

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

JANUARY 10, 2006

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

JOHN PARSONS	Commissioner (NPS)
MICHAEL G. TURNBULL	Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Sr. Zoning Specialist
TRACEY W. ROSE	Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

This transcript constitutes the minutes from the Public Meeting held on January 10, 2006.

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

(10:33 a.m.)

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the 10th of January 2006 Public Meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Geoff Griffis. Joining me today is the Vice Chair, Ms. Miller, and Mr. Etherly. Representing the National Capital Planning Commission with us is Mr. Mann, and we will have differing Zoning Commissioners with us this morning as we go through our decisions.

We have quite a few to get through, and I do apologize for our late start. We are accommodating a couple of schedules this morning, and also had an awful lot to do in Executive Session.

We will begin -- we will call the cases, but the order, as published, may not be the way we follow it. However, we will be starting with 17395, which is Jemal's Citadel. And then, we will be joined -- I am hoping and anticipating -- with Commissioner Turnbull, and we will then go into 17405 of Laverock, and then, third, will be 17402 of Karl Lass. And I will update as we continue on with that.

That being said, copies of the agenda,

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1 which we will vary from, are available for you. They
2 are located where you entered into the hearing room,
3 at that table. You can take a look at how much we
4 will get accomplished this morning.

5 Let me ask that everyone present, of
6 course, turn off cell phones, beepers, so that we
7 don't have a disruption of our transmission and your
8 being able to hear us clearly.

9 Of course, this is not an opportunity for
10 additional testimony or hearings on a case. This is
11 a time for you to watch and hear the Board's
12 deliberation and discussions on cases that have
13 already been heard.

14 With that, I'm going to say very good
15 morning to Ms. Bailey with the Office of Zoning on my
16 very far left, Mr. Moy closer to me on the dais, who
17 is also with the Office of Zoning.

18 Let me turn it over to staff to call the
19 first case for decision this morning.

20 SECRETARY MOY: Yes. Good morning, Mr.
21 Chairman, members of the Board, and Happy New Year.

22 The first case for decision is Application
23 Number 17395 of Jemal's Citadel, LLC, pursuant to 11
24 DCMR 3103.2. This is for a variance from the rear
25 yard requirements under Section 774, a variance from

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1 the nonconforming structure requirements under
2 Subsection 2001.1, a variance from the requirement to
3 provide a loading berth that is 55 feet deep under
4 Subsections 2201.1 and 2201.6.

5 This is to allow the establishment of a
6 mixed use project, including a grocery store and
7 general offices in the RC/C-2-B District at premises
8 1631 Kalorama Road, N.W. That's in Square 2572,
9 Lot 36.

10 On November 29, 2005, the Board completed
11 public testimony on the application, and scheduled
12 this decision on January 10, 2006. For its decision,
13 the Board requested the following: draft findings of
14 fact and conclusions of law, including proposed
15 conditions.

16 Filings have been submitted, Mr. Chairman,
17 by the applicant, ANC-1C, and the party in opposition,
18 the Reed-Cooke Neighborhood Association. These
19 filings are in your case folders identified as Exhibit
20 29 -- I'm sorry, Exhibit 93, 96, and 98, respectively.

21 Finally, as a preliminary matter, Mr.
22 Chairman, we have two filings. One is from the Reed-
23 Cooke Neighborhood Association. This was filed on
24 December 12, 2005, a motion to request to reopen the
25 record and further hearing on designated issues. That

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1 filing is identified as Exhibit -- is identified as
2 Exhibit Number 96.

3 Second is a response to the applicant's
4 draft findings of fact and conclusions of law by a Mr.
5 Mark Rasmussen, and that is identified in your -- in
6 your case folders as Exhibit 99. This response had a
7 deadline of January 3rd and is dated January 5th. It
8 is untimely.

9 So that completes the staff's briefing,
10 Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Excellent. Thank
12 you very much, Mr. Moy. Appreciate that overview. It
13 is quite a full record in terms of the amount of
14 submissions, as he has indicated. The Board -- we do
15 have a preliminary matter in this, and that is to
16 address the motion to reconsider or, rather, open the
17 record on this. That would be in order to enlarge or
18 create a new hearing on a new -- or on a specific
19 topic that the Reed-Cooke overlay was requesting.

20 Before we get into that -- and I think we
21 can get to that really quickly -- well, let's do that.
22 Let me hear any comments or quick discussion on the
23 motion that's before us.

