

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

MAY 6, 2008

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner
(OAC)

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the
minutes from the Public Meeting held on May 6,
2008.

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P R O C E E D I N G S

11:17 a.m.

CHAIR MILLER: This hearing will please come to order. Good morning, ladies and gentlemen. This is the May 6, 2008 public meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Ruthanne Miller. I'm the chairperson. To my right is Mr. Michael Turnbull from the Zoning Commission. Joining us shortly will be Marc Loud, who is the vice chair, and to my left is Mary Oates Walker and Shane Dettman, board members, and then Mr. Clifford Moy from the Office of Zoning, Sherrie Glazer, Office of Attorney General, and Beverly Bailey, Office of Zoning.

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

Please be advised that this

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

7 Does the staff have any
8 preliminary matters?

9 MR. MOY: Yes, we do, Madam Chair.
10 But staff would suggest that we -- the Board
11 take that up, case by case.

12 CHAIR MILLER: Okay. Then let's
13 proceed with our agenda.

14 Application No. 17742

15 MR. MOY: Good morning, Madam
16 Chair, members of the Board. The first case
17 for decision is Application No. 17742 of
18 Unique Learning Center, pursuant to 11 DCMR
19 3104.1 and 3103.2, for a variance from the
20 court requirements under Section 406, and a
21 special exception under Section 209, to
22 operate a community center in the R-4

1 district.

2 This is at premises 1251 through
3 1253 4th Street, N.W., Square 523, Lot 858.
4 Staff notes that the Applicant amended the
5 application to add variance relief from the
6 non-conforming structure provisions under
7 Section 2001.3. As the Board will recall, on
8 April 1st, 2008, the Board completed public
9 testimony, closed the record and scheduled its
10 decision on May 6th.

11 The Board requested additional
12 information to supplement the record from the
13 Applicant, and allow the ANC to respond. We
14 have two filings in the record here.

15 First is the filing dated April
16 14th, 2008, identified as Exhibit 35 from the
17 Applicant. Also in your case folder is an ANC
18 letter from ANC 6C. That letter arrived
19 yesterday, May 5th, 2008, identified as
20 Exhibit 36.

21 That ANC letter should be
22 considered as untimely, being that the due

1 date was April 28th. The Board should act on
2 the merits of the requested variance and the
3 special exception relief. That completes the
4 staff's briefing, Madam Chair.

5 CHAIR MILLER: Thank you, and did
6 you say that the ANC letter was untimely?

7 MR. MOY: Yes, Madam Chair.

8 CHAIR MILLER: Okay. Then I would
9 propose that we waive our regulations to
10 accept the ANC letter. Any opposition to
11 that?

12 (No response.)

13 CHAIR MILLER: Okay. So then that
14 letter has been accepted into the record.
15 Basically, this Applicant is seeking both
16 variances and a special exception. As Mr.
17 Moy, says the variances go to the court
18 requirements and the non-conforming structure
19 requirements.

20 Then the special exception is
21 pursuant to Section 209 to offer a community
22 center in the R-4 district. I would suggest

1 that perhaps we start with the variance relief
2 that's being sought. Does someone want to
3 address why there might be a variance from the
4 court requirements under 406?

5 They are starting with a building
6 that currently exists that they're adding to,
7 and it's my understanding that it is already
8 non-conforming with respect to a court
9 requirement. So in any event, they would need
10 a variance and then they're additional. So
11 that results in another non-conforming open
12 court.

13 What they're doing here is adding
14 a third story onto the already-existing two
15 stories of the building. Mr. Turnbull, did
16 you want to elaborate?

17 MEMBER TURNBULL: Thank you, Madam
18 Chair. Yes, I think adding obviously the non-
19 conforming court, which would be on the side
20 adjacent to the neighbors but what is next to
21 that existing alley, that it's there. I don't
22 think -- it isn't doing anything of detriment

1 on that side of the property.

2 The other courtyard which is
3 created, which is on the -- toward the front
4 of the property on 4th Street, is you're
5 basically on an open street. I don't think
6 there's any detriment to that. It's simply
7 sort of a niche, an offset to the structure,
8 approximately 13 foot 1 and it's 8 foot 6 deep
9 back from the property line. So there's no
10 light and air detriment.

11 There's nothing, other than it's
12 just a sidewalk that goes along that street.
13 So I think that the impact to anything there
14 is very *de minimis*. I think my feeling is
15 that relief should be granted.

16 CHAIR MILLER: Now this is a
17 variance that we need to address, whether this
18 property has a unique or exceptional
19 condition. My understanding from the record
20 is that this is an exceptionally narrow
21 property. Would you agree with that?

22 MEMBER TURNBULL: I would. It

1 sort of makes an L shape as it goes on down
2 the street, and most of the property, for 83
3 feet of it, and I guess it's 83 by 21 feet.
4 So it is a very narrow lot.

5 CHAIR MILLER: And it also has an
6 improvement on the property, which is a
7 contributing building. So that limits that
8 part of the addition.

9 MEMBER TURNBULL: You're
10 absolutely correct. You're absolutely
11 correct.

12 CHAIR MILLER: Okay. Now with
13 respect to the practical difficulty test,
14 which is the second part of the variance test,
15 my understanding is that the community center
16 needs an additional space for a computer lab,
17 which is part of this program, which is a
18 critical part of its program for academic
19 tutoring.

20 In addition to the space for the
21 computer lab is coming a new stairway, which
22 provides faster egress than the other

1 stairway, I believe. It's the stairway that
2 creates the court problem?

3 MEMBER TURNBULL: Well, I think
4 what they've done, the stairway from the
5 standpoint -- there is a practical difficulty
6 from the standpoint of not getting into a
7 building code issue as to how far you could be
8 from an exit stair.

9 So I think there really is only a
10 few options left without totally getting some
11 of the interior space. I think putting it on
12 the far end of the building, and the fact that
13 they've actually made it an enclosed stair, a
14 brick stair to match the existing structure I
15 think is in in their interest. They also
16 added extra windows to make it open. They
17 were those concerns. I know from the ANC and
18 the neighborhoods that they didn't want --
19 they were afraid of people somehow hanging out
20 in the stairs and so I --

21 But getting back to your question,
22 yes, there is a practical difficulty as far as

1 egress within the building and how you can
2 assemble a new part and actually make it work
3 within the structure of the site.

4 So adding it at the far end of the
5 site, toward what is going to be their parking
6 lot is really, is just then natural flow, the
7 way you would design this space.

8 CHAIR MILLER: Okay, and the fact
9 that they already have a non-conforming court.
10 I think all this raises the non-conforming
11 court and the narrowness and the limitations
12 that they have. I have the impression that
13 they really could not -- it would be
14 prohibitive to bring the court in to
15 compliance.

16 MEMBER TURNBULL: Absolutely.

17 CHAIR MILLER: Okay, all right.
18 We found that there's no adverse impact to
19 address that from the --. So I don't think
20 that there is an issue then with respect to
21 the variance, and we can move into the special
22 exception for community center under 209.

1 The Applicant in this case is a
2 non-profit organization that's been serving
3 the Shaw community for over 25 years, and I
4 think the way the Applicant described it at
5 the hearing was that she was trying to find a
6 home for her work.

7 They want to use this as a center
8 for academic, recreational, cultural and moral
9 enrichment programs for approximately 40
10 children and their families, and currently all
11 the students reside in the neighborhood.

12 So we just need to look at 209 and
13 see whether this application meets the
14 requirements. Okay. 209.1 basically says
15 that use as a community center is permitted as
16 a special exception in an R-1 district and
17 those above, including R-4, if it's approved
18 by the BZA subject to the provisions of this
19 section.

20 209.2 says community centers shall
21 not be organized for profit, but shall be
22 organized exclusively for the promotion of the

1 social welfare of the neighborhood in which
2 it's proposed to be located.

3 We have in our record proof that
4 this is a non-profit and its purpose is what
5 I explained, which is for the social welfare
6 of the neighborhood.

7 209.3, a community center shall
8 offer no articles of commerce for sale in the
9 center. They're not going to be doing that.

10 209.4, a community center shall
11 not likely become objectionable in the
12 residence district because of noise or
13 traffic. We do have evidence that they will
14 have a ten-space parking lot, and nine spaces
15 are required by the regulations. So they have
16 sufficient parking and they serve families and
17 students in the neighborhood. So almost all
18 the uses will be walking.

19 MEMBER WALKER: In addition, Madam
20 Chair, I think it's important to point out
21 that the Applicant responded to concerns from
22 the community about noise, when they initially

1 had planned to include a children's play area.
2 Indeed, they eliminated that play area, and so
3 I think that goes to 209.4's restriction on
4 noise.

5 CHAIR MILLER: Yes, good point.
6 Anything else on that one? 209.5, it says
7 that the use of the community center shall be
8 reasonably necessary or convenient to the
9 neighborhood in which it's proposed to be
10 located.

11 It seems to me that the whole
12 point of this is to serve the neighborhood.
13 They're going to have after-school programming
14 and computer lab book clubs, health and
15 nutrition. All the programs are directed at
16 children and families in the neighborhood.

17 MEMBER TURNBULL: And Madam Chair,
18 thank you. We need to point out that it
19 already is an existing community center,
20 working at a local church. So I think that it
21 has a track record of already being within the
22 community. So it's really just a relocation

1 of the current usage.

2 CHAIR MILLER: That's true. I
3 think that does give, I think, the Board and
4 the neighborhood much comfort, in that they
5 know who this organization is, and we know how
6 they've been operating all this time.

7 So that's what you're saying,
8 isn't it? There's a whole track record.
9 There's no adverse impact.

10 There was a concern at the hearing
11 raised by a neighbor with respect to security,
12 and the Applicant did come back with some
13 proposed conditions to address those issues.

14 There were issues that this
15 community center not become a place where
16 there's going to be drug users or homeless
17 individuals hanging around, or vendors.
18 Those are specifically what was mentioned.

19 There was discussion about
20 lighting and fencing, and so now perhaps we
21 should address proposed conditions.

22 MEMBER TURNBULL: Getting back to

1 your one comment about the issue of security,
2 the Applicant is putting a wrought iron fence
3 around the parking lot area and securing it,
4 and they also talked about putting motion
5 lighting on the property, which would be
6 triggered if someone was able to get inside
7 the property or whatever.

8 So I think they've tried to make a
9 reasonable effort to do whatever they can to
10 secure their property from outside people
11 coming in.

12 CHAIR MILLER: Okay. Other
13 comments before we go into the conditions?
14 Okay, and the Board doesn't pose conditions
15 when it finds that the conditions might be
16 necessary to mitigate any adverse impacts that
17 have become, you know, apparent in the record.

18 So in this case, we gave the
19 Applicant the opportunity to go back and talk
20 with the community, and propose conditions
21 that they thought were appropriate.

22 The first condition goes to

1 activities at the property, and the Applicant
2 proposed the following language. They propose
3 as follows: "The Unique Learning Center's
4 mission is to provide programs for the benefit
5 of the children and families it serves. Its
6 mission shall not include sheltering or
7 feeding the homeless, or rehabilitating drug
8 users or ex-offenders."

9 So I looked at that language, and
10 I understand the point of it, based on the
11 discussion. I didn't think that it was
12 written in condition form. So I just want to
13 propose something else that, you know, the
14 Board members can look at and then we can see
15 where we're going to go with it.

16 That would be that activities of
17 the Unique Learning Center shall be limited to
18 those that serve its mission of providing
19 academic, recreational, cultural and moral
20 enrichment programs to at-risk children in the
21 inner city communities of Washington, D.C.,
22 including programs for the children's

1 families.

2 Now I stopped there, and we can
3 see what we can do. But as far as -- instead
4 of going into what they can't do, I thought
5 that perhaps it was sufficient to say what
6 they can do, you know.

7 That's what they're all about, and
8 the language comes from page two of their
9 Exhibit 35, in which they even quote their by-
10 laws for what their mission is.

11 So are there other thoughts on
12 that language?

13 (No response.)

14 CHAIR MILLER: Okay. Not hearing
15 any, why don't we consider that Condition No.
16 1, unless anyone chooses to revisit it before
17 we finish this deliberation and move on.

18 Their second condition goes to
19 lighting, and it reads as follows; this is
20 their proposed condition: "The lighting on
21 the property shall include a downward focused
22 motion sensor light that will illuminate the

1 entirety of the back parking lot and rear
2 entrance to the building.

3 "Additional subdued lighting shall
4 be located on the outside of the building, to
5 give passers-by the impression that the
6 building is occupied." That's fine with me.
7 I think that is written as an appropriate
8 condition, and does address the concerns about
9 the lighting. Okay. Any others?

10 (No response.)

11 CHAIR MILLER: The third one, then
12 -- that's the second condition -- the third
13 one goes to fences. It says "3. A wrought
14 iron fence and the style of other fences in
15 the surrounding neighborhood will attach near
16 the Southwest corner of the building, and will
17 run along the property line encompassing the
18 parking lot, and reattach at the Southeast
19 corner of the building.

20 "The fence will be between six to
21 eight feet high when surrounding the open
22 parking lot, and will be shorter when running

1 along the building. The main entrance to the
2 parking lot will be secured nightly and during
3 the hours and days that the property is not in
4 use."

5 That sounds fine to me. Any
6 concerns?

7 (No response.)

8 CHAIR MILLER: Okay. So that's
9 Condition No. 3. Okay. The last -- I think
10 the last condition that -- well no, maybe not
11 the last one. But the next condition that was
12 at issue was whether we should put a term on
13 this application because it's new.

14 We often do that to see if a use
15 is going to be working out. However, the
16 reasons not to in this case would be number
17 one, that this organization has a long track
18 record in the community, so we know how
19 they're working out in general, as an
20 organization in the community.

21 Then they raise the concern that
22 it would hurt their program, that they'd be

1 less likely to get donations if there wasn't
2 a certainty that this was going to be a long-
3 lasting program.

4 And that there's also expenses
5 involved for non-profits in having to seek
6 additional zoning relief. I don't believe
7 that there was a request for a term by anybody
8 in this case. The ANC is supporting this.

9 I don't see any request for a
10 term. I don't believe the Office of Planning
11 requested a term. So I don't think it's
12 necessary in my opinion. Do others feel that
13 there should be one?

14 MEMBER WALKER: Madam Chair, I
15 agree, that given the Applicant's lengthy
16 history of operating in the neighborhood, and
17 the fact that they are currently operating
18 very near their new site, suggests that the
19 community -- there's not going to be any
20 difference in what's going to happen to the
21 community.

22 The mission hasn't changed. Their

1 activities are going to remain the same, and
2 for that reason, I agree that there should not
3 be a term imposed.

4 CHAIR MILLER: Okay, and the last
5 question goes to whether we want to put a
6 limit on the enrollment. Sometimes we
7 describe for a school or for a certain
8 center's programs that it be limited to a
9 certain amount of students.

10 Their enrollment is characterized
11 as approximately 40 students, and they said
12 that they might grow somewhat in the future.
13 But they expect that the number would be in
14 the context of the physical constraints of the
15 building and the building code regulations.

16 So -- and that they have concern
17 about quality of programming, that that's what
18 key, not increasing numbers. Any comments?
19 Do we need to say anything, approximately 40
20 students, or just leave it?

21 MEMBER TURNBULL: No. I think
22 you're absolutely correct, Madam Chair. I

1 think in that same exhibit number, what is it
2 35, on page three, they do talk about how
3 they've been at the current enrollment of 40
4 students for a while and see some small
5 growth, if anything.

6 But they are going to be
7 restricted by obviously the occupancy permit
8 of the building. So the building's not that
9 big, so I really don't think it's going to be
10 an issue.

