

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

MAY 19, 2009

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Marc D. Loud, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairperson
SHANE L. DETTMAN, Vice Chair

ZONING COMMISSION MEMBER PRESENT:

GREGORY N. JEFFRIES, Vice Chairman
MICHAEL G. TURNBULL, FAIA Commissioner
(OAC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

The transcript constitutes the minutes from the Public Meeting held on May 19, 2009.

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TABLE OF CONTENTS

Opening - Chairperson Loud..... 4
Preliminary Matters..... 5
Application Number 17914..... 5
Vote for Approval..... 14
Application Number 17791..... 15
Vote for Approval..... 32
Application Number 17898..... 33
Vote for Approval..... 41
Application Number 17908..... 42
Vote for Dismissal..... 50

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

2 9:44 a.m.

3 CHAIRPERSON LOUD: Good morning.

4 The meeting will please come to order. Good
5 morning, ladies and gentlemen.

6 This is the May 19th Special Public
7 Meeting of the Board of Zoning Adjustment of
8 the District of Columbia.

9 My name is Marc Loud, Chairperson
10 of the BZA. Joining me today are Vice Chair
11 Shane Dettman to my right, Mr. Greg Jeffries
12 representing the Zoning Commission. To his
13 right and then to my left, Mr. Clifford Moy,
14 Secretary of BZA, Ms. Lori Monroe of the
15 Office of Attorney General and Beverley
16 Bailey, Zoning Specialist here in the Office
17 of Zoning.

18 Copies of today's meeting agenda
19 are available to you and are located to my
20 left in the wall bin near the door. We do not
21 take any public testimony at our meetings
22 unless the Board asks someone to come forward.

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1 Please be advised that this
2 proceeding is being recorded by a court
3 reporter and is also webcast live.
4 Accordingly, we must ask you to refrain from
5 any disruptive noises or actions in the
6 hearing room. Please turn off all beepers and
7 cell phones.

8 Does the staff have any preliminary
9 matters?

10 MR. MOY: Yes, sir, but staff would
11 recommend that we take that on a case-by-case
12 basis.

13 CHAIRPERSON LOUD: Okay. Then
14 let's proceed with the agenda and I think what
15 we'd like to do, Mr. Moy, is call the cases
16 out of published order this morning by calling
17 Sherman Arms and the DRM cases first and then
18 calling District Properties and Merlino.

19 MR. MOY: Yes, sir. Good morning,
20 Mr. Chairman and Members of Board.

21 The first case is Application
22 Number 17914 of Sherman Arms, LLC on behalf of

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1 Vesta Chesapeake, LLC pursuant to 11 DCMR
2 3104.1 for a special exception to establish a
3 community service center in an existing
4 apartment building. This is Section 334 and
5 352 in the R-5-A District at premises 820
6 Southern Avenue, S.E. This property is in
7 Square 6210, Lot 834.

8 On April 28th, 2009, the Board
9 completed public testimony, closed the record
10 and scheduled its decision on May 19th, 2009.

11 The Board requested additional
12 information to supplement the record from the
13 Applicant and that filing, Mr. Chairman, was
14 submitted and it is identified and is in your
15 case folders. Let me see. Yes, that filing
16 is dated May 11th, 2009 and is identified in
17 your case folders as Exhibit 29.

18 That is the only filing in the
19 record, Mr. Chairman, and the Board is to act
20 on the merits of the request for a special
21 exception to establish a community service
22 center and that completes the staff's

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1 briefing.

2 CHAIRPERSON LOUD: Thank you, Mr.
3 Moy. I believe that we have a full record and
4 had a full hearing before us and the follow-up
5 submissions requested were submitted. So, I
6 believe we're ready to deliberate and make a
7 decision this morning and I believe Mr.
8 Dettman is going to start us off.

9 VICE CHAIRPERSON DETTMAN: Thank
10 you, Mr. Chairman.

11 I think we can go through this very
12 quickly. The Applicant as Mr. Moy stated
13 submitted Exhibit Number 29 to fulfill the
14 additional information that the Board had
15 requested at the close of the hearing and
16 mainly, there were two areas that the Board
17 needed additional information.

18 One had to do with the required
19 parking and based on the size of the proposed
20 center, there is a requirement for three
21 parking spaces and what the Board had asked
22 for was a site plan indicating the location of

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1 where those three parking spaces would be and
2 that they would be dedicated to the center.

3 Secondly, there was additional
4 information that the Board needed in order to
5 fulfill 334.5 which requires the center to be
6 not organized for profit and the Applicant has
7 submitted information with respect to that as
8 well.

9 So, this is a request for a special
10 exception to establish a community service
11 center under Section 352.1 in an existing
12 apartment building and so, in order to approve
13 that request, the Board needs to analyze the
14 case under 352 as well as the general special
15 exception criteria under 3104.1.

16 I won't go through them
17 individually, but I will just pull a couple of
18 points. 334.2 states that the community
19 service center shall be located so that it's
20 not likely to become objectionable to
21 neighboring properties. I'd say that given
22 the relatively small size of the proposed

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1 center, the types and intensities of
2 activities that will offered and that fact
3 that it's only going to be available to the
4 residents of the Village at Chesapeake
5 community, I don't really see a potential
6 there for creating any kind of objectionable
7 conditions to neighboring properties.

