

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

NOVEMBER 10, 2009

+ + + + +

The Public Hearing convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:00 a.m., Marc D. Loud, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD Chairman  
SHANE L. DETTMAN Vice Chair (NCPC)  
MEREDITH MOLDENHAUER Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary  
BEVERLEY BAILEY Sr. Zoning Spec.  
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:  
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN  
MATT JESICK

This transcript constitutes the  
minutes from the Public Hearing held on  
November 10, 2009.

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

2 10:06 a.m.

3 CHAIRMAN LOUD: We are now going to  
4 move into the November 10<sup>th</sup> hearing calendar.  
5 And for those of you that sat through this  
6 once already, I do apologize, but this is part  
7 of the protocol of coming out here for the  
8 hearing session. I have to read this all over  
9 again.

10 This is the November 10<sup>th</sup> Public  
11 Hearing of the Board of Zoning Adjustment of  
12 the District of Columbia.

13 My name is Marc Loud, Chairperson.

14 Joining me today are Vice Chair, Shane  
15 Dettman to my right representing the National  
16 Capital Planning Commission, to his right,  
17 Chairman Anthony Hood from the Zoning  
18 Commission, Ms. Meredith Moldenhauer to my  
19 left representing the BZA, a Mayoral  
20 Appointee, Mr. Clifford Moy, Secretary of BZA.

21 We have been joined by Ms. Mary Nagelhout of  
22 the Office of Attorney General, and then to

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1 her left and on the far end, Ms. Beverley  
2 Bailey, Specialist in the Office of Zoning.

3 Copies of today's hearing agenda  
4 are available to you located to my left in the  
5 wall bin near the door. Please, be advised  
6 this proceeding is being recorded by a Court  
7 Reporter and is also webcast live.  
8 Accordingly, we must ask you to refrain from  
9 any disruptive noises or actions in the  
10 hearing room.

11 When presenting information to the  
12 Board, please, turn on and speak into the  
13 microphone, first, stating your name and home  
14 address. When you are finished speaking,  
15 please, turn your microphone off, so that your  
16 microphone is no longer picking up sound or  
17 background noise.

18 All persons planning to testify  
19 either in favor or in opposition are to fill  
20 out two witness cards. These cards are  
21 located to my left on the table near the door  
22 and on the witness tables. Upon coming

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1 forward to speak to the Board, please, give  
2 both cards to the reporter sitting to my  
3 right.

4 The order of procedure for special  
5 exceptions and variances is as follows:  
6 Statement and witnesses of the applicant;  
7 Government reports, including Office of  
8 Planning, Department of Public Works, et al;  
9 Report of the Advisory Neighborhood  
10 Commission; Parties or persons in support;  
11 Parties or persons in opposition and closing  
12 remarks by the applicant.

13 Notwithstanding the order of  
14 procedure, in cases where the Board feels that  
15 the record is full, we may skip steps in the  
16 procedure or recommend to the parties or at  
17 least notify them that we think the record is  
18 full and that we might be able to move to  
19 deliberation without going through each step  
20 in the process.

21 Pursuant to Sections 3117.4 and  
22 3117.5, the following time constraints will be

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1 maintained: The applicant, appellant, persons  
2 and parties, except an ANC, in support,  
3 including witnesses, 60 minutes collectively.

4 Appellees, persons and parties, except an  
5 ANC, in opposition, including witnesses, 60  
6 minutes collectively. Individuals 3 minutes  
7 and organizations are allotted 5 minutes.

8 And again, notwithstanding section  
9 3117.4, in cases where the record is full and  
10 we are pretty confident of the relief that is  
11 being requested, these time allotments may or  
12 may not apply.

13 These time restraints do not  
14 include cross examination and/or questions  
15 from the Board. Cross examination of  
16 witnesses is permitted by the applicant or  
17 parties only. The ANC within which the  
18 property is located is automatically a party  
19 in a 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 material 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 when the persons must 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 decision of the Board in these  
12 contested cases must be based exclusively on  
13 the public record. To avoid any appearance to  
14 the contrary, the Board requests that persons  
15 present not engage the Members of the Board in  
16 conversation. Please, turn off all beepers  
17 and cell phones, at this time, so as not to  
18 disrupt these proceedings.

19 The Board will now consider any  
20 preliminary matters. Preliminary matters are  
21 those which relate to whether a case will or  
22 should be heard today, such as requests for

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1 postponement, continuance or withdrawal or  
2 whether proper and adequate notice of the  
3 hearing has been given. If you are not  
4 prepared to go forward with a case today or if  
5 you believe that the Board should not proceed,  
6 now is the time to raise such a matter.

7 Does the staff have any preliminary  
8 matters?

9 MS. BAILEY: Mr. Chairman and  
10 Members of the Board, good morning. No, Mr.  
11 Chairman, staff does not have any preliminary  
12 matters.

13 CHAIRMAN LOUD: Thank you, Ms.  
14 Bailey. Would all individuals who are here  
15 for the 10:00 a.m. Public Hearing calendar and  
16 who wish to testify today, please, rise so  
17 that Ms. Bailey can give you -- can administer  
18 the oath?

19 MS. BAILEY: Please, raise your  
20 right hand.

21 (Whereupon, the witnesses were  
22 sworn.)

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1 MS. BAILEY: Thank you. Mr.  
2 Chairman, the first case is Application 17990  
3 of Gregory Muehl and Tracy Haugen and it is  
4 pursuant to 11 DCMR § 3104.1, for a special  
5 exception to allow a rear addition to an  
6 existing one-family detached dwelling under  
7 section 223, not meeting the side yard  
8 requirements of section 405. The property is  
9 located at 5019 41<sup>st</sup> Street, N.W., Square 1756,  
10 Lot 12 and it is Zoned R-1-B.

11 Please, have a seat at the table.

12 MS. STANLEY: Good morning.

13 CHAIRMAN LOUD: Good morning.

14 MS. STANLEY: Hi. I'm Jennifer  
15 Stanley at 2500 Q Street, N.W., ZIP 20007.  
16 I'm representing the homeowners, Gregory Muehl  
17 and Tracy Haugen. They are having a baby.

18 CHAIRMAN LOUD: Well,  
19 congratulations --

20 MS. STANLEY: They couldn't be here  
21 right now.

22 CHAIRMAN LOUD: -- to them. It's

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1 exciting news. Before you get started, let me  
2 just ask if a representative from ANC-3E is  
3 here this morning?

4 MS. STANLEY: I don't think so.

5 CHAIRMAN LOUD: Don't see one.  
6 They did submit a report in support of the  
7 application, but I just wanted to double check  
8 and make sure. I think, Ms. Stanley?

9 MS. STANLEY: Yes.

10 CHAIRMAN LOUD: We have taken a  
11 look at the record, the different submissions.  
12 It's a very full record. It's a 223. It's  
13 unopposed. In fact, there is pending  
14 regulatory change now that would allow these  
15 kinds of cases to be placed on a consent  
16 calendar, but we are not there yet.

17 Nonetheless, where we are is that  
18 it's not opposed. The Office of Planning  
19 recommends approval. It's a fairly  
20 straightforward two-story addition. It  
21 doesn't meet the 8 foot side yard requirement.

22 My perspective and I'll open it up

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1 to other Board Members is that we probably  
2 don't need a lot of testimony on the record.  
3 I think it's something that we can rest on the  
4 record on and go into deliberation today on,  
5 but let me see if Board Members have  
6 additional thoughts.

7 Hearing none, I think what -- let  
8 me just ask the Office of Planning, is there  
9 anything in your report that you would like to  
10 lift up specifically? And good morning.

11 MS. JACKSON: I would be happy to  
12 stand on the record.

13 CHAIRMAN LOUD: All right. Then  
14 what I would recommend, again, because it is  
15 such a full record, because it's unopposed,  
16 because the ANC also supports it, because the  
17 Office of Planning supports it, because you  
18 have got a number of neighbors or at least  
19 your client has a number of neighbors that  
20 have also submitted support letters at our  
21 Exhibit 26, that we, based on the record and  
22 based on the articulation of the standard of

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1 223 that is contained in the Office of  
2 Planning's report, which I'm incorporating by  
3 reference into my comments right now, I think  
4 we ought to approve the application.

5 I think it was put together very  
6 well and not take you through a long arduous  
7 process being here this morning.

8 Board Members, are there any,  
9 again, specific things that you might want to  
10 raise with respect to the application?

11 All right. Hearing none, then what  
12 I would like to do is move approval of  
13 Application No. 17990 for special exception  
14 relief under section 3104. The application is  
15 for an addition to a single-family dwelling  
16 that does not meet the 8 foot side yard  
17 requirement.

18 The application is supported by the  
19 Office of Planning, that's our Exhibit 22. It  
20 is also supported by ANC-3E, our Exhibit 25,  
21 and a report dated October 26, '09. There are  
22 additional letters of support in the record at

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1 Exhibit 26 and I would like to incorporate by  
2 reference the special exception analysis that  
3 is in the Office of Planning's report, the  
4 entire light, air, privacy, etcetera, elements  
5 that are part of the special exception  
6 standard.

7 That being said, let me -- that was  
8 long-winded. Let me just say that I would  
9 like to recommend -- I would like to move  
10 approval of Application No. 17990.

11 COMMISSIONER HOOD: Second.

12 CHAIRMAN LOUD: All right. The  
13 motion has been made and seconded. Is there  
14 any further deliberation?

15 Hearing none, all those in favor  
16 say aye.

17 ALL: Aye.

18 CHAIRMAN LOUD: All those who are  
19 opposed? Are there any abstentions? And, Ms.  
20 Bailey, can you read back the vote, please?

21 MS. BAILEY: Certainly, Mr.  
22 Chairman. The vote is recorded as 4-0-1 to

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1 grant the application. Mr. Loud made the  
2 motion, Commission Hood seconded, Mr. Dettman,  
3 Mrs. Moldenhauer support the motion and again,  
4 it's 4-0-1.

5 CHAIRMAN LOUD: Thank you, Ms.  
6 Bailey. And we can do this by summary order,  
7 correct?

8 MS. BAILEY: Thank you. Yes, sir.

9 CHAIRMAN LOUD: Okay. Let's do  
10 that then.

11 COMMISSIONER HOOD: Mr. Chairman?

12 CHAIRMAN LOUD: Yes, sir?

13 COMMISSIONER HOOD: I would just  
14 say, as you said earlier and I don't want that  
15 to get lost, that this is a perfect case for  
16 the consent calendar. The expedited calendar.

17 CHAIRMAN LOUD: Okay. Thank you,  
18 Chairman Hood. Chairman Hood, obviously,  
19 presides over the Zoning Commission, which is  
20 taking up that issue of the consent calendar,  
21 the expedited review calendar, as we speak.

22 So thank you for your application.

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1       Congratulations.    And I hope that all are  
2 safe and well at the hospital.

3               MS. STANLEY:    Great.    Thank you  
4 very much.

5               CHAIRMAN LOUD:   All right.    Ms.  
6 Bailey, when you are ready, you can call our  
7 next case.

8               MS. BAILEY:    Mr. Chairman, the next  
9 case of the morning is Application 17995 of  
10 Suzanne George and Nathan Tibbits and it's  
11 pursuant to 11 DCMR § 3104.1 for a special  
12 exception to allow the construction of a two-  
13 story plus basement rear addition to an  
14 existing one-family detached dwelling under  
15 section 223, not meeting the rear yard  
16 requirements, that's section 404.    The  
17 property is located at 5325 38<sup>th</sup> Street, N.W.,  
18 Square 1872, Lot 812 and it's Zoned R-1-B.

19               CHAIRMAN LOUD:    Good morning, and  
20 if you could introduce yourselves for the  
21 record?

22               MR. TIBBITS:    Good morning, I'm

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1 Nate Tibbits, 5325 38<sup>th</sup> Street.

2 MS. STACY: I'm Amy Stacy, 15  
3 Woodmoor Drive, Silver Spring, Maryland.

4 CHAIRMAN LOUD: Good morning to  
5 both of you and, again, let me, just for the  
6 record, ask if there is a representative here  
7 from ANC-3/4G? They are not here, but they  
8 did submit a report. It's our Exhibit 24 and  
9 they support the application for 223 relief.

10 This case is similar to the one we  
11 just heard. It's a special exception under  
12 section 223 for a single -- for an addition to  
13 a single-family dwelling that doesn't meet the  
14 25 foot rear yard requirement. The current  
15 rear yard is 17.6 feet, as I understand. And  
16 it will continue to be 17.6 feet after the  
17 addition.

18 I only have one question in this  
19 case. I think the record is full. I don't  
20 want to speak for my colleagues, but for me  
21 the record is full. And as we did in the  
22 previous case, I don't need to hear any

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1 additional testimony, but if there is  
2 something specific you want to lift up, I  
3 think that would be appropriate.

4 I did want to ask a question of  
5 what a mud room is. I should know that by  
6 now.

7 MS. STACY: A mud room is sort of a  
8 family entry place for people to shed their  
9 coats, dirty shoes, backpacks.

10 CHAIRMAN LOUD: Okay. Very good.  
11 Every home should have one. All right. I  
12 didn't have any additional questions. As  
13 indicated, there is no ANC opposition to it,  
14 in fact, they support it. A number of you  
15 neighbors also support it and filed a petition  
16 at our Exhibit 26. And as indicated, the  
17 Office of Planning also supports it.

18 Let me turn now to the Office of  
19 Planning and see if they had any additional  
20 comments that they wanted to put on the  
21 record.

22 MR. MORDFIN: Good morning, no.

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1 The Office of Planning has no additional  
2 comments and is happy to stand on the record.

3 CHAIRMAN LOUD: All right. So  
4 again, it's a very full record and it's not  
5 something that we want to belabor and take you  
6 through the formalities of the hearing  
7 process. That is made possible, because you  
8 did an excellent job of pulling the record  
9 together and you got the Office of Planning  
10 and the ANC and your neighbors to support you  
11 on this.

12 So with that as the backdrop, what  
13 I would like to do then is formally move  
14 approval of Application No. 17995 for special  
15 exception relief under section 3104, generally  
16 and specifically, under section 223.

17 VICE CHAIR DETTMAN: Second.

18 CHAIRMAN LOUD: The motion has been  
19 made and seconded. Is there any further  
20 discussion or deliberation?

21 I just want to add that as basis  
22 for granting the motion, I am incorporating by

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1 reference the report of the Office of  
2 Planning, which is our Exhibit 28, and their  
3 very well-written analysis of how section 223  
4 applies to this case. And also to note that  
5 at Exhibit 24, the ANC supports it in addition  
6 to which the neighbors surrounding the  
7 property also support it.

8 The motion has been made and  
9 seconded, any further deliberation?

10 Hearing none, all those in favor  
11 say aye.

12 ALL: Aye.

13 CHAIRMAN LOUD: All those who  
14 oppose? Are there any abstentions?

15 MS. BAILEY: The vote?

16 CHAIRMAN LOUD: Yes, can you read  
17 back the vote?

18 MS. BAILEY: Absolutely, Mr.  
19 Chairman. The vote is 4-0-1 to grant the  
20 application. Mr. Loud made the motion, Board  
21 Member Dettman seconded, Mrs. Moldenhauer  
22 supports the motion, Commissioner Hood is in

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1 support and 4-0-1.

2 CHAIRMAN LOUD: Thank you, Ms.  
3 Bailey.

4 MS. BAILEY: Summary order, Mr.  
5 Chairman?

6 CHAIRMAN LOUD: Yes, please.

7 MS. BAILEY: Okay. Thank you.

8 CHAIRMAN LOUD: Thank you.  
9 Congratulations and good luck with your  
10 project.

11 MS. BAILEY: Are all of the parties  
12 here for Tudor Place? Mr. Chairman, are you  
13 ready for Tudor Place, at this point?

14 CHAIRMAN LOUD: Yes, Ms. Bailey,  
15 you can call it when you are ready.

16 MS. BAILEY: Application 17984 of  
17 Tudor Place Foundation, Inc., pursuant to 11  
18 DCMR § 3104.1, for a special exception to  
19 allow the continued operation of a museum  
20 under section 217 at premises 1605 32<sup>nd</sup> Street,  
21 N.W., and 1644 31<sup>st</sup> Street, N.W. The property  
22 is in Square 1281, Lot 835 and it's Zoned R-1-

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1 B.

2 CHAIRMAN LOUD: Good morning. We  
3 cleared the calendar purposefully, so we could  
4 go at it with you guys for about 2.5 hours.  
5 Why don't you state your names for the record  
6 and we can start with you, counsel.

