

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

NOVEMBER 25, 2008

+ + + + +

The public hearing convened in
Room 220 South, 441 4th Street, N.W.,
Washington, D.C., pursuant to notice at 9:30
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 L. DETTMAN	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD	Chairperson
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARLOVA JACKSON
STEPHEN MORDFIN
KAREN THOMAS
MAXINE BROWN-ROBERTS

 This transcript constitutes the
minutes from the public hearing held on
November 25, 2008.

APPEARANCES:

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

(9:59 a.m.)

BZA CHAIR MILLER: This is the
November 25th public hearing of the Board of
Zoning Adjustment of the District of Columbia.

My name is RuthAnne Miller. I am
the Chair of the BZA. To my far right is Mr.
Anthony Hood from the Zoning Commission. Mr.
Marc Loud, our Vice Chair of the BZA, will be
joining us shortly. He will be seated to my
right. To my left is Mary Oates Walker and
Shane Dettman, Board member; Ms. Sherry Glazer
from the Office of Attorney General; Ms.
Beverley Bailey from the Office of Zoning.
And Mr. Clifford Moy from the Office of Zoning
will also be joining us shortly.

Copies of today's hearing agenda
are available. Please be advised that this
proceeding is being recorded by a court
reporter and is also webcast live.
Accordingly, we must ask you to refrain from
any disruptive noises or actions in the

1 hearing room.

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

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

17 The order of procedure for special
18 exceptions and variances is as follows: one,
19 statement and witnesses of the applicant; two,
20 government reports, including Office of
21 Planning, Department of Public Works, DDOT, et
22 cetera; three, report of the Advisory

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1 Neighborhood Commission; four, parties or
2 persons in support; five, parties or persons
3 in opposition; six, closing remarks by the
4 applicant.

5 Pursuant to sections 3117.4 and
6 3117.5 of the zoning regulations, the
7 following time constraints will be maintained:
8 the applicant, persons and parties, except an
9 ANC, in support, including witnesses, 60
10 minutes collectively; persons and parties,
11 except an ANC, in opposition, including
12 witnesses, 60 minutes collectively;
13 individuals, 3 minutes. These time restraints
14 do not include cross-examination and/or
15 questions from the Board.

16 Cross-examination of witnesses is
17 permitted by the applicant or parties. The
18 ANC within which the property is located is
19 automatically a party in a special exception
20 of variance case.

21 Nothing prohibits the Board from
22 placing reasonable restrictions on

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

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

12 The Sunshine Act requires that the
13 public hearing on each case be held in the
14 open before the public. The Board may,
15 consistent with its rules of procedure and the
16 Sunshine Act, enter executive session during
17 or after the public hearing on a case for
18 purposes of reviewing the record or
19 deliberating on the case.

20 The decision of the Board in these
21 contested cases must be based exclusively on
22 the public record. To avoid any appearance to

1 the contrary, the Board requests that persons
2 present not engage the members of the Board in
3 conversation.

4 Please turn off all beepers and
5 cell phones at this time so as not to disrupt
6 the proceedings.

7 The Board will now consider any
8 preliminary matters. Preliminary matters are
9 those that relate to whether a case will or
10 should be heard today, such as requests for
11 postponement, continuance, or withdrawal or
12 whether proper and adequate notice of the
13 hearing has been given.

14 If you are not prepared to go
15 forward with a case today or if you believe
16 that the Board should not proceed, now is the
17 time to raise such a matter.

18 Does the staff have any
19 preliminary matters?

20 MS. BAILEY: Madam Chair, members
21 of the Board, to everyone, good morning. I'm
22 not quite sure, Madam Chair, whether you want

1 to take this matter up now or at a later time,
2 but it does have to do with the posting of one
3 of the properties. And the record indicates
4 that that property was not properly posted for
5 the requisite 15 days.

6 BZA CHAIR MILLER: Thank you. And
7 I think there is another preliminary matter in
8 that case as well. The Board would like to
9 deal with the preliminary matters when calling
10 the case.

11 MS. BAILEY: Thank you, Madam
12 Chair.

13 BZA CHAIR MILLER: So at this
14 point, then, would all individuals wishing to
15 testify today please rise to take the oath?
16 And Ms. Bailey will administer it.

17 MS. BAILEY: Would you please
18 raise your right hand?

19 (Whereupon, the witnesses were
20 sworn.)

21 PATRICIA A. SCHAUB

22 APPLICATION NO. 17847 - ANC-6A

1 MS. BAILEY: Madam Chair, the
2 first case of the morning is application
3 number 17847 of Patricia A. Schaub pursuant to
4 11 DCMR 3104.1 for a special exception to
5 allow a second story addition to an existing
6 one-family row dwelling under section 223, not
7 meeting the lot occupancy -- that's section
8 403 -- and court, section 406 requirements.
9 The property is zoned R-4. It's located at
10 1118 Park Street Northeast, square 987, lot 9.

11 Is Patricia Schaub here? Please
12 have a seat at the table.

13 BZA CHAIR MILLER: Good morning.
14 Why don't you start with introducing
15 yourselves for the record, please?

16 MS. SCHAUB: My name is Patricia
17 Schaub. I'm the owner of the property. And
18 with me is my architect, Michael Cross.

19 BZA CHAIR MILLER: Okay. We have
20 read your filing, Office of Planning's filing.
21 I believe we have a report from the ANC in
22 support. And it's pretty straightforward, it

1 appears to us.

2 So you can stand on the record at
3 this point or you can add anything you'd like
4 to the record.

5 MS. SCHAUB: I think the only
6 thing we have to add is we do have letters
7 from both neighbors adjacent to my house now
8 supporting it.

9 BZA CHAIR MILLER: Oh, are they in
10 the record?

11 MS. SCHAUB: Not yet.

12 BZA CHAIR MILLER: But you plan to
13 put them in the record?

14 MS. SCHAUB: Yes. How do we do
15 that?

16 BZA CHAIR MILLER: Do you have
17 copies for the Board or just one copy right
18 now?

19 MS. SCHAUB: I have just one copy
20 right now.

21 BZA CHAIR MILLER: Is it short?
22 If you want to just let us know what it says?

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1 MS. SCHAUB: Very short.

2 BZA CHAIR MILLER: Okay. That
3 would be good, then. Why don't you read it?

4 MS. SCHAUB: "Board of Zoning
5 Adjustment, our family lives next door to
6 Patricia Schaub in 1120 Park Street,
7 Northeast, Washington, D.C. Pat is applying
8 for a special exception, application number
9 17847. Other than a sense of envy, we have no
10 objections to the work she had done.
11 Sincerely, Andrew Daley." And it has his cell
12 phone number, "(202) 409-1935."

13 BZA CHAIR MILLER: And what is the
14 address on that letter?

15 MS. SCHAUB: That's 1120. So
16 that's on the east side of my house.

17 BZA CHAIR MILLER: Okay. The
18 second one is "Board of Zoning Adjustment, I
19 am writing to support the request of my
20 neighbor, Patricia Schaub, 1118 Park Street,
21 for a zoning adjustment. I live next door to
22 Ms. Schaub at 1116 Park Street, Northeast.

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1 Phyllis Thorborn." And she's on the west side
2 of my house.

3 BZA CHAIR MILLER: Okay. Thank
4 you. Anything else?

5 MS. SCHAUB: No.

6 BZA CHAIR MILLER: Any questions
7 from Board members?

8 (No response.)

9 BZA CHAIR MILLER: Okay. Why
10 don't we turn to the Office of Planning?

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

15 I will also stand on the record
16 and just state that the Office of Planning
17 recommends approval and finds that the project
18 meets the standards for special exception
19 under section 223. And I'll take any
20 questions.

21 BZA CHAIR MILLER: Thank you. I
22 just have one question on page 3 of your

1 report, where you said that you requested
2 "additional drawings to clearly depict the
3 work, including a rear elevation site plan and
4 an explanation of the existing photos or
5 additional ones of the existing conditions."
6 Has that been addressed?

7 MS. JACKSON: Yes. The applicant
8 has submitted a rear elevation. And I
9 actually -- that's been satisfied. It came in
10 after the report was filed.

11 BZA CHAIR MILLER: Right. I just
12 wanted to make sure those documents satisfied
13 your concerns. Okay.

14 Any other questions?

15 VICE CHAIRPERSON LOUD: Just a
16 very brief question also. I thought it was a
17 great report, and I am supportive of the
18 application and will be voting in favor of it.
19 But a very basic question, why is this
20 considered a court under section 406?

21 The way I look at the drawing and
22 review I guess the application, it's not open

1 to the sky unless I'm missing and not totally
2 understanding the -- it is open to the sky?
3 Okay.

4 All right. Let me just take
5 another look at the drawings and the plans.
6 But that won't affect my support for the
7 project.

8 BZA CHAIR MILLER: While Mr. Loud
9 is looking through that, I just want to ask,
10 is anyone here from the ANC? Yes? Good
11 morning. Would you introduce yourself for the
12 record, please?

13 MR. HOLMES: I'm David Holmes.
14 I'm the Vice Chair of ANC-6A and the
15 commissioner for this property.

16 The applicant here has inherited
17 irregularities in lot occupancy and court
18 requirements. Had the person who partially
19 filled in the dogleg court on this property
20 come before us, the ANC would have resisted.
21 Doglegs are a defining characteristic of the
22 Capitol Hill historic district.

1 In the current case, the
2 applicant, Ms. Schaub, did not create the
3 problems, either of excessive lot occupancy or
4 of the partial in-fill.

5 The addition does not exacerbate
6 the problems. So ANC-6A by unanimously
7 adopted motion strongly recommends that the
8 applicant be given the special exceptions
9 necessary to complete her second floor
10 addition.

11 That completes my statement.

12 BZA CHAIR MILLER: Thank you. And
13 we also have a letter from the ANC saying
14 there was a resolution voted on, 6:0, to
15 support the request.

16 MR. HOLMES: That's correct, but
17 I'm not here -- I don't claim party status.
18 It doesn't seem necessary.

19 BZA CHAIR MILLER: Okay. Yes.
20 Good. Thank you. You automatically have
21 party status. So if you have any questions?

22 (No response.)

1 BZA CHAIR MILLER: Okay. Did you
2 have any further questions, Mr. Loud?

3 (No response.)

4 BZA CHAIR MILLER: Okay. Anybody
5 else? Is there anybody here who wishes to
6 testify in support of this application?

7 (No response.)

8 BZA CHAIR MILLER: Anybody here
9 who wishes to testify in opposition to this
10 application?

11 (No response.)

12 BZA CHAIR MILLER: Any closing
13 remarks?

14 MS. SCHAUB: We request a bench
15 ruling. Is that the appropriate term?

16 BZA CHAIR MILLER: Yes. We know
17 what you're talking about. Okay. After we
18 deliberate, if we rule in your favor, as there
19 is no party in opposition, we could issue you
20 a bench decision I guess you want. We will
21 deliberate today. So we will issue you a
22 bench decision today, yes.

1 MS. SCHAUB: Thank you

2 BZA CHAIR MILLER: And then the
3 second issue that arises is whether it would
4 be a summary order or a full order. And if
5 there's no party in opposition, it can be a
6 summary order, which is quicker.

7 MS. SCHAUB: Thank you.

8 BZA CHAIR MILLER: Any other
9 questions by Board members?

10 (No response.)

11 BZA CHAIR MILLER: And you don't
12 have anything else you want to add, correct?
13 All right. Then okay.

14 I would move approval of
15 application number 17847 of Patricia A. Schaub
16 pursuant to 11 DCMR 3104.1 for a special
17 exception to allow a second story addition to
18 an existing one-family row dwelling under
19 section 223, not meeting the lot occupancy,
20 section 403; and court, section 406
21 requirements, at premises 1118 Park Street
22 Northeast. Do I have a second?

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1 VICE CHAIRPERSON LOUD: Second,
2 Madam Chair.

3 BZA CHAIR MILLER: Okay. I'm just
4 going to do this very, very quickly because
5 this is very straightforward, I think, in that
6 the property was already nonconforming with
7 respect to lot occupancy and court. And
8 neither of those nonconformities are being
9 increased.

10 And the footprint is remaining the
11 same. And the lot occupancy is 69.9 percent,
12 which is under the 70 percent threshold for
13 special exception relief under 223.

14 The Office of Planning did a very
15 thorough report, going through each of the
16 elements under 223. And I just want to
17 highlight a few points, in addition to what I
18 have already said. They found that the
19 privacy of use and enjoyment of neighboring
20 properties will not be unduly compromised.

21 The addition doesn't encroach
22 further into the rear yard. It has a similar

1 projection. The balcony has a similar
2 projection as that of the adjacent house to
3 the west.

4 The addition doesn't increase the
5 height of the existing building, and it is in
6 keeping with the character and scale of the
7 other homes on the block. And the project has
8 been approved by the Historic Preservation
9 Office.

10 So ANC is in support. The
11 neighbors on each side are in support. So I
12 don't see if there is any adverse impacts on
13 the adjoining properties.

14 So I think that covers the
15 highlights. Anybody else want to add
16 anything?

17 MEMBER WALKER: Madam Chair, we
18 should also point out that the Department of
19 Transportation has also reviewed the
20 application and has no objection. And their
21 report is at exhibit 26.

22 BZA CHAIR MILLER: Great. Thank

1 you very much.

2 Anything else?

3 (No response.)

4 BZA CHAIR MILLER: Not hearing
5 any, all those in favor say aye.

6 (Whereupon, there was a chorus of
7 "Ayes.")

8 BZA CHAIR MILLER: All those
9 opposed?

10 (No response.)

11 BZA CHAIR MILLER: All those
12 abstaining?

13 (No response.)

14 BZA CHAIR MILLER: And would you
15 call the vote, please?

16 MS. BAILEY: Madam Chair, the vote
17 is recorded as 5:0:0 to grant the application.
18 Mrs. Miller made the motion. Mr. Loud
19 seconded. Mr. Hood, Mr. Dettman, and Mrs.
20 Walker support the motion.

21 BZA CHAIR MILLER: Okay. And this
22 can be a summary order as there is no party in

1 opposition.

2 Okay. Thank you very much.

3 MS. SCHAUB: Thank you.

4 MS. BAILEY: Ms. Schaub, could we
5 have those letters?

6 BZA CHAIR MILLER: We're ready for
7 the next case, Ms. Bailey, when you are.

8 D.C. TEACHER'S FEDERAL CREDIT UNION
9 APPLICATION NO. 17842 - ANC-6A

10 MS. BAILEY: Madam Chair, it's
11 application number 17842. This is the
12 application of the D.C. Teacher's Federal
13 Credit Union. And it's pursuant to 11 DCMR
14 3103.2 for a use variance to allow the
15 continued use of the former Edmonds public
16 school for general office use under section
17 330.5. The property is located in the R-4
18 district at premises 901 through 903 D Street,
19 Northeast, square 938, lot 809.

20 Members of the Board, as Madam
21 Chair had alluded to before, there is a
22 request from ANC-6A for the rescheduling of

1 the case for another 30 to 60 days. And,
2 secondly, the affidavit of posting issue was
3 brought up previously.

4 BZA CHAIR MILLER: Okay. Would
5 the parties in this case please come forward?
6 Good morning. Would you introduce yourselves
7 for the record, please?

8 MR. MAIDEN: My name is Bill
9 Maiden. I'm the applicant on behalf of the
10 D.C. Teacher's Federal Credit Union.

11 MR. BURRELL: Good morning. I'm
12 James Burrell. And I'm representing D.C.
13 Teachers.

14 MR. LEVERMOORE: John Levermoore.
15 I'm a consultant structural engineer with the
16 firm of Maiden and Associates.

17 MR. HOLMES: And I'm David Holmes,
18 designated representative of ANC-6A.

19 BZA CHAIR MILLER: Mr. Burrell,
20 how are D.C. Teachers related to the case?
21 You represent D.C. Teachers?

22 MR. BURRELL: Yes.

1 BZA CHAIR MILLER: Did you file
2 anything in this case or how are you related
3 to the case?

4 MR. BURRELL: The credit union.

5 BZA CHAIR MILLER: Oh, you are
6 with the credit union, D.C. Teacher's Credit
7 Union?

8 MR. BURRELL: Yes.

9 BZA CHAIR MILLER: Okay. I'm
10 sorry. So you're the applicant with Mr.
11 Maiden?

12 MR. BURRELL: Yes.

13 BZA CHAIR MILLER: And the
14 structural engineer is with the applicant.
15 Okay. Good. And I don't see Mr. Peterson
16 here with the Capital Home Restoration
17 Society.

18 As Ms. Bailey mentioned, we see in
19 our record filings requesting postponement
20 one. Mr. Peterson states that the property
21 wasn't posted according to our regulations.
22 And then the ANC, as we understand, is asking

1 for a postponement to work out your response
2 to conditions they proposed. Is that correct?

3 MR. HOLMES: That's correct.

4 BZA CHAIR MILLER: Now, what is
5 the applicant's position on the postponement
6 for either of those reasons?

7 MR. MAIDEN: Well, I'm Bill
8 Maiden. We have no problem with the
9 postponement. However, some of those
10 conditions we have to work out as far as
11 building permits. And we cannot do it until
12 we get a certificate of occupancy.

13 So things like that are cosmetic
14 landscaping maybe we can do some of those
15 things. But the other things, such as
16 screening for air conditioning units, cannot
17 be done until we get a building permit. And
18 we are unable to get a building permit until
19 we can somehow get the variance resolved.

20 MR. HOLMES: Madam Chair, at the
21 point at which agreement is reached, we would
22 hope that BZA could embody that decision

1 between the ANC and the Teacher's Credit Union
2 in the BZA order. Therefore, they could
3 proceed and then at that point go to seek the
4 permits.

5 BZA CHAIR MILLER: Okay. You're
6 talking in fairly general terms. So it's hard
7 for me to respond. But first I would say that
8 the conditions that the Board would consider
9 imposing would need to be for the purpose of
10 mitigating. Well, in general the standard is
11 to mitigate the relief that is being granted.

12 It may be that it's not always
13 that the Board agrees with proponents of
14 conditions. So I can't right now guarantee
15 that the Board would embody all conditions
16 proposed by parties. Sometimes parties agree
17 to conditions outside the order that are still
18 enforceable.

19 I mean, in some of them, for
20 instance, they may not be in our jurisdiction.
21 Some of these might involve public space.
22 Then we don't have the authority to require

1 something not within our jurisdiction.

2 It seems to me that you all could
3 work out agreements or whatever, even if they
4 couldn't be implemented until later down the
5 road for the purposes of these proceedings.
6 So I don't believe the proceedings -- these
7 proceedings wouldn't wait for you to get a
8 building permit related to your air
9 conditioning unit.

10 MR. MAIDEN: Well, the problem is
11 with DCRA, they won't take the permit
12 application without a certificate of
13 occupancy. We have already agreed to what the
14 ANC wants. We have to sit down with them and
15 show them exactly and work with them, but we
16 generally agree to it.

17 But we cannot get the building
18 permit. Well, we can't even apply for it. We
19 tried already. And they won't take the permit
20 application unless we have a certificate of
21 occupancy. We cannot get a certificate of
22 occupancy unless we renew the variance. I

1 mean, we are kind of stuck in that position.

2 MR. HOLMES: If I can speak to
3 this again? I didn't receive notification
4 that these were going to agree to any of these
5 conditions until Thursday of this last week,
6 which is the basis of my request for
7 postponement.

8 I'm delighted just to keep them as
9 neighbors. Nonetheless, we need to see
10 something. Nothing has been presented to us
11 yet, and it's been five, six weeks since we
12 first had conversations with the architects on
13 this matter. So we would like to see
14 something before we agree to it.

15 BZA CHAIR MILLER: So it sounds
16 like you all agree to a postponement in order
17 to come to a more concrete agreement.

18 MR. HOLMES: Okay.

19 BZA CHAIR MILLER: So, Board
20 members, is there an objection to that?

21 ZC CHAIR HOOD: Madam Chair, I
22 haven't sat on the original case. I don't

1 have any objection. And I'm glad to hear
2 Commissioner Holmes sound as though it's not
3 any major issue, but because I know previously
4 in 1999, it was overwhelmingly a lot of
5 support for this project.

6 I don't necessarily know if I
7 agree with Mr. Peterson driving by and not
8 seeing it posted as people do in this city
9 take things down. But I would encourage the
10 applicant to make sure that if that's the
11 issue, that it's properly posted.

12 Thank you, Madam Chair.

13 BZA CHAIR MILLER: We will look
14 for another day on our calendar. I just want
15 to make a comment about I've read the filings.
16 I haven't heard the testimony yet.

17 But I think that Mr. Peterson
18 raised a question about use of the building
19 consistent with the comprehensive plan would
20 be a charter school or something to that
21 effect.

22 And I think when you are going for

1 a use variance, you might think about whether
2 you can say more with respect to why it would
3 be an undue hardship to use the building for
4 a matter-of-right use. And he raised that
5 point after you filed your pleading. So you
6 might think about that.

7 That is one of the questions that
8 I have in my mind as a head's up. And I would
9 be interested in Office of Planning's
10 response. And that can be at the hearing as
11 well. I think Mr. Peterson made an
12 interesting point.

13 And the other thing is that you
14 had a use variance granted once before. And
15 it's terminated. And I guess my other
16 question would be, how have things worked out?
17 This variance, how has it worked? Have
18 conditions changed since when you got the use
19 variance before?

20 Okay. I would like to look at our
21 calendar. Mr. Moy, have you looked at the
22 calendar in the meantime while I have been

1 talking, by any chance?

2 MR. MOY: Yes. While I was doing
3 that, I was listening, Madam Chair. A
4 question for the Chair and the Board. Is the
5 ANC bringing this back before their meeting in
6 December?

7 BZA CHAIR MILLER: Are you going
8 to bring -- do you mean like if you come to an
9 agreement with the applicant, then is that
10 something that you would need to have voted on
11 at your ANC meeting?

12 MR. HOLMES: No. I am designated
13 specifically to accomplish all the
14 negotiations myself. And I don't expect this
15 will take any time.

16 ZC CHAIR HOOD: Madam Chair, do we
17 have something to that effect? I may have
18 missed it. I'm pretty sure --

19 BZA CHAIR MILLER: We have --

20 MR. HOLMES: Two-two-five 9th
21 Street is scheduled on December 16th. It's
22 also this ANC, just down the block.

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1 ZC CHAIR HOOD: But, I mean, do we
2 have anything designated.

3 MR. HOLMES: The question is
4 whether this can be done by the architect and
5 the credit union in sufficient time.

6 MR. MOY: Yes.

7 BZA CHAIR MILLER: That is the
8 December 16th meeting?

9 MR. MOY: Yes.

10 BZA CHAIR MILLER: Okay. Let me
11 look at what is available after the 16th.

12 ZC CHAIR HOOD: I guess my
13 question, Madam Chair, Commissioner Holmes
14 said he was designated. From that point on,
15 designated for all agreements and everything?
16 Do we have that in the letter?

17 BZA CHAIR MILLER: Well, I'm
18 looking at exhibit 25. And it's the November
19 14th, 2008 report. If this is what Mr. Holmes
20 is referring to, it says, "In addition, the
21 Commission designated Commissioner David
22 Holmes as our representative for this case,

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1 invested him with the power to determine our
2 ultimate decision to support or oppose the use
3 variance." Is that what you're referring to?
4 Okay.

5 MR. HOLMES: Yes.

6 BZA CHAIR MILLER: I don't know.
7 I think it would be better if you had a
8 meeting approving specific conditions.

9 MR. HOLMES: I'm happy to provide
10 it.

11 BZA CHAIR MILLER: Okay.

12 ZC CHAIR HOOD: My question was
13 basically for the protection of you.

14 MR. HOLMES: Yes, sir. Thank you.

15 MR. MOY: In that event, Madam
16 Chair, I'm assuming that the ANC meets
17 December the 9th, which would be the second
18 Tuesday in December. So for the BZA, I mean,
19 you could meet on this case as early as the
20 16th if you choose to. But December 16th is
21 a very heavy day.

22 BZA CHAIR MILLER: And what's the

1 next? Let's look and see what the next date
2 is now.

3 MR. MOY: The next date would be
4 January 6. If the applicant has pressing
5 issues, my urge would be to meet earlier than
6 that.

7 BZA CHAIR MILLER: Does the
8 applicant have pressing time issues on this or
9 are you just able to say, you know, using the
10 property in the meantime?

11 MR. MAIDEN: Well, the property's
12 being used every day. We would like to get it
13 done as soon as possible. The 16th is good
14 for us, but if we have to wait until January,
15 that's fine, too.

16 BZA CHAIR MILLER: But our order
17 isn't going to affect when you can do
18 something at this point. There's no
19 construction depending on it. It's just a
20 continuation. Is that right?

21 MR. MAIDEN: No construction
22 depending on it, no. We have to work it out

1 with the ANC.

2 BZA CHAIR MILLER: Right. Okay.

3 (Pause.)

4 BZA CHAIR MILLER: Okay. I guess
5 we'll put you on January 6 in the afternoon.
6 Is that all right with everybody's schedule?

7 MR. HOLMES: Yes, Madam Chair.

8 BZA CHAIR MILLER: Okay. Great.

9 MR. MAIDEN: Yes.

10 BZA CHAIR MILLER: Okay. Any
11 questions before you go?

12 (No response.)

13 BZA CHAIR MILLER: If you do come
14 to an agreement or whatever, it would be
15 useful to file it in advance of the hearing.
16 The more we get in advance, the more
17 streamlined will be the hearing.

18 MR. MAIDEN: I'm pretty sure we'll
19 come to an agreement.

20 BZA CHAIR MILLER: Okay.

21 ZC CHAIR HOOD: Madam Chair, let
22 me ask, January 6, is this going to be the

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1 last case?

2 BZA CHAIR MILLER: I'm not sure.
3 Do you want it to be because you're sitting on
4 it?

5 ZC CHAIR HOOD: I'm only one
6 person.

7 BZA CHAIR MILLER: Right.

8 ZC CHAIR HOOD: But I have a
9 standing obligation the first Tuesday of every
10 month. We want to move it one person. Maybe
11 can we make it the first case of the
12 afternoon?

