

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MAY 9, 2006

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:58 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 MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

JOHN PARSONS	Commissioner (NPS)
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COMMISSION STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON
MATT JESSICK
STEPHEN MORDFIN
STEVEN RICE

The transcript constitutes the minutes
from the Public Hearing held on May 9, 2006.

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

9:58 a.m.

CHAIRPERSON GRIFFIS: I call to order our public hearing of the 9th of May, 2006.

We will be joined by Mr. Mann, who will be representing the National Capital Planning Commission.

I will still be Geoff Griffis, Chairperson today of the Board of Zoning Adjustment, and with me, of course, is Ms. Miller, the Vice Chair, and Mr. Etherly, representing the Zoning Commission. With us this morning in our session is Mr. Parsons.

Copies of today's hearing agenda are available for you. They are located where you enter into the hearing room. You can pick one up and see where you will fall. I will not be changing the schedule this morning. So we will take this in the order of which they have been published.

With that, though, there are several very important things. I am going to ask that everyone please turn off cell phones or beepers at this time as it will disrupt the transmission of our hearings.

And our hearings are in the public, of course, and they are recorded and broadcast. They are recorded by the court reporter, sitting on the floor to my right. They are creating the official

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1 transcript which will be part of the record.

2 We are also, as many of you probably are
3 aware, being broadcast live on the Office of Zoning's
4 website.

5 So attendant to that, there are several
6 additional things. I am going to ask that everyone
7 fill out two witness cards prior to coming forward to
8 speak to the Board. Witness cards are available,
9 hopefully, at the table where you entered into the
10 room. If not, the court reporter has some. Pick
11 those up; fill it out. It's your name and address.
12 That goes to the recorder prior to coming forward.

13 When you sit down in front of the table
14 where you will provide testimony, I would ask that you
15 just state your name and address for the record. You
16 only need to do this once. Obviously, that will set
17 the record on who we have in front of us. Thank you
18 very much for those cards.

19 The order of procedure for special
20 exceptions and variances is as follows: First, we
21 hear from the applicant and the presentation of their
22 case. Secondly, we will hear from any government
23 agencies reporting on an application: the Office of
24 Planning, Department of Transportation. Third, we
25 will hear from the advisory and neighborhood

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1 commission within which the property is located.
2 Fourth will be persons or parties in support of an
3 application. Fifth would be persons or parties in
4 opposition to an application. Finally, sixth, we
5 would hear any rebuttal testimony from the applicant
6 or closing remarks and summations.

7 Cross examination of witnesses is
8 permitted by the parties in the case. The agency
9 within which the properties are located is
10 automatically a party in the case. Of course, the
11 applicant is also a party in the case. We will
12 establish parties in each case if there is timely
13 request for party status.

14 The record will be closed at the
15 conclusion of the hearing on a case, meaning when we
16 finish today, our record closes; the book shuts,
17 except for any material that the Board would request.
18 We at times do request additional information, but we
19 will be very specific on what that information is and
20 when it is to be in the record.

21 As you heard a little bit about this
22 morning, whether you caught it or not, there were
23 things that came into the record that were returned,
24 the Board did not see and did not review, and,
25 therefore, did not deliberate on. So it is very

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1 important that you get the information you want the
2 Board to look at into the record, and, of course, it
3 would be germane and jurisdictional for our review.

4 The Sunshine Act does require that this
5 Board hold all its hearings in the open and before the
6 public. We do from time to time enter into Executive
7 Session. That is for reviewing the facts on each case
8 or deliberating on a case. When this happens, and it
9 does very seldomly, but when it does, this is, of
10 course, in accordance with our rules, regulations,
11 procedure. It is also in accordance with the Sunshine
12 Act.

13 Again, I would state very strongly that
14 the decision of this Board is based exclusively on the
15 record that is created before us. So attendant to
16 that also, we ask that people present today, if you
17 see a Board member at a recess or at lunch, not engage
18 us in private conversations. This may lend to the
19 idea that we are receiving information outside of the
20 public record.

21 To that, as we continue on, let me ask all
22 those people present today that are thinking of or
23 will provide testimony to the Board, I would ask you
24 to please stand and give your attention to Ms. Bailey,
25 who is on my very far left. She is going to swear you

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1 in.

2 MS. BAILEY: Would you please raise your
3 right hand?

4 (Witnesses sworn.)

5 CHAIRPERSON GRIFFIS: Excellent. Thank
6 you all very much.

7 I was going through it so quickly, trying
8 to make up a little time, that I didn't say a very
9 good morning to Ms. Bailey, who is with the Office of
10 Zoning, and also Mr. Moy, with the Office of Zoning,
11 Mr. Nyarku, who is also with the Office of Zoning and
12 he is in and out assisting the Board in its
13 requirements.

14 With that, I do believe we are ready to
15 look at any preliminary matters. Preliminary matters
16 are those which relate to whether a case will or
17 should be heard today. Request for postponements,
18 withdrawals, whether proper and adequate notice has
19 been provided, these are elements of preliminary
20 matters.

21 If you have a preliminary matter for the
22 Board, meaning if you do not believe that the case
23 should go forward that is on the schedule today or you
24 are not prepared to go forward with a case this
25 morning, I would ask you to come forward, have a seat

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1 at the table in front of us as an indication of a
2 preliminary matter.

3 With that, then, let me ask Ms. Bailey if
4 you are aware of any preliminary matters that the
5 Board needs to be attentive to at this time.

6 MS. BAILEY: Mr. Chairman, members of the
7 Board, and to everyone, good morning.

8 There are preliminary matters, but they
9 are case-specific. So, with the Board's approval,
10 after calling the case, if you would prefer, I can
11 deal with the preliminary matters at that time.

12 CHAIRPERSON GRIFFIS: Excellent. I think
13 that is appropriate.

14 MS. BAILEY: That's all that staff has.
15 I don't know if anyone else has anything.

16 CHAIRPERSON GRIFFIS: Doesn't appear to.

17 MS. BAILEY: Okay. First case is
18 Application No. 17471 of Paul Heavey, pursuant to 11
19 DCMR 3104.1, for special exception to allow a rear
20 addition to an existing single-family row dwelling
21 under Section 223, not meeting the lot occupancy
22 requirements, Section 403; the property is zoned R-4
23 and it is located at 309 K Street, Northeast, Square
24 775, Lot 33.

25 The preliminary matter associated with

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1 this case is it was not posted until this past Friday,
2 May 5th, and so it's obviously late, Mr. Chairman.

3 CHAIRPERSON GRIFFIS: Indeed. Thank you
4 very much.

5 Why don't you just introduce yourselves
6 for the record?

7 MS. FOWLER: Hi. I'm Jennifer Fowler of
8 1742 D Street, Southeast, in D.C. I'm the architect
9 on the project.

10 MR. HEAVEY: My name is Paul Heavey, 309
11 K Street, Northeast. I'm the owner.

12 CHAIRPERSON GRIFFIS: Excellent. Ms.
13 Fowler, you've heard Ms. Bailey indicate that there is
14 a preliminary matter as this was not posted for the
15 time requirement. Reasoning?

16 MS. FOWLER: This was purely an oversight
17 on my part and it was not intentional. I just missed
18 the deadline, unfortunately.

19 CHAIRPERSON GRIFFIS: Yes, okay. Of
20 course, it has been through the ANC and, obviously,
21 was mailed and corresponded to. I don't see any
22 reasoning, unless other Board members have any
23 contrary view, that we would not hear this today.

24 However, I do want to impress upon very
25 strongly, Ms. Fowler, you're obviously very familiar

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1 now with the applications that have come through, and
2 it serves, I would say, you and your clients well, but
3 it also serves us very well if these, although it
4 oftentimes seems perhaps too dry or boring, but these
5 are very important aspects, too, because the same
6 threshold that we ask of you is the next applicant,
7 the one tomorrow, and next week; it is a very
8 important piece.

9 It will, in fact, just waste your time,
10 your client's time, and our time if there is any
11 difficulty or complication and we have to re-advertise
12 this, we will set this off; in fact, today, if we did
13 not hear this, we might not hear this until September.
14 Obviously, it doesn't serve anyone to do that.

15 So, if we can ask you to be very
16 deliberative in getting that done next time, I know we
17 won't run into this again.

18 Very well. With that, then, we do have,
19 as announced, a Section 223 application. My Board is
20 very well aware of my small comments on the 223, but
21 I'm going to turn it over to you with this small
22 direction: I think the record is very full on this.
23 If you wanted to summarize, even stand on the record,
24 I think we could proceed, but I'll let you address the
25 Board.

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1 MS. FOWLER: Okay, yes, I would like to
2 stand on the record and just add that we do have
3 neighbor support from both sides, and we have ANC-6C
4 support, as well as the Capitol Hill Restoration
5 Society. So it has been well-received and supported.
6 Thank you.

7 CHAIRPERSON GRIFFIS: Excellent. Thank
8 you very much. I think that's the absolute point to
9 bring up and highlight. I thought it was well-served
10 that the ANC actually asked that. I think, if I read
11 the record correctly, that there was some indication
12 that they had requested letters from the neighbors,
13 and I think it is very important.

14 I know other Board members looked at this
15 and found that that would probably have been the only
16 real issue of concern. As it is addressed, I think we
17 can move ahead.

18 Are there any other questions from the
19 Board? Complications? Ms. Miller?

20 VICE CHAIRPERSON MILLER: I just was
21 looking at the record and would note that the Office
22 of Planning's report was also filed late, I believe.
23 We might want to consider waiving that requirement.

24 CHAIRPERSON GRIFFIS: Should I give them
25 a hard time?

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1 VICE CHAIRPERSON MILLER: We can ask their
2 reasoning, right?

3 CHAIRPERSON GRIFFIS: Excellent. That
4 moves us right into the Office of Planning's untimely
5 report, an excellent one at that, with in fact the
6 photographs.

7 However, before we look at that, why don't
8 you introduce yourself and just give us a little
9 understanding of why it was not timely.

10 MR. RICE: Good morning, Mr. Chairman and
11 Board. My name is Steven Rice.

12 I don't have any excuse for the
13 untimeliness of the application. I think it just got
14 mixed up, the paperwork.

15 CHAIRPERSON GRIFFIS: Procedurally, then,
16 is there any opposition to the Board accepting it into
17 the record?

18 VICE CHAIRPERSON MILLER: No opposition.

19 CHAIRPERSON GRIFFIS: I can't imagine.
20 Okay, very well. We do appreciate it.

21 Let me just step aside a little bit
22 because I think it is not very often that we don't
23 have timely reports from the Office of Planning, but
24 there's a bigger issue here that I think is a positive
25 one, is that getting Office of Planning reports on 223

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1 applications to begin with I think is impressive. I
2 mean the amount of analysis and work that goes into
3 it, and it was not many years ago that that would not
4 have happened. So we absolutely require it to be
5 timely, but it is also good to have them.

6 Mr. Rice, I'll turn it to you.

7 MR. RICE: Well, the Office of Planning
8 does recommend approval for the application. As
9 mentioned, we have received support from both the ANC-
10 6C, the abutting neighbors, and the Capitol Hill
11 Restoration Society's Zoning Committee. We do support
12 their application.

13 CHAIRPERSON GRIFFIS: Excellent. Thank
14 you very much.

15 Questions from the Board?

16 Ms. Fowler, do you have any cross
17 examinations/questions of the Office of Planning?

18 MS. FOWLER: No, thank you.

19 CHAIRPERSON GRIFFIS: Very well, let's
20 move ahead then.

21 I do not see any other government agency
22 reports on this application, unless the Applicant is
23 aware of any.

24 Is the ANC present, ANC-6C? The ANC is
25 not noted as present. They have filed an Exhibit 20,

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1 their report, which was, I might say, timely, the ANC
2 report, and it was, of course, recommending approval
3 of the application. We've already touched upon some
4 of the issues that they had brought up, which I
5 thought were good.

6 Lastly, the Capitol Hill Restoration
7 Society, we talked about that also. Is Mr. Peterson
8 or any representative of the Capitol Hill Restoration
9 Society present?

10 (No response.)

11 Not noting any present, we will note
12 Exhibit 21 also in support of the application.

13 Very well. Let me ask, are there any
14 persons present in Application 17471, in support or in
15 opposition, that would like to provide testimony,
16 persons to provide testimony?

17 (No response.)

18 Not noting any persons present to provide
19 testimony in 17471, I would turn it over to you, Ms.
20 Fowler, for any closing remarks you might have.

21 MS. FOWLER: I would just like to thank
22 the Board for your time and Mr. Rice for his report.
23 Thank you.

24 CHAIRPERSON GRIFFIS: Excellent. Thank
25 you very much.

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1 I think it's expeditious if we continue
2 our thoughts and comments and deliberation under a
3 motion. I would move approval of 17471 under special
4 exception under Section 223, as this property does not
5 meet the lot occupancy requirements, and it is the
6 premises of 309 K Street, Northeast. I would ask for
7 a second.

8 MEMBER ETHERLY: Second, Mr. Chair.

9 CHAIRPERSON GRIFFIS: Thank you very much
10 for the second. I do appreciate it. I think it does
11 meet all the tests as outlined, one, in the
12 Applicant's submissions and also the Office of
13 Planning's excellent analysis of the special exception
14 requirements under 223.

15 I would note that there's particular
16 attention paid to the graphics representation of this
17 and also the materials, not going into the specifics,
18 but I think it is appropriately done for the rear
19 addition, but also I think it takes into account the
20 character and the masking of the existing and the
21 surrounding structures, which is, of course, one of
22 the aspects of the 223 special exception requirements.

23 Noting also that the letters of support or
24 non-opposition of the adjacent neighbors, which would
25 be, of course, the most affected, are very persuasive

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1 in the application.

2 I would turn to anyone else for any other
3 additional comments.

4 (No response.)

5 Not noting any additional comments to the
6 Board, I think we can move ahead with our motion. It
7 has been seconded.

8 I would ask for all those in favor of the
9 motion signify by saying aye.

10 (Chorus of ayes.)

11 And opposed?

12 (No response.)

13 Abstaining?

14 (No response.)

15 Very well, why don't we record the vote?

16 MS. BAILEY: Mr. Chairman, the vote is
17 being recorded as five, zero, zero to approve the
18 application. Mr. Griffis made the motion. Mr.
19 Etherly seconded. Mr. Mann, Mrs. Miller, and Mr.
20 Parsons are in support.

21 CHAIRPERSON GRIFFIS: Excellent. Thank
22 you very much. Thank you all very much.

23 MS. FOWLER: Thank you.

24 CHAIRPERSON GRIFFIS: Enjoy. Good luck.

25 MR. HEAVEY: Thank you.

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1 CHAIRPERSON GRIFFIS: We will see you next
2 time, Ms. Fowler.

3 MS. BAILEY: Go through a summary order or
4 a full order, Mr. Chairman?

5 MR. MOY: Mr. Chairman, would you like to
6 waive the regulation for a summary order?

7 CHAIRPERSON GRIFFIS: Might as well. As
8 we are picking up speed here, why don't we waive our
9 rules and regulations and issue a summary order on
10 that. I don't see any reason why we wouldn't unless
11 there is opposition from the Board or the Applicant.

12 Not noting any, let's move ahead then and
13 call the next case for the morning.

14 MS. BAILEY: The next case, Mr. Chairman?

15 CHAIRPERSON GRIFFIS: Yes, please.

16 MS. BAILEY: Application No. 17464 of
17 Sherman Arms LLC, pursuant to 11 DCMR 3104.1, for a
18 special exception to allow a community service center
19 under Section 334. The property is located in the R-
20 5-A district in a cul-de-sac on 8th Street, Southeast,
21 Square 6209, Lots 28 through 31.

22 Mr. Chairman, just a brief note to
23 indicate that the address was advertised as the 700
24 block of 8th Street, Southeast, but the staff does not
25 believe that is correct. So some clarification may be

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1 needed there.

2 CHAIRPERSON GRIFFIS: Excellent. Thank
3 you very much.

4 Are there any other preliminary matters
5 attendant do this? I don't see any indicated.

6 MS. BAILEY: Yes, I'm not aware of any at
7 this time, sir.

8 CHAIRPERSON GRIFFIS: Okay, good. What we
9 are going to do, then, do we have a visual
10 presentation? Is that correct?

11 MR. STILLWELL: That is correct, Mr.
12 Chairman. There is a five-minute segment.

13 CHAIRPERSON GRIFFIS: Okay, good. Let me
14 ask if those easels could be moved. We're going to
15 angle them a little bit, if you wouldn't mind just
16 angling them. Right at the edge of the table, we'll
17 angle them this way. Yes, keep turning. That way, I
18 believe they will be able to be picked up by the
19 cameras. That way, they won't get in the way of your
20 screen. Yes, that seems to be good.

21 Okay, why don't we start when you're
22 ready.

23 MR. STILLWELL: Yes, good morning, Mr.
24 Chairman and members of the Board.

25 For the record, my name is Garland

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1 Stillwell with the Law Office of Pillsbury, Winthrop,
2 Shaw, Pittman, representing the Applicant today, Vesta
3 Corporation which is here before you for a special
4 exception review of a community center.

5 First, before I speak briefly on the case,
6 I would like to introduce the team. To my immediate
7 right is Mr. Charlton Hamer, Vice President of Vesta
8 Corporation. To his right is Mr. Jack Kerry, CEO of
9 the Kerry Company, who will be the operator of the
10 proposed service center. To his immediate right is
11 Mr. Dave Goslin of Crosskey Architects, who is the
12 project architect. Also assisting me today is an
13 associate from my office, Ms. Christine Laudy, also of
14 Pillsbury, Winthrop, Shaw, Pittman.

15 Mr. Chairman, if I could speak to the
16 address issue that was brought to my attention this
17 morning, I have conferred both with your staff and
18 with the Office of Planning. To be perfectly honest,
19 we are not sure where that reference of 700 block came
20 from. It is not in our application. It is referenced
21 in the Office of Planning report, and Mr. Mordfin has
22 indicated that he believed he saw it in one of the
23 affidavits.

24 But, just for the record, the property is
25 vacant and does not have a designated address and has

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1 never had a designated address, to our knowledge. So
2 at no point during our presentation will we be
3 referencing the 700 block of 8th Street. So I'm not
4 sure how you would like to proceed with that, but we
5 concur that that is not the accurate property address.

6 CHAIRPERSON GRIFFIS: We could pick an
7 address.

8 (Laughter.)

9 I think that's fine. How are we actually
10 legally designating this? By lot and square, is that
11 correct?

12 MR. STILLWELL: That is correct.

13 CHAIRPERSON GRIFFIS: Okay, so we will
14 proceed in that fashion then, and I think, obviously,
15 at the appropriate time in your process, if this was
16 approved and moves forward, you would obviously set an
17 address on this. For our purposes, unless I am
18 mistaken, I think the lot and square would be
19 sufficient for our proceedings.

20 MR. STILLWELL: Yes, and just for the
21 record, the property is located in Square 6209 and
22 comprised of Lots 28 through 31, and is referenced by
23 the D.C. Office of Surveyor Platt that is in your
24 Exhibit Book No. 4.

25 CHAIRPERSON GRIFFIS: A quick question,

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1 then, to clear it up: The cul-de-sac that is shown on
2 that is 8th Street. Does 8th Street go all the way
3 into the cul-de-sac or --

4 MR. STILLWELL: Eighth Street does go all
5 the way into the cul-de-sac.

6 CHAIRPERSON GRIFFIS: Okay. So there is
7 no time where the public right-of-way ends and it
8 becomes private?

9 MR. STILLWELL: That is correct.

10 CHAIRPERSON GRIFFIS: Okay, good enough.

11 MR. STILLWELL: Again, just real briefly
12 before I introduce my first witness, I would just like
13 to state for the record that this is a special
14 exception for a community center. However, we will
15 indicate during our presentation that this is much
16 more than a community center. This is actually a
17 learning center. As the Applicant will describe to
18 you, it is very much more integrated than community
19 centers that may have been before you before, and we
20 believe that after the testimony presented that it
21 will meet the requirements under Section 3104.1 and
22 352.1 of the zoning regulations.

23 With that, I would like to call my first
24 witness, Mr. Charlton Hamer.

25 MR. HAMER: Good morning. Again, my name

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1 is Charlton Hamer. I'm Vice President of Development
2 with Vesta Corporation. Vesta Corporation is located
3 in Weatogue, Connecticut, which is a suburb of
4 Hartford.

5 Vesta's primary responsibility or focus is
6 on the development of affordable housing for its own
7 portfolio. We have approximately 2900 units in
8 Connecticut, Ohio, Texas, and New Jersey. We also
9 provide development services on a case-by-case basis.
10 That includes arranging financing, whether it be debt
11 or equity, and/or property management.

12 The principals of Vesta Corporation have
13 been in business for over 25 years. They have been
14 involved in closings totaling over \$500 million. That
15 equates to about 15,000 units in 11 different states.

16 In the upcoming weeks, Vesta Corporation
17 will be closing on 180 units located on the corner of
18 Chesapeake Street and Southern Avenue in Southeast
19 D.C. We will invest approximately \$51,000 a unit in
20 the upgrading of this facility. The development is
21 right now commonly known as Avalon and Southern Court
22 Apartments.

23 Again, we will be investing about \$51,000
24 a unit in upgrading those apartments. That consists
25 of new roofing, perimeter fencing, security upgrades,

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1 new flooring, new cabinetry, and so forth.

2 The total site area is approximately a
3 little over five acres. Within those five acres is
4 the site that we have in front of you today, which are
5 Lots 28 through 31, Square 6209.

6 On that site we will be constructing our
7 new learning center. Vesta's mission is not just the
8 bricks and mortar of development. It also deals with
9 the enhancement of the quality of life of the
10 individuals and families at our site.

11 For you to get a clear grasp of our
12 learning centers, of which we have six currently open,
13 four in Connecticut, one in Cleveland, and another one
14 in Columbus, Ohio, I would like to show you a brief
15 video that deals with the learning center at our
16 Rainbow Terrace property in Cleveland, Ohio.

17 MR. STILLWELL: Mr. Chairman, for whatever
18 reason, the sound component just went out. So what I
19 would like to do is have Mr. Hamer, while your tech
20 person comes up to take a look at it, just describe
21 some of the functions, activities of the learning
22 centers.

23 CHAIRPERSON GRIFFIS: That's fine.
24 However, why don't we see if we can get that rolling
25 and, if so, we can do it.

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1 You have an extensive amount in the record
2 also, just written, which I know we have all read. So
3 we're very briefed on it. I like visuals. So if we
4 can get it rolling, that's fine.

5 MR. STILLWELL: Okay.

6 CHAIRPERSON GRIFFIS: But let's move ahead
7 and then we can always play it at the end as kind of
8 a celebration.

9 MR. STILLWELL: Okay. If we can just take
10 a brief moment, your tech person is here.

11 CHAIRPERSON GRIFFIS: Sure.

12 MR. STILLWELL: And while they are looking
13 at it, it is a five-minute clip. We do have copies in
14 a DVD format to pass out to each member.

15 If you could rewind it and drop the main
16 screen, please? That's fine. And if you could drop
17 the main screen? If I had my daughter here, she is
18 very good with remotes, she would have fixed this in
19 a second.

20 CHAIRPERSON GRIFFIS: I think you have to
21 be under a certain age to do that.

22 (Laughter.)

23 (Video shown.)

24 MR. STILLWELL: If I can ask the staff to
25 set the monitor for PC for the next presentation?

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1 This would conclude Mr. Hamer's part of
2 the presentation. He will be available for questions.

3 Ms. Laudy will be passing out, in
4 addition, too, copies of the video you just saw.

5 (Whereupon, the foregoing matter went off
6 the record at 10:30 a.m. and went back on the record
7 at 10:32 a.m.)

8 MR. STILLWELL: I think we're back on.

9 CHAIRPERSON GRIFFIS: Excellent.

10 MR. STILLWELL: What I was indicating
11 earlier is that concludes Mr. Hamer's part of the
12 presentation, but he will be available for questions.
13 We are ready to go to our next witness, Mr. Jack
14 Kerry.

15 MR. KERRY: Good morning, and thank you
16 for inviting me here or allowing me to speak. My name
17 is Jack Kerry. I'm the President of the Kerry
18 Company. We are a Washington, D.C. firm.

19 I think what I am going to do, instead of
20 trying to use this technology -- I will give that a
21 shot in a second here -- we also prepared for you a
22 set of screen shots of what we were going to show you
23 for a backup.

24 One quick word about the video that you
25 just saw: That place is my pride and joy, as you can

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1 imagine. The young woman who wrote that poem was a
2 student, is a student at the center. She is now 17
3 years old. She started out three years ago when she
4 was 14.

5 The genesis of that poem was that, as all
6 kids do, one day about two years ago they were giving
7 the teachers a lot of trouble, and so the teachers
8 said, "We quit. We're going on strike," and they
9 walked out.

10 And the kids were so concerned that they
11 came after the teachers and said, "What can we do?"
12 They said, "Show us that you really want us to be
13 here." And they sat down and wrote that poem. Every
14 time I hear it, and I've heard it many, many times, it
15 reminds me of why we do this.

16 In any event, the video that you saw is a
17 good introduction to basically what we're proposing to
18 do at the center. The center is part of something
19 that we call an e-village. The e-village has four
20 parts to it.

21 One is high-speed internet access in all
22 of the units, and those residents who go on to college
23 or get a GED, and you saw one of the people in the
24 video, or get a job, receive a free computer and
25 receive free high-speed internet access in their unit.

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1 The second element of the e-village is the
2 learning center, which you saw an example of it there.
3 By the way, if you saw the layout of the learning
4 center at Rainbow, that's going to be similar to what
5 we're going to be doing here.

6 The learning center, really the best way
7 to view that is that it is the hub of the wheel. We
8 have a set of partners who will come in with us and
9 actually run the programs in the center, educational
10 partners who will come in and run the programs in the
11 center.

12 In the case of Cleveland, it is Cuyohoga
13 County Community College. Up in Connecticut, it is
14 the University of Connecticut; it is Quinebaug Valley
15 Community College.

16 We, with the residents and other people
17 from the community, will be using the period of time
18 between now and the time that we hope that the center
19 opens, which will be in January, to have discussions
20 with several of the educational institutions here in
21 the District of Columbia -- and as all of you are
22 aware, there are many of them -- to find the right
23 partner or partners. It doesn't necessarily have to
24 be one partner.

25 But one of the things that we want to do

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1 with the learning center -- and, again, I hope you saw
2 that in the video -- is part of what we think makes
3 this unique is that we establish a college campus
4 onsite. So it is not just a question of people taking
5 courses online, and so forth. There is actually staff
6 from the universities onsite.

7 The next part of the e-village is a web
8 application. The web application serves two purposes.
9 One is it's a public website, so it lets people know
10 what programs are available at the center.

11 It also is an administrative site, has an
12 administrative side to it, where we track all of the
13 children, keep track of the programs and of the
14 teachers, and so forth, so that we are able to see if
15 what we are trying to achieve we are achieving and, if
16 we are not, why we are not. So that is part of what
17 the web application does.

18 The web application also serves as a way,
19 because we have something on there called the
20 suggestion box which is on the public side and every
21 place else -- that's our version of "contact us."
22 Because my experience with most "contact us" on a
23 website is that when you bring it up, it says, "to the
24 webmaster," and that's one problem.

25 The second problem is, if you talk about

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1 the programs or anything, and you do get an answer
2 from somebody, the person who is answering you says,
3 if you are concerned about the colors of the website
4 or the font size, and so forth, that's my job, but
5 you've been asking me about the program and that's not
6 my job.

7 What the suggestion box does is it gives
8 residents a chance to voice their opinions about the
9 learning center. For example, in Cleveland the center
10 is open on Saturdays, and the reason it is open on
11 Saturdays is because the residents, through the
12 suggestion box, said it was inconvenient for them to
13 be there during the first set of hours that we had.

14 The final part of the e-village is
15 partnerships. The basic idea behind partnerships is
16 that partnerships work best when all of the people
17 that are involved with them do what they do best. So
18 what Vesta does best is they build housing and they
19 manage housing. They are very, very good at that.

20 They are not educators. That's why we
21 want to get the educational partners. That's why we
22 get the educational partners in that we get in.

23 On the lefthand side, on the "visit our e-
24 villages," you can see some of the centers that
25 Charlton referred to. If you'll turn to the back, if

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1 you'll go to pages 11 and 12, this is the best summary
2 of -- or a summary, anyway -- of what we want to have
3 happen at the learning centers.

4 So the overall notion behind the learning
5 center is that the people who come into this -- what
6 we want the people who come into the center to leave
7 with, whenever they leave -- and some of them may use
8 the center for six months; some of them may use it for
9 a year; some of them may use it for two years. We
10 have people that have used them for three and four and
11 five years. There's no time limit.

12 But when they leave, our objective is for
13 them to have choice, choice about wherever they are in
14 their life. So if, for example, when these young
15 people reach 18, the way I have expressed it, just as
16 you would like for your own children when they are 18
17 to have the choice, to have the choice about where do
18 they go to school and which school do they go to, do
19 they go into the military, do they decide to not do
20 anything for a while, but that they have the choice.
21 The only way that they are going to have that choice
22 is by the time they are 18 they have achieved an
23 educational level that allows them to perform in
24 today's economy.

25 I am not as familiar, because I have just

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1 spent so much of my time working in Cleveland, I am
2 not familiar with the statistics for the District of
3 Columbia, but in Cleveland less than one-third of the
4 entering high school students graduate. Think about
5 that. It is astounding.

6 When you test the students who do
7 graduate, many of them score out at an eighth- and
8 ninth-grade level as far as math and reading are
9 concerned. Unfortunately for those people, they are
10 not going to be able to compete in today's society.

11 Our objective is to give the children and
12 the adults a chance to achieve the academic success
13 that they need, so that they do have choice. That's
14 basically what it amounts to.

15 I am always asked the question, I am
16 always asked that first question, the macro one, which
17 is, well, what do you expect to achieve? How did you
18 measure success? The way I have put it here is that
19 we will measure success on the basis that the children
20 who attend the center score on an SAT test at the same
21 level as the average student in the best high school
22 in that region.

23 Now we are not unrealistic and we realize
24 that for some people that is going to take longer than
25 for others, and we realize that many people will not

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1 achieve that. I wouldn't; I didn't, for example.

2 But having that as an objective we think
3 is extremely important. The one thing we have learned
4 is you never have to worry about the children. The
5 children want to learn. You could see that in the
6 video; I don't need to tell you that. Everyone knows
7 it.

8 What they need is they need loving,
9 caring, competent teachers, and they need a first-
10 class and secure environment. That's what we try to
11 make the learning centers.

12 What is laid out here are the quarterly
13 and annual goals, how we measure things. If you look
14 down at No. 2, the program is really very
15 straightforward. The first thing that happens when
16 children come in is that they are helped with their
17 homework. The second thing that happens is, because
18 there's been an assessment done for each one of them,
19 they receive group mentoring in math, science,
20 reading, and writing.

21 They then use our web application for
22 academic training and research. If you will turn back
23 to page 9, when we first started the learning centers,
24 we used to use disks. As a matter of fact, the first
25 centers we ever opened -- this is how long ago it was

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1 -- they were Apple computers where the operating
2 system was on a disk, and you had to put the operating
3 system in on a disk.

4 So as we moved along, and our company is
5 also a web development company, there are lots and
6 lots of education sites on the web. The problem is
7 not that there aren't sites on the web. The problem
8 is there are so many of them. There are literally
9 hundreds of them being developed each day.

10 So we built the portal that had the best
11 education sites online. The criteria we used for
12 determining which were the best sites is we went out
13 to the Department of Education's gateway website. We
14 went to the Encyclopedia Britannica. We went to The
15 New York Times website. If we identified, if a math
16 site appeared on all three of those sites -- for
17 example, Dr. Math -- that became one of our best
18 practice sites.

19 The reason that having a number of these
20 sites is important is because different children learn
21 differently. What this allows the teachers to be able
22 to do is to decide which ones they want to use.

23 If you are looking at this in the upper
24 righthand corner, in the navigation bar you will see
25 something called "My Bookbag." This is something

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1 that, if you are at home and you are working on a
2 particular site, or at your office, and you say, "I
3 really like that site," you can save it down in your
4 favorites. The problem is, if you're in somebody
5 else's office, you no longer have access to that site.
6 So this is an online favorites.

7 So the children can save down the courses
8 that they are working on online or the teacher can
9 say, as in my case there would be lots of math courses
10 in there, "These are the ones that we want you to
11 study." That allows the student to use that either at
12 home, in the library, or at school.

13 Finally, we go back to page 11, at the
14 bottom. After they go through the academic tutoring
15 and then use the web on No. 3, on No. 4 they do what
16 they like the most. They go onto ESPN. So they may
17 have 10 or 15 minutes of recreation on the web, MTV.

18 We use CyberPatrol and other kinds of
19 blocking software to make sure that pornography sites
20 and that kind of thing don't get through.

21 This page that you are looking at here is
22 something that we give to the teachers to orient them.
23 The last two paragraphs are important.

24 We ask that an agreement be established
25 between the students, the parent, and the teacher that

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1 lays out the mutual responsibilities. In some cases
2 the parents don't cooperate, for whatever reasons. We
3 have taken the position that, as long as the child is
4 interested in cooperating and as long as the child
5 maintains a sense of responsibility to him or herself
6 and the other people, we proceed with the child.

7 The entire program is voluntary and it is
8 free. If any of you have had to go out to price what
9 this would cost, for academic tutoring of this quality
10 it could easily cost you per child \$75 to \$100 a week.
11 This is free. This is four hours a day of free
12 tutoring.

13 Therefore, it is voluntary. Therefore, if
14 someone, for whatever reason -- it's their choice --
15 if they don't want to participate and they don't want
16 to respect themselves and they don't share our goals
17 about academic performance, then they are not allowed
18 in the center. That doesn't mean we don't try to work
19 with people, but we don't allow a few people to
20 disrupt what many, many people want to do.

21 The final paragraph is also important.
22 Quality is much more important to us than quantity,
23 but in the end you don't have to worry about quantity.
24 What we mean by that is, if it turns out that in the
25 beginning only five or six children are interested in

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1 pursuing this, that's okay with us because it will
2 grow. It will grow over time.

3 The problem we have in Rainbow right now
4 is, as Yogi Berra said to Joe Garagiola about a
5 restaurant that they both used to go to in St. Louis,
6 "Nobody goes there anymore because it's so popular."
7 As with most things that Yogi said, there is a lot of
8 truth on both sides.