7 MS. RODDY: Good morning. My name  
8 is Christine Roddy and I'm with the Law Firm  
9 of Pillsbury Winthrop.

10 MS. BUHLER: I'm Leslie Buhler,  
11 Executive Director of Tudor Place.

12 MR. BAKER: I'm Geoffrey Baker,  
13 member of the board of trustees of Tudor  
14 Place.

15 MS. WHITE: Hi, good morning. I'm  
16 Nicole White, Principal with Symmetra Design  
17 Transportation Planning Traffic Engineering.

18 MS. RODDY: And as a preliminary  
19 matter, while we are setting up, we would like  
20 to have Ms. White qualified as an expert. And  
21 her resume was included in your prehearing  
22 statement. She has also been accepted as an

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1 expert in previous cases, including the Jewish  
2 Primary Day School, Georgia Avenue Heights and  
3 Matthew Memorial Terrace.

4 CHAIRMAN LOUD: Thank you, Ms.  
5 Roddy. I do remember at least one of those  
6 cases. But why don't we give Board Members an  
7 opportunity to locate the CV and take a look  
8 at it. And if there are any questions, this  
9 would be a good time for Board Members to ask  
10 those questions regarding the qualifications.

11 Let me just ask, as Board Members  
12 may be reviewing it, I have taken a look at it  
13 and don't have any questions and again recall  
14 her being qualified in one of our previous  
15 cases. The witnesses that you have are at the  
16 table? I don't see anybody in the hearing  
17 room this morning.

18 MS. RODDY: That's correct.

19 CHAIRMAN LOUD: All right. So we  
20 have three witnesses?

21 MS. RODDY: We have two --

22 CHAIRMAN LOUD: Two?

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1 MS. RODDY: -- direct witnesses,  
2 yes.

3 CHAIRMAN LOUD: Okay. And if you  
4 see any opportunity to truncate the testimony  
5 by way of eliminating any duplicative  
6 testimony or that kind of thing, please, feel  
7 free to do that.

8 I think where Board Members are,  
9 having read the record, and reviewed  
10 everything, you, as well, have put together a  
11 really outstanding application. You have  
12 gotten the community to support you, which is  
13 great. Even a neighbor, I think, that lives  
14 right across the street said hey, let them do  
15 it forever. I think it's a great idea.

16 But that being said, I think the  
17 Board would like some perhaps articulation of  
18 the rationale for an unlimited term. I think  
19 as you know, the Office of Planning disagreed  
20 with you on that one point. And each of the  
21 conditions that you are asking for slight  
22 modifications to, perhaps if you can address

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1 that very briefly, as opposed to sort of a  
2 universal briefing on the whole application.

3 I think we are up to speed on what  
4 is in the application and the criteria for the  
5 relief. Is that a fair statement, Board  
6 Members?

7 MEMBER MOLDENHAUER: Yes.

8 CHAIRMAN LOUD: Okay. Chairman  
9 Hood, is that --

10 COMMISSIONER HOOD: Yes, sir.

11 CHAIRMAN LOUD: Does that meet with  
12 your approval?

13 COMMISSIONER HOOD: Yes.

14 CHAIRMAN LOUD: Okay.

15 COMMISSIONER HOOD: Yes, sir.

16 CHAIRMAN LOUD: All right. All  
17 right. So there are the conditions that we  
18 want to talk about, the term condition  
19 eliminating some of the language in Condition  
20 9 regarding meetings with the DDOT and the  
21 Emergency Medical -- Emergency Management  
22 Agency. I don't even think they have that

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1 name any more.

2           The Clause B in Condition 9,  
3 Condition No. 15 regarding the Dower House's  
4 accessory uses and allowing greater staff to  
5 be reassigned there along with allowing a  
6 collection storage. Condition No. 16, which  
7 is a condition that you are saying you have  
8 now met, and so that requirement doesn't need  
9 to be in there.

10           And then you also talked about -- I  
11 don't think this was a condition, but there  
12 was something in the previous order that gave  
13 a definition of special event and you wanted  
14 to tweak that definition a little bit.

15           I think also the Department of  
16 Transportation filed a report. It's our  
17 Exhibit 35 and in the report they recommend  
18 conditional approval, but I don't recall  
19 reading exactly what they thought the  
20 conditions should be. I just remember them  
21 complaining that they didn't have specific  
22 vehicle count information.

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1                   But you may want to address some of  
2 what's in their Exhibit 35. Do you have the  
3 Department of Transportation's report?

4                   MS. RODDY: We do.

5                   CHAIRMAN LOUD: Okay. So with that  
6 then, why don't we turn it back over to you  
7 and, with that context in mind, allow you an  
8 opportunity to address some of that?

9                   MS. RODDY: Okay. I will quickly  
10 turn it over to Leslie Buhler, the Executive  
11 Director of Tudor Place. And she is going to  
12 give a brief history just of the importance of  
13 Tudor Place, but then address the  
14 modifications that we are proposing.

15                  MS. BUHLER: Again, my name is  
16 Leslie Buhler. I'm the Executive Director of  
17 Tudor Place. I have been with the Tudor Place  
18 Foundation for 10 years. And I'm responsible  
19 for ensuring its submission of preservation  
20 and education.

21                  Tudor Place is the most  
22 architecturally significant house of the early

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1 19<sup>th</sup> Century in the City of Washington. It  
2 predates the Federal City, the house and its  
3 5.5 acres retains much of the historic  
4 integrity and its a significant archeological  
5 site.

6 The property is located in  
7 Georgetown between 31<sup>st</sup> and 32<sup>nd</sup> Street and to  
8 its east and west Q Street to its south. In  
9 addition to the National Landmark House, there  
10 are four additional structures on the historic  
11 corridor of the property.

12 There is the south side. And you  
13 can go to the next slide real quick. I  
14 thought our technology was better. The next  
15 one. The Landmark House was built between  
16 1795 and completed in 1816. The architect was  
17 William Thornton, the architect for the first  
18 United States Capitol Building.

19 The original 8.5 acre property was  
20 purchased in 1805 by Thomas Peter, son of the  
21 first Mayor of Georgetown and proprietor of  
22 the Federal City and his wife Martha Custis,

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1 granddaughter of Martha Washington.

2           The house stayed in the family for  
3 six generations until the death of the last  
4 owner in 1983. The extensive and important  
5 collection, next slide, please, includes one  
6 of the finest domestic silver collections in  
7 the country. Outstanding examples of  
8 Georgetown in federal period furniture,  
9 textiles from the 18<sup>th</sup> through the 19<sup>th</sup>  
10 Centuries, as well as a substantial collection  
11 of objects and papers owned by Martha and  
12 George Washington.

13           The archives hold early documents  
14 related to the city and major events and  
15 individuals who shaped this country,  
16 presidential papers and an extensive book  
17 collection, diaries and letters that record  
18 daily life.

19           On the property, there is a second  
20 house used as the administration building,  
21 that was formerly called Dower House. This  
22 house was built in 1867 on the property and

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1 was sold by the second owner of Tudor Place  
2 following the Civil War and purchased back in  
3 the late 1960s by the last owner, Armistead  
4 Peter, III, for his daughter and her family.

5 The house was occupied by family  
6 members until 1995. The property has -- this  
7 property, the administration building has  
8 become pivotal in supporting the professional  
9 management of the historic core of the  
10 property and the Landmark House.

11 Tudor Place is listed on both the  
12 National Register and the District of Columbia  
13 Inventory of Historic Sites. It is amongst  
14 the first group of houses and properties,  
15 buildings named as National Historic Landmarks  
16 in the City.

17 Given its importance in the history  
18 of D.C., as well as the nation, it has been  
19 operating as an historic house museum since  
20 1988. Although the last wife of the last  
21 owner died in 1995.

22 I'll skip on to modifications then.

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1 I just wanted to show we do have one of --  
2 our main educational outreach programs is to  
3 the D.C. Public School System and we have a  
4 substantial program, which we fund ourselves,  
5 for D.C. Public Schools providing school bus,  
6 Metro and walking access to the site.

7 We have over 3,000 school children  
8 and also trained D.C. Public School teachers  
9 in Federal City as well as the Civil War era.

10 We would like to make some modest  
11 modifications to the condition of Order No.  
12 16974, approved by the BZA 5 years ago.

13 First, we are requesting approval -  
14 - that the approval of the -- to use this  
15 property as a museum be on a permanent basis.

16 Tudor Place Foundation, a private foundation,  
17 operates this historic site with a belief that  
18 the importance of the grounds, the Landmark  
19 House, the collections and the archives add  
20 tremendously to the understanding of our  
21 cities and nation's history.

22 Not only are we preserving the site

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1 to the highest professional standards, but we  
2 provide extensive outreach to children across  
3 the city and future training programs. As we  
4 outlined in our prehearing statement, the  
5 Office of Planning is proposing that the Board  
6 treat Tudor Place differently than any number  
7 of house museums in the District, such as the  
8 Kreeger Museum, Hillwood and the Old Y on 12<sup>th</sup>  
9 Street.

10 We don't believe this is fair,  
11 particularly since Tudor Place has gone  
12 through great lengths to accommodate any  
13 concerns of its neighbors and is sufficiently  
14 curtailed in its operations by the BZA  
15 conditions.

16 Imposing a time limitation creates  
17 an extreme hardship on Tudor Place when  
18 planning for investments and the care of the  
19 important documents and objects in its  
20 collection. Investing in the future becomes  
21 difficult to donors and creates a substantial  
22 obstacle if we have to borrow money for

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1 capital improvements.

2 For instance, the improvements that  
3 we are considering in connection with a Master  
4 Preservation Plan are for security and to  
5 preserve the integrity of our collections. It  
6 is difficult to justify such an investment  
7 with no guarantee of continued operations in  
8 the future.

9 It is also difficult to finance the  
10 improvements without being able to assure our  
11 lenders that Tudor Place will continue to  
12 operate in the future.

13 Second, we would like to modify  
14 Condition No. 9, which requires us to hold  
15 semi-annual meetings with DDOT along with  
16 neighbors, representatives from ANC-2E and the  
17 Citizens Association of Georgetown, who attend  
18 the semi-annual neighborhood liaison committee  
19 meetings.

20 We would like -- when we began to  
21 adhere to the conditions of the last ruling,  
22 DDOT and DCEMA were not responsive in regards

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1 to coming to meet. In fact, I was told by the  
2 Georgetown DDOT representative, at the time,  
3 that we were the least of their problems and  
4 we should not worry about it.

5 Now that we have the DDOT report,  
6 which indicates their wish to be notified of  
7 the neighborhood liaison committee meetings,  
8 we would be pleased to do so.

9 The third condition we would like  
10 to modify is Condition No. 15. We would like  
11 to expand the permissible uses of the  
12 administration building, formerly called Dower  
13 House, to include collection storage, because  
14 it houses a portion of our vast collection.

15 We would also like to use the  
16 administration building for nine staff offices  
17 rather than seven that are currently  
18 permitted.

19 Our fourth modification is to  
20 eliminate Condition No. 16. We are in the  
21 process of permitting improvements to the 32<sup>nd</sup>  
22 Street entrance, which involves widening it

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1 for easy access by trash trucks and emergency  
2 vehicles. We have worked with the Fire  
3 Department, the location station, on our  
4 access end and all of our emergency plans.

5 Finally, we would like to clarify  
6 the definition of people or attendees to  
7 special events to exclude individuals under  
8 the age of 16. This limitation was  
9 established in negotiation with DDOT and  
10 neighbors and was placed on us by the Board of  
11 Zoning Adjustment to limit the number of  
12 vehicle trips to and from the site.

13 We have family events with children  
14 and parents in cars and as such know that  
15 individuals under the age of 16 are not  
16 contributing to the site's trip generation.  
17 Including these individuals in the museum's  
18 numbers would have a detrimental effect on  
19 many of the museum's events that are geared  
20 toward children and families.

21 MS. RODDY: And I'll introduce Ms.  
22 White now who will respond to DDOT's report as

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1 well.

2 CHAIRMAN LOUD: While we do some  
3 housekeeping with respect to Ms. White, before  
4 you get started, I think we had discussed your  
5 qualifications, but I don't know if we  
6 formally voted on it. Why don't we do that?  
7 I think we need to go ahead and do that. I  
8 think we have had enough time to take a look  
9 at the CV by now.

10 Do Board Members have any concerns  
11 regarding qualification of Ms. White as an  
12 expert in transportation? Okay. Yes, sir?

13 COMMISSIONER HOOD: I think Ms.  
14 White is definitely qualified, so I don't know  
15 if we need to spend a whole lot of time on  
16 that. She has been in front of the Zoning  
17 Commission and I don't know if the BZA has  
18 qualified her before, but she is definitely  
19 qualified.

20 CHAIRMAN LOUD: Okay. And Board  
21 Member Dettman is shaking his head as well.  
22 So with that being said, let me just ask a

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1 point of clarification. Ms. Nagelhout, do we  
2 need to vote on her admission? Okay.

3 So your testimony will be accorded  
4 the weight of an expert.

5 MS. RODDY: I believe she actually  
6 needs to be sworn in as well.

7 CHAIRMAN LOUD: Okay.

8 (Whereupon, the witness was sworn.)

9 MS. WHITE: Good morning. Again,  
10 Nicole White, Symmetra Design. Thank you very  
11 much, Mr. Hood.

12 CHAIRMAN LOUD: Good morning, Ms.  
13 White. Before you begin, let me ask, Board  
14 Member Moldenhauer has reminded me of this, if  
15 a representative from ANC-2E has entered the  
16 hearing room? It does not appear, so we will  
17 continue. Thank you.

18 MS. WHITE: Okay. So just so that  
19 we can take a look at Tudor Place in the  
20 context of the transportation network, here it  
21 is with a star. My apologies, my battery came  
22 out of my laser pointer, so I'll try to

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1 describe what I'm talking about here.

2 It is clear where the Tudor Place  
3 site is. It is located over a mile away from  
4 the Foggy Bottom Metrorail Station and over a  
5 mile and a half away from the Dupont Metro  
6 Station.

7 There is a Georgetown Metro  
8 connection stop at the corner of Wisconsin and  
9 M Street, which is about a half a mile away.  
10 The site is also three-quarters of a mile away  
11 from the Rock Creek Park and then vehicular  
12 access is primarily from Wisconsin and M  
13 Street.

14 Zooming in a little bit to take a  
15 better look at multi-modal transit, we have a  
16 number of bus stops within the vicinity of the  
17 site. The -- near the 31<sup>st</sup> and Q Street  
18 intersection, there is a Metro Bus Stop  
19 connecting from Sibley Hospital to the Stadium  
20 Armory. Also the Georgetown Union Station  
21 circulator route stops at Wisconsin and Q  
22 Street. And then R Street is assigned as a

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1 bicycle route.

2 So here is a close-in view of the  
3 site, a beautiful site that is a photo down at  
4 the bottom of the main pedestrian entrance  
5 from 31<sup>st</sup> Street. Also, there is vehicular  
6 access from 31<sup>st</sup> Street.

7 The beauty of this is there is  
8 actually a parking lot, a small parking lot  
9 which you can't see from the aerial. We tried  
10 different aerials so that you could see it,  
11 but with such beautiful green landscaping, you  
12 are not able to see it. But the access is  
13 from 31<sup>st</sup> Street. Access to the loading area  
14 is from 32<sup>nd</sup> street.

15 And here again is the access from  
16 32<sup>nd</sup> Street for the loading, a very beautiful  
17 design loading access. It is currently 15  
18 feet and Ms. Buhler already spoke about how we  
19 are in the works of widening it. And it has  
20 been approved and currently being permitted  
21 for an additional 5 feet.

22 In terms of the frequency of

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1 delivery vehicles, Tudor Place does not  
2 receive a great deal of deliveries. When they  
3 have catered events on occasion, there is one  
4 to two small box trucks that is generated.  
5 And then another small box truck or van  
6 delivery four times a month or about once per  
7 week and then they have mulch delivery in a  
8 dumptruck about twice a year.

9 So here is a profile of the  
10 visitors on a month-by-month basis. Tudor  
11 Place receives between 17,000 and 20,000  
12 visitors per year. When we look at the past  
13 12 months from September '08 to September '09  
14 it's just over 19,000 visitors. The monthly  
15 average is about 1,480 visitors.

16 You can see the spike down in  
17 January where there is little to no activity  
18 and then in May there is the highest activity  
19 of 2,650 visitors.