13 BZA CHAIR MILLER: Yes, we can do
14 that.

15 ZC CHAIR HOOD: Okay. Thank you
16 very much.

17 BZA CHAIR MILLER: The first case?
18 I'm sorry. I didn't know you had that in your
19 schedule. Can you still do this?

20 ZC CHAIR HOOD: Yes, yes, if you
21 make it the first case. Thank you.

22 BZA CHAIR MILLER: Also if you did

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1 want to file any additional points responding
2 to the points that I made, you are welcome to
3 do that in advance of the hearing as well and
4 serve on the ANC.

5 Anything else?

6 MS. BAILEY: Madam Chair? Sorry.
7 Just for clarity, the applicant needs to post
8 a sign for 15 days and file an affidavit of
9 posting. We don't have one in the record at
10 this point. And you can come to the office,
11 and we'll be glad to give you an office across
12 the hall.

13 BZA CHAIR MILLER: Any other
14 questions?

15 MR. BURRELL: It is posted.

16 MS. BAILEY: It was posted
17 yesterday?

18 MR. BURRELL: Yes, yes.

19 BZA CHAIR MILLER: Ms. Bailey,
20 should they be posted with the right date of
21 the hearing?

22 MS. BAILEY: Yes, Madam Chair. I

1 would suggest that it be posted with the
2 January 6 date because that is when the next
3 hearing is going to be.

4 MR. MAIDEN: Fine. We would have
5 to come and get a new sign, I believe.

6 BZA CHAIR MILLER: You're right
7 here, though. You can go on over and get one.
8 Right, Ms. Bailey?

9 MS. BAILEY: Yes, ma'am.

10 BZA CHAIR MILLER: You can just go
11 right from here to there, yes. Okay? All
12 right. Thank you very much.

13 MR. MAIDEN: Thank you.

14 BZA CHAIR MILLER: We're ready
15 when you are, Ms. Bailey, with the last case
16 in the morning.

17 MS. BAILEY: Thank you, Madam
18 Chair.

19 HAY ADAMS HOLDINGS LLC

20 APPLICATION NO. 17843 - ANC-2B

21 MS. BAILEY: That is application
22 number 17843 of the Hay Adams Holdings LLC.

1 It is pursuant to 11 DCMR section 3104.1 for
2 a special exception from the roof structure
3 setback requirements under section 770.6 and
4 411 to allow the construction of an addition
5 to an existing hotel in the C-4 district,
6 pending map amendment to the SP-2 district, at
7 premises 800 16th Street, Northwest, square
8 186, lot 809.

9 BZA CHAIR MILLER: Good morning.
10 Why don't you introduce yourselves for the
11 record, please?

12 MR. GLASGOW: For the record, my
13 name is Norman M. Glasgow, Jr., the law firm
14 of Holland and Knight, here representing the
15 Hay Adams Holdings LLC. Also in attendance
16 here today are Mr. Page Lansdale of Hay Adams
17 Holdings LLC and BF Saul; Mr. Warren Cox,
18 architect of the project; and Mr. Steven Sher,
19 who is a land planner.

20 BZA CHAIR MILLER: Okay. Your
21 application is pretty straightforward as well,
22 not quite as simple but pretty

1 straightforward.

2 MR. GLASGOW: We are ready to rest
3 on the record and answer questions if that's
4 the way the Board would like to proceed.

5 BZA CHAIR MILLER: Well, let's
6 see. First of all, I do have a question. And
7 I just want to confirm my assumption that you
8 wish to proceed on the basis of a special
9 exception, as opposed to a variance that was
10 raised by the Office of Planning.

11 MR. GLASGOW: That is correct.
12 This Board has consistently held that this is
13 a special exception application. We're a
14 little surprised to keep seeing that issue get
15 re-raised by the Office of Planning given the
16 Board's consistent rulings on this issue,
17 three times within the past year.

18 And then we had submitted a
19 booklet in one of those prior cases -- let's
20 see. It was application number 17679, where
21 I think we submitted like 25 or 30 precedents
22 that this is a special exception application.

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1 BZA CHAIR MILLER: Okay. That's
2 what I assumed. Yes. I think we have, and I
3 think the Board or the majority of the Board
4 and the Office of Planning I think have agreed
5 to disagree.

6 So I guess they recognized our
7 decisions, at least, in their memorandum. And
8 they just wanted to I guess be on the record
9 with that position.

10 But I don't see the Office of
11 Planning here. Oh, okay.

12 BZA CHAIR MILLER: Good morning,
13 Ms. Thomas.

14 MS. THOMAS: I'm sorry. Good
15 morning, members of the Board.

16 BZA CHAIR MILLER: We're moving a
17 lot more quickly today.

18 MS. THOMAS: I'm sorry about that.

19 The Office of Planning is
20 recommending approval of variance relief in
21 this case, rather than special exception, as
22 the applicant applied for. Based on our

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1 belief that the code specifically excludes
2 section 411.2, which refers to the setback
3 ratio for the roof structures.

4 So we are recommending relief,
5 approval of relief, based on variance, on the
6 variance requirements.

7 BZA CHAIR MILLER: Okay. You're
8 not disapproving special exception relief, are
9 you? You're just taking the position that you
10 think it should be a variance based on your
11 interpretation of the words in 411.11?

12 MS. THOMAS: That's correct.
13 We're not disapproving.

14 BZA CHAIR MILLER: Okay. I'm not
15 sure if you heard, but I was just getting
16 confirmation from the applicant that they wish
17 to proceed under special exception.

18 And I said that basically this
19 issue has come up a few times. And you
20 reference it in your memorandum. And
21 basically the Board and the Office of Planning
22 have agreed to disagree on this.

1 MS. THOMAS: That's correct, yes.

2 BZA CHAIR MILLER: Okay. I'm just
3 going to make one other comment on this in
4 that the Office of Attorney General took
5 another look at this language. And obviously
6 they looked at it before with us on our
7 previous orders.

8 They made a comment that the
9 language reads in 411.11 that it references
10 "special exception under 3104, the location,
11 design number, and all other aspects of such
12 structure regulated under 411.3 through
13 411.6."

14 Their point that they communicated
15 to us is that structures referenced or
16 regulated under 411.3 through 411.6 include
17 penthouses. So that was just another angle on
18 this. You might want to take another look at
19 the words.

20 Anyway, we can move beyond that.
21 Basically you want to basically stand on the
22 record, Mr. Glasgow.

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1 MR. GLASGOW: Yes. We are
2 prepared to stand on the record. We have been
3 to the Commission of Fine Arts on this
4 project, the Historic Preservation Review
5 Board. We have had it reviewed by the U.S.
6 Secret Service. We have unanimous support of
7 the ANC.

8 We have been to the Zoning
9 Commission to rezone the site so that we could
10 put this addition on the site. The plans were
11 not technically in front of the Zoning
12 Commission, but they were filed for
13 informational purposes.

14 So we have had a lot of approvals.
15 We understand we're in a sensitive location,
16 but everybody has approved this project. And
17 now this is the very last step.

18 BZA CHAIR MILLER: Well, let me
19 ask you this. The Zoning Commission order
20 that rezoned the property, has that been
21 published in the register yet?

22 MR. GLASGOW: No, it has not been

1 published, but the Commission took final
2 action in October of this year. So we assume
3 that we would have a BZA order assuming that
4 you approved the application that would be
5 contingent upon the issuance of the Zoning
6 Commission rezoning of the site to C-4.

7 BZA CHAIR MILLER: Ms. Thomas, do
8 you know when that is going to be published in
9 the D.C. Register, by any chance?

10 MS. THOMAS: I don't have data,
11 but it should be by next month.

12 MR. GLASGOW: That sounds about
13 right.

14 MS. THOMAS: Yes.

15 MS. GLAZER: Madam Chair, Mr. Moy
16 is going to check with staff to see if we can
17 pin down the date.

18 BZA CHAIR MILLER: Great. Thank
19 you.

20 ZC CHAIR HOOD: May I ask?

21 BZA CHAIR MILLER: Yes, please.

22 ZC CHAIR HOOD: I actually thought

1 this was going to fall off. I know when the
2 Zoning Commission dealt with it, there was a
3 map amendment. Why at the time did we not
4 deal with the whole gamut?

5 I know there was a map amendment
6 and maybe come back with the other relief all
7 at one time in front of the Commission. Why
8 did we go in this order? I'm asking for my
9 own.

10 MR. GLASGOW: Yes. We addressed
11 that at the Commission. You may recall there
12 was a question as to whether or not there
13 should be a planned unit development. And
14 there was a dialogue between the applicant and
15 the members of the Commission that there was
16 not a process similar to a special exception
17 available to the Commission.

18 So that we either had a PUD for a
19 site that is about 12,000 square feet with a
20 9,000 square foot addition called for in the
21 comprehensive plan. I think everybody
22 recognizes that doing a PUD for that did not

1 make sense.

2 But in order for us to be able to
3 proceed because we were in the SP zone with a
4 90-foot height limit and the building is
5 approximately 90 feet right now, that we
6 needed to have a map amendment, which was
7 consistent with the comprehensive plan because
8 we are designated high-density commercial,
9 that it was appropriate to go ahead and rezone
10 the site and that we would follow up with the
11 Board of Zoning Adjustment with the roof
12 structure setback relief, which is like three
13 and a half feet on the north side of the
14 building and one and a half feet on the west
15 side of the building.

16 It's just that we didn't have a
17 structure in place. And I think Ms.
18 Steingasser made a comment, saying that maybe
19 there would be some performance-based
20 regulations coming in as part of the zoning
21 rewrite.

22 That may better address this type

1 of situation so we're not going to the Zoning
2 Commission one month to get a property rezoned
3 and then coming here before the Board of
4 Zoning Adjustment for a pretty minor special
5 exception.

6 ZC CHAIR HOOD: Okay. Your memory
7 is a lot better than mine. Thank you.

8 VICE CHAIRPERSON LOUD: Good
9 morning, Mr. Glasgow.

10 MR. GLASGOW: Good morning.

11 VICE CHAIRPERSON LOUD: First let
12 me note that I do support the application, and
13 I look forward to the opportunity to vote for
14 it today if we do that; if not today, at the
15 first opportunity that we do vote for it.

16 But I do want to ask a question
17 about the Historic Preservation Review Board
18 report, which is at exhibit 24. When I look
19 at that report, it looks like they supported
20 the application provided there was the
21 one-to-one setback. That's at exhibit E.

22 MR. GLASGOW: That was a

1 one-to-one setback on the south and the east
2 frontages.

3 VICE CHAIRPERSON LOUD: In other
4 words, where you currently meet the one-to-one
5 setback.

6 MR. GLASGOW: That's right. And
7 we set back the building and sloped the roof
8 specifically to address that. They didn't
9 have any issue with where we were on the
10 setback on that northwest corner of the site,
11 where we're tucked furthest away from the
12 White House and Lafayette Square.

13 VICE CHAIRPERSON LOUD: I gathered
14 that that would be your position because of
15 what you represented in your pleadings, but is
16 that in the report itself? Am I overlooking
17 that part of the report? The language is
18 pretty broad in terms of the --

19 MR. GLASGOW: Well, they say the
20 concept of a one-story addition, which we
21 have, albeit one that is set back from the
22 elevations at a one-to-one ratio.

1 And they were talking about the
2 16th Street because you have the 16th Street
3 historic district and you have the fronting on
4 Lafayette Square. And those were the historic
5 frontages that they are talking about. It's
6 those elevations.

7 VICE CHAIRPERSON LOUD: Thank you
8 for clarifying that. The other question I had
9 was just to understand. I'm not certain where
10 the Board is going this morning. Are you of
11 the opinion, I guess, that the Board could
12 rule on this today and just put a condition in
13 our decision that would tie the effectiveness
14 to the formal approval of the 08-02 ZC order?

15 MR. GLASGOW: Yes, sir. We had
16 something very similar to this with a case
17 that I had tried where the apartment building
18 is at 450 Massachusetts Avenue, the Paradigm.
19 I think my client right at that point in time
20 was DRI. It was Greg Fazakerly.

21 And we were in the process of
22 rezoning the site and went to the Board of

1 Zoning Adjustment and had a series of relief
2 for that major apartment building that is
3 there.

4 And I think that we went to the
5 Board in the interim. It was not rezoned.

6 VICE CHAIRPERSON LOUD: As a
7 practical matter, does it make any difference
8 to the applicant if the Board sets this for a
9 decision at a later date that coincides with
10 the ZC 08-02 formally being effective? Does
11 that create any practical concerns?

12 MR. GLASGOW: Well, I'm thinking
13 maybe there's a different way to do that, to
14 vote on the case now and then issue the order
15 after the Zoning Commission issues its
16 decision. So the order can just be dated
17 after.

18 VICE CHAIRPERSON LOUD: Thanks.

19 BZA CHAIR MILLER: Since we have a
20 little time, I wouldn't mind your showing why
21 you need the relief a little bit, explaining,
22 even though this case looks pretty clear-cut,

1 just so I can have a better idea of the
2 different components, the difficulties.

3 MR. GLASGOW: We can have Mr. Cox
4 just explain that briefly. I think a lot of
5 it has to do with all the setbacks with
6 respect to the historic preservation, where
7 the existing facilities are within the
8 building right at this point in time, and how
9 is it that you best address the square, the
10 overlook of the White House, 16th Street, and
11 then where logically these facilities should
12 be in that square given those sensitivities.

13 So, Mr. Cox, could you please
14 explain that to the Board?

15 BZA CHAIR MILLER: And also the
16 impact of the Zoning Commission order on the
17 plan?

18 MR. GLASGOW: While Mr. Cox is
19 getting set up, just briefly with respect to
20 that, we're currently in the SP zone. An that
21 has a 90-foot height limit. And this between
22 the one-story addition and the roof structure

1 will end up at about 108 and a half feet above
2 from the point of measurement.

3 And so the rezoning allowed all of
4 this to fit. Because of the width of 16th
5 Street, the rezoning to C-4 consistent with
6 the high-density commercial designation on the
7 comprehensive plan allows all of this height
8 to go in this as a matter of right.

9 BZA CHAIR MILLER: What are the
10 changes in the height that are allowed in --

11 MR. GLASGOW: Ninety feet to 130
12 feet.

13 BZA CHAIR MILLER: A hundred and
14 30. Okay.

15 MR. GLASGOW: But our plan is for
16 a building that to the top of the roof
17 structure would be 108 and a half feet.

18 BZA CHAIR MILLER: Thank you.

19 MR. COX: This is the elevation of
20 the Hay Adams facing on Lafayette Square.
21 Sorry. Turned around. This is 17th Street
22 showing the site lines with the 45-degree

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1 setback and the penthouse set back off of
2 Lafayette Square and off of 17th Street.

3 The building is actually U-shaped,
4 which is why we wound up pushing the
5 penthouse, which I will show you in a moment,
6 back into this area. And it did come up
7 against the edge of the building.

8 The idea is to replace the
9 existing dining facility, which is basically
10 just an awning and some side curtains. And
11 they have to take everything up the stairs
12 from the top floor to serve it and then use
13 the bathrooms in the rooms below.

14 So the idea is to run some
15 elevators up and have a copper kitchen up
16 there and then have a glass-enclosed dining
17 area facing 17th Street and Lafayette Square
18 with a small fitness center back in the corner
19 and, then, of course, toilet facilities as
20 well.

21 So here would be the kitchen, and
22 here would be the dining areas. It's set back

1 with a small terrace on H Street and 16th
2 Street. And what you would see would be --
3 you don't really see very much. We'll show
4 you in a minute. It's basically a glass
5 pavilion.

6 Now, this is the roof plan. And
7 what we're proposing to do is put the
8 mechanical equipment over top of the kitchen
9 so that we would have kitchen area, bathrooms,
10 service area here. And then this is the
11 glass-roofed restaurant and fitness center.

12 This is just scattered all over
13 the roof. It's a mess. And it was
14 grandfathered in. And this will be all
15 shielded and effectively go away visually if
16 we can do this. So it would be up in here.

17 Then we have a couple of photo
18 montages showing what is there now and what
19 you will see in the future. This is that
20 awning running along the edge. And here is
21 the railing and the new structure, which is
22 set back farther than the existing.

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1 And here looking at it from
2 Lafayette Park -- of course, this is the
3 winter. In the summer, you can't see
4 anything. Here is the proposed structure, and
5 here is the existing. So it's really
6 considerably less visible and blends in I
7 think much better with the existing building.

8 BZA CHAIR MILLER: Thank you.
9 Great.

10 Any questions?

11 VICE CHAIRPERSON LOUD: Just real
12 briefly and probably for the lawyer. Can you
13 explain to me again why you wouldn't be
14 seeking special exception relief for the
15 entire height, which would include the fitness
16 center, the swimming pool, and the mechanical?

17 MR. GLASGOW: Because the roof
18 structure itself, which is embedded into the
19 northwest portion of the structure, is the
20 only thing that requires setback relief. The
21 rest of the building can go straight up to 130
22 feet.

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1 ZC CHAIR HOOD: You are not going
2 up to 130 feet.

3 MR. GLASGOW: No. This building
4 is -- I know. That was part of the questions
5 --

6 ZC CHAIR HOOD: Do you remember
7 that?

8 MR. GLASGOW: Yes. We had the
9 discussion. We were going to go up to 108 and
10 a half feet.

11 ZC CHAIR HOOD: Okay.

12 MR. GLASGOW: Remember, under the
13 Board's rules, similar to a PUD, but it's
14 right in the Board's rules that the approved
15 plans that you show to the Board are part of
16 the approval.

17 ZC CHAIR HOOD: Okay. Thank you.

18 BZA CHAIR MILLER: Okay. Any
19 other questions?

20 (No response.)

21 BZA CHAIR MILLER: Does Office of
22 Planning want to add anything more or were you

1 standing on the record?

2 MS. THOMAS: No. We'll stand on
3 the record in this case.

4 BZA CHAIR MILLER: Okay. Thank
5 you.

6 That was an excellent report.
7 Thank you. Any other questions from Board
8 members?

9 (No response.)

10 BZA CHAIR MILLER: Okay. At this
11 point, then -- oh, wait a minute. Is anybody
12 here from the ANC?

13 (No response.)

14 BZA CHAIR MILLER: Not seeing
15 anyone. Is there anybody here in support of
16 this application?

17 (No response.)

18 BZA CHAIR MILLER: Anybody here in
19 opposition to this application?

20 (No response.)

21 BZA CHAIR MILLER: Okay. Then
22 that brings us to closing remarks. Mr.

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1 Glasgow, do you or Mr. Sher just want to
2 highlight some closing remarks, including the
3 exceptional conditions that lead to practical
4 difficulties?

5 MR. GLASGOW: Well, I believe the
6 testimony in the record would show that the
7 situation and conditions that lead to meeting
8 the special exception relief for the setback
9 of the roof structure, one and a half feet on
10 the western side and three and a half feet on
11 the northern side, come from the size and
12 shape of the roof itself and that U-shape that
13 it has, the sensitivities of the design of the
14 building as it fronts 16th Street and
15 Lafayette Square across from the White House
16 lead to the conclusion that the mechanical
17 equipment should be pushed to the northern and
18 western portion of the site. And that is
19 where it is located. And in doing so and in
20 having additional setbacks that are at the
21 other two portions of the site lead to the
22 special exception relief.

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1 And we would like to have a bench
2 decision today with the understanding that the
3 order would not be issued -- and we would like
4 to have a summary order -- that that would not
5 be issued until after the Zoning Commission
6 final order comes out on the zoning case.

7 BZA CHAIR MILLER: Anything else?
8 Anyone?

9 (No response.)

10 BZA CHAIR MILLER: Do we have a
11 motion?

12 VICE CHAIRPERSON LOUD: I'll move,
13 Madam Chair. I would like to move approval of
14 application number 17843 for special exception
15 relief from the rooftop structure setback
16 requirements of section 770.6 and section 411.

17 BZA CHAIR MILLER: Second.

18 VICE CHAIRPERSON LOUD: Let me
19 start us off. And, colleagues, feel free to
20 jump in if I leave anything out, as invariably
21 I do.

22 This is a project to add a

1 one-story glass-enclosed kitchen, dining room,
2 and fitness center to the Hay Adams Hotel,
3 which results in approximately a nine-foot,
4 six-inch-high rooftop mechanical structure
5 penthouse that's set back only one and a half
6 feet from the west wall and about three and a
7 half feet from the north wall.

8 In light of the setbacks of the
9 mechanical penthouse not meeting the
10 requirements of section 770.6(b), I believe it
11 is, the applicant seeks special exception
12 relief under 411.11. And our analysis follows
13 through on the section 411.11 analysis.

14 The applicant does an excellent
15 job at exhibit 24 of walking through the
16 special exception relief. And I'm not going
17 to go through it in great detail. I will
18 mention a few things from it.

19 Generally it's laid out very well
20 in that exhibit. A nine-foot, six-inch
21 setback if attempted by the applicant in this
22 case would severely disrupt the applicant's

1 existing core elements of the elevator, the
2 stairs, and the mechanical systems, which are
3 currently in the central part of the building
4 and would have to be relocated, in addition to
5 which if the applicant were to attempt a
6 smaller mechanical penthouse for the one-story
7 addition that we're talking about, it would
8 significantly impair the operational
9 functionality of the hotel. So he's got some
10 genuine impracticalities in terms of trying to
11 meet the one-to-one requirement.

12 He has, as I indicated, at his
13 exhibit 24, beginning at page 6, walked
14 through a special exception analysis. And in
15 talking about some of the elements, he talks
16 about the difficulty of placing the penthouse
17 structure in a different location, the need to
18 place it directly where it is so that it
19 protects both the character of the historic
20 landmark and not disrupting the current
21 building core location.

22 It goes into some detail talking

1 about the existing elevators and stairs and
2 mechanical and ventilation systems being a
3 part of that existing core, in addition to
4 which the applicant walks us through the same
5 document through the evidence that suggest
6 there is no light and air adverse impact to
7 neighbors and that the intent and purpose of
8 chapter 400 of the zoning regs will be
9 respected in this case.

10 As I said, I don't want to walk
11 through every material representation the
12 applicant has made. This does receive support
13 from the Commission of Fine Arts. That is our
14 exhibit 24.

15 I'm sorry. I'm not certain if
16 there is a separate submission for Commission
17 of Fine Arts or not, but I know it's at your
18 exhibit 24, tab E.

19 MR. GLASGOW: Yes. We had a
20 presentation before the Commission of Fine
21 Arts.

22 VICE CHAIRPERSON LOUD: No. I'm

1 just saying I don't think that we have
2 independent from your exhibit 24 received --

3 MR. GLASGOW: Probably not.

4 VICE CHAIRPERSON LOUD: Okay. So
5 then I will reference your exhibit 24, tab E
6 as the letter from the Commission of Fine Arts
7 in support of the project as well as the
8 Historic Preservation Review Board and the
9 Secret Service.

10 The ANC supports it. That is our
11 exhibit 22. They met on August 13 with a full
12 quorum and, as indicated, support it.

13 The Office of Planning supports
14 it. I think they supported it under a
15 variance analysis. Madam Chair queried them
16 on whether or not they would support it under
17 a special exception analysis here this
18 morning. And they opine that they would
19 support it.

20 My support for it, I guess, Madam
21 Chair, is unconditional to the extent it is
22 unconditional. But it would be -- and I don't

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1 know if "condition" is the right word --
2 conditioned upon the formal approval of ZC
3 08-02 allowing the 130-foot height at the site
4 under the map amendment.

5 So I am fully in support of it and
6 want to vote on it this morning.

7 BZA CHAIR MILLER: Thank you. I
8 think that we shouldn't condition the order
9 but deal with it. Yes, it's the same thing,
10 though, basically deal with it in the manner
11 that Mr. Glasgow suggested, which would be to
12 hold the first issuance until the regulation
13 is in effect.

14 I think that was a great summary.
15 Office of Planning did an excellent report on
16 this as well as did the applicant. Just a
17 comment on 411.11 again. I think that it is
18 almost a distinction without a different
19 almost, the analysis for a variance and the
20 analysis under 411.11 there.

21 They're not exactly the same, but
22 in these instances and certainly this

1 particular instance, as you can tell by your
2 analysis -- and we're looking at -- 411.11
3 does talk to impractical because of specific
4 operating difficulties or size of building or
5 conditions relating to the building.

6 And in this case we have an
7 existing improvement. And it's an historic
8 landmark with the U shape. And that really
9 goes to the 411.11 special exception factor.
10 And it goes to the variance, what's
11 exceptional about the property. And then
12 certainly that all leads to practical
13 difficulty, which is referenced in 411.11,
14 which talks about impracticable because. And
15 you addressed why it was impractical to locate
16 the existing equipment in accordance with the
17 regulations.

18 We had another case also which
19 placed mechanical equipment so that they would
20 be less visible from important streets. And
21 I think this falls in that category as well.
22 And clearly there is no adverse impact that

1 has been brought to our attention.

2 Anything else anyone wants to add
3 about this? I think that it looks like it is
4 going to be quite nice and, in fact, be a
5 great improvement.

6 Did you reference that the ANC is
7 in support?

8 VICE CHAIRPERSON LOUD: I did,
9 Madam Chair.

10 BZA CHAIR MILLER: Okay. Good.
11 Anything else?

12 (No response.)

13 BZA CHAIR MILLER: Then all those
14 in favor say aye.

15 (Whereupon, there was a chorus of
16 "Ayes.")

17 BZA CHAIR MILLER: All those
18 opposed?

19 (No response.)

20 BZA CHAIR MILLER: All those
21 abstaining?

22 (No response.)

1 BZA CHAIR MILLER: And would you
2 call the vote, please?

3 MS. BAILEY: Madam Chair, the vote
4 is recorded as 5:0:0 to grant the application.
5 Mr. Loud made the motion. Mrs. Miller
6 seconded. Mr. Dettman, Mrs. Walker, and Mr.
7 Hood support the motion.

8 And the Board approved the
9 application with the understanding that the
10 order will not be issued until final action
11 has been taken by the Zoning Commission as it
12 is associated with case number 08-02 that is
13 the rezoning of the property from SP-2 to C-4.
14 At that time a summary order is to be issued.

