

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,
APRIL 3, 2007

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:50 p.m., Ruthanne G. Miller, Vice-Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Vice Chairperson
CURTIS ETHERLY, JR. Board Member
JOHN A. MANN, II Board Member
(NCPC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLY BAILEY Sr. Zoning Spec.

D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE

OFFICE OF PLANNING STAFF PRESENT:

TRAVIS PARKER
STEPHEN RICE

This transcript constitutes the minutes from the Public Hearing held on April 3, 2007.

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

2 1:50 p.m.

3 VICE CHAIR MILLER: This hearing
4 will, please, come to order. Good afternoon,
5 ladies and gentlemen. This is the April 3rd
6 Public Hearing of the Board of Zoning
7 Adjustment of the District of Columbia 2007.
8 My name is Ruthanne Miller. I am the Vice
9 Chair of the BZA. The Chair of our BZA's term
10 has been completed and so I am acting as Chair
11 today and we expect to have elections soon
12 when we have our new Member on board.

13 And with me is Mr. Curtis Etherly
14 to my right, also mayoral appointee, to my
15 left is Mr. John Mann representing NCPC, to
16 his left is Mr. Clifford Moy from the Office
17 of Zoning, Lori Monroe from the Office of the
18 Attorney General and Beverly Bailey from the
19 Office of Zoning.

20 Copies of today's hearing agenda
21 are available to you and are located to my
22 left in the wall bin near the door. Please,

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

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

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

21 The order of procedure for special
22 exceptions and variances is: One, statement

1 and witnesses of the applicant. Two,
2 Government reports, including Office of
3 Planning, Department of Public Works and any
4 other agencies. Three, report of the Advisory
5 Neighborhood Commission. Four, parties or
6 persons in support. Five, parties or persons
7 in opposition. Six, closing remarks by the
8 applicant.

9 Pursuant to section 3117.4 and
10 3117.5, the following time constraints may be
11 maintained. The applicant/appellant, persons
12 and parties, except an ANC in support,
13 including witnesses 60 minutes collectively.
14 Appellees, persons and other parties, except
15 an ANC in opposition, including witnesses, 60
16 minutes collectively. Individuals 3 minutes.
17 These time constraints do not include cross
18 examination and/or questions from the Board.

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

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

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

14 The Sunshine Act requires that the
15 Public Hearing on each case be held in the
16 open before the public. The Board may
17 consistent with its rules and procedures and
18 the Sunshine Act enter Executive Session
19 during or after the Public Hearing on a case
20 for purposes of reviewing the record or
21 deliberating on the case.

22 The decision of the Board in these

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

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

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

21 If you are not prepared to go
22 forward with a case today or if you believe

1 that the Board should not proceed, now is the
2 time to raise such a matter.

3 Does the staff have any
4 preliminary matters?

5 MS. BAILEY: Madam Vice Chair,
6 Members of the Board and to everyone, good
7 afternoon. Yes, Madam Chair, there is a
8 preliminary matter concerning Application No.
9 17585 of Darshan Shah. The ANC and in
10 addition to others are requesting that there
11 are procedural irregularities or procedural
12 problems with this application and that it be
13 postponed. And I think there is a
14 representative from ANC-2D here at this time.

15 VICE CHAIR MILLER: Okay. Ms.
16 Bailey, can I ask, could we have those wishing
17 to testify today raise to take the oath and
18 then proceed with the preliminary matter?

19 MS. BAILEY: Absolutely, sure.

20 VICE CHAIR MILLER: Okay. Thank
21 you.

22 MS. BAILEY: All those persons

1 wishing to testify today, would you, please,
2 stand to take the oath? Please, raise your
3 right hand.

4 (Whereupon, the witnesses were
5 sworn.)

6 MS. BAILEY: Thank you.

7 VICE CHAIR MILLER: Okay. Whoever
8 is here on the preliminary matter with respect
9 to Case No. 17585 should come forward now and
10 we can hear about that. Good afternoon, could
11 you identify yourselves for the record,
12 please?

13 MS. BIOLLEY: Is it on? Pamela
14 Biolley, 2114 Bancroft Place.

15 MS. CANDON: I'm Mary Eva Candon,
16 the Advisory Neighborhood Commissioner from
17 ANC-2D02, representing the two of us from the
18 smallest ANC in the city.

19 VICE CHAIR MILLER: Oh, you are
20 both ANC Commissioners? Is that what you are
21 saying?

22 MS. CANDON: No. Ms. Perlmutter

1 is not here.

2 VICE CHAIR MILLER: Oh, I see.
3 You are representing her.

4 MS. CANDON: I'm here for both of
5 us, yes.

6 VICE CHAIR MILLER: Got it. Okay.
7 Yes?

8 MR. CLARK: I'm Jerald Clark. I'm
9 an architect representing Mr. Shah in
10 modifying the building from a single-family to
11 a three apartment unit.

12 MR. SHAH: I'm Michael Shah and
13 I'm here on behalf of -- I'm the applicant.

14 VICE CHAIR MILLER: Okay.

15 MS. CANDON: I know we haven't
16 coordinated this, but the Advisory
17 Neighborhood Commission believes that we
18 should postpone the hearing because we don't
19 believe the applicant has had the opportunity
20 to come before us or at least they haven't and
21 the community would like to have a greater
22 understanding of what proposed changes are to

1 the building. An opportunity to comment on
2 them.

3 VICE CHAIR MILLER: And what's the
4 position of the applicant?

5 MR. CLARK: We would like to
6 proceed if we could. There is no change to
7 the exterior of the building. It's all
8 interior, so we don't see that it is offensive
9 from that standpoint.

10 MS. CANDON: I think the concerns
11 of the neighborhood are not surrounding the
12 facade, but about the changes in the number of
13 persons who may occupy the building and the
14 impact that the number of residents in the
15 neighborhood might have. And this is not a --
16 the ANC is not taking a pro or con position.
17 At the last meeting we did not have a quorum,
18 meaning there was only one of the two
19 Commissioners there and so both Commissioners
20 haven't had the opportunity to understand what
21 the application is as well as to hear from the
22 community about their concerns to be able to

1 make a qualified determination about the
2 position of the ANC and we would like to be
3 able to provide our great weight to your
4 decision making.

5 MS. BIOLLEY: I'm a neighbor and I
6 have specific problems with -- an exterior
7 problem.

8 MS. CANDON: I would like to ask
9 the neighbors not to comment until the ANC has
10 had the opportunity to present this to all the
11 neighbors and the question of postponement is
12 regarding not any particular resident's
13 concerns.

14 VICE CHAIR MILLER: There are
15 several requests for party status in this
16 case. Is anybody else here who requested
17 party status? Did you request party status?
18 You don't think so?

19 MS. CANDON: It's possible that
20 five neighbors did.

21 MS. BIOLLEY: I filled out some
22 forms, but I -- I filled out forms --

1 VICE CHAIR MILLER: Do you know?

2 MS. BIOLLEY: -- in objection. I
3 don't know if my name is on the list.

4 VICE CHAIR MILLER: Could you
5 spell your last name?

6 MS. BIOLLEY: B, as in boy, I-O-L-
7 L-E-Y.

8 BOARD MEMBER ETHERLY: Perhaps,
9 Madam Chair, just to be sure that we are
10 moving forward in a complete fashion, I know
11 that Exhibit No. 28, the party status
12 application of Linda Bumbalo indicated that
13 she would not be present due to a conflicting
14 schedule. Timothy McFeeley at Exhibit No. 25,
15 I didn't see Mr. McFeeley represented in the
16 room when you inquired if he was present.
17 Exhibit 24, Linda Lori, Exhibit 23, Mirko
18 Antara Turnovich, pardon the mispronunciation,
19 and Exhibit No. 22 of Kelmer Blum and
20 Jonathan/Dilana or Diana at Exhibit No. 22.
21 And then you were indicating, ma'am, that you
22 also had submitted a party request?