20 Looking again, there are,  
21 basically, two types of events that Tudor  
22 Place receives. There is the daily activity

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1 and then there are special events. Daily  
2 activity happens between the hours of 9:00  
3 a.m. and 4:30 p.m. when there are tours,  
4 either walk-in tours or tours that are  
5 prescheduled in advance. Also, Ms. Buhler  
6 also mentioned the school program, which also  
7 primarily takes place during those hours.

8 Special events can happen during  
9 the daytime, evenings and weekends and they  
10 include public programs, rentals by private  
11 corporations and families, development events  
12 to really promote the rareness of Tudor Place  
13 and its mission and wedding ceremonies, not  
14 wedding receptions, but ceremonies.

15 So down at the bottom of this slide  
16 is a table just reminding us of some of the  
17 key conditions from the last BZA Order in  
18 regard to special events and that is what  
19 happens given certain levels of attendees.

20 So between 75 -- first of all, when  
21 you get to a limit of 75, Tudor Place is  
22 required to have valet parking service. And

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1 so we see that. And we are capped at 15 per  
2 year with the size of these events. For  
3 events with 100 to 199 attendees, we are  
4 capped at 10 per year.

5 And then once we get to the 200  
6 level threshold, we are also required to have  
7 satellite parking and shuttle bus from that  
8 satellite parking. And those events should  
9 not exceed 6 times per year.

10 So two slides ago I told you that  
11 May was the -- had the heaviest activity over  
12 the past year, so I wanted to zoom in and take  
13 a closer look at what has happened in May, so  
14 that we can really understand the worst case  
15 scenario here.

16 So you can see the blue is the  
17 daily activity of what happens. In red are  
18 the four special events that occur during May.

19 With average daily activity of 70 people per  
20 day and again that happens between the hours  
21 of 9:00 a.m. and 4:30 p.m., so there is no  
22 real impact during the rush hour period there.

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1           There were four events in May.  
2           There was a Mother's Day Tea with 78 guests, a  
3           wedding ceremony with 35 guests and a garden  
4           party with 325 guests. So this is the one big  
5           activity that is exceeding that 200 attendee  
6           threshold here. There was also a memorial  
7           service of 35 guests.

8           So looking down in the far left  
9           corner, it's just a summary of events that  
10          were totaled at 2,648 visitors for the month  
11          of May. Special events had 473. The school  
12          program where the children arrive by school  
13          bus had 540. And then the daily tours had 267  
14          for prescheduled and over 1,300 for walk-ins.

15          Again, zooming in to take a closer  
16          look at the typical daily activity, I said the  
17          average was 70 in May, but it can range from,  
18          on a typical day, anywhere from 38 to 120  
19          visitors.

20          So DDOT specifically wanted to  
21          understand what the modal split was and this  
22          is how it is outlined in our transportation

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1 study. Tudor Place has done a survey --

2 CHAIRMAN LOUD: Can I interrupt you  
3 for just one quick second? So when DDOT says  
4 that they did not have this information, is it  
5 that this is something that they have not seen  
6 or they have seen it, but wanted it captured a  
7 little differently?

8 MS. WHITE: This was in the report.

9 CHAIRMAN LOUD: Okay.

10 MS. WHITE: And so I'm thinking  
11 maybe they wanted it captured a little  
12 differently, but I think this really, you  
13 know, is very telling and I can explain it  
14 pretty clear.

15 So I think what specifically they  
16 were looking for, for example, we say 50  
17 percent of the people drive for walk-in tours  
18 and their question was what did the remaining  
19 50 percent of the people do? So we were  
20 really focused on what the impacts were in  
21 terms of vehicles.

22 There may not have been enough

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1 information available to determine if someone  
2 walked or took transit, but let me get into  
3 the walk-in tours, because Tudor Place has  
4 done some surveys where they ask people who  
5 are walking or who have come in for walk-in  
6 tours.

7           And I should have mentioned that, a  
8 few slides ago, the Dumbarton Oaks facility is  
9 within close proximity. And so I say this  
10 because in a number of cases, I think, Ms.  
11 Buhler mentioned that it was like 27 percent  
12 of the people just happened to be walking by  
13 and they saw the sign and so they decided to  
14 come in.

15           And then another 25 percent of the  
16 people were in the neighborhood. So we're  
17 really looking at daily activity. Again, very  
18 low levels of about 70 people on average with  
19 most of the people walking.

20           The school program again on a  
21 typical day, you can see somewhere between 20  
22 and 30 students and they don't drive. We know

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1 this. They are coming by school bus. And  
2 then the group tours can attract between 8 to  
3 60 people. With the group tours, they are  
4 organized. You are more likely to see  
5 carpooling activity and people coming by  
6 shuttle even.

7 And so not go to through all of the  
8 details of the calculations, but just to focus  
9 on us and on what this means in terms of  
10 traffic, we are looking at between 10 to 25  
11 cars per day that are attracted to this site.

12 And again, that's spread out throughout the  
13 entire operating hours. And this translates  
14 to 22 to 52 vehicles when you consider inbound  
15 and outbound and you also consider the shuttle  
16 bus. I'm sorry, the school bus for the school  
17 program.

18 Also again, this was outlined in  
19 our report. The mode choice for employees,  
20 although this is slightly different, we have  
21 since discussed a few changes in the employee  
22 travel mode choice, but what we see from this

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1 table is that less than 50 percent of the  
2 employees drive, so that is commendable.

3 We have 15 percent of the employees  
4 walk. And when I say 15 percent, it is two  
5 employees. It's just not a lot of staff and  
6 volunteers that work here, but very low  
7 impacts from employees as well as daily  
8 activity.

9 So there were four special events  
10 that happened in May, but let's take a look at  
11 what happens or what we could expect to happen  
12 with cars in terms of special events.

13 We were retained by Tudor Place, I  
14 think, at the end of September and since that  
15 time, there were two special events. So we  
16 had the opportunity to go out and observe  
17 those two special events. But other than  
18 that, we didn't really have the opportunity to  
19 see the special events throughout the year.

20 And so we had to go partly on  
21 information that Tudor Place provided and also  
22 what the valet parking attendant told us and

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1 what the valet told us is that typically one-  
2 third of the people park their car. So you  
3 know, if an event had 60 people, you could  
4 expect 20 parked vehicles.

5 And so in keeping with that, we  
6 looked at the number of parked cars for these  
7 type of special event activities. So  
8 typically 25 to 35 cars for the typical size  
9 of event and it can get up to 70 to 170 parked  
10 cars.

11 I didn't mention that the valet  
12 parking lots are located at Wisconsin and S  
13 Street at the Girls and Boys Club and there is  
14 also an additional lot at, I think there might  
15 be one too many 2s, 2233 Wisconsin Avenue.

16 Okay. Let's see, and I would note  
17 that in the past year, there was only one  
18 event with more than 200 adults and that was  
19 the one that I highlighted that happened in  
20 May. And also there was one additional event  
21 with less than 200 adults, but more than 200  
22 children. So those -- when we looked at what

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1 happened over the past year, that's what we  
2 are talking about in terms of special events.

3 This is one of the special events  
4 that I observed, which was the historic  
5 Halloween Spooktacular event. It was a misty  
6 rainy day, but still everyone was in great  
7 spirits and the picture in the far left is a  
8 sorority sister I hadn't seen in years, so I  
9 said you're going to be on the presentation  
10 and her kids and the Girl Scout Troops. And  
11 so everyone really had a good time.

12 And I stood out there and I asked  
13 people how did you get here today and  
14 calculating that with the number of attendees,  
15 we had 14 percent of the people drove and, of  
16 course, since it was Girl Scouts, we had a lot  
17 more people that carpooled, because they are  
18 not driving. A small percentage of the people  
19 came by transit and taxi.

20 So this is, I think, a good example  
21 of what Ms. Buhler was asking about and the  
22 exception that -- or the modification to the

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1 previous order is that we have 170 children.  
2 They are, obviously, not driving. And this  
3 event only generated like 35 vehicles.

4 So what are we doing in terms of  
5 sustainability and transportation management?

6 Well, certainly, the site itself is 5.5 acres  
7 of green space. I love this aerial image  
8 here. And also in terms of transportation,  
9 the Tudor Place provides literature to area  
10 hotels as well as their website making  
11 visitors aware of their parking policies and  
12 also the transportation options.

13 I noted already that half of the  
14 daily visitors walk to Tudor Place. 23  
15 percent of visitors arrive by school bus with  
16 the Public School Program. Tudor Place does  
17 provide shower facilities for employees if  
18 they need to take a shower from riding their  
19 bike to work.

20 Today there are no bicycle racks,  
21 but Tudor Place has said that they are  
22 certainly willing to provide those. And that

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1 concludes my transportation presentation.

2 CHAIRMAN LOUD: Thank you. Let me  
3 see if Board Members have any questions for  
4 you that we can go into right now and then  
5 we'll move to your next witness. Are there  
6 any questions? Okay. Chairman Hood, do you  
7 have any questions?

8 COMMISSIONER HOOD: Actually, I do,  
9 but I'm just not sure. I'm just trying to  
10 understand --

11 CHAIRMAN LOUD: Okay.

12 COMMISSIONER HOOD: -- and, Mr.  
13 Chairman, maybe you alluded to this. And I  
14 don't know if this is necessarily for Ms.  
15 White. And I forgot your name, I'm sorry.

16 MS. BUHLER: Leslie Buhler.

17 COMMISSIONER HOOD: Ms. Buhler.  
18 This may be for Ms. Buhler. But it goes back  
19 to what you said, Mr. Chairman. I'm trying to  
20 understand, it was stated in spite of the  
21 previous issue, D.C. Office of Zoning's  
22 operational conditions, DDOT is unaware of any

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1 semi-annual discussions with the policy and  
2 planning staff.

3 I mean, what I'm getting from DDOT,  
4 they act as though nothing has ever happened.

5 They haven't seen any of this information. I  
6 just want to know, did that happen? As what  
7 was said previously in the previous order, it  
8 said "There will be discussions with DDOT."  
9 And I'm just going by what they said.

10 It acts as though since the last  
11 time Tudor Place has come down, nothing has  
12 happened. There has been no discussions with  
13 DDOT. And I just want to know is that the  
14 case?

15 MS. BUHLER: That is not the case.

16 When the order was first passed, the last  
17 order number which I don't have in front of  
18 me, was passed, we did contact DDOT and we did  
19 send notices to DEMA.

20 COMMISSIONER HOOD: Okay.

21 MS. BUHLER: But they -- as I  
22 mentioned before, the representative, whose

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1 name I have, had indicated to me that we were  
2 operating fine and that there was no need to  
3 continue to do it.

4 COMMISSIONER HOOD: Okay.

5 MS. BUHLER: So we did not --

6 COMMISSIONER HOOD: The  
7 representative from DDOT?

8 MS. BUHLER: From DDOT. We did not  
9 and we met -- as a community, we met with the  
10 people, the neighbors that prior -- during  
11 that Board of Zoning Adjustment hearing, the  
12 numbers of hearings that we had, at that time,  
13 we had a -- we did meet with neighbors and we  
14 did meet with DDOT to define the  
15 transportation and with our traffic  
16 consultant, at the time, to define the  
17 conditions under which we operate with the  
18 valet parking and the shuttle bus.

19 COMMISSIONER HOOD: Because when I  
20 hear Ms. White's presentation, then I read  
21 their letter that says "DDOT would have  
22 preferred to meet with the applicant earlier

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1 in the planning phase of the project. DDOT  
2 did not have the opportunity to meet in the  
3 early phase application."

4 So that's sending me mixed signals  
5 and I just want clarification to see who was  
6 the representative? Do you mind telling us  
7 who the representative was? Was it Mr.  
8 Jennings?

9 MS. WHITE: No, it was Ramona  
10 Burns.

11 COMMISSIONER HOOD: Okay.

12 MS. WHITE: She is no longer with  
13 DDOT. There is a new Ward Planner. So I  
14 think there are two questions. One, had DDOT  
15 -- they were concerned that maybe they didn't  
16 meet throughout the process, which Ms. Buhler  
17 has clearly said that she has reached out to  
18 them, but they didn't think that this was an  
19 issue.

20 And the second concern that I think  
21 DDOT had is that we didn't specifically go and  
22 meet with them as a consultant, although we

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1 did correspond with them via email and  
2 provided the report to them. So they actually  
3 wanted a sit down meeting. So I think those  
4 were their two concerns.

5 COMMISSIONER HOOD: Okay. Thank  
6 you.

7 CHAIRMAN LOUD: Thank you.

8 COMMISSIONER HOOD: Thank you, Mr.  
9 Chairman.

10 CHAIRMAN LOUD: Thank you, Mr.  
11 Chair. Thank you, Ms. White. I think unless  
12 there are other questions, we'll go to Mr.  
13 Baker now.

14 MR. BAKER: My name is Geoffrey  
15 Baker. My address is 2410 Wyoming Avenue,  
16 N.W., and I'm a member of the board of  
17 trustees of Tudor Place Foundation and  
18 Chairman of its Strategic Planning Committee.

19 As you have heard from our previous  
20 testimony, we seek a permanent special  
21 exception to continue to operate the Historic  
22 House Museum and grounds of Tudor Place.

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1           Based on our operating experience  
2 in compliance with BZA conditions, we submit  
3 that this permanent exception is not only  
4 justified, but, in fact, essential to the  
5 future of this historic property, which we  
6 preserve in the public interest.

7           Why is a permanent exception  
8 necessary to sustain Tudor Place? The answer  
9 is because we are committed to preserving this  
10 historic property for generations to come. We  
11 take a long view of its continuing importance  
12 to the community and are prepared to work for  
13 its protection and enhancement as one of the  
14 District's treasures.

15           A permanent exception is necessary  
16 in order for us to invest the hundreds of  
17 thousands of dollars required for a  
18 comprehensive long-term Master Preservation  
19 Plan to protect the historic house and  
20 especially its valuable archives and  
21 collections.

22           A permanent exception is necessary

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1 in order for us to raise the millions of  
2 dollars from donors interested in the long-  
3 term operation and preservation of Tudor  
4 Place. A permanent exception is necessary in  
5 order for us to approach potential lenders who  
6 will require long-term security for their  
7 implementation of any Master Preservation  
8 Plan.

9 A permanent exception is necessary  
10 in order for us to justify the investment of  
11 millions of dollars over more than 10 years in  
12 capital improvements to enhance the security  
13 and protection of the property and collections  
14 of Tudor Place.

15 We ask the Board of Zoning  
16 Adjustment not to limit Tudor Place's future  
17 as a sustainable historic property by again  
18 limiting our special exception. We have  
19 demonstrated our willingness to make the long-  
20 term commitment to preserving Tudor Place.  
21 Please, help us to secure its future for  
22 generations to come. Thank you.

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1 CHAIRMAN LOUD: Thank you, Mr.  
2 Baker. Let me see if there are questions from  
3 the Board with respect to your testimony. Ms.  
4 Moldenhauer?

5 MEMBER MOLDENHAUER: Mr. Baker, you  
6 mentioned that financing would be a challenge  
7 without a permanent special exception. Has  
8 any specific lender told you that you would  
9 need a permanent, I guess, special exception  
10 in order to provide you security?

11 MR. BAKER: We have not approached  
12 potential lenders, in my experience, and I'm  
13 not an expert witness, at this point, but in  
14 my experience working with other organizations  
15 that have permanent exceptions, that has been  
16 an issue in terms of security collateral for  
17 any loans that those other organizations  
18 received.

19 I'm raising the issue because we  
20 believe it is a legitimate issue. The more  
21 immediate issue, of course, is raising money  
22 from donors which we do to sustain the

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1 property, at this point. We have a limited  
2 endowment and a limited budget as our  
3 Executive Director has testified. And so  
4 taking the long view, unless our donors/our  
5 lenders we believe and our board believes that  
6 we have a long-term future in this community,  
7 it will be very hard to spend the money and  
8 raise the money and potentially borrow the  
9 money for us to sustain the property through a  
10 Master Preservation Plan.

11 Now, as our Executive Director, Ms.  
12 Buhler, has said, we intend to come before BZA  
13 in the next year with a Master Preservation  
14 Plan, which we will have consulted with all  
15 the relevant agencies, obviously, by the time.

16 So we are not suggesting, at this  
17 point, that we have an approved Master  
18 Preservation Plan. But in order for us to  
19 protect the property, and I can assure you  
20 that our concerns, as the Strategic Planning  
21 Committee, are fire safety, the -- all of the  
22 mechanical systems, the protection of the

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1 archives and collections, which are at great  
2 risk now, none of that can go forward unless  
3 we have a plan, unless we raise millions of  
4 dollars.