8 According to OP's report, the
9 anticipated hours of operation would be 10:00
10 to 7:00 Monday through Friday, 10:00 to 3:00
11 on Saturday. I suppose if the Board was
12 inclined to do so, they could look at that as
13 a potential condition. Although, I'm not sure
14 what that would be mitigating, but
15 nonetheless, we could look at that.

16 And finally, based on the size of
17 the proposed center, as I stated, there would
18 be a requirement for three parking spaces and
19 the Applicant in Exhibit 29 and attachment has
20 indicated that there will be three parking
21 spaces dedicated to the center and there's a
22 site plan that indicates where those would be

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1 located on the property.

2 And I'll skip over to 334.5 which
3 states that the community service center shall
4 not be organized for profit and no part of
5 it's net income shall inure to benefit any
6 private shareholder or individual.

7 Again, it's attached to Exhibit 29
8 as information. That states that the
9 Applicant is currently in negotiations with
10 two qualified nonprofit organizations being
11 the Anacostia Economic Development Corporation
12 as well as the Fair Southeast Family
13 Strengthening Collaborative and it appears
14 that one of those organizations will be hired
15 to operate the center and again, those are two
16 nonprofit organizations.

17 Finally, with respect to the
18 general special exception criteria, I think
19 I've stated that it appears as if this is a
20 very low intensity use. It's small. It's
21 only going to be available to the residents of
22 the community. So, I don't recall see a

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1 potential for any kind of adverse impact
2 neighboring property with respect to traffic,
3 noise, light, air, what have you.

4 The application has the support of
5 DCOP in Exhibit 25. The ANC is supportive of
6 the application. That's our Exhibit Number
7 27.

8 And with that, Mr. Chair, I can
9 turn it back to you and prepare to make a
10 motion.

11 CHAIRPERSON LOUD: Thank you, Mr.
12 Dettman. I don't -- that was an excellent
13 summary of I think where the evidence brought
14 us in both the pleadings and the hearing
15 testimony and I think one of the things that I
16 had asked about was the nonprofit status and
17 making sure that that was resolved and I do
18 see the names of these organization both of
19 which are recognized as someone who spends a
20 lot of time in communities, the AEDC and the
21 Far Southeast Family Strengthening
22 Collaborative.

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1 So, I think any question that I may
2 have had about that has certainly been
3 resolved by the post-hearing submission and as
4 you mentioned, the ANC which is 8D does have a
5 great weight report for our consideration that
6 is supportive of it.

7 So, I don't have anything further
8 to add unless Mr. Jeffries has something to
9 add I think we're ready to vote.

10 COMMISSIONER JEFFRIES: No,
11 actually, I'm fine and I think that Board
12 Member Dettman covered all the salient facts
13 and ready to proceed.

14 CHAIRPERSON LOUD: Is there a
15 motion, Mr. Dettman? And as you ponder that,
16 also the question of whether or not you wanted
17 to include that condition in there or not.

18 VICE CHAIRPERSON DETTMAN: Well, I
19 can address that now. As I said, I don't see
20 a need to condition it for the hours of
21 operation. I think this is a relatively small
22 use and I don't see any potential for adverse

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1 impact to the neighbors. So, I'm not sure
2 what the hours of operation would be
3 mitigating. So, I don't really see a need to
4 condition this order.

5 So, noting that the applicant has
6 met the criteria of 352, 334 and 3104, I'm
7 move for approval of Application Number 17914
8 of Sherman Arms, LLC on behalf of Vesta
9 Chesapeake, LLC pursuant to 11 DCMR 3104.1 for
10 a special exception to establish a community
11 service center under Section 352.1 in an
12 existing apartment building in the R-5-A
13 District located at 820 Southern Avenue, S.E.

14 CHAIRPERSON LOUD: Second. Motion
15 has been made by Mr. Dettman. Seconded by
16 myself. Is there any further discussion?

17 COMMISSIONER JEFFRIES: Yes, Mr.
18 Chair, I did not sit for the hearing of this
19 particular case, but I did read the file. So,
20 I am going to proceed in voting.

21 CHAIRPERSON LOUD: Thank you, Mr.
22 Jeffries, for that clarification.

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1 That being said now, motion has
2 been made, seconded. Any further
3 deliberation?

4 CHAIRPERSON LOUD: Hearing none,
5 all those in favor say aye.

6 (Ayes.)

7 CHAIRPERSON LOUD: All those
8 opposed? Any abstentions? Can you read back
9 the vote, Mr. Moy?

10 MR. MOY: Yes, sir, Mr. Chairman.
11 The staff would record the vote as 3 to 0 to
12 2. This is on the motion of the Vice Chair
13 Mr. Dettman, seconded by Mr. Loud the Chair
14 and also in support of the motion Mr.
15 Jeffries. We have two other Board Members not
16 participating. So, again, the final vote is 3
17 to 0 to 2.

18 This could qualify as a summary
19 order if the Board chooses to waive the
20 records for that -- requirements for that.

21 CHAIRPERSON LOUD: Yes, please.
22 We'd like to do that.

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1 Good luck with the project and can
2 we call our next case. We're going to go out
3 of order as I indicated. So, we'll call DRM
4 next.