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1 MS. BIOLLEY: I also have two
2 neighbors who said that they sent things in.

3 BOARD MEMBER ETHERLY: Okay.

4 VICE CHAIR MILLER: Well, first of
5 all, I just wanted to see if somebody had
6 requested party status and they were here, we
7 might have considered that, so that they could
8 participate in this dialogue as well. So that
9 was my main reason for asking for it then.

10 Well, I mean, the Board looked at
11 this request earlier that's in writing in the
12 file and we really hadn't come to a conclusion
13 whether or not to postpone and I just wanted
14 to explore a little bit more with you. One of
15 the reasons that Ms. Bumbalo asked for
16 postponement in Exhibit 29 is that she said
17 that there was a problem with notice and I
18 wanted to see whether you had any comments on
19 that, all of you here at this table.

20 MS. CANDON: Well, I think what
21 you're running into, Madam Chair, is what is
22 common in the city is that nobody understands

1 the rules about which to come forward to raise
2 positive or negative comments about anything
3 and it's -- as the ANC Commissioner, it seems
4 pretty clear to me that the applicant didn't
5 understand the role of the Advisory
6 Neighborhood Commission who would then come
7 back to the community to make sure that there
8 was notice about everything, so that there was
9 time for comment.

10 So the entire process of notice, I
11 don't know exactly what Ms. Bumbalo is
12 referring to specifically, but the entire
13 notice process has broken down as it usually
14 does. So the ANC usually tries to step in to
15 make sure it doesn't happen, but, in fact, the
16 notice was so late that the applicant was
17 coming before the ANC that there was a
18 conflict that we couldn't have both members
19 there and couldn't get the notice out in time.

20 And clearly, the applicant didn't
21 understand what coming before the ANC was,
22 because the person, I don't know who it was,

1 I'm the absent ANC Commissioner, didn't
2 realize the extent to which the ANC can get
3 involved in the changes in the neighborhood
4 and wasn't able to answer the questions that
5 were raised there.

6 So there is no doubt about the
7 need for this hearing to be postponed, because
8 the neighborhood has not been able to bring to
9 you their concerns. I mean, that's -- I don't
10 understand even the -- I apologize, even the
11 question of whether we're postponing this
12 hearing.

13 VICE CHAIR MILLER: Okay. Well,
14 let me explain. All right.

15 MS. CANDON: Quickly, because
16 we're all kind of, you know, got lots of
17 things to do.

18 VICE CHAIR MILLER: Okay. Well,
19 we actually bumped you ahead as a preliminary
20 matter.

21 MS. CANDON: Yes, and kept us
22 waiting an hour. Thank you. We're all quite

1 busy.

2 VICE CHAIR MILLER: Well, let me
3 just clarify.

4 MS. CANDON: Yes.

5 VICE CHAIR MILLER: That when we
6 say the hearings start at 1:00, they don't
7 necessarily start at 1:00. They could start
8 at 1:00. That the Board has business in the
9 morning and, you know, we begin in the
10 afternoon.

11 MS. CANDON: I have been the chair
12 of a commission --

13 VICE CHAIR MILLER: Okay. I don't
14 want to debate this.

15 MS. CANDON: -- before --

16 VICE CHAIR MILLER: I don't want
17 to debate this --

18 MS. CANDON: I understand.

19 VICE CHAIR MILLER: -- in this
20 case. But what I want to say is my
21 understanding is it's not a requirement for
22 the applicant to go to the ANC, that it's

1 usually very beneficial for the applicant to
2 go to the ANC and for the community and the
3 applicants to work together. But that's not
4 necessarily, unless you point to something in
5 the regulations that I'm not aware of, reason
6 in and of itself to delay. That it could be
7 beneficial for the applicant even if it were
8 to delay, but it's not required to.

9 We're not required to postpone the
10 hearings merely because they didn't go to the
11 ANC. And the issues in this case, there is no
12 allegation that the ANC didn't get notice from
13 the BZA of this case, from the Zoning Office.

14 MS. CANDON: You know what, we
15 don't manage our ANC.

16 MS. BIOLLEY: I think there's more
17 at interest here. Excuse me.

18 VICE CHAIR MILLER: So let me just
19 say this.

20 MS. CANDON: Yes.

21 VICE CHAIR MILLER: So we look to
22 see --

1 MS. CANDON: Okay. Well, then let
2 me alter the position of the Advisory
3 Neighborhood Commission. No, we did not have
4 enough notice to be able to come forward with
5 our great weight for your determination. We
6 did not have enough notice.

7 VICE CHAIR MILLER: Okay. You
8 probably -- it's not that you didn't get the
9 legally required notice. What I hear you
10 saying is that if you had more notice, what
11 you consider sufficient, you would have
12 prepared more in a certain way and been able
13 to issue an ANC report to which we would give
14 great weight under the law. There is no ANC
15 report at this time.

16 Sometimes we will not postpone a
17 hearing, but we will leave the record open for
18 an ANC report and that's an option that is
19 Board is considering, if it makes sense to go
20 forward.

21 MS. CANDON: How many parties are
22 there to this hearing if it goes forward

1 today?

2 VICE CHAIR MILLER: We have to
3 determine the party status applications.

4 BOARD MEMBER ETHERLY: If I may,
5 Madam Chair, let me perhaps ask this question
6 just to round out our discussion, because I
7 agree with you. I don't think a debate is
8 going to be productive for us in this forum
9 nor would it be appropriate. However, in one
10 of the party status requests, let me just make
11 sure, Mr. Clark, are you and your applicant in
12 receipt of the five party status requests, at
13 this point?

14 MR. CLARK: No.

15 BOARD MEMBER ETHERLY: Okay. So
16 it would probably be helpful for us to get
17 copies, too. What we are talking about are
18 five residents in the community who have
19 expressed a desire to be parties to this
20 application. That's a separate question from
21 where we are right now in terms of the
22 postponement.

1 But part of this decision, of
2 course, is well, one, we have five applicants
3 for party status. We have the concerns that
4 have been expressed by the ANC. They are not
5 in a position, at this time, to express yay or
6 nay on the application, but as you can tell,
7 there are considerable concerns that exist.
8 One of the party status applications did
9 reference a concern about whether or not the
10 property was adequately posted and that's what
11 I wanted to inquire about.

12 Are you aware as to whether or not
13 the property was posted for the mandatory time
14 amount?

15 MR. CLARK: We put it up. We put
16 the -- it put it up on March 19th, which gave
17 us the 15 days.

18 BOARD MEMBER ETHERLY: Okay.

19 MR. CLARK: I also took a computer
20 list from the tax office that listed even the
21 people in the apartments and I took every
22 address around the block within 200 feet and

1 found it through the computer system. And
2 what we got was out of D.C.'s computer for the
3 tax records of who lives in what apartment and
4 what building. And we did that and gave the
5 BZA the proper stickies for them to mail to
6 the people.

7 BOARD MEMBER ETHERLY: Okay.

8 MR. CLARK: And I see things in
9 order. Also, I went to another hearing at the
10 same ANC and I was talking to a gentleman
11 before it started and he said one of the
12 persons weren't there, so they wouldn't have
13 a quorum, so I just left.

