

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,
FEBRUARY 27, 2007

+ + + + +

The Public Hearing convened in
Room 220 South, 441 4th Street, N.W.,
Washington, D.C. 20001, pursuant to notice at
9:30 a.m., Geoffrey H. Griffis, Chairperson,
presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
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.
ESTHER BUSHMAN	General Counsel

D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

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KAREN THOMAS
JOHN MOORE
MAXINE BROWN-ROBERTS

This transcript constitutes the
minutes from the Public Hearing held on
February 27, 2007.

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

2 10:31 a.m.

3 CHAIRPERSON GRIFFIS: I call to
4 order our Public Hearing of the Board of
5 Zoning Adjustment. This is, of course, the
6 27th of February 2007 and I am Geoff Griffis,
7 Chairperson. Joining me today is the Vice
8 Chair, Ms. Miller, and Mr. Etherly.
9 Representing the National Capital Planning
10 Commission is Mr. Mann, and I do not believe
11 we have a Zoning Commissioner with us this
12 morning on our cases.

13 Copies of today's hearing agenda
14 are available for you. Please, pick that up.
15 I did mention to turn off all cell phones,
16 etcetera. I will reiterate that. Our cell
17 phones do two things. One, they disrupt
18 anyone giving testimony and may knock them off
19 their cadence, but more importantly, it
20 disrupts our transmission.

21 We are transmitting all Public
22 Hearings and Meetings in two fashions. The

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1 most important is the Court Reporter sitting
2 on the floor to my right. They are creating
3 the official transcript. We are also being
4 broadcast live on the Office of Zoning's
5 website.

6 Attendant to both of those, there
7 are additional things. First, I'm going to
8 ask that everyone that is going to address the
9 Board, please, have two witness cards filled
10 out prior to coming forward. They are
11 available where you entered into the hearing
12 room. They should also be available at the
13 table in front. Those go to the Court
14 Reporter. Obviously, they will be able to
15 spell your name right and give you all the
16 credit for the important things that you will
17 be telling us.

18 Secondly, I would ask when you
19 come forward make yourself comfortable. You
20 need to state your name and address for the
21 record, that will complete all of the
22 formalities that you need to do and then you

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1 can get into your testimony.

2 Be it known, however, that we are
3 creating a record here today in this room.
4 That record is the basis of which we will have
5 our decisions made. Anything outside of the
6 record we will not be basing our decisions on.
7 So for you, it should be very importantly
8 understood that you have to speak into a
9 microphone, otherwise, you are not on the
10 record. All of that said, I think it's
11 understandable.

12 Our procedures for special
13 exceptions and variances will be as follows:
14 First, we hear from the applicant, the
15 presentation of their case, all their
16 witnesses, evidence, whatever they are putting
17 together. Second, we go to any of the
18 Government reports attendant to the
19 application, the Office of Planning,
20 Department of Transportation, whoever is
21 providing us an analysis.

22 We will third go to the Advisory

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1 Neighborhood Commission within which the
2 property is located. Fourth, we will go to
3 persons or parties in support of an
4 application. Fifth are persons or parties in
5 opposition to an application. Sixth, finally,
6 we return to the applicant. It is their time
7 to address all the other evidence that they
8 have heard come since they opened up. They
9 are to provide rebuttal witnesses or closing
10 remarks or summations that they might have.

11 Cross examination during the
12 hearing of all the witnesses, of course, is
13 allowed by the applicant and parties in a
14 case. We will establish parties as a
15 preliminary matter in each and every
16 application. If you are a party, then, of
17 course, you will be able to conduct cross
18 examination.

19 The ANC within which the property
20 is located is automatically a party in the
21 case and, therefore, will be able to conduct
22 cross examination.

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1 Our rules and regulations are
2 exhaustive in addressing cross examination.
3 And I know as much as all of you would love me
4 to go through all of those today, I'm not
5 going to. But be it known the fact that I
6 will direct cross examination as needed.
7 Cross examination should be direct questions
8 of witnesses and direct answers. If it goes
9 far afield, it goes beyond the jurisdiction of
10 our Board or it goes beyond the application of
11 which we are hearing, I will bring it back
12 into focus, so that our cross examination
13 proceedings can move forward.

14 The record will be closed at the
15 conclusion of our hearing. You will not leave
16 this hearing room as part of your application
17 wondering can I submit information in or am I
18 not allowed to. You will know exactly before
19 you leave whether the record is closed or
20 whether we are keeping the record open. If we
21 keep a record open on an application in a
22 case, we are very specific as to what is to be

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1 put into the record.

2 Not only substantively, you will
3 have a deadline for it. So at the end, you
4 will know that we will have procedural
5 schedule and that is if the record is left
6 open, you have additional filings to put in,
7 you will know what it is, how it is to come
8 in, who it is to be served to and when it is
9 to be due. Because if you miss that date, the
10 record will close and it will not be accepted
11 into the record.

12 Lastly, the decision of our Board,
13 as I have said now perhaps enough, but it is
14 based exclusively on the record that is
15 created before us today. We do periodically
16 take a break. I would ask that people if they
17 see any of the Board Members out on a break
18 today in the halls or at a lunch break, if you
19 would refrain from engaging us in
20 conversations this afternoon.

21 It would appear as we are in our
22 hearings and we are creating records, it might

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1 appear to others that we are receiving
2 information outside of the public record and,
3 of course, we don't want to do that.

4 That being said, let me say a very
5 good morning to Ms. Bailey, with the Office of
6 Zoning on my very far left. Ms. Bushman also
7 with the Office of Zoning. Ms. Monroe is with
8 the Office of Attorney General, who is not Mr.
9 Moy, but will be sitting close to where Mr.
10 Moy is. Mr. Moy is with the Office of Zoning
11 also.

12 At this time, I would ask that
13 everyone that is anticipating addressing the
14 Board, if you would, please, stand and give
15 your attention to Ms. Bailey, she is going to
16 swear you in.

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

19 (Whereupon, the witnesses were
20 sworn.)

21 MS. BAILEY: Thank you.

22 CHAIRPERSON GRIFFIS: Excellent.

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1 Thank you all very much. At this point then,
2 we're prepared to hear any preliminary
3 matters. Preliminary matters are those which
4 relate to whether a case will or should be
5 heard today. If you are not prepared to go
6 forward with a case or if you want to withdraw
7 a case or you believe that a case before us
8 has not been properly noticed, these are types
9 of preliminary matters that the Board needs to
10 address immediately.

11 I would ask that you come forward
12 and have a seat at the table in front of us as
13 an indication of a preliminary matter. I'll
14 ask, Ms. Bailey, if she is aware of any
15 preliminary matters for the Board's attention.

16 MS. BAILEY: Mr. Chairman, good
17 morning.

18 CHAIRPERSON GRIFFIS: Good
19 morning.

20 MS. BAILEY: Also to everyone,
21 Board Members and the audience. Staff does
22 not have any, sir.

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1 CHAIRPERSON GRIFFIS: Excellent.
2 Not having any occasion of preliminary matters
3 from any of the applicants, I have one
4 preliminary matter and that is I just can't
5 hold it in, quite frankly, because Mr. Etherly
6 got married since the last we have seen him
7 and so I just want to say a great
8 congratulations.

9 BOARD MEMBER ETHERLY: Thank you.

10 CHAIRPERSON GRIFFIS: Frankly, it
11 was supposed to happen and it snowed and so we
12 were all a little bit wondering whether it
13 went through. So, Mr. Etherly,
14 congratulations to you and we, you know, think
15 that our lives change day to day, week to week
16 with these episodes, but your's did.

17 BOARD MEMBER ETHERLY: Thank you.
18 Thank you very much, Mr. Chair. I trust that
19 the weather will not be a harbinger of things
20 to come with the auspicious beginning of a
21 harsh and heavy ice storm, but thank you very
22 much, Mr. Chair. Appreciate it.

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1 CHAIRPERSON GRIFFIS: Yes, and
2 congratulations to you.

3 Very well. With that then, let's
4 move ahead and call the first case of the day.

5 MS. BAILEY: Application No. 17569
6 of the Marriott International, Inc., on behalf
7 of Team Eckington, LLC, pursuant to 11 DCMR
8 3103.2 and 3104.1, for a variance from the
9 off-street parking requirements under
10 subsection 2101.1, a special exception from
11 the roof structure requirements under section
12 411, and a special exception from the rear
13 yard requirements under subsection 774.2 and
14 774.9(c) to allow the construction of a hotel.
15 The property is Zoned C-3-C. It is located at
16 201 Florida Avenue, N.E., Square E-710 and Lot
17 801.

18 CHAIRPERSON GRIFFIS: Whew.

19 MS. BAILEY: Mr. Chairman?

20 CHAIRPERSON GRIFFIS: Yes.

21 MS. BAILEY: If I'm not mistaken,
22 there was a request for party status.

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1 CHAIRPERSON GRIFFIS: Yes.

2 MS. BAILEY: From the Near
3 Northeast Citizens Against Crime and Drugs, so
4 that's something you may want to consider, Mr.
5 Chairman.

6 CHAIRPERSON GRIFFIS: Excellent.
7 Thank you very much. I appreciate you
8 bringing that to our attention. I think the
9 Board was aware of that. Is there a
10 representative here from -- good morning. If
11 you wouldn't mind, you can just turn that
12 microphone on and state your name and address
13 for the record.

14 MR. PERNELL: Okay. Ambassador
15 Daniel Pernell representing the Near Northeast
16 Citizens Against crime and Drugs, 1116 3rd
17 Street, N.E.

18 CHAIRPERSON GRIFFIS: Excellent.
19 Thank you very much, Mr. Pernell. I
20 appreciate you being here. And you wanted to
21 be granted standing as a party, rather than
22 just providing testimony from the association.

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1 Is that a correct understanding?

2 MR. PERNELL: Right. We have
3 several letters on file.

4 CHAIRPERSON GRIFFIS: Sure.

5 MR. PERNELL: I think they speak
6 for themselves and so we just want to have
7 status, party status. We have been around
8 since 1985.

9 CHAIRPERSON GRIFFIS: Oh,
10 certainly, clearly. And you certainly have
11 standing in this hearing. There is no
12 question about that. We have all your letters
13 in the record.

14 MR. PERNELL: Right.

15 CHAIRPERSON GRIFFIS: In fact, we
16 have read them all. And this is not the first
17 time that it has been presented to the Board.

18 MR. PERNELL: All right.

19 CHAIRPERSON GRIFFIS: We
20 appreciate that. However, are you wanting to
21 be granted an additional standing, not just as
22 the association to present your letters and

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1 testimony? You want to have party status in
2 this case?

3 MR. PERNELL: Yes.

4 CHAIRPERSON GRIFFIS: Okay. Any
5 questions? And this would be party status in
6 support of the application?

7 MR. PERNELL: Yes, sir.

8 CHAIRPERSON GRIFFIS: Comments,
9 questions?

10 VICE CHAIR MILLER: Good morning,
11 Mr. Pernell. I think you have submitted in
12 writing your position and everything, but
13 could you just summarize briefly how you are
14 affected differently from the general public
15 with respect to this case?

16 MR. PERNELL: We have been around
17 -- Near Northeast was inducted in 1985 by Ms.
18 Loree Murray, who is the founder and president
19 of Near Northeast. I am the vice president of
20 Near Northeast. I have been with her since I
21 was a commissioner in '94 and I am no longer
22 a commissioner. I no longer ran and I have a

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1 new position as Ambassador or Peace for the
2 United Inn.

3 The status party that we are
4 requesting is that Near Northeast has been
5 around a number of years dealing with the
6 crime in the community. We're the first and
7 only civic group that is designated as a crime
8 civic group. We have been working with the
9 homeless, people who in the last five years
10 have been removed from their home and we have
11 been receiving a number of applications, a
12 total of 120 applications for redevelopment.

13 And the Near Northeast community
14 have not reaped that benefit, those developers
15 coming in and we have had good relationships
16 with the developers, but we are now trying to
17 keep our citizens in the area that vote and
18 support these projects. And this is the
19 reason why we are asking for party status and
20 also on the basis that we have growing --
21 continued growing families.

22 We have new families who have

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1 moved in the community. And we also have
2 schools that are being revamped, a new
3 wellness center at the Hayes School that at
4 5th and K and that sort of thing. So we want
5 to keep that collaborated effort and partners
6 in the community.

7 VICE CHAIR MILLER: Thank you.

8 CHAIRPERSON GRIFFIS: Very well.
9 Any other questions? Clarifications? Any
10 objections? Any positions on this? Very
11 well. I don't see any reason why we can't
12 grant party status to the Near Northeast
13 Citizens Against Crime and Drugs in this case
14 as proponents, unless there is a difference of
15 opinions of the Board.

16 VICE CHAIR MILLER: No, I think we
17 should grant them party status, but it seems
18 like a very important community group that is
19 especially well-aware of the problems in the
20 community with crime and homelessness and the
21 impact of development on the community and
22 there is no objection.

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1 CHAIRPERSON GRIFFIS: Excellent.
2 That being said, thank you very much.
3 Obviously, we will call you up for
4 presentation of your case and also for cross
5 examination of all the witnesses as we go
6 forward.

7 With that then, let's move ahead
8 and get right into the case presentation.
9 Yes?

10 MR. FREEMAN: Good morning,
11 Members of the Board. My name is Kyrus
12 Freeman. I'm an attorney with the Law Firm of
13 Holland and Knight. I am here on behalf of
14 the applicant. To my immediate left is Mr.
15 Norman M. Glasgow, Jr., also of Holland and
16 Knight. And I'll just go down and introduce
17 the team.

18 We have Mr. Bobby, Robert Finvarb
19 of the Finvarb Group on behalf of the owner of
20 the subject property. We have Mr. Robert
21 Mannon on behalf of Marriott International and
22 we have Mr. Ken Heidebrecht as the architect

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1 to discuss the overall project and the design
2 of the project. We also have Mr. Steven Sher,
3 who I'm sure the Board is familiar with, and
4 he will be our expert in zoning and land use.

5 For the record, we also have Mr.
6 Chris Kabatt of Wells and Associates in the
7 audience to be available to answer questions,
8 if necessary. Kris Manning of Clark
9 Construction and Wade Eller of the Eller
10 Group. Mr. Kabatt will be submitted, if
11 needed, as an expert in transportation and
12 parking. And Mr. Manning will be an expert in
13 construction design, planning and costs
14 estimated.

15 We are prepared to proceed with
16 the full presentation, if the Board is
17 inclined, but we would just like to start off
18 by thanking the Office of Planning for their
19 report and support of the application. They
20 did a thorough job of going through the
21 project and identifying how we meet each or
22 comply with each element of the required

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1 burden of proof.

2 The ANC has filed two separate
3 letters supporting the application and those
4 are identified in the record. We have two
5 separate letters filed from the Near Northeast
6 Citizens Against Crime and Drugs. As
7 Commissioner Pernell indicated, both of which
8 are in support of the project and the areas of
9 relief.

10 I understand that DDOT has also
11 submitted a report. I don't know if it's in
12 the official exhibit log, but DDOT has
13 submitted a report in support of our parking
14 variance. And I also found out that the
15 Department of Housing and Community
16 Development has submitted a report in support
17 of our required -- our requested relief.

18 CHAIRPERSON GRIFFIS: Excellent.
19 Yes, all that is in the record. The Board
20 has, in fact, read and reviewed those. May I
21 ask, is the ANC-6C present?

22 MS. THOMAS: Yes.

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1 CHAIRPERSON GRIFFIS: Oh,
2 excellent. Okay. I would note that they do
3 have two filings, Exhibit 29 and 30, are the
4 ANC's position. I think we can really just
5 highlight a couple of -- highlight your case
6 presentation. It's very clear and
7 straightforward in terms of the variance of
8 the off-street parking and also the roof
9 structures and I think we can get into some
10 questions.

11 The rear yard we can address
12 pretty quickly. I wouldn't mind just having
13 a site, it may be my oversight, but just kind
14 of a site location of the project. There was
15 some substantive discussion of its adjacency
16 to the Metro Station, which I think is
17 important. Of course, you have also indicated
18 that it is within the 800 feet of the R-4.

19 MR. FREEMAN: Right.

20 CHAIRPERSON GRIFFIS: I believe,
21 was the District that it's in.

22 MR. FREEMAN: Yes.

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1 CHAIRPERSON GRIFFIS: If we could
2 just get some -- let's start big picture and
3 then I think quickly get through the details
4 and it may be, in fact, more appropriate to
5 take Board questions. Mr. Mann?

6 BOARD MEMBER MANN: Yes, Mr.
7 Chairman, I just had a question, sort of
8 preliminary. I just want to get something on
9 the record here. I see in our Exhibit 10 that
10 persons or entities within 200 feet were
11 notified. One of those was U.S., United
12 States of America GSA Federal Building Service
13 in regard to the ownership of Square 710. Is
14 that the location of the future Bureau of
15 Alcohol, Tobacco and Firearms?

16 MR. FREEMAN: ATF, correct.

17 BOARD MEMBER MANN: And so they
18 were notified. Did they have any -- did you
19 receive any response from them?

20 MR. FREEMAN: In fact, we have
21 been working with the ATF in terms of the
22 design of the building. We have been

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1 contacting them in terms of what we can and
2 cannot do along second street and that's part
3 of our practical difficulty in terms of what
4 we can construct.

5 We can't have cars sitting idly on
6 2nd Street, so yes, we have notified them and
7 we have been in conversations with them about
8 the project.

9 BOARD MEMBER MANN: Okay. Great.
10 Thank you. I just wanted to make sure that
11 was on the record.

12 MR. FREEMAN: In terms of the
13 first question regarding the overview of the
14 site, if I might draw the Board's attention to
15 our prehearing statement, then we could just
16 go through a couple of other tabs there.

17 Exhibit A shows our site. Square
18 E -- I'm sorry, Lot E-710. To the north is
19 Florida Avenue, to the east are the Metro,
20 WMATA rail tracks and to the west is the 2nd
21 Street. That's the first page. And the
22 second page of Exhibit B, the applicant's

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1 prehearing statement. I'm sorry, Exhibit A.
2 Also, there is an overview of the location of
3 the project.

4 With respect --

5 CHAIRPERSON GRIFFIS: Do you have
6 that in Exhibit A? I don't have that.

7 MR. FREEMAN: The applicant's
8 prehearing statement?

9 CHAIRPERSON GRIFFIS: What's the
10 top date on that bound one?

11 MR. FREEMAN: February 27, 2007.
12 I'm sorry, February -- that's the date on the
13 statement, but the actual date it was filed
14 was --

15 CHAIRPERSON GRIFFIS: Do you have
16 a date on the top of the letter?

17 MR. FREEMAN: February 12th.

18 CHAIRPERSON GRIFFIS: It is?

19 MR. FREEMAN: Yes.

20 MS. BAILEY: Mr. Chairman?

21 CHAIRPERSON GRIFFIS: Yes.

22 MS. BAILEY: What may have

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1 happened is when the package comes in, it may
2 be pulled apart to go into the file.

3 CHAIRPERSON GRIFFIS: Right.
4 That's what I was thinking it might be.

5 MR. FREEMAN: We're going to give
6 you our copy of it, so that you could have it.

7 CHAIRPERSON GRIFFIS: Okay. Thank
8 you. Oh, gosh. Is this for clarification?
9 I have one. We have numerous copies of loose
10 things in this record. It was kind of
11 frustrating. I'm not putting that on the
12 applicant.

13 MR. FREEMAN: Right.

14 CHAIRPERSON GRIFFIS: Somehow we
15 got a lot of duplications in here. Of course,
16 we read every one of them, but let me ask you.
17 I have this one, the filing, this is the only
18 bound copy I have. It's October 18th.

19 MR. FREEMAN: That looks like our
20 application statement.

21 CHAIRPERSON GRIFFIS: Okay. So
22 and that's fine.

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1 MR. FREEMAN: Right.

2 CHAIRPERSON GRIFFIS: That's the
3 initial application.

4 MR. FREEMAN: Right.

5 CHAIRPERSON GRIFFIS: Following up
6 from that, was there other additional filings
7 or it would get to --

8 MR. FREEMAN: We filed our
9 prehearing statement.

10 CHAIRPERSON GRIFFIS: -- this?

11 MR. FREEMAN: Which you just
12 received on February 12th, two weeks prior to
13 the hearing.

14 CHAIRPERSON GRIFFIS: Materially
15 different than the application?

16 MR. FREEMAN: Not materially. The
17 prehearing statement just goes through in
18 further depth that explains how we meet each
19 element of the required burden of proof. I
20 might note it is not exactly the same, but
21 it's very similar to the prehearing statement
22 which we filed previously when we were here in

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1 July and upon which we relied and the Board
2 reviewed excessively and approved in the first
3 iteration of this project.

4 CHAIRPERSON GRIFFIS: Right.
5 Okay. Let's move ahead. Excellent. We'll
6 get through this. Let's continue on this now
7 and just get -- so perhaps my question of
8 actually locating the site isn't as absurd as
9 you guys thought now, right? Because -- good.
10 I think we have them coming now. Oh, Ms.
11 Bailey has got a ton in her hand.

12 I would note -- thank you very
13 much. Good. I'm sorry, but we're going to
14 take the time just to go through each of these
15 exhibits, if you wouldn't mind. Walk us
16 through exactly now.

17 MR. FREEMAN: Let's go.

18 CHAIRPERSON GRIFFIS: We're in
19 Exhibit No. A, which looks like from the Base
20 Atlas. I would note that on the right side
21 that's the Metro line and/or train tracks. Is
22 that correct?

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1 MR. FREEMAN: Yes, sir.

2 CHAIRPERSON GRIFFIS: Okay. And
3 then on the left of that, as Mr. Mann has
4 brought up, the Federal Government Building on
5 the left side of that which would be going
6 west is the ATF?

7 MR. FREEMAN: It's west of 2nd
8 Street.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. FREEMAN: Correct.

11 CHAIRPERSON GRIFFIS: So this is
12 actually directly adjacent to, it shares the
13 property line, the ATF Building?

14 MR. FREEMAN: Well, the ATF is
15 across 2nd Street to the west.

16 CHAIRPERSON GRIFFIS: Right. Of
17 course it is. Okay. 2nd is right there.
18 Good. Exhibit B?

19 MR. FREEMAN: Exhibit B is a
20 zoning map.

21 CHAIRPERSON GRIFFIS: Exhibit C
22 are the drawings?

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1 MR. FREEMAN: The plans and
2 elevations.

3 CHAIRPERSON GRIFFIS: Geez, okay.

4 MR. FREEMAN: Why don't we come
5 back to Exhibit C? Exhibit D is the previous
6 letter from DDOT approving the location of our
7 parking entrance and loading access.

8 CHAIRPERSON GRIFFIS: Good.

9 MR. FREEMAN: Exhibit E is the
10 Board's order from July 2006, seven months
11 ago, approving a previous version of this
12 project which will compare the differences of
13 -- as Exhibit F. Exhibit F compares the
14 previous plan to the current plan. As you can
15 see, we withdrew one area of relief, that
16 being the court relief, because we have made
17 our building smaller. We have taken two
18 stories off.

19 We have taken off -- we have
20 reduced the FAR. We have eliminated a number
21 of the rooms, we have reduced the size of the
22 conference space and the amount of retail

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1 space and we have reduced the amount of
2 parking, which is the basis of our variance
3 request. However, the Board approved previous
4 special exception relief to reduce the amount
5 of parking in the previous case.