5 MR. MOY: Yes, sir, that
6 Application Number is 17791 of DRM and
7 Associates, Incorporated pursuant to 11 DCMR
8 3103.2 and 3104.1. Well, let me first say,
9 Mr. Chairman, that this application has gone
10 through a number of changes and the staff's
11 going to read what is currently before the
12 Board.

13 Anyway, this is pursuant to 11 DCMR
14 3103.2 and 3104.1 for a special exception to
15 continue a child development center, 50
16 children infant to 12 years and nine staff
17 under Section 205 and a variance from the off-
18 street parking requirements under Section
19 2101.1 in the R-4 District at premises 728 F
20 Street, N.E. This is in Square 891, Lot 49.

21 If the Board will recall at it's
22 decision meeting on April 14th, 2009, the

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1 Board deliberated and rescheduled its decision
2 to May 15th or rather May 19th. The Board
3 requested that the Applicant file additional
4 information to supplement the record and the
5 filing deadline was established as May 15th,
6 2009 for both the Applicant and responses from
7 ANC-6-C and the opposition party Vincent
8 Morris and the Office of Planning.

9 There are three filings in your
10 case folders, Mr. Chairman.

11 The first filing is from the
12 Applicant dated May 5th, 2009 and that exhibit
13 is identified as Exhibit 48.

14 The Board is also in possession of
15 a filing from the -- a supplement report from
16 the Office of Planning dated May 12th, 2009
17 and that document is identified as Exhibit 49.

18 The third and last filing, Mr.
19 Chairman, which is the preliminary matter is
20 an additional filing from the Applicant which
21 was submitted yesterday, Monday, May 18th,
22 identified as Exhibit 50 and as you'll read in

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1 the document, the Applicant is requesting a
2 variance relief from the parking pursuant to
3 2101.1.

4 Finally, the Board is to act on the
5 merits of the application and that completes
6 the status briefing, Mr. Chairman.

7 CHAIRPERSON LOUD: Thank you, Mr.
8 Moy. I don't believe I have a copy of Exhibit
9 50 which came in, I guess, yesterday and okay.

10 But, I did see this. I guess it was faxed to
11 my office. So, I just don't have it with me
12 this morning.

13 Okay. Well, we are ready to
14 deliberate on this one as well this morning
15 and as I understand it -- sorry. As I
16 understand it, there's been some going back
17 and forth about the relief throughout the
18 proceedings. In particular as regards to off-
19 street parking and whether or not we would be
20 looking at a variance from the requirement or
21 a special exception to allow off-street
22 parking and I think we're going to be

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1 resolving that this morning, but I guess what
2 I should do at this point since Mr. Dettman's
3 going to walk us through this case as well is
4 turn it over to Mr. Dettman.

5 VICE CHAIRPERSON DETTMAN: Mr.
6 Chairman, I think at the last special public
7 meeting when we decided to put off our
8 decision until today, we spent a little time
9 talking about the variance versus special
10 exception question and I think the Board ended
11 up deciding that the best route to go was
12 going to be the variance which was the
13 original advertised language for this
14 application and mainly because the Applicant
15 did demonstrate that he was able to secure
16 off-site parking spaces which would go towards
17 the special exception.

18 However, given that in the past,
19 the two parking spaces that were assigned to
20 this location went away through the sale of a
21 piece of property and that the Board didn't
22 want to have that happen again in the future

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1 and so, we were given indication by OP that
2 they would be supportive of a variance for the
3 two spaces and in order to kind of clean up
4 the history of review on this project, we
5 thought that the variance was the best way to
6 go.

7 So, that being said, it would be a
8 variance from Section 2101.1 for parking and
9 again, the requirement based on the staffing
10 levels of this center would be two parking
11 spaces and then a special exception from
12 Section 205 for the continuation of the child
13 development center.

14 I can walk the Board through the
15 analysis if now's a good time.

16 CHAIRPERSON LOUD: Yes, why don't
17 you do that, Mr. Dettman.

18 VICE CHAIRPERSON DETTMAN: Okay.
19 Well, with respect to the special exception
20 under 205 and 3104, I think what we can do is
21 rely upon DCOP's report which is our Exhibit
22 27. It's their original report to the Board.

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1 Is that right? Exhibit 27?

2 We can rely upon DCOP's original
3 report to the Board that lays out the analysis
4 under Section 205 and again, they were
5 supportive of the application for the
6 continuation of a child development center.

7 We have a letter from the DC
8 Department of Health which is our Exhibit 24
9 which would satisfy the requirements under
10 205.9 and 205.10.

11 We're also told by OP that
12 according to the Department of Health there is
13 not another child development center within a
14 thousand feet of this particular location.
15 That's satisfies 205.8.

16 There is no off-site play area
17 being proposed.

18 Yes, Mr. Chairman, with respect to
19 the requirements under 205, I would say that
20 just we could rely upon OP's report and say
21 that the criteria for the special exception is
22 met.

