 quick question for Ms. Walker in regards to
14 the impact on your views.

15 The standard that we have to judge
16 up here is whether or not the addition would
17 have a substantially adverse impact on the use
18 or enjoyment of an adjacent property. And I
19 think in particular, it would be substantially
20 adverse impact on the light and air available
21 to neighboring properties.

22 Would you say there is a

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1 substantial adverse impact on your property?

2 MS. WALKER: Yes. Because now
3 that I'm a senior citizen, I don't sit out
4 front much. It's much quieter in the back of
5 my house on my porch. And I can sit out there
6 and watch the birds and, you know, the little
7 animals, the squirrels and what have you. And
8 I can look out onto Thomas Street as I see the
9 -- oops, I'm sorry -- as I can see the cars
10 when they pass by.

11 I mean, it's very peaceful for me.
12 At my age I'm not out there for a lot of
13 noise. The cars now, there's a lot of traffic
14 coming up 2nd Street and what have you. I
15 just like to go out there and have a peace of
16 mind after I have my meals and what not. And
17 just sit there and reminisce, and think about
18 things when I was a kid and all my neighbors
19 and what have you.

20 Just like at 1927, after the
21 Williamsons passed, they've been renting out
22 all the time. And a lot of times when you

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1 have renters, they do not take care of their
2 properties like owners. I can witness to
3 that. That's the reason why I was never told
4 anything about an addition of this house over
5 there. And I just remember the Graysons as
6 very nice neighbors when I was a little kid.

7 And just like on the property that
8 I'm living on, at that particular time my dad
9 was delivering mail in the neighborhood. That
10 was a cemetery for the church right there at
11 2nd and U Street. And all these things that I
12 learned as I grew older, because the Graysons
13 at this house told me that used to be a
14 cemetery and I got very upset. She said,
15 "No." At that time I didn't know that they
16 moved the bodies and everything like that.

17 But I mean, that's my home.
18 That's all I know, the neighborhood and what
19 have you. And now I'm the oldest person in my
20 neighborhood. Everybody else is renters or
21 they're just coming in, you know, buying the
22 property. So that's the reason why I have a

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1 lot of concerns about it now, the changes.

2 ZC VICE CHAIR SCHLATER: Thank you
3 very much for coming before us.

4 CHAIRPERSON MOLDENHAUER: Are
5 there any additional questions from the Board?

6 Thank you both for your testimony
7 and for the time to come down today to
8 testify.

9 Does the applicant have any
10 questions of Ms. Reed or Ms. Walker, Mr.
11 Bello?

12 MR. BELLO: Just one question.
13 This is for Ms. Reed, I believe.

14 Ms. Walker resides at 1929 2nd
15 Street, is that correct?

16 MS. REED: That's correct.

17 MR. BELLO: Given that there are
18 approximately about five lots in this block --

19 MS. REED: Five what? I'm sorry.

20 MR. BELLO: Five lots.

21 MS. REED: Five lots? Okay.

22 MR. BELLO: Ms. Walker is one

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1 house removed from Mr. Keita's property. Now,
2 aside from Mr. Keita's property and 1923 that
3 are approximately 15 feet wide in width, the
4 other lots on the block are approximately 20
5 feet wide. Which means that Ms. Walker's
6 property, even at a 45 degree trajectory, is
7 20 feet away from this property.

8 Would you agree that this distance
9 does not lend to an argument for substantial
10 adverse impact on light and air?

11 MS. REED: I didn't understand
12 you, sir. Would I agree --

13 MR. BELLO: Given the distance
14 from the applicant's property of approximately
15 20 feet and that the porch that Ms. Walker
16 refers to is a one story porch -- given that
17 distance, would you agree that the light and
18 air for Ms. Walker is not substantially
19 affected or changed, nor would a line of
20 vision be changed because Mr. Keita's property
21 already had a one story porch?

22 MS. REED: I would disagree in

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1 this respect. As to the 20 feet and that
2 technical aspect of it, I'm not an architect
3 or -- what 20 feet would mean.

4 What I can tell you is that Ms.
5 Walker has a fairly narrow view anyway. In
6 other words, from the side of the property
7 that is the first property on Thomas Street
8 and from the side of the house closest to her
9 property of Mr. Keita, there is a narrowing
10 that already exists as we speak.

11 But the direct line of sight from
12 either her porch on the back or from her
13 bedroom is at this point completely cut off.
14 The only thing you can see from that is a tiny
15 bit of street and maybe the side of a tree.

16 I submitted photographs so that
17 you can see just how she has in fact been cut
18 off.

19 So that in terms of the impact and
20 the line of sight, at the end of the day there
21 is no line of sight anymore. She looks
22 directly -- I mean, whether Mr. Keita puts a

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1 window in it or whether Mr. Keita does not
2 have a window in it is really a moot issue.

3 The issue is that between the
4 columns, the small porch that was there prior
5 to and what the permit was to repair would
6 have been -- I think for the support, would
7 have been around 4x4s.

8 The height of the porch was
9 substantially low enough that at the
10 particular time, she could sit on her porch
11 and there was no blockage, because she could
12 see the full foliage of the trees and she
13 could see the street. In fact, she's been
14 involved in, you know, crime watch and all of
15 that. Both of us have. So that the ability
16 to see the street, to see the trees, to have
17 the enjoyment is one thing. That is
18 completely cut off at this time.

19 Now, on the air and the light, one
20 of the most interesting aspects of that
21 particular -- I also submitted photographs on
22 that. One of the aspects of that particular

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1 back area along from the church, which would
2 be at U Street, near 2nd and U, all the way
3 down through the T Street, I believe it is --
4 that whole back area, one of the things in
5 terms of the character -- and I've heard you
6 say rhythm; I'll use that as well -- of that
7 particular area has been that, ironically
8 enough, with the ginkgo trees that are there
9 -- and they're old; it's old growth.

10 Between those old growth ginkgo
11 trees, many of the neighbors, in fact all of
12 the neighbors, have not added. There was one
13 gentleman that moved in not too long ago, an
14 owner, and he went up. He put a third story
15 on.

16 CHAIRPERSON MOLDENHAUER: I don't
17 really see where the relevance is here. If
18 you can just kind of focus in on the issue?

19 MS. REED: I was going to focus on
20 -- okay. So when you talk about the air and
21 the light, especially the air, there was an
22 unfettered breezeway that carried a current

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1 all the way from U Street all the way to T
2 Street.

3 So now what happens, and I'm
4 impacted as well, is that because the
5 structure comes out far enough, it interrupts
6 that air that was the part of the breezeway
7 that came through, sufficient that at this
8 point I don't get the kind of breeze that I
9 had before. And I know Ms. Walker doesn't get
10 the breeze she had before.