6 Exhibit G is a case that talks
7 about the basis of economic factors and
8 concerning the practical difficulty. Economic
9 factors are not the only basis that we can go
10 through the construction and the architecture
11 and design issues with respect to our
12 practical difficulty, but I just added that
13 for your review.

14 Exhibit H is a memorandum prepared
15 by Wells and Associates that goes through and
16 does a detailed analysis of our requested
17 parking reduction that examines the amount of
18 parking that we propose to provide as well as
19 the adjacency to the Metro Station, existing
20 bike trail and other public transportation
21 facilities in the neighborhood and concludes
22 that, on page 4, the amount of parking is

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1 sufficient to meet the anticipated demand of
2 our project.

3 Exhibit I is a letter that we
4 prepared in consultation in working with
5 Commissioner Pernell of the ANC, as well as
6 the full ANC outlining any number of
7 transportation amenities that we have proposed
8 to provide with respect to this project. And
9 we have committed to doing these things. They
10 are consistent with DDOT's report with one
11 exception and that is Exhibit I. We filed a
12 copy of that letter as well, and those items
13 are also listed in the ANC's report.

14 Exhibit J is a memorandum prepared
15 by Clark Construction that discusses the
16 construction practical difficulties with
17 respect to going down deeper. And I can just
18 talk about that briefly. Because of the
19 triangular shape of our site, in order to
20 construct all of the required parking spaces
21 within our property line, a number of our
22 parking spaces are located in vault space.

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1 They are not any different. A
2 person coming in wouldn't know that they are
3 in vault space. But a number of them are a
4 vault parking space. In order to meet the
5 requirement, we would have to go down at least
6 two to three levels just to provide 66 parking
7 spaces, where, in effect, we're providing 55,
8 which is within 25 percent. We're only
9 seeking a 20 percent variance in terms of the
10 raw number of parking spaces.

11 Exhibit K, which --

12 CHAIRPERSON GRIFFIS: And I'm
13 sorry, the vault parking spaces, obviously,
14 aren't going toward the count of those that
15 are required?

16 MR. FREEMAN: They are not.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. FREEMAN: I think we have 23,
19 what we call, self-parking zoning compliant
20 parking spaces.

21 CHAIRPERSON GRIFFIS: Right.
22 That's shown pretty well.

1 MR. FREEMAN: Let me just confirm
2 that number. We get our numbers mixed up. We
3 have 32. I'm sorry. We have 32 zoning
4 compliant and 23 located in either the vault
5 or in tandem, in a tandem situation.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. FREEMAN: With respect to your
8 question previously about where we are located
9 in relation to the Residential Zone, Exhibit
10 K is a diagram that was prepared by our civil
11 engineer that shows the radius of our property
12 within the R-4 Zone. What you can see from
13 that diagram is that only a small portion of
14 our project is within that Residential Zone.

15 And actually an interesting part,
16 if you read the regulations it says "no part
17 of your building has to be within," and a
18 small, very small part of our building is
19 within that 800 foot.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. FREEMAN: Most of that is open
22 space, meaning a Metro Station, the canopy and

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1 the outdoor pedestrian area. So technically,
2 there is an argument that we might be entitled
3 to that 25 percent reduction automatically,
4 but we decided to come here just to be
5 straightforward on that.

6 Exhibit L is a list of all of our
7 testimony, our outlines of witness testimony.

8 CHAIRPERSON GRIFFIS: Good.

9 MR. FREEMAN: Exhibit M are the
10 two letters of supported filed by the ANC.
11 The first one was filed by the then Chairman,
12 Mr. Mark Dixon. And the second letter which
13 is behind the blue pages was filed more
14 recently by the new ANC Commissioner. What's
15 important to note is that both letters
16 strongly support the project and I think
17 that's evident from reading the letters.

18 CHAIRPERSON GRIFFIS: Absolutely.

19 MR. FREEMAN: Exhibit -- I'm
20 sorry. The letters of support, both letters
21 of support from the Near Northeast Citizens
22 Against Crime and Drugs, which again both

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1 support our project.

2 And Exhibit O, we always like to
3 file just an updated zoning computation form,
4 since the project, obviously, developed a
5 little since we originally filed our
6 application.

7 CHAIRPERSON GRIFFIS: Perfect.
8 Appreciate that. I would not that Exhibit 30
9 in our record, our Exhibit 30, actually has
10 most of the exhibits, including the ANC, the
11 resolution from Commissioner Pernell and the
12 letter. So all of that has been read and
13 reviewed and so it's appropriate to look at
14 the additional information that we now have in
15 front of us. But with that, let's move
16 quickly ahead.

17 MR. FREEMAN: When we were talking
18 about the Marriott letter and the things that
19 we have committed to, I don't know if you have
20 in front of you the DDOT report, which
21 supports our parking variance, we agreed with
22 everything that they have recommended, other

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1 than the two -- what we generally refer to as
2 Zipcar or Flexcar spaces.

3 Due to the practical operation of
4 the garage, it's going to be a controlled
5 garage without access to the general public,
6 so we're not in a position to be able to
7 provide two Zipcar spaces within the parking
8 garage, because it's a private, valet-only
9 garage. And the way a Zipcar works is anybody
10 within 50 miles, 30 miles of the site would,
11 theoretically, be able to go into our parking
12 garage to access the Zipcar parking spaces.

13 Our position is that the parking
14 we provided is sufficient as well as the
15 transportation demand amenities that we
16 specified in our letter and as agreed upon
17 with the ANC.

18 CHAIRPERSON GRIFFIS: Okay.
19 Questions?

20 VICE CHAIR MILLER: I just want to
21 follow-up on what you just said, because I
22 don't totally understand why you can't set

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1 aside spaces for a Zipcar or Flexcar
2 arrangement. Can't the owner of the garage be
3 informed to let those cars in?

4 MR. FREEMAN: My -- our
5 understanding of how the Zipcar/Flexcar
6 process works and we can have our expert,
7 Chris Kabatt of Wells and Associates, talk
8 about it a little more. Our understanding is
9 that you sign up for a Zipcar space. You go
10 on line to find out where a Zipcar space is
11 located and the person who wants to use that,
12 get that car will just go to the site.

13 The owner of the property doesn't
14 have any control over who signs up for Zipcar.
15 They don't have any control over who comes to
16 try to rent the car. So as the owner, we
17 wouldn't have any control over who ultimately
18 wanted to access that garage or what they
19 would want to do in that garage in order to
20 access that Zipcar space.

21 In terms of the patrons, the
22 patrons are not -- I mean, the patrons of the

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1 hotel are going to have cars or some other
2 mechanism in order to access that, the parking
3 garage, in order to be clearly identifiable.
4 But, you know, I could walk in there and say
5 I want to get a Zipcar and that might not
6 necessarily by my intent.

7 So it's really a security concern
8 and I think our traffic consultant in speaking
9 with the Zipcar people said that they were not
10 aware of any Zipcar within any hotel or retail
11 type of establishment.

12 CHAIRPERSON GRIFFIS: Because
13 there is no publicly accessible parking space?

14 MR. FREEMAN: Right. It's a
15 private parking.

16 CHAIRPERSON GRIFFIS: And there is
17 no place in the -- even at the surface area
18 that -- towards the entrance?

19 MR. FREEMAN: As we said earlier,
20 ATF doesn't want cars just sitting on 2nd
21 Street, so that's the problem with having that
22 on 2nd Street.

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1 CHAIRPERSON GRIFFIS: Good. Any
2 other questions right now? Let's go ahead and
3 highlight any other elements if need be. I
4 think the parking is pretty straightforward in
5 my mind. We can get into the detail of that,
6 if need be. The roof structure, I think we
7 just need to point out just quickly through
8 that and then, of course, the rear yard just
9 point out on the plan how it is setting and
10 the specifics of it.

11 MR. FREEMAN: Okay. We can go
12 through those. With respect to the penthouse
13 structure, I'm going to look at pages -- if I
14 can have our architect come up to get the
15 plans set up? But with respect to the
16 penthouse, we're looking at Sheet 6 and 7 of
17 our plans. Why don't we do this, we'll have
18 Steve Sher, our expert in zoning and land use,
19 go through each of the areas of relief.

20 CHAIRPERSON GRIFFIS: I think
21 that's excellent. Let me just for
22 clarification, it's the setback requirements

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1 on the penthouse structure right at the --
2 kind of at the elbow of the building. Is that
3 correct?

4 MR. FREEMAN: Yes.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. FREEMAN: It's just that one
7 portion of the penthouse.

8 CHAIRPERSON GRIFFIS: Okay. Good.
9 Yes?

10 MR. SHER: Mr. Chairman, Members
11 of the Board, for the record, my name is
12 Steven E. Sher, the Director of Zoning and
13 Land Use Services with the Law Firm of Holland
14 and Knight. As the Board indicated at the
15 outset, we have three areas of relief. On the
16 penthouse, the requirement is that the roof
17 structure be setback 1:1 above the level of
18 the roof upon which it is located.

19 Our roof structure is 15 feet
20 high, requiring a 15 foot setback. As you can
21 see, if I had my laser pointer I would point,
22 well, let me get it, so I can point. Excuse

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1 me one second. The building above the level
2 of the second floor is basically, I'll loosely
3 call it, an L-shape with the structure going
4 along and parallel to Florida Avenue and along
5 and parallel to 2nd Street.

6 This is the roof structure plan
7 and it is at this location only where, as the
8 Chairman described, we have the elbow of the
9 connection between the two wings of the
10 building where we don't meet the setback
11 requirements. This is the elevator core for
12 the building. And as you enter from 2nd
13 Street, there is an entrance lobby on the
14 first floor and then reception desk and then
15 you get to the elevator core going up.

16 That constrains the location of
17 the roof structure. And so when you get to
18 the roof, at this point, we don't meet the
19 setback requirement. It is solely a function
20 of the operating characteristics of the
21 building.

22 CHAIRPERSON GRIFFIS: Okay.

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1 MR. SHER: On the rear yard, this
2 is a corner lot in a C-3-C District. We are
3 able to provide a court in lieu of a rear yard
4 on a corner lot. And what we have in this
5 situation is a court at the south end of the
6 building in this location here. The court has
7 to start no higher than 20 feet above the
8 measuring point. And the measuring point, of
9 course, is on -- on 2nd Street is at about
10 elevation 55.

11 The court is filled or occupied in
12 part by facilities related to the entrance to
13 the Metro Station, including a canopy and
14 other things that will extend out over that
15 area. That canopy is at an elevation of about
16 27 feet above the measuring point. The court
17 is wide enough to meet the minimum width
18 requirements based on the height of the court,
19 but because it starts 27 feet above the
20 measuring point, rather than 20 feet above the
21 measuring point, we technically do not have a
22 complying court in lieu of a rear yard.

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1 The regulations allow the Board to
2 approve a rear yard of less than the normal
3 requirement. In fact, it could be eliminated
4 in its entirety as a special exception
5 pursuant to sections 774.3 through 774.6. The
6 basic concern of the regulations is twofold.
7 One, if you did not have this open space here,
8 what is the situation with confronting windows
9 on properties facing that side of the
10 building?

11 Well, you don't quite see it here,
12 but the railroad right of way continues on at
13 a diagonal, so when you look due south of this
14 building looking in that direction, says he
15 pointing to the right on the drawing, you go
16 about 600 feet before you get to any building.
17 So there is no conceivable impact, no view
18 into the building. In fact, there are no
19 habitable rooms in this building, because it's
20 a hotel and not an apartment type building, so
21 you wind up with not having that issue in this
22 situation.

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1 The second thing that the
2 regulations talk about is that there be
3 adequate service facilities. The presumption
4 being that those facilities might otherwise be
5 located in the rear yard. But in this case,
6 all of the service comes off of Florida Avenue
7 as internal to the site and the building. In
8 fact, the entrance to the garage is here. The
9 loading area is internal to the building here.
10 And the garage continues down in that
11 location.

12 So the rear yard has no impact or
13 the reduction in the rear yard in that 7 foot
14 volume has no impact on the service functions
15 of the building.

16 CHAIRPERSON GRIFFIS: So you're
17 saying if the canopy that was projecting from
18 the building was at or below 20 feet, it
19 wouldn't interfere with the calculation of the
20 court and would be potentially --

21 MR. SHER: It would be a
22 potentially complying situation.

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1 CHAIRPERSON GRIFFIS: --

2 complying? And the reason it is at 27 feet is
3 to, one accommodate, what, the band of the
4 building, but also so that it doesn't
5 interfere with the Metro canopy?

6 MR. SHER: Yes. Give me the west
7 elevation.

8 CHAIRPERSON GRIFFIS: From that
9 entrance point to the hotel there are stairs
10 that are showing on the drawings. That's a
11 direct access to the Metro site.

12 MR. SHER: Correct.

13 CHAIRPERSON GRIFFIS: Is that
14 correct?

15 MR. SHER: Okay. West elevation
16 of the building. 2nd Street is in front of
17 you, Florida Avenue to the left.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. SHER: South to the right.
20 This is that area where the stairs go up to
21 the level of the Metropolitan Branch Trail,
22 which is the bike trail that runs north

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1 through and along the railroad right of way at
2 that point.

3 CHAIRPERSON GRIFFIS: Wow.

4 MR. SHER: This is the top of the
5 canopy. You can see it is just about the
6 level of the third floor of the building. The
7 elevation is 55. This is about 82. So we're
8 at 27 feet above the measuring point, rather
9 than only 20.

10 CHAIRPERSON GRIFFIS: Excellent.
11 Okay. That's pretty clear. Actually, our
12 last rendering in the submission, I think,
13 shows it well. It doesn't have a page number,
14 but it's dated January 25, '07, for Board
15 Members perspective. I think it shows,
16 obviously, perspective and it's kind of an
17 artistic rendering, but I think it shows the
18 relationship of that to the Metro and also the
19 stairs behind. Okay. Pretty clear on mine.
20 Yes, there is it.

21 MR. SHER: Okay.

22 CHAIRPERSON GRIFFIS: Okay.

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1 Anything else then?

2 MR. SHER: Not on that. The last
3 point is the parking variance.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. SHER: And it comes about
6 basically because of the shape and size of the
7 site. What happens is we have one level of
8 parking, the parking plan, that has a total of
9 55 spaces. We're required to have a minimum
10 of 69, based on the hotel and some non-hotel
11 retail that's also in the building. And what
12 happens is, as I mentioned before, you wind up
13 coming into the building off Florida Avenue.
14 The ramp comes down and makes a fairly tight
15 turn here and then ends up at this point here.
16 This is one level of parking.

17 These parking spaces can't count,
18 because they are in the vault. These parking
19 spaces are not countable, because they are
20 stacked and you have to access another space
21 to get to them, as well as some of these in
22 this corner. If you wound up going down

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1 further to try and get more parking in there,
2 what happens is you wind up losing all of
3 these spaces on this level here as the ramp
4 would have to wrap around and continue going
5 down.

6 So you wind up in at least in two,
7 I'm going to say two and a half to three,
8 levels to go down to get the minimum number of
9 parking spaces of 69. If you don't count
10 spaces that are stacked, that are in the
11 vault, you don't count the spaces that are
12 stacked, which you would have to lose here
13 anyhow, because the ramp continues on down
14 there, you wind up with a much deeper
15 excavation required in order to get the
16 conforming number of spaces.

17 It's not quite as bad as one
18 project where we had where I think you wound
19 up with basically one or two spaces per level,
20 because the site was so tight and the ramp
21 just kept eating the whole thing up, but this
22 one just winds up going down much further than

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1 you need. And given the report of Wells and
2 Associates, it would be providing spaces that
3 we just don't need.

4 Given the demand for the parking,
5 given the cost to provide them, given the
6 transportation demand management measures that
7 we have agreed to with the ANC and the
8 Department of Transportation, we think that we
9 have demonstrated that we are entitled to the
10 variance here to provide the 55 spaces instead
11 of the 69 that are otherwise required.

12 CHAIRPERSON GRIFFIS: And why
13 isn't the rest of the site being utilized in
14 terms of parking?

15 MR. SHER: Well --

16 CHAIRPERSON GRIFFIS: Especially
17 away from Florida Avenue.

18 MR. SHER: -- in this area here,
19 you have the Metropolitan Branch Trail and the
20 Metro Rider where there is an easement. We
21 can't go on to there.

22 CHAIRPERSON GRIFFIS: Okay.

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1 MR. SHER: And I think what
2 happens when you get to here is --

3 CHAIRPERSON GRIFFIS: Are those
4 pylons showing? Is that what's showing there?

5 MR. SHER: These?

6 CHAIRPERSON GRIFFIS: Those dashed
7 lines.

8 MR. WEBB: Those would be the
9 supports.

10 MR. SHER: The trail is up in the
11 air, at that point.

12 CHAIRPERSON GRIFFIS: Right,
13 right. Okay. And then on the right side?

14 MR. WEBB: On the right side,
15 these items here?

16 CHAIRPERSON GRIFFIS: Yes, why
17 wouldn't that area be parked?

18 MR. WEBB: This is the --

19 MR. SHER: You've got to come and
20 talk here. Identify yourself, too.

21 MR. WEBB: My name is Larry Webb.
22 I'm with Law Kingdon Architects.

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1 CHAIRPERSON GRIFFIS: Excellent.

2 MR. WEBB: The area that you are
3 referring to on the south end of the site
4 there is basically going to be occupied by the
5 Metro Plaza area. So the Metro Plaza would be
6 right along in this area right here and where
7 you see these circles here would be where the
8 Metro canopy would be.

9 CHAIRPERSON GRIFFIS: I see.
10 Okay. And succinctly, why wouldn't you
11 excavate that portion to park it?

12 MR. WEBB: Well --

13 MR. FREEMAN: Well, there is the
14 existing Metro stair and elevator there, so we
15 can't excavate, because there is an existing
16 WMATA easement there that we can't impact.

17 CHAIRPERSON GRIFFIS: Okay. So
18 the easement carries over onto that area also?

19 MR. FREEMAN: Yes.

20 CHAIRPERSON GRIFFIS: Okay.
21 That's pretty clear. All right. Let's move
22 ahead. So, Mr. Sher, the applicant -- you are

1 addressing this parking and you're saying that
2 the deeper you go, frankly, the efficiency is
3 added or the inefficiency is added to? The
4 deeper you go doesn't add, you know,
5 excellently put. Diminishing returns the
6 farther down you go or the cost is getting
7 more and more, of course.

8 MR. SHER: Cost per spaces gets
9 higher for spaces that we don't believe we
10 need.

11 CHAIRPERSON GRIFFIS: And the last
12 piece that actually is in here also, but you
13 have indicated that the fact of the matter is
14 your expert and as one might say implicitly in
15 the DDOT and also the ANC's position is you
16 don't need the parking. In fact, what better
17 location is there to encourage other type of
18 transportation than the vehicle as opposed to
19 encouraging public transportation when you are
20 right on top of the Metro Station.

21 MR. SHER: We're as close as we
22 can get.

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1 CHAIRPERSON GRIFFIS: Okay.

2 Right. Okay. That's pretty well said. Any
3 other questions, clarifications on that? Yes?

4 VICE CHAIR MILLER: Could you just
5 refresh my memory how you determined the
6 number of spaces you needed?

7 MR. SHER: The number of spaces we
8 need is based on two different uses in the
9 building, hotel and retail. The hotel
10 requires one parking space for each four rooms
11 usable for sleeping, plus one space for each
12 300 square feet in either the largest function
13 room or exhibit space. The retail requires
14 one space for each 750 square feet of gross
15 floor area in excess of 3,000.

16 We have 218 hotel rooms that
17 requires 55 spaces where the largest meeting
18 room is 1,600 square feet, that requires five.
19 The hotel, therefore, requires 66. We have
20 9,875 square feet of retail. Take 3,000 off
21 that and divide it by 750, you get nine.
22 Total 69 spaces for the building.

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1 VICE CHAIR MILLER: That's the
2 number that is required?

3 MR. SHER: Required.

4 VICE CHAIR MILLER: But I think I
5 recall that there is something like really you
6 only need 50 percent of that for certain
7 reasons, but you don't need all that's
8 required. Is that not right?

9 MR. SHER: Well, we could ask for
10 a special exception to reduce by 25 percent,
11 which would get us down to about the level we
12 are talking about here, but we can't do that
13 for a couple of reasons. One, because some of
14 the spaces are in the vault. Two, because we
15 are within 800 feet, as Mr. Freeman was
16 describing earlier, which is one of the
17 prerequisites for getting that relief as a
18 special exception, rather than as a variance.

19 CHAIRPERSON GRIFFIS: I had a
20 question. In looking at the retail, first of
21 all, where is it just specifically? But more
22 importantly, as this is part -- when do you

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1 calculate it differently, essentially, as an
2 accessory to hotel use or as a retail stand-
3 alone or do you ever differentiate that in
4 your parking calculation?

5 MR. SHER: In this case, this is
6 the first floor plan of the hotel. The hotel
7 main entrance is here on 2nd Street with the
8 lobby and so forth. There is one retail area
9 located to the north of that and then a larger
10 retail area located to the south that sort of
11 wraps around this exit stair as well.

12 In addition to that, there is a
13 hotel restaurant, which is required under the
14 regulations for the definition of a hotel.
15 That is not counted within this area that's
16 retail.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. SHER: We can see these things
19 of being likely to be independent of the hotel
20 operation. They have separate entrances from
21 the street. You can see them on the plan.
22 They are not going to be -- they may be food

1 service, most likely. They may have other
2 elements of retail in there.

3 CHAIRPERSON GRIFFIS: Sure.

4 MR. SHER: I hate to use -- I'll
5 say coffee shop without saying what kind of
6 coffee shop.

7 CHAIRPERSON GRIFFIS: Good.

8 MR. SHER: Sort of perhaps ideally
9 here as you come off the Metro you grab your
10 coffee and go.

11 CHAIRPERSON GRIFFIS: Sure.

12 MR. SHER: But also given the
13 proximity of other office developments and
14 other daytime population in the neighborhood,
15 we think food service is a likely draw in that
16 neighborhood. And so as you come off the
17 Metro and go up 2nd Street, there is the
18 access. There are plenty of hotels that have
19 commercial adjuncts to the hotels. They are
20 generally located within the hotel and not
21 commercially accessible directly from the
22 street.

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1 I suspect there are probably some
2 which would be adjuncts that do have street
3 access, but if you think about hotels like the
4 Hilton or the Marriott, Wardman Park or other
5 large hotels, their commercial adjuncts tend
6 to be internal off the interior hallways and
7 lobbies of the building.

8 CHAIRPERSON GRIFFIS: Those are
9 often in the higher density Residential Zones
10 also though.

11 MR. SHER: Right. Yes, and so
12 they -- in order to be there, they have to be
13 commercial adjuncts.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. SHER: Because retail is not
16 otherwise permitted.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. SHER: This is C-3-C. Retail
19 is permitted as a matter-of-right.

20 CHAIRPERSON GRIFFIS: Okay. So
21 just directly then, is there any way where you
22 would ever calculate -- is the retail

1 calculated differently if it's adjunct to the
2 hotel or if it's stand-alone?

3 MR. SHER: If it's a commercial
4 adjunct to the hotel, it doesn't get charged
5 for parking at all.

6 CHAIRPERSON GRIFFIS: Right. So
7 what you have done is taken a much more
8 conservative, much more demand for parking
9 calculation and saying look you're looking at
10 these as independent, although you may well
11 have made a case that you are not making today
12 that these were, my terminology, but,
13 accessory to the hotel.