11 CHAIR MILLER: Okay. I don't
12 think so either, especially it's non-profit.
13 It's not like they want to bring in more
14 numbers to make more money. They really want
15 to just serve with quality their constituents.
16 So I don't think I see a need for that.
17 Anything else?

18 (No response.)

19 CHAIR MILLER: I do want to note
20 that not only does it have the support of ANC
21 6C, which is our Exhibit 36, but it also has
22 the support of the Mount Vernon Square

1 Neighborhood Association and Ms. Walker
2 mentioned earlier that the Applicant did
3 address their concerns with respect to noise,
4 and also note that they have some other
5 concerns with respect to aesthetics and
6 greenery on the property, and lighting on the
7 parking lot, and that all of these were
8 addressed, and that we also have any letters
9 in support in the record.

10 Any other comments?

11 (No response.)

12 CHAIR MILLER: Okay. Then I would
13 move approval of Application No. 1742 of
14 Unique Learning Center, pursuant to 11 DCMR
15 Section 3104.1 and 3103.2, for a variance from
16 the court requirements under Section 406 and
17 the non-conforming structure provision of
18 Section 2001.3, and the special exception
19 under Section 209, to operate a community
20 center in the R-4 district at premises 1251-
21 1253 4th Street, N.W., as conditioned. Do I
22 have a second?

1 MEMBER TURNBULL: Second.

2 CHAIR MILLER: Further deliberation?

3 (No response.)

4 CHAIR MILLER: Okay. All those in
5 favor say aye?

6 (Chorus of ayes.)

7 CHAIR MILLER: All those opposed?

8 (No response.)

9 CHAIR MILLER: All those abstaining?

10 (No response.)

11 CHAIR MILLER: And would you call
12 the vote please?

13 MR. MOY: Yes, Madam Chair. Staff
14 would record the vote as 4 to 0 to 1. This is
15 on the motion of the Chair, Ms. Miller, to
16 approve the application as conditioned.

17 Seconded by Mr. Turnbull. Also in support of
18 the motion Ms. Walker and Mr. Dettman.

19 CHAIR MILLER: And as we have no
20 party in opposition, this can be a summary
21 order. Thank you.

22 Application 17737

1 MR. MOY: The next application is
2 Application No. 17737 of District
3 Properties.com, LLC, pursuant to 11 DCMR
4 3103.2, for variances from the lot area and
5 lot width requirements under Section 401 and
6 a variance from the side yard requirements
7 under Section 405, to allow the construction
8 of a new one-family detached dwelling in the
9 R-1-B district.

10 This is at premises 4527 Douglas
11 Street, N.E., Square 5115, Lot 20. On March
12 25th, 2008, the Board completed public
13 testimony, closed the record, and scheduled
14 this decision on May 6th.

15 The Board requested additional
16 information to supplement the record from the
17 Applicant, the Office of Planning, ANC 6C and
18 other parties.

19 Filings submitted into the record,
20 Madam Chair, first is from the Applicant,
21 which is in your case folders identified as
22 Exhibit 27. The second filing is from the

1 Office of Planning. It's their supplemental
2 report, identified as Exhibit 28.

3 Finally, the last filing is from the
4 party in opposition dated April 21st, 2008 and
5 is identified in your case folders as Exhibit
6 29. The Board is to act on the merits of the
7 requested variances, and I'm going to end
8 here. That completes the staff's briefing,
9 Madam Chair.

10 CHAIR MILLER: Thank you, Mr. Moy.
11 I think before we get into the merits of the
12 variance, we should address the opposition
13 parties' argument that challenges the
14 Applicant's ownership, in this case ownership
15 is a prerequisite for bringing an application.

16 They state that there are "valid
17 questions about District Properties' legal
18 ownership," and that there being -- the
19 questions are being conducted by Ward 7
20 Council. Does someone want to address this
21 question to start off?

22 MEMBER LOUD: Madam Chair, I'll take

1 a stab at it very briefly. Although the issue
2 was raised at the hearing by Mr. Matthews and
3 Mr. I believe his name is pronounced Ince,
4 there wasn't anything to substantiate the
5 allegation, just apart from it being raised.

6 It was raised in the context of a
7 number of other allegations, similar type
8 allegations that were raised regarding this
9 application. On the other hand, there were a
10 number of pieces of evidence in the record
11 that, when added to one another, one could
12 reasonably conclude that this gentleman is the
13 owner.

14 For example, I believe in the
15 supplemental filing and I'll find the exhibit
16 number momentarily, Mr. Sikder offers to sell
17 the property to Mr. Matthews and Mr. Ince. He
18 offers to sell it and come to closing within
19 30 days, which would not typically indicate
20 someone who doesn't already have title.

21 I believe he himself testified that
22 he's the owner of the property, and testified

1 how much he purchased it for, and there's just
2 no basis for us to go on that kind of witch
3 hunt. I think absent more specific evidence
4 regarding the ownership question.

5 In particular the issue of him
6 offering to sell the property is in our
7 Exhibit 27. It's dated April 4th, and Mr.
8 Sikder offers to sell the property for \$22,000
9 to Mr. Matthews, a similar offer made to Mr.
10 Inlay or Ince. Again, he offers to go to
11 closing before the scheduled public hearing of
12 May 6th. This is dated April 4.

13 So to me, all of those pieces add up
14 to suggest that you have someone who is the
15 owner. Absent something really specific
16 saying otherwise, I'm not inclined to start
17 treading down that path.

18 CHAIR MILLER: Anything else?

19 MEMBER TURNBULL: I would concur
20 with Mr. Loud's assessment. I don't think
21 anybody would go to this trouble, getting
22 surveys and going through the process, if they

1 didn't have ownership of the property.

2 CHAIR MILLER: I would agree, and
3 also the opposition is somewhat speculative
4 and vague. Basically, it's questionable,
5 they say, that he has ownership. So okay. So
6 we can move off that issue then.

7 Then the other issue that the
8 opposition party raised was the validity of
9 the survey that was submitted. That goes to
10 the width of the property.

11 He cites the capital survey that was
12 submitted, that says "This drawing is not
13 intended to establish property lines. It's
14 used for construction or design purposes."

15 MEMBER LOUD: Again as I recall, the
16 whole issue of the dimensions of the property
17 came into question, because the witnesses at
18 the hearing indicated that they had stepped it
19 off sort of informally, and that it measured
20 at 20 feet, I believe. But again, the actual
21 dimensions on the survey are a more precise
22 consideration.

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1 They're not experts. Their
2 testimony that the property doesn't measure 25
3 feet in width is speculative. Added to which,
4 the Office of Planning's report indicates that
5 the width is 25 feet, and there's actually a
6 survey, a BZA survey in our file that
7 indicates the measurements as 25 feet.

8 So for this Board member, I just
9 need more than sort of those kind of
10 allegations, to pivot and then make the
11 Applicant have to jump through all of these
12 preliminary hurdles to push the case forward.
13 There ought to be something of substance.

14 CHAIR MILLER: I would agree, and
15 again, I do think it's important that in
16 addition to that survey, that they were citing
17 in a couple of surveys, we already had in the
18 record the District of Columbia Government
19 Office of the Surveyor exhibit, showing the
20 width to be 25 feet. Anybody else have any
21 comments on these preliminary issues?

22 MEMBER TURNBULL: Madam Chair, the

1 only thing I would ask, and I think, as Mr.
2 Loud said, a lot of that is purely
3 speculative, whether they have actually --
4 whether the lot is smaller. Unfortunately, it
5 could be that if there's anything built on
6 those adjoining lots, they may have encroached
7 over their own property line, which we don't
8 need to get into.

9 But that is always an issue that
10 they may think -- what they think is where the
11 boundary is may not entirely be what the
12 property lines are.

13 CHAIR MILLER: Okay. Then I think
14 we can move into the variance that's at issue
15 then. Variance from the side yard
16 requirements under Section 405, and from the
17 lot area, and the lot width requirements under
18 Section 401. The Applicant wants to construct
19 a one-family, two-story detached dwelling on
20 an infill lot, and the building would be 19
21 feet wide and 63.3 feet deep, and 29.9 feet
22 high.

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1 The dwelling would have three foot
2 wide side yards. So what we have here is --
3 it is a very small lot that wasn't in
4 existence prior to the enactment of the zoning
5 regulations. It's not developable without
6 zoning relief, because it doesn't meet the lot
7 area and width dimensions.

8 I think in doing the variance
9 analysis, the first question is, is this a
10 unique or an exceptional condition, because
11 from my understanding, it is not dissimilar to
12 the other lots in the area, that they were all
13 pretty much of this dimension, and some of
14 them are combined with other lots to make
15 bigger lots.

16 But this one can't be, which is the
17 practical difficulty, one of the practical
18 difficulties, because the abutting properties
19 are owned by other, and he actually tried to
20 sell, according to the letter you just read
21 Mr. Loud, the property to both neighbors.

22 So the question is, I mean is this

1 exceptional, because you can't build upon it
2 because of the zoning regulations. It's too
3 small. It's not different from the other
4 properties in the area. They all could be
5 considered exceptional. But I think it does
6 meet the variance test, because it was before
7 the enactment of the zoning regulations.

8 If it was similar to all the other
9 properties after the zoning regulations, we'd
10 have a different story. But this was small
11 because of that.

12 He can't -- he meets the side yard
13 relief because without the side yard relief,
14 the house would be too narrow, and so he has
15 those two practical difficulties. He could
16 build anything without the variance, and then
17 I couldn't build the house without the side
18 yard variance, because it would be too narrow.
19 I'll let you all jump in in a second.

20 But then I think we get to what's
21 key in this case, is whether relief can be
22 granted without substantial detriment to the

1 public good, and without impairing the intent,
2 purpose and integrity of the zoning
3 regulations and maps.

4 I don't recall at the hearing
5 certainly looking at pictures, and wondering
6 whether or not this was way out of character
7 in the neighborhood, whether it was fitting in
8 a house that would be way out of place in the
9 context of a neighborhood, that all the other
10 houses had larger yards between them.

11 I'm not really convinced of that at
12 this point, but I would like to hear others.
13 Office of Planning has said that it's not out
14 of character.

15 They support the application, that
16 it's -- I believe that the other properties
17 have five feet size yards, so that there's
18 eight feet between the neighboring properties
19 and this property, and that that's not unusual
20 according to the Office of Planning.

21 MEMBER LOUD: Madam Chair, I would
22 concur with you and just add that looking back

1 on the testimony of Mr. Moore from the Office
2 of Planning, his assessment of it, that they
3 are also recommending granting the relief.

4 But he did put sort of corollary on
5 it. He said that if it were, and he pointed
6 on the same side of the block, going toward
7 Kenilworth Avenue, where there are
8 approximately four lots in a row that they
9 would recommend they would not approve an
10 applicant for, they would not grant the
11 relief. But rather they would recommend they
12 would combine two lots and meet the
13 regulations.

14 But as he then said, that there are
15 other numerous lots in this block that are
16 similar, in the sense that they're narrower
17 than 25, that other than leaving those lots
18 vacant to encourage development, you have to
19 grant relief. There's no other way to develop
20 those single lots that are stuck between
21 existing properties.

22 And that only in the case where

1 there was several lots in a row that would
2 allow the double lot combining, you're at a
3 stand-still. You're at a point where you have
4 to grant relief, if you want to encourage
5 development.

6 CHAIR MILLER: I think it's also
7 important that he tried to sell it, the land,
8 you know, and he couldn't.

9 MEMBER TURNBULL: You're absolutely
10 correct. You're absolutely correct.

11 CHAIR MILLER: Which kind of goes
12 along with the other, if you can combine them.
13 But that's better, yes. Then the Applicant
14 also submitted pictures of other houses on the
15 street that had the same width, which would go
16 to whether this would be out of character with
17 the neighborhood. That's also in this Exhibit
18 27.

19 MEMBER TURNBULL: I think Madam
20 Chair, the others. I know some of the
21 neighbors were making the argument that
22 there's more space between existing homes.

1 I think some of that is because you
2 have these single lots between them. Or if
3 they are on a double lot, some of them are
4 already non-conforming also, that they've only
5 got five feet or less on their side.

6 So I think the neighbors' concerns
7 that this would destroy the looks of the
8 neighborhood is sort of an artificial
9 viewpoint, in the sense that there are
10 existing single lots in there that are not
11 developed, that give the impression that the
12 homes are on bigger lots than what they are
13 actually are.

14 CHAIR MILLER: And there also isn't
15 any evidence in the record of any adverse
16 impacts on neighbors, light and air, as a
17 result of this dwelling being built. Okay.
18 Is there anything else then?

19 (No response.)

20 MEMBER TURNBULL: Madam Chair, it's
21 the only -- and I don't know whether it's a
22 condition, but I know OP in their comments

1 says that they would -- they talked about the
2 adjacent properties and how they would be
3 combined, and they had -- they were strongly
4 recommending that the Applicant develop its
5 windows, such that -- or the placement of
6 windows, not looking into another window or
7 whatever.

8 We haven't seen that, that kind of a
9 comparison. I don't know to what degree you
10 could enforce that or try to actually -- I
11 mean it's a guideline, to try to structure
12 your windows and openings such that it's to
13 the best advantage of not only the existing
14 neighbor next by and your own house that
15 you're putting up, the new dwelling.

16 But I don't know if they've actually
17 done any kind of a conjecture. We've not seen
18 that. We've seen the existing floor plan, and
19 I'm not sure how that actually gets -- how
20 well it relates to the other homes.

21 CHAIR MILLER: I mean I vaguely
22 remember a discussion of that, but I don't

1 think it goes to the level of a condition.
2 Yes, I see it in this Office of Planning
3 Supplemental Report, Exhibit No. 28.

4 MEMBER TURNBULL: Yes. It's on page
5 two of number 28. It's under "Privacy." It
6 says "This was an existing lot, created for
7 development, which is consistent in form to
8 that of the neighborhood side yards, which are
9 less than the required eight feet, are not
10 uncommon in the area.

11 "However, OP would encourage the
12 Applicant to ensure that the design minimizes
13 potential privacy impacts. For example,
14 through window placement or reduction
15 screening, etcetera.

16 CHAIR MILLER: Okay. I think
17 they're setting forth general suggestions, and
18 so perhaps we shouldn't frame a specific
19 condition to the options.

20 MEMBER TURNBULL: Yes, yes.

21 (Pause.)

22 MEMBER LOUD: In light of what we've

1 discussed, I'd like to move for approval of
2 Application No. 17737 of District
3 Properties.com for three areas of variance
4 relief: Section 401.3, lot area; Section 401,
5 lot width; and Section 405, side yard.

6 CHAIR MILLER: Second. Further
7 discussion?

8 (No response.)

9 CHAIR MILLER: Okay. There's a
10 motion that's been seconded. All those in
11 favor say aye?

12 (Chorus of ayes.)

13 CHAIR MILLER: All those opposed?

14 (No response.)

15 CHAIR MILLER: All those abstaining.

16 (No response.)

17 CHAIR MILLER: Would you call the
18 vote please?

19 MR. MOY: Yes, Madam Chair. Staff
20 would record the vote as 4 to 0 to 1. This is
21 on the motion of the vice chair, Mr. Loud, to
22 approve the application. Seconded by Ms.

1 Miller, the Chair. Also in support of the
2 motion Mr. Dettman and Mr. Turnbull, and we
3 have no other Board member participating. So
4 again the vote is 4 to 0 to 1.

5 (Pause.)

6 MR. MOY: The next application is
7 No. 17755. This is of Mount Lebanon Baptist
8 Church, pursuant to 11 DCMR 3104.1 and 3103.2,
9 for a variance to allow an increase in the
10 number of units within an existing apartment
11 house under Subsection 401.11, and a special
12 exception to establish a community service
13 center under Section 334 in the R-4 district,
14 at premises 225 Morgan Street, N.W.

