

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

OCTOBER 3, 2006

+ + + + +

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)

COMMISSION STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Sr. Zoning Specialist
JOHN NYARKU	Zoning Specialist
ESTHER BUSHMAN	General Counsel

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the minutes from the Public Meeting held on October 3, 2006.

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

10:19 a.m.

1
2
3 CHAIRMAN GRIFFIS: Good morning, ladies
4 and gentlemen. Let me call to order our September 27,
5 2006 public meeting of the Board of Zoning Adjustment
6 of the District of Columbia. My name is Geoff
7 Griffis, Chairperson. Joining us today is Vice
8 Chairman, Ms. Miller, and Mr. Etherly, our other
9 esteemed colleague on the Board and member.

10 Representing the National Capital Planning
11 Commission with us is Mr. Mann, and we have rotating
12 Zoning Commissioners that were on each case. We
13 anticipate, perhaps, their physical presence and
14 participation in the deliberation, or they will have
15 sent in absentee notes for our consideration.

16 That being said, let me just make a couple
17 of quick opening remarks. Of course, the agenda of
18 which cases we will be deciding this morning should be
19 available for you where you came in to the hearing
20 room. This is not an opportunity to have any other
21 additional testimony, of course, this is to call cases
22 that have been previously heard, have been reviewed by
23 the Board, and this will be our deliberation on those.

24 I would ask that people turn off cell
25 phones and other electronic devices, so that we don't

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1 disrupt our recording of our proceedings, and, of
2 course, we are being recorded in two fashions. The
3 court reporter sitting on the right on the floor is
4 making the official transcript. We are also being
5 broadcast live on the Office of Zoning's website.

6 With that, let me say a very good morning
7 to Ms. Bailey from the Office of Zoning with us to my
8 very far left, Mr. Moy also with the Office of Zoning.
9 I'm going to jump right into the case presentations
10 this morning, so we can move ahead on our schedule, as
11 we have a full morning and afternoon.

12 So, with that, why don't we call the first
13 of our four case decisions this morning.

14 MR. MOY: Yes, sir, good morning, Mr.
15 Chairman, and Members of the Board.

16 The first case for a decision is
17 Application No. 17438 of Braden and Conner Herman,
18 pursuant to 11 DCMR 3104.1, for a special exception to
19 allow a two-story rear addition to a single-family row
20 dwelling under section 223, not meeting the lot
21 occupancy requirements under section 403 in the R-4
22 District at premises 628 East Capitol Street, N.E.
23 That's in Square 868, Lot 805.

24 Staff notes that this application has been
25 amended to include relief from the width of open court

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1 requirements under section 406, because of the revised
2 plans as shown on Scheme B.

3 On September 5, 2006, the Board completed
4 public testimony, closed the record, and scheduled its
5 decision on October 3, 2006. The Board allowed the
6 Office of Planning to file a supplemental report.
7 That filing was made, and is identified as Exhibit No.
8 45 in your case folder.

9 The Board has -- the merits of the
10 application for special exception relief from the lot
11 occupancy requirements of 403.2 and the open court
12 width requirements of 406, pursuant to section 223.

13 That concludes the staff's briefing, Mr.
14 Chairman.

15 CHAIRMAN GRIFFIS: Thank you very much,
16 Mr. Moy. Forgive me, but did you mention, you did
17 call the supplemental report from the Office of
18 Planning, is that correct?

19 MR. MOY: Yes, I did.

20 CHAIRMAN GRIFFIS: Excellent, thank you,
21 I do appreciate that. It's very important. Of
22 course, the record was left open for that, and that
23 was brought into the record.

24 Okay. Let's move ahead then, jump right
25 into this. Of course, this is, as Mr. Moy has

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1 adequately summarized, a 223 application, noting the
2 elements of which were non-conforming or needed
3 relief, all falling under the special exception.

4 This was a fascinating case, as all our
5 cases are, regarding, however, the two different light
6 studies, I'll generally call them both light studies,
7 and I know in my own review in preparation for the
8 hearing, and then during the hearing, there was some
9 question of how could two experts come with totally
10 different conclusions, and I think it became very
11 evident to me, as we were going through in the
12 application, in the hearing rather, that the
13 assessment was based on a different criterion,
14 essentially, a different model of how one would look
15 at or try to measure impact, and, therefore, be
16 persuasive to us as creating or not creating an undue
17 impact.

18 I would generally summarize it, and it's
19 my understanding this way, that the applicant's expert
20 in light setting did a more, how might I say, did a
21 calculation of how much light came into each room, and
22 so how many lumens, one might say, how light and lit
23 up a room would be, based on the angle of the sun, and
24 based on surfaces and reflections, all of it, how much
25 makes it through and into a room to illuminate it.

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1 The adjacent neighbor conducted the study
2 that looked at it differently, and in my mind the way
3 I understand the study was, not how much light was
4 gathered into the room, but rather, how much one
5 viewed from the room as looking through the window,
6 how much light was able to be, essentially, seen,
7 what's your view shed out of that, what's the impact
8 on that.

9 And, fascinating information on both
10 sides, and I think it was very substantive in terms of
11 the review, and really, as we have seen in other
12 cases, rose to a new level of calculation and
13 assessment of a special exception in a 223.

14 I'm going to leave it at that in terms of
15 my summary right now, and ask others if they have
16 additional or beginnings of deliberation on it, and
17 then I will pick this back up again, but I'll open it
18 up to others for their comments, unless there are
19 none, in which case I'll keep yacking.

20 VICE-CHAIR MILLER: I have certainly some
21 comments. Picking up where you left off, I think that
22 we go back to then what is the test, and 223(a) says
23 the light and air available to neighboring properties
24 shall not be unduly affected, and then we have to look
25 at the evidence and see whether that rises to that

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1 standard, which may be similar to a subjective
2 standard, but a standard that we are used to applying
3 in our cases.

4 And, my general view on both those studies
5 was that they applicant's study was more of an overall
6 impact on the property, and the opposition study, to
7 me, was daylight reduction from certain windows. And,
8 my problem with the opposition's study was that I
9 didn't think that it measured the overall impact,
10 which would lead me to reaching the more general
11 assessment of unduly affected.

12 And, I certainly turn to Office of
13 Planning's report for some guidance on this, in that
14 we give the Office of Planning great weight, and
15 certainly in their report at page four they seem to
16 conclude, based on the applicant's study, that the
17 impact of this addition would be minimal to no
18 negative impact on daylight delivered during any
19 season and any time of the day on certain faces,
20 primarily, the kitchen of the neighbor's property.

21 CHAIRMAN GRIFFIS: Excellent.

22 Others?

23 VICE-CHAIR MILLER: I also do want to
24 acknowledge, certainly, that there is a reduction in
25 daylight, as was shown from the opposition study, but

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1 I didn't -- it didn't seem to me to make the case that
2 it led to the property being unduly affected.

3 CHAIRMAN GRIFFIS: Good point. I think
4 it's absolutely understood by myself, and I think
5 others, that any construction or any increase in the
6 mass is going to have some impact, and, obviously, we
7 are not measuring whether there's impact or not, but
8 whether from the evidence presented we find it to be
9 unduly burdensome on the adjacent.

10 And, I absolutely concur with the Office
11 of Planning's report and supplement, but also in your
12 comments, Ms. Miller, in looking at what's existing,
13 and what is allowed in terms of the lot occupancy, and
14 in terms of criterion, coming under a special
15 exception, our regulations already point to the fact
16 of what is within reason, I could say, what is within
17 reason to look at under special exception criterion,
18 and then we take the specific.

19 I think there's been a substantial amount
20 of attention paid to how the building is massed and
21 how it addresses the current situation and the
22 proposed, meaning the setbacks. Already we have
23 impact by the existing condition of the first level
24 that is covered, the roof level, and the addition, of
25 course, would have the same type of impact as that.

