

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

JULY 29, 2008

+ + + + +

The Public Hearing convened in
Room 220 South, 441 4th Street, N.W.,
Washington, D.C. 20001, pursuant to notice at
2:30 p.m., Ruthanne G. Miller, Chairperson,
presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER, Chairperson
MARC D. LOUD, Vice Chairman
MARY OATES WALKER, Board Member
SHANE L. DETTMAN, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

CURTIS L. ETHERLY, JR., Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Spec.

DC OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

PAUL GOLDSTEIN

ARLOVA JACKSON

This transcript constitutes the
minutes from the Public Hearing held on July
29, 2008.

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

2 2:43 p.m.

3 CHAIRPERSON MILLER: This hearing
4 will, please, come to order. Good afternoon,
5 ladies and gentlemen. This is the July 29th
6 Public Hearing of the Board of Zoning
7 Adjustment of the District of Columbia.

8 My name is Ruthanne Miller. I'm
9 the Chair. Joining me today is the Vice Chair
10 to my right, Mr. Marc Loud, and next to Mr.
11 Loud is Mr. Curtis Etherly from the Zoning
12 Commission. To my left is Mary Oates Walker
13 and Shane Dettman, Board Members. Also
14 joining us next to Mr. Dettman is Mr. Cliff
15 Moy from the Office of Zoning and Ms. Lori
16 Monroe is passing by and Ms. Beverley Bailey
17 is at the end here. Ms. Beverley Bailey is
18 from the Office of Zoning.

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

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

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

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

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

1 Two, Government reports, including Office of
2 Planning, Department of Public Works, DDOT,
3 etcetera. 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 Section 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.

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

1 exception or variance case.

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

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

15 The 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 it's Rules of Procedure and
19 the Sunshine Act, enter Executive Session
20 during or after the Public Hearing on a case
21 for 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
9 disrupt these proceedings.

10 The Board will make every effort
11 to conclude the Public Hearing as near as
12 possible to 6:00 p.m. If the afternoon cases
13 are not completed at 6:00, the Board will
14 assess whether it can complete the pending
15 case or cases 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, continuances or
21 withdrawal or whether proper and adequate
22 notice of the hearing has been given. If you

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

5 Does the staff have any
6 preliminary matters?

7 MS. BAILEY: Madam Chair, Members
8 of the Board and to everyone, good afternoon.
9 There are two, one of which the Board has
10 already taken up, that was the postponement of
11 Euclid Virginia, Inc., 17725. As you recall,
12 Madam Chair, you took that up before your
13 lunch recess.

14 And then the second preliminary
15 matter has to do with McLean Bible Church
16 application, that's an appeal rather, No.
17 17767. That appeal was withdrawn.

18 CHAIRPERSON MILLER: Thank you.
19 And there is no action required by the Board
20 on that matter, correct?

21 MS. BAILEY: None is required,
22 Madam Chair.

1 CHAIRPERSON MILLER: Okay. Then
2 would all individuals wishing to testify today
3 either in support or opposition of any case
4 that's on the agenda for this afternoon,
5 please, stand now to take the oath? And Ms.
6 Bailey will administer it.

7 MS. BAILEY: Would you, please,
8 raise your right hand?

9 (Whereupon, the witnesses were
10 sworn)

11 MS. BAILEY: Madam Chair,
12 Application No. 17804 of John B. Ritch
13 Associates, pursuant to 11 DCMR 3103.2, for a
14 variance from the lot occupancy requirements
15 under section 403, a variance from the
16 nonconforming structure provisions under
17 subsection 2001.3, to construct a deck
18 addition to an existing apartment building at
19 premises 4 Logan Circle, N.W. The property is
20 Zoned R-5-B. It is located in Square 241 on
21 Lot 1.

22 CHAIRPERSON MILLER: Thank you. I

1 gather the parties are at the table? Okay.
2 Would you introduce yourselves for the record,
3 please?

4 MR. BROWN: Patrick Brown from
5 Greenstein, DeLorme and Luchs on behalf of the
6 applicant.

7 MS. VERBEKE: Jennifer Verbeke
8 from Mangan Group Architects on behalf of the
9 applicant.

10 MS. OLSON: Kate Olson with
11 Greenstein, DeLorme and Luchs, also with the
12 applicant.

13 CHAIRPERSON MILLER: Okay. I just
14 want to check if the ANC is here in this case.
15 Okay. Not hearing from anyone, then the
16 parties are at the table.

17 Is there a preliminary question on
18 this case? Mr. Dettman, did you have a
19 question before we get into it?

20 MEMBER DETTMAN: Certainly.

21 CHAIRPERSON MILLER: Okay.

22 MEMBER DETTMAN: In reviewing the

1 application, it seems to me that it might be
2 appropriate to request relief for FAR. I
3 noticed that the proposed deck extends from
4 the exterior wall in excess of 6 feet. And
5 under the definition of gross floor area, an
6 exterior deck that does not extend past 6 feet
7 does not count towards GFA. Anything in
8 excess, I would assume, counts towards GFA,
9 which would change your FAR.

10 Now, you are nonconforming to FAR,
11 so if you are do increase the nonconformity,
12 you still fall under the 2001.3. But I was
13 just wondering your thoughts.

14 MR. BROWN: And we have had that
15 discussion, I believe, with the Office of
16 Planning and agreed to disagree. And I don't
17 -- I think in this case the deck doesn't
18 involve FAR. But in keeping with the Office
19 of Planning's view, perhaps rather than
20 debating the matter, they certainly supported
21 extending the variance relief to include a
22 minor increase in FAR. And perhaps that's the

1 better way to proceed, the easiest way to
2 proceed. Certainly, there is no substantive
3 change in the application.

4 CHAIRPERSON MILLER: Okay. So you
5 are amending your application to include that
6 under 2001.3?

7 MR. BROWN: Yes.

8 CHAIRPERSON MILLER: Okay.

9 MR. BROWN: And again --

10 CHAIRPERSON MILLER: But --

11 MR. BROWN: Go ahead.

12 CHAIRPERSON MILLER: Do we have
13 any numbers to go with that then?

14 MR. BROWN: It would just be the--
15 beyond the 6 feet. The deck is what -- yeah,
16 so it's 4.5 feet times 32 feet, which is the
17 length of it. So that would be 128, if I'm
18 correct, 128 square feet of FAR.

19 CHAIRPERSON MILLER: And is there
20 a percentage figure that goes with that then?

21 MR. BROWN: Ah --

22 CHAIRPERSON MILLER: If you want

1 to add that later, you can.

2 MR. BROWN: Sure.

3 CHAIRPERSON MILLER: I mean, if
4 you don't have it at the tip of your tongue.

5 MR. BROWN: It's very minor. If
6 you go back to the --

7 CHAIRPERSON MILLER: Okay.

8 MR. BROWN: -- original and again,
9 FAR is being slightly reduced as a result of
10 the renovations. Not counting the deck and
11 the additional, we were just slightly, we were
12 1.854 FAR as opposed to the required or the
13 existing 1.863. You add 128, 129 feet to
14 that. We can figure out the number.

15 CHAIRPERSON MILLER: So --

16 MR. BROWN: But it's very minor.

17 CHAIRPERSON MILLER: -- the bottom
18 line would be a very slight increase as
19 opposed to a very slight decrease?

20 MR. BROWN: Yes.

21 CHAIRPERSON MILLER: Okay.

22 MR. BROWN: Over the existing

1 condition. It would be -- you are looking at
2 about 100 square feet, 103 square feet
3 increase net.

4 CHAIRPERSON MILLER: Okay. We can
5 figure out later the percentage if you want to
6 fill in that blank. But we get the picture.

7 MR. BROWN: Sure.

8 CHAIRPERSON MILLER: That it's a
9 slight decrease. Okay. I mean, increase.
10 Other than that, I think we are ready to hear
11 your case.

12 MR. BROWN: All right. And again,
13 given the record in this case and clearly the
14 Board has gone over the record and the Office
15 of Planning support, and also it doesn't
16 appear in the record, I don't believe, but the
17 ANC has voted both through their CDC and
18 through the full Commission ANC-2F to support
19 the application, although I don't believe it
20 has actually gotten in the record.

21 I don't want to belabor the case.
22 We are talking about an uncovered deck of very

1 limited size that is part of, and Jennifer
2 will, I think, tie it all together, a
3 renovation that has a lot of considerations
4 that had to be brought together, historic
5 preservation, the existing site and also
6 maintaining the historic nature and quality
7 and actually improving the rear of this
8 property.

9 So all those confluence of factors
10 came together and it brings us to this
11 relatively minor variance request. And I
12 think everybody has come so far to the same
13 conclusion that the end result both in the
14 overall renovation of the property and the
15 quality of the renovation and the quality of
16 the restoration is of an important site.

17 I mean, Logan Circle gets its name
18 from John Logan, whose house this is. And it
19 is more than just another building in this
20 area. It is significant.

21 Unfortunately, John Ritch, the
22 owner of the property, is away on business in

1 London and wasn't able to make it. I have
2 submitted a statement on his behalf and even
3 that, I don't think, does justice to how
4 strongly he feels about the property and what
5 he is doing and, quite frankly, the labor of
6 love and expense and care he has taken over an
7 extended period of time to make sure that this
8 project is done right.

9 And as a result of wanting to do
10 it right, this variance really is a result of
11 that.

12 With that, if the Board doesn't
13 have any questions, I would like Jennifer to
14 take you through. She is the project manager
15 for the architects and walk you through the
16 project very quickly.

17 CHAIRPERSON MILLER: Okay. And
18 when you do that, you know, as part of the
19 walking us through, could you show us, you
20 know, what is an exceptional situation related
21 to that? If it is related to the specific
22 building and property as opposed to, you know,

1 named after Logan or whatever. But you know,
2 and then what practical difficulty, you know,
3 arises from that in complying with the
4 regulations.

5 MS. VERBEKE: Okay.

6 CHAIRPERSON MILLER: Okay. Thank
7 you.

8 MS. VERBEKE: Thank you.

9 MR. BROWN: The hand held mike
10 seems to have gone missing. Madam Chair,
11 apparently to get the boards on the webcast,
12 they have been put way back there. I don't
13 know if that works for the Board Members
14 particularly well. If it would please you, we
15 could move them closer or also if you could go
16 to --

17 CHAIRPERSON MILLER: I wouldn't
18 move them, I don't think, because I think we
19 have got a good full perspective of them, so
20 we are fine.

21 MR. BROWN: Also, they all appear
22 in your prehearing statement, so that you can

1 look in both places.

2 CHAIRPERSON MILLER: Oh, I would--
3 if it's not a problem, in that case it's often
4 nice to reference where they appear in our
5 prehearing statement when you are pointing, so
6 for the record, you know, people can go back
7 to the right picture in the record. Okay.

8 VICE CHAIR LOUD: Before you
9 start, if you could, please, repeat your name
10 one more time.

11 MS. VERBEKE: Hello? Hi. My name
12 is Jennifer Verbeke from Mangan Group
13 Architects. I'm the project designer.
14 Basically, as Mr. Brown said, the existing
15 residence is to remain. Our only -- we are
16 only asking for a deck off the rear.

17 Just to orient you, Logan Circle
18 is here. This is P Street and this is Kingman
19 Place. This is a pretty unique site because
20 we have frontage on all three faces and you
21 can -- it's a gateway into Logan Circle over
22 here. And the rear elevation is quite

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1 prominent.

2 As it stands today, it has been
3 neglected. In the design process itself, the
4 front elevation is known, characterized by its
5 renaissance revival porch, which is here. And
6 the side elevation, which is the biggest
7 elevation it has, is characterized by the
8 steamboat gothic porch.

9 The rear is a little more
10 difficult to see. The rear elevation is a
11 result of different permits that were pulled
12 in the early 20th Century. The latest one is
13 dated 1910 in which the original owner just
14 kept adding pieces onto it. And as Kingman
15 Place was originally platted as an alley in
16 L'Enfant's plan, it was really kept as the
17 backside.

18 But since Kingman Place was made
19 into a street, 1890s, then it is quite
20 prominent. So as you go around to the rear,
21 we're really just trying to tie in the rear
22 elevation with the rest of the building to

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1 emphasize the uniqueness of the steamboat
2 gothic porch and try and tie that into the
3 rear, so that we are creating a new gateway
4 into Logan Circle.

5 And in doing so, not only are we
6 beautifying the rear of the elevation, but we
7 are also screening some parking spaces and
8 providing an outdoor living space for the
9 condo unit in the rear.

10 CHAIRPERSON MILLER: I missed the
11 last part where you were talking about
12 screening the parking spaces. Were you
13 referring to the deck or referring to other
14 parts of the architecture or something?

15 MS. VERBEKE: The deck itself is
16 screening. And Appendix D of the prehearing
17 statement has all the architectural drawings.
18 The deck itself is about 10.5 feet wide. It
19 spans the entire length of the building. This
20 design has come across from a year and a half
21 of community involvement with various single
22 community members and also the Logan Circle

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1 Community Association, the CDC and the ANC-2F.

2 So there have been some changes to
3 create what we feel is now a much better
4 design than it originally was. But there are
5 three parking spaces underneath that would be
6 somewhat concealed by this new deck. The
7 parking spaces actually slope down into the
8 site so that it is much -- it is very
9 difficult to see from the street and
10 especially from the sidewalk on the other
11 side, which you can see in the sight line
12 diagram in Appendix H, I believe.

13 All right. What is deceptive
14 about the property itself is that it appears
15 that we have a great deal of property, when,
16 in fact, our property line ends here. So as
17 you can see, some of our building, the
18 existing building is not even on our property.
19 It extends into the public space, which was
20 permitted as per L'Enfant's plan.

21 So that's probably why it appears
22 that our lot occupancy is a lot higher. In

1 Appendix E of the prehearing statement, this
2 is our actual lot coverage. All of the gray
3 is our actual lot. The darker gray is the
4 existing residents. This hatch pattern is
5 where the proposed deck is. And the rest is
6 the rest of the lot.

7 So that's -- this is the actual,
8 but to the general community and the
9 perception, I'll do this here so you can
10 compare, we appear to have a lot more land.
11 So we are not actually, we didn't like, over
12 densifying the area, because we appear to have
13 so much more land. Granted, it's not
14 technically our's, so all of our additions
15 have appeared on our own property, but we are
16 not -- we believe we are keeping with the
17 general themes of the requirements.

18 But our perceived occupancy is
19 actually less than the 60 percent maximum. So
20 our perceived total occupancy, including the
21 deck addition, is 53.75 percent.

22 CHAIRPERSON MILLER: Did you just

1 say that some of the building is on public
2 space?

3 MS. VERBEKE: Yes, it is. The two
4 bays fronting on P Street and part of the
5 front porch and all of the front steps are
6 actually on public space. Those are
7 preexisting conditions.

8 CHAIRPERSON MILLER: Earlier when
9 I asked about the screening, I thought I had
10 missed something, and I just want to make
11 sure. When you are talking about screening,
12 you are just talking about the deck that is
13 over the new parking spaces that are proposed,
14 right? Not any other screening?

15 MS. VERBEKE: There is a landscape
16 screening, as required by HPRB, that was one
17 of our stipulations coming out of the hearing.
18 So we have added some trees and low planting.
19 The actual species of that is yet to be
20 determined as per their request.