15 BZA CHAIR MILLER: Ms. Bailey,
16 correction. I think the Zoning Commission has
17 taken final action. What we will be doing is
18 holding the order for issuance until the
19 regulation becomes --

20 MS. BAILEY: Publication?

21 BZA CHAIR MILLER: -- fully
22 effective and published in the Register.

1 MS. BAILEY: Thank you.

2 MR. GLASGOW: Until publication of
3 the final order.

4 MS. BAILEY: Okay.

5 BZA CHAIR MILLER: The publication
6 of the final order, which will make it legally
7 effective. Is that not correct? Okay. So
8 we're all understanding on that. Okay. Thank
9 you very much.

10 Ms. Bailey, do we have anything
11 else on the agenda for this morning?

12 MS. BAILEY: No, Madam Chair.
13 That's it.

14 BZA CHAIR MILLER: Okay. This
15 hearing is adjourned.

16 (Whereupon, a luncheon recess was
17 taken at 11:09 a.m.)
18
19
20
21
22

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

(1:09 p.m.)

BZA CHAIR MILLER: This hearing will please come to order. Good afternoon, ladies and gentlemen. This is the November 25th afternoon public hearing of the Board of Zoning Adjustment.

My name is RuthAnne Miller. I am the Chair of the Zoning Board. To my right is Mr. Marc Loud, our Vice Chair. And next to Mr. Loud is Mr. Anthony Hood, who is Chair of the Zoning Commission. To my left is Mary Oates Walker and Shane Dettman, who are Board members. And next to Mr. Dettman is Mr. Clifford Moy from the Office of Zoning, Ms. Sherry Glazer from the Office of Attorney General, and Ms. Beverley Bailey from the Office of Zoning.

Copies of today's hearing agenda are available to you and are located to my left in the wall bin near the door. Please be aware that this proceeding is being recorded

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

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

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

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

1 government reports, including Office of
2 Planning, Department of Public Works, DDOT, et
3 cetera; three, report of the Advisory
4 Neighborhood Commission; four, parties or
5 persons in support; five, parties or persons
6 in opposition; six, closing remarks by the
7 applicant.

8 Pursuant to sections 3117.4 and
9 3117.5 of the zoning regulations, the
10 following time constraints will be maintained:
11 the applicant, persons and parties, except an
12 ANC, in support, including witnesses, 60
13 minutes collectively; persons and parties,
14 except an ANC, in opposition, including
15 witnesses, 60 minutes collectively;
16 individuals, 3 minutes. These time restraints
17 do not include cross-examination and/or
18 questions from the Board.

19 Cross-examination of witnesses is
20 permitted by the applicant or parties. The
21 ANC within which the property is located is
22 automatically a party in a special exception

1 of variance case.

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

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

15 The Sunshine Act requires that the
16 public hearing on each case be held in the
17 open before the public. The Board may,
18 consistent with its rules of procedure and the
19 Sunshine Act, enter executive session during
20 or after the public hearing on a case for
21 purposes of reviewing the record or
22 deliberating on the case.

1 The decision of the Board in these
2 contested cases must be based exclusively on
3 the public record. To avoid any appearance to
4 the contrary, the Board requests that persons
5 present not engage the members of the Board in
6 conversation.

7 Please turn off all beepers and
8 cell phones at this time so as not to disrupt
9 these proceedings. The Board will make every
10 effort to conclude the public hearing as near
11 as possible to 6:00 o'clock p.m. If the
12 afternoon cases are not complete at 6:00
13 o'clock p.m., the Board will assess whether it
14 can complete the pending case or cases
15 remaining on the agenda.

16 At this time the Board will
17 consider any preliminary matters. Preliminary
18 matters are those that relate to whether a
19 case will or should be heard today, such as
20 requests for postponement, continuance, or
21 withdrawal or whether proper and adequate
22 notice of the hearing has been given.

1 If you are not prepared to go
2 forward with a case today or if you believe
3 that the Board should not proceed, now is the
4 time to raise such a matter.

5 Does the staff have any
6 preliminary matters?

7 MS. BAILEY: Madam Chairman,
8 members of the Board, to everyone, good
9 afternoon. Madam Chair, there may be a
10 preliminary matter associated with the last
11 case of the day.

12 Staff is asking the Board
13 indulgence so we can get clarification prior
14 to taking that matter up. So we will ask that
15 that matter be taken up at the end of the day
16 if that is appropriate for the Board.

17 BZA CHAIR MILLER: Okay. If it is
18 going to be very quick and the party is here,
19 we could take it up before the end of the day.
20 But my understanding is the party is not here
21 at this point. Is that correct?

22 MS. BAILEY: No, I don't think Mr.

1 Maiden is in the audience. He is not
2 responding, Madam Chair.

3 BZA CHAIR MILLER: Okay. So we'll
4 move forward. Okay. At this point, that is
5 the only preliminary matter, correct?

6 MS. BAILEY: That I am aware of,
7 Madam Chair.

8 BZA CHAIR MILLER: Would all
9 individuals wishing to testify today, then,
10 please rise to take the oath? And Ms. Bailey
11 will administer it.

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

14 (Whereupon, the witnesses were
15 sworn.)

16 801 VIRGINIA AVE LLC

17 BY PHILLIPS OCILLA DAVIS DEVELOPMENT LLC

18 APPLICATION NO. 17844 - ANC-6B

19 MS. BAILEY: Madam Chair, this is
20 application number 17844, 801 Virginia Avenue
21 LLC by Phillips Ocilla Davis Development LLC.
22 It is pursuant to 11 DCMR section 3103.2 for

1 a variance from the court requirements under
2 section 776 and a variance from the off-street
3 parking requirements under subsection 2101.1
4 to allow the construction of a new commercial
5 office building with ground floor retail at
6 premises 801 Virginia Avenue, Southeast. The
7 property is located in the Eighth Street
8 Overlay district. It is zoned C-3-A. And it
9 is located in square 929 on lot 7.

10 BZA CHAIR MILLER: Good afternoon.
11 Why don't we start with your introducing
12 yourselves for the record, please?

13 MR. DePUY: There. Madam Chair,
14 for the record, I am Jacques DePuy, attorney
15 with Greenstein, DeLorme and Luchs. We have
16 three witnesses this afternoon in this case.
17 To my immediate right is Karen Phillips
18 representing the applicant.

19 Next is Erwin Andres with
20 Gorove/Slade, a traffic engineer. And to my
21 far right is John Edwards, architect with
22 Bonstra Haresign.

1 Mr. Edwards will be our first
2 witness, but before he is called, I have a
3 very brief opening statement.

4 This is an application for a
5 commercial mixed-use project, office and
6 retail, in a commercially zoned area on a
7 commercial corridor in Capitol Hill, the
8 Eighth Street corridor. The project has been
9 designed to be consistent in all respects to
10 the overlay, the Eighth Street Overlay.

11 We are here before you requesting
12 two variances, two area variances, one for
13 parking and other for courts. For clarity,
14 there are two courts or, actually, three
15 courts, two of which are caused by an
16 encroachment and the third of which is caused
17 by the design and the shape of the property.

18 At this point I would call Mr.
19 Edwards, our first witness. Thank you.

20 MR. EDWARDS: Thank you.

21 My name is John Edwards. I am an
22 architect with Bonstra Haresign Architects.

1 We were the architects for the original
2 version of this project that was permitted in
3 2006 as well as the proposed conversion that
4 is before the Board today.

5 To give you a brief description of
6 the project, it is 7,635 square feet property
7 at the corner of Eighth Street, Southeast and
8 Virginia Avenue, Southeast in the Eighth
9 Street, Southeast commercial overlay, the
10 C-3-A zone.

11 It is in the Capitol Hill historic
12 district in the southern end of the Barracks
13 Row, Main Street. So it sits between the
14 Southeast/Southwest Freeway south of the
15 Marine barracks and just north of the Navy
16 Yard gate.

17 The majority of the buildings in
18 the vicinity of the project are commercial in
19 nature. Most of the buildings south of the
20 freeway within the historic district are
21 commercial. And that includes the adjacent
22 historic rowhouses that are immediately

1 adjacent to the building on the east side,
2 which have been converted to commercial use.
3 Those are these buildings here.

4 The design and use of the site,
5 this was originally designed as a four-story
6 mixed-use project, residential with retail and
7 commercial office space on the ground floor
8 and one level of below-grade parking.

9 At that time it had 13 parking
10 spaces in the below-grade garage, which was
11 sufficient under the zoning regulations at
12 that time for the residential and office use
13 that was proposed.

14 Because of the down turn in the
15 residential market over the last year and a
16 half, there were delays in starting
17 construction of this project, although it did
18 receive full permits from DCRA and approval
19 from the Historic Preservation Review Board.
20 And the current financial problems with the
21 housing market eventually led the owners to
22 seek to convert this from a residential use to

1 a totally commercial use.

2 So the present project has 2,998
3 square feet of retail on the ground floor and
4 approximately 19,840 square feet of commercial
5 office and core space above where the
6 residential used to be. And at the time that
7 conversion was started, we also augmented the
8 13 spaces in the garage underneath with 4
9 additional spaces by reintroducing a vault in
10 public space underneath the Virginia Avenue
11 right-of-way in front of the building, which
12 you can see in this section here.

13 The property line runs this way.
14 These four spaces were added to make a total
15 of 17 spaces in the first floor or the first
16 parking level below-grade parking.

17 I want to just briefly go through
18 the unique and exceptional circumstances
19 connected to the site that bring the
20 application before you today.

21 First, there is a significant
22 encroachment from the adjacent property. This

1 adjacent property here encroaches upon the
2 building approximately 1.5 feet on the
3 northeast corner along Virginia Avenue. And
4 that dwindles down to an encroachment of
5 around seven inches on the southeast corner
6 along L Street.

7 This encroachment, in effect,
8 because the building is designed to be built
9 alongside the existing historic fabric of the
10 building coming straight up, it results in an
11 inadvertent court, nonconforming court at the
12 third floor and fourth floor of the proposed
13 building over above the existing adjacent
14 structure there.

15 The second exceptional
16 circumstance of the site is that the
17 geotechnical report for this indicated a
18 significant amount of subsurface groundwater
19 at approximately 21 and a half feet below
20 grade.

21 The current level of the garage as
22 designed is 15 to 18 feet below grade. So

1 going down below that level would create a
2 significant practical technical difficulty as
3 well as an economic viability issue.

4 This is complicated because the
5 geotechnical report also indicated a probable
6 contamination of the soil because the property
7 was previously used as originally a gasoline
8 filling station and then as a service station
9 for a garage. So dealing with the excavation
10 of contaminated water below grade would create
11 quite a problem for that.

12 Another significant unique
13 characteristic of the site that you can see is
14 that it is what can best be described as a
15 notched trapezoid with the short side along
16 the adjacent property away from the street
17 facades along Virginia Avenue, Eighth Street,
18 and L Street.

19 And it's notched in a way because
20 of the property lines perpendicular to both
21 Virginia Avenue and L Street, which creates a
22 very unusual circumstance in which we need to

1 accommodate both the parking ramp going down
2 from the ground level as well as the 20-feet
3 required parking aisles and turning clearances
4 down below.

5 This is further complicated
6 because of the restrictions that we have on
7 curb cuts in the area. This is a result of
8 both the Overlay District, the Barracks Row
9 Main Street guidelines, and the community
10 reviews that we went through with the Capitol
11 Hill Restoration Society, and the Historic
12 Preservation Review Board.

13 All of these resulted in being
14 told that we cannot have curb cuts along
15 Eighth Street or along Virginia Avenue and we
16 cannot have a curb cut within 25 feet of the
17 corner of Eighth Street and L Street.

18 That necessitates the only curb
19 cut that we could have at the far southeast
20 corner of the side along L Street, which is
21 the most difficult place in order to get a
22 ramp down because of the constricted nature of

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1 the site at the eastern section.

2 This is further complicated the
3 last major conflicting or unique
4 characteristic of the site is because we are
5 required to have two egress stairs and a
6 handicapped access elevator on the lower
7 level.

8 The combination of the shape of
9 the site, the location of where the ramp comes
10 down, and the relatively significant amount of
11 floor area in the garage that is dedicated to
12 the staircases and the elevator seriously
13 constrains how we can lay out parking on the
14 lower level and limits the number of spaces
15 that can actually be fit and accommodated
16 within the footprint of the building.

17 I just want to briefly now go over
18 the area variances that we are requesting as
19 part of this application. The first, as Mr.
20 DePuy said, was a requested area variance for
21 a nonconforming court.

22 This, as I briefly touched on

1 before, is brought about primarily because of
2 the encroachment of the adjacent property that
3 creates this one and a half-foot court at the
4 third and fourth floor of the proposed
5 building.

6 The required court for this height
7 would be a 12-foot-wide court. This at its
8 widest point is only one and a half feet wide
9 at this section that you can see on the
10 elevation along that strip of the property.
11 It would bring this down to a seven-inch court
12 on the southern side of the section, the
13 southeast corner of the property.

14 It would require, at least -- if
15 we were to have a strict conformance of the
16 zoning code what we would be required to do
17 would be to cantilever out the structure of
18 the building over top the adjacent structure,
19 both for the fourth floor and partially for
20 the third floor, which would constitute a
21 significant technical viability as well as
22 economic viability to do that.

1 And also, more importantly, it
2 would create a significant detriment to the
3 historic integrity of the adjacent building,
4 which is a contributing structure within the
5 Capitol Hill historic district.

6 And we also feel that because this
7 building is proposed to be built alongside the
8 existing wall of the existing building, that
9 it would not present any perceivable existence
10 of this court from the street.

11 And because it is an historic
12 building, it is highly unlikely that there
13 would be any addition to the adjacent
14 structure going up above it. So that we don't
15 feel that there would be any detriment to air
16 and light to either the adjacent building or
17 to our structure in the future.

18 The second court, as Mr. DePuy
19 noted, occurs right at the peak of this
20 corner. Because of the acute angle of
21 Virginia Avenue and Eighth Street and the need
22 to best utilize that space economically, we

1 have a chamford bay that cuts across that
2 corner, which cuts off a small triangle at
3 that corner, which creates a six-foot-wide
4 court of leftover space there.

5 Because this faces an
6 intersection, the intersection of Virginia
7 Avenue and Eighth Street, but also, more
8 importantly, the Southeast Freeway, which is
9 immediately north of Virginia Avenue -- on
10 this you see the curve of Virginia Avenue.
11 Directly to the north of it is the
12 Southeast/Southwest Freeway.

13 So there are no immediate
14 neighbors to this building until you get to
15 the northern section of Capitol Hill at the
16 Marine barracks. So we would contend that
17 there is no detriment to the public good or
18 the zone plan by this nonconforming court at
19 the corner of this since it's open on two
20 sides to both Eighth Street and Virginia
21 Avenue.

22 The second area variance that we

1 are requesting is for the parking.

2 BZA CHAIR MILLER: Can I interrupt
3 you for a second --

4 MR. EDWARDS: Yes.

5 BZA CHAIR MILLER: -- before you
6 get off that topic, though? You know, I get
7 the big picture here, but just with respect to
8 the three-prong test and that corner area, did
9 you address what is exceptional about it?

10 MR. EDWARDS: It is primarily
11 because of the acute angle that we have here
12 in order to make that both welcoming to the
13 property owners and the business districts
14 that are coming down here.

15 And working with the Historic
16 Preservation Review Board and with the Capitol
17 Hill Restoration Society, they felt very
18 strongly that there be a significant corner
19 presence on here because there is an overpass
20 for the freeway directly north and that there
21 was great concern of bringing foot traffic in
22 south of the freeway and having a corner

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1 presence there that welcomed people in with a
2 door retail entry right there on the corner,
3 which we worked back and forth within.

4 This has undergone a number of
5 different designs, all of which have this
6 chamford corner on there. Some have been
7 rounded. The current design is squared off,
8 but with the intent of having an entry on that
9 corner for the retail.

10 So in order to have an entry, you
11 can't have a point, basically. And looking at
12 the other precedent buildings in the historic
13 district along Barracks Row, this is the way
14 that most of those historically you would see
15 along the streets north of the
16 Southeast/Southwest Freeway along Barracks
17 Row.

18 BZA CHAIR MILLER: Okay. And with
19 the other two courts, the cantilever roof
20 would bring the property into compliance,
21 right? But you said it varied some -- I
22 understand what you said about the detrimental

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1 to the historic.

2 MR. EDWARDS: Right. We would
3 basically need to project over a foot and a
4 half over top of the other building and bring
5 that down on the third floor because the third
6 floor floor level is actually at this level
7 here.

8 So we can't actually build the
9 third floor over that. We would have to sort
10 of build a shelf or a false front of the
11 building that would extend over top the
12 existing building that would stretch this out,
13 both at the fourth floor and then at the
14 partial level of the third floor.

15 So technically that creates a
16 great practical difficulty because of the
17 construction of the building. This is a wood
18 frame building from the ground level up.

19 So in order to bring the brick
20 over top that other building would require a
21 whole second steel structure just to
22 cantilever that over and have a beam and not

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1 damage the existing building that is
2 underneath of it and somehow come down and
3 rest over top of it.

4 BZA CHAIR MILLER: Okay. So you
5 don't just have a projection from your
6 building? It has to touch the other building
7 in order to --

8 MR. EDWARDS: Well, otherwise
9 there would be that court again. Then it
10 would be a closed area in between the bottom
11 of our building and the top of the other
12 building.

13 And so in order to bring our
14 building to the property line going all the
15 way down, it would have to hit the top of this
16 other building at some point in order to
17 strictly meet our interpretation of what the
18 zoning regulation is saying for a closed
19 court.

20 BZA CHAIR MILLER: Okay. Thank
21 you.

22 MR. EDWARDS: The other variance

1 request that we are asking for is for the
2 parking. As I stated earlier, the building,
3 as proposed, has 2,998 square feet of retail
4 space, which in itself does not generate any
5 parking requirement and 19,850 square feet of
6 commercial office and core space, which
7 together generates 30 required zoning spaces
8 for the building.

9 Because of the unique
10 circumstances that I went through earlier, the
11 unique shape of the site, the limitations on
12 the location of the curb cuts and the ramps
13 going down and the relatively large amount of
14 floor space that is taken up by the egress and
15 accessibility features for the lower level of
16 the garage, it leads us to have a maximum of
17 ten spaces that can be accommodated within the
18 footprint if we were to go down additional
19 levels. There are 13 spaces here if we stop
20 at the proposed level that we have now.

21 If we were to have to have another
22 ramp going down to lower levels, the most that

1 we would be able to fit in would be ten
2 spaces. That would result in three levels
3 being necessary to meet the 30 parking spaces
4 that would otherwise be required by the zone.

5 And also, as I mentioned earlier,
6 right now the bottom of the foundations for
7 the garage is at 18 feet below grade. And the
8 significant amount of subsurface groundwater
9 has been detected at 21 and a half feet below
10 grade.

11 So going down any more than the
12 one level that we already have kicks in the
13 difficulties with economic viability to
14 support the spaces that we would be getting
15 from that. It would be technically difficult
16 as well as economically inviable to go through
17 with the project if we were required to do
18 that.

19 Also, we feel that having the
20 fewer number of spaces, the 17 spaces, that
21 are being provided here does not create a
22 detriment to either the public good or the

1 zone plan, mainly because of the vast amount
2 of public transportation that is accessible to
3 the site. And Mr. Andres will go into that in
4 more detail with our transportation management
5 plan.

6 Briefly, the site is within four
7 blocks of the Eastern Market Metro station and
8 eight blocks of the Navy Yard Metro station.
9 So it is easily walkable to either one of
10 those.

11 There are bus routes going along
12 Eighth Street as well as Virginia Avenue,
13 including one bus stop that is directly in
14 front of the site on Eighth Street. One block
15 south of there there is a ride share bike rack
16 that the city has installed at the corner of
17 Eighth Street and Potomac Avenue.

18 So there is ample amount of public
19 transportation opportunities as well as just
20 the overall community walkable nature of the
21 businesses that are along Barracks Row and
22 that are encouraged along Barracks Row that we

1 feel that it is not going to be pulling in
2 vehicles from outside to that.

3 But Mr. Andres, I will turn it
4 over to him to outline our transportation
5 management plan in more detail. And he can
6 address some of these other transportation
7 options that we feel compensates for the lack
8 of full parking.

9 BZA CHAIR MILLER: Let me just
10 double check whether Board members have any
11 questions of this witness at this point. I
12 have one other question or confirmation. It
13 is my understanding that the design of the
14 building didn't change at all, that it was
15 permitted for a matter-of-right use as
16 residential but the fact that it is switching
17 to commercial uses triggers the court
18 requirements and these parking requirements
19 and that is why you are here.

20 MR. EDWARDS: Yes.

21 BZA CHAIR MILLER: Is that
22 correct?

1 MR. EDWARDS: Yes, that is
2 correct.

3 BZA CHAIR MILLER: Okay.

4 MR. ANDRES: Good afternoon, Madam
5 Chair, members of the Board. My name is Erwin
6 Andres. I'm principal of Gorove/Slade
7 Associates. We're the traffic and
8 transportation parking consultants on the
9 project. I reside at 2356 40th Street,
10 Northwest.

11 As part of this project, what we
12 have been responsible for is reviewing the
13 circulation and the access related to the
14 project as well as identifying the elements
15 necessary to support the transportation
16 management plan for this project.

17 As was mentioned before, this
18 project has many benefits that help reduce the
19 projected traffic, vehicular traffic, and
20 parking demand related to the project.
21 Considering where it is located -- actually,
22 I will take out an area map.

1 As was mentioned, the site is
2 located approximately 5 blocks south of the
3 Eastern Market Metro, which is approximately
4 a 10-minute walk, and 7 blocks east, north of
5 the Navy Yard Metro, which is equivalent to 12
6 minutes.

7 In addition to that, it actually
8 also has access to the Potomac South Metro,
9 located at 14th and Potomac in a range of walk
10 times about 14 minutes.

11 So given these relative distances
12 to the Metro stations as well as to vibrant
13 destinations in and around this area, which
14 include H Street retail and commercial
15 corridor north of the Southeast/Southwest
16 Freeway -- you have the Washington Navy Yard
17 about a block and a half south of the site,
18 which we believe that will potentially be a
19 location for some of the potential tenants of
20 the building. There's also obviously U.S. DOT
21 and some of the emerging developments, both
22 commercial and retail, along M Street as well.

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1 So, given the synergy of
2 pedestrian traffic in the area, we believe
3 that this is an opportunity to capture that.
4 And, again, that opportunity is manifested in
5 the way that the building is designed, again
6 by providing that entry for a lot of the foot
7 traffic heading south on H Street.

8 In addition to that, we have
9 coordinated with District Department of
10 Transpiration as well as the Office of
11 Planning in order to identify the elements
12 that would be beneficial to both the owner as
13 well as the overall community relative to the
14 transportation management plan.

15 Given our coordination with them,
16 they have signed off on what we have proposed,
17 which included a plan that identifies how the
18 leasing arrangements would help define the
19 framework for tenants that are coming in as
20 part of the leasing program.

21 There would be a transportation
22 management coordinator that would be

1 identified that would be responsible for
2 providing all of the promotional materials,
3 all of the information regarding to all of the
4 businesses in the area to prospective tenants
5 so that they understand that when they come
6 and move and occupy the space, that they will
7 have the opportunity to take advantage of some
8 of the community benefits in the area.

9 In addition to that, the plan also
10 calls for the potential provision of
11 additional off-street parking spaces at 820
12 Potomac Avenue, which is roughly a block away
13 from the site.

14 Based on our calculations and
15 based on the demand reductions identified by
16 the proximity and walkability scores of the
17 site as well as the transit options that are
18 available, we don't believe that overflow
19 parking is necessary. However, it is an
20 emergency valve that can be provided in the
21 event that the Board doesn't think that there
22 is enough parking. But we don't think that

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1 this is necessary. Again, given the nature of
2 the site and given the nature of the
3 surrounding elements, that would help support
4 the site.

5 One last comment I would like to
6 make is that the parking that's provided is
7 assigned parking. So there won't be any
8 confusion for anybody coming to the site. The
9 only people that would be coming to the site
10 were those who will be assigned parking
11 spaces.

12 The parking control, there is gate
13 control. There is, I believe, a gate that
14 comes down when not in use. So it will not
15 unnecessarily attract people to come in and
16 park and circulate through the garage if they
17 don't need to be.

18 So that is the summary of our
19 transportation management plan. As I
20 mentioned, we believe that given all of the
21 benefits and given our coordination of DDOT
22 and OP, we believe this is an excellent plan

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1 to take advantage of the amenities as well as
2 the transit opportunities around the site.

3 Thank you.

4 BZA CHAIR MILLER: Thank you.

5 Let me ask you this. DDOT filed a
6 memorandum in support of the application dated
7 November 20th, 2008. Do you have a copy of
8 that?

9 MR. ANDRES: Yes, I believe I do.

10 BZA CHAIR MILLER: Okay. In that
11 memorandum, they reference a -- well, they say
12 a TMP but dated November 3rd, 2008. And we
13 didn't see that in our files. Is there a
14 November 3rd, 2008 document?

15 MR. ANDRES: I have copies. If
16 that can be distributed?

17 BZA CHAIR MILLER: You have
18 copies, enough copies, for the Board members?

19 MR. ANDRES: Unfortunately, I
20 don't. We did not realize that it wasn't part
21 of the overall application.

22 BZA CHAIR MILLER: Okay. Maybe we

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1 can have some copies made because --

2 MR. ANDRES: Absolutely.

3 BZA CHAIR MILLER: Maybe if you
4 could give them to Ms. Bailey? Because I was
5 just wondering. I'm not sure that the Board
6 was looking at the right documents.

7 There were some transportation
8 management measures attached to the November
9 11th, 2008 prehearing statement, but I didn't
10 see one dated November 3rd.

11 MR. DePUY: Madam Chair, the
12 document we submitted with our prehearing is
13 dated October 24th. And that lists the
14 transportation management proposal.

15 BZA CHAIR MILLER: Okay. So there
16 is nothing different in the November 3rd?

17 MR. ANDRES: No, there is not.

18 BZA CHAIR MILLER: Is anyone here
19 from the ANC, by the way, in this case?

20 (No response.)

21 BZA CHAIR MILLER: And these
22 measures were coordinated with DDOT, right?

1 MR. ANDRES: Yes, that's correct.

2 BZA CHAIR MILLER: Were they
3 coordinated at all with the ANC?

4 MR. ANDRES: I believe. Actually,
5 Mr. DePuy probably? I wasn't at the ANC
6 meeting. I believe elements of that plan were
7 shared with the ANC.