5 We are committed to doing that and  
6 we are asking for your help.

7 MEMBER MOLDENHAUER: Thank you.

8 CHAIRMAN LOUD: In response to Ms.  
9 Moldenhauer's question, you mentioned that  
10 there were some other similar nonprofits that  
11 you specifically didn't have anecdotal or  
12 direct lenders that you had approached, but  
13 that there were some other nonprofits that  
14 were in that situation that had, I think,  
15 permanent special exceptions or did I  
16 misunderstand your testimony?

17 MR. BAKER: My -- to be clear, I am  
18 implying that this could be an issue based on  
19 my experience working with other bank lenders  
20 to similar nonprofit organizations that do not  
21 have limited special exceptions.

22 So we are raising this issue among

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1 other issues to explain to you why we believe  
2 that permanent exception is critical to the  
3 future of Tudor Place.

4 CHAIRMAN LOUD: I think that's  
5 where my question was heading. I personally,  
6 you know, don't see why it should be limited  
7 to 5 years or maybe even 10 years, but you  
8 started down a path of articulating perhaps  
9 what bank lending committees go through and  
10 you mentioned something about other nonprofits  
11 that don't have these limitations on their  
12 special exceptions, am I correct?

13 MR. BAKER: Yes.

14 CHAIRMAN LOUD: And are you at  
15 liberty to name some of these nonprofits or at  
16 least put on the record what their terms are?

17 MR. BAKER: Well, if I may say, I  
18 have been involved with -- because I don't  
19 want to speak for any other organization. As  
20 a chairman of a board of a private school in  
21 Washington, D.C. that is a religious school, I  
22 was involved in bank financing that was 30

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1 year financing. And that's typical for  
2 construction financing in this area.

3 And when you take a 30 year  
4 horizon, you have to assume that you are going  
5 to be there in 30 years and that you don't  
6 have any impediments to your sustaining the  
7 mission in operation.

8 We are raising the question of  
9 whether or not we can make the kinds of long-  
10 term commitments in terms of fundraising and  
11 perhaps borrowing with a 10 year special  
12 exception.

13 And in my experience --

14 CHAIRMAN LOUD: But between 10  
15 years, let's say, and no term at all, there  
16 are some cresting points, right? I mean, one  
17 of the things that OP says in its report is  
18 that they are not -- it's very rare, at least  
19 according to OP, for there to be a special  
20 exception that has no term at all.

21 And I think your testimony was that  
22 there is a religious school out there

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1 somewhere that has a special exception that  
2 has at least a 30 year term, maybe no term at  
3 all. Is that --

4 MR. BAKER: Well, our testimony has  
5 been and will be that there are other historic  
6 house museums that do not have limited special  
7 exceptions and are in a much better position  
8 to raise money and commit money to capital  
9 improvements necessary to sustain their  
10 historic houses.

11 And that's exactly what we are  
12 talking about to be specific. And I believe  
13 we will have testimony to that effect.

14 CHAIRMAN LOUD: Could you remove  
15 some of the funding hurdle if it were a longer  
16 term than 10, but not necessarily no term at  
17 all?

18 MR. BAKER: The argument that we  
19 have made is that we have complied with the  
20 BZA conditions. There may be some issue to  
21 that, but we believe that there is sufficient  
22 citizen access to BZA enforcement if there are

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1 any problems in the future.

2 We understand the conditions that  
3 we operate under and we respect the regulation  
4 of BZA in this case. We do not believe that  
5 granting a permanent special exception in any  
6 way compromises the ability of citizens and  
7 particularly the citizens of Georgetown who,  
8 you know and I may say, are ready to speak out  
9 to raise any questions about the operation of  
10 Tudor Place.

11 If we felt that was a concern, we  
12 would offer to negotiate additional  
13 conditions. This is a simple matter of giving  
14 us a future that we can work with. 10 years  
15 is not -- given the ambitious plans that we  
16 have to protect this property, not to increase  
17 visitors, increase traffic or parking, but  
18 quite simply to protect the house that we are  
19 preserving, its archives and collections.

20 If we can't raise literally  
21 millions of dollars under a Master  
22 Preservation Plan, in 10 years we are not sure

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1 what we will be able to do with that property.

2 And we don't want to lose it and I know the  
3 city doesn't want to lose it.

4 And so we are hoping that you will  
5 understand our interest in the long-term,  
6 however you define that. If -- in our mind,  
7 given that other historic house museums have a  
8 permanent exception or at least can operate  
9 without a special exception, we hope you will  
10 see the wisdom of that.

11 If you believe that a longer term  
12 than 10 years is appropriate, we will accept  
13 your judgment, but we ask you to consider the  
14 reason why you would do that. Is the reason  
15 that you want us to come back to BZA and  
16 justify ourselves? We are trying to justify  
17 ourselves now and show that we have operated  
18 responsibly under the conditions of the  
19 current BZA order and will continue to do so.

20 And that is how we respect the BZA  
21 process. But we hope you understand we're  
22 very willing to go to work and raise the money

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1 however we can do it and make sure that this  
2 property will be here not just in 10 years,  
3 but in 20, 30, 40, 50. I'm thinking beyond my  
4 life.

5 Every organization that I have ever  
6 worked for, I'm thinking beyond my life. And  
7 10 years, I hope, is -- I hope I have more  
8 than 10 years let me say. And but quite  
9 simply, that's the way we look at the long-  
10 term future of Tudor Place.

11 We hope you will see it the same  
12 way. We hope you will at least give us a  
13 chance to preserve this property properly.

14 CHAIRMAN LOUD: Well, I understand  
15 your point. I think to your credit, to the  
16 applicant's credit, you are still offering to  
17 meet with the ANC every 6 months, even if  
18 there were no term. Every 6 months for the  
19 rest of -- you know, two centuries into the  
20 future every 6 months you will be meeting with  
21 the ANC.

22 And I believe there is an ANC

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1 report on file and they are not here, but I  
2 think hearsay is permissible in these  
3 proceedings. Was their conversation had with  
4 the ANC regarding the term and is there -- do  
5 you recall what their conclusion was on that  
6 issue?

7 MS. BUHLER: Yes, I was at the --  
8 Mr. Chairman, I was at the hearing at which  
9 the ANC deliberated on our application. And  
10 I'm pleased to say that they commended us.  
11 They feel that we are a major addition to the  
12 Georgetown community and an important and  
13 integral part of the community and had no  
14 issues in response to our asking for a  
15 permanent -- none, no issue in response to  
16 asking to a permanent special exception.

17 And I would like to just elaborate  
18 a bit. We meet on -- twice a year with all of  
19 our neighbors or the neighbors that seek to  
20 come. We send notification to all of our  
21 neighbors. And we also to the Citizens  
22 Association of Georgetown have a

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1 representative come as well as the ANC-2E.

2 We work hard to be an integral part  
3 of the Georgetown community. We cooperate  
4 with the BID, with the GBA and other  
5 organizations. And I believe that we have  
6 been embraced as an important part of the  
7 historic fabric of Georgetown.

8 CHAIRMAN LOUD: Thank you. And I  
9 just want to note the Exhibit 29 where the ANC  
10 is properly noticed with an appropriate  
11 quorum, their report, they resolve support for  
12 the application and then they say as  
13 submitted. And I think that it would be a big  
14 omission not to draw the inference that they  
15 mean the term as well.

16 So to me, that's a bit more  
17 persuasive than the idea of there being  
18 enforcement mechanisms in place to address  
19 community concerns. The idea that you are  
20 back in front of them every 6 months. You  
21 have been there for quite a while. You have  
22 got neighbors directly across the street

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1 saying it's great, give them an unlimited  
2 term.

3 You have the ANC supporting the  
4 unlimited term. But let's proceed forward  
5 with the evidence and the Office of Planning  
6 and see how other Board Members feel. I don't  
7 have any other questions right now. Let's see  
8 if the Board Members do. Okay. I don't hear  
9 any, so had you concluded, Mr. Baker?

10 MR. BAKER: Yes.

11 CHAIRMAN LOUD: Okay. Why don't we  
12 then turn to the Office of Planning for your  
13 report. Good morning.

14 MR. JESICK: Good morning, Mr.  
15 Chairman, Members of the Board. My name is  
16 Matt Jesick. We reviewed this application  
17 pursuant to the special exception criteria in  
18 section 217 of the Zoning Regulations. And  
19 just very briefly, we felt that there would be  
20 no general adverse impact on the neighborhood,  
21 specifically those regulations speak to the  
22 traffic impacts.

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1           And we noted that the applicant and  
2 the neighbors have worked hard on a set of  
3 conditions to try and mitigate the traffic  
4 impacts to the community.

5           The Zoning Regulations also speak  
6 to what goods are sold on the site and if any  
7 construction is proposed on the site. The  
8 only goods that are sold there are those that  
9 would be related to its use as a museum, that  
10 would typically be found in a museum gift  
11 shop. And at this time, no construction is  
12 proposed with this application.

13           The Office of Planning also has no  
14 objection to the changes to the conditions  
15 that the applicant has set forth. We feel it  
16 is a modest increase and the number of  
17 employees at the administration building would  
18 have no impact on the neighbors.

19           And we have, of course, no  
20 objection to adding collection storage to the  
21 uses allowed at the Dower House.

22           In regards to the term of the

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1 approval, we did feel that it is fairly rare  
2 for special exceptions to be given a permanent  
3 approval. It has happened in the past. But  
4 just out of an abundance of caution for the  
5 neighborhood, we wanted to be sure there was  
6 at least some point in the future when, if  
7 necessary, if all other means failed, that the  
8 neighborhood could come back to the Board to  
9 express any issues that we may not even  
10 foresee at this time.

11 But if the Board chooses to go with  
12 some other length of time, the Office of  
13 Planning would not object to that. That  
14 concludes my testimony, but I would be happy  
15 to answer any questions.

16 CHAIRMAN LOUD: Thank you. Let's  
17 see if the applicant has any questions for  
18 you, then we can turn to the Members of the  
19 Board.

20 MS. RODDY: I don't.

21 CHAIRMAN LOUD: Okay. I have one  
22 quick question for you. Your written report,

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1 I think, generally supports where the  
2 applicant wants to go, but there are a couple  
3 of areas where you disagree. You mentioned  
4 one which was the term. They have also  
5 recommended elimination of some language in  
6 Condition No. 9, relative to, it sounds like,  
7 reserving four parking spaces near the 31<sup>st</sup>  
8 Street entrance for valet service.

9 They want to eliminate that  
10 language. In your report you disagree. Is  
11 that something that I have either  
12 misunderstood or is there a different position  
13 on it now?

14 MR. JESICK: No, that's correct. I  
15 think we do have a slight difference of  
16 opinion there. We thought that reserving  
17 those four to six spaces would allow visitors  
18 to pull their car out of the travel way, allow  
19 the valet to deal with -- you know, take their  
20 car away without blocking the through traffic  
21 on 31<sup>st</sup> Street. So we felt that that was an  
22 appropriate part of the condition that had

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1 been added previously.

2 CHAIRMAN LOUD: Okay. I think we  
3 are going to turn back to perhaps Ms. White  
4 just to respond to that momentarily. But let  
5 me see if there are any additional areas that  
6 you raised that were slightly different from  
7 the applicant.

8 MS. WHITE: Can you explain --  
9 okay, go ahead.

10 CHAIRMAN LOUD: Just momentarily.  
11 And you have no issues with respect to their  
12 changing the definition of special events?

13 MR. JESICK: No. We thought that  
14 change was logical.

15 CHAIRMAN LOUD: Okay. All right.  
16 Okay. Then let's see if Board Members have  
17 any additional questions? And we can then  
18 turn back to you, Ms. Roddy.

19 MEMBER MOLDENHAUER: I just have  
20 one question. It goes to Condition 16. And I  
21 agree with you that they have not yet met the  
22 conditions. They are presenting testimony,

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1 however, that they are in the process of  
2 obtaining a permit to widen the sidewalk.

3 If they were to provide, I believe  
4 it is just, oral testimony, to date, we don't  
5 actually have a copy of any applications for  
6 that or any drawings of the widening of the  
7 sidewalk, that to you, would you then find  
8 that condition is in the process of being met  
9 with the sidewalk widening the entrance  
10 throughway?

11 MR. JESICK: Actually in the report  
12 on page 5, I believe I did say that we feel  
13 that Condition 16 has been met. It's true  
14 they have not yet obtained permission to widen  
15 the curb cut, but nevertheless, we felt that  
16 they have taken steps to improve their loading  
17 functions from the 32<sup>nd</sup> Street entrance.

18 MEMBER MOLDENHAUER: Okay. On your  
19 first page in regards to OP's recommended  
20 approval, you don't have Condition 16 to  
21 approve the removal of that, but I do see  
22 where you then make that note. Thank you.

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1 CHAIRMAN LOUD: Thank you, Ms.  
2 Moldenhauer. Again, Board Members, if there  
3 are no additional questions, we will turn back  
4 to Ms. Roddy on the issue of the four spaces  
5 near 31<sup>st</sup> Street. I don't believe that was  
6 covered when your witnesses presented  
7 testimony.

8 MS. RODDY: No, it wasn't.

9 CHAIRMAN LOUD: Okay.

10 MS. RODDY: I believe that was  
11 actually just a miscommunication. We are not  
12 proposing to eliminate those spaces, so I'm  
13 sorry if the correspondence indicated that we  
14 were.

15 CHAIRMAN LOUD: So that you're not  
16 proposing elimination of the language  
17 requiring those?

18 MS. RODDY: We're proposing the  
19 same elimination of the language as OP  
20 indicated in their report.

21 CHAIRMAN LOUD: Okay.

22 MS. RODDY: So we are on the same

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1 page with OP. We are still proposing the  
2 modification to Condition 9, but not including  
3 the elimination of those spaces in our  
4 modification.

5 CHAIRMAN LOUD: All right. So the  
6 whole discussion about Clause, I think it was,  
7 3(i)(b), we can just ignore that.

8 MS. RODDY: With respect to  
9 eliminating those parking spaces.

10 CHAIRMAN LOUD: Okay. And, OP,  
11 does that satisfy the concern that you raised?

12 MR. JESICK: Yes.

13 CHAIRMAN LOUD: Okay. Excellent.  
14 We are now at the point of the proceeding  
15 where we would turn to the ANC for it's  
16 report. And we have sort of gone into their  
17 report a little bit already. They have  
18 submitted a great weight report. It is our  
19 Exhibit 29. And it is in support of the  
20 application as submitted, so we won't belabor  
21 that point.

22 Are there any witnesses in the

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1 audience who are in support of the  
2 application? Now would be the time to come  
3 up. Seeing none, are there any witnesses in  
4 the audience who are in opposition to the  
5 application? If so, now would be the time to  
6 come up. And we would now turn to you, Ms.  
7 Roddy, for closing remarks, unless Board  
8 Members have any final questions or  
9 reflections.

10 Okay. And seeing none, I'll turn  
11 it over to you.

12 MS. RODDY: Thank you. We  
13 appreciate the Board's consideration of this  
14 application this morning. I would like to  
15 underscore Mr. Baker's testimony regarding the  
16 importance of securing a permanent approval  
17 for Tudor Place.

18 While Mr. Baker testified to the  
19 practical implications in needing a permanent  
20 approval, I would like to speak briefly to the  
21 legal implications.

22 To impose a time limit on an

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1 approval of this application would be to treat  
2 Tudor Place differently than any other number  
3 of house museums in the District, as well as  
4 other section 217 cases.

5 There are a number of house museums  
6 that operate in Residential Districts  
7 indefinitely, such as the Dumbarton House and  
8 the Textile Museum. Many of these house  
9 museums have come before the Board for  
10 approval and have been specifically granted a  
11 permanent approval for the museum use.

12 There have also been a number of  
13 section 217 cases that came before the Board  
14 and no time limit was imposed.

15 In 2002, the Board approved the  
16 Application of Howard and Frances Phipps to  
17 permit a nonprofit to operate out of the Cady-  
18 Lee Mansion in Takoma Park. That was the  
19 section 217 case. No time limit was imposed  
20 in that application.

21 In 1999 another 217 case, the Board  
22 approved the sorority, the Delta Sigma Theta

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1 Sorority to operate from a house on New  
2 Hampshire Avenue. No time limit was imposed  
3 in that case.

4 In 1997, the Board approved a  
5 section 217 special exception for the Council  
6 of Early Childhood to operate in a residential  
7 building on 16<sup>th</sup> Street. No time limit was  
8 imposed in that case.

9 In 1994, the Board approved a  
10 special exception under 217 to permit a museum  
11 as well as a nonprofit to operate from the Old  
12 Y, the Anthony Bowen Y on 12<sup>th</sup> Street, and no  
13 time limit was imposed in that case.

