

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA  
+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

DECEMBER 9, 2008

+ + + + +

The Regular 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., Ruthanne G. Miller,  
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

|                    |                     |
|--------------------|---------------------|
| RUTHANNE G. MILLER | Chairperson         |
| MARC D. LOUD       | Vice-Chairperson    |
| MARY OATES WALKER  | Board Member        |
| SHANE DETTMAN      | Board Member (NCPC) |

ZONING COMMISSION MEMBER[S] PRESENT:

|                        |               |
|------------------------|---------------|
| GREGORY JEFFRIES       | Vice Chairman |
| MICHAEL TURNBULL, FAIA | Commissioner  |
|                        | (OAC)         |

OFFICE OF ZONING STAFF PRESENT:

|                 |                       |
|-----------------|-----------------------|
| CLIFFORD MOY    | Secretary             |
| BEVERLEY BAILEY | Sr. Zoning Specialist |

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

DAN EMERINE  
MICHAEL GUILIONI  
ARTHUR JACKSON  
MATT JESICK  
KAREN THOMAS

The transcript constitutes the  
minutes from the Public Hearing held on  
December 9, 2008.

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

2 10:26 a.m.

3 CHAIRPERSON MILLER: And I'm going  
4 to call for the Hearing for December 9, 2008.

1 This is the December 9, 2008  
2 Public Hearing of the Board of Zoning  
3 Adjustment of the District of Columbia.

4 I don't know if anyone else has  
5 come in since I started the Public Meeting.  
6 But I'll go through the intro real quickly.

7 My name is Ruthanne Miller. I'm  
8 the Chair of the BZA.

9 To my right is Mr. Marc Loud, he's  
10 our Vice Chair. And next to Mr. Loud is Mr.  
11 Michael Turnbull from the Zoning Commission  
12 sitting with us today. To my left is Mary  
13 Oates Walker and Shane Dettman, Board members,  
14 Mr. Cliff Moy from the Office of Zoning, Mary  
15 Nagelhout from the Office of Attorney General  
16 and Ms. Beverley Bailey from the Office of  
17 Zoning.

18 Copies of today's hearing agenda

1 are available to you and are located to my  
2 left in the wall bin near the door.

3 Please, be advised that this  
4 proceeding is being recorded by a Court  
5 Reporter and is also webcast live.  
6 Accordingly, we must ask you to refrain from  
7 any disruptive noises or actions in the  
8 hearing room.

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

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

1 right.

2 The order of procedure for special  
3 exceptions and variances is as follows:

4 One, statement and witnesses of  
5 the applicant.

6 Two, Government reports, including  
7 Office of Planning, Department of Public  
8 Works, DDOT, et cetera.

9 Three, report of the Advisory  
10 Neighborhood Commission.

11 Four, parties or persons in  
12 support.

13 Five, parties or persons in  
14 opposition.

15 Six, closing remarks by the  
16 applicant.

17 Pursuant to Section 3117.4 and  
18 3117.5 of the Zoning Regulations the following  
19 time constraints will be maintained:

20 The applicant, persons and  
21 parties, except an ANC, in support, including  
22 witnesses, 60 minutes collectively.

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1                   Persons and parties, except an ANC  
2                   in opposition, including witnesses, 60 minutes  
3                   collectively.

4                   Individuals 3 minutes.

5                   These time restraints do not  
6                   include cross examination and/or questions  
7                   from the Board.

8                   Cross examination of witnesses is  
9                   permitted by the applicant or parties. The  
10                  ANC within which the property is located is  
11                  automatically a party in a special exception  
12                  or variance case.

13                  Nothing prohibits the Board from  
14                  placing reasonable restrictions on cross  
15                  examination, including time limits and  
16                  limitations on the scope of cross examination.

17                  The record will be closed at the  
18                  conclusion of each case, except for any  
19                  material specifically requested by the Board.  
20                  The Board and the staff will specify at the  
21                  end of the hearing exactly what is expected  
22                  and the date when the persons must submit the

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1 evidence to the Office of Zoning. After the  
2 record is closed, no other information will be  
3 accepted by the Board.

4 The Sunshine Act requires that the  
5 Public Hearing on each case be held in the  
6 open before the public. The Board may,  
7 consistent with its Rules of Procedure and the  
8 Sunshine Act, enter Executive Session during  
9 or after the Public Hearing on a case for  
10 purposes of reviewing the record or  
11 deliberating on a case.

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

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

21 The Board will now consider any  
22 preliminary matters. Preliminary matters are

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

9 Does the staff have any  
10 preliminary matters?

11 MS. BAILEY: Madam Chair, members  
12 of the Board and to everyone, good morning.

13 This is. I'm not sure if the  
14 Board wants to take up that up now or when the  
15 case is called. But one of the bases was not  
16 posted for the requisite 15 days. And that is  
17 a matter that the Board may want to let me  
18 know whether or they want to take that up now  
19 or when the case is called.

20 CHAIRPERSON MILLER: The Board  
21 wants to take that up later within the case.

22 MS. BAILEY: Thank you.

1 CHAIRPERSON MILLER: Okay. All  
2 right.

3 Would all individuals who wish to  
4 testify today please raise to take the oath,  
5 and Ms. Bailey will administer it.

6 (Whereupon, Witnesses sworn.)

7 MS. BAILEY: The first case this  
8 morning is Application No. 17853 is the  
9 application of Carol McCabe Booker, pursuant  
10 to 11 DCMR § 3103.2, for a variance from the  
11 nonconforming structure provisions under  
12 subsection 2001.3 not meeting the lot  
13 occupancy requirements under section 403 to  
14 allow a second level addition to an existing  
15 one-family dwelling. The property is located  
16 at CAP/R-4 District at 155 North Carolina  
17 Avenue, Southeast, Square 735, Lot 57.

18 Ms. McCabe, would you please have  
19 a seat at the table.

20 CHAIRPERSON MILLER: And is anyone  
21 here from the ANC in this case? Okay.

22 Good morning. You need to turn

1 your mics to get on the record.

2 MS. BOOKER: I'm Carol Booker,  
3 current owner with my husband Simeon Booker of  
4 the subject property.

5 May I introduce my witness?

6 CHAIRPERSON MILLER: Sure.

7 MS. BOOKER: This is Joel Truitt.

8 MR. TRUITT: Good morning.

9 CHAIRPERSON MILLER: Good morning.

10 MS. BOOKER: Who has done the  
11 design for the small addition on the second  
12 floor.

13 CHAIRPERSON MILLER: Okay. And  
14 let me just say that I think that your record  
15 is quite full, and it seems to be a very  
16 straight forward case where you're not  
17 increasing the footprint of the property. And  
18 there seem to be no adverse impacts of the  
19 neighboring properties. And you have the  
20 support of the ANC.

21 MS. BOOKER: Yes.

22 CHAIRPERSON MILLER: And the

1 Capitol Hill Restoration Society. I don't see  
2 Mr. Peterson here from the Capitol Hill  
3 Restoration Society.

4 What I mean to say is you don't  
5 need to make a whole full case necessarily  
6 because I think you have made a full case, but  
7 you're welcome to add anything.

8 I was particularly curious,  
9 though, I think Mr. Peterson described this as  
10 the most unusual property ever -- let's see.  
11 Every encountered in a zoning case. Do you  
12 have a copy of his letter, by the way?

13 MS. BOOKER: Yes, we do.

14 CHAIRPERSON MILLER: Okay.

15 MR. TRUITT: Yes.

16 CHAIRPERSON MILLER: And he's not  
17 here to ask him what he meant by that. But--

18 MS. BOOKER: I know what he meant.

19 CHAIRPERSON MILLER: But that's  
20 the first prong of the variance test if, you  
21 know, uniqueness. So, yes, I would love you  
22 to address that if you'd like to.

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1 MS. BOOKER: Well, there are two  
2 corners of the house as shown on the plate  
3 map. It's an irregularly shaped house in a  
4 very irregularly shaped lot. The other lots  
5 in that square are long rectangles. Our house  
6 was the last one built on the corner of North  
7 Carolina and 2nd Street. And it looks like the  
8 builder who did four or five in that row ran  
9 out of land. And our house is on a truncated  
10 triangular lot. And as a result two corners  
11 of the house jet out onto public property. And  
12 you wouldn't know it from the street. The house  
13 looks like it has an appropriate setback,  
14 looks perfectly normal. But when you look at  
15 the plat map, which is part of the record,  
16 you'll see that two corners -- so the  
17 Restoration Society as well as the ANC after  
18 long winter evenings of dealing with complex  
19 problems when they came to my property they  
20 were bemused at how that had happened back in  
21 1911. And they told me that the city could  
22 come and take the furniture out of the corner

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1 out of the corner of the house if I wasn't  
2 careful.

3 CHAIRPERSON MILLER: While you're  
4 into that, I'll let you then maybe say what  
5 practical difficulty that has led for your  
6 complying with the regulations.

7 MR. TRUITT: Yes.

8 MS. BOOKER: The unusual shape of  
9 the lot and the fact that the house exceeds  
10 the later imposed zoning requirement of 60  
11 percent means that we can't add on. And we're  
12 not proposing to. We're proposing to fill in  
13 some air space above an existing porch so that  
14 we can meet the hardship of the laundry.

15 At my age and my husband, who has  
16 just retired last year who is 90 years old,  
17 we'd like to stay in the house until we die.  
18 And currently the only place you can put a  
19 washer and dryer is in the basement, where it  
20 is. The stairway, which Mr. Emerine from the  
21 Office of Planning photographed and that's  
22 part of his submission, is winding to the

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1 point where it makes a hairpin turn. This is  
2 dangerous and it's more difficult, let's say,  
3 under the most easiest circumstances. But  
4 carrying the laundry down is impossible.

5 Currently I put the laundry in a  
6 pillow case or a laundry bag and I kick it  
7 downstairs in front of me. To carry it up, I  
8 have to make several trips. It's difficult.  
9 And all the laundry is created up on the third  
10 floor where you have all your linens and all  
11 your clothing, except for a dish towels in the  
12 kitchen. So I'd like to do the laundry where  
13 we make the dirty clothes and the sheets and  
14 towels.

15 And there's a place right above  
16 the kitchen where we could run the plumbing  
17 straight up if we just build out that tiny  
18 bedroom there, which we can't do it now it  
19 would just destroy the bedroom. Turn our  
20 bedroom into the laundromat, and you don't  
21 want to do that. So that's the hardship of  
22 it.

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1 CHAIRPERSON MILLER: Okay. Okay.

2 I got it.

3 Any other questions by Board  
4 members? All right.

5 You know, you're welcome to say  
6 more but I think that you did an excellent  
7 presentation in writing. And Office of  
8 Planning has also addressed all the test. So  
9 we can move on to the Office of Planning's  
10 report, unless there's something more you want  
11 to add at this point. You will have a chance  
12 later on to add.

13 MS. BOOKER: Thank you, Madam  
14 Chair.

15 CHAIRPERSON MILLER: Okay. Good  
16 morning.

17 MR. EMERINE: Good morning, Madam  
18 Chair and members of the Board. My name is  
19 Dan Emerine and I'm a Development Review  
20 Specialist with the Office of Planning.

21 As you see in the report before  
22 you, the Office of Planning recommends

1 approval of the requested variance relief in  
2 this case from section 2001.3.

3 I'm prepared to stand on the  
4 record, but I'm also here to answer any  
5 questions that you might have about this case.

6 CHAIRPERSON MILLER: Okay. It was  
7 a very excellent report. Thank you.

8 I do have a question. Just with  
9 respect to the photograph on page 6, Exhibit  
10 3, which may be showing why this building is  
11 so unusual.

12 MR. EMERINE: Yes.

13 CHAIRPERSON MILLER: With the two  
14 corners as was described, I just am wondering  
15 would you know how that happened? I mean,  
16 would that have happened in a -- is that a  
17 legal way back then? It's very odd, right?

18 MR. EMERINE: It is odd, and it's  
19 not clear to me how that occurred.

20 CHAIRPERSON MILLER: Okay. But  
21 basically when this applicant had the  
22 property, they inherited the property as it

1 was, you know?

2 MR. EMERINE: Yes.

3 CHAIRPERSON MILLER: Okay. Other  
4 questions? Okay.

5 Is there anybody here wishing to  
6 testify in support or in opposition to this  
7 application? Okay. I'm not hearing from  
8 anyone.

9 I previously asked if the ANC was  
10 here in this case, and no one came forward.

11 So that brings us back to you. At  
12 this point if there are no final Board  
13 questions, if you have any closing remarks  
14 you'd like to say.

15 MS. BOOKER: Nothing other than  
16 that I'm very pleased that both the ANC and  
17 the Capitol Hill Restoration Society have  
18 supported our application, and our sole  
19 neighbors at 153 North Carolina have written  
20 a very descriptive letter of their  
21 relationship to the property.

22 And perhaps Mr. Truitt?

1                   MR. TRUITT: I can just add that  
2 we worked very hard with the Historic  
3 Preservation office to develop the plans. So  
4 it's in keeping with the neighborhood and  
5 compatible with the house and all their  
6 wishes.                   So it's also similar in  
7 nature to one a block away, also facing the  
8 park on D Street that enclosed the rear of  
9 their house. And we picked up the same  
10 detailing, and so we were in Folger Park or  
11 Providence Park you will look at these two  
12 houses and it'll actually you very, very nice  
13 pictures of the neighborhood rather than just  
14 a back of a house which it looks like right  
15 now.

16                   So we feel that this construction  
17 in addition all actually compliment the  
18 neighborhood and make the view of the  
19 townhouses more attractive from the public  
20 view standpoint.

21                   WOMAN: Mr. Truitt, do you have  
22 plans to seek approval from DDOT for the

1 extension of the deck which according to the  
2 surveyor's plat will actually be on public  
3 space as well?

4 MR. TRUITT: I thought that was  
5 Ms. Xoan who reviewed this in the Office of  
6 Zoning, because it's not high enough she said  
7 it didn't qualify as an issue. Yes.

8 CHAIRPERSON MILLER: Well, I think  
9 what she meant is it's not an issue for  
10 zoning, it's not an issue for this Board under  
11 the Zoning Regulations. I think Ms. Walker  
12 was just asking out of interest whether it  
13 might be an encroachment on public space, in  
14 which case you would go to Public Space. It  
15 wouldn't be before us. And did you have any  
16 plans or were you aware of that?

17 MR. TRUITT: Because of the lot  
18 angle, yes. If it's necessary, we could go to  
19 Public Space, you know, sure.

20 WOMAN: Yes, that's what I mean.  
21 And perhaps Mr. Emerine has a rule on whether-

22 MR. EMERINE: I would encourage the

1 applicant to at least pose the question to  
2 Public Space whether in fact this is something  
3 that would need permission.

4 MR. TRUITT: We will. Okay. In  
5 the permit application process. Okay.

6 CHAIRPERSON MILLER: Okay. And  
7 that's not within our jurisdiction so that's  
8 not something that we'll be dealing with.  
9 Okay.

10 Any other remarks or is --

11 COMMISSIONER TURNBULL: Madam  
12 Chair, I wonder if I could ask one question?

13 CHAIRPERSON MILLER: Yes.

14 COMMISSIONER TURNBULL: In their  
15 plans of the additions, we don't have any  
16 elevations of it. I'm just curious. I mean,  
17 although you've been to Capitol Hill  
18 Restoration Society what is the addition being  
19 faced with? Is it siding?

20 MR. TRUITT: It's windows and --

21 MS. BOOKER: It's just like the  
22 one at 2nd and D. It's very nice, almost a

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1 panel effect.

2 MR. TRUITT: It's pilasters with  
3 stucco paneling between the floors. There's  
4 very little left. Windows and transoms over  
5 them and pilasters between the windows and on  
6 the corners. And in between the second floor  
7 and first floor windows I think there's a  
8 stucco panel. And below the first floor  
9 windows stucco panel.

10 COMMISSIONER TURNBULL: Okay.  
11 Could you just submit a drawing for the  
12 record.

13 MR. TRUITT: We had it. We had it  
14 in there.

15 COMMISSIONER TURNBULL: I don't  
16 think we have any elevations. We have floor  
17 plans of -- I don't think we have any  
18 elevations. At least I don't have any  
19 elevations.

20 MS. BOOKER: We had originally  
21 proposed it very plain and brick. But the  
22 Historical Restoration asked it to be a

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1 distinct facade.

2 COMMISSIONER TURNBULL: I don't  
3 believe we have these drawings.

4 CHAIRPERSON MILLER: Do you want  
5 to double check with Ms. Bailey see if they're  
6 in the -- we can pass them down.

7 MR. TRUITT: Oh, I correct myself.  
8 I'm sorry. That was the original proposal and  
9 Historic Preservation wanted a wood panel with  
10 molding below the windows. So, I'm sorry. In  
11 the revision there is wood paneling below the  
12 windows. And that's compatible with the other  
13 addition a block away.

14 COMMISSIONER TURNBULL: So you've  
15 got a change from this then?

16 MR. TRUITT: I'm sorry. It's --

17 MS. BOOKER: Oh, we submitted the  
18 final one. Yes. What I submitted was 20  
19 copies as approved by Historic Preservation  
20 with their stamp.

21 CHAIRPERSON MILLER: Do you know  
22 the exhibit number?

1 MS. BOOKER: Do I know the --

2 CHAIRPERSON MILLER: Do you have  
3 an exhibit number on yours?

4 MS. BAILEY: That's not in.

5 CHAIRPERSON MILLER: That's not  
6 in? She said she submitted 20 copies.

7 MS. BOOKER: No. I'm sure you  
8 have with the color pictures, you have the  
9 design which is what Mr. Truitt is showing  
10 you.

11 COMMISSIONER TURNBULL: Yes, I  
12 don't think I'm going to have any issues, but  
13 I just thought for the record we ought to have  
14 those drawings.

15 MS. BOOKER: Okay.

16 CHAIRPERSON MILLER: Okay. From  
17 what I hear is that Ms. Booker said they did  
18 submit it but for some reason it didn't make  
19 it to our files. So Ms. Bailey is going to  
20 make a copy for the file. Okay.

21 Anything else? Okay.

22 MS. BOOKER: No. And we would

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1 appreciate it if the Board supports this, we  
2 would delighted if you could what I understand  
3 is a bench decision. Because we've been  
4 trying to get this through for almost three  
5 years and we're getting older by the minute.

6 CHAIRPERSON MILLER: Oh, you don't  
7 look it, though.

8 MS. BOOKER: Thank you.

9 CHAIRPERSON MILLER: Okay. If  
10 there are no further questions, I think the  
11 Board is ready to proceed with a bench  
12 decision as the record is full. And as I said  
13 before, the case is very straight forward. So  
14 I am going to move approval of Application No.  
15 17853 of Carol McCabe Booker, pursuant to 11  
16 DCMR § 3103.2, for a variance from the  
17 nonconforming structure provisions under  
18 subsection 2001.3 not meeting the lot  
19 occupancy requirements under section 403 and  
20 also not meeting the court requirements under  
21 section 406 to allow a second to allow a  
22 second level addition to an existing one-

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1 family dwelling at premises 155 North Carolina  
2 Avenue, Southeast.

3 VICE CHAIRPERSON LOUD: Second,  
4 Madam Chair.

5 CHAIRPERSON MILLER: Okay. I  
6 first want to just mention that I did add in  
7 406 which is subsumed by 2001.3 in light of  
8 the Office of Planning's report that  
9 nonconforming courts would also be extended  
10 and enlarged by the addition.

11 Basically this is a very straight  
12 forward addition with no adverse impacts on  
13 neighboring properties that is apparent in the  
14 record.

15 Briefly as the Capital Hill  
16 Restoration Society noted, it's an  
17 exceptionally unique property. It's a  
18 triangular shape -- it's on a triangular lot  
19 and it's got the two corners. And it is  
20 nonconforming under the regulations so that  
21 there's a practical difficulty of making any  
22 addition to the property without being in

1 noncompliance of the requirements, and in  
2 particular the lot occupancy.

3 It's already 79 percent lot  
4 occupancy and it's not going to increase.

5 And then we heard about the  
6 specific difficulties involved inside the  
7 house with respect to the stairway and getting  
8 to the laundry that has arisen in light of the  
9 shape of the house as it is.

10 There's no substantial detriment  
11 to the public good. The neighbor that's  
12 impacted has submitted a letter in support.  
13 Office of Planning has found no adverse  
14 impacts on neighboring property. Historic  
15 Preservation staff has approved the plans. It  
16 is in the Capitol Hill Historic District. And  
17 the ANC and Capitol Hill Restoration Society  
18 have both reviewed the plans and support the  
19 application.

20 Mr. Truitt also explained that  
21 actually the addition will make the property  
22 more attractive, which is in the public

1 interest.

2 Any other comments by Board  
3 members on this application? Okay.

4 And then there is a motion that's  
5 been made and seconded. All those in favor  
6 say aye.

7 ALL: Aye.

8 CHAIRPERSON MILLER: All those  
9 opposed? All those abstaining?

10 And would you call the vote,  
11 please.

12 MS. BAILEY: The vote is recorded  
13 as five-zero-zero to grant the application.

14 Ms. Miller made the motion, Mr.  
15 Loud seconded, Mr. Dettman, Ms. Walker and Mr.  
16 Turnbull support the motion.

17 CHAIRPERSON MILLER: Okay. And  
18 because there is no party in opposition, this  
19 can also be a summary order, which means that  
20 the order will be issued fairly quickly from  
21 the Office of Zoning.

22 Okay.

1 MR. TRUITT: Thank you.

2 CHAIRPERSON MILLER: Thank you.

3 We're ready for the next case when  
4 you are, Ms. Bailey.

5 MS. BAILEY: Madam Chair, that is  
6 Application 17851 of Silvia and William Moten,  
7 pursuant to 11 DCMR § 3104.1 for a special  
8 exception for a child development center,  
9 that's 40 children and 7 teacher, under  
10 section 205. The property is zoned R-5-A.  
11 It's located at 355 Parkland Place, Southwest.  
12 Square 5988, Lot 78.

13 If the Motens are here, would you  
14 please have a seat at the table?

15 CHAIRPERSON MILLER: Good morning.

16 MR. SOLOMON: Good morning.

17 CHAIRPERSON MILLER: Why don't you  
18 start with identifying yourself for the  
19 record, please, with your name and address.

20 Is your mic on? That's what you  
21 have to start with, your mic on.

22 MR. SOLOMON: Good morning, Madam

1 Chair, honorable members of the Zoning Board.  
2 My name is Caleb Solomon. I'm the attorney  
3 representing Mr. and Mrs. Moten

4 MS. MOTEN: Hi. My name is Sylvia  
5 Moten and I live 2256 Rolling Meadows Street  
6 in Waldorf, Maryland.

7 MR. MOTEN: My name is William  
8 Moten. Address is 2256 Rolling Meadows,  
9 Waldorf, Maryland.

10 CHAIRPERSON MILLER: Okay. You  
11 live in what, Waldorf, Maryland

12 MS. MOTEN: Yes.

13 CHAIRPERSON MILLER: Okay. And,  
14 sir, where do you live.

15 MR. SOLOMON: Oh, I apologize. In  
16 Crofton, Maryland. 2301 Momomet Court,  
17 Crofton, Maryland.

18 CHAIRPERSON MILLER: Okay. Good.

19 Okay. Let me also ask if any is  
20 here from the ANC in this case. And did you  
21 present at the ANC? We don't have anything in  
22 our record right now from the ANC?

1 MS. MOTEN: We tried contacting  
2 the ANC and no records has been submitted.

3 CHAIRPERSON MILLER: So you didn't  
4 appear before them? You tried to contact them  
5 and didn't have any contact, and therefore  
6 there was no meeting or anything that you were  
7 at?

8 MS. MOTEN: Correct.

9 CHAIRPERSON MILLER: Okay.

10 MR. SOLOMON: The records will  
11 indicate when I looked through the records in  
12 the file the ANC had actually invited Mrs.  
13 Moten. Mrs. Moten couldn't make the meeting,  
14 however she did write a letter to the ANC to  
15 one of their representatives. And they tried  
16 to set up another meeting schedule. That  
17 couldn't happen.

18 The prior attorney representing  
19 them who is away also called the same ANC  
20 representative and just could not get anywhere  
21 as regards setting up a date for the meeting.  
22 From what I learned from him, it wasn't a very

1 good conversation. And there are records, I  
2 think, at least we got in the letter in the  
3 file.

4 CHAIRPERSON MILLER: Yes. That's  
5 bringing back memories. Okay. So that was an  
6 unsuccessful attempt to have this meeting.  
7 Okay.

8 Why don't we start with you  
9 explaining your plans for the child  
10 development center and how you think you meet  
11 the regulations?

12 MS. MOTEN: The plans were to  
13 start the day care center there at the 355  
14 Parkland Place. It was currently used as  
15 tenants. They currently support the day care  
16 to beatify and probably vitalize the area and  
17 that where the day care will be placed. That  
18 area -- when we first moved there, it was kind  
19 of a lot of traffic in there and we decided to  
20 maybe, I guess, uplift the community. Because  
21 the area there is not so profound in that  
22 community. So the day care is one of the

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1 places that we had decided to -- I mean that  
2 location was one of the places we decided to  
3 have the day care because of the location and  
4 need in that area.

5 And the plans were to basically in  
6 the record that will show is a two unit  
7 building, an upstairs and a downstairs unit.  
8 And pretty much the space wise is, I guess on  
9 the records it speaks for itself, is very  
10 spacious. And it's an area where I guess you  
11 can pretty much kind of start a day care  
12 center because it has a lot of kids in the  
13 area. It has a playground across the street.  
14 And there's a need, definitely a need in that  
15 area of -- in the Washington area period for  
16 a day care center.

17 And the unit pretty much speaks  
18 for itself of the size and then it's a one way  
19 street, not too much traffic comes down on  
20 that street.

21 Also we have tenants next door of  
22 each sides of the building which I don't -- I

1 haven't noticed any traffic as well on that  
2 side.

3 And the plans were to just start  
4 the day care on one level first and then in  
5 the future maybe extend it to the upper level.  
6 The day care will be pretty much providing  
7 infant care as well as toddlers care and  
8 before and after school care for the children  
9 in the community and in the neighborhood.

10 CHAIRPERSON MILLER: So is there  
11 going to be one tenant remaining in the  
12 building when it starts out?

13 MR. MOTEN: No. Both are vacant.  
14 Both places vacant.

15 MS. MOTEN: Yes. Currently the  
16 building is vacant.

17 MR. SOLOMON: Both tenants,  
18 actually, they've moved out, right?

19 MS. MOTEN: Yes.

20 MR. SOLOMON: They've moved?

21 MS. MOTEN: Yes.

22 CHAIRPERSON MILLER: So you're

1 saying, though, you're going to start with one  
2 unit and slowly grow?

3 MR. MOTEN: Eventually.

4 MS. MOTEN: Yes.

5 MR. MOTEN: Eventually the top  
6 level to expand.

7 CHAIRPERSON MILLER: Okay. You  
8 going to leave that empty to begin with?

9 MS. MOTEN: Well, that would just  
10 starting out would be like office space or  
11 something. But we would have the kids at the  
12 lower area first. And as we expand and the  
13 growth of it, we would extend it to the top  
14 level as well.

15 CHAIRPERSON MILLER: Okay. And  
16 what's the number of children that you plan to  
17 have?

18 MS. MOTEN: Starting out --

19 CHAIRPERSON MILLER: There are two  
20 different operations, right? One is a child  
21 development center care during the day and  
22 then an after school program or something?

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1 MS. MOTEN: Yes.

2 MR. MOTEN: Yes.

3 CHAIRPERSON MILLER: Okay. So if  
4 you could address the numbers for each and the  
5 ages.

6 MR. SOLOMON: Can I answer?

7 CHAIRPERSON MILLER: Sure,  
8 absolutely.

9 MR. SOLOMON: Certainly. The plan  
10 is to have a total of 40 kids, however the  
11 records might show 50 individuals. That  
12 number, the discrepancy in that number is  
13 because the other 10 individuals will be part  
14 of the staff. So you might see, the original  
15 application states 50 individual, but there  
16 will actually be 40 kids and starting with I  
17 think it's 10 or 15.

18 MS. MOTEN: It's be 10 and 15  
19 starting out.

20 MR. SOLOMON: Right. But then  
21 when it expands to its full potential it will  
22 be a total of 40 kids and about, you know, 10

1 members of the staff.

2 MS. MOTEN: Yes.

3 MR. SOLOMON: Teachers, teacher's  
4 aides. So that's why.

5 Even OP in their report also  
6 recommended 40 kids, which is the number she  
7 was looking at.

8 CHAIRPERSON MILLER: I'm sorry,  
9 who recommended 40?

10 MR. SOLOMON: Office of Planning.

11 CHAIRPERSON MILLER: Office of  
12 Planning. Okay.

13 MR. SOLOMON: Consistent with her  
14 application.

15 CHAIRPERSON MILLER: Ms. Thomas.

16 MS. THOMAS: Good morning, Madam  
17 Chair. This is Karen Thomas with the Office  
18 of Planning.

19 Yes, I was a little bit thrown off  
20 with respect to the numbers, so I sought  
21 clarification from the applicants.

22 There is a part in the application

1 that says 50. So I was a bit concerned as to  
2 how it was going to accommodate that. So I  
3 called them and they clarified that it was  
4 going to be 40 children.

5 CHAIRPERSON MILLER: So you  
6 clarified that, right? You didn't come up  
7 with the 40, did you?

8 MS. THOMAS: No, I didn't come up  
9 with the 40.

10 CHAIRPERSON MILLER: So she didn't  
11 recommend the 40?

12 MS. MOTEN: No.

13 MR. SOLOMON: No, she did not  
14 recommend the 40. It's just from the letter  
15 that I had I was privileged to see, which is in  
16 the file. So the number was corrected.  
17 Because I was looking at the original  
18 application it say 50 individuals. But not to  
19 confuse anyone, it was just 40 kids and 10  
20 individuals who will be members of the staff.  
21 So that's why I was just trying to clarify  
22 that.

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1 CHAIRPERSON MILLER: Okay. One of  
2 the criteria we look at is the number of  
3 children so we look at it in the context. You  
4 know, is that too many or why is that a good  
5 number.

6 So the application is saying 40.  
7 And so my question is why 40? How did you get  
8 to 40? Why is that a good number for the  
9 Board to consider giving you approval for.

10 MS. MOTEN: Based on the floor  
11 plan and the ratio of the child versus the  
12 adults. When I attended the orientation for  
13 the child care, I got the child care  
14 orientation, I pretty much decided and  
15 listened to what the instructions were. And  
16 based on the space of that, I thought 20 would  
17 be the capacity, will be the best number for  
18 us as far as starting out. Between 10 to 20  
19 kids.

20 CHAIRPERSON MILLER: Do you mean  
21 20 per unit or 20 total?

22 MS. MOTEN: It will probably be

1 maybe ten -- I mean 20 each unit based on the  
2 space. I think the Office of Child Care would  
3 have to come in to see, but the proposal is  
4 maybe 20 on each level, if possible.

5 CHAIRPERSON MILLER: Okay. From  
6 what I understand then it's probably you're  
7 getting from the Child Care Licensing Branch  
8 of -- it looks like we have a letter from  
9 OSSE, D.D. Office of State Superintendent of  
10 Education. And then Ms. Valerie Ware is in  
11 the Child and Residential Care Facilities  
12 Division.

13 MS. MOTEN: Yes.

14 CHAIRPERSON MILLER: And so I  
15 guess am I correct that you're getting numbers  
16 from them. They do how many kids depending on  
17 the floor area that you have, right?

18 MR. MOTEN: Yes, the floor plans.

19 MS. MOTEN: Yes, that was  
20 basically because I'm just putting in the  
21 proposal for 20. Child care could come back  
22 and say -- I mean the licensing could say it

1 could be less.

2 CHAIRPERSON MILLER: Okay.

3 MS. MOTEN: But that that's just a  
4 proposal of 20.

5 CHAIRPERSON MILLER: Okay.

6 MS. MOTEN: Based on the space and  
7 the two bathrooms that we have on each level,  
8 too, as well we had considered it as well.

9 CHAIRPERSON MILLER: I see. Okay.  
10 So it has to go to them after us anyway again.

11 MS. MOTEN: Of course.

12 CHAIRPERSON MILLER: Yes. Yes. And  
13 then they'll tell you for sure --

14 MR. MOTEN: Determination.

15 CHAIRPERSON MILLER: -- whether  
16 that number is too high or not?

17 MS. MOTEN: Yes, they will  
18 determine the number.

19 CHAIRPERSON MILLER: Okay. So  
20 based on what you understand the requirements  
21 to be based on your plan, 40 is the right  
22 number, 20 per floor?

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1 MR. MOTEN: Correct.

2 CHAIRPERSON MILLER: Though do you  
3 necessarily plan to go that high or do you  
4 just want to have the option to go that high?

5 MR. MOTEN: The option.

6 MS. MOTEN: The option.

7 CHAIRPERSON MILLER: Okay. You  
8 anticipate that you will have the staff to  
9 meet that if you choose that route?

10 MR. MOTEN: Yes.

11 CHAIRPERSON MILLER: Okay.

12 MS. MOTEN: Yes.

13 CHAIRPERSON MILLER: But you're  
14 starting with just the first unit right now?

15 MR. MOTEN: Correct.

16 CHAIRPERSON MILLER: Okay. And  
17 that's 15 to 20, correct?

18 MR. MOTEN: Yes, correct.

19 MS. MOTEN: Yes.

20 CHAIRPERSON MILLER: And what's  
21 the staff then for that number of kids?

22 MS. MOTEN: Oh, for the staff, it

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1 would be three. Three to five. Depending on  
2 if we have the 20 full capacity it will be  
3 five or less, depending on the capacity.

4 CHAIRPERSON MILLER: And what is  
5 that? What kind of staff is it? Is it  
6 teachers, is it child care specialists; what  
7 kind of staff?

8 MS. MOTEN: We will have teachers  
9 and a teacher's assistant.

10 CHAIRPERSON MILLER: And do you  
11 have the parking for five staff?

12 MS. MOTEN: Yes.

13 CHAIRPERSON MILLER: Okay. Why  
14 don't you address that?

15 MR. MOTEN: We have the parking.  
16 There's two parking spaces in back and also on  
17 the side we have space there, at least two  
18 more parking. Because on each side, actually  
19 connected to the other building, but it's a  
20 space between the building over to the left.  
21 Okay. Well, there was gate there, but we  
22 took the gate there. So there is parking

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1 coming from the alley in the back.

2 So we estimate a total of four  
3 parking spaces.

4 CHAIRPERSON MILLER: Total of how  
5 many?

6 MR. MOTEN: Four.

7 CHAIRPERSON MILLER: Two in the  
8 back, one on the side --

9 MR. MOTEN: Well, there's two in  
10 back and two on the side.

11 CHAIRPERSON MILLER: Two on the  
12 side?

13 MR. MOTEN: Yes, ma'am.

14 MS. MOTEN: And then there's also  
15 off-street parking as well.

16 COMMISSIONER TURNBULL: You have  
17 side yard eight feet wide? I'm looking at  
18 Exhibit 3 which it shows from the Office of  
19 the Surveyor of the District of Columbia. And  
20 they two parking spaces or you could have two  
21 parking spaces at the back.

22 MS. MOTEN: Yes.

1 COMMISSIONER TURNBULL: But the  
2 site plan shows that there's only eight feet.  
3 I don't know if that actually meets the  
4 requirement for a parking space.

5 MS. MOTEN: You're referring to  
6 the side of the building?

7 COMMISSIONER TURNBULL: Right.

8 MR. MOTEN: On the side. Okay.

9 COMMISSIONER TURNBULL: Because  
10 your unit section is part of the duplex,  
11 right?

12 MR. MOTEN: On one side.

13 COMMISSIONER TURNBULL: On one  
14 side?

15 MS. MOTEN: Yes, on one side.

16 COMMISSIONER TURNBULL: And so  
17 then on the other side I see a --

18 MR. MOTEN: Right.

19 COMMISSIONER TURNBULL: It's eight  
20 feet? Is that eight feet to the next building  
21 or is there another eight feet beyond that?

22 MR. MOTEN: Well, there's another

1 eight feet beyond that.

2 COMMISSIONER TURNBULL: But that's  
3 not yours?

4 MR. MOTEN: No. Well now, you say  
5 it's got to be eight feet for parking? Is  
6 that--

7 COMMISSIONER TURNBULL: Right. I  
8 don't think you can park --

9 MR. MOTEN: It's got to be beyond  
10 eight feet beyond or just eight feet?

11 COMMISSIONER TURNBULL: Right.

12 MS. MOTEN: And then we have the  
13 parking in the back.

14 MR. MOTEN: On the back. Okay.  
15 Until I can get clarification on that.

16 COMMISSIONER TURNBULL: And in  
17 Exhibit 26 it shows photographs right now. It  
18 looks like the whole back yard is a wheat  
19 field or something. It's overgrown with  
20 grass.

21 MS. MOTEN: Yes.

22 MR. MOTEN: Yes.

1 COMMISSIONER TURNBULL: We don't  
2 have a site plan from you showing how you are  
3 proposing to do this. All we really have the  
4 District of Columbia survey. Do you have a  
5 site plan of how you're planning to lay this  
6 out? We have the architectural plans, but I  
7 don't believe there's a site plan.

8 MR. SOLOMON: Not at this time,  
9 but we can supplement the records with that.

10 COMMISSIONER TURNBULL: Okay. I'm  
11 sorry, Madam Chair, to interrupt your  
12 questions.

13 CHAIRPERSON MILLER: No. That's a  
14 very good point about the parking.

15 I have another question. The five  
16 staff is for the 20 children. If you expand to  
17 40, what would your staff be? Am I correct,  
18 you're going to double it?

19 MR. MOTEN: Yes. Ten, that's --

20 MS. MOTEN: It would be ten.

21 CHAIRPERSON MILLER: Ten?

22 MS. MOTEN: Yes. Ten.

1 CHAIRPERSON MILLER: Okay. So  
2 your parking requirements would increase.

3 MS. MOTEN: We also have or  
4 propose in the records that the staff would  
5 use public transportation as well. We will be  
6 serving the children in the community and we  
7 will be proposing that they use public  
8 transportation.

9 CHAIRPERSON MILLER: Okay. Office  
10 of Planning addresses this parking requirement  
11 on page 4 of their report. And they cite 2101  
12 that requires one space for every four  
13 teachers and other employees. So if you were  
14 to have ten, you would need three parking  
15 spaces, I believe if my math is right.

16 So you're planning on submitting a  
17 site plan showing two parking spaces in the  
18 back, is that correct?

19 MS. MOTEN: Yes.

20 MR. MOTEN: Yes.

21 CHAIRPERSON MILLER: Okay. And  
22 then the third space would be -- are we

1 talking about the side that Mr. Turnbull was  
2 also exploring?

3 MR. MOTEN: Yes, we also --

4 MS. MOTEN: Yes. Not the side,  
5 but the off-street parking.

6 CHAIRPERSON MILLER: Is there not  
7 enough room for a third space if we included  
8 that or what?

9 MR. SOLOMON: We haven't come to  
10 that. We'll look into that again, supplement  
11 you know just to make sure we have all the  
12 information you will need.

13 In addition, if I may just say  
14 this, the street where the building will be  
15 located is a huge one way street, rarely used  
16 with double side parking spaces. So the staff  
17 they may park there you know, because again,  
18 most of the time these parking spaces are not  
19 used. It's not a high traffic area. And,  
20 again, most of the kids, you already explained  
21 that, most of the kids coming to that facility  
22 will be local kids. Their parents will walk

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1       them to school and possibly may not even have  
2       that much need. However, because it's the law,  
3       we will still do everything possible to make  
4       sure there are parking spaces available  
5       consistent with the rules and regulations.

6               CHAIRPERSON MILLER: Okay. And  
7       when we're talking about the rules and  
8       regulations, you know you need to be looking  
9       at 205, which I'm sure you are. And 205.4  
10      says that the center shall provide sufficient  
11      off-street parking spaces --

12             MR. SOLOMON: Yes.

13             CHAIRPERSON MILLER: -- to meet  
14      the reasonable needs of teachers, other  
15      employees and visitors. So that's why we're  
16      looking at this issue.

17             MR. SOLOMON: Absolutely.

18             CHAIRPERSON MILLER: Okay.

19             MR. MOTEN: Madam Chair, what the  
20      photo here -- there's a street here I'm  
21      looking at and the building as far as how wide  
22      the street is and as far as if there's ample

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1 enough parking space for that are inside.

2 CHAIRPERSON MILLER: I'm sorry.

3 What are you looking at?

4 MR. MOTEN: Let's see, the photo--

5 the photograph one, two -- photograph three.

6 The first photograph is the playground. The

7 second is four pictures of the unit and the

8 third which is the street. The second below.

9 Yes.

10 CHAIRPERSON MILLER: Okay. You

11 wanted to bring our attention to the photo on

12 that page.

13 MR. MOTEN: Well, referring to it

14 as far as the parking. Obviously there will

15 be ample enough parking for the staff. And I

16 was referring to the front of the building,

17 the unit, and this is a one way street. You

18 can park on both sides.

19 CHAIRPERSON MILLER: Okay. What

20 time of the day was this taken?

21 MR. MOTEN: This was taken, I

22 believe it noon?

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1 MS. MOTEN: Noontime.

2 MR. MOTEN: At noontime.

3 CHAIRPERSON MILLER: Okay. Who  
4 took it?

5 MR. MOTEN: Ms. Silvia Moten.

6 CHAIRPERSON MILLER: Okay. On a  
7 weekday.

8 MS. MOTEN: Yes, ma'am.

9 MR. MOTEN: Yes.

10 MS. MOTEN: Yes, ma'am.

11 CHAIRPERSON MILLER: Okay.

12 Okay. Could you just describe the  
13 two different operations and how many children  
14 in each and staff in each? Because it seems  
15 that there are two different functions going  
16 on, a child care and then an after school  
17 program, is that right?

18 MS. MOTEN: Yes.

19 CHAIRPERSON MILLER: Or after  
20 care? Yes.

21 MS. MOTEN: Yes. The two programs  
22 established is one will be for toddlers,

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1 infants and toddlers which will be operating  
2 the hours from 6:00 to about 3:00.

3 And then the afternoon school  
4 program is more when, I guess from 3:00 to  
5 6:00.

6 We will also be servicing the  
7 tutoring program for the children that attend  
8 the day care as well. And that's where that  
9 after school part comes in. If they have  
10 homework or need, I guess, help with their  
11 homework assignments or any, I guess, tutorial  
12 that they may need, we will be able to provide  
13 it.

14 And during that time I probably  
15 will be proposing just volunteers in that area  
16 as well.

17 CHAIRPERSON MILLER: Let me ask  
18 you, how is it that all the infants and  
19 toddlers are going to be picked up at 3:00?  
20 I mean, don't a lot of people work until 6:00?