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1 And, I didn't find anything persuasive
2 that would move me to say that I would not be
3 supportive of approving the special exception, knowing
4 full well I'm going back to my first comment that any
5 sort of additional mass will have some visual impact
6 from the adjacent properties.

7 Others?

8 COMMISSIONER MANN: I would also agree.
9 I think that Ms. Miller's characterization of the
10 differences between the two studies was very good, and
11 if one painted a rosier picture and one painted a less
12 optimal situation, I'm still left thinking that even
13 under this worst-case scenario that was painted it is
14 still sort of within the range of what's acceptable,
15 and I don't believe that it was -- that the reduction
16 of light unduly affects the property.

17 CHAIRMAN GRIFFIS: Excellent.

18 Others? Anything else?

19 VICE-CHAIR MILLER: Well, I think -- I
20 don't have anything else on the light and air, but I
21 just want to say that then we also considered the
22 privacy of use and enjoyment of neighboring property
23 shall not be unduly compromised. And, in this case
24 this privacy concern, just to the abutting property
25 owner, and that as the Office of Planning has noted,

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1 there's a question about windows, but the new second
2 floor windows are going to be similar to the
3 positioning of the existing second floor windows, so
4 I don't see that privacy and enjoyment of neighboring
5 properties would be unduly compromised.

6 CHAIRMAN GRIFFIS: Anything else?

7 VICE-CHAIR MILLER: The third
8 consideration is, (C) the addition together with the
9 original building as viewed from the street, alley and
10 other public ways, shall not substantially visually
11 intrude upon the character, scale and pattern of
12 houses along the subject street frontage. I don't
13 really think that was even an issue in this case, I
14 don't think there's anything that would show that it
15 would be out of character and scale here.

16 CHAIRMAN GRIFFIS: Right. I think to
17 phrase it another way, I think it was an issue in
18 terms of what we reviewed, and they, obviously, comply
19 with that. In terms of the graphic representation
20 that was presented, it shows that it is immaterial and
21 also the fenestration pattern, very consistent with
22 the character of the overall neighborhood.

23 VICE-CHAIR MILLER: I also note that it is
24 in the Capitol Hill Historic District, and that the
25 Historic Preservation Office reviewed this, with

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1 respect to the conceptual design, and found it
2 compatible with the character of the Historic
3 District, in terms of size, height, massing and
4 material.

5 CHAIRMAN GRIFFIS: Great.

6 Others? Is there a motion?

7 VICE-CHAIR MILLER: I would move to
8 approve Application No. 17438 of Braden and Conner
9 Herman, pursuant to 11 DCMR, section 3104.1, for a
10 special exception to allow a two-story rear addition
11 to a single-family row dwelling under section 223, not
12 meeting the lot occupancy requirements, section 403 in
13 the R-4 District at premises 628 East Capitol Street,
14 N.E.

15 CHAIRMAN GRIFFIS: Is there a second?

16 VICE-CHAIR MILLER: Oh, I'm sorry, I would
17 like to add also not meeting the requirements under
18 section 406 as well, apparently, I'm sorry, the
19 application was amended to include relief from with
20 the vote in court as well.

21 COMMISSIONER MANN: Second.

22 CHAIRMAN GRIFFIS: Excellent, thank you
23 very much, Ms. Miller and Mr. Mann.

24 Are there other comments to the motion?

25 Very well, I think there's been

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1 substantial deliberation on this, and certainly
2 reference to that which Board Members have relied, in
3 terms of their position.

4 I would just take note that ANC-6C did
5 have Exhibit 33 in the record, and that the ANC did
6 not take a position on the application. There was some
7 indication that they felt they needed more expertise
8 in reviewing light studies before they could render a
9 position, is my understanding of the position that was
10 taken.

11 That being said, we have noted, of course,
12 the Capitol Hill District which will, obviously, speak
13 to the additional reviews that this would go under,
14 and also the exhibits from the Office of Planning,
15 which is a very substantial analysis on this
16 application.

17 I don't think that I need to talk much
18 more about this, but I think that it should be said
19 for the record that, I know myself, and I know in
20 discussions on the record with the other Board
21 Members, that there was a substantial amount of
22 investigation of each of the studies of the applicant
23 and the adjacent property owner, even to the level of
24 looking at the diagrams, the photographs, and the
25 models, and talking about the percentage of reduction

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1 of light, and I specifically recall, Ms. Miller, in
2 your -- in the hearings talking about what was the
3 level of which one would set to be -- to be measurable
4 of when one would get concerned, not your words, but
5 get concerned in terms of a percentage of reduction of
6 sky light that was available, and that was directly
7 related to that kind of data that was presented by
8 the opposition party.

9 I think it was fascinating, although it
10 doesn't appear, and it certainly wasn't for me
11 persuasive in rising to the level of our special
12 exception criteria that would mean it would be unduly
13 burdensome, there were several factors, and we've
14 talked about some, the others that we haven't
15 specifically mentioned is, the most reduced percentage
16 of the sky light available in the studies that were
17 presented were actually the very lower windows, in the
18 basement and the first floor. And, it should be noted
19 that -- and it was noted, that there is a fence that
20 wasn't calculated into that aspect, and that didn't
21 really bother me because what I was looking for, and
22 I would be -- perhaps, it's appropriate to say, I
23 looked at, very specifically, the measurements and
24 comparing it, but then I stepped back and looked at
25 the larger picture, the overall impact of what was

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1 proposed and that of the adjacent property. And,
2 factoring that together, I did not see, in what we are
3 charged with looking at, in terms of measurement of
4 unduly burdensome, whether it would rise to that
5 level, and I have not found that it does.

6 So, I would be supportive of the motion.
7 I don't think I need to speak anymore to that, but
8 I'll let anyone else have additional time to discuss
9 this.

10 Additional comments? Very well, if
11 there's no other need for that, we do have a motion
12 before us, it has been seconded. I would ask for all
13 those in favor of the motion to signify by saying aye.

14 (Ayes.)

15 CHAIRMAN GRIFFIS: And, opposed?

16 And, abstaining?

17 Very well, we would ask that you record
18 the vote, Mr. Moy.

19 MR. MOY: Yes, Mr. Chairman.

20 For Application No. 17438, staff would
21 record the vote as 4-0-0. This is on the motion of
22 Ms. Miller to approve the application, seconded by Mr.
23 Mann. Also in support of the motion, Mr. Etherly and
24 -- yes, that's four.

25 We also have an absentee ballot from Mr.

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1 Gregory Jeffries, and his absentee vote is to approve
2 the application. So, that would give a resulting vote
3 of 5-0-0.

4 CHAIRMAN GRIFFIS: Excellent, thank you
5 very much, Mr. Moy.

6 Let's move ahead then.

7 MR. MOY: The next application for a
8 decision is Application No. 17512 of KC Enterprises,
9 pursuant to 11 DCMR 3103.2, for a variance from the --
10 and this is from, I'm reading the original notice as
11 published, from the lot area and lot width
12 requirements under section 401, and a variance from
13 the side yard requirements under section 405, to
14 construct a new semi-detached dwelling in the R-2
15 District, at premises east side of the 300 block of
16 58th Street, N.E., Square 5265, Lot 22.

17 Staff notes the application was amended to
18 exclude the requested zoning variance relief from the
19 lot area requirements as not being applicable.

20 On September 19, 2006, the Board completed
21 public testimony, closed the record, and scheduled its
22 decision on October 3, 2006. The Board requested
23 specific post-hearing documents from the applicant and
24 ANC-7C. Filings from the applicant were submitted and
25 is in your case folders, identified as Exhibit 26.