14 In 1992, the Board approved an  
15 application for a use variance to permit the  
16 Kreeger Museum to operate in a Residential  
17 District. It did not impose a time limit on  
18 that approval.

19 In Application 7281, the Board  
20 approved a use variance to permit a museum for  
21 Woodrow Wilson to operate out of one of his  
22 former -- out of his former home and no time

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1 limit was imposed in that application.

2 And finally, this will be my last  
3 example, but in 1977, the Board approved a use  
4 variance for Hillwood Museum. It limited its  
5 initial approval to 5 years and it subjected  
6 it to several conditions. 5 years later in  
7 1982, the museum returned to the Board for --  
8 to extend its approval and asked for permanent  
9 approval.

10 The Board found that "The proposed  
11 continued operation of Hillwood and the  
12 construction of two buildings will not  
13 constitute any greater intrusion in that  
14 Residential District than uses permitted as a  
15 matter-of-right, such as churches, embassies  
16 and public schools.

17 This conclusion is based on the 5  
18 year operating experience of Hillwood. A  
19 permanent variance will allow the preservation  
20 of this unique civic asset and its extensive  
21 grounds in their existing form."

22 There are numerous other nonprofit

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1 organizations that have received permanent  
2 approval from the Board to operate in a  
3 Residential District without a time  
4 limitation. And we disagree with the  
5 statement from the Office of Planning that it  
6 is the norm to impose a time limitation.

7 In our research, we really did not  
8 find any cases under section 217 that imposed  
9 a time limitation on the use. And I believe  
10 we referenced it in our prehearing statement  
11 that even schools don't have a time limitation  
12 on the use, they just return to the Board  
13 generally to modify the conditions, but the  
14 use -- the permission to use the property as a  
15 school is a permanent use approval.

16 Tudor Place does not expect to be  
17 treated any differently. And OP initially, in  
18 previous cases, when Tudor Place came before  
19 the Board supported permanent approval. And  
20 now they suggest that it should be imposed --  
21 a time limit should be imposed to allow the  
22 community to come before the Board should any

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1 issues arise.

2 If the community has a concern  
3 about Tudor Place's compliance with this  
4 order, we believe that that's an enforcement  
5 issue that should be brought to the attention  
6 of DCRA and is not an issue for the Board of  
7 Zoning Adjustment.

8 We also disagree that the community  
9 will never have another opportunity to speak  
10 with the Board. If Tudor Place wants to  
11 modify any of their conditions, they will have  
12 to come back before the Board and that would  
13 give the community every opportunity to speak  
14 to the Board and weigh in at that time.

15 But I think to make Tudor Place to  
16 return to the Board every 5, every 10 years  
17 just to prove the use all over again makes it  
18 vulnerable as we have testified earlier today.

19 We appreciate the Board's  
20 consideration of the application and we ask  
21 that in light of all of the community support  
22 for Tudor Place and the work that they have

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1 done with the community, that you would  
2 approve the application today with a permanent  
3 approval. Thank you.

4 CHAIRMAN LOUD: Thank you. We  
5 appreciate that. I'm going to see if Board  
6 Members would like to go into deliberation  
7 this morning on this, I think the record is  
8 pretty full. But I wanted to turn back to OP  
9 just to ask OP in response to the closing  
10 whether you were familiar with any section 217  
11 cases that did term the relief?

12 Counsel has indicated in her  
13 closing that she is not familiar with any.

14 MR. JESICK: No, I have not done  
15 that research to --

16 CHAIRMAN LOUD: Okay.

17 MR. JESICK: -- find out what  
18 cases.

19 CHAIRMAN LOUD: One way or the  
20 other. And just to clarify, in your  
21 testimony, I know you testified in favor of a  
22 10 year term, but I thought I heard you say

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1 that if the Board does not do that, you have  
2 no objection?

3 MR. JESICK: Yes, I made that  
4 statement.

5 CHAIRMAN LOUD: I wanted to make  
6 sure I heard that correctly. Okay. Well,  
7 with that, I think we have a couple of  
8 options. We could set this for deliberation  
9 at a later time, find an opportunity in the  
10 calendar to do it, if Board Members don't feel  
11 like the record is full or there is some  
12 addition information you want or we could  
13 deliberate on it this morning.

14 And I think, from my perspective,  
15 the record is full and I'm prepared to go  
16 deliberate and kick us off in terms of the  
17 deliberation. But let me see how others feel.

18 Mr. Dettman says yes. Chairman Hood? All  
19 right.

20 I think what we will do then is go  
21 ahead and deliberate the case this morning.  
22 And I'll start us off and, Board Members,

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1 please, feel free to jump in here and both  
2 help me out, but also offer your perspectives.

3 This is an application for special  
4 exception relief under section 217, which is  
5 necessitated by an existing special exception  
6 that expires, I think, at the end of 2009, I  
7 believe December 30, 2009.

8 This property is located, I  
9 believe, on 5.5. acres. I think Ms. Buhler  
10 said 8.5 acres, but that perhaps was  
11 misspeaking. 5.5 acres. The point being it's  
12 a very large site and the museum building is  
13 located in the center of the property and it  
14 is buffered significantly by landscaping and  
15 other things that prevent noise impact to the  
16 surrounding neighbors.

17 There are a number of existing  
18 conditions on the property and that tends to  
19 be where most of the evidence has been in the  
20 hearing and I just want to go over the several  
21 conditions that are in -- that are as to which  
22 requests are being made for modification.

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1           First, let me say that a special  
2 exception of this type has to comply with  
3 section 217 and the Office of Planning did an  
4 excellent analysis of section 217. And so I'm  
5 not going to repeat what is in their report.  
6 I'm just going to adopt it by reference that  
7 the section 217 analysis, I think, was met by  
8 the applicant and very much supported by the  
9 Office of Planning in its analysis of the  
10 case.

11           In terms of the conditions as to  
12 which modification is sought, let's walk  
13 through those. And I think I'm going to do  
14 the term last, because that may be the one  
15 that has the most discussion attached to it.

16           With respect to the use of the  
17 accessory property, the Dower House, for  
18 archive collections and for employees to use,  
19 the Office of Planning had no objection to  
20 that. Certainly, a facility of this type, a  
21 key value of which is the type of archive  
22 collections that are offered to the public. I

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1 think there was some testimony this morning  
2 that there are still some original letters of  
3 George Washington and Martha Washington and  
4 preserving that has got to be a top priority  
5 for everyone in the community, such a  
6 wonderful asset to still have.

7 I think the applicant made the case  
8 for expanding/modifying that condition, so  
9 that the Dower House could be used both for  
10 collections/archiving as well as allowing  
11 existing employees to use parts of the  
12 building for office space.

13 The applicant also suggested  
14 modifying language in Condition No. 9 that  
15 required meetings with the DDOT as well as the  
16 D.C. Emergency Management Agency, which I  
17 think has a different name now. The Office of  
18 Planning supported that recommendation and the  
19 applicant testified that they have contacted  
20 DDOT, sent notices to the DCEMA and they were  
21 told by DDOT, I believe the person's name was  
22 Ms. Burns, that the applicant, I'm

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1 paraphrasing, was the least of its concerns or  
2 something to that effect.

3 But nonetheless had never really  
4 gotten the kind of response from either DDOT  
5 or DCEMA to this requirement for regular  
6 meetings that would really allow these  
7 meetings to take place and it has become a bit  
8 of a burden to continue that condition. As I  
9 said, OP favors that condition.

10 Notably, the applicant is not  
11 requesting that the requirement be eliminated  
12 as to the ANC and those semi-annual meetings,  
13 so I think that that's a condition that is  
14 supported by OP. I think the evidence in the  
15 record supports eliminating the language for  
16 that condition.

17 Thirdly, with respect to Condition  
18 No. 15, we talked about that, the Dower House  
19 accessory uses.

20 With respect to Condition No. 16,  
21 the applicant is not requesting modification  
22 so much, but the complete elimination of this

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1 condition, which the applicant is saying that  
2 they have now met the condition that relates  
3 to taking substantial action to improve  
4 management and efficiency of delivery and  
5 pick-up of goods.

6 And Ms. White testified to the fact  
7 that there are not very many deliveries.  
8 There is some catering taking place, some  
9 other small events and that they are widening  
10 the sidewalk. And so I believe, based on the  
11 record before us, that the applicant  
12 demonstrated that there is no longer a need to  
13 continue this condition as well.

14 With respect to part of Order No.  
15 16974, a definition of special event, the  
16 applicant suggested or requested relief from  
17 the language that does not make it clear that  
18 children under age 16 should not be counted as  
19 attendees at special events as current. I  
20 think a 50 person cap is a part of that  
21 language.

22 Whether there is a 50 person cap or

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1 not a 50 person cap, whatever the cap is, the  
2 point is that children under 16 should not be  
3 counted as part of the cap. And I think Ms.  
4 Buhler testified that the whole point of that  
5 provision was that it was tied to vehicles  
6 coming to the site and that youth under age 16  
7 do not drive, at least that's the presumption.

8 Certainly do not drive in numbers sufficient  
9 enough to change the outcome.

10 And I think again the applicant has  
11 made a compelling case and that is supported  
12 by some of the transportation data around the  
13 number of vehicles that visit the site, the  
14 number of persons that use the site who then  
15 use their vehicles, I think it was a 50  
16 percent figure reference, would, in my mind,  
17 support our making that tweak to the language  
18 for special events.

19 I believe then that takes us back  
20 to the condition for term. And that seems to  
21 be the most -- none of these issues were  
22 contingent, but the issue around which shows

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1 the greatest amount of evidence.

2 Let me just say before starting on  
3 the issue of term that the ANC did submit a  
4 report. I have indicated the exhibit number  
5 previously. It is a great weight report.  
6 There is notice and a quorum. It's our  
7 Exhibit 29. And in that report, they indicate  
8 that they support the application as  
9 submitted.

10 There are also letters in our  
11 record, Exhibits 28, 30 and 32, from a Mr.  
12 Gray and Mr. Bradford, I believe, and a Ms.  
13 Golden all of which support the grant of the  
14 application. And I believe two of which the  
15 neighbors directly across the street, I think,  
16 it's maybe Mr. Bradford, supports it without  
17 any term.

18 This museum has been there under  
19 special exception since at least the 1980s, I  
20 believe. There is some history to it. In  
21 some of the earlier reviews, there was a bit  
22 more concern than is being raised here, which

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1 says to me that the behavior of the applicant  
2 is meeting with approval of the persons who  
3 are most affected or potentially affected by  
4 the operation of the facility.

5 That being said, the applicant has  
6 provided some additional testimony this  
7 morning regarding the challenges of investing  
8 funds that are necessary for capital  
9 improvements. The applicant mentioned fire  
10 safety issues. The applicant mentioned  
11 mechanical systems that need upgrading and the  
12 difficulty of trying to make a long-term  
13 investment and basic infrastructure, basic  
14 capital requirements of the facility without  
15 there being this sort of clarity around  
16 continued operation of the facility.

17 They also talked about the  
18 difficulty of attracting donor funding, which  
19 is a bit different than bank funding. I'm  
20 assuming because you don't have to pay it  
21 back. And the importance to them of being  
22 able to do this on a long-term basis to really

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1 make this the sort of value-added flagship  
2 museum that its history suggests it should  
3 continue to be in our city.

4 They have also talked about the  
5 difficulty of attracting bank financing and  
6 tying bank financing to 30 year cycles because  
7 of the lending requirements.

8 Generally, all of the evidence  
9 suggesting that a 10 year term, even as OP had  
10 initially suggested would put some severe  
11 constraints on their ability to raise the kind  
12 of funding necessary to continue to operate  
13 the facility at a quality level.

14 Additionally, counsel in her  
15 closing made reference to a number of museums,  
16 section 217 cases, as to which there were no  
17 time limits placed. She talked about the  
18 Cady-Lee House, the Delta Sigma Theta House,  
19 the Council of Early Childhood Education, the  
20 Antony Bowen Y, the Hillwood Museum. Some of  
21 these are special exceptions, some were use  
22 variances. We typically don't term a use

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1 variance. But some of them were special  
2 exceptions and were without terms.

3 Mr. Baker talked about a school, he  
4 didn't name it on the record, with a special  
5 exception and not termed. And I think we are  
6 all familiar in our experience with special  
7 exceptions that have not been termed.

8 So I think the applicant has made a  
9 compelling case for not placing a term on the  
10 application. In addition to which, as I have  
11 indicated before, the applicant is willing to  
12 go back before the ANC every 6 months for  
13 dialogue and relationship building. And I  
14 think that gives the community some leverage,  
15 along with the 15 or so existing conditions  
16 that will remain in the approval and creative  
17 members of the community can figure out a way  
18 to tie up the applicant on any one of those 15  
19 conditions that will remain.

20 And perhaps not necessarily have to  
21 have a term in there to bring this applicant  
22 to account for behavior in the community, that

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1 the community views is inappropriate.

2 So I'm supportive of not terming  
3 the application, based on the fact that the  
4 community doesn't see a need for terming the  
5 application, based on the fact that the Office  
6 of Planning has stated if we don't term it,  
7 they don't object to it, based on the fact  
8 that the most immediate neighbors that live  
9 right in close proximity to the project do not  
10 see a need for terming it and based on some of  
11 the financial considerations testified to by  
12 Mr. Baker this morning.

13 And I would be in full support of  
14 granting this application this morning. Let  
15 me open it up for other Board Members.

16 VICE CHAIR DETTMAN: Mr. Chairman,  
17 I'm in agreement with everything that you  
18 said. And I think you did a great job taking  
19 the Board through the relevant provisions and  
20 addressing the conditions, especially with  
21 respect to the term.

22 I am also in favor of granting an

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1 approval without limiting the approval to any  
2 set term. I think I agree with Ms. Roddy  
3 that, I think, it's typical that the Board  
4 conditions special exceptions, but I have sat  
5 on several cases where we have conditioned  
6 special exceptions that included term, but I  
7 would say that it's not the norm.

8 And when we do so, we do that in  
9 order to make sure that a new use can  
10 establish itself and operate successfully in a  
11 neighborhood or we do that in a particular use  
12 that has a demonstrated history of having  
13 problems in the community.

14 CHAIRMAN LOUD: Yes.

15 VICE CHAIR DETTMAN: I think in  
16 this case the applicant has existed for some  
17 time, as you have said. They have operated  
18 successfully. They have demonstrated that  
19 they, you know, really like the outreach into  
20 the community. They want to be a good  
21 neighbor and they have the community support,  
22 as you said.

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1           It's a lot like last week we had  
2 the St. John's Community Child Development  
3 Center. It has operated for some time under  
4 condition. We looked at it last week. We  
5 found that they had community support. They  
6 are successful in the neighborhood and we  
7 granted approval without a term. So I think  
8 that no term is appropriate.

9           I just have two very short comments  
10 about the DDOT letter. One where they say on  
11 page 2 that "DDOT is led to believe that a  
12 number of vehicle trips are used to access the  
13 site" and goes on to say that "the applicant  
14 provides no means to mitigate the number of  
15 vehicle trips to the site."

16           I would argue that they have and I  
17 would say that the average daily trips of  
18 between 22 and 52 trips is minimal, especially  
19 when you consider that to be about 4 to 8  
20 trips per hour. I can't even see that that  
21 would even be perceived if you are along the  
22 streets.

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1           And I think that that's a  
2 reflection of the applicant's efforts to  
3 reduce the number of trips and market the  
4 different transit options that are around the  
5 neighborhood.

6           And secondly, it notes at the  
7 bottom of page 2 that "The applicant make a  
8 significantly stronger effort for the number  
9 of trips to be made on foot, bike transit.  
10 It's clear that this is not occurring." And  
11 again, I would argue that it is.

12           The traffic report says that 50  
13 percent of its employees do not drive. And  
14 for a use that might have, you know, hundreds  
15 of employees, that might warrant some  
16 attention. But this is a use that has 13  
17 employees, so we're really only looking at 6  
18 vehicles, 6 employee vehicles that are coming  
19 to the site.

20           And I think the other  
21 transportation numbers in terms of its  
22 visitation shows that carpooling and shuttles

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1 and whatnot are relied upon heavily. So I  
2 think that with respect to the transportation  
3 impacts for this facility, I think that the  
4 applicant is doing an admirable job.

5 CHAIRMAN LOUD: Ms. Moldenhauer?

6 MEMBER MOLDENHAUER: I agree with  
7 both my fellow Board Members. I think that  
8 you both -- I think that Chairman Loud you  
9 provided a very full summary of the different  
10 issues and conditions that we have before us.