9 So Rainbow is now so popular that we've
10 actually run into some problems with some parents
11 saying it used to be nice when there were only 10 or
12 15 kids here. We like having those problems.

13 So that's the end of my presentation, and
14 I'll be happy to answer any questions that you have.

15 CHAIRPERSON GRIFFIS: Excellent. Thank
16 you very much, Mr. Kerry.

17 MR. STILLWELL: If there are no questions
18 of Mr. Kerry, we will now call the project architect,
19 Mr. Dave Goslin.

20 CHAIRPERSON GRIFFIS: Maybe a couple of
21 quick questions. Ms. Miller?

22 VICE CHAIRPERSON MILLER: I just want to
23 say, first of all, that sounds like a wonderful
24 program.

25 MR. KERRY: Yes.

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1 VICE CHAIRPERSON MILLER: I have a few
2 specific questions. You made reference to college
3 campuses coming on the site. What did you mean by
4 that?

5 MR. KERRY: Well, what we mean by that,
6 I'll describe what we have in Cleveland. I think it
7 will be a little different here.

8 We have an agreement with Cuyohoga County
9 Community College, and similarly, if we work out an
10 agreement with Georgetown or with Howard or with
11 Southeastern University, UDC -- they're making sure I
12 cover all of the bases here, but there are a lot of
13 them -- we will have an agreement signed with them.

14 The agreement lays out what our
15 responsibilities are, and our responsibilities are to
16 provide the center, to provide the security, and so
17 forth. Their responsibilities are to provide both the
18 instructors and also the curriculum and also to come
19 out on the site to talk especially to the adults who
20 have been thinking about going to college but are not
21 sure, have not taken that step to go, no matter how
22 convenient it is for them to get on the Metro and go
23 to one of these places.

24 So we literally mean, if you walked into
25 UDC -- I'm sorry, if you walked into CCC and you

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1 walked into a classroom, you would see the same level
2 of teachers that you see at the learning center.
3 That's what we want to accomplish here.

4 VICE CHAIRPERSON MILLER: But do you mean
5 that they would offer enough courses so that someone
6 could get a degree by just going to your learning
7 center?

8 MR. KERRY: No.

9 VICE CHAIRPERSON MILLER: No? Okay.

10 MR. KERRY: No. What happens is,
11 remember, for the children we are talking about people
12 getting educated in reading, writing, and science. We
13 want absolutely first-class teachers either from the
14 colleges or from the schools. But for the adults,
15 yes, I mean they actually offer college courses there
16 onsite. Everyone now has online courses. Then they
17 also sign them up for courses at the particular
18 institution.

19 But let me give you one more example.
20 Every one of these works out differently. In
21 Connecticut every day during the school year there are
22 about 20 students that show up from the University of
23 Connecticut at the Windham Heights Learning Center,
24 which is one of the centers that you see on your list.
25 It is the last one listed.

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1 These are young people from all over the
2 University of Connecticut campus who come in and
3 mentor the children at the campus. On Fridays all
4 those kids get in a bus provided by the University of
5 Connecticut and go to the University of Connecticut.
6 Each Friday they go to a different part of the
7 University. So at one point they will go to biology;
8 another time they will sit in on reading and writing.
9 So each one of them is different.

10 But the idea is to take those tremendous
11 resources and aim them here, where they are very much
12 needed, and connect them up.

13 CHAIRPERSON GRIFFIS: Excellent. Thank
14 you very much. I think your presentation, as Ms.
15 Miller said, was excellent in terms of understanding
16 what the program is. Obviously, it is a very good
17 program.

18 Part of our requirement, of course, in 334
19 is to show that this would somehow impact, positively
20 impact, the social and economic well-being of those
21 participants. I think that is fairly persuasive.

22 Let me just ask you a quick clarification.
23 In 334.4, I believe it is, it talks about reasonably
24 convenient to the neighborhood of which it is going to
25 serve. Is this -- and you have talked about the

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1 number of units that you're now acquiring, closing on
2 shortly -- is this to serve just those units --

3 MR. KERRY: No.

4 CHAIRPERSON GRIFFIS: -- or is it opened
5 up to the larger community?

6 You talked about it being free except for
7 those that are rabble-rousers and they're ejected
8 promptly. But what is the program for participation?

9 MR. KERRY: Well, let me answer your
10 question directly. The program is open to everybody
11 in the community. It's not just the people at the
12 particular development.

13 The way we let people know about it, we do
14 that in a couple of ways. First of all, once we have
15 the education partner in hand, we and the residents --
16 and we have asked the ANC to participate in this with
17 us as well -- will hold a series of meetings in the
18 neighborhood to let people know about it. That's one
19 thing we will do. We hold open houses where we invite
20 people to come in and sign up.

21 There's also a piece on the District's
22 website. It's called the "City of Access," in which
23 you can go up and search for centers like this
24 throughout the city. So we will make sure we will get
25 listed on that site as well. So if somebody was

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1 interested, they could --

2 CHAIRPERSON GRIFFIS: Okay. So the
3 starting area can come in -- and is there an
4 enrollment? Do you have to show up at certain times?
5 Is it a drop-in? How is this programmed?

6 MR. KERRY: The priority as far as
7 enrollment is concerned is for the residents, the 180
8 units that I talked about. After that, it will be
9 open to the rest of the community.

10 CHAIRPERSON GRIFFIS: So if a child in the
11 neighborhood or even at the development decides just
12 to show up one day, is that possible or is that not
13 what this is set up to do?

14 MR. KERRY: Well, part of the hours that
15 we set up normally, and we will do that here as well,
16 is we set up a time -- and it is usually on Saturday
17 -- where we have what we call open session, where
18 anybody can drop in, ask questions, so we get both
19 adults and children.

20 If a child dropped in for one day, the
21 thing the teachers would try to do would be to recruit
22 them. It would be to try to get them to join the
23 program.

24 But they can't just drop in intermittently
25 because there's an agreement, because there's an

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1 assessment that's done of the child, and we are
2 measuring ourselves on the basis of how well kids are
3 improving.

4 CHAIRPERSON GRIFFIS: Okay, that makes
5 sense.

6 MR. KERRY: But our main objective is not
7 to turn people away. Our main objective is to
8 convince them that they want to participate in the
9 program.

10 CHAIRPERSON GRIFFIS: Right. Understood.
11 Understood.

12 Does that seem to coincide, then -- in
13 terms of students that are in school, how are they
14 using the facility between 10:00 and 7:00?

15 MR. KERRY: They are not using the --
16 well, between 10:00 and 7:00, from ten o'clock until
17 about three o'clock during the week, adults are using
18 the program.

19 CHAIRPERSON GRIFFIS: So from 3:00 on?

20 MR. KERRY: That varies from place to
21 place. Some places end at three o'clock, some at
22 3:15, some at 3:45, but whatever it is, for the next
23 three or four hours, the children can use it.

24 CHAIRPERSON GRIFFIS: Okay, anything else?

25 VICE CHAIRPERSON MILLER: Just to follow

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1 up, I was just wondering if you have an idea of how
2 many people it can accommodate, how many students at
3 a time. I mean it sounds like in your history you
4 haven't had to turn anybody away, but is there a
5 certain amount of computers and teachers?

6 MR. KERRY: Yes. Well, yes. Roughly, it
7 goes like this: This space, the learning center
8 portion of this space is -- let me get my notes out
9 here -- 1,222 square feet. That's the learning center
10 portion of the space. Then the meeting room/community
11 room is 1,016 square feet.

12 In the learning center itself there are a
13 couple of different constraints on how many people you
14 can handle. One constraint is the physical size,
15 obviously. In that size space, which is similar to
16 Rainbow and our other places, we can handle from 20 to
17 25 children at the same time. The closer to 20 you
18 are, the better because 25 it starts getting pretty
19 raucous. That is one constraint.

20 The second constraint is the number of
21 staff you have because the ratio we like to keep is
22 somewhere like one teacher to seven pupils. So you
23 need about three people. So if you viewed it as -- in
24 a particular session going on at any time, you could
25 have 20 pupils and you would have three teachers.

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1 Now there are a couple of things that we
2 have learned about that. When you look, for example,
3 at the drawing here, you will see that there are a
4 number of offices that are in there. One of the
5 reasons those offices are in there -- there are none
6 at Rainbow; we wish there were, but that was built
7 four years ago, so we have learned -- is that those
8 places are used for mentoring. So to the extent we
9 get more staff, we could accommodate more children.
10 But for the basic program, 20 is about the limit that
11 you can handle at any one time.

12 CHAIRPERSON GRIFFIS: Good. Anything
13 else?

14 (No response.)

15 Very well, thank you very much.

16 MR. STILLWELL: At this time we would like
17 to call our next witness, Mr. Dave Goslin, the project
18 architect.

19 MR. GOSLIN: Thank you, Garland.

20 As Garland said, my name is David Goslin.
21 I am the project architect with Crosskey Architects.
22 Crosskey is located at 100 Allyn Street in Hartford,
23 Connecticut. This is actually our fourth Vesta
24 property that we have worked on. We have done the
25 other properties up in Connecticut.

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1 They have done an excellent job explaining
2 what goes on here. My portion of the presentation is
3 to actually go over what the building is and how it
4 was designed and why it was designed the way it was.

5 So if you will bear with me while I get
6 this thing situated?

7 CHAIRPERSON GRIFFIS: Let me just ask you
8 as you are getting ready, our jurisdiction over the
9 building is going to be fairly limited, I suppose, but
10 depending on how you read the regulations, it could be
11 extremely broad. So the direct question is: Are you
12 aware of any or is it your opinion that the
13 development of this and its siting or any of its
14 aspects would potentially create an objectionable
15 condition to the surrounding area?

16 MR. GOSLIN: No. Actually, to answer your
17 question, looking at the site plan here, to get
18 yourself oriented, north is to the top of the board.
19 The apartments, the 180 units, are located to this
20 side of the property. E Street comes in off of
21 Chesapeake and the cul-de-sac is right here. Then off
22 the cul-de-sac there's a 16-foot wide public alley
23 which extends and connects over to Barnaby Street off
24 to the west. There's also another 16-foot wide public
25 alley which comes off of 8th, wraps around our site,

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1 and connects into the public alley. So we are
2 bordered by public alleys on three-quarters of the
3 site.

4 So with that, we have a site that is about
5 18,000 square feet. Our building itself is 4,006
6 square feet. We've kind of juxtaposed the shape and
7 the location of the building to fit within the 8-foot,
8 20-foot, and the 10-foot building line setbacks. So
9 the entire building is within the parameter of the
10 site. We are not encroaching upon or over any of the
11 setbacks or into the public alleys.

12 The way the building was sited is we
13 wanted to skew it slightly for two reasons: one, to
14 get it to fit on the site; the other one, to turn it
15 so it addresses and it faces the apartments, so there
16 is a frontal approach that the residents can see, and
17 they can see clearly where the entries are.

18 That also allowed us to tuck the parking
19 spaces off to the west side of the site, from which we
20 got six parking spaces. I think four are required.
21 So we have more parking than what is required. Of
22 that, one of those spaces is handicapped accessible.

23 We don't really anticipate there being a
24 large parking. Most of the parking here is for the
25 staffing. There will be some parent dropoff and

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1 pickup, but most of the residents coming here, it's
2 foot-dropping. So most of the traffic coming here is
3 anticipated to be foot traffic.

4 Also, back in the corner, we are proposing
5 a dumpster. That dumpster will have a full enclosure,
6 a chainlink fence with privacy slats, and it would
7 also be buffered by evergreen landscaping to kind of
8 conceal it from view.

9 So that concludes the site. We will have
10 sidewalks that will connect the main entries from the
11 public alleys and the cul-de-sac.

12 As I said, the building is 4,006 square
13 feet. It's a slab on grade. It's fully handicapped
14 accessible.

15 The construction of the building is 2x6
16 framing, 9-feet high, on top of which would be roof
17 trusses, just to go over the exterior of the building
18 components.

19 One of the concerns that you may have
20 noticed in the presentation is that the computers for
21 the learning center have to go to the perimeter of the
22 learning center. So really we need low wall space to
23 accommodate.

24 For that reason, we have high clear
25 windows here, which allows natural light, but it also

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1 provides some sense of security. So we have these
2 high windows that wrap around the building. So the
3 building is well-lit, the space.

4 These are photos of one of the properties
5 up in Connecticut -- this is Mossup Gardens -- just to
6 give you a sense of what it actually looks like when
7 it is completed.

8 This building was completed about a year
9 ago. The materials we used on this, the roof shingles
10 are 30-year architectural asphalt shingles. The
11 siding of the building, it's not vinyl siding and it's
12 not wood siding; it's kind of a newer material, new to
13 the market. It's called Hearty Plank, is the trade
14 name. It is a cementitious fiber.

15 It is a wonderful material in that it is
16 cement-based product. It doesn't rot. Insects can't
17 get into it and it is fire-resistant.

18 The windows themselves are insulated glass
19 vinyl windows, non-operable, just for control of the
20 space.

21 CHAIRPERSON GRIFFIS: Is this small deck
22 area between the pitched roofs, is that occupiable or
23 is that decorative?

24 MR. GOSLIN: That actually is a platform
25 for mechanical equipment.

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1 CHAIRPERSON GRIFFIS: Okay. So part of it
2 is screened and then part of it just has the railing,
3 French railing?

4 MR. GOSLIN: Yes. Basically, what we need
5 to do here, because we are slab on grade, we do have
6 mechanical equipment; we don't want to put it on the
7 ground where kids can access it.

8 CHAIRPERSON GRIFFIS: Sure.

9 MR. GOSLIN: So one of the things we do is
10 we carve a little pocket out of the roof and set it on
11 the platform.

12 CHAIRPERSON GRIFFIS: Sure. Excellent.

13 MR. GOSLIN: That is actually accessed
14 from within a locked room of the building.

15 CHAIRPERSON GRIFFIS: Excellent. Okay.
16 It's an impressive building for its function and its
17 siting.

18 Any questions you want? Mr. Etherly?

19 MEMBER ETHERLY: Thank you very much, Mr.
20 Chair.

21 Just very quickly, Mr. Goslin, an
22 excellent presentation. I think I have a very
23 adequate sense of what the building looks like, but I
24 wanted to just address a little bit the issue of the
25 trash enclosure. Could you speak again to how you are

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1 planning to enclose the dumpster at the rear of the
2 site? You're just talking chainlink fencing or are
3 you looking at any type of enclosure?

4 Because if I am not mistaken, do you have
5 some site lines from residential properties at the
6 rear of the building as well that would be looking in
7 that direction? I see you're going to have some
8 evergreens shading, but I just want to kind of get a
9 sense for that fencing again.

10 MR. GOSLIN: What we have done at our
11 other sites up in Connecticut is we have the dumpster;
12 the dumpster is a front-loaded access so the truck can
13 drive up and pick it up, lift it and load it.

14 So three sides of the dumpster have a 6-
15 foot high chainlink fence with the inserts so you
16 can't see through. There's plastic inserts, so you
17 basket-weave through the chainlink. So you really
18 can't see the dumpster. Then around the perimeter of
19 that we will have evergreen landscaping.

20 MEMBER ETHERLY: Okay, excellent. That
21 answers my question. Thank you, Mr. Chair.

22 CHAIRPERSON GRIFFIS: Excellent. Anything
23 else then? Any other questions?

24 It is an intriguing roof pitch that you
25 have on this. There it is. It looks like it could

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1 handle a Connecticut snow load.

2 All right.

3 MR. STILLWELL: Mr. Chairman, this
4 concludes our presentation of our case-in-chief. I
5 would like to just note for the record we actually
6 have three exhibits. We might as well go over them
7 now. I would just like to have them moved into the
8 record.

9 The first exhibit is the video clip that
10 was played during Mr. Hamer's testimony. That is
11 presented to you in a DVD format and includes the clip
12 in its entirety.

13 The second exhibit is the website
14 printouts that are in hard-copy format. That will be
15 our second exhibit for submission.

16 Our third exhibit would be the affidavit
17 of posting that we have ready to file that was sworn
18 by our paralegal yesterday when he did his last check
19 of the site.

20 CHAIRPERSON GRIFFIS: Okay, excellent.
21 Okay. Anything else at this time?

22 VICE CHAIRPERSON MILLER: This may be for
23 Mr. Kerry or Mr. Stillwell. I just was glancing over
24 the written application at the same time as I was
25 listening to everything. There are a few

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1 discrepancies between the testimony that's been
2 presented this morning and what's in the written
3 record. I just want to make sure I have the right
4 information. Or maybe I am misreading it.

5 But one goes to the number of individuals
6 that the learning center can serve at one time. Mr.
7 Kerry said 20 ideally with three staff, and page 5 of
8 the pre-hearing statement indicates 30 to 40.

9 MR. STILLWELL: I believe the numbers that
10 Mr. Kerry presented were a minimum and his ideal
11 number of students, but the full capacity is the
12 capacity that's listed in the application.

13 VICE CHAIRPERSON MILLER: And what's that
14 based on, the 30 to 40?

15 MR. KERRY: I was going to get into this
16 when I was answering my question, but if you look at
17 the space, you'll see that you have the learning
18 center portion and then to the right you have the
19 meeting center portion. So what happens at Rainbow,
20 and what we're anticipating happening here, if we do
21 get that big a crowd, that some of the functions will
22 move off into the meeting space area. You remember
23 when I talked about the constraints. As long as we
24 have the staff to handle that, we have certainly got
25 plenty of space to do it.

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1 VICE CHAIRPERSON MILLER: Okay, because
2 that is what my next question is, how to interpret.
3 In the written application it said the meeting room is
4 something like 50 to 60. Does that include the people
5 in the learning center or is that on top of the people
6 in the learning center?

7 CHAIRPERSON GRIFFIS: Is that in a program
8 or an occupancy level?

9 VICE CHAIRPERSON MILLER: Yes, what is
10 that?

11 MR. HAMER: No, that doesn't include the
12 people in the learning center. That's the capacity of
13 the meeting room.

14 VICE CHAIRPERSON MILLER: Okay.

15 MR. STILLWELL: An auditorium, I should
16 say, and auditorium-style seating.

17 VICE CHAIRPERSON MILLER: Okay.

18 CHAIRPERSON GRIFFIS: So it is a building
19 code calculation based on no fixed tables or chairs?

20 MR. STILLWELL: Actually, I believe the
21 building code calculation actually is higher, and Mr.
22 Goslin can speak to that.

23 CHAIRPERSON GRIFFIS: What the number is
24 is all we need. So it is a program number, not a
25 code --

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1 MR. STILLWELL: That is correct.

2 VICE CHAIRPERSON MILLER: It's a program
3 number, the 50 to 60?

4 MR. STILLWELL: Yes.

5 VICE CHAIRPERSON MILLER: Okay.

6 MR. GOSLIN: Yes. The actual total
7 occupant load I think is 146. That's assuming it's
8 individual chairs and people are sitting kind of in an
9 auditorium format.

10 CHAIRPERSON GRIFFIS: Okay.

11 VICE CHAIRPERSON MILLER: Also, I just
12 want to make sure I understand right about who the
13 neighborhoods are that this will be serving. I think
14 in the letter of understanding it referred to the
15 village and the apartment units, and it didn't go
16 further than that, but you said here that you would
17 make the program available to people outside of that
18 community, is that right, within the general
19 community?

20 MR. HAMER: Yes. I think we have in there
21 the Village at the Chesapeake, which will be the name
22 of the development once we acquire it. It is commonly
23 known as Avalon and Southern Court Apartments.

24 Again, I think I stated that first and
25 foremost the learning center will be for the

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1 residents. Based upon capacity and enrollment, then
2 we will open it up to the broader community.

3 VICE CHAIRPERSON MILLER: Okay, and the
4 age of the children is kindergarten through 12, is
5 that right?

6 MR. HAMER: Kindergarten through 12th
7 grade, yes.

8 VICE CHAIRPERSON MILLER: Okay, thank you.

9 CHAIRPERSON GRIFFIS: Okay, let's move
10 ahead then. If there is nothing further from the
11 Board, let me ask, first of all, is ANC present with
12 us today, the ANC representative?

13 AUDIENCE MEMBER: Yes.

14 CHAIRPERSON GRIFFIS: Excellent. It would
15 be appropriate at this time if you had any cross
16 examination questions of the witnesses, if you wanted
17 to come up. Do you have any cross? No cross? That's
18 fine.

19 MR. STILLWELL: I may be able to clarify,
20 Mr. Chairman. We have three representatives from the
21 ANC today. We have the Single Member District
22 Commissioner, Ms. Robin Adams. We have the Chair of
23 the ANC, Mr. O. V. Johnson, and we also have one of
24 the Board members of the ANC who at the meeting where
25 we received approval voted in dissent of the project.

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1 CHAIRPERSON GRIFFIS: Excellent, and who's
2 here in official capacity to represent the ANC agency?

3 MR. STILLWELL: Mr. O. V. Johnson.

4 (Off-the-record discussion.)

5 CHAIRPERSON GRIFFIS: Let's get into this
6 very quickly then. I just need to know who the
7 representative of the ANC is today to represent the
8 8D, and will, therefore, be able to ask and direct
9 cross examination questions. Why don't we have you
10 introduce yourself, Mr. Johnson, for the record.

11 MR. JORDAN: Mr. Chairman, my name is
12 Absalom Jordan. I am Commissioner from 8D.

13 You have a letter before you. The
14 Commission held a meeting on April the 17th. You have
15 a copy of the agenda that was attached for that
16 meeting. It was a continuation of a special meeting.

17 The agenda for that meeting was several
18 things. One is to remove Mr. O. V. Johnson as Chair,
19 and the second was to rescind the previous
20 Commission's approval of the motion to support this
21 development.

22 CHAIRPERSON GRIFFIS: Let's step back two
23 seconds. First of all, I'm not sure we have what
24 you're talking about because I don't have it right in
25 front of me.

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1 MR. JORDAN: I just gave it to Ms. Bailey.

2 CHAIRPERSON GRIFFIS: Okay. Well, that's
3 fine. Then we wouldn't have it in front of us. She
4 needs to put it into an exhibit and then distribute
5 it.

6 So let me step back further, though,
7 because all I am trying to establish right now is who
8 is representing the ANC in order to conduct cross
9 examination questions, if there are any.

10 Mr. Jordan, did you want to address that?

11 MR. JORDAN: Yes. I'm saying that Mr. O.
12 V. Johnson has been removed as Chair. He was at a
13 meeting on April the 17th at which four members were
14 present. That was a majority of the Commission
15 members. The meeting was called specifically to
16 remove Mr. Johnson, and the second item was to rescind
17 the motion to support this project.

18 CHAIRPERSON GRIFFIS: Who is here, with
19 all of that, if that is what happened, who is here to
20 represent the ANC then?

21 MR. JORDAN: Me.

22 MR. JOHNSON: I am.

23 CHAIRPERSON GRIFFIS: And so where do I
24 find that, Mr. Jordan?

25 MR. JORDAN: Pardon? I just submitted it

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1 to you.

2 CHAIRPERSON GRIFFIS: Oh, I see, that's
3 going to be on that?

4 MR. JORDAN: Yes.

5 CHAIRPERSON GRIFFIS: Okay, we'll take a
6 moment and take a look at that.

7 Let me have the next gentleman introduce
8 himself for the record, if you would, please.

9 MR. JOHNSON: My name is Commissioner O.
10 V. Johnson. Despite Mr. Jordan's provision for this
11 particular project, the particular meeting he has
12 referred to I think is incorrectly stated. It really
13 wasn't that particular date. And, also, the provision
14 that he is speaking of is yet to be resolved. That
15 has been sent to the Director of the Office of ANC,
16 Mr. Gottlieb Simon, for his ruling.

17 Because our prevailing bylaws require five
18 Commissioners to change the bylaws in order to convert
19 the bylaws to remove me, so that has not been
20 established yet.

21 MR. JORDAN: Can I address that, Mr.
22 Chairman?

23 MR. JOHNSON: Until that proof has been --
24 until that has been met, I'm still the Chair, and I
25 also stipulated, when I submitted the approval of this

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1 project on March the 1st, which you have before you,
2 the division of the vote was three to two in the ANC
3 proceeding. That was the subject matter that caused
4 the division in ANC. There was concern about a proxy
5 vote.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. JOHNSON: Mr. Jordan wanted to vote
8 general proxies, and the bylaw says a specified proxy,
9 which you said for or against, and this is internal
10 division which is --

11 CHAIRPERSON GRIFFIS: Understood, and I
12 think that's exactly right; it is internal. First of
13 all, as interested as we may be with all these issues,
14 jurisdictionally we have no control over it.

15 So what I really want to do is very
16 quickly take another case --

17 MR. JOHNSON: But I did put in the letter
18 of support that the Chairperson and Ms. Lumpkin, who
19 was the Chairperson of the Housing Committee which Mr.
20 Jordan is a member of, have the opportunity to state
21 a minority opinion.

22 CHAIRPERSON GRIFFIS: Good. So,
23 obviously, we have some differing opinions on the ANC.
24 So for our clarification and for our procedure --

25 MR. JORDAN: Mr. Chairman, could I just

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1 clarify one point? Mr. Gottlieb Simon can't resolve
2 the problem. He has no authority at all to -- and let
3 me make another --

4 CHAIRPERSON GRIFFIS: Let me say, if Mr.
5 Simon has none, we have less.

6 MR. JORDAN: You're absolutely correct,
7 and that is why I'm saying you have been supplied a
8 copy of the agenda at our last meeting for April the
9 17th. Now, if you want, I have a copy of the letter
10 that Mr. Johnson sent to Mr. Gottlieb Simon. Within
11 that letter he indicates that there was a majority;
12 otherwise, he couldn't have commenced the meeting.

13 MR. JOHNSON: There was a quorum of four.

14 MR. JORDAN: There was a quorum.

15 MR. JOHNSON: For our ordinary minutes.

16 MR. JORDAN: Well, I'm not going to get
17 into that.

18 CHAIRPERSON GRIFFIS: Correct, nor are we.

19 MR. JORDAN: I'm just saying, sir, if he
20 says there was a quorum, the quorum was for this
21 agenda. By the way, whatever bylaws we had allowed us
22 to remove the Chair; then it requires to amend the
23 bylaws in order to remove him.

24 But the reality is you have before you
25 today a letter from the Commission, a majority of the

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1 Commissioners at that meeting, that said we were
2 rescinding this motion.

3 Now let me make one other point while we
4 are here. Mr. Johnson makes the point about the vote
5 on February the 23rd. We also raised a question about
6 Commissioner Robin Adams' status at that meeting.
7 That's why I want to talk to the people from Vesta,
8 because I want to find out whether there was a
9 relationship between them and Fleetwood Management,
10 and then we can establish the relationship between
11 Fleetwood Management and Mrs. Adams.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. JORDAN: But that's the nature of the
14 questions that I want to pose.

15 CHAIRPERSON GRIFFIS: I'm glad you bring
16 that up because that gets right to the point of why we
17 all came up here. I'm not sure why that would be
18 jurisdictional for us in terms of a special exception
19 or --

20 MR. JORDAN: It's not.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. JORDAN: But I'm just saying, from my
23 perspective --

24 CHAIRPERSON GRIFFIS: No, I understand
25 that.

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1 MR. JORDAN: -- we are making a record
2 today.

3 CHAIRPERSON GRIFFIS: And I think there's
4 a lot that needs to be resolved, and I think you're
5 pursuing it in the correct means and process.
6 However, for our purposes and for all those here, I'm
7 not sure that cross examination questioning would be
8 appropriate --

9 MR. JORDAN: Okay.

10 CHAIRPERSON GRIFFIS: -- or
11 jurisdictional.

12 Did you have anything else to ask the
13 witnesses?

14 MR. JORDAN: No. It's just to say, to put
15 on the record --

16 CHAIRPERSON GRIFFIS: Okay, I think it is
17 somewhat resolved --

18 MR. JORDAN: -- that the Commission's
19 latest position is -- and let me say we are not
20 opposed to the project per se --

21 CHAIRPERSON GRIFFIS: That's good, but --

22 MR. JORDAN: -- but we are not supporting
23 it.

24 CHAIRPERSON GRIFFIS: Yes, but now is not
25 the time, Mr. Jordan.

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1 MR. JORDAN: Okay.

2 CHAIRPERSON GRIFFIS: Now is the time just
3 for cross examination of the witnesses.

4 MR. JORDAN: Okay.

5 CHAIRPERSON GRIFFIS: And I understand
6 that we don't have any cross at this point. So what
7 I would like to do is move ahead to the Office of
8 Planning and the governmental reports, right after
9 which -- which they have submitted an excellent
10 analysis -- we will go into the ANC.

11 I'm going to ask all of your patience that
12 we would have you, sir, Mr. Johnson, that would
13 present the ANC; I'm also going to have Mr. Jordan
14 speak as an ANC member, and we'll get it all into the
15 record and we'll figure out how we deal with it, but
16 as succinctly and directly as we can, that would be
17 great.

18 If that is amenable to you, I think let's
19 move ahead and get into the Office of Planning. Then,
20 for all those other people that are here, after the
21 ANC, we'll have persons in support or opposition come
22 up for three minutes, and we'll get you out by
23 lunchtime, I assure you.

24 That being said, let's go to the Office of
25 Planning.

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1 MR. MORDFIN: Good morning, Chair, members
2 of the Board. I'm Stephen Mordfin with the Office of
3 Planning.

4 The subject application conforms to the
5 provisions of Sections 352.1 and 334 of the zoning
6 regulations for the establishment of a community
7 service center and that it will provide after-school
8 programming for children and job and computer training
9 for adults for the residents of the two adjacent
10 apartment complexes, Avalon and Southern Court.

11 It will not become objectionable to
12 neighboring properties because all activities will
13 take place within the building. The hours of
14 operation will be from 10:00 a.m. to 7:00 o'clock p.m.
15 Monday through Friday and 10:00 a.m. to 3:00 o'clock
16 p.m. Saturday.

17 Six parking spaces are provided as
18 required for a 3,600-square-foot building.

19 Construction of the building will conform
20 to all applicable municipal laws. The community
21 center will be located within walking distance to the
22 two adjacent apartment complexes it is primarily
23 intended to serve, and it will be operated by a non-
24 profit organization.

25 Therefore, the subject application is in

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1 conformance with the provisions of the zoning
2 ordinance for the establishment of a community service
3 center, and the Office of Planning recommends approval
4 of the application as submitted by the Applicant.

5 Also, as a point of clarification, the
6 Office of Planning report does not reference the
7 subject properties being located in the 700 block of
8 8th Street Southeast.

9 Thank you.

10 CHAIRPERSON GRIFFIS: Excellent. Thank
11 you very much.

12 No one is taking responsibility for the
13 700 block; let me tell you that right now.

14 (Laughter.)

15 Okay, questions from the Board on the
16 Office of Planning's report? Clarifications?

17 (No response.)

18 We do appreciate that, and also the
19 parking calculation. Of course, we did hear from the
20 Applicant there were four, obviously, and how you have
21 done it in terms of that, the square footage is
22 appropriate, six provided, and I think it is an
23 excellent analysis.

24 If there is nothing further from the
25 Board, I would ask if the Applicant has any cross

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1 examination questions of the Office of Planning.

2 MR. STILLWELL: No, Mr. Chairman. We
3 concur with the Office of Planning's report and we
4 have no questions.

5 CHAIRPERSON GRIFFIS: Okay. Just to be
6 inclusive, does the ANC on my right and my left either
7 have cross examination questions of the Office of
8 Planning? No cross?

9 MR. JOHNSON: Commissioner Johnson, 8D02
10 is in favor.

11 MS. ADAMS: Commissioner Robin Adams,
12 8D01, favor.

13 CHAIRPERSON GRIFFIS: Okay, excellent, in
14 which case I don't have any other governmental reports
15 sent to this application. We can move right into the
16 ANC's report. We can start with Exhibit 24.

17 Mrs. Miller, did you have a comment?

18 VICE CHAIRPERSON MILLER: I just want to
19 make a comment. We just got this May 8th letter, so
20 maybe I'm missing it.

21 But our regulations require that, if
22 someone is going to speak on behalf of the ANC, as
23 opposed to just as a person, that it be set forth in
24 the resolution that's voted upon that that person is
25 authorized to represent the ANC.

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1 So, Mr. Jordan, I don't see that in the
2 new ANC letter submitted May 8th.

3 MR. JOHNSON: No, the resolution he has
4 provided, made in that resolution, as a member, Ms.
5 Soisette Lumpkin, Housing Committee, can speak; I made
6 that provision in it, as the Chair at that point.

7 VICE CHAIRPERSON MILLER: I'm sorry, do
8 you want to bring our attention --

9 CHAIRPERSON GRIFFIS: In the resolution
10 Mr. Jordan would be able to speak as the Chair of the
11 Housing Committee --

12 VICE CHAIRPERSON MILLER: Which one are we
13 talking about?

14 MR. JOHNSON: February the 23rd.

15 VICE CHAIRPERSON MILLER: February the
16 23rd, that resolution, right, okay.

17 MR. JOHNSON: Yes. Wait a minute. The
18 resolution is dated March the 1st.

19 MR. STILLWELL: I believe you are
20 referring to Exhibit No. 24 in your record.

21 VICE CHAIRPERSON MILLER: I saw that. I
22 guess my question is, with this latest ANC letter,
23 there is no one authorized to speak as far as I can
24 see.

25 MR. JORDAN: I don't have a problem with

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1 not being able to speak as it relates to it. I'm just
2 saying we have submitted that, and you have that now
3 before you to deal with it.

4 VICE CHAIRPERSON MILLER: Okay. I didn't
5 mean speak; I mean speak as a representative of the
6 ANC.

7 MR. JORDAN: Well, let me just do this
8 this way: Our bylaws say that, if the Chairman
9 refuses to sign a letter or the Vice Chair, then it
10 works its way on down. So that's why I was here
11 today, because the Acting Chair, which would be Maria
12 Powell, refused to or declined to come and testify
13 today on behalf of this.

14 VICE CHAIRPERSON MILLER: Okay. What I
15 want to say is, and I can see if my Board concurs with
16 me, our regulations say, if you're going to represent
17 the ANC, you have to have that kind of a resolution.
18 Not that you can't speak as a person; it's just not
19 going to carry the great weight as representing the
20 ANC.

21 MR. JORDAN: Well, can I suggest another
22 thing then, too? About the resolution, the resolution
23 that was submitted by the ANC doesn't contain that
24 statement either.