21 But there is two kinds of
22 screening. That we have the building

1 screening, which would mostly screen from the
2 neighbors surrounding where they would have a
3 higher view. We are also redoing the fence
4 that surrounds the property, which currently
5 is sort of cheap looking iron fence and we're
6 going to beef that up and make that more in
7 keeping with the time period of the actual
8 house. And plus the plantings. So all three
9 of those combined, plus the fact that the
10 parking slopes down, makes it pretty difficult
11 to see the cars.

12 CHAIRPERSON MILLER: The fact that
13 it slopes down makes it difficult to see the
14 cars? Is that what you said?

15 MS. VERBEKE: Well, the fact that
16 it slopes down, plus the deck, plus the trees,
17 plus the fence, a lot of factors.

18 CHAIRPERSON MILLER: Okay. Thank
19 you.

20 MR. BROWN: Okay.

21 CHAIRPERSON MILLER: Is that it
22 right here?

1 MR. BROWN: That's it.

2 CHAIRPERSON MILLER: Any other
3 questions from Board Members? Okay. Do you
4 have any other witnesses?

5 MR. BROWN: No.

6 CHAIRPERSON MILLER: Okay. Then
7 could you, Mr. Brown, then just lay out for
8 us, so that we have that in our context,
9 before we go to Office of Planning, you know,
10 the variance test? What's the exceptional
11 condition here that leads to a practical
12 difficulty in complying with the regulations?

13 MR. BROWN: It starts with the
14 location of the property, not just in the
15 Historic District, but also at this vantage
16 point where you have got the frontage on Logan
17 Circle, P Street and the Kingman Place, which
18 has certain advantages, but also makes it a
19 high visibility and a sensitive site.

20 It also, you know, creates
21 interesting dilemmas. You will see, and I
22 don't know if any of the photos are up, the

1 fence that goes around the site forming a
2 perimeter, which is something that has to be
3 maintained under the Historic Preservation,
4 but none of that is my client's property, yet
5 very much responsible for it and responsible
6 for it in the context of the property and
7 design in an area where rear parking is
8 common.

9 This is the only site in this area
10 that doesn't have the ability to access
11 parking from the rear. Kingman onto -- and
12 you will see photos in the record. So the
13 ability to provide parking in compliance with
14 the Zoning Regulations.

15 CHAIRPERSON MILLER: You are not
16 required to provide parking here?

17 MR. BROWN: No, no.

18 CHAIRPERSON MILLER: Okay.

19 MR. BROWN: Given that -- the
20 existing nature of the structure and its
21 historic contribution, you would not be
22 required to provide any parking. And in fact,

1 in this case, when we are going from nine
2 units to only four, any parking requirement
3 arguably would be cut in half.

4 Having said that, this is the only
5 property in this row that doesn't have rear
6 access to parking and that's an important
7 element, I think, certainly for this property
8 in the ability to put together a meaningful
9 project and meaningful renovation.

10 MEMBER WALKER: Mr. Brown, let me
11 interrupt you. What row are you referring to?

12 MR. BROWN: Along Kingman Place.
13 If you look at, and I believe there is some
14 photos we can put up, the two immediate
15 properties on the same side of Kingman, both
16 have access to rear parking. One would
17 suspect that that wasn't done with the level
18 of historic design sensitivity that has
19 occurred here.

20 But nevertheless, it's not
21 uncommon. In fact, it is more common with the
22 exception of this property to have rear access

1 to parking. And certainly, the Zoning
2 Regulations permit and these parking spaces
3 comply with the Zoning Regulations.

4 So in order to provide that
5 parking, and in the context of this building
6 and it's vantage point and the historic
7 preservation, the deck became a critical
8 factor. It was one of the most important
9 elements from the Historic Preservation Review
10 Board as part of a package of design to make
11 this appropriate.

12 Historic Preservation had no
13 problem with the concept of parking, but put
14 enormous burden on my client for purposes of
15 screening that parking and just by virtue of
16 the size of parking. Parking spaces are
17 certainly 19 feet long. You have to build a
18 deck of a certain length to provide any
19 meaningful screening. You've got the
20 landscaping in place.

21 In an earlier version, the
22 retaining wall, which was beyond the private

1 property line into public space has been
2 brought back as part of an overall plan for
3 this property.

4 In providing the parking, there
5 have also been, from a Historic Preservation
6 standpoint, the rear on Kingman Place an
7 existing door was returned to a window
8 configuration, so that you have lost access
9 from the rear of the property to the outside.

10 The deck in part recreates that
11 rear access slightly at a higher level, rather
12 than at grade in the area that was where the
13 parking was. So all these factors --

14 CHAIRPERSON MILLER: What's the
15 on-street parking like?

16 MR. BROWN: The parking is in
17 demand there. And the ability to provide some
18 on -- off-street parking for this particular
19 property is important. It's, I think,
20 important from a neighborhood context and
21 certainly that's the experience and the
22 comments we have received as we go through the

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1 process.

2 CHAIRPERSON MILLER: Okay. I
3 don't think we have those comments. Do we?
4 I mean, I think that, you know, when you're
5 talking about the deck it's there for the
6 parking and so certainly we don't have a
7 Zoning Reg that says you are required to have
8 parking, so then what's -- there might be a
9 problem in parking. I mean, is it zoned? Is
10 it -- if there is a lot of space, I would
11 think in front of the house, it's a big house,
12 I mean, is there a problem with four cars
13 parking or how many cars?

14 Not everybody necessarily would
15 have a car, but --

16 MR. BROWN: Yeah. I don't -- I
17 mean, on -- on an on-street basis?

18 CHAIRPERSON MILLER: Yeah.

19 MR. BROWN: Well --

20 CHAIRPERSON MILLER: Because we --

21 MR. BROWN: -- all the way along P
22 Street, correct me if I'm wrong, there is no

1 parking on P Street. The house has a very --
2 there is no parking, I don't believe, on Logan
3 Circle and the frontage on Logan Circle is
4 very narrow. And there is currently, I don't
5 believe, with the exception of --

6 MS. VERBEKE: There is a no
7 parking sign existing right about here. And
8 that allows you to put two cars, if they are
9 good parkers, between that sign and the
10 neighbor's driveway.

11 CHAIRPERSON MILLER: And can you
12 identify for the record, you know, what street
13 you are talking about?

14 MS. VERBEKE: Oh, this is on
15 Kingman Place. As Mr. Brown said, there is no
16 parking on P Street or Logan.

17 CHAIRPERSON MILLER: Oh, there is
18 no parking on P Street or Logan period, I
19 mean, for safety reasons or whatever, no
20 exceptions, right?

21 MR. BROWN: Yes.

22 CHAIRPERSON MILLER: So that's

1 out?

2 MS. VERBEKE: Correct.

3 MR. BROWN: No parking.

4 CHAIRPERSON MILLER: Okay.

5 MR. BROWN: 24/7.

6 CHAIRPERSON MILLER: 24/7, okay.

7 And so you identified that there is room for
8 two cars.

9 MS. VERBEKE: Yes, two cars.

10 CHAIRPERSON MILLER: On Kingman.

11 MS. VERBEKE: On Kingman. Our
12 proposal with the curb cut eliminates one of
13 the on-street parking, but you would gain
14 three off-street, so theoretically, those cars
15 that would be looking for spots, could find
16 homes here.

17 CHAIRPERSON MILLER: I thought you
18 were providing four spaces. Are you providing
19 four?

20 MR. BROWN: Three.

21 CHAIRPERSON MILLER: Three?

22 MR. BROWN: Three.

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1 CHAIRPERSON MILLER: Okay. So
2 it's either okay, so three if you are granted
3 the variance and the HPRB approval and you
4 have the on-site parking area. And two if you
5 are on Kingman. Is that correct?

6 MR. BROWN: I --

7 MS. VERBEKE: Well --

8 CHAIRPERSON MILLER: The two
9 aren't guaranteed to you, right?

10 MS. VERBEKE: Right.

11 CHAIRPERSON MILLER: I mean,
12 that's public --

13 MS. VERBEKE: Right.

14 CHAIRPERSON MILLER: -- parking
15 spaces.

16 MS. VERBEKE: Right, right.

17 CHAIRPERSON MILLER: So ---

18 MR. BROWN: That's right.

19 MS. VERBEKE: So you would have,
20 without this, two on Kingman. With this, you
21 would have one still on Kingman plus the
22 three, so you would have room for four cars.

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1 MR. BROWN: And again, occurring
2 in the context of conversion from currently
3 nine units to four units. As part of the
4 historic renovation of the property, so that--
5 I can't guarantee it, but certainly, there
6 will be fewer occupants of this building
7 perhaps than fewer units, perhaps creating
8 less parking demand.

9 And parking -- and just kind of a
10 visual observation, but again, this is Logan
11 Circle where parking is in demand and at a
12 premium on-street.

13 CHAIRPERSON MILLER: Just to
14 follow-up, just to finish with that line. How
15 close is it to mass transportation, to Metro
16 or bus lines?

17 MS. VERBEKE: The closest one I
18 have walked to is Dupont Circle, which is a
19 good 15 minute walk at a stride.

20 CHAIRPERSON MILLER: That's to the
21 Metro?

22 MS. VERBEKE: Yes.

1 CHAIRPERSON MILLER: Okay.

2 MS. VERBEKE: I'm not sure about
3 the buses, but I have seen buses along P
4 Street. I'm not sure where the stops are.

5 CHAIRPERSON MILLER: Okay. Any
6 other questions right now? You were in the
7 middle of the variance test. Was there more
8 you wanted to say about practical difficulty?

9 MR. BROWN: Well, given the site,
10 the building and the constraints that come
11 with it through Historic Preservation and also
12 doing something in the fashion that Mr. Ritch
13 wants to for historic sensitivity and doing a
14 good job or a better job of it, it comes -- it
15 becomes complicated.

16 There are all these factors that
17 have to come together, various people
18 sometimes perhaps almost with conflicting
19 views. But if you were outside the historic
20 context and didn't care, it would be a lot
21 easier, but that's not the case.

22 And so as a result, balancing all

1 the has to be accommodated and reaching a
2 quality product made it very difficult. And
3 the most critical element in the Historic
4 Preservation Review Board as it relates to the
5 parking, they had no objection, quite
6 remarkably, to the curb cut given the nature
7 of Kingman as really basically an alley and no
8 objections to the parking.

9 But the critical factor for the
10 Historic Preservation Review Board in this
11 matter went back several times and was given
12 a lot of consideration was the ability to
13 screen that parking area and the critical
14 factor there was the deck. So the two go
15 directly hand in hand, as well as, you know,
16 the deck looks the way it does for historic
17 preservation purposes.

18 And the need to -- for instance,
19 just the width of the deck 32 feet across the
20 whole back of the property is a factor rising
21 directly out of the configuration of the
22 building and the need to span the whole rear

1 as opposed to something less, as opposed to
2 the depth of the deck is a direct factor in
3 the parking to be screened.

4 A 6 foot deep deck would not
5 accomplish the screening purposes that are
6 important for historic preservation. A 10
7 foot wide deck, rather than a 32 feet wide,
8 would not accomplish the design elements as
9 well as the screening elements that are
10 important in looking at the building that
11 exists.

12 So that in large measure, to do
13 this, the options were limited. The deck
14 became a critical factor. So I think that's
15 important. And the inability to do all these
16 things creates an inferior product in an
17 important way from a historic preservation
18 standpoint, as well as the restoration of the
19 property in ways that doing this meets the
20 Zoning Regulations.

21 You know, providing the parking
22 doesn't require any zoning relief and is

1 absolutely permitted, except for the context
2 of the property itself. So those hardships
3 arise.

4 And I'll be honest with you when
5 we put this in our statement, the parking --
6 there is an economic factor to this parking as
7 part of an overall package. The premium for
8 this project is substantial, because of the
9 nature of the restoration and just the iron
10 work alone for the fence and the existing
11 decks has a cost of over \$400,000. That's
12 before you even start renovating the interior
13 of this property, which is in pretty poor
14 condition, so that the economics are, in fact,
15 a factor.

16 And a factor that the Board, as
17 part of the overall confluence of factors, can
18 certainly take into account. And in the end,
19 the last test is this going to be consistent
20 with the integrity of the regulations and the
21 Zoning Map and not cause objectionable
22 conditions? I think this is, one, an

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1 improvement, a benefit, both at the lowest
2 level providing additional off-street parking
3 and also, doing a first class job of restoring
4 a highly visible property in a way that makes
5 sense.

6 It certainly has met with the ANC
7 support, both -- you know, this project has
8 been through the Historic Preservation Review
9 process, as well as this process, and has met
10 with support, some criticism that has been
11 responded to and changes made.

12 So I think the record speaks to a
13 beneficial project that at the end of the day
14 is in keeping with not just the Zoning
15 Regulations, but with the neighborhood in the
16 context in this important location.

17 So I think that's it in a
18 nutshell, subject to any Board questions.

19 MEMBER DETTMAN: Mr. Brown, I
20 think you had mentioned that HPRB's big issue
21 was screening of the parking and that the deck
22 became a critical element to satisfying that

1 recommendation. But I was wondering, is the
2 deck a direct result of an HPRB recommendation
3 or was the deck put before the HPRB and the
4 HPRB made a comment saying the deck looks good
5 and it is going to help screen the parking?

6 MS. VERBEKE: The deck was
7 actually part of John Ritch's, who is the
8 client, initial desires. When he came to us
9 with this project, it was always in his mind
10 that this unit would have a deck. Because as
11 it stands right now, this unit is the only one
12 that doesn't have access to an existing
13 balcony. So he always wanted a deck there and
14 he always wanted the parking. So those two
15 kind of came hand in hand.

16 Through HPRB, the design of the
17 deck, which was first presented to them, they
18 didn't come up with that idea, that was ours,
19 that the shape of that has changed a bit,
20 because originally it was extending beyond our
21 property line. Then it was pulled back, then
22 it was extended and the shape has changed, but

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1 the deck has been there since the beginning.

2 MEMBER DETTMAN: Okay. Well,
3 clearly, the historic nature of the structure
4 goes to the uniqueness test. But the -- your
5 inability to meet lot occupancy is not a
6 direct result of any recommendation made by
7 HPRB, is it?

8 MR. BROWN: That's -- I'm trying
9 to get my mike to come on, I'm sorry. To a
10 point that is correct. The deck was part of
11 the conceptual submission that was made. And
12 the deck was a critical element of their
13 approval. I'm not so sure I can speculate
14 would they have approved the curb cut and the
15 parking from a historic standpoint without the
16 deck, but they didn't.

17 And so the deck as part of the
18 screening as well as the landscaping were
19 issues that were given enormous amount of
20 consideration. So that's how I would respond.

21 CHAIRPERSON MILLER: Okay. I just
22 want to make one comment and you are free to

1 address it now or I would like, you know,
2 Office of Planning to think about it, because
3 what concerns me and, you know, we're still in
4 the middle of this hearing, but it looks to me
5 as if the parking is there as an amenity. And
6 that it is there to help make a profit on the
7 price of the units.

8 This is just what I'm thinking,
9 you know, and we have this hearing to, you
10 know, address concerns. That's a concern.
11 There is a difference between variances that
12 are given for economic practical difficulties,
13 you know, where something might not be
14 economically feasible.

15 For instance, you put so much
16 money into this renovation and unless they
17 provide parking, they won't get enough back or
18 something. You know, that might be
19 appropriate being for the practical difficulty
20 element. We don't have any of that
21 information right now, so also it looks like--
22 I don't think that, if I understood you

1 correctly, that HPRB is requiring you to have
2 the parking or the deck, that it's something
3 that the applicant would like to have.