11 I also think that in regards to  
12 permanent approval, they have demonstrated a  
13 hardship, not only in regards to a potential  
14 issue with future lenders, as they haven't  
15 actually spoken with any currently, but also  
16 with donors.

17 And I think that they have really  
18 demonstrated a commitment to -- they spoke  
19 about, you know, coming back potentially for a  
20 comprehensive conservation plan within a year,  
21 their desires to really add to the community  
22 by not just continuing to run the facility,

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1 but also to include the facility over a long-  
2 term and that does take a long-term approach,  
3 not just with financing, but with time  
4 dedication.

5 And in order to do that, I think  
6 the permanent plan would be important. And I  
7 think in addition, there was testimony, and I  
8 agree with it, that a permanent approval would  
9 not hurt or provide any challenges to the  
10 local citizens and neighbors bringing forth  
11 any enforcement challenges.

12 I think also -- I don't know  
13 whether it was Mr. Dettman or Mr. Loud who  
14 mentioned that there are a lot of other  
15 conditions that also still will remain on the  
16 application that can always be brought up.  
17 And the fact that even though they are looking  
18 on Condition No. 9 to eliminate DDOT, which I  
19 agree with, they are not looking to eliminate  
20 their 6 month review and discussions every  
21 month with the ANC. I think that's very  
22 important.

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1 I also think that the additional  
2 definitional change to not include children of  
3 the age of 16 and below is agreeable, with the  
4 fact, you know, that, obviously, most of those  
5 children are going to be coming in a school  
6 bus or coming with parents to some of their  
7 many activities, you know, such as the  
8 Halloween event, Mother's Day Teas, things to  
9 that effect.

10 And you know, each grade -- there  
11 is no reason to hurt a community or a program  
12 or nonprofit that is actually trying to  
13 provide these services to the community. So  
14 to modify that definition, I would be  
15 agreeable with.

16 CHAIRMAN LOUD: Is there any  
17 further discussion? Hearing none, then what I  
18 would like to do is formally make a motion.  
19 And that motion is that we approve Application  
20 No. 17984, the Application of Tudor Place  
21 Foundation for special exception relief under  
22 section 217 as conditioned and consistent with

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1 our deliberation discussions.

2 Is there a second?

3 MEMBER MOLDENHAUER: I second.

4 CHAIRMAN LOUD: Okay. The motion  
5 has been made and seconded. Any further  
6 deliberation?

7 COMMISSIONER HOOD: Mr. Chairman?

8 CHAIRMAN LOUD: Yes, sir.

9 COMMISSIONER HOOD: Is there a  
10 motion? I may have missed it. There is no  
11 term limit, right?

12 CHAIRMAN LOUD: That's correct.  
13 That's correct. Further deliberation?

14 All right. Hearing none, all those  
15 in favor say aye.

16 ALL: Aye.

17 CHAIRMAN LOUD: All those who are  
18 opposed? And if there are any abstentions?  
19 And, Ms. Bailey, can you read back the vote  
20 for us, please?

21 MS. BAILEY: Mr. Chairman, the vote  
22 is recorded as 4-0-1 to grant the application

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1 for an indefinite period of time, however,  
2 with other conditions as stipulated. The  
3 motion was made by Mr. Loud, seconded by Mrs.  
4 Moldenhauer, Board Member Dettman and  
5 Commissioner Hood support the motion.

6 CHAIRMAN LOUD: Thank you, Ms.  
7 Bailey. I wanted to commend the Office of  
8 Planning for an excellent report. It's very  
9 helpful as well as the applicants for a very  
10 fine job of not only submitting the materials  
11 for relief, but also working with the  
12 community. And, in fact, to commend the  
13 applicant for your hard work with the  
14 community over the years that made it all  
15 possible.

16 Ms. Bailey, is there anything  
17 further in this case?

18 MS. BAILEY: A summary order, Mr.  
19 Chairman?

20 CHAIRMAN LOUD: Let me ask this  
21 question of everyone, everybody can weigh in  
22 on this. The summary order idea, the fact

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1 that we have tweaked some of the conditions,  
2 would we need to include the tweaks in the  
3 summary order? And would that make it not a  
4 summary order?

5 MS. NAGELHOUT: It would still be a  
6 summary order. We would just restate the  
7 conditions with the changes that you just  
8 adopted.

9 CHAIRMAN LOUD: Okay. Great.

10 MS. NAGELHOUT: All the conditions,  
11 you know, the conditions that remain in effect  
12 without changes and then the changes that you  
13 just adopted.

14 CHAIRMAN LOUD: Okay. In that case  
15 then, let's do a summary order.

16 MS. BAILEY: Thank you, sir.

17 CHAIRMAN LOUD: Thank you. Thank  
18 you.

19 (Whereupon, the Public Hearing was  
20 recessed at 11:42 a.m. to reconvene at 2:00  
21 p.m. this same day.)  
22

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

2 2:00 p.m.

3 CHAIRMAN LOUD: Good afternoon.

4 This hearing will, please, come to order.

5 Ladies and gentlemen, this is the November 10<sup>th</sup>

6 Public Hearing of the Board of Zoning

7 Adjustment of the District of Columbia.

8 My name is Marc Loud, Chairperson.

9 Joining me today are Vice Chair, Shane

10 Dettman, representing the National Capital

11 Planning Commission, Chairman Anthony Hood

12 representing the Zoning Commission. To my

13 left is Mrs. Meredith Moldenhauer, BZA Mayoral

14 Appointee, to her far left Ms. Mary Nagelhout

15 from the Office of Attorney General and Ms.

16 Beverley Bailey, Zoning Specialist here in the

17 Office of Zoning. We will be joined shortly

18 by Mr. Clifford Moy, Secretary of BZA.

19 Copies of today's hearing agenda

20 are available to you and are located to my

21 left in the wall bin near the door. Please,

22 be aware that this proceeding is being

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1 recorded by a Court Reporter and is also  
2 webcast live. Accordingly, we must ask you to  
3 refrain from any disruptive noises or actions  
4 in the hearing room.

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

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

20 The order of procedure for special  
21 exceptions and variances is as follows:  
22 Statement and witnesses of the applicant;

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1 Government reports, including the Office of  
2 Planning, the Department of Public Works,  
3 etcetera; Report of the Advisory Neighborhood  
4 Commission; Parties or persons in support;  
5 Parties or persons in opposition; and Closing  
6 remarks by the applicant.

7 Pursuant to Sections 3117.4 and  
8 3117.5 of the Zoning Regulations, the  
9 following time constraints will be maintained:

10 The applicant, appellant, persons and  
11 parties, except an ANC, in support, including  
12 witnesses, 60 minutes collectively.  
13 Appellees, persons and parties, except an ANC,  
14 in opposition, including witnesses, 60 minutes  
15 collectively. Individuals 3 minutes and  
16 organizations 5 minutes.

17 These time restraints do not  
18 include cross examination and/or questions  
19 from the Board. Cross examination of  
20 witnesses is permitted by the applicant or  
21 parties. The ANC within which the property is  
22 located is automatically a party in a special

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1 exception or variance case.

2 Nothing prohibits the Board from  
3 placing reasonable restrictions on cross  
4 examination, including time limits and  
5 limitations on the scope.

6 The record will be closed at the  
7 conclusion of each case, except for any  
8 material specifically requested by the Board.

9 The Board and the staff will specify at the  
10 end of the hearing exactly what is expected  
11 and the date when the persons must submit the  
12 evidence to the Office of Zoning. After the  
13 record is closed, no other information will be  
14 accepted by the Board.

15 The decision of the Board in  
16 contested cases must be based exclusively on  
17 the public record. To avoid any appearance to  
18 the contrary, the Board requests that persons  
19 present not engage Members of the Board in  
20 conversation.

21 Please, turn off all beepers and  
22 cell phones, at this time, so as to not

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1 disrupt the proceedings.

2           The Board will make every effort  
3 and, in fact, today will conclude the Public  
4 Hearing before 5:00 p.m. If for some reason  
5 our other cases are not completed by then, the  
6 Board will assess whether we can complete any  
7 pending cases or matters remaining on the  
8 agenda and if not, we will continue the matter  
9 to the first available date on the calendar.

10           At this time, the Board will  
11 consider any preliminary matters. Preliminary  
12 matters are those that relate to whether a  
13 case will or should be heard today, such as  
14 requests for postponement, continuance,  
15 etcetera. If you are not prepared to go  
16 forward with a case today or if you believe  
17 that the Board should not proceed, now is the  
18 time to raise such a matter.

19           Does the staff have any preliminary  
20 matters?

21           MS. BAILEY: Mr. Chairman, yes. It  
22 has to do with postponement of one of the

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1 cases for the afternoon.

2 CHAIRMAN LOUD: Okay.

3 MS. BAILEY: The applicant 17987 El  
4 Jardin' Infantil is requesting a postponement.

5 Is the applicant here for that  
6 case? There is correspondence in the file,  
7 but the applicant doesn't seem to be present  
8 in the hearing room, at this time, Mr.  
9 Chairman.

10 CHAIRMAN LOUD: Okay. So are we  
11 then going to call that case and give it an  
12 official continuance date?

13 MS. BAILEY: I certainly can do  
14 that. Would you like for me to do that?

15 CHAIRMAN LOUD: Well, just  
16 whichever way is the best way and the quickest  
17 way to proceed. If we don't need to call it,  
18 we can just give it a continuance date and  
19 that's fine, too.

20 MS. BAILEY: We could give it a  
21 continuance date.

22 CHAIRMAN LOUD: Okay.

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1 MS. BAILEY: The applicant  
2 specifically requested the spring of next  
3 year. So two suggestions/considerations may  
4 be March 10<sup>th</sup> or April 13<sup>th</sup>, Mr. Chairman.

5 CHAIRMAN LOUD: And I don't have a  
6 calendar that goes out that far in front of  
7 me, but with respect to either date, are we  
8 squeezing too many cases in between that 10:00  
9 a.m. and 12:00 noon slot?

10 MS. BAILEY: No, sir.

11 CHAIRMAN LOUD: Okay.

12 MS. BAILEY: Those dates are open  
13 at this point.

14 CHAIRMAN LOUD: Okay. Great.

15 MS. BAILEY: It's just a matter of  
16 choosing one or the other.

17 CHAIRMAN LOUD: Why don't we go  
18 with March 10?

19 MS. BAILEY: March 10<sup>th</sup>?

20 CHAIRMAN LOUD: Yes.

21 MS. BAILEY: And so we will do that  
22 in the morning?

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1 CHAIRMAN LOUD: Yes.

2 MS. BAILEY: Okay. Thank you.

3 CHAIRMAN LOUD: Thank you. If  
4 there are no further preliminary matters, then  
5 what I would like to do is ask all individuals  
6 who are going to be testifying in this  
7 afternoon's cases, and I believe there is only  
8 one case scheduled for this afternoon, if you  
9 are here to testify for the 1301 Florida  
10 Avenue case, if you could, please, rise and  
11 Ms. Bailey will administer the oath to you.

12 MS. BAILEY: Would you, please,  
13 raise your right hand?

14 (Whereupon, the witnesses were  
15 sworn.)

16 MS. BAILEY: Thank you. Members of  
17 the Board, this is Application 17986 of 1301  
18 Florida Avenue LLC, and it is pursuant to 11  
19 DCMR § 3104.1, for a special exception to  
20 allow a change of nonconforming use from a  
21 barbershop to a pick-up dry cleaners under  
22 subsection 2003.1 at premises 1301 Florida

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1 Avenue, N.W., on the first floor. The  
2 property is located in Square 2868 on Lot 100  
3 and it is Zoned R-5-B.

4 Would the applicant, please, have a  
5 seat at the table?

6 MR. DIETZ: Good afternoon. My  
7 name is Bernard C. Dietz. I'm an attorney and  
8 I represent the applicant. And I have with me  
9 Mr. Tony Bruno, who is -- who represents the  
10 owner of the property, which is 1301 Florida  
11 Avenue LLC. He's the agent for the property.

12 And I have with me Mr. Phil Ho Ahn, who is a  
13 tenant under a proposed lease for the use that  
14 the application is being submitted for.

15 CHAIRMAN LOUD: Okay. Thank you.  
16 And good afternoon. Thank you for your  
17 patience. Are you intending to call -- I  
18 believe I only saw one gentleman raise his  
19 hand to be sworn in. Is that correct?

20 MR. DIETZ: I asked both Mr. Bruno  
21 and Mr. Ahn to stand. They were both  
22 standing. Mr. Ahn is sitting towards the

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1 rear.

2 CHAIRMAN LOUD: Okay. Then the two  
3 gentleman that you intend to call as  
4 witnesses, I think, can join you at the table.

5 MR. DIETZ: Yes. Come on up.

6 CHAIRMAN LOUD: And let me ask, is  
7 the ANC here? This would be ANC-1B. It  
8 doesn't look like they are here. Were they  
9 here, they would also be able to come to the  
10 front of the room and take a seat at the  
11 table.

12 I think the first thing we probably  
13 need to do and maybe it's just me, but I think  
14 from the submissions in the record, it may or  
15 may not have been clear the standard for  
16 relief that we are looking at?

17 For example, the Office of  
18 Planning's report utilized a use variance test  
19 and I believe what we are looking at is a  
20 special exception, and I believe that's the  
21 case, because a use variance for the property  
22 had been issued by the BZA in, I believe, 1998

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1 I believe. I can check that for sure, but I  
2 believe it was 1998 for barbershop.

3 So the nonconforming use was  
4 established in 1998, which means that the  
5 effort to establish the dry cleaning in the R-  
6 5-B would now require a special exception and  
7 not a use variance.

8 And let me clarify that and make  
9 sure I'm on track with the Office of Attorney  
10 General.

11 MS. NAGELHOUT: I think that's  
12 correct, because the prior use got a use  
13 variance which makes it a nonconforming use,  
14 so you could change nonconforming uses  
15 consistent with, I think it is, 2001.3 by  
16 special exception.

17 CHAIRMAN LOUD: Okay. And there is  
18 no question here of the use lapsing at all?

19 MS. NAGELHOUT: You can ask them.

20 CHAIRMAN LOUD: But based on the  
21 record that we have been presented so far, the  
22 use established in 1998 would still be in play

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1 and they would simply be needing a special  
2 exception for the dry cleaning?

3 MS. NAGELHOUT: I would ask the  
4 applicant to make that case, that's one issue.

5 Also, I would note that both the uses,  
6 barbershop and the proposed dry cleaning  
7 collection use, are both permitted as a  
8 matter-of-right in the C-1, so that's one of  
9 the other standards under the special  
10 exception provision.

11 CHAIRMAN LOUD: Okay. And I'll be  
12 looking at a specific -- I think you and I  
13 talked about that. We're not looking at a  
14 specific section of the regs for this type of  
15 special exception. This is the general --

16 MS. NAGELHOUT: That's right.

17 CHAIRMAN LOUD: -- special  
18 exception under 3103?

19 MS. NAGELHOUT: That's right, yes.

20 CHAIRMAN LOUD: Okay. All right.  
21 Then let me do this, again, before we get  
22 started. I just wanted to very briefly turn

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1 to the Office of Planning, which had submitted  
2 a very outstanding use variance analysis test  
3 and have you respond to what Ms. Nagelhout has  
4 said.

5 MR. MORDFIN: Well, the Office of  
6 Planning had determined that it was a use  
7 variance and not a special exception after  
8 consulting with OAG and was directed that it  
9 was a use variance, because the previous  
10 issues did not become nonconforming as a  
11 result of a rezoning of the property.

12 The barbershop was established as a  
13 use variance. It did not become a  
14 nonconforming use because the property was  
15 rezoned or the Zoning Regs were amended to  
16 exclude that use. And I was told, therefore,  
17 it had to be a use variance.

18 CHAIRMAN LOUD: Prior to that  
19 though, you had some suspicion that it was a  
20 special exception?

21 MR. MORDFIN: Well, what had  
22 happened was it did get directed from the

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1 Zoning Administrator's office to the applicant  
2 to apply for the special exception. And the  
3 applicant had also then applied and made an  
4 argument as a use variance.

5 So based on that, I was trying to  
6 determine exactly where this fell. And I had  
7 spoken with OAG and was told that because the  
8 barbershop use did not become nonconforming as  
9 a result of a change in zoning or a change in  
10 the Zoning Regulations, that therefore we had  
11 to do a use variance.