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1 The ANC submitted a filing under the name
2 of Ms. Anderson on September 23rd, and that is
3 identified as Exhibit No. 27.

4 Finally, the last filing is from a Melissa
5 Muhammed, who testified in opposition, who filed three
6 letters, which is now four letters from residents
7 close to the subject property in opposition, and this
8 is identified as Exhibits 28 and 29 in your case
9 records.

10 There are preliminary matters in these
11 filings, and staff can go over these if the Board
12 desires.

13 That concludes the staff's briefing, Mr.
14 Chairman.

15 CHAIRMAN GRIFFIS: Yes, why don't we take
16 up preliminary matters on those then. Did you have
17 additional comments on that?

18 MR. MOY: Well, I can go either way, I can
19 do that if you like.

20 CHAIRMAN GRIFFIS: Let's have quick
21 comment on what the record was kept open for, and what
22 we received, and whether we received that, and
23 anything additional. Ms. Miller, did you want to
24 address that?

25 VICE-CHAIR MILLER: Okay, I can address

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1 that as well.

2 In that sense, we closed the record at the
3 end of the hearing, except for specific documents, and
4 I may be being redundant a little bit, but just to be
5 clear, one was for the applicant to submit revised
6 design plans, incorporating comments provided by the
7 Board and the adjacent property owner, and additional
8 photographs of the adjacent property to address the
9 scale and context of existing homes in the
10 neighborhood. And then, the other was to allow an ANC
11 report in.

12 We got in documents that did not fall
13 within that category, in my opinion. Attached to
14 Exhibit 26, which is the applicant's submission, we
15 have a letter from Mr. Norman Porter, the owner of the
16 property, and then we have a petition for -- an
17 approval petition for Board of Zoning Adjustment.

18 I would suggest that the Board not
19 consider these two documents, because they go beyond
20 what we asked for, and it wouldn't be fair to the
21 opposing party to have new information submitted that
22 was not requested after we closed the hearing, except
23 for specific documents.

24 But, before we address those, I also want
25 to state that Exhibit 27 is a letter from a single-

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1 member ANC Commissioner, and my understanding was that
2 we left the record open for an official ANC report,
3 and that's different from a letter from a single
4 Commissioner member. So, we might not also consider
5 that for consideration.

6 And finally, Exhibit 28, which is letters
7 of nearby residents in opposition, also I think that
8 they are submitted late and they weren't requested.

9 And, for the same reason, it really goes
10 to fairness, we closed the record, and it's just not
11 fair to have the parties try to add on evidence
12 without other parties having a chance to do the same,
13 or respond to them, unless we choose to waive them for
14 some good reason, but I don't suggest that we do that.

15 CHAIRMAN GRIFFIS: Very well.

16 Any comments on that, that would be
17 removing Exhibit No. 28, also Exhibit No. 27.

18 VICE-CHAIR MILLER: And, I'd just say, it
19 would also be removing, from our consideration, from
20 Exhibit 26 the letter from Mr. Porter, the owner of
21 the property and the petition.

22 MR. MOY: Mr. Chairman, I would also add,
23 too, that this morning you had received that fourth
24 letter, which is identified as Exhibit 29, that I
25 mentioned earlier, that falls in the category of Ms.

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1 Muhammed filing.

2 VICE-CHAIR MILLER: I didn't even see an
3 Exhibit 29.

4 CHAIRMAN GRIFFIS: No, I didn't see
5 Exhibit 29 either.

6 MR. MOY: Okay.

7 VICE-CHAIR MILLER: But, we may not need
8 to.

9 CHAIRMAN GRIFFIS: Right, agreed.

10 The quick question on Exhibit 26, we did
11 ask that the applicant and their representative file
12 the additional exhibits, the photographs and all the
13 dimensional requirements. But, what you are saying is
14 that the cover letter by the property owner/applicant
15 goes beyond that which was requested and the record
16 kept open for?

17 VICE-CHAIR MILLER: There are a few
18 documents all lumped in one in Exhibit 26. Yes, I
19 would suggest that -- my first page is a September
20 22nd letter from Mr. Porter, I would suggest we don't
21 consider that, and then after that I have an approval
22 petition which I would suggest we don't consider. And
23 then after that, I have an additional clarification
24 statement which has photographs, and I would suggest
25 that we consider those. I think that is responsive.

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1 I mean, there may be photos in here that
2 aren't thoroughly responsive, but that's okay.

3 CHAIRMAN GRIFFIS: Understood.

4 VICE-CHAIR MILLER: Yes.

5 CHAIRMAN GRIFFIS: Any other comments on
6 that petitions in opposition to, that would be
7 striking partial Exhibit 26, removal of Exhibit 29, 28
8 and 27. Is everybody clear on that?

9 Excellent. Very well, let's proceed then.
10 Let's move right into the variance, and, of course, as
11 has been written and now stated, the additional filing
12 is present, the application is full, we are looking at
13 a variance from the lot width requirements under 401,
14 and also the side yard requirements under 405.

15 Looking at this in terms of its
16 uniqueness, obviously, the first step of the variance
17 case, I think it is very persuasive of being unique in
18 terms of its situation. Now, uniqueness in the
19 standard of the zoning regulations isn't that this is
20 one and only, there is no other ever found in the
21 City, but rather what is it that creates a unique
22 character on this particular site.

23 And, the one first threshold that the
24 regulations are very clear on is, if it was in
25 existence prior to the adoption of our regulations

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1 that there is a uniqueness there. And, obviously, not
2 obviously, the case states that this is a situation
3 analogous to that. It seems to make total sense that
4 our regulations would anticipate that, if you put into
5 place regulations that, obviously, existing condition
6 then renders something non-conforming, there has to be
7 some sort of understanding or address to that, and a
8 variance case, I believe, does that.

9 Out of that, is there a practical
10 difficulty that has arisen in this uniqueness, in
11 terms of the deem size, the subdivision of history?
12 I think it is very easily shown the practical
13 difficulty, because it cannot come into compliance.
14 What we are talking about here is the physical
15 attributes of the lot. You would have to subdivide it
16 into something of which is not in common ownership, so
17 you have to somehow add land to this. I think we are
18 all pretty clear on that.

19 When you get to the side yard, then, well,
20 I also believe that based on the unique aspects of the
21 lot width, when you look at what could be a
22 functioning dwelling, could you put it in with a
23 conforming side yard, and I think it's fairly
24 persuasive and, frankly, fairly straightforward, that
25 you could not easily do that in 22 feet with an

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1 existing, or rather, with a conforming side yard of 8
2 feet, you'd have a very diminutus then with then the
3 construction of exterior walls, your interior space
4 would be, if not unusable, certainly would be a
5 fascinating architectural endeavor. But, that's a
6 little bit of a digression. I think it's fairly
7 persuasive with the facts that were presented that
8 this wouldn't be accommodating to a dwelling unit.

9 So then, we get to the last, and then
10 somewhat summarizing, I know that we are going to get
11 into more depth of all of our deliberation on this,
12 but then we get into the aspect of whether it is in
13 any way detrimental to the zone plan map for the
14 public good. And, the public good and the zone plan
15 map, those are huge, huge phrases, and really take on
16 a great responsibility, and a fairly wide jurisdiction
17 for the Board and how we look at it.

18 I think that there is some aspect to how
19 this, if approved, would fit within the parameters of
20 the requirements for the zone district in which this
21 is located. How far deep that goes in I don't know at
22 this point, but, obviously, the R-2 has the character
23 aspects that are determined by the massing, by the
24 setbacks, by the use, by the occupancy, all these
25 elements fit and create what is to be the, one might

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1 say, the character of an R-2 District.