4 MR. BROWN: One, approaching it
5 first, providing the parking it is, in fact,
6 an amenity, whether you are talking this
7 property or any other property. But my
8 client's ability -- and again, the parking is
9 not something that requires, from a zoning
10 perspective, approval. Only in the context of
11 the Historic Preservation of this site does,
12 in fact, the issue become difficult.

13 So he is trying to do something
14 from a zoning context, which he otherwise
15 would be allowed to do without restriction.
16 As a result of that, and there is an economic
17 benefit to the units, there is a marketing
18 benefit to them, there is a neighborhood
19 benefit.

20 And also if you look at, and we
21 have pointed out pictures -- there is a
22 neighborhood context where the other houses

1 do, in fact, have parking, some much more
2 extensive, some fairly ugly. So it's an
3 important part of this property that he
4 otherwise would be allowed to do.

5 The deck as a design element was
6 important to Historic Preservation. Would
7 they have not approved the parking without the
8 deck? It was never put to them that way. But
9 I'm being referred to. Can I -- yeah.

10 CHAIRPERSON MILLER: The deck can
11 serve another purpose besides screening the
12 parking? Because I know you are not here for
13 a parking variance.

14 MR. BROWN: Yeah. Yes, but can I
15 just read the -- this is the -- and it's in
16 our prehearing statement. It's one of the
17 exhibits in our prehearing statement, I
18 believe. And this is Steve Calcott from
19 Historic Preservation and I'm quoting his
20 recommendation at the end. "The HPO, Historic
21 Preservation Office, recommends that the
22 review board approve the curb cut and parking

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1 pad in concept based on the specific
2 characteristics of this site contingent on the
3 curb cut being narrowed, the rear porch being
4 located behind the building line and a
5 landscape plan being developed that will
6 screen the parking spaces."

7 CHAIRPERSON MILLER: Where is that
8 in the record? It's attached to --

9 MR. BROWN: It may be --

10 CHAIRPERSON MILLER: -- 24, Office
11 of Planning report. Okay. Which one were you
12 reading from? We have two HPRB reports.

13 MR. BROWN: This one, the first
14 one, which was

15 MS. VERBEKE: Staff Report No. 1.

16 MR. BROWN: July --

17 MS. VERBEKE: Which is July 26th.

18 MR. BROWN: -- 26, 2007.

19 MS. VERBEKE: Staff Report No. 2
20 from September 27th states a similar fact
21 showing the rear porch change.

22 CHAIRPERSON MILLER: Are you

1 reading the part that says that it is
2 contingent upon a landscape plan being
3 developed that will screen the parking spaces?

4 MS. VERBEKE: Um-hum.

5 CHAIRPERSON MILLER: Okay. And
6 did you look at other concepts that didn't
7 require a variance from the Board that would
8 screen the parking spaces?

9 MR. BROWN: I'm sorry. All right,
10 we're back. Other means of screening? With
11 the exception of landscaping, which is a
12 zoning matter, any construction on this site,
13 again starting with the fact that it is
14 nonconforming for lot occupancy, FAR and
15 height, just about any kind of structure that
16 would be built as a screening mechanism would
17 involve some sort of zoning relief.

18 The other thing is that because
19 the site is historic, we went through this
20 process, but the opportunity to make changes
21 to the property to some how otherwise conform
22 isn't a viable option. I mean, if you had a

1 lot occupancy problem, you could somehow try
2 to address that by reducing lot occupancy.
3 And this building, the contributing building
4 in a Historic District, that's not going to
5 happen.

6 You know, another context, height
7 or any of the other requirements, again, there
8 wouldn't be any ability to respond. So that
9 you start with a nonconforming structure,
10 you're trying to accomplish something clearly
11 permitted by the regulations providing parking
12 and your options become limited. And there is
13 no doubt about it that the parking provides a
14 benefit.

15 The deck a benefit, both in
16 facilitating the parking and also in providing
17 some rear outdoor access to the rear unit,
18 which is lost as a result of the lower level
19 window or door being turned back into a
20 window. So these things all come together.

21 Certainly, Mrs. Miller, you raised
22 the economic hardship. Certainly, we are not

1 pleading poverty here. But in the context of
2 what is being done and the expense of this,
3 economics are a factor in the ability to
4 produce a quality product, which would then
5 allow some reasonable return for some very
6 expensive work.

7 I mentioned the figure for the
8 iron work of \$400,000. That's -- you know,
9 the overall premium I have been told by the
10 architects in this project could be as much as
11 25 percent over what construction of this
12 nature might normally entail, given the
13 Historic Preservation aspects and also given
14 the age and condition of the property. So it
15 is -- economics are, in fact, a factor.

16 No one factor, and we tried to
17 point this out in our prehearing statement and
18 I think the Office of Planning understood
19 this, standing by itself is justifying this,
20 but they all come together. And certainly the
21 court has indicated that a number of factors
22 coming together at the same time can, in fact,

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1 all contribute to satisfying the variance
2 test.

3 CHAIRPERSON MILLER: Any other
4 questions right now? Mr. Etherly?

5 COMMISSIONER ETHERLY: Thank you
6 very much, Madam Chair. I'm going to
7 apologize in advance for what is becoming an
8 increasingly challenging cold for me today, so
9 I'm going to be a little nasaed in my
10 comments.

11 But let me make sure that I am
12 clear in terms of understanding the outdoor
13 recreation space and the usage and perhaps
14 this is best directed to Ms. Verbeke, was it?

15 MS. VERBEKE: Yes.

16 COMMISSIONER ETHERLY: Excellent.
17 With respect -- could you just point out on
18 any of your illustrations or photographs in
19 the attachment that was provided to us the
20 recreation spaces that would be attached to
21 each unit?

22 So for the decks on the -- what

1 would be the finished building, which deck
2 would be attached to which unit?

3 MS. VERBEKE: Okay. I think it
4 will be best to do the perspectives.

5 COMMISSIONER ETHERLY: Certainly.

6 MS. VERBEKE: So that way I can
7 show you all. There are four units in here,
8 the two lower units are each two stories tall
9 using the ground floor and the basement level.
10 So the first unit is in the front. They have
11 access to the side steamboat gothic porch.
12 The second unit is in the rear and that's the
13 unit in question, which doesn't have access to
14 any existing, that's this level is the top
15 level of that unit, balconies, which is why we
16 are asking for the creation of a new balcony.

17 Unit 3 goes all the way across the
18 top and that actually has access to the most
19 existing balconies. They have a nice large
20 one in the front and also to the side is the
21 steamboat gothic. And unit 4 is a lot unit
22 with the historic renovation. This bay is

1 currently going all the way to the top, which
2 was not historically accurate, that will be
3 dropped and we will be getting back a deck on
4 top of that, which we have seen photographs
5 from the early -- the late 19th Century, early
6 20th Century. And economics contending, they
7 may have access to a roof, which was
8 originally the widow's walk.

9 COMMISSIONER ETHERLY: Excellent.
10 Okay. That concludes my questions. Thank
11 you, Madam Chair.

12 CHAIRPERSON MILLER: Thank you.
13 Anybody else right now? Okay. Why don't we
14 go to the Office of Planning. Good afternoon,
15 Mr. Goldstein.

16 MR. GOLDSTEIN: Good afternoon,
17 Madam Chair, Members of the Board. My name is
18 Paul Goldstein and I am a Development Review
19 Specialist with the Office of Planning. I am
20 filling in today for Karen Thomas, who is the
21 case manager on the case. So the details are
22 a little less in focus for me.

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1 The Office of Planning supports
2 the requested relief. And so I'm going to try
3 to answer any questions of a more general
4 nature, but may not be able to help on the
5 details of the case. Thank you.

6 CHAIRPERSON MILLER: All right.
7 Well, here is my question, but it may be too
8 case-specific, I'm not sure. But I'm looking
9 at the language of the variance test and I'm
10 looking specifically at 3103.2 of our
11 regulations.

12 It says "Whereby reason of
13 exceptional narrowness, shallowness or shape
14 of the specific piece of property at the time
15 of the original adoption of the regulations or
16 by reason of exceptional topographical
17 conditions or other extraordinary or
18 exceptional situation or condition of a
19 specific piece of property, the strict
20 application of any regulation adopted under
21 D.C. Official Code would result in peculiar
22 and exceptional practical difficulties to or

1 exceptional and undue hardship upon the owner
2 of such property."

3 I'm trying to make the connection
4 or find the connection between the -- there
5 are things that are exceptional about this
6 property for sure. I mean, I see that. But
7 where is the connection between something that
8 is exceptional about the property and the
9 strict application of a Zoning Regulation
10 resulting in peculiar and exceptional
11 practical difficulty upon the owner?

12 MR. GOLDSTEIN: I can -- with my
13 limited understanding of the details, it seems
14 to me as the applicant stated that in part you
15 have to look to a confluence of factors in
16 order to get there. I think the applicant
17 asserted that it's not really any one thing
18 that makes their case.

19 But I would suggest that the
20 property is historic. In order to make any
21 alteration or any addition, it's going to need
22 relief and that seems to be a connection here.

1 That if you agree that the parking and the
2 living space outside the back units are
3 necessary amenities to renovating the home --

4 CHAIRPERSON MILLER: Does the
5 Office of Planning evaluate that way, whether
6 amenities is necessary? Is that what you
7 are --

8 MR. GOLDSTEIN: Well --

9 CHAIRPERSON MILLER: -- thinking
10 that those parking spaces are necessary?

11 MR. GOLDSTEIN: -- I think the
12 Office of Planning typically thinks that a
13 homeowner should have the ability to make some
14 kind of reasonable upgrade of their property.
15 Certainly, there seems to be some judgment
16 that there is a practical difficulty here. So
17 I'm trying to tease that out.

18 So it seems like in order to make
19 a reasonable upgrade of the property, if --
20 it would suggest that parking and a deck is
21 maybe part of that, you can't --

22 CHAIRPERSON MILLER: Let me --

1 MR. GOLDSTEIN: -- for that
2 relief --

3 CHAIRPERSON MILLER: -- jump in,
4 okay, because, I mean, does that mean like
5 this is a gorgeous piece of property. It's
6 obviously a special piece of property owned
7 fronting on the three streets and whatever.
8 If you didn't provide parking here, would that
9 be unreasonable? Would that somehow, you
10 know, rise to the level of a practical
11 difficulty, even though parking is not
12 required?

13 MR. GOLDSTEIN: That's a good
14 question. I -- perhaps I'm wading in the
15 territory that I should stay away from without
16 knowing the details, but it's all part of the
17 mix of what we would be looking into.

18 MR. BROWN: Madam Chair, could I
19 interject on that?

20 CHAIRPERSON MILLER: Okay. Well,
21 okay, because -- all right. My other Board
22 Members have questions, but they are going to

1 let you --

2 MR. BROWN: Oh, I interrupted you.

3 CHAIRPERSON MILLER: Yeah, okay.

4 Okay. Yeah, go ahead. Was there something
5 you wanted to say?

6 MR. BROWN: And following up on
7 your question, and for whether it is in this
8 context or another context, for a property
9 owner to want to do something that's otherwise
10 permitted, in this case particularly in the
11 zoning context provide the parking, to
12 encounter the, to use the term, difficulties
13 that have been encountered, I -- draws the
14 connection.

15 If we were anywhere but this
16 property, specifically this property and the
17 importance of the site, the historic nature of
18 it, and we were talking about providing
19 parking that is otherwise permitted, I -- we
20 wouldn't be having this discussion. We
21 wouldn't be here.

22 And then if you add on top of that

1 the other factors and the importance of the
2 Kingman side of this property from a design
3 standpoint and the importance of tying it all
4 together with the existing building and in the
5 context of Historic Preservation and that
6 whole process, I think that tends to bring it
7 together. I mean, again, trying to do
8 something that is otherwise permitted.

9 CHAIRPERSON MILLER: The deck
10 isn't otherwise permitted though.

11 MR. BROWN: But the parking
12 certainly is. And in some significant
13 measure, the deck is related to satisfying the
14 Historic Preservation process in providing the
15 parking.

16 CHAIRPERSON MILLER: So the
17 practical difficulty is not being able to do
18 something that is permitted by the regs, the
19 parking?

20 MR. BROWN: Yes. And that's one
21 of the practical difficulties. And then the
22 requirement, again, arising out of -- and we

1 are talking about a deck of a certain
2 dimension, because it is there for a purpose.
3 I mean, if the purpose of this deck was just
4 to provide, solely provide, a place for the
5 people in that rear unit to walk outside and
6 smell the fresh air, the deck would not have
7 to be 32 feet wide and 10 feet deep.

8 The deck is that wide and that
9 deep as a direct result of design.

10 CHAIRPERSON MILLER: If it were
11 just even 2 inches deep, wouldn't it still
12 need a variance? I thought you couldn't
13 expand at all, because you are already at the
14 limit?

15 MR. BROWN: Well, that's true.

16 CHAIRPERSON MILLER: Um-hum.

17 MR. BROWN: But again, if it was
18 very minor, I'm not so sure that the concerns
19 would be raised. But in the context of what
20 we are doing, one, it is important to Historic
21 Preservation and important to the property and
22 the neighborhood as part of screening the

1 parking. And it is putting aside the design
2 element of it, which meets and agrees with the
3 existing building.

4 The deck we are talking about is a
5 direct factor of what it's there to
6 accomplish. The outside space could be
7 accomplished in a much different type of
8 arrangement. If you look at the open space
9 that is providing the rear -- the outside
10 access in the other context, it's different.
11 It's much narrower, not as deep.

12 So this deck at the rear is a
13 function of what it is trying to accomplish
14 from a historic standpoint in the context of,
15 you know, the rear of the structure and being
16 a, you know, structure that's 32 feet wide.
17 The deck is 32 feet wide to coincide with
18 that. It is 10 feet deep to provide a certain
19 measure of screening over the parking. It's
20 not bigger than that, you know, because it's
21 not necessary to accomplish that goal.

22 CHAIRPERSON MILLER: Okay. I

1 don't want to get too far off our procedures,
2 because I think we'll get back to you for your
3 closing arguments. But are there some other
4 questions for Office of Planning?

5 MEMBER WALKER: Yes, Madam Chair.
6 I have a couple of questions for you, Mr.
7 Goldstein. Now, they are general, as I try to
8 wrap my mind around this parking question.
9 Can you -- I believe Ms. Verbeke testified
10 that the closest Metro Station that she would
11 walk to is Dupont Circle. Do you have a sense
12 of whether the U Street Metro Station is
13 actually closer?

14 MR. GOLDSTEIN: My impression is
15 that it's a bit further, in fact.

16 MEMBER WALKER: Okay. And do you
17 have any sense of the G2 Bus Line on P Street
18 or any of the other bus lines that serve this
19 area?

20 MR. GOLDSTEIN: No, no specific
21 knowledge.

22 CHAIRPERSON MILLER: And here is a

1 general question, Mr. Goldstein. It's my
2 impression that Office of Planning is going in
3 the direction of trying to reduce pervious --
4 impervious surfaces and parking spaces. Is
5 that not correct?

6 MR. GOLDSTEIN: I think there is a
7 general trend toward trying to make surfaces
8 more permeable.

9 CHAIRPERSON MILLER: I think that
10 this case is a little tricky because it's like
11 a two-part thing. You know, they are not
12 coming for a parking variance. They are
13 coming for, you know, a variance related to
14 the deck. But the applicant says that the
15 variance for the deck is directly related to
16 what it's purpose is and it's purpose is to
17 provide screening for parking.