14 BOARD MEMBER ETHERLY: Okay.

15 MR. CLARK: And then I came again
16 and there was another -- there was two
17 missing.

18 BOARD MEMBER ETHERLY: Okay. And
19 that's okay. I don't want to get too deeply
20 into those particular dynamics. But as the
21 Chair was indicating, where that leaves, I
22 think, Madam Chair, us today is, of course,

1 there is need to balance the interest of the
2 ANC, the community, especially those persons
3 who have requested party status, and, of
4 course, the applicant's presence here and
5 preparedness to move forward, so it would
6 appear.

7 MR. SHAH: Mr. --

8 BOARD MEMBER ETHERLY: Just a
9 moment, Mr. Shah. It would appear that you
10 have a couple of different options. The
11 Board, of course, we could decide to just
12 proceed forward today, of course, that's going
13 to severely limit what the ANC would be able
14 to say and, quite frankly, that probably would
15 not be helpful.

16 I'm not saying that that puts your
17 case on a bad footing or on a good footing,
18 but where there is an opportunity to discuss
19 with the ANC and review material, it can be
20 helpful. And clearly, you have some concerns
21 that are being expressed at this point and the
22 ANC is saying we haven't had an adequate

1 opportunity.

2 As the Chair said, we could,
3 indeed, still move forward today and just take
4 the benefit of the ANC's presence. You can
5 share with us what you feel you know, at this
6 point, but it's probably not going to be a lot
7 and what you feel you know, at this point,
8 probably is not going to be positive for the
9 applicant.

10 So that's one thing. We could
11 still move forward today. We do, of course,
12 have the five party status applications and,
13 at this point, and potentially at least two
14 more that perhaps we are not in receipt of,
15 that's also an issue. The parties don't
16 necessarily have to be present for us to rule
17 on those applications, but it is perhaps
18 helpful if they are.

19 So bottom line where I think I'm
20 rounding off to, Madam Chair, is perhaps being
21 a little hesitant at moving forward, because
22 we just might not be ripe enough for doing

1 that in that we don't have the ANC piece.
2 Again, it's not required. We love to have
3 your input and we would desire it and make it
4 possible wherever we can to do it, but there
5 is also the issue of administrative efficiency
6 and just making use of everybody's time who is
7 here today.

8 So I think that's kind of perhaps
9 where I'm beginning to lean, Madam Chair. We
10 just might not be ready to move forward. But
11 again, I'm sensitive to the fact that the
12 applicant has said we are here and we're
13 prepared to go forward. As you know, and this
14 has nothing to do with our postponement
15 question or the party status question, but
16 clearly there are a couple of issues that have
17 been identified, both in the Office of
18 Planning's report and again I'm sure the ANC
19 will probably, if they are asked to provide
20 some remarks today, will probably have some
21 concerns to also express.

22 So from the standpoint of the

1 different chips, if you will, that are lining
2 up on the table, there is a pretty high bar
3 that is kind of coalescing around this
4 application in a not good direction. That
5 doesn't mean we're going to go that way, but
6 if you have the ability to take some time
7 perhaps to get some of your other ducks in a
8 row, that might not be a bad course of action.

9 It's not for this Board or for me
10 to tell you to do that. Again, if you are
11 ready to go forward, we can just take that
12 and, you know, take that under advisement and
13 make a decision today. But I just wanted to
14 offer those comments, Madam Chair, to our
15 applicants and our participants from the ANC
16 as to where I think we are.

17 MR. SHAH: Could I?

18 BOARD MEMBER ETHERLY: And I
19 apologize for cutting you off, Mr. Shah.

20 MR. SHAH: With all due respect to
21 everyone that has submitted party applications
22 and isn't here, I have waited for this hearing

1 for six months and I have been carrying a
2 mortgage that is in excess of what I am
3 financially capable of .

4 BOARD MEMBER ETHERLY: Yes, sir.

5 MR. SHAH: So what would we be
6 talking about in terms of a rescheduling date?

7 BOARD MEMBER ETHERLY: Okay.

8 MR. SHAH: And I also flew in from
9 New York for this.

10 VICE CHAIR MILLER: That's right.
11 I want to just say just a couple of things.
12 First of all, one issue was whether the notice
13 was legally sufficient. And I want to just
14 explore that with the Office of Zoning a
15 little bit more. And if it was, then, number
16 two, the prejudices to the parties if we delay
17 or we don't delay. And I think your question
18 goes to that as to when would the next date
19 be, correct? So we're going to take a look at
20 that with Mr. Moy and let you know.

21 MR. SHAH: Okay.

22 MR. MOY: While Madam Chair is --

1 I have a question to the ANC. When is the
2 next ANC meeting in May?

3 MS. CANDON: It's the third Monday
4 of every month.

5 MR. MOY: The third Monday.

6 MS. CANDON: And they are at 7:30
7 or 7:00.

8 MR. MOY: Thank you.

9 BOARD MEMBER ETHERLY: And that
10 would be your April 16th date?

11 MS. CANDON: Yes, that's April
12 16th.

13 BOARD MEMBER ETHERLY: Okay.

14 MS. CANDON: Yes.

15 VICE CHAIR MILLER: Okay. We have
16 an opening on April 17th.

17 MR. SHAH: I'm going to be
18 traveling to the Middle East at that time.
19 What's the next opening immediately after
20 that? I return on the 18th of April.

21 VICE CHAIR MILLER: We only meet
22 on Tuesdays. What's the next one?

1 MR. MOY: It's possible to do
2 April 24th in the afternoon.

3 VICE CHAIR MILLER: April 24th?

4 MR. SHAH: I'll take it.

5 VICE CHAIR MILLER: Okay. And how
6 do you all feel about that date, April 24th?

7 MS. CANDON: April -- is that it?

8 VICE CHAIR MILLER: No. Almost.
9 No, we want to get your reaction and then
10 we'll decide. But I just want to make a
11 comment that I don't think that the ANC should
12 assume just because a postponement is
13 requested that you're going to get it, because
14 the applicant hasn't been cooperative, because
15 we have seen in many cases that the applicant
16 isn't cooperative and it makes sense in this
17 case, I think, to postpone. It's only a
18 couple of weeks. There's no prejudice.

19 But, you know, if you can get
20 access to the documents in other ways and if
21 you can't get a quorum, if you can sometimes--

22 MS. CANDON: Well, we have a

1 quorum always, unless one of us is out of
2 town.

3 VICE CHAIR MILLER: Okay. We --

4 MS. CANDON: But it's kind of an
5 issue with us.

6 VICE CHAIR MILLER: -- can also,
7 because of the scheduling problems in this
8 case, they didn't seem that apparent, that bad
9 in this case, we found some openings, but
10 often it's very difficult. So we also leave
11 the record open for the ANC to submit their
12 report later to have their testimony ratified
13 later if necessary. So we try to be a little
14 bit flexible.

15 So anyway, we will see you -- oh,
16 wait. How does the Board feel?

17 BOARD MEMBER ETHERLY: No, I think
18 this is the appropriate direction.

19 VICE CHAIR MILLER: Yes.

20 BOARD MEMBER ETHERLY: I'll just
21 indicate that this doesn't, of course, require
22 the applicant to work everything out with the

1 ANC. It may be the case that you might not be
2 able to reach a consensus on all of the
3 issues, but for the time that you do have, try
4 to make advantageous use of it, but if you
5 can't bridge the gap at the end of the day,
6 that's fine. We'll come back and we'll just
7 dive into it on the 24th. But I appreciate
8 everyone's flexibility.