15 This is in Square 555, Lot 150. On
16 April 22nd, 2008, the Board completed public
17 testimony, closed the record and scheduled its
18 decision on May the 6th. The Board requested
19 additional information to supplement the
20 record from the Applicant and the Office of
21 Planning.

22 Those filings have been submitted

1 into the record. The Applicant's filing is
2 identified as Exhibit 33 and 35 in your case
3 folders, and the Office of Planning's
4 supplemental report is also in your case
5 folders, identified as Exhibit 34.

6 The Board has acted on the merits of
7 the requested variance and special exception
8 relief, and that completes the staff's
9 briefing, Madam Chair.

10 CHAIR MILLER: Thank you, Mr. Moy.
11 The first question I think we should address
12 is the variance. It's a variance to allow an
13 increase in the number of units within an
14 existing apartment house under Subsection
15 401.11.

16 We had much discussion at the
17 hearing as to whether or not a variance is
18 required at all. 401.11, which is the
19 provision from which the variance is sought.
20 I think there was a text amendment in July of
21 2007, and it reads "An apartment house in an
22 R-4 district, whether converted from a

1 building or structure pursuant to Section
2 330.5, or existing before May 12, 1958, may
3 not be renovated or expanded so as to increase
4 the number of dwelling units, unless there are
5 900 square feet of lot area for each dwelling
6 unit, both existing and new."

7 Okay, and this apartment building,
8 we have an existing apartment house, was in
9 existence prior to 1958, so it falls within
10 this regulation. But the Office of Planning
11 indicates that the structure was constructed
12 as a six unit general apartment house in 1924.

13 So it is an apartment that existed
14 prior to 1958, with six units. It says here
15 that it can't be renovated or expanded so as
16 to increase the number of dwelling units.

17 So we had various evidence in the
18 record about those dwelling units. One is I
19 think in 1985, there was a certificate of
20 occupancy that says that there are four units.
21 We also have in the record testimony from the
22 Office of Planning and the Applicant that this

1 building structurally has six units clearly,
2 and when they were discussing the options for
3 renovating it, it all had to do with the fact
4 that there were already six units there.

5 There was a great deal of evidence
6 supporting the fact that these were six units.
7 If you all remember, there was the kitchen
8 doors and there was electrical units. You'll
9 come and help me on this one.

10 But the point is that structurally,
11 there seemed to be no question that this
12 apartment house has six units. So when I read
13 that provision in 401.11 literally, it says,
14 you know, it can't be renovated or expanded to
15 increase the number of dwelling units.

16 In this case, I don't see that it
17 would be increasing the number of dwelling
18 units to six because the facts seem to
19 strongly indicate that there are six dwelling
20 units there.

21 I think sometimes we talk about a
22 certificate of occupancy being *prima facie*

1 evidence of at least the use of a building.
2 But number one, that's rebuttable. If we have
3 other evidence that is clear and compelling to
4 lead us otherwise, that's fine.

5 Then the other thing is I think this
6 goes to, in my opinion, this goes also to the
7 structure, whether they were used or not. In
8 certain years I'm not sure if that's
9 conclusive either. Structurally, there are
10 six units and it's not being increased from
11 four to six. There are six.

12 So I would not think that a variance
13 would be necessary. Other comments?

14 MEMBER LOUD: I couldn't agree with
15 you more, Madam Chair. I think it's an
16 excellent project, and I'm looking forward to
17 voting for it when the time comes this
18 morning.

19 In terms of specific testimony, I
20 think Mr. Moore testified that on April 4th he
21 did a walk-through of the property. There
22 were three floors. There were two units on

1 each floor, and then he identified six
2 separately-metered electric and gas boxes, as
3 well as exhaust vents on the wall where stoves
4 would have been.

5 The operative word for me as well
6 was "increase," and I didn't see where the
7 plans put forth any increase in the number of
8 units there. I really struggled with the idea
9 of defining dwelling units by whether or not
10 -- the existence of a dwelling unit by whether
11 or not a certificate of occupancy could be
12 correlated to that unit.

13 That's not something that our
14 regulations speak to or require, that a
15 dwelling unit has to have a certificate of
16 occupancy attached to it. I looked throughout
17 the regs to see if there was such a
18 correlation and there wasn't.

19 In addition to which, when you take
20 a look at the Zoning Commission order that is
21 the basis of Section 401.11, it speaks to the
22 intent of 401.11 being to stabilize the

1 rowhouse and single family aspects of the R-4
2 district.

3 Well this particular structure was
4 never a single family dwelling. So it's not
5 a question of it in any way stabilizing it as
6 a single family dwelling. It was always,
7 whether you argue six units or four units, it
8 was not a single family structure at any point
9 in time.

10 So I don't think that the intent of
11 401.11 is in any way fractured by our treating
12 this as a special exception as opposed to a
13 variance. Let me see if there are any other
14 pieces I want to just lift up in particular.

15 Those are the main points I wanted
16 to make. I think that there was additional
17 testimony from Mr. Moore regarding the
18 property being identified as a six unit
19 property in various public records of the
20 city, including -- I'm fumbling through my
21 papers for some of his notes.

22 On our Exhibit No. 34, he identified

1 the number of documents, including the
2 Experian 1998 District of Columbia Assessment
3 Director. He speaks to the April 4 walk-
4 through that I talked about, and he speaks to
5 the D.C. Office of Tax and Revenue, Real
6 Property Tax Administration Assessment
7 Division, continuing to identify the property
8 as having six units.

9 In addition to which, this whole
10 business of the four unit certificate of
11 occupancy came up, and it's interesting. I
12 think Mr. Dettman may have caught it
13 initially, that that particular C of O only
14 referenced two floors in the property, and I
15 think it's three floors.

16 It was curious to me that the four
17 units were identified as belonging to the two
18 floors in this structure, almost making the
19 third floor sort of a phantom or not in
20 existence, and that was curious.

21 In addition to which, about two to
22 three weeks after the C of O was filed,

1 changing the number of units from six to four,
2 additional paper work was filed with the
3 Rental Accommodations Office at DCRA, which
4 would have exempted this property from
5 coverage of rent control, and four being the
6 trigger number that would have required rent
7 control.

8 So it was very suspicious that those
9 two aligned with one another, almost to
10 suggest, and I'm not making that conclusion,
11 that there was a strong incentive to re-
12 position the property, at least for purposes
13 of regulatory oversight, as a four-unit, as
14 opposed to a six-unit, but never that the
15 other two units were to disappear and go away.

16 So when one looks at all of that and
17 adds all of those circumstances together, I'm
18 strongly behind you, Madam Chair, that this is
19 currently a six dwelling unit structure, and
20 that it started out in '24 as a six-unit
21 dwelling structure and as we preside over this
22 case, it is still a six-unit dwelling

1 structure.

2 CHAIR MILLER: Thank you. Anything
3 else on that?

4 MEMBER TURNBULL: I would just
5 concur with Mr. Loud's assessment, especially
6 his interpretation of the Zoning Commission's
7 text amendment, in which it was really meant
8 to stabilize. It really does not apply to
9 this particular structure.

10 CHAIR MILLER: I also think it's
11 worth noting that the Office of Planing is
12 almost never -- I've never seen them in
13 support of a conversion of an apartment
14 building, and they're in support of it this
15 time. I think that's why, because it really
16 isn't a conversion.

17 I think that the Applicant brought
18 it to us out of an abundance of caution. So
19 okay. If that's the sentiment, then we don't
20 need to analyze the variance in this case. We
21 can put in the order, you know, a little bit
22 as to our reasoning, so that the Zoning

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1 Administrator's on notice that we considered
2 this issue and found it wasn't necessary.

3 So the other aspect of this is the
4 community service center, because what's
5 happening here is the Applicant is doing a
6 mixed use with affordable housing on the
7 second and third floor, and then this
8 community service center on the first floor
9 and the basement. So this one falls under
10 Section 334.

11 (Pause.)

12 CHAIR MILLER: Okay. This is
13 somewhat similar to the one we did earlier.
14 A community service center, R-4, a community
15 service center as to accommodate organizations
16 created for the purpose of improving the
17 social or economic well-being of the residents
18 of the neighborhood in which the center is
19 proposed to be located.

20 That may include, but not be limited
21 to, centers for job training, family
22 counseling, consumer cooperatives and such

1 other facilities as our similar in nature and
2 purpose. So it will be permitted as a special
3 exception in an R-4 district if approved by
4 the Board of Zoning Adjustment under 3104,
5 subject to the provisions of this section.

6 Okay. So I think what they're doing
7 at this community service center is an
8 interesting partnership with CVS and DOES, in
9 which they're going to be providing job
10 training to individuals in the neighborhood,
11 who are actually going to then work in CVS.

12 Then I believe that the service,
13 that the center is also going to be providing
14 services to the general community, such as in
15 computer training and other things of that
16 sort. So it does fall within this Section
17 334.2, Community Service Centers shall be
18 located so it's not likely to become
19 objectionable to neighboring properties
20 because of noise or other objectionable
21 conditions.

22 Again, like the other one, I believe

1 that this center is serving its community, and
2 I don't recall evidence of concern about
3 noise. Some of the work is going to be in the
4 basement, you know, computer work, which is
5 pretty quiet. Did you all hear anything with
6 respect to objectionable conditions?

7 I think we're going to be later
8 getting to a few conditions, you know, which
9 will define the hours and the number of
10 trainees, etcetera. But I don't recall real
11 concerns about that.

12 "3334.3. No structural changes
13 shall be made except those required by other
14 municipal laws or regulations. My
15 understanding is that this was in pretty bad
16 shape and they are making changes to bring it
17 up to code.

18 "3334.5. The use shall be
19 reasonably necessary or convenient to the
20 neighborhood in which it is proposed to be
21 located." Again, this organization, community
22 center, is going to be serving its immediate

1 neighborhood, or at least its surrounding
2 community, and it's not for profit. That's
3 3334.5. Then there's also any general adverse
4 conditions.

5 MEMBER LOUD: As well, let me just
6 add to Section 3334.4, that we do have a
7 report from the ANC 6C, which we have two; in
8 fact one from, I think, the single member as
9 well as one from the chair.

10 But the point of it is that they, in
11 this report, are supportive of the
12 application, and one can read into that that
13 they've made a determination that the services
14 to be offered are convenient and/or necessary
15 in that community of folks.

16 MEMBER DETTMAN: Madam Chair, just
17 to add to your comment about the 3334.5. I
18 believe at the hearing, it was stated by the
19 Applicant that their 501(c)(3) status was
20 pending before the IRS, and I don't have an
21 exhibit number, but it was a post-hearing
22 filing by the Applicant, which included a

1 letter dated April 15th, 20098 from the IRS,
2 that states "We are pleased to inform you that
3 upon review of your application for tax exempt
4 status, we have determined that you are exempt
5 from federal income tax under 501(c)(3)."

6 CHAIR MILLER: Right, thank you.
7 Oh, I don't know if this has an exhibit
8 number, but the Applicant submitted a
9 memorandum on April 29th, 2008, in which it
10 included that, included updated architectural
11 plans, and it includes pages from the
12 Department of Housing and Community
13 Development's multi-family request for
14 proposals.

15 It includes, I think it's somewhat
16 in the form of conditions, and we can look at
17 them if we want of conditions, that address
18 their hours of operations.

19 I think we could -- we should go to
20 whether we think that we should be imposing
21 any conditions on this project. Conditions
22 were recommended originally by the Mount

1 Vernon Square Neighborhood Association and the
2 Office of Planning also commented on the
3 conditions.

4 They suggested that three out of the
5 seven conditions that were submitted by Mount
6 Vernon Square Neighborhood Association were
7 actually ones that could be enforceable by the
8 BZA. That's in Exhibit 30.

9 Then in that memorandum that I just
10 made reference to, which I don't have an
11 exhibit number on yet, the Applicant responded
12 to what they foresaw as their hours of
13 operation.

14 It seems to me that in this case,
15 unlike the previous one, there is a concern
16 that there be hours of operation set, and that
17 there is a certainty here from the Applicant
18 as to what the hours would be.

19 The Applicant, with respect to hours
20 of operation, separates them by uses. I think
21 they're pretty fine as is, but I'll read it
22 and see if others have any comments.

1 First is a job training center on
2 the ground floor level (operated in
3 conjunction with DOES and CVS, Monday through
4 Friday, 8:30 a.m. to 5:30 p.m.), two computer
5 training centers, service space on first floor
6 Monday through Saturday, 8:30 a.m. to 6:30
7 p.m., and third, community room-meeting space
8 for neighborhood associations, non-profits,
9 Monday through Saturday, 8:30 a.m. to 10:00
10 p.m. Any comments on that?

11 (No response.)

12 CHAIR MILLER: Okay. So I guess we
13 will include that as conditions. Okay. Then
14 they say "In response to conditions put forth
15 by the D.C. Office of Planning in its report,
16 and from a letter produced by the Mount Vernon
17 Square Neighborhood Association, Applicant is
18 amenable to the conditions as follows:

19 "Use of the building will be limited
20 to a maximum of six dwelling units, a
21 community service center, and the Mount
22 Lebanon Baptist Church Community Development

1 Corporation. The CDC would manage the
2 building and offer computer training and other
3 social service programs as support for the
4 community service center. Any comments on
5 that?

6 (No response.)

7 CHAIR MILLER: Okay. Next is there
8 would be a maximum of 12 trainees and five
9 staff persons on site at any given time. The
10 hours of operations for the job skills
11 training center, CVS Pharmacy incumbent worker
12 training, would be 8:30 a.m. to 5:30 p.m.
13 Monday through Friday.

14 I don't know if that's redundant.
15 It looks like that's redundant to what's on
16 top. The next sentence is "The hours of
17 operations for the other useable areas of the
18 community service center are listed above."
19 That looks redundant. Is it?

20 MEMBER LOUD: To me, it looks like
21 the provision above is a little broader, and
22 I'm not certain of that. But the one of the

1 bottom specifies the pharmacy incumbent worker
2 training.

3 I was just wondering if the job
4 training over time goes beyond just the
5 pharmacy, that they have enough flexibility to
6 still have it during those hours, that it not
7 just be limited to the pharmacy incumbent
8 worker training program.

9 That can be raised as something
10 that's totally off the mark, but if they're
11 doing various job training programs with DOES,
12 an opportunity may surface to go beyond just
13 the pharmacy piece.

14 MEMBER WALKER: In light of Mr.
15 Loud's observation, it seems to me that
16 instead of linking, you know, the times to the
17 various aspects of the job training and
18 computer training, that we may want to make
19 the condition a little more broad, and have
20 one general condition relating to training
21 activities and time limitations on that, on
22 those activities.

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1 CHAIR MILLER: When you look at the
2 first one, job training center on the ground
3 floor, operated in conjunction with DOES and
4 CVS, Monday through Friday, 8:30 to 5:30, how
5 is that different from operations for job
6 skills training center, CVS Pharmacy incumbent
7 worker training, 8:30 a.m. to 5:30 p.m. Monday
8 through Friday?

9 MEMBER WALKER: It's not clear that
10 it is, but you know, to avoid any confusion,
11 instead of making the reference to the job
12 training so specific, we could reference it
13 more generally.

14 CHAIR MILLER: You see, that's what
15 it looks like to me. If I cut out the last
16 bullet and we just look at the first bullet,
17 Job Training Center, 8:30 to 5:30, in
18 conjunction with DOES and CVS, that's broader.
19 That's includes it, doesn't it?

20 MEMBER WALKER: Yes, I agree, and I
21 think you can delete the reference to the
22 ground floor level. It's not so important

1 exactly where these activities will take
2 place.

3 CHAIR MILLER: Okay, okay. So just
4 to finalize this, so would you delete the
5 service space reference with respect to
6 computer training?