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1 I can move on to the area variance
2 under 2101.1 for the two parking spaces.
3 Although we don't have a report from the
4 Office of Planning that addresses the three
5 prongs of the variance test, we do have
6 testimony from Mr. Rice from the Office of
7 Planning during the hearing saying that given
8 the improvements on this property that it's
9 nearing 100 percent lot occupancy and that the
10 property's not serviced by a rear alley. They
11 would be supportive of a variance mainly
12 because of those exceptional conditions that
13 relate to -- make it practically difficult for
14 the Applicant to provide two on-site parking
15 spaces and they also don't see the potential
16 for causing any kind of a detriment to the
17 public good as well as the zone plan.

18 There doesn't appear to be any
19 other opposition to this application. The ANC
20 is now supportive and I believe the only other
21 party that we had to this case, a Mr. Vincent
22 Morris, withdrew his opposition to the

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1 application as the proceedings kind of went
2 on.

3 So, it looks like the three-prong
4 variance test from the parking requirement is
5 met as well.

6 With that, Mr. Chairman, I can turn
7 it back to you or open it up to questions.

8 CHAIRPERSON LOUD: Thank you, Mr.
9 Dettman. Just to clarify a couple of things,
10 I think when we had the hearing last time one
11 of the things that we left the record open for
12 was for OP among others to weigh in on the
13 whole variance issue from the parking. So, to
14 me the fact that we -- I'm reading into their
15 silence on that issue as you do perhaps that
16 they didn't have any concerns about the
17 variance. Because we certainly were clear
18 that we were leaving the record open for that.

19 I think on Mr. Morris who was
20 granted party status, and I'm looking for our
21 Exhibit 41, he did change a lot from the
22 initial filing of the application to coming

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1 around to being supportive, but I do think he
2 had some questions about -- okay. I'm looking
3 at Exhibit 41 now and I think while he did not
4 formally withdraw, he did really spell out his
5 support for the project in a carte blanche
6 kind of fashion except that he was not
7 supportive of a term that extended beyond 10
8 years.

9 So, technically, I don't know if we
10 can say he withdrew, but I do think it's very,
11 very accurate to say that he's supportive of
12 the 205 relief and appears to be silent on the
13 variance relief.

14 When we left the record open last
15 time for OP, we specifically left the record
16 open for Mr. Morris as well I do believe to
17 weigh in on the whole variance question.

18 So, those were the only follow-up
19 comments I would make.

20 VICE CHAIRPERSON DETTMAN: I have
21 nothing further, Mr. Chairman. I agree with
22 you. I think that the ANC's silence on the

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1 variance question we can read into that that
2 they don't really see any problems with going
3 the variance route.

4 Our supplemental report from OP,
5 Exhibit 49, addressed this as a special
6 exception because at that time, the Applicant
7 had indicated that's what -- the route that he
8 wanted to go, but the Applicant did submit
9 Exhibit Number 50 saying that he wants to
10 pursue a variance now.

11 And as I mentioned, the testimony
12 of DCOP shows that they would be supportive of
13 a variance as well.

14 A motion?

15 CHAIRPERSON LOUD: With that, let
16 me just check in with Mr. Jeffries. See if
17 there's any further deliberation or feedback
18 and I believe we have --

19 MR. MOY: Actually, Mr. Chairman,
20 it's Mr. Hood who participated on that.

21 CHAIRPERSON LOUD: Mr. Hood. Okay.

22 All right.

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1 MR. MOY: And I do have it.

2 CHAIRPERSON LOUD: Very good.

3 Thank you.

4 MS. MONROE: Let me just mention
5 you should go through the conditions quickly.

6 CHAIRPERSON LOUD: With respect to
7 -- Ms. Monroe raises a good point. With
8 respect to some of the conditions that had
9 been set out I think in OP's report and with
10 part of the previous order, perhaps we can
11 just weigh in on those as well before we
12 proceed further.

13 VICE CHAIRPERSON DETTMAN: Mr.
14 Chairman, I'm looking at the previous Board
15 order which was from 1999 and that order
16 contained eight conditions and just looking
17 through those, I think that those would be
18 fine to carry over into the new order if the
19 Board is inclined to grant this application.

20 All of them except for number six
21 which states the Applicant shall provide two
22 leased parking spaces for staff use at 600 9th

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1 Street. I think that since we're granting a
2 variance, the Applicant doesn't need to
3 provide any. I think he's shown that he has
4 identified two spaces on H Street which
5 strengthen the third prong of our variance
6 test, but I don't see a need to have that as a
7 condition in the order.

8 So, I think other than condition
9 number six the other seven conditions would be
10 fine pulling them over.

11 MS. BAILEY: Mr. Dettman, condition
12 number 7, the Applicant shall provide a
13 solid/baffled, should that be maintained? The
14 Applicant shall maintain a solid or baffled
15 wood fence?

16 VICE CHAIRPERSON DETTMAN: Thank
17 you, Ms. Bailey. Looking at picture of kind
18 of the rear of the building, it looks like it
19 does have a play area in the backyard or maybe
20 on the roof of a one-story part of the
21 building towards the rear of the property.
22 So, I think that having the Applicant maintain

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1 some kind of screen around the deck play area
2 to minimize noise created by the outdoor play
3 area would be appropriate.

4 CHAIRPERSON LOUD: So, I mean as I
5 understand the motion has not been made, but
6 as we move toward it, it would be for granting
7 of the 205 relief granting of the variance as
8 conditioned by what is in the previous 1999
9 order except for condition number six
10 pertaining to the parking spaces. Okay.