11 Because it comes out far enough to
12 break that breezeway that was all the way --
13 because there are no other additions on the
14 properties on the back of the rest of 2nd
15 Street from Thomas to T. And so that's
16 completely disturbed now.

17 CHAIRPERSON MOLDENHAUER: Thank
18 you.

19 MS. REED: Thank you so much.

20 CHAIRPERSON MOLDENHAUER: Mr.
21 Bello, are you --

22 MR. BELLO: No, thank you. No

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1 further questions.

2 CHAIRPERSON MOLDENHAUER: Thank
3 you.

4 At this point in time, unless the
5 Board Members have any questions, I think we
6 can close the hearing. I think we've heard
7 sufficient testimony from the applicant, from
8 the opposing parties, and from the Office of
9 Planning.

10 I would recommend to just simply
11 leave the record open. We'll set this for a
12 date for decision. The date for decision will
13 be after the June 15 meeting.

14 I'd recommend that the applicant
15 present their case before the ANC. The ANC
16 will then get a letter that qualifies under
17 our regulations to us before --

18 Mr. Moy, what would be a good date
19 for a new decision?

20 MR. BELLO: Madam Chair, if I may
21 just add, while we are not adverse to doing
22 that, I did speak to the ANC Commissioner who

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1 stated that the ANC had no position and would
2 be providing no written position on this
3 application at this time.

4 CHAIRPERSON MOLDENHAUER: Okay.

5 Well, obviously, we don't have that in
6 writing. So if that continues to be their
7 position after you present then there will be
8 no issue. But no matter what happens we'll be
9 able to have something in our record,
10 hopefully, one way or another. Either by
11 absence, by a letter stating what you've
12 identified, or something following a meeting.

13 I think we've heard testimony that
14 there's been two different agendas; you
15 haven't presented. I'm hearing your statement
16 that you actually have spoken with the ANC.
17 But I think what we'll do is we are going to
18 set it for decision.

19 Do we have room, Mr. Moy, on July
20 13 in the morning?

21 MR. MOY: Yes. I was going to
22 suggest that, Madam Chair.

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1 CHAIRPERSON MOLDENHAUER: Okay.
2 Fabulous. I will set it then for decision on
3 July 13 in the morning.

4 Mr. Salatti, if you can make sure
5 that the ANC --

6 MS. REED: Madam Chair, may I ask
7 if the July 13 -- I don't have my calendar in
8 front of me.

9 CHAIRPERSON MOLDENHAUER: There's
10 no need for any other parties to actually be
11 present. We will not take any more testimony.
12 It will just simply be a decision case.

13 MS. REED: Okay. So in other
14 words, we don't have to come?

15 CHAIRPERSON MOLDENHAUER: You do
16 not need to be present.

17 MS. REED: Good. Okay.

18 CHAIRPERSON MOLDENHAUER: We would
19 not take any testimony.

20 It's going to stay as July 13.

21 Then what we'll do is if the ANC
22 can provide something for our record prior to

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1 July 6 in writing, that would be great. That
2 provides you plenty of time following --

3 MR. SALATTI: Yes. That should be
4 quite doable.

5 CHAIRPERSON MOLDENHAUER: -- your
6 July 15. That would also then provide about
7 a week if there's any response from the
8 applicant.

9 Thank you very much. Thank you to
10 all the parties for coming today and
11 presenting.

12 VICE CHAIR DETTMAN: Madam Chair,
13 may I just make one comment?

14 Mr. Salatti, you heard the Chair
15 say that the ANC provide us a letter that
16 meets the great weight requirements? That's
17 in Section 3115 of the Zoning Regulations. I
18 encourage you to look at that section because
19 it very clearly spells out what the ANC
20 resolution needs to include in order for us to
21 give it great weight.

22 MR. SALATTI: Thank you very much.

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1 CHAIRPERSON MOLDENHAUER: Thank
2 you, Mr. Dettman, for identifying that section
3 for all of those present.

4 Thank you.

5 At this point in time, this case
6 is concluded.

7 We can move on to the next case,
8 Mr. Moy, if you'd like to call that?

9 MR. MOY: Yes. Madam Chair, just
10 for the staff's record keeping on this case of
11 the submission of the revised drawings, Sheet
12 A-1. One, staff is assuming that's replacing
13 the existing Sheet A-1 for the record.

14 Two, it's staff's understanding
15 that the Board by consensus had admitted the
16 affidavit of posting?

17 CHAIRPERSON MOLDENHAUER: Yes, we
18 did.

19 MR. MOY: Okay. Very good.

20 CHAIRPERSON MOLDENHAUER: Thank
21 you for that clarification.

22 Thank you.

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1 MS. ROSE: The next case is
2 Application No. 18066 of Charles Emor,
3 pursuant to 11 DCMR 3104.1, for a special
4 exception to allow a change of use from a
5 nonconforming retail grocery store to a
6 delicatessen/prepared food shop under
7 Subsection 2003.1, in the R-4 District at
8 premises 1201 S Street, Northwest (Square 275,
9 Lot 35).

10 CHAIRPERSON MOLDENHAUER: Good
11 morning.

12 MR. BELLO: Good morning, Madam
13 Chair. We're actually asking for a
14 continuance on this case.

15 CHAIRPERSON MOLDENHAUER: Just for
16 the record, can you state your name?

17 MR. BELLO: I'm sorry.

18 CHAIRPERSON MOLDENHAUER: Thank
19 you. We're on a new case.

20 MR. BELLO: My name is Toye Bello.
21 I am representing the applicant in this case.

22 CHAIRPERSON MOLDENHAUER: Thank

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1 you. And, yes. We have in our record a
2 request for postponement. I believe we have
3 July 20 in the afternoon session for this
4 case.

5 MR. BELLO: That's fine.

6 CHAIRPERSON MOLDENHAUER:

7 Wonderful. I would just recommend again that
8 if any postings are required, make sure that
9 you have the property correctly posted, that
10 our affidavit is submitted within the correct
11 time frames, and that it includes all of the
12 information that's needed.

13 MR. BELLO: Absolutely.

14 CHAIRPERSON MOLDENHAUER: Thank
15 you very much.

16 MR. BELLO: Thank you.

17 CHAIRPERSON MOLDENHAUER: Mr. Moy,
18 that's for July 20 in the afternoon.

19 MR. MOY: Very good. Perfect.

20 CHAIRPERSON MOLDENHAUER: Thank
21 you very much.

22 This morning session is concluded.

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1 (Whereupon, at 12:02 p.m. the
2 hearing was adjourned to reconvene at 1:29
3 p.m.)
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1
2 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

3 1:29 p.m.