18 I don't want to beat this dead
19 horse. But if we look at -- if you are
20 familiar at all with, you know, even the
21 property at issue, if you were to not have
22 that, not have the deck or the parking, would

1 that diminish? Do you have any idea if that
2 would diminish the historic value, the
3 appearance of the structure there?

4 MR. GOLDSTEIN: I'm sorry? If
5 they didn't have the deck?

6 CHAIRPERSON MILLER: Deck or the
7 parking.

8 MR. GOLDSTEIN: And the parking.
9 Um, I have difficulty answering that one. I
10 don't know what the implications would be for
11 how it would look. I -- the Historic
12 Preservation Board seemed to like the deck,
13 the look of it. I'm not a historic
14 preservationist.

15 CHAIRPERSON MILLER: I could be
16 mistaken. I'm under the impression that it's
17 rare for the Office of Planning to support a
18 variance from 2001.3. Is that correct?

19 MR. GOLDSTEIN: That is correct.

20 CHAIRPERSON MILLER: So what is it
21 in this case that, if you're familiar enough
22 with the case, you know, prompts the Office of

1 Planning to feel differently here?

2 MR. GOLDSTEIN: I think that it is
3 not an incredible intrusion. It's not a very
4 substantial increase in lot occupancy. It's
5 true that we usually take a pretty hard stance
6 on this. I think it has got the support of
7 the neighborhood, from what I understand.
8 There are certain historic constraints that
9 are involved here. And I think it would
10 probably be a number of factors that would
11 lead us to support it in this instance where
12 typically we would not be supporting an
13 extension like -- of an increase in a
14 nonconformity for 2001.3.

15 CHAIRPERSON MILLER: If I'm
16 reading the chart right, the existing lot
17 occupancy is 68.45 percent and the proposed is
18 80.25 percent. And this is from Office of
19 Planning's report, page 2. Is that -- are you
20 saying that is not a large change?

21 MR. GOLDSTEIN: It's not large
22 compared to some of the others that I have

1 dealt with. That's -- from my own knowledge,
2 I have dealt with 97 percent and some numbers
3 that get quite a bit higher than this one.

4 CHAIRPERSON MILLER: All right. I
5 think this is my last question. Does it look
6 like to you, as you read this case, that the
7 parking is an amenity or something else or
8 just reasonable for homeowners?

9 MR. GOLDSTEIN: It's not a bad
10 question. It appears that along that street,
11 most of the dwellings have parking, I would
12 guess. This seems to be one that doesn't seem
13 to have parking. It's not incredibly
14 unreasonable to want parking on your property.
15 It probably does make it economically a
16 stronger project to renovate. It's not an
17 unreasonable request. Where the line between
18 amenity and other is unclear to me, but --

19 CHAIRPERSON MILLER: I mean, the
20 way the applicant presented it, it looked like
21 there is only -- if they were not to get the
22 parking -- if they were not to get the

1 variance for the screening, which screens the
2 parking, that there would only be two parking
3 spaces available on the street for four units
4 here.

5 MR. GOLDSTEIN: Yeah, and I think
6 they suggested that those aren't dedicated
7 parking spaces, so it's a very different
8 ballgame at that point.

9 CHAIRPERSON MILLER: Now, I want
10 to ask one other question. Also, because the
11 parking regulations, you know, are -- new
12 parking regulations are being proposed and so
13 I think that a lot of us are thinking through
14 the implications of parking regulations and
15 the reasonableness.

16 And so I mean, in looking at
17 parking regulations for the future, if you saw
18 that there were only two parking spaces on a
19 street or something, that would lead -- would
20 that lead you to a conclusion that there
21 should be more on-site parking required or
22 allowed? I mean, how unusual is this two on

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1 the street? I mean, that sounds kind of
2 unusual to me.

3 MR. GOLDSTEIN: Honestly, I do not
4 know. I don't know how to answer that one.

5 CHAIRPERSON MILLER: Anybody else?
6 Okay. Has the ANC walked in in the meantime?
7 I don't see anyone. Is there anybody here who
8 wants to testify in support or opposition of
9 this application? Not hearing from anybody,
10 Mr. Brown, do you want to make some more
11 closing remarks?

12 MR. BROWN: I would like Jennifer
13 to point out one thing about the rear Kingman
14 Place and then go ahead, Jennifer.

15 MS. VERBEKE: This is one of our
16 original boards from our historic
17 presentation. This is the existing elevation
18 as it exists today. It's a little hard to
19 see, but it's the result of two different
20 additions that the original owner, Cynthia V.
21 Chase, put on, this box and this box on the
22 side. And as a result, you see the coins kind

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1 of divide things.

2 It's not very unified and it
3 doesn't really coincide with what the rest of
4 the elevations look like. So we believe that
5 the deck is also going to greatly enhance
6 this. So it's not just to screen parking, but
7 also a way to tie the whole building together
8 since this is the face you see as you are
9 driving down P Street and you are entering
10 Logan Circle. This is the first view you get
11 of this great building on Logan Circle.

12 So we are just trying to improve
13 that face and tie it in with the rest of the
14 elevations.

15 CHAIRPERSON MILLER: Do you have a
16 feel, Mr. Brown, how unusual it is just to
17 have two parking spaces available in this kind
18 of situation?

19 MR. BROWN: Well, I wanted to --
20 and I'm not so sure I'm allowed to ask the
21 Chair a question, but I don't quite understand
22 your reference to two parking spots. I mean,

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1 the two parking spots on Kingman we are
2 talking about are on-street public spots. So
3 that, one, they are in use now by others.
4 This property is vacant.

5 So my client or the people who
6 live at 4 Logan Circle have no claim to those
7 spaces. So that we are looking to provide
8 parking, you know, outside the context of on-
9 street parking. So I'm -- in trying to
10 respond to or understand the Chair's comment,
11 I'm not so sure the relevance of those two
12 parking spots on Kingman.

13 CHAIRPERSON MILLER: Okay. Well,
14 just to respond. I mean, I recognized that
15 and that to me sounds like that might be an
16 exceptional situation, that the parking is
17 really difficult here. And I agree they are
18 not dedicated to the applicant. And so to me,
19 that wasn't something that was argued before,
20 but as we were discussing this, that seemed
21 like perhaps an unusual situation that would
22 lead to a practical difficulty.

1 MR. BROWN: Well, certainly, and
2 we have some pictures that we passed up and
3 you can see that in photograph 6. I think we
4 handed up a package to you and it gives you
5 some feel. I mean, people are parking on
6 Kingman. Again, there is no parking on P
7 Street adjacent or Logan Circle itself.

8 People are parking wherever they
9 can on Kingman. And the demand is there. You
10 know, this is a high density urban area, so
11 that people, whether they use the bus to get
12 to work or not, people still have cars. And
13 they are in search of places to put them, so
14 I mean --

15 MEMBER DETTMAN: Mr. Brown, I may
16 have missed it, but did you discuss at all,
17 did you talk to DDOT about this? I noticed in
18 OP's report that OP met with the applicant to
19 discuss the curb cut issues, advised the
20 applicant to meet with DDOT. Have you
21 coordinated with them at all?

22 MR. BROWN: Yeah, we have met with

1 DDOT. They have actually -- on several
2 levels, DDOT has made some comments from
3 distances, from trees and other things and
4 various other factors as part of the process.
5 We are actually tempted to file a public space
6 permit application for -- through DDOT, which
7 they rejected because we failed to provide
8 some stamped drawings.

9 It's not clear that they are
10 required. So we're going to repackage it to
11 their liking and resubmit it. The public
12 space process is a separate process from the
13 zoning or from the Historic Preservation.

14 MEMBER DETTMAN: But there is a
15 zoning element to creating a curb cut for
16 access to a driveway? For instance, it didn't
17 come through on your plans, but there is a
18 regulation that prevents you from putting a
19 driveway entrance too close to an
20 intersection. Did that question come up or
21 can you tell me what the distance would be?

22 MR. BROWN: Well, Jennifer can

1 tell you the distance. In the zoning context,
2 there is a requirement distance from the
3 intersection, also distance from another curb
4 cut. And I'll let Jennifer take you through
5 our compliance with those restrictions, but we
6 do comply.

7 MS. VERBEKE: In Exhibit D of the
8 prehearing statement on the first sheet that
9 is in there, Sheet A1.6, the site plan curb
10 cut, our curb cut starts at 28 foot 7.5 inches
11 as measured from the intersection, which is
12 more than the 25 foot requirement. And we are
13 36.5 feet from the neighbor's driveway, which
14 also complies. And we have the minimum width
15 for a single access.

16 MEMBER DETTMAN: Madam Chair, I
17 wondered if I could just ask one more question
18 to OP for clarification? I know the reg does
19 say 25 feet, but I have always heard -- well,
20 I have recently heard that DDOT uses the
21 standard of 60 feet, though it's not in the
22 regs. So just could we get clarification on

1 that?

2 MR. GOLDSTEIN: I called them
3 today to try to get a clarification of that,
4 but I wasn't able to get it. It's -- yeah, I
5 would like to know what -- I can't say what
6 their current standard is.

7 CHAIRPERSON MILLER: We wouldn't
8 need that for our determination today, because
9 we're just talking about the deck, right?

10 MEMBER DETTMAN: Well, I think the
11 reg --

12 CHAIRPERSON MILLER: Or do you?

13 MEMBER DETTMAN: -- says 25 feet
14 and I personally think that that would be the
15 standard that the Board would use to determine
16 compliance.

17 CHAIRPERSON MILLER: Mr. Dettman,
18 could you show me what -- are you talking
19 about a specific statement in the record about
20 the curb cut?

21 MEMBER DETTMAN: I began by
22 pointing to page 4 of the OP report that says

1 "OP met with the applicant to discuss the curb
2 cut issues and advise the applicant to meet
3 with DDOT." I think the applicant stated that
4 they had talked to DDOT. They pointed to
5 their Exhibit E and stated that "The distance
6 between the curb cut and the intersection of
7 P and Kingman is slightly over 28 feet."

8 So according to the regs, and I
9 know it's in the access section of Chapter 21,
10 I don't know the exact provision, but I know
11 the regs say 25 feet. But I know that when we
12 have heard from DDOT, they have used this
13 standard, which I don't know where it comes
14 from, is 60 feet.

15 CHAIRPERSON MILLER: So where do
16 you want to go with that?

17 MR. GOLDSTEIN: Well, as I stated,
18 I think that we should go with what the
19 current regs say and if they want to change
20 it, they can take it up in rewrite.

21 CHAIRPERSON MILLER: Or DDOT can
22 also -- DDOT is going to be making the

1 decision anyway on the curb cut. Okay.
2 Anything else you want to say? Okay. We just
3 settled the brief discussion about whether we
4 want to decide this today and we do.

5 So I guess I'll start off the
6 conversation at least and then others can
7 pitch in. I mean, I was very critical,
8 obviously, at first looking at and trying to
9 figure out the exceptional condition here that
10 gave rise to the practical difficulty in
11 complying with the Zoning Regs.

12 And you know, as often is the
13 case, things come out in the hearing, which I
14 don't think are necessarily present in the
15 papers. But anyway, well, before I didn't see
16 it, as I started to say, I think I do at this
17 point. I think there is a confluence of
18 factors certainly for the exceptional
19 condition here. And I think I see a direct
20 link starting with the fact that this property
21 is a grand historic mansion, but it fronts on
22 three streets.

1 And we really went right to like
2 the parking, because the purpose of the deck
3 is to screen the parking. And the parking is
4 allowed, but it seems that when we examined
5 the options for parking, that they were pretty
6 slim, that there were only two parking spaces
7 nearby that are available that are not
8 dedicated to the applicant. And there will be
9 four units here and that this is a unique
10 situation for this property and that the
11 others in the row have spaces in the rear and
12 this one can't.

13 So I see that the exceptional
14 situation being the fronting on these streets
15 where there is no available parking. And a
16 practical difficulty in that parking is
17 permitted and -- however, in order to be
18 allowed by the HPRB, it seems, the deck was an
19 integral component of that, that's at issue
20 here.

21 And that deck is also an integral
22 component of the historic structure facade

1 that I have been hearing. So if the parking--
2 not being able to park is a practical
3 difficulty and then being able to solve that
4 by providing parking, leads to this deck.

5 And that it is a practical
6 difficulty in complying with the Zoning
7 Regulations to provide this deck, because any
8 addition would require variance relief, as
9 this is out of conformance with lot occupancy,
10 as one component. We also talked about the
11 FAR, but lot occupancy being the key one. So
12 any addition would require variance relief.

13 And then when we get to the no
14 substantial detriment, HPRB has found,
15 certainly, that it is not of any detriment to
16 the historic structure. In fact, it
17 compliments it. And that the screening of the
18 parking is, in fact, beneficial to the
19 neighborhood. And it gets cars off the
20 street, which is usually beneficial to the
21 neighborhood.

22 So that's where I have come around

1 to. Others?

2 COMMISSIONER ETHERLY: Madam
3 Chair, I'm more than happy to weigh in here.
4 I would agree wholeheartedly with your
5 analysis. It took some work to kind of walk
6 through it, but I think it was time well
7 spent. Clearly, this body has dealt with the
8 issue of historic structures in the past, in
9 terms of looking at, at minimum, the first
10 prong of the variance test.

11 And with regard to that, I felt
12 that the uniqueness was a fairly
13 straightforward analysis for us. Clearly,
14 perhaps a little bit of the rubber meets the
15 road comes in dealing with what the practical
16 difficulty is, if you will, that is perhaps
17 created in part by the challenges that are
18 raised by such a unique structure.

19 And I think you hit it right on
20 the head in terms of, as I noted during the
21 testimony, dealing with this issue of the
22 provision of on-site parking. While it

1 perhaps is an interesting academic discussion
2 to come talk a little bit about where this
3 parking seems to be an amenity and start to be
4 something that just adds an extra little bit
5 to your sales brochure for the purpose of the
6 condo.

7 But I think, essentially, here
8 that's not the only gain that is kind of in
9 town here. I asked about the outdoor
10 recreation, because I found that to be quite
11 a compelling component to this. Clearly, this
12 is a structure that already had components of
13 outdoor recreation space attached to it, so to
14 an extent I saw this additional structure as
15 a replication, if you will, or a nod to that--
16 some of those existing historic spaces.

17 And I think that kind of connects
18 to the final point or one of the final points
19 that Ms. Verbeke was making with respect to
20 kind of the aesthetic context of the rear of
21 the building and what the introduction of this
22 deck space does. And I don't want to put

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1 words into her mouth and misspeak, but to an
2 extent, there is again a little bit of a
3 consistency that I think this structure
4 introduces to that facade of the building.

5 So when you look at the
6 opportunity to create the on-site parking
7 spaces, the outdoor recreation space that
8 would be created for a unit that would
9 otherwise not have one and, therefore, be
10 somewhat out of step with other existing units
11 in the property, and then this broad kind of
12 aesthetic consideration, if you will, I found
13 all of these elements to come together around
14 this issue of practical difficulty.

15 I wasn't too much ill at ease with
16 respect to kind of the discussion that we had
17 about the economic considerations. I heard a
18 little bit of it in the applicant's
19 presentation, but I do not feel that we need
20 to probe that further or look for
21 documentation getting at the issue of
22 feasibility, marketability and what have you.