7 MEMBER LOUD: No, I don't think we
8 would -- at least in my mind, we weren't
9 talking about that. We were just talking
10 about the job training part of it, which I
11 think is a separate service being provided
12 than the computer training.

13 CHAIR MILLER: All right, then.
14 Okay. We're just, if I'm correct, we're just
15 going to have job training center, operating
16 in conjunction with DOES and CVS Monday
17 through Friday, 8:30 to 5:30, and just take
18 out the reference on the ground floor level,
19 that one. Leave all the other ones as is, and
20 delete the last bullet. It's redundant, okay.

21 MEMBER LOUD: One can delete it or
22 one can just repeat what you just said, where

1 the current third one is. Just take that,
2 just lift it out altogether and then just
3 repeat what you just said.

4 In other words, copy the first
5 bullet and put it where this third bullet is
6 at the bottom, the exact same language. You
7 can do that or you can do what you just
8 mentioned. But I think either way, it makes
9 it a little more consistent.

10 CHAIR MILLER: Okay. I guess my
11 preference would be not to repeat it, because
12 we're going to have like five bullets here,
13 whatever, five conditions. So I think it
14 would -- it would be clear.

15 We don't have to have the
16 preparatory language that says hours of
17 operations are as follows. We could just have
18 those bullets. So it covers both hours and
19 use basically is what I think you're getting
20 at, right? Okay, okay.

21 Then I think the last issue is
22 whether to impose a term. The ANC suggested

1 that this be revisited in ten years, and they
2 state as reason, in response to citizen
3 concern about the community center bringing
4 unwanted traffic to a residential area, the
5 commissioners ask that the community center
6 usage be revisited in ten years.

7 I'll just start off the discussion
8 on that briefly. I don't recall evidence in
9 the record that there would be much traffic
10 associated with the center, because it's
11 drawing from the immediate community.

12 Another point to consider is, again
13 it's a new operation, so sometimes we impose
14 conditions like this, to make sure that it's
15 working well. Then the other side is, as we
16 considered in the previous community center,
17 that it is being operated by a non-profit, and
18 therefore number one, it's expensive for them
19 to come back.

20 Sometimes it also can affect
21 funding. I'm not sure if that's an issue in
22 this case though. Any comments?

1 (No response.)

2 MEMBER LOUD: Just a point of
3 clarification. So is Madam Chair leaning in
4 a certain direction regarding the ten year
5 language?

6 CHAIR MILLER: I'm looking to
7 refresh my memory as to whether Office of
8 Planning had a position on this. I don't
9 recall that they did, or whether there was a
10 concern here with funding. You know, our
11 conditions are directed at mitigating
12 anticipated adverse impacts.

13 So on the one hand I think I'm
14 leaning against it, because I don't see that
15 as an issue in this case, because of the
16 neighborhood-oriented aspect of the program.
17 Then also it doesn't sound that intense. The
18 training program only has 12 trainees.

19 But you know, on the other side,
20 though, is the fact that it's a new use.

21 MEMBER TURNBULL: Madam Chair, the
22 only thing that I can find from OP is in their

1 original report on page six, they talked about
2 the Applicant negotiated seven conditions with
3 the Mount Vernon Square Association, and OP
4 concluded that they're only following three
5 stipulations that were enforceable by the BZA.

6 It didn't mention anything about a
7 term limit. They talked about the hours, the
8 maximum number of people; they talked about
9 the use of the building. But they really
10 didn't even get into a term limit as being
11 enforceable.

12 CHAIR MILLER: The other thing I
13 would note is I think this is a very
14 appropriate location for this type of center,
15 and the BZA had previously approved this
16 building for a child development center, which
17 would have had 100 children and 16 staff,
18 which would have been much more intense with
19 respect to traffic.

20 Okay. Any comment? If there's not
21 a strong feeling to impose the condition, then
22 I would say we probably should not, that the

1 evidence really isn't there that it's
2 necessary to mitigate an adverse condition.

3 MEMBER LOUD: Yes. I don't feel
4 strongly about imposing this condition, I
5 think for all the reasons you already
6 mentioned, regarding there being no indication
7 of any adverse impact from the types of
8 services they'll be providing there.

9 But I do want to just encourage the
10 Applicant to continue to work with the ANC, as
11 I'm sure they already know, is in their best
12 interest. Based on the record before us,
13 they're very savvy in working with the
14 community, and I'm certain they would not
15 overlook that.

16 But I agree with you. In terms of
17 imposing it as a specific condition, I'm not
18 seeing any particular reason to do that.

19 CHAIR MILLER: Okay. Any other?

20 (No response.)

21 CHAIR MILLER: Okay. Then --

22 MEMBER TURNBULL: Madam Chair, just

1 the only other thing, I want to thank the
2 Applicant for sending us the revised drawings
3 and plans, which show the corrected stairway,
4 the rear stairway that we had such confusion
5 with the last time, because we didn't have the
6 updated ones.

7 So I want to thank them for
8 submitting those. The only thing that I see
9 on those drawings, and again it's not a zoning
10 issue, a BZA issue, is that on the second
11 floor, before they go to the Zoning
12 Administrator for a building permit, they need
13 to look at the two apartments.

14 They have one apartment exiting into
15 a hallway before it can go outside to the
16 adjoining apartment's hallway, before they can
17 go to the stairwell, which you're not able to
18 do.

19 So it's just a slight change that
20 we're going to have to make by the rear
21 stair, to make that code acceptable to the ZA.
22 But again, that's not one of our issues.

1 CHAIR MILLER: Okay, yes. I guess
2 it doesn't affect our analysis under the
3 special exception for a community service
4 center. Anything else?

5 (No response.)

6 Application No. 17755

7 CHAIR MILLER: Okay. Then I would
8 move application number -- move approval of
9 Application No. 17755 of Mount Lebanon Baptist
10 Church, for a special exception to establish
11 a community service center under Section 334
12 in the R-4 district and premises, 225 Morgan
13 Street, N.W.

14 MEMBER LOUD: Second.

15 CHAIR MILLER: Further deliberation?
16 Okay, let's vote on this and then I'll just
17 make one more comment. All those in favor say
18 aye?

19 (Chorus of ayes.)

20 CHAIR MILLER: All those opposed?

21 (No response.)

22 CHAIR MILLER: All those abstaining?

1 (No response.)

2 CHAIR MILLER: Would you call the
3 vote, Mr. Moy?

4 MR. MOY: Yes, Madam Chair. Staff
5 would record the vote as 5 to 0 to 0, on the
6 motion of the Chair, Ms. Miller, to approve
7 the application for special exception relief
8 under Section 334. This is as conditioned by
9 the Board. It was seconded by Mr. Loud. Also
10 in support of the motion Mr. Dettman, Ms.
11 Walker and Mr. Turnbull.

12 CHAIR MILLER: Thank you. That's
13 right. I'm glad Mr. Moy added that, "as
14 conditioned" here. Also, this would be a
15 summary order. There's no party in
16 opposition, but we should include in that
17 order the Board's finding that a variance
18 wasn't required.

19 Application No. 17729

20 MR. MOY: Okay, very good. The next
21 to last case for decision by the Board, the
22 Board's in receipt of a motion for

1 reconsideration or rehearing of Application
2 No. 17729. This is pursuant to Section 3126
3 of the zoning regulations.

4 This is to the original application
5 number 17729 of Morrison-Clark Limited
6 Partnership I and Morrison-Clark LP, pursuant
7 to 11 DCMR 3103.2 and 3104.1 for a variance
8 from the use provisions under Subsection
9 350.4(d), a variance from the non-conforming
10 structure provisions under Subsection 2001.3,
11 a variance from the rear yard requirements
12 under Section 404, and a special exception
13 from the roof structure setback requirements
14 under Subsection 411.11.

15 This is to allow the renovation and
16 expansion of an existing inn, located in the
17 DD/R-5-E district. This is at premises 1015
18 L Street, N.W., Square 341, Lots 63, 69, 78,
19 31 and 832.

20 Very quickly, the Board, as I
21 mentioned, received on April 10th, 2008, a
22 request for reconsideration, rehearing from

1 ANC 2F. This filing is identified in your
2 case folders as Exhibit 37.

3 The second and last filing in this
4 record is a response from the Applicant, the
5 property owner, and this document is
6 identified as Exhibit 38 and additionally
7 Exhibit 39 in your case folders.

8 In brief, the Board is to act on the
9 merits on the motion for reconsideration and
10 rehearing pursuant to Section 3126.6. That
11 completes the staff's briefing, Madam Chair.

12 CHAIR MILLER: Thank you, Mr. Moy.
13 My understanding is we have a motion for
14 reconsideration and rehearing before us,
15 because the ANC is arguing that the Applicant
16 didn't show them the same plans that were
17 presented to the BZA.

18 We have very specific provisions
19 that the Board looks to in deciding whether or
20 not there should be a rehearing and
21 separately, whether there should be a
22 reconsideration. 3126.6 says that the Board

1 "shall not consider a rehearing unless new
2 evidence is submitted that could not
3 reasonably have been presented at the original
4 hearing."

5 3126.4 states on a motion for
6 reconsideration that it shall "state
7 specifically all respects in which the final
8 decision is claimed to be erroneous, the
9 grounds for the motion and the relief sought."

10 So with respect to the rehearing, we
11 have to look at the motion and see whether or
12 not it presents new evidence that the Board
13 didn't consider, and that couldn't have been
14 placed before the Board at the hearing.

15 I gleaned from the ANC's motion that
16 one new evidence they cite is the withdrawal
17 of approval of the application, and then other
18 is the effect that the construction would have
19 on the Quincy Park Condominium. This is kind
20 of in a nutshell.

21 I just want to address first the
22 rehearing. Perhaps we can get into that. Is

1 there new evidence? ANC's withdrawal of
2 approval is not really -- is not evidence.
3 That is basically argument or position.
4 Evidence goes more to facts, expert witness'
5 testimony about facts, hard evidence.

6 So I don't see that as new evidence.
7 Then the effect the construction would have on
8 Quincy Park Condominium, that's really a
9 generalization or a judgment. When we're
10 looking at new evidence, it's really as if
11 like oh, you know, we didn't have this piece
12 of evidence before us and if we had it now,
13 specifically the Board might come to a
14 different conclusion.

15 We do see that rarely, but I don't
16 see that here. I don't see any new evidence.
17 I see concerns, you know, generalizations
18 about effects. But I don't see new evidence.
19 Do others see new evidence?

20 MEMBER LOUD: I know we're
21 deliberating now moreso on the rehearing part
22 of the request for relief.

1 CHAIR MILLER: If you'd rather --
2 why don't I lay it all out and then we can
3 have a full discussion if you'd like.

4 MEMBER LOUD: Well, it doesn't
5 matter to me.

6 CHAIR MILLER: It's pretty simple.
7 The other part is that a motion for
8 consideration, Section 3126.4 says "shall
9 state specifically all respects in which the
10 final decision is claimed to be erroneous, the
11 grounds of the motion and the relief sought."

12 So okay, and I'll pass this on to
13 you, except that just by saying that, I didn't
14 see that either exactly, where the Board made
15 a mistake in its decision-making. I just saw
16 in this motion concerns that the ANC had,
17 because it got -- it says it got different
18 plans.

19 But I'm going to let others speak
20 and just finish right here by saying that I
21 believe that the issues that they're concerned
22 about were raised by a resident of the Quincy

1 Park Condominium, and the Board did actually
2 look at those issues at the hearing.

3 MEMBER LOUD: This is a hard one for
4 me too. I look at it the same way you look at
5 it, but draw slightly different conclusions.
6 I think that it might be, at least for me,
7 premature to ask the movant to provide some
8 new evidence, without us having some answers
9 to certain questions that we don't now have.

10 I think specifically with respect to
11 the reconsideration, the issue that they're
12 saying an error was made, and I'm not saying
13 we made an error, but their point is that the
14 decision, our decision dated March 11, 2008,
15 page two of the decision says "The Board
16 further concludes that granting the requested
17 relief will not tend to affect adversely the
18 use of neighboring property."

19 I think as I read their pleadings, I
20 think what they're saying is that that's an
21 error, that they it will tend to affect the
22 use of the Quincy, I think they call it Quincy

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1 Park Condominiums, and they're saying it's an
2 error because they have this whole string of
3 allegations regarding being presented with one
4 set of plans at a February '07 ANC meeting,
5 and then a second set of plans slipped into
6 BZA, the way they try to couch it, at a
7 February '08 filing, which of course we heard
8 March 11.

9 Now I'm not saying that that's what
10 happened or it's how it happened and who's
11 right and who's wrong. But I think that
12 they've raised the allegation. I think that
13 I don't have before me what was submitted in
14 February '07.

15 I don't have the ANC minutes from
16 February '07, if there were any attachments to
17 those minutes which might present me with a
18 copy of whatever plans were presented in
19 February '07, so I can then compare that to
20 what was submitted in September '07 and then
21 compare that to what was submitted in February
22 '08, nearly a year later, just to be doubly

1 cautious that in fact that did not happen.

2 So the direction I'm moving in is
3 one of favoring relief for the
4 reconsideration, just so that we can get some
5 answers to questions that are kind of vague
6 right now regarding specifically what I think
7 they're -- what I read them to say was that
8 they were never informed of where on the plans
9 the project would be.

10 As a result of not being informed of
11 that, they had no idea that the 88, 78 foot
12 wall, whichever it may end up being, was as
13 close to the Quincy Park Condos as they are.

14 Now again, there are a lot of
15 questions. Well, did you get the September
16 '07 drawings? Was there a change in the
17 September '07 drawings from the February '08
18 drawings? Why didn't you get it? Did you
19 change officers? Did someone juts ignore the
20 pleadings that were -- and the notifications
21 that were sent repeatedly by the Applicant as
22 well as this office.

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1 But having none of those answers to
2 those kinds of questions, I would at least
3 like the opportunity to move forward with the
4 reconsideration, and get some answers to those
5 kinds of questions.

6 Then if it's appropriate that there
7 is some new evidence and we move to rehearing,
8 make the decision at that time. But if it's
9 not, then make a decision on both the
10 reconsideration and the rehearing at the same
11 time.

12 MEMBER DETTMAN: Madam Chair, I
13 think I'm leaning in the opposite direction as
14 Mr. Loud is. I just want to address two
15 points. One, the ANC's allegation or
16 statement that they were presented with a set
17 of plans and then there was a difference in
18 the plans presented to the Board.

19 Then I just want to address a couple
20 of the statements that were made with respect
21 to the ANC saying that had they known about
22 the relationship of the construction to the

1 existing condominiums, to quote their filing,
2 that they're virtually certain that they would
3 have seen it a different way.

4 First with respect to the plans, in
5 my limited experience on the Board, I've seen
6 situations where something's presented to the
7 ANC and as a project steps through the process
8 to the HPRB and other necessary agencies,
9 these kind of things do happen, that plans get
10 tinkered with.

11 Be that as it may, I'm looking at
12 the Applicant's filing, Exhibit No. 38, and in
13 addition the plans that were submitted to the
14 ANC at the February '07 meeting, part of the
15 application that the Applicant filed with the
16 Office of Zoning on September 13th '07, and by
17 that time, the changes had been made to the
18 plan, and the plans that were submitted to the
19 Office of Zoning do indicate the proposed
20 construction in relation to the condominium.

21 Those plans were submitted to the
22 ANC, served on the ANC on I believe September

1 of '07, yes. Following that, two weeks,
2 roughly two weeks before the hearing in
3 January of '08, the plans were submitted to
4 the ANC again.

5 So whether or not the plans at the
6 February '07 meeting didn't indicate the
7 relationship of the construction to the Quincy
8 Park Condominiums, the ANC had two shots
9 afterwards to take a look at the plans and
10 make this determination that there were
11 changes that they were uncomfortable with.