9 VICE CHAIR MILLER: I also want to
10 say there seems to be a question raised about
11 notice and so I would advise the applicant
12 that you make sure there is no notice problem.
13 You've got a few weeks now, make sure that's
14 in order or else we could knock it out on
15 notice.

16 MR. CLARK: Okay.

17 MS. CANDON: Rather than referring
18 to it as notice, let me ask you this. Does
19 this office advise applicant's to contact
20 their ANCs when they have applied for a zoning
21 adjustment? What I mean is I don't think the
22 applicants even are -- you know, especially if

1 it's their first time, understand the role of
2 the ANC.

3 VICE CHAIR MILLER: I think so. I
4 think so. I think if you check the file in
5 the Zoning's Office, you'll see what the
6 notices say.

7 MR. CLARK: They did advise us.

8 VICE CHAIR MILLER: Okay. And it
9 is a good idea. It makes the cases work much
10 better for all parties involved.

11 MR. SHAH: I think in this case,
12 they advised us right before their meeting.

13 MS. CANDON: Yes.

14 MR. SHAH: So I sent Jerald to go
15 to the meeting, but I wasn't aware of it
16 until, you know, very late in the game.

17 VICE CHAIR MILLER: Okay. Do you
18 have any other questions?

19 MR. SHAH: As a practical
20 question, if a petition comes without ANC
21 support or with ANC actually against it, are
22 those ever granted? I mean, I realize

1 theoretically they could be, but --

2 MS. CANDON: They only give us
3 great weight. It doesn't matter however --

4 VICE CHAIR MILLER: Okay.

5 MS. CANDON: -- heavy it is. But
6 they can do what they want.

7 VICE CHAIR MILLER: We weigh all
8 the evidence that's in the record and giving
9 ANC great weight means that we address the
10 issues that are raised in their report.

11 MR. SHAH: Gotcha.

12 VICE CHAIR MILLER: Okay.

13 MS. CANDON: They consider it.

14 MR. SHAH: Okay.

15 VICE CHAIR MILLER: Thank you.

16 MR. SHAH: Thanks. Thank you.

17 VICE CHAIR MILLER: Oh, wait a
18 second.

19 MS. BAILEY: Ms. Biolley indicated
20 that she had filed correspondence with us.
21 Would you, please, let us have a copy of that
22 if you have it with you today? And if you

1 don't have it with you, would you, please, let
2 us make sure that we have whatever it is that
3 you filed? Because we don't seem to have it
4 at this point.

5 VICE CHAIR MILLER: Thank you very
6 much. And I would also say there is a record
7 of this case in the Office of Zoning, so you
8 can check and see what papers have been filed.
9 Okay. Thank you. Ms. Bailey, would you like
10 to call the next case, please?

11 MS. BAILEY: Application No. 17584
12 of Stephen Lerner, pursuant to 11 DCMR 3104.1,
13 for a special exception to allow a rear
14 addition to an existing single-family row
15 dwelling under section 223, not meeting the
16 open court and nonconforming structure
17 provisions. The property is Zoned R-5-B and
18 it is located at 2729 Ontario Road, N.W.,
19 Square 2581, Lot 295.

20 VICE CHAIR MILLER: Good
21 afternoon. Would you like to identify
22 yourself for the record, please?

1 MR. LERNER: I'm Stephen Lerner.
2 I'm the owner of 2729 Ontario Road.

3 MS. STANLEY: And I'm Jenna
4 Stanley. I'm representing Stephen Lerner as
5 his designer, case designer.

6 VICE CHAIR MILLER: Okay. Thank
7 you. You have a pretty strong case in the
8 file here on the record. Would you like to
9 just highlight the main points as to why you
10 think your project meets the special exception
11 standards?

12 MS. STANLEY: Sure, sure thing.
13 Stephen's property has --

14 VICE CHAIR MILLER: I'm sorry. Is
15 there anybody else here who is going to be
16 testifying on this case at all? ANC here?
17 Okay. Proceed. Thank you.

18 MS. STANLEY: Sure. Stephen's
19 property is a row house in Adams Morgan that
20 has a nonconforming open court and as of
21 right, the open court precludes doing an
22 addition that is very wide. It narrows it

1 down to about 11 feet, which becomes pretty
2 much unusable as an extension of the house.

3 What is allowed as of right would
4 take over the existing open court and make a
5 very severe wall to his neighbor and light and
6 ventilation issues for her. So we are looking
7 for a special exception to extend the existing
8 nonconformity of the court, which is about a
9 governance of about 3 feet over what is
10 existing right now. Is that sufficient?

11 VICE CHAIR MILLER: Okay. Do my
12 Board Members have any questions?

13 BOARD MEMBER ETHERLY: Very, very
14 quickly, Madam Chair.

15 VICE CHAIR MILLER: Okay.

16 BOARD MEMBER ETHERLY: I agree
17 with you wholeheartedly that I think the
18 record is very full and complete on this
19 particular case. I'll just ask just very
20 quickly are you aware of any concerns that
21 have been expressed on the part of any of your
22 neighbors with regard to any impacts that they

1 feel they may experience by virtue of the
2 addition if this application were granted?

3 MS. STANLEY: The only things I
4 have seen have been in support of the project
5 from ANC, neighboring homeowners and also from
6 the Office of Planning with that.

7 MR. RICE: That is correct.

8 BOARD MEMBER ETHERLY: Excellent.
9 Thank you. That concludes my questions, Madam
10 Chair.

11 VICE CHAIR MILLER: I think we can
12 turn to the Office of Planning then. Good
13 afternoon.

14 MR. RICE: Good afternoon, Madam
15 Chair, Board. My name is Stephen Rice. OP
16 also stands on their record. It's pretty
17 full. We don't -- we have not received any
18 comments of opposition from any of the
19 neighbors. In fact, we have received comments
20 of support.

21 OP would note that the lot
22 coverage should be adjusted. The 2.88 width

1 should count toward the lot occupancy, which
2 would bring it up to, with the addition, with
3 the court, with the existing property, roughly
4 it will bring it up to roughly 60 percent,
5 which is permitted under section 223 up to 70
6 percent.

7 But, yes, OP does stand on the
8 record and support approval for the
9 application. Thank you.

10 VICE CHAIR MILLER: Thank you.
11 And as I understand it, nothing in the plans
12 that have been submitted to us changed based
13 on what you are saying about the lot
14 occupancy. It's just the calculation?

15 MR. RICE: Yes, correct.

16 VICE CHAIR MILLER: Okay. Thank
17 you. Anybody else have any questions? I
18 asked previously if there was anybody else in
19 the hearing room who wants to testify on this
20 case, has anybody else come in since then? I
21 don't think so. Okay.

22 And we have a report from the ANC.

1 They are not here, but they did submit a
2 report. It's Exhibit 26. They submit the
3 application unanimously and this is to be
4 afforded great weight. It was taken at a
5 regularly scheduled meeting and they had a
6 quorum present and they addressed the issue
7 and they meet all the requirements. So we
8 will give it great weight.

9 Okay. Do you have any closing
10 remarks?

11 MS. STANLEY: I will clarify that
12 the discrepancy in the lot coverage was my
13 misunderstanding that the open court should be
14 included in the lot coverage and I actually
15 had a conversation with Stephen Rice about
16 that, so we understand and I apologize.