21 MS. MOTEN: Yes.

22 CHAIRPERSON MILLER: So you said

1 that the infant and toddler program is going  
2 to go until 3:00.

3 MS. MOTEN: Okay. Did I say that?

4 CHAIRPERSON MILLER: Is that  
5 wrong?

6 MS. MOTEN: Yes, that's it. Yes,  
7 for the infant and toddlers, I'm sorry. That  
8 was a correction. For the infants and  
9 toddlers it will be from 6:00 to 6:00. The  
10 after school program is from 3:00 to 6:00.  
11 I'm sorry about that.

12 CHAIRPERSON MILLER: Okay.

13 MS. MOTEN: I don't have my paper  
14 in front of me.

15 CHAIRPERSON MILLER: That's okay.  
16 I just want to get it straight.

17 MS. MOTEN: Okay. Yes. Yes,  
18 you're right.

19 CHAIRPERSON MILLER: So and when  
20 we're looking at numbers, the 20 maximum would  
21 include infants and toddlers plus after school  
22 children. So for instance if you had 15

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1 infants and toddlers there already, then only  
2 five students would come in after school, is  
3 that correct?

4 MS. MOTEN: That's correct.

5 CHAIRPERSON MILLER: Okay. Okay.  
6 And do you have a play area or are they going  
7 to be walking across the street to a park or  
8 something?

9 MS. MOTEN: Yes.

10 CHAIRPERSON MILLER: Could you  
11 describe that?

12 MS. MOTEN: I'm sorry. There is a  
13 playground across the street directly in front  
14 of the proposed unit. And that's on photograph  
15 1 in the proposal report.

16 MR. SOLOMON: To answer your  
17 question, yes. I guess the staff who will be  
18 in charge of taking the kids across the street  
19 must have a -- allow to, you know, that are  
20 across the street to the playground.

21 CHAIRPERSON MILLER: I'm sorry. I  
22 want to back up one more time. Since this is

1 child care assuming for individuals, parents  
2 who are working, why is it ending at 6:00 per  
3 se? I mean, did you consider going later? Is  
4 there a reason why it's ending at 6:00, you  
5 know as opposed to 6:30?

6 MS. MOTEN: The time frame, I was  
7 just basing it on like from 9:00 to 5:00 when  
8 majority of parents, I guess, are at work. But  
9 the hours is not set in stones or anything.  
10 I will also try to adjust. If I need to open  
11 a little earlier, I can adjust that. If I  
12 need to open a little later to accommodate any  
13 of the parents and the children, it's  
14 possible.

15 CHAIRPERSON MILLER: Okay. The  
16 reason I'm asking is it's not set yet, but  
17 when we issue an order we often do set those  
18 parameters. And so that's the reason I just  
19 wanted to bring this to your attention to  
20 think about a little more. Because I don't  
21 think that the Board wants to set a time that  
22 maybe is going to end up being a problem for

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1 the purpose that you're serving. You know, if  
2 you're serving these families and then  
3 actually it's very difficult, say, for many to  
4 get by 6:00, then there's a problem.

5 So if there's not an adverse  
6 impact on neighboring properties or whatever,  
7 you know, we could consider going later if you  
8 needed that or building in some kind of  
9 flexibility.

10 MS. MOTEN: Okay.

11 CHAIRPERSON MILLER: So that's why  
12 I was asking if you were certain that no all  
13 the families that you know you're going to  
14 serve that they would have no problem getting  
15 there by 6:00, then it's not an issue. But I  
16 just wanted to let you know you can think  
17 about that a little bit more.

18 MS. MOTEN: Okay.

19 CHAIRPERSON MILLER: Okay.

20 MR. MOTEN: Madam Chair, I just  
21 want to mention on that as far as the survey,  
22 as far as driving parents normally pick up

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1       their kids between 6:15 and 6:30. Very seldom  
2       I've seen someone pick up their kid around  
3       7:00 or 8:00 unless they're working in the  
4       evening time from 3:00 to 11:00. Also we can  
5       also accommodate that. But as far as our  
6       survey most of us, you know, work in the  
7       daytime. That's in -- and in special programs  
8       they're required to work in daytime from 8:00  
9       to 5:00 or 9:00 to 3:00 depending on that.  
10      And that's the survey that we went by as far  
11      as other day cares that's in the area.

12               CHAIRPERSON MILLER: So would you  
13      say that 6:30 would cover it better?

14               MR. MOTEN: Yes, correct.

15               CHAIRPERSON MILLER: Okay. I  
16      thought that I read in the file something to  
17      the effect about -- something concern about  
18      crime in the area. Is that an issue you want  
19      to address with respect to the safety of the  
20      children?

21               MR. MOTEN: Well, there's crime  
22      everywhere, Madam Chair. In that area we're

1       trying to vitalize the area. We don't want to  
2       be intimidated, say, where we don't want this  
3       here because it's unsafe to the kids because  
4       there are kids out there that's in the crime  
5       area. God forbid anything should happen, but  
6       we just want to build the area. So in that  
7       way, we can say that we did something to the  
8       community. Because we both grew up in the  
9       area since we was probably first grade and  
10      attended elementary and junior high and high  
11      school.

12               We don't want to be afraid, you  
13      know. Any area can be turned around, you  
14      know. And, you know, someone comes in to  
15      build a facility that's for the community and  
16      better the community. We do have police in  
17      the area we can also call. We can get the  
18      neighbors to get involved. And especially  
19      when, you know, I myself used to be a former  
20      police officer. And I can get officers to  
21      come through there and so forth, you know.

22               So there are going to be

1       altercations and so forth, but not to a point  
2       if something is especially making their rounds  
3       and have the community to look out, the  
4       neighbors if they see anything suspicious or  
5       crime and so forth, call 311. I mean, most of  
6       these cases cannot be solved because people  
7       are afraid to come out and to testify or et  
8       cetera, et cetera. So we're trying to make it  
9       more comfortable just to uplift the area.

10               And also, there's other businesses  
11       around there on Malcolm X Avenue also. And  
12       they also have activities in the park area  
13       like during the summer for kids to enjoy to  
14       come together as one.

15               So, crime that wouldn't be  
16       concerning us because we just -- you know, we  
17       have the police and ANC. We have attempted to  
18       meet with us saying what can we do to better  
19       the community.

20               I recently went to a meeting and  
21       they had judges come from the courthouse and  
22       attorneys talking about as far has someone

1       been convicted or how can they serve time by  
2       doing community service and so forth. And to  
3       me, I was impressed about that how they have  
4       people come to the court -- in court to their  
5       meeting and to discuss those issues and so  
6       forth. And I think it was very helpful in  
7       that manner.

8               CHAIRPERSON MILLER: Okay. I have  
9       one more question. The ages for the after  
10      school program, kindergarten to sixth grade,  
11      is that right for after school?

12             MS. MOTEN: Yes.

13             CHAIRPERSON MILLER: Yes.

14             MS. MOTEN: School age kids.

15             CHAIRPERSON MILLER: And is there  
16      an elementary school in walking distance of  
17      the center

18             MR. MOTEN: Yes. Yes.

19             CHAIRPERSON MILLER: Is that how  
20      most of them would perhaps get there, or how  
21      far away is that?

22             MR. MOTEN: That's about -- maybe

1 about six blocks away.

2 CHAIRPERSON MILLER: Okay.

3 MR. MOTEN: You have different  
4 charter schools in that area also.

5 MS. MOTEN: Yes.

6 MR. MOTEN: Because D.C. public  
7 schools.

8 CHAIRPERSON MILLER: Okay. Are  
9 there other questions?

10 VICE CHAIRPERSON LOUD: Good  
11 morning. Just a couple of very brief  
12 questions.

13 It sounds like basically the  
14 property was historically an apartment  
15 building, which will now become a day care.  
16 And it's also surrounded mostly by other  
17 apartment buildings?

18 MR. MOTEN: Correct.

19 MS. MOTEN: Yes.

20 VICE CHAIRPERSON LOUD: Okay.  
21 Have you had an opportunity to speak with or  
22 just hear feedback from your neighbors

1 regarding the proposed change to a day care?

2 And if so, what has been the feedback?

3 MS. MOTEN: I have spoken to one  
4 of the neighbors at 357, I believe. And she  
5 was surprised. And I, you know, introduced  
6 myself to her. And she support it. I wanted  
7 to get something in writing, but she didn't  
8 have time to write. But she's located at 357  
9 Parkland Place.

10 VICE CHAIRPERSON LOUD: So that  
11 would be directly next door?

12 MS. MOTEN: Yes.

13 VICE CHAIRPERSON LOUD: Okay. And  
14 just in terms of the mix of folks who are in  
15 the units that surround the proposed site, are  
16 they folks that are home all day, are they  
17 retired, are they young families? Do you have  
18 a sense of the makeup?

19 MS. MOTEN: I think it's like you  
20 said, a mixed community folks that's in the  
21 neighborhood right now. I think I have seen--  
22 I notice working parents in the area as well

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1 as maybe further up the street I notice other  
2 parents going to, I guess, a place of business  
3 in that area as well. So I have noticed.

4 VICE CHAIRPERSON LOUD: And when  
5 you say that much of the population will come  
6 from the neighborhood there, are you  
7 anticipating that they'll come from these  
8 apartment units sort of in this general area?

9 MS. MOTEN: Yes, I think --

10 MR. MOTEN: Yes, it's a  
11 possibility. Once they realize that it's a day  
12 care next door, some might say it's convenient  
13 for them just to drop next door and then go to  
14 work from there. Most of them it's, some is  
15 low income but they are working and so forth.

16 I did interviews of some  
17 applicants probably about two doors, maybe  
18 three doors down. And also they were  
19 surprised, you know. A day care here? That's  
20 great, you know. We need something to uplift  
21 the neighborhood. But I did get a couple of  
22 responses back and so forth. And it was quite

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1 good, you know. And a lot of them was for it.  
2 And I anticipate because there's a lot of kids  
3 in that area, too, you know toddlers up to six  
4 years old, maybe ten. So I realize that they  
5 will probably be coming through there because  
6 it's convenient.

7 VICE CHAIRPERSON LOUD: Okay.

8 Thank you.

9 \ I didn't totally get the picture  
10 of it, but thank you. Your answer have  
11 helped.

12 MR. MOTEN: Okay. Thank you.

13 CHAIRPERSON MILLER: Other  
14 questions?

15 Okay. There's no one here from  
16 the ANC, I gather. All right.

17 Do you have anything further you  
18 want to add at this point? Otherwise we'll go  
19 to the -- opps, sorry. We have a question.

20 Okay. Someone in the audience is  
21 saying she's not from the ANC but you are from  
22 the community. Okay.

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1                   So in our order of procedure then  
2 we'll get to you after the Office of Planning.  
3 Okay. Thank you for bringing that to my  
4 attention.

5                   Okay. Is there anything further  
6 from the applicant at this point?

7                   MR. SOLOMON: Thank you, Madam  
8 Chair.

9                   The only thing I want to add is  
10 this: Regarding your question about crime  
11 area. It is a known fact that you establish  
12 something like a school in a neighborhood it  
13 just brings -- it changes the character of the  
14 neighborhood. It's very positive. It will  
15 become their brother's keepers. And then  
16 where you have kids playing in a playground,  
17 and we have them out there when they're in  
18 school, there is a lower possibility of crimes  
19 that are going on. I mean, you become very  
20 sensitive to the fact that kids are there. You  
21 know, parents are there looking out for their  
22 kids.

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1           So, again, these are neighborhoods  
2       where people have actually lived and grown up  
3       for quite a long time. So I don't see that as  
4       -- I actually see it as something that is  
5       extremely positive that will change the very  
6       nature of that neighborhood.

7           Thanks.

8           CHAIRPERSON MILLER: Thank you.

9           I mean, and I really would concur.  
10       And I don't think that this Board would take  
11       a position, you know, unless it was war zone  
12       or something.

13          MR. SOLOMON: Okay.

14          CHAIRPERSON MILLER: I mean, a  
15       community shouldn't have a school, you know.  
16       Anyway, I think that it was raised in some  
17       papers and that's why I asked, just to flush  
18       out concerns that were in our file.

19          MR. SOLOMON: Yes. Thank you,  
20       Madam Chair.

21          CHAIRPERSON MILLER: Okay. All  
22       right. Then I guess we can go to Ms. Thomas.

1 MS. THOMAS: Madam Chair, good  
2 morning again. I'm Karen Thomas with the  
3 Office of Planning.

4 We are recommending approval in  
5 this case. We have no issue with the fact  
6 that on the basis that the applicant seemed to  
7 have answered the questions laid out in  
8 section 205. Our only concern was with the  
9 ANC and they not submitting a report. And I  
10 did contact the ANC for that, and they were in  
11 negotiations at the time and trying to set up  
12 a meeting. Apparently the meeting didn't  
13 happen, and that was our only concern.

14 The ANC did express a concern of  
15 the crime issue. And I just don't see how we  
16 could address on the basis of the provisions  
17 in section 205.

18 That would be all I have and I'd  
19 be happy to answer any questions.

20 CHAIRPERSON MILLER: Well, I have  
21 a question about the parking in the back that  
22 Mr. Turnbull brought our attention to. Have

1     you visited the site and seen the rear of the  
2     property where the parking is intended to be?

3             MS. THOMAS: I have not seen the  
4     rear. I didn't get to the back. But I also  
5     share that concern based on what was  
6     submitted, I only believe that two spaces  
7     could fit on the site. I don't believe that  
8     there should be parking in the side yard. So  
9     on that basis I do believe that only two.

10            And based on what was told as to  
11    how many employees they would have, it would  
12    be five. And it's one to four employees, I  
13    thought that two was sufficient as proposed.  
14    However, if they did expand, they would either  
15    have to come back in or make some provisions  
16    that the employees take public transportation.

17            CHAIRPERSON MILLER: I think that  
18    the applicant may be making the argument that  
19    there's sufficient off-street parking and  
20    maybe it's not fully flushed out here yet. I  
21    don't know. But there's sufficient off-street  
22    parking plus they're accessible to public

1 transportation. Plus a lot of the clients are  
2 in walking distance and staff.

3 MS. THOMAS: I believe there are  
4 sufficient on-street parking along the street.  
5 The times I did visit there didn't seem to be  
6 any issue with the street being overcrowded  
7 with parking. I would think it will be  
8 sufficient.

9 CHAIRPERSON MILLER: Okay. So you  
10 think there's sufficient information in the  
11 record to conclude that they have sufficient  
12 off-street spaces to meet the reasonable needs  
13 of teachers, employees and visitors?

14 MS. THOMAS: Yes.

15 CHAIRPERSON MILLER: For even if  
16 they expand to 40?

17 MS. THOMAS: Yes.

18 CHAIRPERSON MILLER: Okay. And my  
19 other question is, I don't know if you know  
20 the answer to this, but with respect if they  
21 have sufficient room for parking in the rear,  
22 whether they can -- do they have to pave it or

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1       whether they can just use that space? How  
2       much more do they have to do for zoning  
3       purposes?

4               MS. THOMAS: I think they would  
5       have to pave it and, you know, at least mark  
6       it properly just two legally spaces. To have  
7       at least two legal spaces as the regulations  
8       would require.

9               CHAIRPERSON MILLER: I guess we  
10      have to look at the regulations for parking  
11      spaces.

12              MS. THOMAS: Nine by 19.

13              CHAIRPERSON MILLER: Right. But  
14      we don't require paving all the time anymore,  
15      do we, for environmental reasons?

16              MS. THOMAS: I mean, we would  
17      encourage previous paving. And so not for  
18      concrete or stuff like that. We would  
19      certainly encourage them to -- they can do  
20      grass and strip concrete, you know, where the  
21      wheels would go.

22              CHAIRPERSON MILLER: Right.

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1 MS. THOMAS: I mean we wouldn't  
2 encourage paving over the site.

3 CHAIRPERSON MILLER: Okay. So we  
4 would need to look at the Zoning Regulations  
5 on parking spaces, right?

6 MS. THOMAS: Yes.

7 CHAIRPERSON MILLER: Okay.

8 MS. THOMAS: It does recommend  
9 paving even.

10 COMMISSIONER TURNBULL: But if  
11 they went to 40, they would need more than two  
12 parking spaces?

13 MS. THOMAS: If they went to 40  
14 and increased the staff to suit, based on what  
15 was said in the record, I understand she said  
16 it was about five.

17 COMMISSIONER TURNBULL: Yes.

18 MS. MOTEN: Yes.

19 MS. THOMAS: Or six, as I have in  
20 my report, they would go up to three teachers  
21 and three assistants, that would make it about  
22 six. So they would have one to four. They

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1 would need at least one more. They may need  
2 at least one more. But --

3 COMMISSIONER TURNBULL: So they  
4 would have to reconfigure the stairs and the  
5 porch on the back somehow to create another  
6 space?

7 MS. THOMAS: Another space.

8 COMMISSIONER TURNBULL: But we  
9 would have to see that on a site plan to show  
10 that they planned to do that. Otherwise, I  
11 don't know if we could approve it for more  
12 than 20.

13 CHAIRPERSON MILLER: Well, I think  
14 we can. But --

15 COMMISSIONER TURNBULL: Can we?  
16 Okay.

17 CHAIRPERSON MILLER: -- that is  
18 because this is a legal interpretation,  
19 though. 205.4 says that the center shall  
20 provide sufficient off-street parking spaces  
21 to meet the reasonable needs of teachers,  
22 other employees and visitors. It doesn't say

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1       that they need to comply with Chapter 21  
2       parking requirements.

3               COMMISSIONER TURNBULL:  Oh, okay.

4               CHAIRPERSON MILLER:  I mean, this  
5       has come up before and I can't say that it's  
6       a black and white issue.  But it appears to  
7       give the authority to determine under this by  
8       special exception that the center provide  
9       sufficient off-street parking spaces.

10              If someone were to come to a  
11       different conclusion than what I'm asserting,  
12       then I would think they would then need a  
13       variance instead and they could show the  
14       difficulty in providing -- you know, go  
15       through the whole variance test.

16              BOARD MEMBER WALKER  Madam Chair,  
17       I think we have to be careful here in light of  
18       the fact that an after school program is  
19       proposed with tutors coming in.  So I think we  
20       need to think about staff, but we also need to  
21       think about tutors who will be visiting the  
22       site as well.

1 CHAIRPERSON MILLER: I agree. And  
2 I think, you know, special exception really  
3 does have a emphasis on watching out for  
4 adverse impacts as opposed to the variance  
5 where we're looking at an exceptional  
6 condition of the property.

7 MEMBER DETTMAN: Madam Chair?

8 CHAIRPERSON MILLER: Yes.

9 MEMBER DETTMAN: I'm looking at  
10 2118.3 -- well, before I say what I'm going to  
11 say, can I just ask the applicant when you  
12 anticipate growing to 40 students and ten  
13 staff, are all ten staff going to be on site  
14 on a daily basis?

15 MS. MOTEN: No.

16 MEMBER DETTMAN: No? Do you have  
17 any idea if you're going to have about 40  
18 students on site, how many staff will you have  
19 to take care of those 40 students? Well, I  
20 guess I should rephrase the question saying  
21 what's the maximum number of students at any  
22 one time that you anticipate having on site?

1 And then what is the maximum number of  
2 teachers that you're going to have to  
3 accommodate that maximum number of students?

4 MS. MOTEN: In the event of  
5 extending, we had considered the capacity of  
6 40 students if approved through the license  
7 Child care Office. If it's full capacity, we  
8 have intended in fact to have ten staff there.  
9 However, some of the staff will be on public  
10 transportation. Not all of the staff will be  
11 here parking. So I just wanted to reemphasize  
12 that.

13 And also you asked if the full  
14 capacity of 40, how many will be there? It  
15 will be ten.

16 MEMBER DETTMAN: Ten?

17 MS. MOTEN: Yes.

18 MEMBER DETTMAN: So you do  
19 anticipate having all ten staff on site at a  
20 particular time once you reach your maximum  
21 students enrollment?

22 MS. MOTEN: Yes, I have.

1 MEMBER DETTMAN: Okay. Okay.

2 I was going to mention that 2118.3  
3 the number of teachers or employees shall be  
4 computed on the basis of the greatest number  
5 of persons to be employed at any one time  
6 during the day or night, including persons  
7 have both full time and part time employment.  
8 I read that as meaning you basically calculate  
9 based on the number of people who are going to  
10 -- the maximum number of teachers or employees  
11 that are going to be on site at any one time.  
12 So if the applicant had said well we're going  
13 to have a total staff of ten people but at any  
14 one time, we're going to have six people to me  
15 I read that provision saying we would  
16 calculate based on six people. But since  
17 we're anticipating ten people being on site  
18 sometime in the future, I think that ten is  
19 the right number to use, which would mean  
20 three spaces.

21 MR. MOTEN: Can I add something to  
22 that? When you say ten people, I mean

1       sometime maybe two or three may call in sick  
2       and not necessarily, you know, a capacity of  
3       having ten in 365 calendar day, you know. So  
4       we might have a staff of five or six depending  
5       on the form and calling in for various reasons  
6       they can't make it or one might resign and so  
7       forth.

8                       So, you know if I can take that  
9       into consideration. Or might have a  
10      replacement or a sub.

11                     CHAIRPERSON MILLER: I guess I  
12      just want to say, Mr. Dettman, I understand  
13      what you're saying. But it doesn't take away  
14      from the question of whether we can just  
15      decide based on the special exception standard  
16      whether there's sufficient off-street parking  
17      spaces as opposed to whether they need to  
18      comply with 2110.

19                     MEMBER DETTMAN: Right. Right.

20                     CHAIRPERSON MILLER: Okay. Okay.  
21      Do we have other questions for Office of  
22      Planning?

1                   VICE CHAIRPERSON LOUD: I just  
2                   have one question. In looking at the  
3                   application as a whole it looks fairly well  
4                   presented. And my only concern as a BZA  
5                   member on this case would be the safety of the  
6                   kids for the drop off and the pick up. And  
7                   from reading your report and hearing the  
8                   testimony of the applicant the reason we're  
9                   saying it's safe, for particularly the pick up  
10                  I'm thinking around 6:00 p.m. where everybody  
11                  kind of converges on the space to pick up  
12                  their kids, both the toddlers as well as the  
13                  after school community. We're kind of saying  
14                  it's safe because most of the population will  
15                  not drive. Is that pretty much --

16                 MS. THOMAS: Pretty much, yes.

17                 VICE CHAIRPERSON LOUD: Okay.

18                 MS. THOMAS: Because if they come  
19                  in from the neighborhood.

20                 VICE CHAIRPERSON LOUD: Okay. And  
21                  I know the applicant said he did some  
22                  surveying, maybe I'll ask him about the

1 surveys. But if it appears that that's not the  
2 case and that the population is driving to  
3 pick up the kids, would you recommend any kind  
4 of -- I don't want to say conditions, but  
5 steps like we've seen in other cases. Sort of  
6 a management plan to get people in and out  
7 during that peak period of around 6:00 p.m.

8 MS. THOMAS: We can recommend  
9 that.

10 What I've also seen is that for  
11 some centers with that type of situation  
12 they've gone to DDOT and requested that they  
13 have no parking signs at certain times in  
14 front of their space, in front of the area or,  
15 you know, for at least two houses away.

16 You have -- they can park -- no  
17 parking between the hours of 6:30 and 9:00 and  
18 then again no parking between the hours of  
19 6:00 and 7:00 or 6:00 and 8:00. Sometimes I've  
20 seen that in some cases. And it's a case I'm  
21 working on as well where they have that  
22 accommodation. Maybe you can go to DDOT and

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1 request that for drop off and pickup times  
2 that DDOT will accommodate them with that  
3 street signage situation.

4 VICE CHAIRPERSON LOUD: I don't  
5 necessary want to go that far in this case.  
6 I just wanted to get sense of if our  
7 assumption is wrong and there are more parents  
8 coming to pick up their children by vehicle at  
9 6:00. say it's dark or it's cold or whatever,  
10 that you --

11 MS. THOMAS: We can also  
12 management by the applicant, show some way  
13 they could manage the traffic flow.

14 VICE CHAIRPERSON LOUD: Okay. Let  
15 me ask the applicant, if I can. You had  
16 mentioned that you did some surveying which  
17 gave you some feedback, at least on the hours.  
18 But did it also give you some indication on  
19 the parents that would be using cars to pick  
20 up their kids?

21 MR. MOTEN: Well, my indication as  
22 far as where I've been surveying, where I've

1 asked, the majority are by bus or a subway,  
2 which there are at least three subway stations  
3 in that area. And Metro bus stations and so  
4 forth. They come in and the majority of them  
5 probably live, I would say two or three  
6 blocks, you know. And that's the survey that  
7 I've encountered and when I visit to other day  
8 care centers. And I also, you know, have two  
9 kids that I did have going to day care in that  
10 area. And, you know, we need to pick up by  
11 bus, train, whatever at the time. You know,  
12 it was years ago. But we did have to manage  
13 and, you know, do what we had to do.

14 VICE CHAIRPERSON LOUD: You've got  
15 a tremendous amount of enthusiasm and  
16 compassion for the young people. And like  
17 you, I have small kids and I know -- well,  
18 young kids now. But it's always chaos when  
19 it's time for the parents to pick up the kids.  
20 In my particular context most parents are  
21 driving. And you see cars stalled in  
22 crosswalks, you see cars double parked. I

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1 mean, it gets to be really dangerous during  
2 that period of time.

3 So I guess as you move forward  
4 that's something to keep on the front burner  
5 in terms of adjusting your plan for managing  
6 that peak hour time period if circumstances  
7 warrant it.

8 MR. MOTEN: Sir, can I ask a  
9 question? When you said, you know, as far as  
10 concerned about the cars parking, are you  
11 saying as far as moving or just actually  
12 parking when parents, you know, drop the kids  
13 off on either side of a one way street or --

14 VICE CHAIRPERSON LOUD: I've seen  
15 it both ways. I've seen it where the vehicles  
16 take up so much of the road space that the  
17 kids cannot -- literally cannot walk in the  
18 street. Or if they're walking in the street,  
19 they're dodging around vehicles that are  
20 parked illegally or stalled illegally. And  
21 I've heard of instances where the young people  
22 are hit by the car. But it's both illegal

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1 parking, it's illegal stalling.

2 MR. MOTEN: Yes.

3 VICE CHAIRPERSON LOUD: It's one  
4 parent being in the car in a crosswalk and  
5 just illegally stopped in that crosswalk,  
6 which is normally where a child would cross.  
7 But the child not being able to, so the child  
8 has to dart around that car and go out into an  
9 area of the street or the road that they're  
10 not supposed to be in. So I've seen it a lot  
11 of different ways. And again, I think it's  
12 just something, and you guys seem like you're  
13 on top of it anyway to have a plan that  
14 evolves with the circumstances.

15 MR. MOTEN: Right.

16 MS. MOTEN: I just want to add  
17 it's just a one way street. So it's not cars--  
18 yes. WE're street boxed, too. So it's not  
19 like they're going to fly through. It's  
20 street boxed. I think it's a safe street.

21 And we did survey, you know, the  
22 area as well to make sure of that concern of

1 the traffic and the children's safety as well.

2 MR. MOTEN: Also, we had  
3 implemented in our plan as far as having a  
4 person with a visibility vest or something  
5 more security to control the traffic also. As  
6 far as hiring someone, you know, maybe one or  
7 two just for that person in the morning and  
8 the evening time just to survey and just say  
9 move your car, park on this side, et cetera,  
10 et cetera. Just keep the traffic flowing.

11 VICE CHAIRPERSON LOUD: I mean,  
12 you've got five staff already. I mean  
13 grabbing one of those.

14 MR. MOTEN: Or use one of those.  
15 Right.

16 VICE CHAIRPERSON LOUD: It's only  
17 a brief period of time where you're picking up  
18 and dropping off.

19 MR. MOTEN: Correct.

20 CHAIRPERSON MILLER: Any other  
21 questions for Office of Planning? Okay.

22 Then is there anybody here who

1 wishes to testify in support of this  
2 application.

3 Is there anyone who wishes to  
4 testify in opposition to the application?  
5 Okay. Now's the time to come forward.

6 Good morning. Why don't you  
7 introduce yourself for the record, please?  
8 Give your name and address.

9 And you need to press the push  
10 button to get the microphone on.

11 MS. HALL: Good morning. My name  
12 is Sharrone Hall and I reside at 349 Parkland  
13 Place, Southwest, Unit 1.

14 CHAIRPERSON MILLER: Okay.

15 MS. HALL: I do oppose the day  
16 care center that they're trying to put in the  
17 community.

18 I've spoken with several of my  
19 neighbors who also oppose. Just about all the  
20 questions that you all have for them, I can  
21 just about answer 99 percent of them with  
22 respects to the property around the back and

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1 the side for parking. the safety of the  
2 neighborhood. I've been a resident there for  
3 six years.

4 It is a neighborhood that we're  
5 trying to change.

6 One of the properties that's  
7 adjacent to the building where they're going  
8 to be putting the day care center actually has  
9 at least nine to ten bullet holes riddled  
10 through the window and there's taping on the  
11 window currently.

12 The property on the side that's  
13 vacant, which is the eight feet or four feet  
14 I think you all are talking about, that's  
15 another property that's up for sale. Some  
16 came through there shooting.

17 The playground that's across the  
18 street, all that it is there, we're trying to  
19 have Federal Park Services, because they own  
20 the park it's not D.C. Government owned, we're  
21 trying to get them to put a fence around it,  
22 some lighting and uplift the playground. It's

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1 one that's vandalized all the time. The swings  
2 are broke.

3 The wooded area that's beside the  
4 playground, I want to say early part of this  
5 year, maybe last year, a woman was beat there  
6 and raped, and she did die.

7 The kids that are in the  
8 neighborhood are mostly in charter schools.  
9 They're in school until 6:00. Some one has  
10 said that this is going to cater to most of us  
11 in the community, I don't feel that it will.

12 There are speed humps on the  
13 street which took us two years working with  
14 Ms. Gabrielle Vega so we could get the speed  
15 humps installed after a little girl was hit  
16 and placed in a body cast from the waist down.

17 Stolen cars still peel through the  
18 streets. One had turned over in the middle of  
19 the street. I immediately emailed the Mayor's  
20 office after that.

21 The meetings for the community are  
22 open. They're over at the Petey Green Center,

1     you know. As far as trying to get your name  
2     down, you can go over there and apply. Just  
3     put your name down on a list and you will be  
4     heard. However, I understand you all are from  
5     the community. This is not a personal attack  
6     against them. I want to know when was the  
7     last time did they really visit the community?  
8     When was the last time they hung in the  
9     community? When was the last time they  
10    knocked from door-to-door to introduce  
11    themselves and say well we're putting a day  
12    care center?

13               The tenants who were in that  
14    building, they were forced to move. They  
15    didn't move because they had to move. They  
16    moved because there was a proposed day care  
17    center coming.

18               And most of the neighbors there do  
19    work, like myself, I am employed and my kids  
20    don't go to school in that area. They're  
21    already in after care. A lot of the after  
22    care programs that are at the schools are free

1 already. So I don't feel that this would  
2 cater to my community that I reside in.

3 There is crime on the street. Like  
4 you say, there's crime everywhere. But to  
5 bring other children in this area who don't  
6 reside there at this present time, I don't  
7 think is a good idea for a day care center.

8 The park has now made themselves  
9 known for a horseshoe throwing league. With  
10 that horseshoe throwing league that's over in  
11 the park area where the playground is, because  
12 this is a large area, there are a lot of  
13 people that hang over there that drink.  
14 There's a lot of crime that goes on in that  
15 park, and most of it is in the daytime while  
16 they're at work. While they would be having  
17 the day care center.

18 So I'm kind of confused about how  
19 they've come up to the assumption that this is  
20 a pretty much okay neighborhood and it's  
21 pretty much safe.

22 We live there. Some of my tenants

1 or residents, neighbors they had to work  
2 today. So a lot of them couldn't come.

3 A lot of us just pass this house  
4 and keep going down the street. I live at  
5 357. So where they want to put the -- I mean,  
6 I live at 349. I apologize about that. Where  
7 the residence is going to be or the day care  
8 center, is the day care center is right here,  
9 there's an empty lot, there's the building  
10 that's shared by that lot and then there's  
11 where I live. I've never got a knock at my  
12 door to say hi. I'm Mr. and Mrs. and we're  
13 proposing to put a day care in your  
14 neighborhood. How do you feel about that?

15 The parking is first come, first  
16 served. There's two parking spaces at least  
17 for each unit out front. There is ample  
18 parking across the street. But if you ask any  
19 Metropolitan Police officer who patrols that  
20 area, I will guarantee that they will have a  
21 denial about putting a day care center up  
22 there. There's just too much going on and

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1 we're really trying to fight against that.

2 When you come on the street  
3 there's the gas station, there's an alley,  
4 there's a building, there's another building,  
5 then their building, the lot. And, you know,  
6 it's all -- this is a residential area. And  
7 to put a -- even to put parking spaces out  
8 back, this is a alley. It's an alley out  
9 back. And it's a very narrow alley.

10 And the reason why the fence is  
11 gone on that property they were talking about  
12 is because it was knocked down. It didn't  
13 just up and move.

14 So there's a lot of things, a lot  
15 of dynamics of Parkland Place. And I was told  
16 before the reason why they can't really get  
17 change going is because people don't stay  
18 long.

19 After care is free in D.C. Public  
20 Schools for most of my neighbors who receive--  
21 if they have low paying jobs, they're entitled  
22 to free child care, after care anyway.

1           And I understand that it was  
2           proposed that you may have somebody outside to  
3           help get kids to the car. I doubt if that  
4           would be successful. Just an example.

5           It was a nice afternoon.  
6           Saturday. No, it was a holiday. And we were  
7           all home. It was raining. The kids were  
8           outside and then it started raining. Everybody  
9           went inside. Within three minutes we opened  
10          our doors and the police are out there.  
11          There's a guy laying down the street. And I  
12          want to say the address is 357, but I'm not  
13          sure. It's at least about 4 doors down from  
14          me and he's dead. Nobody knew what happened,  
15          but he was shot through the rain.

16          You know, I just don't believe  
17          that we should put other kids -- we decided to  
18          stay there, most of us. We have decided that  
19          this is our community, we're going to fight  
20          for it, we're going to do whatever it takes  
21          and try to get things going. Try to get maybe  
22          a community center for the kids. A community

1 center that will cater to the teenagers  
2 because there's a high dropout rate in that  
3 area and the children are hanging right  
4 outside smoking and selling drugs. The truancy  
5 officers won't even come and pick the children  
6 up And I've called on more than one occasion.

7 And so it is a neighborhood. It's  
8 an upcoming neighborhood but it's not going to  
9 come together that quickly for a day care  
10 center.

11 CHAIRPERSON MILLER: So the Public  
12 School provide after school programs but not  
13 for teenagers, for younger than teenagers?

14 MS. HALL: They have them for  
15 teenagers who are in school. We have  
16 teenagers that are not in school who are  
17 hanging right there beside were they want to  
18 put the day care center.

19 The numbers are all kind of messed  
20 up, so if I say the numbers I sometimes get  
21 them confused. But we have teenagers that  
22 just outside on the proposed -- next to the

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1 proposed property doing whatever they want to  
2 do.

3 Even a police officer said on a  
4 bike one day "I'm getting so tired of coming  
5 around here and when I try to ask questions,  
6 nobody wants to tell me anything."

7 I'm like the neighborhood mom. I  
8 will tell, and I will tell you to stop, too.

9 To put a day care center right  
10 now, 2008 on Parkland Place is not something  
11 that I agree upon.

12 CHAIRPERSON MILLER: Okay. And  
13 basically you're concerned about the safety  
14 for the children because it's --

15 MS. HALL: The safety of other  
16 children, the safety of other children during  
17 the daytime. There's not a lot of people  
18 home. Yes, a lot of people do work. And the  
19 ones that are home, they're not going to tell  
20 you what happened if anything does happen.

21 There is a safety issue crossing  
22 that street to go to that park. There's no

1 fence around the park or playground. There's  
2 no fencing around there. And right there is a  
3 highway, which is Malcolm X Highway or Malcolm  
4 X Avenue, however you want to rephrase. There  
5 is kind of little stores in the area, but  
6 they're mostly liquor stores.

7 CHAIRPERSON MILLER: Okay. Thank  
8 you.

9 Are there Board questions,  
10 otherwise we can turn to the applicant to  
11 either -- if you have a few kind of cross  
12 examination questions, you could ask her.  
13 Otherwise, you could have a chance to address  
14 some of her concerns that she's raised.

15 VICE CHAIRPERSON LOUD: I have a  
16 question.

17 CHAIRPERSON MILLER: Oh, wait.  
18 Mr. Loud's going to have some questions first.

19 VICE CHAIRPERSON LOUD: Two quick  
20 questions.

21 Thank you for your participation  
22 this afternoon and your leadership in the

1 community.

2 Where you say the teenagers are  
3 hanging out, is that the lot that has the  
4 bullet holes that's directly adjacent to?

5 MS. HALL: Yes. Yes.

6 VICE CHAIRPERSON LOUD: So they  
7 hang out in front of that building?

8 MS. HALL: Yes, sir.

9 VICE CHAIRPERSON LOUD: Okay. And  
10 also from the record from the OP's report, I  
11 know you probably didn't get a chance to get  
12 a copy of this --

13 MS. HALL: No, I haven't.

14 VICE CHAIRPERSON LOUD: -- there  
15 are two child care centers already in the  
16 area. Are you familiar with either of those  
17 two?

18 MS. HALL: Yes, I am. They're not  
19 on our street.

20 VICE CHAIRPERSON LOUD: Okay.

21 MS. HALL: The one is located over  
22 there where the police are stationed. That's

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1 a pretty quiet street over there. The other  
2 one is right there on the front side of  
3 Malcolm X Avenue where the bus stop is, which  
4 they have facilities probably out back for  
5 those children. I'm not aware if they really  
6 use that playground.

7 VICE CHAIRPERSON LOUD: Are you  
8 opposed to those two child care facilities in  
9 their location.

10 MS. HALL: Yes, the one on Malcolm  
11 X, sure.

12 VICE CHAIRPERSON LOUD: Okay.

13 MS. HALL: The one over on -- I'm  
14 not sure of the street name, but I know  
15 exactly where you're talking about. It's a  
16 yellow/white house. I know exactly where  
17 you're talking about but I just don't know the  
18 name of the center. That's a pretty quiet  
19 area and it's not a lot of crime over in that  
20 area.

21 When I moved on the street that  
22 day care center was already over there, to my

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1 knowledge.

2 VICE CHAIRPERSON LOUD: All right.

3 Thank you.

4 CHAIRPERSON MILLER: Okay. Any

5 other Board questions?

6 All right. Does the applicant have  
7 any questions or response to the concerns that  
8 she's just raised?

9 MR. SOLOMON: Yes. Madam Chair,  
10 thank you so much for giving us the time to  
11 ask the community leader a question. I thank  
12 you so much.

13 MS. HALL: You're welcome. And I'm  
14 not the leader, I'm a laborer. A concerned  
15 citizen.

16 MR. SOLOMON: Okay. Okay.  
17 Thanks. I didn't mean that in a derogatory  
18 way. I mean it in a respectful way.

19 MS. HALL: Thank you.

20 MR. SOLOMON: Okay. And a  
21 question for you, there are other day care  
22 centers, I think about 1,000 feet from this

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1 proposed day care, right, on Martin Luther  
2 King side about probably two day care centers  
3 that would be very close?

4 MS. HALL: Yes. That's not Martin  
5 Luther King Street. That is another street.  
6 It's a side street. There is a day care  
7 center there. However, as I told the panel  
8 this morning, that's a pretty nice  
9 neighborhood.

10 MR. SOLOMON: How far is it from  
11 this neighborhood?

12 MS. HALL: How far? I'm not sure.

13 MR. SOLOMON: Would you say one  
14 mile?

15 MS. HALL: It'll take -- it'll  
16 take about a good three to four minutes to  
17 walk over there.

18 MR. SOLOMON: Okay.

19 MS. HALL: They have their own --  
20 I just want to finish answering the question.

21 MR. SOLOMON: Go ahead.

22 MS. HALL: They have their own

1 area where the children can play also. They  
2 have their own grassy area. They have a  
3 playground out there and everything for those  
4 children. They don't have to bring them out  
5 to cross over any crime or anything like that.  
6 And with OIC stationed right next door to them  
7 there's not a lot that happens on that street.

8 MR. SOLOMON: So the other day  
9 care centers, they're about three to four  
10 minutes walk? To the best of your knowledge  
11 or recollection has there been any crime  
12 against kids at that day care center or any--

13 MS. HALL: Not to my knowledge,  
14 sir.

15 MR. SOLOMON: Okay. And also you  
16 said that you are working to get a community  
17 center for kids in your neighborhood, right?

18 MS. HALL: Yes. And when I was  
19 talking about a community center, I didn't  
20 want to elaborate, but I can. Something along  
21 the lines that the children, the teenagers  
22 preferably, have somewhere if they need to

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1 reapply for schools or have somebody that can  
2 take them. Because most of the parents in  
3 those neighboring areas are on drugs. So this  
4 would be not a day care center. It would be  
5 a day center would teenagers can come. And  
6 there's a lot of homeless teenagers in the  
7 District of Columbia that can maybe take a  
8 shower, get a fresh change of clothes and have  
9 job training. Not in the facility, but with  
10 neighboring service, still setup almost like  
11 a residential place to live.

12 MR. SOLOMON: Would the proposed  
13 facility be close to the building where you  
14 said there are about eight to ten bullet  
15 holes?

16 MS. HALL: We're not sure yet.  
17 This is just an idea that's been storming up.  
18 They're not sure about that.

19 MR. SOLOMON: But at least you're  
20 thinking about it?

21 MS. HALL: But we're not sure of  
22 the location, sir. It may not even take place

1 in there. There are all sorts of ways that  
2 you can cater to the teens by using rec  
3 centers in the morning time or in the  
4 afternoon. Just something for the other kids.

5 MR. SOLOMON: Okay. And this  
6 would be for teenagers, right?

7 MS. HALL: Yes, sir.

8 MR. SOLOMON: And the people that  
9 hang around the playground doing all sorts of  
10 things, are teenagers, right?

11 MS. HALL: Yes. And those are the  
12 people that you want to target to help get  
13 them off the streets. Find out why they don't  
14 like school.

15 The little kids are made to go to  
16 school by their parents. At the age of 16  
17 they're not mandated to go to school. If they  
18 don't show, they don't show. They're dropped  
19 from the role.