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1 I think, again, our case law helps
2 us look at a number of factors that in
3 addition to a little bit of this economic
4 discussion could, indeed, help round out the
5 record in this instance.

6 If I didn't have some of these
7 other considerations, I might be inclined to
8 say let's dig, let's probe a little more in
9 the economic feasibility, look at th Logan
10 market, talk about what is happening in terms
11 of other inventory and what people are
12 expecting to see, but I just don't think we
13 need to go there.

14 And then finally, when you deal
15 with this issue of impact on the public good
16 and the Zone Plan, this is where I think
17 really some of the wonderful and interesting
18 history of the building comes into play. HPRB
19 was -- its discussion and the presentation of
20 the applicant was very helpful in terms of
21 talking about, again, the historic context of
22 Kingman Place. And in particular, the fact

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1 that Kingman Place, which I have had some fun
2 patrolling through from time to time trying to
3 find parking, but we won't go there and I
4 shouldn't probably even put that on the
5 record, I don't want anybody to come after me
6 for that, but HPRB's report talks about
7 Kingman Place having both characteristics of
8 an alley as well as a residential street.

9 And we have seen that with some of
10 the photographic evidence that was provided by
11 the applicant and clearly in the discussion
12 today. So again, I think what we see here is
13 consistent with most certainly the history of
14 Kingman Place and current practice. So all of
15 this, I think, comes together to make a
16 fairly, I don't want to use the word
17 straightforward, because again it took us some
18 well spent time to get here, but I think I see
19 it at the end of the day as a fairly
20 straightforward variance analysis that has
21 been successfully navigated by the applicant.

22 And so I'm comfortable moving

1 forward today, Madam Chair. Thank you.

2 CHAIRPERSON MILLER: Anybody else?
3 Okay. Thank you, Mr. Etherly. Yeah, I think
4 that, you know, if you just look at these
5 pictures, I kind of imagined, you know, all
6 this on-street parking all around this
7 building and so when we heard the evidence to
8 be opposite, that's what did it for me.

9 Okay. Any other comments? Then I
10 would move to approve the application of John
11 Ritch NO. 17804 for variances from lot
12 occupancy. Hold on. Okay. I would move
13 approval of Application No. 17804 of John B.
14 Ritch Associates, as amended today to include
15 the FAR. I guess I can read this. Pursuant
16 to 11 DCMR section 3103.2, for a variance from
17 the lot occupancy requirements under section
18 403, a variance from the nonconforming
19 structure provisions under subsection 2001.3,
20 including a variance from the FAR, to
21 construct a deck addition to an existing
22 apartment building. Apartment building?

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1 That's how it's advertised. Anyway, at
2 premises 4 Logan Circle, N.W.

3 COMMISSIONER ETHERLY: Seconded,
4 Madam Chair.

5 CHAIRPERSON MILLER: Okay.
6 Further deliberation?

7 COMMISSIONER ETHERLY: I'll just
8 say, Madam Chair, as we close out, I feel very
9 much compelled to thank the applicant. These
10 kind of projects, and the applicant indicated
11 as much in his statement, are not easy to get
12 into and we have one that, for this particular
13 applicant, has now wound its way past 30 years
14 to get from Point A to Point B.

15 Historic structures are tough.
16 They are absolutely tough, but it is the
17 preservation of these kinds of buildings,
18 these kinds of edifices that help continue to
19 lend the uniqueness to the District of
20 Columbia that we enjoy as a city.

21 My colleagues and perhaps members
22 of the audience will recall a couple of weeks

1 back, I think it was, a discussion in the Post
2 about the District's sometimes maligned Height
3 Act and whether or not this city would benefit
4 from going towards more of a skyscraper type
5 skyline.

6 And I just -- this project brings
7 to mind some of the comments you often hear
8 about how unique this skyline is. And it's
9 the preservation of this kind of architecture,
10 these kinds of structures that help to
11 preserve us. There is much to be said for
12 Manhattan. There is much to be said for other
13 cities with distinct skylines that go up into
14 the heavens, but it's the preservation of
15 these types of structures that make the
16 District of Columbia the unique place that it
17 is.

18 So kudos to the applicant. It's
19 not an easy case to bring forward. It most
20 certainly has to be a labor of love. With
21 that, Madam Chair, I'm very happy to move
22 forward. Thank you.

1 CHAIRPERSON MILLER: Thank you.
2 Okay. Very well said. Anything else? Then
3 there has been a motion. Has it been
4 seconded? Okay.

5 All those in favor say aye.

6 ALL: Aye.

7 CHAIRPERSON MILLER: All those
8 opposed? All those abstaining? 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 as amended. Mrs. Miller made the motion, Mr.
13 Etherly seconded, Mrs. Walker, Mr. Dettman and
14 Mr. Loud support the motion.

15 CHAIRPERSON MILLER: And this will
16 be a summary order, as there is no party in
17 opposition. Okay.

18 MR. BROWN: Thank you very much.

19 CHAIRPERSON MILLER: Okay. Ms.
20 Bailey, we're ready when you are.

21 MS. BAILEY: Okay. The second
22 case this afternoon is Application No. 17794

1 of NH Street Partners Holdings, LLC, pursuant
2 to 11 DCMR 3103.2, for a variance from the
3 floor area ratio requirements under section
4 631, and a variance from the required ground
5 level public space requirements under section
6 633, to permit the renovation and expansion of
7 an existing office building with a ground
8 floor retail at premises 1200 New Hampshire
9 Avenue, N.W. The property is Zoned DC/CR and
10 it's located in Square 70, Lot 195.

11 CHAIRPERSON MILLER: Okay. Good
12 afternoon.

13 MS. SHIKER: Good afternoon.

14 CHAIRPERSON MILLER: Would you
15 introduce yourselves for the record, please?

16 MS. SHIKER: Yes, Members of the
17 Board, Madam Chairman, good afternoon. My
18 name is Christy Shiker with the Law Firm of
19 Holland and Knight. I'm joined today by
20 several people. First, to my left is Michael
21 Betancourt representing the applicant today.
22 On my far right is David Haresign and behind

1 him is Jennifer Marca, the project architects
2 from Bonstra Haresign Architects. And next to
3 me is Mr. Steven Sher from the Law Firm of
4 Holland and Knight. He is our Director of
5 Zoning and Land Use.

6 Mr. Haresign and Ms. Marca are
7 being submitted as experts in design and
8 architecture today. Mr. Sher is being
9 submitted as an expert in Zoning and Land Use.
10 I have submitted all three resumes for the
11 record in the prehearing submission at Tab H
12 and I would ask that you accept them as
13 experts, please.

14 CHAIRPERSON MILLER: Okay. Do my
15 Board Members have any concerns? Okay. Mr.
16 Sher has appeared before us many times, so
17 it's not an issue. And then the other two are
18 being requested to be experts in design?

19 MS. SHIKER: Design and
20 architecture.

21 CHAIRPERSON MILLER: Design and
22 architecture. Okay. They both have very full

1 resumes. We don't have a problem with that.

2 MS. SHIKER: Okay. Thank you.

3 CHAIRPERSON MILLER: Okay.

4 MS. SHIKER: We are here today

5 to --

6 CHAIRPERSON MILLER: And Mr. Sher
7 is an expert in Zoning, is that right?

8 MS. SHIKER: Land Use and Zoning.

9 CHAIRPERSON MILLER: Oh, Land Use
10 and Zoning, all right. Good. All right.
11 Okay. Now, we are done.

12 MS. SHIKER: Okay. Thank you.

13 CHAIRPERSON MILLER: We'll have a
14 test later.

15 MS. SHIKER: We are here today to
16 present an application for variance relief for
17 a small addition to an existing office
18 building with ground floor retail that is
19 located at 1200 New Hampshire Avenue. You can
20 see existing photographs as well as a key site
21 location map.

22 The site is located along New

1 Hampshire Avenue, M Street and Ward Place,
2 N.W. It holds a prominent position as the
3 entry point from the central employment area
4 from the east into the Westend neighborhood on
5 the west. The site is Zoned CR and is located
6 within the Dupont Circle Overlay as is noted
7 in our statement and in the Office of Planning
8 report. The Dupont Circle Overlay provisions
9 are not applicable to the present case.

10 The proposed addition is comprised
11 of a single story glass --

12 CHAIRPERSON MILLER: Could you
13 refresh our memory, why aren't they
14 applicable?

15 MS. SHIKER: Ah, the two primary
16 D.C. Overlay provisions are "No curb cuts on
17 Connecticut Avenue," we're not in that general
18 area of the Dupont Circle Overlay. The second
19 is related to PUDs and the processing of those
20 within matter-of-right height and densities.
21 This isn't a PUD.

22 CHAIRPERSON MILLER: Thank you.

1 MS. SHIKER: You're welcome. The
2 proposed addition is comprised of a single
3 story retail addition with glass space which
4 infills the triangular plaza on New Hampshire
5 Avenue. It provides, approximately, 4,500
6 square feet of additional neighborhood retail
7 that will better engage and relate to the
8 streetscape.

9 The construction of the small
10 addition requires relief from two separate
11 areas of the Zoning Regulations. The first
12 will be a variance from the FAR limitation set
13 forth in section 631. This section provides
14 for a maximum FAR of 6.0, all of which may be
15 devoted to commercial uses on this site, based
16 on covenant, but have been recorded in the
17 land records, for transfer of residential and
18 commercial uses with the adjacent property.

19 The amount of the variance we are
20 requesting is 0.09 FAR or, approximately,
21 4,500 square feet.

22 The second is a variance from the

1 public space at ground floor level requirement
2 set forth in section 633 of the Zoning
3 Regulations. This section requires that 10
4 percent of the land area be devoted to
5 publicly accessible open space on private
6 property. With the proposed addition, the
7 public space provided at ground level will no
8 longer comply.

9 You should have received a
10 prehearing submission, which set forth the
11 project in detail, discussed the areas of
12 relief and the three prong test of the
13 variance relief and it shows how the applicant
14 meets the burden of proof. We are also
15 pleased that you should have a supportive
16 report from the Office of Planning.

17 And although it's not in the
18 record, the applicant and the team did appear
19 twice before Advisory Neighborhood Commission
20 2A and they indicated no objection to the
21 project.

22 We believe that the submission

1 before you satisfies the burden of proof and
2 given the hour of the day, we are prepared to
3 either rest on the record and answer questions
4 or present an abbreviated presentation. If
5 you would like our full presentation, we are
6 ready and prepared to do that as well. If the
7 Board would let us know their pleasure?

8 CHAIRPERSON MILLER: You know, I
9 never know what is the full exactly and what
10 is the abbreviated, but I think it would be
11 helpful to go through the variance test and
12 show us, you know, how it is met.

13 MR. SHER: Unaccustomed as I am at
14 public speaking, I'll give it a shot. For the
15 record, my name is Steven E. Sher, the
16 Director of Zoning and Land Use Service with
17 the Law Firm of Holland and Knight. As
18 Christy indicated in her opening statement,
19 we're here seeking two variances, both related
20 to the same enclosure of space at the ground
21 floor level, at the corner and enclosing
22 arcades on two sides of the building.

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1 Ground floor plan. This is the
2 proposed ground floor plan, a slightly colored
3 version of which you have the black and white
4 version in your package along with the plans
5 that you received. It is Sheet 3 of the plans
6 that you have before you. And what you see
7 here, since he's using the laser pointer, is
8 Ward Place on one side, New Hampshire Avenue
9 and M Street North is actually to the right in
10 that diagram. So M Street runs east and west
11 and New Hampshire Avenue and Ward Place are
12 both at a skew to the east/west axis.

13 The area that we are going to
14 enclose is the area shaded here that is now
15 part of an open plaza in front of the
16 building. And, Jennifer, if you could throw
17 that existing aerial photo, existing site
18 building photo up there again on the left hand
19 side perhaps?

20 You can see that plaza area in
21 front of the building here. And then you can
22 see the arcade here. Part of that arcade is

1 already counted in FAR and not counted in the
2 area for this 10 percent semi-public open
3 space at ground level. We can go ahead and
4 enclose that without having the Board's
5 permission and that's the area along Ward
6 Place here and along M Street here.

7 It is the area that is along New
8 Hampshire Avenue that is not included in FAR,
9 because it was in this open space at ground
10 level and, therefore, not counted in FAR that
11 we need the variance for.

12 This is -- this project is,
13 essentially, a decision by the owner of the
14 building to take a 30 year-old building, a
15 1970s, late 1970s building, and bring it to
16 the 2008 vintage. And the key issue here is
17 bringing the retail out to the sidewalk.

18 What was accepted practice when
19 the building was built is no longer considered
20 to be desirable or a good thing to happen in
21 the city, that is the retail setback into the
22 arcade, the building brought back from the

1 street. Rather, current practice and
2 philosophy is bring the retail out to the
3 street, engage the pedestrian on the sidewalk,
4 bring the buildings out, so that you don't
5 have these areas where the retail is back
6 behind in the arcade and where -- I used to
7 think it was nice to be able to walk in the
8 arcades when it was raining or too hot or
9 whatever. Accepted practice generally says
10 bring it out to the street, engage the
11 pedestrian directly on the sidewalk.

12 So what we seek are the two
13 variances to increase the FAR by a very small
14 amount and to reduce the amount of this public
15 open space at ground level. And I know
16 parenthetically the CR District is the only
17 District that has that requirement at all.
18 There is no other zone that has this 10
19 percent requirement at ground space.

20 At the risk of revealing my
21 complicity in that, I was the office maid of
22 the person who proposed that on the staff of

1 the Zoning Commission when it was put in and
2 we really thought this was going to be the way
3 of the future and the Zoning Commission
4 adopted it here and then completely forgot
5 about it and never made it part of any other
6 Zone District category.

7 And perhaps in the revisions to
8 the regulations coming we will get rid of it
9 here, because it doesn't make sense here any
10 more than it does in none of the other zones
11 where it exists now. That's just an aside.

12 So as to the --

13 CHAIRPERSON MILLER: Can I -- I'm
14 sorry. I know you have broad historical
15 understanding. How is this related or why
16 wasn't it related to the Text Amendment that,
17 you know, allowed enclosure of open arcades
18 for C Districts?

19 MR. SHER: Well, they are allowed
20 within the central employment area. And if I
21 picked this building up and moved it across
22 New Hampshire Avenue, we wouldn't be here.

1 But unfortunately, I can't do that and so that
2 section didn't apply, because New Hampshire
3 Avenue here is the boundary of the CEA.

4 CHAIRPERSON MILLER: Do you know
5 why it was limited to this area?

6 MR. SHER: Not explicitly. I
7 think generally it was the thought that that
8 was the highest density downtown core, but, of
9 course, with all the receiving zones and all
10 the other things, the -- what is now the
11 higher density downtown core spills beyond the
12 boundary of the CEA into the Westend in one
13 area up until North Capitol Street as another
14 perhaps.

15 But in any event, but for my being
16 able to either shift that boundary line or
17 move this building, we're here.

18 So the Board is aware of the three
19 prong test for a variance and you have had
20 some extensive discussion in the last case
21 about what that test is. Exceptional or
22 extraordinary situation or condition,

1 practical difficulty, no detriment to the
2 public good.