24 VICE CHAIRPERSON MILLER: Mr. Chairman, I
25 would be opposed to granting the request. They asked

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1 us to reopen the record at this time, and there isn't
2 any good reason, number one, why they could not have
3 presented the evidence when the hearing was ongoing.
4 So for that reason primarily, I would suggest that we
5 deny the motion.

6 CHAIRPERSON GRIFFIS: Okay. Excellent. I
7 would absolutely agree on that count, as they had full
8 ability to present the case that they wanted to.
9 There is no new evidence that has been brought for why
10 they wouldn't have known these issues or have
11 addressed them, and perhaps have, within the hearings
12 themselves.

13 Okay. Other comments? Is there any
14 opposition to, or disagreement with, that stated
15 position?

16 (No response.)

17 If there's no further discussion on that,
18 I take, Ms. Miller, that that's a motion, a motion to
19 deny?

20 VICE CHAIRPERSON MILLER: Yes, you can
21 take that as that.

22 BOARD MEMBER ETHERLY: Second, Mr. Chair.

23 CHAIRPERSON GRIFFIS: Excellent. Thank
24 you very much, Ms. Miller, Mr. Etherly.

25 The motion is before us. Is there further

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1 discussion?

2 (No response.)

3 Not noting any further discussion, I'd ask
4 for all those in favor signify by saying aye.

5 (Chorus of ayes.)

6 Opposed?

7 (No response.)

8 SECRETARY MOY: Staff would record the
9 vote on the motion to deny the request to reopen the
10 record, the motion on the part of the Vice Chair, Ms.
11 Miller, seconded by Mr. Etherly. Vote is four to zero
12 to one in support of the motion, the Chairman, Mr.
13 Griffis, and Mr. Mann, Mr. Jeffries, not present, not
14 voting.

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

17 Mr. Moy also indicated Exhibit Number 99
18 from Mr. Rasmussen. I wasn't sure if you were
19 indicating that there was action required from the
20 Board. If so, I -- there may well be, just to take it
21 into the record as we had not left the record open for
22 continuing accumulation of letters outside of the
23 parties' responses that we had requested.

24 However, I don't have any opposition to
25 accepting this into the record as it -- it goes to the

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1 basis of the testimony that was brought up at the
2 hearing time. And this is almost a reissuance of the
3 oral testimony in written form, and I don't think it's
4 anything new that needed to and was not -- or given
5 the opportunity was not addressed in the hearings.
6 But let me hear from others.

7 (No response.)

8 Very well. Is there any opposition to
9 accepting Mr. Rasmussen's submission into the record?

10 VICE CHAIRPERSON MILLER: No opposition.

11 CHAIRPERSON GRIFFIS: Excellent. Then,
12 let's move ahead.

13 Cases like this seem -- well, cases like
14 this remind me often of how large issues and large --
15 well, for our purposes, large projects come before us.
16 And oftentimes, or most of the time, it's hard to
17 decipher the smaller issues that we actually have
18 before us, and the jurisdiction of which we have when
19 -- when one looks at it from street level, and a
20 community member or a participant or an applicant for
21 that matter. You see the whole world as you put this
22 together. And how can you not see that?

23 And that -- that -- oftentimes it becomes
24 very difficult for my purposes in deliberating on
25 cases somewhat like this. As you start to have to

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1 remove so much from what you will decide, the amount
2 of authority we have over certain things are -- are
3 very limited.

4 It goes specifically into this case, and
5 I think that this is a large project. There has
6 clearly been a lot of work that has happened on
7 everyone's side, from the community, from the Reed-
8 Cooke Association, from the adjacent neighbors to the
9 ANC, to the applicant, in putting all of this
10 together. And it is a complicated and an interesting
11 project as it evolves.

12 But when we come down, what we have and
13 what we're talking about is the size of a loading
14 berth, the relief from that, and the provision of the
15 rear yard. And, you know, if I was better spoken this
16 morning, I might make it sound very glamorous in how
17 that is. But it really isn't. I mean, and I think it
18 is fairly straightforward of what we're looking at.

19 However, it does get to be a little bit
20 more integrated when we look at the issues around the
21 loading berth as the dimensional requirement that our
22 regulations dictate. And if that variance is made
23 based on its uniqueness and practical difficulty,
24 really what we perhaps are getting into -- and I found
25 most of the testimony went to -- whether it would have

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1 detrimental impact or impair the public good.