17 VICE CHAIR MILLER: Okay. Okay.
18 Thank you. Does anybody want to make a motion
19 or otherwise I will. Okay. I would move to
20 approve Application No. 17584 of Stephen
21 Lerner pursuant to 11 DCMR section 3104.1, for
22 a special exception to allow a rear addition

1 to an existing single-family row dwelling
2 under section 223, not meeting the open court
3 section 406 and nonconforming structure
4 subsection 2001.3 requirements at premises
5 2729 Ontario Road, N.W.

6 BOARD MEMBER ETHERLY: Second it,
7 Madam Chair.

8 VICE CHAIR MILLER: Okay. I just
9 want to make a few comments. I think that the
10 record is very full on this. The Office of
11 Planning did an excellent job, a very thorough
12 excellent job as they most often do. The ANC
13 supports this, as we said before. The site is
14 not in an Historic District.

15 Basically, it's an extension of a
16 nonconforming court and if they were to fill
17 in and not have this nonconforming aspect, as
18 I understand it, then there may be adverse
19 impacts of light and air. And in this case
20 what they are doing creates no adverse impacts
21 at all.

22 Let's see if there are any other

1 highlights of this that I want to bring to our
2 attention. Looking at the standard,
3 certainly, "The addition shall not have a
4 substantially adverse effect on the use or
5 enjoyment of any abutting or adjacent dwelling
6 or property. In particular, the light and air
7 available to neighboring properties shall not
8 be unduly affected."

9 This is the case, no neighbors
10 have come forward to say that there is any
11 adverse impact on light and air. And as we
12 just said, if they did it matter-of-right and
13 filled it in, there would be. "The addition
14 together with the original building as viewed
15 from the street alley and other public ways
16 shall not be substantially visually intrude
17 upon the character, scale and pattern of
18 houses along the subject and street frontage."

19 The project is in the rear, so it
20 doesn't have an impact on the front. It does
21 back into an alley, but it's very similar to
22 other structures that front onto this alley,

1 so it's in character with the scale and
2 pattern of the houses, particularly as found
3 by the Office of Planning.

4 And they have submitted into the
5 record their plans representing the
6 relationship of the proposed addition to the
7 adjacent buildings and views from public ways.
8 So I think that I would move, at this time,
9 that we approve this application. I did move.
10 I would say that those are the reasons that we
11 should do it and anybody else have any
12 comments before we put it to a vote?

13 Okay. All those in favor say aye.

14 ALL: Aye.

15 VICE CHAIR MILLER: All those
16 opposed? I would also move that we waive our
17 rules requiring a full order on this and that
18 we issue a summary order. Okay. Thank you.
19 Thank you very much.

20 MS. STANLEY: Thank you.

21 MS. BAILEY: Madam Chair, the vote
22 is recorded as 3-0-2 to approve the

1 application. The motion made by Mrs. Miller,
2 seconded by Mr. Etherly, Mr. Mann is in
3 agreement, a Zoning Commission Member and a
4 fifth Board Member is not present at this
5 time.

6 And, Madam Chair, we also included
7 under 223 relief from lot occupancy? That's
8 what the Office of Planning had indicated and
9 the applicant agreed that under 223 lot
10 occupancy was needed.

11 VICE CHAIR MILLER: You know, I
12 think we'll let Mr. Rice address this, because
13 I think what we were saying is certainly they
14 are qualified for a special exception, because
15 it's under 70 percent, but I don't recall
16 whether or not they have to seek a special
17 exception now because of that change in
18 calculation.

19 MR. RICE: No, they -- I don't
20 think that is necessary, because it's -- even
21 with the court included, it shouldn't be over
22 60 percent, so it's still by right.

1 MS. BAILEY: Okay.

2 MR. RICE: So it's not necessary,
3 I don't think.

4 VICE CHAIR MILLER: Okay. So then
5 we don't have -- yes, we did discuss about the
6 plans haven't changed and stuff.

7 MS. BAILEY: Okay.

8 VICE CHAIR MILLER: And the
9 calculations are still within that. Okay.
10 Thank you. You can call the next case.

11 MS. BAILEY: Application No. 17583
12 of 1634 Associates LLC, pursuant to 11 DCMR
13 3103.2, for a variance from the residential
14 recreation space requirements under section
15 773, a variance from the retail use provisions
16 under subsection 1901.1, and a variance from
17 the off-street parking requirements under
18 subsection 2101.1, to construct a 32 unit
19 residential building with ground floor retail.
20 The property is located in the ARTS/C-3-A
21 District at the southwest corner of the
22 intersection of 14th and R Streets, N.W. The

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1 property is also known as Square 208, Lots
2 806, 807, and 808.

3 VICE CHAIR MILLER: Good
4 afternoon.

5 MR. GLASGOW: Good afternoon,
6 Madam Chairman.

7 VICE CHAIR MILLER: Would you
8 identify yourselves for the record, please?

9 MR. GLASGOW: Sure. My name is
10 Norman M. Glasgow, Jr. of the Law Firm of
11 Holland and Knight here on behalf of the
12 applicant, 1634 Associates.

13 MR. HAZARD: My name is Dan
14 Hazard, 1323 Corcoran Street, N.W.,
15 Washington, D.C. 20009. I'm the owner,
16 developer of the property.

17 MR. GLASGOW: And Mr. Kiras
18 Freedman is in the audience who has worked on
19 the case with me. Mr. Steven Sher and Mr.
20 Bill Bonstra or the expert witnesses in the
21 case and Mr. David Baker is with Mr. Bonstra.
22 Steven Sher would be the expert land planning

1 witness and Mr. Bonstra an expert in urban
2 architecture. I know that Mr. Bonstra has
3 been accepted as an expert before by the
4 Zoning Commission and I believe also by BZA
5 and Mr. Sher many times by BZA.

6 VICE CHAIR MILLER: Are you
7 requesting that right now that they be
8 afforded expert status?

9 MR. GLASGOW: Yes, in this
10 particular case, yes.

11 VICE CHAIR MILLER: Okay. I
12 certainly have seen all of them appear here
13 before. Did my other Board Members have any
14 concerns or questions about these witnesses?
15 Okay. They can all be afforded expert status.

16 MR. GLASGOW: Thank you.

17 VICE CHAIR MILLER: I just want to
18 say that I don't see anybody else in the
19 audience, at this time, such as the ANC or
20 persons in support or in opposition.

21 MR. GLASGOW: Fine.

22 VICE CHAIR MILLER: Okay. Mr.

1 Glasgow?

2 MR. GLASGOW: All right. Madam
3 Chair, we are prepared to give as full or an
4 as abbreviated presentation as the Board deems
5 it requires given the information of record.
6 We have a letter in support from the ANC. We
7 have a report in support by the Office of
8 Planning. We're at your direction on that.

9 COURT REPORTER: Excuse me, sir,
10 did you fill out a card?

11 MR. GLASGOW: Did you fill out a
12 card for me? Okay.

13 VICE CHAIR MILLER: Okay. Well,
14 I'll wait for you to get back then. What I
15 was going to suggest is that I don't think you
16 should just stand on the record and I don't
17 think you should go into a whole full detailed
18 explanation either. So I think something in
19 between where you highlight where we can
20 visualize on your plans and everything and
21 your pictures, the variance that you are
22 requesting.

1 For instance, you know, where it
2 is narrow or just show us --

3 MR. GLASGOW: Sure.

4 VICE CHAIR MILLER: Go through the
5 variance test.

6 MR. GLASGOW: All right.

7 VICE CHAIR MILLER: And use that
8 as a tool to just bring it to life for us.

9 MR. GLASGOW: We will ask Mr. Sher
10 to highlight how it is that we meet the
11 requested relief that we have and if there are
12 any particular questions with respect to the
13 plans, then the architect, Mr. Bonstra, can
14 answer those. But I think Steven can go
15 through very efficiently the -- what the
16 relief is that's required and how it is that
17 we meet the burden of proof that the Board
18 will be looking for.