25 And the other part about it is that you

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1 can look at the resolution itself and it says that,
2 whereas Commissioner Maria Powell made a motion --
3 this resolution was never offered by any Commissioner
4 nor adopted. I don't know how this resolution came
5 into existence, but there was a motion made to support
6 this but there was never a resolution. So in that
7 respect, we don't have anybody who can speak for us
8 because that letter, that resolution, doesn't say who
9 can speak for us either.

10 CHAIRPERSON GRIFFIS: Well, at the risk of
11 making some grave error, I would like to hear from
12 both, and then we will proceed with how and what we
13 give great weight to in terms of whether this actual
14 issue and element is resolved prior to our
15 decisionmaking on it.

16 I think there are some informative
17 provisions in the ANC regulations involved that we
18 could look at as needed in terms of acceptance of the
19 May 8th, but it is not timely.

20 However, as always, we will get down to
21 the base idea of why we are here, and that is to hear
22 factual information. So, with that, I think let's
23 proceed.

24 I will start on my right and --

25 MEMBER ETHERLY: If I could, Mr. Chair --

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1 CHAIRPERSON GRIFFIS: Yes.

2 MEMBER ETHERLY: -- just I agree with you
3 wholeheartedly in terms of the direction and in terms
4 of hearing both, and that the question for the Board
5 will be how we deal with the issue of great weight.
6 But I will definitely emphasize, as you suggested at
7 the outset of this, that the Board definitely has no
8 authority or power to, shall we say, adjudicate or
9 sort out what clearly is a division of some sort
10 within the ANC. But I think it would be helpful to
11 get the perspectives on the table, and then we will
12 sort out the issue of great weight as we move forward.

13 VICE CHAIRPERSON MILLER: I just want to
14 say I'm not in disagreement with that. I just wanted
15 to let them know that we're not necessarily
16 interpreting that they are representing the ANC.
17 Thank you.

18 CHAIRPERSON GRIFFIS: Excellent. All good
19 points.

20 Let's proceed.

21 MR. JOHNSON: I guess it's still "good
22 morning." I'm Commissioner O. V. Johnson, and I am
23 presenting this on behalf of ANC-8D. As of February
24 the 23rd, I was the Chair, even if there has been some
25 development subsequently to that date.

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1 The division of the Commission arose when
2 there was a division of the vote on this particular
3 learning center. There are three of us in favor of it
4 and two voted to oppose the center. The reason was
5 not given at that particular meeting because the
6 residents that we held a meeting for asked a question,
7 and the dissenting Commissioners failed to answer the
8 reason why they were voting to oppose the center.

9 However, as you will note in the March the
10 1st resolution, I included, which would have been a
11 part of the minutes, as required by you when we answer
12 the Zoning Board, that the provision of the resolution
13 provide an opportunity for myself and the Housing
14 Committee and all members of that particular Housing
15 Committee, which is Mr. Jordan, if they so like,
16 because I had anticipated a dissenting opponent of
17 this position of this particular case.

18 I ask that they be also allowed to present
19 their part from a minority viewpoint, and I will
20 present the majority viewpoint, which was passed on
21 February the 23rd at a townhall meeting held for the
22 affected area in 8D02, which is -- 8D01 rather; the
23 meeting was held in 8D02 -- 8D01, which is
24 Commissioner Robins' ANC.

25 All of the persons who were in attendance,

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1 I did not find one other person at the meeting that
2 opposed this learning center, and I'm elated that
3 Vesta has stepped up and offered to place a learning
4 center in our community ahead of any other projects,
5 or whatever, they may later on undertake.

6 Oftentimes, developers promise you that
7 they are going to do something in the community. They
8 do what they're going to do, and then at the end they
9 bail out, saying, for lack of funds, they could not go
10 any further or they couldn't give back to the
11 community.

12 So I am wholeheartedly endorsing this
13 learning center, and I hope that you will think
14 favorably on this particular learning center in your
15 ruling. Thank you.

16 CHAIRPERSON GRIFFIS: Excellent. Thank
17 you very much. It is taken out of one of the
18 sentences in your report that was submitted that the
19 project would be "a valuable addition to the immediate
20 community and bring substantial...ultimately,
21 transform property to use that contributes to the
22 surroundings in a substantial way...." That was the
23 position, as you understand it, that the ANC took,
24 okay.

25 Yes?

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1 MS. ADAMS: Good morning. My name is
2 Robin Adams.

3 The ANC business, I want to come to you;
4 I lived in those apartments for four years. Two of
5 those years I did work for the company and I was a
6 community person, because there's 168 families, each
7 one having three to four children. There was nothing
8 for them to do or anything surrounding without
9 crossing that busy Southern Avenue. You see how many
10 kids we would have lost up there by getting hit by
11 cars.

12 So the best next thing they do, breaking
13 the windows. The people that owned it at the time
14 didn't care, so it just looked rundown.

15 So I found several ways: get them a
16 playground. I held parties. I had the Job Corps come
17 in and hold one to get some of those boys off the
18 corner, and they were able to help some.

19 So, finally, I decided to run for the ANC,
20 where I thought maybe I could get some funding for the
21 area or maybe push the people that own it to do more.
22 That didn't really work.

23 So when Vesta did come along and
24 approached and told us about the learning center,
25 because before they came, they used to come in my two-

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1 bedroom house. It started off with five kids in my
2 house for a sleepover every weekend just to keep them
3 off the street until I had fifty.

4 Out of that fifty, in my two bedrooms,
5 some of them have died; some of them are in jail; all
6 of them couldn't read.

7 So when they came along and they
8 approached us saying that they wanted to bring this
9 program, that's really, really going to help. Because
10 some of the parents are either on drugs -- you know,
11 the same scenario just like you saw in those pictures
12 over there.

13 This would be the best thing because the
14 closest things to Southern Avenue and Chesapeake is
15 Mississippi. That's all the way up the highway.

16 Then the next center is Hawk. That's way
17 across on another highway. So these kids haven't had
18 anything for a long, long time.

19 So, like I said, the size of the agency
20 mess going on right there, please let's think about
21 these children because they have been lost in this
22 system for the longest time. They didn't have
23 anything, and I brought their attention to Mayor
24 Barry, had them come out there and look. We had
25 nothing.

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1 So to turn this away from these kids that
2 really, really need it, it would be wrong. I know
3 some kind of way we could figure it out and work this
4 out, because it's for the children at the end.

5 If you go to any D.C. public school, the
6 reading level is not high at all, and it's terrible.
7 If the parents can't read, can't nobody help.

8 At least we know they're safe and not
9 throwing rocks. They're in the center and they're
10 going to learn, and then they are going to be proud of
11 where they live.

12 This is a true story. I lived there for
13 four years. So please don't turn this down, and I
14 thank you very much.

15 MR. JOHNSON: I only have one addition to
16 the substance to my -- I would like to say, because of
17 my strong support for this center and the principle of
18 abiding by the prevailing bylaws, there are some
19 Commissioners that wants to remove me. If that is to
20 be, so be it. But whatever we do, I'll be for this
21 learning center because it affects my single member
22 district. I live next to -- my area is next to hers.
23 So I am for this 100 percent.

24 The Committee came up, because I strongly
25 support this, and ruled that a certain procedure was

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1 out of order, and that led to the pettiness and
2 internal fights. So thank you very much.

3 CHAIRPERSON GRIFFIS: Thank you.

4 MS. ADAMS: May I say one more thing?
5 Also, I'm representing the other tenants that wanted
6 to come and have been going to the Vesta meetings ever
7 since they came. A lot of them are teachers and they
8 couldn't come. But I am also representing them. They
9 are much in support of it.

10 They met with them on Saturday and sat
11 down with Mr. Kerry. He answered all their questions.

12 But the ANC, when we had a meeting, none
13 of the ANC members that are against it could answer
14 the question of why you don't want us to have a
15 learning center. That question was never asked.

16 CHAIRPERSON GRIFFIS: Okay, thank you very
17 much. We do appreciate that.

18 Let's move to you, Mr. Jordan. I'm sorry
19 -- no, Mr. Jordan.

20 One just quick announcement and reminder:
21 that I would ask if you have a Blackberry or a Nextel
22 phone, if you would turn them off. It seems like it
23 is getting some feedback with our transmissions today.

24 MR. JORDAN: Yes, thank you, Mr. Chairman.

25 CHAIRPERSON GRIFFIS: Sure.

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1 MR. JORDAN: The question keeps coming up
2 about why are we opposed to it. I want to state from
3 the start we are not opposed to it. The question is,
4 and I think some of you have raised some issues about,
5 how do we ensure that this will do the things that
6 they are saying it is going to do?

7 Nobody is more concerned about the kids
8 than I am. While Ms. Adams is raising questions about
9 the fate of the D.C. public schools, I am working
10 every day with the superintendent and others to bring
11 parenting centers to our ward and trying, working with
12 the local school restructuring teams, and what have
13 you, to try to make the D.C. public school systems
14 able to accommodate our children.

15 So I think we need something like this,
16 but the question is, is it going to do it or is it a
17 hollow promise? Now let's deal with a couple of
18 things.

19 One is that when we talk about the people
20 who are in support of it, there are homeowners
21 contiguous to this site who were never involved in the
22 process. Mr. John Evans, who goes to my church, who
23 lives in a home right next to this site, was never
24 involved. So what I am saying is we wanted a process
25 that brought all the community together, so that they

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1 could have a voice.

2 The second thing, when we looked at this,
3 because we keep talking about all the kids, all the
4 kids, if you will look at the apartments now, you see
5 many of the people have been put out of those
6 apartments. Many of those units are vacant.

7 We raised the question with Mr. Hamer at
8 that meeting in February, have they met the
9 requirement in terms of residents, because they say,
10 "We're in the process of buying" or at least
11 supposedly they own them. So we said, well, did you
12 meet the right-of-first-refusal requirement? "Yes, it
13 was waived," he said.

14 We have talked to the Department, I mean
15 the D.C. Housing Finance Agency staff there, because
16 pending before them is an application for funding.
17 What they told us was that they have held up that
18 application because they have not received from DCRA
19 assurances that the right-of-first-refusal was offered
20 to all the residents.

21 So what we are saying is we don't want to
22 do the zoning and then at some point the financing
23 falls through for the housing, and then there is no
24 assurance that this is going to be built. Because if
25 Vesta doesn't get the housing loan, and if they can't

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1 rehab those units, then there's no incentive for them
2 to build.

3 The second thing that we were concerned
4 with -- and Mr. Hamer knows that we have raised this
5 question, and he was vague about it today, but then he
6 answers it. We want a firm commitment so that it's
7 open to the community, not exclusively for just the
8 180 folks in that unit. There has to be some
9 provision. If, in fact, it's going to benefit the
10 community, as he says, then we were trying to get some
11 kind of formula, some commitment, because the children
12 who are going to be moving back into that site may not
13 be the kids who need to be in there.

14 The children who are in areas contiguous
15 with that site may need it more than the children who
16 will be living there. So we were trying to get some
17 kind of commitment from them to say, "Look, we will
18 assure that we're going to give you 'X' number of
19 spaces in here." Then we could really feel that it
20 benefits the community, because now it only benefits
21 a few people.

22 But the first questions is: Where are
23 they in terms of the housing financing? Can they
24 assure us, because they've stated earlier today that
25 they're in the process of settling on it. Well, we

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1 want some assurances that the housing is going to be
2 rehabbed and that, if it is going to be rehabbed,
3 then, yes, this is a good idea to have a center.

4 I am tired of people trying to say that
5 just because you raise some questions in a meeting
6 that you are opposed to something. No, you want to
7 clarify.

8 And let me make one last thing because our
9 Commission has been dubbed before. You know, we were
10 here a couple of years ago with Danbury Street. We
11 were told initially that housing there was going to be
12 \$165,000 to \$185,000. Housing there on Danbury Street
13 now is \$350,000. We were lied to. We had a
14 memorandum of understanding. It was eviscerated.

15 So we don't want to go through the same
16 thing again. We are trying to get at the front end
17 some commitments from Vesta: one, to let people from
18 the larger community in there and, two, to make
19 certain that they're going to get the dollars to rehab
20 this place, to ensure that it will be, in fact,
21 affordable housing.

22 CHAIRPERSON GRIFFIS: Excellent. Thank
23 you very much, Mr. Jordan. I think those are
24 excellent points.

25 MR. JORDAN: Can I just make one last

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1 point, though?

2 CHAIRPERSON GRIFFIS: Sure.

3 MR. JORDAN: The meeting of April 17th was
4 an official meeting.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. JORDAN: It was duly called. Mr.
7 Johnson sent out the notice of the meeting. It was
8 not a regular meeting. It was a continuation of a
9 special meeting, because the law says that when enough
10 Commissioners file, he had a responsibility to call a
11 special meeting within 30 days. So I am just saying
12 the D.C. Code required a meeting to be held for
13 removal of the Chair.

14 There was a quorum at that meeting, and
15 the action was taken. So you can't resolve that, but
16 I'm just saying in terms of looking at our viewpoints.
17 I wish all the Commissioners were here.

18 CHAIRPERSON GRIFFIS: Sure.

19 MR. JORDAN: But the first argument is,
20 why are you opposed to it? If they would listen
21 sometimes, they would understand people are not
22 necessarily opposed, but they want certain protections
23 and certain commitments assured.

24 CHAIRPERSON GRIFFIS: Well, and I think
25 your position here today is very clear, Mr. Jordan.

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1 I appreciate your bringing it down.

2 Two things: First, I don't want to raise
3 your expectations too high of how much jurisdiction or
4 control or power we have. I think you bring up an
5 excellent point of, how much assurance do you have to
6 make sure this happens, and happens correctly? Our
7 jurisdiction will begin and end in the zoning
8 regulation.

9 So what they can show us or not,
10 obviously, is what we will be ruling on, meaning the
11 housing financing or any of their financing, I'm not
12 sure that I can find anything in the regulations right
13 now that would stop us from not processing this
14 application, but I think it is an excellent point to
15 bring up.

16 Let me just bring some clarification
17 because you're throwing around community a lot.
18 Aren't the 180 units going to be part of the
19 community?

20 MR. JORDAN: Sure, but there are also some
21 people who live right next door to it.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. JORDAN: And their children will be
24 excluded. See, how can they say --

25 CHAIRPERSON GRIFFIS: And I think that's

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1 an excellent point.

2 MR. JORDAN: -- that it benefits the
3 larger community? It's going to be a part of the
4 community. Then you isolate yourself as if you --

5 CHAIRPERSON GRIFFIS: Well, if it's full,
6 if the classroom is full, but if the classroom is full
7 and the center is being used, isn't it serving the
8 community?

9 MR. JORDAN: Sure, but there's an
10 assumption that if it's full --

11 CHAIRPERSON GRIFFIS: No, I understand
12 that. And I think you made an excellent point: So
13 all these folks that move back into the apartments
14 maybe they all have Ph.D.s and they don't need this.
15 When does it open up? And I think we can get some
16 clarification for that, because I think I haven't
17 heard anything today that would lend me to believe
18 that this is just to be a quiet, maybe underutilized
19 is really the goal. No, it seems to me that the goal
20 of this is to make it very utilized, so they're going
21 to find the people that need it.

22 MR. JORDAN: Can I make one other point?

23 CHAIRPERSON GRIFFIS: Sure.

24 MR. JORDAN: There's a question about
25 staffing: Where's the funds coming from for the

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1 center? Nobody has talked about that. Those are the
2 kind of things we wanted to vent out at the ANC
3 meeting. When we tried to raise these questions, they
4 weren't always answered.

5 So I'm just saying to you, they could say
6 that 10 percent of the slots will go to the community.
7 They could say 15 percent. Then there wouldn't be a
8 problem of ensuring -- rather than saying, "if we have
9 some space," "if we don't use up all the space," do
10 you understand?

11 I'm saying to you right now that the
12 homeowners who live contiguous to that site are going
13 to be impacted by that center. Why should their
14 children be denied access to it if it is supposed to
15 benefit, quote, "the community," unquote?

16 CHAIRPERSON GRIFFIS: I understand. Okay.
17 Any other questions from the Board?

18 VICE CHAIRPERSON MILLER: I have a comment
19 and a question.

20 I just want to say, first of all, I
21 certainly understand your point about the community
22 that's there now, the children that are there now, and
23 whether that will serve them. That was one of the
24 areas that I was trying to resolve myself.

25 I just want to make a constructive

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1 suggestion to your ANC, so that you don't run into
2 problems in the future where we are questioning who's
3 representing the ANC. We have it in our regulations,
4 the specific requirement, but two that seem to be
5 lacking here.

6 One was, who is authorized, not to dwell
7 on this? Then the other one I didn't see in this
8 letter was the notice to the community, because that's
9 also important. If there's a meeting held but we
10 don't know that the community had notice, how much
11 weight can we give that?

12 So I just wanted to bring it to your
13 attention for the future, and I appreciate the remarks
14 you made. Regardless of whether they represent the
15 ANC or not, I think they were good points for us to
16 hear and consider.

17 CHAIRPERSON GRIFFIS: Excellent. Anything
18 else? Mr. Etherly?

19 MEMBER ETHERLY: Not necessarily as a
20 followup for the ANC, I appreciate the presentations
21 on the part of all three Commissioners, and I think I
22 have a fairly decent sense of kind of where we are
23 there. This question is perhaps addressed back to Mr.
24 Stillwell because, as you probably are aware, attached
25 to Exhibit 24 there is a letter of understanding that

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1 is referenced, and Commissioner Jordan did reference
2 it as well. So I just wanted to get a sense from the
3 Applicant as to where the Applicant is presently with
4 the issue of a letter of understanding of some type
5 with the ANC. Is the document that we have attached
6 to Exhibit -- that's your letter of understanding?

7 MR. STILLWELL: Am I on mic? I believe
8 I'm on mic.

9 But that is the letter of understanding.
10 In that same exhibit, if you look at the "whereas"
11 clause, it states the sequence of meetings. At the
12 meeting of January 12th -- I should say a work session
13 -- we met with the ANC, and it was specifically
14 requested that we draft and submit a letter of
15 understanding. That was done subsequently and was
16 included in your exhibit attached with the letter of
17 support and was discussed at the ANC meeting of
18 February 23rd, 2006.

19 So at that meeting of February 23rd, 2006,
20 each of the ANC Commissioners had received hand-
21 delivered, at least for the Chair and the Single
22 Member District Commissioner, and at least mailed
23 individually to the others, that letter of
24 understanding. So it was available for discussion at
25 that meeting.

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1 CHAIRPERSON GRIFFIS: Okay, thank you.

2 MEMBER ETHERLY: Thank you, Mr. Chairman.

3 MR. JOHNSON: May I add one thing, sir?

4 CHAIRPERSON GRIFFIS: Yes, sir.

5 MR. JOHNSON: This first came to the
6 agency on December the 15th to introduce Mr. Jordan,
7 as it said in the working session, which was on April
8 the 17th. We'd only had the meeting April 23rd (sic),
9 but on December the 15th at the working session they
10 introduced the project. On January the 12th we called
11 them for a working session for the Commission only,
12 where we sat down and we would go over the issues.

13 Mr. Jordan had said early on the principle
14 of development. He had from December 15th to January
15 the 12th, from January the 12th to February the 23rd,
16 to develop whatever he thought was the principle of
17 development. It never occurred and the issue was
18 never raised until after the vote on February the
19 23rd. I think it was raised on March the 23rd.

20 If he had those issues early on, he had
21 over 60 days to deal with that. So I guess the vote
22 surprised him to the point, but he should have raised
23 those issues. There was plenty of time. Once we went
24 to the community and after a little understanding had
25 arisen, after the January the 12th working session,

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1 that's when we asked all the questions that we had on
2 tap that particular evening.

3 Now if we had any additional questions, we
4 could have raised them after the letter of
5 understanding, which was introduced on February the
6 17th, at the February the 23rd meeting.

7 CHAIRPERSON GRIFFIS: Excellent. I
8 appreciate that clarification and chronology, but,
9 obviously, we have all the testimony that is in. I
10 don't want to get back into the chronology of this.

11 MR. JORDAN: I just want to clarify one
12 point, though. I never mentioned anything about the
13 principles of development. The second thing is all of
14 us did not receive the letter of understanding.

15 We have a Committee of Housing. The Chair
16 is Soisette Lumpkin. The developer, Mr. Stillwell and
17 others, should have been working through her.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. JORDAN: And they didn't do that.

20 CHAIRPERSON GRIFFIS: You have the letter
21 of understanding now, though, correct?

22 MR. JORDAN: Yes.

23 CHAIRPERSON GRIFFIS: Okay, good.
24 Excellent.

25 All right, thank you all very much. We do

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1 appreciate it.

2 I am going to ask if the Applicant
3 representative has any cross examination questions of
4 any of your testimony.

5 MEMBER ETHERLY: No, sir.

6 CHAIRPERSON GRIFFIS: Excellent. Thank
7 you very much. Then thank you. I do appreciate
8 everyone's being out here.

9 At this time, then, let's move ahead to
10 persons that are present that would like to provide
11 the Board testimony. Anyone that would like to speak
12 to this application 17464, if you would come forward
13 at this time, persons in support or in opposition.
14 Let's fill up all the chairs. We have five available.
15 For the added cost, we can add another chair in.

16 (Laughter.)

17 Okay, two. Excellent. A very good
18 morning to you.

19 MS. SMITH: Good morning. My name is
20 Dorothy M. Smith, and I live at 821 Chesapeake Street
21 in Southeast Washington, D.C.

22 CHAIRPERSON GRIFFIS: Excellent. Thank
23 you. Welcome, Ms. Smith.

24 MS. SMITH: Well, thank you.

25 I'm here representing the Chesapeake

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1 Street block along with my neighbor, Mr. Carthone
2 Richard Carthone.

3 My concern is I do not, I have no problems
4 with the center itself. I have problems with the
5 location.

6 Where they are going to put the center is
7 right in the back of my house. I'm concerned with the
8 neighborhood being overcrowded because most of the
9 people in my block don't have children. I love
10 children. I have children. I have grandchildren. I
11 have great grandchildren. But what I am saying is, if
12 they're going to have all these people coming in from
13 throughout the area, it's going to be overcrowded.
14 There's going to be no place to park. All these
15 things are going to be our problem right there on
16 Chesapeake Street.

17 Now Mr. Johnson, who is adamant about the
18 center, lives six blocks away. It's not going to
19 affect him.

20 Then I don't know where the other people
21 live at ANC, but we're concerned about our
22 environment. We were not notified. The only letter
23 I got was this letter, I guess from your Department,
24 stating that you would be having this. I have not
25 received a letter, not a telephone call. ANC has not

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1 sent us anything.

2 So we don't need people to speak for us.
3 We can speak. We have a right to vote for the things
4 that we want in our neighborhood because we pay tax
5 just like they do.

6 I do not understand how ANC can come in
7 here and say they have decided that they're going to
8 do what they want to do with my area. I don't
9 understand that.

10 CHAIRPERSON GRIFFIS: Sure.

11 MS. SMITH: At least give me the
12 opportunity to say yes or no whether I want something.

13 Now the center is a good idea. Put it
14 someplace else. We're already congested where we are.

15 CHAIRPERSON GRIFFIS: Excellent.

16 MS. SMITH: Thank you.

17 CHAIRPERSON GRIFFIS: Thank you very much.
18 Just to be clear, this is your opportunity, so we're
19 so glad that you took it and came down and spoke to
20 the Board because we'll be making a decision. Of
21 course, ANC plays an important role in filling the
22 record, but it is just one of those aspects that the
23 Board will deliberate on.

24 So I understand that you are perhaps a
25 little disappointed that you weren't involved in the

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1 ANC's --

2 MS. SMITH: Right.

3 CHAIRPERSON GRIFFIS: But here you are
4 able to address the Board, and we have obviously heard
5 your concerns with the placement of this center
6 actually being in proximity to your residence and how
7 it might, in fact, increase the parking or the lack
8 thereof --

9 MS. SMITH: Right.

10 CHAIRPERSON GRIFFIS: -- in the area.

11 What is your understanding of if the
12 majority of the people that utilize this center came
13 from the adjacent development or redevelopment of the
14 apartments? Would that change your understanding of
15 the density or use of that area? Would it lessen the
16 impact for you?

17 MS. SMITH: I'm not sure of that. How can
18 you have a center come into a neighborhood and limit
19 the children that are going to attend it? How can you
20 do that?

21 CHAIRPERSON GRIFFIS: I'm not sure it
22 would be limit, but, rather, where the kids would be
23 coming from and whether that would have an impact. In
24 your understanding, what impact would that be if they
25 were walking across from the apartment buildings?

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1 MS. SMITH: That would be an impact.

2 CHAIRPERSON GRIFFIS: Okay, and what is
3 the impact, just for my understanding?

4 MS. SMITH: I'm not sure because I'm not
5 sure of the age limit. Then, there again, we don't
6 know who's going to move back into those apartments
7 after they have refurbished. We don't know that. It
8 might be families with no kids. So why is that
9 building going to be sitting there?

10 Now another thing I don't like, I don't
11 like the material they're putting in that building.
12 Those houses are brick houses. What is that stuff
13 that he's talking about that he's going to build it
14 with. Do you know what I'm saying?

15 CHAIRPERSON GRIFFIS: Uh-hum.

16 MS. SMITH: That's going to take away from
17 our area.

18 CHAIRPERSON GRIFFIS: Understood. Okay.
19 Something of that nature, then if you looked at the
20 diagram that was actually just put back up and you see
21 the trees, do you think that the trees at all, as
22 they're proposed, add any sort of screening or buffer
23 to your residence?

24 MS. SMITH: You know another thing, too,
25 is we have been told that we are going to do certain

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1 things. Then once it's approved, the contractors come
2 and do what they want to do or either they don't do
3 anything.

4 CHAIRPERSON GRIFFIS: Sure, sure.

5 MS. SMITH: So I'm not sure.

6 CHAIRPERSON GRIFFIS: I can tell you that,
7 if we approve for a plan, that they'll build it, if
8 they build it. I'm not saying that we'll force them
9 to build it, but they won't vary if there are
10 specifics that we look at, as it would tend to
11 decrease an objectionable condition.

12 MS. SMITH: Okay.

13 CHAIRPERSON GRIFFIS: Okay. Well,
14 excellent, Ms. Smith. I do appreciate your taking the
15 opportunity to come here. As I said, I think this is
16 the point that is of most critical value as it
17 pertains to the zoning issues relating to this center.
18 So we appreciate your being here.

19 MS. SMITH: And thank you so much for
20 listening.

21 CHAIRPERSON GRIFFIS: Certainly.

22 Yes, sir?

23 MR. CARTHONE: Yes, my name is Richard
24 Carthone, Sr. I live at 827 Chesapeake Street,
25 Southeast.

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1 All of the concerns that Ms. Smith has
2 spoken definitely are mine as well. I, too, I'd say
3 I've been a long-time resident of Chesapeake. As a
4 matter of fact, come June, 44 years. I've heard
5 people say they've been in the area for five, six,
6 whatever. Forty-four years.

7 I, too, was not contacted by the ANC.
8 People are just overlooking the long-time residents
9 altogether.

10 As she said, this building, I definitely
11 have no problem with education, definite. I have
12 children. On a heart, there's no problem whatsoever
13 with that, but the location again is my concern
14 because it would be, the proposal would be right
15 somewhat in the back porch. So that's my concern
16 there again, too.

17 But everything that Ms. Smith said I think
18 I would agree with that to be my major concern.

19 CHAIRPERSON GRIFFIS: Excellent,
20 excellent. Thank you very much. Again, we also
21 appreciate your taking the time to be down here to
22 give us your testimony in person.

23 May I ask if there are any questions from
24 the Board at this time? Yes, Mr. Parsons?

25 MR. PARSONS: I really appreciate

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1 testimony. It is very helpful.

2 What other alternative use of this
3 property would be compatible to your use? It is just
4 now an open lot, I guess, that is used in some fashion
5 by the community. Maybe you just look at it; I don't
6 know, but I'm trying to get a better understanding as
7 to your view of the existing condition and your view
8 as to what else should be built here instead of this.

9 MR. CARTHONE: I'm not certain exactly
10 what, but I'm just thinking. There would be a massive
11 building back here that we would have to look at. So
12 I just don't know what could be placed there. I don't
13 know what would be an alternative.

14 But I was thinking in terms of alternative
15 for a building around the corner on Barnaby Street.
16 I know it would have to be cleaned off some, or
17 whatever, but rather than right close to somebody's
18 house.

19 MR. PARSONS: So if somebody was to
20 propose houses here similar to yours backing up to
21 yours, would that be objectionable?

22 MR. CARTHONE: I'm sorry?

23 MR. PARSONS: If somebody was to propose
24 to build houses here similar to yours backing up to
25 your rear yard, would that be a better use?

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1 MR. CARTHONE: I would have to see it.

2 MR. PARSONS: So you really haven't
3 thought about it?

4 MR. CARTHONE: I really don't know as of
5 now.

6 MR. PARSONS: Okay.

7 MR. CARTHONE: I just don't have an answer
8 for that.

9 MR. PARSONS: So in your view, I guess,
10 leaving it the way it is is probably preferable?

11 MR. CARTHONE: Again --

12 MR. PARSONS: After 44 years, pretty good,
13 huh?

14 MR. CARTHONE: Well, not that bad, but
15 when I first moved there, all the population were not
16 there. I'm saying we're being completely enclosed as
17 time goes on.

18 MR. PARSONS: I understand. All right.

19 MR. CARTHONE: So I'm not certain.

20 MR. PARSONS: Thank you.

21 CHAIRPERSON GRIFFIS: Good. Thank you.

22 Do you want Ms. Smith to respond to that?

23 MR. PARSONS: Could you respond to that or
24 haven't you -- if you haven't thought about it --

25 MS. SMITH: Well, when we had children --

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1 my children are all gone -- when we had children,
2 they would use that place to play softball or
3 whatever, activities they had. It was ideal for that.

4 It's not a large place. I cannot
5 understand why you want to crowd it out like that in
6 the first place, but, anyway, you asked about, what
7 would I think? I would think it would be ideal for
8 anyone that wanted to have their children play.

9 On the opposite side from where I am they
10 have a little playground like, but a lot of the kids
11 ride their bikes back there and do little things, you
12 know. It's ideal for that, but not for a building.

13 MR. PARSONS: Thank you.

14 MS. SMITH: You're welcome.

15 CHAIRPERSON GRIFFIS: Excellent. Thank
16 you very much.

17 Good question, Mr. Parsons.

18 Are there any other questions from the
19 Board?

20 (No response.)

21 Does the representative have any cross
22 examination of the witness?

23 MEMBER ETHERLY: No, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Very well, thank you
25 both very much again.

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1 MS. SMITH: Thank you.

2 CHAIRPERSON GRIFFIS: We do appreciate
3 your coming down. It's important to hear testimony on
4 all sides and to bring to the Board's attention any
5 potential or actual objectionable conditions that
6 might arise.

7 That being said, let me ask if there's
8 anyone else here either in support or in opposition to
9 Application 17464, and if they would come forward at
10 this time.

11 (No response.)

12 Not noting any other individuals present,
13 we'll turn it over to Mr. Stillwell for closing
14 remarks.

15 MR. STILLWELL: Yes, Mr. Chairman. I can
16 do this a couple of different ways. I was going to
17 bring Mr. Hamer back up just to clarify a couple of
18 points that were raised.

19 CHAIRPERSON GRIFFIS: Do you have a
20 follow-up question? Why don't you launch the follow-
21 up questions, too, so we can address them?

22 VICE CHAIRPERSON MILLER: Maybe he was
23 planning on addressing them anyway, but one is -- and
24 I addressed this before, and I just want to revisit it
25 -- the question about access of children in the

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1 community who are there now to the center. Because
2 the way our regulations read is that it is supposed to
3 serve the neighborhood which it is in, and how big
4 that is. I'm not reading that exactly, but I think
5 that's a very legitimate concern. I think that the
6 interest of your group is very laudable.

7 So we have a community and you're coming
8 into the community and you're doing great stuff, but
9 then the kids that are there maybe now won't be able
10 to use it; maybe they will. I mean it sounded like it
11 depends on space availability.

12 But I'm wondering if you can really give
13 any assurances that this will be accessible to
14 children who are in the neighborhood now.

15 MR. HAMER: Well, let me say this: It
16 will definitely be for the children of the community,
17 of which Avalon and Southern Court are a part of that
18 community.

19 Again, we are acquiring Avalon and
20 Southern Court. First and foremost, this building
21 will be for the residents of Avalon and Southern
22 Court.

23 Again, we do have capacity issues. If
24 those issues are not a problem, then it would be
25 opened up to the children of the broader community.

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1 But, yes, to answer your question, the community
2 center will be for the community.

3 VICE CHAIRPERSON MILLER: And there was
4 question -- we don't have any authority over the
5 housing aspect of this, but if the public housing fell
6 through for some reason, would the learning center
7 still go forward, or there's no question that the
8 housing is going to fall through?

9 MR. HAMER: Well, we have in many cases
10 with affordable houses, which this is, affordable
11 rental houses, we have layered financing. We have
12 conventional lenders for construction loans. We have
13 been working with D.C. Housing Finance Agency, to
14 which we submitted an application last August. We
15 received an eligibility resolution in late February,
16 and we're scheduled to close with the D.C. Housing
17 Finance Authority in June.

18 Again, with the Housing Finance Authority,
19 we're utilizing tax-exempt bonds, 4 percent low-income
20 housing tax credits. Again, we are scheduled to
21 close.

22 VICE CHAIRPERSON MILLER: Thank you.

23 CHAIRPERSON GRIFFIS: Anything else?

24 (No response.)

25 Okay, let's get a quick rebuttal.

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1 MR. STILLWELL: Yes. Mr. Chairman, Mr.
2 Hamer was going to address exactly -- I was going to
3 have him address the very issues that Commissioner
4 Miller presented to him.

5 With that, I would just like to respond to
6 a couple of references in the record. Mr. Jordan
7 indicates, for example, that Mr. John Evans never
8 received notice. I would just like to put into the
9 record that in your Exhibit No. 7 is the 200 property
10 owners list. On the third page Mr. John B. Evans is
11 listed.

12 In addition, it is my understanding that
13 it was announced during, and I would say it was
14 announced during the ANC meeting of February 23rd,
15 that notice for that meeting was specifically hand-
16 delivered to the adjacent property owners, which I
17 believe would also include Mr. Evans.

18 Now with regard to the adjacent property
19 owners, they have received due notice, as required by
20 the zoning regulations, and I believe additional
21 notice beyond the posting based upon some of the
22 activities as announced by the ANC.

23 So with that, I don't know what more we
24 could have done with regard to addressing concerns
25 that may have existed with the residents if they were

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1 not brought to us, or at least to the ANC and, in
2 turn, brought to us.