20 MR. SOLOMON: Okay. So that  
21 you're not concerned about bringing a lot of  
22 teenagers together to a neighborhood where,

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1 you know, you said and I also believe that the  
2 crime rate is pretty high? You know what  
3 happens sometimes, not all the time, when  
4 teenagers are brought together in an  
5 environment where speculatively there might be  
6 some, you know, egos or -- have you considered  
7 that bringing teenagers together no matter  
8 what the reason might be?

9 MS. HALL: No matter what the  
10 reason is.

11 I didn't mentioned, however,  
12 Salvation Army comes in the neighborhood and  
13 they take the children to church. I also take  
14 kids to church with me, too, in that  
15 community. And that means the teenagers also.

16 There are small things that  
17 happen, but they're not stationed in that  
18 community. And why I--

19 CHAIRPERSON MILLER: Can I  
20 interrupt for a second. I don't want us to  
21 get too far off course. I mean, from what I'm  
22 hearing it sounds like that you're concerned

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1       that there are really other needs that need to  
2       be met in the community instead of a day care  
3       center. That it doesn't meet the needs that  
4       you see in your community and you'd rather  
5       that these other needs be met. But our rule  
6       here, we can't necessarily tell them, okay,  
7       make a center for teenagers instead because  
8       that's what's needed in your community.

9                   MS. HALL: Right. I understand  
10       that.

11                  CHAIRPERSON MILLER: We just have  
12       to avail -- it's more narrow. We have to --  
13       okay. We have to evaluate by the standards in  
14       205 whether this proposed center meets that  
15       criteria.

16                  MS. HALL: Right.

17                  CHAIRPERSON MILLER: And I know  
18       you didn't go that far off in your testimony.  
19       But sometimes when there are questions asked,  
20       then we go off on a different track.

21                  MS. HALL: Yes. Exactly.

22                  CHAIRPERSON MILLER: And we don't

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1 want to go too far that way.

2 MS. HALL: I apologize about that.

3 CHAIRPERSON MILLER: No.

4 MS. HALL: I just wanted to answer  
5 his questions.

6 CHAIRPERSON MILLER: Right.

7 MS. HALL: And even disregard --  
8 we can disregard the other needs. There is not  
9 necessarily a need for a child development  
10 center on Parkland Place. There's Friendship  
11 Edison, a public charter school down the  
12 street. There's Martin Luther King Elementary  
13 School. There's other alternatives for  
14 education besides a child development center  
15 right there in that particular neighborhood.

16 MR. SOLOMON: Madam Chair, yes.  
17 Mr. And Mrs. Moten, they're spending upwards  
18 of \$50,000, right? They're spending upwards  
19 of \$50,000 to develop this building and get  
20 this child care facility. I would sincerely  
21 doubt they don't want to throw away this money  
22 not doing their due diligence to make sure

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1 that they will have kids coming to this  
2 facility. You know, it would be highly  
3 doubtful. She's saying that there's no need  
4 and that most of the kids from that  
5 neighborhood already have child care  
6 facilities that they go to. But Mr. and Mrs.  
7 Moten even though they may not met her when  
8 obviously she works, but they did do their due  
9 diligence.

10 A lot of people in that  
11 neighborhood did say that they liked the idea  
12 of having a child care facility.

13 Now no one in their right mind  
14 would want to expend all that money knowing  
15 that a child care facility won't happen.  
16 Knowing that they have no way of bringing in  
17 kids.

18 VICE CHAIRPERSON LOUD: Counsel, I  
19 just wanted to interrupt you just for one  
20 second to note that it sounds like he's moving  
21 into closing. And he's doing the cross of this  
22 witness, right? I thought. I mean, I didn't

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1 want you to necessarily use all your fire  
2 power if you're still trying to cross this  
3 witness.

4 MR. SOLOMON: Yes.

5 VICE CHAIRPERSON LOUD: Or if you  
6 brought the cross to a close.

7 MR. SOLOMON: Yes. I was just  
8 addressing the issue of, you know, what the  
9 individual said about talking to her neighbors  
10 and that none of them said that they wanted  
11 child care facility. So I've just giving that  
12 point to the attention, even though members of  
13 the Board recall what she was saying. But  
14 just to refute that they could -- it's almost  
15 impossible for that to have happened  
16 considering the fact that Mr. and Mrs. Moten  
17 actually respect of her neighbors who  
18 indicated that they would work on this  
19 personally.

20 CHAIRPERSON MILLER: Okay. I  
21 think that the Vice Chair is just trying to  
22 keep the proceedings organized and know where

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1 we're at. So, for instance, if you have any  
2 other cross, you should finish any other  
3 questions. Otherwise, we an excuse this  
4 witness and then we can move into your closing  
5 or rebuttal.

6 MR. SOLOMON: All right. Just one  
7 more question.

8 CHAIRPERSON MILLER: Okay.

9 MR. SOLOMON: Would you think or  
10 would you agree with me that educational  
11 facilities or even child care facilities,  
12 child development center or whatever you might  
13 want to call it is a very positive development  
14 in any neighborhood that it comes into? That  
15 it could be nothing negative about a child  
16 care facility, would you agree with me?

17 MS. HALL: No, I don't agree with  
18 you.

19 MR. SOLOMON: Thank you.

20 CHAIRPERSON MILLER: Okay. Any  
21 other Board questions of her?

22 Thank you very much for taking the

1 time to come down and testify.

2 MS. HALL: Thank you.

3 CHAIRPERSON MILLER: Is there  
4 anybody else in the audience here to testify  
5 either in support or opposition of this  
6 application? Okay. Not hearing from anyone,  
7 I think what we'll do is turn to the applicant  
8 for any other rebuttal or closing remarks. And  
9 then we'll see where we're at with this  
10 application, whether it seems like we may need  
11 to keep the record open for some additional  
12 information. So I will explore that after you  
13 make your closing.

14 MR. SOLOMON: Yes, Madam Chair.

15 CHAIRPERSON MILLER: Okay.

16 MS. MOTEN: I just would like to  
17 thank the Office of Planning for their  
18 recommendation of approval and as well as the  
19 Office of State Superintendent of Early  
20 Childhood Education and Child Residential Care  
21 Facility too for their approval as well.

22 We did do a survey in the area and

1 there is a need for infants and toddlers, and  
2 tutoring in that neighborhood greatly.

3 And I appreciate you guys and the  
4 Board coming out, taking the time out to hear  
5 our case. And we hope that you will grant the  
6 approval of the exception for this day care  
7 center.

8 Thank you.

9 CHAIRPERSON MILLER: Okay. Thank  
10 you very much.

11 I believe that there is more  
12 information that we want to get into the  
13 record before the Board decides this case. And  
14 I'm going to start with what I understand that  
15 to be, and anyone can comment. And then we'll  
16 see exactly how we want to proceed.

17 The first point is the parking  
18 spaces, that what we have is a picture of the  
19 rear yard that Mr. Turnbull says looks like a  
20 wheat yard, or whatever. And that we need  
21 something more definitive demonstrating the  
22 parking spaces that will exist there.

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1                   There is specific parking  
2 regulations that's set forth in Chapter 21 of  
3 the Zoning Regulations. I think 2115 goes to  
4 the size of the parking space. But I think you  
5 could, you know, check with Office of Planning  
6 on this as well. Isn't that the consensus of  
7 the Board that we would -- Mr. Turnbull, do  
8 you have an idea of exactly what it would look  
9 like, what they might be turning in to address  
10 the two parking spaces in the rear?

11                   COMMISSIONER TURNBULL: Yes. I  
12 guess my main concern was the issue of trying  
13 to park between the two buildings, which I  
14 don't think you can. And there's not enough  
15 room there. So that would take away -- but I  
16 think it would be good to see a site plan that  
17 would more clearly explain what they intend to  
18 do.

19                   CHAIRPERSON MILLER: Okay. And  
20 again, I think that Ms. Thomas could work with  
21 you on that as to what that should look like

22                   MS. THOMAS: Yes. That's good.

1 That's fine.

2 CHAIRPERSON MILLER: Okay. You  
3 know, showing the size or whatever of the  
4 parking space.

5 With respect to -- that's two  
6 spaces that you've identified that you have  
7 room for.

8 MS. MOTEN: In the back?

9 CHAIRPERSON MILLER: In the back.

10 MS. MOTEN: Yes.

11 CHAIRPERSON MILLER: I think  
12 there's a real question about whether you can  
13 have another one on the side from what I've  
14 understood today.

15 MS. MOTEN: Okay.

16 CHAIRPERSON MILLER: You know,  
17 we're going by 205. So you have to meet the  
18 criteria in 205. And so we're looking at  
19 205.4 the center shall provide sufficient off-  
20 street parking spaces to meet the reasonable  
21 needs of teachers, other employees and  
22 visitors. Okay.

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1           So first of all, I gave an  
2       interpretation that you might need to show to  
3       meet that, which I think you do in any event  
4       while if you only have two off-street parking  
5       spaces, why that's reasonable to meet the  
6       needs of teaches, other employees and  
7       visitors. So that would involve a little bit  
8       more elaboration, for instance, of where  
9       you're going to be drawing your staff from.  
10      For instance, if you're saying most of them or  
11      a lot of them are going to be using public  
12      transportation, how do we know that? Or the  
13      same with the visitors or anybody else who  
14      would be using those spaces. Why is that  
15      sufficient?

16           We did not make a decision today  
17      whether or not my reading of that regulation  
18      is the one that the whole Board would sign  
19      onto, meaning that there are requirements in  
20      Chapter 21 where we get the equation from. And  
21      you certainly look to that, like one for every  
22      four staff, for instance. And you have that

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1 under your 20, but you don't have it for your  
2 40? You have enough parking space. Okay. So  
3 that's the guide. You definitely need what  
4 the regulations set forth in the table under  
5 Chapter 21.

6 What I'm trying to say is in the  
7 interpretation that I gave, 205.4, it might be  
8 sufficient just for you to show why she  
9 reasonably meets the needs of 40, for  
10 instance. However, the other view would be  
11 that you would need a variance from the  
12 requirements in Chapter 21. And that's a  
13 different standard. So I just want to -- you  
14 can ask Office of Planning as well. I think  
15 perhaps you might want to address that in the  
16 event that the Board would decide that in fact  
17 you need a variance. The Board hasn't decided.  
18 I don't think we need to decide that today  
19 because it's getting late.

20 So in the event it's a three prong  
21 test. You need to show that your property  
22 already has some exceptional condition that's

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1 different from other properties that makes it  
2 difficult for you to provide more than the two  
3 parking spaces, and why there's no adverse  
4 impact on neighboring properties or to the  
5 public good. Office of Planning can help you  
6 that as well. It's in our regulations as well.  
7 So you might want to address that as well in  
8 the event the Board were to decide a variance  
9 was needed.

10 Do other Board members have a  
11 recollection of other information that we need  
12 to leave the record open for?

13 BOARD MEMBER WALKER: Madam Chair,  
14 I am particularly concerned about the safety  
15 of the children who will be using this off  
16 site play area. And I feel like there is a  
17 paucity of information in the record about  
18 what the plan is for ensuring the children's  
19 safety, particularly in light of information  
20 that we have now that there is no fencing  
21 around this park that you're planning to use.  
22 And so it would be useful for me if the

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1 applicant would address that issue.

2 Furthermore, if we're going to  
3 leave the record open for some period of time,  
4 I think it would allow the applicant, it would  
5 afford them an opportunity to attend a  
6 community meeting. We have some conflicting  
7 testimony about whether the community is  
8 indeed in support or in opposition. And so it  
9 would give us an opportunity, hopefully, to  
10 either get something from the ANC or to get  
11 something a little more concrete about the  
12 community's view.

13 CHAIRPERSON MILLER: I have a  
14 question also about the drop off. Did you say  
15 is there going to be an adult bringing out the  
16 child to drop off or how was it? Is that  
17 addressed in your application how drop off  
18 with work and pick up?

19 MS. MOTEN: No. The parent will be  
20 coming to drop the kids in and out of the day  
21 care.

22 CHAIRPERSON MILLER: Will they

1 need to park and bring the child in,  
2 basically?

3 MS. MOTEN: Not all the parents  
4 will be parking. They will be using public  
5 transportation. So some will have to park.

6 CHAIRPERSON MILLER: Okay.

7 MS. MOTEN: But we don't know yet.

8 CHAIRPERSON MILLER: But that's  
9 the plan that they bring the children in  
10 basically?

11 MS. MOTEN: In that community most  
12 of the parents are on public transportation.

13 CHAIRPERSON MILLER: Okay. Any  
14 other issues that the Board wants more  
15 information on? Okay.

16 So we'll leave the record open for  
17 those issues.

18 And let me just ask you before we  
19 complete this that are there any other issues  
20 that you've heard today that you feel you  
21 would like to supplement the record for?

22 MR. SOLOMON: On the record where

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1 Mr. Turnbull had asked for a site plan showing  
2 how the two parking spaces at the side of the  
3 building will be, how we'll get that. So we're  
4 going to -- we'll supplement the record on  
5 that. And every other supplement records of  
6 every other concern Madam Chair and the Board  
7 members may have had regarding the  
8 application. So that would be our goal to make  
9 sure we provide additional information.

10 CHAIRPERSON MILLER: Okay. Okay.  
11 So what we're going to do then is set a time  
12 for you to provide these filings. And then  
13 we'll set a date for our decision.

14 We won't need to have anymore  
15 hearing on this issue. Okay.

16 So we have meetings for decisions  
17 scheduled the first Tuesday of every month,  
18 basically. So our next one is January 6th and  
19 the one after that is February 3rd, I think.  
20 Let's see. We want to leave you enough time  
21 to prepare your documents and we don't want to  
22 leave too much time so that, you know, you're

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1       inconvenienced that way. And we also based on  
2       I think Ms. Walker's concern, what to leave  
3       the record open in the event you have an  
4       opportunity to meet with ANC or the community,  
5       thought we don't require that. It's often a  
6       good idea. And then give them an opportunity.  
7       The ANC is automatically a party to these  
8       proceedings. They could respond. You should  
9       serve them with whatever you serve us with  
10      because they are considered a party.

11               So that being said, do you think  
12      that the February is the more realistic date  
13      to give you enough time to do your pleadings,  
14      serve the ANC and the Board and Office of  
15      Planning and then they can respond, and then  
16      we decide?

17               MR. SOLOMON: Yes. Let's do  
18      February.

19               CHAIRPERSON MILLER: Okay. So  
20      that's what I thought. So we'll set this for  
21      February 3rd decision.

22               When would you anticipate being

1 ready to file your pleadings? Early January,  
2 January sometime?

3 MR. SOLOMON: Yes, Madam Chair.  
4 By mid-January.

5 CHAIRPERSON MILLER: Okay. So  
6 what we want to do is leave -- I guess we can  
7 figure that out with the staff here. What  
8 time and the latest for you to have time to  
9 file your pleading and then time for the ANC  
10 to respond if they care to. And then the  
11 Board decides on the 3rd.

12 So would that be like around  
13 January 13th for their filing or -- he's  
14 talking about mid-January, which then gives  
15 the ANC like a week to respond or something.  
16 Or what do you think, Mr. Moy? Should we go  
17 back a little further?

18 MR. MOY: Well going backwards  
19 from February the 3rd --

20 CHAIRPERSON MILLER: Right.

21 MR. MOY: -- if the Board's  
22 interested in responses, which I assume you

1 are, we could set a deadline for responses by  
2 January 27th, which is Tuesday, January 27th.  
3 And maybe to give the applicant ample time to  
4 pull all the materials together. Perhaps maybe  
5 the week prior to that, which I believe is  
6 January 23rd. Is that correct?

7 CHAIRPERSON MILLER: That's right.  
8 Right. Okay. That would be good.

9 MR. MOY: Actually, January 23rd,  
10 I believe, was a Friday. Is that a Friday or  
11 a Tuesday?

12 CHAIRPERSON MILLER: The 20th is a  
13 Tuesday, so Friday.

14 MR. MOY: Well, no that's a  
15 holiday. So we'll make that the 21st, which  
16 will be the Wednesday, correct?

17 CHAIRPERSON MILLER: Yes.

18 MR. MOY: The 21st would be a  
19 Wednesday for the applicant to file.

20 CHAIRPERSON MILLER: How about the  
21 22nd so they can enjoy inauguration day?

22 MR. MOY: Yes.

1 CHAIRPERSON MILLER: Okay. Okay.

2 How does that sound? Is that okay.

3 MR. SOLOMON: Yes, ma'am.

4 CHAIRPERSON MILLER: Okay. So  
5 that would be January 22nd for the applicant  
6 to file supplemental pleadings or filings.  
7 And January 27th for any responses from the  
8 ANC. And I guess the Office of Planning if  
9 you care to. And then a decision by the Board  
10 on February 3rd.

11 MR. MOY: Madam Chair, one other  
12 thing.

13 CHAIRPERSON MILLER: Okay.

14 MR. MOY: In the OP report the OP  
15 addressed the MPD comments, which we have no  
16 record of. Is that something that the Board  
17 wanted to pursue?

18 CHAIRPERSON MILLER: That's a good  
19 point. Why don't we leave the open for that.  
20 That is an issue of concern that's been raised  
21 in these proceedings. Let me see where that  
22 is.

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1 Ms. Thomas, do you think that  
2 there's a chance that MPD may submit some  
3 information.

4 MS. THOMAS: You know, I tried  
5 calling them a couple of time myself and I  
6 actually contacted the Crime Statistics or  
7 Vital Statistics Unit they have. And tried to  
8 talk to somebody. But they didn't return my  
9 calls. You know, it kind of get bumped around.  
10 But I'll keep trying.

11 CHAIRPERSON MILLER: Okay. So we  
12 can leave the record open for that.

13 I guess I would say just  
14 procedurally wise, you know, if you get  
15 something like that earlier, that we would put  
16 you on the calendar for like last for  
17 responding. But if you have something from  
18 MPD, maybe if you can share it with the  
19 applicant earlier and the ANC then, then they  
20 could respond to that.

21 MS. THOMAS: Okay.

22 CHAIRPERSON MILLER: Okay. So

1 we'll leave that kind of loose that way.

2 All right. Anything else?

3 MR. MOY: Madam Chair, just a real  
4 quick one. If we're moving for the date of  
5 Thursday, January 22nd for the applicant to  
6 file, we want to give at least a minimum of  
7 one week for other responses. That would be  
8 Thursday, January 29th.

9 CHAIRPERSON MILLER: Yes. Yes,  
10 let's do that. You just want to make sure  
11 that it comes to the office in time to be  
12 circulated to the Board in our files. So, yes,  
13 that makes sense. Thank you.

14 Okay. All right. Are there any  
15 questions? Okay.

16 You'll have to come forward. I  
17 know we usually only take it from parties, but  
18 since -- that's okay. We'll let you.

19 MS. HALL: I apologize.

20 CHAIRPERSON MILLER: Okay.

21 MS. HALL: And thank you for  
22 giving me the opportunity to ask another

1 question. Do the neighbors get a chance to  
2 respond again or that they don't have anything  
3 else to say, the neighborhood in itself with  
4 respects to putting the day care center up?  
5 Is there any information that they can submit  
6 or petitions or statements, as I heard her ask  
7 about -- Ms. Walker asked about MPD. Are  
8 there anything that we can do or bring forth?

9 CHAIRPERSON MILLER: Okay. So  
10 you're requesting that the record stay open to  
11 receive further information from the  
12 neighbors, correct?

13 MS. HALL: Right. Exactly.

14 CHAIRPERSON MILLER: Let me just  
15 say this: I think the Board can consider  
16 that. The ANC is a party in the case.

17 MS. HALL: Yes.

18 CHAIRPERSON MILLER: And we are  
19 required by law to give them great weight,  
20 which means we're required to address their  
21 issues. So I would say that it would be most  
22 effective for neighbors to work through the

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1       ANC. And the ANC has an opportunity to --  
2       we've left the record open for them.

3               Now the other thing as the  
4       petitions, it's not a popularity contest.

5               MS. HALL: Okay.

6               CHAIRPERSON MILLER: We're looking  
7       at the criteria.

8               MS. HALL: Okay. And a lot of my  
9       neighbors didn't know about the hearing  
10      because a lot of them drive. So when they  
11      drive down, they drive past the property in  
12      order to park. So we kind of thought it was  
13      yesterday. And then I had to tell one of my  
14      neighbors no it was today. And she's off on  
15      Mondays, but she had to work today.

16              CHAIRPERSON MILLER: Okay. So  
17      what the Board needs to decide right now then  
18      is shall we leave the record open for the  
19      neighbors to file anything additional? I  
20      think that would be with respect to any  
21      adverse impacts as a result of this child  
22      center, okay.

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1 MS. HALL: Yes, ma'am.

2 CHAIRPERSON MILLER: We can do it.  
3 Do Board members have an objection to that?  
4 Okay.

5 I'm trying to think where this  
6 will fit in the schedule, when we should do  
7 that by.

8 BOARD MEMBER WALKER: Let me ask  
9 one question.

10 CHAIRPERSON MILLER: Yes.

11 BOARD MEMBER WALKER: Are the open  
12 community meetings that you referred to ANC  
13 meetings or are they different meetings?

14 MS. HALL: They're ANC meetings.  
15 That for the community to come to, and anybody  
16 can come. They just need to sign in and wait  
17 their turn to speak. Where the Police  
18 Department and the Fire Department and other  
19 areas, Homeland Security comes out and they  
20 talk to the community about the upcoming  
21 changes.

22 MR. MOY: Madam Chair, maybe the

1 staff could make a suggestion since there was  
2 testimony that other neighbors would have been  
3 here since they had to work, the suggestion  
4 might be that the Board allow the record to be  
5 open for them to file a letter by January  
6 22nd. And that way the applicant would have  
7 a chance to respond to those kind of letters  
8 that would have taken place at the spoken  
9 hearing. That's a suggestion.

10 CHAIRPERSON MILLER: Yes, that's  
11 what I'm looking at. That the applicant's  
12 filing on January 22nd, right? So if the  
13 neighbors file on January 22nd, the applicant  
14 didn't see the letters yet, right? So they'd  
15 have to file them a little earlier, right?

16 MR. MOY: That's true. But the  
17 applicant would be allowed to respond to those  
18 letters --

19 CHAIRPERSON MILLER: Afterwards?

20 MR. MOY: -- by January 29th. The  
21 responses would be going in two different  
22 directions.

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1 CHAIRPERSON MILLER: Okay. Let me  
2 throw thing since you brought this up. We're  
3 going to leave the record open for you and we  
4 just want to figure out the best way. You  
5 know, if you filed it before the applicant  
6 files their pleading and then the applicant  
7 would have a chance to respond to those  
8 concerns. So that's a possibility. If you  
9 file it after they file, then you will have  
10 seen their updated filing.

11 I think it maybe makes sense for  
12 you to do it before and then they could  
13 respond to that, your concerns. Okay.

14 MS. THOMAS: That's fine.

15 CHAIRPERSON MILLER: Because they  
16 don't need a lot of time. They couldn't come  
17 to the hearing. So if we back this up another  
18 week or so and put them to January -- by  
19 January 13th or something, we could leave the  
20 record open. How does that sound for any  
21 letters from neighbors? Okay. Yes, let's  
22 just leave it at that. Is that okay?

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1 Do you know when the ANC meets, by  
2 any chance?

3 MS. HALL: It meets normally on  
4 Wednesday at 7:00 at the Petey Green Center.

5 CHAIRPERSON MILLER: I mean events  
6 coming up with the date like January 13th or  
7 something, is that after the ANC meeting or  
8 before, or do you have any idea?

9 MS. HALL: Okay. I have to look  
10 at my calendar.

11 CHAIRPERSON MILLER: Do you have  
12 it with you?

13 MS. HALL: I don't have my -- but  
14 I can look.

15 CHAIRPERSON MILLER: Okay. I  
16 think what we'd like to do is schedule it  
17 after the ANC meeting so perhaps some of these  
18 issues can be resolved at the ANC meeting.

19 MS. MOTEN: It was my  
20 understanding they didn't have a meeting for  
21 December. I did try to contact Mary Cuthbert,  
22 but they didn't have a meeting. So I'm not

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1 aware of the meetings. It's posted on the  
2 website. But they change.

3 MS. HALL: They do take a break  
4 for Christmas and come back.

5 MS. MOTEN: Yes. And they need to  
6 post it.

7 CHAIRPERSON MILLER: We may have a  
8 schedule here of all ANC meetings, dates when  
9 they meet.

10 MR. MOY: Ms. Hall, is this ANC  
11 8A.

12 MS. HALL: I'm not sure of the  
13 number.

14 MR. MOY: Because they meet on the  
15 first Tuesdays. 8C meets on the first  
16 Wednesday.

17 MS. HALL: That's 8C, because it's  
18 always on Wednesday nights. Because I have  
19 church that night, too.

20 MR. MOY: 8B is Tuesday. 8E, which  
21 is the --

22 MS. HALL: 8C.

1 CHAIRPERSON MILLER: When does 8C  
2 meet?

3 MR. MOY: 8C meets the first  
4 Wednesday of the month. 8C is the first  
5 Wednesday of the month.

6 CHAIRPERSON MILLER: So is that  
7 the 7th or --

8 MR. MOY: Which would be --

9 CHAIRPERSON MILLER: -- or the  
10 2nd.

11 MS. HALL: That's the 7th. The  
12 first Wednesday on January is the 7th.

13 MS. MOTEN: Correct.

14 CHAIRPERSON MILLER: Okay. So why  
15 don't we have any letters due a week later,  
16 which would be the 15th.

17 MS. HALL: Or the 14th.

18 CHAIRPERSON MILLER: It doesn't  
19 matter. Does it matter to you? Okay. The  
20 15th is fine. So the 15th it is. That would  
21 be separate from the ANC, if you were to file  
22 something separate from the ANC.

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1 MS. HALL: Okay.

2 CHAIRPERSON MILLER: Okay.

3 MS. HALL: Thank you.

4 CHAIRPERSON MILLER: As I told  
5 you, the ANC gets great weight but we look at  
6 any evidence that's put in the record.

7 MS. HALL: Okay. Thank you very  
8 much.

9 CHAIRPERSON MILLER: Okay. Thank  
10 you.

11 MS. HALL: I appreciate the time.

12 CHAIRPERSON MILLER: Okay. We all  
13 set on the dates then? Ms. Bailey, do you  
14 want to reiterate them and then we'll end this  
15 case and go on to the next one?

16 MS. BAILEY: Sure, Madam Chair.

17 The record is left open for the  
18 applicant's submission by January 22, '09.

19 The residents may file petition  
20 letters, et cetera, by January 15th.

21 OP is to work with the applicant  
22 and their report is to be due on the 29th of

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1 January. That is also the date that was given  
2 to the ANC, that's ANC 8C.

3 And the Board has scheduled a  
4 decision for February 3rd, '09.

5 CHAIRPERSON MILLER: Okay. And  
6 then the record is closed with respect to  
7 everything other than what was identified.

8 So are you all clear on --

9 MR. SOLOMON: Yes, Madam Chair.

10 CHAIRPERSON MILLER: Okay. Then  
11 that's it.

12 MR. SOLOMON: Thank you.

13 CHAIRPERSON MILLER: Okay. Thank  
14 you very much.

15 MS. MOTEN: Thank you.

16 CHAIRPERSON MILLER: We're ready  
17 for the next case, Ms. Bailey, when you are.

18 MS. BAILEY: The last case of the  
19 morning, Madam Chair, is Application No.  
20 17852. It's the application of Ok Y. Cho -  
21 Fingertip Nails, pursuant to 11 DCMR § 3104.1  
22 and 3103.2 for a special exception for a

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1 change of nonconforming use under subsection  
2 2003.1, or alternatively a use variance to  
3 allow the establishment of a nail salon  
4 business under subsection 350.4. The property  
5 is zoned R-5-B. It's located at 3413 Wisconsin  
6 Avenue, Northwest, Square 1914, Lot 40.

7 Madam Chair, it's the staff  
8 understanding that this property was posted  
9 late. As you may know, 15 days are required  
10 and I believe it was posted for three days.  
11 So the Board may need to consider waiving or  
12 considering that matter at this time.

13 CHAIRPERSON MILLER: Thank you,  
14 Ms. Bailey.

15 Why don't we start with parties  
16 introducing themselves for the record, please?

17 MR. EDDIE MOY: Hi. My name is  
18 Eddie Moy. I'm an agent for the owner.

19 CHAIRPERSON MILLER: What's your  
20 address?

21 MR. EDDIE MOY: I live in Silver  
22 Spring, Maryland. Do you want to the address?

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1 CHAIRPERSON MILLER: No. That's  
2 probably sufficient. Okay.

3 MS. TSAI: My name is Lisa Tsai.  
4 I live in Bethesda, Maryland 20817.

5 CHAIRPERSON MILLER: Okay. We  
6 have a couple of preliminary matters in this  
7 case first. Ms. Bailey has already identified  
8 one dealing with posting. I have an  
9 additional one, and that is that I am going to  
10 recuse myself from this case because I live  
11 very close to the business and I have actually  
12 frequented this business over time.

13 Our regulations don't address  
14 recusal specifically. We follow the guidelines  
15 of what the Court of Appeals has given us.  
16 And in general we need to make our decisions  
17 based on what we hear on the record only. And  
18 we don't want to have any of us in a position  
19 where even if we feel like we wouldn't be  
20 bias, that there would be an appearance of  
21 impartiality.

22 So having been a customer, I

1 certainly have been exposed to the layout of  
2 the business. And I've certainly, you know,  
3 had conversations not knowing that this  
4 business had any zoning issues that were  
5 coming before the Board.

6 So for that reason, and as we have  
7 four members here, we have more than a quorum,  
8 I am going to recuse myself.

9 So therefore, at this point I'm  
10 going to turn over the proceedings to Mr.  
11 Loud, who is our Vice Chair. And I will see  
12 you later. But I'm going to be exiting.

13 VICE CHAIRPERSON LOUD: Thank you,  
14 Madam Chair.

15 As the Chairperson said, my name  
16 is Marc Loud. I'm the Vice Chair and I'm  
17 stepping into some pretty large shoes to try  
18 to preside over this matter.

19 So I want you to relax. Because  
20 if you're a little bit nervous, you're  
21 probably not as nervous as I am.

22 I believe we have a preliminary

1 matter. And why don't we address the  
2 preliminary matter first. Ms. Bailey, I think  
3 you spoke to it briefly but can you just  
4 summarize again with respect to the posting  
5 issue?

6 MS. BAILEY: Yes, Mr. Loud.

7 Fifteen days are required for the  
8 property to be posted. To the best of my  
9 knowledge, the applicant picked up the posting  
10 sign last Friday. And so the property was  
11 posted for three or four days. That being the  
12 case, it's ten or eleven or so days that the  
13 posting was not on the property. And so the  
14 Board may want to consider that matter at this  
15 time.

16 VICE CHAIRPERSON LOUD: Thank you,  
17 Ms. Bailey.

18 I think what we'll do, I'm going  
19 to ask the applicant to speak to the whole  
20 posting issue. We have a rule that covers  
21 that scenario. And assuming that we are able  
22 to dispose of that issue, we'll move forward

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1 and I'll outline the procedure for moving  
2 forward. But why don't we start with you  
3 speaking to the failure to post?

4 MR. EDDIE MOY: Yes. I want to  
5 thank you for -- to welcome us to apply for  
6 this variance, Board members and Board of  
7 Zoning Adjustment.

8 One of the reasons we didn't post  
9 in a timely fashion was because originally the  
10 filing was done by the tenant. Where, you  
11 know, she is the owner of the property. And  
12 what happened was the tenant, you know, once  
13 she got closed down by the DCRA, Board of  
14 Zoning violation, she closed down -- well, she  
15 had a timely manner to apply for the variance,  
16 which she -- you know, and she didn't do that,  
17 which we didn't know about. And when we  
18 finally applied, and by the time she applied  
19 it, right, and by the time this hearing came  
20 up, you know she said -- you know, she told  
21 the owner she wasn't going to show up. So as  
22 owners of the property, which is more weight

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1       than tenant, you know, I said look. Okay.  
2       Well, I'll sub in as agent. And I submitted  
3       that later last week and faxed it over to the  
4       Office of Board of Zoning.

5               Once we did that right and they  
6       told me I had to pick up placards, right? By  
7       the time I picked it up, that was Friday. So,  
8       you know, when I read the affidavit, you know  
9       the posting, you know, it required the 15  
10      days. And I addressed it to her. You know,  
11      did you want me to continue with the meeting,  
12      postpone the meeting or address the issue.

13             Well, so you know I did post it  
14      up, you know. And I get the written affidavit  
15      and I submitted that to her yesterday to  
16      verify that I did post it up and took pictures  
17      of it.

18             So that is the reason why, you  
19      know, the posting wasn't in a timely fashion.

20             VICE CHAIRPERSON LOUD: Okay. Let  
21      me ask Board members if you have any questions  
22      for Mr. Moy regarding the explanation.

1                   Thank you, Mr. Moy. I think our  
2 rules section 3100.5 allow the BZA for good  
3 cause shown to waive any of the provisions of  
4 this chapter, which in this case would include  
5 the provision for the 15 day posting. If in  
6 the judgment the Board the waiver will not  
7 prejudice the rights of any party and is not  
8 otherwise prohibited by law.

9                   I think in your case the only  
10 other party to the case would be the ANC. And  
11 although the ANC has not responded on the  
12 record, we do have in our exhibits, part of  
13 the record I believe is Exhibit 15 where  
14 notice was sent to the ANC on July 18th. ANC  
15 3C. And so I don't think that their rights  
16 would be prejudiced by our waiving the  
17 requirement for 15 day posting in this case.

18                  In addition to the notice that  
19 went to the ANC under Exhibit 15 the Office of  
20 Zoning also sends out a notice to property  
21 owners within a 200 foot radius. And in this  
22 case that notice went out. That's our Exhibit

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1 8.

2 So I'm inclined to think that  
3 there's no prejudice to the rights of any  
4 party and that we should move forward on the  
5 merits. Okay.

6 All right. So this is what I'm  
7 going to do. I'm going to describe the  
8 procedure that we'll go through. And of course  
9 if you have any questions, feel free to  
10 interrupt and ask.

11 We're going to begin with the  
12 applicant's case. After the applicant  
13 concludes its case, the Board will ask you  
14 questions if they have any questions.

15 Then we'll move to the Office of  
16 Planning and they'll give their report.

17 You have the opportunity at the  
18 conclusion of their report to do a cross  
19 examination of them. And just as in your  
20 case, the Board will ask them questions if we  
21 have any questions.

22 Then if there or any persons or

1 parties -- I'm sorry. If there are any  
2 persons in support of your application here,  
3 it doesn't look like anyone's in the audience,  
4 we'll bring them up. If there are persons in  
5 opposition, we'll bring them up as well. And  
6 at that point we will then if we feel like we  
7 have enough of a record, to begin our  
8 deliberation, we'll do that. And we'll have  
9 closing argument for you as the applicant and  
10 then we will move to either schedule the  
11 matter for a decision or again if the record's  
12 full, we'll make a deliberation today.

13 So do you have any questions about  
14 the procedure?

15 MR. EDDIE MOY: No.

16 VICE CHAIRPERSON LOUD: Okay. Why  
17 don't we move directly into your case.

18 And let me just state at the  
19 outset that your application is for a variance  
20 and it's a use variance from section 350.4 of  
21 our regulations, which do not allow a nail  
22 salon in the R-5 District. And under the

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1 variance test, and particularly the use  
2 variance tests, there are four elements that  
3 you have to meet. And so the testimony that  
4 you give should be orchestrated to meet each  
5 of these elements.

6 The first test is that you have to  
7 show that there's something unique or  
8 exceptional about the property itself, the  
9 topography of the property or exceptional  
10 about the circumstances of your request. For  
11 example zoning history. But it's got to be  
12 something unique and/or exceptional about the  
13 property or the situation.

14 The second element of the test is  
15 that you have to show that there's undue  
16 hardship. That there is a hardship on the  
17 part of the owner to comply with the existing  
18 zoning that prevents the owner from being in  
19 compliance in this case.

20 The third element is that you have  
21 to show that there is no substantial detriment  
22 to the public good.

1           And lastly you'd have to show that  
2           there's no substantial impairment to the zone  
3           plan or regs by our granting the relief that  
4           you seek.

5           So with that being said, you can  
6           go ahead and begin your presentation.

7           MR. EDDIE MOY: Okay. I want  
8           start off with the property itself is in  
9           Cleveland Park. And the subject building is  
10          located in the center of the block with both  
11          dwellings and office type use within the same  
12          block location.

13          The subject building was built in  
14          1925. And subject space applied for variance  
15          is located in the lower portion of the  
16          building, which is interior at grade level.

17          You know, my analysis for the  
18          variance use, you know, in the past -- first  
19          of all, I don't know what happened but the  
20          nail salon has been there for over ten years.  
21          And if the problem was that the tenant was  
22          responsible for the permit and throughout the

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1       ten    years somehow or another it was  
2       overlooked. I don't know why DCRA never got  
3       involved. I don't know why they operated a  
4       business or what happened. But it's been  
5       there for ten years.

6               And right now, you know, we're at  
7       a point where in the past, you know, the  
8       business has been sold for X amount of money.  
9       I'm not sure, you know, what people buy the  
10      business for and then continue on.

11             The zoning itself, I know it's R-  
12      5-B. Adjacent two doors away there's an office  
13      for a dental office, you know. And the prior  
14      -- my research reveals that the subject itself  
15      had an art display Certificate of Occupancy  
16      before but not a nail salon.

17             So, you know irregardless whether  
18      it was a business or office type of thing, you  
19      know to me it was not residential. So  
20      evidently they accepted the fact that it could  
21      be an art display use.

22             As far as my knowledge of the

1 property, you know, and on behalf of the owner  
2 to promote the highest best use of the  
3 property, you know, and this variance would  
4 comply to that. By approving the variance  
5 would support the highest best use and the  
6 three elements which meets my interpretation  
7 of being the highest best use, which is fiscal  
8 practicality, economic feasibility and being  
9 profitable.

10 I'm not saying because its been  
11 there ten years, it should be automatically  
12 right. That's why we're here, you know, for  
13 a user variance. But allowing the pre-  
14 existing use to continue would not impact on  
15 a major expansion or modification of possible  
16 additions or any time factor set by the Board,  
17 you know if you want to do a condition or a  
18 time or a term -- you know, condition for the  
19 variance, we will abide to that, too.

20 I think the allowance of the us,  
21 its just been there, doesn't distract any  
22 visual street view.

1           The owner, you know has sent the--  
2           some how or another the Tax Assessment Office,  
3           they know this is mixed use and they've been  
4           assessing her taxes for mixed use for .95 per  
5           \$1,000 versus, you know, the \$1.80 per \$1,000  
6           on the assessment. So she's paying higher in  
7           taxes.

8           The foot traffic and this location  
9           would make a substantial difference, you know.  
10          I mean, it's not like it's going to be a noise  
11          area or a neighborhood complaint area. I  
12          mean, if it's been there for ten years, I  
13          don't think the neighborhood would complain by  
14          now.

15          I don't think this type of  
16          business would be detrimental to th quietness  
17          of the neighborhood, you know, which is pretty  
18          quiet already.

19          It would deteriorate any adjacent  
20          commercial areas, you know, across the street  
21          or just as a whole. Just across the street is  
22          an all commercial zone. There's all retail

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1       there.

2                   And it won't cause any ill effect  
3       or cause urban plight. You know, not in  
4       Cleveland Park.

5                   With       abundance       of       future  
6       developments in nearby blocks, I think this  
7       business would not spread to urban congestion  
8       or decay. So I don't see any ill effect on  
9       that party.

10                  Anticipation of change would have  
11       not any immediate impact on how the market  
12       react because the business has been operating  
13       previously.

14                  If the variance is allowed, the  
15       property value will have greater potential  
16       effect on the value on the property in a  
17       positive matter. And the business variance  
18       will contribute to a city assessment, and  
19       thereby increasing financial gain by way of  
20       their city taxes.

21                  I think that it's the trend in  
22       property values are constantly changing, which

1 would not inconvenience or impose on today's  
2 external economics.

3 So in regards to the current  
4 variance as a business there, I don't think  
5 it's going to affect the integrity of the  
6 zoning, you know, according to the zoning  
7 regulations or map. And ever since it's been  
8 there, I think it's not -- it's a business  
9 oriented type of business and service type. So  
10 it could be effective for the public good, in  
11 my opinion.

12 VICE CHAIRPERSON LOUD: Thank you.

13 Does Ms. Tsai have anything she  
14 wants to add?

15 MR. EDDIE MOY: Do you want to say  
16 anything?

17 VICE CHAIRPERSON LOUD: Hold off  
18 for one second. I just wanted to check and get  
19 a gauge of the time. But if you're through  
20 before we get to Ms. Tsai, I wanted to see if  
21 Board members had any questions.

22 I have a couple of questions.

1 MR. EDDIE MOY: Sure.

2 VICE CHAIRPERSON LOUD: Help me  
3 understand the use from 1997 to 2007 where  
4 you're saying that for ten years its been used  
5 as a nail salon.

6 MR. EDDIE MOY: Yes.

7 VICE CHAIRPERSON LOUD: I think we  
8 have something in the record that says it was  
9 an art gallery, or at least it was permitted  
10 as a art gallery?

11 MR. EDDIE MOY: Right. Well, I  
12 think that tenant --

13 VICE CHAIRPERSON LOUD: I'm trying  
14 to understand. Why don't you start at 1997  
15 and just very briefly just walk me through the  
16 ten years.

17 MS. TSAI: In 1997 was -- I don't  
18 know how long ago when my tenant -- the first  
19 tenant is art gallery. Then after that they  
20 close door.

21 Then -- then art gallery. I don't  
22 know they applied. They become -- not even

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1       ten. I think more than ten years. They  
2       applied -- then they give -- I just sign the  
3       lease. So I don't know anything.

4               They been there I think more than  
5       ten years. I didn't know. Because I just  
6       sign the -- how good was my tenant and she  
7       apply everything. So before no problem. Only  
8       since this new tenant -- new tenant, then she  
9       open and then up to two years later then the  
10      government give her a ticket, you know. So  
11      they close door right now. That's why -- you  
12      know--

13              VICE CHAIRPERSON LOUD: Do you  
14      recall when the art gallery was in the space?

15              MS. TSAI: Art gallery I think is  
16      upstairs. And this is the first floor. This  
17      is the street.

18              VICE CHAIRPERSON LOUD: So there  
19      never was an art gallery in that ground floor  
20      space. Okay. Well, that helps to know.