3 As Christy pointed out, we have
4 address that in detail in the written
5 statement. I'm just going to summarize
6 quickly what we believe are the key points
7 here. The site is exceptional or
8 extraordinary. It has an unusual and
9 irregular shape. I'm not sure I know exactly
10 how to describe that. It's a pentagon, I
11 guess, as Mr. Haresign says. It has got five
12 sides. It doesn't look like that thing over
13 in Arlington, but nonetheless, it has frontage
14 on three streets, Ward Place is a street, not
15 an alley. New Hampshire Avenue and M Street.

16 The configuration of the existing
17 building on the site, again, driven by that
18 requirement to provide this area on the ground
19 floor, the building is pushed back from the
20 sidewalk and we have the retail space setback
21 from the sidewalk, forced both by the arcade
22 and by the open space and we believe there is

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1 no other property like that in this Westend
2 area.

3 CHAIRPERSON MILLER: What do you
4 mean? Like what? I mean, if you have this
5 arcade situation, they are all setback, right?
6 That's what the arcade does.

7 MR. SHER: Right.

8 CHAIRPERSON MILLER: It sets the
9 retail back. So what is it that is different
10 about this one?

11 MR. SHER: There is no other
12 property that we know of that is as unusually
13 configured as this as fronting on the three
14 streets with the retail arcade setback, those
15 three factors together.

16 CHAIRPERSON MILLER: Okay.
17 Fronting on three streets, five sides, retail
18 setback, bad confluence.

19 MR. SHER: Yes.

20 CHAIRPERSON MILLER: Okay.

21 MR. HARESIGN: My name is David
22 Haresign. I'm an architect with Bonstra

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1 Haresign Architects. I live in the city and
2 work in the city. In addition to being a five
3 sided site by creating this inflection, we now
4 have a six sided building that pulls the
5 retail away, as Steve has mentioned, from the
6 street, but also pulls the entrance of the
7 building away from the street.

8 There is another practical
9 difficulty that this causes on this site,
10 which is an accessibility difficulty. The
11 slopes on the plaza itself, getting back to
12 the entrance of the building, are
13 approximately 7.5 percent in this area here
14 and across slope here of about 3 percent,
15 which exceeds accessibility standards.

16 So again, our proposed solution we
17 believe will help alleviate those
18 difficulties.

19 MR. SHER: Which takes us into the
20 practical difficulty part of the test. We
21 have got this ground floor retail space which
22 we think we can enhance or which needs to be

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1 enhanced by bringing it out to the street and
2 I have talked about the current urban thinking
3 and where retail should be vis-a-vis the
4 sidewalk.

5 We have got no other way to
6 increase the amount of retail on the site and
7 no other way to relocate the entrance and
8 provide the required open space other than
9 what we think we're doing here. And of
10 course, as Mr. Haresign just mentioned, the
11 current plaza does not meet ADA accessibility
12 standards. I don't think there was an ADA
13 when this building was built.

14 With respect to detriment to the
15 public good, there are sufficient sidewalks in
16 public spaces around the building to provide
17 enough width for public circulation. And in
18 the statement, we have gone through and
19 identified policies out of the recently
20 adopted Comprehensive Plan that speak to
21 enhancing retail and enhancing retail along
22 street frontages in particular.

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1 So we believe that putting all
2 those factors together that the proposed
3 infill is consistent with current retail
4 strategies of the city, that combination of
5 the factors create the exceptional and
6 extraordinary situation of the practical
7 difficulty that leads to the need for what we
8 believe is a de minimis variance.

9 As we have noted, the proposed
10 increase in FAR is only 1.5 percent of the
11 total permitted on the site, again, 0.09 FAR
12 and that we believe the application should be
13 granted as having satisfied the tests that are
14 incumbent upon us.

15 CHAIRPERSON MILLER: 0.09 is the
16 increase? Is that it?

17 MR. SHER: Yes, it would go from 6
18 to 6.09.

19 CHAIRPERSON MILLER: Okay. The
20 practical difficulty I know you said was,
21 number one, the access, that the accessibility
22 requirements weren't in existence in the '70s.

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1 And did you say just the fact that the retail
2 is setback away from the street makes it
3 difficult for them to do business, basically?

4 MR. SHER: Well, we believe that
5 the retail can be enhanced by bringing it out
6 to the street. There are -- these spaces are
7 not empty, except that part of the first floor
8 is actually being devoted to office use and
9 not retail, even though it was originally
10 anticipated when the building was built that
11 the first floor would be retail.

12 The portion of the building along
13 Ward Place is actually these -- is office
14 space to a law firm that occupies another
15 space in the building. At some point, at such
16 point, as that lease ends, if and when it
17 does, if it is not renewed and if we are able
18 to enhance the ability for retail along that
19 space, we think we can perhaps convert that
20 space to retail as well and enhance the
21 existing retail in the building, give the
22 existing restaurants and retailers more

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1 exposure to the street, give them some more
2 space, frankly, and we believe that would be
3 a positive thing for the building.

4 But it also overcomes the
5 difficulty that those guys have that they are
6 now back in the arcade.

7 CHAIRPERSON MILLER: Did the
8 retail succeed in the days, you know, back in
9 the '70s when they had this concept of the
10 arcade and now they don't or did it never take
11 off?

12 MR. SHER: Um, there were a number
13 of examples of arcades that did not enhance
14 the retail at all. And the one that -- not
15 this building was not the prime example. The
16 one that was the prime example is a building
17 known as Columbia Square on the south side of
18 F Street between 13th and 14th. I'm sorry,
19 between 12th and 13th.

20 There is a Metro entrance at 12th
21 Street and that building has a very deep
22 arcade, doesn't have a lot of active retail.

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1 There was an Olson's Book Store on one side
2 for a long time, a McDonalds restaurant on the
3 other end for a long time. But the arcade
4 space itself was just very dark and uninviting
5 and unattractive and there were anecdotal
6 stories about potential muggings and things
7 like that.

8 I'm not sure if the statistics
9 ever really bored that out, but the whole
10 thought was if you bring the retail out to the
11 front of the building, then you enhance the
12 experience of pedestrians on the street. And
13 I guess part of it is this whole sort of
14 reaction to or the counter-reaction to
15 suburban indoor malls. We don't want the
16 District's retail opportunities to look like
17 the interior of Wheaton Plaza, Montgomery
18 Mall, Tyson's Corner Center or whatever you
19 want to call it.

20 We want to have definable
21 segments, different looking buildings, retail
22 that is attractive to the people going up and

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1 down and to and fro. And that's as much a
2 philosophical change as to how cities grow and
3 how retail develops as it is a reaction to the
4 fact that no retail was making money, because
5 it was back behind an arcade.

6 I mean, department stores failed
7 downtown not because they were behind arcades,
8 but because the whole concept of marketing
9 changed and this -- the idea of retail in the
10 city -- there was a hope at one point that we
11 could get, what was it, either the third or
12 the fourth department store downtown to
13 compliment the ones we have now where we are
14 holding on to one.

15 You know, you could -- you have to
16 be as old as I am, which is 6,422 to try out
17 the litany of Garfinkles, Woodys and all the
18 others, Kens, Lansburgs and I'll stop. The
19 ones that are gone and aren't going to be
20 replaced. But the whole idea of retailing has
21 come around to finer grained, bring it out to
22 the street and make it successful that way.

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1 CHAIRPERSON MILLER: I guess my
2 question is though when this building was
3 first in place with the arcade, was it
4 successful, you know, with respect to retail
5 or whatever? Because at that time, it worked
6 or did it never work? I mean, you know, time
7 have changed.

8 MR. SHER: Yeah.

9 CHAIRPERSON MILLER: And is it
10 part of the reason why --

11 MR. SHER: I don't --

12 CHAIRPERSON MILLER: -- this needs
13 to change?

14 MR. SHER: I don't know if the
15 Ward Place side was ever used for retail. I
16 believe that the other sides, the New
17 Hampshire Avenue and the M Street sides have
18 been used for retail. You know, our current
19 owner only owns the building for about a year,
20 so his -- he can't speak to the long-term
21 experience of that. And while I have some
22 recollections of it, I honestly don't know

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1 what vacancy rates were or whatever in this
2 building.

3 CHAIRPERSON MILLER: I guess my
4 question is, you know, what was the purpose of
5 this whole arcade idea? What were they trying
6 to achieve? Did they achieve that and now
7 times have changed and it's no longer the
8 purpose any more or you know?

9 MR. SHER: Well, I think it's more
10 it's no longer the purpose, than it was a
11 driver the other way. I really do believe
12 that in the late, I think it was -- goes back
13 to the early '60s when the arcade credits were
14 put in, the desire was to provide these sort
15 of weather covered areas where people could
16 connect from one building to another and not
17 be subject to the rain, snow, you know, heat
18 on a day like today or what have you.

19 And it's not like we are in
20 Minneapolis or Toronto where you need to have
21 that interconnecting walkway system which they
22 have to -- because you need it. And I think

1 that again the whole thrust of what we want
2 out of the city, particularly, as reflected in
3 the Comprehensive Plan, suggests arcades are
4 not something that we want to encourage any
5 more.

6 MS. SHIKER: And if you look at
7 the intent of the CR District and the open
8 space provisions, it was to provide
9 appropriate transitions from the right-of-way
10 into the building. This right-of-way is very
11 wide, 34 feet, on the sidewalk and with the
12 design as proposed, it does accomplish that
13 goal of providing a very appropriate
14 transition into that very wide right-of-way
15 into the building.

16 CHAIRPERSON MILLER: Well, the
17 very wide right-of-way, is that something that
18 is unusual for this -- to this property that
19 is linked to the practical difficulty?

20 MS. SHIKER: New Hampshire Avenue
21 has a very wide sidewalk, 34 feet is very
22 wide, for the District of Columbia. And there

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1 are no other properties in the CR District in
2 this area that front on New Hampshire Avenue
3 except for this site, most of them front on
4 streets that are north/south, east/west. I
5 believe there may be only one other property
6 that fronts on a diagonal street in the CR
7 District and that's in the Westend.

8 CHAIRPERSON MILLER: And how does
9 that translate to a practical difficulty here?

10 MS. SHIKER: Well, you have a
11 practical difficulty of having such a wide
12 sidewalk entering into the wider plaza that
13 you are not being able to get the retail
14 interaction that you would prefer.

15 CHAIRPERSON MILLER: Okay. So is
16 the retail further back than it normally would
17 be?

18 MS. SHIKER: Correct.

19 CHAIRPERSON MILLER: From the
20 sidewalk?

21 MS. SHIKER: Correct.

22 CHAIRPERSON MILLER: Okay.

1 MS. SHIKER: Well, correct.

2 CHAIRPERSON MILLER: Okay. Oh,
3 yes, Mr. Dettman?

4 MEMBER DETTMAN: Mr. Sher, in
5 listening to your testimony and reading your
6 filing here, with respect to the variance
7 test, several of the things that you list off
8 for the first prong is the configuration of
9 the existing building on the site, location of
10 existing retail, setback from the sidewalk.

11 On the second prong, it's no way
12 of increasing the amount of retail and no way
13 to relocate the entrance. Those are really
14 driven by this particular reg.

15 And then also you talked about
16 that the CR District is the only District that
17 has this provision for the 10 percent public
18 space. And when I was reading the record, I
19 started to think well, are we going to start
20 a process that leads to a lot of people either
21 existing buildings looking to fill in this
22 public space that exists or if a building is

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1 demolished, they are going to be having to
2 require this 10 percent, so they are going to
3 come in and look for relief from this public
4 space.

5 So are we starting a process where
6 the Board is starting to change the regs when
7 they are not really allowed to? And so I was
8 just wondering if there is something very,
9 very, very specific about this property where
10 if the property next door was a perfect
11 rectangle and it built the building and it has
12 this 10 percent, that they couldn't come in
13 here and demonstrate a unique circumstance and
14 a practical difficulty?

15 MR. SHER: Not wanting to argue a
16 case that isn't before you, because I may be
17 back here next week with that case, a couple
18 of thoughts or maybe three. One, that's
19 something like what happened with the now
20 departed residential recreation space
21 requirement. People began to realize that
22 that was something that didn't make sense in

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1 the context that once did.

2 And the Board granted one and then
3 another and then many and ultimately, the
4 Zoning Commission saw the wisdom of making
5 that piece of the regulations go away. And in
6 fact, there was a residential recreation space
7 requirement in this zone, which is gone as
8 well. We don't have that. It's not a
9 residential building.

10 Number two, this building as David
11 said a few minutes ago is a six sided building
12 on a five sided site. If you had a
13 rectangular building, the chances are that you
14 -- if you had a rectangular site, rather, the
15 chances are that you would not have a building
16 that looked like that. You would have a
17 building that was orthogonal to the site. The
18 column grid would line up with the nicely
19 rectangular grid that the building gives you.
20 However, the column spacing works out.

21 It is a different kind of building
22 and a different kind of site to work with than

1 one which, in this case, has got column grids
2 that go one way here or column grids that go
3 another way there. And the building itself is
4 at a skew to the lot line in the front there,
5 because they had to provide this space
6 required by the regulations.

7 So I think that this site is
8 distinguishable. I would say that immediately
9 there is no adjoining site to this one that is
10 rectangular and nice and would come in and
11 would ask for the same kind of relief.
12 Whether there are other buildings in the
13 Westend that would seek the same relief and
14 whether we're creating some kind of, Arlo
15 Guthrie might call it, movement, but I don't
16 think so.

17 I do suspect at some point when we
18 continue down the road on the zoning revision
19 that this is something that will go away, but
20 I don't know that for a fact and I don't when
21 that will happen, a year and a half at least
22 I would guess, so I don't think we are in the

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1 position where we want to wait for that. But
2 that's my attempt at an answer.

3 CHAIRPERSON MILLER: Yeah, I mean,
4 there is that larger picture where no one
5 should have to do this. But then since we are
6 dealing with a variance in this case, it seems
7 like I have heard some specific uniqueness.
8 One, we just heard about the very wide
9 sidewalk and the very wide right-of-way and it
10 means that these retail areas are further
11 setback than others, correct? I think we have
12 said that.

13 Okay. You have said that. Then
14 that there is a slope here on the property
15 also that affects the access. That if the
16 access is brought out, you won't have that
17 slope problem which doesn't comply with the
18 ADA.

19 Is there some way that the six
20 sided building on five sided lot impacts
21 access to retail or something? Is there a
22 connection to be made there? It really was

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1 the design. The requirements of the
2 regulations drove the design of the building
3 into a particular configuration that is what
4 you have now.

5 And we don't think today that
6 that's the direction we want to take for the
7 future. And we believe that the appropriate
8 solution is to infill that plaza area at the
9 front, infill the arcade and bring the retail
10 out to the street. That's where we are at.

11 CHAIRPERSON MILLER: Okay. Okay.
12 I just want to say it sounds like what Mr.
13 Dettman was saying though, the arcade regs in
14 general probably forced everybody to put their
15 retail further back, right? But it's your --
16 oh, I'm sorry.

17 MR. SHER: Yes.

18 CHAIRPERSON MILLER: Okay. And
19 the next question is though but is your's
20 configured in a more weird way because of the
21 different sides of the building?

22 MR. SHER: Yes, in part it is.

1 CHAIRPERSON MILLER: Okay.

2 MR. SHER: And again, as somebody
3 asked before, if we were in the CEA, we could
4 enclose that arcade and not be here, but here
5 we are.

6 CHAIRPERSON MILLER: And there is
7 no public policy that you know about that, you
8 know, would have driven the Zoning Commission
9 to distinguish between the CEA, those in the
10 CEA and those right outside of it, like this
11 property?