8 MR. EDWARDS: Yes. At the ANC
9 meeting where they took this up, we did
10 provide them a copy of the Gorove/Slade report
11 in detail. And that was discussed about the
12 parking management plan and transportation
13 management plan.

14 So we did address the issue of
15 overflow parking that they didn't feel was
16 necessary but also the proximity of the
17 various bus lines, the Metro lines, the bikes.
18 So that was taken up by the ANC.

19 BZA CHAIR MILLER: Okay. We can
20 look at this further later. I was just
21 wondering whether -- it's being presented to
22 substantiate grounds for not needing the

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1 parking and for the parking variance.

2 And so I am wondering if they are
3 intended to be conditions for the order or do
4 you have an opinion on that, Mr. DePuy or
5 either of you?

6 MR. DePUY: We're prepared to have
7 them be conditions if the Board feels that is
8 necessary. We didn't propose them as
9 conditions because we didn't feel it was
10 absolutely necessary given the nature of the
11 budget, but if the Board would feel more
12 comfortable that they be conditions, we would
13 accept that.

14 ZC CHAIR HOOD: Madam Chair, can I
15 ask a question?

16 BZA CHAIR MILLER: Yes.

17 ZC CHAIR HOOD: Mr. DePuy, even if
18 this Commission did not make it a condition,
19 don't you still have to get another, say,
20 approval from DDOT before moving forward?

21 MR. DePUY: Yes. We will need
22 various approvals from DDOT for the curb cuts

1 and vault space and other interactions with
2 DDOT, yes.

3 ZC CHAIR HOOD: Even the things
4 that they recommend in their letter dated
5 November the 20th?

6 MR. DePUY: That's correct.

7 BZA CHAIR MILLER: So I think the
8 question goes to, though, when you go to get
9 permits signed off by DDOT, are they going to
10 be looking at this issue again with respect to
11 transportation management measures in the
12 process or not really?

13 MR. DePUY: I believe they have
14 accepted the proposal as it has been prepared.
15 So I don't believe unless there is some reason
16 for change that they would revisit it.

17 BZA CHAIR MILLER: Okay. So, I
18 mean, were we not to put it in as a condition,
19 are you saying it is in such a form that it is
20 an integral part of your application so that
21 that is what DDOT would be relying on, that it
22 was approved as part of the application?

1 MR. DePUY: Either way, as I said,
2 as conditions if the Board feels it is
3 necessary or not.

4 BZA CHAIR MILLER: All right. We
5 can get into this a little later with the
6 Office of Planning.

7 Any other questions?

8 (No response.)

9 BZA CHAIR MILLER: Thank you.

10 MR. DePUY: Our last witness is
11 Ms. Karen Phillips. Ms. Phillips, would you
12 give your statement to the Board, please?

13 MS. PHILLIPS: Thank you.

14 Good afternoon, Madam Chair,
15 members of the Board. I am Karen Phillips.
16 I'm developer and applicant for the project at
17 801 Virginia Avenue, Southeast. I am pleased
18 to have this opportunity to appear before you.

19 We have worked to design a project
20 here that complies with four major components.
21 One is that it complies with the Eighth
22 Street, Southeast neighborhood commercial

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1 overlay with the underlying C-3-A zoning
2 requirements and its historic preservation
3 guidelines and standards.

4 We have satisfied a number of
5 community issues and concerns.

6 The third is that we come up with
7 an economically viable project in the midst of
8 our current crisis. And although we have had
9 to redesign several times, we have worked very
10 hard to keep the character of the building the
11 same. But we have had to do so because of the
12 current economic conditions.

13 We do think that we have
14 accomplished the objectives that we set out to
15 do and that are required. We are pleased to
16 have received the support of the ANC
17 Commission, the Capitol Hill Restoration, and
18 the Office of Planning for our development
19 proposal.

20 This development includes retail
21 space, as required in compliance with the
22 Eighth Street Overlay, along Barracks Row.

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1 But that will be neighborhood retail. And, as
2 mentioned, it's under the 3,000 square foot
3 cutoff for having parking, but we do not think
4 that the nature of the retail that we have
5 there will further attract a great deal of
6 parking in the area.

7 We do have 17 parking spaces below
8 grade, which will be for the office tenants.
9 It does have a garage door opening, and there
10 will be assigned spaces.

11 As our architect, Mr. Edwards,
12 detailed, there are site constraints here:
13 the shape of the site, the encroachment with
14 an adjacent property, where they are taking
15 part of our land, and creates the courts. We
16 do require your variance for those courts and
17 parking variances.

18 One of the things he did not point
19 out, the Virginia and Eighth Street
20 intersection, that acute angle, I think he has
21 handled it very well but in a way that is kind
22 of mimicked by the Haines Building right at

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1 Eighth Street at the park near Pennsylvania,
2 which is an historically significant building.

3 But we do hope that this new
4 structure fits in very nicely on that
5 coordinator and attracts people from Eighth
6 Street to get rid of the huge scar that has
7 been made by the highway there but to try to
8 help it be more seamless in terms of people
9 using this area that right now is
10 under-utilized in terms of retail.

11 He did mention the problems with
12 the water table but also that there is the
13 cost of going down lower to comply with the
14 parking and also some environmental concerns
15 because of previous uses on the site. We
16 would not like to have to excavate further
17 than we are already.

18 Mr. Andres stated the conditions
19 of our site in terms of the access to
20 transportation is excellent and the ten-minute
21 walk from Pennsylvania, which is the closest
22 subway station, is very doable as well as the

1 bus routes that run along.

2 But we do plan to do some of the
3 things, all of the things, as we just referred
4 to that will be required by DDOT and that we
5 have outlined here in terms of managing the
6 transportation and the parking on our site
7 with the coordinator who will be working with
8 our tenants.

9 I would be pleased to respond to
10 any questions, other questions, that you might
11 have that my colleagues or myself or Mr. DePuy
12 could answer for you.

13 BZA CHAIR MILLER: Thank you.

14 I just want to ask another
15 question about the transportation demand
16 management measures. I think they are very
17 thoughtful, and I think that is why DDOT is so
18 supportive. Just the way that they are
19 written, it's like this could happen or we
20 could do this.

21 I guess what do you think that
22 they represent? Do they represent like a plan

1 that you're willing to do, take these
2 measures, if circumstances make them
3 appropriate?

4 I mean, are there things that
5 you've thought through that might work and
6 then you're going to wait and see or how would
7 you characterize this?

8 MS. PHILLIPS: Well, I mean, there
9 are a number of measures and some that we
10 discussed with the transportation planner.
11 But we felt that these were reasonable and
12 things that we could do with staff that would
13 be involved with our tenants anyway. And
14 because it is a small building, we anticipate
15 three or four companies there, all of which we
16 would establish a person that they could go to
17 to address those.

18 Basically I think most of it is
19 making people aware of what kind of things are
20 out there in terms of their staff getting to
21 work in an also environmentally sensitive way.

22 I mean, that's something we are

1 also working with the building to come up with
2 green measures but, again, to make people just
3 more aware of opportunities there in terms of
4 the Metro checks or Ride share programs.

5 But, again, since we'll be
6 assigning spaces within the building, those
7 are things that we can't implement or to work
8 with coordinating between different companies
9 in terms of people coming.

10 I don't think there's anything
11 here that would be extreme measures, but I
12 guess something like the Ride Home program,
13 you know, if someone said, "I'm taking public
14 transportation" but to really try to
15 coordinate that.

16 That could be, if nothing else, to
17 make sure that there is a cab company or
18 something that could help them out in those
19 kind of situations but that they would know
20 that there was someone that they could assist
21 them in that effort.

22 MR. ANDRES: Madam Chair, I also

1 would like to add that because the tenants
2 aren't necessarily her employees, a lot of
3 this is a promotional and marketing effort
4 because of the fact she necessarily can't
5 control what her tenants' employees do.

6 And on projects that we have
7 worked with before, this is how the wording is
8 identified, because we can't mandate the
9 tenants to do certain things.

10 BZA CHAIR MILLER: But you provide
11 only 17 spaces. And then that's all the
12 number of cars there are going to be. So it
13 is just going to have to work itself out?

14 MR. ANDRES: Well, no, not
15 necessarily, because, as you know, DDOT and
16 Office of Planning are pushing initiatives
17 actually to identify parking maximums, rather
18 than minimums, given that reducing the amount
19 of parking supply is actually a transportation
20 demand management measure. And given those
21 initiatives by DDOT, we feel that this project
22 is in line with that.

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1 Now, the transportation management
2 plan elements have been geared or written in
3 a manner that it is could and should because
4 of the fact that Ms. Phillips has committed to
5 using staff to promote those items, but as for
6 their actual utilization, yes, it depends on
7 who the tenants actually are.

8 BZA CHAIR MILLER: Okay. Let me
9 ask you this. With respect to the other
10 parking lot or whatever that has been
11 identified, how is that going to work? I
12 mean, how do we know that that is going to
13 have spaces for overflow if overflow is
14 needed?

15 MR. ANDRES: Well, at this point,
16 we, first of all, would like to stress that we
17 don't believe it is needed. And under any
18 circumstances, we don't think that we will
19 ever need that lot.

20 There are other alternatives
21 because for uses that might potentially need
22 short-term parking, on Eighth Street, there is

1 metered short-term parking available,
2 actually, up and down Eighth Street. There is
3 more so in the direct vicinity of the site.
4 So would somebody rather park someplace more
5 convenient for the short-term resident side?
6 I would assume they would?

7 I guess the measure that
8 identified the potential for 820, I guess my
9 client wanted to show that they're committed
10 to making this project work.

11 There are existing users of that
12 lot. And there are some available spaces. We
13 don't think that they will be necessary, but
14 we want to identify that the client is willing
15 to identify that those spaces could
16 potentially be available.

17 BZA CHAIR MILLER: Did you
18 identify an estimate of the number of
19 employees that would be tenants in the
20 building? There are 17 spaces.

21 MR. ANDRES: Well, with respect to
22 the office space, there is 19,000 square feet

1 for the office. So I guess given the ratios
2 for employees per space, you know, that would
3 be a way to derive the number of employees.

4 BZA CHAIR MILLER: We actually
5 don't have to look at that because we have the
6 parking requirements in the regulations that
7 we're using.

8 MR. ANDRES: Yes.

9 BZA CHAIR MILLER: Okay. Anybody
10 else have any questions?

11 (No response.)

12 BZA CHAIR MILLER: Okay. Thank
13 you.

14 MR. ANDRES: Great. Thank you.

15 BZA CHAIR MILLER: Does that
16 complete your case?

17 MR. DePUY: It does. Thank you,
18 Madam Chair.

19 BZA CHAIR MILLER: Thank you.

20 Any questions?

21 (No response.)

22 BZA CHAIR MILLER: And the ANC is

1 not here. ANC did submit a letter in support.
2 I guess I will reference it right now, dated
3 October 16th, 2008. With a quorum present,
4 they had a regularly called and properly
5 noticed meeting on October 14th, 2008 and
6 voted unanimously, 8:0, to support the
7 applicant's request.

8 "The Commission is taking this
9 action after reviewing the applicant's
10 documentation and believes this project will
11 be a welcome addition into the Eighth Street
12 business community."

13 Okay. I guess we can turn now to
14 Office of Planning.

15 MS. BROWN-ROBERTS: Good
16 afternoon, Madam Chairman and members of the
17 Board. I am Maxine Brown-Roberts from the
18 Office of Planning.

19 I think I am going to stand on the
20 record and basically take any questions from
21 the Board. I think, as outlined in our
22 report, the applicant has met the variance

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1 requirements for the two special exceptions
2 from section 776.1 and 2100 and 2101 as it
3 regards parking spaces.

4 We think that the proposed
5 development does meet the standards outlined
6 by the Eighth Street Overlay, commercial
7 overlay, and that the project should be -- we
8 recommend approval of the variances requested.

9 And I am available for any
10 questions.

11 BZA CHAIR MILLER: Any Board
12 questions?

13 (No response.)

14 BZA CHAIR MILLER: I just have one
15 with respect to the transportation management
16 measures. Do you have an opinion whether it
17 would be a good idea to have a condition
18 referencing their compliance with the measures
19 -- let's see -- well, in general some type of
20 compliance with the measures that they have
21 set forth in their November 3rd, 2008 memo?

22 MS. BROWN-ROBERTS: Right. I

1 would prefer, you know, DDOT address this
2 issue, but in conversations with DDOT
3 regarding the application, we spoke about the
4 requested reductions. The conversation
5 revolved mainly around that okay, they're
6 requesting a reduction.

7 But the property also is in close
8 proximity to the Metro stations and the buses.
9 And we thought that that was sufficient to
10 address especially the third problem of the
11 varying steps.

12 I thought that the TMP measures
13 that the applicant was addressing was just
14 some additional things on top of what they had
15 00 on top of meeting their test. And so that
16 is why, you know, I didn't think that we
17 needed to put it as a condition. And DDOT
18 also really didn't emphasize that they thought
19 that these should be conditions.

20 ZC CHAIR HOOD: Madam Chair, I was
21 just simply saying, you know, I can go either
22 way. I wasn't arguing a point, but I was just

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1 simply saying if it gives us a sense of
2 comfort level that I do know that DDOT I don't
3 believe, Ms. Brown-Roberts, will sign off on
4 it when it comes to building permits and
5 whatever sign-offs they have to do, even after
6 we deal with it from the Board's standpoint
7 because if they don't sign off on it, they
8 still have to deal with their transportation
9 issues, but, I mean, either way.

10 BZA CHAIR MILLER: I think that is
11 an important point to get clarified, though.
12 I'm not under the impression that they would
13 be signing off on something like
14 transportation management measures at a later
15 date.

16 MS. BROWN-ROBERTS: No. I think
17 what they have been looking at is basically
18 the curb cuts and some projections that they
19 have into the open space. Those are sort of
20 the general things. I think they already have
21 the traffic studies on which they base their
22 decision for this.

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1 BZA CHAIR MILLER: I guess where I
2 was pulling this from was DDOT's memorandum
3 dated November 20th, 2008, where they say, "We
4 believe the proper implementation of the TMP
5 dated November 3, 2008 will reduce the need to
6 provide additional parking spaces.

7 MS. BROWN-ROBERTS: Again, I think
8 I agree with Mr. Hood. I mean, talking on
9 behalf of the Office of Planning, I don't
10 think that we would mind either way.

11 BZA CHAIR MILLER: And it may not
12 be necessary. I think you know some of the
13 question goes to the certainty and what
14 certainty do we have that the applicant is
15 going to implement any of these measures.

16 MS. BROWN-ROBERTS: Yes.

17 ZC CHAIR HOOD: I know, Madam
18 Chair, maybe just the difference between the
19 ZC and BZA because I do know that they have
20 another avenue where certain things if we
21 don't deal with it, it gets caught on the
22 permit side. I may be talking out of school,

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1 but I believe that's the way I've seen it
2 happens. I'm not going to make a big deal of
3 it.

4 BZA CHAIR MILLER: All right. I
5 don't think I want to make too big a deal
6 either because I think you're representing
7 that you are going to do this. So, in one way
8 or another, we can reflect that.

9 Okay. Other questions?

10 (No response.)

11 BZA CHAIR MILLER: Okay. Do you
12 have any questions for the Office of Planning,
13 the applicant?

14 MR. DePUY: No thank you, Madam
15 Chair.

16 BZA CHAIR MILLER: Okay. And you
17 do have a copy of their report, right?

18 MR. DePUY: Yes.

19 BZA CHAIR MILLER: Is there
20 anybody here who wishes to testify in support
21 of this application?

22 (No response.)

1 BZA CHAIR MILLER: Is there
2 anybody here who wishes to testify in
3 opposition?

4 (No response.)

5 BZA CHAIR MILLER: Okay. Any
6 closing remarks?

7 MR. DePUY: Very briefly, Madam
8 Chairman, members of the Board. We think the
9 record is clear and strong and convincing that
10 there are exceptional and practical
11 circumstances affecting this property. They
12 have been outlined in detail.

13 They include the encroachment, the
14 subsurface water, the shape of the property,
15 which pertained to both requested variances,
16 the parking, and the courts.

17 We think that there is no
18 impediment to the zone plan or to the public
19 as a result of the granting of these
20 variances. The project has been designed to
21 be consistent with the Eighth Street Overlay.

22 It has the support of the

1 community, both the Capitol Hill Restoration
2 Society and the Advisory Neighborhood
3 Commission. And we would respectfully request
4 a bench decision approving the application.

5 Thank you.

6 BZA CHAIR MILLER: Okay. I also
7 want to note Mr. DePuy said that there was
8 support from the Capitol Hill Restoration
9 Society and that we do have that in our record
10 at exhibit number 25. It's dated November
11 16th, 2008.

12 And the applicant made a
13 presentation at their meeting. And their
14 committee voted unanimously to support the
15 application, believing that the applicant met
16 all the tests for the variances requested, and
17 urges the Board to approve the application.

18 Okay. I guess I will move
19 approval of application number 17844 of 801
20 Virginia Avenue LLC by Phillips Ocilla Davis
21 Development LLC, pursuant to 11 DCMR section
22 3103.2 for a variance from the court

1 requirements under section 776 and a variance
2 from the off-street parking requirements under
3 subsection 2101.1 to allow the construction of
4 a new commercial office building with ground
5 floor retail at premises 801 Virginia Avenue,
6 Southeast.

7 VICE CHAIRPERSON LOUD: Second,
8 Madam Chair.

9 BZA CHAIR MILLER: Okay. I'll
10 start off by saying what I said before was
11 basically the same building was a matter of
12 right for residential uses and that when they
13 had to convert it to commercial use given the
14 economic climate, it triggered need for
15 variance relief for parking and for courts.
16 So the same building could be here without any
17 relief needed if it were for residential.

18 So I think that they made a very
19 strong case for all three prongs of the
20 variance test with respect to both the courts
21 and the parking. The applicant basically just
22 summarized it, but I will reiterate. I think

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1 it is significant.

2 With respect to the courts, two of
3 them are caused by an encroachment of the
4 abutting property building. And they went
5 through the whole explanation of how
6 complicated. And it would be contrary to
7 historic fabric to do a cantilever roof in
8 order to make it comply when, in fact, the
9 noncompliances are not even visually
10 perceptible.

11 So there was the practical
12 difficulty and no adverse impact there and
13 that the other court is caused by the
14 intersection of Virginia and Eighth Streets,
15 that without the courts, it would interfere
16 with pedestrian traffic. And it fits in
17 better just with the court.

18 So there are practical
19 difficulties if there is not a court by the
20 interference. And it's an exceptional
21 condition with respect to the intersection of
22 those two streets causing that situation.

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1 And, again, no adverse impact. Actually, it's
2 a public benefit in order to have those
3 courts.

4 With respect to the parking -- and
5 you all can pick up the things that I forget
6 -- basically they have the contamination of
7 the soil below grade so that that is an
8 economic feasibility issue to go down that low
9 as well as a contamination issue to get into
10 that, also that because of the way the
11 building is configured and where the curb cuts
12 have to be, where the ramp would go, they
13 would have to go down three floors, which
14 would not be economically feasible.

15 And then there is no adverse
16 impact with respect to having fewer parking
17 spaces because they are near a Metro. There
18 are several Metros.

19 That's kind of a quick summary.
20 If people want to add to that? Then we can
21 discuss -- well, let me just throw it out
22 right now. I have been bringing up that issue

1 about the November 3rd transportation demand
2 management measures that the applicant has put
3 forward, which DDOT looked to in part for
4 concluding that they didn't need to have
5 additional parking spaces.

6 According to Office of Planning,
7 the primary reason, I believe, was the
8 proximity to Metro and that this was just
9 additional reason. So I think that we have a
10 choice and we could just reference that this
11 was part of their application that they are
12 intending to do this or we could make as a
13 condition that they implement the measures set
14 forth in that memo.

15 But I don't feel strongly about
16 making a condition this early. We don't have
17 anyone really asking us specifically to do
18 that. And they just seem like good measures,
19 which appear to me that the applicant strongly
20 intends to pursue without a condition.

21 Others?

22 VICE CHAIRPERSON LOUD: Madam

1 Chair, I will be supporting the application as
2 well. I gleaned from your summary that it
3 sounds like you are going to be supporting it
4 also.

5 I just wanted to note that, in
6 addition to the contamination, I think part of
7 the issue going or trying to yield 30 spaces
8 was that they're at 18 feet roughly now with
9 the underground parking.

10 And if they were to go to 21,
11 there's groundwater on site, which I think is
12 a separate issue from the contamination, in
13 addition to which I am crediting the testimony
14 of the Office of Planning that the proximity
15 of Metrorail and the number of Metro bus lines
16 close to the project site really satisfy the
17 parking and any parking displacement from not
18 having the additional 13 with the traffic
19 management plan sort of being gravy on top of
20 what those two outlets provide.

21 I'm a little concerned about some
22 of your questions regarding the traffic

1 management plan, there being little clarity
2 from how to interpret what DDOT has put in the
3 record, but DDOT is not here to help clarify
4 the report.

5 OP is here. Their testimony, as
6 indicated, was that there are sufficient ways
7 to sort of ameliorate some of the parking
8 concerns, in addition to which I think even,
9 after 30 parking spaces, it would have been
10 roughly one parking space for a little over
11 500 square feet. And at the 17, it's
12 basically half that.

13 In other words, to me whoever
14 tenants this property -- I don't know if it's
15 pre-leased or not -- comes into it with an
16 understanding that I don't know how it is
17 going to be demised. But they come into it
18 with an understanding that if they're getting
19 a 1,000 square foot office suite, they're only
20 getting one parking space, they know that from
21 jump street so that they know that they have
22 to find alternative ways to get to the site.

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1 It's not a huge loss in parking supply.

2 So I will be supporting it, Madam
3 Chair.

4 BZA CHAIR MILLER: I just want to
5 comment. I think someone else made the
6 comment here already but reflect that this is
7 the direction that the Department of
8 Transportation is pushing, fewer spaces,
9 rather than more spaces. So I think that is
10 one of the reasons that they supported anyway
11 that it's fewer spaces.

12 VICE CHAIRPERSON LOUD: I also
13 want to commend my other colleagues. I just
14 want to commend Mrs. Phillips for hanging in
15 there with this project through the ups and
16 downs of the market and it going from
17 residential to now commercial -- and hopefully
18 it is pre-lease, but if not, it will be tended
19 to soon -- and just for, as I said, hanging in
20 there and being a part of the revitalization
21 of Barracks Row.

22 ZC CHAIR HOOD: If I could just

1 confuse the issue a little more? I'm kind of
2 leaning towards your leadership and, as you
3 stated, I think I would rather be safe than
4 sorry. If you want to put a condition in
5 there, I'm not sure. I think my colleague can
6 go either way. But thinking about it, we
7 probably might at least reference, put a
8 condition. I'm not sure what you have in
9 mind.

10 MEMBER WALKER: Madam Chair, I
11 don't know that we need to go as far as
12 putting a condition, but I think that we
13 should reference the representation that the
14 applicant has made that they will establish a
15 transportation services coordinate and that
16 that person's role will be to come up with
17 ways to promote alternative commuting options
18 to the site.

19 So I think I would be in favor of
20 not going as far as a condition but putting
21 that reference in the order.

22 BZA CHAIR MILLER: I think if we

1 did that, though, I would rather just
2 reference the November 3rd, 2008 memo because
3 it contains other measures dealing with
4 transportation.

5 MEMBER WALKER: Well, my point was
6 that it would be up to the transportation
7 services coordinator to determine what
8 measures are most appropriate.

9 So rather than incorporating this
10 particular document that speaks to more
11 specifics, managed parking, Metro checks, and
12 so forth, If we gave the applicant some
13 flexibility, then they could evaluate the
14 needs and tailor a program to the particular
15 situation.

16 BZA CHAIR MILLER: This is what I
17 would suggest if we were go with a condition.
18 And it would be something to the effect that
19 the applicant shall implement a traffic
20 management plan consistent with the November
21 3rd, 2008 memorandum.

22 And in that memorandum, if we look

1 at it, it is general. I mean, it doesn't
2 force the applicant into situations that are
3 untenable or anything. It just said things
4 like the position could be established, the
5 development team should encourage -- I mean,
6 I think it's pretty wide open.

7 But if we don't want to have a
8 condition, I think that the other thing to do
9 would be to just say to reference that in our
10 order, that the applicant represented that
11 they will have a transportation management
12 plan and perhaps reference this November 3rd,
13 2008 memo.

14 ZC CHAIR HOOD: I could go either
15 way, Madam Chair. I wanted to ask
16 Commissioner Walker -- and I agree with you.
17 I mean, I think the way you sort of laid it
18 out is something that I had thought about and
19 just didn't say.

20 A concern I would have about
21 moving forward in that direction without being
22 really, really clear is that we might saddle

1 this applicant with the economic cost of
2 staffing out a position for a transportation
3 management plan coordinator or whatever.

4 And so I just wanted to be clear
5 that if we go down that path, we're not
6 talking about a staffed position that would
7 have to be paid 40 hours a week or something
8 like that to give out Metro information
9 because I think it would affect the viability
10 of the project.

11 MEMBER WALKER: No. I agree this
12 could be a function of someone who is a part
13 of the applicant's staff. This could be one
14 of many functions.

15 BZA CHAIR MILLER: We could have
16 something like the applicant -- without it
17 being a condition, reference in the order that
18 the applicant has indicated that it will have
19 a TMP to reduce the potential traffic and
20 parking impacts of the proposed development,
21 such as that presented in its November 3rd,
22 2008 memo.

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1 I think the point of what we want
2 to do is to flag it a little bit, but I don't
3 think that we need, you know, a serious
4 condition, that we're worried that they are
5 actually going to be -- you know, that it is
6 needed to mitigate adverse impacts.

7 I think perhaps that is where the
8 Office of Planning might be coming from, that
9 DDOT wasn't convinced that there were going to
10 be adverse impacts if there weren't these
11 conditions. And so often conditions are for
12 the purpose of actually mitigating an
13 anticipated adverse impact.

14 So perhaps if we're not really
15 convinced that there is going to be an adverse
16 impact, then I would say let's not do a
17 condition and perhaps just flag it because we
18 think it's important, if we even want to flag
19 that.