4 CHAIRPERSON MOLDENHAUER: This
5 hearing will please come to order.

6 Good afternoon, ladies and
7 gentlemen. This is the June 8, 2010 Public
8 Hearing of the Board of Zoning Adjustments for
9 the District of Columbia.

10 My name is Meridith Moldenhauer,
11 Chairperson.

12 Joining me today to my right is
13 Vice Chair Shane Dettman, representative of
14 the National Capitol Planning Commission. To
15 my left, Nicole Sorg, mayoral appointee.

16 Copies of today's hearing agenda
17 are available to you and are located to my
18 left in the wall bin near the door.

19 Please be aware that this
20 proceeding is being recorded by a court
21 reporter and is also being Webcast live.
22 Accordingly, we must ask you to refrain from

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1 any disturbing noise or actions in the hearing
2 room.

3 When presenting information to the
4 Board, please turn on and speak into your
5 microphone, first stating your name and home
6 address. When you finish speaking please turn
7 off your microphone so that the microphone is
8 no longer picking up sounds or background
9 noise.

10 All persons planning to testify
11 either in favor or in opposition are to fill
12 out two witness cards. These cards are
13 located to my left on the table near the door
14 and on the witness tables. Upon coming
15 forward to speak to the Board, please give
16 both cards to the court reporter sitting to my
17 right.

18 The order of procedure for special
19 exceptions and variances is as follows:
20 statement and witnesses of the applicant,
21 government reports including Office of
22 Planning and Department of Public Works,

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1 reports from the ANC, parties and persons in
2 support, parties and persons in opposition,
3 and closing remarks by the applicant.

4 Pursuant to Section 3117.4 and
5 3117.5, the following time constraints will be
6 maintained. The applicant, appellant, persons
7 and parties in support except the ANC, will be
8 provided 60 minutes collectively. Appellees,
9 persons and parties in opposition except the
10 ANC, including witnesses, will be provided 60
11 minutes collectively. Individuals will be
12 provided 3 minutes.

13 These time restraints do not
14 include cross-examinations or questions from
15 the Board. Cross-examination of witnesses
16 will be permitted by the appellant and
17 parties.

18 The ANC within which the property
19 is located is automatically a party in a
20 special exception or variance case.

21 Nothing prohibits the Board from
22 placing reasonable restrictions on the cross-

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1 examination, including time limits and
2 limitations on the scope of the cross-
3 examination.

4 The record will be closed at the
5 conclusion of each case except for any
6 materials specifically requested by the Board.
7 The Board and the staff will specify at the
8 end of each hearing exactly what is expected
9 and the date when the person must submit
10 evidence to the Office of Zoning. After the
11 record is closed no other information will be
12 accepted by the Board.

13 The Sunshine Act requires that the
14 Public Hearing on each case be held in the
15 open before the public. The Board may,
16 consistent with its rules and procedures and
17 the Sunshine Act, enter into Executive Session
18 during or after the Public Hearing of a case
19 for purposes of reviewing the record or
20 deliberating on the case.

21 The decision of the Board in these
22 contested cases must be based exclusively on

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1 the public record. To avoid any appearance of
2 the contrary, the Board requests that the
3 persons present not engage members of the
4 Board in conversation.

5 Please turn off all beepers and
6 cell phones at this time so as to not disturb
7 these proceedings.

8 The Board will make every effort
9 to conclude the Public Hearing as near as
10 possible to 6:00 p.m. If the afternoon cases
11 are not completed by 6:00 p.m., the Board will
12 assess whether it can complete the pending
13 case or cases remaining on the agenda.

14 At this time, the Board will
15 consider any preliminary matters. Preliminary
16 matters are those that are related to whether
17 a case will or should be heard today, such as
18 requests for postponement, continuance,
19 withdrawal, or whether proper adequate notice
20 of the hearing has been given. If you are not
21 prepared to go forward with a case today or
22 you believe the Board should not proceed, now

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1 is the time to raise these matters.

2 Mr. Secretary, are there any
3 preliminary matters?

4 MR. MOY: Good afternoon, Madam
5 Chairman, members of the Board. There are
6 three applications scheduled for the afternoon
7 session. In each of the three applications
8 there were elements of preliminary matters.

9 The staff would suggest that the
10 Board would be more efficient to address these
11 preliminary matters on a case by case.

12 CHAIRPERSON MOLDENHAUER: Thank
13 you very much.

14 In that case, we will move on.

15 All those individuals planning to
16 testify today, if you could please stand and
17 take the oath?

18 (WITNESSES SWORN.)

19 CHAIRPERSON MOLDENHAUER: Thank
20 you very much, Mr. Moy.

21 If we can then call the first case
22 on the afternoon agenda?

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1 MS. ROSE: The first case is
2 Application No. 18067, the Application of
3 Marzieh Ostadhosseini, pursuant to 11 DCMR
4 3103.2, for a variance from the off-street
5 parking requirements under Subsection 2101.1,
6 to allow the construction of a flat (two-
7 family dwelling) in the R-4 District, at
8 premises 1211 4th Street, Northwest (Square
9 523, Lot 866).

10 CHAIRPERSON MOLDENHAUER: Thank
11 you very much.

12 Would the applicant introduce
13 himself and state his home address? You need
14 to turn on the microphone. That's okay.

15 MR. FATHI: Is it on yet?

16 CHAIRPERSON MOLDENHAUER: Yes.

17 MR. FATHI: My name is Abbas
18 Fathi. I will present No. 18067 and No.
19 18068, which is two lots on the same street.
20 The address is 16703 Cyrus Street,
21 Gaithersburg, Maryland 20877.

22 CHAIRPERSON MOLDENHAUER: Thank

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1 you.

2 If you'd like to introduce
3 yourself also?

4 MR. WASHINGTON: Yes. My name is
5 William Washington and I am the designer to
6 work with Mr. Abbas on this project. My
7 address is 10101 Linford Terrace, Lanham,
8 Maryland.

9 CHAIRPERSON MOLDENHAUER: Thank
10 you both.

11 We have a preliminary matter in
12 this case and then also in the next. Both
13 cases appear that they were not noticed
14 properly, that the posting just went up
15 yesterday.

16 Is that correct?

17 MR. WASHINGTON: Yes.

18 CHAIRPERSON MOLDENHAUER: Why was
19 there a delay in that?

20 MR. WASHINGTON: Well, I didn't
21 get any correspondence pertaining to that. It
22 was just an oversight. I didn't get anything

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1 and I didn't know about the 14 days.

2 CHAIRPERSON MOLDENHAUER: It is
3 actually included in the initial packets that
4 are sent, and which we have copies of, to the
5 applicant. There was the 14-day requirement.
6 We can waive that based on actual notice.

7 We did receive a letter from the
8 ANC, and it does appear as though the mailing
9 went out to everybody in the 200 feet.