2 And I don't think it rose to the level of
3 the zone plan map, but that's really what we're --
4 we're -- the substance of what we're getting into.

5 And let me, lastly, in my opening -- and
6 then, I'll open it up to everyone to speak -- is I'm
7 incredibly impressed with the thoroughness of
8 everyone's participation in this -- and I think it's
9 an excellent, excellent showing on everyone's part --
10 the submissions.

11 It really focuses and becomes
12 determinative of what we have to do, and it shows a
13 great understanding of our -- of our process, and I
14 think it's very appreciative -- one, the direct
15 comparison and the response of each of the submissions
16 that are in, the discussion, obviously, in the
17 hearing, but also in the last submissions of each of
18 the conditions and the impacts of those conditions,
19 and the substantive issues of which everyone is
20 concerned.

21 That being said, I'll open it up to
22 others, if they would -- to begin their discussion.

23 VICE CHAIRPERSON MILLER: Okay. I'll
24 begin. I think, just to comment on what you said, I
25 think perhaps that some of the parties thought -- or

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1 wanted this case to be about whether or not there
2 could be a supermarket here, and really, in fact, the
3 only issues that we're dealing with are the size of
4 the loading berth and the rear yard variance.

5 So I'm going to jump right into the
6 variance test that's before us for those two
7 variances, if that's all right.

8 CHAIRPERSON GRIFFIS: Excellent.

9 VICE CHAIRPERSON MILLER: Okay. So the
10 first test for a variance is whether the property is
11 unique or has some exceptional circumstances. This
12 aspect has not been contested. It's an existing
13 building, it's on the lot, which brings with it
14 certain constraints as to how they can work with the
15 property. And it's an irregular-shaped building, and
16 we have a situation where internal structures don't
17 accommodate modern uses.

18 The next test that we need to address is
19 -- and these go to both of the variances -- strict
20 application of the zoning regulations would require a
21 practical difficulty in complying with them. And with
22 respect to the rear yard, we already have an existing
23 building that's nonconforming with the rear yard, and
24 I think in this particular situation they want to
25 install an elevator.

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1 They have to install an elevator to gain
2 access to a new floor, and the most efficient place to
3 place the elevator is against the wall. Otherwise,
4 they're going to have to take away parking. There are
5 practical difficulties with placing the elevator
6 elsewhere, which is the loss of parking and the
7 greater expenses that would be involved.

8 And with respect to the loading berth, we
9 have here they want to have a smaller loading berth
10 than what the regulations require. And there's no
11 need for the larger loading berth, because they've
12 agreed to only have smaller trucks come because of the
13 narrowness of the street.

14 There would be additional costs for a
15 larger berth, and it would create complications in the
16 layout and design of the garage and the loss of
17 parking spaces.

18 So I don't think that -- that issue was
19 not contested either, and we get to the adverse
20 impacts to the public from a smaller loading dock.
21 And the rear yard is not contested, so we can just
22 deal with the smaller loading dock. And I think what
23 has happened in this case basically is that I don't
24 think that there are adverse impacts from a smaller
25 loading dock compared to a larger loading dock.

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1 But what we have is there may be some
2 adverse impacts associated with loading, and so,
3 therefore, the applicant has worked with the community
4 and Office of Planning and DDOT to come up with
5 conditions that would address those adverse --
6 possible adverse impacts.

7 CHAIRPERSON GRIFFIS: Excellent. That
8 frames it out very well.

9 All right. We'll follow up on the rear
10 yard variance and say that I believe that the case
11 presentation is persuasive, even -- on top of the fact
12 that it is not contested. But, clearly, I think your
13 meaning was that there weren't testimony and evidence
14 brought to the Board's attention that would -- would
15 persuade us otherwise.

16 I mean, it is fairly clear that the
17 threshold of the test for practical difficulty is not
18 to say it's impossible, but is it practically
19 difficult. And as we look at this holistically and
20 look at the requirement for parking and space
21 utilization, and the circulation on the upper floors,
22 it was pretty clear that this would eliminate up to 10
23 parking spaces if certain accommodations couldn't be
24 made, and certainly that becomes a level of practical
25 difficulty.

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1 Very well. Others?

2 The loading dock -- you made a small --
3 you made a statement regarding that diminishing the
4 size doesn't impact -- I forget what it actually was,
5 but I guess the number of trips. Perhaps that's not
6 what you're saying, but the -- it seemed to me a
7 fairly complicated discussion in the hearing about if
8 you -- if you weren't able to do the larger trucks,
9 does that start to increase the number of trips you
10 have to do to service?