2 I'm going to open it up for others to take
3 on from there, but noting, of course, I think there
4 was a great importance to the last filing, of which
5 the Board required the applicant to submit, and that
6 did two things. It photographed buildings in close
7 proximity, and also other like -- perhaps like,
8 construction dwellings. It also provided the
9 dimensional, I would say, approximations of the
10 separation of other properties to get a little bit of
11 scale and understanding of what was being proposed
12 here, because, of course, we are looking at everything
13 that is based and put into this record.

14 I mean, obviously, we have knowledge
15 outside in the public sphere, but, specifically, in
16 this application I think it was lacking what the
17 context of the separation was, and that's what was to
18 be provided additionally from the applicant.

19 With that, I'll open it up for comments.

20 COMMISSIONER MANN: I'll start.

21 CHAIRMAN GRIFFIS: Good, thank you, Mr.
22 Mann.

23 COMMISSIONER MANN: OP noted in their
24 report that the intent of the side yard requirement is
25 to preserve the predominantly detached and semi-

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1 detached character of the R-2 District, like you were
2 talking about a moment ago. And, I thought that the
3 supplemental filing, actually, was very helpful in
4 having those photographs of these dimensions, and of
5 the different property types, and the different sizes,
6 and demonstrating the side yards between some of these
7 houses, and the difference between the modular and
8 the stick-built house. I thought it was all very
9 useful in helping me to determine that as OP suggested
10 that this relief does not harm the adjacent and nearby
11 properties, and that as proposed this project does
12 preserve the detached and semi-detached character of
13 the R-2 District.

14 CHAIRMAN GRIFFIS: Excellent, thank you
15 very much.

16 Others?

17 VICE-CHAIR MILLER: I think it was clear
18 at the hearing that with respect to the variance test
19 that there wasn't much of a question that this was an
20 exceptional condition with practical difficulties for
21 complying with the regulations, in that it was a non-
22 conforming property and there was no way that it could
23 be developed without relief. So, I think if that was
24 put into evidence, that if there were pictures showing
25 the block as a whole, the street as a whole, four

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1 houses, five houses, whatever, on each side, of each
2 side of the street, that I could at least assess
3 generally this scream out of character, perhaps. I
4 don't know how deep we would want to delve into that.
5 We are not a design board.

6 On the other hand, I don't -- I think you
7 could include within public good aesthetics to a
8 certain extent, if you were going to allow an eye sore
9 to be built, I think that would be not in the public
10 good.

11 So, really, my point is only that I don't
12 have the evidence to make that assessment. And so,
13 without the evidence, I don't feel comfortable
14 approving it, whether we would leave the record open
15 or whether you all feel that you have the evidence you
16 need to be certain that this is not way out of
17 character, you know, it's a judgment.

18 CHAIRMAN GRIFFIS: Right, excellent, and
19 I appreciate that.

20 There are two points that you bring up,
21 and I think both are critical. One is, do we have the
22 jurisdiction to go into the design elements and
23 quality, and I think absolutely we do. So, we
24 definitely do in the special exceptions, the criterion
25 section 223s that we look at, that's one of the

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1 criterion we look at. In the zoning regulations, in
2 numerous elements and sections require us to look at
3 it, and I think implicitly and directly, rather, the
4 variance test incorporates that, of a lesser burden of
5 a special exception into it, and that's a variance in
6 which case we, I think, do have the jurisdiction.

7 We don't often invoke it, because there is
8 -- well, for numerous reasons.

9 Now, the second point of yours is, is
10 there enough in the record to assess whether this fits
11 in character with the general area. For me, there is.
12 I look first at the first filing in Exhibit No. 7,
13 which I think is our exhibit, it may not be, but
14 Exhibit No. 7 is marked, and I have the front
15 elevation of the adjacent property and the site.

16 You can see that in the back, across the
17 alley, the back portion of what the residences are
18 there.

19 On the adjacent side, if I'm facing the
20 property on my left, as you go left, you see that that
21 entire road is attached row dwellings. We are looking
22 at the rear of them, but I think you can see that's a
23 whole different character of housing that happens.

24 Now, what is similar, whether two, two and
25 a half levels, they are brick construction, these are

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1 all flat roofs, that's a factual basis in what I'm
2 seeing here.

3 If you look at the next photograph, which
4 is the left side view, labeled left side view of the
5 vacant lot, it shows going down the block. Now, I'm
6 assuming, as then I pick up the second filing coming
7 in, that then I look at the Exhibit As, and I'm seeing
8 that house, which I can see in this original filing,
9 the metal roof house with the small, kind of looks
10 like almost a covered porch, and a little bit below
11 grade there. So, what I'm saying is that I can glean
12 that there is -- I think it's generally saying I would
13 call this an eclectic character. However, all fitting
14 within the R-2, and that -- you know, the attached
15 houses, the brick, the flat roofs, the pitched roofs,
16 the metal roofs, the different materials, all of which
17 I would then have to return to and say, does this rise
18 to the level, in looking at the proposed elevation,
19 rise to the level of being something that is adverse
20 to the public good.

21 And, I guess -- well, I wouldn't guess --
22 I don't find myself strongly feeling that it does.

23 Go ahead.

24 VICE-CHAIR MILLER: I just want to make
25 one other comment.

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1 CHAIRMAN GRIFFIS: Sure.

2 VICE-CHAIR MILLER: And, that's with
3 respect to the Office of Planning report and
4 testimony.

5 Often, well, I think in the past, Office
6 of Planning has given us their opinion with respect to
7 the character of the neighborhood, and I don't think
8 we really have that in this case either. They didn't
9 find a problem with it, but, again, they didn't paint
10 a picture for me, which they often do. So, I hope
11 that they do that in the future.

12 CHAIRMAN GRIFFIS: Good point.

13 I think, I mean, that's absolutely true,
14 it's often very helpful and assisting, in terms of
15 their analysis and seeing it from their point of view.

16 Okay. Anything else?

17 COMMISSIONER MANN: Just to add a little
18 bit of flavor to -- not so much flavor -- to the
19 conversation, Mr. Chair.

20 CHAIRMAN GRIFFIS: Yes.

21 COMMISSIONER MANN: When I was first
22 presented with the application, I definitely will
23 admit that there was a bit of a struggle, because of
24 the size of the lot. Clearly, as our deliberation and
25 discussion has indicated, that supports or establishes

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1 very nicely, essentially, the first two prongs of this
2 test.

3 I agree with the tension, I think, that,
4 perhaps, is heard in the deliberation between Ms.
5 Miller's and Mr. Mann's perspective, and to an extent
6 the Chair's perspective, and I use tension very, very
7 lightly, very softly.

8 I do agree, however, that I think that the
9 evidence that was presented following our first
10 hearing, did help for me establish a sense of context,
11 if you will, for the property from the standpoint for
12 how it will sit in terms of its presentation with its
13 neighboring properties.

14 I tend to agree, therefore, Mr. Chair,
15 that the case has been made for the variance test and
16 will be prepared to move forward.

17 CHAIRMAN GRIFFIS: Excellent, thank you
18 very much.

19 Very well then. Is there a motion?

20 COMMISSIONER MANN: I'll move approval of
21 Application -- is this one 17512?

22 MR. MOY: Yes.

23 COMMISSIONER MANN: 17512, of KC
24 Enterprises for the variance from a lot area and lot
25 width requirements and a variance from the side yard

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1 requirements to construct a new semi-detached dwelling
2 in the R-2 District.

3 CHAIRMAN GRIFFIS: Excellent.

4 MR. ETHERLY: Second it, Mr. Chair.

5 CHAIRMAN GRIFFIS: Thank you, Mr. Etherly.

6 One clarification, of course, the lot area
7 was removed to fit within the parameters of the 3,000
8 required.

9 MR. ETHERLY: Right.

10 CHAIRMAN GRIFFIS: Noting that it was
11 advertised as having that, but was removed in the
12 hearing. I appreciate that.