14 MR. SHER: If they were, as I said
15 before, the parking requirement is based on
16 rooms.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. SHER: And sleeping rooms.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. SHER: And function and
21 exhibit space, but not commercial adjuncts.

22 CHAIRPERSON GRIFFIS: Good. Yes,

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1 and I'm not making judgment on which way is
2 correct or not. I just wanted clarification
3 of that, because I thought it was interesting
4 that you pulled out this retail, which let me
5 step back and say, first of all, I think
6 that's an excellent idea. And it really
7 serves the urban fabric and the design of this
8 very, very well, rather than making this kind
9 of an island on its own that people just come
10 in to town, they stay at the Marriott, they
11 eat there and then they leave.

12 Obviously, this makes it a face
13 and an interaction with the overall existing
14 area, but also the developing area. So I
15 think it's well done. All right. I don't
16 have any other questions, clarifications on
17 the parking. Yes?

18 VICE CHAIR MILLER: I just want to
19 follow-up on my earlier question, because I
20 found where it came from. And it probably
21 should be directed to Mr. Kabatt and it's in
22 the Wells and Associates' December 13, 2006

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1 memo, in which it says that the study assumes
2 non-auto mode split of 50 percent for the peak
3 hour vehicle trips.

4 And it assumes that at least half
5 of the hotel patrons and employees will access
6 the site by public transportation or some
7 other mode. My question is it sounds logical
8 to me, but I'm wondering if there is more to
9 where this assumption comes from in making
10 those predictions.

11 MR. SHER: We could let Mr. Kabatt
12 answer that, but those are our studies that
13 have been done over many years on most --
14 particularly in downtown. The original ones
15 go back to, what, the '80s?

16 MR. KABATT: Hi, I'm Chris Kabatt
17 with Wells and Associates. And we began our
18 analysis looking at the WMATA standards for
19 non-auto mode splits that are approximate to
20 Metro Stations. Looking at those standards
21 and U.S. Census data and other parking
22 generators for urban areas, we estimate that

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1 50 percent of the users would use some other
2 mode of transportation than the private
3 vehicle or a vehicle.

4 Now, the other 50 percent that
5 would use a passenger vehicle, we estimate
6 that that would break down even. A percentage
7 of that would use taxis, somewhere around 30
8 percent, and, therefore, only about 20 percent
9 of the actual hotel users would use the
10 private vehicle.

11 VICE CHAIR MILLER: So I guess my
12 question is are these assumptions based on a
13 history at other hotels at Metro stops or, you
14 know, that is proven to be reliable?

15 MR. KABATT: Yes, they are.

16 VICE CHAIR MILLER: Okay. Thank
17 you.

18 CHAIRPERSON GRIFFIS: Yes? Okay.
19 Anything else? Any other questions from the
20 Board? Anything else for us, at this time?

21 MR. FREEMAN: We are prepared to
22 rest on the record, if the Board is so

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1 inclined to issue a decision.

2 CHAIRPERSON GRIFFIS: Let's get
3 through. I think we're going to get a lot of
4 information from OP in their review. Also, I
5 want to get through the DDOT. But let me ask
6 then now, does the ANC have any cross
7 examination questions of any of the witnesses
8 or any of the presentations?

9 MS. THOMAS: No.

10 CHAIRPERSON GRIFFIS: None. Mr.
11 Pernell? Excellent. Let's give him a chair.
12 Okay. Why don't you come on this side then
13 and just sit there and that will be perfect.

14 MR. PERNELL: The concern that I
15 have is that we understand that ATF mentioned
16 that they did not want any cars idle on 2nd
17 Street and I have been an advocate to open up
18 2nd Street for the last 12 years. The
19 question is is that have there been clarified
20 a difference between idle and drop-off for
21 patrons that's coming to the hotel?

22 CHAIRPERSON GRIFFIS: Excellent.

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1 MR. PERNELL: Because there are
2 some people that are sitting in the car with
3 the engine on waiting on things to come out or
4 individuals to come out to the cars.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. PERNELL: So and then the
7 second issue that I had to answer was is this
8 going to be -- this instruction is going to be
9 given to Homeland Security and to the
10 Metropolitan Police Department, which are
11 right there on 3rd Street at 1205 -- 1215 3rd
12 Street under the direction of McGuire, who
13 used to be the Commander of the 1st District.

14 CHAIRPERSON GRIFFIS: Excellent.
15 Good questions. So your question is is there
16 anticipation that is going to be idle and/or
17 standing cars dropping and picking up, and if
18 so, is there going to be coordination with ATF
19 and Metropolitan Police?

20 MR. PERNELL: Right.

21 CHAIRPERSON GRIFFIS: So we don't
22 have SWAT Teams jumping in on the street the

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1 minute someone is dropping off and getting
2 back out of the car.

3 MR. PERNELL: Right. On 3rd Street
4 I get it all the time.

5 CHAIRPERSON GRIFFIS: Good, good,
6 good.

7 MR. FREEMAN: With respect to the
8 first question, we're going to have a drop-off
9 zone, so they won't just be parked on the
10 street. The reference with respect to ATF was
11 in terms of having Zipcar spaces on 2nd Street
12 that would be unmarked that would be sitting
13 there.

14 CHAIRPERSON GRIFFIS: Where is
15 your drop-off area?

16 MR. FREEMAN: Our drop-off area is
17 on 2nd Street.

18 CHAIRPERSON GRIFFIS: Is it
19 showing on the site plan now?

20 MR. FREEMAN: I'm trying to find
21 it. Help me out, Larry. Do you want to?

22 CHAIRPERSON GRIFFIS: Yes, I don't

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1 see it. Is that the drawing that it would be
2 shown on? Looking at the first floor plan.
3 There is no curb cut. I mean, you're not
4 pulling into, there's not like a pull off
5 area.

6 MR. FREEMAN: There is not a lay-
7 by, no, sir.

8 CHAIRPERSON GRIFFIS: Oh, okay.
9 All right. So I think that would work or on
10 our site plan it's not listed. The first
11 floor plan actually is what I have listed.

12 MR. WEBB: If I could just talk to
13 that real quickly here. Basically, what we
14 are going to do is we're investigating a two
15 bay lay-by that is going to be located right
16 off of 2nd Street right here at the entry.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. WEBB: Right now.

19 CHAIRPERSON GRIFFIS: But it's
20 going to farther out, because that's the curb
21 line showing on the bottom of the drawing,
22 isn't it?

1 MR. WEBB: Correct. That's going
2 to be right in this area right here.

3 CHAIRPERSON GRIFFIS: Okay. So
4 then maybe 40 or 60 feet right in front,
5 centered off of the entrance where that canopy
6 that will have no parking, you know, loading
7 and unloading for hotel use or 15 minute
8 parking, I think, we have seen before.

9 MR. WEBB: Correct.

10 CHAIRPERSON GRIFFIS: Is that what
11 is anticipated?

12 MR. WEBB: Correct.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. WEBB: It will be able to
15 accommodate, basically, two --

16 CHAIRPERSON GRIFFIS: Is that
17 coordination going to happen with the
18 authorities in the area on that?

19 MR. WEBB: Yes.

20 CHAIRPERSON GRIFFIS: Okay.
21 Excellent. Great questions, Mr. Pernell.
22 Thank you very much. Anything else? Nothing

1 further? Very well. Let's move ahead then
2 and move into the Office of Planning's report.
3 I would make note that it is Exhibit 33. The
4 Office of Planning is recommending approval of
5 this application. A very good morning to you.

6 MS. THOMAS: Good morning, Mr.
7 Chairman, Members of the Board. This case is
8 similar to Application 17505, which was
9 approved by the Board, and OP supported that
10 application. The only difference here being
11 is the applicant and the height of the hotel
12 being reduced by two floors with a reduced
13 FAR.

14 OP supports this proposal as we
15 believe the special exception criteria have
16 been established again in this case. The
17 relief requested from the rear yard and roof
18 structure requirements are a direct result of
19 the site's configuration and its existing
20 public facilities, including the elevated back
21 yard, and the Metro Station entrance, which
22 cannot be removed from their location.

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1 Therefore, the requested relief
2 for the proposed roof structure and rear yard
3 reduction are a result of the most efficient
4 design that can be accommodated under the
5 developable area.

6 I would just like to make a
7 correction. Section 411.3, which I referred
8 to in my report, is not relevant to this
9 application. And that involves the single
10 enclosure. The previous application had two
11 enclosures, I believe, and this should have
12 been removed from this application.

13 CHAIRPERSON GRIFFIS: Oh, 411?

14 MS. THOMAS: Yes, 411.3.

15 CHAIRPERSON GRIFFIS: Okay. I was
16 thinking of 4011.3.

17 MS. THOMAS: Oh, no. I'm sorry.

18 CHAIRPERSON GRIFFIS: And
19 wondering why we had 40 Chapter in it.
20 Excellent. Okay. Good clarification. I
21 appreciate that. Yes?

22 MS. THOMAS: Just to continue.

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1 The parking for this use meets the intended
2 Zoning Regulations. Due to the variety of
3 transit options, the traffic impact would not
4 be significant. The applicant has worked with
5 the neighborhood to devise a Transportation
6 Management Plan in lieu of the provision of
7 the required number of spaces and, therefore,
8 relief could be granted without substantial
9 detriment to the public and without
10 substantially impairing the intent and purpose
11 of the integrity of the Zoning Regulations
12 and, therefore, we would support approval of
13 the application as submitted. Thanks.

14 CHAIRPERSON GRIFFIS: Excellent.
15 Thank you very much. Appreciate it.
16 Questions? Clarification of the Board? Does
17 the applicant have any cross examination of
18 the Office of Planning?

19 MR. FREEMAN: No, sir.

20 CHAIRPERSON GRIFFIS: ANC? Mr.
21 Pernell? Very well. Let's move ahead to any
22 other Government reports. Is the DDOT

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1 representative present here today? Okay. And
2 I'm assuming DHCD is also not present. Any
3 representative from DHCD? We do have a report
4 from both of those. We'll make note of those.

5 Let's talk about just quickly
6 review of the DDOT report and analysis. The
7 applicant has addressed one of those elements
8 that was put forth by DDOT. First of all, I
9 think it's a phenomenal assessment of the
10 application by the Department of
11 Transportation and I know the Board
12 appreciates this.

13 I think it's a great idea to have
14 some sort of share-car piece, as my question
15 went to whether there was an on-site
16 capability for a public space to be provided.
17 The applicant's answer is no. I don't think
18 that precludes the applicant from working with
19 Zipcar or whatever other share-car and having
20 a public space provided out on the street.

21 But I don't think that would fall
22 within the authority or jurisdiction of this

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1 Board to address that. But I certainly, as an
2 individual Board Member, would support that
3 if, of course, everyone else of the Agency
4 surrounding were also inclined to support it.

5 Especially right at a Metro
6 Station, it seems to make an awful lot of
7 sense, but that's a larger field and a larger
8 position. Any other questions, comments?
9 Yes, Ms. Miller?

10 VICE CHAIR MILLER: I was trying
11 to look over DDOT's conditions and the
12 applicant's with respect to parking. I have
13 a question for the applicant. Is there a
14 provision for a shared space for hotel
15 employees and guests?

16 MR. FREEMAN: Yes, there -- we
17 will be -- if you take a look at our letter,
18 the Marriott letter that we submitted, which
19 I was just looking at, or actually if you look
20 at DDOT's report under 1(c), we're going to
21 offer carpool matching service to help people
22 carpool and park and reduce the need for

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1 employee parking on the site amongst the other
2 things that we're doing in terms of reducing
3 the demand for parking. But we have not, as
4 of yet, designated a number of parking spaces
5 just for employees.

6 VICE CHAIR MILLER: I guess my
7 question goes to does that contemplate like a
8 Zipcar, for instance, not Zipcar of the
9 company, the company Zipcar, but that concept
10 being designated, a space for that kind of
11 car, for employees to come and go or hotel
12 guests to use to come and go?

13 Do you know what I'm saying? I
14 understand that your concern about a Zipcar in
15 general was control as to who can enter the
16 parking lot and that it should just be for
17 hotel guests and employees, correct?

18 MR. FREEMAN: If I understand your
19 question correctly, we have not designated an
20 area specifically for employees, primarily
21 because at any given shift, I think, we have
22 at most 20, 25 employees on-site. We

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1 anticipate that they would be traveling via
2 Metro and not necessarily parking in the
3 garage.

4 VICE CHAIR MILLER: No, I don't
5 think that's -- that's not what I mean. What
6 I understand the Zipcar concept to be is that
7 there is a space and a car designated for
8 people to use, to share. And I understood you
9 to say you wouldn't want to have that in this
10 garage, because you have no control over who
11 in the public might be entering the garage.

12 So I was just wondering if that
13 concept was contemplated just for employees of
14 the hotel and guests of the hotel so that you
15 would know who was using that space.

16 MR. FREEMAN: In terms of the
17 employees, you would know who the employees
18 are, but the employees would be at the hotel
19 and wouldn't need a car to travel during the
20 day off-site. In terms of the guests, you
21 could theoretically do it for the guests, but
22 our traffic expert's opinion is that any

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1 guests coming to the site is going to come
2 either via Metro to the extent that they have
3 to go to a meeting off-site. They are going
4 to --

5 CHAIRPERSON GRIFFIS: But again --

6 MR. FREEMAN: -- catch Metro or a
7 taxi.

8 VICE CHAIR MILLER: Okay.

9 MR. FREEMAN: And not take a
10 Zipcar.

11 CHAIRPERSON GRIFFIS: There's a
12 little perhaps miscommunication.

13 VICE CHAIR MILLER: No, no.

14 CHAIRPERSON GRIFFIS: But I think
15 what you are going to is programmatically, I
16 think, there are also in the Marriott letter
17 of December 13th offering the vanpool and the
18 carpool matching services, which might go more
19 programmatically to what you are talking
20 about, the share-car doing.

21 VICE CHAIR MILLER: Based on Mr.
22 Freeman's last response, I understand that

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1 there wouldn't be such a need in this program
2 for a Zipcar type of thing for employees. And
3 therefore, that's why it's not one of these
4 conditions.

5 CHAIRPERSON GRIFFIS: Gotcha. All
6 right.

7 VICE CHAIR MILLER: Okay. So I
8 understand it now that we have had that
9 discussion. And that the carpool and van-
10 sharing is the more appropriate way to address
11 employees' parking needs.

12 MR. FREEMAN: Yes.

13 VICE CHAIR MILLER: Thank you. I
14 guess one other clarification. Is the
15 applicant fine with all of the conditions
16 proposed by DDOT, except for the Zipcar one?

17 MR. FREEMAN: Yes, we agree to
18 Conditions 1 through 4, but not what's there,
19 the paragraph that begins with "finally."

20 VICE CHAIR MILLER: Thank you.

21 BOARD MEMBER MANN: Within how
22 many blocks of the hotel is there a full-time

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1 on-street parking?

2 MR. FREEMAN: It's five to six
3 blocks away. We are bounded to the, at least,
4 east by the Metro tracks and on the other
5 side, I think, walking distance it's a number
6 of blocks. Well, let's have our traffic
7 expert answer that.

8 BOARD MEMBER MANN: For the
9 Chairman's benefit, I was asking with how many
10 blocks of the hotel there is full-time on-
11 street parking. To get to your point that you
12 raised earlier that perhaps the applicant
13 should just encourage the shared-car companies
14 to, working with DDOT, put something on the
15 street.

16 CHAIRPERSON GRIFFIS: Good.

17 BOARD MEMBER MANN: I was just
18 curious to see how far away the closest place
19 would be.

20 CHAIRPERSON GRIFFIS: Good
21 question.

22 MR. KABATT: There is on-street

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1 metered parking on, to the west of the site,
2 M and 1st Streets, so that's about a block, a
3 block and a half away.

4 CHAIRPERSON GRIFFIS: On N, you
5 said, right? N?

6 MR. KABATT: M, as in Mark, N as
7 in Nancy.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. KABATT: And 1st Streets.

10 CHAIRPERSON GRIFFIS: Okay.

11 BOARD MEMBER MANN: And that's
12 parking that is available 24 hours a day?

13 MR. KABATT: Yes, it's metered,
14 but it's public parking.

15 BOARD MEMBER MANN: Okay. And as
16 I was saying, I as just exploring the
17 Chairman's comment earlier that perhaps the
18 shared-car companies could be encouraged to
19 work with DDOT to provide places that are
20 still within a reasonable walking distance of
21 the Metro stop.

22 CHAIRPERSON GRIFFIS: Yes, good

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1 point. Okay. Anything else on that from the
2 Board? On any of the Government reports
3 attendant to the application? The DHCD, DDOT,
4 OP, we can bring up again. Very well. Does
5 the applicant have any comments in address of
6 those?

7 MR. FREEMAN: No, sir.

8 CHAIRPERSON GRIFFIS: Okay. Let's
9 move ahead then. I think we're ready for the
10 ANC, if they would like to provide their
11 report.

12 MS. PHELPS: Hello, my name is
13 Anne Phelps.

14 CHAIRPERSON GRIFFIS: Oh, good.

15 MS. PHELPS: My address is 1150 5th
16 Street, N.E.

17 CHAIRPERSON GRIFFIS: Thank you.

18 MS. PHELPS: And I actually, Mr.
19 Chairman, have relatively brief comments to
20 make, just that the Commission is in support
21 of the applicant's request for a variance in
22 parking and the other issues. Our main

1 concern was not to have adverse impact on the
2 neighborhood residential parking and Marriott
3 has worked with us and you see the seven
4 points that we have addressed in our letter.
5 They have incorporated in their presentation
6 as well.

7 And otherwise, we are in complete
8 support.

9 CHAIRPERSON GRIFFIS: Excellent.
10 Thank you very much. Appreciate that. And
11 the seven points, which I think, have been
12 very well laid out and, obviously, supported
13 with DDOT's own analysis. Good. Questions
14 from the Board?

15 BOARD MEMBER ETHERLY: Very
16 briefly, Mr. Chair.

17 CHAIRPERSON GRIFFIS: Yes.

18 BOARD MEMBER ETHERLY: Thank you
19 very much for your testimony, Ms. Phelps.
20 Could you perhaps speak a little bit to just
21 perhaps broadly the general experience that
22 the community has had? This is a fairly new

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1 Metro Station if you will.

2 MS. PHELPS: Um-hum.

3 BOARD MEMBER ETHERLY: What's the
4 experience or what has your experience been
5 with regard to, if you will, commuter-based
6 parking or just parking from non-
7 residentially-based people in the immediate
8 vicinity of that Metro Station?

9 MS. PHELPS: I would say that
10 there has been an adverse impact in terms of
11 commuter parking, but there are relatively few
12 streets that are not zoned.

13 BOARD MEMBER ETHERLY: Okay.

14 MS. PHELPS: So I think there may
15 be just a couple of blocks where it is not
16 zoned parking.

17 BOARD MEMBER ETHERLY: Okay.

18 MS. PHELPS: We have actually seen
19 more impact probably from the school that has
20 just come in, Two Rivers Charter School has
21 just located in our area and we're absolutely
22 thrilled that it is there and couldn't be

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1 happier. But a lot of families are coming in
2 that are within Ward 6 and so they have the
3 legal right to park there all day, but it is
4 a bit of a prickly point with some of the
5 neighbors.

6 But other than that, I would say
7 there is just very few areas that are not
8 zoned at this point.

9 BOARD MEMBER ETHERLY: Okay.

10 MS. PHELPS: So that's not really
11 too much of a problem.

12 BOARD MEMBER ETHERLY: Okay.

13 MS. PHELPS: And I did just want
14 to add while I'm here that the idea of
15 exploring public space for a Zipcar space, if
16 the Commission can be of assistance, I'm more
17 than happy to help.

18 BOARD MEMBER ETHERLY: Excellent.
19 Thank you. Thank you, Mr. Chair.

20 CHAIRPERSON GRIFFIS: Good. Thank
21 you, Mr. Etherly. Excellent point. I think
22 hopefully the representatives will take the

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1 ANC up on that. Ms. Miller, questions?

2 VICE CHAIR MILLER: Good morning.

3 MS. PHELPS: Good morning.

4 VICE CHAIR MILLER: I was just
5 curious, even separate from this proceeding,
6 you know when there are these parking issues
7 that come up. Like we hear about them in our
8 proceedings, but in many cases they are not
9 directly tied to what is at issue before us.

10 MS. PHELPS: Um-hum.

11 VICE CHAIR MILLER: But for
12 instance, with respect to the zone situation
13 and the problems from the charter schools, I'm
14 just wondering is that an issue that you
15 raised with DDOT, by any chance?

16 MS. PHELPS: In terms of like --

17 VICE CHAIR MILLER: In terms of--

18 MS. PHELPS: -- increased
19 enforcement of the zoned parking?

20 VICE CHAIR MILLER: Either that or
21 that it is not working, that the zone
22 situation may not be working because you have

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1 all these drivers coming in and parking on
2 your street.

3 MS. PHELPS: Well, in this
4 particular instance with the school, the
5 school just opened in January and some of the
6 residual effects now are just shaking out.
7 You know, working out how drop-off is going to
8 work and pick-up is going to work. And the
9 school has been really receptive in working
10 with their parents and their staff.

11 I have addressed concerns with
12 them and they have already made adjustments
13 and worked with parents. But in the case of
14 people with zoned stickers for that area,
15 there is nothing really to be done about that.
16 They are allowed legally to park wherever
17 there -- I mean, if they just live on Capitol
18 Hill, they have a Zone 6 sticker. They can
19 park on my block.

20 I certainly did it when I worked
21 on the Hill and lived in near Northeast. So
22 I haven't had a complaint with that. In terms

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1 of commuter parking, if it's not zoned, then
2 there is that limit of however -- it's whether
3 or not DDOT is patrolling. And they have
4 actually increased parking patrols in the
5 last, I would say, 12 to 15 months, I have
6 seen an increase during the day of just a
7 regular driver coming and checking.

8 But I haven't had enough
9 complaints from constituents other than just
10 what happens when something new happens and we
11 have to see how it shakes out and give it a
12 few weeks or a month or two to see how it
13 happens. So we haven't actually approached
14 DDOT yet, because I haven't seen it become
15 that far of a problem.

16 VICE CHAIR MILLER: Thank you.
17 And then in this case, you feel pretty
18 comfortable that this is not going to be a
19 problem, because of all of the conditions and
20 everything that have been worked out?

21 MS. PHELPS: I think that the
22 seven points that we set forward, I think that

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1 if Marriott complies with that, I don't see a
2 problem. I also think one of the -- the vote
3 that was against this, we were 6-1 on this
4 issue, was a primary concern about employees
5 and where were they going to park.

6 And it's my understanding that
7 Marriott meets 61 percent of its employees are
8 District residents. Is that correct? That
9 came up at one of the meetings at least. And
10 with that, with Metro access and the bus
11 access, it's quite a lot of public
12 transportation right there. You couldn't, as
13 he said, be closer to the Metro than they are
14 going to be. We, of course, want to encourage
15 as much Metro use as we can.

16 VICE CHAIR MILLER: Thank you.

17 MS. PHELPS: Um-hum.

18 CHAIRPERSON GRIFFIS: Good. Is
19 that true? Is anyone able to answer that?
20 The amount of employees that would be at this
21 site are District residents?

22 MR. MANNON: There is a

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1 requirement. There is a minimum requirement.
2 I'm not -- I can't say that it's 60 percent.
3 I do know that it is certainly in the range of
4 50 percent or more, that's something that we
5 are well aware of.