11 I don't think there were persuasive
12 statistics on it that -- that having those large
13 structures would diminish a lot. As we did hear,
14 depending on the different vendors, there are
15 different sizes, and there are different trucks.

16 There was the combination that was being
17 talked about by the applicant to deal with loading on
18 the street. Also, the -- in terms of the directions
19 of streets. DDOT did have a last submission on that.
20 I didn't find it definitive, but they were talking
21 about the possible establishment of the one-way street
22 on 17th Street.

23 Yes?

24 VICE CHAIRPERSON MILLER: I think what I
25 said was that the smaller loading berth would not

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1 create greater adverse impacts than the larger loading
2 berth, because the applicant said that in any of that
3 they are only going to be using the smaller trucks
4 that would fit on the smaller loading berth, because
5 of the narrow streets and because of their agreement
6 also with the community.

7 CHAIRPERSON GRIFFIS: Okay.

8 VICE CHAIRPERSON MILLER: Agreement to the
9 conditions that we'll get to discuss.

10 CHAIRPERSON GRIFFIS: Good. All right.
11 But I think it does go to the substance of what you
12 were saying is that is what is the impact of the
13 loading. And we talked about crossing the sidewalks,
14 the number of trips, the sound of the doors entering
15 and exiting, and opening and closing, and so I think
16 that we will have some discussion on the time window
17 of availability to use the dock and other operating
18 aspects of that, and also whether there is an actual
19 manager on the loading.

20 VICE CHAIRPERSON MILLER: Also, just on
21 that point, my recollection of the testimony is that
22 the smaller loading berth allowed for greater storage
23 space, which would contribute to a lower frequency of
24 deliveries perhaps.

25 CHAIRPERSON GRIFFIS: Okay. Others?

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1 BOARD MEMBER MANN: I just have a comment,
2 not so much a question, but it's an interesting
3 question to ponder, that had they not been seeking
4 relief from the loading dock requirements, and if they
5 were going with the longer loading dock, then there
6 wouldn't have been conditions necessarily even
7 associated with that. But that's just sort of a
8 theoretical question.

9 CHAIRPERSON GRIFFIS: Okay. Good point,
10 an interesting thought. Any other aspects that need
11 to be brought to public light in terms of the findings
12 and -- of which will be determinative of our decision?

13 VICE CHAIRPERSON MILLER: You're not
14 referring to conditions yet, are you?

15 CHAIRPERSON GRIFFIS: No.

16 VICE CHAIRPERSON MILLER: That's what I
17 thought.

18 CHAIRPERSON GRIFFIS: Okay. Well, then,
19 let's get to it. Are you interested in discussing the
20 conditions? If so, I would propose that you put a
21 motion. We can discuss the conditions under a motion.

22 While you're getting ready for that, let
23 me make one more statement that I think goes directly
24 to, of course, both of the variance tests. And Ms.
25 Miller laid it out a little bit, but I think there's

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1 -- it's clear in the record, but this is an existing
2 structure and a very unique structure, not to mention
3 the size of it, the location of it.

4 But the physical structure of it as it was
5 built, and its volumes and its massing actually goes
6 to some of the rear yard uniqueness and practical
7 difficulty -- the vaulted ceiling and the utilization
8 of how it's carved up and how, you know, light
9 actually gets in and out.

10 To that, though, there is a huge amount --
11 or not huge. It is built for below-grade parking, and
12 it has its ingress and egress already situated. You
13 know, the front doors are there, the vehicle access is
14 there, the loading docks are there.

15 What is -- which I think is -- is part of
16 the uniqueness and is part of the practical difficulty
17 is you have these already placed. Now, how do you
18 accommodate this adaptive reuse to a structure that
19 is, you know, pretty much one of a kind, certainly in
20 this neighborhood, as the record shows, if not
21 anywhere else.

22 That's an important aspect as we kind of
23 factor back into this is this is totally different
24 than if it was brand-new construction, and all of
25 which was open to the architecture developer and how

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1 you position these things, and how you would better
2 accommodate the demands of a grocery store of this
3 size. Okay.

4 VICE CHAIRPERSON MILLER: I just want to
5 follow up on that, too, because that -- that was a big
6 part of the hearing I think where -- this isn't --
7 what's not before us is whether or not there can be a
8 grocery store here, and we heard, you know, concerns
9 about the garage door going up and down and bothering
10 neighbors.