21              But the floor space has been a  
22      nail salon continuously --

1 MS. TSAI: Yes.

2 VICE CHAIRPERSON LOUD: -- from  
3 around 1997/1998? Were there any lapses at  
4 all in the use as a nail salon?

5 MR. EDDIE MOY: No. What happened,  
6 well they did transfer hands a couple of times  
7 and then continue on.

8 VICE CHAIRPERSON LOUD: Okay.

9 MR. EDDIE MOY: Yes. But it's  
10 always been a nail salon.

11 VICE CHAIRPERSON LOUD: Okay.

12 MS. TSAI: In there, but long --  
13 all people, they just walk in so they like  
14 very much. So I don't know they apply just  
15 continual heavy business.

16 MR. EDDIE MOY: Yes. It's always  
17 an ongoing business as a nail salon.

18 MS. TSAI: Yes. For a long time.

19 COMMISSIONER TURNBULL: How long  
20 have you owned the property?

21 MS. TSAI: I think 1981 or  
22 something. 1981.

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1 COMMISSIONER TURNBULL: But it was  
2 never leased out until later?

3 MS. TSAI: No, I lease -- I have  
4 leased one time.

5 MR. EDDIE MOY: Did you live there  
6 before?

7 MS. TSAI: On no. I don't live. I  
8 don't live there.

9 MR. EDDIE MOY: Since 1980 she  
10 says rented out as a residential before that.

11 MS. TSAI: I don't live there.  
12 Yes.

13 COMMISSIONER TURNBULL: Before  
14 that it was residential.

15 MR. EDDIE MOY: Right.

16 COMMISSIONER TURNBULL: Oh, okay.  
17 Thank you.

18 BOARD MEMBER WALKER: Well, I  
19 guess I'm curious as to what is prompting you  
20 to seek this relief? Do you have a  
21 relationship with the tenant? I mean, do you  
22 have an interest in the nail salon business?

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1 MR. EDDIE MOY: Well, as you know,  
2 we wouldn't have a direct relationship with  
3 her but the tenant, you know, we burdened the  
4 tenant at the time whether it was one year ago  
5 or ten years ago, to obtain a permit, you  
6 know. We were presumptions that they always  
7 had one.

8 The problem was that whether the  
9 new tenant when they buy a new location,  
10 right, they're going to pay money for the  
11 business whether it be \$20,000, \$30,000 or  
12 \$40,000. And then all of a sudden you're the  
13 last one and you get caught with that, with  
14 your pants down and then you can't have an  
15 ongoing operating business that the government  
16 says we'll shut you down, number one, and you  
17 won't have an ongoing business. And number  
18 two, they lose their money that you bought the  
19 business for.

20 So I mean they're losing in both  
21 ways, you know what I mean? So it would be  
22 hardship for the tenants where they lost their

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1 ongoing business because that's their  
2 moneymaker and then number two, they bought  
3 the business from a prior business owner. So  
4 I mean the business owner is gone and they're  
5 saying no, you're running the business, you  
6 know, you pay for equipment or you pay for the  
7 customer list, or whatever the business -- the  
8 definition of their business when they sell  
9 their business.

10 BOARD MEMBER WALKER: Okay. I  
11 think I understand from the tenant's  
12 perspective. Why the tenant wouldn't be  
13 interested in pursuing this. But why is the  
14 owner now interested in pursuing this? I  
15 mean, do you have an occasion to --

16 MR. EDDIE MOY: Well, for them to  
17 keep it open as an ongoing business, right,  
18 the community has asked us why we're closed.  
19 And, you know, we're trying to support her,  
20 the tenant, saying hey we're trying to get a  
21 variance for you guys so you can continue and  
22 have an ongoing business. I think it would be

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1 a problem for the government, a problem for  
2 the tenant, you know. That way she can keep  
3 a tenant instead of rotating a new customer.

4 If we get a new tenant, right,  
5 it's going to be the same issue whether it's  
6 going to be a nail salon or another type  
7 business. But by keeping the nail salon, you  
8 know, since the neighborhood is aware of that  
9 and its been there, and I think it could be an  
10 ongoing business continually.

11 VICE CHAIRPERSON LOUD: Let me  
12 just make sure I have the picture correct in  
13 my head. So in the last several years there's  
14 been a purchaser for the nail salon that's  
15 different than the first six or seven years.

16 MR. EDDIE MOY: Yes.

17 VICE CHAIRPERSON LOUD: And that  
18 purchaser paid you testified \$20,000 for --

19 MR. EDDIE MOY: I don't know --  
20 that's what --

21 MS. TSAI: That's between them.

22 MR. EDDIE MOY: That's between the

1 --

2 MS. TSAI: The only submission  
3 after this, I don't know. And I didn't  
4 remember after the sale, then I just sign the  
5 lease.

6 VICE CHAIRPERSON LOUD: Okay.

7 MS. TSAI: They always have a  
8 license. I don't know.

9 MR. EDDIE MOY: Those are  
10 hypothetical numbers that I'm doing.

11 VICE CHAIRPERSON LOUD: Thank you.  
12 I appreciate the clarification. It might be  
13 relevant to the question of undue hardship.

14 MR. EDDIE MOY: Right.

15 VICE CHAIRPERSON LOUD: But thank  
16 you for the clarification.

17 So for the first six or seven  
18 years before the sale was there any  
19 Certificate of Occupancy for the nail salon?

20 MR. EDDIE MOY: Well, we was  
21 always presumptions that the tenant would take  
22 care of that. But evidentially, you know, we

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1 need to know better.

2 VICE CHAIRPERSON LOUD: Okay.

3 MS. TSAI: So that's why it just  
4 came to the issue now currently.

5 VICE CHAIRPERSON LOUD: So you  
6 don't have anyway of knowing whether DCRA  
7 erroneously issued a Certificate of Occupancy?  
8 And that's why the applicant was there for --  
9 or if the applicant --

10 MR. EDDIE MOY: Right.

11 VICE CHAIRPERSON LOUD: Is it's  
12 just that the applicant just operated a nail  
13 salon independent of the regulations in the  
14 city?

15 MR. EDDIE MOY: You know, it could  
16 be record lost, it could be no Certificate of  
17 Occupancy prior. You know, it could be no  
18 research that no applicant had even applied  
19 for it. It's hard for me to say. But my  
20 research didn't tell me that. There's no  
21 prior, as far as I know, on record.

22 MS. TSAI: But excuse me. But

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1 they have a business from the city. They pay  
2 some money. They have a nail salon. When I  
3 look -- when they show me, I want to sign a  
4 paper before, that's a long time ago, before  
5 ten years, you know, when they have affidavit  
6 signed, they can open nail saloon, then I sign  
7 the lease. After that I just -- when they say  
8 here it is, then they sale to somebody else,  
9 then I just sign the lease.

10 And here this time, she's unlucky.  
11 She just bought it from the previous tenant  
12 then this happened. So she cry. So I try to  
13 help her to continue, you know. To her, have  
14 to keep business. Because them I like. Very  
15 quiet

16 VICE CHAIRPERSON LOUD: I think as  
17 Commissioner Walker was sort of alluding to,  
18 normally it's the applicant who is here making  
19 the case for his or herself and advancing the  
20 testimony that establishes some unique  
21 circumstance or undue hardship. Now in your  
22 case it's a little bit different because

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1       you're making that case for the applicant.

2                   MR. EDDIE MOY:   Right.

3                   VICE CHAIRPERSON LOUD:   So is  
4       there anything else that you would like to  
5       place on the record regarding either the  
6       exceptional nature, exceptional circumstance  
7       for granting the nail salon or the undue  
8       hardship on the applicant?

9                   MR. EDDIE MOY:   Well, besides the  
10      tenant hardship, you know, I mean my goodness,  
11      you know, if the variance is allowed is right,  
12      you know, it won't be a detriment to the  
13      community. And it won't affect the integrity  
14      of the zoning of Cleveland Park.

15                  VICE CHAIRPERSON LOUD:   Is there a  
16      reason why the owner could not utilize the  
17      space in conformance with the zone? In other  
18      words, as residential space? I understand  
19      from the record that the space is laid out  
20      such that there's a kitchen there, I think  
21      bathrooms are there, et cetera. So would  
22      there be some undue hardship in complying with

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1 the current zone for that space?

2 MR. EDDIE MOY: I guess not. I  
3 mean, we posted because someone always asked  
4 us -- asked her about renting the space as  
5 commercial, you know. And we provided and  
6 told them verbally so, you know, if you want  
7 to do it, you know, just you have to apply for  
8 it, the necessary permits, you know and be in  
9 compliance with DCRA. And that's why we're --  
10 whether if you don't allow it, I think  
11 residents will be probably, you know, calling  
12 us, too. You know, I'm not 100 percent sure.

13 VICE CHAIRPERSON LOUD: The person  
14 that you just testified to that asked you  
15 about the space for a nail salon, is that the  
16 same person as the applicant, as the operator  
17 of the nail salon or is that a third party?

18 MR. EDDIE MOY: The same person.

19 VICE CHAIRPERSON LOUD: Okay. All  
20 right.

21 I don't have any further  
22 questions.

1 MS. TSAI: I asked her to come,  
2 but she said right now she don't have  
3 business. She have to make a living. So she  
4 have to work. That's why I say if I can  
5 present her, you know. But next time you need  
6 her, she can come. She said today -- after  
7 she closed so she cannot eat. So she says to  
8 have to work today. I call her, she said  
9 please, you know, I have to present for her  
10 today. That's why she called me. Yes. She  
11 said next time, you know. If needed, she have  
12 to -- talk to the boss, then she can take a  
13 day off. But she said she have to make a  
14 living.

15 She paid her money to be buy the  
16 store. And right now suddenly just close door,  
17 you know. So she have to make a living.  
18 That's what she told me last night. Yes.

19 COMMISSIONER TURNBULL: But prior  
20 to 1997 was the space a residential apartment,  
21 or rental apartment?

22 MS. TSAI: This is before.

1 COMMISSIONER TURNBULL: It was an  
2 apartment?

3 MS. TSAI: When I bought it just a  
4 -- the --

5 MS. TSAI: Single-family home,  
6 probably.

7 MS. TSAI: Then after that, I  
8 applied art gallery. They have art galley. I  
9 don't know they apply. I applied art gallery,  
10 you know.

11 Then later on this -- then later  
12 on this was the basement, you know. Then I  
13 opened -- for street. Then the -- they say  
14 she would apply if she can get a license.  
15 Then ask me to rent for her. So she get a  
16 license from the city. They have a license,  
17 you know, in their shop. You know, a license.  
18 So I just sign the lease.

19 Then after that I don't know.  
20 Here it is, they say. Here it is. I just sign  
21 the paper. She pay money then suddenly --  
22 suddenly, you know, government say this is

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1 illegal. That's why, you know -- yes.

2           Been long time. Maybe more than  
3 ten years, fifteen years have nail salon. And  
4 the whole neighborhood, they like. They say  
5 why you closed because they have a building,  
6 all people. They just work today. You know,  
7 they have building -- apartment building. So  
8 everybody, you know, when come the time they  
9 apply this, you can open. Then she's open one  
10 month. Everybody come back and so happy. So  
11 that's what she told. Then suddenly again  
12 you, you know, close again.

13           VICE CHAIRPERSON LOUD: I think  
14 that's why we're here. That's one of the  
15 things that we're going to try to sort out  
16 today in terms of the government asking you to  
17 request relief with the conditional  
18 Certificate of Occupancy that was issued back  
19 in May.

20           I think unless there are any more  
21 questions from the Board, we can go to the  
22 Office of Planning's report. So why don't we

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1 do? We'll go to the Office of Planning.

2 MR. GUILIONI: Good afternoon,  
3 Vice Chair and members of the Board.

4 My name is Michael Guilioni, and  
5 I'll be speaking on behalf of the Office of  
6 Planning.

7 As the agent for the applicant  
8 already identified -- on excuse me. I'd like  
9 to start off with the Office of Planning is  
10 recommending denial of the use variance  
11 application. And as the agent for the owner  
12 mentioned, this building was originally  
13 constructed as a row dwelling in 1925. Your  
14 report provided an overview of the land use  
15 designation, which is a moderate density  
16 residential where already the zoning is R-5-B.  
17 And there's R-1 zoning to the east. R-5 to  
18 the north. And C-1 across the street.

19 And important to note is that we  
20 are talking about the lower portion of the  
21 building.

22 So moving into the use variance

1 analysis, with respect to the uniqueness of  
2 the property our review found that there was  
3 no uniqueness associated with the property or  
4 the defined space under consideration.

5 The size space and its associated  
6 amenities are typical of a residential unit  
7 which is permitted in the zone.

8 And the subject property generally  
9 shares the same condition as other buildings  
10 within the block, which also have residences.

11 With respect to peculiarity  
12 exceptional practical difficulties or undue  
13 hardship, the use of the space for residential  
14 purposes, which is quite viable based on the  
15 existing conditions. There wouldn't be, due  
16 to the date of construction, no parking  
17 restriction would apply. And one could  
18 actually say that the topography, the ability  
19 to access at grade, actually facilitates the  
20 establishment of a residential use on the  
21 lower floor through better provision of light  
22 and air to a unit.

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1           We feel, therefore, that the  
2           applicant faces no exceptional difficulty or  
3           undue hardship in complying with the zone plan  
4           its provided permitted use.

5           With respect to no detriment to  
6           the public good, generally we just feel it's  
7           inconsistent for a commercial use to be  
8           established in the defined zone.

9           COMMISSIONER TURNBULL: There are  
10          no other commercial basements in this --

11          MR. GUILIONI: The applicant's  
12          agent is right there. There are what would be  
13          considered home occupancies which would be  
14          permitted under the home occupancy provisions.  
15          But --

16          COMMISSIONER TURNBULL: They're a  
17          home office or --

18          MR. GUILIONI: I believe at the  
19          end of the block there's some form of  
20          practitioner. You know, a dentist or a  
21          doctor.

22          COMMISSIONER TURNBULL: So that is

1 allowed?

2 MR. GUILIONI: Under the home  
3 occupancy requirements, yes.

4 COMMISSIONER TURNBULL: Oh, I see.  
5 Home occupancy. So he owns the property and he  
6 has his office --

7 MR. GUILIONI: If he's complying  
8 with the law, yes.

9 COMMISSIONER TURNBULL: If he's  
10 complying with the law. Okay. But there are  
11 other apartments, rentable apartments or it  
12 appears to be there's some residential?

13 MR. GUILIONI: Yes. Even if I  
14 think if you looked at both the photos that  
15 were submitted as a part of the applicant's  
16 initial package and today, you can see  
17 immediately right on the submission that was  
18 provided today.

19 COMMISSIONER TURNBULL: Right.

20 MR. GUILIONI: There's a directly  
21 accessed doorway.

22 COMMISSIONER TURNBULL: So that's

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1 another apartment? Okay.

2 MR. GUILIONI: Yes.

3 COMMISSIONER TURNBULL: Very good.

4 Thank you.

5 MR. GUILIONI: You're welcome.

6 VICE CHAIRPERSON LOUD: You heard  
7 the applicant testify regarding the history of  
8 use at the site for at least the last decade  
9 being a nail salon. Does the Office of  
10 Planning have any position with respect to  
11 sort of that continuous unbroken use and the  
12 current request for a use variance?

13 MR. GUILIONI: Unfortunately, the  
14 tests do not provide us any means by which we  
15 can weigh that into our view. I believe --  
16 well, I know unfortunately the tests don't  
17 provide any means by which we can incorporate  
18 that into our view.

19 VICE CHAIRPERSON LOUD: Would your  
20 analysis be different if for that ten year  
21 period the applicant had been issued  
22 Certificate of Occupancies for a nail salon

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1 either through error -- I guess through error  
2 or, you know, just bad staff work?

3 MR. GUILIONI: No.

4 VICE CHAIRPERSON LOUD: No?

5 MR. GUILIONI: No. You know, the  
6 nature of whether or not something was  
7 inappropriately conducted previously, I can't  
8 really weigh that into whether or not -- what  
9 is rightfully being asked for complies with  
10 the zone plan or not and the conditions of the  
11 ordinance.

12 VICE CHAIRPERSON LOUD: Do Board  
13 members have any questions of the Office of  
14 Planning?

15 Okay. You have the opportunity  
16 now to cross examine the Office of Planning.

17 I'm assuming you've seen their report at  
18 Exhibit 22?

19 MR. EDDIE MOY: Yes. Well, my  
20 rebuttal was my testimony, you know, to his  
21 report.

22 VICE CHAIRPERSON LOUD: Okay.

1 Then if you don't have any cross for the  
2 Office of Planning, let me ask if there are  
3 any persons in the audience that are in  
4 support of the application in this case? And  
5 for those who may have just come in, we're in  
6 Application No. 17852 of Ok Y Cho for variance  
7 relief to operate a nail salon in the R-5-B on  
8 Wisconsin Avenue.

9 Are there any parties who wish to  
10 testify in support? I'm sorry. Any witnesses  
11 who wish to testify in support?

12 Are there any witnesses who wish  
13 to testify in opposition to the application?

14 Okay. Then what we're going to do  
15 now is move to the closing by the applicant.  
16 And this is your opportunity to sort of  
17 marshal all the evidence and summarize it and  
18 articulate the case for the use variance.

19 MR. EDDIE MOY: My summation to  
20 this hearing is I'm asking the Board of Zoning  
21 Adjustment to consider and analyze all the  
22 pertinent points that I testified on and

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1 render a conclusion that may bring a viable  
2 and vibrant business to operate continually.

3 This service type business would  
4 not be a detriment to the community or cause  
5 any heavy foot traffic and cause congestion to  
6 the area or noise with the nearby adjacent  
7 office or residential dwellings.

8 I think disapproval would be a  
9 hardship on the current tenant, but that's not  
10 at issue and I don't want to weigh that too  
11 much on the tenant or committee.

12 Since business has been in  
13 operation the last ten years, there would be  
14 no substantial modification to existing  
15 structure which has been conformity and  
16 homogenous with existence use. Those years  
17 indicate stability and the BZA approval may  
18 regenerate the growth and renewal period for  
19 the vicinity in the corridors of Cleveland  
20 Park.

21 VICE CHAIRPERSON LOUD: I want to  
22 thank you for closing, as well as you bringing

1 together all of the sort of disparate parts of  
2 this case to try to address the situation that  
3 probably has become very uncomfortable for  
4 your principal there.

5 MR. EDDIE MOY: Right.

6 VICE CHAIRPERSON LOUD: And I do  
7 believe that the record is full. And I believe  
8 that we're probably going to be able to  
9 deliberate on this case.

10 So let me start by again thanking  
11 you for coming down and thanking you for, it  
12 sounds like you stepped into the case at the  
13 eleventh hour and had to pull together a lot  
14 of information.

15 MR. EDDIE MOY: Right.

16 VICE CHAIRPERSON LOUD: And I  
17 think you've done a very, very good job of  
18 making it clear for us what the nature of the  
19 relief is and the arguments for it.

20 In reviewing an application for a  
21 use variance we have to look the laws as we  
22 find them and for a use variance the standard

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1 is fairly high. It's higher than area  
2 variance. I think I articulated at the outset  
3 that there has to be something unique or  
4 exceptional about the property, that there's  
5 an undue hardship on the part of the applicant  
6 that's been articulated and supported by the  
7 evidence, that there's no substantial  
8 detriment to the public good. And that  
9 there's no substantial impairment to the zone  
10 plan or regs.

11 And so as we now enter into  
12 deliberation on the case, those are the  
13 standards against which we'll be weighing both  
14 your testimony, the written record, the report  
15 of the Office of Planning.

16 Is there a motion with respect to  
17 this case? Why don't I go ahead and move  
18 denial of Application No. 17852 of Ok Y. Cho  
19 -Fingertip Nails, for variance relief from  
20 section 350.4 of our regulations to operate a  
21 nail salon in the R-5-B.

22 MEMBER DETTMAN: Second.

1 VICE CHAIRPERSON LOUD: Thank you,  
2 Commissioner Dettman.

3 I think it's important to  
4 articulate the reasons why I've moved for  
5 denial of the application.

6 I think the applicant has brought  
7 forward a very sincere position with respect  
8 to continuing to operate the nail salon in the  
9 R-5-B. However, our rules are very, very clear  
10 that that's a very tough standard that has to  
11 be met. And in this case as I look at the  
12 requirements for a use variance to be granted,  
13 then I'll go through each one separately.  
14 Those standards were not met, and the way the  
15 rule operates is that each of the elements  
16 have to be met. It's not a situation where  
17 you can meet two of the four, three of the  
18 four and be granted the relief.

19 With respect to the element of it  
20 being unique or exceptional, we've heard the  
21 testimony of Office of Planning that there's  
22 nothing unique about the topography of the

1 location, about the grade or any of the  
2 physical aspects of the property itself.  
3 There's also, at least to this Commissioner,  
4 insufficient evidence of there being any  
5 zoning irregularities or a long continual  
6 period of zoning history that would have made  
7 this an exceptional or unique situation.

8 For example, there was no  
9 indication in the record that there had been  
10 Certificate of Occupancies issued continuously  
11 from 1997 forward that allowed the nail salon  
12 in this location. From the record it's just as  
13 reasonable a conclusion to make that the  
14 operation of the nail salon had been  
15 unpermitted or illegal.

16 With respect to there being an  
17 undue hardship, again there's not testimony,  
18 no evidence which would suggest anything  
19 specific in terms of meeting that requirement  
20 for an undue hardship. There was some  
21 testimony that perhaps the purchase price of  
22 this applicant's tenant may have been a

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1 certain number. But the applicant was a bit  
2 unclear on whether on the amount of that  
3 purchase, which suggested to me that there's  
4 not enough evidence to really confirm that  
5 there's an undue hardship on the applicant.  
6 In addition to which the Office of Planning  
7 testified that the current configuration of  
8 the bottom unit is such that it can still be  
9 used in conforming with the zone for  
10 residential use.

11 With respect to lack of  
12 substantial detriment to the public good, the  
13 testimony I think convinced me anyway that if  
14 it's been there for ten years, we don't have  
15 neighbors complaining about it, it probably  
16 does not -- will not substantially work to the  
17 detriment of the public good. However, I want  
18 to add that that's one of the four elements  
19 and all four of them would have to be  
20 established in order to grant the relief.

21 With respect to impairment of the  
22 zone plan or regulations, the Office of

1 Planning I think, which had a very thorough  
2 report, had indicated that the preferred  
3 either the zone plan supports how residential  
4 in this zone as opposed to commercial.

5 And so those are some of the  
6 reasons why, although I thought it was a very  
7 well put together application and certainly I  
8 think that the applicant finds herself in a  
9 difficult situation relying on tenants to do  
10 their due diligence and move their business  
11 concerns forward. Nonetheless, not meeting  
12 the high requirements for the variance test  
13 under our section 3103.

14 I don't know if other Board  
15 members want to weigh in.

16 COMMISSIONER TURNBULL: Mr. Vice  
17 Chair, I think you've summed it up quite well.

18 I think one of the things we often  
19 look at in something like this is a hardship  
20 where they've come to rely on a government  
21 interpretation. And in this case we don't  
22 have. We've really got an absence of someone

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1 going for a Certificate of Occupancy rather  
2 than being issued a Certificate of Occupancy  
3 for ten years and reliance upon a government  
4 issued document.

5 So unfortunately we don't have  
6 that here. But that weighs in with a lot of  
7 our -- in the testimony of what we often go  
8 through. And as I say, we don't have that  
9 here.

10 I think what you said is very  
11 clear. And it's unfortunate, but the owner in  
12 this case still has the opportunity to rent  
13 out that lower space as an apartment rental.  
14 So from their standpoint, there is no undue  
15 hardship.

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

18 I think with Mr. Turnbull's  
19 comments, I'll call for a vote on the motion.  
20 All those in favor say aye.

21 ALL: Aye.

22 VICE CHAIRPERSON LOUD: All those

1       opposed say nay.

2                   The ayes have it.

3                   Mr. Moy or Ms. Bailey can you read  
4       the -- I'm not sure which one of you does it,  
5       but can you read the vote back?

6                   MS. BAILEY: It will be an honor,  
7       Mr. Vice Chair.

8                   The Board has voted four-zero-one  
9       to deny the application.

10                  The motion was made by Mr. Loud,  
11       seconded by Mr. Dettman. Mr. Turnbull and Ms.  
12       Walker support the motion. Ms. Miller is not  
13       present at this time having recused herself.  
14       And the vote is four-zero-one.

15                  And this will be a full order, Mr.  
16       Chairman?

17                  VICE CHAIRPERSON LOUD: Yes, it  
18       will be a full order.

19                  With that, we conclude this  
20       morning's hearings and we will adjourn for an  
21       hour.

22                  MR. EDDIE MOY: All right. Thank

1       you for your time.

2                   VICE CHAIRPERSON LOUD: Thank you  
3       so much for coming. Again, we really  
4       appreciate it.

5                   We'll conclude for an hour. And we  
6       will reconvene at 2:15.

7                   (Whereupon, at 1:18 p.m. the  
8       hearing was adjourned, to reconvene this same  
9       day at 2:45 p.m.)

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

2 2:45 p.m.

3 CHAIRPERSON MILLER: Good

4 afternoon, ladies and gentlemen. This hearing  
5 will please come to order.

6 This is the December 9, 2008  
7 afternoon Public Hearing of the Board of  
8 Zoning Adjustment of the District of Columbia.

9 My name is Ruthanne Miller. I'm  
10 the Chair of the BZA.

11 To my right is Mr. Marc Loud, he's  
12 our Vice Chair. And next to him is Mr. Greg  
13 Jeffries from the Zoning Commission sitting  
14 with us today. And to my left is Mary Oates  
15 Walker and Shane Dettman, Board members. And  
16 further along down the table is Mary  
17 Nagelhout from the Office of Attorney General  
18 and Ms. Beverley Bailey from the Office of  
19 Zoning. Mr. Clifford Moy from the Office of  
20 Zoning will be joining us shortly.

21 Copies of today's hearing agenda  
22 are available to you and are located to my

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1 left in the wall bin near the door.

2 Please, be advised that this  
3 proceeding is being recorded by a Court  
4 Reporter and is also webcast live.  
5 Accordingly, we must ask you to refrain from  
6 any disruptive noises or actions in the  
7 hearing room.

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

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

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1           The order of procedure for special  
2 exceptions and variances is as follows:

3           One, statement and witnesses of  
4 the applicant.

5           Two, Government reports, including  
6 Office of Planning, Department of Public  
7 Works, DDOT, et cetera.

8           Three, report of the Advisory  
9 Neighborhood Commission.

10           Four, parties or persons in  
11 support.

12           Five, parties or persons in  
13 opposition.

14           Six, closing remarks by the  
15 applicant.

16           The order of procedure for appeal  
17 applications will be as follows:

18           One, statement and witnesses of  
19 the appellant.

20           Two, the Zoning Administrator or  
21 other government officials' case.

22           Three, case for the owner, lessee

1 or operator of the property involved if not  
2 the appellant.

3 Four, the ANC within which the  
4 property is located.

5 Five, intervenor's case, if  
6 permitted by the Board.

7 Six, rebuttal and closing  
8 statement by the appellant.

9 Pursuant to Sections 3117.4 and  
10 3117.5 of the Zoning Regulations the following  
11 time constraints will be maintained:

12 The applicant, appellant, persons  
13 and parties, except an ANC, in support,  
14 including witnesses, 60 minutes collectively.

15  
16 Appellees, persons and parties,  
17 except an ANC in opposition, including  
18 witnesses, 60 minutes collectively.

19 Individuals 3 minutes.

20 These time restraints do not  
21 include cross examination and/or questions  
22 from the Board.

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1 Cross examination of witnesses is  
2 permitted by the applicant or parties. The  
3 ANC within which the property is located is  
4 automatically a party in a special exception  
5 or variance case.

6 Nothing prohibits the Board from  
7 placing reasonable restrictions on cross  
8 examination, including time limits and  
9 limitations on the scope of cross examination.

10 The record will be closed at the  
11 conclusion of each case, except for any  
12 material specifically requested by the Board.  
13 The Board and the staff will specify at the  
14 end of the hearing exactly what is expected  
15 and the date when the persons must submit the  
16 evidence to the Office of Zoning. After the  
17 record is closed, no other information will be  
18 accepted by the Board.

19 The Sunshine Act requires that the  
20 Public Hearing on each case be held in the  
21 open before the public. The Board may,  
22 consistent with its Rules of Procedure and the

1 Sunshine Act, enter Executive Session during  
2 or after the Public Hearing on a case for  
3 purposes of reviewing the record or  
4 deliberating on a case.

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

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

14 The Board will make every effort to  
15 conclude the public hearing at near as  
16 possible to 6:00 p.m. If the afternoon cases  
17 are not completed at 6:00, the Board will  
18 assess whether it can complete the pending  
19 case or cases remaining on the agenda.

20 At this time the Board will  
21 consider any preliminary matters. Preliminary  
22 matters are those that relate to whether a

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

9 Does the staff have any  
10 preliminary matters?

11 MS. BAILEY: Madam Chair, member  
12 of the Board, to everyone good afternoon.

13 There are two. And I'm not sure if  
14 the Board wants to those matters up now or  
15 when the cases are called.

16 There's a request for postponement  
17 for one of the case, 17854 Equity Appreciation  
18 Partners Capital Fund 1 LLC. And there's also  
19 some question as to whether the appeal case  
20 that's on the agenda for the afternoon,  
21 whether that will be going forward at this  
22 time.

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1                   So those are two matters that the  
2                   staff is aware of.

3                   CHAIRPERSON MILLER:   Okay.   What I  
4                   would like to do is have you swear in all  
5                   those who wish to testify this afternoon.   And  
6                   then we can call 17854 first and deal with the  
7                   preliminary matters in that case.   And then I  
8                   think we'll deal with the preliminary matters  
9                   in the other case when we call that case.  
10                  Because that appeal case is related to 17870,  
11                  and I believe that case is going forward in  
12                  any event.   So unless there's a reason to deal  
13                  with the preliminary matter in 177725 earlier,  
14                  I think that we will just roll that into when  
15                  we call the special exception case and the  
16                  appeal together at the end.

17                  Okay.   So the bottom line is let's  
18                  swear everybody in and then call 17854 and  
19                  deal with their preliminary matter.

20                  Thank you.

21                  (Whereupon, witnesses sworn.)

22                  MS. BAILEY:   Application No. 17854

1 this is the Equity Appreciation Partners  
2 Capital Fund 1 LLC, pursuant to 11 DCMR §  
3 3104.1, for a special exception to locate two  
4 or more principal buildings or structures on  
5 a single subdivided lot under section 2516 to  
6 establish a one-family dwelling in the D/R-1-B  
7 District at premises 1645 31st Street,  
8 Northwest, Square 1282, Lot 277.

9 And, Madam Chair and members of  
10 the Board, just to remind you that there is a  
11 request for party status in opposition to this  
12 case. That request is from Friends of the  
13 Williams-Addison House.

14 CHAIRPERSON MILLER: Thank you.

15 And I just want to also state that  
16 we had indicated to the applicant in 17848  
17 that they would be taken first this afternoon.  
18 And they will be the next case. We are taking  
19 17854 at this time because we're only going to  
20 be dealing with preliminary matters. If that  
21 changes, we'll put the case ahead. But that's  
22 my understanding.

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1                   So, with respect to 17954, why  
2                   don't we start with introductions?

3                   MS. BROWN: Good afternoon, Madam  
4                   Chair and members of the Board. Carolyn Brown  
5                   from Holland & Knight on behalf of the  
6                   applicant Equity Appreciation Partners Capital  
7                   Fund 1 LLC, Long name.

8                   Thank you.

9                   MS. BRAY: Good afternoon, members  
10                  of the Board. My name is Kinley Bray on behalf  
11                  of the law firm of Arent Fox, and our client  
12                  Friends of the Williams-Addison House  
13                  requesting party status in this case.

14                  CHAIRPERSON MILLER: Okay. Thank  
15                  you.

16                  And is there anybody here from the  
17                  ANC in this case? Not hearing from anyone.

18                  Then I think we need to deal with  
19                  the question of party status first, because  
20                  only parties can make motions or respond to  
21                  motions.

22                  So we have an application for

1 party status, Ms. Bray. You're representing  
2 a group of neighbors? Okay.

3 Ms. Brown, is there an objection  
4 to their application for party status?

5 MS. BROWN: We don't have an  
6 objection, Madam Chair.

7 CHAIRPERSON MILLER: Do Board  
8 members have questions about the application  
9 for party status?

10 And, Ms. Bray, would you just  
11 really succinctly just indicate the impact on  
12 these neighbors that's different from the  
13 general public.

14 MS. BRAY: Sure. All the members  
15 of the Friends of the Williams-Addison House  
16 are residents and property owners within 200  
17 feet of the subject property. They are  
18 distinctly affected because the theoretical  
19 lot subdivision that is proposed would impact  
20 the traffic and use of the substandard public  
21 alley known as Avon Lane, which the property  
22 would be accessed from. And because the

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1 members of the Friends of the Williams-Addison  
2 House have for many months at this point been  
3 active in this case before other bodies and  
4 believe that the proposed theoretical lot  
5 subdivision would degrade the historic  
6 character of the individual landmark and the  
7 historic district in which their homes lie.

8 CHAIRPERSON MILLER: Okay. Any  
9 comments from Board members?

10 And the applicant has no  
11 objection?

12 MS. BROWN: That's correct.

13 CHAIRPERSON MILLER: Okay. And I  
14 guess it's the consensus of this Board then  
15 that we will accept or grant those neighbors  
16 party status as one entity. And the name of  
17 that entity is Friends of the Williams-Addison  
18 House?

19 MS. BRAY: That's correct.

20 CHAIRPERSON MILLER: Okay. Good.

21 Next, we have then a request to  
22 postpone this hearing.

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1 MS. BROWN: Yes. Madam Chair, on  
2 behalf of the applicant we have requested a  
3 postponement in this hearing.

4 A week ago today we received the  
5 Office of Planning report indicating that it  
6 could not make a recommendation in this case  
7 because the HPRB had not reviewed the  
8 theoretical building site that we are  
9 proposing. And we would like additional time  
10 to address that issue.

11 We've been running into a chicken  
12 and egg situation with this lot, and no agency  
13 seems to be clear or have a definitive answer  
14 on which comes first, zoning or historic  
15 preservation.

16 The theoretical building site is  
17 just a vehicle for a new house. And the  
18 Commission of Fine Arts has declined to review  
19 the Old Georgetown Board recommendation until  
20 this body, BZA, makes a determination on  
21 whether the theoretical subdivision is  
22 possible.

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1 HPRB has said that they can't look  
2 at the theoretical building site in isolation.  
3 That they have to look at the new house, but  
4 the referral from Commission of Fine Arts  
5 can't come over. So we're kind of stuck in  
6 this quandary. So we've decided that it makes  
7 sense to at least get HPRB recommendation.  
8 And we're on the calendar for December.

9 CHAIRPERSON MILLER: Okay. Was  
10 that December 18th or am I just --

11 MS. BROWN: December 18th. That's  
12 correct.

13 CHAIRPERSON MILLER: Okay. And  
14 what happens after that, after the 18th? I  
15 mean is there a period of time while you're  
16 waiting --

17 MS. BROWN: As you know, the HPRB  
18 will only make a recommendation and the matter  
19 can only be ruled upon by the Mayor's Agent  
20 for Historic Preservation. So there is that  
21 process that we'll need to go through.

22 CHAIRPERSON MILLER: Before you

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1       come back to the Zoning Board?

2                   MS. BROWN: Well, based on the  
3       Office of Planning report they said that they  
4       would base it on HPRB. I don't know. It may  
5       be Mayor's Agent. So I think that in  
6       requesting postponement we probably would like  
7       it rescheduled far out enough so that we would  
8       have the opportunity to get to the Mayor's  
9       Agent.

10                  CHAIRPERSON MILLER: Is there an  
11       objection by Friends?

12                  MS. BRAY: The Friends of the  
13       Williams-Addison House do not object to the  
14       request for postponement. We would, however,  
15       like the Board to look at our request to  
16       consider whether a use variance is required in  
17       this case as a preliminary matter so that both  
18       the applicant and the Friends group are  
19       adequately prepared when this does come back  
20       to the Board.

21                  CHAIRPERSON MILLER: Okay. By  
22       that, I would understand that if we set a date

1       -- I don't know, whatever. You all can tell us  
2       what date down the road for the next hearing,  
3       that we would also set a briefing schedule in  
4       which the applicant would address the use  
5       variance question. I would think and/or file  
6       with respect to anything that's changed. I  
7       don't know if anything is going to change  
8       after HPRB or it's going to remain the same.

9               MS. BROWN: Madam Chair, to the  
10       extent that we can dispense with the use  
11       variance, I think it's pretty clear that there  
12       is no use variance. This is a theoretical  
13       building site and even the Office of Planning  
14       agrees that a use variance is not implicated.  
15       This is a theoretical building site that has  
16       no frontage, let alone street frontage or  
17       alley frontage. The record lot is on a  
18       street. So that's the only thing that we're  
19       concerned with is the record lot 277, which  
20       fronts on 31st Street and a theoretical  
21       building site for zone purposes is not a lot.

22               MS. BRAY: If I may respond? The

1 definition of lot in the Zoning Regulations  
2 section 199.1 makes no distinction between a  
3 record lot or a theoretical building site.  
4 and the definite of "lot alley" includes lots  
5 which abut or face a public -- I'm sorry.  
6 Which abut or face an alley.

7 The configuration of this lot  
8 faces an alley. In fact, the proposed  
9 pedestrian and vehicular access to the  
10 proposed theoretical building site is only to  
11 Avon Lane, which is a public alley. It happens  
12 to be a named public alley, but it is a public  
13 alley. And therefore, we believe that the  
14 prohibition on alley lots located in Chapter  
15 25 would apply to this lot.

16 CHAIRPERSON MILLER: Are you  
17 saying it faces or it abuts an alley?

18 MS. BRAY: The lot faces an alley.  
19 And the only access to the alley -- "face" is  
20 not defined in the Zoning Regulations. Using  
21 the plain meaning of "face," that would be  
22 oriented toward -- the house is oriented

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1 toward the public alley referred to as Avon  
2 Lane. And the only proposed access is over --  
3 through easement to Avon Lane.

4 CHAIRPERSON MILLER: Does it front  
5 the alley?

6 MS. BRAY: Well, the definition of  
7 "alley lot" doesn't use the term "front." It  
8 uses "faces" or "abut." It doesn't abut the  
9 alley except to be an easement.

10 MS. BROWN: Madam Chair, we'll be  
11 happy to brief the issue. But it turns the  
12 theoretical building site regulations on its  
13 head to reach that interpretation of the use  
14 variance. But we'll be happy to brief it.

15 CHAIRPERSON MILLER: Okay.  
16 Because I don't think the Board is prepared to  
17 decide that issue now. And we did promise the  
18 next case that we were only going to be  
19 dealing with preliminary issues. But that is  
20 a basic issue that they've raised, and I think  
21 it would be a good idea to brief it ahead of  
22 time. And then the Board would be able to

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1 address it and you could move forward from  
2 there.

3 So I have just one other basic  
4 question, just to understand what's going on  
5 in the realm of all these different bodies.

6 It sounded like HPRB already ruled  
7 against the applicant once and the applicant  
8 is going back a second time. And so we just  
9 want to have an understanding of what's  
10 different this time?

11 MS. BROWN: Yes. The previous  
12 iteration was an actual subdivision for record  
13 lots and that was turned down by the Mayor's  
14 Agent, the particular configuration that had  
15 been proposed. We are now returning with a  
16 different configuration and it is a  
17 theoretical building site so that the original  
18 lot 277 that's been in existence for, I think  
19 since 1858, will continue to be in existence.  
20 It will not disappear. It is a different  
21 application.

22 CHAIRPERSON MILLER: And then if

1 HPRB rules against the applicant in December,  
2 does that mean that this case is going to go  
3 away?

4 MS. BROWN: No, Madam Chair. As  
5 you know, the HPRB can only make a  
6 recommendation.

7 CHAIRPERSON MILLER: Oh, right.

8 MS. BROWN: And it's the Mayor's  
9 Agent that makes the final determination.

10 CHAIRPERSON MILLER: Okay. So  
11 what you're looking for is the HPRB  
12 determination so that the Office of Planning  
13 can make their recommendations?

14 MS. BROWN: Well, it's still  
15 unclear whether it's simply the HPRB  
16 recommendation that they will base their  
17 recommendation on.

18 CHAIRPERSON MILLER: Oh, I see.  
19 Okay.

20 MS. BROWN: Or if we're still  
21 trying to figure the process out.

22 CHAIRPERSON MILLER: I see. Okay.

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1 So basically what we're waiting for probably  
2 is the Mayor's Agent's decision. And then OP  
3 will make a recommendation.

4 MS. BROWN: We can work with HPRB.  
5 We just don't know and we want the flexibility  
6 to understand what the continuing process is  
7 evolving.

8 CHAIRPERSON MILLER: Okay. So as  
9 there's no objection, and it appears that this  
10 case should be continued, do you have a  
11 request for a specific date down the road?  
12 What are we talking about?

13 MS. BROWN: Late April/May.

14 CHAIRPERSON MILLER: Okay. Are  
15 there other Board questions?

16 Okay. Let's look at our calendar  
17 then.

18 And is there anything the Office  
19 of Planning wishes to add to this discussion?  
20 Okay.

21 Okay. How about May 19?

22 MS. BROWN: That's fine with the

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1 applicant.

2 CHAIRPERSON MILLER: Okay.

3 Because that's very free on our calendar. So  
4 we can make sure that you have sufficient  
5 time.

6 So May 19th would be the hearing.  
7 And then we can set a briefing schedule on any  
8 supplemental issues, such as whether a use  
9 variance is required.

10 Well let me ask this preliminary  
11 matters, Ms. Brown. Do you anticipate any  
12 additional filing? I think we would probably  
13 want additional filing as to the status of the  
14 case?

15 MS. BROWN: That could be done  
16 simultaneously with any pleading on the use  
17 variance issue.

18 CHAIRPERSON MILLER: Okay. Okay.  
19 Why we don't do that simultaneous. Then  
20 that's not a problem.

21 I guess if we did this a month out  
22 or so, applicant could file the status and

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1 Friends could file their arguments. You  
2 already have filed arguments, though, have you  
3 not? Do you want to file more?

4 MS. BRAY: We have filed a  
5 statement in opposition. We would appreciate  
6 the opportunity to respond to anything.

7 MS. BROWN: So it's really their  
8 turn.

9 MS. BRAY: But just particularly  
10 if we're talking about the use variance issue  
11 --

12 CHAIRPERSON MILLER: Right.

13 MS. BRAY: -- or to separate the  
14 two filings so that the use variance briefings  
15 come in at the same time and then the  
16 prehearing statement of the applicant, if  
17 anything is to be changed on HPRB and Mayor's  
18 Agent recommendation.

19 CHAIRPERSON MILLER: I mean, I'm  
20 just wondering at this point if you have filed  
21 your arguments, whether the applicant would be  
22 filing an update and a response to you first.