20 What do you all think?

21 VICE CHAIRPERSON LOUD: I'm ready
22 to vote, Madam Chair, when you are.

1 BZA CHAIR MILLER: I guess my
2 question is, do -- I guess I would at this
3 point be in favor of not having a condition.
4 And then I would put on the table just whether
5 or not when we give direction for this order
6 to be written -- and this is just going to be
7 a summary order because there is no party in
8 opposition, you know, whether we want to flag
9 the TMP.

10 MEMBER WALKER: Madam Chair, again
11 I would recommend that there just be a
12 reference to this representation that the
13 applicant has made that they will establish a
14 coordinator, who will be responsible for
15 establishing their transportation management
16 plan without going further in terms of the
17 details of the plan.

18 BZA CHAIR MILLER: Okay.
19 Sometimes the little things get us bogged
20 down. But you are not in favor of referencing
21 that there is just going to be a plan? You
22 want to reference a coordinator?

1 MEMBER WALKER: I could go either
2 way. I think sometimes plans are established
3 and they're put in files and they don't become
4 living working documents, that if the
5 applicant has a person who is responsible for
6 disseminating the information, then it could
7 be potentially be used more effectively. But
8 I could go either way with that.

9 BZA CHAIR MILLER: Okay. So,
10 then, I guess I would see it, then, as that
11 they would implement a TMP that would include
12 a transportation service coordinator and
13 perhaps still reference the November 3rd
14 document, though, as a reference point.

15 Does everybody agree to that?
16 Okay. Done. All right. Then we don't have
17 a condition. We just will be voting on a
18 motion to approve and just with a reference in
19 the order to the TMP and the coordinator.
20 Everybody clear on that? Okay.

21 All those in favor say aye.

22 (Whereupon, there was a chorus of

1 "Ayes.")

2 BZA CHAIR MILLER: All those
3 opposed?

4 (No response.)

5 BZA CHAIR MILLER: All those
6 abstaining?

7 (No response.)

8 BZA CHAIR MILLER: And would you
9 call the vote, please?

10 MS. BAILEY: Madam Chair, the vote
11 is recorded as 5:0:0 to grant the application.
12 Mrs. Miller made the motion. Mr. Loud
13 seconded. Mr. Dettman, Mrs. Walker, and Mr.
14 Hood support the motion with the stipulation
15 to be included in the order.

16 BZA CHAIR MILLER: I don't know if
17 I would call it a stipulation, but it will be
18 a reference. And it will be a summary order
19 as there is no party in opposition.

20 MS. BAILEY: Thank you.

21 BZA CHAIR MILLER: Thank you very
22 much.

1 Yes?

2 MR. STILLWELL: Before the next
3 case is called, may we just take a
4 couple-of-minute break to allow some of my
5 members to --

6 BZA CHAIR MILLER: Absolutely.
7 Would you like five minutes?

8 MR. STILLWELL: Five minutes would
9 be perfect.

10 BZA CHAIR MILLER: Okay.

11 (Whereupon, the foregoing matter
12 went off the record at 2:24 p.m. and went back
13 on the record at 2:36 p.m.)

14 BZA CHAIR MILLER: We're back on
15 the record. And I understand that the parties
16 in case number 17846 are at the table.
17 However, I just want to ask Ms. Bailey just to
18 briefly call 17813. You don't have to leave
19 the table. It's a very quick housekeeping
20 issue.

21 DRM AND ASSOCIATES, INC.

22 APPLICATION NO. 17813 - ANC-6C

1 MS. BAILEY: Madam Chair, the
2 application of DRM, 17813, DRM and Associates,
3 Inc., pursuant to 11 DCMR 3103.2, for a
4 variance from the lot area requirements under
5 subsection 401.3, a variance from the rear
6 yard requirements under section 404, a
7 variance from the open court requirements
8 under section 406, a variance from the
9 nonconforming structure provisions under
10 subsection 2001.3 to allow the conversion of
11 a one-family dwelling to a four-unit apartment
12 building at premises 1242 New Jersey Avenue,
13 Northwest.

14 As the Board members may recall,
15 the applicant did remove variance from the
16 parking requirements and also to develop
17 elderly housing.

18 The point of all of this is we do
19 understand that this application was
20 withdrawn. And so no further action by the
21 Board will be required at this time.

22 BZA CHAIR MILLER: Thank you.

1 Is there anybody here for that
2 case?

3 (No response.)

4 BZA CHAIR MILLER: Okay. Yes.
5 That is our understanding, then, that this
6 case has been withdrawn. And no further
7 action is required by the Board.

8 Okay. Thank you.

9 BROWN MEMORIAL A.M.E. CHURCH
10 APPLICATION NO. 17846 - ANC-6A

11 MS. BAILEY: And the last case of
12 the day, Madam Chair, is application number
13 17846. That is of Brown Memorial A.M.E.
14 Church. And it is pursuant to 11 DCMR section
15 3103.2 for a variance from the lot occupancy
16 requirements under section 403 and a variance
17 from the rear yard requirements under section
18 404 to allow an addition to an existing church
19 building at premises 130 14th Street,
20 Northeast, square 1034, lot 824. The property
21 is located in the R-4 district.

22 That application is ready to go

1 forward at this time, Madam Chair.

2 BZA CHAIR MILLER: Thank you.

3 Why don't we start with
4 introductions?

5 MR. STILLWELL: Good afternoon,
6 Madam Chair. For the record, my name is
7 Garland Stillwell with the law offices of
8 O'Malley, Miles, Nylen and Gilmore,
9 representing Brown Memorial A.M.E. Church.

10 I do have a small preliminary
11 matter, but if I can just run through
12 introductions very quickly? To my immediate
13 right is the pastor, Pastor Henry Y. White, of
14 Brown Memorial. To his immediate right is
15 Trustee Ron Jones. And to his immediate right
16 is Mr. James R. Jordan, our project architect,
17 of Arel Architects.

18 We also have behind us members of
19 the congregation in support from Brown
20 Memorial A.M.E. Church. However, the
21 individuals at the table are the only stated
22 witnesses for today's case.

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1 PRELIMINARY MATTER

2 MR. STILLWELL: The one
3 preliminary matter I would like to present
4 before the BZA is that I would like to move
5 Mr. Jordan as an expert witness.

6 I've given Ms. Bailey copies of
7 Mr. Jordan's resume. And Mr. Jordan is
8 licensed as an architect in the District of
9 Columbia. And he is available for questions
10 with regards to his credentials before he
11 proceeds with his testimony.

12 ZC CHAIR HOOD: Madam Chair,
13 before I make any decisions on this case, in
14 exhibit 31, I just want to do a disclosure
15 that one of the letters of one of the members
16 I am very familiar with the family. I have
17 not spoken to anyone about this particular
18 case, and it will not have any influence on my
19 decision. I wanted to make sure I put that on
20 the public record.

21 MR. STILLWELL: And we have no
22 such objection based on his testimony.

1 BZA CHAIR MILLER: Okay. Before
2 we get into establishing expert witness
3 status, I believe that there is a concern that
4 was raised with respect to posting by the
5 Capitol Hill Restoration Society. Is anyone
6 here from that?

7 MR. STILLWELL: Madam Chair, there
8 was no issue brought to our attention with
9 regards to posting. There was an issue with
10 regards to one of the signs being blown away,
11 but it was immediately replaced.

12 It was our understanding that the
13 affidavits of posting have been filed
14 properly. But beyond that, there has been
15 nothing else brought to our attention or at
16 least to the record when we last checked with
17 regards to a posting issue.

18 BZA CHAIR MILLER: Okay. If I
19 recall correctly, I think that a complaint was
20 made that it wasn't posted on all street
21 fronts. And I believe that you did submit an
22 affidavit of posting.

1 MR. STILLWELL: Yes.

2 BZA CHAIR MILLER: Is that right?

3 MR. STILLWELL: Yes, with
4 photographs of the postings.

5 BZA CHAIR MILLER: Okay. How many
6 streets does the church front?

7 MR. STILLWELL: It fronts on two,
8 Madam Chair.

9 BZA CHAIR MILLER: Okay.

10 MR. STILLWELL: And there are
11 postings, photographs of postings, on each
12 side. And, again, the only issue was there
13 was an instance when one of the signs
14 disappeared, blew away, whatever. The church
15 immediately notified us, and the team
16 immediately had that sign replaced.

17 I do have the staff person from my
18 office who coordinated that effort if that is
19 needed for additional testimony. But, to our
20 understanding, the sign posting has met the
21 regulations, as reflected, and the affidavit
22 has been filed.

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1 BZA CHAIR MILLER: We have the
2 authority to waive a regulation if it hasn't
3 been met for good reason and there is no
4 prejudice to the public and there has been
5 adequate notice.

6 I just wanted to bring your
7 attention. This complaint is in Capitol Hill
8 Restoration's filing of November 21st, 2008 on
9 page 2. And they request a continuance.

10 It says, "The applicant has failed
11 to post the property as required by 3113.14 in
12 that the property fronts three streets,
13 Constitution Avenue, North Avenue, and 14th
14 Street, and only North Carolina Avenue was
15 posted."

16 MR. STILLWELL: Madam Chair, what
17 exhibit item was that letter because --

18 BZA CHAIR MILLER: It is our
19 exhibit number 34.

20 MR. STILLWELL: Our exhibit items
21 stopped at 33 --

22 BZA CHAIR MILLER: Thirty-three?

1 MR. STILLWELL: -- when we last
2 checked the record yesterday.

3 BZA CHAIR MILLER: Okay. We'll
4 get you a copy of this. Right, Ms. Bailey?

5 MR. STILLWELL: And for that
6 purpose, I think it would help if Mr. Jordan
7 would explain the property location, the
8 street frontages. Would you like for him to
9 do that now?

10 BZA CHAIR MILLER: Sure.

11 MR. STILLWELL: Mr. Jordan, would
12 you please just identify for this preliminary
13 matter the location of the church and the
14 street frontages?

15 MR. JORDAN: Okay. For the
16 record, James Jordan, principal partner at
17 Arel Architects.

18 This heavy dashed, dotted line
19 represents the property boundary. To the
20 north is Constitution Avenue, to the south
21 North Carolina Avenue, a small area of
22 frontage.

1 There's a turnaround here and a
2 curved area. So the small area of frontage
3 here is 14th Street at the very front,
4 directly at the front of the church.

5 BZA CHAIR MILLER: Okay. And
6 where was it posted?

7 MR. STILLWELL: I beg the Board's
8 indulgence for just a brief moment.

9 (Pause.)

10 MR. STILLWELL: Madam Chair, you
11 have in your file under exhibit item 33 the
12 affidavit of posting, which includes two
13 photographs. One photograph shows posting on
14 Constitution Avenue. The second photograph
15 shows posting on North Carolina Avenue,
16 Northeast.

17 And the one sign which was
18 replaced -- I believe it was the Constitution
19 Avenue -- that was replaced in its exact
20 location as soon as we were notified.

21 Again, that is exhibit item number
22 33.

1 BZA CHAIR MILLER: Okay. We do
2 have that. Let me ask, is the ANC here in
3 this case?

4 (No response.)

5 BZA CHAIR MILLER: Is it your
6 opinion that the public had adequate notice by
7 those two postings and what other --

8 MR. STILLWELL: Madam Chair, it is
9 our opinion that there was adequate posting.
10 And, again, this is not a project that is a
11 stranger to the community. We recently
12 completed an Historic Preservation Review
13 Committee process. And we have been active,
14 as have members in the church and the
15 congregation been active, in the community in
16 speaking with the citizens, the residents,
17 anyone who has an interest in this project.

18 So we believe that pursuant to the
19 regulatory required notice, in addition to the
20 efforts made by the church, adequate notice
21 has been made. And if there is any concern as
22 a result of the issue raised by the Capitol

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1 Hill Restoration Society, we respectfully
2 request that, just for an abundance of
3 caution, if it be deemed appropriate, a waiver
4 be granted so we may proceed forward today.

5 But it is our argument and our
6 position that adequate notice has been met and
7 meets the regulations as reflected in exhibit
8 item number 33.

9 BZA CHAIR MILLER: Okay. Do Board
10 members have any concerns about notice?

11 MEMBER WALKER: Let me just ask a
12 quick question. It appears from the second
13 photograph of the posting on North Carolina
14 Avenue that the placard is actually on the
15 corner. Is it the case that you can see the
16 placard from 14th Street, Mr. Stillwell, in
17 photo number 2? Although it's labeled "North
18 Carolina Avenue," can you see it from 14th
19 Street as well?

20 MR. STILLWELL: Yes, that is
21 correct.

22 MEMBER WALKER: Well, then I don't

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1 think there is any issue, Madam Chair.

2 BZA CHAIR MILLER: Okay. I don't
3 have a concern, actually, either that since
4 two of the streets were covered, the longer
5 streets, and there is also additional notice
6 that the rules provide for to the ANC, to
7 those within 200 feet, in the D.C. Register.

8 And I think Mr. Peterson had
9 sufficient notice to file a filing
10 substantively as well as with respect to this
11 procedural concern. And he is not here to
12 pursue this. So I think at this point we
13 should go forward with the hearing and waive
14 the regulation.

15 MR. STILLWELL: Thank you, Madam
16 Chair.

17 BZA CHAIR MILLER: That is the
18 consensus of the Board, correct? All right.

19 So where you were about to go was
20 to request that Mr. Jordan be given expert
21 witness status?

22 MR. STILLWELL: Yes. Mr. Jordan

1 is prepared to discuss his credentials,
2 background, and qualifications at your
3 request. Mr. Jordan is licensed in the
4 District of Columbia and has worked on a
5 number of projects in the District of Columbia
6 based on his experience with Skidmore, Owens
7 and Merrill in Washington, D.C. Mr. Jordan
8 has also presented extensive testimony before
9 other administrative bodies throughout the
10 metropolitan region.

11 So, with that, if there are any
12 specific questions of Mr. Jordan, his resume
13 I believe has been circulated among the Board.
14 So unless you have specific questions of Mr.
15 Jordan's qualifications, he is here to respond
16 to those questions.

17 But based on his credentials, I
18 would respectfully request that he be
19 designated an expert witness.

20 BZA CHAIR MILLER: Expert in what,
21 in architecture or what?

22 MR. STILLWELL: In architecture.

1 BZA CHAIR MILLER: Yes?

2 MR. JORDAN: Yes.

3 BZA CHAIR MILLER: And you haven't
4 appeared before the BZA or the Zoning
5 Commission?

6 MR. JORDAN: I have not appeared
7 before the BZA before. I have appeared
8 extensively before the Maryland National
9 Capital Park and Planning Commission and also
10 the District Council.

11 Prior to coming to Arel
12 Architects, I spent 11 years employed by
13 Maryland Park and Planning Commission, half of
14 which was in comprehensive design and
15 community planning. The other half was in
16 development review, which I prepared reports
17 and made recommendations to the Planning Board
18 and to the County Council for matters such as
19 this.

20 BZA CHAIR MILLER: So has most of
21 your work been Maryland, as opposed to the
22 District? Do you have any District work,

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1 District of Columbia work, that you want to
2 highlight or it's mainly Maryland?

3 MR. JORDAN: It's probably a
4 mixture of both. I can name a couple of
5 projects that I have worked on in the
6 District: Evening Star Building on
7 Pennsylvania Avenue when I was at Skidmore.

8 One very recent, which was just
9 opened this past year, was Carver Terrace
10 Senior Apartments in Southeast Washington, on
11 East Capitol Street. I think it's
12 approximately a little over 100, 105, units
13 for seniors, 4-story structure; also Walker
14 Memorial Baptist Church, located on 13th
15 Street, Northwest.

16 Currently we have Gethsemane
17 Baptist Church, located in Northwest. So I
18 have a fair amount.

19 BZA CHAIR MILLER: Okay. Anybody
20 else have any questions?

21 ZC CHAIR HOOD: I just want to
22 ask, Mr. Jordan, were you the lead architect

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1 on the East Capitol senior dwelling?

2 MR. JORDAN: I was not the lead
3 architect. My partner was, but we worked in
4 conjunction on that project. He appeared here
5 before this body, not myself.

6 ZC CHAIR HOOD: Zoning Commission
7 is where he appeared. So okay. Thank you.

8 BZA CHAIR MILLER: Any concerns?

9 (No response.)

10 BZA CHAIR MILLER: Okay. Then it
11 appears that Mr. Jordan is qualified as an
12 expert in architecture.

13 MR. STILLWELL: Okay.

14 MEMBER WALKER: Madam Chair, I
15 think in light of Mr. Jordan's background in
16 planning, that we should consider him an
17 expert in both.

18 MR. STILLWELL: I would so request
19 as well.

20 BZA CHAIR MILLER: Okay. In what?
21 In urban planning?

22 MR. JORDAN: I had two

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1 responsibilities. Half of my career at Park
2 and Planning was in urban planning and
3 community planning, where we developed master
4 plans and et cetera, long-range plans, sector
5 plans.

6 The second half of my experience
7 was in development review, where I reviewed
8 proposed developments and made recommendations
9 and did presentations before the Planning
10 Board and County Council.

11 BZA CHAIR MILLER: Is that
12 experience germane to his testimony today with
13 respect to the application at hand?

14 MR. STILLWELL: I believe it goes
15 to the depth of his experience with regard to
16 some of the issues that we have dealt with.
17 Mr. Jordan has been on the project from the
18 very beginning, including the presentation
19 before the Historic Preservation Review Board.

20 And during this entire process and
21 the outreach with the community, a number of
22 issues have arisen, just not architectural

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1 issues. A number of site plan issues have
2 arisen as a result of that. And I don't know
3 who will be here to testify. That's not from
4 our team. But Mr. Jordan was critical in
5 those meetings as well.

6 So I would present that his
7 testimony both as a licensed architect and
8 with regards to his extensive background as a
9 land user planner would be relevant in this
10 particular proceeding.

11 BZA CHAIR MILLER: Okay. Any
12 objections?

13 (No response.)

14 BZA CHAIR MILLER: Okay. Then he
15 is qualified as an architect and --

16 MR. STILLWELL: We had requested
17 land planner.

18 BZA CHAIR MILLER: I'm trying to
19 use the right word. It says, "urban design
20 planner." Are you saying it should be land
21 use planner?

22 MR. STILLWELL: Well, urban design

1 planner. We use the terms interchangeably.

2 BZA CHAIR MILLER: We'll take the
3 urban design planner if that is all right.
4 That is what is on his resume.

5 MR. STILLWELL: That would be
6 perfectly fine.

7 BZA CHAIR MILLER: Okay. I guess
8 I have one other preliminary matter before you
9 get into the variance test.

10 MR. STILLWELL: Yes, Madam Chair.

11 BZA CHAIR MILLER: And that is the
12 parking requirement under 2116.3.

13 MR. STILLWELL: Yes, Madam Chair.

14 BZA CHAIR MILLER: Do you want to
15 address it at a later point? I just wanted to
16 make sure. I think it needs addressing.

17 MR. STILLWELL: Well, just to
18 indicate because there have been last-minute
19 discussions with Department of Transportation
20 with regards to that need. And ultimately
21 their finding and their strong recommendation
22 was that we needed one additional off-street

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1 parking spot.

2 And to accommodate that, the
3 church has reached an agreement with John
4 Murray Elementary School, which is less than
5 a block away, which has agreed to provide the
6 church with two off-street parking spaces just
7 so that we would have one additional space.

8 As a result of that, that
9 satisfied the concerns raised by the
10 Department of Transportation as well as this
11 was again not just a spot issue by the
12 Department of Transportation, but it was an
13 ongoing dialogue that was raised by some of
14 the members in the community. And so it
15 resulted in the negotiation with the
16 Department of Transportation.

17 And, as a result of this letter,
18 they have submitted a report in support of
19 this particular application. So they are now
20 in approval because they now have indicated
21 that we meet the parking requirements because
22 we have the two off-street parking spaces.

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1 BZA CHAIR MILLER: Do you have any
2 other agreement with John Murray Elementary
3 School other than exhibit 35, which is a
4 letter dated November 24th, 2008?

5 MR. STILLWELL: No, we do not. It
6 was discussed with Department of
7 Transportation that this letter was
8 sufficient. We had discussed how formal the
9 agreement needed to be. And he said a letter
10 from the school on their letterhead would be
11 sufficient.

12 But we were prepared to do a much
13 more formal agreement, as attorneys are
14 prepared to do.

15 BZA CHAIR MILLER: Okay. Yes.
16 Just a second. Let me pull the regulation.
17 I know the regulation calls for a binding
18 agreement. Let's see. 2116.3. You're
19 familiar with this provision, right?

20 MR. STILLWELL: Yes, yes.

21 BZA CHAIR MILLER: That provision
22 says, in relevant part, "where the required

1 number of spaces are made available for the
2 use of the church through a binding agreement
3 with the owners of the parking facility."

4 So it's been the position of the
5 Board that an applicant needs a binding
6 agreement?

7 MR. STILLWELL: We were prepared
8 to go that next step. In fact, that was our
9 initial draft. And, again, at the time our
10 negotiation was trying to satisfy the concerns
11 of Department of Transportation staff.

12 BZA CHAIR MILLER: Okay. Good.

13 MR. STILLWELL: So we have no
14 problem with submitting to the school and we
15 are sure based on our discussions with the
16 school they have no problems executing a
17 binding agreement because we actually have
18 that document drafted.

19 Again, we have done this many
20 times before. We don't provide more than what
21 was requested. DDOT said this would be
22 sufficient.

1 BZA CHAIR MILLER: Okay.

2 MR. STILLWELL: So that --

3 BZA CHAIR MILLER: I know that's
4 not for this Board, but that is fine. You can
5 follow up on this.

6 MR. STILLWELL: That will be fine.

7 BZA CHAIR MILLER: In the past,
8 with the schools, I believe we have gotten an
9 agreement from the D.C. Public School system,
10 not the school itself. It's got to be, yes,
11 in a --

12 MR. STILLWELL: We will make sure
13 that that is addressed.

14 BZA CHAIR MILLER: Okay.
15 Terrific. All right. I guess that is it for
16 my preliminary questions. Anybody else have
17 anything before they start?

18 (No response.)

19 BZA CHAIR MILLER: Okay. Thank
20 you.

21 MR. STILLWELL: Thank you.

22 I believe the case was described

1 initially, but I will e very brief. I know it
2 is late in the afternoon. This is a variance
3 request from the lot occupancy requirements
4 under section 403 and a variance from the rear
5 yard requirements under section 404 to allow
6 an addition to the existing church building.

7 I have introduced the witnesses
8 that will present testimony. And, if I may
9 commence, I would like to start testimony with
10 Mr. James Jordan, who will describe the
11 property, describe the elements of the
12 property -- I'm sorry?

13 BZA CHAIR MILLER: My colleague
14 was noting that we don't believe that the
15 witnesses have been sworn in, actually.

16 MR. STILLWELL: Oh, my apologies.

17 BZA CHAIR MILLER: I think they
18 came in after we started the afternoon
19 session.

20 MR. STILLWELL: Yes. You are
21 correct.

22 BZA CHAIR MILLER: Okay.

1 MR. STILLWELL: I was distracted
2 with the preliminary matter. My apologies.

3 BZA CHAIR MILLER: That's okay.
4 Me, too. So anybody here who would like to
5 testify, either in support or in opposition to
6 this application, if you would rise? Ms.
7 Bailey will administer the oath.

8 MS. BAILEY: Madam Chair, I feel a
9 little awkward swearing in the minister.
10 Please raise your right hand.

11 (Whereupon, the witnesses were
12 sworn.)

13 MS. BAILEY: Thank you.

14 MR. STILLWELL: Okay. If we may
15 just go ahead and begin? Our first witness is
16 Mr. James Jordan from Arel Architects. Mr.
17 Jordan, if you may please proceed by
18 identifying yourself in the record and then
19 present your testimony?

20 MR. JORDAN: For the record again,
21 James Jordan, Arel Architects, offices located
22 in Clinton, Maryland.

1 I briefly want to describe the
2 property to you. And also, if you would turn
3 to exhibit H? You have a full set of the
4 existing documents that have been put together
5 to this point, which shows the schematic
6 design, final drawings. And also the very
7 last page shows some photographs of the church
8 itself and the surrounding property.

9 MR. STILLWELL: If I can
10 interrupt, Mr. Jordan, for a second? When he
11 refers to exhibit H, he is referring to the
12 supplemental submission, revised requests for
13 variance relief, which encompasses the entire
14 application package plus the supplemental
15 submission.

16 BZA CHAIR MILLER: And it's our
17 exhibit 30, correct?

18 MR. STILLWELL: That is correct.

19 BZA CHAIR MILLER: Okay.

20 MR. STILLWELL: You may proceed,
21 Mr. Jordan.

22 MR. JORDAN: Thank you.

1 The property is triangular in
2 shape. And, as previously stated, it's bound
3 by Constitution Avenue, 14th Street, and North
4 Carolina Avenue. There is a small public
5 pocket park that is directly in front of the
6 property.

7 This is the existing frontage. To
8 the north, the property is on the property
9 line. There is no space between the property
10 line and the building.

11 To the rear, the property, the
12 existing structure, abuts an existing
13 rowhouse. To the south, the property again
14 abuts the property line. And to the east, the
15 front porch or the entrance there at the
16 property, there is approximately one-foot
17 distance between the property line and the
18 structure itself.

19 The lot area is 8,809 square feet.
20 The building area, the current building area,
21 total square footage, first floor and basement
22 floor and including the balcony, there is a

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1 small balcony in the front of the church, that
2 is 9,295 square feet.

3 The proposed addition that is
4 before you today is 5,893 square feet. What
5 is proposed for this development is a
6 two-story addition that would be located
7 directly above this outdoor, what we call an
8 outdoor, plaza area. It is an elevated
9 structure, approximately three and a half feet
10 above the grade. It's currently open.

11 The church, there is an egress
12 door on this side of the building that you can
13 access that plaza area. And, again, it's
14 about three and a half feet above grade. The
15 majority of our structure that is proposed
16 would be directly above this plaza area, two
17 stories in height.

18 I did want to speak about the
19 purpose and the sort of genesis of how this
20 project came about. There are a couple of
21 things that are happening. The church really
22 has no space, no interior or ancillary space

1 for classrooms, meeting rooms, administrative
2 offices, nothing of the like.