19 VICE CHAIR MILLER: All right.
20 And I also understand that we approved
21 something earlier on this same piece of
22 property, so, you know, whatever facts of that

1 might be relevant, it would be good to
2 highlight again to such as we already found it
3 was a narrow piece of property or something
4 like that.

5 MR. GLASGOW: Yes.

6 VICE CHAIR MILLER: Okay.

7 MR. GLASGOW: That is correct.

8 VICE CHAIR MILLER: Thank you.

9 MR. SHER: Madam Chair and Members
10 of the Board, for the record, my name is
11 Steven E. Sher, the Director of Zoning and
12 Land Use Services with the Law Firm of Holland
13 and Knight. This case as filed and as before
14 you today involves three variances. A
15 variance from the residential recreation space
16 requirements, a variance from the parking
17 requirements and a variance from the
18 requirements related to ground floor retail
19 use of the Uptown ARTS Overlay District.

20 The Zoning Commission is going to
21 publish in this Friday's Register Order No.
22 05-02 finally repealing the residential

1 recreation space requirements. So today we
2 need it, by Friday we won't.

3 VICE CHAIR MILLER: How do you
4 know that, Mr. Sher?

5 MR. SHER: Because I have a copy
6 of it right here and it has an effective date
7 on it of April 6, 2007.

8 VICE CHAIR MILLER: Okay. Thank
9 you.

10 MR. SHER: So on that one, I think
11 we're done.

12 BOARD MEMBER ETHERLY: And just as
13 a quick procedural matter for purposes of
14 process, would you -- do you recommend that we
15 still act on that variance or just to knock it
16 out?

17 MR. SHER: I would say yes.

18 BOARD MEMBER ETHERLY: Just to be
19 safe.

20 MR. SHER: But if you didn't, it
21 wouldn't matter.

22 BOARD MEMBER ETHERLY: Excellent.

1 Okay.

2 MR. SHER: Okay. On the remaining
3 two variances, we need a variance on the
4 parking requirements. The amount of retail
5 space that we have is below the minimum
6 threshold for a requirement for parking, so
7 the only parking required that we have is for
8 the residential units. There are 32
9 residential units. That requires 16 spaces a
10 the rate of one space for every two units.

11 We have a garage level, one level
12 below grade that contains a total of 18
13 spaces. However, only three of those 18
14 spaces actually conform with the regulations,
15 i.e., they meet the size and dimension
16 requirements and they are not located in the
17 vault, because the other spaces are compact
18 spaces.

19 You are allowed to have compact
20 spaces, but only if the number of required
21 parking spaces is 25 or more. We only have
22 16, so we have them, but we can't count them

1 and the remaining spaces are in the vault that
2 lines R Street. They are actually accessed
3 through a driveway on private property. The
4 spaces themselves are in the vault. They are
5 there if you do down in the garage, you will
6 see them. You can park in them, but we can't
7 count them as required spaces under the
8 regulations.

9 If we had to provide the minimum
10 number of spaces required by the regulations
11 in conforming 9 x 19 spaces on the subject
12 property, we figure we would need at least
13 four to five levels below ground, because with
14 the width of the property being only 50 feet,
15 when you take the dimensions required for
16 drive ramps and access aisles and the spaces
17 themselves and the core of the building, you
18 basically wind up being able to get three or
19 four parking spaces per level.

20 So you can get there, but you just
21 have to keep going further and further down.
22 It's almost like the law of diminishing

1 returns. That's exactly the situation that we
2 found ourselves in the last time. We can get
3 the number of spaces required, but the Board
4 found that because the site was narrow and the
5 space taken up by ramps, access aisles, core,
6 etcetera, the practical difficulty is you've
7 just got to keep digging further down and you
8 wind up having to spend an inordinate amount
9 of money for each parking space, because you
10 can only get three or four per level. So
11 that's the reason why we need the variance on
12 parking.

13 As a practical matter, we have
14 more than the number of spaces required in the
15 garage, but they are compact spaces and they
16 are in the vault and, therefore, we need the
17 variance. So in terms of the people living in
18 the building, they will have as many spaces
19 available to them as they would have had if we
20 had met the requirements of the regulations,
21 but they just don't meet the requirements of
22 the regulations.

1 The third variance that we need --

2 VICE CHAIR MILLER: Mr. Sher, if
3 you're going to move off parking, I just
4 wanted to ask two questions.

5 MR. SHER: Sure.

6 VICE CHAIR MILLER: I meant to
7 look this up before and I didn't, so I'm going
8 to ask you. I'm under the impression there is
9 a regulation that talks about discounting the
10 number of parking spaces required if you are
11 near a Metro.

12 MR. SHER: Correct, but not as to
13 residential use.

14 VICE CHAIR MILLER: Oh, that
15 doesn't --

16 MR. SHER: That's only for non-
17 residential use.

18 VICE CHAIR MILLER: Oh, okay.
19 Thank you. And the vault space, I know we
20 discussed this before, and I can't remember.
21 I know Mr. Glasgow addressed this. I can't
22 remember what you said now exactly, but I

1 think that the communities raised a concern
2 about well, can we count on those spaces in,
3 you know, years forward.

4 And I believe, Mr. Glasgow, you
5 had a good response to that the last time and
6 I don't remember what it is.

7 MR. GLASGOW: All right. Well,
8 with respect to the vault spaces, we don't
9 have any problem with the concept that the
10 community and the ANC is after here. The
11 vault, technically the city issues a vault
12 permit. It is not in perpetuity. It is at
13 the discretion of the city. So the city
14 issues the vault permit and then they can
15 revoke that vault permit if they want to.

16 It's like a driver's license, from
17 that standpoint. We have never had vaults
18 reclaimed by the city other than for Metro
19 construction. The Metro construction on 14th
20 Street, as we all know, it's done. It's
21 there. And we did go and Mr. Freedman had
22 given copies and it's a very cursory note, but

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1 it was from the people within DDOT that deal
2 with the public space saying that they don't
3 have any problem with our -- we showed them
4 the plans and they don't have any problem with
5 our vault application.

6 BOARD MEMBER ETHERLY: So it's
7 your sense, if I may, Madam Chair, that as the
8 ANC indicated being able to grant an assurance
9 that there is a permanent securing of this
10 parking space is going to be impossible?

11 MR. GLASGOW: That's correct.
12 That's just not the way the District operates
13 when it grants you a vault permit.

14 BOARD MEMBER ETHERLY: Okay.

15 VICE CHAIR MILLER: Are you
16 referring to -- we don't even have an exhibit
17 number on this yet, but the December 21, 2006
18 "To Whom It May Concern" letter?

19 MR. GLASGOW: Yes.

20 VICE CHAIR MILLER: It says "The
21 District of Columbia Department of
22 Transportation Public Space Permitting Office

1 has made a preliminary review of the" -- well,
2 it should be proposed, I guess, "condominiums
3 located at 1638 14th Street, N.W., Washington,
4 D.C. The Permit Office found no issues with
5 this project at this time."

6 MR. GLASGOW: Right. Because they
7 are public space. The only thing they deal
8 with is the vault. This is the public --

9 VICE CHAIR MILLER: Okay.

10 MR. GLASGOW: -- DDOT Public Space
11 Permitting Office. They wouldn't be dealing
12 with the construction of the building as a
13 whole or anything else. They are just looking
14 at what is in the public space. When we went
15 and first met with the Office of Planning,
16 they asked us to check with public space and
17 confirm that there was -- you know, like there
18 wasn't a 7 foot storm sewer in there that
19 would be difficult to relocate or something
20 like that. So they did not find any major
21 public facilities in there, so that the vault
22 is -- the vault is okay.