12 MR. SHER: No. The Comp Plan
13 seems to suggest that this is the right thing
14 to do in this area, as indicated by the
15 citations we gave you. The change to that
16 regulation, three of four years ago, I guess,
17 maybe a little bit longer in 2002, six years
18 ago. And that clearly predates the existing
19 Comp Plan, so perhaps today it might be done
20 differently.

21 CHAIRPERSON MILLER: Okay. Any
22 other questions? Mr. Etherly?

1 COMMISSIONER ETHERLY: Thank you
2 very much, Madam Chair. Unsolicited plug for
3 Grillfish Restaurant?

4 MR. SHER: We like Grillfish.

5 COMMISSIONER ETHERLY: But that
6 most certainly is not germane to our
7 conversation today. Two things that I want to
8 kind of peruse. This is what happens when you
9 get sick, you start getting kind of punchy.
10 This issue of back office space. I just want
11 to kind of get a sense of -- and I'm not sure
12 I'll rely on your guidance, Ms. Shiker,
13 whether this might be for Mr. Betancourt or
14 whichever of your witnesses.

15 With regard to the existing
16 configuration, the fact that some of those
17 spaces have found no other usefulness other
18 than as back office space, what's driven that?
19 In your submission it is given the distance
20 from the sidewalk and the pedestrian
21 experience to those spaces, that's all that
22 you kind of have going forward.

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1 Is that essentially -- so
2 essentially, part of the presentation that
3 this is really the market model now. It's
4 just showing us that this is not working. Is
5 that an accurate characterization?

6 MS. SHIKER: That's correct. Mr.
7 Betancourt and his company have only owned the
8 property for a little less than one year, but
9 it is their understanding that these spaces
10 have not been used in the past as retail
11 spaces and have always -- only found
12 usefulness in back office space.

13 It is our understanding not having
14 done any back market studies that the
15 prevalent reason why is the lack of direct
16 connection to the street.

17 COMMISSIONER ETHERLY: Okay. So
18 with respect to the -- as I look at the
19 proposed first floor site plan at what is
20 labeled as Drawing ASK3A, you still are
21 showing back office space adjacent to the
22 retail space that Columbia Cleaners occupies.

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1 Why would that space remain as back office
2 space and not necessarily with the new
3 configuration come to some other more active
4 use?

5 MS. SHIKER: You will notice on
6 that plan, ASK3A, there are arrows from the
7 center which say potential conversion to
8 retail. That space is currently subject to a
9 lease for the back office space and at such
10 time as that lease expires, there would be a
11 desire to seek to use that, all of the space
12 for retail.

13 COMMISSIONER ETHERLY: Okay.
14 Okay. Okay. That answers that question. Let
15 me now perhaps keeping an eye on ASK3A or even
16 ASK3, I want to just kind of walk through a
17 little bit of the discussion around. It was
18 very helpful that you provided substantial
19 discussion, I felt, on the whole issue of why
20 alternatives wouldn't work. And perhaps this
21 comes -- an extent connects back up to my
22 colleague's, Mr. Dettman, conversation about

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1 all of the different factors that kind of
2 combine here.

3 On page 10 of the prehearing
4 submission in that second full paragraph you
5 kind of walk through some of the problems,
6 some of the challenges and problems that would
7 be raised by moving the main entrance and what
8 have you. With the diagram handy, could you
9 perhaps just walk through that one more time,
10 but pointing to the diagram to help kind of
11 orient me there?

12 I just want to make sure that I'm
13 clear on no other configuration gets you to
14 where you want to be other than the relief
15 that you are seeking today. So I just want to
16 be sure that I'm clear there. And maybe the
17 first place to start or one of the most
18 obvious ones is well, yeah, if you don't
19 relocate the main entrance -- if you do
20 relocate the main entrance, does that allow
21 you -- does that get you any closer to where
22 you are trying to be?

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1 MS. SHIKER: Okay. I'm happy to
2 do that. Currently, the main entrance is
3 located on New Hampshire Avenue. If you
4 relocated the main entrance to M Street, it is
5 impossible to satisfy the requirements,
6 because the way the space has been
7 constructed, it constructs overhead to the
8 property line, the arcade.

9 You see the open arcade goes to
10 the property line with the retail spaces and
11 you have the garage entry. You have a
12 relatively short frontage on M Street. And
13 again, the property -- there would be no
14 public open space to satisfy the requirement.

15 Shifting over to Ward Place, you
16 do have quite an extensive amount of public
17 space, approximately, 15 feet from the inside
18 of the arcade to the property line. However,
19 the distance from the existing core of the
20 building would be too extensive to have your
21 location there, as well as having your main
22 building entrance on a relatively minor street

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1 would be a difficulty for the building.

2 You also have the loading berth
3 area back there and you typically try not to
4 put a main office location near those
5 facilities. And so although the public space
6 would be there, physically, it's impossible to
7 locate the entrance, because -- primarily
8 because of the location from the core and the
9 ability to get people into the building.

10 COMMISSIONER ETHERLY: Okay.
11 Excellent. Thank you. Thank you, Madam
12 Chair.

13 CHAIRPERSON MILLER: Any other
14 Board questions? Okay. Do you have any other
15 testimony?

16 MS. SHIKER: That's the extent of
17 our testimony. Thank you.

18 COMMISSIONER ETHERLY: Oh, Madam
19 Chair, one final question. Looking at the
20 Office of Planning's report, let me jump, this
21 is a question coming back to Mr. Sher, at page
22 8 of the OP report, there is an overhead. It

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1 would be the final page of the report. There
2 is an overhead that gives a very nice snapshot
3 of this particular area.

4 And with an eye towards the
5 argument that based on the research you have
6 been able to conduct, there appear to be no
7 other buildings that have this number of
8 factors attached to it. The building that is
9 in what would be kind of the northwestern
10 corner of the DC/CR Zone here, Mr. Sher, do
11 you know what that building is?

12 And I'm only inquiring because I
13 see quite a bit of open space right at the
14 bottom tip of that building. It would be the
15 building that is fronting on 22nd Street and
16 it has kind of an open space right in the
17 corner of it.

18 MR. SHER: The northeast corner of
19 22nd Street and Ward Place?

20 COMMISSIONER ETHERLY: It would be
21 closer to 22nd Street and N Street. If you go
22 to the intersection of 22nd and N on this

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1 overhead --

2 MR. SHER: 22nd and N is a Pepco
3 Substation and then south of that there is an
4 office building.

5 COMMISSIONER ETHERLY: Okay. That
6 -- and the office building that has that open
7 space right at the corner, what is that open
8 space? And the reason I'm asking is does that
9 present a -- it's very different. It doesn't
10 appear to be an arcade in the classic sense of
11 the building that we are dealing with here,
12 but I just wanted to be sure that it's not a
13 similar effort to get out of a public space
14 requirement.

15 MR. SHER: I don't know if that
16 building has an arcade. I remember looking at
17 it, but I just don't remember. That space in
18 the front of it is a driveway.

19 COMMISSIONER ETHERLY: Gotcha.

20 MR. SHER: Basically, so it really
21 is not the same situation.

22 COMMISSIONER ETHERLY: Okay.

1 Thank you. Thank you, Madam Chair.

2 CHAIRPERSON MILLER: Anybody else?

3 And let me just ask if anybody is here from
4 the ANC? Okay. Then why don't we turn to the
5 Office of Planning?

6 MR. JACKSON: Thank you. Good
7 afternoon, Madam Chair, Members of the Board.
8 My name is Arlova Jackson. For the record,
9 I'm a Development Review Specialist with the
10 District of Columbia Office of Planning.

11 At the risk of being redundant, I
12 will just briefly say that the Office of
13 Planning is in support of the requested
14 variance and find that it meets the standards
15 found in the variance test for approval. And
16 will stand on the record reflected in the
17 report that was submitted as Exhibit 23. And
18 take any questions that you have.

19 CHAIRPERSON MILLER: Any
20 questions? Okay. No, it's an excellent
21 report. Thank you. Does the applicant have
22 a copy of the Office of Planning report?

1 MS. SHIKER: We do.

2 CHAIRPERSON MILLER: And do you
3 have any questions for them?

4 MS. SHIKER: No, we don't. Thank
5 you.

6 CHAIRPERSON MILLER: Okay. Okay.
7 Anybody here to testify in support or
8 opposition to this application? Okay. Not
9 hearing from anybody, any closing remarks?

10 MS. SHIKER: We believe that the
11 application satisfied the burden of proof as
12 we have established today in this hearing and
13 in our submissions and we would ask that the
14 Board grant the application. Thank you.

15 CHAIRPERSON MILLER: Okay. We are
16 going to deliberate on it today. I think we
17 can do this by motion. I would move approval
18 of Application No. 17794 of NH Street Partners
19 Holding, LLC, pursuant to 11 DCMR section
20 3103.2, for a variance from floor area ratio
21 requirements under section 631, and a variance
22 from the required ground level public space

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1 requirements under section 633, to permit the
2 renovation and expansion of an existing office
3 building with ground floor retail at premises
4 1200 New Hampshire Avenue, N.W. Do I have a
5 second?

6 MEMBER DETTMAN: Second.

7 CHAIRPERSON MILLER: Okay. I
8 guess I'll just start off by saying we had a
9 very good discussion about arcades and some of
10 the outdatedness of the regulations, but we
11 also zeroed in, I think, today on what is
12 unique about this property that would give
13 rise to our granting variance relief in this
14 case.

15 (Whereupon, at 5:00 p.m. the
16 Public Hearing continued into the evening
17 session.)
18
19
20
21
22

1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 5:00 p.m.

3 CHAIRPERSON MILLER: And I'm just
4 going to highlight a couple, which may be
5 redundant from what has been discussed, but
6 for the purposes of our deliberation, we
7 talked about the fact that this building is of
8 an irregular shape. It was six sided on a
9 five sided property. And it is on a very wide
10 right-of-way, which has an extremely wide
11 sidewalk.

12 And the extremely wide sidewalk
13 makes the impact of the Arcade Regulations
14 even greater on this property, I believe, than
15 on others in general. The retail -- the
16 practical difficulty that is resulting is that
17 the retail is setback very far from the street
18 and from the sidewalk and, therefore, is
19 having difficulty making it. It is not
20 working.

21 And they also have an issue with
22 their main entrance having to be setback far

1 as well and that there is a slope in this case
2 that is noncompliant with the ADA. So that's
3 two practical difficulties here.

4 There is no public detriment if we
5 grant the relief, because actually it's
6 consistent with the Comprehensive Plan. It
7 will bring retail closer to the sidewalk
8 making it a more vibrant location. And Office
9 of Planning support. We don't have anything
10 from the ANC, though I believe we have
11 indication that they don't oppose, if I am
12 correct. I'll double check that.

13 We have heard testimony. Let's
14 see, okay, according to the Office of
15 Planning, the ANC on June 18, 2008 and June
16 26, 2008, indicated positions of no objection.

17 We have also heard testimony that
18 these regulations really are dated and so it's
19 consistent with the direction of Comprehensive
20 Plan and to actually, you know, grant relief
21 that is different from these regulations.
22 However, we did say in general that we are not

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1 necessarily dealing in generalities. We are
2 dealing in particular with the specific case,
3 how it creates practical difficulties here,
4 based on exceptional circumstances of this
5 property and the context of the regulations.

6 Okay. Others?

7 MEMBER DETTMAN: Madam Chair, I
8 just want to express my support for the
9 project. I think what we have here is a very
10 good example of a bad Zoning Reg in this
11 building. And because it goes against all of
12 the very good planning and design principles
13 that were expressed by Mr. Sher, so I think
14 it's a great design from an urban design and
15 planning perspective by engaging the street
16 and bringing it out to the street level and
17 creating a strong street wall.

18 But also as a sustainability
19 component as well with creating a green roof
20 on the addition. So I'm very much in support
21 of the project.

22 CHAIRPERSON MILLER: Good. That

1 was a good point. Okay. Others? Okay. We
2 have a motion. It has been seconded.

3 All those in favor say aye.

4 ALL: Aye.

5 CHAIRPERSON MILLER: All those
6 opposed? All those abstaining? And would you
7 call the vote, please?

8 MS. BAILEY: The vote is recorded
9 as 5-0-0 to grant the application. The motion
10 was made by Mrs. Miller, seconded by Mr.
11 Dettman, Mr. Etherly, Mr. Loud and Mrs. Walker
12 support the motion.

13 CHAIRPERSON MILLER: And this will
14 be a summary order.

15 MS. BAILEY: Summary order.

16 CHAIRPERSON MILLER: As there are
17 no parties in opposition.

18 MS. SHIKER: Thank you.

19 CHAIRPERSON MILLER: Okay. Thank
20 you. Okay. We're just going to take a five
21 minute break and then we will give you our
22 time. Okay. We will be right back.

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1 (Whereupon, at 5:05 p.m. a recess
2 until 5:15 p.m.)

3 CHAIRPERSON MILLER: Good
4 afternoon. Would you introduce yourselves for
5 the record, please?

6 MR. ARNESS: John Arness of the
7 Law Firm Arness and Associates. With me is
8 Barbara Jones and Reverend Logan from the
9 applicant, United -- McKendree-Simms United
10 Brookland Church.

11 CHAIRPERSON MILLER: Thank you for
12 your --

13 MR. ARNESS: McKendree-Simms-
14 Brookland.

15 CHAIRPERSON MILLER: -- patience.
16 Okay. You are here for a special exception?

17 MR. ARNESS: Yes.

18 CHAIRPERSON MILLER: Community
19 center within the church? Is that correct?

20 MR. ARNESS: It's next door to the
21 church property at 2411 --

22 CHAIRPERSON MILLER: Oh, okay.

1 MR. ARNESS: -- Lawrence. The
2 church actually owns six of the surrounding
3 properties, so the community center lies
4 between the church itself and the rectory and
5 the education center for the church, all along
6 Lawrence Avenue.

7 This is for renewal of a
8 Certificate of Occupancy that was approved in
9 Case No. 16491 in, let's see, decision date,
10 October 6, 1999. The applicant is seeking an
11 extension of this use with the same
12 limitations. The only difference is that in
13 this summary order, it indicated that the use
14 was authorized for five years subject to
15 review. And because this use has been
16 successfully operated at this location at the
17 same scale, we would ask that the duration be
18 10 years this time.

19 The hours being sought in the
20 application are limited 9:00 to 4:00, five
21 days a week, with one evening 6:00 to 9:00
22 p.m., one evening per week for meetings and

1 community meals.

2 The outreach center, as I said,
3 began operating a food pantry in,
4 approximately, 1980 out of the church. Upon
5 acquisition of the subject property, 2411,
6 they moved the outreach center operations over
7 there and also started a community closet
8 where they give out food and clothing to the
9 needy and the homeless.

10 We have submitted a supplemental
11 statement which we hope would address most of
12 the questions that might arise and that
13 addresses the factors to be considered in your
14 review of the special exception. But as for
15 our presentation, we would just stress that
16 this is a continuation of a use that has been
17 successfully operated without objection and
18 community issues, negative community issues
19 for in excess of 12 years.

20 It serves an obvious need, both in
21 the immediately surrounding neighborhood and
22 the community at large. And it fits in very

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1 well with the mission of the church just as an
2 extension of their efforts in the community.

3 We did just today receive a letter
4 of approval for -- or support from the ANC.
5 I don't know if that has made it to your
6 files. I do have multiple copies here.