10 If I have the consensus of the
11 Board, what we'll do is we will waive that
12 requirement. Obviously, just in the future,
13 it is part of the application. You have to
14 make sure to have that posted within the 14
15 days. But we'll go ahead and waive that.

16 We can go forward on the merits of
17 the case. So if you'd like to present on the
18 merits of the case, you can start.

19 MR. FATHI: We have two
20 properties. This is in the Historic District
21 on 4th Street. Both properties are
22 landlocked. There is a Church of God behind

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1 the property. There is no back alley.

2 Basically, we don't know what to
3 do. We have gone and got all the approvals,
4 and the Zoning said, "You need to go and get
5 a Zoning variance for this."

6 So that's basically it. I don't
7 know what else can I add to it. This is two
8 landlocked properties. And Historic, under no
9 circumstance, they said, will they ever let
10 anybody to cut the street to make a parking in
11 it. So that's why we're here.

12 VICE CHAIR DETTMAN: Can you tell
13 us whom you had discussions with that told you
14 that they wouldn't allow you to put in a curb
15 cut?

16 MR. FATHI: The responsible party
17 over there is -- what's his name?

18 VICE CHAIR DETTMAN: Just the
19 agency would be fine.

20 MR. FATHI: The Historic
21 Preservation.

22 VICE CHAIR DETTMAN: Historic

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1 Preservation? Okay.

2 MR. FATHI: And the ANC -- we have
3 gone to the ANC -- knows about whole thing.
4 By the way, it's ANC-6, not ANC-2 that they
5 have put here. I have gone to the meeting
6 there and they have approved unanimously that,
7 you know, there's no way we can have a parking
8 there.

9 VICE CHAIR DETTMAN: Is it correct
10 that there's no alley whatsoever within the
11 subject square?

12 MR. FATHI: No. The name of the
13 gentleman in the Historic is Brendan Meyer.

14 VICE CHAIR DETTMAN: Brendan
15 Meyer?

16 CHAIRPERSON MOLDENHAUER: OAG
17 actually just brought something to my
18 attention. I'm just trying to review this.

19 Right now you own the other
20 property, which we're actually not at that
21 case yet. What's your relationship to the
22 ownership of 1211 4th Street?

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1 MR. FATHI: Not the ownership; I'm
2 not the owner. It's a distant cousin of mine
3 that I've -- both of us, we bought this
4 property. I'll go ahead and do all this stuff
5 and build it for them. That's all. I'm
6 actually the builder and somebody that knows
7 how the system works. She's just a cousin of
8 mine. And we both -- three of us in fact,
9 three of us bought three properties to build
10 and move to the city.

11 CHAIRPERSON MOLDENHAUER: What's
12 the name on the title?

13 MR. FATHI: Marzieh Ostadhosseini,
14 the one that you have over there.

15 CHAIRPERSON MOLDENHAUER: Okay.

16 MR. FATHI: On 211 is Marzieh
17 Ostadhosseini. On 213 is Abbas Fathi, which
18 is me.

19 CHAIRPERSON MOLDENHAUER: Okay.
20 Ms. --

21 MR. FATHI: Ostadhosseini.

22 CHAIRPERSON MOLDENHAUER: --

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1 Ostadhosseini needs to actually authorize you
2 to represent her in this proceeding. We have
3 nothing in the record currently where you're
4 being authorized on her behalf to represent
5 her in the case that we're talking about
6 currently.

7 MR. FATHI: I have something. I
8 think there is one piece of paper that is
9 notarized by her that, you know, I'm -- but I
10 don't know why you don't have it. I don't
11 have it here.

12 CHAIRPERSON MOLDENHAUER: Okay.
13 Let's do this. We can continue, but what
14 we'll do is if we decide to make a decision on
15 the case today, you'll have to actually get
16 something in writing that indicates you are
17 able to come before the Board. And then we
18 would have to delay any order that would be
19 issued prior to getting that documentation.

20 Okay?

21 MR. FATHI: I can bring that
22 tomorrow.

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1 CHAIRPERSON MOLDENHAUER: Okay.
2 Wonderful.

3 Does the Board have any other
4 questions specifically about this property?

5 I see a shaking of no.

6 If the applicant has concluded
7 their testimony, we'll then move on to the
8 Office of Planning for their report.

9 MR. MORDFIN: Good afternoon. I'm
10 Stephen Mordfin with the Office of Planning.

11 The subject property is unique in
12 that it is located within a square that was
13 developed over 100 years ago with no alley
14 access, prior to the adoption of the off-
15 street parking regulations in 1958 and the
16 inclusion of the subject property within the
17 Shaw Historic District in 1999.

18 The property and the adjoining lot
19 to the north would be the first to be
20 developed within this square with an off-
21 street parking requirement, resulting in an
22 exceptional situation.

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1 It would be a practical difficulty
2 to the applicant to have to provide an off-
3 street parking space because there is no alley
4 access, and the Historic Preservation Office
5 has recommended against the construction of a
6 curb cut on 4th Street.

7 The granting of this variance
8 would not impair the intent of the Zone Plan,
9 as it would allow for infill development on a
10 vacant lot and would maintain the existing
11 number of parking spaces, as a provision of a
12 curb cut would simply trade an on-street
13 parking space for an off-street parking space.

14 Therefore, the Office of Planning
15 recommends approval of the application. Thank
16 you.

17 CHAIRPERSON MOLDENHAUER: Thank
18 you very much. It was a very thorough report.

19 I don't believe I have any
20 questions and I don't see any questions from
21 the other Board Members, so thank you.

22 Does the applicant have any

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1 questions from the Office of Planning?

2 At this point in time we would
3 then look to any testimony reports from the
4 ANC.

5 Is anybody from ANC-6C present?
6 Seeing no one.

7 We actually have our Exhibit 21.
8 This indicates that on May 12, 2010 there was
9 a duly notice meeting. There was a quorum
10 present with a vote of 5-0. It was a
11 unanimous vote in support of this application.
12 That will go into the record in regards to
13 this case.

14 Are there any persons or parties
15 in support or in opposition of this case in
16 the audience?

17 Please come forward. You can come
18 forward and turn on the microphone, and you
19 can state your name and address.

20 MS. PLUMMER: My name is Michel
21 Plummer. I live at 1207 4th Street,
22 Northwest.

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1 CHAIRPERSON MOLDENHAUER: 1207 4th?

2 MS. PLUMMER: Right.

3 CHAIRPERSON MOLDENHAUER: Okay.

4 So you're right next to or on the same block?

5 MS. PLUMMER: Right. Right next
6 door to the vacant place.

7 CHAIRPERSON MOLDENHAUER: You'll
8 have 3 minutes. Are you testifying in support
9 or in opposition?

10 MS. PLUMMER: I'm not testifying
11 for support, no.

12 CHAIRPERSON MOLDENHAUER: You're
13 in opposition?

14 MS. PLUMMER: Right.

15 CHAIRPERSON MOLDENHAUER: Okay.

16 So you'll have 3 minutes to provide any
17 comments that you have and present why you're
18 in opposition to the case.