3 I would also like to point out that Vesta,
4 on the issue of the learning center -- and, again, we
5 first went to the ANC regarding our special exception
6 application for the learning center. We have met
7 extensively with the learning center, and even the
8 minutes which reflect the meetings from December
9 through present do not pick up all of the meetings
10 that Vesta and Vesta representatives have had out in
11 the community, but to emphasize for the learning
12 center or the community center application, which is
13 before you now, there has been extensive consultation
14 with the Advisory Neighborhood Commission, the
15 Commissioners, and the residents.

16 Even in the record presented today,
17 everyone has indicated that they have no opposition to
18 the learning center, but there are external issues
19 that I believe this Board doesn't have the
20 jurisdiction to deal with that they have questioned.
21 Those questions will be resolved in other forums.

22 But I would like the record to reflect
23 that even Mr. Jordan indicated he does not oppose the
24 learning center, and no one at any of the ANC meetings
25 has stood up and opposed the learning centers.

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1 With regard to how you determine where to
2 apply the great weight, again, I'm not going to get
3 into the internal grievances of the ANC, but the
4 Applicant's position is we have done what is required
5 of us by law. That is to confer, consult, and to seek
6 advice from the ANC, which we have done extensively
7 and which is well-documented by letters of support in
8 Exhibit No. -- bear with me a second -- Exhibit No. 19
9 in your record, which would be a letter of support
10 from Single Member District Commissioner Robin Adams,
11 and then in your record No. 24 which is the letter of
12 support with the resolution of the vote by Chairman O.
13 V. Johnson.

14 That also includes a letter of
15 understanding that we were required to present to the
16 ANC, pursuant to the work session I had mentioned
17 earlier.

18 With regard to the Code requirements, I
19 believe the record has indicated that there has been
20 no evidence indicating a detrimental effect to the
21 community. In fact, I think just the opposite has
22 been presented. We hear very frequently we need
23 programs to bridge the digital divide. This is
24 exactly the type of program we believe addresses that
25 need, and we believe that it is consistent and is not

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1 inconsistent with any of the regulations, of the
2 zoning regulations specifically for special exception
3 approval for a community center.

4 Having said that, unless this Board has
5 any specific questions, I request approval of this
6 application and I daresay, based upon the fact that
7 the record indicates by all parties that they have no
8 opposition to the center, to this application, I
9 request a bench decision.

10 CHAIRPERSON GRIFFIS: Very well. Thank
11 you very much. We do appreciate that.

12 I do believe the record is full. I don't
13 think we need to keep the record open for any
14 additional information.

15 However, with the time constraint, it is
16 noon and we have one more case to go -- we have taken
17 a lot of time on this one -- with good reason to do
18 so, let me ask first if there's any followup.

19 (No response.)

20 If there are no last comments or follow-up
21 clarifications from the Board, I am afraid that we
22 would set this for a decision, just for the time
23 constraints that we have. I would like to do that as
24 quickly as possible. Let me hear from others, but I
25 think that would be on the 6th of June at our

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1 regularly scheduled public meeting.

2 MEMBER ETHERLY: I would agree with that
3 course of action, Mr. Chair.

4 I think the ANC piece is something that
5 perhaps the Board is going to have to talk through,
6 not necessarily in great detail, but in some detail,
7 just to at least sort it out clearly in the course of
8 deliberation. Rather than kind of trundle through
9 that now, I think it would be most appropriate to set
10 it all for a decisionmaking, do it expeditiously, as
11 you noted, with a June decision date, rather than
12 working it out today.

13 CHAIRPERSON GRIFFIS: Excellent. Thank
14 you very much.

15 Any other comments, questions, concerns of
16 setting that for the 6th from the Board?

17 (No response.)

18 Okay. Let me ask, then, the last followup
19 on Exhibit No. 19 in your recent submission or latest
20 submission, it's the site plan, which is the same as
21 the Board here --

22 MR. STILLWELL: That is correct.

23 CHAIRPERSON GRIFFIS: Let me just get a
24 quick clarification. The testimony in this is showing
25 that it is actually surrounded on three sides by an

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1 alley?

2 MR. STILLWELL: That is correct.

3 CHAIRPERSON GRIFFIS: One is 16-foot and
4 the other is approximately the same size? Is that
5 correct?

6 MR. STILLWELL: That is correct.

7 CHAIRPERSON GRIFFIS: So perhaps about 16
8 feet and then, of course, from the public right-of-
9 away --

10 MR. STILLWELL: Yes. And, Mr. Chairman,
11 I believe the alley widths are also referenced in
12 Exhibit No. 7, which is the Surveyor's Platt.

13 CHAIRPERSON GRIFFIS: In the platt, right,
14 exactly. Very well.

15 MR. STILLWELL: I'm sorry, our Exhibit
16 number is 7 in the application package.

17 CHAIRPERSON GRIFFIS: Good. I don't have
18 any other questions for the application.

19 Is there anything else from any of the
20 Board members?

21 (No response.)

22 Ms. Bailey?

23 MS. BAILEY: Sorry, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Yes.

25 MS. BAILEY: Is it possible to get

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1 clarification of the address before the decision or is
2 that not necessary?

3 CHAIRPERSON GRIFFIS: I'm not sure that
4 would happen in the time before June, is my
5 understanding as to when you would pick an address.

6 MR. STILLWELL: It was my understanding
7 that what happened, after the fact, but my
8 understanding now is that there is no fixed address
9 for this property.

10 CHAIRPERSON GRIFFIS: Okay, I think we're
11 just going to run it with the lot and square --

12 MS. BAILEY: The lot and square.

13 CHAIRPERSON GRIFFIS: -- for the official
14 site of this. Very well.

15 MR. STILLWELL: Mr. Chairman, the last
16 thing is I just want clarification that the three
17 exhibits that we have submitted have been accepted
18 into the record.

19 CHAIRPERSON GRIFFIS: That's correct.
20 Excellent.

21 If there's nothing further then --
22 anything else?

23 MS. BAILEY: Just the color renderings,
24 sir. I don't believe those are in the file, the
25 color-coded --

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1 CHAIRPERSON GRIFFIS: This site plan?

2 MS. BAILEY: There was some other color-
3 coded renderings that were presented today.

4 CHAIRPERSON GRIFFIS: Oh, I'm sorry, yes.
5 Obviously, if it was presented today, we will have it
6 in the record if it isn't already put in.

7 Good, very well. Then we will see you on
8 the 6th perhaps.

9 MR. STILLWELL: Yes.

10 CHAIRPERSON GRIFFIS: We will set a
11 decision. Of course, the record is closed at this
12 time. We will call this for decision and
13 deliberation; there would be no other additional
14 testimony provided to the Board in this case.

15 Thank you all very much.

16 Let's move ahead then and we will call the
17 next case, the final case for the morning.

18 MS. BAILEY: Application No. 17466 of 2109
19 10th Street Associates LLC, pursuant to 11 DCMR
20 3103.2, for a variance to allow a reduction in the
21 required amount of residential recreation space under
22 Section 773, serving an existing apartment house in
23 the ARTS/C-2-B District at premises 2109 10th Street,
24 Northwest, Square 358, Lot 9.

25 CHAIRPERSON GRIFFIS: Unfortunately, a

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1 very good afternoon to you both. If you would like to
2 state your name and address for the record, I think we
3 could get right into this application.

4 MR. SHER: Mr. Chairman, for the record,
5 my name is Steven E. Sher, the Director of Zoning and
6 Land Use Services with the Law Firm of Holland &
7 Knight. Seated to my right is Paul Robertson. We are
8 here on behalf of 2109 10th Street Associates LLC, the
9 owner of the property.

10 This is a preliminary matter with respect
11 to the posting of the notice on the property. Through
12 inadvertence and miscommunication within our office,
13 the notice did not get posted until six days in
14 advance of the hearing rather than the fifteen days
15 normally required. We would request the Board to
16 waive the rules and allow the hearing to go forward
17 this afternoon, as opposed to this morning.

18 CHAIRPERSON GRIFFIS: We appreciate your
19 bringing that to our attention. The Board was well
20 aware of that, and that's actually why we grouped them
21 all together, the non-posting crowd.

22 (Laughter.)

23 I note that ANC, Mr. Spalding is here. I
24 would like to hear if you have any objections with us
25 continuing, as this wasn't posted for the proper time.

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1 MR. SPALDING: Phil Spalding. I live at
2 1929 13th Street, and I represent ANC-1B, and we have
3 no opposition to going forward.

4 CHAIRPERSON GRIFFIS: Excellent. Thank
5 you.

6 Board members?

7 MEMBER ETHERLY: Mr. Spalding, would you
8 suggest that we do, however, be somewhat hard on Mr.
9 Sher for missing a posting or should we go easy?

10 MR. SPALDING: I think there have been
11 enough scoldings this morning.

12 MEMBER ETHERLY: Thank you, sir.

13 MR. SPALDING: I think Mr. Sher was here
14 to listen to them.

15 MEMBER ETHERLY: Excellent. Thank you,
16 sir. Thank you, Mr. Chair.

17 CHAIRPERSON GRIFFIS: We appreciate that.

18 I have no difficulty continuing on this.
19 In fact, just the fact that the ANC is here and,
20 obviously, it has gone through the public notice,
21 let's move ahead unless there is any objection from
22 the Board.

23 Mr. Sher, it's all to you.

24 MR. SHER: Mr. Chairman, members of the
25 Board, we can be as brief as you like us to be. We

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1 are prepared to stand on the written record, if the
2 Board has pleasure in that. Otherwise, I can give you
3 a very brief summary of what this case is about.

4 CHAIRPERSON GRIFFIS: I think we need a
5 brief summary on this one.

6 MR. SHER: Okay. This is an existing
7 building located on the east side of 10th Street
8 between V and W Streets, Northwest. It's in a C-2-
9 B/ARTS overlay district. The key, obviously, there is
10 C-2-B.

11 It is a small building. It has only seven
12 units. The lot's only 25-feet wide. It's a
13 relatively new building. It was built with the
14 understanding as far as the permanent plans were
15 concerned that we would provide the appropriate amount
16 of residential recreation space, and we did.

17 The building is built. The residential
18 recreation space is there. Frankly, it's not very
19 good space. We designed it; it complies, but it's not
20 very good space.

21 As a result of that, as a result of the
22 building having been built and the space configured
23 the way it is, and the determination by Mr. Robertson
24 on behalf of the owner and others that it would be
25 better if we could use that space for parking as

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1 opposed to residential recreation space, what we are
2 here before the Board to seek is to reduce the amount
3 of residential recreation space to 688 square feet and
4 to provide six total parking spaces on the site for
5 the seven units in the building.

6 Parking is required under the regulations
7 only at the rate of one space for every three units.
8 So for seven units we are only actually required to
9 provide two spaces, but the demand in the neighborhood
10 for parking would seem to suggest that, if we could
11 provide more, that would be better.

12 So what we would like to do is provide, as
13 I said, six total parking spaces, as shown on the
14 plans which we submitted to the Board with our
15 application. The application was filed on December
16 5th. The plans are actually dated November 29th.

17 There would be four full-sized spaces and
18 two compact spaces. Only two full-sized spaces are
19 required. So it's more parking than the regulations
20 require.

21 Because of the width of the lot and the
22 size of the property, there is essentially no other
23 way to provide residential recreation space elsewhere
24 on the lot. If you think about putting it up on the
25 roof, you need to have two means of egress and other

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1 requirements for being able to access the roof. On a
2 25-foot wide lot, it just can't happen.

3 So either we keep the residential
4 recreation space on the ground as it is now in the
5 admittedly not very good condition or we can replace
6 with a total of six parking spaces on the ground
7 floor, partly under the building and partly in the
8 open space adjacent to public alleys at the rear.

9 We think that the size and shape of the
10 lot, the configuration, the size of the building
11 create the exceptional situation. The practical
12 difficulty is, again, that there is no other way to
13 provide the residential recreation space other than
14 where it is now, and we think that space is better
15 used for parking, and that parking would be a more
16 compatible and a more beneficial use of that area than
17 leaving it in the way it is now.

18 That's the two-minute summary.

19 CHAIRPERSON GRIFFIS: Indeed, and I think
20 that is an excellent summary. My understanding, then,
21 is the uniqueness really is circumstantial and
22 physical. I mean you have a lot that is about 3,125
23 square feet, which is particularly small in my
24 familiarity with C-2-B. What you are saying is that
25 there is a circumstance around that, that uniqueness,

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1 that tightness of everything trying to get fit into
2 it, the circumstances that once it's up and complete,
3 that the reality of the utilization, the reality of
4 the compliance with the regulations actually lends
5 itself to some of the practical difficulty of the
6 reality of the need and the demand.

7 Now parking, of course, is part of our
8 regulations. Parking is not independent of it.
9 You've met the requirement. However, what you are
10 saying is that the better utilization of it puts you
11 into a competitive aspect that makes it practically
12 difficult to completely comply with the regulations.

13 I was noting in the 25-foot dimension that
14 we could say, then, just modify the building to put it
15 up on the roof. What I am hearing you say, it is my
16 understanding that, first of all, two means of egress
17 off the roof have not been provided, and if you did
18 put a structure and a cover on the stairs, would you
19 potentially lose that dimension of the 25-foot which
20 would be required for the roof?

21 Is that also correct?

22 MR. SHER: Yes, that's part of it. Being
23 able to get up there is the biggest problem, pure
24 access.

25 CHAIRPERSON GRIFFIS: Sure.

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1 MR. SHER: Then if you had to put a roof
2 structure up there and you had to set the roof
3 structure back, you've got an alley on one side, so we
4 would have to set it back from the south. I guess we
5 could technically put it up against the north side
6 property wall. At the moment that is an open side of
7 the building. There is no adjoining building there.
8 But it just didn't seem to be a way that we could do
9 that that would comply without creating other areas of
10 relief that we might have to come back for.

11 CHAIRPERSON GRIFFIS: Right, right. It
12 seems like, kind of in sum, when I was thinking about
13 this this morning, and then in reading the entire
14 record, it's almost the de minimis size and the heavy
15 requirement in the C-2-B for the residential rec
16 percentage creates a practical difficulty. Even if we
17 kind of remove this from it's already provided, just
18 in the particular smallness of trying to make this
19 actually usable obviously shows that it could not --
20 it wasn't done.

21 MR. SHER: There is probably a dimension
22 of a lot somewhere where 15 percent of the amount of
23 residential floor space in C-2-B zone is the right
24 amount. Unfortunately, most of the cases I've seen
25 have either been too big for that dimension or too

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1 small for that number. So you wind up with way more
2 space than you need or an ability not to provide the
3 space because the site is too small.

4 Somewhere out there I'll find a case that
5 I won't have to bring here because it will meet the
6 residential requirements. It will be the right amount
7 of space, and you and I will be doing something
8 different on a Tuesday. But so far that hasn't
9 happened.

10 CHAIRPERSON GRIFFIS: Parking a car or
11 recreating.

12 (Laughter.)

13 Okay, questions? Yes, Mr. Mann?

14 MEMBER MANN: With all your experience in
15 these sort of situations, I'm surprised that we're
16 hearing this today. Was this unanticipated?

17 MR. SHER: What was unanticipated in part
18 was the demand for parking that the residents in the
19 building had and also unanticipated how unfriendly the
20 space turns out to be when you're out there on the
21 ground.

22 I think OP's pictures that are attached,
23 the pictures attached to the OP report are a little
24 clearer than the pictures we had attached to our
25 application, which are a little fuzzy when they got

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1 reproduced. But it shows a pretty barren space
2 adjacent to two public alleys, one on the south and
3 one on the east. It's just not very good space, and
4 I don't think we anticipated that it would be as
5 unfriendly as it turns out to be.

6 MR. PARSONS: I would just like to follow
7 up.

8 CHAIRPERSON GRIFFIS: Yes, go ahead.

9 MR. PARSONS: What was anticipated the
10 under part of the building to be used for? Was it to
11 be enclosed or an exercise room or what were people to
12 do there?

13 MR. SHER: There is a space inside the
14 building that is an enclosed conditioned space with
15 access down from inside the building. The other space
16 was just there because it met the literal number of
17 square feet we had to provide.

18 MR. PARSONS: And people would park there?
19 I mean there's no other alternative? They're not
20 going to sit out there and read a book or exercise.

21 MR. SHER: I suppose you could use your
22 Blackberry there where I can't use it in here, but
23 it's not very good space. That's all I'll say.

24 MR. PARSONS: Thank you.

25 CHAIRPERSON GRIFFIS: Yes?

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1 VICE CHAIRPERSON MILLER: And that space,
2 are you saying that it is impossible to make that
3 space good space for recreation? I mean we have a
4 lousy picture. It looks terrible. Who wants to use
5 it? But are you saying it cannot be transformed into
6 good recreation space?

7 MR. ROBERTSON: My name is Paul Robertson.
8 I'm the owner of the property.

9 I suppose, given a sufficient amount of
10 time and investment, that something could be
11 transformed, but in the real world of what would
12 normally seem feasible, no.

13 It is also viewed from -- there's a very
14 large building behind, so there is really no privacy
15 back there. Either there's a million people looking
16 into it -- you can't see it from the pictures, but
17 it's the Rhapsody building.

18 Also, what was unanticipated was the
19 degree of demand for parking when we were getting
20 close to the sales, you know, time when we were going
21 to sell the units and during when we were selling the
22 units, for people to have parking.

23 And also comments from the neighbors when
24 they found out that there was only going to be the
25 limited parking and why weren't we pushing to get more

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1 parking. So it's not just our interest, but it's
2 everyone because there are other condominium projects
3 going up in the neighborhood. It's a block off of U
4 Street.

5 So it was sort of a combination of
6 factors.

7 VICE CHAIRPERSON MILLER: Okay. I guess
8 my question was fitting this into the variance test.
9 There are two issues. I mean one is I think what Mr.
10 Parsons and Mr. Mann probably have said like, why
11 didn't you think of this before? It's kind of your
12 architects draw it out. Why can't they tell ahead of
13 time that this rec faces --

14 CHAIRPERSON GRIFFIS: Was this a matter of
15 rec project?

16 MR. ROBERTSON: Yes.

17 CHAIRPERSON GRIFFIS: That's why.

18 VICE CHAIRPERSON MILLER: Well, not if
19 they couldn't meet the recreation, residential
20 recreation requirement; they would have to come down -
21 -

22 MR. ROBERTSON: But it was met.

23 VICE CHAIRPERSON MILLER: But it was met.

24 CHAIRPERSON GRIFFIS: But you're asking
25 them why. I understand the question. I mean, why are

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1 we here now when it's already done? Why didn't you
2 look at this before?

3 I think it's probably my understanding
4 would be, well, of course not, that it was faster --
5 so you don't open yourself up to coming to us because,
6 as much as we think we're fun, I don't think everyone
7 does.

8 (Laughter.)

9 So you move ahead. Now what I'm hearing
10 is that now we have a project that has come to
11 fruition, and it met all the requirements of our
12 regulation but the reality of what that means isn't
13 successful.

14 VICE CHAIRPERSON MILLER: Okay, I could
15 see that.

16 CHAIRPERSON GRIFFIS: That's how I'm
17 reading it.

18 VICE CHAIRPERSON MILLER: Okay. So then
19 the next question is, though we hear often parking is
20 better than this kind of recreation space, it's
21 preferable, it's more compatible, it's not such a
22 great regulation; it's being revisited. Okay, that's
23 not unique.

24 So I guess I would like if you could
25 address -- maybe some of the uniqueness here is the

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1 reality of how it's playing out in your case, but not
2 just that parking is preferable to the people who want
3 to buy the units, unless that comes into an economic
4 argument or something related to your practical
5 difficulty on it.

6 MR. SHER: No, I don't think we
7 necessarily need to get to any economic argument here.
8 What is exceptional is the size of the site and what
9 you would be forced to do in order to provide
10 recreation space in some other way.

11 So you're back to the situation you've
12 heard many times. You wind up taking programmed space
13 out of the building, because if you have to put more
14 space inside, it takes away from the number of units
15 that you're providing within the 3.5 FAR that C-2-B
16 allows, and/or if you look for other alternatives, the
17 building comes to the property at the front; you can't
18 get up to the roof because of the means of egress, and
19 the trickle-down effect that that has going through
20 the building to try to do that just to provide
21 recreation space for seven units.

22 We also have space that can't count as
23 residential recreation space because it's not communal
24 space, but there are private recreation spaces for
25 four of the seven units in the building.

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1 So all of those factors together we
2 believe constitute a situation where the Board could
3 grant a variance, find that there is an exceptional
4 situation or find that the integrity and purpose of
5 the regulation is not being detracted from.

6 MEMBER ETHERLY: If I could just jump in,
7 Mr. Chair, I kind of find myself chuckling a little
8 bit. Your choice of words, Mr. Sher, I think was
9 spot-on where you indicated that the Board could do
10 it. I think I'm kind of with Mrs. Miller a little
11 bit. I guess I'm struggling with the fact -- and I
12 get the argument. I get it, but I'm struggling with
13 the fact that, well, you built the darned thing and
14 it's there, and you got the space, and you did it as
15 a matter of why you're totally in compliance. Now
16 you're kind of asking us to undo the space.

17 Again, the pictures said a thousand words.
18 It's crappy space, using the unscientific term of it.
19 But it's there.

20 So I'm trying to struggle with kind of
21 undoing the fact that it's there and you're completely
22 in compliance. I agree with where Mrs. Miller was
23 going in that the parking piece I completely get. I
24 think we're all intimately familiar with that, that
25 lament that we hear now almost as a daily refrain here

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1 in the District of Columbia. But I'm just still kind
2 of struggling to get my hand around it.

3 CHAIRPERSON GRIFFIS: I appreciate that,
4 and I think everyone is. It reminds me of an
5 analogous case that we heard on residential recreation
6 space where it was brought forth and the diagram
7 showed, and it was a perfect space that complied with
8 outdoor residential recreation space, and, ironically,
9 it was 9x19. It was in between six other spots, and
10 that was the residential rec space. We looked at it
11 and we said, "My gosh, who's going to bring a chair
12 out there? Why are we going to sit there?" And they
13 said, "Well, we need relief from it because that's
14 what we're providing or it could be a parking space."

15 I understand that there is great concern
16 because of the threshold tasked to the variance, but
17 residential rec is interesting that it is a variance.
18 I think there is particular -- well, I'll leave it at
19 that for now.

20 Other questions, clarifications?

21 (No response.)

22 Why don't we proceed with the rest of this
23 and we'll see where we are in a few moments? I think
24 it is important to get to the Office of Planning's
25 report, and they are here to present it.

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1 MR. JESSICK: Thank you, Mr. Chairman,
2 members of the Board. My name is Matt Jessick. I'm
3 with the Office of Planning.

4 The Applicant for Case No. 17466 has
5 requested variance relief from Section 773,
6 Residential Recreation Space. The Office of Planning
7 has no outstanding issues and recommends approval of
8 the application.

9 As was mentioned, the property at 2109
10 10th Street is an existing condominium building which
11 was built as a matter of right and currently meets all
12 zoning requirements, including residential recreation
13 space.

14 The Applicant has heard requests from the
15 community to provide more off-street parking and also
16 feels that the building would be marketable if a
17 higher parking ratio were provided.

18 The Applicant has met the three-part test
19 for a variance. The property is unique in that it is
20 25-feet wide. This uniqueness leads directly to the
21 second part of the test, which is that it would be
22 practically difficult to provide recreation space on
23 the roof because of the minimum area and dimensional
24 requirements and the need for two means of egress.

25 The result is that a large portion of the

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1 recreation space is provided currently at the rear of
2 the property near the intersection of two public
3 alleys. The recreation space is currently
4 unattractive and perhaps, some would say, unusable.

5 The third part of the test is, can the
6 relief be granted without detriment to the public good
7 or without impairing the intent of the zoning
8 regulations? As I mentioned, the surrounding
9 neighbors, in fact, asked for additional off-street
10 parking and, therefore, the relief would not cause a
11 detriment to the public good.

12 The zoning regulations aim to provide
13 enough recreation space and parking spaces for each
14 development, and this Applicant would provide
15 additional parking above the requirement and would
16 still provide some recreation space for the residents.

17 The ANC voted nine, zero, two to support
18 the application, and in their decision they cited the
19 provision of additional off-street parking as a reason
20 to support the project.

21 The Office of Planning has received no
22 letters or phone calls of support or opposition to the
23 project. Again, we have no outstanding issues and
24 recommend approval.

25 I would be happy to take any questions.

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1 CHAIRPERSON GRIFFIS: Excellent. Thank
2 you very much.

3 Questions from the Board?

4 MEMBER ETHERLY: Not for the Office of
5 Planning. I just want to come back real quickly to
6 Mr. Sher just to make sure I understand something.

7 The current recreation space that you are
8 providing, are you counting -- let me look to page 8
9 of 8 of the Office of Planning's report. It's the
10 picture on the very back page. The recreation space,
11 just to be sure that I'm clear, the space that
12 currently has the very lovely -- is that a convertible
13 Saab, by the way -- a very lovely convertible Saab
14 there, is that counted as recreation space for
15 purposes of zoning?

16 MR. SHER: The Saab, no.

17 MEMBER ETHERLY: The Saab itself is
18 recreational.

19 (Laughter.)

20 MR. SHER: Well, that's true. I hadn't
21 thought about that. That's a good argument. No,
22 never mind.

23 (Laughter.)

24 No, that is not.

25 MEMBER ETHERLY: Okay, just the outside

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1 portion?

2 MR. SHER: The outside portion there, some
3 of the space inside the building, and other spaces --

4 MEMBER ETHERLY: Other areas?

5 MR. SHER: Not the two parking spaces that
6 are there.

7 MEMBER ETHERLY: Okay, got you. Thank
8 you. Thank you, Mr. Chair.

9 CHAIRPERSON GRIFFIS: So it's the rear
10 yard which is 25x25, which is your 1375, and then the
11 addition up to 1408 is inside the building?

12 MR. SHER: I'm not sure your numbers match
13 my numbers, but the required amount of recreation
14 space is 1339 or 1399 -- 1399. We want to provide
15 688. So we would have about 7 percent instead of
16 about 15 percent.

17 CHAIRPERSON GRIFFIS: Okay. But following
18 up on Mr. Etherly, just two parking spaces are
19 provided, correct?

20 MR. SHER: Right.

21 CHAIRPERSON GRIFFIS: But we're showing
22 three under the building?

23 MR. SHER: Right, there would be three
24 under the building and three in the back.

25 CHAIRPERSON GRIFFIS: And the reason why

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1 there aren't three under the building now is because
2 some of that space goes to residential recreation?

3 MR. SHER: Yes.

4 CHAIRPERSON GRIFFIS: Okay. So maybe Mr.
5 Etherly was clear on that; I wasn't. Okay.

6 And that's the portion where you wrote in
7 the submission that part of it is not open directly to
8 the sky?

9 MR. SHER: Right.

10 CHAIRPERSON GRIFFIS: Okay. All right,
11 there it is.

12 Anything else? Clarifications? Ms.
13 Miller? Of the Office of Planning or the Applicant?

14 VICE CHAIRPERSON MILLER: Applicant. Have
15 you provided all the private rec space that you can?

16 MR. SHER: Yes. On the plans there are
17 four terraces shown for four of the units. Two of
18 them are in the middle, south-facing on the third
19 floor, and two on the front west-facing.

20 CHAIRPERSON GRIFFIS: Anything else from
21 the Board for the Office of Planning? Does the
22 Applicant have any cross examination of the Office of
23 Planning?

24 MR. PARSONS: No, sir.

25 CHAIRPERSON GRIFFIS: Okay, let me answer

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1 one question here.

2 Mr. Mann?

3 MEMBER MANN: Mr. Sher, I have a question
4 for you.

5 CHAIRPERSON GRIFFIS: Yes.

6 MEMBER MANN: If this --

7 CHAIRPERSON GRIFFIS: For me?

8 MEMBER MANN: No, for Mr. Sher.

9 CHAIRPERSON GRIFFIS: That was "Mr.
10 Chair," not "Mr. Sher."

11 (Laughter.)

12 MEMBER MANN: That's correct.

13 CHAIRPERSON GRIFFIS: It's lunchtime, I'm
14 sorry. Thank you, Mr. Mann.

15 MEMBER MANN: If this application were
16 before us before the building were built, if we were
17 just looking at plans in your request in this
18 variance, would your arguments be any different or
19 would what you are asking us to consider as the
20 variance test be any different?

21 MR. SHER: Essentially, no. What we have
22 discovered from experience is that after construction
23 the space is just not very good. But I think if we
24 had come in and tried to figure out what space we
25 could have provided that would be good, it's just not

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1 there. So the answer is no. The size of the lot, the
2 shape of the lot, the inability to use the roof, all
3 those things would be the same whether the building
4 was built or before the building was built.

5 CHAIRPERSON GRIFFIS: Anything else? Any
6 other questions?

7 (No response.)

8 Very well, let's move ahead then.

9 Yes, Mr. Spalding.

10 MR. SPALDING: Phil Spalding. I live at
11 1929 13th Street, and I represent ANC-1B.

12 We have submitted a letter into the record
13 that shows our unanimous support of this application.
14 To that I would like to add a couple of small pieces
15 of context for the Board.

16 Square 358 is approximately 25 percent R-
17 5-B and the remaining three-quarters is ARTS/C-2-B.
18 One of the difficulties with ARTS/C-2-B with
19 residential development is that we cannot provide RPP
20 on-street parking. In this case, Square 358 is being
21 predominantly developed as residential. A few years
22 ago I would have described this square as maybe 30 to
23 50 percent commercial with about 40 housing units.
24 Within the next few years it's going to be just two
25 commercial outlets and approaching 300 residential

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1 units.

2 The demand here is specifically weighted
3 toward parking rather than residential recreation.
4 Our community does provide more than enough recreation
5 of different varieties, maybe not in the residential
6 context, but we do provide lots of residents
7 recreational opportunities.

8 In this specific case, when it came before
9 the Commission, we weighed the balance of those two
10 things. Here, where there is not going to be
11 regulated on-street parking, that was a specific
12 difficulty for residents who would be buying into this
13 block. So trading off a bit of the residential
14 recreation space to accommodate off-street parking for
15 these cars was a trade that we were willing to make.

16 Other than that, I will rest on what we
17 have submitted.

18 CHAIRPERSON GRIFFIS: Excellent. Thank
19 you very much.

20 Questions from the Board?

21 (No response.)

22 Does the Applicant have any cross?

23 MR. SHER: No.

24 CHAIRPERSON GRIFFIS: Thank you.

25 Actually, that's of particular interest. I think that

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1 is a good summation of the surrounding area. That
2 puts it into great context in terms of the R-5-B that
3 surrounds the area and the C-2 and the impact of that.
4 When you say that, in fact, the blocks could not get
5 their residential permit parking because of the
6 district of which the zoning has labeled it, that's a
7 fascinating aspect that I think also changes the
8 parameters of how we would look at a successful
9 implementation of the regulations.

10 Very well. That being said, let's move
11 ahead to any other persons present in this Application
12 17466, either in support or in opposition; can come
13 forward at this time.

14 (No response.)

15 Not noting a stampede of people that come
16 forward, we can move ahead for any closing remarks
17 that you might have.

18 MR. SHER: Mr. Chairman, we believe that
19 the Applicant has met its burden of proof under the
20 regulations, that the Board should find that there is
21 exceptional situation causing a practical difficulty
22 for the owner, and that the relief can be granted
23 without substantial detriment to the regulations.

24 We would request the Board to grant the
25 application. We, hopefully, request that you grant it

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1 today and issue a summary order, and we can all go
2 have lunch. Thank you very much.

3 CHAIRPERSON GRIFFIS: I'm not hungry.

4 (Laughter.)

5 Okay, but in all seriousness, of course,
6 which is the way we actually operate around here, I
7 think it is appropriate to take -- the record is full
8 on this. We are not going to have anything more put
9 into the record that is going to facilitate it. I
10 think there is a strong deliberation.

11 So I would move approval of Application
12 17466, and that is for the variance to reduce the
13 amount of residential recreation space at 2909 10th
14 Street, Northwest, and I would ask for a second.

15 MEMBER MANN: Second.

16 CHAIRPERSON GRIFFIS: Thank you very much,
17 Mr. Mann. I do appreciate it.

18 I don't think it's inappropriate to say on
19 the record and in public that we often have weak
20 variance test cases made. This one isn't for lack of
21 ability or lack of substance. It is a difficult
22 parameter in the realities of what we're looking at.

23 One, with the section itself for
24 residential recreation space, of which the Board is
25 all too familiar, and its precariousness, and perhaps

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1 its own out-of-date aspect of need.

2 The balancing on this particular case of
3 what is better served in the surrounding community
4 and, therefore, the longevity of the block, and,
5 therefore, frankly, the integrity of the zone map and
6 plan, but that gets ahead of ourselves in terms of
7 what was actually presented today. That's the
8 uniqueness.

9 I think Mr. Mann had an excellent question
10 of, would this be the same test if it was at permit
11 stage as opposed to now? I think that's a sense of
12 the way I was looking at it; as if this building
13 didn't exist, would we not be looking at a strong
14 application? I think we would. I think based on the
15 fact of the de minimis size for the zone district that
16 it's in, the 25-foot, which allows for incredible
17 height and incredible density, and, obviously, does it
18 in terms of the depth of this, the practical
19 difficulty in providing it.

20 I think we have seen in this case that you
21 can shoehorn it in, but does that really fit the
22 intent or really the purpose of the requirement? I
23 think it's obviously been shown to be practically
24 difficult in providing that space as it is intended
25 and as is written in the regulations.

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1 In addition, last, I would say the test,
2 the intent of the zone planning map for the public
3 good, actually, what we're being presented here is
4 that it would be better served, the people in the
5 surrounding area and the regulates would be better
6 served if the relief was to be granted. So I would be
7 supportive of the motion.

8 I would open it up to any other comments.

9 VICE CHAIRPERSON MILLER: Mr. Chairman, I
10 thought you were going to say that sometimes we come
11 in here and we read the papers and we think this is a
12 lousy case, or whatever, which is basically where I
13 was coming from. It seemed like, oh, they want
14 parking now.

15 But, actually, I think the Applicant and
16 ANC and the Office of Planning did a good job -- and
17 the Chairman -- with respect for me to see it in a
18 different light, and Mr. Mann, because, basically,
19 fitting into the variance test, I do think it fits
20 into the uniqueness exceptional condition prong in
21 that it is a very small building, only 25-feet wide,
22 and we often see that that does create a problem.