11 MS. MONROE: You also need to
12 decide number 1, the term and that's a
13 condition, but it's also something that needs
14 to be separately --

15 VICE CHAIRPERSON DETTMAN: That's
16 right. Thank you, Ms. Monroe.

17 CHAIRPERSON LOUD: Thank you, Ms.
18 Monroe.

19 VICE CHAIRPERSON DETTMAN: I think
20 the Applicant is requesting that there will be
21 no term and the only other mention of a term
22 that we have is from OP in their Exhibit 49

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1 which is suggesting a five-year term, but
2 again, they were looking at it as a special
3 exception and they noted that because these
4 two spaces that the Applicant was proposing
5 were located in the H Street Overlay and that
6 there's a possibility given the efforts that
7 are ongoing to develop H Street that there's a
8 potential for this spaces to go away. They
9 just wanted to put some kind of term on it so
10 that the Board can look at this again to make
11 sure that the parking situation was working.

12 Since the Board has decided to go
13 the variance route, I think that given --

14 MS. MONROE: Let me just tell you.

15 The term would be on the CDC not the
16 variance. The term would go to the child
17 development center if you want one. You don't
18 have to have one at all, but I'm saying this
19 special exception for a child development
20 center, the term last time I think went to the
21 child development center which is why he's
22 here. Because it will be up in June of '09 or

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1 whatever.

2 VICE CHAIRPERSON DETTMAN: Okay.

3 MS. MONROE: So, that's all. You
4 can have no term, but it would go to that.

5 VICE CHAIRPERSON DETTMAN: Well,
6 thank you. Yes, I was mentioning DCOP's
7 recommendation for our term limit simply
8 because I think that they were going about it
9 from the parking standpoint, but since we are
10 looking at it as a variance, I don't really
11 see a need to have a term that goes to the
12 parking or anything like that and also, given
13 the history of operation of this project, I
14 think that the Applicant has demonstrated that
15 the child development center is run in a way
16 that does not have adverse impacts on the
17 neighborhood. It's been in existence for
18 quite a long time. He's been to the Board a
19 few times. One under a three year and the
20 other may under a ten year. I think that he's
21 demonstrated that this is okay for the
22 neighborhood and that we can move forward with

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1 no term.

2 CHAIRPERSON LOUD: Thank you, Mr.
3 Dettman. I'm supportive of that approach as
4 well. I think initially I was concerned about
5 the term, the ten-year term question both in
6 deference to Mr. Morris who wanted a ten-year
7 term, but then also looking at the Applicant's
8 age and him being up in years and just looking
9 forward and seeing where things might be ten
10 years from now. If he'd be still energetic
11 and fully capable of continuing to run the
12 facility, but I think I was persuaded by the
13 fact that he had brought in this new
14 management which was in place and was
15 receiving rave reviews from the community and
16 I think that management will be around
17 regardless of what happens over the next ten
18 years.

19 So, I fully support your approach
20 on that and I believe if you're ready to move
21 for relief, we can do that.

22 VICE CHAIRPERSON DETTMAN: Just one

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1 last point on the conditions and so, what the
2 Board is considering now is the elimination of
3 conditions number one and six from the
4 previous order and carrying over the remaining
5 six conditions.

6 Mr. Chairman, I would move for
7 approval of Application Number 17791 of DRM
8 and Associates, Inc. pursuant to 11 DCMR
9 3104.1 for a special exception to continue a
10 child development center within an enrollment
11 of 50 children ages infant through 12 years
12 old and a maximum of nine staff under Section
13 205 and a variance from the off-street parking
14 requirements under Section 2101.1 in the R-4
15 District located at 728 F Street, N.E. as
16 conditioned.

17 CHAIRPERSON LOUD: Motion seconded.

18 The motion's been made as conditioned and
19 seconded. All those in favor say aye?

20 (Ayes.)

21 CHAIRPERSON LOUD: All those
22 opposed? All those in abstention? Can you

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1 read back the vote and if there are any
2 absentee ballots?

3 MR. MOY: Yes, sir, Mr. Chairman.
4 Before I read the final vote, as you've
5 indicated, we do have an absentee vote from
6 another participant on the case which is Mr.
7 Hood -- Mr. Anthony Hood and his absentee vote
8 is to approve with such conditions as imposed
9 by the Board.

10 So, that would give a final
11 resulting vote of 3 to 0 to 2. This is on the
12 motion of the Vice Chair Mr. Dettman to
13 approve as conditioned. Seconded by the Chair
14 Mr. Loud and, of course, also in support of
15 the motion Mr. Hood. So, again, the final
16 vote is 3 to 0 to 2 to approve as conditioned.

17 CHAIRPERSON LOUD: Thank you, Mr.
18 Moy. I believe that because the party status
19 application remained we would not be able to
20 do a summary. Is that correct? Okay.

21 MR. MOY: That's correct, sir.

22 CHAIRPERSON LOUD: All right. Are

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1 we ready to call the next case?

2 MR. MOY: Yes, sir.

3 CHAIRPERSON LOUD: Okay. Thank
4 you. We want to say goodbye to Mr. Jeffries
5 and have a wonderful day and thank you for
6 coming in and we will be joined very shortly
7 by Mr. Turnbull.