19 MS. PLUMMER: Well, for one
20 reason, they want to put a parking space back
21 there. I don't understand what they're
22 putting back there -- they're asking for. Put

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1 a curb?

2 CHAIRPERSON MOLDENHAUER: No.

3 What they're doing is they're actually asking
4 for permission not to have parking.

5 MS. PLUMMER: Not to have parking?

6 CHAIRPERSON MOLDENHAUER: Because
7 they would be required to provide one off-
8 street parking space. So they're asking for
9 relief that they don't have to provide that
10 off-street parking.

11 MS. PLUMMER: I don't understand.
12 They're asking so they won't have off-street
13 parking?

14 CHAIRPERSON MOLDENHAUER: Yes.

15 MS. PLUMMER: So they want to make
16 parking spaces behind the houses?

17 CHAIRPERSON MOLDENHAUER: No. The
18 Zoning requirements would require, if a new
19 building was built today or a property was
20 renovated today, that you would have to build
21 one parking space per number of units being
22 created. Here, as a flat, they would be

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1 required to provide one off-street parking
2 space, so one parking space either on the side
3 or in the rear of the property.

4 The applicant is indicating that
5 because of the location, the aspect that the
6 property is landlocked, and there's no alley,
7 that they could not put parking in the rear
8 and that they would not be able to provide a
9 curb cut.

10 He is asking this Board to provide
11 him the relief, the fact that he would not
12 have to provide any off-street parking, any
13 parking on the property. That's what we're
14 evaluating right now.

15 MS. PLUMMER: Okay.

16 CHAIRPERSON MOLDENHAUER: Does
17 that change --

18 MS. PLUMMER: Yes.

19 CHAIRPERSON MOLDENHAUER: Then are
20 you okay with that?

21 MS. PLUMMER: Yes. I'm okay with
22 that.

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1 CHAIRPERSON MOLDENHAUER: You're
2 okay with that? Okay. Do you have any other
3 comments?

4 MS. PLUMMER: No, I don't have
5 any.

6 CHAIRPERSON MOLDENHAUER: Okay.
7 Then thank you so much for coming down.

8 If anybody else has any other
9 points, they can come forward and provide a 3-
10 minute --

11 Miss?

12 MS. PLUMMER: Yes?

13 CHAIRPERSON MOLDENHAUER: You'll
14 have to provide your name on a witness card to
15 the court reporter, who is over here to my
16 right.

17 Sir, if you can state your name,
18 and were you sworn in; did you stand up?

19 MR. WHITAKER: Yes, ma'am.

20 CHAIRPERSON MOLDENHAUER: Okay.
21 You can state your name and your home address
22 for the record.

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1 MR. WHITAKER: My name is Ezell
2 Whitaker, address 1207 4th Street, Northwest.

3 CHAIRPERSON MOLDENHAUER: Okay.
4 Mr. Whitaker, are you in support or in
5 opposition of the case?

6 MR. WHITAKER: Well, I've just got
7 some questions I want to ask. Maybe I'm in
8 support of the case. I mean, I just want to
9 get some information about parking.

10 CHAIRPERSON MOLDENHAUER: Okay.
11 Usually this is the point in time where you
12 would present your opinions. What exactly are
13 your questions?

14 MR. WHITAKER: My question is, I
15 live at 1207 and I don't have no alleyway. I
16 mean, all I'm asking for is some way to get
17 out from my house to the street -- somebody
18 was telling me about.

19 I have a bit of a -- I can't get
20 from my garage to the street other than going
21 through the churchyard. When they put the
22 building up they closed me in. I mean, I have

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1 no way out. So all I'm asking for is some
2 kind of alleyway or parking way or something
3 to get from my house to the street. Any way,
4 either way, it wouldn't matter as long as I
5 can get out.

6 CHAIRPERSON MOLDENHAUER:

7 Unfortunately this is not the Board or the
8 type of environment where we can provide that.
9 What we're doing is we're trying to determine
10 whether or not there's any negative effect on
11 the community in regards to permitting this
12 relief in regards to off-street parking. The
13 fact that these parcels are landlocked,
14 there's nothing that this Board has the
15 authority to really respond to in that regard.

16 I think what you're saying is your
17 lot is landlocked. So by having a development
18 on that vacant parcel, you're going to then be
19 even more so landlocked. But there's really
20 nothing in our capacity as a Board -- we don't
21 have the authority to address that issue.

22 MR. WHITAKER: I'm not against

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1 what's going on or anything. The building,
2 they can build it and it's okay with me. All
3 I want is just give me an out.

4 VICE CHAIR DETTMAN: Mr. Whitaker,
5 you're saying that you actually use your rear
6 yard for parking right now?

7 MR. WHITAKER: No, not for
8 parking.

9 VICE CHAIR DETTMAN: You don't?

10 MR. WHITAKER: I do landscaping.

11 VICE CHAIR DETTMAN: Okay.

12 CHAIRPERSON MOLDENHAUER: Mr.
13 Whitaker, I think we just found you on our
14 Office of Planning map. Again, there's really
15 nothing that we can do. We're discussing this
16 application. If you have no problems with
17 this application, I appreciate you coming down
18 here.

19 MR. WHITAKER: That's fine. I got
20 a letter so I decided to come down and see
21 what it was all about.

22 CHAIRPERSON MOLDENHAUER: I

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1 appreciate that. Thank you for coming down
2 and participating.

3 MR. WHITAKER: You're welcome.
4 Thank you very much.

5 CHAIRPERSON MOLDENHAUER: Thank
6 you very much.

7 Are there any other parties in
8 support or in opposition of this case? Seeing
9 none.

10 At this point in time we'll go
11 back to the applicant for any closing remarks.

12 MR. FATHI: Thank you. I need the
13 permit so we can go ahead and do this. We've
14 been waiting for one year.

15 CHAIRPERSON MOLDENHAUER: Thank
16 you very much.

17 We'll now conclude this case.
18 We're still going to be waiting for the letter
19 of authorization.

20 MR. FATHI: Where should I bring
21 it to; should I bring it to here?

22 CHAIRPERSON MOLDENHAUER: You

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1 should bring it to the office. Yes. On the
2 other side of the --

3 MR. FATHI: I will bring that
4 tomorrow.

5 CHAIRPERSON MOLDENHAUER:
6 Tomorrow, yes. Deliver that.

7 What we'll do now is I think we
8 can deliberate on this case currently. But
9 we'll just simply hold off on any decision or
10 any order until the documentation is provided.