1 MS. BROWN: Madam Chair, what I  
2 would suggest --

3 CHAIRPERSON MILLER: Yes, please.  
4 Yes.

5 MS. BROWN: -- is that this issue  
6 was raised by the opposition that they have  
7 the obligation to present their brief first.  
8 It's either what's ever been filed or they  
9 should supplement it and then the applicant  
10 would have the opportunity respond. And then  
11 at the same time we would file any status  
12 report on the case.

13 MS. BRAY: I'm not sure if that's  
14 particularly helpful. I know that the Board  
15 has in previous cases where you have decided  
16 whether a use variance is required as a  
17 preliminary matter, have set a briefing  
18 schedule where both parties would submit a  
19 brief on that issue at the same time. And then  
20 the Board would make a preliminary  
21 determination before moving forward on hearing  
22 on the merits. And I think that's what we were

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1 requesting as a matter of procedure so that  
2 both the applicant, frankly and Friends of the  
3 Williams-Addison House are prepared when it  
4 does come to a hearing on the merits to  
5 respond to the nature of the relief requested.  
6 And that that relief be nailed down prior to  
7 a hearing in the interest of saving time and  
8 not having to come back after a determination  
9 that a use variance is required based on the  
10 need by the applicant to change an  
11 application.

12 CHAIRPERSON MILLER: Well, I think  
13 what happened in the last case, which you may  
14 be referring to, the Alley Cat Mews case, the  
15 applicant asked actually I think that we rule  
16 on that issue, and then they went back.  
17 Because they needed to prepare a whole  
18 different case. I don't hear that from the  
19 applicant in this case. And correct me if I'm  
20 wrong. It sounds like if the Board were to  
21 rule that that was required, that you would be  
22 prepared to address that the hearing that

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1 would be scheduled. That we wouldn't have to  
2 delay. Am I mistaken on that?

3 MS. BROWN: No, that's correct.  
4 But I can't imagine that a use variance would  
5 be determined in this case. Because truly it  
6 would turn the regulations on their head.

7 CHAIRPERSON MILLER: Okay. But  
8 it's possible? So just given that we're  
9 scheduling, I just wanted to respond to the  
10 Friends' concern, Ms. Bray's concern that if  
11 you decided ahead of time. But the way it  
12 might work under this schedule, and I'm not  
13 sure that they need an additional briefing at  
14 this point. Because I think they've briefed  
15 it and it's really the applicant's time to  
16 respond.

17 MS. BROWN: I agree.

18 CHAIRPERSON MILLER: Okay. That  
19 when we would get to the hearing that the  
20 Board might entertain a little more argument,  
21 as is often the case. And that if the Board  
22 were then prepared to rule that day, that we

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1       could then proceed with the hearing. That we  
2       wouldn't have to set another hearing.

3               So if that's all right the  
4       parties.

5               MS. BROWN: That would be fine.

6               CHAIRPERSON MILLER: Because  
7       otherwise we ought to get another hearing on  
8       the schedule, too.

9               MS. BRAY: That's exactly what I'm  
10      trying to avoid, is a second hearing.

11              CHAIRPERSON MILLER: Okay. Okay.

12              MS. BROWN: Yes.

13              CHAIRPERSON MILLER: So the  
14      parties just should be aware whichever way it  
15      goes that they're ready to proceed. Okay.

16              So the schedule would entail then  
17      the applicant filing an update prehearing  
18      statement, you know, and addressing the issue  
19      of the use variance.

20              Do you want an opportunity to  
21      respond to their arguments?

22              MS. BRAY: I would like an

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1 opportunity to respond since we raised the  
2 issue of whether a use variance is required.

3 CHAIRPERSON MILLER: Okay.

4 MS. BRAY: We would like --

5 MS. BROWN: Now I would object to  
6 that. I mean, they've already had the  
7 opportunity to brief it. We haven't had a  
8 chance to respond to it. Otherwise we're just  
9 going to have pleadings going back and forth,  
10 back and forth on this issue. And I think that  
11 it's --

12 CHAIRPERSON MILLER: Doesn't it  
13 often go, though, motion opposition replay?  
14 I mean, that's really the norm in the courts.  
15 I'm not sure --

16 MS. BROWN: A reply is not  
17 mandatory or required and it just doesn't make  
18 sense to me in this case. But it's obviously  
19 your call.

20 CHAIRPERSON MILLER: Okay. Okay.  
21 I think it would be helpful to the Board to  
22 have the issues flushed out that way. So how

1 much time do we need to begin with? A month  
2 ahead of schedule and ahead of the hearing you  
3 would file if you think you'll be ready by  
4 then, or we could move this up. But a month  
5 ahead you could file your prehearing statement  
6 update, response to use variance issue and  
7 then two weeks later the Friends and the ANC,  
8 if they so choose as a party, could respond.  
9 And then go forward with the hearing.

10 And at the hearing the applicant  
11 would certainly have full opportunity to  
12 address the arguments that were submitted by  
13 the Friends.

14 Does that work? Is that enough  
15 time?

16 MS. BROWN: Yes. That will be  
17 plenty of time.

18 CHAIRPERSON MILLER: Okay. So  
19 then the hearing we said was May 19th. So  
20 then we go back a month, I don't know if we  
21 want to go April 19th. I don't know what day  
22 of the week that is. Would that work Ms.

1 Bailey or Mr. Moy?

2 MS. BAILEY: No, Madam Chair.

3 April 19th is on a Sunday, so we would have to  
4 be the 20th.

5 CHAIRPERSON MILLER: Okay.

6 MS. BAILEY: Or the 17th.

7 CHAIRPERSON MILLER: Okay. So  
8 April 20th would be the first filings by the  
9 applicant. And then when would the two weeks  
10 later fall?

11 MS. BAILEY: Two weeks later would  
12 be May 4th.

13 CHAIRPERSON MILLER: Okay. And  
14 that would be the response by Friends and the  
15 ANC.

16 Okay. Are there any other issues?

17 MS. BRAY: Not that I'm aware of,  
18 Madam Chair. Thank you.

19 CHAIRPERSON MILLER: Okay. Thank  
20 you very much.

21 Okay. We're ready for the next  
22 case, Ms. Bailey, when you're ready to call

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1 it.

2 MS. BAILEY: Application No. 17848  
3 of Anne M. Holbrook, pursuant to 11 DCMR §  
4 3103.2, for a variance from the lot occupancy  
5 requirements under section 403. a variance  
6 from the rear yard requirements under section  
7 404, and a variance from the nonconforming  
8 structure provisions under subsection 2001.3  
9 to allow an addition to an existing one-family  
10 row dwelling in the premises 1510  
11 Massachusetts Avenue, Southeast. The property  
12 is zoned R-4. It's located in Square 1072  
13 South, Lot 10.

14 CHAIRPERSON MILLER: Whenever  
15 you're ready, if you would introduce  
16 yourselves for the record.

17 MS. FOWLER: Yes. I'm Jennifer  
18 Fowler of 1819 D Street, Southeast.

19 MS. HOLBROOK: Anne Holbrook, 1510  
20 Mass. Avenue, Southeast.

21 CHAIRPERSON MILLER: Okay. I  
22 think I'm going to defer to you to make your

1 case with respect to the variance and keeping  
2 in mind that I understand the Office of  
3 Planning has some concerns which they've  
4 documented in their report. You have a copy  
5 of that, don't you?

6 MS. FOWLER: Yes, we do.

7 CHAIRPERSON MILLER: Okay.

8 MS. HOLBROOK: Madam Chair and the  
9 Board, thank you for accommodating the time  
10 constrain issue that I had last time and by  
11 putting me right away. I appreciate that.

12 I'm a retired elementary science  
13 teacher that got recycled into volunteer work  
14 and then back teaching fifth graders for D.C.  
15 STEM program. And much of what I do has to do  
16 with the environment and making environmental  
17 decisions. And so I tend to live what I say.

18 In regards to the house, I brought  
19 the house in 2001. At the time it didn't have  
20 a door and had broken windows in it, and I did  
21 renovate one room at a time removing debris  
22 and taking out chimneys and hearths. But the

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1 rooms were still tiny. At that point in time  
2 I couldn't afford to add on and the house has  
3 one closet, a bathroom about the size of a  
4 closet and a second bedroom that had a window  
5 but almost no floor space.

6 And so it's been hard with the  
7 maximum space that I've been trying to make  
8 out of it as much as I can to basically have  
9 space to even have people come over.

10 I have no space to eat in the  
11 kitchen. And would like to have a little  
12 dining place just to eat.

13 A regular size bathroom would be  
14 nice. And a larger bedroom would be really  
15 good that I could have a chest or dresser in.

16 Summer of 2002 two Maryland  
17 investors bought rowhouses behind me on  
18 Independence Avenue and requested a 100  
19 percent variance, which they received. They  
20 have a super small little front yard, so  
21 there's very little green space and it's  
22 almost all concrete, their area is. And that

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1 was built completely out to the alley that I'm  
2 also on. And they were completed in 2005 and  
3 then later on one was repossessed by the U.S.  
4 Marshals as a drug house and the other one is  
5 up for sale.

6 Then in March of 2006 a three  
7 story apartment building pretty closed the  
8 alley off completely at that point in time  
9 that was put up. And I'll get to why closing  
10 off the alley isn't necessarily a bad thing  
11 because of the problems with it.

12 And then in October of 2007 I  
13 began investigating possibilities of doing  
14 some green things and putting an addition on  
15 in lieu of moving out of the District and  
16 trying to find a different house to live.

17 In February and March I met with  
18 the Office of Planning. The first meeting  
19 with Mr. Goldstein was basically to find out  
20 what could I do, what were some possibilities.  
21 And we discussed what I wanted to do, which  
22 was to do the same thing the other people did,

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1 and that was to go out 100 percent. At that  
2 time he encouraged me to instead go with the  
3 90 percent because of not wanting to set a  
4 precedent. I asked him in that point of time  
5 I think a precedent was already set because of  
6 all the properties that already do it, but he  
7 encouraged again to limit this to a 90  
8 percent.

9 He also encouraged me, I told him  
10 some of the green ideas, and he encouraged me  
11 to come back, meet with some other people from  
12 the Office of Planning that understood the  
13 environment type of green things. Which I came  
14 back in March then and I met with three other  
15 individuals besides himself about assisting me  
16 with plans for not only the green material  
17 building, the green roofs, a cistern  
18 beekeeping station, a greenhouse, solar water  
19 heating, solar heat, radiant floor heating; a  
20 variety of things that would reduce the carbon  
21 footprint.

22 In May of 2008 I met with each

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1 neighbor on my block on both sides of the  
2 street because I felt the people across the  
3 street from me would have to look at my house  
4 as well. But while I was in the Office of  
5 Planning they suggested that even though I  
6 wasn't in the historic district, that I might  
7 want to keep the front so that it's not  
8 noticeable that there's any change that's been  
9 done. And so I agreed with them. And I said  
10 because I'm part of a row of rowhouses that I  
11 would do that.

12 And so the setback on the addition  
13 on top isn't seen from the people down on the  
14 ground then. But I included the people across  
15 the street because I knew that they would  
16 looking at the house as well. I included the  
17 people that lived behind me on Independence  
18 Avenue.

19 And what happened was that only  
20 minus one person, which is an ANC Commissioner  
21 who would have to vote on it, did not sign the  
22 signature for neighbors agreeing with and

1 supporting my building additions. And the  
2 person who didn't was Neil Glick because he is  
3 an ANC Commissioner and we would go before him  
4 for the hearing in regards to it. So I  
5 understood that. But I had a 100 percent  
6 neighbor support. And each one saw the plans,  
7 they previewed them, and we discussed them.

8 May of 2008 I also felt that it  
9 was important -- I don't know how to say this  
10 exactly. But over time in this alley I had  
11 assisted the police with having some drug  
12 arrests done. And the person who is kind of in  
13 between behind me kind of was involved with  
14 these types of situations. And so my hope was  
15 that I would have his support as well, even  
16 though he had told me that it interfered with  
17 his clientele. And I was very much surprised  
18 that when I discussed this with this  
19 particular person, because he had threatened  
20 me before to burn my house down, that he was  
21 very supportive. And so that was kind of  
22 good. Because I was told that I need the

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1 adjacent properties and the properties behind  
2 me to get support from them. So --=

3 CHAIRPERSON MILLER: Let me just  
4 interrupt for one second, because I don't want  
5 you to lose attention.

6 We have a specific variance test,  
7 though, and it's not just based on support.  
8 Because I hear your point that there's a lot  
9 of support in the neighborhood for this.

10 MS. HOLBROOK: Right. Yes, there  
11 wasn't any opposition.

12 CHAIRPERSON MILLER: Okay.

13 MS. HOLBROOK: We felt that might  
14 be where the opposition might lie. But that  
15 wasn't what happened.

16 I've had the neighbors also got to  
17 eh ANC meetings, different ones each time.  
18 There's different neighbors here today that  
19 felt that they would come and do this as well.

20 CHAIRPERSON MILLER: And I think--  
21 I don't mean to cut you off. But I just want  
22 to focus your attention to what we need to

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1 make a decision. Because we're governed by a  
2 specific test and regulations. And you need  
3 to show how your property is exceptional. And  
4 I know that the Office of Planning has stated  
5 that it's just like the other eight rowhouses  
6 or so. So if you could address that point.

7 And then also, then get to the  
8 practical difficulty if you didn't get the  
9 relief that you're seeking today.

10 MS. HOLBROOK: Okay. Well, I  
11 thought I had addressed the public good.

12 CHAIRPERSON MILLER: You did. We  
13 can't grant -- that's the third test, we can't  
14 grant relief if it wouldn't be in the public  
15 good.

16 MS. HOLBROOK: Okay.

17 CHAIRPERSON MILLER: If there's  
18 more that you really need to say, that's fine.  
19 I think that's probably your strongest  
20 argument in your papers anyway. There's no  
21 opposition, I don't believe. Office of  
22 Planning opposed this.

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1 MS. HOLBROOK: Oh.

2 CHAIRPERSON MILLER: I hear that--  
3 I don't believe that there's opposition from  
4 neighbors in the file. Okay. But Office of  
5 Planning I think opposes because they don't  
6 see how your property is different from other  
7 properties. And that's our first test, its  
8 uniqueness or exceptional condition.

9 MS. HOLBROOK: Well, in the  
10 rowhouses that are there, there are eight and  
11 there are only two owner occupants. The other  
12 ones are rentals. And the person, David  
13 Rupert who rents, only wants to rent to people  
14 that are single. He doesn't -- that his plan.  
15 So for him -- for him in the type of situation  
16 that he has, those are -- he can deal with  
17 those houses because he doesn't want a lot of  
18 people or additional people in. But for the  
19 other person who is an owner occupant, she  
20 already has gone back a 100 percent of her  
21 property. She's the very first property  
22 that's there in the rows of rowhouses. And sh

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1 added on to have a bedroom, to have a place  
2 where you could eat.

3 And those are the two biggest  
4 problems that I have is that it's so  
5 extraordinarily tiny that even when I took out  
6 everything I could possibly take out, there  
7 just still wasn't enough room.

8 For example, the current staircase  
9 that's even there, is super steep. But I  
10 couldn't take it because if I took it out and  
11 met code, my living room would disappear. So  
12 it's a very difficult situation. It's narrow  
13 and I feel that it is unique because I don't  
14 believe that under today's standards that it  
15 would meet any of the codes.

16 CHAIRPERSON MILLER: How long have  
17 you lived there?

18 MS. HOLBROOK: Moved in about the  
19 last part of 2002.

20 MS. FOWLER: I can try to address  
21 some more of the --

22 CHAIRPERSON MILLER: What's

1 changed since 2002, anything?

2 MS. FOWLER: I think she mentioned  
3 2002 because there actually was a variance for  
4 two properties immediately behind her at 1513  
5 and 1515 Independence. where they were granted  
6 100 percent coverage in a similar size lot --

7 MS. HOLBROOK: Same thing.

8 MS. FOWLER: Same size lot. And in  
9 fact, they don't even have the green -- she  
10 has about a 33 foot yard in the front and they  
11 don't have any yard space in the front. Maybe  
12 five or six feet. And they were given  
13 approval.

14 MS. HOLBROOK: Same size house.

15 MS. FOWLER: I think that's she's  
16 referring to 2002.

17 CHAIRPERSON MILLER: I don't think  
18 any of us were on the Board at that point, I'm  
19 sure. So I don't know what case this is.

20 But each case we look at  
21 individually and see if there's an exceptional  
22 condition. And so I don't know what it was in

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1       that case, until you tell us. But it's not  
2       that because just one house got it, then you  
3       get it. Because that's not the way the  
4       variance works. You have to actually prove  
5       why you're exceptional. So I'm trying to  
6       understand.

7               Are you saying it's exceptional  
8       because it's not up to code and to make it up  
9       to code you would need this variance?

10              MS. FOWLER: Yes. I think part of  
11       -- there's a few things that we thought make  
12       this property unique and exceptional.

13              The entire lot is 602 square feet.  
14       A typical house in the neighborhood is  
15       probably about 700 square feet per floor. So  
16       the entire lot is at the same size or slightly  
17       smaller than kind of the typical house.

18              You know, the lot is one-third the  
19       size of a legal lot, you know 1800 square  
20       feet.

21              VICE CHAIRMAN ZC JEFFRIES: But  
22       the adjoining lots are in that same square

1       footage?

2                   MS. FOWLER:   Yes, they are.   But  
3       many of them are covered up to 100 percent  
4       already.

5                   VICE CHAIRMAN ZC JEFFRIES:   Okay.

6                   MS. FOWLER:   But there are some.  
7       Yes, the eight houses that were built at the  
8       same time do have the same configuration.

9                   The    width    of    the    lot    is  
10       exceptional small.   It's 11.98 feet, which  
11       means it's only two rooms deep. Essentially  
12       you come in and you have a living room and  
13       then you have a stairway and then you have  
14       kitchen.

15                   And as I had mentioned, her stair  
16       is very far from being to code. If she were to  
17       bring that up to code, she's going to lose  
18       maybe another 6 inches to a foot of width,  
19       plus no telling how far we'd have to add  
20       additional risers, which is going to really  
21       cut down the living room to almost not useable  
22       space.

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1           The second floor you have two  
2 bedrooms that are tiny with a small bathroom.  
3 The back bedroom, in fact, is only five feet  
4 11 inches from front to back, which is not  
5 even a legal room. I mean, you need seven  
6 room to be a legitimate room.

7           VICE CHAIRMAN ZC JEFFRIES: Isn't  
8 this size home, I mean in terms of lot size  
9 and two stories, isn't it somewhat prevalent  
10 in Capitol Hill? Aren't there a number of  
11 residences of this size and envelop? Even  
12 beyond your block?

13          MS. HOLBROOK: I don't know.

14          VICE CHAIRMAN ZC JEFFRIES: Okay.  
15 Okay. So the other adjacent lots, the homes  
16 are about 11 foot wide? I mean, the same  
17 scenario? Okay.

18          MS. FOWLER: Until you hit the  
19 1520, 1522 and beyond.

20  
21          Sorry. Until you hit 1520 and  
22 1522 and beyond, and those are quite a bit

1 larger. In fact, 15520 the home owner is here  
2 today on her behalf. But they're actually  
3 covered almost as much as what we're proposing  
4 on their property, but it's a much larger  
5 house.

6 But, yes, I think this stretch of  
7 houses is unique compared to most of the other  
8 houses in the immediate area. And, you know,  
9 we're talking about adding an addition of 188  
10 square feet on the back, which is a very, very  
11 modest addition. She's at 60 percent right  
12 now. If were to go to 70 percent, it would  
13 only be a 5½ foot addition. So that's why  
14 we're kind of -- in order to even make any  
15 useable space, six feet is not going to help  
16 anything. It's not going to create a dining  
17 room space. It's not big enough for a living  
18 area. It's not even big enough for her to  
19 move her kitchen to the back house. Really  
20 it's that's why we were kind of forced to go  
21 for the variance in order to create additional  
22 living space so she could have three distinct

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1 rooms on that first floor. And the first floor  
2 was really what was driving the design.  
3 Because that's where she needs the additional  
4 room.

5 And I mentioned before that she  
6 does have a very deep and exceptionally large  
7 front yard, 33 feet. You know, Massachusetts  
8 Avenue, they have a very grand big front  
9 yards. So there's a lot of open space, a lot  
10 of light, a lot of air. In fact she has an  
11 extensive vegetable garden out front every  
12 summer.

13 So it's I suppose not expected as  
14 unique in that you have so much property in  
15 the front, not for private, but it's part of  
16 the public way, and so little in the back  
17 because of the way it's situated.

18 CHAIRPERSON MILLER: But that  
19 uniqueness doesn't give rise to the practical  
20 difficulty?

21 MS. FOWLER: Right.

22 CHAIRPERSON MILLER: So what

1 condition gives rise to the practical  
2 difficulty? It's the small size, correct?

3 MS. FOWLER: It's the small size.  
4 The width and the fact that you can't create  
5 two uses within the same width because it's so  
6 narrow. The rooms, you couldn't even create  
7 a third bedroom because you'd lose the bedroom  
8 in the middle just to get to the back bedroom.  
9 It's just so narrow.

10 And the fact that you can't  
11 upgrade the stairs without going through a lot  
12 of -- you know, losing a lot of space.

13 CHAIRPERSON MILLER: But there's  
14 nothing different about this house from the  
15 other rowhouses in that row, the other seven  
16 or eight?

17 MS. HOLBROOK: Well, it hasn't  
18 been added onto. And they've added onto their  
19 rowhouses already.

20 CHAIRPERSON MILLER: All the rest  
21 of them?

22 MS. HOLBROOK: The ones that are

1 owner occupied and also the one that David  
2 Rupert, the very last one, also added on. Or  
3 there's three out of the eight, yes.

4 CHAIRPERSON MILLER: Three?

5 MS. HOLBROOK: Sorry. Three out of  
6 the eight. I had to think about it.

7 And then the identical rowhouses  
8 are on Independence. And all of those have  
9 added on.

10 CHAIRPERSON MILLER: And then you  
11 say they've added on? Did they all get  
12 variances, is that -- if you know? The three?

13 MS. FOWLER: The only variances  
14 that we were able to find were the two behind  
15 1515 and 1513 were the only ones that we could  
16 find in the transcripts.

17 I believe 1511 was added on  
18 probably without permission. We're not sure,  
19 though. Or maybe it was a long time ago.

20 MS. HOLBROOK: It was a long time  
21 ago. Because the people at the end that are  
22 on my side of the rowhouses that are 100

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1 percent said that theirs was added on when  
2 they purchased it. It was already at 100  
3 percent. And so I asked them about the house  
4 behind them, and they said that it was 100  
5 percent when they moved in. And that was 15  
6 years ago. So then the two next to it are the  
7 ones are from 2002 that went 100 percent.

8 And so the ones on Independence in  
9 fact have all added on to the back of their  
10 properties.

11 And what delayed my side from  
12 doing it is that five of them are owned by a  
13 person who rents them and doesn't really see  
14 the need because it's not his living space.  
15 In order to do anything with them, it fits his  
16 need for what he wants to use it for.

17 CHAIRPERSON MILLER: Well, the  
18 cases that got variances, you're saying there  
19 were two in 2002?

20 MS. FOWLER: Yes. It was a  
21 developer that had purchased the properties  
22 and they were in very bad condition. And his

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1 argument was that they needed to be upgraded  
2 and that he needed to add an addition on the  
3 back in order to make them more marketable for  
4 sale. And that was essentially -- that was  
5 his main argument for that.

6 CHAIRPERSON MILLER: Did you cite  
7 them or you have the cases?

8 MS. FOWLER: I have them, yes.

9 CHAIRPERSON MILLER: Okay. Maybe  
10 if you could give them to Ms. Bailey, I think  
11 it would be worth looking at.

12 MS. FOWLER: Okay.

13 CHAIRPERSON MILLER: Thanks.

14 MS. FOWLER: Just one other aspect  
15 of the property. It's not unique to her but  
16 it's something shared between all of them, is  
17 that they border the C-2-A zone so you have a  
18 dry cleaner and a liquor store right on the  
19 corner. So it's just a very different alley.  
20 The nature of it's very different than most of  
21 your residential alleys. You know, you have  
22 trucks going through there. You have a lot of

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1 traffic, a lot of issues with drugs and things  
2 like that that they've always struggled with.  
3 But I don't if that can be considered a  
4 hardship or a unique situation because it's so  
5 close to this commercial zone.

6 CHAIRPERSON MILLER: Well, we'll  
7 see. I don't think it's an important issue,  
8 though. I mean, is your point that that open  
9 space isn't very useable because of all those  
10 reasons and that's why most of the outdoor  
11 activity would take place in the bigger front  
12 yard?

13 MS. FOWLER: That's right. I  
14 mean, Anne can probably the alley issues.

15 MS. HOLBROOK: The alley is like a  
16 T. So right behind the liquor store is where  
17 they have needle exchange van set up. And so  
18 you get a clientele of people that are very  
19 unusual. But they go back there and they  
20 urinate, they defecate, they have sex in the  
21 back yard. I've tried to put out plants and  
22 I tried to put out, you know, things that

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1 would be looking decent back there. And  
2 everything was stolen and they urinated on the  
3 stuff, defecated on it. So I instead put in  
4 concrete in the back and put up a gate.  
5 Because I didn't want them up next to my house  
6 because they were literally up next to my back  
7 door.

8 And when you talking about public  
9 good that's what I was thinking about. Was  
10 that when I went to the ANC meeting Francis  
11 Campbell, he's an ANC Commissioner, the first  
12 words out of his mouth was he said why don't  
13 you go to a 100 percent? He said, and help  
14 clean up that alley, you know. Because the  
15 man lives there and he knows what a terrible  
16 place it is.

17 I've had people trying to kill  
18 each other back there with baseball bats.  
19 Choking a lady back there. All the time  
20 shooting up with drugs. But the worse thing  
21 is that you go out there with bleach, five  
22 gallons of bleach and you clean it up you

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1 think and rinse everything off and the next  
2 day it's all back again.

3 And so far the only thing that's  
4 cut down on this has been the people that  
5 built back 100 percent. It takes out some of  
6 the nooks and crannies and it gives some  
7 visibility to it so that you can identify  
8 what's going on. And that's kind of sad, but  
9 that's basically what has happened so far.  
10 And that's why the ANC Commission Francis  
11 Campbell said to me "Why didn't you go to a  
12 100 percent and try cleaning that place up?"  
13 It is a terrible place.

14 The Fire Department were called to  
15 go back there and they wouldn't go into the  
16 alley because they said it smelled like a  
17 cesspool. So they went around, completely  
18 around the block the other direction.

19 So it's a very bad place.

20 CHAIRPERSON MILLER: Okay. So  
21 what I hear you saying, perhaps, is that it's  
22 an exceptional condition because you can't use

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1 your back yard for the purpose that it's  
2 intended for.

3 MS. HOLBROOK: Right. You can't  
4 use it at all.

5 CHAIRPERSON MILLER: I just want  
6 to ask you, is your situation any different  
7 from the other back yards on that alley?

8 MS. HOLBROOK: Well, because where  
9 the alley goes back it makes the turn right  
10 there and opens up some space. That's the  
11 reason I think that myself and then my  
12 neighbor that's here we get so much of this  
13 stuff. Because when you have that tiny little  
14 bend if somebody's looking at the end, they  
15 can't readily see them.

16 Also, those houses all went out a  
17 100 percent. There's no place to hide there.

18 CHAIRPERSON MILLER: Okay.

19 MS. FOWLER: Yes. So she has one  
20 of the first houses that opens up once you get  
21 through the alley. And people are not as  
22 likely to walk all the way down to the end of

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1 the alley. I think that's what you're saying,  
2 right?

3 MS. HOLBROOK: Correct.

4 CHAIRPERSON MILLER: Okay.

5 Anything else you want to say at this point  
6 before we go to Office of Planning?

7 Any other Board questions before  
8 we go to Office of Planning?

9 And is anybody here from the ANC  
10 on this case? Okay. Not hearing from  
11 anyone, let's turn to the Office of Planning.

12 MR. JACKSON: Thank you, Madam  
13 Chair. My name is Arthur Jackson, Development  
14 Review Specialist of the District of Columbia  
15 Office of Planning. And I'll briefly  
16 summarize the Office of Planning's report.

17 Basically in our analysis we  
18 looked at the standards for compliance with  
19 section 3103.2 in terms of the granting of  
20 variance that's been requested.

21 To recap, the variance is to go  
22 from 58.8 percent to 90 percent which exceeds

1 the 60 percent allowed under an R-4 District  
2 and the 70 percent allowed by the special  
3 exception.

4 On our review we found that the  
5 unique characteristics that were characterized  
6 in the report, in the applicant's submission  
7 was that it allows approximately 603 square  
8 feet, which is a third of the requirement in  
9 the District. It's 12 feet wide and the depth  
10 is not enough to extend the building.

11 Our analysis indicates that only  
12 one lot on the square meets the requirements  
13 for the zoned district in terms of size and  
14 width. And that half of the lots are between  
15 600 and 700 square feet.

16 We also noted that there are, as  
17 stated in the applicant's presentation, there  
18 are a group of eight dwellings that are  
19 essentially on the same size lot. And pretty  
20 much have the same floor area.

21 So the fact that only one lot in  
22 the square meets the minimum requirements

1 seems to indicate that not meeting the minimum  
2 requirements for a lot size and width are not  
3 unique for this square.

4 In terms of exceptional practical  
5 difficulty, the basic contention is that it's  
6 a small dwelling and they can't expand due to  
7 limitations in the current Zoning Regulations.  
8 Now looking at the regulations, however, if  
9 you take under 223, which is the provision  
10 that was created specifically to address this  
11 type of situation, they can come pretty close  
12 to what they had proposed to provide in terms  
13 of expansion. Now they've always had the  
14 third floor option, but we think based on the  
15 calculations provided in our report, that 223  
16 which is specifically provided to allow a  
17 proportional increase of a dwelling in line  
18 such that the density would not significantly  
19 change from what would be the character of the  
20 existing area would meet their requirements  
21 for the most part.

22 Under those circumstances there is

1 no practical difficulty has been demonstrated  
2 in their submission.

3 In terms of detriment to the  
4 public good, we think that this is a square  
5 with many similar lots. And a reference was  
6 a made to an application that was approved  
7 recently that went to 90 percent. But if you  
8 look at the variance, they were going, as I  
9 recall, from 85 to 100 percent. In essence  
10 what they were going to do was the expansion  
11 was going to, I believe was going to cut off  
12 a courtyard, a small courtyard in the back of  
13 the property. And the applicant made the  
14 application for two properties saying that  
15 they were going to -- basically wanted to  
16 close it off.

17 So the percentage of increase was  
18 not nearly as great as what's being proposed,  
19 but it's more in the line ten or twelve  
20 percent, which in previous cases reviewed by  
21 this BZA and other BZAs was asserted to be de  
22 minimis considering the existing situation.

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1           And I did not find any other  
2 requests approved variances to increase lot  
3 occupancy on this square. And this, of course,  
4 dates back to the creation of the existing  
5 Zoning Regulations.

6           So as such, I don't think that  
7 particular application resonance nearly as  
8 much change as is being proposed today.

9           So that since 223 was designed  
10 specific to address this circumstance, I would  
11 encourage -- we support, more than support the  
12 applicant expanding the dwelling and we think  
13 223 is the tool to do that.

14           Moreover, we think that not  
15 ignoring that provision in the regulations for  
16 this case could set a precedent on this  
17 square. Because if we have ten lots, half of  
18 the lots are essentially between 600 and 700  
19 square feet and other lots meet the current  
20 zoning requirements, I would think that it's  
21 potentially the beginning of a rush to  
22 increase the density overall in the square

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1     such that it goes from a residential density,  
2     which it is now, to a density that is more  
3     prevalent in commercial zones, nearly a 100  
4     percent density. And I'm not sure if -- now,  
5     obviously the applicant doesn't intend this.  
6     But in the long term such an increase overall  
7     in the square would really increase the  
8     density overall in it so that I think it would  
9     be a major change in the character of the area  
10    that currently exists.

11           And I think that overall those two  
12    circumstances could be detrimental to the  
13    square and have unintended consequences that--  
14    or would be preserved if we stuck 223  
15    standards. So based on the circumstances and  
16    characteristics, granting this variance would  
17    be counter to the intent of the Zoning  
18    Regulations and potentially detrimental to the  
19    good of the public as a whole.

20           And, of course, in community  
21    comments the Advisory Neighborhood Commission  
22    voted five to three to support the

1 application. And my understanding is that the  
2 Capitol Hill Restoration Society recommended  
3 a denial. But this is just based on an email  
4 that we received in the office.

5 So although OP recommends denial  
6 of the requested variances to reach the 90  
7 percent occupancy, we strongly support and  
8 think the applicant more than meets the  
9 requirements for 223. And we also contend that  
10 223 comes close to meeting the proposed  
11 expansion that was outlined by the applicant  
12 in their application.

13 And we also want to raise the  
14 question or question whether or not the  
15 proposed variance would require elimination of  
16 the one space parking requirement that  
17 currently would apply to single-family  
18 dwellings in the residential district.

19 So based on that, that concludes  
20 Office of Planning's report. And we're  
21 available to answer questions.

22 CHAIRPERSON MILLER: Okay. With

1     respect to a 70 percent lot occupancy and  
2     special exception relief, I heard the  
3     applicant to say that they could really -- it  
4     wouldn't do them any good basically. It's  
5     under six feet, and therefore they couldn't do  
6     any addition just with that percentage. And  
7     you seem to be saying something different.  
8     Can you reconcile that?

9             MR. JACKSON: Well, now I will  
10     state that we aren't designing the building.  
11     We're not playing the role of architectural  
12     professional to design what could be done with  
13     the building with the additional square  
14     footage. What we simply were doing was an  
15     estimate based on what would be the maximum  
16     allowed under the current regulations under  
17     223. And the number we came up with in terms  
18     of floor area, still keeping the setback on  
19     the top floor, was a difference of 150 feet.  
20     I believe approximately 150 feet.

21             Now how that additional increase  
22     would be used is open to the design and

1 desires. But we're just saying that the  
2 proposal -- comparing the proposal to what's  
3 allowed under 223 is very similar. And as  
4 such, we think 223 is an avenue that they  
5 should pursue. And we recommend that as  
6 opposed to basically filling up the lot with  
7 building.

8 CHAIRPERSON MILLER: Okay. I hold  
9 that in obedience then for the applicant to  
10 respond to again. Because I think, you know,  
11 one of the reasons for a variance might be if  
12 they could -- if they have practical  
13 difficulty in building in compliance with the  
14 70 percent. You seem to think that they  
15 probably can. They said they can't.

16 MR. JACKSON: Again, we're just  
17 saying that in terms of this, we're just going  
18 with what they've stated their trying to  
19 reach. The 223 allows -- reaches --  
20 essentially reaches that goal short of less  
21 than 200 feet. So they come close to the goal  
22 that they have outlined that they were trying

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1 to reach using the 223 as opposed to the 90  
2 percent occupancy. That's all we're saying.

3 CHAIRPERSON MILLER: Let me ask  
4 the applicant then if I'm not understanding  
5 this correctly. I mean, to me that sounded  
6 like the issue but OP says, you know, just go  
7 to 70 percent and that's what the special  
8 exception is there for. And so, you know, it  
9 won't be as big as what you'd like but you can  
10 accommodate your needs or whatever, enough  
11 needs. I thought I heard you say they can't  
12 do anything with going up to 70 percent that  
13 would work. So do you want to address that  
14 again?

15 MS. FOWLER: Yes. Going to 70  
16 percent would be a 5½ foot addition. And then  
17 when you take out for the thickness of walls,  
18 you know 6 inch would be the minimal. So  
19 you're talking about a 5 foot interior  
20 dimension, which I really don't think we could  
21 do much with. And that's not helping out a  
22 dining space or any -- she needs storage. It

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1 just certainly could be built. There might be  
2 a way we could configure something, but it's  
3 not really accommodating what she needs in  
4 that house.

5 And he's talking about where it's  
6 only 200 square feet, or whatever the  
7 difference is between the 70 and the 90. But  
8 when you're talking about a house this small,  
9 it's a huge amount. I mean, we're only  
10 talking about 188 square feet that we're  
11 asking for. And you're talking about cutting  
12 it back in half, essentially.

13 MS. HOLBROOK: Something else that  
14 I noticed what he was talking about is there  
15 was basically 16 rowhouses initially that were  
16 built this size. And out of those 16, there  
17 are five left that haven't been added to. And  
18 of those five, I am in one, the person behind  
19 me is in one and the other ones are rentals.

20 And so to say it's going to change  
21 the character of something, I'm not quite sure  
22 how that is in effect here, nor set a

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1 precedent. The precedent was set long before  
2 now. And so I don't quite understand that  
3 either.

4 But if you went with the  
5 additional and you put it on top of the  
6 property, then we're changing the face of the  
7 property. And I didn't want to do that  
8 because I knew the Historical Society was  
9 concerned about that happening, even though  
10 I'm not within that district. And I agree  
11 with them, I didn't want to change the  
12 character in front of the house. And so in  
13 order not to do that, you set back that room  
14 on top so that you don't see it. And so you  
15 can't make up the extra space there either.

16 And by adding green space on the  
17 top where currently there's only concrete, I'm  
18 adding actually green space to it. But where  
19 this particular alley is or my property is,  
20 that's where the alley spans out into a larger  
21 area. That is not going to change. It's  
22 still going to be a large concrete area back

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1       there, even though the alley is not useable.

2                   And I have no idea about a parking  
3       regulation because there's no one who uses  
4       that alley. So other than someone who once  
5       tried to illegally park something back there  
6       that we had to get removed. So I'm not sure  
7       where that comes from.

8                   CHAIRPERSON MILLER: Okay. We'll  
9       get back to you. I think we need to go back  
10      to Office of Planning since this is basically  
11      their time.

12                  I have a question about the  
13      precedent issue.

14                  MR. JACKSON: All right.

15                  CHAIRPERSON MILLER: Because I  
16      think we were handed some cases or something,  
17      but I haven't really had a chance to go  
18      through them at the same time. But there have  
19      been variances granted and they're not  
20      necessarily precedent.

21                  I mean, we look at a variance one  
22      at a time, I mean case, and decide whether

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1       there's something exceptional about that  
2       particular property. I mean, are you familiar  
3       with those cases? I think you were addressing  
4       them to a certain extent?

5                   MR. JACKSON: Yes.

6                   CHAIRPERSON MILLER: That they're  
7       so different from this one that they didn't  
8       set a precedent that this one would set?

9                   MR. JACKSON: Well, again, as I  
10      recall, the lots were developed to 80 or 85  
11      percent at the time. They were already --

12                  CHAIRPERSON MILLER: It was more  
13      of a de minimis --

14                  MR. JACKSON: Exactly.

15                  CHAIRPERSON MILLER: Okay. In  
16      those cases?

17                  MR. JACKSON: And it appeared, as  
18      I recall, it seemed like they were closing off  
19      -- well, of course the rowhouses are typically  
20      designed with these courts that face each  
21      other. So they have small courts in the back,  
22      as I recall. So that there were two lots

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1 together, they had facing courts. And what  
2 they were talking about doing was building the  
3 addition so it covered the court. And then  
4 covering the court, they have a 100 percent  
5 lot occupancy. But if you actually visit the  
6 site, the entrances are -- the rear entrances  
7 -- I didn't go to the front. But the rear  
8 entrances are recessed into the building. I  
9 believe that used to be court space.

10 So that by building a second floor  
11 that came to the rear property line, they  
12 reached a 100 percent. Now that's as I recall  
13 in that case.

14 But just since you raised that  
15 point, I would refer you to Exhibit 2 in my  
16 submission, which is the aerial of the site  
17 and the lots that are in the -- it's the only  
18 aerial I have in the -- the second aerial I  
19 have in the application. Okay.

20 And I guess my concern is right  
21 along the front you have these eight dwellings  
22 that are all on essentially the same size lot.

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1     Okay.  You've got one that apparently built  
2     out their lot illegally because there's no  
3     record of any variance being granted, or it  
4     predates the regulations which is also a  
5     possibility.

6             Granting this variance to our  
7     interpretation, this is not -- the fact that  
8     there are eight identical dwellings on this  
9     lot and there's no many other dwellings that  
10    do not meet the regulations means not meeting  
11    the minimum size for lots in the area is no  
12    longer a unique condition.  So the fact that  
13    if this were to be granted, and then it's not  
14    unique, then what basis would you have for not  
15    -- the concern is that the same case could be  
16    made for everyone of these houses.  And not  
17    only the eight that are -- and we've, of  
18    course, are thinking about the eight that are  
19    immediately adjacent to this property.  But,  
20    again, none of the lots on the square except  
21    for one, one residential lot, really meets the  
22    -- it's conforming or exceeds the minimum

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1 requirements.

2           So we just don't think that this  
3 application meets the basic standard that you  
4 have to consider for a variance. But we  
5 understand her desire to have additional room.  
6 We understand she acquired a house that she  
7 wants to add more space to the house, and that  
8 there are some limits in the regulations. But  
9 we really think that's why they created the  
10 223 provision was just so that every house on  
11 the lot can take advantage of it to add  
12 something. To add some additional space. And  
13 now she's saying that that's not enough space,  
14 I can appreciate that. But the regulations  
15 really are designed such that there's not a  
16 wholesale change in the character of an area  
17 as a result of a waiver of the variance  
18 standard.

19           And to address the issue of people  
20 staying in the District and being able to  
21 expand small homes to some degree, the Zoning  
22 Commission created the 223. I think that's

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1 the tool that's most appropriate in this  
2 location. But that's the Office of Planning's  
3 position.

4 Now we understand that the  
5 applicant wants more. But I'm afraid that's  
6 the circumstance that we can address -- but  
7 we're addressing whether or not this meets the  
8 standards for approval, and we don't think it  
9 does.

10 CHAIRPERSON MILLER: Okay. I have  
11 two more questions then.

12 MR. JACKSON: Okay.

13 CHAIRPERSON MILLER: One is well  
14 have you been to the site?

15 MR. JACKSON: Yes.

16 CHAIRPERSON MILLER: Okay. Is  
17 there anything exceptional about the position  
18 of this property on the alley that's different  
19 from the others with respect to being more  
20 susceptible to crime?

21 MR. JACKSON: Well now I was out  
22 there in the daytime. And I tried to drive a

1 vehicle back there. I actually did drive a  
2 vehicle back there. And it was a challenge.  
3 But I have to say that it is a close space and  
4 there are yards. But they seem to be in  
5 different states of usage. Some are paved,  
6 most are fenced off. But I also observed,  
7 made the observation to myself, if all of the  
8 properties moved back to the alley, that would  
9 be an impossible space. I mean, it's almost  
10 as if it would be probably better to close the  
11 alley and split the land between the property  
12 owners. Because I didn't see any vehicles  
13 parked there. And all the rear yards are in  
14 active usage for everything but cars. But  
15 that's not the issue we're dealing with here  
16 today, of course. But it's tight. But it will  
17 be even tighter if every house in the alley  
18 were to build back to its limit.