13 Speaking to the motion then, is there
14 additional comments to it?

15 I would just note then lastly, as we go
16 into the variance test in terms of a question, we've
17 established the uniqueness, and the difficulty in
18 complying with the regulation. I just want to put on
19 the record, and we've had this several other times, in
20 terms of looking at this, but it's pretty clear if you
21 have a 22-foot -- well, it shouldn't be pretty clear
22 -- in coming into compliance with an 8 foot yard, a
23 side yard, with a 22 foot width of a lot, you would
24 obviously be looking at a building footprint of 14
25 feet.

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1 If you just took out six inches on each of
2 the exterior sides, just for practical purposes, to
3 make it even, it would be 13 feet clear inside. If
4 you just started thinking about 13 feet, what that is
5 in terms of dimensions, you'd have to have hallways to
6 get to rooms and stairs, and then stairs cannot be
7 hallways, meaning if you walk in the front door and
8 you walk upstairs, then you have to have a hallway by
9 the stair to get to the back of the house, if you
10 start taking out at 13 feet, let's just say it's a 3-
11 foot stair and a 3-foot hallway, 13 minus 6, you
12 realize you have rooms that, basically, are closets.

13 So, I think the difficulty here in
14 complying fully is a fairly clear one, just in those
15 rough calculations, and I think that actually
16 presented graphically.

17 The others I think I stand by, of course,
18 the Office of Planning's analysis, but also others'
19 deliberation on this. I think it is -- I don't think
20 it should go without notice, the Board's opinions as
21 stated in my own in terms of really looking to
22 encourage additional attributes that might be added to
23 this pre-engineered structure that is being proposed,
24 I think that would be a great benefit, (1) to the
25 overall area, but also to the value, and that means

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1 actually the out sale of the house itself.

2 That being said, I, obviously, support the
3 motion at this point, and will open it up to others
4 for any other additional comments.

5 If there are no others, then we do have a
6 motion to approve, for all those in favor signify by
7 saying aye.

8 (Ayes.)

9 CHAIRMAN GRIFFIS: And, opposed?

10 VICE-CHAIR MILLER: Opposed.

11 CHAIRMAN GRIFFIS: Excellent, and any
12 abstentions? Not noting any abstentions, why don't we
13 record the vote.

14 MR. MOY: Yes, sir. For Application No.
15 17512 of KC Enterprises, staff would record the vote
16 as 3-1-0. This is on a motion of Mr. Mann to approve
17 the application, seconded by Mr. Etherly. Also in
18 support of the motion, Mr. Griffis, the Chair, Ms.
19 Miller is opposed to the motion. We also have an
20 absentee ballot, Mr. Chairman, from Anthony Hood, who
21 is also participating on the case, and his ballot --
22 his absentee vote is to deny the application, so that
23 would give a resulting vote of 3-2-0.

24 CHAIRMAN GRIFFIS: Excellent, very well
25 done. Thank you all and Mr. Moy.

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1 Anything on that application?

2 MR. MOY: Sir, we -- as you know, there's
3 no weighted ANC letter on this particular case, no
4 party status, so staff's question is whether the Board
5 prefers a full order or a summary.

6 CHAIRMAN GRIFFIS: I don't see any reason
7 why we wouldn't waive our rules and regulations to
8 issue a summary order on this, unless any Board
9 members have any objection to that.

10 Not noting any objection, let's move ahead
11 with a summary order.

12 Excellent.

13 Let's move ahead then and call the next
14 case for decision.

15 MR. MOY: The next case is Application
16 No., as originally noticed, Application No. 17510 of
17 Bertha Tucker, pursuant to 11 DCMR 3104.1, for a
18 special exception to establish a child development
19 center for 60 children and ten staff, under section
20 205, at premises 3219 9th Place, S.E., and that's in
21 Square 5942, Lot 824.

22 On September 19, 2006, the Board completed
23 public testimony, closed the record, and scheduled its
24 decision on October 3, 2006. The Board requested
25 specific post-hearing documents from the applicant, or

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1 through the Office of Planning. The office has
2 received a filing from the applicant, and is
3 identified in your case record as Exhibit No. 28.

4 Staff notes that in that filing there is
5 a reduction of the number of students, and also a
6 reduction of the number of staff.

7 The second and final filing is from the
8 Office of Planning, a memorandum with an attachment
9 from DOH, and that is identified in your case record
10 as Exhibit 29.

11 Both of these exhibits, Mr. Chairman, are
12 two days untimely, since the Board asked for these
13 documents on September 27th. So, the Board has to act
14 on the merits of the application request for a special
15 exception relief under Section 205, and that completes
16 the staff's briefing, Mr. Chairman.

17 CHAIRMAN GRIFFIS: Excellent, thank you
18 very much, Mr. Moy. I don't see any reason why we
19 couldn't waive our time requirements, as we set that
20 schedule to get this additional documentation, and
21 they are very critical, I think, for the application,
22 unless there's any opposition to that, and we can take
23 them into the record.

24 Excellent, very well, not noting any
25 objection, let's move ahead with this.

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1 The Board has great familiarity with
2 reviewing applications for child development centers.
3 And, I think that this particular case, there was some
4 concern of the occupancy, and there was direct
5 questions to it, which is why the additional
6 information was requested and, in fact, is very
7 informative.

8 As we focus our deliberation on this, I
9 think we should focus it around, (1) obviously, the
10 requirements of the regulations, but those
11 requirements also break down into, I think, fairly
12 clear categories.

13 One, we do have the Office of Planning in
14 their analysis recommending approval of this
15 application for five years. I think we also need to
16 talk about the number of teachers and/or staff that
17 would not be exceeded in the application. We will
18 address the ages of the children, which are from 6
19 weeks to 2-1/2. They have three different categories,
20 so it was 6 weeks to two years, and then it was 2-1/2
21 and up, I believe, because they had talked about some
22 of the teenagers in that. So, I think we just
23 clarify, obviously, what we are looking at.

24 Then the number of children, as we need to
25 discuss, in terms of the occupancy or licensing that

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1 has been submitted into, and then how we deal with
2 that in terms of an enrollment or an on-site number,
3 and the impacts or the potential for impacts of that.

4 We also had requested, and which was
5 submitted, drop-off/pick-ups and other operating
6 aspects.

7 So, let's move ahead then, and I think
8 it's possibly -- as I was going to say, it's possibly
9 best just to form this in a motion, but why don't we
10 just start the discussion immediately on the
11 additional filings that came in, or wherever anyone
12 wants to pick this up.

13 Just for clarity, of course, the
14 application came in, well, the application came in for
15 60 children. This is, potentially, a three-level
16 house, a basement, 1st and 2nd level. The variations
17 of ages of the children, obviously, invoked questions
18 from the Board of how that was going to be programmed
19 in the house. There is ample outside space, which is
20 one of the requirements. The parking also in back,
21 which corresponds to the ten staff members in the
22 count, they have provided with the projection of work
23 that will make a hard surface there for parking.

24 I think it's fairly clear that 60 children
25 in that facility would not be allowed. The total

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1 square footage is roughly estimated by the government
2 agency that went to review this, DOH, is 1,320 square
3 feet. The infants are required to have 45 square feet
4 per, and the children two years and older are required
5 to have 35 square feet per child. That would equate to
6 13 infants and 21 children two years and older, which
7 would be a total of 34 students.

8 I think for this that we would obviously
9 -- well, not obviously -- we can follow those exact
10 calculations. We can have that as an on-site number.
11 We can have an enrollment number. It seems to me that
12 -- well, there is --

13 Comments?

14 COMMISSIONER MANN: Perhaps, the answer is
15 in the materials, if I dig a little deeper, but if you
16 were to calculate it just the opposite way, and say
17 the facility has 1,320 square feet, and then divide it
18 by either 45 or 35, then you end up with a different
19 number. So, how is it that this breakdown of 13 and
20 21 was achieved?