11 This is an application for an area
12 variance under 2101.1, for a decrease in the
13 number of off-street parking from one to zero.
14 The applicant is trying to develop an existing
15 vacant property at 211 4th Street, Northwest,
16 and create a flat.

17 The Office of Planning report I
18 will just incorporate, which is very in-depth
19 and provides the different elements of the
20 test.

21 It includes ways in which the
22 property has an exceptional circumstance based

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1 on the history of the parcel; the fact that
2 the parcel is alley and landlocked for over
3 100 years, that time frame obviously is very
4 unique; the practical difficulty of trying to
5 create off-street parking in regard to the
6 curb cut and the historical overlay of the
7 district in the Shaw area; and the fact that
8 there would be no impact on Zoning.

9 We have a letter from the ANC in
10 support, which is our Exhibit 21.

11 We did have two individuals come
12 and testify. However, both Ms. Plummer and
13 Mr. Whitaker did not have specific objections
14 to this application.

15 Based on that, I find no
16 objection. I would submit a motion to approve
17 Application No. 18067 for an area variance
18 under 2101.1, to eliminate the off-street
19 parking requirement.

20 The motion has been made.

21 Do I have a second?

22 MEMBER SORG: Second.

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1 CHAIRPERSON MOLDENHAUER: Motion's
2 been made and seconded.

3 All those in favor?

4 ALL: Aye.

5 CHAIRPERSON MOLDENHAUER: If we
6 could have the vote called back, please?

7 MR. MOY: Yes, Madam Chair. The
8 staff would record the vote as 3-0-2. This is
9 a motion on the Chair to approve the
10 application for area variance relief from
11 Section 2101.1. Seconding the motion, Ms.
12 Sorg. Also in support of the motion, Mr.
13 Dettman. There's no Zoning Commissioner
14 participating or another Board Member.

15 Again, the vote is 3-0-2.

16 CHAIRPERSON MOLDENHAUER: Thank
17 you very much.

18 MR. MOY: The staff would also
19 like to add, Madam Chair, just for the record,
20 that the applicant submitted today an
21 affidavit of posting which staff understands
22 was waived into the record by the Board by

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1 consensus.

2 VICE CHAIR DETTMAN: Summary
3 order, Madam Chair?

4 CHAIRPERSON MOLDENHAUER: Yes. I
5 believe the Board will waive their
6 requirements and request a summary order. But
7 any order would have to be held until we have
8 the authorization letter.

9 MR. MOY: Yes.

10 CHAIRPERSON MOLDENHAUER: Thank
11 you.

12 Ready for the next case. Thank
13 you.

14 MS. ROSE: The next application is
15 No. 18068, Application of Abbas Fathi,
16 pursuant to 11 DCMR 3103.2, for a variance
17 from the off-street parking requirements under
18 Subsection 2101.1, to allow the construction
19 of a flat (two-family dwelling) in the R-4
20 District at premises 1213 4th Street,
21 Northwest (Square 523, Lot 865).

22 CHAIRPERSON MOLDENHAUER: If you

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1 could both reintroduce yourselves for the
2 record? Thank you.

3 MR. FATHI: My name is Abbas Fathi
4 and it's 16703 Cyrus Street, Gaithersburg,
5 Maryland 30877.

6 MR. WASHINGTON: William
7 Washington, 10101 Linford Terrace, Lanham,
8 Maryland.

9 CHAIRPERSON MOLDENHAUER: At this
10 point in time the applicant can present their
11 case. If you'd like, you can just simply rest
12 on the record. I believe the record is full.

13 MR. FATHI: I own the piece of
14 land 1213 4th Street, and the property is
15 landlocked. There is no alley in the back and
16 there is no access from the front. Therefore
17 I am requesting a waiver on the requirement
18 for a parking space.

19 CHAIRPERSON MOLDENHAUER: Thank
20 you very much.

21 Does the Board have any questions?

22 At this point in time we can --

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1 again, sorry, the issue of posting. I believe
2 we just got that into the record.

3 Mr. Moy, what exhibit number would
4 that be now?

5 MR. MOY: That would be -- just a
6 second.

7 CHAIRPERSON MOLDENHAUER: That's
8 fine. We don't need to reference the exact
9 exhibit number. I can just reference for the
10 record that we did just receive that today,
11 the affidavit of posting. And I believe it
12 was just posted yesterday.

13 Based on my Board's consensus, we
14 can waive that requirement since we do have a
15 letter from the ANC, and we do have notice
16 that the information went out to the 200 feet
17 individuals around the property.

18 Having that been waived, at this
19 point in time the applicant has presented
20 their case, and we can now move on to the
21 Office of Planning.

22 MR. MORDFIN: Good afternoon. I'm

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1 Stephen Mordfin. The Office of Planning is
2 willing to stand on the record on this case.

3 CHAIRPERSON MOLDENHAUER: Thank
4 you very much. I don't believe the Board has
5 any questions for the Office of Planning.

6 Does the applicant have any
7 questions?

8 MR. FATHI: No.

9 CHAIRPERSON MOLDENHAUER: At this
10 point in time we will move on to the ANC
11 report.

12 This is actually a duplicate
13 document in our case No. 18067 which should
14 also be in case No. 18068, which is the ANC
15 letter from ANC-6C dated May 17, 2010, in
16 which they had a meeting on May 12, 2010, and
17 a duly notice meeting where a quorum was
18 present and they voted unanimously to support
19 the application for this project at 1213 4th
20 Street.

21 Are there any individuals in
22 support or in opposition of this case?

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1 Seeing none and having addressed
2 some of the similar issues previously with Ms.
3 Plummer and Mr. Whitaker, I think we can move
4 forward.

5 If there are any closing remarks
6 by the applicant?

7 MR. FATHI: No.

8 CHAIRPERSON MOLDENHAUER: Okay.
9 Then at this point in time we will close the
10 record and I believe we can deliberate on this
11 case.

12 I will just simply say that we can
13 rest on the record. I will incorporate the
14 Office of Planning's analysis and report in
15 regards to the three-prong test for the
16 variance under 2101.1, for the off-street
17 parking requirement to be reduced from one to
18 zero.

19 I will submit a motion to approve
20 Application No. 18068 for 1213 4th Street, for
21 an area variance under 2101.1, to decrease the
22 number of off-street parking spaces from one

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1 to zero.

2 Do I have a second?

3 MEMBER SORG: Second.

4 CHAIRPERSON MOLDENHAUER: The
5 motion's been made and seconded.

6 All those in favor, say aye?

7 ALL: Aye.

8 MR. MOY: Staff would record the
9 vote, Madam Chair, as 3-0-2 on the motion of
10 the Chair, Ms. Moldenhauer to approve the
11 application for area variance relief under
12 Section 2101.1. Seconding the motion, Ms.
13 Sorg. In support of the motion, Mr. Dettman.
14 No Zoning Commissioner or another Board Member
15 participating.