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1 VICE CHAIR MILLER: Okay. I hear
2 you, but we don't have the ANC here. Did they
3 see this letter? Did that mean anything to
4 them, that you know of?

5 MR. GLASGOW: No, that wasn't
6 presented to the ANC.

7 VICE CHAIR MILLER: Oh, okay.

8 MR. GLASGOW: So they weren't
9 aware of that. Well, the ANC letter is just
10 an impossibility, because that's just not what
11 the District does.

12 VICE CHAIR MILLER: Right.

13 MR. GLASGOW: If someone said go
14 and get them to give you something
15 permanently, just say they --

16 VICE CHAIR MILLER: Okay.

17 MR. GLASGOW: They just don't do
18 that.

19 VICE CHAIR MILLER: Right. Okay.

20 MR. GLASGOW: All right.

21 VICE CHAIR MILLER: Thank you. I
22 don't have any other questions right now.

1 Thank you.

2 MR. SHER: Okay. The third
3 variance is related to the requirements of the
4 Uptown ARTS Overlay District and that
5 requirement says that 50 percent of the ground
6 floor must be devoted to retail and service
7 uses as defined in the overlay. That would
8 translate into the minimum amount required of
9 2,250 square feet. We are actually providing
10 2,154 square feet, so we are 96 square feet
11 short. It's almost the de minimis variance in
12 the first place.

13 But if you look at the drawing
14 which shows the first floor, and it's the
15 middle one of the three drawings on the top,
16 the situation comes about as follows. We have
17 retail space fronting all of the 14th Street
18 frontage and extending in depth along the
19 southern lot line.

20 On the R Street frontage, we have
21 behind this one retail unit that fronts on
22 14th Street, we have the lobby entrance to the

1 residential space, the elevator that goes up,
2 the fire stairs that serve the upper floors
3 and then we have two residential units behind
4 those fronting on R Street west of the main
5 residential lobby.

6 So what's the practical difficulty
7 in providing 96 square feet more? Issue No.
8 1 is the core of the building, the stair and
9 the elevator and the location of the entrance
10 thereto is dictated by the layout of this and
11 then the units on the upper floors, which you
12 can see on the two lower drawings. Then you
13 have those same plans in your packet in front
14 of you.

15 Issue No. 2 is that the size of
16 this residential entry is controlled, in large
17 part, by the fact that there is a difference
18 in grade between the outside sidewalk on the
19 floor of the first floor and not only do we
20 need an entrance that goes through here, but
21 because there are steps, we also need a ramp
22 in order to accommodate handicapped access

1 through that lobby.

2 So you can't just whack a piece of
3 that lobby out and say here is 96 square feet
4 more, because then you don't have the
5 handicapped access that's required by other
6 code and regulations.

7 The third part of this situation
8 is that you don't want to put retail on the
9 side of the building west of the main
10 residential entrance, because (A) you don't
11 have a way to service it, there's no way to
12 get there other than to come in through the
13 street and (B) you wind up having a potential
14 security issue with access to the residential
15 lobby also being access to retail space that
16 fronts on R Street, aside from which, as the
17 Office of Planning points out in its report,
18 notwithstanding the fact that the Commercial
19 Zoning extends along the full depth of the
20 property, retail use on R Street seems to be
21 less desirable than residential use on that
22 ground floor.

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1 So all those factors come together
2 in sort of a logical conclusion. You want to
3 have your retail use fronting on 14th Street
4 and extending as far in depth as possible
5 along the south side of the building and it's
6 the depth that it can follow on the north side
7 is constrained by the location of the
8 residential lobby and the location of the
9 residential units to the west.

10 As a practical matter, we actually
11 have more than 2,250 square feet of retail in
12 the building, some of it is in the lower
13 cellar level and would -- but doesn't count
14 towards meeting that requirement. Some of it
15 is actually store front bays in public space.
16 In total, we have more than the 2,250 square
17 feet, but in terms of what you can actually
18 count under the regulations, we are at 2,154,
19 so we're 96 square feet short and that's the
20 amount that we need the variance for.

21 VICE CHAIR MILLER: Thank you.

22 BOARD MEMBER MANN: Where are the

1 store front bays in the public space?

2 MR. SHER: Didn't I put that
3 there?

4 MR. BONSTRA: This is the
5 extension here.

6 BOARD MEMBER ETHERLY: If you
7 could turn your microphone on, Mr. Bonstra?

8 MR. BONSTRA: Sorry.

9 BOARD MEMBER ETHERLY: Thanks.

10 MR. BONSTRA: This is the
11 extension here of this commercial mass along
12 14th Street, so that projects 4 feet into
13 public space. This is about 106 square feet.
14 That, in fact, doesn't count per the Zoning
15 Regulations.

16 BOARD MEMBER MANN: Okay. Thanks.

17 VICE CHAIR MILLER: Okay. We
18 don't have any other questions right now. Do
19 you have more testimony, at this point?

20 MR. GLASGOW: Unless the Board has
21 any further questions, we don't need to have
22 anything.

1 VICE CHAIR MILLER: Okay. Then we
2 will turn to the Office of Planning. Good
3 afternoon, Mr. Parker.

4 MR. PARKER: Good afternoon, Vice
5 Chair Miller and Members of the Board. I'm
6 Travis Parker with the Office of Planning.
7 The issues have been very succinctly covered
8 by the applicant. I'm happy to answer
9 particular questions on any of the three
10 variances. They have all -- well, two of them
11 have been up before and one of them is the
12 retail space of 96 square feet. I'm happy to
13 answer any particular questions, but absent
14 those questions, I'll stand on the record in
15 approval.

16 VICE CHAIR MILLER: I think you
17 did an excellent report.

18 MR. PARKER: Thank you.

19 VICE CHAIR MILLER: I don't have
20 any questions. Do Board Members? And I
21 assume the applicant has seen the Office of
22 Planning report?

1 MR. GLASGOW: We have seen the
2 Office of Planning report and we have no
3 questions.

4 VICE CHAIR MILLER: Okay. I don't
5 see anybody else in the audience to testify on
6 this case, so I think we are ready for closing
7 argument.

8 MR. GLASGOW: Closing argument
9 will be very succinct. We would like to have
10 a Bench decision and a summary order.

11 VICE CHAIR MILLER: If we
12 deliberate this today?

13 MR. GLASGOW: Yes, if you
14 deliberate it today.

15 VICE CHAIR MILLER: Mr. Etherly,
16 are you ready to go forward?

17 BOARD MEMBER ETHERLY: Madam
18 Chair, it would be my motion to move approval
19 of Application No. 17583 of 1634 Associates
20 LLC, pursuant to 11 DCMR 3103.2, for a
21 variance from the residential recreation space
22 requirements under section 773, a variance

1 from the retail use provisions under
2 subsection 1901.1, and a variance from the
3 off-street parking requirements under
4 subsection 2101, to construct a 32 unit
5 residential building with ground floor retail
6 at premises southwest corner of the
7 intersection of 14th and R Streets, N.W., and
8 would invite a second.

9 BOARD MEMBER MANN: Second.

10 BOARD MEMBER ETHERLY: Thank you
11 very much, Mr. Mann. I think as we have
12 discussed, the record is very full and
13 complete with regards to all of the variances
14 at issue. I'll deal with perhaps the easiest
15 and most direct one first and that is the
16 residential recreation space piece.