6 CHAIRPERSON GRIFFIS: Okay. And
7 that would be the base threshold of the
8 requirement.

9 MR. MANNON: I'm sorry, Robert --
10 my name is Robert Mannon, Senior Vice
11 President, Marriott International.

12 CHAIRPERSON GRIFFIS: Okay. And
13 that's required just based on this particular
14 site or project?

15 MS. PHELPS: I think it was a
16 citywide agreement actually.

17 MR. MANNON: It is a --

18 MS. PHELPS: I shouldn't be
19 speaking for Marriott, but that's just what I
20 remember from the presentation.

21 MR. MANNON: Well, it's a
22 requirement of the approvals that the

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1 Eckington, LLC had in terms of their approval
2 for purchasing the property.

3 CHAIRPERSON GRIFFIS: Right.
4 Okay. And so there is a threshold there which
5 is probably a minimum of 50 percent or more
6 and then perhaps anticipated the draw of
7 employees will increase that. Is that
8 correct?

9 MR. MANNON: The draw of the
10 employees will certainly -- I mean, just the
11 location itself is going to give us a
12 tremendous opportunity to employee people that
13 live right in the neighborhood.

14 CHAIRPERSON GRIFFIS: Right.
15 Okay. Excellent. Thank you very much.

16 MS. PHELPS: Thank you.

17 CHAIRPERSON GRIFFIS: Don't go too
18 quickly. One more question. Ms. Miller?

19 VICE CHAIR MILLER: This is kind
20 of obvious, but I just want to clarify.
21 Basically, when you were referring to seven
22 points, I didn't have in front of me.

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1 MS. PHELPS: Okay.

2 VICE CHAIR MILLER: The ANC
3 letter, but I do now. So basically, you are--
4 am I correct, that your support of this
5 project was based on their agreement to
6 implement these seven points?

7 MS. PHELPS: Yes, yes.

8 VICE CHAIR MILLER: Okay. Thank
9 you.

10 CHAIRPERSON GRIFFIS: Okay. Any
11 cross from the applicant?

12 MR. FREEMAN: No.

13 CHAIRPERSON GRIFFIS: Mr. Pernell,
14 questions? Very well. Thank you very much.

15 MS. PHELPS: Thank you.

16 CHAIRPERSON GRIFFIS: We
17 appreciate you being down here and presenting
18 this. Yes? Okay. Let's move ahead. Mr.
19 Pernell, why don't we call you up, at this
20 time?

21 MR. PERNELL: Good morning.

22 CHAIRPERSON GRIFFIS: Good

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1 morning.

2 MR. PERNELL: I want to be very
3 brief. I think our letters from Near
4 Northeast Citizens Against Crime and Drugs are
5 explanatory and also the support from the 6C
6 Commission and the Commissioner, Ms. Phelps,
7 who appeared here today. So I'll be very
8 brief.

9 But some of the things that I have
10 heard, I would like to elaborate on is that
11 Near Northeast Against Crime and Drugs is
12 against the Zipcar for the purpose that the --
13 being a former member of the Marriott, just a
14 few months ago, at the Courtyard on 6th
15 Street, that Marriott would not have any
16 control of who goes in and out that garage and
17 that would be security -- I mean, a security
18 risk to the patrons. And some of the
19 buildings are adjacent to condos, as you see
20 on 555 Mass.

21 The other reason is that the
22 property that is adjacent to Marriott is owned

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1 by Metro and this Near Northeast Citizens
2 Against Crime and Drugs have some strong
3 opposition not only with Metro, but with ATF.
4 We had serious problems when ATF first
5 proposed to come to that site, that they would
6 not come to the community.

7 And I had to go to court to get
8 them to turn that issue around and they did
9 come to the community and that's the reason
10 why we have an entrance which costs \$2.5
11 million on M Street, so they can be a friendly
12 part of the community.

13 The other issue was that the
14 community of Near Northeast is just a block
15 and a half away, which is my block. And as
16 Ms. Phelps said, we haven't had any real
17 impact. We supported Two River School there.
18 And we did have, when Two Rivers first came to
19 me, a community meeting at Near Northeast and
20 we discussed the traffic issue, not so much
21 that cars will be parking on the street or
22 that we will have a number of additional cars

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1 coming into the neighborhood, but the fact
2 that it's a traffic hazard at 4th and Florida
3 Avenue right there and there has been a number
4 of accidents.

5 And we had Commander Groomes, who
6 was also present at the meeting, to address
7 those issues with the director of the Two
8 River School. So I hope that communication
9 will continue with Ms. Phelps as the ANC and
10 also they still have direct contact with us
11 and hearing our issues, too, at Near
12 Northeast.

13 The other thing that -- we have
14 the problem that we have on 3rd Street as far
15 as parking, we are bordered by, and this has
16 been an issue we put to not only DDOT, but to
17 Commander Groomes, the two garages that are
18 adjacent on both sides of my house. And they
19 congest most of the problem. They park --
20 they pick-up abandoned cars, wrecked cars,
21 stole/wrecked cars and they park them in front
22 of our homes, so we have been having that

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1 issue and it has nothing to do with Marriott
2 or the adjacent community.

3 So far with our vision out there,
4 me being on the block, we have been having
5 those issues addressed by 1st District Police
6 Officer and we plan on delivering a report to
7 the 6C Commission.

8 Again, we have letters on file.
9 We support this Application 17569 and we want
10 to continue to be a part of this partnered
11 with 6C Commission, Stanton Park, a public
12 interest civic association, which is another
13 civic group in the area that works with Near
14 Northeast Citizens Against Crime and Drugs.
15 Thank you.

16 CHAIRPERSON GRIFFIS: Excellent.
17 Thank you very much. And I think you are a
18 very important part of the coordinated efforts
19 in that area and so we appreciate you being
20 here on this specific and as you have been
21 before us on other applications. Questions
22 from the Board? Mr. Pernel? Does the

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1 applicant have any cross examination?

2 MR. FREEMAN: No, sir.

3 CHAIRPERSON GRIFFIS: ANC, any
4 cross?

5 MS. PHELPS: No, sir.

6 CHAIRPERSON GRIFFIS: Very well.
7 You know, it always brings to light reading
8 the background and the importance of the
9 organization and kind of taking back the
10 neighborhood and all that, which is very
11 important. And when I looked at that in
12 reflection on this property, I think, one very
13 positive aspect is that you are putting uses
14 here.

15 Uses with people that will be on
16 the street, that will be able to be, frankly,
17 eyes on the Metro Station of people coming and
18 going at all times of the day and night and
19 then also just on the street on 2nd and on
20 Florida. And I think from reading it from
21 your perspective and kind of the fundamental
22 aspect of what the Near Northeast Citizens is

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1 about, I think, it was a good reflection as I
2 looked into this project in a larger
3 perspective.

4 So I appreciated having that
5 ability to see it through your eyes,
6 essentially.

7 MR. PERNELL: Can I add one more
8 thing to parking? One of the initiatives that
9 we did, there is parking with meters east of
10 the tracks, which is Delaware, one thinks the
11 second street between L and M, and I was
12 successful last year to getting DDOT to put
13 meters back on there, because we have a lot of
14 construction workers who were using for free.
15 That's helpful.

16 But the biggest problem that we
17 have in the neighborhood is not hotels that
18 come in the area, because the patrons are very
19 orderly. We have problems with a number of
20 clubs that are being opened up on the west
21 side of 1st Street, so we have to look into
22 that very visually and with the 6C Commission

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1 to make sure that no additional nightclubs
2 come in the area with their patrons, because
3 they are parking everywhere and you can hear
4 the music.

5 CHAIRPERSON GRIFFIS: Sure.

6 MR. PERNELL: Especially when the
7 summer comes and we've got our windows open,
8 we can hear it. So that's one of the big
9 issues.

10 CHAIRPERSON GRIFFIS: Excellent.

11 MR. PERNELL: Thank you.

12 CHAIRPERSON GRIFFIS: Excellent.
13 Thank you very much. We appreciate it and
14 appreciate you being down here this morning.
15 Very well. Let's move ahead then. I don't
16 have any other Government reports attendant to
17 this application, unless the applicant is
18 aware of any or Board Members are aware. We
19 can move ahead to call persons present in
20 Application 17569, any persons here present to
21 provide testimony in support, in opposition?

22 Not noting any other additional

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1 persons to provide additional testimony, let's
2 go to the applicant for any closing remarks
3 that you might have.

4 MR. FREEMAN: I'll just take a
5 minute. Thank you, Mr. Pernell, thank you,
6 Commissioner Phelps, thank you, Ms. Thomas,
7 and everyone who has submitted their letters
8 in support of our application. As you heard
9 today, we have detailed -- we have submitted
10 substantial information detailing how we meet
11 each area of the variance and special
12 exception relief requested and we are prepared
13 to rest on the record.

14 In terms of timing here, the
15 applicant, the owner has an agreement with
16 Marriott in terms of the timing that certain
17 benchmarks must be reached and there are
18 financing issues as well. So to the extent
19 the Board is so inclined to make a decision on
20 this case, we would ask if the Board is
21 inclined to rule today and, if possible, issue
22 a summary order, as it did in the last case.

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1 We would make that request. Thank you.

2 CHAIRPERSON GRIFFIS: I don't know
3 if the last case has anything to do with this
4 one, but it's a good point to throw in at the
5 end here. Let me ask you just directly, there
6 was some discussion off the record here and
7 I'll put it on the record. And that is the
8 ANC conditions. And the ANC says in their
9 report that the applicant has agreed to
10 implement the seven transportation, parking,
11 management controls as outlined below.

12 That's the testimony today of the
13 persons representing Marriott, that you are
14 committed to implementing these seven
15 conditions?

16 MR. FREEMAN: Absolutely. And we
17 filed a letter subsequent to the ANC letter,
18 which is identified as one of the exhibits in
19 the official log.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. FREEMAN: So yes, we are
22 absolutely committed and would proffer that

1 you could add those as conditions to any order
2 that you issue.

3 CHAIRPERSON GRIFFIS: Okay. Well,
4 that raises a different level of whether we
5 would condition an order and take on those.
6 It would be my position that it is a strong
7 enough agreement and implementation of those
8 as it has been decided between the
9 representatives of Marriott, the developers
10 and the ANC.

11 I have always a little hesitation
12 in conditioning a variance. Conditioning
13 special exceptions, of course, go directly to
14 how one mitigates any potential adverse impact
15 or adverse impact, but a variance runs with
16 the land and it says "under a unique and
17 practical difficulty, you cannot provide or
18 easily accommodate the required."

19 So the conditions -- now, I'm not
20 saying we can't, but I'm not sure I'm so moved
21 to this level to attach those as conditions.
22 But let me hear from others on the opposite

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1 side.

2 VICE CHAIR MILLER: Well, as we're
3 having a discussion on this issue, I would say
4 that what I have been thinking is that if we
5 grant this variance, that granting it is based
6 in some part upon the applicant's commitments
7 to do all these things, that that be reflected
8 in the order, so they would still be outlined
9 in the order, but it wouldn't be identified as
10 a condition.

11 CHAIRPERSON GRIFFIS: Well, I
12 don't disagree with that.

13 VICE CHAIR MILLER: Okay.

14 CHAIRPERSON GRIFFIS: I don't
15 disagree with that position.

16 MR. FREEMAN: We don't have any
17 problem with that and to the extent you,
18 whether or not, want to add that as a specific
19 condition. Exhibit No. 25, which is what I
20 was looking for, is our December 13th letter,
21 pending letter that we filed with the Office
22 of Zoning just recommitting to our agreement

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1 to do those factors.

2 CHAIRPERSON GRIFFIS: Oh, right.

3 MR. FREEMAN: Those seven items as
4 listed in the ANC resolution. So it's in the
5 record.

6 BOARD MEMBER ETHERLY: I would
7 agree, Mr. Chair. The record is amply
8 complete. I would say on the issue of the
9 agreements and the assurances that were
10 reached between the parties and the interested
11 ANC and other community organizations. So if
12 I'm to take Mrs. Miller's comment, would it be
13 the suggestion whether or not to incorporate
14 it as conditions per se, but they are simply
15 reflected in the body of the order?

16 VICE CHAIR MILLER: Right.

17 BOARD MEMBER ETHERLY: I'm fine
18 either way.

19 VICE CHAIR MILLER: That's what I
20 was saying, but actually, since we're having
21 this discussion out here, I would be
22 interested in asking the applicant and the ANC

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1 whether they would see any difference in the
2 assurance that this commitment would be
3 followed through with whether it was a
4 condition or in the body?

5 MR. FREEMAN: Well, we will be
6 doing these seven things, whether they are a
7 condition to the order or not. Just as a
8 matter of keeping our word and good business
9 practice.

10 BOARD MEMBER ETHERLY: It looks as
11 thought we lost the ANC, but I would be
12 comfortable moving forward, one, with the
13 assurance, but as was indicated by counsel for
14 the applicant. The record is clear that there
15 have been agreements reached. I don't know if
16 I should disclose I'm a Marriott Rewards
17 Member, so maybe I should step off, but in all
18 seriousness, I think the record is very clear
19 on the agreements that have been reached and
20 I think I would be comfortable moving forward
21 today.

22 VICE CHAIR MILLER: I think it's

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1 more accurate in this case, because when I
2 read the ANC resolution and the other
3 documents, they all talk about their support
4 because the applicant has agreed to do the
5 following. So I think it would be the same in
6 our analysis that we would make our findings
7 because the applicant has agreed to do the
8 following.

9 CHAIRPERSON GRIFFIS: Good. Is
10 there a proposed action then?

11 BOARD MEMBER ETHERLY: Mr. Chair,
12 I would be happy to move approval of
13 Application No. 17569 of Marriott
14 International, Inc. on behalf of Team
15 Eckington, LLC, pursuant to 11 DCMR 3103.2 and
16 3104.1, for a variance from the off-street
17 parking requirements under subsection 2101.1,
18 a special exception from the roof structure
19 requirements under section 411, a special
20 exception for the rear yard requirements under
21 subsection 774.2 and 774.9(c), to allow the
22 construction of a hotel at premises 201

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1 Florida Avenue, N.E., and would invite a
2 second.

3 BOARD MEMBER MANN: Second.

4 CHAIRPERSON GRIFFIS: Thank you.

5 BOARD MEMBER ETHERLY: Thank you
6 very much, Mr. Mann. I don't believe it is
7 necessary to ruminate extensively on what is
8 a very complete, full record, a very strong
9 presentation, I believe, in all elements as it
10 relates to the variance relief and the special
11 exception relief.

12 I'll perhaps just speak very
13 broadly at the outset that I think a lot of
14 very excellent work has been done on the part
15 of the applicant, Marriott and the development
16 team in working with the ANC, with other
17 representative organizations, Near Northeast
18 Citizens Against Crime and Drugs to put a very
19 strong application together.

20 As we discussed in portions of the
21 testimony, my colleagues will recall my
22 inquiry into the issue of the impact of

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1 commuter parking and other parking
2 contributors, if you will, to parking in the
3 surrounding residential area. I think this
4 proposal, this project, as it has been
5 illustrated to the Board, dots all of the Is
6 and crosses all of the Ts as it relates to any
7 parking impacts that may be generated by this
8 property.

9 As was discussed at some length
10 with regard to the agreements that have been
11 reached between the applicant and again
12 members of the community and the ANC, I think
13 it has been very well thought out as it
14 relates to the issue of the off-street parking
15 requirements and that variance, in particular,
16 that some very important steps have been taken
17 to address those particular issues.

18 So I'll just kind of say that as a
19 starting point, Mr. Chair, and perhaps leave
20 it for others to speak more specifically. And
21 I might have some comments at the close.

22 CHAIRPERSON GRIFFIS: Excellent.

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1 BOARD MEMBER ETHERLY: Thank you,
2 Mr. Chair.

3 CHAIRPERSON GRIFFIS: I appreciate
4 that. I'll address, first of all, the 411
5 aspect. And of course, 411.11 allows for the
6 Board under special exception where it is
7 shown that it is practically or not easily
8 complied with all of the sections in terms of
9 the setbacks, but also the differing height
10 setbacks, which is, of course, what we are
11 looking at here.

12 We can, in fact, grant relief and
13 actually it shows very well and
14 straightforwardly that this wouldn't impair
15 light and air or any of the other applicable
16 aspects of that, which the special exception
17 covers. And it doesn't even do away, frankly,
18 with the intent of 411, as that setback there
19 is in a weird and strange place in terms of
20 any sort of relationship to the rest of the
21 buildings.

22 But going more importantly to the

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1 variances and the variance from the parking
2 requirements, I think it's clearly been shown
3 the uniqueness of this and it really is a
4 confluence of factors, the site shape for one,
5 the location of the building, be it its
6 adjacency and its uses, which are fairly
7 unique in terms of the Government ATF and
8 lending itself to some of those elements.

9 But more importantly, the
10 adjacency to the WMATA facilities, the bike
11 trail, the elevated tracks, the stairs, the
12 entrance, the canopy, it shows that there is
13 a unique and then out of that is some great
14 practical difficulty in terms of maximizing
15 the amount of below grade access ingress/
16 egress and ramp size for it.

17 I don't think it is incorrectly
18 stated and persuasively so that the
19 effectiveness or the return for going deeper
20 and deeper, as Mr. Etherly had put,
21 diminishing quickly. And then as we come up
22 into the larger picture and look at DDOT's

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1 report, look at the ANC, Mr. Pernell and the
2 applicant themselves, it all seems to be
3 focusing in a direction that is positive in
4 actually reducing the parking spaces provided,
5 encouraging those, the employees and the other
6 users, which are shown in this case and in
7 other hotel cases, not to be personal car,
8 vehicle trip generators as compared to a
9 commercial office.

10 But all going in the same
11 direction and really moving towards supporting
12 public transportation. And this, obviously,
13 is a great way to do it.

14 As Ms. Miller and other Board
15 Members have indicated, the agreement that has
16 been struck with the community represented by
17 the ANC in the numerous points, seven noted in
18 the ANC's report, but all of which go towards
19 making this a much more transit-oriented
20 utilization and site location.

21 So with that, the practical
22 difficulty, I think, is clearly shown out of

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1 its uniqueness and whether it would impair the
2 intent and integrity of the Zone Plan Map or
3 the public good, public good, of course, is
4 reflected again in the support of this and it
5 certainly doesn't fly in the face of the
6 regulations.

7 Lastly, the rear yard also special
8 exception. I think that was clearly and
9 persuasively stated. The rear yard, of
10 course, can be utilized or supplemented as a
11 court in this Zone District. The canopy that
12 covers the entrance to the hotel, obviously,
13 projects over into that making it
14 noncomplying. The reasoning of the
15 dimensional size is pretty straightforward and
16 that is in coordination with the Metro canopy.

17 And I didn't see any other
18 persuasive evidence to the contrary that would
19 lend me to not support the special exception.
20 I'll open it up to others. Yes, Ms. Miller?

21 VICE CHAIR MILLER: I would just
22 like to say that I concur with your analysis

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1 and I don't feel the need to add to that. And
2 I just want to say that this application
3 appears to be one in which the applicant has
4 worked very successfully with the community
5 and the Office of Planning and DDOT and has
6 come up with some great commitments that I
7 think is going to make this project a real
8 addition and benefit to the community.

9 CHAIRPERSON GRIFFIS: Good.
10 Others? Very well. If there is no further
11 comments or deliberation, we do have a motion
12 before us. It has been seconded. I would ask
13 for all those in favor to signify by saying --

14 VICE CHAIR MILLER: Well, can I
15 interrupt you for a moment?

16 CHAIRPERSON GRIFFIS: Sure.

17 VICE CHAIR MILLER: Oh, no, go
18 ahead. Well, I don't know if you are taking
19 the vote, but for discussion on it, I think
20 that I want to note that I guess what I would
21 propose to the Board is granting the
22 application reflecting the commitments made by

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1 the applicant to the ANC and also 1 through 4,
2 as set forth in the DDOT report, dated
3 February 23, 2007.

4 CHAIRPERSON GRIFFIS: If approved?

5 VICE CHAIR MILLER: Yes.

6 CHAIRPERSON GRIFFIS: Okay. Why
7 don't we take that up after it is approved or
8 not?

9 VICE CHAIR MILLER: Well, that --

10 CHAIRPERSON GRIFFIS: But noting,
11 of course --

12 VICE CHAIR MILLER: -- that would
13 be -- okay. Go ahead.

14 CHAIRPERSON GRIFFIS: We will get
15 it covered.

16 VICE CHAIR MILLER: Okay.

17 CHAIRPERSON GRIFFIS: The motion
18 is before us. It has been seconded. I would
19 ask for all those in favor to signify by
20 saying aye.

21 ALL: Aye.

22 CHAIRPERSON GRIFFIS: And opposed?

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1 Abstaining? Very well. Why don't we record
2 the vote?

3 MS. BAILEY: Mr. Chairman, the
4 vote is recorded as 4-0-1 to approve the
5 application. Mr. Etherly made the motion, Mr.
6 Mann seconded, Mr. Griffis, Mrs. Miller
7 support the motion, a Zoning Commission Member
8 is not present with us today.

9 And did you say you were going to
10 clarify, Mr. Chairman?

11 CHAIRPERSON GRIFFIS: Yes.

12 MS. BAILEY: Okay.

13 CHAIRPERSON GRIFFIS: Excellent.
14 And I think on your point, you want it listed
15 is the fact of those comments in the agreement
16 in the order. Is that correct? I mean, I
17 think that's the intent of the Board. Ms.
18 Miller?

19 VICE CHAIR MILLER: Yes, the
20 commitments that are set forth, I believe it's
21 the 1 through 7 in the ANC report and then 1
22 through 4 in the DDOT report. I haven't

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1 compared them to see if they are totally
2 different.

3 CHAIRPERSON GRIFFIS: Okay.

4 VICE CHAIR MILLER: That's what
5 I'm referring to.

6 CHAIRPERSON GRIFFIS: I don't see
7 any difficulty in that and, frankly, it will
8 be a full order. However, it will not
9 necessarily be an extensive order. But I
10 think it's important enough to issue that with
11 the noting of the agreement and the basis of
12 the facts. There's no other way to do it.

13 VICE CHAIR MILLER: Why is that?

14 CHAIRPERSON GRIFFIS: What would
15 you do?

16 VICE CHAIR MILLER: Okay. There
17 isn't any opposition in this case, so I'm just
18 trying to understand what you mean by a full
19 order.

20 CHAIRPERSON GRIFFIS: There is
21 only two things that we have. There is a
22 summary order, which would, you very well

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1 know, list the application, what was approved,
2 the regulations that were met and then our
3 vote, that would be it. The minute we add
4 facts to it or detail or legal analysis, it
5 becomes a full order. It doesn't necessarily
6 mean it has to be our judicial 250 page order,
7 but it would have to get into that template of
8 it.

9 VICE CHAIR MILLER: Okay.

10 CHAIRPERSON GRIFFIS: So what we
11 would do is ask the applicant if they would
12 like to submit a draft order of which will be
13 very succinct and, obviously, addressing those
14 issues in the agreement. We'll get that and
15 add to it, subtract and that is it and issue
16 it as quickly as possible.

17 MR. FREEMAN: Just to be clear,
18 add those 1 through 7 of the ANC report and 1
19 through 4 of the DDOT report within the
20 findings of fact? Is that where you -- okay.
21 Okay. Thank you.

22 CHAIRPERSON GRIFFIS: Good.

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1 Anything else? Any other clarification?