21 CHAIRMAN GRIFFIS: They say 13 infants by
22 45 would fit into 585 square feet.

23 COMMISSIONER MANN: That's right, but were
24 they -- was it --

25 CHAIRMAN GRIFFIS: Oh, you are saying

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1 which started first, the square footage or the number
2 of infants?

3 COMMISSIONER MANN: Yes, that's right.

4 CHAIRMAN GRIFFIS: Yes, I have no idea,
5 that's -- I mean, that's an excellent question, unless
6 the -- I would only -- this is all just projection on
7 my part, but, perhaps, it's assuming that the infants
8 would be on the first floor, because infants would not
9 be appropriately on the second level or in the
10 basement level, and so the floor plan on the first
11 floor would allow for 585 square feet. That's what I
12 -- that's the only sense that I would make, but
13 there's nothing factually to base that on.

14 COMMISSIONER MANN: Okay. Although,
15 here's, perhaps, a suggestion that may give us
16 something to base it on, is if we go to the next
17 enclosure that was submitted by Tucker's Day Care
18 Center, it doesn't definitively answer which came
19 first, the number of children or the amount of square
20 feet, however, Tucker's Day Care Center does proffer
21 13 infants, and 13 two to four year olds, and eight
22 after school, which, presumably, is older than infant
23 and older than a two to four year old.

24 CHAIRMAN GRIFFIS: Okay. So, one way to
25 take a look at this, in terms of the deliberation, is

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1 just to take their direct information, and that is,
2 this is an application for 34 students and eight
3 staff, and that the breakdown would be as follows, and
4 that would be an on-site number, not an enrollment
5 number.

6 COMMISSIONER MANN: Yes.

7 CHAIRMAN GRIFFIS: Okay. I have no
8 difficulty with that. I think as we stated in
9 previous applications for schools and day cares, that
10 it's critical that we are precise in the numbers and
11 what they mean, and what they are rather. I don't
12 have any difficulty with doing an on-site number or an
13 enrollment number, as long as we know that's exactly
14 what we are talking about and, therefore, measuring
15 the impacts as they are on each of those.

16 COMMISSIONER MANN: Okay.

17 VICE-CHAIR MILLER: I would just add that
18 the evidence that we've been given really does go to
19 on site, you know, how much capacity the building has,
20 et cetera. So, that makes sense in this case to use
21 it that way.

22 CHAIRMAN GRIFFIS: Okay.

23 VICE-CHAIR MILLER: So, we have an on-site
24 number of the 34 students broken down the way Tucker
25 has presented it, between infants, and two to four

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1 year olds, and after school.

2 CHAIRMAN GRIFFIS: Right.

3 VICE-CHAIR MILLER: Okay.

4 CHAIRMAN GRIFFIS: So, it's 13-13-8.

5 VICE-CHAIR MILLER: Right.

6 CHAIRMAN GRIFFIS: Good.

7 VICE-CHAIR MILLER: Now, if we want to
8 move into the number for staff, they represent that
9 they will have eight in staff.

10 CHAIRMAN GRIFFIS: Right.

11 VICE-CHAIR MILLER: And then, Office of
12 Planning had suggested that there be a maximum of ten,
13 I believe, on site at any one time.

14 CHAIRMAN GRIFFIS: Right, as the staff is
15 in direct relation to the students, I think we'd go
16 with what the applicant has presented, just as they
17 are presenting their students on site.

18 VICE-CHAIR MILLER: Okay. Right, and I
19 think that OP's recommendation was made before we had
20 the information from --

21 CHAIRMAN GRIFFIS: DOH?

22 VICE-CHAIR MILLER: -- DOH, yes.

23 CHAIRMAN GRIFFIS: Right. Good.

24 What else? They are also proposing to
25 have -- create the two 9 x 19 parking spaces in the

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1 rear. The pick-up and drop-off, I think that it's
2 required, and I think that we would just have that
3 they would maintain this proposed plan to make sure
4 that there's safe drop-off and pick-up of the
5 students.

6 COMMISSIONER MANN: We also heard, whether
7 or not it was supported by evidence or anecdotally I
8 don't recall, that most of the students would not be
9 arriving by automobile.

10 CHAIRMAN GRIFFIS: Right, exactly.

11 VICE-CHAIR MILLER: And, that the center
12 is near public transportation. So, yes, traffic
13 wasn't really a contested issue in this case.

14 CHAIRMAN GRIFFIS: Good. Okay.

15 Anything else?

16 VICE-CHAIR MILLER: We usually put in the
17 hours of operation.

18 CHAIRMAN GRIFFIS: Right.

19 VICE-CHAIR MILLER: Also --

20 CHAIRMAN GRIFFIS: 7:00 to 6:00?

21 VICE-CHAIR MILLER: -- 7:00 to 6:00,
22 right.

23 CHAIRMAN GRIFFIS: Right.

24 VICE-CHAIR MILLER: Monday through Friday.

25 CHAIRMAN GRIFFIS: It's supported by their

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1 program also. I mean, operation, I think, obviously,
2 well, they have submitted that their day starts at
3 7:00 with activities, and ends at 5:45, which allows
4 7:00 to 6:00. Okay.

5 Anything else?

6 VICE-CHAIR MILLER: Office of Planning had
7 suggested that we put a term on this, special
8 exception for five years from the date of issuance of
9 the Certificate of Occupancy --

10 CHAIRMAN GRIFFIS: Right.

11 VICE-CHAIR MILLER: -- for the child
12 development center, and since this is a new operation
13 it's usually a good idea.

14 CHAIRMAN GRIFFIS: Absolutely agree.

15 Anything else? We take note that DDOT did
16 review this, and did not have any objection to the
17 application. They did some substantive analysis of
18 the fact that they did not see that this would have
19 any sort of contribution to any objectionable traffic
20 impact.

21 VICE-CHAIR MILLER: Yes.

22 VICE-CHAIR MILLER: I'm not sure how we
23 are going to write this up, but the submittal by
24 Tucker's Day Care Center, which is -- let's see what
25 exhibit number that is -- 28, it does set forth pretty

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1 well the parking plan, the number of students, the
2 pick-up and drop-off plan, and their program. So,
3 perhaps, we could reference it somehow in our order.

4 CHAIRMAN GRIFFIS: This one?

5 VICE-CHAIR MILLER: This one.

6 I also want to add that the ANC did submit
7 a letter in support of the application unanimously
8 recommending approval. Unless I missed something, it
9 looked like they may have missed one of the criteria
10 for great weight, in that they didn't, as far as I can
11 tell, identify what their quorum was, and, therefore,
12 how many people voted to support it.

13 However, they didn't -- however, they
14 didn't raise any issues that would require us to
15 really address them, and which is what the great
16 weight really goes to, addressing issues raised in the
17 report with particularity. So, I just want to make it
18 clear that the Board would be recognizing and
19 acknowledging the support of the ANC, even if they
20 missed that one thing, but I would suggest that they,
21 in the future they notice all the different elements
22 for great weight.

23 CHAIRMAN GRIFFIS: Good. Very well,
24 anything else? I believe that's quite thorough. I
25 think we ought to move right into a motion at this

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1 point, and then we can start crafting the specifics of
2 conditions, if that is the way to move ahead.

3 And, I would move approval of Application
4 17510 under section 205 to allow for the operation of
5 the child development center, with conditions as we
6 will lay out, and that is for the premise of 3219 9th
7 Place, S.E., and I would ask for a second.