17 Hopefully soon to be mooted, but
18 for the purposes of just our full
19 deliberation, I think the case has been
20 adequately met and made with respect to the
21 constraints of the building as it is currently
22 laid out, with respect to alternative

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1 locations where residential rec space could be
2 located. There are constraints with regards
3 to HVAC units in terms of the roof space.

4 Clearly, as we have talked about
5 the issue of the retail use within the
6 building to get as close as we have gotten to
7 the required retail space as was indicated by
8 Mr. Sher, there would just simply be
9 overwhelming difficulties with respect to the
10 site in providing adequate residential
11 recreation space.

12 With respect to the issue of
13 retail use, clearly, the applicant has come
14 extremely close, 96 square feet short of
15 getting to the required 2,250 square feet of
16 retail. But again, constraints of the
17 building as relates to the placement of
18 stairwells, certain core elements, placement
19 of the residential lobby and simply effective
20 use of the 14th Street corridor and frontage
21 for retail space, there are clear constraints
22 that have compelled the applicant to make some

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1 of the design decisions that have been made
2 here.

3 But I think clearly the variance
4 test is met with regard to the issue of the
5 retail space.

6 And then finally, as has been
7 discussed, with regard to the issue of
8 parking, I think, once again we have very
9 clear grounds for supporting the parking
10 variance. As relates to the issue of
11 substantial detriment and public good, the
12 applicant has, I think, more than adequately
13 embraced both the spirit and substantial
14 portions of the substance as it relates to the
15 ARTS Overlay and requirements in this regard.

16 So as I view these overall
17 variances, I think they are de minimis at best
18 or I should say de minimis at worst here.
19 Clearly, there are a wide range of
20 conveniences that are available in the
21 immediate area as it relates to again coming
22 back to the residential recreation space. And

1 I think the applicant has brought us just a
2 very strong and solid project.

3 I'll mention just because I heard
4 a little bit of the exchange between my
5 colleagues, but we also did discuss it at the
6 top and that was the issue of the Advisory
7 Neighborhood Commission's report at Exhibit
8 No. 23, and what was in their phrasing, the
9 advice to the Board of expressly
10 preconditioning that the applicant demonstrate
11 to the Board that off-site parking will, in
12 fact, be secured on a permanent basis.

13 I am not including in my motion a
14 suggestion that we include a condition to that
15 effect by virtue of the testimony provided by
16 the applicant and the documentation provided
17 by the Department of Transportation's Space
18 Permitting Office with regard to how vault
19 space is handled. The applicant has made, I
20 think, more than appropriate assurances that
21 they have engaged in dialogue with the
22 Department of Transportation around use of

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1 that space.

2 As is normal practice, that space
3 is not granted or leased in perpetuity in any
4 way. It is subject to the discretion of the
5 District of Columbia, but the applicant has
6 made sufficient assurances that they are
7 engaged in discussions and that there are no
8 issues at this time foreseen by the Public
9 Space Permitting Office with regard to that
10 vault space.

11 With that being said, Madam Chair,
12 again, I think the record is very full. The
13 ANC's report otherwise is very solid and very
14 square on point with regard to all of the
15 aspects of the variances as, of course, was
16 the Office of Planning's report. Thank you,
17 Madam Chair.

18 VICE CHAIR MILLER: Thank you, Mr.
19 Etherly. That was very thorough and I'm just
20 going to add a few points. Just in looking at
21 the variance test, I think we need to say
22 certainly the first test is whether there is

1 an exceptional condition here. And we found
2 it in the preceding case and it's clearly
3 evident here that this is a very narrow piece
4 of property. And as the Office of Planning
5 says because of its small size, the core takes
6 up about 20 percent, I believe it said, of the
7 building.

8 And a lot of the requirements that
9 they need to make for parking, for retail and
10 for residential rec space are all being
11 balanced against each other. With respect to
12 the parking, it's clear that because of the
13 narrowness in the core and everything, that
14 they would have to go down many levels which
15 would be very inefficient in cost and no one
16 is recommending that they do that.

17 And I think that the ANC's concern
18 about the vault space, the permanency of that,
19 was well-addressed by Mr. Glasgow and makes me
20 feel comfortable that it will be their based
21 on, as you said, the history of using the
22 District's vault space, that it is only been

1 revoked in the case of construction for Metro.
2 And the Metro construction is complete in that
3 area.

4 So I think that that very much
5 addresses the ANC concern. And I think pretty
6 much, let's see, I think you did address --
7 oh, the residential rec requirements, I mean,
8 they are about to go and I think that they
9 have met the test here anyway, because if you
10 increased the residential rec space, for
11 instance, even you would have to decrease the
12 retail use and the retail use is not being met
13 to begin with.

14 And that seems to be the more
15 important element here. They also say that
16 there is a lot of private residential
17 recreation space with respect to balconies and
18 roof access that is just not counted in this
19 case, so actually the spirit of the
20 residential rec requirements have been met.

21 So I think that's about all I need
22 to add.

1 BOARD MEMBER ETHERLY: Well, I
2 think we're --

3 VICE CHAIR MILLER: Okay.

4 BOARD MEMBER ETHERLY: -- fairly
5 complete, Madam Chair. I'll just note perhaps
6 as we enjoy the last waning days of the
7 residential recreation space requirement, we
8 should perhaps just celebrate the spirit of
9 that grand clause in the Zoning Regulations,
10 but I think you have done a more than adequate
11 job and I'll just take a moment of silence as
12 we celebrate the passing of the residential
13 rec space requirement. Thank you, Madam
14 Chair.

15 VICE CHAIR MILLER: Okay. Any
16 other comments? All right. Then did you make
17 a motion already?

18 BOARD MEMBER ETHERLY: Yes, ma'am,
19 and it has been properly seconded.

20 VICE CHAIR MILLER: Okay. All
21 those in favor say aye.

22 ALL: Aye.

1 VICE CHAIR MILLER: All those
2 opposed? All those abstaining? The ayes have
3 it. Would you call the vote, please?

4 MS. BAILEY: The vote is recorded
5 as 4-0-1 to approve the application. The
6 motion was made by Mr. Etherly, seconded by
7 Mr. Mann, Mrs. Miller agreed to the motion, a
8 Zoning Commission Member and a fifth Board
9 Member is not present at this time. And are
10 we doing a summary order, Madam Chair?

11 VICE CHAIR MILLER: I think we
12 should do a summary order.

13 BOARD MEMBER ETHERLY: No
14 objection, Madam Chair. And just to be --
15 just to clarify that vote, it was 3-0-2?

16 MS. BAILEY: 3-0-2, sorry, thanks.

17 BOARD MEMBER ETHERLY: Excellent.

18 MS. BAILEY: Absolutely.

19 BOARD MEMBER ETHERLY: You're very
20 welcome.

21 VICE CHAIR MILLER: Okay. Yes,
22 and we have decided to waive our rules for a

1 full order of findings of fact and issue a
2 summary order in this case.

3 MS. BAILEY: Thank you.

4 VICE CHAIR MILLER: Okay. Thank
5 you. Good luck. Mr. Moy, do we have any
6 other business on the agenda for this
7 afternoon?

8 MR. MOY: That should complete the
9 afternoon's agenda, Madam Chair.

10 VICE CHAIR MILLER: Thank you.
11 Then this hearing is adjourned.

12 (Whereupon, the Public Hearing was
13 concluded at 2:54 p.m.)

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