23 In this case, just because there was rec
24 space that's designated for recreational space, if
25 it's lousy space, if it's unusual, then it really

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1 doesn't fulfill the purpose of the regulation. So
2 it's almost the same as not being able to -- it is the
3 same as not being able to meet that requirement, as
4 far as I can tell, because if no one is going to use
5 it, it doesn't meet the requirement, if it is so bad.

6 So I think that it does meet the
7 exceptional conditions and the practical difficulties,
8 and there's no adverse impact on the public good. In
9 fact, it's a positive impact to provide a place for
10 parking and to provide a meaningful use of the
11 property.

12 CHAIRPERSON GRIFFIS: Excellent. Thank
13 you.

14 Others?

15 MEMBER MANN: Yes. I also thought that it
16 was easier to consider if it was almost considered as
17 though it were a new application for an unbuilt
18 building.

19 I think the biggest struggle, though, I
20 had to get over was just that you had to kind of ask
21 us to unring that bell in a way that we haven't really
22 had to consider before.

23 CHAIRPERSON GRIFFIS: Well said.

24 Others?

25 (No response.)

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1 If there's no other comments, then we do
2 have a motion before us and it has been seconded. All
3 those in favor signify by saying.

4 (Chorus of ayes.)

5 And opposed?

6 (No response.)

7 Abstaining?

8 (No response.)

9 Very well, why don't we record the vote?

10 MS. BAILEY: Mr. Chairman, the vote is
11 recorded as five, zero, zero to approve the
12 application. Mr. Griffis made the motion; Mr. Mann
13 seconded. Mrs. Miller, Mr. Etherly, and Mr. Parsons
14 are in support.

15 Summary order, sir?

16 CHAIRPERSON GRIFFIS: Thank you very much.

17 Yes, I think we could waive our rules and
18 regulations and issue a summary order on this, unless
19 there's any opposition from the Board or the
20 Applicant.

21 (No response.)

22 Not noting any opposition --

23 MR. SHER: The Applicant has no
24 opposition, for the record.

25 CHAIRPERSON GRIFFIS: Indeed. Very well.

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1 Is there anything else for the Board this
2 morning?

3 MS. BAILEY: Not for the morning, Mr.
4 Chairman.

5 CHAIRPERSON GRIFFIS: Thank you all. Have
6 a very pleasant day.

7 Let's adjourn our morning session.

8 (Whereupon, the foregoing matter went off
9 the record at 12:41 p.m. for lunch and went back on
10 the record at 2:02 p.m.)

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 2:02 p.m.

3 CHAIRPERSON GRIFFIS: Good afternoon,
4 ladies and gentlemen. Let me call to order our
5 afternoon session, the 9th of May, 2006.

6 This is, of course, the Board of Zoning
7 Adjustment for the District of Columbia, and my name
8 is Geoff Griffis, Chairperson.

9 Joining me today is the Vice Chair, Ms.
10 Miller, and our esteemed member, Mr. Etherly, will be
11 with us shortly. He was just detained for half a
12 moment.

13 Representing the Zoning Commission with us
14 is Mr. Parsons this afternoon, and representing the
15 National Capital Planning Commission is Mr. Mann.

16 Copies of today's hearing agenda are
17 available for you. They are located, hopefully, where
18 you came into the room. I can't see it behind our
19 column. As we have reconfigured the entire room, I
20 have lost sight of that door. However, that's where
21 they normally are.

22 With that, though, I will not be adjusting
23 our schedule, so we will get right into it.

24 There are several important aspects that
25 I will go through in my opening remarks, and I will

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1 speak very quickly in order to make up a few moments.
2 I appreciate everyone's patience with us, as our
3 morning went a little bit over.

4 First of all, it should be well-known that
5 we are creating an official transcript. Therefore,
6 all of our proceedings are going to be recorded.

7 It is very important that you fill out two
8 witness cards prior to coming forward to speak to the
9 Board and give them to the court reporter, who is
10 sitting on my right on the floor. She will be
11 creating our official transcript.

12 Attendant to that, also, when you come
13 forward, make yourself comfortable at the table in
14 front of us, where you will provide testimony. You
15 just need to state your name and address for the
16 record. You only need to do that once. Obviously,
17 that will get you correctly onto the transcript.

18 We are also being broadcast live on the
19 Office of Zoning's website. Attendant to that, I may
20 give some instruction as to how your boards will show,
21 so that we can actually transmit that on the cameras.

22 We would also ask that, of course, you
23 refrain from making any noises in the overall hearing
24 room, so we don't disrupt either of those
25 transmissions.

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1 Importantly, it was made note this morning
2 that not only will I ask you to turn off your cell
3 phones and other beepers and such, but would also ask
4 that you turn off your Blackberries because it does
5 disrupt the transmission.

6 That being said, the order of procedure
7 for our special exceptions and variances is as
8 follows:

9 First, we hear from the applicant the case
10 presentation. Secondly, we will hear any government
11 reports attendant to that application from the Office
12 of Planning, the Department of Transportation. Third,
13 we will go to the ANC within which the property is
14 located. Fourth, we hear from the persons or parties
15 in support of an application. Fifth are persons or
16 parties in opposition to an application.

17 After all of that is done, we will hear
18 from the applicant again. They will provide us with
19 any rebuttal testimony that they might have or closing
20 remarks or summations.

21 Cross examination of witnesses is
22 permitted by the parties and the applicant in a case.
23 The ANC within which the property is located is
24 automatically a party in the case. They are,
25 therefore, afforded the ability to cross examine

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1 witnesses.

2 We will establish parties in each of the
3 cases as a preliminary matter. Obviously, therefore,
4 any party that is established will be able to conduct
5 cross examination.

6 We have full ability and authority to
7 instruct time and material and direction of cross
8 examination, but I will take that up, if needed, and
9 on specific matters.

10 Our record will be closed at the
11 conclusion of the hearing. It is very important to
12 understand that, that we are going to be creating an
13 official record before us today, and once the hearing
14 is done, the book is essentially closed. Anything
15 that we will make our decisions on must be based
16 solely what is put into the record.

17 So, unless we specifically request
18 additional information, you should make note that you
19 should put all of your information into the record,
20 either in writing or in testimony, oral testimony,
21 today.

22 We do ask that people present please not
23 engage Board members in private conversations this
24 afternoon if we recess or take a moment because we
25 are, of course, going to deliberate solely on the

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1 record that's presented before us today and in the
2 public, and if we are having private conversations, it
3 may lend some to give the impression that we are
4 receiving information outside of the public record.

5 To that, the Sunshine Act, of course,
6 requires us to conduct all our hearings in the open
7 and before the public. We do on occasion enter into
8 Executive Session, both during or after hearings on
9 cases. We use that not only to tell jokes, but also
10 to review the record and sometimes to deliberate on
11 the cases that we have heard.

12 With that, I believe I can say a very good
13 afternoon to Ms. Bailey, on my far left, with the
14 Office of Zoning; Mr. Moy, also with the Office of
15 Zoning; Mr. Nyarku is in and out, also with the Office
16 of Zoning.

17 I'm going to ask that all persons present
18 today that are going to provide testimony to the
19 Board, or are thinking of providing testimony, if you
20 would please stand and give your attention to Ms.
21 Bailey, she's going to swear you in.

22 MS. BAILEY: Would you please raise your
23 right hand?

24 (Witnesses sworn.)

25 CHAIRPERSON GRIFFIS: Excellent. Thank

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1 you all very much.

2 At this time, then, we would be ready for
3 preliminary matters. Preliminary matters are those
4 which relate to whether a case will or should be heard
5 today. Requests for postponements, continuance, or
6 withdrawals, whether proper and adequate notice of an
7 application has been provided, these are all elements
8 of preliminary matters, meaning matters that should
9 come to the Board's attention prior to calling a case.

10 I ask Ms. Bailey if she is aware of any
11 preliminary matters for the Board's attention.

12 MS. BAILEY: Mr. Chairman, members of the
13 Board, and to everyone, good afternoon.

14 Staff does not have any at this point, Mr.
15 Chairman.

16 CHAIRPERSON GRIFFIS: Very well. Does
17 anyone else here present have a preliminary matter for
18 the Board's attention? They can come forward at this
19 time.

20 (No response.)

21 Not noting anybody coming forward, why
22 don't we call the first case of the afternoon?

23 MS. BAILEY: And that is the application
24 of ARCH Training Center, No. 17463, pursuant to 11
25 DCMR 3103.2, for a variance from the off-street

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1 parking requirements under Subsection 2101.1, to
2 convert a vacant community residence facility and re-
3 occupy it as a 29-unit apartment house. The property
4 is zoned R-5-A and it is located at 2024 Fendall
5 Street, Southeast, Square 5777, Lot 952.

6 Mr. Chairman, I just wanted to bring to
7 the Board's attention that the property was posted.
8 However, staff is of the opinion that it was not
9 properly posted.

10 Thank you, sir.

11 CHAIRPERSON GRIFFIS: Excellent. Thank
12 you very much for that.

13 Not properly posted meaning it was not on
14 the property?

15 MS. BAILEY: Yes, sir.

16 CHAIRPERSON GRIFFIS: It was in the
17 public?

18 MS. BAILEY: Right-of-way.

19 CHAIRPERSON GRIFFIS: On a pole?

20 MS. GIORDANO: I'm going to ask Mr. Gross
21 to speak directly to that.

22 CHAIRPERSON GRIFFIS: Good thought. Mr.
23 Gross?

24 MR. GROSS: Ms. Bailey approached me about
25 this a few minutes ago, Mr. Chairman. I guess I was

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1 fuzzy on that rule and did not realize telephone
2 poles were completely out of bounds for posting. So
3 I will remember that in the future, and I apologize.

4 CHAIRPERSON GRIFFIS: You're clear on that
5 now then?

6 MR. GROSS: I am very clear.

7 CHAIRPERSON GRIFFIS: We appreciate Ms.
8 Bailey's eagle eye in picking that up in the posting.
9 (Laughter.)

10 In all seriousness, you know, it is a very
11 important aspect. Of course, the posting is one of
12 the ways that we announce that this is going to happen
13 and get, obviously, the public's participation in
14 this. If it isn't on the building, one might think
15 it's no parking or who knows what it was or where it
16 went to. An important point to bring up. I think
17 we've all learned a little something today.

18 But, with that, let's move ahead, and I
19 will turn it over to Ms. Giordano.

20 MS. GIORDANO: Yes, good afternoon, Mr.
21 Chairman, members of the Board. My name is Cynthia
22 Giordano, for the record, from Arnold and Porter Law
23 Firm, representing the Applicant in this case.

24 I'm going to introduce our witnesses and
25 just jump right into their testimony. I think they

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1 have a very interesting story to tell, and a
2 compelling one today, in support of the requested
3 variance and special exception.

4 We will start with Rachel Schroder, who is
5 Chairman of the Board of ARCH Training Center, and
6 Steve Shaff with Community Vision.

7 We left, I think, on Ms. Bailey's desktop
8 a little article about Mr. Shaff and Community Vision.
9 I don't know if you received that or not, but --

10 CHAIRPERSON GRIFFIS: We have that.

11 MS. GIORDANO: And they are both non-
12 profits.

13 Greg Kearley from Inscape Studio, the
14 project architect, will also provide some brief
15 testimony, and Mr. Gross, from our firm, of course, is
16 going to speak directly to the compliance of the
17 application with the zoning regulations.

18 So we will begin with the developer team
19 of Rachel and Steve.

20 MS. SCHRODER: Good afternoon. My name is
21 Rachel Schroder, and I work with ARCH Training Center.

22 ARCH Training Center has been in Anacostia
23 -- it's a non-profit, economic development and job
24 training center -- for 20 years in Anacostia.

25 We work with mostly job training. We have

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1 53 full-time employees at ARCH and we service
2 thousands of children under the age of 16 as well as
3 adults between the age of 16 and 24. We also work
4 with fatherhood and mother programs.

5 We also do economic development. We have
6 developed over 540 units of housing since our
7 existence and most of it in Southeast. Actually,
8 almost probably 98 percent of it has been in Southeast
9 within the Anacostia or Ward 8 area.

10 MR. SHAFF: Good afternoon. My name is
11 Steve Shaff. I'm founder and President of Community
12 Vision Consultants.

13 I'm actually a for-profit development
14 company, but we have a very strong and as-committed
15 social mission as well. One of our current projects
16 right now is in Washington Highlands. We are
17 developing over 116 affordable housing homeownership
18 opportunities while at the same time we are organizing
19 the community and getting rid of some of the social
20 concerns of that development project. We are very
21 successful in literally changing the community around.

22 I am also very active in the community.
23 I serve on several boards, the Police Boys and Girls
24 Club, Metro Police D.C. Boys and Girls Club. I'm the
25 Treasurer. I also helped found several community arts

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1 organizations which we use to help cure some of the
2 issues in our communities. I am also very much
3 involved with political activism to help address some
4 of the economic and social issues of our communities.

5 I have been doing this for over 20 years.
6 We have been developing projects on this scale for the
7 past three or four years. Fendall is something that
8 we think we can develop, not only to help address the
9 affordable housing issues, but also take care of some
10 of the social issues, the same issues we have been
11 dealing with for the past 20 years I have been working
12 in this line.

13 MS. SCHRODER: I just wanted to make a
14 note, so everyone understands, Steve Shaff of
15 Community Vision, and ARCH Training Center are working
16 together to develop Fendall Street, and ARCH remains
17 the owner of the building, and Community Vision will
18 be the developer, working with ARCH on every aspect.

19 MR. SHAFF: Some of the objectives and
20 part of the reason why I'm personally very excited
21 about this project is it is a very good, affordable
22 housing project. One of the things that we look at
23 when we get involved in a community project is, what
24 can that actual development do to impact the immediate
25 area? As I said, in our project in Washington

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1 Highlands, our approach was not only just to do
2 affordable housing, but to really address and organize
3 and get involved with the community to address that.

4 The particular corner this building is on
5 I think serves well in terms of what we can do as a
6 redeveloped building and how it can impact the
7 community.

8 The other issue is this is, by covenant,
9 by City covenant, and it is recorded on the title,
10 this has to be and fit within affordable housing
11 parameters. So even if the market took off in that
12 particular corner, we are still bound and limited as
13 to the profit we can make. That's part of the
14 Homestead Program.

15 I think very few conventional developers
16 would want to come in here because their profit
17 potential will be capped. Again, for us that is not
18 an issue because as important to us is not only
19 providing affordable, truly affordable, and quality
20 affordable housing, but we also want to address the
21 social issues there, which personally is where I
22 personally enjoy this process.

23 As you know, developing real estate in
24 D.C. is a very tough profession, but when you add the
25 social component, for me, in particular, it's very

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1 exciting.

2 So our goal here is to keep -- well,
3 obviously, we have no choice but to keep within the
4 realms of the limitations on the pricing.

5 The other nice benefit of this particular
6 project is we want to do this in as high of a green
7 standard as possible. We are assessing how high the
8 lead standard we can go. Very specific things such as
9 a green roof is very much going to be part of this
10 endeavor. We feel the City's goals of trying to keep
11 the water runoff issues with the Anacostia are part of
12 what we want to do.

13 The other thing that Community Vision
14 strives to do is influence other developers. When
15 they see that we can come into a community, leave
16 something in the community, do a development better,
17 it's something that actually serves the developer.

18 So in Washington Highlands, for example,
19 the gentleman who bought across the street, because we
20 are already there, came in; he understood that leaving
21 or donating money to the community center that is
22 being developed there, as well as really paying
23 attention to the real concerns of the community, is
24 something that he is doing now; whereas, in his past
25 this was never a big issue for him. So influencing

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1 other developers to do community development is
2 something that, again, is very much a part of our
3 mission.

4 CHAIRPERSON GRIFFIS: Anything else on
5 that?

6 (No response.)

7 Let's take some quick questions, if
8 there's any. My first is: Outside of the Homestead
9 Program, which you say will cap your profits -- or
10 does it set a sale of affordability?

11 MS. SCHRODER: It sets the scale of
12 affordability.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. SCHRODER: I think what Steve was
15 discussing was, because of those issues and the cost
16 of the development, it isn't about the profit in this
17 case.

18 CHAIRPERSON GRIFFIS: Sure, sure.
19 Understandable.

20 Outside of that, is there any other
21 programmed aspect to this?

22 MS. SCHRODER: We will be tying in at the
23 end of the development process. ARCH Training Center
24 has a Youth-Build Program, and they will use some of
25 the community space. There's a big room that can't be

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1 developed as an apartment. So it will be used as just
2 a space that is open for the folks that live inside of
3 the development. The Youth-Build students will help
4 with part of their curriculum, learning how to do the
5 electric and drywall and such, which is one of ARCH's
6 programs.

7 CHAIRPERSON GRIFFIS: Right. So you're
8 going to keep ownership of some of the --

9 MS. SCHRODER: No. No, we won't. It will
10 be 100 percent of the building will be sold.

11 CHAIRPERSON GRIFFIS: Okay.

12 MS. SCHRODER: It has to be sold 100
13 percent. But at the end of the process, Youth-Build
14 will get involved. So it will be part of the training
15 program; it will tie ARCH into it.

16 CHAIRPERSON GRIFFIS: Your list of who you
17 are selling to, that's coming from maybe DHCD, and to
18 qualify --

19 MS. SCHRODER: We have to work with DHCD.
20 We will have to personally qualify each candidate that
21 owns the building, and they will have to go through a
22 DHCD course for homeownership.

23 CHAIRPERSON GRIFFIS: Sure. So when it is
24 all said and done, moved in, sold, it will look no
25 different than a straight fee simple condo project?

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1 MS. SCHRODER: Absolutely. I mean there
2 will be a \$10,000 asset turned over from DHCD to the
3 homeowner, that if they own it within a certain
4 amount, part of their mortgage will be excused.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. SCHRODER: But other than that, it's
7 100 percent --

8 CHAIRPERSON GRIFFIS: I don't want to get
9 too confused.

10 MS. SCHRODER: -- ownership.

11 CHAIRPERSON GRIFFIS: Okay. The last
12 thing is in the application as it was submitted; in
13 the preliminary hearing there was talk of this Lot
14 711, and it looks like we have a diagram in front of
15 us that shows its utilization.

16 MS. GIORDANO: I'm sorry, the architect
17 was going to address that. But, also, I'm going to
18 ask Steve to address the van purchase proposal that
19 they are going to include as part of this project.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. GIORDANO: Steve, why don't you go
22 first?

23 MR. SHAFF: Sure. Again, one of our
24 primary objectives is to do green development. That's
25 one aspect of our plans for being as creative as

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1 possible.

2 There's a couple of concerns there.
3 Obviously, green, we want to minimize the amount of
4 asphalt. Two, we want to keep costs down because,
5 again, it is very limited affordable housing.

6 Then the other issue is, frankly, I'm a
7 pretty devote environmentalist. The less people who
8 need to own a car at this facility I think really adds
9 to the value of buying at this facility.

10 A lot of people need a van or a car just
11 to get back and forth to work, in this case the Metro,
12 which is less than three-quarters of a mile away.

13 So the idea, not only for this project but
14 for others, is to bring in a community van that will
15 help keep costs lower for the individual buyer. It is
16 an additional amenity, as well as the fact that it is
17 environmentally-sound. In this particular case we
18 feel it really addresses some of the parking pressures
19 of the area.

20 So there's several reasons why we wanted
21 to include this. We did not put this on the table
22 before because we didn't realize it was an issue.
23 But, again, this is a component that we as developers
24 want to factor into all our condo developments,
25 including the one we are involved with in Washington

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1 Highlands.

2 Kids after school should be able to have
3 transportation to local good rec centers, the Boys and
4 Girls Clubs, that type of thing. That's what the
5 purpose of the van will have here.

6 MS. GIORDANO: So the van will be
7 purchased by the developer and become the property of
8 the homeowners' association for managing some ride-
9 sharing shuttle to the Metro and, as Steve mentioned,
10 the possibility of outings for kids. It will be under
11 their management.

12 CHAIRPERSON GRIFFIS: Where are they going
13 to park it? Oh, wait, we'll get to that later, I
14 think.

15 (Laughter.)

16 MR. SHAFF: The proposal for the van sort
17 of spells out our preliminary analysis of the
18 feasibility of this. It does make sense. Of course,
19 we will narrow down the details as we get further
20 along in the project.

21 MS. GIORDANO: Okay, I'll ask the
22 architect now to -- do you want to start with the lot
23 or do you want to start with an overview of the
24 project?

25 MR. KEARLEY: Let me give an overview of

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1 the project and then we will talk about the adjacent
2 lot.

3 My name is Greg Kearley. I'm with Inscape
4 Studio. I'm a principal at Inscape.

5 We have a longstanding commitment to the
6 work in Southeast. We have been working with ARCH,
7 groups like African Heritage Dancers and Drummers, and
8 Wilkinson Elementary School recently. So it is a part
9 of the City that we have been engaged in and,
10 hopefully, are part of.

11 The overall project description -- and you
12 have, I believe, plans in front of you -- is 29 units.
13 Nineteen of those are two-bedroom, one-bath; two are
14 two-bedroom, two-bath, and eight are one-bedroom, one-
15 bath. The typical unit is approximately 800 square
16 feet and two-bedroom, one-bath.

17 There's some room left in the development
18 which is about 2800 square feet which will be used
19 later for a community room, and that is not defined
20 yet, but it's not being developed with this particular
21 application.

22 We are doing things to the building. We
23 are making it accessible to meet code. As Steve
24 mentioned, we are designing the building to be
25 environmentally-sensitive, including a green roof,

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1 Energy Star appliances, low VOC paints and sealers,
2 materials that have a high content of recyclable
3 material in them.

4 So that is a quick overall of the
5 parameters of the site.

6 We are asking for a parking variance,
7 nothing really to do with the space. So we didn't
8 bring any graphics to describe that.

9 CHAIRPERSON GRIFFIS: Right. I don't
10 think we need to go too far into it.

11 The numbers are a little different on the
12 units, though. Just for clarification, you had how
13 many studios?

14 MR. KEARLEY: We have no studios now.

15 CHAIRPERSON GRIFFIS: Okay, so that's the
16 change because we had two studios. So you have eight
17 one-bedrooms and --

18 MR. KEARLEY: We have eight one-bedrooms,
19 one-bath; two two-bedrooms, two-bath; and nineteen
20 two-bedroom, one-bath.

21 CHAIRPERSON GRIFFIS: Got you. Okay. The
22 same total amount though?

23 MR. KEARLEY: Yes.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. KEARLEY: I'm going to address the

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1 parking issue now. We do have a board for that. It
2 is the lot that is adjacent to our property.

3 MS. GIORDANO: And this in response to a
4 suggestion by the Office of Planning that we explore
5 purchasing that. I don't think Steve mentioned it
6 specifically, but there is an ownership problem that
7 we explored. Apparently, there is quite a bit of back
8 taxes that are owed on this lot, and the owner is not
9 somebody that is easy to find. So there's that issue
10 as well as other constraints that the architect is
11 going to mention.

12 CHAIRPERSON GRIFFIS: Well, wait. So you
13 don't have control of --

14 MS. GIORDANO: We are not proposing to
15 purchase the lot, no.

16 CHAIRPERSON GRIFFIS: Then we probably
17 don't need to talk about it, right?

18 MS. GIORDANO: Well, the issue was raised
19 by the Office of Planning. We just wanted to address
20 it.

21 CHAIRPERSON GRIFFIS: Okay.

22 MS. GIORDANO: If you don't think it is
23 important -- so what we are trying to say it is --

24 CHAIRPERSON GRIFFIS: We could all have a
25 lot of fun. I could tell you what to do with the rest

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1 of the block.

2 (Laughter.)

3 But I'm not sure what we want to do.

4 Mr. Jackson, what I understood -- and I
5 will hear your comments on this -- I understood you,
6 and actually I was intrigued; it was a good idea to go
7 after it. Are you wanting them to explore how they
8 would utilize it if they received it?

9 MR. JACKSON: Mr. Chairman, again, Arthur
10 Jackson, D.C. Office of Planning.

11 We met on the site. I mentioned the
12 opportunity that might exist for the property, and
13 they pursued it. I was satisfied with their effort
14 and the response that they gave, that they had made
15 contact and were having issues with finding what could
16 be determined as the legitimate person to make
17 negotiations with.

18 But, based on the merits of the
19 application, we think that the variance should be
20 granted. So we are not requiring that they move
21 forward. We are going to try to give whatever
22 assistance we can to see if they can acquire the
23 property. But given the existing situation, it
24 doesn't appear like that is a probability at this
25 time.

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1 CHAIRPERSON GRIFFIS: Right, and I
2 certainly wouldn't think it is a probability for our
3 discussions today, the application that is here before
4 us.

5 I think it is pretty clear that you are
6 about to tell us that, if you were to acquire it, you
7 could fit four parking spaces in there. We can leave
8 it at that.

9 MR. KEARLEY: Yes. I don't even think we
10 can legally do that, but we are just showing some
11 spaces. There is a practical difficulty that we won't
12 be able to get the parking because of the width of the
13 lot --

14 CHAIRPERSON GRIFFIS: Right.

15 MR. KEARLEY: -- and the required drive
16 aisle and parking size dictated by the District; that
17 we explored the option and we don't think it's a
18 feasible option.

19 CHAIRPERSON GRIFFIS: Okay.

20 MR. KEARLEY: I can leave it at that. I
21 don't know if I need to really get in and explain it.

22 CHAIRPERSON GRIFFIS: Do we have a hand-
23 held mic anywhere? Oh, there it is. Okay.

24 Yes, I think you're going to tell us --
25 that's fine. That would have to be a two-way drive

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1 aisle. Is that what you're saying?

2 MR. KEARLEY: It would have to be a two-
3 way drive aisle, and the access to it -- there's not
4 enough room to turn around and there's no place to --
5 you can't go through someone else's property for a
6 one-way drive aisle.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. KEARLEY: So even if you did park this
9 way, you would have to back all the way out of the
10 parking, out of the lot, to get out of the space.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. KEARLEY: So it doesn't seem like it's
13 a viable alternative for parking to acquire this lot.
14 The lot is actually in a historic district. I doubt
15 that historic would want to build a parking lot on a
16 historic site.

17 CHAIRPERSON GRIFFIS: Well, we don't want
18 to speak for them, but, nonetheless -- okay, there it
19 is. There's no curb cut there, is what you're saying?

20 MR. KEARLEY: There is a curb cut there.

21 CHAIRPERSON GRIFFIS: There is? Into 711?

22 MR. KEARLEY: I believe there's a curb cut
23 on D Street.

24 CHAIRPERSON GRIFFIS: I see. Okay. There
25 it is.

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1 Any questions? Clarifications? I don't
2 think it's that fruitful for us to go much further
3 than just describing the submission.

4 MS. GIORDANO: Okay, so we'll just move on
5 to Mr. Gross' testimony. Mr. Gross is going to
6 address the variance standards and the special
7 exception standards.

8 MR. KEARLEY: Before Mr. Gross talks about
9 the variance particularly, if you have the site plan
10 in front of you when we're getting into specifics
11 about the practical difficulty of getting parking on
12 the site, there's physically no room on either side
13 yards' rear yards, and the lack of curb cuts, to get
14 any parking on the site. So I think that is very
15 clear when you look at the site plan and you see the
16 dimensions, that parking is not available on the site.
17 We did explore that.

18 CHAIRPERSON GRIFFIS: Excellent.

19 MR. GROSS: Mr. Chairman, Nathan W. Gross,
20 for the record.

21 As Mr. Kearley just mentioned, the
22 situation is just very tight with no land area left
23 from the building to even talk about a legal driveway,
24 let alone parking on the side. So in terms of the
25 exceptional condition and practical difficulty for the

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1 parking variance, that's pretty much it. There's just
2 physically no space.

3 It's a 1942 building, pre-1958 zoning
4 regulations, of course, and a non-conforming
5 structure.

6 So that would be our exceptional condition
7 and practical difficulty. I will go on to tests two
8 and three.

9 As to the intent of the zone plan, the
10 preferred use in the R-5-A zone is residential even
11 though other uses are allowed. This building was
12 originally constructed to be an apartment house and
13 we're returning it to that use after some use as a
14 community residence facility.

15 With 28 units, the parking requirement
16 would be 29 spaces. As set forth in our pre-hearing
17 submission, we have a parking credit of 16 spaces,
18 leaving a variance for the remaining 13 spaces.

19 As to the effect on the public good, we
20 believe the building, when occupied, will have limited
21 adverse effects from the lack of parking for several
22 reasons. There are three bus stops within two blocks
23 at 16th and Good Hope Road, Southeast, and these stops
24 serve six routes, including connections to the
25 Anacostia Metrorail station.

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1 Mr. Shaff has set forth his proposal to
2 buy the shuttle van, which would be, of course, a
3 major help in getting people around. There's a
4 reasonable amount of curbside parking in the vicinity.

5 We do have a reduction in intensity of use
6 from the 115 community residence facility. We project
7 approximately 75 to 80 residents in these 29 units,
8 given the unit mix.

9 The moderate-income residents will not
10 have as high of an automobile ownership level as would
11 market-rate or upper-income apartments. As mentioned
12 by Mr. Shaff, they must be maintained as affordable.

13 The Department of Transportation has
14 expressed to the Office of Planning that they have no
15 objection to the requested variance.

16 Finally, a key point is this building has
17 been vacant for a number of years. Of course, in a
18 vacant condition it is a drag on the neighborhood,
19 potential aggravation of crime, and decline in
20 property values, and just neighborhood quality.

21 It will either continue to be vacant or be
22 re-occupied by some use. Whatever use that is will
23 require a parking variance and possibly other relief
24 such as special exception.

25 I guess I would just comment that there

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1 are uses that the building could be put to that would
2 probably have more significant parking and traffic
3 effects on the neighborhood. One would be a fairly
4 large child development center or a private school or
5 a charter school, just to name a couple that would
6 require special exceptions as well as the parking
7 variance.

8 So, all in all, we believe that the
9 building can be re-occupied as proposed with the
10 parking variance with no adverse effect on the public
11 good, and, indeed, positive effects on the
12 neighborhood and the housing supply.

13 I believe that concludes our presentation,
14 Mr. Chairman.

15 CHAIRPERSON GRIFFIS: Excellent. Thank
16 you very much.

17 A couple of quick questions in your
18 analysis: First, it's my understanding in the record
19 that the past use was stopped more than three years
20 ago, is that correct?

21 MR. GROSS: Yes.

22 CHAIRPERSON GRIFFIS: It would not be a
23 conforming use in the regulations currently?

24 MR. GROSS: Well, I had a number of email
25 exchanges with Mr. Jackson of OP and Faye Ogunnage of

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1 the Zoning Administrator's Office on that.

2 I believe that Section 2005 does not apply
3 because it's not a non-conforming use, and, therefore,
4 it wouldn't be applicable. The reason for that is
5 that the 1979 C of O for the community residence
6 facility was a matter-of-right C of O. Then the CBRF
7 regulations were adopted in either 1980 or 1981. At
8 that point the use would have required a special
9 exception.

10 In the definition of non-conforming use
11 there's a couple of sentences that say: a use
12 originally established as a matter of right and then
13 requiring a special exception is a conforming use.
14 For that reason, I don't believe that the non-
15 conformity provisions or the discontinuance clause
16 applies to the use.

17 CHAIRPERSON GRIFFIS: Would they have
18 needed parking relief even when the relief for the use
19 went to special exception? Would they have not had to
20 come in? Or would you also have thought that that
21 would have been conforming?

22 I guess the point is, fundamentally, it
23 doesn't -- in this specific application I think I
24 could say directly it doesn't matter.

25 MR. GROSS: That's my thought.

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1 CHAIRPERSON GRIFFIS: I mean, what we're
2 looking at as either 13 or 29.

3 MS. GIORDANO: Right, but I think the
4 credit would have applied, so there wouldn't have been
5 a parking problem; it was established as a matter-of-
6 right use.

7 CHAIRPERSON GRIFFIS: Right. So what were
8 the number of units originally, though? How many were
9 there?

10 MR. GROSS: Before the CBRF?

11 CHAIRPERSON GRIFFIS: Right.

12 MR. GROSS: Now that I do not have
13 information on.

14 CHAIRPERSON GRIFFIS: Do you know how many
15 units there were, roughly.

16 MR. KEARLEY: How many for this --

17 CHAIRPERSON GRIFFIS: When it was
18 originally built in 1942, what was it built? How many
19 apartments?

20 MR. KEARLEY: I don't know because when we
21 came in there to document the facility it had been a -
22 -

23 CHAIRPERSON GRIFFIS: It was reconfigured?

24 MR. KEARLEY: It was reconfigured. So we
25 don't have the actual configuration of the original

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1 apartment building.

2 MS. SCHRODER: I do know that when it was
3 being used as a community room, just the way the
4 apartments were configured, there were no bathrooms
5 and kitchens in each because everything was community.
6 There were more people than 29 units would hold
7 because of how many individual rooms they had.

8 CHAIRPERSON GRIFFIS: Right. I don't
9 question that.

10 MR. KEARLEY: But the original use we
11 don't know.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. GROSS: But it's possible that it
14 would have required some variance relief, but in terms
15 of specific discontinuance, it is my opinion that it
16 doesn't apply. But, as you say, Mr. Chairman, it's
17 maybe not the most important issue here when we're
18 going back to an apartment house.

19 CHAIRPERSON GRIFFIS: Yes, it's somewhat
20 moot, the number, because we're looking at an entire
21 relief from it, but it's an interesting point that
22 Office of Planning brought up. I think we'll get to
23 another one of their points, but that's whether a
24 special exception is also required, if I'm not
25 mistaken, under 343, which is the residential

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1 requirement.

2 MR. GROSS: Yes, my understanding of that
3 is that the intent of that is to apply to new
4 construction rather than re-occupancy of an existing
5 apartment house.

6 CHAIRPERSON GRIFFIS: Okay. Well, I'll
7 wait for the Office of Planning --

8 MR. GROSS: Sure.

9 CHAIRPERSON GRIFFIS: -- to provide that
10 position, and then we can have further discussions on
11 that.

12 Very well. Anything else?

13 MS. GIORDANO: No.

14 CHAIRPERSON GRIFFIS: Any other questions
15 from the Board? Clarifications?

16 (No response.)