2 Questions? Yes, Mr. Moy?

3 MR. MOY: A clarification with
4 staff, Mr. Chairman. Ms. Miller, on the DDOT
5 report, 1 through 4, did that also include the
6 property of No. 5 which referred to the two
7 parking spaces at no cost? That's not
8 included.

9 VICE CHAIR MILLER: I'm sorry.
10 That's not included.

11 MR. MOY: I just wanted to make
12 sure.

13 VICE CHAIR MILLER: The language
14 starting with --

15 MR. MOY: Just for clarity.

16 VICE CHAIR MILLER: -- "finally"
17 would not be included.

18 MR. MOY: Perfect.

19 VICE CHAIR MILLER: Okay.

20 MR. MOY: Thank you.

21 CHAIRPERSON GRIFFIS: Good. All
22 right. Any other questions, comments? How

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1 soon can we have that in? I'm sorry.

2 MR. FREEMAN: In less than a week.

3 CHAIRPERSON GRIFFIS: Okay. All
4 right. So we'll anticipate that in a week.
5 Obviously, we will turn that around as quickly
6 as we can, once we receive that. Very well.
7 Any other questions procedurally I can answer?
8 If there's nothing, thank you all very much.
9 Appreciate it. Appreciate everyone's patience
10 that's here for this morning.

11 Of course, we're going to move
12 ahead with the next Application 17570. Let's
13 just take a quick five minute break and then
14 we'll be back.

15 (Whereupon, at 12:08 p.m. a recess
16 until 12:22 p.m.)

17 CHAIRPERSON GRIFFIS: Very well.
18 Let's resume and when Ms. Bailey is ready, we
19 can move ahead and call the next case for this
20 morning.

21 MS. BAILEY: Thank you, Mr.
22 Chairman. The next case is Application No.

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1 17570 of Inglewood Group, pursuant to 11 DCMR
2 3103.2, for a variance from the use provisions
3 to convert a beauty salon to a general office
4 use under section 330.5. The property is
5 Zoned R-4 and it's in the -- it's located at
6 122 15th Street, N.E., Square 1056, Lot 81,
7 and it is located on the premise -- on the
8 basement level of the building.

9 CHAIRPERSON GRIFFIS: Excellent.
10 Thank you very much. Yes, Mr. Gell?

11 MR. GELL: Good morning, Mr.
12 Griffis and Members of the Board. My name is
13 Stephen Gell. I'm an attorney representing
14 the Inglebrook, LLC and I said that with some
15 emphasis, because I think originally I had by
16 mistake put it down as Inglewood and that's
17 why the original notice that Inglewood.
18 However, it is Inglebrook and we did try to
19 make the correction in the prehearing
20 statement. So let the record show, please,
21 that it is Inglebrook, LLC.

22 With me are two members of the

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1 board of that very small corporation, which is
2 really a family corporation, Ms. Loretta
3 Brook-Harris and Preston -- Loretta Best-
4 Harris and Preston Best. Her mother Myrtle
5 Best, who appeared with us at the ANC, and her
6 brother are both involved in some problems
7 about getting back from Denver.

8 CHAIRPERSON GRIFFIS: Oh.

9 MR. GELL: As you know, the ice
10 has been pretty bad. They -- all four of them
11 have been at all of the other hearings with
12 the ANC and the Capitol Hill Restoration
13 Society and so forth. And I'm sure they would
14 have liked to have been here.

15 Now, the -- let me introduce Ms.
16 Best-Harris to make a statement. I think it
17 is better if you would hear from her and then
18 I'll have a couple of comments. And I think
19 you really have most of the information, all
20 the information that you need on this case,
21 but Ms. Best-Harris.

22 CHAIRPERSON GRIFFIS: Excellent.

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1 Yes, let me just reemphasize or not. Let me
2 emphasize the fact that I think we can get
3 through this pretty quickly and we appreciate
4 your patience being sitting here all morning.
5 You can see how our schedule is somewhat
6 unpredictable at times. But it's very clear
7 as this is laid out.

8 Obviously, there has been a
9 nonconforming use or a use was there that was
10 rendered nonconforming when we actually
11 implemented our Zoning Regulations and I
12 believe, if I recall correctly, it has been
13 since the '40s that, in fact, it was used as
14 a commercial use.

15 Mr. Gell has laid out, I think,
16 appropriately well the tests that would need
17 to be made in terms of the uniqueness, but
18 also the hardship for a use variance. I think
19 we are pretty clear on it, but I'll turn it
20 over to you for just brief remarks, if you
21 would, and then we can go to questions.

22 MS. BEST-HARRIS: Good afternoon,

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1 Board Members. Thanks for having us in this
2 morning. I just wanted to say that the
3 property has been in our family since 1952.
4 My mom had started a beauty salon and over the
5 years my mom, when she passed, she did her --
6 she is a retired -- I mean, she left the
7 Government and my dad is here as a retired
8 Government worker.

9 We as a family are very much
10 involved in the property. We have two
11 apartments above and the commercial space has
12 always been used as a commercial space. Over
13 the years, once my mom stopped -- she retired
14 from running that place and we rented to a
15 barbershop and then to another salon, as you
16 know with that kind of activity in that space
17 being 300 square feet, we couldn't grow as
18 other salons to have multiple services. So it
19 didn't lend itself very good.

20 And also with the barbershop
21 having more people than when my mom having
22 more accurate scheduling, we kind of felt that

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1 this time around when it was available, we
2 found that the neighbors were more interested
3 in maybe, you know, I would want as a CPA to
4 have my office there to do some hours of work
5 and not in my house.

6 I was getting more -- because my
7 father and our family was talking to people
8 interested in renting the space and the
9 interest was more in office space. And as we
10 thought about it, we thought that would be
11 more in keeping with the reduction of traffic
12 being there when we have four booths in the
13 salon and each, you know, barber or salon
14 person having clients, having a general office
15 space.

16 The space is very small. It's not
17 segmented, so you would just have a desk and
18 whatever computers you would need as a general
19 office space. And we are here today to
20 address any questions you may have on that.
21 Having been on that block for 50 some years
22 and continue to be, it's a family business and

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1 my brother is younger than me, so we plan to
2 be around for a long time.

3 Our interest was to have something
4 that the community could use that we could
5 continue to give back. We didn't want stores
6 or anything busy, but professionals. We're
7 getting calls for people that may want to live
8 in an apartment, like centered above and maybe
9 use that to -- for office space when they are
10 in town to do work or it may be a CPA.

11 So when I was -- because it wasn't
12 zoned as that, I had to come here and go
13 through the process, because this only limited
14 when people go downtown and inquire, it's a
15 beauty salon and a barbershop. So that's why
16 we are here today.

17 CHAIRPERSON GRIFFIS: Excellent.

18 MR. GELL: Thank you, Ms. Best-
19 Harris. One other thing that I would like to
20 mention and really the rest of it is pretty
21 well laid out. And that is originally we had
22 put in our request a set of conditions that we

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1 thought that would be reasonable for the
2 neighborhood, would assure the neighborhood
3 that it wouldn't be used in a way that would
4 be deleterious.

5 And one of those was that we would
6 keep the hours from 8:00 a.m. to 8:00 p.m.
7 Now, I realized later in the letter to you I
8 mentioned 6:30, but, in fact, we had
9 originally said 8:00. And Mr. Moore had
10 picked that up in his report. In fact, we did
11 and in our prehearing statement ask that that
12 be extended to 8:30 p.m., rather than 8:00.

13 It's really a question of
14 marketability and we don't think it's going to
15 make that much of a difference, but it will
16 enable some people in the neighborhood who
17 work to be able to take advantage of whatever
18 business is there, whatever office is there at
19 the time.

20 With that, I think I can stop and
21 certainly answer any questions you may have.
22 I think I laid out why the -- why we didn't

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1 feel we could go for a special exception. We
2 didn't have a tenant. Therefore, we couldn't
3 prove it would be a neighborhood facility and
4 that's what you have to have in order to get
5 the approval on that basis. And this gives
6 them a bit more flexibility if people leave
7 and they need to rent to new tenants.

8 We felt we had to go that route.
9 If there are any questions, I'd be happy to
10 answer them. Thank you.

11 CHAIRPERSON GRIFFIS: Excellent.
12 A question on the time. Well, how did that
13 come up and why? I mean, if there is a CPA in
14 there and they are doing my taxes, I want them
15 working all night. I don't want them going
16 home until it's done. And in seriousness, I
17 mean, you know, well, in my own respect, I
18 mean, I leave here and I go to my office and
19 I work until 1:00 in the morning. I get a lot
20 of things done.

21 What's the negative impact that
22 that's actually trying to address?

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1 MR. GELL: Well, I don't think
2 there would be a negative impact for the
3 person who is renting the space to be working
4 there. And that's not what we had in mind.
5 But to be open for business past that time
6 might, we feel -- well, let's put it this way.
7 I thought by having some limitation, some
8 reasonable limitation that that would
9 encourage more of the neighbors to sign on
10 and, as you know, we had 22 of the neighbors
11 sign the petition.

12 CHAIRPERSON GRIFFIS: Yes.

13 MR. GELL: The ANC approved. The
14 Capitol Hill Restoration Society approved. So
15 it may have been a good strategy, but perhaps
16 we limited ourselves too much. Did you want
17 to say something?

18 MS. BEST-HARRIS: Yes. I wanted
19 to say over the 50 something years we have
20 been open to 9:00 p.m., because of summer and
21 spring months, you know, and also this is a
22 high work area and I know I work until

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1 midnight. So in most cases, we're talking one
2 owner going and doing paperwork. I would hate
3 -- it just makes it so unmarketable if when
4 they come after their full-time job, they come
5 by there to do that sort of thing.

6 CHAIRPERSON GRIFFIS: Right.

7 MS. BEST-HARRIS: Which is their
8 interest.

9 CHAIRPERSON GRIFFIS: Right.

10 MS. BEST-HARRIS: They only have
11 an hour or two and wouldn't even have time to
12 get organized. Ideally, if we could keep with
13 our same 9:00 p.m., that would be great. If
14 not, at least consider 8:30.

15 CHAIRPERSON GRIFFIS: And that was
16 for the client service based retail that you
17 had. I mean, the barbershop or beauty salon
18 is obviously client-based, right? So when
19 you're talking about that, that was hours of
20 operation up until 9:00. But now, I think OP
21 makes the point of you're going for actually
22 a lesser use, a lesser intensive use, just as

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1 general office, right?

2 MS. BEST-HARRIS: Right, but at
3 the same time if I'm seeing clients to 8:00,
4 I would like the opportunity to do my
5 paperwork before I leave. So if I took the
6 extra time myself from 8:00 to 9:00 --

7 CHAIRPERSON GRIFFIS: Yes. No,
8 I'm actually --

9 MS. BEST-HARRIS: -- to just stay
10 in there, I didn't want neighbors complaining
11 or anybody complaining just because they see
12 a light on past 8:00.

13 CHAIRPERSON GRIFFIS: Right.

14 MS. BEST-HARRIS: That's a
15 problem, so I wanted as we go for any renter
16 to go for considerations on North Capitol
17 Street that it was reasonable enough that
18 people can do clean-up or whatever they want
19 and actually sit in the space past 8:00.

20 CHAIRPERSON GRIFFIS: Sure. And
21 having been in the community for a long time,
22 what are the negative aspects that you see if

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1 someone is in there, the lights are on at
2 10:00 or 11:00?

3 MS. BEST-HARRIS: Personally, my
4 father is here and he knows the neighborhood.
5 I'm also there. When we had it until 9:00, it
6 actually operated to 9:00.

7 CHAIRPERSON GRIFFIS: Right.

8 MS. BEST-HARRIS: And the
9 beauticians did what they did to collect their
10 money and do their paperwork. And they would
11 come in as early as they need to. If they had
12 a client at 6:30 or -- because we're servicing
13 the Government area. So as long as it was
14 quite and wasn't disturbing. The other thing
15 is the park across the street had off-street
16 parking that's not near the residence. So we
17 never got any complaints. We have no citings
18 in 52 years of that.

19 Now, we're going to reduce, so
20 it's even more not a problem. So I never got
21 complaints that people were there however late
22 they needed to clean up or get things done.

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1 CHAIRPERSON GRIFFIS: Okay.

2 Excellent. Thank you.

3 MR. GELL: Mr. Chairman?

4 CHAIRPERSON GRIFFIS: Yes.

5 MR. GELL: Perhaps we could
6 clarify this by simply stating that hours of
7 operation really only includes those periods
8 of time when the doors are open and people are
9 expected to be able to come in.

10 CHAIRPERSON GRIFFIS: Okay.

11 That's enough.

12 MR. GELL: 8:30 seemed a
13 reasonable time for that, but, obviously, this
14 doesn't --

15 CHAIRPERSON GRIFFIS: We'll see.

16 MR. GELL: -- stop the owner from
17 staying for a much longer period of time if he
18 has to.

19 CHAIRPERSON GRIFFIS: Good enough.

20 Okay. Anything else? Questions?

21 VICE CHAIR MILLER: Mr. Gell, is
22 there a definition for general office, which

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1 is the use that you are seeking, in our Zoning
2 Regulations?

3 MR. GELL: I beg your pardon? Is
4 there a limitation?

5 VICE CHAIR MILLER: A definition
6 for general office. Is that the use that you
7 are seeking?

8 MR. GELL: That's the use.

9 VICE CHAIR MILLER: That your
10 client is seeking, yes.

11 MR. GELL: Right. I don't --

12 VICE CHAIR MILLER: Is that
13 defined?

14 MR. GELL: -- recall a definition
15 for general office, but one could perhaps
16 construct one through interpretations by
17 looking at interpretations having been made by
18 the Zoning Commission over the years. I
19 didn't find a definition.

20 VICE CHAIR MILLER: How about for
21 a neighborhood facility?

22 MR. GELL: No, and there again,

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1 when I looked at it and I looked at a number
2 of cases and tried to figure out just what a
3 neighborhood facility is, it kind of seemed
4 all over the lot, those that they refused as
5 a neighborhood facility, those that they
6 accepted. The general tendency was to say
7 that it's something that served the local
8 neighborhood.

9 If it was a retail operation or an
10 office, it would be considered neighborhood
11 facility. If it served a much wider area,
12 like they expected people to come from other
13 parts of the city on a regular basis, not on
14 occasion, but a regular basis, that would not
15 then be a neighborhood facility.

16 But, frankly, the more I tried to
17 figure out how this could be marketed and how
18 it could be used, I thought that there would
19 be some really potential dangers about
20 limiting them to "the definition of
21 neighborhood facility."

22 VICE CHAIR MILLER: But there is

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1 none.

2 MR. GELL: And there wasn't really
3 a clear definition.

4 VICE CHAIR MILLER: Okay. So just
5 your understanding of it is it has been
6 applied in other cases. You thought there
7 would be a danger to limiting it to that?

8 MR. GELL: That's correct. But
9 the major reason that we didn't go for that
10 was in order to show that something is,
11 indeed, a neighborhood facility, you have to
12 have a tenant.

13 VICE CHAIR MILLER: Well, you
14 could also only lease it for those specific
15 purposes perhaps.

16 MR. GELL: And that -- you know,
17 how long a list can you make? I mean, there
18 are so many different kinds of offices that
19 one could have, an engineering office, real
20 estate office, title office. You know, how
21 specific can you make that? And if you say
22 it's a title office, it's a neighborhood

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1 facility, what does that do? It's just a
2 very, very difficult thing.

3 It's a very small space, too.
4 Again, it's 361 square feet. So there again,
5 we thought that the availability of that space
6 or the potential that it would be used by
7 somebody who would really bring lots and lots
8 and lots of people to the neighborhood and
9 impact the parking was so small, that it was
10 not unreasonable to ask for general office,
11 given the space is so small.

12 If it were a much larger space,
13 then I could see that it might have some sort
14 of impact if you just leave it open to any
15 kind of a general office. But I don't think
16 that's true in this case. I guess this
17 question is for Ms. Harris or Best-Harris.

18 MS. BEST-HARRIS: Best-Harris.

19 VICE CHAIR MILLER: Best-Harris.

20 MS. BEST-HARRIS: Uh-huh.

21 VICE CHAIR MILLER: When you were
22 describing what you anticipated for this

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1 space, you seemed to be going in the direction
2 that you were saying something like you wanted
3 to be able to serve the community by providing
4 this space for this use.

5 MS. BEST-HARRIS: All I was saying
6 is as we rented over time, these are the
7 comments I have gotten from the neighbors
8 that, you know, ideally there were times where
9 they could use some office, because those
10 houses are 1910 homes. They weren't
11 constructed like as the homes are today with
12 big offices just for that. So when they serve
13 -- have various -- if there are CPAs or
14 whatever, they don't -- you know, they just
15 like a separate area within the community.

16 But that wasn't all. I mean,
17 sometimes I would get out of town calls from
18 people just looking for general space. We are
19 four minutes from the Capitol, so it attracts
20 that. So instead of, you know, trying to
21 maintain the beauty salon, it seems like now
22 the people are looking for space that they can

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1 come in town or either neighborhood.

2 So I'm not limiting myself. There
3 just seems to be, from the conversation
4 driving, our interest like oh, that's even
5 less risk for us in trying to run a business,
6 to lease a space just to an individual who
7 just needs an office space. But I don't want
8 to limit it. I mean, because this area is so
9 diverse that if it could be generalized, then
10 that's open for us.

11 This is a very expensive process
12 for anybody. That space is very small and
13 even for us it's hardship. And if we have to
14 come when we finally get somebody's interest
15 to come and fine tune it, then it would make
16 us very attractive. We have already limited
17 the number of people, number of employees and
18 all these other things that most offices don't
19 have. So in summary, I was just communicating
20 interest and I think I'm responding to the
21 environment as well.

22 VICE CHAIR MILLER: Okay. I'll

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1 just ask this one other question. Mr. Gell,
2 it goes to the variance analysis that you do.
3 Am I correct that you identify the undue
4 burden as having to go to the BZA every time
5 there is a tenant?

6 MR. GELL: That's certainly one of
7 the reasons that we came through the variance
8 process, rather than special exception
9 process, but I think I mentioned some other
10 possible -- some other hardships that would be
11 -- that were imposed on the space. For one,
12 they can't rent it for residential use,
13 because they already have two units. It's
14 already a flat. So they have to do something
15 else if they are going to use the space for
16 anything at all.

17 Part of it, the part outside of
18 the 361 square feet, there is some space, but
19 it's only 6 foot 7 inches. It could only be
20 used for storage. There are really very
21 limited opportunities to use the space
22 productively. And that I think means that it

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1 is a hardship on them if they can't get use of
2 the space and the fact that it has always been
3 used productively and for uses as the Chairman
4 has indicated, which is more intense than what
5 we anticipate now.

6 VICE CHAIR MILLER: I follow that.
7 I just want to -- just to follow-up on this
8 variance analysis though. It looks to me as
9 if 2003.5 may apply and that it says "In
10 Residence District, the proposed use shall be
11 either a dwelling flat, apartment house or a
12 neighborhood facility."

13 And I understand your arguments
14 why it can't be a dwelling or a residence,
15 because you need a variance of that, because
16 you already have two units. And then we get
17 to the why can't it be a neighborhood
18 facility? And that's where I'm saying it's
19 your argument because then you have to come
20 too often before the BZA?

21 MR. GELL: We would have to come
22 every time we get a new tenant or there was a

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1 potential that somebody would appeal the grant
2 or the certificate. And I didn't feel, given
3 the amount of space, that I could put the best
4 to that.

5 VICE CHAIR MILLER: Someone would
6 appeal whether it is a neighborhood facility?
7 Is that what you're saying?

8 MR. GELL: Might very well do so.
9 We can't -- I can't anticipate what somebody
10 in the neighborhood would do.

11 VICE CHAIR MILLER: No, but I just
12 want to make sure that that's your argument.

13 MR. GELL: But it does become an
14 issue.

15 VICE CHAIR MILLER: Those are the
16 arguments for the neighborhood facility about
17 the process that someone could appeal it and
18 every time you have a new tenant you would
19 have to come to the BZA?

20 MR. GELL: That's correct. There
21 is implicit, I think and you can tell me if
22 I'm right, in your question is the sense that

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1 well, if you can use it for a neighborhood
2 facility, then you can't show a hardship. And
3 my response to that was that it was not the
4 intent of the Zoning Commission to deprive
5 somebody of the opportunity to get a variance
6 simply by making it less necessary for
7 somebody else to go for a variance if they met
8 certain criteria.

9 So in other words, if there had
10 been no opportunity for neighborhood facility
11 special exception, then one would simply go
12 for a variance and we would meet all of those
13 criteria. The mere fact that they wanted to
14 perhaps reduce the burden on the BZA, reduce
15 the burden on owners by providing a separate
16 category that says it could be a special
17 exception doesn't -- should not deprive us of
18 the opportunity to ask for a variance.

19 VICE CHAIR MILLER: So you don't
20 think you need a variance?

21 MR. GELL: And indeed, doesn't
22 mean it's less of a hardship.

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1 VICE CHAIR MILLER: You don't
2 think you need a variance from that provision
3 at all. Is that your point?

4 MR. GELL: The variance we need is
5 from the provision that says it can't be used
6 for anything but residential use.

7 VICE CHAIR MILLER: And in 2003.5
8 or somewhere else? Just so I'm following your
9 argument.

10 CHAIRPERSON GRIFFIS: In matter-
11 of-right uses for the --

12 VICE CHAIR MILLER: A matter-of-
13 right use.

14 CHAIRPERSON GRIFFIS: Right.
15 Which would be Chapter 3.

16 VICE CHAIR MILLER: Okay.

17 CHAIRPERSON GRIFFIS: 330.5, I
18 think it is. I think that's excellent
19 questions and I know that all the Board
20 Members are looking at that and especially
21 because the Office of Planning brought up the
22 2003 and the viability of it. It is an

1 interesting predicament that one is in.

2 You know, you brought up the CPA
3 which is why I'm so fixated on it. How would
4 one prove that that was a neighborhood serving
5 if their clients perhaps were, maybe they are,
6 international and they never come to the
7 office, but he does taxes for international
8 corporations. And is that neighborhood
9 serving or not? I could see how that could
10 get to be a cumbersome chore in terms of
11 signing leases and/or in terms of the
12 understanding of the surrounding community.

13 As having it had as such an
14 undefined term, it could be everything,
15 frankly. If it's a facility in the
16 neighborhood, isn't it a neighborhood facility
17 or it could be more specific. I wouldn't look
18 forward to hearing that appeal, frankly.

19 MR. GELL: Another for instance,
20 which is maybe a very realistic one, is that
21 Senators and Congressmen can't make calls
22 asking for campaign donations from their

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1 offices. They need to go outside the
2 building. If a Senator or a Congressman
3 wanted to use this space just for that
4 purpose, it certainly wouldn't be that much
5 impact on the neighborhood, but it would not
6 be a neighborhood facility under the
7 definitions that I was able to kind of glean
8 from the cases in the past.

9 MS. BEST-HARRIS: That actually
10 happened, that actually happened. That
11 actually happened. I did get a call from a
12 Senator inquiring about the apartment above
13 that was available and the use of the space.
14 So that was my concern is that although we're
15 responding to the neighborhood, we're also
16 getting just as many calls of interest because
17 of where it is located.

18 VICE CHAIR MILLER: Let me ask you
19 one more question. I don't know if it's my
20 last question.

21 MS. BEST-HARRIS: Okay.

22 VICE CHAIR MILLER: But with

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1 respect, you lived in your neighborhood for a
2 long time.