19                   Though it's small. I would agree  
20 with that.

21                   CHAIRPERSON MILLER: My last  
22 question is if were to find that this is just

1     like or very much like the other houses in the  
2     row, and that they all share the same  
3     problems, then a solution could be a map  
4     amendment, is that right?

5                 MR. JACKSON: Generally that's  
6     what you do. That's what Zoning is designed  
7     to do is that you have a common problem shared  
8     by a lot of different properties, then you  
9     look at a map amendment or even changing the  
10    zoning. If there was a zoned district that  
11    was more compatible with the issues that are  
12    identified in this case.

13                We are going through that process  
14    now where we're looking at amending the Zoning  
15    Regulations. And I think there's going to be  
16    more flexibility in there with regard to some  
17    manner of change with the existing situation,  
18    how you might want to improve it. But I think  
19    the underlying goal of the regulation change  
20    and the Comprehensive Plan is that we don't do  
21    anything that markedly or drastically changes  
22    the character of existing neighbors and

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1 residences and blocks and square. Or square.

2 I'm sorry, we don't have blocks.

3 And the incremental change that  
4 could potentially result by granting such a  
5 high variance on a lot that commonly exists,  
6 that is replicated a number of places across  
7 the square, could have negative impacts on the  
8 quality of life in the square in the long term  
9 we feel. Because there's no way to  
10 differentiate from this lot and the other  
11 eight. And we would think the other 34 in  
12 terms of the fact that they aren't as large as  
13 they should be under the Zoning Regulations.  
14 And that's our concern.

15 CHAIRPERSON MILLER: Thank you.

16 Do Board members have other  
17 questions?

18 VICE CHAIR LOUD: Just a couple of  
19 questions.

20 It was a very good report again.  
21 And thank you for your submission.

22 One of the things the applicant

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1 argues is that the size of it in relation to  
2 the zone makes it unique. That is that it's,  
3 what did she say? It's about 1197 square feet  
4 smaller than required in the R-4 for the area.

5 MR. JACKSON: Yes.

6 VICE CHAIR LOUD: But I think  
7 essentially her argument is that if you look  
8 at the lot and then you look at the zone, it's  
9 nonconforming. The size is very, very small.

10 MR. JACKSON: Yes.

11 VICE CHAIR LOUD: And your  
12 argument seems to be, well, you would compare  
13 that lot to other lots on the square, just  
14 adjacent lots on the square. Is that always  
15 the case where we compare the lot in question  
16 just to what's happening on that square?

17 MR. JACKSON: Well, what we're  
18 looking for is what is unique about it? How  
19 do we make this a unique circumstance wherein  
20 we're making a major adjustment in what's  
21 being allowed in the Zoning Regulations based  
22 on some characteristics where this wouldn't be

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1 something that could be commonly applied for  
2 by all the properties on the square.

3 And so we look at the size, the  
4 shape, whether or not there are steep grades  
5 or some other characteristic that is tied  
6 directly to the property that would result in  
7 being considered unique or circumstances  
8 around the property. If it was under an  
9 overpass or it was next to the water, or  
10 there's a drop off right off the side of the  
11 house and you couldn't build over there.

12 So we're just looking for what  
13 characteristics that make it unique. And so  
14 the application indicated that the unique  
15 characteristic was it was small. Okay. So we  
16 looked at the square to see if other lots were  
17 small. And we find that half of the lots are  
18 essentially the same size range, 600 or 700  
19 square feet.

20 VICE CHAIR LOUD: How many lots on  
21 that square? Do you recall?

22 MR. JACKSON: Well, there are 36

1 lots on the square and I'd say approximately  
2 30 of them are row dwellings or parking. And  
3 there are lots, all of the lots -- I'd say 17  
4 of the lots are between 600 and 700 square  
5 feet and are 12 feet wide. And then you've  
6 got a group that are 17 feet. And then you  
7 have some that are large enough but not as  
8 wide, or wide enough and not as large.

9 VICE CHAIRMAN ZC JEFFRIES: Well,  
10 now many are 600 square feet? Because there's  
11 a difference between 600 and 700.

12 MR. JACKSON: Well, there's one  
13 that's 554, 521, 511, 516, 514. So I'm  
14 actually to correct myself. There are 17 that  
15 are been 675 and 511. Not none of 511 group  
16 lots are north along Independence. But by our  
17 tally there are 36 lots total and half of them  
18 are less than 700 square feet. And some are  
19 less than 600 square feet.

20 VICE CHAIR LOUD: Okay. And this  
21 is my last question. And I'm just throwing  
22 these at you because it's helping me to think

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1 better about these kind of problems.

2 But let's say you had seven  
3 contiguous irregularly shaped lots. You know,  
4 like a triangle, trapezoid, triangle  
5 trapezoid, triangle, trapezoid -- seven in a  
6 row. None of them would be eligible for  
7 variance relief because they would be adjacent  
8 to six similarly shaped lots?

9 MR. JACKSON: Well, I can't say  
10 I've ever seen a situation like that. But if  
11 you take the example of houses around a cul-  
12 de-sac if there were six houses around a cul-  
13 de-sac and they were all small. And one came  
14 in for a variance because they had an unusual  
15 shape and they were on a cul-de-sac, you'd  
16 have to say that they are not unique. In that  
17 setting they are unique.

18 VICE CHAIR LOUD: Thank you.

19 MR. JACKSON: Yes.

20 VICE CHAIRMAN ZC JEFFRIES: So in  
21 terms of, and I'm just curious. I mean, you  
22 might not have this information. I mean,

1 throughout the District I mean I see a number  
2 of these two story sort of federal style  
3 rowhouses. I recall a few in Capitol Hill. I  
4 know there's some that are in some  
5 neighborhoods around U Street, around 12th or  
6 11th. I'm just wondering, I mean, are we  
7 getting a lot of applications like this where  
8 people are looking a very similar situation  
9 where you have a small footprint and you have  
10 a small rowhouse that you purchased,  
11 recognizing that the size limitations and so  
12 forth? Are you seeing a lot of these come  
13 through over the last few years?

14 MR. JACKSON: Well, we've seen a  
15 number of applications. Now I'm not sure of  
16 the overall number. But pretty regularly  
17 we've seen these applications come in.

18 VICE CHAIRMAN ZC JEFFRIES: They'd  
19 be coming in as 223s?

20 MR. JACKSON: We encourage them if  
21 they don't come in as 223s, we encourage them  
22 to go 223. And in most cases they can address

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1 most of what they're trying to achieve through  
2 223. And then if they can't, sometimes there  
3 are other circumstances that we will address  
4 in our report such as, of course, if this is  
5 needed for accessibility which we supported or  
6 if it's needed because there's a significant  
7 change in the family structure or something  
8 like that.

9 But we have brought a lot of those  
10 forward where we have recommended denial, too.  
11 Because we didn't think they could make the  
12 test. But we are sympathetic with the desire.  
13 We just think that there was a lot of  
14 agonizing -- based on the record, there was a  
15 lot of agonizing over this 223 tool just  
16 because of the fear that just using it would  
17 significantly change the character of certain  
18 neighbors.

19 I think the result has been much  
20 better than anticipated. Way better than  
21 would have resulted if the Board of Zoning  
22 Adjustment felt pressure then to granting

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1 every variance because they had no other tool  
2 to use. I'm saying in this case there is no  
3 other tool to use that comes within 150 feet  
4 of their goal, and like we said, given great  
5 weight.

6 VICE CHAIRMAN ZC JEFFRIES: But I  
7 might have stepped out when you responded to  
8 this, and I apologize for that. But in terms  
9 of the case that was cited by the applicant,  
10 the 2002 variance, do you recall what the  
11 situation was there?

12 MR. JACKSON: As I recall, they  
13 were abutting lots and they had, as many  
14 rowhouses do, the facing courts in the back  
15 yard. The proposal was to build a second floor  
16 that would come out to the property line. And  
17 basically if you come out to the property  
18 line, you're a 100 percent lot occupancy.

19 And when I visited the site it  
20 appeared that what was open court is now the  
21 entrance to both, the rear entrance to both  
22 dwellings so that they still face each other.

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1 You go into a fence and you turn right and  
2 you're in one building. You go into another  
3 fence you turn right and you're in the other  
4 building.

5 VICE CHAIRMAN ZC JEFFRIES: But do  
6 they take up the full 100 percent of the  
7 footprint?

8 MR. JACKSON: Yes. The second  
9 floor extends to the rear of the property.

10 VICE CHAIRMAN ZC JEFFRIES: The  
11 second floor extends out?

12 MR. JACKSON: To your property  
13 line. And if --

14 VICE CHAIRMAN ZC JEFFRIES:  
15 Cantilevers out?

16 MR. JACKSON: Well if you -- it's  
17 almost like there's a rear porch. A recessed  
18 rear porch in the back.

19 VICE CHAIRMAN ZC JEFFRIES: Okay.  
20 Okay. Yes.

21 MR. JACKSON: But that's just  
22 based on the site visit. I'm not -- I looked

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1 at those cases, but I didn't -- as I recall,  
2 they were actually filling in -- the second  
3 floor was extending out and covering what was  
4 previously a court. On both properties.

5 VICE CHAIRMAN ZC JEFFRIES: Okay.

6 MR. JACKSON: So it was one  
7 approval for both properties. But I could not  
8 find any other variance relief that's been  
9 granted or requested for properties on this  
10 square.

11 VICE CHAIRMAN ZC JEFFRIES: Okay.  
12 In terms of like neighborhood character, I  
13 heard the applicant speak to the fact that  
14 there's so many homes in this square that have  
15 already been built out that how could this  
16 impact the overall character when it seems to  
17 be somewhat of an eclectic arrangement,  
18 assortment of homes here.

19 MR. JACKSON: Well, again I refer  
20 back to Exhibit 2 in my submission. I hope  
21 you have the color ones because the black and  
22 white is not as visible.

1 VICE CHAIRMAN ZC JEFFRIES: Yes.

2 MR. JACKSON: But if you look at  
3 the pattern, granted there are the two houses  
4 that are filled in right next to the site  
5 label.

6 VICE CHAIRMAN ZC JEFFRIES: Yes.

7 MR. JACKSON: Those are filled in.  
8 But the rest have some setbacks because the  
9 property lines vary.

10 VICE CHAIRMAN ZC JEFFRIES: Yes.

11 MR. JACKSON: You go down the  
12 street, down Massachusetts Avenue --

13 VICE CHAIRMAN ZC JEFFRIES: Going  
14 east?

15 MR. JACKSON: Well, east and west  
16 on Massachusetts Avenue.

17 VICE CHAIRMAN ZC JEFFRIES: Yes.

18 MR. JACKSON: Those houses still  
19 have substantial rear yards. Now you look up  
20 and down 7th Street, they have substantial  
21 rear yards.

22 Of course, the tightest lots are

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1 the ones where you probably have the most  
2 impact. But I would say that overall there  
3 doesn't appear to be that much in-fill going  
4 on in there.

5 And I believe I first thought that  
6 the houses that are just east of the row of  
7 small dwellings have actually built out into  
8 their property line -- into their lots. But  
9 then I noticed that the lots actually get  
10 larger when you get to the end of the alley.  
11 So that was -- visually when you're there, you  
12 think that these houses have built too far.  
13 But then when you look at the map, they have  
14 rear yard and they probably between 60 and 70  
15 percent of lot occupancy.

16 VICE CHAIRMAN ZC JEFFRIES: So  
17 there's nothing about the configuration of the  
18 alley in that portion behind that that is an  
19 extenuating circumstance really?

20 MR. JACKSON: That doesn't effect-

21 - VICE CHAIRMAN ZC JEFFRIES: That  
22 really doesn't effect?

1 MR. JACKSON: No. The problem the  
2 applicant has is they have a small house on a  
3 small lot.

4 VICE CHAIRMAN ZC JEFFRIES: And  
5 that's not so unusual?

6 MR. JACKSON: Not on this square,  
7 no.

8 VICE CHAIRMAN ZC JEFFRIES: Okay.  
9 Thank you.

10 CHAIRPERSON MILLER: Other Board  
11 questions?

12 Okay. Does the applicant have  
13 questions for the Office of Planning? Cross  
14 questions.

15 MS. HOLBROOK: Sure. The  
16 photograph that using as an exhibit was taken  
17 before I even bought the house. And so that  
18 does not sure currently all the out building  
19 that's been done since then. Because it shows  
20 my particular yard as grassy and it shows my  
21 neighbor's yard. And that's not correct at  
22 all. And so there's been a lot of building

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1 out in that particular alley.

2 And I personally when you were  
3 talking about the character of an alley, you  
4 know, about changes to it?

5 MR. JACKSON: No, I wasn't talking  
6 about the character of the alley. I was  
7 talking about the character of the  
8 neighborhood. So in essence the block. The  
9 square. The character of the square, not just  
10 the alley.

11 MS. HOLBROOK: Okay. Well,  
12 there's 16 rowhouses that are in that area  
13 that were all built identically to each other.  
14 And as you mentioned, that some of the  
15 rowhouses because of the configuration of the  
16 alley, have more back yard than others.  
17 Because of where mine particular one comes in  
18 at the turn of the alley, I don't have as much  
19 room in the back as the ones that are next to  
20 me. As you go back in the alley, they have  
21 larger back yards.

22 So 60 or 70 percent of those

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1 yards, wouldn't you agree, would be more  
2 addition than what I would be able to do?

3 MR. JACKSON: Well, looking at the  
4 aerial, it appears that -- now let me verify  
5 something. Are you the third house from the  
6 alley? The alley coming in from  
7 Massachusetts, are you the third or the fourth  
8 house?

9 MS. HOLBROOK: The fourth house.

10 MR. JACKSON: Okay. Well, if  
11 you're the fourth house, then just based on  
12 this aerial, it appears that every house to  
13 the east of you has the same area in the back  
14 yard. And the three to the west of you are  
15 the ones that seem to have smaller rear yards  
16 because of the angle of the alley.

17 VICE CHAIRMAN ZC JEFFRIES:  
18 Particularly the second one from that turn, is  
19 that what you're saying?

20 MR. JACKSON: Right. And you're  
21 saying the one on the end is the one that  
22 built all the way out, correct? So that most

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1 of the houses -- it appears that in that row  
2 most of the houses do have the same amount of  
3 rear yard, and of course the lots are the  
4 same.

5 But I can concur with what you  
6 were saying, I believe the house on the far  
7 end, the far east, does have like a four by  
8 four addition in the back that goes to the  
9 second.

10 MS. HOLBROOK: It's very big.

11 MR. JACKSON: Well, actually, I  
12 was thinking that was about the size of what  
13 you would be allowed under 223, and they  
14 should have gone for one.

15 MS. HOLBROOK: Okay. That was  
16 just renovated and before there was just like  
17 a little shed where they put a bathroom on the  
18 back added to it. I don't know when they did  
19 that. And then when he renovated it this last  
20 year, they put in the two story and enlarged  
21 that back area.

22 MR. JACKSON: Well, again, there's

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1 no record of any approval of that.

2 MS. HOLBROOK: And the two houses  
3 that you were talking about are 2002, the  
4 variance that happened on those.

5 MR. JACKSON: Right.

6 MS. HOLBROOK: Basically what was  
7 back there was a grassy area with fence that  
8 kept getting knocked down and lots of trash  
9 and garbage and stuff like that. And what they  
10 did was they just put a security door on the  
11 outside, literally on the edge of the alley  
12 curve. And inset the door. But there's  
13 architectural glass all the way out to the  
14 alley. So that bottom level is out to the  
15 alley and there's a room out to the alley down  
16 there.

17 MR. JACKSON: Right. I was  
18 referring to the -- well, actually you have  
19 the case I believe. The architect gave you  
20 the case. And again, so instead of depending  
21 on my memory, I'm sure the Board will review  
22 the case and particulars about it. But I do

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1 recall that the word "de minimis" was  
2 somewhere in that case in terms of the  
3 increase from what was the lot occupancy when  
4 the application was submitted to what was  
5 being proposed. So it was a minor change going  
6 to a 100 percent, or less of a change.

7 CHAIRPERSON MILLER: I just want  
8 to remind the applicant also, this is a time  
9 to ask questions of Office of Planning and  
10 then you're going to get a time to make any  
11 rebuttal you want to do.

12 MS. HOLBROOK: Thank you.

13 CHAIRPERSON MILLER: Okay.

14 VICE CHAIRMAN ZC JEFFRIES: You  
15 have no more questions?

16 MS. HOLBROOK: I have one other  
17 question.

18 VICE CHAIRMAN ZC JEFFRIES: Oh.

19 MS. HOLBROOK: I believe one of  
20 the properties that was in the case that we  
21 cited, I think it was a 19 percent increase.  
22 I think one of them went from 81 percent, if

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1 I remember correctly I gave you all my copy,  
2 to 100 percent. So that's 19 percent. Do you  
3 think that's de minimutive?

4 MR. JACKSON: As I recall, that  
5 was the phrase that was use in the summary.  
6 So I'm characterizing it based on my  
7 recollection of the case -- the order said.  
8 And I'm assuming that's just repeating what  
9 was mentioned at the meeting. But I don't  
10 think, again, rather than depend on my memory,  
11 I think the Board can read the application and  
12 see exactly what was there.

13 MS. HOLBROOK: Okay. Thank you.

14 CHAIRPERSON MILLER: Okay. Is  
15 that it for question for Office of Planning?

16 MS. HOLBROOK: Yes. Thank you.

17 CHAIRPERSON MILLER: Okay. I'm  
18 going to ask again if there's anybody here  
19 from the ANC? Okay. Not hearing from anyone.

20 Is there anyone here who wishes to  
21 testify in support of the application?

22 Is there anyone who wishes to

1 testify in support? Okay.

2 MS. VAN BUREN: Good evening. My  
3 name is Lashawn Van Buren. And I live 1512  
4 Massachusetts Avenue, Southeast exactly right  
5 next door to Ms. Holbrook.

6 And I just wanted to say that the  
7 hose that I live in is very small, very  
8 limited space and I would be faced with the  
9 same dilemma that she's going through now. I  
10 would probably like to add on, you know, to  
11 the property as well in order to have -- what  
12 you call it, standard living space. Okay.

13 I'm trying to understand the lot  
14 and square, you know, thing that you all were  
15 talking about. Even with the alley -- I mean,  
16 the picture isn't current. There has been two  
17 properties recently that were renovated where  
18 they had expanded the property. And I  
19 actually went in the property and saw them,  
20 they have two bathrooms. And I mean, it looks  
21 really nice.

22 And I think that I support Ms.

1 Holbrook in her decision, you know, to add on.  
2 Because for me I would be doing the same thing  
3 with the property that I'm at, you know.  
4 Because the living space is not enough, you  
5 know. It's like -- I mean the back yard I  
6 think could be used, you know, to expand, you  
7 know, the property for a space. You know,  
8 adequate living space.

9 That's all I want to say.

10 Yes, the alley back there, even  
11 myself along with Ms. Holbrook have been back  
12 there to clean up the alley with all the  
13 activity that's going on back there. We've  
14 made numerous phone calls to the police about  
15 the activity back there. I mean, it's really,  
16 really bad.

17 I think that adding space back  
18 there would alleviate that, you know. Would  
19 alleviate that problem.

20 Basically all eight houses, I'm  
21 talking about the smaller houses on that row,  
22 eventually everybody would need extra space

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1 because the houses are too small, you know.

2 VICE CHAIRMAN ZC JEFFRIES: Excuse  
3 me. How long have you lived in this home?

4 MS. VAN BUREN: I've lived there  
5 since February 2007.

6 VICE CHAIRMAN ZC JEFFRIES: Okay.  
7 So you haven't been there that long. Okay.

8 CHAIRPERSON MILLER: What's your  
9 address? What's your address?

10 MS. VAN BUREN: 1512 Massachusetts  
11 Avenue. I'm right next door to Ms. Holbrook.

12 CHAIRPERSON MILLER: You're right  
13 next door? Okay.

14 MS. VAN BUREN: Yes.

15 CHAIRPERSON MILLER: Other  
16 questions?

17 Okay. Thank you very much.

18 Is there anybody here who wishes  
19 to testify in opposition to this application?  
20 Okay.

21 Any rebuttal or closing remarks?

22 MS. HOLBROOK: I noticed before

1 that Mr. Jackson had addressed an issue about  
2 family change. And what kind of brought all  
3 this about was that I have a fiancé and I  
4 didn't know where to put him. I mean, that  
5 was basically it.

6 I have no closet for him to have.  
7 I have no room. I didn't know what to do with  
8 him. And so we looked at properties in  
9 Virginia because there wasn't any place to put  
10 him. So then I said I didn't really want to  
11 leave the neighborhood because I have friends  
12 on every block from there to Congressional  
13 Cemetery. And I have a community garden  
14 there. And tutor kids there. And, you know,  
15 I just didn't want to leave the neighborhood.  
16 It's a place I'd like to be.

17 And Scott who came the last time,  
18 but he couldn't come today that waited 4½  
19 hours the last meeting, moved in a year ago  
20 August. And the day he moved in, that  
21 evening, was beat to a pulp right there by the  
22 alleyway by some juveniles. Broke his jaw,

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1 fractured his skull. And the man still stays  
2 because in our community for every meeting  
3 that I've gone to and every hearing I've gone  
4 to, there have been neighbors that have  
5 volunteered to come in support of this. And  
6 because they feel that -- I know Mr. Jackson  
7 wasn't at any of the meetings that I went to  
8 for Office of Planning when they advised me  
9 what to do and how to do things, and what they  
10 felt was appropriate to ask for. And I  
11 understand that. But I believe that his idea  
12 about dividing up the alley is really good.  
13 Because it's a dead alley. Once Zoning or  
14 Planning or whoever did it okayed the  
15 apartment building, three story apartment  
16 building at the end of the alley, it closed  
17 it. It made it, unfortunately, alcove for all  
18 kinds of activity you don't want it to be for.  
19 But it's a dead alley. And there's not much  
20 else you can do with it except extend housing  
21 out into it because there isn't anything  
22 there. It's dead.

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1           And my plan was to put green space  
2           on top because you can't have it down below.  
3           There's just nothing there but concrete.

4           So I applaud your idea about doing  
5           that because I think you're absolutely right  
6           that you know, it's an alley that's no longer  
7           used as an alley. It's not a byway, other  
8           than by people you don't want to use it. It  
9           isn't. And, you know, I wish you had been  
10          there -- I met with four people on two  
11          sessions that advised me about what to do.  
12          And I complied with everything they asked me  
13          to do.

14          I still find it very difficult  
15          this whole concept of setting a precedent, you  
16          know. And I don't quite understand that. I  
17          believe that keeping the character of the  
18          neighborhood is exceptionally important. And  
19          that's the reason I wanted to make sure that  
20          I never did that. I never made a change so  
21          that on the outside of the neighborhood -- I  
22          am one in the middle of eight rowhouses. I

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1 want to stay one in the middle of eight  
2 rowhouses. I do not want to be uniquely  
3 different in the front. I don't want that to  
4 happen.

5 And if it's necessary to set a  
6 precedent so my neighbors like Lashawn have an  
7 opportunity to get out of the one closet  
8 dilemma, too, then maybe that's necessary at  
9 some point in time that that's needed.

10 And I do understand about the 228,  
11 223 idea because that was explained to me at  
12 the first meeting at the Office of Planning.  
13 But, in fact, they also felt that that wasn't  
14 going to do me any good because the lot was  
15 too narrow. That because of the narrow  
16 condition of it, it wasn't going to help me  
17 out.

18 And before this I really didn't  
19 know all of this information and all the  
20 different things you needed to do. But I do  
21 believe that what I'm proposing to do is a  
22 benefit to the neighborhood and it's also

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1 going to be a teaching element to the  
2 neighborhood and hopefully make the  
3 neighborhood a better and safe place. Because  
4 I have reported and gotten arrests done  
5 because I could see what was going on. And  
6 trying to make this alley a better place is by  
7 having more presence there. It isn't by  
8 having less presence there. Because right now  
9 everybody just closes their blinds that can't  
10 effect it and doesn't go in their backyard,  
11 and definitely doesn't go in the alley. You  
12 know, they don't go there. Because I don't  
13 know why you were there, but there's all kinds  
14 of things on the ground that are from people  
15 that you don't want to walk through.

16 So I do think it's a unique  
17 situation. And I think that the city should  
18 take whatever steps it needs to do to make it  
19 into a home family oriented situation instead.  
20 What it should be, not little tiny houses on  
21 little tiny lots that require little tiny  
22 people.

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1                   VICE CHAIRMAN ZC JEFFRIES: I  
2           mean, obviously, I'm sympathetic to your  
3           change in lifestyle in terms of taking in a  
4           fiancé and so forth. But, you know, a lot of  
5           us have lifestyle changes that might call for  
6           different housing accommodations and so forth.  
7           And I'm just wondering, I mean obviously you  
8           know there's singles that live in the  
9           District. You know, maybe these homes are more  
10          suited for them. I mean, I don't know how  
11          that works. But I just wanted to put that on  
12          the record. I mean, it's a good thing. I  
13          mean, you have a fiancé. But, you know,  
14          sometimes it might call for -- you know, a  
15          change in terms of housing.

16                   And I'm saying that not that I  
17          want you to leave the District, because I  
18          certainly don't. But I just think a lot of  
19          people are faced with this situation everyday  
20          of the week, I mean in terms of making types  
21          of decisions about lifestyle changes related  
22          to where they live and so forth.

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1 I guess what I'm saying is that I  
2 don't find that as a compelling reason, that  
3 one thing that you said, as related to the  
4 fiancé.

5 MS. HOLBROOK: Well currently  
6 right now I tutor three special ed children.  
7 And I can't have them all three there at the  
8 same time. Because my living room isn't big  
9 enough for all three. And I don't get paid to  
10 do this. I do this because I feel like they  
11 need it. And that to me isn't very good, you  
12 know, that you can't even have three little  
13 people in your house. And so I just feel that  
14 it is extraordinarily little. And when it was  
15 built in 1902, it probably was okay.

16 VICE CHAIRMAN ZC JEFFRIES: The  
17 problem with the variance test is that it's so  
18 pure and so narrow. And that's really all that  
19 we're looking at, you know, the uniqueness,  
20 practical difficulty. And if we can't get past  
21 the first two, it's hard to get to the third  
22 prong.

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1           And you might find a lot of -- I  
2           mean, I don't know which direction the Board  
3           is going. And we hear a lot of these stories  
4           and, you know, it's really unfortunate. But  
5           the business of precedent setting is a very  
6           serious one. Because, you know, someone will  
7           cite your case for down the road, and then  
8           we've opened up a flood gate. And so that's  
9           the difficulty with this variance test. It's  
10          just so pure. The standards are much higher.  
11          And it's very narrow. We don't have a lot of  
12          room to maneuver.

13                 MS. HOLBROOK: Well, there's 16  
14          rowhouses that were all built at the same  
15          time. And only four of them have not been  
16          added on. Whether it was legally, illegally,  
17          before the date, after the date. That's all.

18                 CHAIRPERSON MILLER: Okay. I want  
19          to make a few comments and then maybe I'll  
20          just do it as well, and then we can see  
21          whether we want to decide this today or need  
22          any other information. Because I think it's

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1 a question of understanding the process to a  
2 certain extent. Because all the things that  
3 you have said certainly make sense, you know.  
4 The alley, part isn't being used productively,  
5 in fact it has all sorts of problems back  
6 there. And you're not going to hurt anybody  
7 by putting on an addition in the back. And  
8 you're going to add green the top of your  
9 roof. And your house is small, you know, you  
10 should be able to do an addition, et cetera.  
11 But right now in the process that we're doing  
12 it's for a variance. And when we talk about  
13 precedent it means that what we do in a  
14 variance is make an exception for somebody's  
15 property that is different from everybody  
16 else's so that we're not really changing the  
17 rules of the game.

18 For instance, you know if your  
19 neighbor says well I'd like to do the same  
20 thing because my house is too small, too. And  
21 then if we give you a variance based on the  
22 size of your house being too small, and hers

1 is too, then what we're doing is we're pretty  
2 much changing the rules. And that's what the  
3 Zoning Commission. If all these houses, for  
4 instances, are beset by the same problem,  
5 they're all too small and the alley isn't  
6 serving any productive purpose, then if I'm  
7 correct that they ought to go to the Zoning  
8 Commission and the Zoning Commission can say,  
9 you know what we're going to change the map  
10 for all of them. And then they all can be able  
11 to do it, not just one and not come here one  
12 by one and try to show how you're different  
13 from the other ones.

14 Isn't that what happens at the  
15 Zoning Commission. We have two different  
16 zoning bodies, so there are different ways to  
17 do things.

18 VICE CHAIRMAN ZC JEFFRIES: I mean  
19 we've had cases come before the Zoning  
20 Commission where neighbors have gotten  
21 together and we've actually done map  
22 amendments, you know. You know, if we find

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1       that there's a situation. I mean, there are  
2       number in the Columbia Heights neighborhood  
3       that we're finding that a number of developers  
4       or investors were really changing the overall  
5       character of the rowhouse, the rowhouse  
6       characteristic of that neighborhood by putting  
7       on additions and different things. And we did  
8       a sweeping amendment, you know. But it's not  
9       as the Chair says one person coming before.  
10      It's just a concerted effort by the  
11      neighborhood to come forward.

12               Now, of course, you have some  
13      hurdles there, too. I don't want to make it  
14      sound like it's an easy thing. But I think  
15      how the Chair termed it is correct. You know,  
16      because if the BZA continued to do that, then  
17      effectively they would really be changing  
18      zoning, and that's not really the  
19      responsibility of BZA.

20               MS. HOLBROOK: Well, where my  
21      house is located, I don't think I'd gain  
22      anything by it. Because I'm located at the

1 narrow part of the alley where the turn is.

2 VICE CHAIRMAN ZC JEFFRIES: You  
3 know, I did want to say this: It might -- I  
4 don't know where the Board is going, but it  
5 would be helpful to me if this area of the  
6 world was really blown up so that I could  
7 clearly get an understanding about what the  
8 conditions are back there. Because from what  
9 I'm looking at here, I mean I clearly  
10 understand what Mr. Jackson saying and I would  
11 concur with him, but you know you might be  
12 able to make another case here. I mean, it's  
13 not my job to put that out there. But I just  
14 -- you know, it's very difficult to make a  
15 determination looking at this small map  
16 exactly what are some of the difficulties of  
17 this alley and how it impinges upon your back  
18 yard and how it creates a unique situation  
19 that's different than the other ones.

20 I mean, that's the only piece of  
21 this thing that I would add. That --

22 MS. HOLBROOK: Well, you're

1 absolutely correct. Because that's -- where  
2 my property is is where the alley turns.

3 VICE CHAIRMAN ZC JEFFRIES: And,  
4 see, from here it doesn't look like exactly,  
5 but you're making that statement that it does.  
6 And I do know that some of these things are  
7 not accurate. You know, I've been through  
8 that. But what I'm seeing, it looks like --  
9 I mean I would concur with Mr. Jackson, but if  
10 you think you have a different setup here --

11 MS. FOWLER: You have a site plan  
12 in there. C-2. It does --

13 VICE CHAIRMAN ZC JEFFRIES: Where?

14 MS. FOWLER: C-2 in the plans.  
15 It's maybe the second page.

16 VICE CHAIRMAN ZC JEFFRIES: Oh,  
17 okay.

18 MR. MOY: Mr. Jeffries, in  
19 conjunction with C-2 if you look at the  
20 photographs on Exhibit 6 the second page from  
21 the back, that's the rear of the property  
22 1510.

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1 VICE CHAIRMAN ZC JEFFRIES: Mr.  
2 Moy, those are the photographs, right? I did  
3 see those. Okay. The green is the green  
4 facade is the back of Ms. Holbrook's house?

5 MS. HOLBROOK: Yes.

6 VICE CHAIRMAN ZC JEFFRIES: Okay.  
7 Who did the site plan?

8 MS. FOWLER: I did. I based it  
9 on--

10 VICE CHAIRMAN ZC JEFFRIES: It's a  
11 representational thing? I mean how accurate  
12 is it?

13 MS. FOWLER: You know, I based it  
14 on the DC GIS website, but then I also did  
15 some field measurements. I couldn't,  
16 obviously, get onto to private property. But  
17 I did the best I could to fill in the blanks  
18 between what's on the aerial photos and what's  
19 current now.

20 VICE CHAIRMAN ZC JEFFRIES: Okay.  
21 And the argument that the alley has been  
22 effectively cutoff or dead end because of

1 what's happened at 1504 and 1506 --

2 MS. FOWLER: No. Actually, 1527  
3 you see like a large block towards the top  
4 right of the page. They actually, I believe,  
5 closed -- there used to be a through alley and  
6 they took over the alley at that point.

7 VICE CHAIRMAN ZC JEFFRIES: So  
8 wait. The alley dead ends here?

9 MS. FOWLER: It dead ends  
10 there.applicant

11 VICE CHAIRMAN ZC JEFFRIES: Okay.

12 MS. FOWLER: Correct.

13 VICE CHAIRMAN ZC JEFFRIES: I  
14 gotcha.

15 MS. FOWLER: Yes. I believe it  
16 used to be a through alley.

17 MS. HOLBROOK: 2007 that was  
18 built.

19 MS. FOWLER: 2007.

20 VICE CHAIRMAN ZC JEFFRIES: So  
21 they were able to get like an alley closing or  
22 -- I mean, I'm sorry. I know that's not --

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1 MS. HOLBROOK: I have no idea.

2 VICE CHAIRMAN ZC JEFFRIES: How  
3 were they able to do that?

4 MS. HOLBROOK: There's a lot of  
5 things there that nobody's coming before your  
6 Board before to have done.

7 CHAIRPERSON MILLER: Well, if we  
8 look at C-2 what is it about your property  
9 that's so different from the other properties  
10 that causes a different practical difficulty?

11 MS. HOLBROOK: Well, at the bend  
12 right there allows for different types of  
13 behaviors. And the property that's directly  
14 behind me now, 1517, I know on the aerial map  
15 shows that it's a green space. But now it  
16 isn't a green space. They built out literally  
17 on the edge of the alley.

18 And then 1519 if a fence that's  
19 about ten feet tall that is there as well.

20 And then the alley fans out into  
21 some space right there.

22 So where I am right now even if

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1 the alley were divided up, I wouldn't benefit  
2 from that. I know that was one of the things  
3 that Mr. Jackson said that I thought was a  
4 good idea. But I personally wouldn't be a  
5 benefitter of the spaces as the other  
6 properties over here would because the alley  
7 spreads out I think to like 23 feet at the  
8 other end. And where I am right now, the  
9 corner where the other house that just went in  
10 is barely 8½ feet.

11 VICE CHAIRMAN ZC JEFFRIES: So  
12 you're saying 1512 and 1514 have the advantage  
13 of having a larger alley?

14 MS. HOLBROOK: Oh, absolutely.

15 VICE CHAIRMAN ZC JEFFRIES: And so  
16 because it abuts a larger alley, that means  
17 what?

18 MS. FOWLER: Can I address your  
19 question, actually?

20 I think part of the issue is that  
21 because the alley turns where her property  
22 begins is that when you walk down the 24 foot

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1 public alley that's adjacent to the liquor  
2 store over here.

3 VICE CHAIRMAN ZC JEFFRIES: Yes.

4 MS. FOWLER: The site line looking  
5 down, you're most likely to see some -- that's  
6 kind of the first opportunity for somebody to  
7 turn the corner and be out of eyesight of  
8 somebody cutting through that alley.

9 VICE CHAIRMAN ZC JEFFRIES: Okay.

10 MS. FOWLER: Because of the bend  
11 in the alley right there. So you're asking  
12 what's different about this versus the other  
13 ones. I suppose it's the first -- it's the  
14 closest place for somebody to stop and  
15 defecate or urinate, whatever they're going to  
16 do, because they're not likely to walk all the  
17 way down to the end of the alley. But it does  
18 provide a little bit of cover from the main  
19 alleyway through.

20 VICE CHAIRMAN ZC JEFFRIES: And  
21 1507 doesn't have that probably because that's  
22 still in the cone of vision?

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1 MS. FOWLER: Yes. That's correct,  
2 yes.

3 VICE CHAIRMAN ZC JEFFRIES: And  
4 you think by building an addition it does two  
5 things. It obviously gives you more space,  
6 more liveable space, but you think it will  
7 help in terms of curtailing some of the  
8 activity in the alley?

9 MS. HOLBROOK: Absolutely. When  
10 1517 that's behind me built out this last  
11 year, he put a deck on the second level. And  
12 there was complaints by drug dealing  
13 individuals that that was really causing a  
14 problem for their clients.

15 VICE CHAIRMAN ZC JEFFRIES: Okay.

16 MS. HOLBROOK: And then when  
17 people came back to urinate or defecate, he  
18 accidentally sprinkled them with a garden hose.  
19 And he just -- the presence of people there  
20 made a difference as well as there was less  
21 room for people to hang out.

22 VICE CHAIRMAN ZC JEFFRIES: It

1 really sounds you -- with the issue with the  
2 alley is probably another jurisdiction. I  
3 think someone really -- I mean that's really--

4 MS. HOLBROOK: Oh, I've been  
5 through everybody.

6 VICE CHAIRMAN ZC JEFFRIES: Yes, I  
7 know. But it's not anything that we really can  
8 consider.

9 MS. HOLBROOK: But it's very  
10 problematic being the first property.

11 VICE CHAIRMAN ZC JEFFRIES: Yes.  
12 And then some of the statement you're making,  
13 I mean again I'm very sympathetic. You know,  
14 it's not like you've proffered you as an  
15 expert witness on these things, but you know  
16 someone else could come in and say the  
17 opposite about some of the things that you're  
18 saying. So, you know --

19 CHAIRPERSON MILLER: You have a  
20 fence back there now or you don't?

21 MS. HOLBROOK: I put up an iron  
22 gate with a gate that I could go in and out.

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1 But it necessarily keep people out. I try.

2 VICE CHAIRMAN ZC JEFFRIES: Yes.

3 You know, I have to say, to be honest with you  
4 and to be frank with you, I would agree with  
5 Mr. Jackson. I think if we got a situation  
6 where a lot of people were building out to  
7 this unusually shaped alley, could perhaps a  
8 more dangerous situation. Definitely less  
9 light and -- you know. Ms. Holbrook, this is  
10 a tough one.

11 MS. HOLBROOK: Well, the five out  
12 of the eight that were just renovated by the  
13 owner there, there are no plans to do anything  
14 else with it because that's all his plans  
15 provided for. That's all his interest is.

16 VICE CHAIRMAN ZC JEFFRIES: But he  
17 can sell it.

18 MS. HOLBROOK: His clientele, you  
19 know.

20 VICE CHAIRMAN ZC JEFFRIES: He  
21 could sell it in a few years and then --

22 MS. HOLBROOK: Well, he could but

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1 it's been in their family for 38 years he told  
2 me. But I feel that it is uniquely little.  
3 For when it was built, it wasn't. But for now  
4 it is uniquely little. And I only know of one  
5 way of making it larger.

6 VICE CHAIRMAN ZC JEFFRIES: And  
7 you've investigated all kind of ways? I mean  
8 I guess the 5½, 6 foot increase --

9 MS. HOLBROOK: Well, I went down  
10 to the Office of Planning to do that.

11 VICE CHAIRMAN ZC JEFFRIES: Okay.

12 MS. HOLBROOK: And we sat down  
13 with four individuals in order to try to  
14 figure out a plan. And that's when they --  
15 their suggestion was the 90 percent.

16 VICE CHAIRMAN ZC JEFFRIES: See,  
17 this is really tough for us. Because, you  
18 know, we're residents of the District of  
19 Columbia, you know. And we want to help our  
20 fellow citizens out. You know, it's just sort  
21 of our hands are tied here a little bit.

22 Again, I don't know where my

1 fellow Board members are going here. But this  
2 is just sort of tough.

3 MS. HOLBROOK: Well, I think also  
4 with these particular houses, Mr. Rupert had  
5 to do something about the other homes because  
6 of their agent integrity was having some  
7 problems. And so I know that Lashawn isn't  
8 here now, but her foundation is just, you  
9 know, having great problems. And there's a  
10 city sewer runoff system that's in this  
11 particular area that, you know, is quite old  
12 as well. And I know one of the things that  
13 was included in a letter was from the EPA  
14 person who addressed that particular issue  
15 about the runoff to reduce the runoff from  
16 that area --

17 VICE CHAIRMAN ZC JEFFRIES: Right.

18 MS. HOLBROOK: -- because of the  
19 pollution going into the Anacostia River. And  
20 one way of being able to do that is rain  
21 collectors and by putting green space on top.  
22 And basically the only way I can green space

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1 on top is to have someplace to put it on, you  
2 know.

3 VICE CHAIRMAN ZC JEFFRIES: I  
4 mean, Madam Chair, I know we haven't gotten  
5 into deliberations yet, but somebody up here  
6 can help me out, please help me. I need a  
7 lifeline.

8 MS. HOLBROOK: I just, you know,  
9 see that if you look on the plan here that  
10 they've already built out. They've already  
11 added on. They've already gone from 80  
12 percent. And I honestly don't understand going  
13 from 81 percent to 100 percent. I would have  
14 thought well if they're already 81 percent,  
15 then they shouldn't have anymore. You know,  
16 so that puzzles me.

17 So to me it looks like it's  
18 already been done and somewhere along the line  
19 somebody felt that this was important to do in  
20 order to make these houses more liveable. And  
21 I did investigate the houses of the same size  
22 by Eastern Market. And they've been renovated

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1 and extended on. And the ones that are on 8th  
2 Street. Because I went to look and see what  
3 other people had done and how they had done  
4 it.

5 CHAIRPERSON MILLER: Okay. Let me  
6 say this. I mean, again, what you're saying  
7 is all the reasons that it would make sense,  
8 could policy, whatever, to allow you to do an  
9 extension. And we don't do -- we don't do  
10 that or at least that's only with respect of  
11 our tests that there be no substantial  
12 detriment. And I think that that's not the  
13 test that the Board would be hung up on. The  
14 test that we would be hung up on, at least I  
15 am somewhat and I can see that Mr. Jeffries  
16 is, is how yours is different. Because if you  
17 all -- if runoff is a problem, for instance,  
18 for this whole square or alley, then that  
19 applies everybody. And that doesn't make your  
20 property exceptional.