17 Not any? Indeed.

18 Is the ANC present? Do you have any cross
19 examination of any of the witnesses? Yes? Excellent.
20 Come on forward.

21 MS. HUDSON: Good afternoon, everyone. My
22 name is ANC Commissioner Latesha Hudson, 8A04.

23 My question is the original zoning. It
24 was actually zoned for R-3. Exhibit C within their
25 packet that they submitted to you, the Office of

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1 Zoning, if you look at the actual location of the
2 building, it's within R-3 zoning, not R-5. Therefore,
3 the density would have to change, the number of units.

4 CHAIRPERSON GRIFFIS: You're asking Mr.
5 Gross or --

6 MS. HUDSON: I'm actually asking the D.C.,
7 the Zoning Specialist for the Office of Zoning, Arthur
8 Jackson, about the zoning.

9 CHAIRPERSON GRIFFIS: Office of Planning?

10 MS. HUDSON: Office of Planning. The
11 actual zoning, the R-3 zoning.

12 CHAIRPERSON GRIFFIS: Well, why don't we
13 ask Mr. Gross that question first?

14 MS. HUDSON: Mr. Gross, whoever would like
15 to address it.

16 MR. GROSS: Well, in looking at the
17 current zoning atlas, it appeared to me that the
18 property is within the R-5-A district.

19 MS. HUDSON: That's something that you
20 submitted.

21 CHAIRPERSON GRIFFIS: I think we need a
22 color copy.

23 MS. HUDSON: So that would change the
24 amount of occupancy?

25 CHAIRPERSON GRIFFIS: Your question to him

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1 is, does it fall in the R-5-A?

2 MS. HUDSON: Yes, but it doesn't fall
3 within the R-5-A or the R-5-3.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. GROSS: I believe it falls within the
6 R-5-A.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. KEARLEY: That was our interpretation
9 when we looked at it as well. It's hard to tell on
10 this black and white.

11 MR. GROSS: I think what's happening,
12 again, is that the photocopy is making some of the
13 lines of streets indistinguishable from the zoning
14 lines.

15 MS. HUDSON: Okay. Also, with the cross
16 examination, the driveway, the curb cuts you're
17 speaking of --

18 CHAIRPERSON GRIFFIS: Ms. Hudson, take
19 that microphone. Thank you.

20 MS. HUDSON: Looking this way, there's
21 actually --

22 CHAIRPERSON GRIFFIS: You're not on it.
23 Is it on (referring to microphone)? It's still not.
24 I'm sorry, but you've got to be on the record, so
25 we're going to get this right.

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1 MS. HUDSON: I have testimony from some
2 individuals from ARCH as well as Community Vision when
3 they came to my ANC meeting on March, that they
4 actually do know who owns this property, the lot right
5 here.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. HUDSON: ARCH actually owns this lot,
8 and the reason why we're highlighting this point was
9 that we were asking them to try to join the two
10 projects together, because in the next several months
11 they'll actually come for permits to develop this as
12 well.

13 CHAIRPERSON GRIFFIS: So your question to
14 them is, don't you own the adjacent property, Lot 711?

15 MS. HUDSON: Yes, yes.

16 MS. SCHRODER: We don't. While we were
17 doing the research -- we do own the property you're
18 speaking of. The property that we were talking about
19 is a separate lot that has nothing on it that was
20 found by Arthur Jackson.

21 Hold on. Let me speak to V Street as
22 well. ARCH Training Center also does have the rights
23 to develop V Street through the same Homestead
24 Program. According to this Homestead statute -- and
25 I spoke with Bob Muldering about this over a year ago

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1 before we started the permitting process, as to
2 whether or not we could utilize that space for
3 parking. That's why we halted the development on V
4 Street.

5 Bob Muldering from DHCD said there's no
6 way; it's a statute that all the homes or properties
7 have to be used for low-income housing. We are not
8 allowed to do anything to that property besides low-
9 income housing.

10 CHAIRPERSON GRIFFIS: Okay, what are you
11 talking about? What's V Street?

12 MS. SCHRODER: She's speaking -- I think
13 there's some confusion. Ms. Hudson --

14 CHAIRPERSON GRIFFIS: It's the adjacent
15 property and there's a building, there's a structure
16 on it, separated between Lots 711 and the two
17 properties?

18 MS. SCHRODER: Yes, yes.

19 CHAIRPERSON GRIFFIS: You own both? You
20 gained them out of the Homestead Program, is that
21 correct?

22 MS. SCHRODER: Yes, yes.

23 CHAIRPERSON GRIFFIS: You've asked whether
24 you could actually park, accessory parking lot for
25 this building on that other lot --

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1 MS. SCHRODER: Yes.

2 CHAIRPERSON GRIFFIS: -- that you call the
3 V Street Project?

4 MS. SCHRODER: Yes, correct.

5 CHAIRPERSON GRIFFIS: It's fairly clear.

6 MS. SCHRODER: Just to Ms. Hudson, there
7 is a third lot that's located in the back of Fendall
8 Street that we didn't know existed that someone
9 actually owns. That's the property we were speaking
10 to in regards to that we don't own it.

11 MS. HUDSON: Okay, thank you.

12 MS. SCHRODER: You're welcome.

13 MR. SHAFF: We did find the tax
14 certificate holder of the lot.

15 CHAIRPERSON GRIFFIS: Which lot? Now
16 we've got four lots in play.

17 MR. SHAFF: The lot that Mr. Jackson had
18 suggested we check out. It's a tax certificate sale.
19 It's been a tax certificate sale for over four years,
20 which raises a red flag. Then when we asked this
21 particular gentleman who we talked to to show us
22 anything to indicate that he's the one we should be
23 negotiating with, we're still waiting for an answer
24 from him.

25 CHAIRPERSON GRIFFIS: Okay. We've already

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1 got complications in utilizing it anyway.

2 Ms. Hudson, next question?

3 MS. HUDSON: That's it as far as questions
4 and concerns.

5 CHAIRPERSON GRIFFIS: Okay, excellent.

6 MR. JACKSON: Mr. Chairman?

7 CHAIRPERSON GRIFFIS: Yes?

8 MR. JACKSON: Just a point of
9 clarification --

10 CHAIRPERSON GRIFFIS: Sure.

11 MR. JACKSON: -- are you clear where the
12 R-5-A boundary is then? The Applicant also
13 highlighted that there's a line down the middle of the
14 block that comes down to V Street, then crosses over.
15 That means the frontage of V Street on both sides is
16 in the R-5-A.

17 CHAIRPERSON GRIFFIS: Yes. I'm sorry, I
18 should have gone back to that clarification because I
19 have actually a very clear zoning map in front of me,
20 which made it fairly clear that it's in the R-5-A,
21 but, again, I didn't share that with the rest of you,
22 did I?

23 So I think it is --

24 MS. HUDSON: I have a question for the
25 Board or someone who can answer this. How is it zoned

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1 R-5-A when everything on that street is less than --
2 they're not garden-style apartments. Those are
3 apartment homes where there's less than three units.

4 CHAIRPERSON GRIFFIS: Excellent.

5 MS. HUDSON: I thought anything that
6 required -- if it's going to be R-5-A, it has to be
7 four to five units or more in each apartment dwelling.

8 CHAIRPERSON GRIFFIS: Excellent.

9 MS. HUDSON: All of those apartment
10 dwellings have less than four units. They're three-
11 unit apartment buildings.

12 CHAIRPERSON GRIFFIS: That's a good
13 question. There's actually two answers to it.

14 One, it appears, just from this
15 application, I would assert that the buildings were
16 probably built prior to this being zoned.

17 Secondly, it's not a requirement to build
18 to the maximum of any zone district that a property
19 falls in, but it, obviously, is the ceiling at which
20 you can build it to. So this, if it was a vacant lot,
21 could be a single-family home and still in an R-5 zone
22 district.

23 MS. HUDSON: Oh, okay. Cool. Thank you.

24 CHAIRPERSON GRIFFIS: I think we're ready
25 to move on to the Office of Planning then.

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1 MR. JACKSON: Mr. Chair and members of the
2 Board, again, my name is Arthur Jackson. I'm the
3 Development Review Specialist in the District of
4 Columbia Office of Planning.

5 You have before you the report from the
6 Office of Planning and the issues that have been
7 raised. At this point I will rest on the record and
8 make myself available to answer questions.

9 I would also point out, though, that
10 yesterday I did fax over a copy of a response from the
11 Department of Housing and Community Development that
12 recommended approval of this proposal as presented.

13 With that, that concludes the Office of
14 Planning's brief summary, but we continue to recommend
15 approval of the variance as requested.

16 CHAIRPERSON GRIFFIS: Excellent. Thank
17 you very much.

18 Questions?

19 (No response.)

20 Let's explore a little bit more 353 then.
21 How did your analysis lead to the conclusion that an
22 existing structure that was being modified would fall
23 under that?

24 MR. JACKSON: Well, basically, we looked
25 at the chain of use on the property. We noted back in

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1 1977 it was -- let's see -- back at the COs on the
2 property. In the early, I guess the forties, it was
3 an apartment building. Then it went from being an
4 apartment building to an apartment building and a
5 boarding house. Then it went to a boarding house.
6 Then it went to a CBRF. It stopped being a CBRF -- it
7 was vacant for more than three years.

8 Based on that chain and the fact that
9 there had been no use on the property for three years,
10 we made the determination that there actually is no
11 established use on the property and, as such, the
12 Section 200.4 of the zoning regulations say that --
13 well, Chapter 1 of the zoning regulations indicate
14 that any use that's established on the property should
15 be consistent with the zoning regs. A multi-family
16 use as such in R-5-A is subject to BZA review and
17 comments by the attendant agencies.

18 So we went that track. We followed that
19 procedure, in essence, to make sure that there was no
20 problem when this application came in to go before the
21 DCRA and to have the additional input from the
22 agencies that would be both impacted by that, which
23 would be Transportation and DHCD. In both cases
24 neither agency had any problem with the re-
25 establishment of apartments in this area.

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1 As such, I think that was a prudent
2 course, given the fact that it's a nice event when
3 something is re-established, especially in a multi-
4 family use that's going to be affordable. However,
5 there could be some potential impacts as seen by the
6 community, and we would like to make sure that that
7 petition issue was addressed in advance.

8 CHAIRPERSON GRIFFIS: Excellent. Thank
9 you.

10 In addition to the governmental agencies
11 that reported in favor of the application, do they
12 meet the rest of the test as far as your analysis went
13 on 353?

14 MR. JACKSON: Yes, they did.

15 CHAIRPERSON GRIFFIS: Okay. Any other
16 questions?

17 (No response.)

18 Does Applicant have any cross examination
19 of the Office of Planning?

20 MS. GIORDANO: No questions.

21 CHAIRPERSON GRIFFIS: Do you still
22 disagree with 353?

23 MS. GIORDANO: We appreciate Mr. Jackson's
24 looking ahead, and it certainly can't hurt as we go
25 for our permit to make it clear that this is a

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1 permitted use.

2 CHAIRPERSON GRIFFIS: Okay. I'm not sure
3 we're going to reach a definitive question of that,
4 but I think it's important to state. Mr. Jackson
5 looked through and did the analysis, and, actually, it
6 seems to me it hasn't been shown that it hasn't been
7 met; 353 is a fairly low-impact requirement for
8 special exception outside of the special exception
9 test itself, which, of course, is a lesser burden than
10 the variance which you're in for anyway. Then all the
11 other seem to be met.

12 MR. GROSS: Mr. Chairman?

13 CHAIRPERSON GRIFFIS: Yes?

14 MR. GROSS: Ms. Ogunnage was involved in
15 some emails there, and I thought that her final email
16 to Mr. Jackson on it was that Section 353 would not
17 apply to this. But I agree it's a close call on this.
18 As Ms. Giordano said, we appreciate Mr. Jackson's
19 thoroughness in bringing it up in case it's needed.

20 CHAIRPERSON GRIFFIS: Certainly.

21 MR. GROSS: I don't know if the Board has
22 any recent precedence on this of re-use of existing
23 vacant apartment houses as a matter of right in R-5-A.

24 I believe the original legislative intent
25 of the amendments to the R-5-A zone was to review the

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1 site plans of new garden apartments and townhouses
2 because there was overbuilding on large tracts of R-5-
3 A land across the Anacostia River. I don't remember
4 whether --

5 CHAIRPERSON GRIFFIS: I don't disagree
6 with that, and I think it's supportable of the intent.
7 Just as I say, the less amount of requirements that it
8 actually sets -- its specificity is to refer it to
9 agencies and to show us a landscape plan. It doesn't
10 seem to really speak to new or rather re-animated
11 existing structures.

12 Regarding Ms. Ogunnage and her opinion of
13 it, I think that's very helpful. It's not above the
14 Board and it's our own jurisdiction to not agree with
15 her --

16 MR. GROSS: Sure.

17 CHAIRPERSON GRIFFIS: -- or the Zoning
18 Administrator, for that matter. Again, I don't think
19 we're going to be determinative of whether it will be
20 required or not, but there we are.

21 Anything else? Any other questions?

22 (No response.)

23 Ms. Hudson, do you have any cross
24 examination of the Office of Planning? Any questions?
25 Do you have their report?

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1 MS. HUDSON: No, I don't.

2 CHAIRPERSON GRIFFIS: Why don't we get you
3 a copy of their report? It's an excellent one. In
4 fact, why don't we make sure she gets that?

5 Okay, if there's nothing further then,
6 let's move ahead.

7 Mr. Jackson has highlighted and actually
8 had submitted in several of the government agency
9 reports. Department of Transportation was addressed
10 in their report and also DHCD. I believe the signator
11 -- I have just moved it off -- was Mr. Thackleberry.

12 Are there any questions or comments on
13 those reports?

14 VICE CHAIRPERSON MILLER: The Chairman
15 just referred to that in 353 it asks for a landscape
16 plan. Did you all submit one? Or no?

17 MS. GIORDANO: We have not.

18 Do you want to add anything?

19 MR. KEARLEY: Not right now. I mean the
20 building takes up so much of the property that a
21 landscape plan -- we'll be doing some landscaping, but
22 it's really we didn't think it was a necessary step at
23 this point.

24 CHAIRPERSON GRIFFIS: What's the intent of
25 enclosing the property? It looks like there's a

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1 chainlink fence there currently?

2 MR. SHAFF: We'll definitely get rid of
3 the chainlink. At the very least, we'll do wrought
4 iron and decorative fencing in the front of the
5 building. The back has not been determined yet until
6 we do more planning. The facade, of course, will be
7 redone. We will restore almost -- well, as much of
8 everything as we can.

9 CHAIRPERSON GRIFFIS: So there's going to
10 be some sort of perimeter fencing on the two corners
11 and the side yard, but not on the rear? When you say,
12 "the rear," that's not what abuts Lot 711, is that
13 correct? It's parallel to V Street?

14 MR. KEARLEY: It would be what abuts that
15 property.

16 CHAIRPERSON GRIFFIS: I see.

17 MR. KEARLEY: This property's frontage is
18 on Fendall, not V Street.

19 CHAIRPERSON GRIFFIS: I got you.

20 MR. KEARLEY: So that was a rear yard, not
21 the side yard.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. KEARLEY: I think we want to make the
24 building as inviting as possible. So we'll be getting
25 rid of the chainlink fence.

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1 CHAIRPERSON GRIFFIS: Anything else?

2 (No response.)

3 Very well, let's move ahead.

4 MS. HUDSON: I have a question.

5 CHAIRPERSON GRIFFIS: Yes.

6 MS. HUDSON: I want to ask them as far as
7 architecture and design is concerned, so what
8 requirements do you plan to meet because it is
9 historic? Do you plan on working with Historic
10 Preservation or anything?

11 MR. KEARLEY: This building is not in
12 historic.

13 MS. HUDSON: It's not?

14 MR. KEARLEY: It's surrounded by historic,
15 but it is not in the historic district.

16 MS. HUDSON: Because it's surrounded by
17 historic, do you plan on meeting the needs of the
18 adjacent surrounding area as far as --

19 MR. KEARLEY: Well, we're planning on, in
20 terms of exterior work, doing a couple of things. One
21 is new fenestration which is in windows and doors,
22 which we want to be consistent with original use and
23 the original look of the windows. So we do want to
24 restore the building.

25 We are not making any additions or

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1 alterations to the building except possible repointing
2 new windows and doors. We are having a handicapped-
3 accessible ramp which is going to be required.

4 So in terms of, since we aren't making any
5 additions or alterations, it's really some restoration
6 to the building.

7 CHAIRPERSON GRIFFIS: What kind of windows
8 are you putting in, front doors? Is there any other
9 details of note?

10 MR. KEARLEY: We haven't spec'ed out
11 windows and doors. Typically, when we're going in
12 front of BZA, we don't sort of push the project along
13 that far. So I don't want to answer something that I
14 just don't know right now.

15 MR. SHAFF: From a personal perspective,
16 it's a beautiful art deco building. We want to
17 restore as much as possible. The entrance I would
18 like to maintain and rebuild. The only issue is the
19 ramp and how that's going to fit in architecturally,
20 but we are going to try to restore the building in its
21 original grand beauty.

22 MS. SCHRODER: Obviously, the one
23 difference, just to put it in there, is we are going
24 to do the windows and doors as eco-friendly as
25 possible. So the material may be different, but the

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1 look and feel will remain the same.

2 CHAIRPERSON GRIFFIS: So the single-pane
3 metal windows are out?

4 MS. SCHRODER: Right.

5 MR. KEARLEY: Exactly.

6 (Laughter.)

7 I assume they're going to be aluminum
8 windows, wood-clad aluminum windows. So aluminum on
9 the outside, which would mirror or sort of replicate
10 what was existing in terms of the design of the
11 windows.

12 CHAIRPERSON GRIFFIS: And keep the lead-
13 based paint on them.

14 (Laughter.)

15 MR. KEARLEY: Exactly.

16 CHAIRPERSON GRIFFIS: Okay. I think
17 that's an important thing. I think it is probably
18 valuable no matter what happens here, although you
19 haven't taken it to that level, but just sharing it
20 with the community might be informative, at the very
21 least, and certainly walk through the process of
22 decision, which would be good.

23 It looks like from the photographs and the
24 elevations that that is a fairly impressive entrance
25 in terms of just the scope of the building's

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1 architecture itself. So it would be nice to see.

2 Okay. Anything else then? Any other
3 questions? Ms. Hudson, any other clarifications?

4 Exterior lighting, are you proposing
5 exterior lighting on the building or the entrance?

6 MR. KEARLEY: I think lighting is great
7 for safety. So that's something that we want to
8 consider, definitely, at the entry. That's something
9 we would be glad to talk to ANC and the community
10 about, really safety issues, if they want some of that
11 exterior lighting.

12 CHAIRPERSON GRIFFIS: Okay. What else?
13 Anything else? Any other questions?

14 MS. HUDSON: No.

15 CHAIRPERSON GRIFFIS: Good. If there's
16 nothing else from the Board, at this time, Ms. Hudson,
17 I think we're ready for you.

18 MS. HUDSON: Sure. ANC-8A has delegated
19 me to represent us on this matter. We submitted our
20 actual how we voted in our last month's meeting as
21 well as our petition. The reason why we don't support
22 this project, the main reason, as stated unanimously
23 in our voting, is that, as noted on our regularly-
24 scheduled meeting on April the 4th, ANC-8A voted
25 unanimously to support a motion from Commissioner

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1 Hudson requesting that ANC-8A oppose the off-street
2 parking variance for ARCH Training Center and
3 specifically expressed that the number of units be
4 reduced to 18 to 20 units.

5 ANC-8A has authorized Commissioner Latesha
6 Hudson to represent us in this matter.

7 One of the main issues that we have with
8 this project is the parking variance situation.
9 Fendall Street is a one-way street, and it's fairly
10 large. I don't have the actual measurements to the
11 width of Fendall Street, but what the Commission
12 actually, and the community as a whole -- and there
13 will be several community members testifying to this
14 later on -- is that we would prefer them work with
15 DDOT and maybe the Office of Planning and maybe do
16 vertical parking in front of the building. There at
17 the street it is zoned for three lanes and it's a one-
18 way street.

19 If you look at --

20 CHAIRPERSON GRIFFIS: What do you mean by
21 -- what kind of parking are you looking on Fendall?

22 MS. HUDSON: Vertical parking in front of
23 the building.

24 CHAIRPERSON GRIFFIS: Do you mean angled
25 parking?

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1 MS. HUDSON: Yes, angled parking.

2 CHAIRPERSON GRIFFIS: Okay, and would that
3 be dedicated to this building or would it actually
4 just be --

5 MS. HUDSON: It would be dedicated to that
6 building, vertical parking for Fendall Street, instead
7 of asking for an actual parking variance.

8 CHAIRPERSON GRIFFIS: My understanding is
9 that to do that -- well, for one, I'm not sure that --
10 well, there it is. Okay, let's continue.

11 MS. HUDSON: The reason why we ask to
12 consider vertical parking, I mean angled parking, is
13 because the dwelling across the street from Fendall
14 Street, that's an outpatient medical facility. They
15 are not allowed to drive. They are not permitted to
16 drive. The only variance that is required for that
17 particular dwelling across the street is that the
18 caretakers to the dwelling have to provide parking.
19 Therefore, they only require two parking spaces. They
20 are willing to support the angled parking idea as far
21 as to keep congestion down on that street.

22 Actually, there is parking in front of
23 that building because the surrounding streets have a
24 lot of parking situations on them already, existing
25 parking situations. There's a lot of overcrowding.

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1 So it is the group community consensus
2 that the angled parking would probably work best in
3 this situation. That is the only thing that the ANC
4 is pretty much proposing.

5 CHAIRPERSON GRIFFIS: So it's the parking?

6 MS. HUDSON: Yes. We do not support the
7 variance for parking. Actually, we would really
8 prefer them to find a way to provide parking for the
9 number of units that they plan on proposing.

10 Also, they are stating that they changed
11 the number of units, but the C of O requires the
12 maximum of 115 units. If you do the math and you
13 multiple those numbers at 19 two-bedrooms at a maximum
14 of five people per a two-bedroom and a maximum of
15 three people to a one-bedroom, that will be well over
16 the 115 people they are proposing to move into this
17 building.

18 They stated that they were going to have
19 anywhere from 70 to 80 residents. Well, if they have
20 the maximum number of units in that building, they
21 will have well over 70 to 85 units. Therefore, they
22 can't guarantee that people are going to use their
23 shuttle or utilize Metro. If they are deemed
24 affordable, people will be able to afford cars.

25 CHAIRPERSON GRIFFIS: Sure, sure.

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1 MS. HUDSON: Therefore, there will be a
2 huge parking backlash on those surrounding streets.
3 Right now a lot of those streets are zoned two-hour
4 parking because it's in a commercial district, Good
5 Hope Road.

6 CHAIRPERSON GRIFFIS: Okay, interesting.
7 I'm not sure I followed all your numbers on that one,
8 but I understand your point.

9 MS. HUDSON: I apologize, I brought the
10 wrong notebook this morning. I already have my
11 testimony and everything. I'm a little nervous now.

12 CHAIRPERSON GRIFFIS: I mean the point is
13 very clear. I'm just not sure that the C of O's
14 occupancy for CBRF or a community-based facility for
15 115 persons translates directly into units or C of O
16 for a multi-family apartment building. But I
17 understand that the point you're making is that the
18 amount of density that will be there, the potential
19 for drivers --

20 MS. HUDSON: Drivers, yes.

21 CHAIRPERSON GRIFFIS: -- is at a certain
22 level. Okay.

23 Anything else?

24 MS. HUDSON: No, not at this point.

25 CHAIRPERSON GRIFFIS: Thank you very much,

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1 Ms. Hudson. Very well said.

2 Ms. Miller, questions?

3 VICE CHAIRPERSON MILLER: I just wanted to
4 be clear: Have you talked to DDOT yet about your
5 angled parking?

6 MS. HUDSON: Actually, I left them several
7 messages. I have not gotten any response from them.

8 VICE CHAIRPERSON MILLER: Did you talk to
9 Office of Planning about it?

10 MS. HUDSON: No. I've not gotten a
11 response from Arthur Jackson. This is my first time,
12 actually, even to know that the Office of Planning or
13 anyone was involved. I have been calling around
14 trying to get some correspondence, because we are not
15 opposed to development. Of course, we would love to
16 develop this building; it is just how they're doing
17 it.

18 VICE CHAIRPERSON MILLER: And what were
19 your numbers based on? You propose 18 to 20 units?

20 MS. HUDSON: Yes.

21 VICE CHAIRPERSON MILLER: Why did you pick
22 those numbers?

23 MS. HUDSON: It cuts back on density and
24 it is also kind of keeps the project somewhat
25 affordable, to meet the affordable housing covenant.

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1 Also, ANC-8A has a covenant for inclusionary zoning
2 where you have to mandate -- you put aside 30 units
3 for affordable housing as well. So it also meets
4 those different mandates and resolutions and things
5 that we already have on the books in our area.

6 VICE CHAIRPERSON MILLER: Thank you.

7 CHAIRPERSON GRIFFIS: Anything else? Any
8 other questions from the Board?

9 (No response.)

10 Cross?

11 MS. GIORDANO: No.

12 CHAIRPERSON GRIFFIS: Okay, very well.
13 Ms. Hudson, thank you very much. We do appreciate it.

14 How many people are here for this
15 Application 17463 to provide testimony, persons
16 providing testimony?

17 Excellent. Let's have you up now. We
18 have four. We will give some space at the table.
19 Then we will move ahead.

20 MS. JOHNS GRAY: Excuse me. I'm with the
21 civic association. We applied for party status.

22 CHAIRPERSON GRIFFIS: Why don't you come
23 up?

24 MS. GIORDANO: I guess we'll stay in case
25 there's cross examination.

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1 CHAIRPERSON GRIFFIS: While she's coming
2 up, are you aware of a request for party status in
3 this application? It would be the first time ever
4 that we all missed it. So let's get to the bottom of
5 this quickly.

6 MS. JOHNS GRAY: It was hand-delivered.

7 CHAIRPERSON GRIFFIS: Have a seat. Make
8 yourself comfortable.

9 We're just going to have you state your
10 name and address for the record.

11 MS. JOHNS GRAY: My name is Carolyn Johns
12 Gray, President of Frederick Douglass Community
13 Improvement Council. Our party status was filed by
14 Bernard A. Gray.

15 CHAIRPERSON GRIFFIS: Do you know when
16 that would have come in?

17 MS. JOHNS GRAY: It may have been just a
18 few days before the deadline, but he hand-carried it
19 here or to the Zoning Office.

20 CHAIRPERSON GRIFFIS: That would have been
21 when about calendar-wise?

22 MS. JOHNS GRAY: In April, about the 27th
23 or so.

24 CHAIRPERSON GRIFFIS: Oh, dear. My
25 concern is, of course, if we don't have it, that's a

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1 big concern. Obviously, it didn't get in the record.

2 But, moving on from that, we should have
3 taken that up as a preliminary matter and either
4 established you as a party or not, in which case you
5 would have participated through this hearing and been
6 able to cross examine witnesses.

7 I am concerned that we get to the bottom
8 of where that request is. You wouldn't have a copy of
9 that, would you?

10 MS. JOHNS GRAY: No, I don't. And to tell
11 you the truth, I don't know what questions Mr. Gray
12 may have asked of these people.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. JOHNS GRAY: But he called me and
15 asked me to come down because he got tied up in a
16 trial. He thought he was going to be finished, but
17 he's not.

18 CHAIRPERSON GRIFFIS: Sure, sure. Okay.

19 MS. JOHNS GRAY: But I'll give the
20 testimony on behalf of the civic association, and I'm
21 also a property owner that received a letter who's
22 within the 200 feet. I can just state the questions.
23 I mean I can do it without the questions, if you don't
24 want me to ask them.

25 CHAIRPERSON GRIFFIS: Well, do you have

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1 questions of the witnesses that you've heard?

2 MS. JOHNS GRAY: Yes, I did have. I had
3 some questions, yes.

4 CHAIRPERSON GRIFFIS: What might those
5 have been?

6 MS. JOHNS GRAY: One, if you put on
7 affordable housing -- you know, they come to the
8 community and they keep talking about what's
9 affordable. We need to know what that figure is.

10 CHAIRPERSON GRIFFIS: Okay. How do they
11 establish affordable housing, at what level?

12 MS. JOHNS GRAY: I want to know the exact
13 figure they're using.

14 CHAIRPERSON GRIFFIS: Sure. My
15 understanding is that this is a Homestead Program,
16 which the DHCD would have set the level of
17 affordability, but we'll hear from them also. Is that
18 correct?

19 MS. SCHRODER: Yes, it's actually DHCD
20 that does establish that number. But because that can
21 be a fluid number, it is 80 percent of the average
22 median income. Just as a note, it's not the D.C.
23 number; it's the national number, because D.C.'s
24 salaries are so high, they use the national number,
25 which brings the salary rate down. But, as I said,

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1 that's a fluid number based on DHCD. They're the ones
2 that ultimately approve each candidate.

3 CHAIRPERSON GRIFFIS: So if you were
4 setting a price on a two-bedroom right now at 80
5 percent of the AMI national, what would it be?

6 MS. SCHRODER: Oh, geez, I don't know
7 because it is a fluid number. I would hate to give
8 testimony on something that --

9 CHAIRPERSON GRIFFIS: Okay, and I'm not
10 asking for it to be a factual basis, but do you
11 understand what 80 percent of AMI is? You may; I
12 don't.

13 MS. JOHNS GRAY: Yes, I understand what
14 they're saying.

15 CHAIRPERSON GRIFFIS: Okay.

16 MS. JOHNS GRAY: And I understand why
17 they're using the national rather than the District.
18 Those are the things that concern us in our community.

19 Everyone who comes to us wants an
20 exception to the rule.

21 CHAIRPERSON GRIFFIS: Sure.

22 MS. JOHNS GRAY: They have deceptions to
23 the community. That's where that falls in. Why would
24 you use the national instead of the District when
25 you're trying to help people stay within the community

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1 and become property owners within the community?

2 CHAIRPERSON GRIFFIS: But, actually, my
3 understanding is what the testimony was just that the
4 national is a better, is a lesser cost because the AMI
5 here is higher. So if you took a percentage of a
6 higher salary locally, then your sale could be higher
7 for that unit. So they're doing national to make it
8 less.

9 But I guess the bottom line is they're not
10 setting it. What they're telling us now in their
11 testimony is that the Department of Housing and
12 Community Development in the District is setting that.
13 So if we have these discussions of what should happen
14 or not happen, or how that should change, it should
15 happen with that agency.

16 MS. JOHNS GRAY: Well, the government is
17 doing that so that they can place a certain type of
18 people that they want to get off the streets or out of
19 shelters, or what have you. They need to do what is
20 right for our community.

21 I don't want to spend a lot of time in
22 that area because Mr. Gray could better address that.
23 It's just that I know that those are tactics that they
24 use.

25 CHAIRPERSON GRIFFIS: Sure.

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1 MS. JOHNS GRAY: And we want to make sure
2 that whoever goes in this building stays in it --

3 CHAIRPERSON GRIFFIS: Right.

4 MS. JOHNS GRAY: -- or wants to stay in
5 it --

6 CHAIRPERSON GRIFFIS: Sure.

7 MS. JOHNS GRAY: -- or they don't put
8 people in who will chase other people out.

9 CHAIRPERSON GRIFFIS: Excellent.

10 MS. JOHNS GRAY: The second question was,
11 were they going to be apartment buildings that were
12 being rented or are they condos that are being sold?

13 MS. SCHRODER: They are condos. They are
14 for-sale housing.

15 MS. JOHNS GRAY: Okay, the rest of the
16 questions I won't even bother with because Mr. Gray
17 likes to get things in the record that he can use for
18 the appeal, because we very seldom come forward and
19 don't have an appeal. So I'll just do the testimony
20 for the civic association and hope I can get
21 everything in.

22 CHAIRPERSON GRIFFIS: Excellent.

23 MS. JOHNS GRAY: Our civic association
24 represents the Historic District of Anacostia Historic
25 District and surrounding areas. I did not know that

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1 this building had been marked out of the Historic
2 District because it is on the side of Fendall Street
3 that is within the Historic District.

4 We are against, in opposition of the
5 variance for the parking. Parking is premium in that
6 area now. I don't know who did this study for these
7 people, but parking is premium. Most of my members
8 are senior citizens. They want to park in front of
9 their homes or as close as they possibly can.

10 I don't know what type of residents will
11 be moving into this apartment building that they
12 figure they won't buy cars. People who live in
13 shelters in Anacostia have cars. People who live on
14 the street have cars. Very few people ride the bus in
15 our community. You can tell by the number of cars.
16 If any of these people rode the bus, I don't know why
17 they would want to be bringing new people into the
18 community to put them on that busline.

19 I have lived in Anacostia for 30 years.
20 Riding that bus you have to stand up downtown; you
21 have to stand up coming back home, because our bus is
22 one of the longest routes in the city.

23 So they definitely are wrong about the
24 public transportation. I don't care how many bus
25 stops are there. The fact that the train station is

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1 there does not matter. People drive in Anacostia. If
2 someone is working in the evening or working at night,
3 they do not ride the bus at night.

4 You know, the parallel parking or angled
5 parking, that's fine. We did not discuss parking. We
6 were just totally against the variance.

7 But in talking to the Commissioner, I'm
8 quite sure we would go along with the angled parking
9 because then it would give those people a place to
10 park.

11 But I can't imagine one of my members
12 coming home and not only can't park in front of their
13 house, but have to park two or three blocks away.

14 I don't understand why they don't know how
15 many units were in the building when it was an
16 apartment building, but I remember when it was not a
17 shelter, but a building for the St. Elizabeth's
18 patients. It was quiet there and it was very little
19 parking was necessary because the staff parked there.
20 But even with the staff parking there, some of them
21 had to park on V Street, which did cause a problem
22 with the folks who live on V Street.

23 We have a new condo that opened up about
24 two years ago that is just across the street from
25 there. We had no problems with them coming for any

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1 variances or anything. They made arrangements for
2 their parking.

3 In the 2100 block of 18th Street, which is
4 -- let me see, they're in the 2000 block of Fendall.
5 Eighteenth is one block over. So the 2100 block has
6 just recently opened apartment units. It would be
7 unfair to those people if the people in this building
8 took their parking spots.

9 On V Street there are some vacant
10 apartments that are going to be renovated. Those are
11 the four-unit apartment buildings the ANC was talking
12 about. It would be unfair to those people to come
13 home and not be able to park in front of where they
14 live.

15 So the parking is the issue here, the main
16 issue. They need to go back and rethink their
17 project.

18 I mean we really resent the Department of
19 Transportation and the Office of Planning meeting with
20 developers and helping them to do something that's
21 detrimental to our community and not having the
22 decency to come before us to discuss their plans or to
23 share their plans.