12 To address a couple of comments in
13 the ANC's filing, Exhibit No. 37, where they
14 state "The condominium directly abuts the
15 Applicant's property." They make the
16 statement that there are changes in the plans,
17 and more specifically, they say had the ANC
18 been made aware of the actual relationship of
19 the construction and its impact upon the
20 adjoining property in February '07 when the
21 ANC considered this application, it is
22 virtually certain that it would have

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1 determined that the Applicant failed to meet
2 the requirements."

3 I want to read quickly a little
4 statement from the ANC report that was
5 submitted, and that shows up in the
6 applicant's filing, again Exhibit No. 38, that
7 states "Among the facts found persuasive by
8 the ANC CDC in the Applicant's presentation of
9 his plans and arguments, were the mid-block
10 location and because the adjacent property to
11 the east has already been developed with
12 condominium apartment buildings.

13 "The ANC CDC also found that there
14 will be no substantial detriment of the
15 building if it's constructed without a rear
16 yard." So they were made aware of the
17 relationship of the proposal to the existing
18 condominiums, and they were aware that the
19 building was going to be constructed without
20 a rear yard.

21 So I'm not persuaded by the ANC's
22 statements that there was actually evidence

1 that would have made them see it differently.

2 MEMBER WALKER: Mr. DETTMAN, how do
3 you reconcile the reference to the mid-block
4 location and the reference in the same
5 sentence with the -- to the adjacent property
6 that's been developed with the condominium
7 apartment building?

8 MEMBER DETTMAN: I'm not certain I
9 understand the question with respect to the
10 mid-block location.

11 MEMBER WALKER: Well, I guess that's
12 my question. Are you saying that because of
13 this statement, that there is -- that the ANC
14 knew that the adjacent property has a condo on
15 it, that the ANC then was aware of the
16 proximity of the project to the condo next
17 door?

18 MEMBER DETTMAN: I think the ANC was
19 aware of the relationship of this project to
20 the existing Quincy Park condominium
21 buildings. If you remember from the plans, it
22 goes along L Street, and if you look along the

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1 frontages of L Street, you have the existing
2 Morrison-Clark; you have the buildings that
3 are subject to this construction; and then you
4 have a portion of the Quincy Park Condominiums
5 that front on L Street as well.

6 So the proposed construction is
7 located between the existing Morrison-Clark
8 and the condominium. So in that respect, it
9 is a mid-block location. The issue here is
10 the relationship of the rear of this building,
11 the new building, and a portion of the Quincy
12 Park Condominiums that abuts the rear wall.

13 But the ANC clearly says, and I'll
14 read it again real quickly, that they were
15 persuaded by the Applicant's presentation, not
16 only because of the mid-block location but
17 because the adjacent property the east has
18 already been developed with a condominium
19 apartment building."

20 The ANC now is stating that had they
21 known about the relationship of the proposed
22 construction to the condominium building, they

1 are virtually certain that they would have
2 seen it a different way.

3 In their letter in the record
4 expressing their support for the project, they
5 state that they're very aware that this
6 condominium building is directly to the east
7 of the proposed construction.

8 MEMBER LOUD: Again, for me, and I
9 always respect what Mr. Dettman brings to the
10 table in terms of our deliberations, but I
11 hear these guys saying that everything that
12 they deliberated on was based on the February
13 '07 meeting and presentation.

14 I don't know if they went into
15 snooze after that and didn't follow the
16 proceedings, or if they in good faith, as one
17 might expect, did not expect the plans to
18 change. So they got these subsequent filings,
19 which they say, unlike what you're saying Mr.
20 Dettman, they say that there was a substantial
21 and material alteration of the plans, and not
22 just sort of the normal HPRB sort of tinkering

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1 around the edges.

2 But when I look at it, I see a group
3 of folks who got together a year ago. They
4 did their quorum thing, they did their vote
5 thing, and they made a decision based on that,
6 saying "Hey wait a minute.

7 These plans changed later, and if we
8 would have known about that, we would have
9 done that all over again. We would have
10 convened a meeting, sent a notice out, said
11 this project is in the pipeline. Let's
12 discuss it."

13 But they sort of proceeded under the
14 assumption that what they pulled that
15 notification for back in February of '07, what
16 the quorum was on in '07 was their one
17 opportunity for the community to come together
18 and talk about this project.

19 That's kind of how I hear their
20 pleadings. Now again, this is not the posture
21 for me to say they're wrong, the other guys
22 are right, or the other guys are right,

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1 they're wrong.

2 I'm just saying I would love to have
3 a little more information before trying to
4 make that decision, because the file that was
5 presented for me on this case for today's --
6 for our deliberation today didn't have a lot
7 of those earlier drawings in them, and had
8 nothing from the February '07 meeting in them.

9 CHAIR MILLER: I just want to bring
10 the Board back to, you know, our regulations
11 and our standards for considering this,
12 because even supposing that what the ANC says
13 is true, which I'm not necessarily supposing,
14 but just say it's true, that they didn't see
15 the right plans or whatever, our standards say
16 that now is the time for them to have
17 submitted the evidence, that there was a
18 mistake.

19 If you want a rehearing, it says we
20 don't consider a rehearing -- there are two
21 parts -- unless new evidence is submitted that
22 could not reasonably have been presented at

1 the original hearing.

2 Okay. My first point is there is no
3 new evidence that has been submitted. There's
4 no new evidence. There's arguments we didn't
5 see the plans, it's not fair, you know, those
6 kind of things. That's something maybe to be
7 concerned about, but that's not our standard
8 for a rehearing.

9 Then the other regulation that
10 governs this is to reconsider it, to state
11 specifically all respects in which the final
12 decision is claimed to be erroneous. Well for
13 instance, I see things that the new
14 construction will block out sunlight from the
15 landscaped courtyard at the adjacent Quincy
16 Park Condominium.

17 Well, they don't give anything more.
18 I mean we had a hearing. We looked at those
19 issues. We don't have any reason from the
20 pleadings to believe that we committed an
21 error, you know. I just think that there
22 isn't enough here to meet the burden that's

1 required for rehearing or reconsideration.

2 MEMBER LOUD: Thanks for the
3 clarification. When I took a look at the
4 regs, I saw a distinction between the burden
5 for a rehearing and then the burden for a
6 reconsideration. In fact, it looked like the
7 reconsideration, the regs were kind of vague
8 actually as to what you have to establish for
9 a reconsideration.

10 I agree with you. I don't see any
11 reason for us to move into a rehearing of this
12 case. But I do again, and I'm kind of
13 repeating myself now, I do see some
14 allegations regarding reconsideration that I
15 think are valid allegations. They talk about,
16 I think it's the south side of the new project
17 cutting off light, I think, directly into the
18 living rooms of a number of Quincy Park Condo
19 residents and impacting the value of the
20 properties. I think it's fairly specific in
21 that regard.

22 So I would be for looking at a

1 reconsideration. Certainly I don't want to
2 give any false hopes that I'm looking at a
3 rehearing right now, because I agree with you.
4 But on the reconsideration, I do tend to
5 disagree with you on that.

6 CHAIR MILLER: Well you know, okay.
7 You know, I think that you made a good point.
8 The rehearing, it does call for evidence,
9 which I don't believe there is any. So that
10 is one issue.

11 With respect to the reconsideration,
12 what we can do is yes, there are some
13 arguments of errors. I don't think that on
14 first glance that they're well-substantiated,
15 but they do imply that we made an error, for
16 instance, with respect to the new construction
17 will block off sunlight from the landscaped
18 court yard of the condominium.

19 So if I understand you correctly, if
20 we're just considering reconsideration, we can
21 look at the arguments here and look at our
22 decision, and then make -- and consider

1 whether we want to revisit any of our
2 decisions. Is that what you mean?

3 MEMBER LOUD: I'd actually be for a
4 limited hearing, and limited --

5 CHAIR MILLER: Not for a rehearing.

6 MEMBER LOUD: No, let me clarify.
7 When I read the rehearing provisions of the
8 regulations, I read them to mean a rehearing
9 on the merits, and I'm not supportive of that.
10 I don't think that we're at that juncture.

11 By hearing now, what I'm talking
12 about is not a rehearing, because we've
13 actually not had a hearing on the motion, just
14 a limited hearing on the motion for
15 reconsideration, to get to the bottom of the
16 questions regarding the differences or alleged
17 differences between the various plans, and if
18 in fact that really happened, and if in fact
19 the difference in plans resulted in the ANC
20 taking a position dramatically different from
21 what they would have taken, which if true,
22 deprived them at least of the opportunity for

1 great weight consideration.

2 That's what I'm talking about, a
3 limited hearing on the motion for
4 reconsideration, not a rehearing at all.

5 CHAIR MILLER: Why would we need
6 that, because they have submitted something
7 different now for us to consider. What would
8 we have a hearing on? We're concerned with
9 the merits of the application. I don't think
10 we're -- I mean if the Applicant, you know,
11 jerked the ANC around or something, I'm not
12 sure how that affects the decision.

13 We have a new pleading by them
14 saying this is how we feel about the project,
15 based on, you know, whatever happened.

16 MEMBER LOUD: Well, for me, it would
17 just be helpful to be able to ask certain
18 kinds of questions that the record doesn't
19 fill the gaps on, and possibly we could do it
20 without a hearing, just asking for some
21 additional information.

22 I would like to know what the plans

1 were in February '07 that they're alleging
2 were so misleading, that sort of propelled
3 them to take this decisive action, submitting
4 a report.

5 CHAIR MILLER: But to what end?

6 MEMBER LOUD: To determine whether
7 or not their great weight report was based on
8 a completely false presentation of the
9 project.

10 CHAIR MILLER: Well, they've kind of
11 said that, and they've withdrawn it. That's
12 the way I understand it, that they would be
13 opposed now to the application.

14 MEMBER LOUD: I'm not certain now of
15 whether I'm following you. Are you saying
16 that we're considering it right now, and so we
17 don't need the opportunity for a separate
18 briefing from them? To me, you're either in
19 or you're out.

20 CHAIR MILLER: Well, no. I see a
21 couple of things going on. First of all, I
22 thought you wanted to divide this, because the

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1 standard was a little bit different for a
2 motion for a rehearing and a motion for
3 reconsideration.

4 A motion for rehearing says that we
5 would only consider it if they submitted
6 specific evidence. I thought that we were all
7 of the opinion that they haven't submitted
8 that evidence.

9 So then we were looking at well,
10 shall we just reconsider our decision, based
11 on their motion for reconsideration, in which
12 case either we'd be prepared right now or else
13 we would just take this back with us and look
14 again at our decision and their argument, to
15 see whether or not we might reverse.

16 Like for instance, we might find
17 that there was an adverse impact, and
18 therefore we'd change our decision, without
19 any hearing.

20 MEMBER LOUD: Well, that is one
21 option and that's one way to process the
22 motion for reconsideration. I think what I'm

1 suggesting is an opportunity to hear directly
2 from the movant, as well as the non-movant, so
3 that all of these issues can be fleshed out a
4 little bit better.

5 Again, I'm talking about a limited
6 hearing, both in terms of scope and direction.

7 CHAIR MILLER: But basically, I just
8 want to understand where you're coming from,
9 because I thought that 3126.6 says the Board
10 shall not consider a rehearing unless new
11 evidence is submitted that could not
12 reasonably have been presented at the original
13 hearing. Are you interested in a rehearing of
14 --

15 MEMBER LOUD: No. Again, this
16 wouldn't be a rehearing, because we've not had
17 a hearing. This would be a hearing on the
18 motion for reconsideration.

19 CHAIR MILLER: So the hearing on the
20 motion would be argument as to why the final
21 decision was claimed to be erroneous, the
22 grounds for the motion and the relief sought?

1 MEMBER LOUD: That's correct.

2 CHAIR MILLER: Not evidence.

3 MEMBER LOUD: Well, it could very
4 well lead to some new evidence being brought
5 forth during that hearing, and then we'd have
6 the whole issue of the rehearing resurface.
7 I mean that's kind of -- the two are kind of
8 tied together.

9 Again, erring on the side of giving
10 the ANC an opportunity to establish what
11 they're trying to put before us by way of
12 pleading, I'm suggesting that they be given
13 the opportunity to elaborate on this somewhat
14 troubling allegation, and frankly it's unfair
15 to the non-movant to have that kind of
16 allegation floating out there about them as
17 well, that there was some sort of deliberate
18 or grossly negligent switching of plans, as a
19 part of this case file and case history.

20 CHAIR MILLER: I just think that it
21 has to go somewhere. If there was this kind
22 of behavior, which might be something that the

1 Board would frown upon, it still would have to
2 like, if you get into all that information,
3 would have to lead to a result.

4 I think that it's in this type of
5 proceeding that we're considering right now,
6 that it would have to lead to the ANC would
7 have put forward evidence otherwise if it had
8 the right plans say, and showing us what
9 evidence they would have put forward, which
10 they didn't do, or also they would have made
11 an argument that there was an adverse impact
12 or some other kind of error in our decision
13 that they didn't do.

14 So I don't see that in the
15 pleadings, and the burden was to do it then.
16 I don't believe it's a good idea to open up
17 Pandora's box and get into all these issues
18 about what goes on between an Applicant and an
19 ANC. I think they have to show how they were
20 actually -- what they would have done instead,
21 you know.

22 Like had they known that the wall

1 really was here instead of there, they would
2 have had an expert witness show how that would
3 create an adverse impact or something. I
4 don't see anything like that in the pleadings.
5 I just see, you know, a general adverse impact
6 allegation.

7 MEMBER LOUD: Well, I think we might
8 disagree, then, on the extent of the burden
9 that they have with respect to the
10 reconsideration motion. I don't know if they
11 have to take it to the level that you just
12 described, but perhaps they do, and I just
13 need to revisit the motion for reconsideration
14 burden.

15 It is somewhat vague in the regs in
16 terms of what they actually need to establish
17 in the motion for reconsideration. I don't
18 want to make this any more complicated than it
19 should be, but does the Chair somehow feel
20 that if the ANC was deprived of the
21 opportunity to take, to exercise its rights to
22 have a great weight report as a part of our

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1 consideration, that that is of little
2 consequence?

3 Because I think that's part of what
4 is happening here, is that the ANC met a year
5 ago. They noticed the meeting. They noticed
6 it tot heir colleagues that this would be
7 their meting on the project, and then that
8 they were presented with a set of plans that
9 they're now contending were false and
10 misleading plans.

11 They at the time that we sat down
12 and we heard witnesses and we heard testimony
13 and we evaluated credibility, they did not
14 have a great weight report before us for our
15 consideration, if you give them the benefit of
16 the doubt.

17 What they've submitted was submitted
18 after the fact. So I'm not certain if we can
19 characterize that as a minor matter.

20 CHAIR MILLER: We could consider it.
21 We could reconsider and consider their report
22 and give it great weight, whatever. I'm just

1 saying I don't think we need a hearing.

2 I think that their posture would be
3 that look, we didn't have the right plans, and
4 if we did, we would have been able to point
5 out that this was, you know, would have an
6 adverse impact and this is why.

7 It's just -- there's nothing to hang
8 your hat on in here, I don't think very
9 specific. I think it's just very general.

10 MEMBER LOUD: I would be in favor of
11 that. Again, you're probably right. I
12 haven't given it a lot of thought, but maybe
13 we don't need a full-blown hearing, but an
14 opportunity for the movant to really establish
15 for us what it means when it says that, you
16 know, there was this sort of switching of
17 plans, and for us to have an opportunity to
18 review these different plans, sort of side by
19 side, and make an evaluation of whether or not
20 there's any substance to what was being said.