21 If it were all built up and you  
22 were the only one left, then I would say,

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1       okay, you're exceptional. You're the only  
2       one. But I hear your neighbor saying I'd like  
3       to do the same thing. And then I hear Mr.  
4       Jackson saying all the houses are -- not all  
5       of them, but many of them are small and I'm  
6       sure they'd like to do the same thing. And  
7       because maybe living standards have changed,  
8       I don't know.

9               But we can't look at either  
10       whether they're rental or owners either. We  
11       just look, you know, the lot, the house, the  
12       regulations.

13              But I'm sympathetic because it  
14       certainly makes sense for you to be able to do  
15       that. That doesn't mean that we can grant the  
16       relief though just because it makes sense.

17              I mean, I guess -- I've asked this  
18       before, but I guess I would feel better, and  
19       I know you can't make a prejudgment, but if  
20       Mr. Jeffries in your experience if this is the  
21       kind of situation that can come to the Zoning  
22       Commission, then there might another avenue of

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1 relief that's more appropriate.

2 VICE CHAIRMAN ZC JEFFRIES: I  
3 mean, I would tell you to talk with the Office  
4 of Planning and make the case. And they will  
5 look at the overall immediate area and make a  
6 determination whether they think it's  
7 something that they can support.

8 My only concern is that there are  
9 a number of these two story very shallow small  
10 hoses in the District. They're all over the  
11 place, they're really just not here. I mean,  
12 I know a couple of people that live in them.  
13 And, you know, again they're going to be  
14 looking at this not just from the standpoint  
15 of your particular home or just your five or  
16 six homes, but really the overall general area  
17 and how it impacts or impinges on adjacent  
18 communities and commercial zone. So they're  
19 going to look at a lot of things. So I would  
20 tell you that just, you know, pay a visit to  
21 Office of Planning and talk about the  
22 possibility of some sort of amendment.

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1 I'm not telling you that it's  
2 going to happen, but to look at it.

3 MS. HOLBROOK: I appreciate that.  
4 And that's why I started with the Office of  
5 Planning. And that's how I ended up with what  
6 I have today. But out of the 16 houses that  
7 are here, there only five left that haven't  
8 made modifications to what's there.

9 VICE CHAIRMAN ZC JEFFRIES: Well,  
10 I mean, I have to tell you, Ms. Holbrook. I'm  
11 very impressed with you. I mean, you seem  
12 very dedicated District resident. And I think  
13 we all really like to see that. And I would  
14 hope that if you don't prevail here today,  
15 that you don't consider leaving the District.  
16 And that you do pursue some other avenues.

17 CHAIRPERSON MILLER: Okay. With  
18 respect to this test and I think we're almost  
19 ready to decide how to proceed.

20 Your case is that it's exceptional  
21 because it's exceptionally small and because  
22 of where it's located on the alley, that

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1 that's different from the other properties in  
2 that back yard is more susceptible to criminal  
3 activity. And that your gate doesn't protect  
4 you. And you need a structure.

5 MS. HOLBROOK: And I have the  
6 street light. It doesn't help.

7 CHAIRPERSON MILLER: Okay. Go  
8 ahead. Go ahead. That's all I have to say at  
9 this point.

10 VICE CHAIR LOUD: I just want to  
11 switch gears for a quick second and ask a  
12 couple of quick questions about Mr. Jackson's  
13 recommendation about reducing net, I guess, of  
14 150 feet. And the question I think is based  
15 on the numbers that have been tossed around  
16 during the course of the hearing.

17 And I'm looking at your site plan  
18 C-2. There's no exhibit number on this  
19 document, but C-2. And it looks to me like  
20 your top floor family room would not be  
21 impacted by Mr. Jackson's suggestion, is that  
22 right?

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1 MS. FOWLER: You mean the third  
2 floor?

3 VICE CHAIR LOUD: Yes.

4 MS. FOWLER: Correct. That's a by  
5 right.

6 VICE CHAIR LOUD: Okay. So what  
7 would be impacted would be the first floor  
8 proposed dining room and the second floor  
9 master bedroom?

10 MS. FOWLER: That's correct.

11 VICE CHAIR LOUD: And in the case  
12 of each is that you would lose about five  
13 feet?

14 MS. FOWLER: I believe it's more  
15 like ten feet because we're out at 15.8 about,  
16 and for a 70 percent would be about 5½. So  
17 it's more like ten feet.

18 VICE CHAIR LOUD: Gotcha. Okay.  
19 I just wanted clarification on that. Because  
20 I wasn't clear if you'd lose -- you mentioned  
21 that you had 5½ feet already and that you  
22 would only get 5 feet from Mr. Jackson's

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1 suggestion to reduce it to 70 percent. So I  
2 was adding the 5 that you said had plus his 5  
3 and coming up with ten. But apparently I'm  
4 doing something wrong.

5 MS. FOWLER: Yes. To go to 70  
6 percent would take us out to 5½ and then the  
7 90 takes us to the 15 foot 8.

8 VICE CHAIR LOUD: Okay. Big  
9 difference. Thanks.

10 VICE CHAIRMAN ZC JEFFRIES: Now  
11 the second floor you could get decent second  
12 bedroom if you pulled out another five feet.  
13 You'd only keep the one bathroom there, which  
14 is typically the case in a lot of these  
15 rowhouses.

16 The first floor, I mean obviously  
17 you might be able to do an existing kitchen  
18 with some sort of, you know, island situation  
19 with chairs or something. You couldn't have  
20 a formal dining room situation. But, you  
21 know, you could have a sort of eat in kitchen  
22 kind of thing.

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1 I mean, I don't mean to be up here  
2 designing, but I'm just -- I mean -- you need  
3 to be on the mic. You need to be on the mic.  
4 Understand. I understand.

5 Well, we shouldn't be up here  
6 designing anyway.

7 CHAIRPERSON MILLER: Any other  
8 questions?

9 We're going to take a quick break  
10 and then we'll come back and deliberate on it  
11 today. Okay. We should be back within ten  
12 minutes.

13 (Whereupon, at 4:47 p.m. off the  
14 record until 5:58 p.m.)

15 CHAIRPERSON MILLER: Okay. We're  
16 back on the record.

17 I apologize for keeping you all  
18 waiting. This is a somewhat difficult case  
19 and we were really working hard to see if we  
20 could resolve this today, and we can.

21 So what we're going to do is  
22 deliberate at this point.

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1                   And I want to say to the people  
2                   waiting for the next case that we're almost  
3                   there. And then we'll call you up after this  
4                   case and determine how we're going to proceed,  
5                   whether everybody can stay to do the next  
6                   case. So we're aware that you're out there.

7                   Okay. I think that, as I said,  
8                   this is a difficult case, and I'm speaking for  
9                   myself at this point, all the Board members  
10                  will weigh in and speak their minds.  
11                  Basically it is what I did say to the  
12                  applicant before that based on the evidence  
13                  that I heard in the record, it looks like a  
14                  good idea to do the addition that she's  
15                  seeking. And it makes sense for a lot of  
16                  reasons. But that's not what this Board is  
17                  authorized to decide.

18                  We don't make policy. We deal with  
19                  special exceptions and variances. And we have  
20                  a very specific test with respect to the  
21                  variance. And I'm going to read it from the  
22                  regulations. It's 3103,2, which is also based

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1 on the D.C. Code. But it says: "With respect  
2 to variances the Board has the power under  
3 section 8 of the Zoning Act, D.C. Official  
4 Code Section 6-641.07(g)(3) (2001) formerly  
5 codified at D.C. Code 5-424," et cetera.  
6 Okay.

7 And the language says: "Where by  
8 reason of exceptional narrowness, shallowness  
9 or shape of a specific piece of property at  
10 the time of the original adoption of the  
11 regulations or by reason by exceptional  
12 topographical conditions or other  
13 extraordinary or exception situation or  
14 condition of a specific piece of property the  
15 strict of application of any regulation  
16 adopted under D.C. Official Code Section 6-  
17 641.02 to 6-651.02", which are our zoning  
18 regulations, "will result in peculiar and  
19 exceptional practical difficulties;

20 (2) Or exceptional and undue  
21 hardship upon the owner of the property to  
22 authorize upon an appeal relating to the

1 property a variance from the strict  
2 application so as to relieve the difficulties  
3 or hardship provided that the relief can be  
4 granted without substantial detriment to the  
5 public good and without substantially  
6 impairing the intent, purpose and integrity of  
7 the zone plan as embedded in the Zoning  
8 Regulations and the map."

9 Okay. So the way I read the  
10 regulations I'm looking first, one is there an  
11 exceptional condition. And were I to read the  
12 regulations very literally, I could find that  
13 there is an exceptional -- that the property  
14 falls under the category of exceptionally  
15 narrow or shallow at the time of the original  
16 adoption of the regulations. That this is  
17 property, and others similar situated in the  
18 row, are exceptionally small and that that  
19 does give rise to difficulties to the owner.  
20 What I'm not finding, though, is that it gives  
21 rise to a practical difficulty that's peculiar  
22 to this owner.

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1           It sounds like when I look at the  
2 evidence and I welcome others to see other  
3 evidence to the contrary, but it looks to me  
4 like this lot shares the same qualities as the  
5 other, I guess, eight rowhouses. And that  
6 even based on the testimony of the neighbor  
7 who appeared today in support, that that  
8 neighbor has just found the same type of  
9 difficulties of living in a small house. And  
10 so I didn't see anything peculiar to this  
11 owner.

12           So that's where I got stuck on the  
13 second prong.

14           And then we go to no substantial  
15 detriment if relief is granted. I don't think  
16 that there's strong case that there would be  
17 substantial detriment. You know, it sounded  
18 like an improvement perhaps with respect to  
19 crime on the alley. But there is a detriment  
20 if we grant a variance to a property shares  
21 the same characteristics as other properties  
22 in the row. And that is that we can be then

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1 changing the zone plan. And that's not without  
2 our authority to do. That is a policy issue  
3 for the Zoning Commission.

4 I'm going to let others address  
5 this.

6 I will just say that I do  
7 recognize that ANC 6B did vote to support by  
8 a vote of five to three the application.

9 I think we had indication that the  
10 Capitol Hill Restoration Society may have been  
11 opposed. But we don't have any documentation  
12 from them specifically in the record.

13 And then there was support from  
14 EPA with respect to the green roof, which is  
15 laudable that the applicant want to put on the  
16 addition.

17 And there is support, as we said,  
18 from the neighbor.

19 There may be others and I can look  
20 for that later. But why don't I turn to others  
21 to address the variance test as they see it.

22 VICE CHAIRMAN ZC JEFFRIES:

1 Because of time, I'm going to align my  
2 comments. I agree with the comments of Madam  
3 Chair.

4 BOARD MEMBER WALKER: Madam Chair,  
5 I agree that the property is unique because of  
6 its shallowness. I also believe that the  
7 property is unique because of its position in  
8 the alley. We heard testimony about this lot  
9 being the first lot where the alley bends and  
10 the upshot of that being the inability to --  
11 or the attraction of a certain negative  
12 element. You know, people stopping because  
13 it's the first place where they're out of  
14 view. And so I believe that the property is  
15 also unique for that reason.

16 In terms of the practical  
17 difficulty, I think because we're talking  
18 about a house here that's only 602 square feet  
19 that it's very difficult for me not to find  
20 that there's a practical difficulty. And I  
21 understand that there are other small houses  
22 in this row. But indeed, uniqueness doesn't

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1 mean that it has to be the only house with a  
2 certain characteristic.

3 We heard testimony from the owner  
4 that her back bedroom is only five feet 11  
5 inches and I think by today's standards that's  
6 certainly a practical difficulty.

7 So I disagree with Madam Chair on  
8 that point. However, on the third prong I  
9 believe that the variance test fails because  
10 of an addition here I think would be  
11 essentially a map amendment. Because  
12 essentially we'd be inviting everyone on this  
13 block to do the same type of addition. And I  
14 think the fact that we have had so many  
15 individuals who live in this group of, I  
16 believe 16 houses that are roughly the same  
17 size to do additions to their homes, legal or  
18 not, you know suggests that we would likely  
19 see even more people choosing to add additions  
20 to their homes. And so I believe for that  
21 reason the variance test fails for the third  
22 prong.

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1                   VICE CHAIR LOUD: Madam Chair,  
2                   colleagues, in the interest of time as well  
3                   I'll go straight to the heart of what jumped  
4                   out at me. And it was the fact that you have  
5                   all of these other lots that are similarly  
6                   situation that could seek the same relief.  
7                   And there was one witness here who testified  
8                   that that was what she probably would need to  
9                   do, and perhaps was planning to do. In light  
10                  of her own lot. I think she was a next door  
11                  neighbor.

12                 So it was a very difficult case.  
13                 It is a very difficult case because in your  
14                 heart you want to do everything you can to try  
15                 to help, as Commissioner Jeffries said, a  
16                 fellow citizen. But we can't make it up as we  
17                 go along here. There is a test that we have  
18                 to follow. And it just seems to me with that  
19                 many potential applicants standing in line who  
20                 are in the almost exact same situation as this  
21                 applicant, that you would be talking about a  
22                 rezoning. And that's not the context that a

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1 variance is applicable to.

2 Also in terms of the practical  
3 difficulty I do think that there are some  
4 options under section 223 that would require  
5 a different kind of design, but that  
6 nonetheless would allow a use -- I'm sorry.  
7 Yes, a design, let's put it that way. Not a  
8 use but a design that would fit the zone and  
9 not require a variance. And I don't know if  
10 others are going to talk about it, but just  
11 again very brief, part of it would be the  
12 third floor where there's currently a family  
13 room and I think a patio -- I'm sorry. And a  
14 green roof, and I believe that's set back from  
15 the front of the property 12 feet. So that if  
16 one were to follow Mr. Jackson's advice and go  
17 to 70 percent lot occupancy, seek a 223 but  
18 build out from that family room the bedroom  
19 and maybe even build up a little bit so that  
20 you're not setback 12 feet from the front of  
21 the property with setback -- I don't know.  
22 Some amount less than 12 feet, you could get

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1 a much larger bedroom on that third floor.  
2 You could probably get the bedroom and the  
3 master bath contemplated on, I think it's the  
4 second floor in the current plan.

5 So it's a very difficult case, but  
6 nonetheless, we have a guideline about where  
7 the variance test that we have to follow. And  
8 in this case the evidence does not support  
9 granting that relief.

10 MEMBER DETTMAN: Madam Chair, I'm  
11 in agreement with my colleagues here with  
12 respect to the variance test. Looking at this  
13 case I can get through the first and second  
14 prong. It's the third prong that I had some  
15 difficulty with, and specifically with respect  
16 to the zone plan.

17 I agree that by approving this  
18 variance we're inviting the rest of the  
19 neighbors in that block of rowhouses that are  
20 similar to this one, inviting them to do  
21 similar projects. But I also think that with  
22 past applications with past approvals, we were

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1 given one Deborah Tunney 16895-A, I think  
2 we've already started to see it on this  
3 square. And so that door really has already  
4 been opened.

5 With respect to the 223, I agree  
6 with Mr. Loud that there are some things that  
7 can be done. And not only that, it's that I  
8 think my short one year on the year I've seen  
9 enough of Ms. Fowler's project that she's kind  
10 of a master at doing these third story  
11 additions in Capitol Hill. As a matter of  
12 fact, my predecessor Mr. Mann not too long ago  
13 said to me "Is that girl that does the third  
14 story additions in Capitol Hill come through  
15 yet. She does really nice stuff." I knew who  
16 he was talking about.

17 So I agree with DCOP that you can  
18 make this work under a 223. You know, the  
19 application that comes to mind is the Kaflay  
20 case, and that was one of your cases, Ms.  
21 Fowler.

22 So with respect to the 223, I

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1 think you can make it work. I think you can  
2 meet your goals to have a bedroom. You can put  
3 a dresser in, a place to eat, as well as have  
4 a normal size bathroom under the 223  
5 regulation.

6 VICE CHAIRMAN ZC JEFFRIES: You  
7 will not be able to get everything you're  
8 looking for, obviously, in the 223. But from  
9 where we sit it seems that there is some level  
10 of compromise there.

11 Just being of the Zoning  
12 Commission, I mean my goal partially on this  
13 Board is to make certain that the zone plan is  
14 protected and that we're not opening up a door  
15 for there to be de facto rezoning.

16 So that's where we are.

17 CHAIRPERSON MILLER: Okay. Having  
18 heard everyone's comments, I want to see if I  
19 can just reiterate what I think we're in  
20 agreement on, which would help the Office of  
21 Attorney General in writing an order that  
22 reflects the Board's decision. And correct me

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1 if I'm wrong.

2 I think that we agreed that we  
3 could find that this property is unique by  
4 reason of exceptional shallowness at the time  
5 of the enactment of the regulations. And that  
6 that did give rise to a practical difficulty  
7 in living in a small house. But that the  
8 Board is not convinced that that practical  
9 difficulty could not be addressed with an  
10 expansion that's authorized under 223. And  
11 that we feel that granting the variance would  
12 impair the intent of the zone plan. And that  
13 would constitute substantial detriment to the  
14 public good.

15 Did I say anything that anyone has  
16 any concerns with? Okay.

17 Then --

18 VICE CHAIRMAN ZC JEFFRIES: Well,  
19 Madam Chair --

20 CHAIRPERSON MILLER: Yes.

21 VICE CHAIRMAN ZC JEFFRIES: Are we  
22 urging this applicant to follow 223 or we're

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1 encouraging or are we just -- in addition to  
2 perhaps taking a vote on the variance  
3 application before us, I mean are we leaving  
4 any parting advice or encouragement?

5 CHAIRPERSON MILLER: I think  
6 that's kind of an individual thing. I'm not  
7 sure that the Board needs to take a position  
8 on that because it's not before us.

9 VICE CHAIRMAN ZC JEFFRIES: No.  
10 I'll just say you know, again, Ms. Holbrook,  
11 I mean I think you've impressed us up here in  
12 terms of your love of the city and your  
13 neighborhood and the area. And clearly there  
14 are a lot of issues that you've undertaken.  
15 And, again, I really hope that you might  
16 consider a 223 and revisiting that third  
17 floor. And perhaps, and obviously some  
18 setback, but just take a look at that and see  
19 if there's a way in which you can get some of  
20 the things that you're looking for without  
21 disturbing the zone plan.

22 You know, again, I mean I don't

1 know if I'm speaking for the Board but you've  
2 heard three people up here talk about a 223  
3 that we think perhaps there's a way that you  
4 can get that done. So, you know, I personally  
5 would encourage you to hopefully go forward  
6 and do that.

7 VICE CHAIR LOUD: I want to echo  
8 the Commissioner as well. And also say that  
9 I know sometimes that it gets to be daunting  
10 when you have gone through the bureaucracy and  
11 you face the bureaucracy and you're sort of  
12 reeved up to do it. And then it seems like  
13 you've got to do it all over again, and you're  
14 just kind of deflated. But I think in this  
15 case I just want to, as I said, echo the  
16 Commissioner and say that the scenario  
17 outlined for a 223 looks very promising. One  
18 can never speak with the plans and all of  
19 that. But I just don't want you, Ms.  
20 Holbrook, to get discouraged by the specter of  
21 having to go through the bureaucracy again.  
22 I think it would be worth the effect, and

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1 hopefully you will not meet with a lot of push  
2 back.

3 CHAIRPERSON MILLER: Okay. We're  
4 all making comments. I think we also said,  
5 you know, we have a limited roll. We're tied  
6 to the variance regulation. And that there  
7 are other -- there were problems that became  
8 apparent in this application such as in the  
9 alley, you know some of those security  
10 problems and also the fact that other  
11 properties share the same characteristics and  
12 problems. I think one of the other issues, we  
13 talk about 223, we talk about -- I don't know.  
14 I mean, I'm not a Zoning Commissioner. You  
15 know whether this is appropriate or not for a  
16 map amendment.

17 There's also the Zoning  
18 Regulations are under review now. And if  
19 problems like these could be addressed in that  
20 process, that's a possibility also.

21 And then there was a possibility  
22 of, you know, whether there should be an alley

1 closing and what effect that would have on the  
2 property.

3 But they're all outside of our  
4 jurisdiction. But anyway, you know, we don't  
5 like to deny homeowners an ability to make  
6 reasonable additions. But we are bound by the  
7 regulations.

8 Okay. Any other comments?

9 Okay. Then I would move to deny  
10 Application 17848 of Anne M. Holbrook,  
11 pursuant to 11 DCMR § 3103.2, for a variance  
12 from the lot occupancy requirements under  
13 section 403. a variance from the rear yard  
14 requirements under section 404, and a variance  
15 from the nonconforming structure provisions  
16 under subsection 2001.3 to allow an addition  
17 to an existing one-family row dwelling at  
18 premises 1510 Massachusetts Avenue, Southeast.

19 VICE CHAIRMAN ZC JEFFRIES:

20 Second.

21 CHAIRPERSON MILLER: Further  
22 deliberations?

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1                   Okay. All those in favor say aye.

2                   ALL: Aye.

3                   CHAIRPERSON MILLER: All those  
4                   opposed?

5                   All those abstaining?

6                   And would you call the vote,  
7                   please?

8                   MS. BAILEY: Madam Chair, the vote  
9                   is recorded as five-zero=zero to deny the  
10                  application. Ms. Miller made the motion. Mr.  
11                  Jeffries seconded. Mr. Dettman and Ms. Walker  
12                  did not support the motion.

13                  CHAIRPERSON MILLER: Okay. Thank  
14                  you.

15                  MS. HOLBROOK: Thank you for your  
16                  time.

17                  CHAIRPERSON MILLER: Ms. Bailey,  
18                  we're ready for the next case. I'm wondering  
19                  if you should call the next two cases  
20                  together. I'm not sure how the parties want  
21                  to proceed, but they're related. So why don't  
22                  you do that.

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1 Can you come to the table. Are  
2 you going to tell me which case we should  
3 call? You need both of them, okay.

4 Both, Ms. Bailey, please.

5 MS. BAILEY: Application No. 17870  
6 of Koo Yuen, pursuant to 11 DCMR § 3104.1, for  
7 a special exception to establish a gasoline  
8 service station under sections 726 and 706.  
9 The property is zoned C-2-A. It's located at  
10 3710 Minnesota Avenue, Northeast. Square 5046,  
11 Lot 810.

12 The second case is Appeal No.  
13 17725. It's the appeal of Euclid of Virginia,  
14 Inc., pursuant to 11 DCMR § 3100 and 3101,  
15 from a decision of the Zoning Administrator,  
16 by Zoning Determination Letter dated July 6,  
17 2007 to require BZA special exception approval  
18 to allow the operation of a gasoline service  
19 station in the C-2-A District at premises 3710  
20 Minnesota Avenue, Northeast. Square East  
21 5048, Lot 810.

22 And I would just point out to the

1 Board that the squares do not match, although  
2 it's the same property, there is a problem  
3 here with the identification of the square.  
4 Specifically, is it Square 5046 or is it  
5 Square East 5048?

6 CHAIRPERSON MILLER: Okay. Wait.  
7 But let's start identifying yourselves for the  
8 record and then you can respond to Ms. Bailey.  
9 Okay.

10 MR. DeCARRO: My name is Thomas  
11 DeCarro, and I represent the applicant and  
12 Euclid of Virginia, Inc., which are actually  
13 the same, one in the same entity.

14 And to my left is Mr. Koo Yuen,  
15 the applicant and the President of Euclid of  
16 Virginia, Inc.

17 MS. PARKER-WOOLRIDGE: Good  
18 evening. My name is Doris Parker-Woolridge.  
19 I'm Assistant Attorney for DCRA.

20 CHAIRPERSON MILLER: Okay. Why  
21 don't we start with a response to the  
22 discrepancy in the description of the square.

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1                   MR. YUEN: Ms. Walker, I believe  
2                   some time doing an application or  
3                   transposition error either by the clerk or by  
4                   us inadvertently. But basically it's the same  
5                   premise address and the correct square and lot  
6                   based on Certificate of Occupancy and all the  
7                   history of the Certificate of Occupancy. The  
8                   Square is 5046E and the Lot is 810. So  
9                   therefore, the record should reflect on both  
10                  cases as being the same premise address and  
11                  the square should read Square E5046, Lot 810.

12                 CHAIRPERSON MILLER: Okay. Let's  
13                 talk about we want to proceed this evening.

14                 First of all, are you still all  
15                 right on time for the next hour or so or do  
16                 you want this continued.

17                 MR. DeCARRO: Oh, we're fine on  
18                 time. My contingent is fine on time. I don't  
19                 know about Ms. --

20                 MS. PARKER-WOOLRIDGE: I'm fine.

21                 MR. DeCARRO: And what I was going  
22                 to put on, we have -- I guess this came before

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1 the Board by way of a settlement agreement of  
2 the protest to a stop work order, which  
3 resulted in an adverse zoning determination,  
4 of all things. And I'll go into the details.  
5 But the reason I'm prefacing with that is  
6 because we have two basis I guess on which to  
7 claim relief here.

8 The first is that we have a  
9 conforming use, and so the special exception  
10 should be granted on that basis.

11 The second is that the site fully  
12 qualifies for the special exception based on  
13 the required documentation.

14 And the second prong of the appeal  
15 may take some time. Because I guess we filed  
16 the zoning application in August, you know,  
17 pursuant to the settlement agreement. And  
18 then we received on, I guess it was November,  
19 it was dated November 3rd but we received a  
20 letter from the Planning Board asking for  
21 additional information. And quite a bit of  
22 additional information. All of which, with

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1 the exception of the traffic study, we claim  
2 to have been able to provide. The Planning  
3 Board may disagree with some of that. And that  
4 would be the bulk of the time spent at this  
5 particular hearing.

6 However, we don't have a traffic  
7 study. And I have an explanation for that  
8 which, of course, I can get into in the due  
9 course of the proceedings.

10 So that is the situation that we  
11 find ourselves in. So I'd like to ask how the  
12 Board would like to proceed under that, or if  
13 you have any questions. Because it's a  
14 torturous history of this thing and I don't  
15 want to bring too much of that here to the  
16 extent that it's not necessary for you to make  
17 a decision.

18 CHAIRPERSON MILLER: Okay. I  
19 don't think we have to hear all about your  
20 stop order.

21 A couple of things. First of all,  
22 we have a special exception case and we have

1 an appeal.

2 MR. DeCARRO: Right.

3 CHAIRPERSON MILLER: And I was on  
4 the Board when Mr. Yuen brought the same  
5 argument in an application for special  
6 exception that he didn't need to be here,  
7 because it was a conforming use and not a  
8 nonconforming use. So I'm very familiar with  
9 that argument. However, in this case that is  
10 what's being appealed. But you can't make  
11 that argument in a special exception case  
12 unless Mr. Le Grant is going to be here to  
13 give DCRA's viewpoint. Because that's the  
14 nature of the appeal.

15 MR. DeCARRO: Mr. Le Grant is not  
16 going to be here. And I agreed consistent with  
17 the settlement agreement to proceed on the  
18 appeal only after and in the event that the  
19 Board should deny the special exception  
20 application.

21 CHAIRPERSON MILLER: Okay. But  
22 that's what the appeal is about, so --

1 MR. DeCARRO: I understand.

2 CHAIRPERSON MILLER: -- if we  
3 ruled on it in a special exception case, there  
4 wouldn't be an appeal, correct?

5 MR. DeCARRO: The issues do  
6 overlap. The issues do overlap. Yes, they  
7 do.

8 CHAIRPERSON MILLER: Well, Ms.  
9 Woolridge is here to represent DCRA. So let  
10 me hear your opinion on this so that we know  
11 what we're hearing today.

12 MS. PARKER-WOOLRIDGE: The second  
13 hearing, I'm only here for the 17725, which is  
14 the appeal in the Zoning Administrator's  
15 decision. And that's to ask for an extension  
16 of the order continuing the previous case from  
17 July 29th, '08. That's the only reason why  
18 I'm here today.

19 The Zoning Administrator is not  
20 contesting the special exception for this gas  
21 station at that particular premises. However,  
22 I don't want to get into the settlement

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1 agreement, but the agreement does indicate  
2 that the appellant will be withdrawing his  
3 appeal to the Zoning Administrator's decision  
4 once the decision has been rendered by the  
5 Board.

6 CHAIRPERSON MILLER: Regardless of  
7 which way the decision goes?

8 MS. PARKER-WOOLRIDGE: Well, it's  
9 pretty much like the previous case. That if  
10 the Board rules in their favor, of course  
11 there's no need to have the next case, the  
12 next hearing. And what usually happens if the  
13 Board rules and does not rule in their favor,  
14 then they appeal to the DCCA like the previous  
15 case. And that's the gist of our case.

16 CHAIRPERSON MILLER: I'm sorry.  
17 IF the Board were to deny the special  
18 exception, what would happen to the appeal?

19 MS. PARKER-WOOLRIDGE: The  
20 appellant would have the option of appealing  
21 to the DCCA, DC Court of Appeals the decision  
22 of the Board.

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1                   CHAIRPERSON MILLER: Court of  
2 Appeals? Well, what's your position with  
3 respect to their argument that they can  
4 operate the gas station as a matter-of-right,  
5 which is I understand the nature of the  
6 appeal?

7                   MS. PARKER-WOOLRIDGE: Right. The  
8 Zoning Administrator, he's not here, but I can  
9 state that we disagree with that. And I  
10 didn't think we were going to get into that  
11 because we had talked about the appeal itself.  
12 So I think, if anything, the Zoning  
13 Administrator needs to be here to address that  
14 particular issue because I'm not going to give  
15 his position on the case, or on that  
16 particular issue. But I don't think it would  
17 be appropriate since he's not here and we  
18 weren't supposed to be proceeding with that  
19 particular case today.

20                  CHAIRPERSON MILLER: Have you seen  
21 the special exception case?

22                  MS. PARKER-WOOLRIDGE: I've seen

1 the special exception case.

2 CHAIRPERSON MILLER: Because they  
3 make that argument in the special exception as  
4 well that they don't need it. Because it's a  
5 matter-of-right use. So my question is are  
6 you saying that we can hear their argument in  
7 the special exception case and decide it in  
8 this case without the Zoning Administrator's  
9 participation as he would be participating in  
10 an appeal case?

11 MS. PARKER-WOOLRIDGE: Correct.  
12 But usually the Zoning Administrator does not  
13 participate in the special exception cases.  
14 And I believe that's still his position here.  
15 And maybe I need to ask the Board to take a  
16 couple of minute break to speak with the  
17 appellant's counsel. Because it seems like  
18 it's taken a different turn than what's in the  
19 settlement agreement.

20 CHAIRPERSON MILLER: Okay.  
21 Because I was reading this and we haven't seen  
22 the agreement so we don't know, was that the

1 applicant was going to forego that issue in  
2 the special exception case and just proceed  
3 under the elements of the special exception.

4 MS. PARKER-WOOLRIDGE: Right. And  
5 that is the District's understanding, too. So  
6 maybe we need to take this break. Because if  
7 appellant is going to proceed in a different  
8 manner, then of course that breaches the  
9 settlement agreement and we may have to  
10 rescind it and go a different route.

11 MR. YUEN: With the Board's  
12 indulgence, may I address the Board, Ms.  
13 Miller?

14 CHAIRPERSON MILLER: Sure.

15 MR. YUEN: Thank you for your  
16 vivid and acute memory of my presence before  
17 this Board several years ago.

18 Normally we handle so many thing  
19 in our life, it's hard to have a face-to-face.  
20 And certainly, Ms. Miller, I appreciate you  
21 brought this up immediately. Obviously, I  
22 have forgotten who was presiding before the

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1 Board, other than the Chairman Mr. Godfrey, if  
2 I remember his name correctly.

3 Chair Madam Ms. Miller, no  
4 question that this case fits in every respect  
5 as the case has already decided for 4665 South  
6 Capitol Street. We have the same situation,  
7 the station was established before 1958, there  
8 was a confirming --

9 CHAIRPERSON MILLER: We don't want  
10 to get into the merits of that argument, okay.  
11 We just want to know what's going to be on the  
12 table with this case versus the appeal.

13 MR. YUEN: Okay.

14 MEMBER DETTMAN: Well, I was just  
15 wondering because going through the filings  
16 for the special exception when I saw the  
17 argument about conforming use pre-1958 I was  
18 kind of taken back. I didn't really understand  
19 how it fit into the provisions, the special  
20 exception provisions of 3104, 706 in Chapter  
21 23. There's just no place for it. It has a  
22 place in the appeal. But I thought we were

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1 going forward with the special exception.

2 MR. YUEN: Then if that's the  
3 case, I am taking with my counsel's approval,  
4 we will basically go right straight to the  
5 appeal. We believe that we fit into the appeal  
6 circumstances more so than ask for a new  
7 special exception to the situation. Because we  
8 believe that our case is exactly in the same  
9 ruling that has been made by this Board back  
10 in 2004 regarding the case which involved me  
11 that you remember so well.

12 CHAIRPERSON MILLER: I do. But  
13 every case has its own facts. And so you have  
14 to prove the same elements in this case.

15 MR. YUEN: Right. But with the  
16 Board's indulgence, the fact is -- I mean the  
17 circumstances and the fact, and our approach  
18 and where we are today is basically the same.  
19 In other words, my case before this Board fits  
20 exactly into the shoe of the previous case  
21 that has been decided among the Board of  
22 Zoning Adjustment.

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1 MS. PARKER-WOOLRIDGE: Madam  
2 Chair, obviously there's a turn of events that  
3 counsel is not aware of. And I think counsel  
4 does need to talk to the appellant's counsel.  
5 Because if they want to proceed with the  
6 appeal on the zoning determination's letter,  
7 we can do so. But the settlement agreement  
8 will be rescinded and everything involved in  
9 that settlement agreement will go forward as  
10 in the OAH case as well.

11 CHAIRPERSON MILLER: Okay. Do you  
12 want to take some time? How much time would  
13 you all like?

14 MS. PARKER-WOOLRIDGE: It won't  
15 take more than two minutes.

16 CHAIRPERSON MILLER: Yes. Once we  
17 go out, it's at least five minutes. Okay.

18 MS. PARKER-WOOLRIDGE: Thank you,  
19 Madam Chair.

20 CHAIRPERSON MILLER: Maybe this is  
21 a good time if the court reporter needs a  
22 break at all, or whatever.

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1 (Whereupon, at 6:33 p.m. a recess  
2 until 6:49 p.m.)

3 CHAIRPERSON MILLER: Okay. We're  
4 now back on the record.

5 MR. DeCARRO: Thank you very much.  
6 Okay.

7 So what we're going to do is  
8 notwithstanding our position that it's a  
9 conforming use and everything else like that,  
10 we would ask the Board to maybe take that  
11 under advisement or something. But the thrust  
12 of the hearing now is we're going to establish  
13 that the site is notwithstanding its status in  
14 1959 or '08, or whatever that date was, that  
15 it is qualified for a special exception. And  
16 it's in harmony with the general purpose and  
17 intent of the Zoning Regulations and zoning  
18 maps. It will not tend to adversely effect  
19 the neighboring property.

20 And if you take a look at the --

21 CHAIRPERSON MILLER: Okay. Let's  
22 not get into the merits yet. I just want to

1 know what's going to happen with the issue  
2 that is in the appeal case.

3 MR. DeCARRO: Okay. The issue--

4 CHAIRPERSON MILLER: I understand  
5 we're going to go forward on the special  
6 exception and notwithstanding that issue,  
7 you're just going to address the criteria of  
8 special exception in that application?

9 MR. DeCARRO: Yes, in this  
10 hearing. And then I would ask that the appeal  
11 case be scheduled for further proceedings  
12 after this Board renders a decision. And we  
13 have a settlement agreement, we're going to be  
14 talking about the import of that settlement  
15 agreement, what some of the language means and  
16 everything else like that. Not at this  
17 hearing, if you please. But, you know, later  
18 on in life.

19 And so if we could schedule the  
20 appeal, which is now scheduled on today's  
21 docket. Take it off of today's docket and  
22 move it to be redocketed within five days or

1 after this Board renders a decision, or it  
2 will be withdrawn. Okay? And I can put that  
3 on the record in writing if you like.

4 So in other words, this Board will  
5 render an opinion in this case maybe tonight,  
6 we hope, probably not because we don't have a  
7 traffic study. So I can't go forward on that  
8 basis.

9 So essentially we're going to make  
10 our case and we're going to ask you to keep  
11 the record open so that we can provide the  
12 traffic study and any other information or  
13 documentation that you believe that you may  
14 need.

15 And the reason we're proceeding  
16 this way is because we got notified in  
17 November 3rd or something like that that we  
18 needed to provide a good deal of additional  
19 material. We've got everything we think,  
20 we've got everything but the traffic study.  
21 And so we'd like to just go ahead and proceed.

22 CHAIRPERSON MILLER: Just so Ms.

1 Woolridge an leave when we're finished with  
2 her issue, first of all --

3 MS. PARKER-WOOLRIDGE: I'll be  
4 here the whole time.

5 CHAIRPERSON MILLER: Oh, you will?  
6 Okay. All right. It's not going to be a lot  
7 of time. I'm sorry that we may lose our  
8 quorum, or we will lose our quorum at 7:30.  
9 So I apologize. But let's see what we can at  
10 least get accomplished during that period.

11 But within five days of the  
12 decision that the Board might make from the  
13 bench as opposed to a written decision?

14 MR. DeCARRO: I would say the  
15 written decision --

16 CHAIRPERSON MILLER: Written  
17 decision?

18 MR. DeCARRO: -- you know the  
19 decision that would be appealable to the Court  
20 of Appeals of the District of Columbia,

21 CHAIRPERSON MILLER: Right. Okay.  
22 I'm not sure we have to know this, but is it

1 going to be a factor -- if the decision is  
2 granted in your favor --

3 MR. DeCARRO: Certainly we would  
4 move to reopen the case --

5 CHAIRPERSON MILLER: No. Would  
6 the appeal be withdrawn?

7 MR. DeCARRO: The appeal would  
8 certainly be withdrawn.

9 CHAIRPERSON MILLER: Okay. So  
10 it's in the event that you're not granted the  
11 special exception?

12 MR. DeCARRO: Right. And if we're  
13 not granted the special exception, we would  
14 move for further proceedings consistent with  
15 the appeal and the settlement agreement. And  
16 Ms. Woolridge and I have agreed to disagree  
17 tonight on some of this language, but I'm sure  
18 we'll be able to work something out.

19 MR. YUEN: Madam Chair --

20 MR. DeCARRO: I don't want that to  
21 hold this up.

22 MR. YUEN: Madam Chair, just one

1 quick note.

2 Because of a handicap due to the  
3 time that we were notified by the Office of  
4 Planning Mr. Matthew Jackson here are very  
5 diligently working with us. In fact, he  
6 helping us in every which way with our  
7 architect, Mr. Jeff Way. And we see no  
8 problem other than that there was an employee  
9 absence from the traffic study department in  
10 the District of Columbia to give us guideline  
11 and criteria for this type of study. So we  
12 could not reach him until he comes back from  
13 vacation, which is only momentarily like a day  
14 or two ago. So therefore our traffic engineer  
15 could not really get a sense of what he really  
16 require and so on.

17 And also, Mr. Jeff Way have  
18 probably gone back and forth maybe a couple of  
19 times to get the site plan so that Office of  
20 Planning can give a favorable recommendation.

21 So my question to the Board is  
22 that by the time when we leave here tonight

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1 and that Mr. Jackson and us going to work  
2 toward that goal, can we have an indication  
3 from the member or the five Board members  
4 tonight the likelihood of success by the  
5 applicant, will there be such an indication  
6 knowing that we have a recommendation, traffic  
7 no problem and everything we presented  
8 tonight. So that way at least we can have,  
9 what you call, a --

10 MR. DeCARRO: Narrow down the  
11 issues.

12 MR. YUEN: Okay. Or what you call  
13 -- I'm not asking for a conditional approval,  
14 but however an indication from the Board that  
15 based on the testimony can you -- I guess that  
16 the opinion has been already recommended by  
17 the Office of Planning, can --

18 CHAIRPERSON MILLER: I don't think  
19 so.

20 MR. YUEN: Okay.

21 CHAIRPERSON MILLER: In fact, I  
22 know not. That's really not what we do. We

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1 hear the whole case. And then we --

2 MR. YUEN: Okay. All right. I  
3 believe I pushed a little bit, and I  
4 appreciate your candid comment. I want you to  
5 treat other applicants the same way as you  
6 have treat me. And I think that's a fair  
7 treatment. Okay. Thank you very much.

8 CHAIRPERSON MILLER: Okay.  
9 Anyway, I want to make sure we said on the  
10 special exception and the appeal cases how  
11 they're going to be divided and proceeding.  
12 And I understand that, I want to make sure  
13 that you're on board with the way it was  
14 represented to us?

15 MS. PARKER-WOOLRIDGE: Yes, as far  
16 as the special exception, the Government is  
17 consistent. We're not opposing it.

18 As far as the additional comments  
19 made, that will be addressed after this  
20 hearing in reference to the appeal and the  
21 settlement agreement.

22 MR. DeCARRO: Yes. If there's an

1 adverse decision, if I'm putting words in your  
2 mouth; if there's an adverse decision and we  
3 raise an issue within five days of the written  
4 adverse decision, then they may respond and  
5 oppose the appeal on procedural grounds or if  
6 we try to go forward with the appeal, or  
7 something like.

8 CHAIRPERSON MILLER: Okay. I  
9 think we basically understand that the appeal  
10 issue is not going to come into the special  
11 exception case. And that if there is a  
12 decision that's adverse to the applicant, then  
13 you reserve the right to -- oh, your appeal is  
14 in place. You'll withdraw it if there's an  
15 affirmative decision.

16 MR. DeCARRO: Well, we'll consider  
17 it withdrawn if there's an affirmative  
18 decision.

19 CHAIRPERSON MILLER: Right.

20 MR. DeCARRO: If there's a  
21 negative decision, however, we will take  
22 action within five days of that negative

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1 decision or it will be considered withdrawn.

2 Okay. If we take action, we will  
3 ask the Board to schedule a hearing on the  
4 appeal; that would be the action that we would  
5 take. They may oppose that motion, you know if  
6 we can't work something out. Okay?

7 CHAIRPERSON MILLER: Okay. So now  
8 then the appeal is being held in abeyance at  
9 this point. We're going to reschedule it from  
10 tonight. We can reschedule it to a date that's  
11 far out so that it's still on the calendar.

12 MR. DeCARRO: Okay.

13 MS. PARKER-WOOLRIDGE: And, Madam  
14 Chair, for the record --

15 CHAIRPERSON MILLER: What?

16 MS. PARKER-WOOLRIDGE: For the  
17 record so that we're clear on this, in  
18 reference to the appeal because at this point  
19 the Government does have concerns that the  
20 settlement agreement is being violated. And  
21 so although the respondent or appellant is  
22 making his comments in reference to the appeal

1 and that he will proceed, and this is contrary  
2 to a settlement agreement, frankly I have  
3 concerns about going forward with this hearing  
4 tonight, period, until this matter has been  
5 addressed.