3 There is a basement area, but it
4 is virtually inaccessible. There is no
5 elevator in the property. There is a long
6 winding stair that goes down to the basement,
7 but, again, it is virtually inaccessible
8 because the church has an aging population.

9 And the stairs are very, very long
10 and winding. The stairs themselves don't even
11 meet current code requirement in terms of
12 riser height, tread length, and those types of
13 things. So it's an arduous task to go from
14 the first floor down to the basement. So that
15 space is virtually unused at this point.

16 So the purpose of the project is,
17 one, to provide useable space for classrooms,
18 for Sunday school, for meeting rooms, for
19 administrative functions.

20 Another prong is to provide
21 handicapped accessibility. As I just stated,
22 there is no access to the lower level. There

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1 are no handicapped-accessible bathrooms in the
2 church at all. There is no even handicapped
3 access to the church property itself in terms
4 of from the exterior grade up and into the
5 building.

6 So that is how the project came
7 about. We have been working for quite some
8 time with the client. And we believe that
9 construction and developing the property in
10 this way will just enhance the quality of the
11 experience in the church and make it more
12 useable for the congregants.

13 We are not in any way proposing to
14 expand the existing sanctuary capacity. The
15 sanctuary is remaining as is. The proposed
16 development is going to happen around the
17 sanctuary on the southeastern side of the
18 building and a small lobby addition at the
19 front.

20 The lobby is very small. When you
21 walk in, you walk in. In probably five or six
22 feet, you are at the sanctuary door. So the

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1 expansion towards the front will mainly
2 address providing an adequate lobby for
3 gathering before and after the service.

4 If you look at, again, the color
5 photographs at the end of exhibit H, which
6 speak to the character of the neighborhood,
7 you see the existing church.

8 And principally this property is
9 surrounded by rowhouses. And there are a
10 couple of small, two or three-story apartment
11 buildings, that are in vicinity. But
12 principally it is surrounded by rowhouses.

13 The property, as I think has been
14 noted, is within an historic district. And
15 there has been extensive communication with
16 the community and the governing bodies as far
17 as that is concerned.

18 If I can describe the architecture
19 just a little bit? What we have tried to do
20 is maintain the existing character of the
21 building. We are employing materials that are
22 very consistent with what is already in place.

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1 There are going to be expansive brick and
2 limestone used as accent bands around the
3 building.

4 One of the major elements that
5 came from the design was the existing spire
6 and tower that are on the building, that is a
7 very dominant element. And we strive to try
8 to accent that and highlight it in the design.

9 So we believe that we have
10 achieved that and put together a building that
11 will be compatible to what is existing and
12 also compatible to the surrounding community
13 and fit in with the character that is already
14 established.

15 The next thing I wanted to speak
16 about is the request for variance and meeting
17 the test for approval, for consideration for
18 approval. The first point we want to talk
19 about is we believe that the property is
20 affected by an extraordinary and exceptional
21 condition.

22 The lot, as I previously stated,

1 the lot is a triangular shape. And it is
2 currently built to the, almost built to the,
3 maximum as it is other than a small parking
4 area that is to the southwest corner of the
5 building that the church does use for parking
6 and will continue to use for parking, even
7 with the proposed development's construction.

8 We think that this triangular
9 shape makes this property more susceptible
10 than other lots in the area for rear and side
11 yard lot lines maxing out. We don't have any
12 area for the property as it stands now to
13 expand, either to the sides or to the rear,
14 other than the small parking area, which would
15 preclude any parking there. So we're fairly
16 limited in terms of where our expansion can
17 be. And that is why we propose to expand
18 vertically above this, what we quote as a
19 plaza area.

20 Again, the structure is already
21 nonconforming. And so the structure is
22 already nonconforming. So any additional

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1 expansion would bring us before this body.

2 But we feel that the triangular
3 shape of the property in the existing
4 condition of the building; in other words, the
5 footprint that it already possesses, is a very
6 unusual and extraordinary condition.

7 Currently the structure occupies
8 approximately 75 percent of the lot. With our
9 expansion, we go to 81 percent. We feel that
10 this is a modest increase. And I would point
11 out that the areas of expansion that create
12 that additional six percent of area that we're
13 requesting relief from, those areas are mainly
14 those portions where we are providing
15 handicapped access to the building.

16 We have proposed a
17 handicapped-accessible ramp that would enter
18 the building along the southwest portion of
19 the property. And we have also again, as I
20 stated earlier, proposed along the building
21 frontage a new entrance that will house a
22 handicapped lift, an interior lift, and also

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1 an elevator on the northeast corner of the
2 building.

3 We believe that a strict
4 application of the regulations would result in
5 the church being unable to provide handicapped
6 access within their existing footprint and
7 also relegate the church to remain
8 nonconforming with regard to national
9 handicapped accessibility standards, which we
10 meet none at this point.

11 The rear yard. Currently a
12 significant portion of the building does not
13 provide a rear yard. The existing church
14 building backs up and abuts an existing
15 rowhouse. So we already are at a zero rear
16 yard condition as it is.

17 Again, there is a small portion of
18 open rear yard in the parking area, but it is
19 not our proposal to build that out. So that
20 area would still remain open and remain a
21 parked area.

22 The only way that we believe that

1 we could meet the standard for provision of a
2 rear yard would be to demolish a portion of
3 the existing building, which would
4 significantly hamper the church's ability to
5 function, even as they do now. And also we
6 think that would be a significant detriment to
7 the historic fabric of the community.

8 With regard to detriment to the
9 public good, we do not believe that this
10 proposed expansion would be any detriment to
11 the public good. It is not going to block any
12 light or air from the adjacent residences.

13 The portion of the church which we
14 are proposing to expand, again, faces out onto
15 an open area towards Constitution Avenue. So
16 there are no residential properties that are
17 in close proximity to where we are proposing
18 to expand.

19 Conversely, we think that it is
20 our belief the addition will increase the
21 public good as it will allow the church to
22 continue to contribute to the community, as it

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1 has done for over the last 100 years. And we
2 believe that the proposed addition will only
3 enhance the church's ability to do so.

4 We do not believe that the
5 integrity of the existing zone plan would be
6 compromised. The proposed addition would
7 remain, the proposed addition and existing
8 structure would remain, within the permitted
9 height constraints for the zone and would be
10 consistent with the character of the
11 neighborhood.

12 I was going to address the issue
13 of parking, but we did briefly address that
14 earlier. And we will continue to move forward
15 to try to get the agreements that have been
16 requested and that are required.

17 But we would note that we are not,
18 again, proposing any addition to the sanctuary
19 capacity. So the loss of one space and the
20 agreement for two spaces we believe satisfies
21 the need as is.

22 This concludes my presentation. I

1 would refer to the pastor in regard to the
2 historic context and the church function, but
3 I certainly would entertain any questions.

4 Thank you.

5 ZC CHAIR HOOD: Madam Chair?

6 Mr. Jordan, help me to understand.
7 I think the case in point, if I was in a
8 wheelchair, how would I enter the building the
9 way it exists now?

10 MR. JORDAN: As it exists now, you
11 cannot enter the building other than someone
12 physically lifting you up and bringing you
13 into the building. There are no ramps. There
14 are no wheelchair lifts. There is absolutely
15 no access to the building as it currently
16 exists.

17 ZC CHAIR HOOD: Okay. So if this
18 moves forward, the entrance for the wheelchair
19 would be the 14th Street? I am looking at 3
20 of 8, your 14th Street proposed elevation.

21 MR. JORDAN: We would have two
22 entrances for two points of handicapped

1 accessibility. The first would be a proposed
2 ramp along the North Carolina Avenue side.

3 ZC CHAIR HOOD: Okay.

4 MR. JORDAN: And that ramp would
5 bring you up to what is proposed as a
6 multipurpose room area. And a handicapped
7 person could access the multipurpose room and
8 then from there into the sanctuary.

9 The second point of access and
10 probably what would be probably the main point
11 on a typical basis is at the 14th Street side.
12 What we have proposed is steps up to a porch
13 area that enters the building, but alongside
14 that, there is a grade entrance that would
15 bring you directly into the building at grade.

16 Inside of the building, there
17 would be a handicapped lift that would lift
18 you up to the lobby level. And then you could
19 access the sanctuary from that point.

20 ZC CHAIR HOOD: So the 14th Street
21 elevation, will that get me downstairs? There
22 is a downstairs, correct?

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1 MR. JORDAN: Yes.

2 ZC CHAIR HOOD: Does that come
3 after with the elevator?

4 MR. JORDAN: No. All of that
5 would happen at the same time. The elevator,
6 if you look at sheet 1 of 8 in exhibit H on
7 the floor plan and if you look at the floor
8 plan to the right side of the sheet towards
9 the lower left corner of the plan towards the
10 front of the building, that is where the
11 elevator will be located.

12 So the elevator certainly is going
13 to access all levels from the basement up to
14 the balcony level. The handicapped lift,
15 which is located on the opposite side of the
16 lobby from the elevator, that is going to get
17 you from the grade level up to the entrance
18 lobby and into the sanctuary.

19 ZC CHAIR HOOD: So the only way I
20 access the lower level is to use the elevator?

21 MR. JORDAN: Either the elevator
22 or we will have new stair access that will

1 take you downstairs.

2 ZC CHAIR HOOD: I mean if I am in
3 a wheelchair.

4 MR. JORDAN: Okay. The elevator,
5 yes.

6 ZC CHAIR HOOD: Okay. That's all
7 I have right now. Thank you. Thank you.

8 MEMBER DETTMAN: I have two
9 questions. One is that I cannot figure out
10 why there is a need for rear yard relief on
11 this. It's not something that came to mind
12 when I was reviewing the record. But just
13 looking at your plans and hearing your
14 presentation, I can't seem to figure out where
15 we need rear yard here.

16 I am looking at the first sheet in
17 tab H. And if I read 2001.3 correctly, what
18 needs to comply with the required rear yard is
19 the addition itself. I know your existing
20 structure doesn't provide a rear yard, which
21 I'm assuming is measured from the west side of
22 the rowhouses.

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1 MR. JORDAN: That's correct.

2 MEMBER DETTMAN: But it seems to
3 me like your addition, as proposed, could
4 potentially be providing your 20 feet, as
5 measured across your parking spaces.

6 So if you don't need it, you don't
7 need it. If it turns out that there is a
8 little bit of unclarity, we would just go
9 forward. But I am just wondering if you could
10 shed some light on that.

11 MR. JORDAN: I think in terms of
12 just looking at the distance across the
13 parking lot that you're speaking about and the
14 measurement, you are correct that we would
15 meet that requirement in that particular
16 portion of the site. So the addition, in
17 fact, would meet that requirement.

18 MEMBER DETTMAN: Madam Chair, I
19 just wanted to raise the question. We could
20 go forward and grant the relief out of an
21 abundance of caution or maybe OP when we get
22 to them, they could provide their advice.

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1 BZA CHAIR MILLER: Okay. I think
2 that's an excellent point. And we are going
3 to be leaving the record open anyway for the
4 binding agreement. So we may not necessarily
5 decide that today. But I think it's an
6 excellent point.

7 Do you have another question?

8 MEMBER DETTMAN: Just with respect
9 to the two areas where I believe you said it's
10 a handicapped ramp and then your small
11 extension of the lobby that goes into public
12 space.

13 MR. JORDAN: That does.

14 MEMBER DETTMAN: Have you talked
15 to DDOT regarding those and their approval,
16 potential approval?

17 MR. JORDAN: We are currently
18 working through that approval process. I can
19 defer to Mr. Stillwell if he wants to add
20 anything to it.

21 MR. STILLWELL: And just to make
22 sure I understand your question, the

1 discussions we had with DDOT were with regards
2 to the one parking space. And, again, that
3 was reflected in their report that was
4 submitted into the record.

5 I want to make sure I understood
6 the last part of your question.

7 MEMBER DETTMAN: I'm just
8 wondering. I know that your project is also
9 contingent upon approval of the use of the
10 public space.

11 MR. STILLWELL: Yes.

12 MEMBER DETTMAN: And have you
13 touched base with DDOT, their Public Space
14 Committee, on whether or not they would be --

15 MR. STILLWELL: Only preliminary.

16 MEMBER DETTMAN: Okay.

17 MR. STILLWELL: And the reason
18 they say preliminary is at the time we
19 determined that it was best to sequence the
20 approvals in the way that we're doing it. And
21 also we just weren't ready to submit at the
22 time. And as we dealt with the issues, we did

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1 not want to get ahead of ourselves.

2 So we have touched base, but those
3 discussions have been very preliminary. And
4 there has been no official application. And
5 in the sequence of things, if we do not get
6 past BZA, then public space permit approval
7 review is moot anyway.

8 MEMBER DETTMAN: Right. Have you
9 thought about your course of action if you get
10 past BZA but you don't get past public space?

11 MR. STILLWELL: I believe that is
12 why the church relies on my talent and skill.

13 (Laughter.)

14 MEMBER DETTMAN: Okay.

15 BZA CHAIR MILLER: Okay. I have a
16 few questions for whomever. First of all,
17 there is a reference that what is driving this
18 is a need for useable space for classroom,
19 Sunday School use, meeting rooms, and
20 administrative offices?

21 MR. STILLWELL: Yes.

22 BZA CHAIR MILLER: None of these

1 occur in the church right now or --

2 MR. STILLWELL: On a limited
3 basis. And perhaps, again, not to not address
4 your question, but that is the core part of
5 the pastor's testimony. And so he can either
6 answer it or just go through his testimony,
7 which was concise but I believe addresses all
8 of those issues that you raise.

9 BZA CHAIR MILLER: Okay. I will
10 wait until we get there.

11 MR. STILLWELL: Okay.

12 BZA CHAIR MILLER: I guess Mr.
13 Jordan said something about the triangular
14 shape of the lot makes it more susceptible to
15 rear yard and side yard relief that you need.
16 You're more likely to max out -- that's what
17 you said -- in what you're allowed. Can you
18 explain that?

19 MR. JORDAN: Yes. And I think
20 that I was speaking more so in reference to
21 for this particular property, given the
22 existing footprint of the building, we already

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1 are on the property line on two sides. And we
2 back up, at least a portion of it backs up, to
3 an abutting property on the other side.

4 And then given the parking area
5 that we have, which we have chosen not to
6 build into to at least hold onto some area of
7 parking, we are essentially at the constraints
8 of the site as we are.

9 So our choices are limited in
10 terms of expansion. And we are already in
11 nonconformance because of the existing
12 footprint.

13 BZA CHAIR MILLER: You're in
14 nonconformance because of the existing
15 footprint. You are already in nonconformance.
16 So, no matter what you do, you are going to
17 need a variance if you are going to increase
18 your lot occupancy at all because you are
19 already exceeding your allowable lot
20 occupancy?

21 MR. JORDAN: Yes.

22 BZA CHAIR MILLER: Okay. So what

1 does that have to do with the triangular shape
2 of the property?

3 MR. JORDAN: The triangular shape
4 of the property is unusual. It is unusual in
5 its shape. It is unusual in its
6 configuration. It is unusual that it is
7 bounded by essentially three rights-of-way.

8 BZA CHAIR MILLER: Okay. And I
9 may also read from one of the Court of Appeals
10 cases for the standard so that you all know
11 the standards we're using to evaluate the
12 case.

13 But in general when we do these
14 variances, which we do all the time, there has
15 to be a relationship between the exceptional
16 condition and the practical difficulties. It
17 is because of that condition that there arises
18 a practical difficulty of complying with the
19 regulation. And so I am just trying to focus
20 on what it is in this case. And there are
21 court cases that talk about improvements
22 already on the property.

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1 So I understand your point about
2 it's already nonconforming, you're already
3 built to certain boundary lines. I got that.
4 And it may be or it may not be that the fact
5 that it's triangular, that may or may not lead
6 to a practical difficulty in this case of
7 complying with regs. It just may be an
8 unusual situation. I don't know. So that's
9 why I was asking. I didn't see the
10 connection.

11 So you can think about it. If you
12 don't have an answer right now, that's okay.

13 MR. STILLWELL: And, Madam Chair,
14 the pastor also has made a note. He will
15 respond to your question as well during the
16 course of his testimony.

17 BZA CHAIR MILLER: Okay. Good.
18 Also I do want to bring to your attention a
19 case that I'm thinking about and that other
20 Board members have before them. I don't know
21 if you looked at it, but it's application
22 number 17609, a First Baptist Church. It was

1 a BZA decision in 2007.

2 There is a reference to some
3 guidance from the Court of Appeals in the
4 Draud decision, which is a D.C. Court of
5 Appeals decision, 1979. It's D-r-a-u-d, the
6 D.C. Board of Zoning Adjustment.

7 It talks about an expansion for
8 churches or nonprofits. And it says, "The
9 need to expand does not, however,
10 automatically exempt a public service
11 organization from all zoning requirements.
12 Where a public service organization applies
13 for an area variance in accordance with
14 Monaco, it must show: one, that the specific
15 design it wants to build constitutes an
16 institutional necessity, not merely the most
17 desired of various options; and, two,
18 precisely how the needed design features
19 require the specific variance sought."

20 So that's even a little bit more
21 specific than the regular three-prong test.
22 But I think the court recognizes that churches

1 and nonprofits are in an exceptional situation
2 even to begin with in that they provide
3 services to the community and it's a big loss
4 for the community were they not to be able to
5 provide their services. So they start with a
6 leg up.

7 But, on the other hand, the court
8 is saying, however, when you're looking at the
9 variance that's sought, we have to really look
10 carefully to see what is the need that you
11 can't meet if you don't get the variance.

12 And, in a way, how much area do
13 you really need? Like if we were to look at
14 your expansion, that would be like, well, how
15 much area do you really need if you're saying
16 that it's for the handicapped accessibility or
17 how much do you really need for the services?

18 MR. STILLWELL: And I believe
19 those criteria will come through in the
20 pastor's testimony.

21 BZA CHAIR MILLER: Another
22 question I have is, with respect to exhibit H

1 and the photographs, I just want to make sure.
2 Does one of them show exactly where the
3 expansion is going to be? Is it the center
4 photo on the top? Is it next to that on the
5 left?

6 MR. STILLWELL: Probably the best
7 one would be the top to the very right in the
8 corner. That side is the North Carolina
9 Avenue side.

10 And you can see the beginnings of
11 the small raised platform, the plaza area, to
12 the very -- if you look towards the rear of
13 the building, do you see the green dumpster?

14 BZA CHAIR MILLER: Yes.

15 MR. STILLWELL: Okay. Well, that
16 is sitting on top of this raised plaza area.
17 So that is where the expansion would be.

18 ZC CHAIR HOOD: Madam Chair, are
19 we on 8 of 8?

20 BZA CHAIR MILLER: What?

21 ZC CHAIR HOOD: Are we on 8 of 8?
22 What page are we on?

1 MR. STILLWELL: Yes.

2 ZC CHAIR HOOD: Eight of 8?

3 BZA CHAIR MILLER: Yes, 8 of 8.

4 MR. JORDAN: I'm sorry. That's
5 not a dumpster. That's a fence, a green
6 fence, that is up on the plaza area.

7 BZA CHAIR MILLER: That green
8 square is a fence?

9 MR. JORDAN: Yes. It's a chain
10 link fence with green plastic slats in it.

11 BZA CHAIR MILLER: So that plaza
12 right there, that's the footprint?

13 MR. JORDAN: Yes.

14 BZA CHAIR MILLER: So there are
15 steps right there, right? But they're not on
16 public property?

17 MR. JORDAN: No.

18 BZA CHAIR MILLER: They're private
19 property?

20 MR. JORDAN: The steps are not on
21 public property.

22 BZA CHAIR MILLER: But the fact

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1 that it's going to encroach public property or
2 is it doing it on the other side? Where is it
3 going to encroach the public property?

4 MR. JORDAN: It's a little
5 difficult to see from the photograph, but if
6 you were to continue, see at the front corner
7 of the photograph, where there is a green
8 hedge towards the bottom?

9 BZA CHAIR MILLER: Yes, yes, yes.
10 Okay.

11 MR. JORDAN: Okay. Well, behind
12 that hedge is where the raised plaza
13 continues. I mean, visually that is where it
14 continues. And on that side is where we are
15 proposing the ramp that would spill over into
16 public space slightly.

17 BZA CHAIR MILLER: Okay. Thank
18 you.

19 VICE CHAIRPERSON LOUD: A couple
20 of quick questions, Madam Chair.

21 Good afternoon. And these
22 questions are more by way of helping me

1 understand visually what the project will be
2 like because I'm not getting the full picture
3 looking at the plans.

4 MR. JORDAN: Okay.

5 VICE CHAIRPERSON LOUD: Basically
6 you're adding about 5,900 square feet?

7 MR. JORDAN: Correct.

8 VICE CHAIRPERSON LOUD: And 300 of
9 that is going to be in the basement roughly?

10 MR. JORDAN: Correct, yes.

11 VICE CHAIRPERSON LOUD: So does
12 that mean that you are going to have 2,750 on
13 this first floor addition and 2,750 on the
14 second floor addition roughly?

15 MR. JORDAN: Roughly, yes.

16 VICE CHAIRPERSON LOUD: And so you
17 will actually have a second level? Because I
18 am looking at the plans. And, I mean, it
19 looks like you have the height already for a
20 second level, but I guess because these are
21 embellishments and you have the steeple, that
22 that is not useable space at all. But, with

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1 the addition, you will actually have useable
2 space on a second story?

3 MR. JORDAN: That is correct.

4 VICE CHAIRPERSON LOUD: Got you.
5 And then your testimony earlier was that a big
6 part of the increase from 75 percent to 81
7 percent is taken up by the handicapped access.
8 Is that a fair --

9 MR. JORDAN: By the proposed ramps
10 --

11 VICE CHAIRPERSON LOUD: Ramps,
12 yes.

13 MR. JORDAN: -- and the lobby
14 addition at the frontage of the building.

15 VICE CHAIRPERSON LOUD: At the
16 front. So let's just go back to the 2,750 on
17 the ground floor. Does that mean a
18 significant part of that 2,750 is dedicated to
19 a ramp?

20 MR. JORDAN: No.

21 VICE CHAIRPERSON LOUD: Okay.

22 MR. JORDAN: That means that a

1 significant portion of that 2,750 will be
2 directly located over this raised plaza area.

3 VICE CHAIRPERSON LOUD: Over the
4 plaza. Okay.

5 MR. JORDAN: So that will not
6 expand the plaza footprint itself but the ramp
7 that comes along the side of the building and
8 the steps that connect to it. Those expand
9 the current existing building footprint on
10 that side.

11 VICE CHAIRPERSON LOUD: So the
12 ramp will be outside of the 2,750?

13 MR. JORDAN: Yes.

14 VICE CHAIRPERSON LOUD: Okay.
15 That was part of what I wasn't clear on. And
16 I think that's it.

17 I think you may have inadvertently
18 testified during your presentation that the
19 expansion was on the Constitution Avenue side
20 or maybe I heard it incorrectly, but I think
21 you just clarified that with Madam Chair that
22 it's on the North Carolina side.

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1 MR. JORDAN: That is correct, yes.

2 VICE CHAIRPERSON LOUD: All right.

3 Thank you.

4 MR. JORDAN: Thank you.

5 BZA CHAIR MILLER: Any other
6 questions?

7 (No response.)

8 BZA CHAIR MILLER: All right.

9 Thank you.

10 MR. JORDAN: Thank you.

11 MR. STILLWELL: My next witness is
12 Pastor Henry White. Mr. White, would you
13 please state your name for the record and
14 present your testimony, please?

15 DR. WHITE: I'm Henry White.
16 Madam Chair, members of the Board, good
17 afternoon. I am Pastor Henry White, again.
18 And I have been both blessed and privileged to
19 serve as senior minister of Brown Memorial
20 A.M.E. Church for the past 15 years. And I am
21 both blessed and humbled to serve some of the
22 most faithful members a pastor could ever hope

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1 for.

2 Just a little educational
3 background. I have a Bachelor of Arts degree
4 from Federal City College in sociology,
5 anthropology; a Master of Divinity degree from
6 Howard University School of Divinity; and a
7 Doctor of Ministry degree from United
8 Theological Seminary, Dayton, Ohio.

9 Just for a little history of our
10 church, our church is an anchor institution on
11 Capitol Hill, where we have been serving for
12 100, over now, 125 years.

13 The first structure was built in
14 1883. And our present structure was built in
15 1959. Now, when our church was built 49 years
16 ago, we did not have 20 or more members who
17 were actively worshipping at church who were
18 in their 80s. In fact, even in our audience
19 here today, we have one of our trustees who is
20 91 years old.

21 Therefore, these persons who
22 regularly attend our worship service, of

1 course, with aging have physical challenges.
2 A few are blind. And, yet, they come in
3 wheelchairs.

4 And some of the persons who have
5 physical challenges who are wheelchair bound
6 are not seniors. One young lady here had a
7 stroke, who is in the audience today. And,
8 therefore, she is physically challenged.

9 But 49 years ago, the pastor had a
10 vision to get young men off the street and
11 from the neighborhoods to come into the church
12 to play basketball. His vision was to build
13 a basketball court in the lower level of the
14 church 49 years ago.

15 Well, the vision never became a
16 reality. Therefore, we have a huge lower
17 auditorium, which is a basketball court, no
18 classrooms, no meeting rooms except for the
19 place that was built for a basketball court.
20 All of our Sunday school classes meet there.
21 You could imagine the noise with no privacy,
22 no enclosed spaces. All right?

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1 Down in the lower level, we also
2 have our dining room. That is where our
3 kitchen is. And so it is just a busy place
4 where there is a whole lot of distraction
5 taking place because of all of the traffic
6 that goes through there.

7 Well, our restrooms are down in
8 the lower level, which are two landings down
9 from the sanctuary level. In order for our 20
10 or more 80-year-olds to get to the restroom,
11 they have to first hike down the two landings,
12 struggle the length of the church to the rear
13 of the church to the restrooms, which takes
14 them about 5 to 7 minutes just to get from the
15 sanctuary down the two landings across the
16 length of the church to the restrooms. And
17 then they come back.

18 Well, it breaks my heart. I have
19 been seeing this Sunday after Sunday. And I
20 just, you know, prayed and prayed and prayed
21 and asked God to give me a vision to help me
22 to do something about my seniors.