21 CHAIR MILLER: You see, my point is
22 I don't think we get into that, no matter how

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1 disturbing that might be. I think we're at a
2 point now where somebody says, you know, if I
3 had known that, if I knew this was the plan,
4 I would have said this, and I didn't get to
5 say this at the hearing, and you need to hear
6 this, you know, because this has an adverse
7 effect because it really casts a shadow, blah
8 blah blah, you know, that kind of thing.

9 But I don't hear that. I don't see
10 in their pleadings that because I relied on
11 this information, I wasn't able to show you
12 that, you know, it's really going to have an
13 adverse impact. That's what this motion for
14 reconsideration gives them the opportunity to
15 do. So I think that's what we consider.

16 MEMBER LOUD: I think they're saying
17 that though. They're talking about the number
18 of units that directly face the wall that's
19 three feet away, the diminution of value to
20 those units.

21 No, they're not going at it sort of
22 the way they would to me if they had a real

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1 briefing on it, a hearing and briefing on it,
2 but they certainly mention it in the context
3 of their moving papers.

4 How high a burden do we want to
5 place on the ANC, which was a party to this
6 case, to establish that end of a
7 reconsideration? I don't think we want to
8 make them come at us with a, sort of a
9 pleading retrial of the issues. That's not
10 fair.

11 They don't have any opportunity
12 through the pleading process to cross-examine
13 witnesses, challenge credibility. I don't see
14 the motion for reconsideration as being a
15 full-blown sort of *de novo* debate over the
16 trial merits or the hearing merits.

17 CHAIR MILLER: Okay. I guess what
18 I'm saying is I think we could take this
19 pleading back, if we want to give it more
20 examination, and look at our decision again in
21 light of the points that they make, and see if
22 in fact there's an adverse impact that maybe

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1 we didn't look at closely enough, because they
2 didn't argue that point.

3 That's not a rehearing, though.
4 That's a motion for reconsideration.

5 MEMBER LOUD: I'm not in favor for a
6 rehearing at this point. I would like to ask
7 the ANC, just for my purposes, for me to fully
8 understand the history of this, if they have
9 their ANC minutes from February of '07 and
10 could make those a part of our record.

11 If they have kept the plans that
12 they say were presented to them in February
13 '07, so that when I do reconsider, I can look
14 at the material information that's being
15 referenced as a part of the moving parties'
16 pleadings, which I don't have now.

17 So is it appropriate at this hearing
18 to ask for that kind of information?

19 CHAIR MILLER: Well, we're in a
20 meeting, so you mean is the ANC here to ask
21 them. Let's first decide whether we really
22 need that information to make our decision,

1 because I can see that, you know, I know you
2 have this great love of community and we all
3 do and a concern that we want the Applicant to
4 work with the ANC.

5 My point is that if something went
6 wrong there, and I'm not convinced that it
7 did, still do we need to get into that in
8 order to reconsider our decision? Our
9 decision is to me a factual decision, and that
10 if something went wrong there, then we
11 certainly need to let the ANC, you know, have
12 an opportunity to make its case that they
13 didn't make before.

14 But that seems to me what they do in
15 a motion for reconsideration, that they make
16 their case and we consider it. We don't need
17 to get into what did the Applicant do and what
18 did the ANC do and who's telling the truth on
19 this. I think we just need to have the ANC's
20 argument, based on what they know now, because
21 maybe they didn't -- they said they didn't
22 know something before.

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1 We don't need to know, do we,
2 whether they did or they didn't or -- we're
3 looking at this project, to see whether it has
4 an adverse impact or not. If something
5 happened before, where they didn't have the
6 right information, which I'm not sure that's
7 the case, they do now and they've made an
8 argument and it's before us.

9 MEMBER LOUD: I guess we can look at
10 it that way. I think for the ANC to even get
11 through that door, though, they have to
12 demonstrate some reason for it, and the reason
13 that they've put forth is that they were
14 misled with respect to the various plans that
15 were presented to them during the course of
16 the Application.

17 But if we begin with the premise
18 that they're already through their door; let's
19 just take a look at the substantive
20 requirements that are necessary to change our
21 decision, I'm fine with that too. I'm fine
22 with that as well.

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1 That being said, I would still like
2 to see if the ANC has the minutes from
3 February '07, which in my mind is the only
4 thing that gets them through this door, for us
5 to reconsider.

6 CHAIR MILLER: It doesn't, because
7 let me just say this. They're a party to the
8 case, and any party has a right to move for
9 reconsideration for whatever reasons. So
10 they're through the door. They're here. They
11 moved for reconsideration, and what we need to
12 be concerned about at this juncture is did we
13 make an error in our decision, and that's why
14 we would reconsider?

15 Then they make their argument as to
16 that we made an error and this is it, and we
17 look at it. That's what I'm saying is we
18 don't need to look at the whole history of
19 anything; we just need to look at they have an
20 argument, that we erred and let's look at it.

21 MEMBER LOUD: Madam Chair, I would
22 still like to look at the February '07 ANC

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1 meeting minutes, if they have it, and the
2 plans that were submitted. I understand what
3 you're saying. But you and I both know that
4 there's another reconsideration on our agenda
5 for today, and those folks probably didn't
6 make it through the door.

7 Those folks probably didn't put
8 enough in their motion for us to spend very
9 much time even weighing the pros and cons of
10 granting reconsideration in that case.

11 In this case, there has been some
12 showing by the movant that this is something
13 that we ought to take a look at. So the door
14 being left open like that and us finding
15 enough reason for the door to be left open
16 like that, I'd just like to avail myself of as
17 much information as I think is pertinent to me
18 making the ultimate decision on it.

19 MEMBER WALKER: I think I understand
20 your issue with respect to the February '07
21 plans being different than the current version
22 of the plans. But isn't the real question

1 whether the ANC was provided a copy of the
2 current version of the plans that the Board
3 made its decision on?

4 MEMBER LOUD: Yes, I think that is
5 very germane to us being able to make a
6 decision on the reconsideration motion. Their
7 pleadings, by the way, contend that they
8 weren't provided a copy of that, for whatever
9 the reason may be, although I think our
10 records and the various exhibits we have show
11 that at least that information was sent to
12 them.

13 So I'm not trying to cast aspersion
14 on their allegations at all. I'm just trying
15 to be open-minded and hear their argument out,
16 and give them the opportunity, at least at a
17 reconsideration level, to have us review this
18 with an open mind, regarding whether or not
19 they were duped, as it were, into this great
20 weight report.

21 Maybe they weren't, but I think that
22 they've made enough of an allegation for us to

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1 take a look at it.

2 MEMBER WALKER: So is that the
3 discrepancy that you think the Board should
4 ferret out, whether in fact the ANC received
5 the current version of the plans that the
6 Applicant was required to serve them?

7 MEMBER LOUD: You know what? I
8 think, Member Oates, if we were going to go
9 into a hearing mode, and I think we've kind of
10 pulled back away from that, and I've
11 considered a pull back away from that, that
12 would be something that I would ask them
13 about.

14 Did they receive the September '07
15 plans; did they receive the February '08
16 plans. But since we're not going to go into
17 a hearing mode on it, I'm perfectly
18 comfortable not exploring that, and just
19 having the opportunity to look at our own
20 files and see what was in the '07 plans, what
21 was in the September '07, the February '08 and
22 then the February '07 plans and then compare

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1 them to each other.

2 It could be that they all have the
3 exact same thing, or like Mr. Dettman was
4 saying, it could be that the differences
5 between all three of them were so marginal
6 that it's not even worth exploring at all.
7 But I don't know.

8 MEMBER WALKER: Madam Chair, I think
9 Mr. Loud raises some important due process
10 issues, and I would -- well, I agree that we
11 should not open this up for rehearing. But it
12 may be prudent to -- for the Board to
13 reconsider its decision, in light of the
14 information that we have in the record.

15 It seems to me that a really close
16 inspection of the various iterations of the
17 plan in our record would, you know, answer the
18 questions that Mr. Loud has raised.

19 MEMBER DETTMAN: I just want to
20 address the last comment that Mr. Loud has
21 made, about my stating that there could be
22 just minimal changes between the two sets of

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1 plans. I don't want that to be construed as
2 me sort of holding that up, that there are
3 very minimal changes between these two sets of
4 plans, as the basis for me sort of leaning
5 towards denying this request.

6 What I really wanted to sort of have
7 come across is that I think that the ANC had
8 ample opportunity to take the set that they
9 presented with at their meeting, and the set
10 that was presented before the Board.

11 They were provided with two copies
12 of the plan, September of '07 and January of
13 '08, of the plans that came before the Board.
14 So when I read 3126.6, talking about "unless
15 new evidence is submitted that could not
16 reasonably be presented," I think that they
17 had ample opportunity to compare these two
18 sets of plans, realize that there are
19 differences, and bring it to the Board's
20 attention at the hearing.

21 Finally, when I read 3126.4 about
22 that, it "state specifically all respects in

1 which the final decision is claimed to be
2 erroneous." I'm not hearing that in the ANC's
3 pleading. We explored thoroughly the
4 potential impact on the condominium building
5 with respect to the proposed construction
6 being built right to the rear lot line.

7 We addressed the issue that there is
8 actually a three foot easement that was
9 granted by the developer of the condominium,
10 to allow -- so that proximity was anticipated
11 by the developer. The developer conceded to
12 building his building, I believe, three feet
13 off of his property line, to allow the
14 proposed construction to come up to the rear
15 property line.

16 So the proximity was anticipated.
17 We explored the light and air issues. I
18 believe that there are some building code
19 issues that came up at the hearing, that
20 talked about how those seven facing windows of
21 the condo are not even allowed to be relied
22 upon for light and air.

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1 So I think that it was -- I think
2 the issue, in terms of light and air, and the
3 proximity of these two buildings, was
4 thoroughly addressed at the hearing. With
5 respect to the differences in the plans, I
6 think that the ANC had ample opportunity to
7 present the differences, and raise this issue
8 at the hearing.

9 MEMBER WALKER: Okay, but how could
10 they compare plans if they didn't receive
11 them? I mean that's the question.

12 MEMBER DETTMAN: Well, just looking
13 at the filings that were submitted as part of
14 this motion for reconsideration, particularly
15 Holland and Knight's filing, Exhibit No. 38,
16 it stated that the plans were submitted to the
17 ANC at the ANC meeting in February of '07.

18 They were also =submitted with
19 plans, the modified plans, in September of
20 '07. So seven months later, as well as
21 January of '08. So they did have a copy of
22 both sets of plans. I mean it appears to me

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1 that that's the case.

2 It seems to me that it just so
3 happens that the ANC didn't look at the plans
4 that were showing up in the mail, leading up
5 to the hearing.

6 CHAIR MILLER: They also didn't come
7 to the hearing.

8 MEMBER LOUD: Again, if my
9 colleagues are comfortable drawing a
10 conclusion that the ANC had the plans, and
11 that they've just been snooze mode since maybe
12 February '07.

13 When I look at, when I take a look
14 at the case, the filings and take it into
15 context and what the ANC has done since I
16 think April 2nd or whenever they had their
17 meeting, it just boggles my imagination to
18 think that these are a group of folks who had
19 they known what these plans were at the March
20 11 hearing, would simply have ignored the
21 hearing and purposefully waited a week or two
22 later, to round up all their troops and submit

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1 all of this stuff, so that they could set us
2 a bit of turmoil.

3 I think that there's enough to the
4 allegation for me, and I'm giving them the
5 benefit of the doubt perhaps, that warrants us
6 taking a -- allowing, let me word this
7 properly, reconsidering our decision and
8 making a determination as to whether or not
9 the information that we received during the
10 reconsideration will reverse our decision.

11 CHAIR MILLER: Okay. It sounds like
12 that what I hear you saying is we have a
13 motion for reconsideration and rehearing, and
14 what you would like to do is not decide the
15 reconsideration today and take a look at the
16 documents with respect to our decision and
17 whether we're wrong?

18 MEMBER LOUD: That's correct. I'd
19 like to not decide a reconsideration today;
20 evaluate the record that we have before us,
21 along with some additional information that
22 I've mentioned earlier myself, namely the

1 minutes and the '07 information, and then make
2 a final decision on the reconsideration after
3 we've done that, at least after I've done
4 that.

5 CHAIR MILLER: Okay. I want to
6 express that I would be opposed to bringing
7 further information into the record such as
8 the minutes, because I don't think that that's
9 relevant to our decision.

10 I think it's just kind of, I don't
11 know. Once we do that, then we should open it
12 up for somebody else to comment on it. I
13 think what we should focus on did we err in
14 our decision, and in doing so, consider the
15 arguments that have been made in the ANC in
16 their pleading, and those arguments are made
17 based on the right plans, and based on the
18 transcript of those proceedings.

19 So I don't see any relevance to our
20 decision to bring into the record minutes of
21 the ANC meeting. Unless we want to decide
22 that because of that, there's some wrongdoing

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1 and therefore we're changing our decision. I
2 just don't see the connection.

3 So I have no position. If you would
4 like -- you're not ready to decide the motion
5 for reconsideration and want to give further
6 thought to the arguments made in their motion,
7 and the Applicant's response and look at our
8 transcript and decision and then come back on
9 this.

10 How do others feel about that? I
11 guess we're in agreement except for the
12 minutes issue.

13 MEMBER LOUD: And the plans. It
14 would really be important for me to see the
15 February '07 plans, perhaps even moreso than
16 the minutes. But I think we tend to disagree
17 on that. I think that it is related to our
18 larger, because to me, what we're talking
19 about is the very folks that are coming in
20 through this motion, saying that they have
21 these concerns about light and air, being
22 deprived of the opportunity to be at the March

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1 11 hearing.

2 Again, that's the allegation. I
3 know from our vantage point we have exhibits
4 that say that they were noticed properly. But
5 there are allegations that that's not the
6 case, and I'd like to give them the benefit of
7 the doubt, at least until such time as we see
8 the records behind the allegations, to see if
9 that's the case or not.

10 MEMBER DETTMAN: Just two comments.
11 With respect to the differences in the plans,
12 I'm not sure getting the copy of the plans
13 that the ANC received at their meeting and
14 having them both in front of us, I'm not
15 certain how that's going to better inform us.

16 Because I'm still left with the
17 question well, you had -- you also had two
18 copies of the plans that came before the
19 Board. So I would like to know why didn't you
20 come forward to the Board at the hearing, you
21 know? How come it's taken you this long to
22 sort of notice the difference in the plans?

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1 Specific to light and air, we could
2 go back to the record and read the record and
3 look at the transcript. We've covered the
4 issue of light and air at the hearing pretty
5 thoroughly. But in the absence of new
6 evidence, such as a shadow study presented by
7 the ANC, and I'm reminded of the Victor Tabbs
8 case, it was the shadow study that made the
9 Board reopen the case.

10 We don't have that. The ANC isn't
11 offering it. They're just saying that they
12 think now, based on their new-found knowledge
13 of the proximity of this building, even though
14 I think in their letter of support they were
15 very aware of the proximity of this building
16 to the condo.

17 They're just saying that they now
18 think that there's going to be an impact to
19 light and air, and that they're requesting a
20 reconsideration. But they're not offering up
21 any new evidence to show us that even though
22 we covered this issue throughly through verbal

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1 testimony, and decided that there wasn't going
2 to be an adverse impact, they think that we
3 made an error.

4 I think everything that I said, and
5 I was just going -- I'm just repeating myself,
6 but I think Commissioner Oates-Walker spoke to
7 some of my concerns about due process.

8 Yes, it may -- I'm sorry. No, it
9 may or may not reverse our decision on it, but
10 you've got a number of people out there who
11 are saying to us we were given false plans,
12 and had we known at the very least, we would
13 have been at the March 11 hearing.

14 We would placed our information on
15 the record for you. You would have had that
16 for your deliberations regarding light and
17 air.