3 MS. BEST-HARRIS: I don't live in
4 the neighborhood.

5 VICE CHAIR MILLER: Oh, you don't.

6 MS. BEST-HARRIS: I live about --
7 I grew up in D.C. about 10 minutes away. I
8 have been -- I used to get my hair done there,
9 since I was 5, but I don't live there
10 currently. My parents still live in D.C. who
11 are also owners.

12 VICE CHAIR MILLER: That's fine.

13 MS. BEST-HARRIS: Okay.

14 VICE CHAIR MILLER: Just based on
15 your knowledge, I'm wondering if the block has
16 changed somewhat so that a neighborhood
17 facility like a beauty salon or something is
18 no longer really desired on that block.

19 MS. BEST-HARRIS: I can't really
20 answer it. I just know a number of times we
21 have talked to people who had salons. They
22 needed a lot more space, based on the services

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1 the current professionals are doing.
2 Currently today, you can get nails, you can
3 get massages, you can get hair, unisex kind of
4 situation.

5 The Capitol Hill area, as you
6 know, is up and coming and the income is
7 growing, so the services are more demanding
8 and this space doesn't -- is kind of -- it's
9 not lending itself for the type of -- the way
10 in 1952 we used to work. It's almost like
11 we're just not getting those calls for needing
12 that any more as much.

13 MR. GELL: The one thing I would
14 add to our discussion before is that one has
15 to think not about how something could be
16 used, but how it can be marketed. Is it
17 reasonable to assume that somebody who wants
18 to use the space is going to be willing to
19 wait three, five, six months if -- to go
20 through an appeal procedure? Rather than do
21 that, they want the space free and clear
22 without any potential that somebody can attack

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1 them and drive them out.

2 Just the fact that it's a
3 possibility is likely to put a chill on that
4 sort of market. And again, for a space this
5 small, it seems to be unreasonable to suggest
6 that that would be the case. You know,
7 tenants may change on a yearly basis. And
8 again, to put the family through some kind of
9 a procedure every single year or six months or
10 two years seems to me to add another element
11 of hardship to a space of this type.

12 VICE CHAIR MILLER: Are you saying
13 that because neighborhood facility isn't
14 defined and, therefore, you are saying that
15 every time you have a new tenant, they would
16 have to come before the BZA to prove that they
17 are a neighborhood facility?

18 MR. GELL: There's certainly a
19 likelihood that the Zoning Administrator based
20 on other actions that have been taken --

21 VICE CHAIR MILLER: Oh, I see.

22 MR. GELL: -- might very well say

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1 we don't know if this is a neighborhood
2 facility, we're not going to approve it.

3 VICE CHAIR MILLER: I see.

4 MR. GELL: Neighbors and --

5 VICE CHAIR MILLER: Okay.

6 MR. GELL: And even if he does,
7 you've had appeals from other decisions.
8 People are very active as they should be and
9 it just gets to be very, very iffy. And I
10 wanted to just wipe away any of that concern
11 in this one action.

12 VICE CHAIR MILLER: Okay. Thank
13 you.

14 CHAIRPERSON GRIFFIS: Good. Any
15 other questions of the Board, at this time?
16 Let's move ahead to the Office of Planning.

17 MR. MOORE: Good afternoon, Mr.
18 Chair and Members of the Board.

19 CHAIRPERSON GRIFFIS: Good
20 afternoon.

21 MR. MOORE: I'm John Moore with
22 the Office of Planning. And I'll stand on the

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1 record in terms of supporting the application
2 and counsel for submittal of questions.

3 CHAIRPERSON GRIFFIS: Excellent.

4 MR. MOORE: Basically, the same to
5 me.

6 CHAIRPERSON GRIFFIS: Thank you
7 very much. Excellent report and I did note
8 actually it got a lot, I know it got myself
9 digging into the regulations and your
10 reference in terms of 2003.1 and so that was
11 important to do in terms of the analysis. I
12 am certainly prepared to move forward. Let me
13 open it up to any other Board Members for
14 questions of the Office of Planning, at this
15 time. Yes?

16 VICE CHAIR MILLER: I'm wondering
17 based on your knowledge of space, is this
18 particular space more appropriate for a
19 general office than for what might be
20 understood as -- what you might understand as
21 a neighborhood facility?

22 MR. MOORE: As we indicated in our

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1 report, although I said 2003.1, it should have
2 been 5. As you look at the construction of
3 the building and as constructed keep in mind
4 it was constructed with a separate entrance
5 for the space, which clearly identifies it as
6 different from the residential units above.

7 When you look at the history that
8 says from 1952 until currently the site has
9 been a neighborhood destination, thereby
10 becoming a neighborhood facility. It was a
11 destination for people to go for hair care.
12 I wouldn't need it, of course. Given that
13 history, we really thought that the lesser
14 standard should have been applied, that is the
15 special exception.

16 And because the use, in essence,
17 did not change, you know, were we permitting
18 an office use as a nonconforming use in an R-4
19 District, which we really don't like. But
20 since this has been there for all this time
21 and the use that's going in there call it
22 general office or office or whatever, it's

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1 still a commercial use in this Residential
2 District.

3 But given the history, as I said,
4 the previous use we thought should qualify as
5 a neighborhood facility. And to answer your
6 question specifically, if you can tailor the
7 market as the applicant has mentioned, if you
8 can get a CPA in there who is going to do the
9 Chair's taxes overnight, that's one
10 implication. But you don't necessarily have
11 to get a CPA in there. It could be more
12 active kind of off-use to go in there.

13 Hopefully from what the applicant
14 out here was saying, they basically sort of
15 restricted the field in terms of the kind of
16 clients they want to get into the space as
17 opposed to saying first come, first serve. I
18 really don't have any problem with it being
19 called a general office, although I couldn't
20 find a definition for it.

21 And I still believe that the use
22 really hasn't changed from the original use.

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1 It's still the commercial use in a Residential
2 District and, therefore, nonconforming. It
3 would have been nice, of course, if we had a
4 tenant, a client who was going to go in there
5 to be a bit more specific.

6 VICE CHAIR MILLER: We don't see
7 this neighborhood facility issue very often
8 and I just want to put this question out to
9 you. It has a sound like oh, this is
10 something that serves the neighborhood. And
11 so if we don't put in a neighborhood facility
12 operation, are we thereby -- is that somehow
13 detrimental to the neighboring community?

14 MR. MOORE: Ms. Miller, to be
15 honest, even as I use the expression
16 neighborhood facility relative to this site,
17 let's be clear. The order is not identified
18 by saying it has been this since 1952 and it
19 was a destination for people to come to. It's
20 generally saying that it was African-Americans
21 who came to that location for hair products
22 and care.

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1 Well, we know that area is
2 changing now. So under that definition of
3 neighborhood facility, this wouldn't fit the
4 type definition. The general use in terms of
5 office still being there, yes. But I guess my
6 way of looking at it, it wouldn't meet the
7 same kind of criteria because the audience is
8 going to change.

9 VICE CHAIR MILLER: Okay. So I
10 mean, basically, do you see the neighborhood
11 facility concept covering general office use,
12 such as, you know, a CPA serving the community
13 or whatever?

14 MR. MOORE: I would still just
15 call it an office. And again, in the report,
16 we thought that since we did the analysis
17 based on the higher standard there, the
18 variance, that obviously it should meet the
19 lower test.

20 CHAIRPERSON GRIFFIS: Good.
21 Anything else? Any other questions from the
22 Board? Any cross?

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1 MR. GELL: Just one question. Mr.
2 Moore, at our -- in your report you picked up
3 our original condition about the time being
4 from 8:00 a.m. to 8:00 p.m. and I was going to
5 ask whether 8:30 would make any difference to
6 the Office of Planning if that were the time?

7 MR. MOORE: No.

8 MR. GELL: No. Thank you very
9 much. That's all.

10 VICE CHAIR MILLER: Mr. Moore, why
11 do you think that there needs to be a time on
12 this type of office? I think we were having
13 this discussion earlier, for instance, like
14 one individual going to do paperwork late at
15 night. Why is that a problem?

16 MR. MOORE: I really don't think
17 that there is a need for time. As a matter of
18 fact, an expression of office is burning the
19 midnight oil. What we did is there was a list
20 of conditions in the application. And we
21 attempted to simply weed out those that we
22 didn't think the Board had purview over and

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1 let the ones in. So it wasn't one that we did
2 an analysis and had a position in terms of
3 what we thought the hours should be.

4 VICE CHAIR MILLER: Okay. Thank
5 you.

6 CHAIRPERSON GRIFFIS: Okay.
7 Anything else? Anything further? Very well.
8 Thank you very much, Mr. Moore. We appreciate
9 it. Excellent report. Is the ANC-6A present?
10 ANC-6A? We note that they had submitted a
11 recommendation to approve with conditions and
12 those conditions are reflected and we have
13 discussed a lot of those in the applicant's
14 case presentation going to the hours of
15 operation, the employees, the visitors,
16 etcetera.

17 We will get into more of those
18 details as we address and when we move
19 forward. We don't have any other Government
20 reports attendant to this application, unless
21 you are aware of any, let me ask for any
22 persons present to provide testimony in

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1 support or in opposition to 17570 of
2 Inglebrook Group. Any persons here present?

3 Not noting any additional persons,
4 Mr. Gell, we'll turn to you for closings.

5 MR. GELL: In view of the time,
6 I'll just leave the case as submitted. And
7 thank you for your time.

8 CHAIRPERSON GRIFFIS: Thank you
9 very much. Last questions from the Board,
10 clarifications? Very well. I think it's
11 appropriate to move forward with a motion on
12 this application and we can get into our
13 deliberation very quickly, but the record is
14 full on this. And I would move approval of
15 Application 17570 of Inglebrook Group, and
16 that would be for the variance from the use
17 provisions under 330.5 at premises at basement
18 level of 122 15th Street, N.E., and ask for a
19 second.

20 BOARD MEMBER ETHERLY: Second, Mr.
21 Chair.

22 CHAIRPERSON GRIFFIS: Thank you

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1 very much, Mr. Etherly. I note that the Board
2 began its review of the hearing and the
3 discussion of what type of relief might be
4 best served and I think as I came into this
5 and I have been reading it, I am of the same
6 mind. At first, I had to step back a little
7 bit at first blush. And looking at the
8 outline of this, I thought a use variance,
9 Capitol Hill? Boy, you're in trouble.

10 However, looking then, of course,
11 which is the most important thing we do, at
12 the specific facts of the case and what is
13 presented before us, it starts to open up, of
14 course, the requirements and that's its
15 uniqueness. And out of that uniqueness, what
16 is the hardship? Which is the highest
17 threshold of relief that we hear. It's a use
18 variance.

19 And then, of course, whether it
20 would impair the intent and integrity of the
21 Zone Plan or map and we'll get to that. The
22 uniqueness is pretty clear. I think Mr. Moore

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1 did an excellent job of saying look, step back
2 a minute and realize this is built with a
3 separate entrance. This was constructed
4 before our Zoning Regulations actually were
5 implemented.

6 The Zone District didn't exist
7 when this was built. It has always been a
8 non-residential use. Because actually when it
9 started, there wasn't conforming or not
10 conforming. There was no nomenclature for
11 that, essentially. And so continuing that and
12 adapting that, I think there are numerous
13 provisions in the regulations which we kind of
14 look to to try and help out not going for a
15 use variance.

16 But a use variance is what it is
17 and I think it's a strong one at that. The
18 uniqueness, of course, is the physical
19 development of the site, the entrance, the
20 access. The fact of the matter that as
21 originally built-out there is no connection
22 into the residential.

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1 Another aspect of the uniqueness
2 in which lends itself to the hardship of how
3 come you can't use this for a conforming use?
4 There is no vertical connection into the
5 residential adding another unit, which is a
6 great idea, a separate entrance, obviously,
7 isn't allowed as a matter-of-right in the Zone
8 District that it is in.

9 As you start mounting all of those
10 and you realize that even if you could say get
11 an area variance or whatever kind of variance
12 lesser than a use, the hardship of adding
13 kitchens in 300 square feet, gosh, and, you
14 know, facilities for residential, it all
15 mounts quickly and easily to it.

16 I think Mr. Moore said incredibly
17 well, OP doesn't look, I don't think this
18 Board looks strongly, on general office use in
19 an R-4 Zone. In fact, we probably have more
20 denials than anything in that respect.
21 However, here we have an application that I
22 believe strongly meets the threshold tests of

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1 being granted a use variance and that is based
2 on the uniqueness of this property.

3 And as I said, the zoning history,
4 the use history, the configuration and the
5 hardship of using it for a matter-of-right.
6 The other aspect I said in the beginning, I
7 believe, and Office of Planning brought it up,
8 it's not my own, is that there is the support
9 of whether this would go against the public
10 good, but also the Zone Plan and Map.

11 It's actually approving a use
12 variance for a less intense use of the area.
13 And lastly, Mr. Mann, maybe he will say it on
14 the record, but said it off the record very
15 quickly in our discussion is that how much
16 intense -- how much negative, my words, impact
17 could there be in 300 square feet, whether it
18 be outside or inside?

19 Really, we're talking about de
20 minimis at best and, frankly, you know, the
21 kind of notion that you have in your mind of
22 who would occupy this and utilize this again,

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1 I think supports even more so that feeling of
2 there shouldn't be a lot of trouble.

3 I go into these conditions with
4 trepidation. I think all of them are sound.
5 The one I have some difficulty with is the
6 hours of operation, because, frankly, and even
7 in a Residential Zone, there is benefit for
8 having lights on. There is benefit for people
9 being around and coming and going as long as
10 they are doing good things when they are
11 coming and going.

12 I mean, a safer street is one that
13 people are walking on and engaging and knowing
14 their neighbors. A not so safe street is
15 often an empty street. So I'm still not --
16 and I didn't find anything of evidence in the
17 record that would move me to conditioning
18 hours of operation on this, because hours of
19 operation - a condition should go to mitigate
20 a potential or known adverse impact.

21 And, frankly, in 300 square feet
22 as it is not a client-base, like the

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1 barbershop or beauty shop, that's client-
2 based. You are not working unless you got
3 someone in the chair, right? But a
4 generalized office doesn't mean that it's
5 necessarily heavily client-base. I don't see
6 a great persuasiveness that that would
7 actually mitigate some adverse impact.

8 I think actually it has picked up
9 more in the condition that is proposing
10 clients/visitors and that's no more than six
11 at one time. That seems to really address it,
12 in my mind. But let me let others speak to
13 all those or any of the other elements as they
14 seem fit.

15 VICE CHAIR MILLER: Mr. Chairman,
16 I concur with your analysis and I want to say
17 that Mr. Gell very well addressed where I was
18 coming from, my concern about 2003.5, the fact
19 that you could get a special exception for a
20 neighborhood facility. I was reading that
21 provision as in you would have to prove you
22 couldn't be a neighborhood facility.

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1 And now that I have heard all the
2 discussion at this hearing, I think it is
3 correct that the regs provide an applicant to
4 be able to seek a variance under its own
5 provision. So I'm there on that. And now,
6 I'm at the point where we're talking about a
7 less intensive use than has been employed
8 previously, and I'm not sure why any of these
9 conditions are necessary.

10 I think we didn't hear why they
11 are really necessary, so now, I think we have
12 -- you know, unless you want to go back to the
13 applicant, I don't -- maybe you all can
14 elucidate me a little bit. I mean, signs or
15 whatever, I don't know. This place has been
16 a beauty salon, which must have had a sign.
17 Now, maybe it is better in a residential area
18 not to have any signage or signage that's
19 larger than what is described here, for
20 instance. I guess we should go down the
21 conditions.

22 CHAIRPERSON GRIFFIS: Good. I'll

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1 be happy to.

2 VICE CHAIR MILLER: Yes.

3 CHAIRPERSON GRIFFIS: I think it's
4 appropriate in terms of the signage, because
5 the signage does go to more of a commercial
6 use or a retail use, this being commercial and
7 I think that does, in fact, impair the intent
8 and integrity of the Zone Plan and Map.
9 Meaning the use is in the designation and the
10 appearance of the Residential Zone.

11 So I think it's appropriate to
12 have some sort of signage, but I think limited
13 is appropriate also.

14 VICE CHAIR MILLER: So we're
15 basically going to be evaluating the fact that
16 it's in a residential block.

17 CHAIRPERSON GRIFFIS: Sure.

18 VICE CHAIR MILLER: Not just the
19 fact that well, it was a beauty salon.

20 CHAIRPERSON GRIFFIS: Right.

21 VICE CHAIR MILLER: Actually, I
22 don't know how many years it has been closed,

1 so I think that's appropriate. Okay.

2 CHAIRPERSON GRIFFIS: Good. In
3 terms of the structural alterations or
4 significant modifications to the exterior,
5 again, I think that as it goes directly to any
6 of the zoning impacts, I think that's not a
7 poor condition to have in terms of changing,
8 altering. To me, I can't predict out what
9 that might be or what it might mean.

10 VICE CHAIR MILLER: I can't
11 either. I mean, why couldn't you say that
12 about somebody's residence that there won't be
13 a structural alteration? I don't get that one
14 at all. I don't understand what that is tied
15 to.

16 CHAIRPERSON GRIFFIS: Well, there
17 are a lot of things that --

18 VICE CHAIR MILLER: In order to
19 make it more commercial? I mean, it's just
20 not clear on its face.

21 CHAIRPERSON GRIFFIS: Right,
22 right. No, I don't understand what it might

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1 intend. No more than three employees on the
2 premises at any one time. Clients/visitors
3 are limited to six at one time. Proposed use
4 would not adversely affect the present
5 character of future development for
6 surrounding area.

7 Proposed use will not create any
8 deleterious external effects, including but
9 not limited to noise, traffic, parking. I
10 mean, those seem to be more descriptive of --
11 well, I don't know of what. I'm not sure how
12 those are enforceable or measurable, so I'm
13 open.

14 VICE CHAIR MILLER: I wouldn't
15 include any of them, unless we want to reopen
16 up the record to see why they are necessary on
17 their face. I don't see it.

18 CHAIRPERSON GRIFFIS: Others?

19 VICE CHAIR MILLER: My
20 understanding -- I'm sorry. My understanding
21 is this is a small office, so that it wouldn't
22 be likely to -- general office use wouldn't be

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1 likely to generate a lot of visitors or
2 clients.

3 CHAIRPERSON GRIFFIS: Right.

4 VICE CHAIR MILLER: So we wouldn't
5 need to condition it.

6 CHAIRPERSON GRIFFIS: Sure, maybe.
7 Mr. Mann?

8 BOARD MEMBER MANN: My feeling was
9 perhaps these things weren't directly entered
10 into the record, but I was assuming that the
11 conditions proffered here were so that any
12 proposed use would not change the status quo
13 more or less, that its previous use had not
14 created effects, you know, the negatively
15 impacted noise or traffic or parking or
16 loading or illumination or vibration or odor
17 or sighting effects and that they just wanted
18 to continue whatever use continued in that
19 spot would not create negative effects.

20 It just seemed to me that these
21 were the baseline conditions that already
22 existed and they just wanted to ensure that

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1 that continued. That's how I was -- that's
2 why I was considering these things, although
3 I understand the points that are being brought
4 up that maybe there wasn't information entered
5 into the record that says well, there were
6 negative impacts that need to be -- or
7 potential negative impacts that need to be
8 mitigated.

9 VICE CHAIR MILLER: Just for the
10 record, I'm now looking at the ANC report and
11 they are also requesting a condition that the
12 proposed use will not include a drug treatment
13 center and the number of customer visits is
14 limited to 16 per day. Well, okay, I guess my
15 feeling is that we don't have good evidence in
16 the record supporting these conditions. And
17 we did have a hearing in which everybody had
18 the opportunity to present the evidence, so
19 I'm not inclined to support these, unless my
20 fellow Board Members can, you know, provide
21 some rationale that I'm not seeing here.

22 CHAIRPERSON GRIFFIS: Excellent.

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1 I would propose that we actually have three of
2 the conditions that are proposed. And it is
3 based on, one, the ANC's submission on the
4 Office of Planning's analysis and actually on
5 the hearing today. And the three would be
6 this: One would be the sign, limited to the
7 288 square inches. I'm not sure how that was
8 done. Maybe it is the square root of
9 something nice.

10 And then the others would be that
11 there would be no more than three employees on
12 the premises at any one time. And that
13 clients and visitors would be limited to six
14 at any one time. I think those two come out
15 of the facts in the record and that is in a
16 Residential Zone not stepping well out of the
17 use and intensity for a Residential Zone for
18 this nonconforming use which we will
19 potentially make conforming.

20 Meaning, you want to keep it
21 within the realm of what is somewhat normal
22 for the Residential District. I think those

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1 set itself and I think, frankly, what will
2 self-regulate that, as Mr. Mann has said, is
3 the size that we are talking about here.

4 It would be hard pressed I think
5 if you had had 9 or 10 people in 300 square
6 feet. I'm not sure what type of business you
7 would be doing if that was the case. So I
8 think that based on the size, outside of that
9 I agree that there are not other really
10 evidentiary motivating factors to condition on
11 the other pieces.

12 The last two, I think, I totally
13 agree with the ANC in terms of the proposed
14 use not adversely affecting the present
15 character. And the last, the proposed use
16 would not create any deleterious external
17 effect. However, as we have come to well-
18 craft our conditions, I'm sure -- well, our
19 conditions should be understandable,
20 measurable and enforceable.

21 And I'm not sure where or how we
22 would ask people to measure or enforce those.

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1 They are much too broad and much too general.
2 I think based on the fact in our hearing the
3 test for the variance itself goes into those
4 aspects of it.

5 That being said, that's all I
6 need. Anything else?

7 VICE CHAIR MILLER: I can go on
8 with those three in that I think it's
9 consistent with our discussion today. And
10 what we basically heard as what was intended
11 by general office. So I don't have a problem
12 with that. Just with respect to addressing
13 the ANC's resolution, tell me if your opinions
14 are different, but I don't contemplate a drug
15 treatment center as within the definition of
16 general office use. Do you?

17 CHAIRPERSON GRIFFIS: No, I
18 wouldn't.

19 VICE CHAIR MILLER: I mean, I
20 don't believe there is any condition
21 necessary, I'm just saying.

22 CHAIRPERSON GRIFFIS: I would

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1 believe that would be outside of office use.

2 VICE CHAIR MILLER: Okay.

3 CHAIRPERSON GRIFFIS: That's an
4 excellent point. Okay. Anything else then?
5 Very well. Is there any other discussion?

6 We do have a motion before us. It
7 has been seconded and conditioned. Then I
8 would ask for all those in favor to signify by
9 saying aye.

10 ALL: Aye.

11 CHAIRPERSON GRIFFIS: And opposed?
12 Abstaining? If we could record the vote?

13 MS. BAILEY: Mr. Chairman, the
14 vote is recorded as 4-0-1 to approve the
15 application. Mr. Griffis made the motion, Mr.
16 Etherly seconded, Mr. Mann, Mrs. Miller
17 support the motion and the application is
18 approved with the following three conditions:
19 There shall be no display, other than a small
20 sign limited to 288 square inches. There will
21 be no more than three employees on the
22 premises at any one time. Clients/visitors

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1 will be limited to six at any one time. Am I
2 correct, sir? Thank you.