16 Again, the final vote is 3-0-2.

17 CHAIRPERSON MOLDENHAUER: Great.
18 Thank you very much.

19 MR. MOY: Would the Board care to
20 waive the requirements for a summary order?

21 CHAIRPERSON MOLDENHAUER: Yes, we
22 would.

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1 MR. MOY: Thank you.

2 CHAIRPERSON MOLDENHAUER: Thank
3 you very much.

4 MR. FATHI: Thank you. Thank you
5 for your time. Do I have to wait for anything
6 on this project which is under my name? I'll
7 bring the paper for the 1211 tomorrow.

8 CHAIRPERSON MOLDENHAUER: No.

9 MR. FATHI: For this one do I have
10 to do anything else?

11 CHAIRPERSON MOLDENHAUER: You
12 don't have to do anything else for the
13 application that we just voted on. An order
14 will be sent out.

15 MR. FATHI: Thank you.

16 CHAIRPERSON MOLDENHAUER: You're
17 welcome.

18 I believe we can call the next
19 case which I think is also the last case on
20 our agenda for today.

21 MS. ROSE: Yes. The last case was
22 continued from the April 6, 2010 Public

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1 Hearing session. It is No. 18048, the
2 Application of Washington Middle School for
3 Girls, pursuant to 11 DCMR 3104.1, for a
4 special exception for a private school (40
5 students, 4 staff, Grades 4 and 5) under
6 Section 206, in the R-5-A District at premises
7 2683 Douglas Road, Southeast (Square 5872, Lot
8 143).

9 MR. MOY: Madam Chair, I just want
10 to also add that the affidavit posting of this
11 case, Exhibit 28, was one day late. So it's
12 a bit untimely.

13 CHAIRPERSON MOLDENHAUER: Thank
14 you very much, Mr. Moy. Yes, it's our Exhibit
15 28. It was one day late. But seeing as
16 though it was posted for just one day less
17 than was required -- there was also
18 notification out to the community, and it
19 seems that there is actual knowledge of the
20 notice that went out. I think that we can by
21 a consensus waive the requirements of the time
22 frame for posting.

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1 That as a preliminary matter
2 having been resolved, at this point in time if
3 the applicant can please introduce herself, we
4 will get started on the merits of the case.

5 MS. REED: Good afternoon, Madam
6 Chair and ancillary agencies. My name is
7 Dianna Reed. I'm with Land Use By Design and
8 I represent the Washington Middle School for
9 Girls as their consultant. There's members
10 from staff as well as parents present.

11 Today the Washington Middle School
12 for Girls is requesting a special exception to
13 allow 40 students and 4 staff for Grades 4 and
14 5 to remain at 2683 Douglas Road, Southeast.

15 The catholic school has been at
16 this address since 2001. The school has
17 outreach programs into the community. We feel
18 that the programs, the curriculum, more than
19 makes up for the fact that they have not had
20 a valid certificate of occupancy for that
21 time. The school is actually trying to become
22 compliant with DCRA Regulation 1011, as well

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1 as getting the special exception to remain at
2 that premise.

3 I'll leave it at that. I have
4 some exhibits but I believe you all have a
5 copy of that. If not, I can present those as
6 well. Thank you.

7 CHAIRPERSON MOLDENHAUER: Thank
8 you. We do have those exhibits. I just have
9 some preliminary questions for you.

10 One of the issues is the parking
11 requirement. In the application there was a
12 reference to your ability to park. There was
13 some reference to off-street, then there's
14 another reference to being able to park in
15 other building locations on the property.

16 If you can just kind of describe
17 what you have in regards to parking and where
18 staff is currently parking, that would be
19 great.

20 MS. REED: Sure. Currently this
21 survey shows 45 parking spaces in total.
22 There is 4 staff. The 45 spaces more than

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1 accommodates the 4 staff. There are currently
2 35 students. We're asking for special
3 exception for up to 40.

4 Thirty-five of those students,
5 they actually catch public transportation, as
6 well as they have pickup and drop-off during
7 their mornings and then the late evening when
8 school is out.

9 The survey shows 9 by 19 parking
10 spaces, both on Douglas Road as well as in the
11 front of the building. That's the reason why
12 there's a reference to off-street and on-
13 street parking, because there's parking spaces
14 both on-street and off-street.

15 We actually have the property
16 manager, William C. Smith, present to -- I
17 guess if you guys have any questions about
18 parking from property management, she'll be
19 able to answer those questions as well, or
20 actually repeat what I just said.

21 CHAIRPERSON MOLDENHAUER: You rent
22 that space to William C. Smith, is that

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1 correct?

2 MS. REED: Yes.

3 CHAIRPERSON MOLDENHAUER: I'm just
4 trying to make sure that we understand for the
5 record. It's not actually part of the
6 property that the school owns or is occupying;
7 you rent that space which is part of a
8 separate lot?

9 MS. REED: It's actually the same
10 lot.

11 CHAIRPERSON MOLDENHAUER: Is it
12 the same lot?

13 MS. REED: It's the same lot.

14 CHAIRPERSON MOLDENHAUER: Okay.
15 Sorry.

16 MS. REED: It's the same lot.

17 CHAIRPERSON MOLDENHAUER: Do you
18 have a long-term lease for that space for the
19 parking?

20 MS. REED: Yes, we do.

21 CHAIRPERSON MOLDENHAUER: Do the
22 Board Members have any other questions?

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1 I will turn at this point to
2 Office of Planning and let Office of Planning
3 present their report.

4 MS. THOMAS: Good evening, Madam
5 Chair and members of the Board. I'm Karen
6 Thomas with the Office of Planning.

7 I'll just briefly state that the
8 Office of Planning is recommending approval of
9 the special exception request made by the
10 Washington Middle School for Girls to continue
11 its operation for 40 students, Grades 4
12 through 5, and for 4 staff at the subject
13 location.

14 The application seems to have
15 satisfied the criteria of Section 206 and the
16 standards of special exception relief under
17 Section 3104.

18 While the school has been in
19 operation at the site since 2001, OP is not
20 aware of any complaints regarding adverse
21 impacts to neighboring properties due to the
22 number of students, noise, or traffic. Ample

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1 parking is provided on-site to meet the needs
2 of the school and visitors to the school. All
3 the activities seem to be conducted in
4 agreement with residential management and
5 supervised by staff.