7 CHAIRPERSON MILLER: It has.

8 MR. ARNESS: Okay.

9 CHAIRPERSON MILLER: It has.

10 MR. ARNESS: We have -- I would
11 like to acknowledge the assistance and the
12 cooperation of Mr. Moy and Mr. Goldstein from
13 the Office of Planning and they were very
14 gracious in their time and attention and kind
15 of highlighted for us what some of the
16 concerns might be and allowed us to submit
17 this or suggested that it might be helpful to
18 you in reaching your decision quickly to
19 address some of these issues with regard to
20 parking.

21 Most of the clientele served are
22 walkups, members of the community. Parking

1 has not been an issue. Again, because you
2 should have also received aerial photos. I
3 believe that's also duplicated in the Office
4 of Planning report, but the majority of the
5 surrounding property is owned by the church,
6 so certainly it's not going to be an
7 objectionable use to the surrounding property
8 owners.

9 Basically, I guess, Mr.
10 Goldstein's report kind of says anything that
11 I could say about it. It's a nonprofit. It
12 is directed to benefit the community. There
13 is no objectionable use. And because of the
14 limited duration of its hours of operation,
15 and again, it's 12 year history, we believe
16 that there is a substantial basis for approval
17 of the application.

18 Ms. Jones integrally involved in
19 oversight supervision of the center and is
20 here to answer any questions about day to day
21 operations. And Reverend Logan is also here
22 to support Ms. Jones and also because of his

1 concern in the Board's decision.

2 CHAIRPERSON MILLER: Okay. Thank
3 you. It certainly appears that this is an
4 organization that does great service to the
5 community. And if you have been operating for
6 12 years and there is nobody here complaining
7 about any adverse impacts, it's unlikely that
8 there are, because we see plenty of people
9 show up and complain.

10 Well, I guess my first question
11 is, I guess you have been operating for 12
12 years, but there has been a lapse since the
13 order expired allowing you to operate. Is
14 that right? Since -- am I under the right
15 assumption with respect to the last special
16 exception order? It has a term that expired?

17 MR. ARNESS: That's correct.

18 CHAIRPERSON MILLER: Um-hum.

19 MR. ARNESS: What happened, the
20 church on their own not fully understanding
21 the process, they applied for the Certificate
22 of Occupancy. They were rejected. And then

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1 kind of froze and then they came to me and I
2 resubmitted an application for the Certificate
3 of Occupancy, then it was rejected and then we
4 began the process for BZA approval.

5 CHAIRPERSON MILLER: What happened
6 that prompted a new Certificate of Occupancy
7 for the center?

8 MR. ARNESS: Well, not the new
9 Certificate of Occupancy, but this is a
10 provisional Certificate of Occupancy that
11 expired after five years after '99. And so
12 there was this uncomfortable gap, which in
13 hindsight is two years, and it was just
14 because the church is so reliant on volunteers
15 and the trustees and all those sort of
16 figuring out, okay, what do we do now and not
17 having the proper guidance.

18 CHAIRPERSON MILLER: Okay. So
19 now, you are coming into compliance again?

20 MR. ARNESS: That's correct.

21 CHAIRPERSON MILLER: Okay. And
22 basically, the operations, are they the same?

1 They have been the same for the last 12 years,
2 the same kind of intensity?

3 MR. ARNESS: Yes.

4 MS. JONES: Yes, that's correct.

5 CHAIRPERSON MILLER: Same number
6 of employees? How many people? You don't
7 have that many employees, do you?

8 MS. JONES: We have five
9 volunteers and one part time outreach
10 assistant there.

11 CHAIRPERSON MILLER: Okay. And
12 the Office of Planning and we're going to hear
13 from them, too, but they don't think there is
14 a lot to say, because you have a very full
15 report here with the order, with the
16 description of what you do, the pictures,
17 etcetera. They recommended conditions, hours
18 of operation. And I think that you just made
19 reference to them and is that fine with you
20 that is Monday through Friday, 9:00 to 4:00,
21 6:00 to 9:00 one evening per week for
22 meetings?

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1 MR. ARNESS: That's correct. That
2 has been the current restrictions and that has
3 met the needs.

4 CHAIRPERSON MILLER: And has it
5 bene a problem in any way? I mean, is that
6 what you want? If you are asking for 10
7 years, is that suitable for the next 10 years?

8 MS. JONES: Yes, that's fine.

9 CHAIRPERSON MILLER: Okay.

10 MS. JONES: That's fine.

11 CHAIRPERSON MILLER: Okay. Let me
12 ask you this. What was -- and I may ask
13 Office of Planning this, but what was the
14 basis for putting your hours of operation
15 here? I mean, from what I'm hearing from you
16 is that, you know, almost all the properties
17 are owned by the church and there haven't been
18 any adverse impacts.

19 Not that I want to, you know, open
20 Pandora's Box, but when we have conditions
21 there, you know, it could be like for
22 certainty, you know, so that the community or

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1 whatever knows that these are going to be your
2 hours, so they don't have to worry about your
3 being open at other hours.

4 I mean, do you know what the --
5 this is a carry over from the last order, the
6 hours of operation. Is there, you know, a
7 good reason for it? You're comfortable with
8 those hours? You're not going to want to
9 change it in 10 years? That's my question.

10 MS. JONES: No, I don't see where
11 we would be changing it any time soon, because
12 like I said volunteers mostly and we don't
13 really have any full-time employees that we
14 would need to keep it open longer than those
15 hours.

16 CHAIRPERSON MILLER: Okay. So
17 this has been working?

18 MR. ARNESS: Yes.

19 CHAIRPERSON MILLER: Okay.

20 MR. ARNESS: And I think the
21 thought also was that we have already gotten
22 approval for those hours, that has been

1 working, there hasn't been an identifiable
2 need to expand. And, you know, if the need
3 would arise, then we would come back. But
4 after 12 years, it has been kind of tested and
5 true and we are happy with those hours.

6 CHAIRPERSON MILLER: Okay. Good.
7 Any other questions from Board Members? Okay.
8 Anything else before we go to the Office of
9 Planning? Okay. Thank you. Mr. Goldstein?

10 MR. GOLDSTEIN: Good afternoon,
11 Madam Chair and Members of the Board. My name
12 is Paul Goldstein and I am a Development
13 Review Specialist with the Office of Planning.

14 The Office of Planning supports
15 the requested relief for a community center
16 use under section 209, which is a special
17 exception. I think the record is probably
18 full enough. I can certainly add to it if you
19 all would like, but otherwise I'll just rest
20 on the record.

21 As to your question about the
22 hours, it was my understanding that those

1 hours worked and so we just supported the
2 hours that were from the previous order and
3 that would be the reasoning behind that.

4 CHAIRPERSON MILLER: Are there
5 questions? I'll just ask you this then. Did
6 you look at what kind of traffic does this
7 generate, this center?

8 MR. GOLDSTEIN: I didn't really --
9 I did a site visit. I didn't notice anything
10 in particular while I was there. I guess I
11 relied to some extent on the applicant telling
12 me that. I don't think there was any real
13 traffic concern. They surround that alley,
14 which I think gives some relief as far as any
15 drop-offs need to happen or pickups.

16 It's not my understanding that
17 there is any real traffic issue, particularly
18 since a lot of their clientele as well is not
19 necessarily driving.

20 CHAIRPERSON MILLER: Okay. Any
21 other questions of Board Members? And do you
22 have a copy of the Office of Planning report?

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1 You do. And do you have any questions for the
2 Office of Planning? Okay.

3 I'm just going to say this for the
4 record. Is anybody here from the ANC? Not
5 seeing anybody, I would like to reference the
6 ANC letter that the Board received today
7 stating that "ANC-5A with a quorum voted to
8 support the renewal of the Certificate of
9 Occupancy of the community outreach center at
10 2411 Lawrence Street, N.W.

11 Since 1996, the church has used
12 the property as a church annex and meeting
13 place for handling food, clothing, information
14 and words of encouragement to the community
15 members in need without cost."

16 Okay. That's signed by Angel
17 Alston, Chair 5A. Okay. So we have heard
18 from the ANC and we haven't heard from anybody
19 else with any concerns. Any final questions?

20 MEMBER WALKER: I have a question
21 for Ms. Jones. Do you still do your Wednesday
22 meals on Wednesdays? Your prepared meals on

1 Wednesdays?

2 MS. JONES: Yes, we do. Right
3 now, we are doing sandwiches, because they are
4 renovating the fellowship hall, but yes, we
5 still do the Wednesday meal from 12:30 to
6 1:30.

7 MEMBER WALKER: That was my
8 question. What time?

9 MS. JONES: 12:30 to 1:30.

10 MEMBER WALKER: Okay. So
11 lunchtime?

12 MS. JONES: Yes.

13 MEMBER WALKER: And about how many
14 people generally do you serve?

15 MS. JONES: Oh, around 50.

16 CHAIRPERSON MILLER: Okay. Any
17 final remarks from the applicant?

18 MR. ARNESS: Thank you for your
19 time and your consideration.

20 CHAIRPERSON MILLER: Okay. Then I
21 would suggest that the Board deliberate on
22 this now. And I would -- let me, before I do

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1 that, I do want to -- I can't remember if I
2 asked if there was anybody here in the
3 audience who wanted to testify in support or
4 in opposition, but if I didn't, it is because
5 there is nobody else in the audience. But for
6 the record, I want to let the record reflect
7 that.

8 Okay. I think the Board is quite
9 ready to deliberate this and that we can do it
10 under motion. And I would move approval of
11 Application No. 17758 of McKendree-Simms-
12 Brookland United Methodist Church, pursuant to
13 11 DCMR section 3104.1, for a special
14 exception for a community center under section
15 209 at premises 2411 Lawrence Street, N.E. Do
16 I have a second?

17 VICE CHAIR LOUD: Second, Madam
18 Chair.

19 CHAIRPERSON MILLER: I would say
20 just as a preface that this applicant has been
21 already operating in the same capacity for 12
22 years and has a previous order granting

1 special exception relief for that operation,
2 which has lapsed and so this is a second order
3 to provide the same relief and use as a
4 community center.

5 I'll just go through the
6 regulations pretty quickly. 209.1 "Use as a
7 community center, building, park, playground,
8 swimming pool or athletic field operated by a
9 local community organization or association
10 shall be permitted as a special exception in
11 an R-1 District if approved by the Board under
12 3104, subject to the provisions of this
13 section."

14 And this community center will be
15 within and is within a residential district.

16 209.2 says that "It shall not be
17 organized for profit." This community center
18 is not organized for profit. And all of these
19 things, I think, were found in the previous
20 order as well.

21 209.3 says that "The community
22 center shall offer no articles of commerce for

1 sale in the center." And there is no
2 representation that any articles of commerce
3 will be offered for sale here.

4 209.4 "The community center shall
5 not likely become objectionable in a
6 residential district because of noise or
7 traffic." That's usually, you know, the most
8 important regulation, I think, under 209 or
9 one of them. And this center has been
10 operating for, I think we said, 12 years.
11 There is no indication of any adverse impact.
12 There has been no objections from the
13 neighborhood.

14 The ANC has supported the
15 application as has the Office of Planning.
16 There are no issues with parking or traffic
17 that have surfaced in 12 years. And most of
18 the neighboring properties are, in fact, owned
19 by the church, as we have heard.

20 209.5 says that "The use of the
21 community center shall be reasonably necessary
22 or convenient to the neighborhood in which it

1 is proposed to be located." Office of
2 Planning indicates that the community center
3 serves residents of Ward 5 as well as those
4 outside.

5 All indications are that this
6 community center provides very important and
7 generous service to the community and there
8 have been no adverse impacts related to the
9 operations. So I would recommend approval and
10 we talked about conditioning this similarly to
11 the previous order with respect to days and
12 hours of operation, which would be Monday
13 through Friday, 9:00 to 4:00, with a 6:00 to
14 9:00 p.m. one night, one evening per week for
15 meetings.

16 And I would also recommend that
17 approval be for 10 years, which is what Office
18 of Planning has suggested, based on the fact
19 that the center has operated for 12 without
20 any problems that we can see. Others?

21 VICE CHAIR LOUD: I agree with
22 everything you said, Madam Chair. I just have

1 one question about when our order would take
2 effect, if we know the month that our order
3 would take effect?

4 CHAIRPERSON MILLER: Well, this
5 would be by summary order, so it would
6 probably go out this week. The effective date
7 of the order it might be 10 days after that.
8 I would have to look at the regs, but I think
9 there is a 10 day window in there in the event
10 somebody wants to file a motion for
11 reconsideration.

12 VICE CHAIR LOUD: Okay. The only
13 reason I'm asking is that would make it about
14 August in 2018, I guess, August in 2018 and I
15 wanted to know from your vantage point is that
16 too close to annual conference to -- is it a
17 good time of the year for it to expire? I
18 know you will be doing a lot of preparations
19 for annual conference.

20 CHAIRPERSON MILLER: We're going
21 to go out of deliberation just officially.

22 VICE CHAIR LOUD: Are we?

1 CHAIRPERSON MILLER: You want to
2 go out of deliberation for a minute?

3 VICE CHAIR LOUD: Oh, sorry.

4 CHAIRPERSON MILLER: That's okay.
5 We can go out of deliberation.

6 VICE CHAIR LOUD: We're going to
7 go out of deliberation, which means you can
8 officially answer. I just wouldn't want the
9 10 year lapse to catch you by surprise again.

10 REVEREND LOGAN: No, our annual
11 conference is always in early June, late May.

12 VICE CHAIR LOUD: So the timing
13 would be perfect, in other words?

14 REVEREND LOGAN: Yes.

15 VICE CHAIR LOUD: Okay.

16 CHAIRPERSON MILLER: I would also
17 note on that point though that renewals are
18 not always timed to the exact date of
19 expiration. Like they could come in earlier
20 for renewal. Okay. Others? Okay. Not
21 hearing any other desires to add to the
22 deliberation, there is a motion that has been

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1 seconded. I believe it has been seconded.

2 All those in favor say aye.

3 ALL: Aye.

4 CHAIRPERSON MILLER: All those
5 opposed? All those abstaining? And would you
6 call the vote, please?

7 MS. BAILEY: Madam Chair, the vote
8 is recorded as 5-0-0 to grant the application
9 for 10 years and with the other conditions as
10 identified by the Board. Mrs. Miller made the
11 motion, Mr. Etherly seconded -- I'm sorry, Mr.
12 Loud seconded, Mr. Dettman, Mrs. Walker and
13 Mr. Etherly, Commissioner Etherly, supporting
14 the motion.

15 CHAIRPERSON MILLER: Okay. And
16 this will be by summary order, as there are no
17 parties in opposition.

18 MS. BAILEY: Thank you.

19 CHAIRPERSON MILLER: Okay. Thank
20 you very much. I think you heard, you know,
21 that the order will be coming shortly, because
22 it's a summary order. So I mean, I can't

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1 guarantee it, but probably this week. Okay.

2 MR. ARNESS: Thank you.

3 REVEREND LOGAN: Thank you.

4 CHAIRPERSON MILLER: Thank you.

5 Thank you for your service and your patience.

6 Ms. Bailey, do we have anything
7 else on the agenda for today's hearing?

8 MS. BAILEY: That's it for today's
9 hearing, Madam Chair.

10 CHAIRPERSON MILLER: Thank you
11 very much. Then this hearing is adjourned.

12 (Whereupon, the Public Hearing was
13 concluded at 5:37 p.m.)

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