24 Now I've not talked to Mr. Jackson. So I
25 don't know what his plans are. I've not talked to the

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1 Department of Transportation. It bothers me that
2 these people are involved in something about our
3 community and we have not gotten anything from them.

4 The size of the apartments, we did not get
5 into how many units should be in there, but we
6 definitely thought 15 or less would be comfortable for
7 the community.

8 We are also concerned that they put a
9 working-class people as a majority in the building
10 because the apartment that was just sold as condos was
11 a working-class building, and when they continued to
12 put Section 8 in there and they allowed some of the
13 people to sublet to drug dealers, or whatever, that
14 was what emptied that building out. We want to make
15 sure that when this building opens that it stays open.

16 We are not against the project. We would
17 love to see some life in that building. That's a
18 dangerous corner. V Street is an open-air drug
19 market, and bringing in some life on that corner
20 probably will help to reduce the crime in that area.
21 But if you bring an element of people that the
22 government is trying to place, and they are already
23 involved in the drug trafficking, opening that
24 building could be more detrimental than leaving it
25 vacant.

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1 But we welcome them to the community and
2 thank them for thinking enough to put some life on
3 that corner. We just want them to do it properly.

4 CHAIRPERSON GRIFFIS: Excellent. Thank
5 you very much.

6 MR. SHAFF: If I can comment?

7 CHAIRPERSON GRIFFIS: Not quite yet.

8 MR. SHAFF: Okay.

9 CHAIRPERSON GRIFFIS: A couple of
10 questions. Just to explore a little bit, you said, as
11 you ended, that you want to bring new life into this
12 building, and that new life, you envision it to be at
13 18 or 20 units or 15 units?

14 MS. JOHNS GRAY: About 15.

15 CHAIRPERSON GRIFFIS: That 15 would be --
16 why that number?

17 MS. JOHNS GRAY: We don't want it to be an
18 overcrowding because we have shelters in the area.
19 Like I say, the people who do ride the bus, you have
20 to stand up. When the bus gets to our community, it
21 is full. When the train gets to our community, it is
22 full.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. JOHNS GRAY: So there will be an
25 impact; if they are saying the people will be riding

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1 the bus, they will be missing buses.

2 CHAIRPERSON GRIFFIS: Okay. Mrs. Miller?

3 VICE CHAIRPERSON MILLER: I was wondering
4 if you lived in the area in 1977-78.

5 MS. JOHNS GRAY: Yes, I did.

6 VICE CHAIRPERSON MILLER: Okay. Because,
7 according to the filings we have, there was a rooming
8 and boarding house there at the time.

9 MS. JOHNS GRAY: Uh-hum.

10 VICE CHAIRPERSON MILLER: Was there a
11 parking problem then?

12 MS. JOHNS GRAY: Are you talking about in
13 their building or the house that I live in?

14 VICE CHAIRPERSON MILLER: No, in their
15 building there was a boarding, and I'm asking you, I
16 guess, if you lived in your building at that time.

17 MS. JOHNS GRAY: Yes, I lived there in
18 1977.

19 VICE CHAIRPERSON MILLER: Was there a
20 parking problem on your street when there was the
21 boarding and rooming house?

22 MS. JOHNS GRAY: Not that I am aware of.
23 I came into the civic association in 1978, I think it
24 was in 1978. We didn't have a lot of complaints about
25 parking.

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1 As I stated, in that area it was a working
2 class of people. So they may have, you know, back
3 then they may have ridden a bus then.

4 VICE CHAIRPERSON MILLER: Okay, thank you.

5 CHAIRPERSON GRIFFIS: Any other questions
6 from the Board?

7 (No response.)

8 Cross?

9 MS. GIORDANO: No questions.

10 CHAIRPERSON GRIFFIS: Okay, very well.
11 Let's go ahead. Thank you very much.

12 Were there others? Yes, come on up. Are
13 there others that are going to provide testimony?
14 Anybody else?

15 MR. CLARK: Good afternoon. My name is
16 Marcus Clark. I'm here as the homeowners' association
17 for the condominium which was previously mentioned on
18 the corner of Fendall and V Streets.

19 CHAIRPERSON GRIFFIS: And your address,
20 Mr. Clark?

21 MR. CLARK: 2100 Fendall Street, Unit No.
22 1.

23 CHAIRPERSON GRIFFIS: Thank you. Go
24 ahead.

25 MR. CLARK: I think it's incorrect to

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1 assume that just because something will be labeled as
2 affordable housing that the buyers will not have cars.
3 Our units were sold at \$120,000 early last year, 2005,
4 and 13 out of our 14 owners do have cars. Some have
5 more than one. Some are couples.

6 So we have a small parking lot which is
7 across the intersection from the project. We also are
8 excited about the project, but we have a small parking
9 lot in front of our building. We feel that the
10 variance will push their building's residents into our
11 parking space, which on occasion we are unable to
12 occupy due to the overcrowding on V Street.

13 CHAIRPERSON GRIFFIS: Is it a private
14 parking --

15 MR. CLARK: It's not private parking.
16 It's not blocked off or anything. I'm not sure what
17 the regulations are on this. We actually have been
18 working to acquire that property.

19 CHAIRPERSON GRIFFIS: Got you. Okay, we
20 won't talk too much about it. You might have
21 competition.

22 MR. CLARK: Oh, okay. All right. All
23 right.

24 But we also feel that the variance will
25 push the overcrowding in the neighborhood on that

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1 intersection, on that corner considerably.

2 CHAIRPERSON GRIFFIS: Excellent. Anything
3 else?

4 MR. CLARK: That's all.

5 CHAIRPERSON GRIFFIS: Good. Don't go too
6 far.

7 Let me just try to understand where your
8 building is. We are looking at the site map there
9 where V Street is projecting north-south for that, and
10 then you are? That's you right across the street?
11 Excellent.

12 And your parking then, where is that?
13 It's on Fendall or it's on V? I see, it's right off
14 that area, right off --

15 MR. CLARK: We go right off the map.

16 CHAIRPERSON GRIFFIS: Okay. Interesting.

17 MR. JACKSON: Mr. Chairman, if you look at
18 the Office of Planning report, the second aerial --

19 CHAIRPERSON GRIFFIS: Yes.

20 MR. JACKSON: -- you can see the existing
21 building, the apartment buildings across to the north,
22 across V Street, and I believe yours is a four-story?

23 MR. CLARK: Fourteen units.

24 MR. JACKSON: It's a four-story building?

25 MR. CLARK: Yes.

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1 MR. JACKSON: Okay. Then his apartment
2 building would be the four-story apartments in the
3 back, just north of -- well, just south of V Street.

4 CHAIRPERSON GRIFFIS: So that green area
5 is the parking area?

6 MR. JACKSON: It looks like a natural
7 grass, dirt area. It's north of the green area.

8 CHAIRPERSON GRIFFIS: You're parking on
9 the area that abuts Fendall Street, is that right?

10 MR. CLARK: Correct.

11 CHAIRPERSON GRIFFIS: Okay. Interesting.
12 Okay. Good.

13 Any other questions from the Board for Mr.
14 Clark?

15 (No response.)

16 Is there any cross?

17 MS. GIORDANO: No, no cross.

18 CHAIRPERSON GRIFFIS: No cross.

19 Thank you very much. We do appreciate it.
20 Good afternoon.

21 MS. MARY MILLER: Good afternoon. My name
22 is Mary Miller, and I live at 1663 U Street,
23 Southeast. In fact, my house is right on the corner
24 of Fendall and U. So this property is adjacent to my
25 back yard.

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1 We are having problems now with parking,
2 so I can imagine what it is going to be like if it's
3 29 units. I heard you say that it was going to be
4 condos, but my letter says apartments, 29-unit
5 apartments. So I want to know what it's going to be,
6 if it's going to be condos, homeownership, or is it
7 going to be apartments?

8 CHAIRPERSON GRIFFIS: Okay, let's address
9 that right away. Your letter was from the Office of
10 Zoning announcing this?

11 MS. MARY MILLER: Yes. Yes.

12 CHAIRPERSON GRIFFIS: Okay. I would trust
13 more the testimony here that it's condos than the
14 letter of announcement that went out that may not have
15 been technically correct. Am I correct in stating
16 that?

17 MR. GROSS: Mr. Chairman, my comment would
18 be that there are people in the public and in the real
19 estate business who always use "apartment" to refer to
20 rental and then "condos" are ownership. I tend to use
21 the zoning terminology, which is that it is defined
22 physically as apartment and then the ownership, if
23 it's owned, then it is condominium, or it could be a
24 rental. So if our statement was the source of it,
25 then I use "apartments" generically in that way,

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1 whether it's ownership or rental.

2 CHAIRPERSON GRIFFIS: And that's a good
3 point. That's probably the basis of the confusion
4 when it went out from the Office of Zoning.

5 It would matter not for the zoning
6 regulations whether this was a condominium or a rental
7 apartment because we are, obviously, looking at more
8 area and, like today, parking requirement. So the
9 confusion, hopefully, has been lifted in that this is
10 a ownership product.

11 MS. MARY MILLER: Okay. Ms. Miller was
12 asking, because I've been there like 33 years, and she
13 was asking about the building before when I moved
14 there. It was like a halfway house for senior
15 citizens, you know, patients from Saint E Hospital.
16 That's what it was before it was closed.

17 CHAIRPERSON GRIFFIS: Good.

18 MS. MARY MILLER: So that's my main
19 concern, is the parking, because we are having a
20 problem with parking now.

21 CHAIRPERSON GRIFFIS: Okay. Excellent.
22 Any questions?

23 VICE CHAIRPERSON MILLER: You have a
24 problem parking now?

25 MS. MARY MILLER: Yes.

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1 VICE CHAIRPERSON MILLER: You personally
2 or you --

3 MS. MARY MILLER: Well, the neighborhood
4 on U Street. A lot of times I park on Fendall right
5 by -- you know, it's like woods right there just
6 before you get to this building. So a lot of times I
7 have to park there. I can't even park on U Street.
8 I probably won't even be able to park on Fendall
9 Street by the time that they have 29 units there.

10 VICE CHAIRPERSON MILLER: Okay, thank you.

11 CHAIRPERSON GRIFFIS: Any other questions?

12 (No response.)

13 Any cross?

14 MS. GIORDANO: No.

15 CHAIRPERSON GRIFFIS: Very well. Thank
16 you very much, Ms. Miller.

17 Others?

18 MS. TELESFORD: Good afternoon. My name
19 is Peggy Telesford, and I live at 1659 U Street.

20 My back yard is adjacent to this building
21 that you're talking about. My main concern, like Ms.
22 Miller, is also parking and, like she said, it's
23 stated here it's apartments, and we are concerned
24 about that because homeownership plays a different
25 part than when they are renting.

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1 CHAIRPERSON GRIFFIS: Sure.

2 MS. TELESFORD: When they are renting,
3 they don't care about the place. The trash and
4 whatever goes on. But homeownership, they take pride
5 in their homes. We are concerned whether it's going
6 to be apartments or whether it's going to be condos to
7 be as affordable homes.

8 CHAIRPERSON GRIFFIS: Excellent.

9 MS. TELESFORD: So it's basically the same
10 concern that we have.

11 CHAIRPERSON GRIFFIS: Good. Parking and
12 homeownership?

13 MS. TELESFORD: Yes.

14 CHAIRPERSON GRIFFIS: Good.

15 MS. TELESFORD: Exactly.

16 CHAIRPERSON GRIFFIS: Let me ask you
17 something. You acquired this through the Homestead
18 Program?

19 MS. SCHRODER: Yes, sir.

20 CHAIRPERSON GRIFFIS: Would the Homestead
21 allow you to redevelop this as a rental product?

22 MS. SCHRODER: No, sir. It's 100 percent
23 homeownership, and we won't own one unit. It will be
24 all homeowners.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. TELESFORD: Okay. Well, I'm happy to
2 hear that and I hope it would be so, because I've been
3 living there myself now 30 -- I lived there -- I came
4 there in 1970. When I came there, it was St.
5 Elizabeth's patients. There wasn't anything to do
6 with parking because, of course, they didn't have any
7 cars. So it's going to be difficult now because, like
8 she said, it's already bad. Parking is bad.

9 CHAIRPERSON GRIFFIS: And you don't have
10 an alley that accesses your property, do you?

11 MS. TELESFORD: No, it's not an alley.
12 There's no alley there.

13 CHAIRPERSON GRIFFIS: You don't have
14 parking on your property?

15 MS. TELESFORD: No, I don't.

16 CHAIRPERSON GRIFFIS: Do you have a two-
17 story row dwelling?

18 MS. TELESFORD: Pardon me?

19 CHAIRPERSON GRIFFIS: No, that's okay.
20 Okay, very well. Anything else?

21 MS. TELESFORD: No, sir.

22 CHAIRPERSON GRIFFIS: Any questions?

23 (No response.)

24 Any cross?

25 MS. GIORDANO: No questions.

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1 CHAIRPERSON GRIFFIS: Thank you very much.

2 MS. TELESFORD: Thanks very much.

3 CHAIRPERSON GRIFFIS: We do appreciate it.

4 Do you have an Office of Planning report,
5 by any chance?

6 MS. TELESFORD: An Office --

7 CHAIRPERSON GRIFFIS: Office of Planning's
8 report? It's in the record. You might want to get
9 it. I mention that because it's got a great aerial
10 photograph of your house and your neighbors' houses
11 and the adjacent properties.

12 MS. TELESFORD: Yes, sir.

13 CHAIRPERSON GRIFFIS: I get a kick out of
14 them. You may want one also.

15 MS. TELESFORD: Very well. Thank you.

16 CHAIRPERSON GRIFFIS: Thank you very much.

17 Very well. Is there anyone else present,
18 persons to provide testimony on 17463? In support?
19 In opposition?

20 (No response.)

21 Very well. I think that was very
22 informative in terms of the issues of parking and also
23 utilization and history of this existing structure.

24 With that, then, if there's nothing
25 further, I will ask, Board questions? Clarifications?

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1 Ms. Miller?

2 VICE CHAIRPERSON MILLER: Well, given the
3 testimony that we have heard, I certainly would be
4 interested in hearing from the Applicant and from the
5 Office of Planning with respect to their view on the
6 parking situation.

7 CHAIRPERSON GRIFFIS: Whether that
8 testimony changed their view on the parking? Let's
9 start with the Office of Planning. Their view on the
10 parking?

11 VICE CHAIRPERSON MILLER: No, their view
12 on the parking. I don't remember Mr. Jackson really
13 addressing it earlier. Maybe I missed it. But can
14 you respond to the citizens that we have heard who say
15 that the parking is already bad and that this will
16 create a great parking problem, plus also the
17 suggestion about the angled parking?

18 MR. JACKSON: Well, again, the Office of
19 Planning, of course, would defer to the Department of
20 Transportation with their analysis of the site
21 because, obviously, we visit the site on a regular
22 basis and can do simple computations of linear footage
23 of street to calculate the number of cars that can sit
24 on the street, but we would defer to the Department of
25 Transportation, in that any real complaints about the

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1 parking situation or the lack of parking in an area
2 would have been referred to them for additional
3 discussion because they have area planners that
4 actually are usually up-to-date on this type of thing.

5 We are looking at somewhat a new situation
6 for the current environment, but, of course, at one
7 time this was already apartments. Both in terms of
8 the Department of Transportation and DHCD, their
9 impression was that in re-establishing an existing --
10 what previously used to be on the site, it was not
11 seen as being draining on the site, that there would
12 not be a specific impact, and we would generally
13 concur with that.

14 But, of course, we also recommend to the
15 Applicant that they do pursue every option for
16 parking. We identified an additional lot which they
17 have tried to make work as part of their development
18 and haven't been able to.

19 We would support any proposals that the
20 community would support with DHCD to look at making
21 more parking available along the street. The idea of
22 angled parking along the street for a distance or for
23 the entire street appears to be something that DHCD
24 could look at, particularly since the street is so
25 wide.

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1 So we would support that idea going
2 forward, but, of course, that's an issue with public
3 space. As such, it would not be something that the
4 Applicant could affect either way, as opposed to just
5 -- of course, they could support it.

6 So we would proceed as contacting the
7 Department of Transportation to consider this option
8 and possibly look forward to the Applicant working
9 with the community to come up with some -- to review
10 whether options are available to provide additional
11 parking.

12 But, again, since there really is no
13 option for them providing parking onsite, short of
14 demolishing an existing building, which I think would
15 diminish the fabric of the community since it has been
16 around so long, we would like to see the building put
17 to a use that would benefit the community in the long
18 run and try to deal with these other problems over
19 time, potential problems over time.

20 CHAIRPERSON GRIFFIS: Excellent.

21 VICE CHAIRPERSON MILLER: I have just one
22 followup. When you visited the area, did you notice
23 a parking problem?

24 MR. JACKSON: No. Of course, we went in
25 broad daylight. We noted that, particularly on

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1 Fendall Street, there were no cars parked there at
2 all.

3 MS. GIORDANO: We can also respond to
4 that. I will ask the Applicant to give their
5 impressions of the parking situation. We would
6 certainly be willing to work with DDOT on exploring
7 angled parking, but I just note that we would still
8 need the parking variance because the parking would
9 not be on our lot if the angled parking were to be
10 something that could be worked out.

11 MR. KEARLEY: I just want to respond to
12 the parking situation. I believe that Fendall you can
13 park on both sides of the street since it is wide. So
14 if you went to an angled parking, you're eliminating
15 -- you wouldn't actually get more parking because the
16 spaces, it adds up to the same amount of spaces if you
17 calculate both sides of the street as opposed to one
18 side of the street that's angled. I think it's going
19 to be a wash when you get it figured out.

20 So it could be designated for the
21 particular building, but you're still taking up a
22 space for a space. You're not gaining any additional
23 spaces.

24 CHAIRPERSON GRIFFIS: Interesting.

25 MS. SCHRODER: Hi. Both Steve and myself,

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1 and we stated this at the ANC meeting, we absolutely
2 would love to work with the community. At that time
3 we also understood the fact that we still have to go
4 after the variance because it's public space.
5 However, we would love to work with the community in
6 any way to figure out how to get extra spaces.

7 I live in the City. I live in walking
8 distance to a Metro. I understand every single issue
9 the City faces every day with parking. I think it's
10 part of the love-and-hate relationship you have of
11 living in a city.

12 That said, there is substantial Metro
13 access, not just the buses but also the train station
14 and the proposal which ARCH has supported since day
15 one of the light rail that may or may not end up
16 happening in Anacostia, which would also be within
17 walking distance that would go actually over the
18 bridge eventually, which would cause the time spent
19 traveling to greatly decrease. Again, I know that's
20 still in development with WMATA and the Department of
21 Transportation. But that also potentially would be
22 there by the time this building was ready.

23 One other point I would like to just -- I
24 know Steve will answer this better because he's in
25 development right now with condos in another part of

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1 the City.

2 The 80 percent of AMI, that will probably,
3 more than probably be working class because of what
4 the rate nationally is of income at that level.

5 We also would love to work with DHCD to
6 know that that is going to be there. We are fully
7 supportive of all the main street Anacostia programs
8 that are going on now in order to have a more viable
9 community living there, to have a more viable
10 community serving there.

11 We, both Steve and myself, would love to
12 put people in these units that would be working-class
13 citizens and will work with Bob Muldering's group to
14 do so.

15 Also, the suggestion of 15 units or less
16 would be improbable for us to continue development
17 because of the cost of development. There's no grants
18 anymore for this type of development. So it is all
19 loans. Even the grants that are given by DHCD are
20 actually just low-cost loans. The building would not
21 get developed at the cost of development at this rate
22 without its being 29 units. Steve, if necessary, can
23 speak to that.

24 MR. SHAFF: Yes, a lot of the questions
25 the community has are very valid. Part of that

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1 problem is because we haven't really sat down and met
2 with them to explain everything. That's primarily
3 because we are still gathering our information.
4 There's still issues with the City that we're working
5 out. At the appropriate time we wanted to really sit
6 down, because half the questions that are raised here
7 are very legitimate and can be discussed.

8 Again, our approach, and our record stands
9 for this, shows that we come into a neighborhood
10 because we want to work with the neighborhood. We
11 can't be an island in a neighborhood. So a lot of
12 these issues will more than adequately be addressed.

13 In terms of the feasibility, the
14 affordability, and how you monitor that, the
15 purchasers have to be within a certain income limit,
16 which for our area is lower than national standards.
17 They have to be first-time homeowners in D.C. So we
18 have a very limited market here.

19 To confirm that, when we find an
20 appropriate buyer, the City's requesting or insisting,
21 as part of this process, that the buyer goes through
22 their program to verify that they are, indeed, within
23 this. So there's no way, unless we're extremely
24 unscrupulous, that a buyer who's really hiding their
25 BMW sets of cars up in Columbia Heights is going to be

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1 able to move in here. So there's some control there
2 from the City.

3 In terms of the number of units, again,
4 the configuration we have, and the size of the units
5 we have, is actually a little bit bigger than the
6 standard market right now. If we went down to
7 anything less than this, the project would not be
8 feasible. This would remain empty for quite some
9 time. We're working within the economic reality. So
10 those are the issues there.

11 The parking issues, obviously, we are
12 concerned about that. It is something legitimate.
13 Any solutions that can be done to address that,
14 obviously, we want to look at. That's why we came up
15 with the shuttle, because, as was pointed out, folks
16 may not be inclined to take the bus, but they can go
17 downstairs to the lobby. There's going to be a
18 shuttle there several times in the morning, several
19 times in the afternoon. So we feel that that will be
20 both convenient and also financially sound for the
21 purchasers of these units, who, obviously, are not
22 going to be very affluent.

23 CHAIRPERSON GRIFFIS: Okay, any other
24 rebuttal?

25 MS. GIORDANO: Did you want to share any

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1 observations about the parking demand on the street or
2 congestion?

3 MR. SHAFF: I like going to the
4 neighborhoods all hours of the night, every day of the
5 week. It doesn't matter. I like to really get a
6 sense for it, not while it's sunny and shiny and
7 people are walking around during the day, but all the
8 time, including the time that church is in session up
9 the street.

10 I had just learned, literally, this past
11 winter that there was -- frankly, I thought there was
12 a no parking sign on Fendall because I never ever saw
13 cars parking there. Again, I thought it was because
14 maybe I'm here during the day; people are working and
15 they take their cars. But I've gone through there
16 late evenings, weekends, and that part of Fendall is
17 rarely used. There's not too many other cars there.
18 Now, of course, I don't live there, but I think there
19 is adequate room there.

20 As the project gets developed and there's
21 other ways we can add to parking, obviously, we will
22 look at that. There's no question about that.

23 But there will be an impact. We're not
24 denying that.

25 CHAIRPERSON GRIFFIS: Anything else?

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1 MS. GIORDANO: I think that concludes our
2 rebuttal, closing, et cetera.

3 CHAIRPERSON GRIFFIS: Actually, Ms. Hudson
4 has some cross questions for you all.

5 Ms. Hudson, you're going to limit your
6 cross questions, of course, to that testimony that you
7 just heard, which got you so excited. So I'm very
8 interested to hear all these questions.

9 MS. HUDSON: It's more of a statement.

10 CHAIRPERSON GRIFFIS: Try to pose it in a
11 question. That way, I won't have to cut you off.

12 MS. HUDSON: When you said you come by the
13 neighborhood all hours of the day, what hours are you
14 actually coming through? Because we actually have
15 data that shows that a good portion of the
16 constituents in that particular community come home
17 after 9:00 because most of them are shift workers and
18 they all take their cars. A good portion, 60 percent
19 of them take their cars to work with them.

20 There is no parking on Fendall Street
21 during the day because it's zoned parking during the
22 day. Therefore, they cannot park up there during it.
23 There is no parking in that area.

24 CHAIRPERSON GRIFFIS: There's two
25 questions in that. First of all, do you ever get to

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1 the site --

2 MS. HUDSON: That's why there's no parking
3 during the day.

4 CHAIRPERSON GRIFFIS: -- after nine
5 o'clock? The second is, are you aware that there are
6 parking restrictions during the day on Fendall?

7 MR. SHAFF: Yes. As I said, I come
8 through at all hours because, again, if I'm thinking
9 in terms of a buyer living there, which is how I
10 approach this --

11 CHAIRPERSON GRIFFIS: Okay, but that's
12 understood. You go through all hours of the day.

13 MR. SHAFF: Absolutely.

14 CHAIRPERSON GRIFFIS: Are you aware of the
15 parking restrictions on Fendall?

16 MR. SHAFF: Well, like I said, on Fendall
17 itself, I wasn't aware of that -- I know there's some
18 restrictions, but I wasn't sure what all they have to
19 do with.

20 MS. HUDSON: There are parking
21 restrictions on Fendall.

22 MR. SHAFF: Okay.

23 MS. HUDSON: There's also street-cleaning
24 restrictions on Fendall three days a week, and also on
25 Fendall -- I would like to address the Board. Before

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1 you vote on this matter, we would ask for maybe a
2 postponement until they address the community and also
3 until DDOT comes forward to the community maybe doing
4 a traffic survey and maybe actually addressing the
5 situation on angled parking.

6 CHAIRPERSON GRIFFIS: Interesting. Okay.

7 Any other questions for these witnesses?

8 MS. HUDSON: Do you intend on coming to
9 our June meeting? We were informed that you wanted to
10 come to our April and May meeting and you did not show
11 up at our April meeting. That's where we voted. You
12 didn't do a presentation at our May meeting. So we
13 are requesting that you maybe come to our June meeting
14 maybe and do something in front of the community.

15 MR. SHAFF: I would be more than happy,
16 and we are going to start working with the community
17 so we can sit down to talk more in detail about what
18 we have planned. Again, we're very involved in the
19 communities we work with. If you would like to get
20 information from the community members that we work
21 with now, we certainly would be able to get you
22 information.

23 MS. HUDSON: Cool.

24 MR. SHAFF: Yes.

25 MS. HUDSON: Thanks.

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1 MS. SCHRODER: And I just want to state
2 for the record that we did do a presentation in March
3 to the ANC, but Steve was not available. He had folks
4 from Community Vision there, his folks that are
5 working on this.

6 CHAIRPERSON GRIFFIS: Has the project
7 changed since March?

8 MS. SCHRODER: It has not.

9 MS. HUDSON: Yes, actually, it has. The
10 scope, you went from six one-bedrooms to eight one-
11 bedrooms and then from 21 two-bedrooms to 19 two-
12 bedrooms. So the scope of the project has changed
13 since you approached the ANC.

14 MR. KEARLEY: The number of units is the
15 same. We took two efficiencies and made them one-
16 bedrooms. So that was the six to the eight. So I
17 think the number of units is the same. It's just a
18 slightly different mix of units. So I think, in all
19 intents and purposes, it's the same project.

20 MS. HUDSON: And also the square footage
21 of the units changed as well, and our scope means the
22 largest two-bedroom would be 902 square feet, and in
23 your testimony today you said it was like 800 and
24 something.

25 MR. KEARLEY: All I said was that the

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1 average was 800, approximately 800 square feet, but
2 there are units that are larger than that.

3 CHAIRPERSON GRIFFIS: Sure. Do you see
4 that impact changing the parking?

5 MS. HUDSON: I think that as far as the
6 unit number, it probably won't impact the parking as
7 far as number of spaces as the variance, but I think
8 it will probably have a change in density as far as
9 the number of people in the building itself.

10 CHAIRPERSON GRIFFIS: I see.

11 MS. HUDSON: And that's one of the
12 concerns that the community has, is the density of the
13 number of people in that building. The parking
14 variance is just one situation right now. To put that
15 many units and that many people in that one area,
16 that's an issue of itself.

17 CHAIRPERSON GRIFFIS: Sure, sure. Okay.
18 Anything else?

19 MR. GROSS: Mr. Chairman, I just want to
20 make the observation that, and this doesn't create any
21 parking spaces, but when you're dealing with historic
22 districts and a high percentage of the buildings were
23 built before there was parking requirements or very
24 many automobiles, whether that's the Capitol Hill
25 Historic District, Georgetown, or other places that

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1 are not designated historic yet, such as Adams Morgan,
2 you have a parking deficit and it's tough for people.
3 They just have to adjust.

4 As Mr. Shaff said, I am sure he will try
5 to find any parking exclusions he can, but if you're
6 in a historic district, you have a lot of historic
7 character and environmental quality, but one of the
8 tradeoffs is parking is often difficult.

9 CHAIRPERSON GRIFFIS: Not just in historic
10 districts.

11 (Laughter.)

12 Okay, Ms. Hudson, thank you very much. We
13 appreciate it.

14 MS. HUDSON: Thank you.

15 CHAIRPERSON GRIFFIS: We will take it
16 under advisement as we wind this up.

17 Let's go to closings.

18 MS. GIORDANO: I would just like the
19 Applicant to address the issue of postponement and how
20 that might affect project schedule. I'm sure there
21 would be --

22 MS. SCHRODER: Just one note in regards to
23 that: Working with some of the zoning and getting
24 permits, and as Ms. Hudson stated earlier, she left
25 several messages with DDOT, to no avail -- I would

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1 hope that we would not get postponed because I do feel
2 that it would be difficult to get audience with DDOT
3 on this subject to be taken seriously at first.

4 Although we would continue to work with
5 the community on it, I just would not want to postpone
6 and have to go into another waiting period because
7 every minute -- we have been working very hard on this
8 project for over a year in configuring, went through
9 the environmental, the engineering. To postpone it
10 would cost us a lot of time and effort, and every
11 penny matters on this.

12 MR. SHAFF: DHCD met with us. They are
13 concerned about how long it is taking us to get this
14 going. So they're pretty anxious to get this thing
15 moving.

16 It will create additional cost to the
17 project. Again, we're trying to fit an affordable
18 housing project in here. It's going to have an
19 impact.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. GIORDANO: In closing, I think that we
22 have met the variance relief standard. We are
23 basically dealing with an apartment building that has
24 a credit. We're asking for a variance with regard to
25 not a large number of parking spaces.

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1 The Applicant is going to continue to work
2 with the community. They have committed to coming to
3 the June meeting in the ANC. We would hope that the
4 BZA would go ahead and decide this case at their next
5 monthly meeting, if appropriate, and allow the
6 Applicant to continue to work with the community, as
7 well as DDOT, on additional parking solutions that
8 would not obviate the need for a variance.

9 Thank you.

10 CHAIRPERSON GRIFFIS: Right. I think that
11 is an excellent point that you bring up. No matter
12 what, DDOT might look at it, but even before we get to
13 that, we have the Office of Planning's report that
14 says that DDOT did not express any concern. So it is
15 not as if they are searching for alternatives.

16 I think the impact has been well said and
17 the testimony is persuasive that there's going to be
18 impact once you start re-animating this building.
19 That, obviously, is now before us to see whether it
20 meets the threshold test of the variance.

21 Is there anything else then?

22 (No response.)

23 Very well. I do appreciate that.

24 Board members, I'll open it up to you for
25 a brief discussion on whether we proceed today or

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1 whether additional information is required for the
2 record to be full and we set this for decision.

3 Comments?

4 VICE CHAIRPERSON MILLER: I guess I'm
5 prepared to go forward today. I think we have DDOT's
6 response in the record. We have Office of Planning's
7 comments.

8 I mean I think if the reason to wait would
9 be to get more information on the parking, I think we
10 have enough.

11 CHAIRPERSON GRIFFIS: Others? Mr. Mann?

12 MEMBER MANN: I agree that I don't think
13 there's any other information that we need to wait on.
14 Given all the information that's been entered into the
15 record and the testimony we heard today, I would be
16 able to move forward to make a decision.

17 CHAIRPERSON GRIFFIS: Very well. Any
18 opposition to move forward today?

19 MR. PARSONS: No, I approve of it.

20 CHAIRPERSON GRIFFIS: Okay, let's move
21 ahead then.

22 I think I'll open it up for those to speak
23 first or if there is a motion.

24 (No response.)

25 Okay, I think I'll try to move this on a

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1 little bit. I think it's appropriate to take our
2 deliberation up, as this is a bench deliberation, to
3 speak to it under a motion. I would move approval of
4 Application of 17463 of the ARCH Training Center.
5 That is for the variance of the off-street parking
6 requirements under 2101.1. That is to allow the
7 conversion of the vacant community residence facility
8 which was originally built as an apartment or multi-
9 family structure back into an apartment house, as the
10 zoning regulations stated, but would be a condominium
11 project of 29 units at the premises of 2025 Fendall
12 Street, Southeast.

13 I would ask for a second.

14 VICE CHAIRPERSON MILLER: Second.

15 CHAIRPERSON GRIFFIS: I would make note in
16 the motion, also, on this as we go into deliberations,
17 the Office of Planning I thought made an intriguing
18 argument. I don't think the Board has been definitive
19 about whether actually Section 353 would be a
20 requirement to meet that special exception, but as we
21 are in a variance, I thought it was fulfilling in
22 terms of just the variance test, the special
23 exception, and those elements of the special
24 exception.

25 I think Mr. Jackson was absolutely correct

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1 in saying that it was informative to have the agencies
2 respond to this. It also stepped us into a little bit
3 of what the overall aesthetic exterior landscaping
4 might be, and certainly the elements of what should be
5 of concern to the community.

6 But that's a bit of a digression. The
7 uniqueness I think is unequivocal in this in that the
8 building was built prior to 1958. The regulations
9 state within the requirements of variance the premise
10 of uniqueness. One of that is if it was in existence
11 and became not conforming to the elements when they
12 had the adoption of the 1958 rezoning regulations.
13 Certainly this meets this requirement.

14 Not only that is, how does it actually
15 become non-conforming? That's the aspect that it
16 wasn't built with parking. It is essentially land-
17 locked, although it is on a corner property.

18 We have seen persuasive testimony that if
19 you drove in anywhere, if you could, you couldn't park
20 anywhere. The adjacent lot, of course, is not in
21 discussion because it isn't under the site control.
22 Doing the other aspects of it -- well, that
23 establishes the uniqueness.

24 The practical difficulty right now of
25 that, of course, is if you can't put it on the site,

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1 what do you do? I suppose we could have done away
2 with differing floors of the residential building and
3 driven right in it, kind of parked within the
4 building. I think we have seen in a lot of cases like
5 that that it is not viable.

6 Certainly that didn't come up in this one,
7 but I think we can assume that it isn't in terms of
8 acquiring the adjacent sites or even the adjacent
9 property that separates it from Lot 71.

10 Certainly a practical difficulty is it is
11 also part of the Homestead Program, I understood
12 testimony to state, and therefore, would have to go to
13 homeownership.