6 In that case, we have no issues or
7 objection to the school continuing its
8 operation at this site.

9 CHAIRPERSON MOLDENHAUER: I
10 actually just have one quick question for the
11 Office of Planning.

12 In your report, the last condition
13 that you indicated was to require the
14 distribution of a policy manual. If that
15 wasn't a requirement in regards to providing
16 pickup, drop-off, and parking to parents and
17 staff, would that be a concern of yours that
18 was not included?

19 MS. THOMAS: We typically try to
20 put that in for most of the school
21 applications that come before us now, just in
22 case, to make people more aware of parking,

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1 pickup, and drop off, regardless of whether
2 the majority take a bus or not. Because there
3 might be some instances where that might occur
4 sometimes. So we prefer that they have a
5 policy.

6 CHAIRPERSON MOLDENHAUER: Ms.
7 Reed, have you reviewed the Office of Planning
8 report; do you have any questions for them?

9 MS. REED: No, I don't.

10 CHAIRPERSON MOLDENHAUER: Okay.
11 Are you okay with providing some sort of
12 distribution of a policy or a manual, or
13 posting that on a Web site to inform parents
14 or staff about your need to use the parking
15 lot, drop-off, pickup, and safety concerns in
16 that regard?

17 MS. REED: We have no problem with
18 that.

19 CHAIRPERSON MOLDENHAUER: Okay.
20 Do you have a Web site?

21 MS. REED: Yes. We currently do.

22 CHAIRPERSON MOLDENHAUER: So it

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1 wouldn't be an inconvenience to post that?

2 MS. REED: No. It would not.

3 CHAIRPERSON MOLDENHAUER: Thank
4 you.

5 Do any Board Members have any
6 other questions for Office of Planning?
7 Seeing none.

8 At this point we can then turn to
9 the ANC.

10 Is anybody from the local ANC
11 present today?

12 Seeing nobody in the audience. We
13 also don't have a letter from the ANC.

14 I believe, Ms. Reed, you had
15 indicated in an email that you had spoken with
16 them. Can you provide the background into
17 your correspondence with the ANC?

18 MS. REED: Sure. I actually have
19 an email that I responded to Anthony Muhammad,
20 the Chair of the Commission. And I CCed
21 Office of Planning staff Ms. Karen Thomas, as
22 well as Mr. Rick Nero. And basically recapped

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1 the decision there in the event that they did
2 not send a report.

3 The vote was 3-2 to allow the
4 school to remain at its current address of
5 2683 Douglas Road for 40 students, Grades 4 to
6 5, and 4 staff. There I did a presentation,
7 had these exhibits shown, answered questions
8 from the community, and we got the vote of 3-2
9 in favor of the school remaining there.

10 CHAIRPERSON MOLDENHAUER: Yes. I
11 believe that is our Exhibit 23. Thank you
12 very much.

13 MS. REED: No problem.

14 CHAIRPERSON MOLDENHAUER: At this
15 point we'll move on to any persons or parties
16 in support or opposition for the case.

17 Seeing none, we can move on.

18 Are there are any closing comments
19 by the applicant?

20 MS. REED: No.

21 CHAIRPERSON MOLDENHAUER: No?
22 Okay. Thank you very much and thank you for

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1 your time to come down to present the
2 application.

3 Are there any further questions
4 from the Board Members?

5 At this point in time, the hearing
6 will be concluded and we will enter into the
7 stage for deliberation.

8 This is Application No. 18048 for
9 an approval of a special exception pursuant to
10 206, to operate the Washington Middle School
11 for Girls at 2683 Douglas Road, Southeast.

12 The school is currently in
13 operation. They've been operating since 2001.
14 They're taking an effort to try to come into
15 compliance with all DC requirements, including
16 Zoning requirements to obtain a special
17 exception for their current use and occupancy.
18 They are seeking an application for 40
19 students and 4 staff members.

20 I'll incorporate the OP's analysis
21 which is a very thorough analysis under
22 Section 352, where they go through the

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1 different requirements and articulate the fact
2 that there has been really no concerns or
3 issues in regards to objectionable conditions
4 in noise or traffic from any of the neighbors,
5 that they don't see any problem, that there is
6 ample parking as testified by the applicant
7 today in regard to the property that has 45
8 parking spaces, and that most of their staff
9 and students come in through public
10 transportation. And that under the special
11 exception standard of 3104, this is in harmony
12 with the general purpose and integrity of the
13 Zoning Plan, and that there is no general
14 negative adverse impact on the neighboring
15 properties.

16 We have also in the OP report, as
17 has been testified by the applicant,
18 statements that the ANC has voted to approve
19 the application. We don't have anything
20 specifically in our records. They will not
21 receive great weight. But there are also no
22 additional parties in opposition or in support

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1 for the case.

2 I would actually be inclined to
3 throw out a motion if all Board Members are in
4 agreement. Seeing a nodding of heads.

5 I will throw out a motion to
6 approve Application No. 18048 for a relief
7 under 206, to permit the establishment of a
8 private school, subject to the following
9 conditions:

10 (1) the approval should be for a
11 period of only 5 years from the date of the
12 Board's approval or the date of the Board's
13 order;

14 (2) the maximum number of students
15 should not exceed 40 for children in Grades 4
16 and 5, and the maximum number of staff shall
17 not exceed 4;

18 (3) the school shall operate from
19 7:00 a.m. to 7:00 p.m., Monday through Friday;
20 and,

21 (4) outdoor activities must be
22 supervised by staff.

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1 The motion has been made.

2 Do I have a second?

3 VICE CHAIR DETTMAN: Second.

4 CHAIRPERSON MOLDENHAUER: Motion's
5 been made and seconded.

6 All those in favor, say aye?

7 ALL: Aye.

8 CHAIRPERSON MOLDENHAUER: If we
9 can read back the vote?

10 MR. MOY: Yes, Madam Chair. The
11 staff would record the vote as 3-0-2. This is
12 on the motion of the Chair, Ms. Moldenhauer to
13 approve the request for a special exception
14 under 206. Seconding the motion, Mr. Dettman.

15 I should add, the approval
16 contains 4 conditions as cited by the Chair.

17 Also in support of the motion, Ms.
18 Sorg. No other Zoning Commissioner or another
19 Board Member participating.

20 Again, the vote is 3-0-2.

21 CHAIRPERSON MOLDENHAUER: Thank
22 you. Since there was no formal opposition for

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1 this case, I'd like to waive our requirements
2 and request a summary order.

3 MR. MOY: Very good.

4 CHAIRPERSON MOLDENHAUER: Thank
5 you very much and good luck.

6 I believe we have nothing else on
7 the agenda for this afternoon.

8 MR. MOY: That's correct.

9 CHAIRPERSON MOLDENHAUER: Thank
10 you very much. The hearing is now adjourned.
11 Thank you.

12 (Whereupon, at 2:12 p.m. the
13 hearing was concluded.)
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