12 So that's why I wrote up the report  
13 as a use variance.

14 CHAIRMAN LOUD: Another way to say  
15 that is if a property becomes nonconforming  
16 because of a BZA order, it's distinct from a  
17 property becoming nonconforming due to  
18 rezoning?

19 MR. MORDFIN: Well, my  
20 understanding is that the barbershop use which  
21 is permitted by the special exception is not a  
22 nonconforming use. It was a use permitted by

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1 special -- it was a use variance. I'm sorry,  
2 it was a use variance. It's not a  
3 nonconforming use. It was permitted, so it's  
4 use that was then permitted by the BZA, but  
5 not a nonconforming use.

6 A nonconforming use, I thought, was  
7 then the result of a change in zoning.

8 CHAIRMAN LOUD: All right. Again,  
9 I apologize for our sorting some of this out  
10 on the record and not having worked through  
11 some of more of it, I guess, prior to coming  
12 out. But before we do turn to you, and I  
13 think what we want to do is try to frame the  
14 presentation of the evidence and the relief,  
15 so that if you qualify for the relief, that  
16 you are able to make that case.

17 And what we may end up doing, I  
18 don't know, I'll check with colleagues, is  
19 allowing you to cover all of the bases, both  
20 in terms of the use variance test and the  
21 special exception, if we are unable to be  
22 really, really clear on this before we get

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1 started.

2 Ms. Nagelhout, I wanted to see if  
3 you had a response to the Office of Planning  
4 on their last point?

5 MS. NAGELHOUT: Well, it's not  
6 something I have thought about or researched  
7 at all, but my understanding of a use variance  
8 was the use permitted by use variance becomes  
9 a nonconforming use. And I don't see a  
10 distinction between nonconforming because of  
11 use variance or nonconforming because of a  
12 change in zoning.

13 It could be that's the way it was  
14 interpreted, but I'm not aware of that  
15 distinction.

16 CHAIRMAN LOUD: Okay. Counsel, did  
17 you want to weigh in on this?

18 MR. DIETZ: Yes. If it pleases the  
19 Board, when I originally submitted the  
20 application, I was under the impression that  
21 it was going to be a use variance.

22 CHAIRMAN LOUD: Yes.

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1 MR. DIETZ: And I attached to my  
2 application a statement in support of the use  
3 variance. I was then notified by the staff  
4 that it would be a special exception and I  
5 filed another memorandum in support of special  
6 exception.

7 CHAIRMAN LOUD: Okay.

8 MR. DIETZ: So the file should have  
9 it both ways.

10 CHAIRMAN LOUD: Okay.

11 MR. DIETZ: I hit it on both tests.

12 CHAIRMAN LOUD: Okay.

13 MR. DIETZ: And it should be a  
14 matter of record.

15 CHAIRMAN LOUD: All right. Can we  
16 do this, can I see if Board Members want to  
17 weigh in at all on this discussion? And then  
18 shortly following that, we can proceed to  
19 allow you to make your case.

20 VICE CHAIR DETTMAN: Mr. Chairman,  
21 I think, you know, if you read the definition  
22 of nonconforming use --

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1 CHAIRMAN LOUD: Yes.

2 VICE CHAIR DETTMAN: -- it lends  
3 itself to DCOP's position on this. It's that  
4 basically it says that a nonconforming use is  
5 such that a use that was in lawful existence  
6 and then either through the adoption of the  
7 regs in 50(a) and a change in zoning, that's a  
8 nonconforming use.

9 However, it's interesting, 2001.3,  
10 the first part of 2001.3 is something that has  
11 always kind of left me a questionmark in my  
12 mind what it meant. It says "If approved by  
13 the BZA as authorized in 3103 and 3104 for a  
14 variance and special exceptions, respectively,  
15 a nonconforming use may be changed to a use  
16 that is permitted as a matter-of-right in the  
17 most restrictive District in which the  
18 existing nonconforming use is permitted as a  
19 matter-of-right, subject to the conditions set  
20 forth in this section."

21 It's that first sentence that  
22 always kind of threw me.

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1 CHAIRMAN LOUD: Yes.

2 VICE CHAIR DETTMAN: But I think  
3 what that is saying there is "if approved by  
4 the BZA as authorized in 3103 and 3104 for  
5 variances and special exceptions,  
6 respectively," I think the beginning of that  
7 provision applies to the existing use.

8 CHAIRMAN LOUD: Yes.

9 VICE CHAIR DETTMAN: So in this  
10 case, if the barbershop is approved by the BZA  
11 as authorized in 3103 and 3104 for variances  
12 and special exceptions, respectively, then in  
13 this case it was a use variance.

14 CHAIRMAN LOUD: Yes.

15 VICE CHAIR DETTMAN: The barbershop  
16 may be changed to a use that is permitted as a  
17 matter-of-right in the most restrictive  
18 District in which the existing nonconforming  
19 use, the barbershop, is permitted as a matter-  
20 of-right, subject to the conditions set forth  
21 in this section.

22 So again, the barbershop and the

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1 dry cleaner is allowed as a matter-of-right in  
2 the C-1. So it looks like this can go forward  
3 as a special exception. And that first part  
4 of that permission applies to the existing  
5 use.

6 And we might want to get OP and OAG  
7 to weigh in on that. I'm not sure.

8 MS. NAGELHOUT: I agree with Mr.  
9 Dettman. I think what the section says is if  
10 the prior -- if the existing use was approved  
11 by the BZA, in this case as a variance, that  
12 use may be changed to another use that is  
13 permitted as a matter-of-right in the same  
14 section and in the same District, rather.

15 In this case, both barbershop and  
16 dry cleaner collection are both permitted as a  
17 matter-of-right in C-1. So that part also is  
18 satisfied here. And so getting back to your  
19 other question about which provisions do you  
20 look at to approve the special exception, I  
21 would say look at 2003.2, .3 and .5, those are  
22 the conditions that would apply here,

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1 conditions of approval. And 7 as well.

2 MEMBER MOLDENHAUER: Based on this  
3 discussion, I mean, I think I would definitely  
4 agree with Mr. Dettman on the evaluation that  
5 this would be a special exception analysis.  
6 So it should be applied here.

7 CHAIRMAN LOUD: That being said,  
8 can I suggest this? Can we ask you to present  
9 your case as if it were, and it is, a special  
10 exception and going through the special  
11 exception criteria? And I think Ms. Nagelhout  
12 has indicated sections 2003.2, .3, .5 and .7,  
13 which I think you have pretty much prepared  
14 for in your special exception submission.

15 I think out of an abundance of  
16 caution and since it appears as though from  
17 the report that the Office of Planning did and  
18 sort of the unique nature of this property,  
19 its age and the ground floor coming directly  
20 up against the public sidewalk, that you might  
21 include some evidence, if you have some, that  
22 would also make out a case for a use variance.

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1           We're not saying that the vote  
2 necessarily or deliberation would need to be  
3 on that, but I think you then covered both  
4 bases and depending on, you know, where OP got  
5 their counsel from, either way, you would not  
6 have to come back before us on this matter.

7           So that's what I would suggest. I  
8 think out of an abundance of caution that the  
9 record be completely full on both areas of  
10 relief and that the Board then would select  
11 the evidence and the standard when we  
12 ultimately decide on the case and issue a  
13 decision, which we may not end up doing today.

14           We may be able to put it off for at  
15 least one week maybe and try to clarify some  
16 of this. But it sounds to me like having come  
17 prepared for a special exception and the  
18 Office of Attorney General advising the BZA  
19 that that's the standard, that that's where  
20 you ought to start.

21           MR. DIETZ: I'm ready.

22           CHAIRMAN LOUD: Okay.

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1 MR. DIETZ: This building is  
2 situated on a rather busy street corner. And  
3 it is the end building of a row of residential  
4 buildings. Okay. The building itself is  
5 structured so that there are two residential  
6 units on the second and the third floor with  
7 the commercial unit on the first floor.

8 The residential units are designed  
9 in such a way that they have a separate  
10 entrance and, basically, a separate existence  
11 from the commercial unit. There is no common  
12 entryway.

13 And as the Board can see from the  
14 photographs, there is no real blending of the  
15 building where you would say well, this looks  
16 like the neighbor, it doesn't. It's a corner  
17 store.

18 As far as being a special  
19 exception, where we're requesting a change  
20 use, what I did was I addressed the three  
21 prongs of the test.

22 And the first prong being "The

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1 proposed use shall not adversely affect the  
2 present character or future development of the  
3 surrounding area." Now, this building has  
4 existed this way at least since 1958 when a  
5 Certificate of Occupancy was issued to a small  
6 church, having a capacity of no more than 50  
7 seats.

8 And it was occupied that way until  
9 1998 when the church left and a new tenant was  
10 able to get permission to operate a  
11 barbershop.

12 The dry cleaning pick-up store is a  
13 pick-up facility only. Okay. There is no--  
14 no dry cleaning is done, no laundry is done,  
15 no tailoring is done. It's simply a pick-up  
16 facility.

17 If the Board were to look at the  
18 past 50 years of use in that space where you  
19 had up to 50 church members coming and going,  
20 and then for 10 years you had barbershop  
21 customers coming and going, you would see that  
22 for 40 of those years the space invited people

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1 to visit the premises and stay awhile.

2 In this particular case, in the  
3 case of a dry cleaning pick-up store, the very  
4 nature of the store is such that someone runs  
5 in, drops off their clothes, 24 hours later  
6 they run in and pick up their clothes. Nobody  
7 is hanging around.

8 So there is really more -- if there  
9 is any change, it's beneficial change, because  
10 there will be less of a public presence in the  
11 space. But certainly it's not going to create  
12 anything new vis-a-vis public coming and  
13 going, activity itself. You're not going to  
14 have a choir singing on Sunday morning. And  
15 you're not going to have people coming and  
16 going to a barbershop, that type of thing.

17 And so that the use as a dry  
18 cleaning pick-up store continues the existing  
19 character that was created by the barbershop  
20 and that is a personal services character.

21 Okay. And if you look to the  
22 definition of personal services, it's personal

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1 grooming, personal accommodations, such as  
2 providing clean clothes.

3 So the first prong of the test, I  
4 think, is very easily met.

5 The second prong being "The  
6 proposed use shall not contain any deleterious  
7 external effects, including, but not limited  
8 to, noise, traffic, parking, loading  
9 considerations, illumination, vibration, odor,  
10 design and sighting effects."

11 There will be no dry cleaning  
12 plant. There will be no laundry. Therefore,  
13 there will be no machines running in the  
14 store, other than the trolley that maintains  
15 the hangars for the clothes.

16 That means that there will be no  
17 smell of cleaning fluids. There will be no  
18 smells that are associated with the  
19 barbershop, aftershave and cologne, bay rum,  
20 that type of thing.

21 Okay. It's simply clothes are  
22 delivered to the store in a plastic cover on a

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1 hanger. The applicant has set forth hours of  
2 operation that conform, basically, to a  
3 daytime business. The applicant has stated,  
4 for the record, that delivery and pick-up will  
5 only occur once a day. At 7:00 a.m., right?  
6 At 7:00 a.m. there will be a 7:00 a.m. pick-up  
7 and delivery, that's it.

8 There will be no coming and going  
9 of the cleaning vans. Again, there will be no  
10 noise associated with the business, because  
11 there will be no public congregating. There  
12 will be no barbershop television going,  
13 watching ESPN or whatever. It's simply going  
14 to be a very quiet operation. A one-person  
15 operation in which one person will maintain --  
16 will main the counter and cash register and  
17 the trolley. Simply for the convenience of  
18 the neighborhood.

19 There will be no changes to the  
20 exterior of the store, other than the fact  
21 that the plate glass window will be cleaned  
22 and there will be -- and only an interior sign

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1 designating that this is a dry cleaning pick-  
2 up store.

3           It's my understanding that the  
4 exterior of the building has to conform to the  
5 Historic Preservation standards. There will  
6 be no change of color of the paint, the  
7 exterior paint. There will be no change of  
8 design on the outside. Basically, from the  
9 outside, the building is going to look exactly  
10 the way it has all these years.

11           Turning to the third use, "When an  
12 existing nonconforming use has been changed to  
13 a conforming use to a more stricter use, it  
14 shall not be changed back to another  
15 nonconforming or less restrictive use."

16           The change here is from a  
17 barbershop to a pick-up store, which the Board  
18 of Zoning expressed would be a matter-of-  
19 right. So the three prongs of the test for a  
20 change of use under special exception are  
21 satisfied.

22           Turning to the other aspect as to

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1 whether or not this is a use variance, again,  
2 there is another three prong test that must be  
3 addressed.

4 And the first test is exceptional  
5 topographic conditions. And what I do here is  
6 I direct the Board to Mr. Mordfin's report.  
7 Okay. I can't say it any better than he did.

8 It's a completely thorough accurate analysis.

9 The ground floor portion of that building was  
10 set up, designed for a commercial purpose. It  
11 has always been used that way and it would  
12 require enormous effort.

13 Actually, it would require a  
14 complete remodeling and restructuring of the  
15 exterior of the building to turn it into a  
16 residential use, because nobody lives on the  
17 sidewalk. And basically, that's the thrust of  
18 the analysis.

19 This portion of the building was  
20 designed for the public to take note of it, to  
21 look at it. I could find nothing on the  
22 record as to how this space was used before

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1 1958 when the church moved in. But it sure  
2 looks like a corner grocery store. It looks  
3 like many, many corner grocery stores in the  
4 District of Columbia. But obviously, it has  
5 always been used as a commercial use.

6           Would denial result in an undue  
7 hardship? I have Mr. Bruno here who will  
8 testify that the Barac Company is the leasing  
9 agent for that building. The building has  
10 three sources of income, two residential units  
11 upstairs and then the commercial unit  
12 downstairs.

13           Without those additional rents,  
14 there is no break even point. The owner of  
15 the building cannot maintain it as a financial  
16 investment. It would be a loser. The owner  
17 of the building requires on all -- all three  
18 levels to be rented.

19           As I stated earlier, there is  
20 absolutely no way under the existing form --  
21 and again, looking to the nature of the  
22 neighborhood, a building permit to remodel

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1 that building, so that the ground floor became  
2 an apartment would probably fly in the face of  
3 the restrictions in that neighborhood anyhow,  
4 because everything is supposed to be the same,  
5 stay the same.

6 The third prong is -- addresses  
7 whether or not there would be a detriment to  
8 the Zoning Plan. Well, this is how this space  
9 has always been used. It has been used as a  
10 matter-of-record since 1958 and it has been  
11 used as a matter-of-notice probably since  
12 1911.

13 There would be no change. So I  
14 believe the applicant has met both of the  
15 three prong tests that address these two  
16 situations. And I respectfully request the  
17 Board's approval for either a variance or a  
18 change of use. We will take it either way.

19 CHAIRMAN LOUD: Thank you, Mr.  
20 Dietz. Let me see if my colleagues have any  
21 questions for you, before, I'm presuming, you  
22 call your witnesses. Okay. Before you call

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1 your witnesses. Okay. Why don't we move  
2 directly into your witnesses?

3 MR. DIETZ: Okay. My first witness  
4 will be Mr. Tony Bruno. Turn on your mike.

5 MR. BRUNO: Good afternoon.

6 MR. DIETZ: Okay. Mr. Bruno, you  
7 are with the Barac Company. Is that correct?

8 MR. BRUNO: That's correct.

9 MR. DIETZ: And they are the  
10 leasing agent for the building?

11 MR. BRUNO: That's correct.

12 MR. DIETZ: And how long have they  
13 been the leasing agent?

14 MR. BRUNO: Oh, over 20 years, I  
15 believe.

16 MR. DIETZ: Okay. And would you,  
17 please, explain to the Board the nature of the  
18 leases, the existing leases in the past, the  
19 leases in the building?

20 MR. BRUNO: Sure. There is, as Mr.  
21 Dietz said, commercial use on the first floor  
22 and it has been like that ever since I can

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1 remember, over 20 years. There used to be a  
2 barbershop up until just recently when the  
3 tenant vacated. And there is also two  
4 residential units on the second and third  
5 floors.

6 MR. DIETZ: Okay. And you take in  
7 rents on all three floors?

8 MR. BRUNO: At the present time,  
9 no. But the units are being -- going to be  
10 offered for rent on all three floors.

11 MR. DIETZ: Okay. And are you  
12 relying on full occupancy of the building to  
13 break even on the investment?

14 MR. BRUNO: Absolutely.

15 MR. DIETZ: Okay. Now, when the  
16 building was used, when the first floor was  
17 used as a barbershop, were you aware of any  
18 particular problems regarding that use?