8 MR. MOY: Yes, in the meantime, may
9 I just go ahead with the reading, Mr.
10 Chairman?

11 CHAIRPERSON LOUD: Okay.

12 MR. MOY: That would be Application
13 Number 17898 of District-Properties.com, LLC
14 pursuant to 11 DCMR 3103.2 for a variance from
15 the lot width and lot area requirements under
16 Section 401 and a variance from the side yard
17 requirements under Section 405 to construct a
18 new one-family detached dwelling in the R-2
19 District at premises 311 58th Street, N.E.,
20 Square 5264, Lot 15.

21 On April 7th, 2009, the Board
22 completed testimony, closed the record and

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1 scheduled its decision on May 19th, 2009. The
2 Board allowed the opportunity for the ANC-7-C
3 to file a supplemental report because this
4 would allow additional time for the Applicant
5 to meet with the community at the next
6 scheduled ANC meeting.

7 A filing was made and that post-
8 hearing document is in your case folders
9 identified as Exhibit 30. This is from the
10 Chairperson of ANC-7-C dated May 12th, 2009.
11 There are no other filings in the record, Mr.
12 Chairman. The Board is to act on the merits
13 of the variance relief from lot width/lot area
14 pursuant to 401 and the side-yard requirements
15 to pursuant to 405.

16 And that completes the staff's
17 briefing.

18 CHAIRPERSON LOUD: Thank you, Mr.
19 Moy. Another great job briefing and we've
20 been joined by Mr. Turnbull this morning.

21 So, good morning Mr. Turnbull from
22 the Zoning Commission.

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1 COMMISSIONER TURNBULL: Good
2 morning, Mr. Chair.

3 CHAIRPERSON LOUD: Good morning. I
4 think we are ready to deliberate on this case
5 this morning and make a decision on it and
6 I'll start us off with respect to our
7 deliberations.

8 I'm going to go through the case
9 quickly, but I will go over all of the relief
10 partially because I think were I'm coming at
11 would be a position different than where the
12 ANC is. So, for the benefit of their
13 understanding where I'm going to end up, I'm
14 going to go through it in some detail.

15 This is a -- in this case, the
16 Applicant seeks three variances from us to
17 construct a three bedroom, three and a half
18 bath single family dwelling in the R-2. It's
19 a pre-58 vacant lot that does not meet the lot
20 width area or side-yard requirements and those
21 are the three areas of relief that he seeks.

22 The Applicant represented to us

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1 that he attempted to -- through a certified
2 letter that's part of our record, he attempted
3 to create a larger lot with the south property
4 on it which is vacant, but did not receive a
5 reply. The north adjacent property owner
6 already has a five-foot side yard per evidence
7 submitted through OP. Thus, there would still
8 be an eight -- there would be eight-feet
9 between the Applicant's dwelling and the north
10 neighbor. As I said, there's no south
11 neighbor.

12 The ANC met with the Applicant
13 twice, but the ANC ultimately as you
14 indicated, Mr. Moy, voted not to approve the
15 application. The ANC after the first meeting
16 requested a continuance on the hope that the
17 Applicant would meet with the single member
18 district representative which the Applicant
19 subsequently did on April 6 and then following
20 that meeting, the full ANC voted not to
21 approve the application. That's our Exhibit
22 30.

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1 The ANC cited four main concerns in
2 opposing. One was that the developer
3 indicated that the space needed was a few feet
4 and the actual minimum amount needed to build
5 the home was too large for residents to
6 accept.

7 Secondly, that the developer did
8 not contact the owner of the adjacent lot
9 regarding the use of the lot and hoped to
10 circumvent residents to obtain the permit.
11 However, as I said, we've got the certified
12 letter in our record as well as the OZ letters
13 which are at our Exhibit 7 which would suggest
14 that the Applicant did or certainly the Office
15 of Zoning contacted the neighbors surrounding
16 and then we have the two ANC meetings which
17 also allowed neighbors to learn about the
18 project and weigh in on it.

19 Thirdly, the ANC's concerned that
20 the design does not fit the current homes on
21 58th Street and that is the neighbor's
22 perspective on it and I certainly understand

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1 it. The Office of Planning testified that the
2 building type was consistent with the zone
3 overall and the surrounding neighborhood, but
4 nonetheless, that was the ANC's -- one of the
5 four concerns by the ANC.

6 And I think the fourth concern was
7 that the developer did not request the opinion
8 and input of residents on the design which is
9 sort of a merge of their concern number three.

10 With respect to what the Applicant
11 needed to show in order to get relief, this is
12 a variance case and so for the lot width and
13 lot area, the Applicant needed to show that
14 the property was somehow unique or
15 exceptional. In that regard, it's a
16 substandard lot created in 1900. It has a
17 narrow width of 25 feet and it's a
18 nonconforming area as well at 3500 square feet
19 and the owner cannot make the lot conform.

20 With respect to practical
21 difficulty or undue hardship, the evidence
22 shows that the property is not developable

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1 without BZA relief. The owner tried, but was
2 not able to buy the property next door. So,
3 that a conforming property could be developed
4 on the site.