8 VICE-CHAIR MILLER: Second.

9 CHAIRMAN GRIFFIS: Thanks.

10 We'll second the general motion, and then
11 move ahead into the conditions. We'll get concurrence
12 on all of these conditions, but let's start from the
13 very beginning.

14 I would request that the motion reflect a
15 period of five years from the date of issuance of the
16 Certificate of Occupancy of the development center.
17 Any comments or concerns of that?

18 The next would be that the number of
19 teachers and staff would not exceed eight, that the
20 children's ages would range from two weeks --

21 VICE-CHAIR MILLER: Can we just say
22 employees or staff?

23 CHAIRMAN GRIFFIS: Yes, that's fine, staff
24 is fine.

25 VICE-CHAIR MILLER: Okay.

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1 CHAIRMAN GRIFFIS: In terms of the
2 breakdown of the age of the students, I think I want
3 to use the language of the applicant, and then that we
4 would have infants, two to four year olds, and after
5 school children. The after school they were saying
6 were ranging of, you know, teenage, 13 to 15, to 16.
7 I don't think that really falls into great
8 particularity for this 205 Review of this particular
9 application.

10 We have indicated that there would be no
11 more than 34 students or children on site at one time,
12 and that their breakdown was as 13 infants, 13 two to
13 four year olds, and eight after school.

14 The center would operate in the hours of
15 7:00 a.m., to 6:00 p.m., daily.

16 And, that the center would operate under
17 the parking and pick-up and drop-off plan as submitted
18 in this application, in order to ensure the safety of
19 the children.

20 Ms. Bailey?

21 MS. BAILEY: Mr. Chairman, excuse me. The
22 hours of operation shall be 7:00 a.m., to 6:00 p.m.,
23 Monday through Friday, or daily?

24 CHAIRMAN GRIFFIS: Monday through Friday
25 is what I was anticipating.

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1 MS. BAILEY: Thank you, sir.

2 CHAIRMAN GRIFFIS: Thank you. Good point.

3 Okay, anything else that I missed on
4 those, or concerns, comments addressed to any of those
5 conditions?

6 Yes?

7 VICE-CHAIR MILLER: I just have a question
8 with respect to -- and it was my idea to reference
9 this submittal, which I think is good, but in some
10 cases we pull out specifics like the breakdown on the
11 number, and do you think we need to pull out the
12 specifics with respect to parking or drop-off or not?

13 CHAIRMAN GRIFFIS: Yes, I think we ought
14 craft and factor that condition and say that the
15 applicant will provide two 9 x 19 parking spaces at
16 the rear of the building, and then use the words that
17 were put in here, but not all of them.

18 VICE-CHAIR MILLER: Right.

19 CHAIRMAN GRIFFIS: In terms of the pick-up
20 and drop-off, but we can craft that specific language.

21 VICE-CHAIR MILLER: Good.

22 CHAIRMAN GRIFFIS: And, frankly, just use
23 what's there.

24 VICE-CHAIR MILLER: Good.

25 CHAIRMAN GRIFFIS: Okay. Anything else?

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1 Very well, we do have a motion before us,
2 it has been conditioned. Yes, comments on those?

3 VICE-CHAIR MILLER: Yes, I just want to
4 make just a general comment, in that we haven't gone
5 through every single element of section 205, but that
6 we find that, you know, it's in compliance with all of
7 205, and that's why we've jumped right into the
8 conditions.

9 CHAIRMAN GRIFFIS: Absolutely.

10 VICE-CHAIR MILLER: Okay.

11 CHAIRMAN GRIFFIS: And, on the contrary, I
12 think we addressed all of them.

13 VICE-CHAIR MILLER: Oh, you did?

14 CHAIRMAN GRIFFIS: If you look at it, I
15 think all of our comments actually went directly to
16 it. Meeting applicable code went directly into the
17 number of children and students that, obviously,
18 changed, whether it would be designed with no
19 objectional traffic conditions, we've addressed that
20 and talked a little about it, the off-site parking
21 which was critical, the outdoor play space, which we
22 also addressed, which is 205.5, as having adequate
23 outside space, and treatment in terms of design
24 screening, one, perhaps, we didn't address, but we
25 weren't asking for anything in addition. And, I think

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1 that the Office of Planning was also in concurrence
2 with that.

3 The off-site play areas were not pertinent
4 to this, as they had not talked about having a regular
5 off-site play area because of the on-site piece, and
6 I don't see anything else that we would have had to
7 have addressed.

8 VICE-CHAIR MILLER: A child development
9 center within 1,000 feet.

10 CHAIRMAN GRIFFIS: True enough, that's one
11 that we didn't talk about immediately here. I think
12 we can, I don't think -- I think that it is
13 appropriate, as the record has shown, one, that this
14 particular applicant operates the other adjacent
15 within proximity child development and day care
16 center, and that there was, and is, evidence in the
17 record addressing the demand in the area and the lack
18 of facilities like this, but also lack of possibility
19 to have those. There aren't providers looking for
20 spaces, and so this is, obviously, and directly
21 addressing that need.

22 And, we had some oral testimony on that
23 also, I believe the ANC addressed that, or I don't
24 recall specifically the witness that did, but there
25 was additional testimony to that.

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1 And, I think what we would obviously look
2 to, and I don't think that there was anything
3 persuasive in my mind in the record, the proximity
4 would be the kind of cumulative impact, and whether
5 that would be in any way negative.

6 And, I think there's a lot of points of
7 why that is not the case here, but the one critical
8 and pertinent one is the testimony of the applicant,
9 having run both of them, that the draw is from the
10 immediate community and, therefore, it's not as if
11 there isn't a huge burden being put on the area of
12 influx of people driving and/or coming into the area
13 for the service, but rather it's located adjacent to
14 where the service is required.

15 Good. Anything else?

16 Very well, if there's nothing else then,
17 we can proceed on. We do have the motion that has
18 been stated with conditions and seconded. Unless
19 there's any further deliberation or comment on that,
20 I'd ask for all those in favor to signify by saying
21 aye.

22 (Ayes.)

23 CHAIRMAN GRIFFIS: And, opposed?

24 Abstaining?

25 Very well, why don't we record the vote.

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1 MR. MOY: Yes, sir. For Application No.
2 17510 of Bertha Tucker, staff would record the vote as
3 4-0-1, this on the motion of the Chairman to approve
4 the application with conditions as discussed, seconded
5 by Ms. Miller. Also in support of the motion Mr. Mann
6 and Mr. Etherly, and we have a Zoning Commission
7 member not participating on this case.

8 CHAIRMAN GRIFFIS: Excellent. Thank you
9 very much.

10 What were we doing in that -- we didn't
11 need to do a full order on that, am I right? Is there
12 any objection to waiving our rules and regulations and
13 issue a summary order?

14 Not hearing any objection, why don't we
15 issue a summary order that, of course, it would then
16 add in the conditions of that as part of the order.

17 MR. MOY: Yes, sir, thank you, sir.

18 CHAIRMAN GRIFFIS: Thank you.

19 What's next on the agenda?

20 MR. MOY: The next case, and last case for
21 the morning, for the public meeting, Mr. Chairman, is
22 application No. 17515 of Abdul Kamara, pursuant to 11
23 DCMR 3104.1, for a special exception to construct a
24 four-unit apartment building under section 353, in the
25 R-5-A District at premises 5031 B Street, B as in

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1 bravo, S.E., Square 5325, Lot 10.

2 On September 26, 2006, the Board completed
3 public testimony, closed the record, and scheduled its
4 decision on October 3rd of 2006. The Board requested
5 supplemental information from the applicant, and that
6 was filed by the applicant on September 28, 2006, and
7 is identified in your case folders as Exhibit 28.

8 The Board is to act on the merits of the
9 application for special exception relief. That
10 completes the staff's briefing, Mr. Chairman.