18 Yes, you had some other information
19 regarding light and air, but you didn't have
20 our concerns regarding light and air and
21 impact to adjoining neighbors. We would have
22 had the opportunity to cross-examine.

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1 You've got a number, to me, of
2 issues out there regarding process, apart
3 entirely from the ultimate decision on whether
4 or not we reverse. So that's my position on
5 it. I don't think I'm going to change a
6 whole, whole lot.

7 It sounds like we're pretty much
8 close to one another in terms of agreeing that
9 we need some additional time to review the
10 case and not necessarily make a decision today
11 on at least the motion for reconsideration.

12 (Pause.)

13 MEMBER WALKER: Madam Chair, then I
14 would move to reconsider the Board's decision
15 on Application No. 17729, and to deny the
16 motion for rehearing.

17 MEMBER LOUD: I second the motion.

18 CHAIR MILLER: Okay. I just want to
19 comment on the motion. A vote to approve this
20 would mean that we would come back in a week
21 or two, after we've had further time to
22 consider the motion. We would consider the

1 motion in light of what's on the record, but
2 there will not be a hearing. Okay. Any other
3 comments?

4 MEMBER DETTMAN: Just a quick
5 question, because I probably missed it. Where
6 did we end up with respect to additional
7 filings and requesting information from the
8 ANC? Did we --

9 CHAIR MILLER: None.

10 MEMBER DETTMAN: Nothing.

11 CHAIR MILLER: So what this means is
12 based on the record, we will deliberate on the
13 merits of the motion for reconsideration, at
14 a date which we'll set, after we vote on this,
15 if it gets approved, based on the record, and
16 not on any further information.

17 MR. MOY: Before the Board votes,
18 for the staff's clarification, the motion made
19 by Ms. Walker was to grant the motion for
20 reconsideration and to deny motion for
21 rehearing; correct?

22 CHAIR MILLER: Any other comments?

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(No response.)

CHAIR MILLER: Okay. All those in
favor say aye?

(Chorus of ayes.)

CHAIR MILLER: Opposed?

(No response.)

CHAIR MILLER: Abstaining?

(No response.)

CHAIR MILLER: Okay. Would you call
the vote please?

MR. MOY: The Board's vote is 4 to 0
to 0 on the motion of Ms. Walker to grant the
motion for reconsideration, and deny the
motion for rehearing, seconded by Mr. Loud.
In support of the motion, Mr. Dettman and Ms.
Miller.

We also have -- the board is also in
receipt of an absentee ballot from Mr.
Etherly, who also participated, and his
absentee ballot is to deny the motion for
reconsideration. So that would give a final

1 vote of 4 to 1 to 0.

2 CHAIR MILLER: Okay. Let's set a
3 date to deliberate on the motion for
4 reconsideration. I'm thinking we might just
5 do a special public meeting. Wait a second.
6 Yes, maybe May 20th.

7 MR. MOY: That's fine.

8 CHAIR MILLER: Okay.

9 MR. MOY: May the 20th, in the
10 morning, special public meeting.

11 CHAIR MILLER: Right. Okay. I
12 think that concludes deliberation on that
13 motion, and we'll be ready for the next case.
14 Application No. 17749

15 MR. MOY: The next case is
16 Application No. 17749 of Alturas Real Estate
17 Interest, LLC, pursuant to 11 DCMR 3103.2 and
18 3104.1, for a variance from the non-conforming
19 structure provisions under Subsection 2001.3,
20 and special exceptions from the roof structure
21 provisions under Subsection 411.11, and the
22 arts use and design requirements under

1 Subsection 1906.1, to create the mixed use
2 residential and retail development in the R/C-
3 3-A district, at premises 1625, 1627 through
4 1629, and 1631 14th Street, N.W.

5 This is in Square 240, Lot 6, 812
6 and 819. The staff would just note for the
7 Board that Sections 1906.1 provides varying
8 requirements, specific requirements for eating
9 and drinking establishments under Section
10 1901.6.

11 As the Board will recall on April
12 the 8th, 2008, the Board completed public
13 testimony, closed the record, scheduled its
14 decision on May the 6th.

15 The Board did not request any
16 additional information, as the record was full
17 and complete. The Board is to make a decision
18 as to the merits of the requested variance and
19 multiple special exception zoning relief.
20 That completes the staff's briefing, Madam
21 Chair.

22 CHAIR MILLER: Thank you, Mr. Moy.

1 I think that it would be a good time for the
2 Board just to take a five minute break, and
3 then come back and finish the cases. Thank
4 you.

5 (Whereupon, a short recess was
6 taken.)

7 CHAIR MILLER: I think we're back on
8 the record now. I can't remember exactly what
9 Mr. Moy covered, so just -- I just want to
10 generally state that in this case, the
11 Applicant plans to renovate the historic
12 center Union Mission Building, former
13 Studebaker auto show room connected to three
14 row houses.

15 The planner, they have demolished
16 the rear addition to townhouses, and will
17 construct a new six story addition for mixed
18 use, residential and retail, and one level of
19 underground parking.

20 This is in the Arts Overlay.
21 Specifically, the Applicant is seeking a
22 variance from the non-conforming structure

1 provisions under Section 2001.3. The existing
2 structure is non-conforming as to rear yard
3 and lot occupancy.

4 Special exception from the roof
5 structure provisions under Subsection 411.11,
6 for two roof structures of unequal heights.
7 Then the Applicant is seeking a special
8 exception from the arts use requirement in
9 1901.6 with respect to eating and drinking
10 establishments occupying no more than 25
11 percent of the linear foot frontage within the
12 Arts Overlay district, as measured among the
13 lots lying on 14th Street and U Streets, N.W.,
14 pursuant to the 1906 special exception
15 provision for this chapter.

16 Okay. Why don't we start with the
17 variance and the non-conforming structure
18 provisions, with respect to rear yard and lot
19 occupancy. I think in this case, there's
20 going to be -- all these structures are going
21 to end being one building with a 94 percent
22 lot occupancy.

1 What we have is kind of interesting
2 in this case that we don't always see, is the
3 mixture of commercial and residential, where
4 the commercial has 100 percent lot occupancy;
5 the residential requirement for lot occupancy
6 is 75 percent.

7 So the Applicant's actually
8 measuring lot occupancy on individual floors,
9 and the second and third floors, which are
10 residential, will exceed the lot occupancy
11 requirement. They're going to be 89 percent.
12 Whereas other floors are going to be below the
13 requirement. But this floor's 34 percent and
14 the sixth floor is at 16 percent.

15 Then there's the existing rear yard
16 non-conformity as well. So in looking at
17 this, we need to do the three point test. The
18 exceptional condition, I think, is number one,
19 where we have an historic building that's
20 subject to the Arts Overlay, and it's been
21 before HPRB and they're preserving significant
22 parts of the building and their flexibility

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1 for expansion is quite limited.

2 That's what I see the exceptional
3 condition. Practical difficulty, I mean
4 they're out of compliance. They'd have to
5 demolish in order to commit to compliance, and
6 that's unduly burdensome.

7 They'd have to demolish historically
8 significant parts of the building, not just
9 demolish. They already are demolishing parts
10 of the building, but not the significant
11 parts. Also, I think they stated that, you
12 know, if they kept demolishing or if they had
13 a much smaller addition, it wouldn't be
14 economically feasible.

15 There's no substantial detriment to
16 the public good in this case. In general, the
17 lot occupancy is decreasing, and it -- this is
18 an adaptive reuse, which is preserving and
19 contributing historic structure, and providing
20 desired residential and retail use.

21 Are there other comments on the
22 variance? That's all I have to say on that

1 one.

2 MEMBER DETTMAN: Just one comment,
3 Madam Chair, and I think it's noteworthy to
4 state that with respect to the first prong of
5 the variance test and the existing non-
6 conformities, I believe it was stated at the
7 hearing that there's actually a reduction in
8 the non-conformity that currently on the
9 property, and that the sort of new
10 construction is not creating a non-conformity.

11 Nonetheless, despite the demolition
12 that's being done on the site, what's
13 remaining of this existing historic structure
14 still requires a variance from the lot
15 occupancy and the rear yard.

16 So it's not the new construction is
17 creating a new non-conformity; it's just a
18 carryover from the existing.

19 CHAIR MILLER: Good point, okay.

20 MEMBER WALKER: I would also add in
21 terms of the practical difficulty that because
22 of the HPRB requirements, there cannot be any

1 additions to the roof. So the corner building
2 can't be built up.

3 CHAIR MILLER: Okay, good. Mr.
4 Dettman, you want to address the roof
5 structures?

6 MEMBER DETTMAN: That would be the
7 special exception?

8 CHAIR MILLER: They have roof
9 structures of unequal heights.

10 MEMBER DETTMAN: Right. With
11 respect to a special exception under 411.11,
12 the proposal shows multiple roof structures.
13 One on top of the existing Central Mission
14 Union Building, and another on top of the new
15 construction to the rear of the existing
16 rowhouses or townhouses, I guess they're being
17 called.

18 The Applicant states that the unique
19 relationship between the existing historic
20 structure and the new addition, as well as the
21 aesthetic design limitations related to the
22 adaptive reuse of the historic structures,

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1 makes the creation of a single roof structure
2 unduly restrictive and unreasonable, and I
3 would certainly agree with that.

4 In fact, I believe it was stated
5 that the one roof structure on the Central
6 Union Mission Building is consolidating what
7 roof structures that are already there. The
8 primary penthouse on the historic -- I'm
9 sorry, I already stated that.

10 The last comment is the secondary
11 roof structure complies with the special
12 design requirements, that limits the height of
13 a building and its roof structures to 83.5
14 feet, which is articulated in Subsection
15 1902.1. It's sort of a special design
16 criteria that's within the Arts Overlay.

17 So despite the fact that they need
18 multiple roof structures, the higher roof
19 structure on top of the new construction still
20 complies with that subsection. Finally, both
21 penthouses comply with the necessary setback
22 requirements of 411.

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1 CHAIR MILLER: Okay, and then having
2 those two, I think, make it more in harmony
3 with the various scales of the building.
4 Anything else on that one? They don't impair
5 light and air or anything like that.

6 Okay. Then I think we can move onto
7 the third special exception, that is from the
8 arts use requirement set forth in 1901.6.
9 1901.6 says eating and drinking establishments
10 shall occupy no more than 25 percent of the
11 linear foot frontage within the Arts Overlay
12 district, as measured along the lots fronting
13 on 14th Street and U Street, N.W.

14 This is an unusual request, probably
15 the first one that's come before the Board to
16 grant a special exception from this provision,
17 in that in this kind of case, where the area
18 has not reached 25 percent of the linear foot
19 frontage yet being occupied by eating and
20 drinking establishments.

21 This is somewhat anticipatory. The
22 Applicant has said that it's hard to plan to

1 get a change, to get a restaurant to commit to
2 go into the building without a guarantee that
3 by the time you get the certificate of
4 occupancy, that they can actually begin to get
5 space.

6 I think that in evaluating this
7 request, that we should look to the guidelines
8 that are set forth in 1906.1, special
9 exceptions for this Arts district, and first
10 of all see how this request fits in with that.

11 I would say also before I do that
12 that the Office of Planning is in support of
13 the request, provided that the Applicant
14 agrees to limit the eating and drinking
15 establishment to 50 percent of this project's
16 linear frontage along 14th Street.

17 That will ensure that the project
18 contains a mix of street-oriented uses. I
19 think, and I'll get into the provision for
20 special exceptions in a second, but I think
21 that what is at issue here is that certainly
22 the Arts Overlay and the neighborhood

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1 commercial overlay, they both want to have a
2 mixture of uses that are pedestrian friendly
3 and neighborhood-friendly.

4 The concern with eating and drinking
5 establishments is that they not take over a
6 district at the expense of other service
7 oriented stores, a boutique or things like
8 that. But specifically 1906.1 says that
9 exceptions from the requirements of the Art
10 district shall only be permitted if granted by
11 the Board of Zoning Adjustment under 3104
12 after public hearing, based on the following
13 criteria.

14 The first says "A. The use of
15 buildings or features of the size, intensity
16 and locations proposed will substantially
17 advance the purpose of the Arts Overlay
18 district, and not adversely affect neighboring
19 property, or be detrimental to the health,
20 safety, convenience or general welfare of
21 persons living, working or visiting in the
22 area."

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1 Okay. So we need to consider
2 whether doing this in advance, you now, will
3 advance the purposes of the overlay, and not
4 adversely affect neighboring property. I
5 think what came out at the hearing was that
6 actually restaurants are a preferred use in
7 this overlay. I think that's set forth at
8 Section 1908.

9 So what this is doing number one is
10 guaranteeing a spot for a preferred use. But
11 even bigger than that, I think that it is a
12 big undertaking to renovate this historic
13 property, and allowing for the Applicant to
14 count on a tenant in this area. This furthers
15 that adaptive reuse of the building.

16 I think they have to be able to
17 count on a tenant. So I think that that's
18 certainly -- and this is the type of tenant
19 that is for use in the Overlay. Anyone want
20 to comment on that first criteria? Do you
21 feel any different or do you agree with that?

22 I'll ask one other thing. What is

1 different is you know, again, this is
2 happening before the 25 percent is reached.
3 So it's anticipatory.

4 Office of Planning did say at the
5 hearing that assuming that by the time they're
6 ready to bring in this restaurant they are
7 over 25 percent, that Office of Planning's
8 view was that it would not be -- there would
9 not an adverse impact. That's what this
10 provision is for, this special exception, to
11 allow another restaurant or whatever, once the
12 25 percent has been reached.

13 I can go on to some other ones and
14 then just leave it open for comment
15 afterwards. There are exceptional
16 circumstances affecting the property make
17 compliance with the requirements of this
18 chapter difficult or impossible, or the
19 Development provides alternative public
20 benefits in lieu of the excepted uses or
21 features that have comparable value to the
22 public in achieving the purposes of this

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1 chapter and of the comprehensive plan.

2 Again, I guess this is kind of a
3 complicated mixed use project, renovating a
4 historic property and combining residences and
5 retail, and provides, you know, a great
6 investment. I think that that's -- we heard
7 that it would make it difficult for this
8 Applicant, if it could not count on a tenant
9 of this type.

10 I think it's a good mix in the
11 building where they are, to have a restaurant
12 and something else. Office of Planning, again
13 is supporting it. I think that they found it
14 was in accordance with the Arts Overlay and
15 comprehensive plan.

16 These are architectural design
17 concept of the project will enhance the open
18 design features of the immediate vicinity and
19 which it is located, provided its historic
20 district or historic landmark that's involved,
21 the Board shall refer the application to state
22 historic preservation officer for review and

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1 support.

2 I don't think that's applicable to
3 the special exception we're considering. The
4 next one deals with vehicular access and
5 egress, and in the design, I don't think
6 that's applicable either.

7 E says "The Board may impose
8 requirements pertaining to design, size,
9 landscaping and other such requirements as it
10 deems necessary to protect the open property
11 and to achieve the purposes of the Arts
12 Overlay district. So I don't think that's
13 necessarily that germane either. So that
14 really goes to, I think, the first two.

15 (Pause.)

16 CHAIR MILLER: I think these
17 overlays in general, what they want to promote
18 is the mixed uses, and I think that's what the
19 Office of Planning felt comfortable with in
20 this case, that by conditioning the exception
21 to require the 50 percent of linear frontage,
22 there's another use than an eating and

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1 drinking establishment, would preserve the
2 goals and purposes of the overlays.

3 There isn't any opposition in this
4 case at all, and the ANC is in support. I'm
5 not sure if they weighed in on this particular
6 special exception. They did support the roof
7 structures and the variance. There's no
8 opposition to it.