5 With respect to whether there's
6 substantial detriment to the public good, we
7 again note that the Office of Planning
8 supports it, finds it to be consistent with
9 the zone plan and the regs. That this type of
10 project is permitted in the R-2 zone. The
11 building type is consistent with the zone.

12 However, as I indicated, the ANC
13 opposed the application for its set of
14 reasons.

15 With respect to the variance for
16 the side yard and uniqueness, the same
17 uniqueness as relates to the lot width and lot
18 area. In terms of practical difficulty,
19 strict application of the regs would result in
20 nine foot -- a nine-foot wide dwelling which
21 would not be marketable. We've had then some
22 other cases before us as well.

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1 With respect to whether there's
2 substantial detriment to the public good as I
3 indicated earlier, there's an eight-foot side
4 yard to the north because the neighbor already
5 has a five-foot side yard and the south lot is
6 vacant.

7 So, I think that the Applicant made
8 a case for a variance under all three areas of
9 relief and I think that the Applicant's case
10 was supported by the testimony of the Office
11 of Planning. Mr. Goldstein came before us and
12 testified.

13 And with that, I would open it up
14 to Board Members for your weighing in.

15 VICE CHAIRPERSON DETTMAN: Mr.
16 Chair, I concur with your analysis. I think
17 that the Applicant has met their burden and
18 meets the criteria under the variance test.

19 COMMISSIONER TURNBULL: Mr. Chair,
20 I'm in favor of it.

21 CHAIRPERSON LOUD: Then with that
22 said, what I'd like to do is make a motion.

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1 Let me just get the correct information in
2 front or me for the motion. Yes. All right.

3 Thank you, Mr. Dettman.

4 What I'd like to do now is move
5 approval of Application Number 17898 of
6 District-Properties.com, LLC pursuant to 11
7 DCMR Section 3103.2 for three variances. One
8 from the lot width, one from the lot area
9 requirements under Section 401 and then a
10 variance from the side-yard requirements under
11 Section 405.

12 VICE CHAIRPERSON DETTMAN: Second.

13 CHAIRPERSON LOUD: Thank you, Mr.
14 Dettman. The motion's been made and seconded.

15 Is there any further deliberation?

16 Hearing none, all those in favor of
17 the motion please say aye.

18 (Ayes.)

19 CHAIRPERSON LOUD: All those who
20 oppose please indicate. Any abstentions?

21 Mr. Moy, can you read back our
22 record.

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1 MR. MOY: Yes, sir, Mr. Chairman,
2 staff would record the vote as 3 to 0 to 2.
3 This is the motion of the Vice Chair -- motion
4 of the Chair Mr. Loud to approve the
5 application approving three variance requests.

6 Seconded by Mr. Dettman. Also in support of
7 the motion, Mr. Turnbull. Again, the final
8 vote is 3 to 0 to 2. No other two Board
9 Members participating.

10 CHAIRPERSON LOUD: Thank you, Mr.
11 Moy.

12 I believe since the ANC was in
13 opposition, no summary order in this case.

14 MR. MOY: That's correct.

15 CHAIRPERSON LOUD: And I think
16 we're ready to move on to the next case for
17 the special public meeting.

18 MR. MOY: That would be Application
19 Number 17908 of Mark Merlino pursuant to 11
20 DCMR 3103.2 for a variance from the alley
21 width requirements under Subsections 2507.2
22 and 2507.3 to allow a one-family dwelling in

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1 the R-4 District at premises the rear of 645
2 Maryland Avenue, N.E. also known as 318 7th
3 Street, N.E. The subject property is in
4 square 864, lots 816 and 818.

5 If the Board will recall on April
6 21st, 2009, the Board completed public
7 testimony, closed the record and scheduled its
8 decision on May 19th of this year. The Board
9 requested additional information to supplement
10 the record from the Applicant and from the DC
11 Emergency Medical Services.

12 The filing from DCEMS had a
13 deadline of May 7th. There's no filing from
14 that organization.

15 We do have a filing in the record
16 in the case folders, Mr. Chairman, from the
17 Applicant dated May 5th and that post-hearing
18 document is identified as Exhibit 32.

19 Staff will just conclude by saying
20 that the Board is to act on the merits of the
21 request for the use variance relief pursuant
22 to Section 2507.

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1 And that concludes the staff's
2 briefing, Mr. Chairman.

3 CHAIRPERSON LOUD: Thank you, Mr.
4 Moy.

5 I believe I'll start us off. We're
6 ready to make a decision on this case as well
7 this morning having reviewed the record and
8 the hearing testimony as well and other
9 considerations that I'll talk about.

10 Interesting case. A lot of factual
11 information came in. The Applicant was not
12 represented by counsel I believe nor an
13 architect and so, it was an interesting
14 challenge for the Board to sort of get our
15 arms around exactly what was being proposed,
16 exactly what supported it, exactly what the
17 zoning history had been and so on and so
18 forth, but I do believe we finally have done
19 that. It's always easy, I think, when the
20 Applicant has some background or some training
21 that prepares him for what can be sometimes an
22 intimidating process.