6 CHAIRPERSON MILLER: Okay. So you  
7 would like to seek a continuance of this  
8 hearing in any event?

9 MS. PARKER-WOOLRIDGE: I would,  
10 because I think we need some further  
11 clarification.

12 CHAIRPERSON MILLER: Okay.

13 MS. PARKER-WOOLRIDGE: Because  
14 this is sort of --

15 CHAIRPERSON MILLER: Well maybe we  
16 should -- we only have like 35 minutes. So  
17 maybe we can just use this time to make our  
18 schedules stuff and take a look at what the  
19 Office of Planning has said needs to be done  
20 in this case so that when we do come together  
21 again for a hearing, everything will be in  
22 order.

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1           Let me make just one other point.  
2           I hate to jump around. But sometimes there  
3           are people in the audience who are here today  
4           who if for some reason you can't be here in  
5           the future, need to make a point, let me know.

6           Yes, ma'am? Can you come to the  
7           table for a second?

8           MS. JACKSON-SCOGGINS: I am a  
9           community member --

10          CHAIRPERSON MILLER: No, you won't  
11          be picked up on the transcript. Yes, push the  
12          button.

13          MS. JACKSON-SCOGGINS: Oh, I'm  
14          sorry.

15          I'm a community member. I live  
16          literally behind the area that's being  
17          discussed today. So I didn't come here with  
18          the intention of actually --

19          VICE CHAIRMAN ZC JEFFRIES: Your  
20          name?

21          MS. JACKSON-SCOGGINS: I'm sorry.  
22          My name is Mary Jackson-Scoggins.

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1 CHAIRPERSON MILLER: And your  
2 address? Actually we usually ask for both.  
3 And are you sworn in?

4 MS. JACKSON-SCOGGINS: Yes, I was  
5 here when we were sworn in.

6 CHAIRPERSON MILLER: Okay. Good.  
7 Okay.

8 MS. JACKSON-SCOGGINS: My address  
9 is 112 36th Street, Northeast, Washington,  
10 D.C. 20019.

11 I didn't come with the thought to  
12 hear you speaking today, however I wanted to  
13 support people who I thought would be here  
14 from the community to do so, and we do have  
15 some concerns. So I would definitely like to  
16 be available whenever you do meet again, or  
17 someone from the community. So I would like  
18 to know when the schedule would be. But we'll  
19 make ourselves available.

20 CHAIRPERSON MILLER: Okay. Good.  
21 Thank you.

22 MR. DeCARRO: Okay. My client has

1 just advised me that he wishes to withdraw the  
2 appeal completely. So on the record, I'd like  
3 to withdraw the appeal. And that should take  
4 care of the issue under the settlement  
5 agreement.

6 MS. PARKER-WOOLRIDGE: Yes, it  
7 does for the Government.

8 MR. DeCARRO: So the appeal will  
9 be withdrawn and we are going forward on the  
10 special exception.

11 MR. YUEN: Madam Chair, I make  
12 this decision because I'm confident in the  
13 Board's body and also the reading of the law  
14 and what I understand in the industry and the  
15 long history of the District of Columbia  
16 Zoning Regulations with my technical support  
17 and people that actually in the business of  
18 doing this kind of permitting everyday.

19 So I am confident and relying on  
20 that we are doing everything without any what  
21 you call any unrelated situation. So I'm  
22 confident that the Board will decide with the

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1 founding, what my attorney's presentation and  
2 with the help of the Office of Planning.

3 CHAIRPERSON MILLER: Okay. What  
4 are you doing with the issue that was on  
5 appeal? Are you foregoing that or you seeking  
6 to raise it in the special exception case?

7 MR. YUEN: If we fail to have the  
8 blessing of the five Board members here when  
9 you render the decision, then it's a decision  
10 for us to either to abandon our entire project  
11 and not to do business in District of Columbia  
12 anymore under the C-2-A zone or zoning that  
13 requires to come before the special exception.  
14 Because I firmly believe that the laws are  
15 written to protect the business people as well  
16 as the citizen. And I believe that we fit the  
17 shoe of a situation that has been granted in  
18 the past, okay. And if you rule --

19 CHAIRPERSON MILLER: Okay. Can we  
20 just focus on the question?

21 MR. DeCARRO: Yes. In other words,  
22 I think what the Chair lady was asking was

1       whether you are consenting to withdraw the  
2       portion of the application that deals with the  
3       argument that the property is a conforming use  
4       because of its status as a gas station during  
5       that period of time.

6                   MR. YUEN:  It's all in appeal, am  
7       I correct?

8                   MR. DeCARRO:  That's in the appeal  
9       and in the application.  Okay.  So the  
10      application also contains that issue.  And are  
11      you consenting to withdraw that issue from the  
12      application process?

13                  MR. YUEN:  Okay.  But on the  
14      special exception application the conforming  
15      use has to be introduced because of the  
16      history of the property.

17                  MEMBER DETTMAN:  Excuse me, sir.  
18      I think what Madam Chair was asking is -- I'll  
19      rephrase it.  Not as a question, I'm just  
20      going to make a statement to you.

21                  MR. YUEN:  Thank you.

22                  MEMBER DETTMAN:  Is that your

1 argument that this was a gas station in 1958  
2 and meaning that you locate that as a matter-  
3 of-right has no bearing on the special  
4 exception. That argument has no place in the  
5 special exception case.

6 It doesn't fit into the general  
7 special exception criteria; no impact on the  
8 public good or the zone plan. It doesn't have  
9 anything to do with Chapter 23 with respect to  
10 parking and screening and landscaping and  
11 lighting, or 706.

12 MR. YUEN: Okay. So what you're  
13 really saying to me, Mr. Dettman, is that I  
14 cannot have but two bite at the apple knowing  
15 that if I withdraw my conforming or -- which  
16 is the law clearly state, but this is not  
17 something that you hear or be concerned with?  
18 You're only hearing that a special exception  
19 case is required.

20 My recommendations to my counsel  
21 is simply that we are basically going to live  
22 by the settlement agreement. We do not want,

1       whatever Ms. Woolridge recommendation or her  
2       interpretation of the agreement, we will yield  
3       to her on that basis. I mean that's all we're  
4       asking. And we like because for the valuable  
5       time of my technical and architect, we like at  
6       least some limited presentation so that we can  
7       get to the point where we only depend on the  
8       Office of Planning to give us the  
9       recommendation and the traffic study approval,  
10      so that will be become part of the record.

11               CHAIRPERSON MILLER: Okay. You  
12      think you can put on your witnesses and have  
13      them complete their testimony in 20 minutes or  
14      so?

15               MR. YUEN: Can we handle that?

16               MR. DeCARRO: Well, let me call my  
17      first witness.

18               CHAIRPERSON MILLER: Why don't you  
19      do a proffer of what it is that you want to  
20      do. See it makes sense to do it within 20  
21      minutes or not. I don't really know.

22               MR. DeCARRO: Exactly. Since Mr.

1 Jeff Way to respond to the proffer, I believe,  
2 and if he can't, I certainly --

3 CHAIRPERSON MILLER: You got to  
4 talk in the mic.

5 MR. DeCARRO: I'd like to ask the  
6 architect to give us an explanation. I think  
7 he's best qualified and he's going to take the  
8 shortest period of time. So I would call Jeff  
9 Way to the stand.

10 MS. BAILEY: Madam Chair, while  
11 Mr. Way is coming to the table, is the appeal  
12 now officially withdrawn?

13 MR. DeCARRO: Yes, it is.

14 MS. BAILEY: Okay. Thank you.  
15 Thank you.

16 MR. WAY: I've not been sworn in.

17 CHAIRPERSON MILLER: You haven't  
18 been sworn in? Okay. Ms. Bailey, would you  
19 swear him in please?

20 (Witness sworn).

21 MR. WAY: Good evening. For the  
22 record, Jeffrey Way, registered architect,

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1 postal address being P.O. 3121, Crofton,  
2 Maryland, zip 21114.

3 Good evening, Madam Chair and  
4 members of the Board and all present.

5 I am the architect hired by Mr.  
6 Koo Yuen to depict and describe the intended  
7 work at 3710 Minnesota Avenue.

8 The site essentially is an  
9 existing commercial site. It's a developed  
10 site where the ground plane is virtually 100  
11 percent paved with the exception of the  
12 southwesterly corner sort of towards Ames  
13 Street and the 16 foot improved public alley.

14 In my depictions and description  
15 of work to occur there, we show an existing  
16 one story masonry building, approximately 2500  
17 square feet. And we show also some proposed  
18 reinstallation, if you will, of underground  
19 tank works. So there's no reconfiguration of  
20 the site to the third dimensional features of  
21 the site, only work to be done beneath the  
22 ground plane in the form of reinstalling

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1 underground storage tanks and installing  
2 fueling islands where gasoline or petroleum  
3 products would be dispensed.

4 The plan also depicts proposed  
5 potential overhead canopy, but that I guess  
6 has been determined by the developer that that  
7 feature will be built, actually. But we  
8 thought for the purpose of the approval and  
9 presenting to this Board, that we would show  
10 the ultimate configuration of what could be  
11 there.

12 CHAIRPERSON MILLER: I'm kind of  
13 confused on that. Because I mean we approve  
14 plans that depict what's going to happen.

15 MR. WAY: No, I'm saying specific  
16 with regard to the canopy, ma'am. We're  
17 showing a proposed overhead canopy and we're  
18 certain whether there are conditions  
19 precluding it or whether the owner will  
20 exercise his option to make that expenditure.  
21 So we're just showing it there. Okay?

22 CHAIRPERSON MILLER: Okay.

1 MR. WAY: Thanks.

2 The only other physical alteration  
3 to the property has to do with -- actually  
4 there are two. But one category of  
5 alterations has to do with the existing  
6 driveway entrances. There are two along  
7 Minnesota Avenue frontage. There's along Ames  
8 Street. The northerly driveway entrance on  
9 Minnesota is going to remain unaltered. The  
10 southerly one would be altered so that it  
11 could have the proper 40 foot distance to the  
12 intersection of the curb lines of Ames and  
13 Minnesota.

14 And then similarly, the existing  
15 driveway entrance or curb cuts as we call them  
16 in the industry on Ames Street would be moved  
17 in a westerly direction in order to achieve  
18 the 40 foot minimum distance to the  
19 intersecting of the curb lines of Ames and  
20 Minnesota.

21 And also we propose in this  
22 depiction to remove part of the on site paved

1 area at the intersection of Ames and Minnesota  
2 to indicate a site sign and to retrofit some  
3 landscaping area. Because as we mentioned, the  
4 whole front portion of the site is virtually  
5 100 percent paved. And according to  
6 information available in the D.C. Office of  
7 the Surveyor, including base survey maps and  
8 the survey papers it's been a gas station for  
9 quite some time, perhaps more than a half a  
10 century it looks like at this point.

11 The only other thing that I would  
12 say is I would like to enter into the record  
13 for the transcript of the record, I will read  
14 my justification letter, which will only take  
15 two minutes, regarding section 706, section  
16 726 and section 2302. And it goes as follows:

17 "Per DCMR 11 § 701.1(h) 'the  
18 following service establishments shall be  
19 permitted in D-C-1 District as a matter-of-  
20 right.'" It goes on to say: "(h) gasoline  
21 service station existing on May 12, 1958." It  
22 goes on to say: "Per DCMR 11 § 727.1 'any use

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1 permitted in C-1 District under § 701 shall be  
2 permitted in a C-2 District as a matter-of-  
3 right.'"

4 I go on to say concluding my  
5 comments on § 706 "A copy of the Washington,  
6 D.C. Certificate of Occupancy circa 1965 is  
7 attached" to and submitted herewith is  
8 attached in that set of drawings that's on the  
9 easel.

10 Going on as quickly as I can, §  
11 726 I say here: "Whereas the subject property  
12 was issued a Washington, D.C. Certificate of  
13 Occupancy circa 1955, DCMR 11 § 26.1 we  
14 believe does not apply."

15 And then finally, just for the  
16 record, "Section 2302 per DCMR 11 § 2302.1 'a  
17 gasoline service station established or  
18 enlarged in any district except in the CM  
19 District shall be subject to the provisions in  
20 this section.'"

21 I go on to say: "In DCMR 11 §  
22 2302.4 states: 'No driveway of any driveway

1 or exit to any use listed in § 2302.1 shall be  
2 closer than 40 feet to a street in a section  
3 that's measured from the intersection of the  
4 curb lines extended.'"

5 I go on to say: "Whereas the  
6 subject property has two existing driveway  
7 entrances on Minnesota and one existing  
8 driveway on Ames, the following configuration  
9 depicted on the site plan" or I'm sorry, SP-  
10 1, dated 12/2/2008 submitted herewith and  
11 attached hereto, illustrates a 35 foot  
12 driveway entrance to remain and an adjacent  
13 existing driveway entrance on Minnesota to be  
14 altered for the required 40 foot distance.  
15 And furthermore, an existing 25 foot driveway  
16 on Ames Street will be altered in a westerly  
17 direction for the purpose of providing the  
18 required 40 foot distance from the  
19 intersection of the above referenced  
20 intersection of Minnesota and Ames curb line.

21 And finally towards the westerly  
22 and southwesterly corner of the property we

1 will -- it says 16 foot public alley, again  
2 which is not a paper alley, it is a paved  
3 improved alley, we show a retaining wall which  
4 would enable three parking spaces to be  
5 accommodated. So from the access from the  
6 Minnesota or Ames side and four spaces to be  
7 accessed from the site we lower grade the 16  
8 foot public alley is located.

9 And then finally, there's a  
10 parking space on the northerly side of the  
11 property along the building, which is the  
12 handicapped accessible space.

13 According to the DCMR 11 retail  
14 space under 1500 square feet is not required  
15 to provide parking. And for a gasoline  
16 station, there's no service here, just fueling  
17 there's a requirement that we've indicated.  
18 Six spaces are required, but we've provided a  
19 total of eight spaces.

20 Thank you very much.

21 CHAIRPERSON MILLER: Thank you.

22 Any questions from Board members?

1                   Okay. There's no one here from  
2                   the ANC, is there? Okay. Just wanted to make  
3                   sure. Because they're automatically a party  
4                   in a case and they could ask questions as  
5                   well. Okay.

6                   Do you want to go with your next  
7                   witness?

8                   MR. DeCARRO: Yes. Mr. Thomas  
9                   Beck, known as Ted Beck.

10                  MEMBER DETTMAN: Just quick  
11                  question, Madam Chair. Do we have those  
12                  drawings in the record? Do you have copies?

13                  MR. WAY: Thank you, Mr. Dettman.  
14                  We have brought with us tonight 20 sets which  
15                  we'll be happy to leave with the Board. And  
16                  also in that set of drawings are all the  
17                  historical drawings for the site that we've  
18                  been able to gather. Those were gathered from  
19                  city and federal archives. The permits,  
20                  Certificate of Occupancies, even the permit  
21                  that was issued in 2004 for renovations of the  
22                  building and permit issued by DCRA in 2006,

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1       which for the pump and tank work. So all  
2       that's in these sets of drawings that the  
3       applicant is making available.

4               MEMBER DETTMAN: Thank you.

5               CHAIRPERSON MILLER: And does the  
6       Office of Planning also have a copy?

7               MR. DeCARRO: Yes.

8               CHAIRPERSON MILLER: Okay. We'd  
9       better get going with the next witness.

10              MR. DeCARRO: Okay. This is Ted  
11       Beck.

12              Raise your right hand, Ted.

13              MR. BECK: I'm already sworn in.

14              MR. DeCARRO: Oh, you're already  
15       sworn?

16              MR. BECK: I stood up with  
17       everybody else.

18              CHAIRPERSON MILLER: Good.

19              MR. BECK: My name is Ted Beck.  
20       I'm with Independent Petroleum Services. I'm  
21       a consultant for Mr. Yuen. I build a lot of  
22       gas stations for a lot of vendors. And I do

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1       permitting and process work close with the  
2       engineers and architects in the District.

3               MR. DeCARRO:   Mr. Beck, do you  
4       have a position with the District Government  
5       Gas Advisory Board?

6               MR. BECK:   I sit as a fifth member  
7       on the Gas Advisory Board in D.C.   And that  
8       position is good until 2010.   But I'm not here  
9       to speak on behalf of the Gas Advisory Board  
10      in anyway.   Okay.   I just want to make that on  
11      the record.

12              The    architect designed these  
13      drawings and I implement them, and we get  
14      permits on them.   And the station here that's  
15      in question for the special exception, I know  
16      we're going forward from my history with  
17      special exception that it doesn't matter what  
18      it preexisted, what it was.   We're asking for  
19      approval based on what it is today.   And am I  
20      correct with that, right?

21              CHAIRPERSON MILLER:   Right.

22              MR. BECK:   Okay.   So the history

1 on it is pretty much irrelevant, other than  
2 the fact for you to know if you didn't know a  
3 lot of documents go back and forth that I've  
4 seen from the beginning of this job to the end  
5 of the job that this station is exactly as it  
6 was set up in 1949. It was built by Sunoco  
7 and Sinclair. And it was a BP station. And  
8 a couple of other station.

9 Permit's been issued on this site  
10 back as far as 1974. So it preexisted as a  
11 gas station. It never designed to be a retail  
12 store or anything, not that different uses  
13 don't apply and because of the regulations say  
14 that different uses can be used on this  
15 project.

16 I think the relief from my  
17 standpoint as working with a lot of gas  
18 stations in the District, even the older  
19 sites, there's not really the large sites to  
20 build the large gas stations anymore. And with  
21 the requirements for gas stations in D.C. with  
22 jobbers and other laws in place, these small

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1 stations are the ones that are viable to put  
2 back in to accommodate the people in the  
3 District.

4 Right now they estimate that  
5 there's one gas station for every 6500 people  
6 in the District of Columbia. If there's a mad  
7 rush for gasoline, we'd be all out of luck in  
8 the District. We'd have to run to the outer  
9 counties to get out of town.

10 VICE CHAIRMAN ZC JEFFRIES: What's  
11 a typical ratio?

12 MR. BECK: But this station here--

13 MR. DeCARRO: Mr. Beck, what's the  
14 typical ratio of gas stations per inhabitant?

15 MR. BECK: In the District it's  
16 one for every 6500 people right now.

17 MR. DeCARRO: Yes, but what is it  
18 in Prince George's County, for example?

19 MR. BECK: It's -- I don't know.  
20 It's a much larger -- it's a much larger  
21 capacity. Because it's a bigger county. This  
22 we're consolidated into this triangle here in

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1 the District.

2 MR. DeCARRO: I see.

3 MR. BECK: These --

4 VICE CHAIRMAN ZC JEFFRIES: But  
5 wait a minute. Wait. Wait. What was the  
6 point you were trying to make when you said  
7 one is -- I mean, were you making that we are  
8 under --

9 MR. BECK: I'm making that point  
10 to the fact that this is actually a  
11 revitalized existing gas station. And on the  
12 1958 map at the Zoning, the zoning has every  
13 gas station that preexisted '58 is highlighted  
14 in pink. And they specifically say -- because  
15 they had to establish a date, and a '58 date  
16 was -- I've seen the map. I've quoted it for  
17 other cases and for searching out other  
18 properties that conform to the regulations of  
19 the District so that I could help with  
20 permitting; what is allowed, what isn't  
21 allowed, determining the regulations. And --

22 CHAIRPERSON MILLER: And is your

1 point -- were you going to the point of need?  
2 You know, gee, it's only one for every 6500  
3 people. Are you making a point that it's  
4 needed because--

5 MR. BECK: Yes. I mean if there's  
6 one for every 6500 people in the station and  
7 only -- I'm winging it here, not with  
8 information that only five new ones probably  
9 have been built on alternate sites other than  
10 this one at 3710 Minnesota Avenue, one at  
11 1301, one on New York Avenue. These sites all  
12 existed --

13 VICE CHAIRMAN ZC JEFFRIES: Okay.  
14 I think what we're trying to get to the bottom  
15 of is we're trying to compare the one in 6500  
16 what is typical. I mean, you know, whether  
17 Prince George's County or whatever. IS there  
18 normally one in like a 1,000? I mean, we  
19 don't know.

20 MR. DeCARRO: No, I don't know.

21 VICE CHAIRMAN ZC JEFFRIES: Okay.  
22 Okay.

1 MR. BECK: I don't know what that  
2 is. In Prince George's County because the  
3 county is much larger than the District and  
4 it's spread out over a larger -- the rural  
5 areas aren't condensed.

6 VICE CHAIRMAN ZC JEFFRIES: But  
7 you were making the case when you said one is  
8 6500 that there's more of a need.

9 MR. BECK: I was just making a  
10 case -- not make a case, just make accusation  
11 that right now in the District with the gas  
12 stations that exist in the District, there's  
13 one for every 6500 people right now that's on  
14 record.

15 VICE CHAIRMAN ZC JEFFRIES: Okay.

16 CHAIRPERSON MILLER: Is there an  
17 undersupply of gas stations in the District?

18 VICE CHAIRMAN ZC JEFFRIES: Yes.  
19 That's--

20 MR. BECK: That's the point that  
21 I'm making.

22 CHAIRPERSON MILLER: Even though

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1       there's more public transportation now than  
2       there was in 1958.

3               MR. BECK: Yes, I know. And  
4       they're laying off people and cutting back on  
5       hours all over, state, Maryland, D.C. You  
6       know, so gas is down to phenomenal prices.  
7       People are driving now, you know.

8               VICE CHAIRMAN ZC JEFFRIES: Okay.

9               CHAIRPERSON MILLER: I guess we  
10       can move on.

11              MR. BECK: Yes. I'm making a  
12       point is that the older stations that are  
13       being revitalized, we're trying to bring back  
14       into -- their uses were developed to be there.  
15       That lot was designed to have a gas station on  
16       it, not a Chinese restaurant, not a carry out  
17       or a hair salon, or whatever. And when we get  
18       a customer to spend a half a million dollars  
19       on a piece of property in D.C. to revitalize  
20       it, plus the .37 cents of tax is good for us  
21       in D.C., you know, that you get on every  
22       gallon on gas.

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1 VICE CHAIRMAN ZC JEFFRIES: What's  
2 your basis for that? I mean, you're  
3 effectively saying that a station is a lot, a  
4 parcel that starts if it's a gas station  
5 cannot experience adaptive reuse.

6 MR. BECK: It can.

7 VICE CHAIRMAN ZC JEFFRIES: Okay.

8 MR. BECK: I'm not saying that it  
9 can't. I'm saying that it was designed to be.  
10 The station was laid out on that block.  
11 That's why it meets all the criteria today.  
12 All the setbacks that are required, the alley  
13 setbacks, the away from schools and districts  
14 in a C-2 District; that that piece of property  
15 was designed for that district to be what it  
16 is.

17 VICE CHAIRMAN ZC JEFFRIES: Yes.  
18 But you recognize that there are a lot of  
19 schools that have been changed to --

20 MR. BECK: Yes.

21 VICE CHAIRMAN ZC JEFFRIES: --  
22 residential. There's, you know, art galleries

1 that were formally train stations. I mean, I  
2 mean I understand what you're saying. But --

3 MR. BECK: Well, that's just like  
4 this one. That this one was a three bay  
5 garage which had full service on it.

6 VICE CHAIRMAN ZC JEFFRIES: Right.

7 MR. BECK: And six dispensers.  
8 What proposed is it doesn't have a garage so  
9 the adverse environmental issue with leaking,  
10 dropping oil changes and major repairs and  
11 with the self-service and the new technology  
12 in the gas pumps we can reduce down to three  
13 gas pumps instead of six, which in the history  
14 in these drawings you'll see in the back in,  
15 the '58 when this thing was designed, it had  
16 six dispensers and three garages and oil  
17 interceptors and things of that nature.

18 and with the technology with  
19 convenience stores, which is a whole new  
20 conversion for the District, that's where this  
21 station out of all the properties on that  
22 road, these routes were designed based on my

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1 dealings with D.C. and Office of Zoning and  
2 Planning on where gas stations were put in the  
3 major corridors to be established so that  
4 other people can get to them, you know, coming  
5 in and going out. And that one's at Eastern  
6 Avenue ramp coming up, right at the top. And,  
7 you know, even as the modifications to the  
8 Metro, these stations still exist where they  
9 do.

10 So the fact that I'm just as a  
11 profession in installation and knowing the  
12 Zoning Regulations for gas stations only, I  
13 couldn't tell you how to build a house or what  
14 addition to put on, but I've spent pretty much  
15 22 years of my career in the environmental  
16 field with gas stations. And can speak, and  
17 I volunteer for other agencies with the  
18 District to help bring unity to the agencies  
19 as far as not being scared of gas stations in  
20 neighborhoods. And ANC meetings, I've sat in  
21 on numerous of them. And met with the Mayor's  
22 office.

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1 VICE CHAIRMAN ZC JEFFRIES: Okay.  
2 Madam Chair, in about eight minutes you're  
3 going to lose your quorum.

4 MR. BECK: Right.

5 VICE CHAIRMAN ZC JEFFRIES: So I  
6 don't know if you want to --

7 MR. BECK: Well, I'm done, I  
8 guess.

9 MR. DeCARRO: Unless there are any  
10 questions, I don't have anything further for  
11 this witness.

12 MR. BECK: Unless there's anything  
13 else.

14 CHAIRPERSON MILLER: Okay. Are  
15 there any questions from the Board?

16 Thank you very much.

17 MR. DeCARRO: And I would like to  
18 just briefly call Mr. Yuen to the stand for  
19 just two minutes. And then that would be our  
20 case at that point.

21 CHAIRPERSON MILLER: Okay.

22 MS. BAILEY: Mr. Yuen, I thought

1       you were sworn in. No? That's okay. We'll do  
2       it real quick.

3                       (Witness sworn.)

4                       MR. DeCARRO: Mr. Yuen, in what  
5       respect does this site conform to the special  
6       exceptions?

7                       MR. YUEN: It's an existing gas  
8       station, dated back before we have zoning  
9       ordinance which make this station like conform  
10      in the structure and the infrastructure all  
11      indicate a gas station is being used at the  
12      property. When we become a tenant on this  
13      property we were able to go to the BZA with  
14      the normal permit channel and so on, able to  
15      secure permit with stamped drawings showing  
16      the gas tank, the island and everything. And  
17      based on the record that's how we got the  
18      permit to build a gas station until we have,  
19      I believe, a citizen complaint. And then the  
20      Administrators of Zoning got hold of the  
21      matter and they simply went ahead and believed  
22      that we need to come before this body and put

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1 a stop work order. And this has been a four  
2 year journey for us. We got the permit back  
3 in 2004 for the convenience store, 2006 for  
4 the gas station permit to build.

5 We have -- in the permits, put two  
6 tanks in. We are forced to take those tanks  
7 out, cause a lot of down time and also  
8 expenditure that need not to be a burden by  
9 this particular citizen who live in the  
10 District of Columbia. Certainly a lot of  
11 resources has been wasted. But however, we  
12 realize that we have to live by the  
13 recommendation of the Zoning Administrator so  
14 we came before this body today, which is  
15 almost about four years since we got involved  
16 in the property. So we are asking for relief.  
17 Do ask if we are conforming and we should be  
18 entitled to a special exception. We are  
19 taking the approach that that was never a gas  
20 station --

21 MR. DeCARRO: Thank you very much.

22 Does anyone have any questions?

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1 CHAIRPERSON MILLER: No questions,  
2 do we? Okay. Why don't we now pause.  
3 Because I'm afraid I've already lost one Board  
4 member. If we lose quorum, we can't do  
5 anything.

6 So I think we need to look at a  
7 date for continuing this hearing. Because you  
8 have finished. The applicant's made their  
9 case. But we haven't heard from Office of  
10 Planning yet.

11 MR. DeCARRO: I know we haven't.  
12 And, of course, the continuance will benefit  
13 us by allowing us to complete any -- I don't  
14 think they're fully satisfied with our  
15 submission.

16 CHAIRPERSON MILLER: Right. That's  
17 the two things I want to do is: (1) set  
18 another date for hearing and then by that date  
19 identify what materials need to be submitted  
20 to Office of Planning, the ANC and the Board.

21 MR. DeCARRO: Thank you.

22 CHAIRPERSON MILLER: Okay. So

1 looking at our calendar, our best next  
2 available date is February 17 in the  
3 afternoon. Are you available then.

4 MR. DeCARRO: February 17th is  
5 fine with me.

6 CHAIRPERSON MILLER: Okay.

7 MR. DeCARRO: Ms. Woolridge?

8 CHAIRPERSON MILLER: Okay. Now  
9 the Office of Planning's report, Exhibit 20,  
10 identifies information that's lacking in the  
11 application. I guess I could read it unless  
12 you all have it in front of you.

13 MR. DeCARRO: We have it. I have  
14 a copy of it right here.

15 CHAIRPERSON MILLER: Okay.

16 MR. DeCARRO: And we have provided  
17 since the report came out, we've provided a  
18 lot of the stuff, documentation.

19 CHAIRPERSON MILLER: Okay. Why  
20 don't you tell us what you've provided.

21 MR. DeCARRO: Okay.

22 CHAIRPERSON MILLER: Or unless

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1 Office of Planning wants to tell us what's  
2 still outstanding. Do you want to do that?  
3 Yes, let's do that. Let's go to the Office of  
4 Planning because it's their report. So what  
5 do we still need in the record, in your  
6 opinion?

7 MR. JESICK: Good evening, Madam  
8 Chair. My name is Matt Jesick.

9 Yes. What we're looking for, the  
10 applicant has provided some of the information  
11 from the list in the record. I'll just go as  
12 quickly as I can through what is outstanding.

13 Trash collection in bullet number  
14 2. That's still outstanding. There are two  
15 dumpsters on the site presently, but on the  
16 submitted plan that space is now occupied by  
17 parking.

18 The applicant has shown lighting  
19 fixtures on the building, but what we want to  
20 get at is the impact of this on the  
21 neighborhood. So we really want to see  
22 illumination levels, preferably in foot

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1 candles.

2 Also circulation through the site.

3 Landscaping. The applicant has  
4 shown some landscaping on the revised plan, so  
5 that is appreciated. We'd like to get a  
6 little better sense of what that shrubby will  
7 look like.

8 Signage. They're proposing a sign  
9 at the corner. We just want to get a sense of  
10 how big that sign is and whether it will be  
11 illuminated in some fashion.

12 And what other environmental  
13 protection measures such as: An oil water  
14 separator; is there a possibility for a green  
15 roof. They have shown tank diagrams  
16 indicating double hauled tanks. So we  
17 appreciate that.

18 The applicant has submitted basic  
19 information like yards, lot occupancy, FAR. We  
20 appreciate that.

21 The applicant still needs to  
22 submit a written statement addressing the

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1 basic criteria of section 706, 726 and 2302.

2 The statement that was read into  
3 the record this evening addresses one section  
4 of 2302, that being the entrances. But the  
5 other criteria were not addressed.

6 And then the traffic and queuing  
7 and truck movement analysis which might be the  
8 largest issue.

9 And I just want to emphasize that  
10 these are items that we would either expect to  
11 see on any application or that are called out  
12 specifically in the special exception  
13 criteria. So we would need those to complete  
14 our analysis.

15 VICE CHAIRMAN ZC JEFFRIES: And in  
16 terms of all you're requesting is additional  
17 information? It doesn't mean that you're  
18 going to be voting in favor or denial. I  
19 mean, this is just the information you need in  
20 order to make an informed decision?

21 MR. JESICK: Right. That's  
22 correct.

1 MR. DeCARRO: That's understood.

2 Thank you.

3 CHAIRPERSON MILLER: I didn't  
4 understand. What was the last thing you said?  
5 Any -- that would appear for any special  
6 exception?

7 MR. JESICK: Oh, I just wanted to  
8 emphasized that the information we're asking  
9 for we would either expect with any  
10 application, or it's specifically called out  
11 in the regulations as information to evaluate  
12 the project in the special exception criteria.

13 CHAIRPERSON MILLER: And would  
14 there be a report from DDOT if they provided  
15 their traffic information or what?

16 MR. JESICK: Yes. DDOT, I believe,  
17 said that they would need at least 30 days  
18 from the date of submission of the traffic  
19 study to review it and issue a report. So if  
20 we get the submission soon, they should  
21 probably be able to issue a report by the  
22 February 10th deadline.

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1 VICE CHAIRMAN ZC JEFFRIES: Madam  
2 Chair, I'm going to have to take off.

3 But the one thing that I would  
4 like to see is, and I think we talked about it  
5 just a little bit, you know just a sense of  
6 demand for gas stations. And just, you know,  
7 some more discussion around that.

8 I think Mr. Beck brought it up and  
9 I thought it was an interesting thing if we  
10 can just put that in context.

11 CHAIRPERSON MILLER: Particularly  
12 maybe in that area as well?

13 VICE CHAIRMAN ZC JEFFRIES: Yes,  
14 in that area as well. I mean, like, what's  
15 the closest. It might be here, but you know  
16 other gas stations, you know proximity. Is  
17 that typical to have one 20 miles away? And  
18 don't even come up. Just have a discussion  
19 around that. Okay. Thank you.

20 Okay. Great. Thank you.

21 CHAIRPERSON MILLER: Okay. So any  
22 other information that Board members would

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1       like provided into the record?

2               MR. Beck hasn't been qualified as  
3       an expert, though. Can you characterize?

4               MR. DeCARRO: I can give you his--  
5       if you don't mind, I know his résumé well  
6       enough to make a proffer to the Board or if  
7       you want me to put him back up and --

8               CHAIRPERSON MILLER: That question  
9       just came up with respect to how are we  
10      evaluating the information he's giving us,  
11      what is his --

12              MR. DeCARRO: Well, he'll be at  
13      the next hearing.

14              CHAIRPERSON MILLER: Okay.

15              MR. DeCARRO: But I'll make sure  
16      that I ask that question at the next hearing.

17              CHAIRPERSON MILLER: Okay.

18              MR. DeCARRO: We're get a résumé.

19              CHAIRPERSON MILLER: Okay. Good.  
20      Good. Okay.

21              I would also say that you should--  
22      I would be interested in your responding to

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1 any concerns that the Office of Planning has  
2 raised in the report. You know, I think that  
3 would be a wise thing to do.

4 I can't hear you, sir.

5 MR. YUEN: Madam Chair, we will  
6 cover every item that -- we are working very  
7 closely with the OP office.

8 CHAIRPERSON MILLER: Okay.  
9 Terrific. Okay.

10 So now we're at setting at dates.  
11 So we talked about February 17th in the  
12 afternoon for the hearing.

13 We talked about DDOT needing 30  
14 days in advance a traffic study from the  
15 applicant in order for them to do their  
16 reports.

17 And I think Office of Planning was  
18 suggesting that in order for them to have a  
19 report by February 10th, which would be a week  
20 ahead of the hearing, that I guess the latest  
21 for you to submit that report to DDOT was  
22 January 10th.

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1 MR. DeCARRO: Can we have it by  
2 January 10th?

3 CHAIRPERSON MILLER: You're not on  
4 the record, though, sir. Why don't you come  
5 to the table?

6 Now if you can't make the  
7 deadline, we can move the hearing.

8 MR. DeCARRO: Let's move the  
9 hearing.

10 CHAIRPERSON MILLER: Okay.

11 MR. DeCARRO: I certainly don't  
12 want to put any kind of time measure.

13 MR. YUEN: Can we move it the next  
14 slot.

15 CHAIRPERSON MILLER: Okay. But  
16 bear with us, we'll look at our schedule.

17 All right. We can go to March  
18 24th.

19 MR. DeCARRO: March 24th. That's  
20 fine with me.

21 CHAIRPERSON MILLER: Okay. So we  
22 have a lot of time until then. So let's not

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1 cut it too close.

2 February 10th or February 16th for  
3 the report to DDOT.

4 MR. DeCARRO: My understanding is  
5 that shouldn't be a problem to get the report  
6 to DDOT in that kind of time frame should not  
7 be a problem at all.

8 CHAIRPERSON MILLER: Okay. Let's  
9 pick a date. February 12th. Would that be all  
10 right. February 16th is a holiday.

11 MR. DeCARRO: Okay.

12 CHAIRPERSON MILLER: Is that okay?  
13 I want to make sure that's okay.

14 MR. DeCARRO: Yes.

15 CHAIRPERSON MILLER: Okay.  
16 February 12th is the date, report no later.  
17 The report will be delivered to DDOT and  
18 Office of Planning no later than February 12.

19 Actually, everything you file with  
20 the Board you have to serve on the ANC as  
21 well.

22 MR. DeCARRO: Right.

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1 CHAIRPERSON MILLER: Okay. All  
2 right. So that would be the ANC, the Board,  
3 DDOT.

4 Office of Planning, do you get a  
5 separate report from DDOT or --

6 MR. JESICK: I think they would  
7 issue a referral directly to the Board as they  
8 did send you this memo. We'll be in touch  
9 with them certainly, but --

10 CHAIRPERSON MILLER: But I mean do  
11 you want a separate document from the  
12 applicant with respect to their traffic report  
13 from DDOT?

14 MR. JESICK: If they give us a  
15 courtesy copy, that would be great.

16 CHAIRPERSON MILLER: Okay. Do  
17 that. Okay.

18 Okay. So separate from the  
19 traffic report there's one more filing. You're  
20 going to be filing all that information that  
21 Office of Planning has identified as being  
22 necessary for consideration of your

1 application, plus the information Commissioner  
2 Jeffries requested.

3 MR. DeCARRO: I have 11 items.  
4 The trash study, the lighting fixtures with  
5 the illumination, the traffic circulation  
6 through the site, landscaping, signage how big  
7 and is it illuminated, environmental measures,  
8 section 706, 726 et cetera, the traffic study  
9 including a queuing and truck movement  
10 analysis. Mr. Jeffries asked for a sense of  
11 demand for gas stations. A résumé of Ted Beck  
12 or qualification of him as an expert. And the  
13 other concerns of the Office of Planning that  
14 arise in connection with the documents that we  
15 submit and requested at their request.

16 CHAIRPERSON MILLER: Okay. I'm  
17 not sure whether you said addressing the  
18 standards of the special exception that Office  
19 of Planning recommended that you more fully  
20 address.

21 MR. DeCARRO: Yes. That the code  
22 sections.

1 CHAIRPERSON MILLER: Good. Good.  
2 Okay. And then I said any other concerns that  
3 they may have raised in their report.

4 Okay. So now we just need to set  
5 a date for that submission. And our hearing  
6 is the 24th, so I think we should do this at  
7 least a couple of week if not further -- I  
8 want to give you enough time, but it would be  
9 a good thing since we're this far out, if you  
10 did it far enough in advance so that you could  
11 serve it on the ANC in time for them to  
12 consider it at a meeting. I don't know when  
13 their meeting is. But it's to your advantage  
14 if you can get the ANC on board with you.

15 MR. DeCARRO: That's not going to  
16 happen.

17 CHAIRPERSON MILLER: Okay. Well,  
18 that raises a concern, you know with us.

19 MR. DeCARRO: I does raise a  
20 concern.

21 CHAIRPERSON MILLER: You know,  
22 what are they concerned about. But sometimes

1 the more accurate information you give them,  
2 the better it might be for you. But anyway,  
3 how many weeks in advance of the hearing do  
4 you think that you will be prepared to submit  
5 all the material that we talked about?

6 MR. DeCARRO: Well, it depends on  
7 DDOT's response to the traffic study. But  
8 everything else should be ready by the last  
9 week in February maybe. There's February 27th  
10 or March 2nd. March 2nd is two weeks and one  
11 day in advance of the hearing. February 27th  
12 is on the other side of that weekend.

13 My concern is if we get it to  
14 them, if we get the traffic study on the 12th,  
15 which we'd probably get it to them earlier  
16 than February 12th, but if we get it to them  
17 on February 12th and then they take 30 days,  
18 that's going to put us right up against March  
19 12th. So we could submit everything else  
20 except the traffic study, you see and we'd be  
21 in that kind of a situation.

22 CHAIRPERSON MILLER: Well, it's up

1 to DDOT to submit the traffic study. So that's  
2 not your problem.

3 MR. DeCARRO: Oh, okay.

4 CHAIRPERSON MILLER: I think that  
5 you might want to respond to it at some point,  
6 but you could do that at the hearing as well.

7 MR. DeCARRO: Oh, yes. Okay.

8 CHAIRPERSON MILLER: So it's when  
9 you can provide all the information that we  
10 talked about.

11 MR. DeCARRO: Well, I mean we want  
12 to make sure that everyone has an adequate  
13 opportunity to address the information. And so  
14 I would propose February 23rd, which is three  
15 weeks and one day prior to the hearing date.

16 CHAIRPERSON MILLER: Okay. That  
17 sounds fine to me.

18 Any concerns from Board members?

19 Mr. Moy?

20 MR. MOY: No, that sounds good.

21 Just for the record, that ANC 7A  
22 meets the third, the third Tuesday, which in

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1 this case would be March 27 --

2 MR. DeCARRO: They're going to  
3 meet the same day.

4 CHAIRPERSON MILLER: What day did  
5 you say you'd submit?

6 MR. DeCARRO: I said the 23rd.  
7 The third Tuesday is the 17th of February.  
8 The third Tuesday in February is the 17th of  
9 February.

10 CHAIRPERSON MILLER: I'm just  
11 suggesting that if you present to the ANC and  
12 you hear their concerns, you would have an  
13 opportunity to make any changes you might want  
14 to make, if you want to make any, in response  
15 to concerns that you heard at the ANC.

16 MR. DeCARRO: Okay.

17 CHAIRPERSON MILLER: Okay. So I  
18 think that would give you enough time. Do  
19 you, after the 17th if you filed on the 23rd?

20 MR. DeCARRO: Yes. Yes, it would.

21 CHAIRPERSON MILLER: Okay.

22 MR. DeCARRO: Thank you.

1 CHAIRPERSON MILLER: Okay.

2 Anything else?

3 MR. DeCARRO: Nothing from use.

4 Thank you very much.

5 CHAIRPERSON MILLER: Okay.

6 MR. DeCARRO: I really appreciate.

7 I know this is a little bit unusual. I really  
8 appreciate it very much.

9 CHAIRPERSON MILLER: Okay. Well,  
10 thank you. And I'm sorry that we've run out  
11 of time. But I think you need the time anyway  
12 to supplement your case.

13 Ms. Bailey, do we have anything  
14 else on the agenda for this afternoon's  
15 hearing?

16 MS. BAILEY: No, Madam Chair.

17 CHAIRPERSON MILLER: All right.  
18 Then this hearing is adjourned.

19 (Whereupon, at 7:44 p.m. the  
20 hearing is adjourned.)

21

22