14 But if we dispense with that, even just
15 theoretically, that doesn't relieve this of some
16 relief from the regulations that would then be
17 establishing an accessory parking lot attendant to the
18 primary use on the apartment. That all being said, it
19 is fairly persuasive, the practical difficulty in
20 providing the parking requirements.

21 I don't think we were definitive, either,
22 in what the total relief was required, the number.
23 However, I don't think that that's definitive for our
24 deliberation on this because we are looking for a
25 total relief, as none will be provided.

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1 Whether it would impair the intent and
2 integrity of the zone plan, I certainly do not see in
3 the R-5-A as an existing structure.

4 The public good, this is what rises to, I
5 think, very interesting discussions, and that is, how
6 do we re-animate this building with perhaps other
7 construction that's happened around the area, in
8 anticipation of maybe further or future development in
9 the area, not overburdening?

10 I think one way to look at it is actually
11 the balancing of goods, let's say. We've talked
12 about, and all the testimony I think was fairly
13 supportive of, re-animating this building, but not re-
14 animated to the detriment of the rest and the
15 surrounding community. How do you strike that
16 balance?

17 I'm not sure that there's anything that
18 would rise to putting use back into this that wouldn't
19 have a parking requirement. I think it probably
20 better serves the public that this is used rather than
21 not used.

22 The van is an interesting idea and an
23 interesting program to be put forth. It's the first
24 I have seen of anything on this level of numbers and
25 density that this is being proposed.

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1 I applaud the effort and, hopefully, the
2 implementation of it. However, it's not something
3 that I find is a requirement for the persuasiveness
4 and success of the variances.

5 I actually question more, and I hesitate
6 in bringing this up because I don't want to not be
7 supportive of the van, but I question its longevity in
8 terms of program and in terms of management, and also
9 in terms of the affordability. If one is putting
10 together affordable units in a condo regime, you're
11 also going to have your fees that are attendant to it
12 and the responsibility of upkeep of the building. I
13 wonder how long or whether one would want to burden
14 all those new homeowners with the maintenance or use
15 of this. But, thank goodness, I'm not being hired to
16 manage it because it gives me a bit of a headache to
17 think of it. However, in principle, it seems to be an
18 excellent idea to afford that.

19 Hopefully, there will be further
20 discussions as this goes forward with the other
21 agencies in terms of maybe changing that restrictive
22 parking on Fendall Street and also maybe changing how
23 the parking actually takes place in the public realm
24 that might make it more advantageous for the areas
25 around.

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1 That's my summation for the motion. I'll
2 open it up to others.

3 MEMBER ETHERLY: Thank you very much, Mr.
4 Chairman. I think you were right on target with your
5 summation, so I will not be repetitive, but I will
6 speak just in some detail to the issue of the ANC's
7 report and also the testimony on the part of the
8 residents who came before us and gave of their time.

9 Although I appreciated the testimony, I
10 agree with the direction in which my colleague's
11 deliberation is heading as it relates to, in all
12 honesty, not necessarily being as convinced about the
13 traffic piece. I think you said it, Mr. Chair, in
14 terms of highlighting that there's probably, as we
15 look at bringing this building back into productive
16 use, there's probably very little that we could do
17 that will not have some type of traffic impact.

18 I would hazard to guess that, in the
19 absence of the building being used in a productive
20 way, we have perhaps gotten comfortable with the fact
21 that you haven't had to deal with the traffic
22 component there. But I definitely appreciate the
23 testimony that was brought forward by the residents
24 here.

25 I am swayed by the Department of

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1 Transportation's lack of any objection regarding
2 traffic concerns and also the proximity of the
3 building to adjacent Metro bus routes, which I think
4 will help to eliminate or mitigate, if you will, some
5 of the traffic, potential traffic impacts.

6 That is definitely not to say that there
7 will not be something that you will feel, but I think,
8 as the Chairman indicated here, there is an issue of
9 balance that needs to be struck in terms of how you
10 bring this building back into productive use and
11 balance that with the challenges or the issues that
12 residents might feel as a result of the building
13 coming back online, if you will.

14 But I did not necessarily find it very
15 compelling that the traffic impact was going to be
16 such that you're going to be looking at utter gridlock
17 in the community. But I want to be very clear that
18 that is not to suggest that you are not going to see
19 a difference, because you will have additional bodies
20 coming back into the community.

21 But I think the focus of the zoning
22 inquiry is to balance that inquiry and make certain
23 that, as the Chair alluded to, especially within the
24 context of the variance test, as you look at the
25 intent of the zoning regulations and the overall

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1 public good here, I think this outcome is, indeed, the
2 appropriate one and supported by the argument that has
3 been put forward.

4 Thank you, Mr. Chair.

5 CHAIRPERSON GRIFFIS: Excellent. Thank
6 you.

7 Ms. Miller?

8 ARBITRATOR ROSS: I just want to add to
9 all that you all have said. I mean, in general,
10 there's the premise that most existing neighborhoods
11 would be concerned about any development bringing in
12 more parking.

13 But the history of this building goes way
14 back. I want to note that before the CBRF, in 1977
15 there was a rooming and boarding house there for 130
16 residents. The neighbors who have been there don't
17 remember that having a big negative parking impact.
18 Of course, times have changed, or whatever, though I
19 think that mass transit has gotten better also.

20 Then we were faced with asking that the
21 number of units be reduced perhaps, but, on the other
22 hand, we heard that if that was reduced, then the
23 project would become infeasible. The number that was
24 being proposed was really kind of based on an
25 impression, I think, that that would correlate with a

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1 decrease in the parking problem, which was somewhat
2 vague.

3 Also, there was nothing really to hang our
4 hat on with respect to, well, are these residents
5 really going to bring a lot of cars? I mean with the
6 price of gas, or whatever, and you have a van and you
7 have Metro, it really isn't clear how great that would
8 be; plus, especially DDOT not seeing a problem.

9 And then there's also, when you were
10 considering the public good, the fact that this
11 building is being brought back to life and it's being
12 devoted to affordable housing which is in the public
13 good.

14 So, for all those reasons, even though I
15 think the parking was something we were really
16 considering, when you weigh it all together, the
17 public good is really in favor of the project going
18 forward.

19 CHAIRPERSON GRIFFIS: Others? Yes?

20 MR. PARSONS: Mr. Chairman, I wanted to
21 make a run at you with this shuttle bus.

22 CHAIRPERSON GRIFFIS: Excellent.

23 MR. PARSONS: I certainly think it is
24 worth a trial period. I wondered if you would be
25 willing to consider a requirement that this be

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1 undertaken for a two-year period. In other words, it
2 is either going to catch on or not, and show our
3 support for that.

4 It seems to me there are two sides to a
5 traffic story. That is what we have heard here today
6 -- or parking requirements. I think it is worth our
7 support of the concept of a van or shuttle bus,
8 whatever the term we want to use. Van implies a
9 smaller vehicle of some maybe 15 passengers at
10 maximum. But the commitment seemed to be for a
11 vehicle of about \$35,000 to \$40,000, as I remember it.

12 But I ask for your consideration of that
13 as a condition for two years.

14 CHAIRPERSON GRIFFIS: Excellent. I have
15 no difficulty with that as it is proffered by the
16 Applicant and developer. Then, obviously, after two
17 years the association would decide if it is productive
18 to have, and they're paying for it wouldn't be
19 restrictive if they could continue it on.

20 To that, then, when would the two-year
21 period start?

22 MR. PARSONS: It would start with the sale
23 of the last unit.

24 CHAIRPERSON GRIFFIS: Interesting. Okay.
25 Comments?

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1 MR. PARSONS: I sense underwhelming
2 enthusiasm.

3 VICE CHAIRPERSON MILLER: I think it's a
4 good idea. It's just a different type of condition
5 than we've done. So that's all. I'm just pausing to
6 think about that, a two-year condition.

7 CHAIRPERSON GRIFFIS: I don't think it's
8 any difficulty. I mean I think it is well said the
9 way he's -- I understand your concern. It's like a
10 time condition that will disappear, but I think
11 exactly what Mr. Parsons is getting to is appropriate
12 for a condition of the variance because it is making
13 sure that it is set up and then is given an
14 opportunity to succeed. But it isn't the basis on
15 which the variance would have been or is granted, but
16 it's one of those offsetting opportunities.

17 Mr. Mann, comments?

18 MEMBER MANN: Well, I am also in favor of
19 the van service. I wouldn't be opposed to a
20 condition.

21 But I would also throw out that perhaps,
22 just something for some consideration is, I think we
23 heard testimony that the Applicant also has developed
24 properties in the vicinity, I think. If that's
25 correct, if my recollection is correct, perhaps they

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1 may also be able to coordinate the same sort of
2 service, perhaps even with the same van, with some of
3 the other properties that they have developed in the
4 area.

5 I throw that out for our consideration, if
6 we do condition this, that we wouldn't restrict it to
7 perhaps this one property, but that it might be
8 available on a broader basis, if that makes any sense.

9 CHAIRPERSON GRIFFIS: Right. In fact, if
10 it catches on, DDOT might do a shuttle through the
11 neighborhood, right?

12 Okay, I think it's well said. I think,
13 Mr. Parsons, I have no difficulty in taking that on as
14 a condition of two years commencing with the sale of
15 the last unit and as outlined in the proposed
16 provision of van document that was submitted.

17 Anything else then?

18 (No response.)

19 Concerns? Questions? Anything else on
20 all of the other aspects of the variance we discussed?
21 Any elements at all?

22 VICE CHAIRPERSON MILLER: I think the
23 concept of the van is a good one as well, and I'm
24 certainly willing to go along with it. I'm not sure
25 how we're going to -- we can work it out how we're

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1 going to put it in as a condition?

2 CHAIRPERSON GRIFFIS: Yes.

3 VICE CHAIRPERSON MILLER: Okay.

4 CHAIRPERSON GRIFFIS: Okay, anything else?

5 (No response.)

6 Very well. We do have a motion before us.

7 It has been seconded and conditioned.

8 I would ask for all those in favor to
9 signify by saying aye.

10 (Chorus of ayes.)

11 And opposed?

12 (No response.)

13 Abstaining?

14 (No response.)

15 Very well, Ms. Bailey, if you wouldn't
16 mind reporting the vote?

17 MS. BAILEY: Mr. Chairman, the vote is
18 recorded as five, zero, zero to approve the
19 application. Mr. Griffis made the motion; Mrs. Miller
20 seconded. Mr. Mann, Mr. Etherly, and Mr. Parsons
21 agreed. And it's with a condition as stipulated by
22 the Board.

23 It's approved with a condition?

24 CHAIRPERSON GRIFFIS: Yes, exactly, with
25 one condition.

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1 Excellent. Thank you very much, Ms.
2 Bailey. I do appreciate it.

3 Thank you all, Board members. Thank you
4 everyone who was here and participated in this case,
5 and the Applicant; we appreciate it. Good luck and
6 we'll look to see great successes on this.

7 With that, we're going to take five
8 minutes to let this group get out and then we're going
9 to set up right away and call the next case of the
10 afternoon.

11 (Whereupon, the foregoing matter went off
12 the record at 4:00 p.m. and went back on the record at
13 4:15 p.m.)

14 CHAIRPERSON GRIFFIS: Very well, let's
15 resume.

16 Ms. Bailey, if you wouldn't mind?

17 MS. BAILEY: Mr. Chairman, the last case
18 today is an appeal and the number is 17465. It's the
19 appeal of the Advisory Neighborhood Commission 3D,
20 pursuant to 11 DCMR 3100 and 3101, from the decision
21 of the Administrative Law Judge to dismiss a DCRA/BLRA
22 Notice of Violation for the construction of an
23 unpermitted horse stable.

24 Appellant alleges that the ALJ,
25 Administrative Law Judge, erred on October 20th, 2005,

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1 by overturning a DCRA/BLRA Notice of Violation issued
2 to Dorchester Associates. Appellant contends that the
3 construction of the stable violates Sections 204 and
4 208 of the zoning regulations. The property is
5 located in the CB/UT/R-1-A District at premises 2762
6 Chain Bridge Road, Northwest, Square 1425, Lot 822.

7 CHAIRPERSON GRIFFIS: Excellent. Why
8 don't we introduce for the record who we have?

9 MR. KIERNAN: Good afternoon. Paul
10 Kiernan of Holland & Knight, on behalf of the
11 Intervener Dorchester Associates. With me at the
12 table is Morton Bender, the principal of the owner.

13 CHAIRPERSON GRIFFIS: Excellent. Thank
14 you.

15 MS. GATES: Alma Gates, Chair of ANC-3D.
16 With me is Judith Lanius of the Chain Bridge Road
17 University Terrace Preservation Committee.

18 CHAIRPERSON GRIFFIS: Excellent. Thank
19 you both very much.

20 First of all, I think we need to address
21 we have a motion to dismiss this appeal. Both of you
22 had filed written statements of the motion and then
23 the response to the motion. They're both very clear
24 and full.

25 However, I am going to provide no more

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1 than five minutes for each of you to brief it for the
2 Board. You obviously don't need to; we're well up-to-
3 speed on it. Then I would like to take up the
4 discussions.

5 There are, essentially, if I can frame it,
6 and hopefully I'll do it correctly, but there are
7 three issues that are brought out in the Motion to
8 Appeal. One is the jurisdiction. The second is
9 timeliness, and whether, the third, the ANC has the
10 ability to bring the appeal.

11 I'll turn to you, Ms. Gates, if you want
12 to -- well, I'm sorry, we'll start with the motion
13 first and see if I did it justice in terms of my
14 summation.

15 MR. KIERNAN: I think you got two and a
16 half right, but close enough.

17 CHAIRPERSON GRIFFIS: Indeed.

18 MR. KIERNAN: This is here, as you know,
19 on an appeal from the decision of the Administrative
20 Law Judge. There's no pending permit, application, or
21 other proceeding before the Board other than the
22 appeal itself, which I think is significant.

23 As you know from the record, on the date
24 that the Notice of Violation was to be heard the
25 District did not produce any evidence, did not produce

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1 their witness on this. In response to our Motion to
2 Dismiss, the Hearing Examiner dismissed the Notice of
3 Violation, finding that the District had not sustained
4 its burden of preponderance of evidence.

5 At the hearing there were no witnesses
6 taken. There was no evidence received. So there is,
7 in fact, no record of the hearing that is in before
8 you.

9 On the timeliness issue, which is probably
10 the easiest to deal with, under D.C. Code Title 2,
11 Section 1802.04(A), and as also reflected in the order
12 from the Hearing Examiner himself, an aggrieved party
13 has 15 days to file an appeal. The order in this case
14 was signed October 20th. It was mailed October 25th
15 of 2005. The appeal in this case was not filed until
16 December 5, long after the expiration of any appeal
17 period.

18 I could not find any authority for the
19 proposition that this Board can adjust or ignore the
20 statutory deadlines for filing an appeal, even if
21 these Appellants were proper Appellants, which brings
22 us to point No. 2, which is that the ANC and the Chain
23 Bridge University Terrace Group are not proper
24 Appellants. They were not parties in the proceeding
25 below. They were not Interveners or didn't

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1 participate at all as parties on the violation notice.
2 The fact that they are unhappy with the decision of a
3 Hearing Examiner does not make them aggrieved parties
4 for purposes of filing an appeal.

5 I would note the District of Columbia,
6 which did have its case dismissed below, isn't even
7 here and hasn't, apparently, consented to being
8 dragged back into appeal. It seems to me that if the
9 District of Columbia has its Notice of Violation
10 dismissed and it doesn't want to pursue it any
11 further, that we can't have ANCs or neighbors or
12 people unhappy with it deciding they want to make the
13 appeal and make the District come back in and deal
14 with a case that the District apparently no longer
15 wants to deal with.

16 Finally, on the merits, again, under D.C.
17 Code, Title 2, 1803.03, the scope of review of this
18 Board on this appeal is not a hearing de novo on the
19 merits of whether it's a stable or a shed or a lean-
20 to, or whatever. The statute is very clear that this
21 Board makes its determination on the basis of the
22 record established before the Administrative Law Judge
23 or the Attorney Examiner and shall set aside any order
24 that is without observance of procedures or that is
25 unsupported by a preponderance of evidence in the

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1 record, and thereby can affirm, reverse, or modify the
2 order.

3 Here there was no record below because
4 there was no hearing below. There's no allegation in
5 the appeal papers that the Administrative Law Judge
6 was incorrect in dismissing it, in light of the case
7 management order which required the District to be
8 there, in light of the fact that the case had been
9 continued several times, and it is not in this forum
10 that a new record can be created on the underlying
11 merits by statute.

12 So, for all those reasons, we ask that the
13 appeal be dismissed.

14 CHAIRPERSON GRIFFIS: Excellent. The 15-
15 day timeline, timeliness, would go to a de novo
16 hearing, to the record below, to the ALJ's decision,
17 is that correct?

18 MR. KIERNAN: I'm sorry?

19 CHAIRPERSON GRIFFIS: The 15-day
20 timeliness would go to the hearing, the ALJ's hearing?
21 It would be to the appeal of that ruling, which would
22 be the record below, or if there was a de novo
23 hearing, it would be on that substance, correct?

24 MR. KIERNAN: Well, Title 2, Section
25 1802.04 says that the order of the Administrative Law

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1 Judge or Attorney Examiner shall become final 15
2 calendar days after service of the order upon the
3 respondent --

4 CHAIRPERSON GRIFFIS: Right, so --

5 MR. KIERNAN: -- unless somebody files an
6 appeal.

7 CHAIRPERSON GRIFFIS: Right. So the
8 direct question, though, just for clarification, is
9 that 15-day clock is if what is under appeal is the
10 decision of the ALJ?

11 MR. KIERNAN: Right.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. KIERNAN: Yes, which is what the
14 appeal has been styled in this case.

15 CHAIRPERSON GRIFFIS: Yes. Okay.

16 Questions?

17 VICE CHAIRPERSON MILLER: Okay. With
18 respect to the argument that the ANC didn't have
19 standing to appeal this order in any event, I think
20 you stated that DCRA has standing? Is that correct?

21 MR. KIERNAN: I think they would.

22 VICE CHAIRPERSON MILLER: And would that
23 be the Zoning Administrator or who would that be?

24 MR. KIERNAN: I guess -- well, I don't
25 know. That's a good question. I'm not sure. I'm not

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1 sure what is the answer.

2 VICE CHAIRPERSON MILLER: Okay, that's all
3 for now.

4 CHAIRPERSON GRIFFIS: Does this structure
5 still exist?

6 MR. KIERNAN: It's still there, yes.

7 CHAIRPERSON GRIFFIS: You made a comment
8 that I hadn't seen in writing yet -- the District
9 isn't here, which is actually kind of striking -- that
10 you take that as a notion that they no longer want to,
11 I think you said, deal with this.

12 MR. KIERNAN: Well, I'm drawing from the
13 fact that the District did not file a timely appeal,
14 and they would be the parties who would have the right
15 to appeal.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. KIERNAN: But they have decided not to
18 appeal this matter.

19 CHAIRPERSON GRIFFIS: Right.

20 MR. KIERNAN: Whether the underlying issue
21 is dealt with in other places is an issue for another
22 day.

23 CHAIRPERSON GRIFFIS: Yes?

24 VICE CHAIRPERSON MILLER: I would note
25 that they're not here today, either.

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1 CHAIRPERSON GRIFFIS: Pardon me?

2 VICE CHAIRPERSON MILLER: They're not here
3 today, either.

4 CHAIRPERSON GRIFFIS: That's what we're
5 talking about.

6 VICE CHAIRPERSON MILLER: Oh, I thought
7 you were talking about the fact they didn't appeal
8 the --

9 CHAIRPERSON GRIFFIS: No, that was clear
10 on the writing of the submission, but that they're not
11 represented here -- I'm not sure what -- it's not
12 good, but I'm not sure what to make of it.

13 Okay, Ms. Gates?

14 MS. GATES: Thank you, Mr. Chairman.

15 The ANC believed when Ms. Lanius came
16 forward about the illegal stable and its illegal
17 construction that it did have the right to file an
18 appeal. Anyone can file an appeal in the District of
19 Columbia.

20 The fact that the ALJ dismissed this
21 leaves everyone with their hands tied because it was
22 both the Chain Bridge Road Committee and the ANC who
23 pushed this violation forward. It was Mr. Kiernan who
24 sort of sidetracked it over to the Office of
25 Administrative Hearings. It really should not have

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1 gone there. It should have come to you. I think
2 there's evidence in our submission that would indicate
3 that.

4 I wonder if DCRA isn't here today because
5 they do support the ANC and the Committee.

6 There was a preponderance, I believe, of
7 evidence in our initial filing that would indicate
8 this is an illegal structure. It needed a special
9 exception to be built on the property. A permit was
10 never issued for its construction.

11 Notices were issued to Mr. Bender on
12 November 18th, December 20th, and February 20th.
13 Instead of going through the proper channels, he
14 sidestepped it, as I said before, and went to the
15 Office of Administrative Hearings. This case has
16 never been heard.

17 CHAIRPERSON GRIFFIS: Right. Okay,
18 anything else?

19 MS. GATES: One other thing about
20 notification and timeliness; I think I need to address
21 that.

22 Unlike the Historic Preservation Review
23 Board, the Zoning Commission, the National Capital
24 Planning Commission, or the BZA, the Office of
25 Administrative Hearings does not notify ANCs of

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1 hearings or opinions which may be of interest to their
2 districts. So it wasn't until I went down to the
3 Office to obtain a copy of the final order that I was
4 aware there was a 15-day limit, where it clearly
5 states in Title 11 that we do have 60 days, and we
6 certainly met that. So I think there's some
7 contradiction here in whose timeliness because it
8 refers the issue to you.

9 CHAIRPERSON GRIFFIS: Right, under the
10 civil infractions.

11 Go ahead.

12 VICE CHAIRPERSON MILLER: The sixty days,
13 could you just refresh my memory of your starting date
14 of the 60 days? You were within the 60 days of some
15 date. What's your starting date? It's not October
16 20th because you --

17 MS. GATES: Even if we went to October
18 20th, we filed on December 5th. So we met that
19 deadline. That would have put us within 60 days.

20 VICE CHAIRPERSON MILLER: I see. When did
21 you find out about it, though? Do we have a date?

22 MS. GATES: We were informed on October
23 the 5th at our ANC meeting.

24 VICE CHAIRPERSON MILLER: October the 5th?

25 MS. GATES: No.

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1 VICE CHAIRPERSON MILLER: No?

2 MS. GATES: No, it was dismissed on the
3 29th. So then you came to the October meeting. You
4 had been to the hearing.

5 I am not the person Mr. Kiernan saw at the
6 meeting.

7 VICE CHAIRPERSON MILLER: Okay, that's
8 okay because you're saying, in any event, you're
9 within the six months (sic).

10 MS. LANIUS: Sixty days.

11 MS. GATES: Sixty days.

12 VICE CHAIRPERSON MILLER: What is the
13 error -- the 60-day rule talks about anyone being able
14 to -- anyone in the public, regardless of whether you
15 are a party to that appeal, being allowed to bring an
16 appeal concerning an error that was made by the Zoning
17 Administrator or by some other authority with respect
18 to the carrying out or the administration or the
19 enforcement of a zoning regulation. So I'm wondering,
20 what is the error that you are alleging?

21 MS. GATES: The first error would be the
22 fact that this even went to the Office of
23 Administrative Hearings. The second would be that no
24 hearing took place. So the violation is just now
25 dropped, I believe.

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1 CHAIRPERSON GRIFFIS: Excellent. I think
2 that's some clarity.

3 You made a statement that said everyone or
4 anyone is able to file an appeal in the District of
5 Columbia, and I think Ms. Miller was picking that up.
6 I don't contest that at all.

7 MS. GATES: Under Section 3112.2.

8 CHAIRPERSON GRIFFIS: Sure. But even
9 outside of that, I think that the issue perhaps, and
10 Ms. Miller has stepped right into it, is making sure
11 that anyone that does bring an appeal brings it on the
12 right issue and to the right body. I don't think that
13 we have definitely dispensed with our decision on
14 timeliness, but I think it would be correct to say
15 that there may be some discrepancy between the 60 days
16 and the 15 days on the Zoning Act and the Civic
17 Infractions Act, and whether you've met the 15 days or
18 not, I will hypothetically say we're not dealing with
19 that immediately and move on to the next, to Ms.
20 Miller's question, which goes directly to, what is the
21 element under appeal for us?

22 Because we would not have any zoning or
23 any jurisdiction to remedy or to hear an appeal on
24 whether the administrative hearings took place, or if
25 we were to pick that up, finding it timely to hear the

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1 appeal on the ALJ's dismissal of that, for lack of
2 presentation of a case or a witness. Again, I am not
3 sure where we would find our substance or jurisdiction
4 in a zoning issue.

5 Lastly, I want to find a remedy to this
6 because it's the strangest thing that I have come
7 across. It seems in reading all of the file here that
8 the government, DCRA, and the ANC were all moving in
9 the same direction, and yet official action didn't
10 take place.

11 I just don't know what we can do as a
12 Board at this time with what is presented to us.

13 So, succinctly put, I would have to ask
14 you again what Ms. Miller has just asked: What is the
15 element under appeal? What is the error?

16 MS. GATES: Let me read something that
17 Toye Bello wrote to us.

18 "You will recall that in response -- this
19 was written on the 11th of April, 2005. "You will
20 recall that in response to a Notice of Violation and
21 Notice to Abate issued by the Zoning Division, a
22 building permit application was eventually filed by
23 the owner. That application was issued" -- and I
24 think when we edited this, something happened, but it
25 says, "That application was issued a referral to the

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1 Board of Zoning Adjustment for a special exception, as
2 required by the zoning regulations."

3 CHAIRPERSON GRIFFIS: I know exactly of
4 what you speak, and I think the Board's familiar. So
5 Mr. Bello said, yes, they put in a permit, tried to
6 remedy the situation. We referred him to the Board.
7 We've got a letter sitting here. We've tried to
8 service several times. Where's the error? Did Mr.
9 Bello error in his actions?

10 MS. GATES: No, I don't think he did. I
11 think up to this point he did what he could. I mean
12 three violation notices were issued.

13 CHAIRPERSON GRIFFIS: Yes, right.

14 MS. GATES: So you're asking me who erred.
15 Obviously, I believe Mr. Bender erred by not doing
16 filing for a special exception hearing, and if he were
17 granted, that he file for a building permit. This
18 whole thing is totally backwards.

19 I realize we're both in a difficult
20 position. However, I think we could set the record
21 straight today by saying, "Okay, this is the Board
22 saying, okay, we're going to hear this special
23 exception request," and that's what we're asking you
24 to do.

25 CHAIRPERSON GRIFFIS: I'd be happy to do

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1 that, but we don't have a special exception before us.

2 MS. GATES: I'm sorry?

3 CHAIRPERSON GRIFFIS: I'd be happy to, but
4 we don't have a special exception before us.

5 MS. GATES: Why don't you?

6 CHAIRPERSON GRIFFIS: Because you brought
7 an appeal.

8 MS. GATES: Well, that is what I was
9 advised to do.

10 CHAIRPERSON GRIFFIS: No, I understand
11 that. I understand that.

12 MS. GATES: I would be happy to go file a
13 special appeal, if that's what you're telling me to
14 do.

15 CHAIRPERSON GRIFFIS: No, no, no. No, it
16 would be the property owner's responsibility to bring
17 a special exception.

18 MS. GATES: Okay, thank you.

19 CHAIRPERSON GRIFFIS: Yes.

20 MR. PARSONS: But it seems to me, if you
21 were to take an action, it would be against the
22 property owner directly, rather than trying to find
23 some sort of remedy here in the D.C. Government, but
24 I'm not a lawyer, so I just stepped over the edge and
25 I can see our attorney at the other end saying,

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1 "That's not your place, Parsons. Don't start advising
2 somebody how to deal with this matter."

3 (Laughter.)

4 But please interrupt. I'll stop.

5 MS. GATES: Well, I really did think, Mr.
6 Parsons -- thank you for saying that -- that by filing
7 this we were taking action.

8 CHAIRPERSON GRIFFIS: Right. As you well
9 know in other appeals, in other elements that you've
10 been involved in, we are the appeal body for official
11 actions, the Mayor's action as it pertains to zoning
12 and his designate. So the Zoning Administrator or
13 anyone else, for that matter, that steps into the
14 realm of zoning.

15 What we have difficulty in this is
16 reinventing ourselves and going at this as an
17 enforcement. Really all of this is tying into the end
18 result of some enforcement.

19 If we kept stepping -- if there was a
20 record that was before us somehow that we could even
21 grab onto --

22 MS. GATES: I think part of the problem
23 for all of us is the fact that shortly after April, or
24 sometime in there, Mr. Bello left as the Zoning
25 Administrator, and nobody there picked this up.

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1 However, I believe the community and the ANC felt it
2 was moving forward until it was dismissed.

3 CHAIRPERSON GRIFFIS: Right.

4 MS. GATES: Had he been there to sort of
5 pick it up, I think things would be different.

6 CHAIRPERSON GRIFFIS: Right. It may well
7 be. I'm not sure that I disagree with you there.

8 Be that as it may -- well, I suppose, as
9 Mr. Parsons says, our attorney is in the room and I
10 need to be careful, but it is a frustrating position
11 to be put in when we see so many frivolous things that
12 happen across the City, and then we see elements that
13 seem to be going down the correct path, or at least
14 the corrective path, that things don't come to
15 fruition, and we expend an awfully lot of energy from
16 every side, from the property owners to the community,
17 to ours, in setting these things up and looking at it.

18 I don't know what to do with this. I
19 don't see how, one, the time limit threshold is met
20 here. I don't see how the jurisdictional element is
21 met, and I'm not persuaded that I even need to address
22 whether the ANC has standing to bring the appeal, but
23 on two other elements it seems to fail.

24 I'm, frankly, more vested and spent more
25 time trying to figure out where or what we would

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1 actually be looking at, if we were to continue with
2 this, and I still can't find it. So, as you say,
3 well, we could just take this up and just kind of run
4 with it as we will and try to find some substance or
5 some relief, and, frankly, it would be a waste of your
6 time and ours, as far as I've seen.

7 MS. GATES: Perhaps it would be best for
8 us to return to the new Zoning Administrator and have
9 another Notice of Violation issued.

10 CHAIRPERSON GRIFFIS: Yes, maybe so.

11 I'll let you address any of these issues,
12 if you wish.

13 MR. KIERNAN: I disagree with getting a
14 new Notice of Violation, but other than that --

15 CHAIRPERSON GRIFFIS: Indeed.

16 Other comments from the Board? Does
17 anyone else want to -- yes, Ms. Miller.

18 VICE CHAIRPERSON MILLER: I have a lot of
19 comments. I don't know whether we want to just do it
20 now or for a motion.

21 CHAIRPERSON GRIFFIS: I think under a
22 motion is probably the best.

23 VICE CHAIRPERSON MILLER: Okay. Then,
24 unless any other Board members want to ask any other
25 questions before we -- okay, then I guess I would

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1 reluctantly move to grant the Motion to Dismiss the
2 appeal on grounds of jurisdiction.

3 MR. PARSONS: Second.

4 CHAIRPERSON GRIFFIS: Thank you.

5 VICE CHAIRPERSON MILLER: I think that it
6 appears there's some wrongdoing perhaps out here, but
7 that this isn't before us jurisdictionally. The
8 reason I think so is I looked at it in two ways. One
9 is an appeal of the decision, which I think does fail
10 for two reasons. One is timeliness. It's 15 days
11 within mailing of that order. And, two, the ANC
12 wasn't a party to that case. So I don't believe that
13 the ANC does have standing to appeal.

14 MS. GATES: Ms. Miller, can I just tell
15 you that the ANC would never have standing at the
16 Office of Administrative Hearings?

17 VICE CHAIRPERSON MILLER: Okay, but I
18 don't think the ANC has -- that we have jurisdiction
19 for that reason.

20 Then with respect to -- we do have
21 jurisdiction within 60 days of the ANC knowing about
22 some error. I have been kind of searching for like,
23 what is the error? Because there are things that
24 don't look so right here. But we don't have
25 jurisdiction over any errors. We only have

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1 jurisdiction over the enforcement, the carrying out,
2 the administration of the zoning regulations.

3 When I look at this, when I'm looking for
4 an error, I say, okay, well, gee, how come DCRA didn't
5 appeal that decision? I think that's an error. But
6 that's not an error involving the carrying out of
7 zoning regulations.

8 So I think that is the problem here, and
9 we can't force anybody to bring a special exception.
10 If they put up something in violation of our zoning
11 regulations, then that is up to DCRA to bring
12 enforcement action, as they did. It looks like they
13 dropped the ball on that.

14 Certainly, Mr. Bender could come forward
15 at any time and bring himself into compliance and file
16 an application for a special exception, but that's not
17 what is before us. What's before us is an appeal.

18 There's been some allusion, and I don't
19 see any problem with my referencing a statute that
20 does give a neighboring property owner the right to
21 bring their own private action against a property
22 owner if they feel that they have violated some zoning
23 regulations, and that's 6-641.09. I'm not advising
24 you to do that. I'm just saying that relief may be by
25 another course of action, and this Board just doesn't

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1 have jurisdiction to grant relief always when it would
2 like to.

3 CHAIRPERSON GRIFFIS: Excellent. Thank
4 you very much, Ms. Miller.

5 Others? Any other comments?

6 (No response.)

7 Very well. We do have a motion before us
8 and it has been seconded. Let me ask for all those in
9 favor of the motion to signify by saying aye.

10 (Chorus of ayes.)

11 Opposed?

12 (No response.)

13 Abstaining?

14 (No response.)

15 Very well, Ms. Bailey?

16 MS. BAILEY: Mr. Chairman, the vote is
17 five, zero, zero. The Board has voted to dismiss the
18 appeal. The Board has indicated that it does not have
19 jurisdiction to hear this case.

20 CHAIRPERSON GRIFFIS: Excellent. Thank
21 you very much, Ms. Bailey. I appreciate it.

22 Again, thank you all. We appreciate this,
23 and sorry it took us until 4:00 to get to it, but
24 there it is. We certainly hope that there's, oh,
25 well, good things always to happen. Enjoy.

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1 Is there any other business for the Board
2 this afternoon?

3 MS. BAILEY: No, Mr. Chairman.

4 CHAIRPERSON GRIFFIS: Then if there's no
5 further business for the Board, let's adjourn.

6 (Whereupon, at 4:43 p.m., the proceedings
7 in the above-entitled matter were adjourned.)

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