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1 But, nonetheless, I think where I
2 am this morning after having reviewed again
3 the entire set of facts and the zoning history
4 which was very convoluted in a sense in terms
5 of its presentation. There were exhibits that
6 were presented at the hearing that weren't
7 part of the record that didn't have exhibit
8 numbers for example. Some of them proved
9 very, very decisive, but we didn't have the
10 benefit of them until nearly the end of the
11 process and so rather than repeat all of the
12 facts again, I think I'll just go straight to
13 what I think is the key consideration and this
14 is after reviewing the record and conferring
15 with the Office of Attorney General which we
16 are both privileged and authorized to do
17 through out regulations.

18 There is in the record a building
19 permit that is Building Permit Number B0801358
20 and it is dated November 5th, 2008 and it is
21 the result of a building permit application
22 which is dated July 30th, 2008.

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1 Now, the building permit
2 application has a field for proposed use of
3 building or property and in that field is the
4 entry art studio/housing for this particular
5 property in the alley.

6 In addition to that, the building
7 permit that was issued on November 5th, 2008
8 authorizes, and this is in an entry on the
9 building permit, alteration, repair, use
10 change from auto repair shop to artist studio,
11 single family house, interior only and again,
12 this is now part of our record. I don't
13 believe -- correct me if I'm wrong. I don't
14 believe that these submissions were made prior
15 to the hearing. They were made at the hearing
16 and so, we've got the benefit of a full, full
17 record on this.

18 Our regulations at 3202.4 and
19 3203.11 along with the general occupancy
20 rights vesting provision which is found at
21 3203.81 and as is consistent with the position
22 we took in the Morris case concludes that once

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1 a building permit is issued, and in this
2 particular case Building Permit Number
3 B0801358 authorizing the single family house
4 for this particularly property, once that was
5 issued that the rights of the Applicant vested
6 and that the Applicant was thereafter both
7 privileged and authorized to bring that
8 project to completion based on the issuance of
9 the permit alone and again, that's something
10 that's consistent with the position this Board
11 took in Morris, but also found in our
12 regulations as I just mentioned.

13 And so, it's the position -- it's
14 my position after conferring with OAG that
15 based on the record before us that this
16 Applicant does not need any type of relief
17 from BZA because he already has a building
18 permit approved by DCRA that has gone through
19 their process that has authorized the
20 construction of this alley dwelling and its
21 occupancy.

22 And so, with that and I hope I'm

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1 articulating it in accordance with previous
2 position we've taken in the regulations and
3 certainly, Ms. Monroe, if I've left something
4 out, please feel free to weigh in, I'm going
5 to open it up to Board Members for your
6 thoughts on it.

7 Okay. There appearing to be none,
8 I think what I'll do now is move to dismiss
9 the case, but I do want to note that the
10 zoning history in this case was very
11 interesting in terms of the Applicant
12 presenting his plans and his application to
13 DCRA and getting the relief that he had
14 requested by way of the single family dwelling
15 in the alley.

16 Were we to review it in that
17 manner, we would have reviewed it as a use
18 variance and were we to bring our analysis
19 through the four steps and to conclusion, at
20 least for me, it was looking like the
21 Applicant had a fairly strong case for use
22 variance relief.

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1 Now, that's all sort of gratis
2 conversation because that's not before us, but
3 I think as the case sort of winds its way
4 through the system now back to DCRA if, in
5 fact, it'll end up there, I think it's
6 important that the comments that I just made
7 be reflected upon.

8 If there's nothing further, then
9 I'd like to move that we dismiss. Thank you,
10 Mr. Dettman. That we dismiss Application
11 Number 17908 of Mark Merlino pursuant to 11
12 DCMR 3103.2 for a variance from the alley
13 width requirements under Subsections 2507.2,
14 2507.3.

15 COMMISSIONER TURNBULL: Second.

16 CHAIRPERSON LOUD: Thank you, Mr.
17 Turnbull.

18 The motion's been made. It's been
19 seconded. Is there any further deliberation?

20 Hearing none, all those in favor of
21 the motion please say aye.

22 (Ayes.)

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1 CHAIRPERSON LOUD: All those
2 opposed. Are there any abstentions?

3 Mr. Moy, can you please read back
4 the record.

5 MR. MOY: Yes, Mr. Chairman, staff
6 would record the vote as 3 to 0 to 2. This is
7 on the motion of the Chairman Mr. Loud to
8 dismiss the application. Seconded by Mr.
9 Turnbull. Also in support of the motion, Mr.
10 Dettman. There are no other two Board Members
11 participating. Again, the final vote is 3 to
12 0 to 2 to dismiss.

13 CHAIRPERSON LOUD: Thank you, Mr.
14 Moy and I want to thank my colleagues as we
15 discuss the case and review the pleadings in
16 helping us to reach that decision.

17 I also want to thank the Office of
18 Attorney General for providing some excellent
19 insight on the law and the various provisions
20 that would apply to the case.

21 I believe we are now ready to go
22 into the Public Hearing.

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1 MR. MOY: Yes, sir.

2 CHAIRPERSON LOUD: Okay. And in
3 terms of doing that because I forget from week
4 to week, so, do I need to officially adjourn
5 this session and then -- okay.

6 MR. MOY: That's correct.

7 CHAIRPERSON LOUD: This Special
8 Public Meeting shall be adjourned.

9 (Whereupon, the meeting was
10 concluded at 10:34 a.m.)

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