3 And are we doing a summary order,
4 Mr. Chair?

5 CHAIRPERSON GRIFFIS: Excellent.
6 Any opposition to waiving our rules and
7 regulations and issuing a summary order? Very
8 well. Not noting any, we'll issue a summary
9 order then. Thank you very much. Thank you
10 all very much. We appreciate it. Sorry we
11 have run over time a little bit today. Let's
12 move ahead.

13 MS. BAILEY: The final case of the
14 morning is Application No. 17571 of 1124 9th
15 Street LLC, pursuant to 11 DCMR 3103.2, for a
16 variance from the floor area ratio
17 requirements under section 771, a variance
18 from the lot occupancy requirements under
19 section 772, a variance from the residential
20 open space requirements under section 773, and
21 a variance from the rear yard requirements
22 under section 774, to allow a three story

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1 residential addition to an existing building.
2 The property is Zoned DD/C-2-A and it's
3 located at 1124 9th Street, N.W., Square 369,
4 Lot 36.

5 Mr. Chairman, there is a request
6 for party status in opposition to the
7 application.

8 CHAIRPERSON GRIFFIS: Yes. Thank
9 you very much for bringing that to our
10 attention. And the Gorman family, is the
11 Gorman family represented today? Is that
12 correct? Okay. Very well. Let's take it up
13 very quickly as set into the record.

14 MR. GLASGOW: Mr. Chairman?

15 CHAIRPERSON GRIFFIS: Yes.

16 MR. GLASGOW: They were here and
17 they had left.

18 CHAIRPERSON GRIFFIS: Oh, is that
19 right?

20 MR. GLASGOW: Yes. They left.
21 There is a letter that I issued to their
22 counsel today that they are withdrawing their

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1 opposition.

2 CHAIRPERSON GRIFFIS: That saves
3 us some time doesn't it?

4 MR. GLASGOW: Yes, sir.

5 CHAIRPERSON GRIFFIS: So we take
6 it that they are withdrawing their opposition.
7 Also, then, therefore, withdrawing their
8 request for party status.

9 MR. GLASGOW: Right, yes.

10 CHAIRPERSON GRIFFIS: Okay. Let's
11 move ahead.

12 MR. GLASGOW: All right. Mr.
13 Chairman, we think the record is fairly
14 complete on the case. There is a gentleman
15 here that wanted some clarification with
16 respect to our application. I wanted to
17 submit for the Board that we are not asking
18 for any relief under the parking regulations.

19 And, in fact, technically, because
20 there have been no new regulations issued with
21 respect to when there is addition to historic
22 buildings, even though there has been a

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1 hearing before the Zoning Commission, there
2 has been no action taken, we, technically,
3 don't have to provide any parking. We do have
4 two parking spaces in the rear for our three
5 residential units and that complies with the
6 regulations, if we were required to provide
7 parking for residences, because the parking
8 requirements are one for each two units in C-
9 2-A and we have two parking spaces for the
10 three residential units. And that's all the
11 parking we can fit on the site.

12 CHAIRPERSON GRIFFIS: So if we
13 were to calculate and project out potentially
14 that the regulations read, which they don't
15 read today, that you had to park what you were
16 proposing as new, you park it according to the
17 regulatory requirements?

18 MR. GLASGOW: That is correct.
19 And we meet those requirements.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. GLASGOW: We believe that the
22 -- well, let me introduce our witnesses very

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1 quickly. And I think that we can turn it over
2 to questions for the Board, if you are so
3 inclined to do that. We think the record is
4 very complete in this case as to what we are
5 asking for and why.

6 CHAIRPERSON GRIFFIS: Yes.

7 MR. GLASGOW: Seated to my
8 immediate right is Mr. Howard Toorie of 1124
9 9th Street LLC, Mr. Yves Springuel and Ms.
10 Edie Duffy is at the far edge of the table,
11 and Mr. Steven Sher of Holland and Knight, our
12 land planning expert, is also in attendance.
13 We have submitted a Statement of Applicant.
14 We hope that you all have copies of that and
15 have been able to review that.

16 That was filed February 12th, so we
17 have the same issue. I will give my copy.
18 Yes, we have updated plans. There should be
19 20 sets of the statement here somewhere. That
20 statement was filed February 12th. Yes, the
21 same date as the other one, because that's the
22 two weeks before the hearing.

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1 We do have plans that reflect more
2 accurate computations. They are just very,
3 very slightly revised. Essentially, with
4 respect to the FAR variance, it is within a
5 couple of square feet of the area that is
6 being covered where the parking spaces are
7 being covered and the parking spaces are being
8 covered because of the Historic Preservation
9 Review Board said set the building back X
10 dimension.

11 So area that we had enclosed, but
12 not covered, is now covered, because the
13 building sits on top of the parking spaces.
14 Our original design did not have that.

15 CHAIRPERSON GRIFFIS: Okay. And
16 you are counting also the lot occupancy, that
17 area which is covered, which you are parking
18 because it's part of the residential aspect of
19 it.

20 MR. GLASGOW: Yes, and that's a
21 very technical area.

22 CHAIRPERSON GRIFFIS: Right.

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1 MR. GLASGOW: I'm not sure that
2 parking --

3 CHAIRPERSON GRIFFIS: Right.

4 MR. GLASGOW: -- of those cars,
5 but we didn't want to have a situation where
6 we went back to the Zoning Administrator later
7 and somebody said those are residential
8 parking spaces, therefore, you have
9 residential on the ground floor.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. GLASGOW: And that has 100
12 percent lot occupancy right now.

13 CHAIRPERSON GRIFFIS: Right. Yes,
14 I wasn't assured what my position would be if
15 I was interpreting that that would be counted
16 towards the lot occupancy of the residential
17 use.

18 MR. GLASGOW: We just didn't want
19 to take a chance on that.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. GLASGOW: We could see where
22 we would be fine on that and didn't need a lot

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1 occupancy variance, but we didn't want to take
2 a chance.

3 CHAIRPERSON GRIFFIS: Okay.

4 MR. GLASGOW: All right. Then
5 with respect to --

6 CHAIRPERSON GRIFFIS: Let me, I'm
7 sorry, just for clarification.

8 MR. GLASGOW: Yes.

9 MR. TOM: I need clarification.
10 My name is Tom.

11 CHAIRPERSON GRIFFIS: Okay. But
12 wait a minute. You can't say anything until
13 you come up and you're going to be on the
14 record. I'm going to have you introduce
15 yourself with your name and address. But here
16 is the order of procedures that we are going
17 to do. Come sit.

18 The applicant always puts on their
19 case and then we hear all the Government
20 reports and then we will hear from persons.

21 MR. TOM: My name is Kwok Tom.
22 I'm a resident at 1120 9th Street. And I put

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1 in a party status application and I'm trying
2 to get clarification as to my standing,
3 apparently here, and you mentioned the
4 Gormans', but you did not mention me.

5 CHAIRPERSON GRIFFIS: Oh.

6 VICE CHAIR MILLER: Yes.

7 MR. TOM: In your earlier talk.

8 CHAIRPERSON GRIFFIS: When did you
9 put a request for party status in?

10 MR. TOM: It went in February 5th
11 and I have my receipt, but I didn't get a
12 response from --

13 CHAIRPERSON GRIFFIS: Can you hand
14 that to Ms. Bailey for me, please?

15 MS. BAILEY: I have never seen
16 this before.

17 MR. TOM: All I have is the
18 receipt from the postal service there. I
19 thought that was adequate.

20 CHAIRPERSON GRIFFIS: Mr. Glasgow,
21 are you aware of this?

22 MR. GLASGOW: No. I'm looking

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1 through our file, you know, our copy of the
2 pleading file and we're not seeing it in
3 there.

4 CHAIRPERSON GRIFFIS: Okay. We're
5 going to take a minute and we're just going to
6 get it copied, so everyone has copies so we
7 can read it.

8 MR. GLASGOW: Because if he had
9 seen it, we would have contacted the
10 individual.

11 CHAIRPERSON GRIFFIS: Sure. Just
12 for clarification, do I recall your address as
13 1120 9th Street?

14 MR. TOM: That's correct.

15 CHAIRPERSON GRIFFIS: And that's
16 where in relation to the --

17 MR. TOM: It is the property
18 adjacent, the property abutting the property.
19 I'm one building down.

20 PARTICIPANT: Talk into the
21 microphone, I can't hear you.

22 MR. TOM: I am one building south

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1 of the property.

2 CHAIRPERSON GRIFFIS: Okay. And I
3 just glanced at your request for party status,
4 but you are indicating that you have concern
5 or you believe that you would be uniquely or
6 distinctly impacted by the increase in density
7 and the traffic and the parking?

8 MR. TOM: That's correct.

9 CHAIRPERSON GRIFFIS: Okay. And
10 just for clarity, you are aware of the
11 differing participation levels in our hearing?

12 MR. TOM: Just from the general
13 observation from this morning.

14 CHAIRPERSON GRIFFIS: Okay. There
15 is two basic participation levels. You can
16 show up as a person, which you can do, and
17 provide testimony, we will allow you the time
18 and you can just present your issues or, as
19 you have requested party status, there is a
20 higher level of party status participation.

21 That is we will turn to you, if
22 granted party status, for a full case

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1 presentation. You are allowed cross
2 examination, submissions that the applicant
3 are going to be requested would also be
4 required of you. Any sort of legal analysis,
5 if need be.

6 Were you wanting to come in and
7 provide testimony today?

8 MR. TOM: Well, sir, I have seen
9 some preliminary plans, unofficially, in the
10 back, because the gentleman came to speak to
11 me. I have not seen plans for the building
12 and I have not been notified earlier. And so
13 this is the first opportunity that I have ever
14 seen plans for the building. And my main
15 concern was for parking and how that
16 negatively impacts the neighborhood as well as
17 me personally, because I have observed that
18 there is a parking problem in the
19 neighborhood.

20 And exits out of my rear requires
21 me to come to through the alley and I have
22 noticed that parking is just so bad that

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1 people are parking in the alley and this will
2 be a concern of me going forward on this area.

3 CHAIRPERSON GRIFFIS: Okay. And
4 you think that you can serve your position by
5 just presenting that, you know, within a
6 matter of 3 to 5 minutes today?

7 MR. TOM: I would like to present
8 the fact that this is a unique situation where
9 parking is really getting terrible and that if
10 you add residents in here, they should have
11 adequate off-street parking.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. TOM: As is required.

14 CHAIRPERSON GRIFFIS: Without
15 getting to the substance, what I'm just trying
16 to glean is whether we grant you party status
17 or not. Are you wanting to cross examine the
18 witnesses? Are you wanting to --

19 MR. TOM: I would like to reserve
20 that right to ask for some clarifications on
21 the plans, because I have not reviewed them,
22 and it would be an opportunity to ask a few

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1 questions.

2 CHAIRPERSON GRIFFIS: Okay. Were
3 you aware that this went through Historic
4 Preservation Review?

5 MR. TOM: No, I wasn't.

6 CHAIRPERSON GRIFFIS: Do you live
7 at 1120?

8 MR. TOM: I do. I maintain a
9 residence there.

10 CHAIRPERSON GRIFFIS: Okay. Well,
11 we'll just wait on the copies.

12 (Whereupon, at 1:26 p.m. a recess
13 until 1:27 p.m.)

14 CHAIRPERSON GRIFFIS: So my
15 understanding, your answer, which I find to be
16 most applicable to our party status
17 application, that is explain how the person's
18 interest would be more significant and
19 distinctly or uniquely affected in character
20 or kind by the proposed Zoning Regulation than
21 other persons in the general public.

22 And you have indicated that

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1 increased residential occupancy aggravates
2 vehicle and parking problems in the --

3 MR. TOM: That's right.

4 CHAIRPERSON GRIFFIS: -- local
5 neighborhood because of traffic binds related
6 to the Washington Convention Center?

7 MR. TOM: The Convention Center
8 takes up a lot of public parking and you would
9 find that on the street parking would probably
10 be a problem, if you are a resident there.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. TOM: And --

13 CHAIRPERSON GRIFFIS: But let me
14 take it to the next level then. My
15 understanding of that statement there is that
16 with the Washington Convention Center, no
17 other residential development should happen
18 around it, because it can't support the
19 parking?

20 MR. TOM: No, I believe that they
21 should provide adequate parking though and
22 access --

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. TOM: -- from the rear.

3 CHAIRPERSON GRIFFIS: And are you
4 in the understanding that adequate parking
5 would be that which the regulations require
6 for our purposes?

7 MR. TOM: I am.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. TOM: I was not privy to the
10 information that there might be parking within
11 the building. And upon observation, it
12 appears that they will put parking in the
13 rear.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. TOM: But there is also the
16 commercial aspect of this property.

17 CHAIRPERSON GRIFFIS: Sure.

18 MR. TOM: Which they said that
19 they would load from the front.

20 CHAIRPERSON GRIFFIS: Right,
21 right.

22 MR. TOM: And I would question

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1 having a --

2 CHAIRPERSON GRIFFIS: Okay. I'm
3 sorry. But before we go too far into the
4 substance, we're still at a preliminary
5 matter, so I just need to get back to that,
6 whether we grant party status or not.

7 Is there Board questions,
8 comments? Mr. Glasgow, position by the
9 applicant?

10 MR. GLASGOW: We really have no
11 position one way or the other. I don't know
12 that he said anything that distinguishes his
13 position from that of the general public. And
14 from looking at the nature of the request,
15 it's more about a residential occupancy and
16 that's a permitted use. And we're not asking
17 for any relief from the parking regulations.

18 CHAIRPERSON GRIFFIS: Right.
19 Okay. Other comments? Board Members,
20 positions? I don't disagree. I think in
21 terms of substance, I think we'll address that
22 and I think it's going to be very clear. The

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1 adjacency actually, it's a party request.

2 I'm sorry, how do you pronounce
3 your last name?

4 MR. TOM: My last name is Tom.

5 CHAIRPERSON GRIFFIS: Oh, Tom.
6 Okay.

7 MR. TOM: Yes.

8 CHAIRPERSON GRIFFIS: Excellent.
9 Well, Mr. Tom had indicated it and actually
10 here prevalent to me is the shared alley and
11 then that the uniqueness and distinction is
12 going to be the impact on what that might be
13 and that perspective of accessing in and out
14 on that alley. You know, the most strongest
15 of the elements of significance there are
16 distinctive, but I think it rises to the level
17 potentially of supporting a request for party
18 status.

19 Let me hear from others, if they
20 disagree. Not noting any other disagreement
21 with that, why don't we move ahead. Mr. Tom,
22 party status is granted to you. What we're

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1 going to do is have the applicant make their
2 case in chief. I'll call you up for cross
3 examination and then we'll move on from there.

4 Mr. Glasgow, we'll turn it back
5 over to you.

6 MR. GLASGOW: Mr. Chairman, would
7 the Board Members be interested in answering
8 questions or how would you like us to proceed?
9 We're ready to go in either fashion on the
10 case.

11 CHAIRPERSON GRIFFIS: Why don't we
12 just have limited address of the variances,
13 especially for the FAR. Well, yes, let's --

14 MR. GLASGOW: I'm going to have
15 Mr. Sher give a run through of the --

16 CHAIRPERSON GRIFFIS: I think that
17 would be --

18 MR. GLASGOW: Okay. Of our areas
19 of relief and how we meet the burden of proof.

20 CHAIRPERSON GRIFFIS: Good.

21 MR. GLASGOW: Okay. Thank you.

22 MR. SHER: Good afternoon, Mr.

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1 Chairman, Members of the Board. For the
2 record, my name is Steven E. Sher, the
3 Director of Zoning and Land Use Services with
4 the Law Firm of Holland and Knight.

5 Four variances in this application
6 that we seek. To begin with, the property is
7 a lot of, approximately, 3,469 square feet.
8 It is 25 feet wide and 138 feet and 9 inches
9 deep and it is occupied by a one story
10 building, which right now occupies 100 percent
11 of the lot. It is vacant. It formerly was a
12 commercial use, but it has not been used for
13 some time.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. SHER: What is proposed is a
16 three story addition to be located towards the
17 rear of the lot above the existing building.
18 That addition requires four variances. FAR,
19 lot occupancy, residential recreation space
20 and rear yard.

21 The easiest one to dispose of, I
22 think, is residential recreation space. We

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1 are required to provide 1,200 square feet of
2 residential recreation space right now. We
3 have more than 1,200 square feet of
4 residential recreation space, but it's not
5 communal recreation space. It is individual
6 to each of the three units. There will be one
7 unit on each of the three floors.

8 As I think you are aware, the
9 Zoning Commission has a case pending before it
10 to repeal the residential recreation space
11 requirement. The Commission has actually
12 voted on that matter and taken final action by
13 vote. It has not yet issued an order
14 repealing that requirement, but it will be
15 repealed and will not apply at some point in
16 the future.

17 In any event, we have enough
18 recreation space, but it's not communal, and
19 it's not communal because of the size of the
20 building. There is no open space on the lot
21 to provide it. It's impractical to provide it
22 on the roof and we just allocated it each

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1 among the three units, rather than trying to
2 allocate it among all three units
3 collectively.

4 On the lot occupancy issue, as the
5 Chairman indicated earlier, the only place
6 where we exceed the 60 percent lot occupancy
7 is on the existing ground floor. Now, the
8 existing building is not nonconforming,
9 because the lot occupancy doesn't apply to a
10 commercial building. As soon as we introduce
11 a residential use on that ground floor, it
12 can't exceed 60 percent lot occupancy.

13 Well, we don't have any people
14 living on the ground floor, but we've got two
15 parking spaces at the rear which serve the
16 three residential units above and, as Mr.
17 Glasgow indicated out of an abundance of
18 caution, we sought the lot occupancy variance,
19 based on the existing condition and the fact
20 that we had to keep the existing building the
21 way it was, even though there is nobody living
22 on the ground floor.

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1 FAR. We are 600 and sorry, I'll
2 get it in my head, 614 square feet over the
3 2.5 FAR permitted in the C-2-A District. That
4 614 is, essentially, the parking area at the
5 rear of the first floor. The lot is 25 feet
6 wide. If you measure the dimension that the
7 parking spaces themselves take up plus that
8 access around them and so forth, there is your
9 614 square feet.

10 Normally, in a building you would
11 not have parking included in FAR. It would be
12 in a below ground garage, not charged against
13 FAR. It would be an open area of the lot not
14 charged against FAR. But because this
15 building occupies 100 percent of the lot and
16 there isn't any way to get to a below grade --
17 there isn't a below grade level in the first
18 place, there isn't any way to get to one if
19 there were one, the parking has to be at the
20 first floor level.

21 It is included in FAR and,
22 basically, what we are asking for is a

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1 variance to enable us to recoup the space that
2 is being charged against the parking, which is
3 provided on the first floor, which we
4 technically don't have to provide right now,
5 but as a practical matter are providing, and
6 we just want to get that space back for the
7 residential uses going in the building.

8 The rear yard variance. This is a
9 C-2-A District. The requirement for minimum
10 depth of rear yard is 15 feet. Up to a height
11 of 20 feet, you measure that distance to the
12 center line of the alley at the rear, if there
13 is an alley. Since there is a 30 foot wide
14 alley at the rear of this property, that 15
15 feet on the first floor is essentially
16 contained entirely within the alley.

17 Above the 20 foot level, you
18 measure the rear yard to the property line.
19 Since the second, third and fourth floors are
20 setback 1 foot from the rear wall for
21 structural reasons, we have a 1 foot rear yard
22 above the first floor. So the second, third

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1 and fourth floors have a 1 foot rear yard and
2 then we need a 14 foot variance on the second,
3 third and fourth floors and we don't need a
4 variance for the first floor.

5 Why is the building set all the
6 way back and not -- since I said the lot is
7 138 feet 9 inches deep, you've got plenty of
8 room back there. Well, it's your friends on
9 the Historic Preservation Review Board. And
10 this is another one of those cases where
11 you've got a push and a pull between HPRB and
12 the Zoning Regulations.

13 When we went to HPRB originally,
14 the notion was push this addition as far to
15 the back of the property as you can push it.
16 As you can see from the photographs that are
17 in the plans, if you look at the sheet labeled
18 A02 and A03, this is a one story building that
19 sits between a two story building on one side
20 and a three story building on the other side.

21 There is behind it in this earlier
22 picture still pretty much under construction

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1 a large apartment house being built in
2 accordance with the DD/C-2-C District. That
3 building is closed in, essentially, finished.
4 It's not completely finished, but it's,
5 essentially, finished.

6 This building sits here and it is
7 kind of a unique and unusual design within
8 this context and HPRB said yes, it's okay to
9 put an addition back there, because an
10 addition, in fact, is compatible with other
11 heights and density around there, but we want
12 it pushed as far to the back as you can make
13 it go, so that it's not visually intrusive to
14 what is or I guess I'll put it this way, what
15 could be a fairly interesting facade.

16 Right now, it's not -- there's not
17 a whole lot of interest in its present
18 condition. But as you can see from the
19 elevations of what has been -- what is being
20 proposed, we're going to restore that and make
21 it look better and make it look more
22 interesting. But, in fact, the addition,

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1 which is a very different style building and
2 our architects can talk more about the
3 addition if you want them to talk about the
4 design, is set 56 feet back from the front of
5 the lot.

6 So it is as if this were a three
7 story box on rails. How far back from the
8 front can you push it? And we just pushed it
9 as far to the back as we can, which was
10 consistent with discussions with HPRB and the
11 Historic Preservation Division staff. And so
12 that's why we don't have a rear yard on the
13 second, third and fourth floor.

14 The combination of the width of
15 the lot, the size of the lot, the requirements
16 of the Historic Preservation Review Board, the
17 ability to get to the density permitted under
18 the zoning, the compatibility of the building
19 with what goes on around it, the fact that
20 this is the only, basically, one story
21 building in that whole stretch, all of those,
22 we think, combine to satisfy the requirement

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1 of exceptional or extraordinary situation or
2 condition, practical difficulty on the owner
3 and no adverse impact or inconsistency with
4 the intent, purpose and integrity of the Zone
5 Plan.

6 And that's the 152 word summary.

7 CHAIRPERSON GRIFFIS: Excellent.

8 Thank you very much. I saw the reports from
9 the HPRB, but I don't know if we could -- I
10 hesitate getting into this too far, but is
11 there a quick synopsis of the motivation of
12 moving this so far back? I know there were
13 two dimensions and they may not have
14 prescribed 56 feet, maybe it was 42 or
15 whatever it was, but it was substantially
16 moved back.

17 And my question arises for several
18 reasons. But directly with this one is the
19 adjacent building is three levels. It's lower
20 than this one. And the section, actually
21 relationship, shows it well, but the picture
22 shows it even more so. So what we have done

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1 in terms of -- if I understand what HPRB's
2 move was, was to preserve the historic
3 character by making sure that we will always
4 see that party wall that was never supposed to
5 be next to your wall, but was supposed to join
6 to a building.

7 MR. SPRINGUEL: Yves Springuel
8 with the Architectural Firm Mancini Duffy,
9 1627 K. Yes, in fact, part of the discussion
10 at the staff level was to create an addition
11 that did not compete with the existing street
12 front historic fabric. And so the notion of
13 pushing the building all the way back to the
14 point of even separating it from the existing
15 adjacent property was, you know, the kind of
16 discussion we had and the kind of result that
17 was sought.

18 CHAIRPERSON GRIFFIS: Gotcha.

19 MR. SPRINGUEL: Completely
20 separated.

21 CHAIRPERSON GRIFFIS: I mean,
22 that's a design remedy for not competing with

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1 the historic retail frontage and going
2 residential, not just having a physical
3 separation, but we need to be careful. I'm
4 sorry. Go ahead.