11 CHAIRMAN GRIFFIS: Excellent, thank you
12 very much. We do appreciate it.

13 Mr. Moy has adequately summarized the
14 application before us. It is absolutely full. I
15 think we ought to expedite this as we did receive the
16 specific information that the Board requested, and I
17 would move approval of Application 17515, which would
18 allow, under a special exception, construction of a
19 four-year apartment building under section 353 of the
20 premises 5031 B Street, S.E., and would ask for a
21 second.

22 MR. ETHERLY: Second, Mr. Chairman.

23 CHAIRMAN GRIFFIS: Thank you very much.
24 Let's move ahead very quickly. I think we can rely
25 substantially on the Office of Planning's

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1 recommendation of approval. We also had the
2 submission of the DACD, which supported the granting
3 of the requested relief.

4 We have the supplemental submission by the
5 owner, which I didn't find very persuasive, but that's
6 what we asked for, he gave it to us, and the ANC-7E,
7 which I'd like to address, had submitted in, and their
8 Exhibit No. 23, the fact that they had taken a vote to
9 deny the application are requesting that we deny the
10 application.

11 I think this is another case in which we
12 saw, and I can speak specifically, the importance of
13 the public hearing, that not all of the information is
14 adequately presented in written form, and I'll be
15 specific on this. The ANC came in and their biggest
16 criterion was that they wanted a home ownership in
17 this building, and I would go deeper into that,
18 because my understanding of their position was that
19 they did not want a rental building because of the
20 history of rental buildings in their neighborhood.

21 I was persuaded based on the testimony of
22 the applicant that they are moving ahead to develop a
23 condominium regime in this new construction, but I'm
24 also persuaded by the fact that there is nothing in
25 the evidence that would lead me to believe that this

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1 new construction, if, and there's nothing in the
2 evidence that says it would be rental, but if it was
3 to go to be a rental that it would fall into the same
4 situation as that which is in the generalized area,
5 and, obviously, therefore, was the concern of the ANC.

6 But, directly going to the special
7 exception under 353, it's a very limited review, I
8 must say, for this type of application. It really, as
9 I said in the public hearing for the R-5-A Zone
10 District within which this is located, it really
11 anticipated larger developments and multiple
12 buildings. There are certain things that are required
13 to be addressed, the front of buildings, the interior
14 stairs, none of which has much importance or direct
15 relation to what we are assessing here, and I think
16 that their reference in the referral to all the
17 agencies has been done.

18 I'm very supportive of this new
19 construction, and had some concern, as was noted, just
20 with the proper and adequate landscaping and lighting.

21 We have submitted, and I would say that
22 this is part of the application of which will be
23 approved, a lighting plan and a spec sheet on the type
24 of lighting to be provided. I don't feel strongly
25 that we should require the specific number that has

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1 been submitted in here, but rather that it has been
2 presented that there would be adequate exterior
3 lighting in the surface parking and on the side of the
4 property, and that it would not -- it would be -- it
5 would not flood or be detrimental or shine over onto
6 the adjacent properties. And, I think that's
7 sufficient and very adequate. It was good to get
8 clarification of how they were proposing to have that
9 small wire deck on the trash receptacles. I don't know
10 if that's better than a concrete pad or not, but it's
11 not worth our time getting into that, or jurisdiction
12 for that matter.

13 I'll open it up to others for comment.

14 Ms. Miller?

15 VICE-CHAIR MILLER: I have a couple
16 comments.

17 I'd just like -- you, basically, said
18 this, but I just want to agree, that the ANC did
19 oppose the application, but as it's written, even in
20 their report, the basis was that they were opposed to
21 an apartment building, and then at the hearing they
22 were not opposed if it was going to be condominium.

23 I don't think that it's within our
24 regulations for us to -- I'm pretty sure it is -- to
25 require that it be condominium, but I would note that

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1 the applicant has made specific representations in the
2 record that, in fact, the units will be for sale and
3 that they will also be affordable.

4 And, one document in particular is Exhibit
5 25, entitled, "Clarification of Project Intent," but
6 that was what the applicant represented throughout the
7 hearing.

8 Also, I just wanted to bring to the
9 Board's attention that in the Office of Planning
10 report the Office of Planning recommended, at page 5,
11 as a condition of approval that the top of the
12 retaining wall be no more than 4 feet above any
13 adjacent grade, and if my memory serves me correctly
14 I think that the applicant represented that they had
15 redesigned or something, and that that was the case.
16 But, I just wanted to bring it to the Board's
17 attention in the event we want to reference that
18 somehow or not.

19 CHAIRMAN GRIFFIS: I don't feel compelled
20 to reference that.

21 VICE-CHAIR MILLER: Okay.

22 CHAIRMAN GRIFFIS: Others?

23 I think some of the concern of the Office
24 of Planning, and what they said in the hearing, was
25 the fact that the grade falls away to the adjacent

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1 property, and they wanted to make sure that there
2 wasn't a huge wall that was created there.

3 The plans that were submitted, obviously,
4 as part of the approval if this goes forward show the
5 fact that it was redesigned and there won't be a
6 retaining wall that is out of scale, let's say, to the
7 grade changes.

8 But, I'm leery of putting a condition in
9 there for two reasons. One, I wasn't sure that there
10 was enough persuasive evidence that a detrimental
11 impact was created for us to condition that, and the
12 other piece is to get into what happens if it has to
13 be 4 feet, 1 inch, based on the engineering of the
14 site and all that, whether that would be worth them
15 coming back for a modification to the order. So, in
16 that sense, I wouldn't, at this point, encourage a
17 condition.

18 VICE-CHAIR MILLER: Well, I just wanted to
19 note that it's certainly addressed with particularity
20 OP's concern and given it great weight.

21 CHAIRMAN GRIFFIS: Well done.

22 Anything else? Very well.

23 We do have a motion before us, it has been
24 seconded. If there's no further deliberation or
25 comment on that I'd ask for all those in favor to

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1 signify by saying aye.

2 (Ayes.)

3 CHAIRMAN GRIFFIS: Opposed?

4 Abstaining?

5 Mr. Moy?

6 MR. MOY: Yes, sir. Staff would, for
7 Application No. 17515 of Abdul Kamara, staff records
8 the vote as 4-0-1, or I should say, 4-0-0 for the
9 moment, on the motion of the Chairman to approve the
10 application, seconded by Mr. Etherly. Also in support
11 of the motion, Ms. Miller and Mr. Mann. We have an
12 absentee ballot from Mr. Michael Turnbull, who is
13 participating on the case, and his vote is to approve,
14 with such conditions as the Board may impose.

15 Staff would also like to add that his
16 comment on his absentee ballot reads as follows,
17 "Lighting in parking lot needs lighting focused on the
18 lot and not spilling into neighbors' property. Trash
19 enclosures should conceal trash receptacles." But, as
20 I said, his vote is to approve the application, which
21 give a final vote of 5-0-0.

22 CHAIRMAN GRIFFIS: Very well. I think
23 we'll address both of those elements as we talked
24 about in terms of our deliberation, but also in the
25 order when we issue it, and how it was addressed by

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1 the applicant.

2 Ms. Miller brings up an excellent point,
3 the fact that the ANC was in opposition to this,
4 although they did change their position in the
5 hearing. We don't have the official position of them,
6 so that we might have, let us just say, a brief full
7 order on this that will address all of those issues.

8 That being said, anything else?

9 MR. MOY: No, that's it for the public
10 meeting, Mr. Chairman.

11 CHAIRMAN GRIFFIS: Very well.

12 If there's no other further business for
13 the Board, let's adjourn our public meeting.

14 (Whereupon, the above-entitled matter was
15 concluded at 11:48 a.m.)

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