9 I think that what's tricky about the
10 25 percent is that it can go and up, that
11 unlike most zoning decisions, this one, the
12 property's affected by what is going on around
13 it. So if a restaurant opens up, one opens up
14 and another one closes, that 25 percent figure
15 can change. That's what makes it so difficult
16 to predict.

17 I also want to note that again, this
18 is a special exception which is deemed
19 compatible with its neighborhood, with the
20 criteria met, and a restaurant's a preferred
21 use. So I don't really see any downside at
22 all.

1 Office of Planning was saying this
2 assumes that by the time they're ready to get
3 their certificate of occupancy, that the 25
4 percent threshold has been met.

5 MEMBER DETTMAN: Madam Chair, just
6 to make a couple of comments. To address the
7 point that you made, that there was no
8 opposition, there are no parties in
9 opposition, but we did have a couple of people
10 come forward with some testimony.

11 I think those had to do with light
12 and air, construction noise, pest and rodents
13 during demolition, and closing of the alley
14 during construction. I think it was sort of
15 hashed out at the hearing that those were
16 really construction management issues that
17 didn't fall under the jurisdiction of the
18 Board.

19 With respect to light and air, the
20 project is within its matter of right height,
21 and meets all the setback requirements with
22 respect to roof structures. So really there's

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1 nothing the Board can do there.

2 I just wanted to address the 25
3 percent provision under, is it 1901, 1901.6.
4 I'm in support of that special exception
5 request, but I just wanted to get in my
6 comments into the record on that provision,
7 because I was particularly taken during the
8 testimony, during the hearing, that we've
9 implemented this provision, but we've provided
10 no way of measuring, or no matrix to sort of
11 track where the percentage of eating and
12 drinking establishments along 14th Street is.

13 So whether we grant or deny that
14 particular request, I think it would be
15 important for whomever the agency is to either
16 maybe retract this or revisit the
17 appropriateness of this provision, or get busy
18 measuring this. So that the next time a
19 request comes before the Board, we'll have
20 some sort of number to judge where that
21 corridor is. So those are just my
22 observations on 1901.6.

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1 MEMBER WALKER: Madam Chair, I too
2 was troubled at the paucity of evidence
3 related to the 25 percent linear footage
4 restriction in this particular corridor. It
5 is unfortunate that the agency has not come up
6 with a number as yet. I struggled with why
7 the Applicant did not make an effort to come
8 up with some sort of number for the Board's
9 consideration.

10 But that being said, I think that
11 the Office of Planning's recommendation, that
12 limits the linear footage of this particular
13 project to 50 percent, is a reasonable one, in
14 light of the fact that we don't have more
15 specific information about where this corridor
16 is.

17 CHAIR MILLER: I think the reason,
18 one of the reasons that we don't have that
19 much information about where it is is because
20 I believe we did have testimony that it was
21 way below the 25 percent threshold, and that
22 until -- and I think they just eyeballed that

1 or whatever.

2 Until it gets close, they're not
3 going to count, because there's no need to
4 count. In this case, there wasn't a need to
5 count per se because we knew that right now
6 it's below the 25 percent, and it was assuming
7 in a year or two, however long it takes for
8 the project to come on board, that at that
9 point, if it were over, then they would need
10 the exception. It doesn't matter what it is
11 now to that analysis, I don't believe you
12 know.

13 I think that there is this whole
14 zoning review going on of the regulations, and
15 I think this is one of them, because this is
16 kind of a tricky regulation. I think that in
17 other areas, where they're already at this
18 threshold or above, it's been measured. But
19 you know, they have to measure every single
20 storefront of what are the individual footage
21 in front of each place.

22 MEMBER WALKER: Well, I'll only say

1 that we can surmise that it's below, but we
2 don't know. There's no evidence in the record
3 one way or another, as to whether the 25
4 percent threshold -- like how close we are to
5 the 25 percent threshold.

6 CHAIR MILLER: But why do you need
7 to know it?

8 MEMBER WALKER: Because the special
9 exception is appropriate if you're going to
10 exceed it, and here we don't know. So that's
11 why I think that it's reasonable that the
12 Office of Planning came up with this
13 alternative recommendation, because we don't
14 know.

15 I mean if we suggests that oh, it's
16 way below, without having evidence in the
17 record of that fact, then it calls into
18 question whether this application is
19 premature. So I think rather than go down
20 that difficult, troublesome path, the Board
21 should recognize that we don't have
22 information in the record one way or another.

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1 CHAIR MILLER: I just want to say
2 the quirkiness of this regulation is that it
3 can constantly be changing. So even if it
4 were at 25 percent today, two years from now
5 it could be at 50 percent if a lot of
6 restaurants just closed and something else
7 opened in their spaces. It fluctuates. So
8 you never know until the day you're applying
9 for the C of O, and that's why they've asked
10 for this special exception, basically kind of
11 in advance, so they can count on space for
12 their tenant.

13 I meant when I was saying there was
14 no official position with respect to this
15 actual relief, the special exception relief.
16 But I didn't discuss, and I'm glad you all
17 did, about the opposition that was presented
18 in this case. There was a lot about
19 construction, and then I think some of it was
20 also -- did we have a petition that went to
21 the height? They're concerned about the
22 height, but the heights would be a matter of

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1 right.

2 I think also I have in my notes the
3 ANC, we have their minutes but not a report
4 from them. Okay. Anything else? All right.
5 Ready to vote? Okay. All right, in which
6 case I would move approval of Application No.
7 17749, of Alturas Real Estate Interest, LLC,
8 pursuant to 11 DCMR 3103.2 and 3104.1, for a
9 variance in the non-conforming structure
10 provisions under Subsection 2001.3, and
11 special exceptions from the roof structure
12 provisions under Subsection 411.11, and the
13 arts use requirements under Subsection 1906.1,
14 to create a mixed use residential and retail
15 development in the R/C-3-A district.

16 That premises is 1625, 1627 through
17 29 and 1631 14th Street, N.W. I guess I would
18 say, we're conditioning the special exception
19 with respect to the eating and drinking
20 establishments, in that Applicant will limit
21 the eating and drinking establishment to 50
22 percent of the project's linear frontage along

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1 14th Street.

2 Do I have a second?

3 MEMBER DETTMAN: Second.

4 CHAIR MILLER: Further deliberation?

5 (No response.)

6 CHAIR MILLER: All those in favor
7 say aye?

8 (Chorus of ayes.)

9 CHAIR MILLER: All those opposed?

10 (No response.)

11 CHAIR MILLER: All those abstaining?

12 (No response.)

13 CHAIR MILLER: And would you call
14 the vote please?

15 MR. MOY: Yes, Madam Chair. Staff
16 would record the vote as 3 to 0 to 2. This is
17 on the motion of the chair to approve the
18 application, seconded by Mr. Dettman.

19 Also in support of the motion is Ms.
20 Walker, and we have no other Board member or
21 Zoning Commission member participating. So
22 again the vote is 3 to 0 to 2.

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1 CHAIR MILLER: That can be a summary
2 order if there's no party in opposition in
3 that case.

4 MR. MOY: That's correct. Thank
5 you.

6 CHAIR MILLER: Okay.

7 Application No. 17724

8 MR. MOY: The last case for decision
9 of the Board is another -- or rather it's a
10 motion for reconsideration of Application No.
11 17724, pursuant to Section 3126 of the zoning
12 regulations.

13 This is to the original application,
14 No. 17724 of Francis Fabrizio and Glen Thomas,
15 pursuant to 11 DCMR 3104.1, for a special
16 exception to allow the construction of eight
17 row dwellings under Section 353, in the R-5-A
18 district at premises, the northwest corner of
19 the intersection of 50th Street and Fitch
20 Street, N.E.

21 That's in Square 5181, Lots 40
22 through 43, 55, and 803. On April 15th, 2008,

1 the ANC 7C filed a request for
2 reconsideration. This is -- this filing is in
3 your case folder, identified as Exhibit 35.

4 There were no other filings in the
5 record, Madam Chair, other than another filing
6 from ANC 7C, which was submitted yesterday,
7 May the 5th, 2008, and is identified in your
8 case folders as Exhibit 37.

9 Staff will just conclude by saying
10 that the Board is to act on the merits of the
11 reconsideration motion.

12 CHAIR MILLER: Okay, thank you.
13 Exhibit 37, the May 5th letter. I guess our
14 rules don't necessarily provide for a letter
15 like this, but it appears that we could if we
16 want to waive our rules, consider it in
17 conjunction with the motion for
18 reconsideration. It appears to be related to
19 that.

20 MR. MOY: To the staff, that was the
21 staff's feeling, although if when you read the
22 filing very closely, it's also -- they also

1 attach a petition as well, to their filing.
2 So the Board will defer to the Board's
3 decision on this.

4 CHAIR MILLER: So the decision we
5 have to make, just as a preliminary matter, is
6 this May 5th letter, to accept it into the
7 record. It also has a petition attached to
8 it.

9 It's a letter addressed to Ms.
10 Kress, which indicates that a number of
11 residents -- I'm having trouble even reading
12 this, but a number of residents had a
13 misunderstanding. I don't know if my copy is
14 worse than others. Okay, let's see. Thank
15 you, okay.

16 A number of residents with whom the
17 ANC commissioner spoke, stated that they
18 misunderstood information provided by the
19 developer, and they assumed the construction
20 would be located in the new community's
21 development, Lincoln Heights, not the corner
22 of the site that's actually proposed.

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1 Anyway, we have a motion for
2 reconsideration by the same ANC commissioner.
3 What does the Board want to do with respect to
4 the letter?

5 Do you want to just waive our rules
6 and take it into the record, in conjunction
7 with the motion for reconsideration, or do
8 Board members not want to do that?

9 That's what would be required,
10 grounds for waiving our rules is good cause
11 and no prejudice to a party.

12 I mean I think it could be
13 characterized as additional supporting
14 information for the motion for
15 reconsideration. So I don't think the
16 Applicant is prejudiced or anything by that.
17 Does anybody have an opinion?

18 (No response.)

19 CHAIR MILLER: Okay. Why don't we
20 just move forward then, accept it into the
21 record, and then consider this motion for
22 reconsideration. This one is also for

1 rehearing, if I'm not mistaken. Let's see.
2 Maybe it's just for reconsideration. Yes. It
3 is both. When you go through the letter, the
4 last sentence is "We're requesting that
5 reconsideration be given to this motion and
6 that a hearing be scheduled."

7 Okay. We just had a lengthy
8 discussion a little while ago on another case,
9 with respect to a motion for reconsideration
10 and rehearing. I want to reiterate the
11 regulations that govern it, 3126.6. "The
12 Board shall not consider a rehearing unless
13 new evidence is submitted that could not
14 reasonably have been presented at the original
15 hearing."

16 3126.4. "The motion for
17 reconsideration shall state specifically all
18 respects in which the final decision is
19 claimed to be erroneous, the grounds for the
20 motion and the relief sought."

21 The two grounds that I see in the --
22 or that I glean from the submittals are that

1 the ANC said that they were waiting for the
2 Applicant to arrange another meeting, which
3 never took place. They thought that the
4 development was located in the new community's
5 development, in Lincoln Heights, and not at
6 the corner of the site actually proposed.

7 They also say that they were unaware
8 that the public hearing was scheduled for
9 February 26, 2008. We also have in our record
10 Exhibit 36, a letter from Jerrily Kress,
11 Director, Office of Zoning, saying that the
12 records indicate notice of the filing of the
13 application and the specific date of the
14 hearing to the ANC.

15 So again I would say to consider
16 whether we should grant the rehearing in this
17 case, we would need to see what evidence they
18 would submit that they didn't and couldn't
19 submit it before, and for the reconsideration,
20 how the decision is erroneous.

21 I just want to comment in general.
22 I think this case again, it's different. But

1 there's a theme here, you know, about being
2 upset with the relationship with the
3 Applicant. I don't think that's enough,
4 though, for us to rehear or reconsider.

5 They haven't in this case also
6 identified any new evidence that they would
7 submit to us for a rehearing, or why they
8 couldn't have done it before. Except they did
9 claim they didn't have notice, I guess, of the
10 hearing though. Our records indicate that
11 notice was given to them.

12 But again, there isn't any specific
13 evidence identified that they would want to
14 put before us. Moreover, there isn't any
15 argument as to what was erroneous in our
16 decision. They may not be happy with it, but
17 what did we do wrong that we should
18 reconsider.

19 MEMBER LOUD: Madam Chair, I think
20 that hits the nail on the head for me. It's
21 different from the one we had earlier, in the
22 sense that they had some very specific

1 allegations about what at least they thought
2 was the error.

3 In this case, there is no showing in
4 the pleadings as to what they think the error
5 was that we made in our decision. Also in the
6 earlier case, the ANC -- I'm sorry, in this
7 case, the ANC, it was clear that they were
8 briefed, that they took a position against it,
9 that they never supported this thing.

10 In the other case, the ANC said
11 well, we were kind of duped into supporting
12 it. So that was a clear difference between
13 that motion for reconsideration and this
14 motion for reconsideration.

15 And there doesn't appear to be any
16 new evidence in terms of rehearing. So I'm
17 not inclined to support, when we get to that
18 point, just to give a vote of approval for
19 this motion. Thank you.

20 CHAIR MILLER: All right. Okay.
21 I'm certainly in favor of better
22 communication, you know, between the Applicant

1 and the community, without judging, you know,
2 what actually happened here. But our job is
3 to look at our regulations and see whether the
4 grounds have been met to have another hearing
5 or to reconsider.

6 That does not -- there doesn't seem
7 to be any evidence or argument supporting
8 either the motion for reconsideration or
9 rehearing, or rising to the level that the
10 Board would grant that, in my view.

11 So if there isn't any further
12 comment, I would move for denial of the motion
13 for reconsideration of Application No. 17724,
14 pursuant to 3126 of the zoning regulations, to
15 the original application No. 17724 of Francis
16 Fabrizio and Glen Thomas, pursuant to 11 DCMR
17 Section 3104.1, for special exception to allow
18 the construction of eight row dwellings under
19 Section 353 in the R/5-A district, on the
20 premises northwest corner of the intersection
21 of 50th Street and Fitch Place, N.E. Do I
22 have a second?

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1 MEMBER LOUD: Second, Madam Chair.

2 CHAIR MILLER: Further deliberation?

3 (No response.)

4 CHAIR MILLER: All those in favor

5 say aye?

6 (Chorus of ayes.)

7 CHAIR MILLER: All those opposed?

8 (No response.)

9 CHAIR MILLER: All those abstaining?

10 (No response.)

11 CHAIR MILLER: And would you call

12 the vote please?

13 MR. MOY: Yes, Madam Chair. Staff
14 would record the vote as 4 to 0 to 1, on the
15 motion of the Chair, Ms. Miller, to deny the
16 motion for reconsideration, seconded by Mr.
17 Loud.

18 Also in support of the motion Ms.
19 Walker and Mr. Dettman, and we have no Zoning
20 Commission member participating. So again
21 the vote is 4 to 0 to 1.

22 CHAIR MILLER: Thank you. Do we

1 have anything else on the meeting agenda for
2 this morning?

3 MR. MOY: No, that completes the
4 public meeting, Madam Chair.

5 CHAIR MILLER: Thank you. Mr. Moy,
6 I believe that we have just one case on the
7 agenda for this afternoon, and there's a
8 procedural motion that's been made in that
9 case?

10 MR. MOY: That's correct, Madam
11 Chair.

12 CHAIR MILLER: Okay. Then I think
13 what we ought to do is, in an abbreviated
14 fashion, call the public hearing for this
15 afternoon, and hear that motion now, if all
16 the parties are here. Are the parties here?
17 Okay. Then the public meeting for the morning
18 is adjourned.

19 (Whereupon, at 2:31 p.m., the
20 proceedings went off the record.)

21
22

1