19 MR. BRUNO: None at all.

20 MR. DIETZ: Okay. I have no  
21 further questions of this witness and I,  
22 again, leave it to the Board.

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1 CHAIRMAN LOUD: Any questions,  
2 colleagues, for -- it's Mr. Bruno, correct?

3 MR. BRUNO: Yes, sir.

4 CHAIRMAN LOUD: Mr. Bruno, I just  
5 have one quick question regarding the  
6 barbershop use. Did that use expire in 2008?

7 MR. BRUNO: I believe he did vacate  
8 in 2008. I have got an exact date if you  
9 would like?

10 CHAIRMAN LOUD: Well, just a year.  
11 I think one of our rules regarding  
12 nonconforming uses is that if they lapse for a  
13 period of three years, consecutively three  
14 years, that the nonconforming use reverts  
15 back. I think it's 2000 -- well, if it lapses  
16 for a period of 3 years, for more than 3  
17 years, "Any subsequent use shall conform to  
18 the regulations of the District in which the  
19 use is located."

20 But your pleadings suggested --

21 MR. BRUNO: He was in there within  
22 the last 3 years.

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1 CHAIRMAN LOUD: -- it was 2008.  
2 Okay. All right. That was my only question.  
3 Thank you. I think we can go to your next  
4 witness.

5 MR. DIETZ: My next witness is Mr.  
6 Phil Ho Ahn. Mr. Ahn, state your name for the  
7 record.

8 MR. AHN: Good afternoon. My name  
9 is Phil Ahn. I'm actually -- I'm a tailor, so  
10 I'm doing this business, this store is my  
11 life.

12 MR. DIETZ: Okay. And are you in  
13 the dry cleaning business?

14 MR. AHN: Yes, I do.

15 MR. DIETZ: Do you have a store  
16 with a dry cleaning plant?

17 MR. AHN: Yes, I do.

18 MR. DIETZ: And where is it  
19 located?

20 MR. AHN: At 17 and L Street  
21 corner, N.W.

22 MR. DIETZ: And does this dry

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1 cleaning plant feed a number of pick-up  
2 stores?

3 MR. AHN: Yes, I do.

4 MR. DIETZ: Okay. How many pick-up  
5 stores do you operate in the District of  
6 Columbia?

7 MR. AHN: I have two, just two.  
8 Maybe if I open the 1301, it's going to be  
9 three.

10 MR. DIETZ: Okay. Now, if you were  
11 granted this use and you open the dry cleaning  
12 pick-up store, how many employees will be in  
13 the store?

14 MR. AHN: Only one person. My wife  
15 or either me or my wife going to be there.

16 MR. DIETZ: Okay. And what will  
17 the hours of operation be?

18 MR. AHN: 7:00 to 7:00 p.m., 7:00  
19 a.m. to 7:00 p.m., Monday through Friday.  
20 Saturday maybe 9:00 to 4:00 and Sunday we're  
21 closed.

22 MR. DIETZ: And how often will the

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1 clothes be picked up and delivered from the  
2 plant to the site?

3 MR. AHN: I believe, Mr. Dietz say  
4 7:00 a.m. Actually, normally pick-up around  
5 5:00 p.m., we pick-up and delivery.

6 MR. DIETZ: And will there only be  
7 one pick-up and delivery?

8 MR. AHN: One time. Maybe some  
9 custom order may be able to stop by just take  
10 less than one minute to come in, you know,  
11 stop.

12 MR. DIETZ: Okay. I have no  
13 further questions.

14 CHAIRMAN LOUD: Thank you. Board  
15 Members, any questions? Okay. There do not  
16 appear to be any. So why don't we now turn to  
17 the Office of Planning? And similarly, your  
18 report already captures a very extensive use  
19 variance analysis, which I think is  
20 outstanding.

21 You may want to focus on special  
22 exception analysis.

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1 MR. MORDFIN: Yes. I had also  
2 looked at this pursuant to doing a special  
3 exception because of the way it had originally  
4 come in. So under the provisions of 2003, the  
5 first one is 2003.2, that applies that -- you  
6 know, it talks about "it shall not adversely  
7 affect the surrounding area," which is defined  
8 within 300 feet.

9 You go within 300 feet of the  
10 subject property, if you go to the north, it  
11 goes to the north side of Belmont Street,  
12 where you have the Christopher Price House and  
13 the rest of it is you have row houses and  
14 flats and apartments there.

15 And if you go to the west across  
16 13<sup>th</sup> Street, there is a high school, a couple  
17 of high schools. Across 13<sup>th</sup> and Florida, you  
18 have more residential units, mostly row houses  
19 to the south. Across Florida from the subject  
20 property is a small apartment house. And you  
21 have also a couple of charter schools.

22 I think this does clip a portion of

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1 the corner of the building where the public  
2 charter school is located.

3 Now, I don't think this would  
4 adversely affect it. This is a use that is  
5 intended to be used by the surrounding  
6 neighborhood. It is not something like a  
7 specialty store where you would travel across  
8 town to go and purchase something that you  
9 can't get any place else.

10 The next one, 2003.3 talks about  
11 the external effects. As the applicant has  
12 stated, there will be no dry cleaning done on  
13 the premises. There will only be pick-up and  
14 drop-off from a plant located elsewhere.

15 So there shouldn't be any odor and  
16 things like that, the exterior design of the  
17 building, any changes to that that the  
18 applicant may propose, and would have to be  
19 approved by the Historic Preservation Review  
20 Board.

21 As for parking, it talks about  
22 parking also. This is a relatively small

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1 store. If this were located in the C-1, which  
2 is the first District in which you can have a  
3 dry cleaner, because there are no retail  
4 parking provisions in the R-5-B District  
5 contained within the Zoning Regulations, what  
6 it states in there is that for the first 3,000  
7 square feet, no parking is required. And  
8 after that, only one space per 300 square  
9 feet.

10 And from looking at the drawings  
11 that the applicant has submitted, I don't  
12 think, although it doesn't give a dimension  
13 for everything, it doesn't look like they have  
14 3,000 square feet. So if they don't have  
15 3,000 square feet, then no parking would be  
16 required for this anyway. So I think that  
17 goes towards whether or not there would be a  
18 problem from parking.

19 The existing use is being changed.

20 It's not more restrictive or less  
21 restrictive. The first time a barbershop and  
22 the first time a dry cleaner are permitted in

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1 the Zoning Regulations is in C-1, in both  
2 instances. So it doesn't -- we're not going  
3 to a more restrictive or a less restrictive  
4 Zone District by permitting a dry cleaner  
5 plant when the last one had been a barbershop.

6 And then I think also it says in  
7 Residence Districts, "The use shall be either  
8 dwelling, flat, apartment house or  
9 neighborhood facility." I think a dry  
10 cleaning pick-up is a neighborhood facility.  
11 It is not something, as I stated before, that  
12 you would travel across town to go to this  
13 one. It's something that is fairly common and  
14 I think you would -- most people would tend to  
15 use the one that is located within their  
16 neighborhood.

17 And I think then the last one is,  
18 well, if the Board would require any changes.

19 And we wouldn't be requiring any changes to  
20 the exterior of the building. I think we  
21 don't have any other recommendations that we  
22 would make for the exterior of the building or

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1 for access to it.

2 And I think those are all of the  
3 criteria contained in 2003 that are applicable  
4 to this application.

5 CHAIRMAN LOUD: Thank you. Let me  
6 see if Board Members have any questions for  
7 you, then we will turn to the applicant to see  
8 if he has any questions.

9 And I only have one question. It  
10 doesn't appear that any other Board Members  
11 have questions. There is, in our record, a  
12 letter from a Mr. Hudson, which is Exhibit 24.

13 Have you had a chance to review that? He is  
14 a neighbor. He just, basically, raises some  
15 concerns about parking, double parking.

16 MR. MORDFIN: There was, yes.

17 CHAIRMAN LOUD: Traffic and so on.  
18 I just wanted you to respond to Mr. Hudson's  
19 concerns.

20 MR. MORDFIN: I did see that  
21 letter. He was talking about there were  
22 issues with double parking when they were a

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1 barbershop there and he assumes that those  
2 same issues would continue on. And also, if  
3 there were any activities going on on the  
4 weekends, Cardozo -- there is a high school  
5 that there would be additional parking in the  
6 neighborhood or stresses on the on-street  
7 parking system.

8 But I don't think that those things  
9 really change this. Whether or not this is a  
10 pick-up dry cleaning station, Cardozo will  
11 still have its weekend events. And I think  
12 that there is minimal parking that is required  
13 for this and it does appear that it's not even  
14 one parking space.

15 So the minimum amount of parking  
16 that is required for this is then met by this  
17 application, even though it has no parking,  
18 because none would be required, I would  
19 believe, by just inferring from the C-1 where  
20 the first time pick-up dry cleaning stations  
21 are required.

22 I don't think that that would --

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1 that this use would unduly cause parking  
2 problems within the neighborhood.

3 CHAIRMAN LOUD: Okay. Thank you  
4 very much. Let's see, again, I don't think  
5 anyone has any questions for you. You and  
6 your report, both covers the evidence that  
7 would support a use variance. And then you  
8 have just walked us through the evidence that  
9 supports a special exception.

10 At this time, we will turn to -- we  
11 would normally have turned to the ANC. In  
12 this case, it's ANC-1B, but in this case, we  
13 do not have a report from ANC-1B, so we will  
14 turn to the next phase of the proceeding,  
15 which would be to see if there are persons in  
16 support in the audience? If so, this would be  
17 the time to come up. You would be given 3  
18 minutes.

19 Not seeing anyone do that, I'll  
20 offer the same opportunity to persons who are  
21 in opposition. You would come up now and now  
22 would be the time to give your testimony. You

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1 would be given 3 minutes. And again, seeing  
2 no one take advantage of that opportunity, we  
3 would now turn back to you, Mr. Dietz, for any  
4 closing remarks.

5 MR. DIETZ: The applicant has met  
6 the three prong test under both applications.

7 And as the Office of Planning has stated in  
8 detail, the applicant is requesting nothing  
9 more than a continuation of an already  
10 permitted use.

11 In other words, the dry cleaning  
12 pick-up store and the barbershop were both  
13 permitted under the C-1 zoning. There is no  
14 change up or down. And for the reasons stated  
15 earlier, we respectfully request that the  
16 Board accept the application.

17 CHAIRMAN LOUD: Thank you. I think  
18 the Board is going to deliberate today. And I  
19 think we are going to deliberate under the  
20 special exception standard. And I believe  
21 Mrs. Moldenhauer will start us off.

22 MEMBER MOLDENHAUER: Thank you. I

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1 believe that we have a full record. And I  
2 think that we have previously discussed  
3 whether or not this case should be evaluated  
4 under a variance or a special exception test.

5 And I think that we all do agree  
6 that based on the prior approval of the use,  
7 that it would fall under 2003.1 stating that  
8 it had previously been approved for a  
9 nonconforming use. And that any change in  
10 that use would be permitted as a matter-of-  
11 right in the most restrictive District in  
12 which the existing nonconforming use is  
13 permitted as a matter-of-right.

14 And here, a barbershop would be  
15 permitted in the C-1 Zone and then, thus, so  
16 would a dry cleaners.

17 I think that the Office of Planning  
18 has done an excellent job of trying to revise,  
19 you know, its analysis, you know, since its  
20 initial report was on a variance and has  
21 provided us a very thorough analysis of its  
22 evaluation based on a special exception.

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1           The applicant has also testified  
2 and Mr. Bruno has testified, you know, to the  
3 different issues relating to a special  
4 exception. And taking a look at those  
5 different factors, the issue -- one of the  
6 first factors is that "The proposed use shall  
7 not adversely affect the present character or  
8 future development of the surrounding area, in  
9 accordance with this title."

10           And then it provides the specific  
11 circumference area of 300 feet. And I think  
12 OP gave a very specific analysis of the  
13 surrounding neighborhood, the different  
14 aspects and that it would not be affected and  
15 that the similar use of a barbershop would  
16 provide then the same effects of a dry  
17 cleaners.

18           It also addressed the letter that  
19 we have in our record, which is Exhibit 24,  
20 which is from a neighbor addressing some  
21 concerns of parking and safety for double  
22 parking stating that there most likely would

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1 not be any sort of adverse impact, both under  
2 -- or present any present or future character  
3 or development under 2003.2 or under 2003.3,  
4 which states that "The proposed use shall not  
5 create any external effect, including, but not  
6 limited to, any noise, traffic, parking or  
7 loading considerations."

8           And I believe that the prior  
9 existence of the barbershop or even going back  
10 further, the use of a church until 1998, as  
11 the applicant was stating, that a dry cleaner  
12 just simply has a clientele. Since this is  
13 not actually a service dry cleaner, it's just  
14 simply a drop-off and pick-up dry cleaner,  
15 that it is, you know, going to have clientele  
16 that is just going to run in and run out  
17 versus having individuals that would  
18 potentially be lingering for a longer period  
19 of time, as, you know, a church or even a  
20 barbershop.

21           In addition to that, the applicant  
22 also stated that this is a type of a service

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1 that would be serving the neighborhood. And  
2 OP confirmed that statement that this is not  
3 something where you are going to have  
4 individuals coming from, you know, different  
5 areas of the community. Rather, you are going  
6 to have people using it and it's actually  
7 going to help provide a service to the  
8 community.

9 In addition to that, I think that  
10 the applicant provided some additional  
11 testimony which is not actually relevant here,  
12 but to the issues of a variance test as to the  
13 fact that this, you know, would detrimentally  
14 harm the owner because of the fact that they  
15 would need an additional rent in order to  
16 break even on the property.

17 And that since the prior use had,  
18 you know, been used for many years as a  
19 barbershop and, you know, it has only been  
20 vacant since 2008 and this is, you know, a new  
21 use that they would need in order to maintain  
22 the financial abilities of the location.

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1           Based on the above, I think that,  
2 you know, I would be willing to move forward  
3 for a motion to approve this. And I'll open  
4 it up for any additional deliberation or  
5 discussion.

6           CHAIRMAN LOUD: Thank you, Board  
7 Member Moldenhauer. I think that was an  
8 excellent recap of the evidence put forward  
9 and the standard that we agreed upon at the  
10 outset.

11           And with that said, if there is a  
12 motion, I would be happy to second the motion.

13           MEMBER MOLDENHAUER: A motion to  
14 approve a special exception under Case No.  
15 17986 for a pick-up and drop-off dry cleaning  
16 facility at 1301 Florida Avenue, N.W., under  
17 section 2003.

18           CHAIRMAN LOUD: Motion seconded.  
19 The motion has been made and seconded. Is  
20 there further deliberation?

21           Seeing and hearing none, all those  
22 in favor say aye.

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1 ALL: Aye.

2 CHAIRMAN LOUD: All those who  
3 oppose? Are there any abstentions? And, Ms.  
4 Bailey, can you read back the vote for us,  
5 please?

6 MS. BAILEY: Mr. Chairman, the vote  
7 is recorded as 4-0-1 to grant the application.  
8 Board Member Moldenhauer made the motion.  
9 Chairman Loud seconded, Mr. Dettman and Mr.  
10 Hood support the motion.

11 CHAIRMAN LOUD: Thank you, Ms.  
12 Bailey. And there being no opposition, we can  
13 do a summary on this one.

14 MS. BAILEY: A summary order it is,  
15 Mr. Chairman.

16 CHAIRMAN LOUD: Okay. Thank you  
17 very much. Thank you, Mr. Dietz. Thank you  
18 applicants. And good luck. I'm sorry?

19 MR. DIETZ: Can I ask the Board?  
20 When would be the time frame we would expect  
21 to receive the Board order?

22 CHAIRMAN LOUD: I'll defer to Ms.

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1 Bailey and Mr. Moy on that. I think it should  
2 be within 24 hours or something.

3 MR. MOY: 24 hours.

4 MR. DIETZ: Oh, good. Thank you.

5 MR. MOY: At this point, tomorrow  
6 at the earliest.

7 MR. DIETZ: Thank you.

8 CHAIRMAN LOUD: Okay.

9 MS. BAILEY: But tomorrow is a  
10 holiday, so we're talking --

11 CHAIRMAN LOUD: 24 business hours.  
12 Thank you.

13 And I do believe that's it. Is  
14 there anything else for today's calendar?

15 MS. BAILEY: No, Mr. Chairman.

16 CHAIRMAN LOUD: Okay.

17 MS. BAILEY: Not from me anyway.

18 CHAIRMAN LOUD: Okay. Then today's  
19 hearing calendar is adjourned.

20 Thanks to everyone.

21 (Whereupon, the Public Hearing was  
22 concluded at 2:52 p.m.)

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