1 I just wonder, why do they keep
2 coming? If they have to struggle like this,
3 why do they come? But, yet, they come Sunday
4 after Sunday. And we see them get up and go
5 out, struggling with their walkers and their
6 canes to go down those two landings and go the
7 length of the church.

8 Well, there was no vision 49 years
9 ago with seniors living as long as they're
10 living now. So, as a result, we have a large
11 senior citizen population and persons who are
12 not seniors who also have physical challenges.

13 We have no restrooms on the
14 sanctuary level, as I said before. The two
15 restrooms that we have are down there in the
16 lower level of the church.

17 Again, I don't want to repeat
18 myself, but I don't even have any
19 administrative offices for our board meetings,
20 no conference spaces, conference room spaces.

21 So, therefore, I brought it to the
22 church at the church conference that we had to

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1 do something about it. And they readily
2 agreed. And we voted to go forth with this
3 project, which we call From Vision to Victory.

4 And we are here now because, being
5 an anchor institution, serving in the
6 community for 125 years, we do have some stake
7 in the community. And we do choose. We have
8 chosen to continue to serve in the community
9 where we have served for 125 years.

10 However, we cannot continue to do
11 ministry the way that we are doing it with
12 inadequate facilities. So it's an
13 institutional necessity.

14 The necessity requires physical
15 improvements to retrofit, as it were,
16 reconfigure a structure that was built 49
17 years ago not knowing without any possible
18 knowledge of the longevity of people today
19 living as long as they are living.

20 So this is why we are here today,
21 to offer some relief to our congregation and
22 for some means by which to do ministry in a

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1 more organized way and a way that we can
2 accommodate our ministry at Brown Memorial
3 A.M.E. Church.

4 So, therefore, we do need the
5 elevator, the wheelchair lift, the bathrooms
6 on the sanctuary level, and a handicapped
7 ramp, all of these things, with which we would
8 have our restrooms in compliance with ADA.

9 Are there any questions?

10 BZA CHAIR MILLER: Okay. Thank
11 you very much. That was a compelling
12 statement. And I think you probably captured,
13 really, the reasons and the difficulties and
14 the fact that times have changed and your
15 congregation has changed and the building
16 needs to change as a result of that.

17 And I guess, then, the only other
18 -- well, the extension of that is, is this the
19 minimum to meet those needs or is this really
20 more? You know, I don't know if that is an
21 architecture's question or a lawyer's question
22 or what, but when I read the court case, it

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1 sounds like "Yes, but we should be looking at
2 the parameters," like is this ideally what the
3 church would like, "We would love to have a
4 big, say, conference room" or whatever or is
5 this what the church needs? I guess we have
6 an institutional necessity for a conference
7 room for ten people because we hold these
8 meetings all the time and they hold ten people
9 and we're cramped now in a certain space or
10 just some kind of -- I think because I read
11 the court case some type of way to measure
12 that what you're asking for is what you need,
13 not just "Okay. Here is an opportunity to
14 like build whatever we want."

15 DR. WHITE: Could I answer that?

16 BZA CHAIR MILLER: I would love
17 you to, yes.

18 DR. WHITE: We have no conference
19 rooms. We have no meeting rooms. So it's not
20 that we want to get one to accommodate 10 or
21 15 people. We can't accommodate two people.

22 Everything is done in that big

1 space, that cave, that cavernous place that
2 was built to be a basketball court. So you
3 could imagine the challenges we have trying to
4 maintain some type of organization.

5 BZA CHAIR MILLER: I think that,
6 you know, when you are talking about an
7 elevator or ramps, there are really basic
8 dimensions for those. So I guess when you're
9 talking about room for Sunday school classes
10 or meeting rooms, can you explain like how
11 many rooms you're going to have and why you
12 need those?

13 DR. WHITE: Well, we have seven --

14 BZA CHAIR MILLER: You have seven
15 now?

16 DR. WHITE: -- classes, Sunday
17 school classes.

18 BZA CHAIR MILLER: You have seven
19 classes. And what is the proposal for? In
20 this application, you're increasing your lot
21 occupancy to accommodate how many?

22 DR. WHITE: Well, we already have.

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1 We're proposing this to accommodate what we
2 already are doing, you know, the meetings that
3 we already have, such as the classes, the
4 number of classes, in our church school
5 department, what we call Sunday school, church
6 school. We already have those. There are
7 seven.

8 And then we have our boards, the
9 various boards that run the church. We have
10 about ten boards that run the church. So,
11 therefore, we do have to have meeting rooms
12 for our board meetings, which we currently do
13 not have.

14 MR. STILLWELL: And, Madam Chair,
15 if your question, as I understand it, as well
16 goes to the numeric how many are we asking for
17 now, Mr. Jordan is prepared to put that on the
18 record at this moment.

19 MR. JORDAN: Yes. As proposed, on
20 the lower level, we are proposing six meeting
21 rooms and/or classrooms. They can be
22 interchangeably used for one or the other.

1 So the pastor stated he has at
2 least seven Sunday school classes. We're
3 proposing six at this point. I mean, we still
4 envision having to use some of the other
5 space.

6 BZA CHAIR MILLER: Is the lower
7 level the basement level?

8 DR. WHITE: Yes.

9 MR. JORDAN: Yes.

10 BZA CHAIR MILLER: I apologize,
11 but I just want to make sure I understand.
12 Are you talking about the existing basement
13 level, where you are going to be retrofitting?
14 Are you talking about in the addition you are
15 going to have these classrooms?

16 MEMBER WALKER: It may be helpful
17 if you referenced the drawing for Madam Chair,
18 if you make reference to sheet 1 of 8.

19 MR. JORDAN: Yes. I'm sorry.
20 Yes, sheet 1 of 8. So sheet 1 of 8, the
21 drawing to the left side shows the proposed
22 basement plan.

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1 BZA CHAIR MILLER: Okay. Thank
2 you. I mean, I'm not an architect. I'm a
3 lawyer. And I look at plans a lot, but still
4 I need to be directed sometimes.

5 So it looks to me, then, Ms.
6 Walker was pointing out that the triangular
7 shape is the addition in the basement,
8 correct? And that is where the meeting
9 rooms/classrooms are going to be?

10 MR. JORDAN: That is correct.

11 BZA CHAIR MILLER: What happens in
12 the fellowship hall? That's the original
13 basement, right?

14 DR. WHITE: Yes.

15 MR. JORDAN: Yes.

16 BZA CHAIR MILLER: And what
17 activities happen there?

18 DR. WHITE: A game currently.
19 That's where we eat.

20 BZA CHAIR MILLER: That's where
21 you eat.

22 DR. WHITE: We eat breakfast. We

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1 eat our dinners. We have our board meetings.
2 We have our Sunday school classes. We have
3 our AA meetings. We have our homeless
4 ministry meetings, all of our meetings.

5 BZA CHAIR MILLER: Okay. But you
6 won't. In the future, if you get this
7 approved, you will have your meetings in the
8 meeting rooms?

9 DR. WHITE: Yes, ma'am.

10 BZA CHAIR MILLER: Okay.

11 DR. WHITE: Yes, Madam Chair.

12 BZA CHAIR MILLER: Unless there's
13 a big meeting. Okay. But they will be used
14 for dining and stuff?

15 DR. WHITE: Yes.

16 BZA CHAIR MILLER: Is that right?
17 Okay.

18 ZC CHAIR HOOD: Madam Chair, were
19 you finished?

20 BZA CHAIR MILLER: Yes.

21 ZC CHAIR HOOD: I just wanted to
22 ask a question. Dr. White, I understand your

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1 plight about the seniors having to go to the
2 restroom. I, too, go to church in the city.
3 So I understand.

4 Let me ask you. I'm looking here
5 on the diagram. Where are your existing
6 restrooms?

7 DR. WHITE: Okay.

8 ZC CHAIR HOOD: Are they
9 downstairs?

10 DR. WHITE: Yes. If you would
11 look -- what exhibit is that?

12 ZC CHAIR HOOD: I'm actually
13 looking at sheet 1 of 8. Is it shown here or
14 do I need to go somewhere else?

15 MR. JORDAN: If you could look at
16 sheet 5 of 8?

17 ZC CHAIR HOOD: Okay. Five of 8.

18 MR. JORDAN: If you look at the
19 basement plan and drawing to the right, the
20 spaces that are all the way in the rear of the
21 building, basically at the top of the drawing,
22 those spaces that line the back, those are

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1 where the existing restrooms are currently.

2 ZC CHAIR HOOD: Okay.

3 MEMBER WALKER: The drawing to the
4 left?

5 MR. STILLWELL: Mr. Jordan, would
6 you read the dimensions of the rooms you are
7 referring to?

8 MR. JORDAN: The men's bathroom if
9 you see the existing staircase to the top
10 right corner of the basement, existing
11 basement plan, the space that is directly
12 adjacent to that is the men's room. It's
13 approximately 8-foot-6 in width and
14 approximately 8-foot-9 in depth.

15 The women's restroom is located
16 basically in the same basement plan but is
17 located to the opposite side of the drawing to
18 the left corner. There is a triangular space
19 up in the far left corner of the plan.

20 MR. STILLWELL: Mr. Jordan, you
21 are referring to the space that has the
22 dimensions 11 feet, 1 inch?

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1 MR. JORDAN: The one to the left
2 of that.

3 MR. STILLWELL: Okay.

4 ZC CHAIR HOOD: Which is marked 20
5 feet, 4 inches. Anyway, okay. I got the gist
6 of it.

7 Let me also ask this, Dr. White.
8 Is there an issue about when you have
9 funerals? And I think there are five steps in
10 the front of the church.

11 DR. WHITE: Yes.

12 ZC CHAIR HOOD: Okay. Is that
13 also an issue with bringing the coffins into
14 the --

15 DR. WHITE: Yes, that is an issue
16 in trying to get the casket into the church.
17 We have to have some persons to lift the
18 casket and walk up the steps to the entry.

19 ZC CHAIR HOOD: Okay. Madam
20 Chair, I guess we're going to ask the
21 questions about the ANC letter, the
22 opposition?

1 BZA CHAIR MILLER: Feel free to.

2 ZC CHAIR HOOD: I am sure my other
3 colleagues will peruse a little more, but I
4 was looking here at the ANC. And I realized
5 that Brown has been in the community for a
6 long time.

7 When it says the ANC -- and I am
8 looking at the ANC letter dated November 6.
9 And it says the ANC opposed the project at 130
10 14th Street, Northeast because the application
11 is incomplete and the project does not meet
12 the burden of proof for an area of variance.

13 Were you aware that the
14 neighborhood ANC -- this is under signature of
15 David Holmes, who is the Vice Chairman,
16 Advisory Neighborhood Commission 6A -- has
17 some specific issues to the expansion?

18 MR. STILLWELL: Yes. If I could
19 interject first?

20 ZC CHAIR HOOD: That's fine.

21 MR. STILLWELL: And then team
22 members who were present can respond.

1 Yes. We presented for this
2 particular application and then historically.
3 The ANC has seen this application before it
4 went through the historic preservation review
5 process.

6 But specifically for this BZA
7 application, we met before their Zoning
8 Subcommittee and presented this application at
9 length. We requested extensively to present
10 before the full body, but that request was not
11 granted.

12 But at that meeting, the
13 objections were noted. Primarily the issues
14 focused on two points. They focused on
15 parking, which has been addressed by the DDOT.
16 And then there was extensive discussion with
17 regards to the public space incursions, which,
18 again, will be addressed by a separate
19 administrative body.

20 Those were the two salient issues
21 that the ANC members presented at that
22 particular juncture. We did request to

1 present before their meetings in October, and
2 we did request to present in their meetings in
3 November. We do have e-mail correspondence to
4 establish that, if need be, but it's not in
5 the record. But we can present it if need be.
6 But we were not invited.

7 And there are two points I would
8 like to make. In carrying on the issues
9 raised, that dialogue pertaining to parking,
10 which is a relevant issue before the BZA, we
11 addressed through DDOT.

12 And it was our understanding from
13 the DDOT staff person that they were in touch
14 with the Advisory Neighborhood Commission
15 members. And so they were communicating with
16 the ANC, and then they were communicating with
17 us. And so the DDOT issue was resolved prior
18 to that hearing based on that dialogue.

19 Also I have with the team Mr. Ron
20 Jones, who is a trustee but also the
21 designated community liaison and has met
22 extensively with not only the ANC members but

1 all the other civic/community associations and
2 members as it pertains to the church.

3 So this dialogue has been ongoing.
4 And we have established, the church not only
5 has established, good rapport over the past
6 100 years but has established bonds in the
7 community.

8 And, again, it was unfortunate
9 that we were not able to persuade the ANC on
10 this particular application, but I would
11 present that this is a minority position.

12 And Mr. Jones is free if he deems
13 necessary to add to that because he has had
14 more direct input with the other members in
15 the community as well as ANC members as well.

16 MR. JONES: For the record, I am
17 Ronald Jones, the Trustee Pro Temp of Brown
18 Memorial A.M.E. Church. And, as the Trustee
19 Pro Temp and on the Trustee Board, we are
20 responsible for all of the church property, so
21 the maintenance, the buying, the selling, the
22 renovation.

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1 Anything that deals with the
2 church property comes under the purview of the
3 Trustee Board, which meant that part of this
4 design process -- I'm going to get to the
5 question -- we have been looking at all of
6 these issues for over the past three years and
7 working and going to all of the meetings that
8 were required from the Historical Preservation
9 Society through the ANC Economic Development
10 Committees to the ANC full committee meetings.
11 And we have done everything that we could to
12 try to mitigate their issues.

13 Yes, I was aware and was at the
14 meeting when they stated that they felt that
15 the application was incomplete. We went
16 through all of the application and tried to
17 answer every one of their questions.

18 To give you an example of some of
19 the things that we have put into place
20 concerning the parking, we talked about the
21 parking. We have established a parking
22 ministry. And what our parking ministry does

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1 every Sunday is that we're out there every
2 Sunday, at least an hour, maybe an hour and a
3 half before service, directing members where
4 to park. We actually provide the valet
5 services for our seniors and so we can fully
6 utilize the parking lot that we have.

7 And the reason why we established
8 the meeting, because one of the issues with
9 the ANC, particularly with the ANC, was the
10 impact of the parking in the community.

11 So we wanted to do everything that
12 we could to ensure that we could mitigate that
13 the best we can by assisting our members in
14 parking and utilizing the parking space that
15 we have to our fullest. So that is why we
16 have established the parking ministry.

17 In addition, we have just added
18 another requirement to our bus ministry we're
19 standing up in which we have just purchased a
20 21-passenger bus, in which we are going to
21 start picking up people who normally drive.
22 So not only the seniors, we're also going to

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1 go to the local Metro stops in the area
2 because we have people that may want to take
3 the Metro that wouldn't drive in order to try
4 to alleviate that.

5 So all of these issues we are
6 working to try to work with the community.

7 ZC CHAIR HOOD: I just want to ask
8 this. This actually has nothing to do with
9 the case, but the people who are driving, are
10 they church members or are they people that
11 the church has hired?

12 MR. JONES: No. That are driving
13 the bus?

14 ZC CHAIR HOOD: That are going to
15 be driving the bus.

16 MR. JONES: Church members.

17 ZC CHAIR HOOD: Do they get paid?

18 MR. JONES: We'll get paid, but
19 no.

20 ZC CHAIR HOOD: Okay. No. I'm
21 just asking.

22 MR. JONES: They are not salaried

1 employees of the church, no.

2 ZC CHAIR HOOD: That's all I
3 wanted to know. That was for my benefit.
4 Thank you.

5 Thank you, Madam Chair.

6 MR. JONES: I'm one of the
7 drivers.

8 DR. WHITE: And, Madam Chair, may
9 I add that we did meet with the ANC
10 commissioner along with our neighbors in our
11 community and our members recently.

12 On two occasions we met for church
13 and community dialogue. We served
14 refreshments, coffee, and doughnuts, and
15 everything else to try to, you know, make it
16 palatable, make it a time of just relaxation,
17 at which time we actually listened and also
18 answered any questions that anyone had who
19 attended that meeting. And from this meeting,
20 we organized a parking ministry that brother
21 Ron Jones spoke about.

22 Since that meeting, we have not

1 heard one complaint about parking from anyone
2 in our community. And my memory escapes me as
3 to how long that was. I know it's been a few
4 months ago.

5 But we thought that at that
6 meeting, after addressing the concerns about
7 parking, our members parking, in the community
8 while doing ministry and while attending
9 worship service, we thought that had been
10 satisfied because our parking ministry does
11 not allow.

12 Our parking ministry parks our
13 members' cars on the parking lot that we have
14 and ensure that none of our members park in
15 any illegal places or restricted spaces.

16 So we have heard no complaints
17 about a parking issue concerning Brown
18 Memorial.

19 BZA CHAIR MILLER: Well, I think
20 that we resolved what I thought was the
21 relevant parking issue about compliance with
22 2116.3.

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1 So I think maybe that's what they
2 might have been concerned about, that you
3 didn't have enough parking. And according to
4 my read of the regulations, you do as long as
5 you have that binding agreement, which you are
6 going to get.

7 DR. WHITE: Yes.

8 BZA CHAIR MILLER: But did you
9 talk to them about the issue about expanding
10 your footprint?

11 MR. STILLWELL: Yes.

12 BZA CHAIR MILLER: I can't see
13 what their concern is other than they say that
14 you don't explain well enough why you can't
15 accommodate your existing programs.

16 MR. STILLWELL: It's very simple.
17 The position was -- and to be very accurate,
18 the same testimony that was presented before
19 this Board was presented to them. And the did
20 not find it persuasive.

21 And so they said, "Well, based on
22 what you told us, we don't think you need it."

1 And this is a paraphrase. I am not quoting
2 the exact words.

3 They felt that no intrusion should
4 be the result. And so they just did not find
5 our arguments persuasive. That's the best way
6 I can characterize it within the record
7 without any member being here. Yes.

8 MR. JONES: Madam Chair, I would
9 like to add one thing because I have been
10 intimately involved in the planning process.
11 And, actually, what you spoke about is what we
12 did. We were looking at what was our minimum
13 requirement, what did we need. It wasn't that
14 we wanted to do more than what we need.

15 So we looked at how many primary
16 kids were in the primary class, how many
17 juniors in the junior class, how many adults
18 meet in the adult class and where they meet.
19 So we looked at our minimum requirements in
20 establishing what we needed for classroom
21 space and for restroom facilities.

22 And not only our seniors but those

1 who had two knee surgeries in two years find
2 it difficult to go up and down those stairs as
3 well.

4 MR. STILLWELL: Madam Chair, we
5 had a third witness, Mr. Jones. However, he
6 was only to testify in sort of cleanup
7 position so that we would not have any
8 repetitious testimony as he is intimately
9 familiar with the church as the pastor.

10 We have no need to bring Mr. Jones
11 up to present testimony. He has presented his
12 salient testimony responding to your
13 questions.

14 So at this particular point, I
15 just wanted the Board to be aware as time is
16 getting late that unless you have specific
17 questions, our principal part of our
18 presentation is concluded. And we're
19 available.

20 You know, we consider this the
21 answer in response to questions made at this
22 point. So we have concluded the presentation

1 of our witnesses.

2 BZA CHAIR MILLER: Okay. Thank
3 you.

4 Part of our procedure, we do give
5 great weight to an ANC report. And that means
6 that we address the issues that they raise in
7 their report.

8 So there is another issue that I
9 am spotting, and that is the encroachment onto
10 park land. I'm wondering if you might address
11 why there is no detriment to the public good
12 with that encroachment.

13 MR. STILLWELL: I will start, but
14 I will have Mr. Jordan and perhaps Mr. Jones
15 dovetail. And, again, even though this is to
16 respond to the issue and, again, this is not
17 an issue review, the public space issue is
18 really two issues. To the south -- and, Mr.
19 Jordan, if you could please point out the
20 reference?

21 There are two public space
22 incursions. One is controlled by the

1 Department of Transportation. The second is
2 controlled by the National Park Service, which
3 has designated responsibilities to the D.C.
4 Parks Department.

5 So when we refer to park plan,
6 that is the park incursion. But the park is
7 really the green space in the corner of the
8 triangle between Constitution and North
9 Carolina Avenues. It's park in the sense that
10 it is owned by the park property, and they
11 maintain that little sliver.

12 However, at this particular point
13 with regard to why there is no detriment, I
14 will have Mr. Jordan and Mr. Jones address two
15 specific issues: number one, the extent of
16 the incursion of that area; and number two,
17 the landscaping requirements that were being
18 required to do as a result of the historic
19 preservation approval. And that really kind
20 of triggered this incursion issue in one
21 sense.

22 Gentlemen, if you are ready?

1 MR. JONES: Well, if you are
2 familiar with the triangle parks throughout
3 the city, one of the features of that triangle
4 park is that it has always been the front
5 porch. It has always been the front yard, so
6 to speak, the welcoming portion of the church.

7 As a matter of fact, when we
8 designed this addition, we went back and
9 looked at some of the old photographs of the
10 church, where we had the two steeples and a
11 park being in the front.

12 Well, in order to extend the lobby
13 so we can have the elevator and have the
14 circulation required and maintain the
15 architectural piece of the park being the
16 front yard of the church, we needed to extend
17 and go six feet into the park. That is the
18 objection, us going even one foot into the
19 park.

20 So it was keeping within the
21 design of that being the front yard of the
22 church, as it had always been, and also

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1 keeping with the use of public property,
2 public space, in that neighborhood. That is
3 the reason why we are proposing putting a
4 porch in that would go into the public space.

5 Secondly, I might add that the --

6 BZA CHAIR MILLER: Can you direct
7 me to where that is shown in the plans?

8 MR. JONES: Sure.

9 MR. JORDAN: If you look at the
10 second sheet of exhibit H, which is a site
11 plan, the shaded areas indicate the proposed
12 new portions of the building.

13 So along the frontage, if you will
14 note, approximately six foot is what Mr. Jones
15 was referring to -- projects beyond the
16 property line into the public space along the
17 frontage.

18 And on the southwest corner of the
19 proposed expansion abutting the parking lot
20 area, the ramp itself projects approximately
21 five feet into the public space area. And the
22 adjoining stair at the very southwest bottom

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1 corner of the building projects an additional
2 three feet.

3 MR. STILLWELL: Madam Chair, if
4 you would like to see a photograph of the
5 existing condition, if you turn to the
6 photograph plan sheet, the top center
7 photograph that shows the frontal view of the
8 church, -- this is still exhibit H, the last
9 sheet with photographs -- the green space,
10 that lawn area, is the park area. So you have
11 a visual of the existing condition. You can
12 see a little bit more at an angle to the
13 photograph through the top right.

14 The diagram that Mr. Jordan was
15 just describing is the proposed landscaped
16 proposed for this area that is reflected in
17 the photographs on the top of this page.

18 BZA CHAIR MILLER: Thank you.
19 They're all very helpful.

20 And the encroachment is going to
21 be a porch. Is that right? Is that what you
22 said?

1 MR. JORDAN: That's correct.

2 BZA CHAIR MILLER: And why is the
3 porch a necessity?

4 MR. JORDAN: Well, the porch we
5 believe sort of keeps in the same character of
6 the building as it is now. So what we tried
7 to do is basically provide a formal entrance
8 and access to the front of the building.

9 It sort of gives it a presence at
10 the existing frontage to keep it in the
11 character that the building has already
12 established in the community.

13 So we did not want to change the
14 main entrance or the main frontage of the
15 building; thus, kind of changing and altering
16 the character, as it has existed for
17 essentially the last 100 years. So that was
18 the main reason to provide the porch and the
19 entrance along the frontage to try to keep it
20 in the character of the existing structure as
21 it is.

22 And, if I can add to that, there

1 is a sidewalk along that frontage. And we
2 have looked at providing at the face of our
3 proposed porch to maintain that and keep the
4 circulation flow as it currently is on the
5 property.

6 So there will be in our opinion
7 minimal change to the character and to the
8 circulation flow along the frontage of that
9 property.

10 BZA CHAIR MILLER: I ask these
11 questions for our analysis purposes. Okay.

12 MR. JORDAN: Yes.

13 BZA CHAIR MILLER: What would
14 happen if it weren't there?

15 MR. JORDAN: Well, if it wasn't
16 there, then, again, we believe that just the
17 overall character of that entrance is going to
18 change because now you're looking at entrances
19 that would have to be accessed from the side.
20 You would not have the direct visual from 14th
21 Street in terms of this announces the front of
22 the church.

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1 BZA CHAIR MILLER: Thank you.

2 MEMBER DETTMAN: Mr. Stillwell,
3 would you happen to know -- as the National
4 Park Service transfers jurisdiction to DPR, I
5 assume they retain ownership -- does the
6 National Park Service give DPR the authority
7 to grant these types of situations?

8 MR. STILLWELL: It is our
9 understanding that is the case. And what that
10 internal consultant review procedure is I
11 cannot describe that process.

12 MEMBER DETTMAN: And the two
13 encroachments that we're talking about, the
14 front porch and I believe it's just a
15 handicapped ramp and maybe a stair along North
16 Carolina, none of these incursions are going
17 to be closed in or anything like that?
18 They're just porches and ramps? Nothing is
19 under roof or anything? That might be a
20 question for Mr. Jordan.

21 MR. JORDAN: That is correct, yes.

22 MEMBER DETTMAN: And at no time

1 are any of these areas going to be closed off
2 to the public? That is all going to remain
3 publicly assessable. Is that correct?

4 MR. JORDAN: That is correct.

5 MEMBER DETTMAN: Thank you.

6 VICE CHAIRPERSON LOUD: Good
7 afternoon again. I don't get it. So walk me
8 through it. And you can be brief because I
9 know you were very patient walking Madam Chair
10 through, but I don't fully understand why
11 you're doing the porch in the front into the
12 public space.

13 And I'm looking at your existing
14 conditions, and I am looking at the proposed
15 conditions as well as I guess 6 of 8 just to
16 sort of give me a framework for trying to
17 understand it.

18 MR. JORDAN: I would say it's
19 twofold. One, I guess I won't reiterate what
20 I just said about the architectural character
21 of the existing building frontage and wanting
22 to maintain that presence along the frontage

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1 to announce that this is the front of the
2 building and this is how you access the
3 building.