5 MR. SPRINGUEL: So the intent was
6 to create a condition where the two buildings
7 really didn't touch, if at all possible, at
8 least against the existing somewhat federal
9 style building that existed to the south.

10 CHAIRPERSON GRIFFIS: Yes. Okay.
11 Interesting. All right. Yes. I mean, even
12 like the animation of that, which obviously
13 you are trying to do of having kind of an
14 outside garden area and all that, to me it
15 just looks -- it doesn't look like the best
16 use of that space, you know. I don't know.
17 I don't need to spend time here getting into
18 this.

19 Let's move ahead. Any other
20 questions?

21 VICE CHAIR MILLER: I just have a
22 question for Mr. Sher. Just for curiosity,

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1 when you talked about for the residential rec.
2 requirements that they are not there
3 communally, but you allocated the same amount
4 among the specific units. I think it's on
5 their balconies, by giving them balconies. Is
6 that right?

7 MR. SHER: Two units have
8 balconies and the second floor unit has a very
9 large terrace that extends over the front of
10 the addition, over the first floor.

11 VICE CHAIR MILLER: Okay. My
12 question is, and this is really just for
13 curiosity, did you come to that amount of
14 residential rec. because -- out of a business
15 decision, that that's what was appropriate for
16 this building or did the applicant come to
17 that amount because it was trying to mirror
18 the amount required by the regulations?

19 MR. SHER: I think it came about
20 because of what were basically commercial
21 decisions on the balconies, frankly, and the
22 terrace is just what it is. Because you

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1 pushed the building all the way back, you've
2 got this 58 foot wide by 25 -- 58 foot deep by
3 25 foot wide space.

4 VICE CHAIR MILLER: Right.

5 MR. SHER: And that's how much
6 space it turned out to be. If the building
7 had been pushed back 25 feet, it would have
8 been a smaller terrace. So the amount of
9 space on the two upper floors was a business
10 decision about how much space you needed. On
11 the second floor, which is the floor of the
12 first floor, it's just whatever area that is,
13 that's what it was.

14 VICE CHAIR MILLER: Okay. Thank
15 you.

16 CHAIRPERSON GRIFFIS: Any other
17 questions? Okay. One more comment, because
18 we have you captured here. If I look at A03,
19 I guess just to, I don't know, maybe put it
20 into some context, when I look at the 9th
21 Street, first of all, it is fascinating, an
22 eclectic street. I mean, it's really quite

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1 wonderful, even though it has seen physically
2 better times maybe on some of these buildings.

3 But, I mean, the fabric to me in
4 that is it's such an undulation. It's such an
5 eclectic frontage. And the fact of the matter
6 that this building will be pushed back to far
7 that on the bottom looking north view, you
8 probably won't even see it, but for the top of
9 it. And as you pass, it's going to look like
10 it's not even connected to any building on 9th
11 Street.

12 I don't understand the design
13 decision that would move you to -- I'm not
14 saying you made the decision, but I don't
15 understand the design that would push it back
16 to far that would literally leave an empty
17 space on an urban -- there is not many really
18 tight urban blocks like this one in the city
19 that have that kind of retail, mixed-use, you
20 know, residential on top.

21 It's almost as if there is a
22 historic nature. Maybe I'm going too far.

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1 But if there is a historic nature on that
2 block, isn't that exactly what it is is retail
3 and residential on top? Perhaps these are
4 rhetorical questions anyway.

5 MR. SPRINGUEL: I might just
6 submit that the discussion with HPRB staff was
7 concerning the fact that this singular one
8 story building different from other one story
9 buildings or near one story buildings on the
10 stretch has a way it meets the sky that
11 clearly indicates that it is one story.

12 CHAIRPERSON GRIFFIS: Yes.

13 MR. SPRINGUEL: It doesn't -- not
14 only is there a cornice at the storefront
15 level, but then there is a crenelation to the
16 top of the wall, which clearly says that there
17 is no other floor above this level. So in the
18 original views, the original design we had it,
19 if I recall correctly, was either 10 or 14
20 feet pushed back.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. SPRINGUEL: There was a

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1 concern that that competed with this
2 particular -- this character that is unique to
3 this particular property.

4 CHAIRPERSON GRIFFIS: I see. Yes.

5 MR. SPRINGUEL: And that was the--
6 my understanding of the reason we were
7 directed to push it all the way back.

8 CHAIRPERSON GRIFFIS: Yes, okay.
9 Yes, I mean, believe me, I'm not trying to
10 step on their toes, I'm just trying to
11 understand, or step on their shoes, I'm just
12 trying to understand. I see all those
13 comments. And I absolutely agree. I mean, it
14 is. It's fascinating. It's a unique
15 building. What you are proposing to do in
16 terms of bringing back life in that retail is
17 stunning. I mean, it's great.

18 I just wonder if there isn't --
19 you know, there is a million ways to design
20 things, but if there wasn't a better, tighter
21 connection of use and connection in context
22 with being able to give that deferential

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1 treatment to the existing single story. But
2 I'm going to catch grief from Board Members,
3 because I've moved way beyond zoning here.

4 So let's get back into what we
5 focus on. And I think I'm good. I didn't
6 hear any other additional questions or
7 comments. Ms. Miller?

8 VICE CHAIR MILLER: This is
9 probably on the record, but since we're
10 talking about pushing back, sometimes in some
11 cases we see that when it is pushed so far
12 back into the rear yard, it has an adverse
13 impact on properties that are back there.
14 Could you just clarify? I'm under the
15 impression that that's not the case here.

16 MR. SHER: I would submit that it
17 does not have an adverse impact, in large
18 part, because the alley is 30 feet wide at the
19 back. And then you have this larger building
20 rising up on the other side of the alley.
21 It's in a different Zone District and
22 permitted to go to a much higher height.

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1 But I don't think that -- and
2 again, you can see that height, even though
3 it's not finished, in some of these
4 photographs. And the plat shows the width of
5 that and the actual condition. And there's an
6 aerial photograph which shows the hole that
7 that building was doing, at that time, which
8 was the last page of this.

9 I don't -- and furthermore, you
10 can see that there are other lower buildings
11 that go back along that alley there. There
12 are accessory buildings, garages and the like
13 rather than the full principal building. But
14 I don't think there will be any adverse impact
15 on the alley and I don't think there is any
16 issue with respect to light, air or
17 ventilation for the units in this building by
18 having it pushed all the way to the back, just
19 because of that separation.

20 If this were a 10 foot alley, it
21 might be a different story, but I don't
22 believe that it is in this case.

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1 CHAIRPERSON GRIFFIS: Good.
2 Anything else? Was there any other parking
3 provided in existing for the retail/commercial
4 use?

5 MR. SHER: The retail/commercial
6 use is below the threshold for which parking
7 is required.

8 CHAIRPERSON GRIFFIS: I know, but
9 there was none provided in the existing
10 condition?

11 MR. GLASGOW: Right. There was
12 none provided, Mr. Chairman. There is a
13 loading zone in front of the building and the
14 loading zone, we're going to keep.

15 CHAIRPERSON GRIFFIS: Okay. And
16 you're saying it's below the threshold. It's
17 below the 3,000 square feet of which then
18 there would be starting to calculate the
19 parking requirement?

20 MR. SHER: It's actually the first
21 floor is 3,468, but then you've got to take
22 away the space devoted to parking. And when

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1 you get to that, it is below the 3,000 square
2 feet.

3 CHAIRPERSON GRIFFIS: Okay. I
4 see. Okay. There it is. I don't have
5 anything else. Anything else? Mr. Tom, did
6 you have any cross examination? Do you have
7 any questions of the witness or the applicant?

8 MR. TOM: No, I can clarify that.

9 CHAIRPERSON GRIFFIS: No, but do
10 you have questions of the witnesses right now?

11 MR. TOM: No.

12 CHAIRPERSON GRIFFIS: Okay. We'll
13 get back to you. Good. Let's move ahead to
14 the Office of Planning then.

15 MS. BROWN-ROBERTS: Good morning,
16 Mr. Chairman and Members of the Board. As
17 stated in our -- and for the interest of time,
18 I will stand on the record by our analysis
19 that was submitted in our report. In
20 addition, I think we do agree with the
21 analysis that was done by the applicant.

22 So saying that, we think that the

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1 renovation of this existing building with
2 retail on the lower floor and residential use
3 on the upper floors will help to continue the
4 revitalization of the neighborhood and the 9th
5 Street corridor.

6 The relief would not be
7 detrimental to the intent and regulations and,
8 therefore, we recommend approval of the
9 requested variances. Thank you, Mr. Chairman.

10 CHAIRPERSON GRIFFIS: Excellent.
11 Thank you very much. We appreciate it. It is
12 an excellent report, phenomenal this aerial
13 photograph looking at the Convention Center.
14 But it does put in perspective also the site
15 and 9th Street. Okay. Any questions from the
16 Board? Does the applicant have any cross?
17 Mr. Tom, any cross questions of Office of
18 Planning?

19 Okay. Let's move ahead then. We
20 have gone through the fact of the historic
21 connection. The Office of Planning attached
22 some of the historic reports also. ANC-2C, is

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1 the ANC represented? Noting Exhibit 18, they
2 were recommending approval. We will make note
3 of that.

4 At this point then, Mr. Tom, if
5 you would like to come forward to present your
6 case? Also, are there other persons present
7 to provide testimony? Are you going to be
8 providing testimony today? Okay.

9 MR. TOM: Yeah, again, I didn't
10 receive plans on this. I see there is some
11 parking that is planned into the building. I
12 don't know if that -- again, my concerns would
13 be adequacy regarding the parking. I have
14 heard mention a 30 foot alley. It seems quite
15 a bit, but as of experience, when you are
16 going to be pulling out from the building,
17 turning into the alley, 30 is not going to be
18 quite wide enough, from my experience.

19 And the other item is two parking,
20 two private parking spaces for the tenants
21 seems kind of low for me. Like I said, my
22 experience is that people now park in the

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1 alley. In fact, people charge other people to
2 park in the alley on occasion and people are
3 willing to pay to park in the alley, because
4 it's so bad for parking around the Convention
5 Center.

6 And that was my main concern and
7 it still is a concern that there is adequate
8 parking for the residents. And if there is
9 going to be a commercial part to this
10 building, it seems like they are saying it
11 will be serviced from the front. Certainly,
12 I would think that facilities for trash
13 removal and everything else is going to be a
14 hard sell moving that out to the front.

15 So that's just my observation at
16 the moment here with regard to the building
17 plans that -- as I see it.

18 CHAIRPERSON GRIFFIS: Okay.
19 Questions? Cross?

20 MR. GLASGOW: No cross.

21 CHAIRPERSON GRIFFIS: Okay. Thank
22 you. Thank you very much, Mr. Tom. I

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1 appreciate that. It brings up some good
2 questions. Let's get right into one of those
3 questions just to get clarification. I'm not
4 sure it rises to the level of zoning relief
5 that is being required, but trash. How is
6 that being dealt with?

7 MR. SPRINGUEL: In the rear, the
8 residential units have a corridor giving them
9 access to the rear of the building. Within
10 the garage, we intend to store their trash.
11 It would then be discharged to the alley when
12 a truck came to pick it up. The commercial
13 trash would discharge to its loading zone when
14 the truck is there to receive it.

15 CHAIRPERSON GRIFFIS: Okay. Very
16 well. I don't have anything else then.
17 Anyone else? Yes?

18 VICE CHAIR MILLER: Could you just
19 address Mr. Tom's concern about 30 feet not
20 being enough room to -- I wasn't sure exactly
21 for what.

22 CHAIRPERSON GRIFFIS: Turning in

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1 and out of the garage.

2 VICE CHAIR MILLER: Thank you.

3 MR. SPRINGUEL: It would certainly
4 take a vehicle far larger than the automobile
5 parking space that we are providing to have
6 that concern. The 30 feet exceeds the
7 requirements under zoning for a two-way drive
8 lane.

9 CHAIRPERSON GRIFFIS: Anything
10 else? In fact, it's 20 feet for a double-
11 loaded parking garage access. So pulling out
12 on both sides would be 20 feet clear between
13 two levels of parking, if I'm not mistaken,
14 just to lend a dimensional comparison. Okay.

15 MR. TOM: On that trash, then you
16 would actually have to move the containers out
17 into the alley to load into the trucks. Is
18 that correct?

19 MR. SPRINGUEL: Yes, I think you
20 would. I think that the amount of trash
21 generated by three units is not of such a
22 large quantity that you would have, you know,

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1 cans on wheels, that kind of thing.

2 MR. TOM: I'll assume that's a
3 dumpster and that when -- in the case of two
4 cars are already parked in the garage, how
5 would you facilitate that? You would have to
6 find the residents to move their cars out, so
7 that you could move the dumpster out?

8 MR. SPRINGUEL: While we haven't
9 developed the details of this plan, I don't
10 think we are intending a dumpster and I don't
11 think one is required for this volume of
12 trash.

13 MR. GLASGOW: Mr. Chairman, if you
14 look at the plans, you will see that there is
15 maneuvering room left around the trash room,
16 which is just east of the parking spaces, so
17 that we have that so that the trash, as it
18 gets collected off the alley of this very,
19 very small apartment building, would be no
20 different than the apartment buildings
21 throughout the District of Columbia.

22 CHAIRPERSON GRIFFIS: So you're

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1 saying that that door, the door area is an
2 enclosed trash room?

3 MR. GLASGOW: That's correct.

4 CHAIRPERSON GRIFFIS: Behind the
5 parking spaces?

6 MR. GLASGOW: That's correct.

7 CHAIRPERSON GRIFFIS: And then
8 there is access directly out from the retail
9 into that garage.

10 MR. GLASGOW: Yes.

11 CHAIRPERSON GRIFFIS: Is that a 60
12 door that you have there?

13 MR. SPRINGUEL: Yes.

14 MR. GLASGOW: So if you look at
15 Sheet A04 --

16 CHAIRPERSON GRIFFIS: Wow.

17 MR. GLASGOW: -- there is a trash
18 room. There is access from both the
19 residential and the commercial portions of the
20 building into the trash rooms. And then there
21 is an area where you can take the trash around
22 and get it back out to the alley.

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1 CHAIRPERSON GRIFFIS: Yes. Okay.
2 I don't have any questions on that. Do you
3 have questions? So obviously, as you were
4 saying, probably wheeled dumpsters. There's
5 a commercial hauler that's coming. They are
6 going to have a key to that door. They are
7 going to come in the door. They will pull out
8 those cans, load it up in the truck, put them
9 back inside, lock up and go?

10 MR. SPRINGUEL: Correct.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. SPRINGUEL: Yes.

13 CHAIRPERSON GRIFFIS: All right.
14 Excellent. Anything else? Any other
15 questions, comments, clarifications? Yes, Mr.
16 Glasgow?

17 MR. GLASGOW: All right. Mr.
18 Chairman, we do believe that we have met the
19 burden of proof in this case and should be
20 granted relief, so that we can get started.
21 We have the support of the Advisory
22 Neighborhood Commission, who has expressed

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1 that they are anxious that we do move forward,
2 restore this piece of property and get the
3 residential project completed.

4 If it is possible, we would like
5 to have a decision today on this matter.

6 CHAIRPERSON GRIFFIS: Okay.
7 Comments, questions, clarifications? Is there
8 a direction? Very well. I agree. I think
9 with the feeling of the Board that it's
10 appropriate to move forward today, as the
11 record is full on this. We could set this for
12 a decision, if we needed to, and that would be
13 to provide us more time, one, to review the
14 record or actually to have more submitted into
15 the record.

16 I don't see the need for that,
17 unless others think differently and,
18 therefore, I believe we should move forward
19 today. And I would move approval of
20 Application 17571, that is for the relief from
21 the FAR, the lot occupancy, the rear yard and
22 the residential recreation requirements at

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1 1124 9th Street, N.W., and I would ask for a
2 second.

3 VICE CHAIR MILLER: Second.

4 CHAIRPERSON GRIFFIS: Thank you
5 very much. You know, when I first looked at
6 this, this is the day of reflecting on first
7 impressions, I guess. My first impression
8 with this was oh, my gosh, a morning case for
9 one, which we proved it wasn't and, two, four
10 variances stacking it up right after a use
11 variance. I thought who sets this schedule.

12 But nonetheless, moving forward on
13 it and although I regret that we have had to
14 move into the afternoon on this, the record is
15 very clear and very persuasive in this. One,
16 as a side note, I think it's excellent to see
17 a reanimation of, frankly, I think, an
18 intriguing structure and certainly site. And
19 noting that the retail is going to stay in is
20 actually even more intriguing as a mixed-use.

21 I think that this is a fascinating
22 program for mixed-use and it fits exactly

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1 into, I dare say, the historic character of
2 uses along the street and on 9th Street. And
3 I think it actually supports and reanimates
4 the whole area of 9th Street, but also
5 somewhat of what the Convention Center has
6 done.

7 With or without the Convention
8 Center, I think this would be strong, but I
9 have gone to the end really of fitting in with
10 the Zone Plan and Map and the public good.
11 And I'll begin with the beginning and that is
12 the uniqueness.

13 First of all, all the variances
14 relate to each other directly. We have a
15 unique situation in terms of the lot occupancy
16 with the existing structure. The long and the
17 narrow aspect of it. The fact of the matter
18 with the FAR and the lot occupancy and the
19 rear yard tieing together with the sighting
20 based on the Historic Preservation Review,
21 based on the massing and moving it far enough
22 back.

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1 The rear yard is very clear. The
2 structure moved to the end of the building and
3 one could say, you know, what's the practical
4 difficulty? Well, the practical difficulty
5 comes with the fact that one review body
6 wouldn't allow the building to be done in
7 accordance with our regulations.

8 And at times we have had
9 difficulty with that. It's a hard balance to
10 strike. This one, perhaps, even more so, but
11 it's also, frankly, a battle that I don't
12 think we need to wage at the cost of a single
13 project. And so I think we are charged with
14 looking at directly whether there would be any
15 adverse relief impacts to the Zone Plan and
16 Map, to the use, to the adjacent and
17 surrounding properties.

18 I think Ms. Miller asked the
19 excellent question of 30 feet, is 30 feet
20 enough? You know, what is 30 feet? What are
21 we impacting? Well, we haven't had persuasive
22 evidence from the adjacent properties that

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1 there would be an impact there. But that's
2 all right. We can also see evidently if there
3 would be an impact and I also haven't seen
4 that come.

5 There was one piece, I think, an
6 argument that could be made, in setting it
7 back so far is the disruption of the rhythm in
8 the back of the buildings and the massing and
9 the like. And yet, you know, it opens up a
10 whole different direction of review on this.
11 And then I would have to go back to well,
12 what's allowed in the C-2-A?

13 We could mass this up to the
14 allowable FAR for the commercial and we could
15 step back just 15 feet or so. My point being,
16 it's de minimis in terms of the impact and the
17 sighting of this for the residential addition.
18 The FAR, the lot occupancy, it's an
19 interesting point of introducing parking into
20 an existing building. And then you see that
21 well, then you are almost caught by not
22 complying by the mere fact that you are

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1 starting to do that.

2 And those are the two with the FAR
3 and also the lot occupancy. The FAR I didn't
4 find was so dramatically persuasive until it
5 came down to the fact that it's really that
6 and all of them is a confluence of the
7 elements, because it's going above the 2.5.
8 But what it is really talking about is well,
9 how do you facilitate putting in a mixed-use?

10 You could have moved the entire
11 residential up to the front. You could have
12 parked in the back, right, and, essentially,
13 locked off the structure on the retail and,
14 therefore, it would be open to the sky. It
15 would be just parked. But now, we have had a
16 shifting of the massing and when you shift the
17 mass, there, obviously, isn't anywhere to park
18 except for inside the building, at this point.

19 And that's where the connection
20 was made with all of the other pieces that
21 were coming together then that touched onto
22 the FAR. And the lot occupancy in terms of

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1 combining that, the parked area as part of the
2 residential. I don't think that this should
3 serve as a precedent or an interpretation of
4 772 as that, but I think based on the fact
5 that this is before us, I am supportive of the
6 persuasive variance case that they have made
7 for relief from that.

8 Residential recreation
9 requirements, gosh, I thought we would never
10 see those again. But nonetheless, I think the
11 case can easily be made for that, but it's
12 almost not -- it isn't worth actually taking
13 the time to really address a lot of that. We
14 have been exhaustive in our review of those
15 and I think, in fact, because of our review of
16 those, the Zoning Commission changed the
17 entire regulations on it.

18 And if anything, if we looked at
19 the intent of it providing, you know, insular
20 outside or recreation space, this kind of tips
21 the scale over in terms of the provision of
22 private space. Not fitting, obviously, the

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1 whole direction and compliance with the
2 residential rec., but I don't have any concern
3 in terms of approving the variance on that
4 one.

5 I think that's where I'll leave
6 it, at this point, and open it up to others,
7 if they have comment on these. Any other
8 comments or deliberation? Oh, indeed, perhaps
9 a little lunch. Very well then.

10 We have a motion before us. It
11 has been seconded. I would ask for all those
12 in favor to signify by saying aye.

13 ALL: Aye.

14 CHAIRPERSON GRIFFIS: And opposed?
15 Very well. Let's record the vote.

16 MS. BAILEY: The vote, Mr.
17 Chairman, is 4-0-1 to grant the application.
18 Mr. Griffis made the motion, Mrs. Miller
19 seconded, Mr. Mann, Mr. Etherly support the
20 motion and there is not a Zoning Commission
21 Member present at this time. And we do have
22 a party in opposition, Mr. Chairman.

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1 CHAIRPERSON GRIFFIS: Excellent.
2 Thank you very much. Let me take a quick
3 moment and ask the applicant if they would
4 submit a draft order on this one?

5 MR. GLASGOW: Yes, sir.

6 CHAIRPERSON GRIFFIS: And also,
7 just take a quick note. I want to step back
8 a little bit just within the case proceedings
9 on this and also address the fact that,
10 obviously, there was not a parking relief
11 requirement that was brought up. I'm hoping
12 that Mr. Tom in your review of the plans got
13 a further understanding and address of those
14 issues.

15 And lastly, well, there it is. I
16 think Mr. Tom brought up some excellent points
17 and I think a lot of them were
18 programmatically addressed and I don't think
19 it went -- well, it will show in the record.
20 I don't have any other comments on that,
21 unless others do.

22 Very well. As soon as possible,

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1 obviously, we would have an abridged shortened
2 version of a full order on this, the findings
3 and such and we'll go from there. Thank you
4 all very much. I appreciate everyone's
5 patience today.

6 Is there any other business for
7 the Board, Ms. Bailey, Mr. Moy?

8 MS. BAILEY: Mr. Chairman, not for
9 the morning, the morning session, but I do
10 have a quick comment for the afternoon
11 session.

12 CHAIRPERSON GRIFFIS: Yes,
13 excellent. Thank you. I'll take that
14 comment.

15 MS. BAILEY: And that is
16 Application No. 17567 of Kenneth A Kessler.
17 This is an appeal. It was withdrawn, Mr.
18 Chairman.

19 CHAIRPERSON GRIFFIS: Excellent.
20 Thank you very much. We have dispensed with
21 the afternoon. Before we adjourn the morning,
22 if I could just call -- let me make sure,

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1 you're still on, right? Excellent. Okay.

2 (Whereupon, at 2:08 p.m. the
3 Public Hearing was concluded.)

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