4 VICE CHAIRPERSON LOUD: Okay.
5 Stop right there. So you're saying -- and,
6 again, this is just kind of new to me -- so
7 that with the addition, the existing porch
8 would no longer do that?

9 MR. JORDAN: Well, the existing
10 porch, the existing porch, we're sort of
11 limited in what the interior of the space can
12 yield. In other words, there's a very small
13 lobby. Currently where the proposed elevator
14 is going to be located is where currently
15 there is an access there that goes up to the
16 second floor balcony. So that elevator is
17 going to occupy that access space.

18 In turn, we then have to provide a
19 legal access stair that meets today's
20 standards and requirements, which that current
21 access stair does not meet. We have to
22 provide a legal access stair to, again, access

1 the second floor for the balcony and for the
2 new spaces that are going to be up there.

3 That's not the only one that we
4 have to provide. We have to provide at least
5 two means of egress in case of emergency from
6 the second floor.

7 So in terms of providing the new
8 access stair, we essentially have to expand
9 that lobby depth and width. In doing that,
10 that pushes us out towards the existing
11 frontage.

12 So we believe it's, on one hand,
13 an architectural element that keeps the
14 character of the existing building and
15 announces its presence.

16 On a second note, we believe that
17 in terms of life, safety, and egress, we have
18 to provide that second stair along that
19 frontage, particularly when the code states
20 that those two stairs or those two means of
21 egress, should be as remote as possible from
22 each other.

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1 So we have one means of egress
2 towards the back southwest corner of the
3 building. And then we have what would be now
4 the second means of egress from the balcony
5 and second floor along the building frontage
6 in what is now the lobby and the expanded area
7 at that front.

8 VICE CHAIRPERSON LOUD: So, if I
9 understand, the expanded area in the front
10 after the improvement -- well, let me back up
11 and state it differently. The current porch
12 would become enclosed?

13 MR. JORDAN: That is correct.

14 VICE CHAIRPERSON LOUD: And so as
15 a result of that becoming enclosed, you really
16 have no visual for the entrance into the
17 church any longer. And so this new porch
18 allows you to continue having that prominent
19 sort of entrance?

20 MR. JORDAN: That is correct, yes.

21 VICE CHAIRPERSON LOUD: Thank you.

22 BZA CHAIR MILLER: And what's the

1 landscaping that you were referring to that is
2 going to happen in that triangle?

3 MR. JORDAN: Now, that, we have
4 not specifically determined that yet, but we
5 certainly have reached out to the community
6 and offered to work with them in terms of what
7 is going to be placed there.

8 We have not determined the
9 specifics of it, but the church has certainly
10 been willing to provide landscaping,
11 particularly if anything is removed in the
12 construction process. We wanted to replicate
13 what is existing there now.

14 BZA CHAIR MILLER: But, again,
15 that would be public space. So you would need
16 to work it out with DDOT?

17 MR. STILLWELL: Yes, as part of
18 public space as well as --

19 MR. JORDAN: Yes.

20 BZA CHAIR MILLER: Did HPRB get
21 into that at all or no?

22 MR. JORDAN: Yes.

1 BZA CHAIR MILLER: So what
2 happened with that?

3 MR. STILLWELL: One of the things
4 they asked is that we reach out to the
5 community, which is what the church has been
6 doing. So that is a work in progress.

7 BZA CHAIR MILLER: Okay. Any
8 other questions right now?

9 (No response.)

10 BZA CHAIR MILLER: Okay. Then we
11 can go to the Office of Planning. Let me just
12 ask you first, though, do you have a copy of
13 the Office of Planning report?

14 MR. STILLWELL: Yes, I do.

15 BZA CHAIR MILLER: Okay. Good.

16 MS. BROWN-ROBERTS: Good afternoon
17 again, Madam Chair and members of the Board.
18 I am Maxine Brown-Roberts with the Office of
19 Planning.

20 Before I get into my report, I
21 just wanted to address before I forget one
22 thing concerning the porch issue. The

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1 application was or design was reviewed by
2 HPRB. And in our office, I did review the
3 staff report that was written.

4 One of the things that was called
5 out, I am sorry I didn't make a copy to attach
6 to your report, but one of the things that was
7 called out was about the landscaping.

8 And a second one was the need to
9 keep the porch because the report said that
10 because of the historic nature of the building
11 and also it being within the historic
12 district, that it talked about the porch being
13 an integral portion of this building. And so
14 they needed to have it there.

15 And so I think with the -- not to
16 make the applicant's case, but because of the
17 expansion of having the elevator in that
18 needed space, therefore, it had to go out.
19 And, therefore, in order to keep the porch, it
20 sort of had to spill over onto park property.

21 But, to get back to it, it was
22 something that the HP staff required, that

1 they do keep the porch on the front of the
2 building. Okay.

3 To address some other things, the
4 applicant or the proposal is the building is
5 nonconforming. It's a nonconforming
6 structure. And so there are three variances
7 that we looked at, the one from the
8 nonconforming structure, the lot occupancy,
9 and also they also requested the rear yard.

10 Regarding the nonconforming
11 structure, it is nonconforming as regarding to
12 the lot occupancy. And it's going from 75
13 percent to 81 percent.

14 And then there is a question of
15 the building that doesn't have -- I think
16 something that maybe the applicant didn't
17 bring out and I'm not sure if you're aware
18 that the building is a church and two other
19 rowhouse buildings. I just wanted to make
20 sure that -- I don't know if the Board
21 realized that that was the building, the
22 building consisted of those two portions. But

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1 the expansion is only going towards the church
2 portion.

3 And so the rowhouse section does
4 abut another rowhouse. And then there is a
5 space that is used for parking, which is sort
6 of directly behind the church.

7 We think the subject property is
8 unique because of exceptional circumstances:
9 one, because it's an historic building that
10 already exceeds the lot occupancy and does not
11 need the rear yard requirements; and the
12 existing church does not have the flexibility
13 to expand above the church. And, therefore,
14 they have to do -- the addition that they're
15 requiring or that they're requesting has to be
16 over the patio area.

17 They could also have gone into the
18 parking area, but then they would also need
19 the parking variance. So we think that this
20 was the best option for them to use in
21 expanding over in the existing footprint of
22 the building.

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1 Regarding the lot occupancy,
2 again, the property is currently above the
3 permitted lot occupancy. And with the
4 expansion, even to cover the needs for their
5 offices and also to provide the handicapped
6 access, the lot occupancy would have to be
7 increased.

8 Regarding the rear yard again, a
9 portion of the building abuts another
10 building. And the remainder of it has a
11 varying rear yard, which goes up to in some
12 cases over 20 feet.

13 The variance will not cause any
14 substantial determine to the public good.
15 Again, the expansion will not cause any light
16 and air issues to their neighbors.

17 We sort of relied on the
18 applicant's submission that the addition that
19 they are requesting is sufficient to meet
20 their needs and is not excessive.

21 The sanctuary itself will not be
22 increased. And, therefore, one of the things,

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1 while we didn't look at this as regarding the
2 parking because the parking ratio is based on
3 the sanctuary itself and number of seats and
4 that is not being expanded and, therefore, we
5 didn't think they needed a parking variance,
6 at the same time I didn't have any
7 correspondence with DDOT to talk over what
8 they recommended. But I think that it has
9 been addressed between DDOT and the applicant.

10 We think that the addition will be
11 something that is good for the community. The
12 church is able to more sufficiently
13 accommodate their congregation. And it will
14 not affect any more the surrounding community.

15 Just of note, the District allows
16 a church as a matter of right. And we do not
17 want to see it limited because of the
18 accessibility into the building. And we,
19 therefore, recommended that the requested
20 variances be approved.

21 Thank you.

22 BZA CHAIR MILLER: Thank you.

1 That was excellent.

2 Anybody have any questions?

3 (No response.)

4 BZA CHAIR MILLER: I have a
5 question about Mr. Dettman's point about rear
6 yard variance not being necessary for the
7 addition. Do you have an opinion on that?

8 MS. BROWN-ROBERTS: I agreed with
9 it. I think we looked at it because the
10 applicant had submitted it, but the rear yard
11 when I measured it on the plans, it sort of --
12 there were some areas where it was just below
13 20 feet and that sort of thing. So we think
14 that was appropriate just to cover them, to go
15 ahead and let it go.

16 BZA CHAIR MILLER: I'm sorry?
17 Which do you mean, then? Do you think that
18 variance is required or not required?

19 MS. BROWN-ROBERTS: What I'm
20 saying is that overall there was one portion
21 of the property that abuts that has no rear
22 yard because it abuts an existing building.

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1 And then the area that they use
2 for parking right now, the measurement varies.
3 In some areas, it is above the 20 feet that
4 would be required for a rear yard. And in a
5 few instances, it may have been just a tad
6 below. And so we just wanted to say okay.

7 BZA CHAIR MILLER: I think that he
8 was referring to 2001.3, which talks about
9 only the rear yard for the addition itself and
10 that if --

11 MS. BROWN-ROBERTS: I think from
12 my reading of the plan that shows the
13 expansion, there is a shaded area in the back
14 that has seemed to have -- let me see if I can
15 look at exhibit H. And it's the second sheet.
16 There's a small shaded area there that seems
17 to me to read that that may be a part of the
18 addition, note there.

19 BZA CHAIR MILLER: Okay. Thanks.
20 So what you are saying is that you think, even
21 for the addition itself, you see an area that
22 might --

1 MS. BROWN-ROBERTS: Yes, right,
2 right.

3 BZA CHAIR MILLER: Okay. Thank
4 you.

5 MEMBER DETTMAN: Madam Chair, if
6 we end up leaving the record open and setting
7 this for decision at a later date, it might be
8 worthy of asking the applicant to clarify that
9 distance.

10 I think what Ms. Roberts is
11 referring to is it kind of juts out. It looks
12 like that is a stair. It might be a stair to
13 get up on to the first floor.

14 I don't know what the scale of
15 these drawings is. I assume they have been
16 reduced. But it seems to me like the distance
17 between that stair and the rear property line
18 could still be 20 feet.

19 So, again, if we decide to go
20 forward today, I think we should probably just
21 grant the relief or go forward as advertised.
22 But if not, it would be interesting to find

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1 out what that distance is.

2 BZA CHAIR MILLER: Other questions
3 for Office of Planning?

4 (No response.)

5 BZA CHAIR MILLER: Does the
6 applicant have any questions for the Office of
7 Planning?

8 MR. STILLWELL: No, we do not. We
9 would just like to thank them for their
10 cooperation and support throughout this
11 process.

12 BZA CHAIR MILLER: Okay. I am
13 going to ask again just in case. Is anybody
14 here from the ANC in this case?

15 (No response.)

16 BZA CHAIR MILLER: Okay. Not
17 seeing anybody, is there anybody here who
18 wishes to testify in support of the
19 application?

20 (No response.)

21 BZA CHAIR MILLER: Is there
22 anybody here who wishes to testify in

1 opposition?

2 (No response.)

3 BZA CHAIR MILLER: Okay. Not
4 hearing from anyone, I just want to ask
5 another question just to get everything in for
6 this case. I think a lot of this is about, as
7 we were discussing, the church's congregation
8 changing, aging, and different needs now than
9 when the building was built.

10 And the congregation is not
11 growing. Is that correct? Because we weren't
12 talking about -- or is the congregation
13 growing?

14 DR. WHITE: No, it's not a growth
15 issue.

16 BZA CHAIR MILLER: Okay. It's a
17 change issue?

18 DR. WHITE: Yes, ma'am.

19 BZA CHAIR MILLER: So I think that
20 the change is very obvious with respect to the
21 bathroom situation, the handicapped
22 accessibility because that goes directly to

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1 age.

2 How is it? Could you just address
3 one more time, how is it changing with respect
4 to the need now for the meeting rooms? Is
5 there a different need than there was, you
6 know, 40 years ago?

7 I have heard you talking about how
8 you have to meet in these not very suitable
9 conditions. They're very distracting and
10 noisy, et cetera. But is there anything that
11 you can say like why it was okay 40 years ago
12 but now something has changed and, therefore,
13 it doesn't work anymore and, therefore, you
14 need these rooms?

15 DR. WHITE: No, Madam Chair, it
16 was not okay 49 years ago. It was just a lack
17 of not projecting and a vision that would
18 allow for privacy, the various organizations
19 that were formed that have no separate or
20 private meeting rooms.

21 We didn't have it then 49 years
22 ago, and we don't have it now. It was not a

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1 part of the vision of this new and -- not new
2 but the present structure.

3 So it's not that it's an
4 all-of-a-sudden need. It was always an
5 existing need. We just came to the point
6 where we had to address this need that was now
7 a combination of things, not just a lack of
8 meeting rooms, but as our seniors and other
9 persons who are non-seniors who have physical
10 challenges must also be accommodated as they
11 come to worship there.

12 So there's a multitude of needs,
13 not just the meeting room need.

14 BZA CHAIR MILLER: Do you have
15 more Sunday school classes than you used to
16 have at all? Has that changed?

17 DR. WHITE: Oh, no. No. I could
18 show you a picture of the Sunday school
19 classes. They have always meet openly, all
20 the classes meeting in one area with just --
21 you know, I guess you're just trying to figure
22 out, how in the world could you have allowed

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1 that to happen, but I guess you --

2 BZA CHAIR MILLER: No.

3 DR. WHITE: -- just don't know. I
4 mean, you just do what you have to do. And I
5 guess we just said, "Wait a minute. This
6 cannot continue." I mean, kids are being
7 distracted with all this traffic. A group
8 meeting over here, church class meeting over
9 here, another group is meeting over there.
10 And we said, "Enough already."

11 BZA CHAIR MILLER: Okay. Thank
12 you very much.

13 Any other questions?

14 (No response.)

15 BZA CHAIR MILLER: Any closing
16 remarks?

17 MR. STILLWELL: As the hour is
18 late and we're 24 hours from Thanksgiving, we
19 will just conclude very briefly. Just one
20 procedural matter. It's my understanding that
21 the record will be held open for two items:
22 number one, the binding agreement between the

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1 church and the D.C. public school system; and,
2 secondly, documentation clarifying the
3 distance with regards to the rear property
4 line. And that is information that we will
5 submit forthwith.

6 Again, you have heard extensive
7 testimony today. I will not recap it. But
8 with regards to the testimony presented by Mr.
9 Jordan and Pastor White and Mr. Jones, that
10 testimony was specifically designed to address
11 the criteria, particularly the institutional
12 necessity as presented through Pastor White,
13 and the need for the physical improvements.

14 And I believe that, in addition to
15 that, with the testimony of Mr. Jordan and the
16 supplemental testimony of Mr. Jones, that the
17 criteria for the variance needs has been met.

18 I would add that, again, the
19 additional variance, it was debated whether or
20 not to include the request. And because of
21 the history of this property and because I
22 think it was just felt that, to be safe, if we

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1 thought we present the request, it can be
2 discussed.

3 Worst case scenario, it can be
4 determined it was not needed. But we did not
5 want to be in a position of not requiring it,
6 not requesting it, and then it being needed.
7 And, again, that is an issue that can easily
8 be clarified with the supplemental submission.

9 So, having said that, we are
10 satisfied with the requirements that have been
11 made upon us at this particular time. And we
12 respectfully request -- well, we would first
13 like to thank your indulgence for our
14 presentation. But we respectfully request
15 your approval.

16 And I can't even say it with a
17 straight face, but if a bench decision is in
18 order with this particular time with the two
19 agenda items that are left over, I believe we
20 have made a very compelling argument with
21 regards to approval of this matter.

22 But, again, we will abide by your

1 discretion at that particular point.

2 BZA CHAIR MILLER: Let me ask you,
3 your request for the rear yard variance, was
4 that based on any measurements of the rear
5 yard of the addition?

6 MR. STILLWELL: Not to my
7 recollection. And at this particular point,
8 I cannot give an accurate answer to that. So
9 the measurement that you were requesting, I
10 would need to review it because it's not I
11 believe an item we have handy. It's something
12 that our architect would have to prepare.

13 BZA CHAIR MILLER: Okay. I think
14 what I would like to do is give us a five to
15 ten-minute break. And we're just going to
16 reflect on whether to proceed with a bench
17 decision today or not. Okay.

18 MR. STILLWELL: Thank you.

19 (Whereupon, the foregoing matter
20 went off the record at 4:35 p.m. and went back
21 on the record at 5:16 p.m.)

22 BZA CHAIR MILLER: We're back on

1 the record after a little break. The Board
2 has decided that we have enough information
3 to deliberate on the case. And since you all
4 are here today, we decided that we're going to
5 do that.

6 So I think I am going to begin the
7 discussion first by addressing why we think we
8 have enough information given that we were
9 talking about two pieces of information that
10 we were going to keep the record open for.

11 The first goes to the parking
12 issue. And we were looking at 2116.3. The
13 point that we were addressing earlier was that
14 if the applicant had a binding agreement,
15 which is not in our record -- what we had in
16 our record was a letter from the elementary
17 school saying that they would provide parking
18 spaces -- that the applicant would not need
19 relief in the form of a variance because
20 2116.3 talks about location of parking spaces
21 as a matter of right provided that the
22 applicant is in compliance with those

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1 provisions.

2 So it's my position and I think
3 that of the Board as a whole -- and we'll talk
4 about that, you know, I'll get concurrence --
5 that the applicant will need such a binding
6 agreement when it goes for permitting, that
7 the Zoning Administrator would need that.
8 Otherwise it would be kicked back to the
9 Zoning Board for a variance.

10 As this is self-certified, we
11 don't have a variance for parking. We don't
12 really have to look at that document. So we
13 just want to clarify that we can go forward
14 and we expect that that is what the applicant
15 will do. And if the applicant doesn't do it,
16 the applicant will have to come back for a
17 variance. So, therefore, we are going to
18 proceed without that.

19 The other document we were talking
20 about goes to the measurement of the rear yard
21 behind the addition under 2001.3. What we
22 have decided is that we could deliberate on

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1 this based on the testimony of the Office of
2 Planning that they believe that rear yard
3 relief is required in a certain place and that
4 we believe that this application falls under
5 2001.3, which encompasses variance relief from
6 both lot occupancy and rear yard.

7 And the applicant certainly needs
8 relief from lot occupancy. So we are looking
9 at 2001.3, which encompasses relief from 404
10 and 403 lot occupancy and rear yard. So we
11 are going to address both of those under
12 2001.3.

13 At worst, applicant might not have
14 needed rear yard relief, but we believe that
15 they can reach that variance and given that
16 there is a question that they need it and that
17 they have applied for it, we can analyze that
18 without the exact measurement. So that is
19 what we are going to do.

20 That is my explanation for why we
21 are proceeding now. I think that the
22 applicants made a very strong case at this

1 hearing with respect to the three prongs for
2 the variance test.

3 I had referred in today's hearing
4 to application number 17609 of First Baptist
5 Church, Inc., of 2007, a decision by the BZA
6 in which we also dealt with a church expanding
7 and in which we cited some Court of Appeals
8 decisions.

9 And what I didn't talk about too
10 much in the hearing was Monaco, which I think
11 that this case falls under. Monaco talks
12 about where a public service organization, a
13 nonprofit, or a church has inadequate
14 facilities and they apply for a variance to
15 expand into an adjacent area in common
16 ownership, it says, "which has long been
17 regarded as part of the same area of the same
18 site, then the Board of Zoning Adjustment does
19 not err in considering the needs of the
20 organization as possible 'other extraordinary
21 and exceptional situation or condition of a
22 particular piece of property'."

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1 And I think that this case
2 demonstrates a lot of exceptional qualities,
3 conditions. I didn't see the authority myself
4 because I didn't think that that gave rise to
5 the practical difficulty, but I think that
6 this falls squarely within Monaco, where we
7 heard all about inadequate facilities and a
8 changing population with changing needs and
9 that the facility no longer can serve the
10 congregation well.

11 It also is an historic property.
12 And, therefore, as I think Office of Planning
13 said, it can't increase its area by going up
14 and not increasing its lot occupancy. The
15 only way it can increase and expand is by
16 increasing its lot occupancy.

17 So, therefore, I think those are
18 exceptional conditions. I think it runs into
19 the practical difficulty, too. I think they
20 somewhat overlap.

21 Before it's historic, there is the
22 practical difficulty that they can only

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1 expand. They can't expand up. As a practical
2 difficulty, they can only expand out.

3 And we heard a lot of testimony
4 about the practical difficulties of not
5 expanding with respect to the aging population
6 and the greater need there for an elevator and
7 ramps and things so that the congregation will
8 stay with this building.

9 We also heard practical difficulty
10 with respect to not having the meeting rooms
11 and classes that they will have with this
12 project, that there is no privacy, that there
13 is a lot of distraction, and it's not
14 conducive to the types of meetings and classes
15 that they need to have.

16 And we did explore whether or not
17 that was something has changed. And the
18 testimony was no but that there was bad
19 planning years ago and that they really need
20 to change it now.

21 I know others are going to add in.
22 This is just my basic analysis here. I may be

1 forgetting things, but we certainly heard that
2 there was no detriment to the public good.
3 They're actually expanding within their own
4 area.

5 There's no effect on light and
6 air. There's no increase in traffic or
7 parking problems because they're not expanding
8 their congregation.

9 I think that I am going to let
10 others jump in. And then maybe we can address
11 the -- again, the ANC did oppose the
12 application. Well, I think just, first of
13 all, -- and I did address this at the hearing
14 -- I think they were concerned with whether
15 the applicant needed a variance for parking.

16 And we already said that they
17 won't need a variance if they comply with
18 2116.3 and they intend to. Otherwise the
19 Zoning Administrator will send it back for a
20 variance.

21 However, I guess I can do it right
22 now. They did talk about their not seeing

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1 that there would be practical difficulties
2 that give rise to the applicant's desire to
3 expand.

4 And I think that, as I mentioned,
5 we heard a lot of testimony to real practical
6 difficulties. The ANC is not here to have
7 heard the testimony.

8 Actually, I would say that a lot
9 came out in the hearing that perhaps on paper,
10 it wasn't as clear. But I think that it
11 became quite apparent at the hearing.

12 So okay. I'm going to turn to
13 others if they want to make some comments.

14 VICE CHAIRPERSON LOUD: I think
15 we're all silent because you've done such a
16 great job outlining each of the elements,
17 Madam Chair.

18 BZA CHAIR MILLER: Well, the other
19 thing that I would add about we did look at
20 was, was there some public detriment to an
21 encroachment on public space. And, even
22 though that is within the jurisdiction of

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1 public space, if there was some public
2 detriment that could fall within the third
3 prong of our variance analysis.

4 And I didn't see that. In fact,
5 what I heard was that the porch, which is one
6 of the encroachments, would be a welcoming
7 feature and that it would be compatible with
8 the historic nature of the building, and that
9 there were plans to landscape on the public
10 space around it. And they're working with the
11 community on that. And so I don't see any
12 public detriment there.

13 Okay. I want to mention something
14 else, then. We also at the hearing talked
15 about the Draud case, which cautioned the BZA
16 with respect to making sure that the public
17 service organization wasn't actually expanding
18 more than necessary.

19 And we had a lot of testimony that
20 went to explaining how many classrooms they
21 actually needed based on how many classes they
22 have and where the lot occupancy was being

1 increased with respect to the elevators and
2 other features that were changing to
3 accommodate their aging congregation. And the
4 Office of Planning specifically stated that,
5 in her opinion, they were not asking for
6 excessive relief at all.

7 I think also with respect to the
8 rear yard, based on the testimony and the
9 drawings in the record, that that does not
10 infringe on any light and air of any
11 residences. And also there is no adverse
12 impact. In fact, it is a very small amount,
13 whatever the exact measurement is.

14 Others?

15 ZC CHAIR HOOD: I will say, Madam
16 Chair, I think you have captured it all. And
17 I think the record is really replete. Was
18 that a motion?

19 BZA CHAIR MILLER: Oh, I didn't do
20 a motion, but I would be happy to do a motion.

21 ZC CHAIR HOOD: Okay. If that's a
22 motion, I will second it.

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1 BZA CHAIR MILLER: Okay. I guess
2 I would move for approval of application
3 number 17846 of Brown Memorial A.M.E. Church,
4 pursuant to 11 DCMR section 3103.2 for a
5 variance from 2001.3, encompassing the lot
6 occupancy under section 403 and rear yard
7 under section 404 to allow an addition to an
8 existing church building at premises 130 14th
9 Street, Northeast.

10 ZC CHAIR HOOD: Second.

11 BZA CHAIR MILLER: I guess,
12 further deliberation, I would say that this
13 was advertised for relief under 403 and 404.
14 And Office of Planning, I believe, indicated
15 that there should be relief from 2001.3, which
16 deals with additions to nonconforming
17 structures, which this is.

18 And in looking at this, the Board
19 also agreed that it was appropriate under
20 2001.3 and that that regulation actually
21 encompasses the requirements under 403 and
22 404. And so that's how we are treating it.

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1 And it would not need to be readvertised or
2 anything because we are talking about the same
3 relief as to how to phrase it.

4 All right. Is there further
5 deliberation?

6 (No response.)

7 BZA CHAIR MILLER: Not hearing
8 any, all those in favor say aye.

9 (Whereupon, there was a chorus of
10 "Ayes.")

11 BZA CHAIR MILLER: All those
12 opposed?

13 (No response.)

14 BZA CHAIR MILLER: All those
15 abstaining?

16 (No response.)

17 BZA CHAIR MILLER: And would you
18 call the vote, please?

19 MS. BAILEY: Madam Chair, the vote
20 is recorded as 5:0:0 to grant the application
21 as amended. Mrs. Miller made the motion. Mr.
22 Hood seconded. Mr. Dettman, Mrs. Walker, and

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1 Mr. Loud supported the motion.

2 BZA CHAIR MILLER: Thank you.

3 This will be a full order, though,
4 because we have a party in opposition, which
5 is the ANC.

6 Okay. Thank you very much. And
7 have a happy Thanksgiving.

8 (Applause.)

9 BZA CHAIR MILLER: Ms. Bailey, do
10 we have anything else on the agenda for this
11 afternoon?

12 MS. BAILEY: No, Madam Chair.
13 Happy Thanksgiving to you.

14 BZA CHAIR MILLER: Thank you.
15 Happy Thanksgiving to you. This hearing is
16 adjourned.

17 (Whereupon, the foregoing matter
18 was concluded at 5:32 p.m.)

19

20

21

22