11 But I think we pretty much indicated at
12 the hearing that that's really not before us, and
13 that's not something within our jurisdiction to
14 address.

15 CHAIRPERSON GRIFFIS: Right. And the
16 issue to address -- actually, I think Mr. Rasmussen
17 made it, and a couple of others in the hearing -- the
18 issue of if you were to compare uses, which we aren't,
19 that's not what we can do, but if we were to compare
20 -- because it's in the record -- to an office
21 building, and some of the adjacent neighbors are
22 saying, "Well, an office building would have less
23 impact in terms of the driving coming in and out, and
24 the lights that would shine, as opposed to this," I'm
25 not -- there would need to have been a lot more

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1 information to be persuasive on that element, because
2 there's nothing that precludes a commercial office
3 building from being a 24-hour use, or having three
4 shifts from, you know, beginning shift to night shift.
5 And who knows? Maybe it would be a call center, you
6 know, and it was 24 hours, and there are people coming
7 in and out.

8 These kind of things I think -- I think
9 that -- which goes directly back to the uniqueness of
10 the structure, its size -- once utilized, once
11 reanimated, will have that kind of density and use.

12 Okay. Are you ready?

13 VICE CHAIRPERSON MILLER: At this point,
14 I'd like to move to grant approval for the Application
15 Number 17395 of Jemal's Citadel, pursuant to 11 DCMR
16 Section 3103.2, for a variance from the rear yard
17 requirements under Section 774, a variance from the
18 nonconforming structure requirements under Subsection
19 2001.1, a variance from the requirement to provide a
20 loading berth that is 55 feet deep under Subsections
21 2201.1 and 2201.6, to allow the establishment of a
22 mixed use project, including a grocery store and
23 general offices in the RC/C-2-B District, at premises
24 1631 Kalorama Road, N.W., as conditioned at this
25 meeting.

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1 CHAIRPERSON GRIFFIS: Excellent. Is there
2 a second?

3 BOARD MEMBER MANN: Second.

4 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.
5 Ms. Miller?

6 VICE CHAIRPERSON MILLER: Basically, the
7 applicant has worked with Office of Planning and the
8 ANC and the community and has proposed it looks like
9 18 conditions which -- which are set forth on pages 21
10 through 23 of the proposed findings of fact and
11 conclusions of law, which I think we could work with.

12 I think that basically there is one major
13 point of contention with the ANC, and that involves
14 the number of deliveries per day.

15 CHAIRPERSON GRIFFIS: Okay.

16 VICE CHAIRPERSON MILLER: I don't know if
17 you want to go through each one or --

18 CHAIRPERSON GRIFFIS: Absolutely.

19 VICE CHAIRPERSON MILLER: -- how you want
20 to do it.

21 CHAIRPERSON GRIFFIS: What would you
22 propose for conditions? Mr. Mann?

23 BOARD MEMBER MANN: Well, I was just going
24 to also note that on the previous page, on page 20 of
25 the proposed conditions, under number 6, there was one

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1 condition that was also proffered in relation to the
2 one aspect regarding the side yard, and it goes to
3 prohibiting any more construction of that space into
4 usable space, which they would have had to -- they'd
5 have to seek further relief to do that anyway, because
6 they've already maxed out -- they are going to be
7 maxing out their FAR at 1.5, but I don't have any --
8 I don't have any reason not to accept that condition.

9 VICE CHAIRPERSON MILLER: Just for
10 clarification, I think that's repeated in number 18 on
11 page 23.

12 BOARD MEMBER MANN: Yes. Good.

13 CHAIRPERSON GRIFFIS: So, I'm sorry, Mr.
14 Mann, your position is you don't -- you don't see the
15 total rationale for having that condition as it would
16 require relief. However, you don't have any
17 opposition to maintaining it.

18 BOARD MEMBER MANN: That's right. There
19 was no indication given that they're going to seek
20 that in the future, but this would prohibit them from
21 doing that anyway, without amending the order.

22 CHAIRPERSON GRIFFIS: I see. Okay. Very
23 well.

24 BOARD MEMBER MANN: But as Ms. Miller
25 points out, it's -- I overlooked the fact that it's

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1 number 18 on the other proposed conditions anyway.

2 CHAIRPERSON GRIFFIS: Okay. Condition
3 number 1 proposed by the applicant is analogous to ANC
4 condition number 2. For purposes of the conditions,
5 the terms "truck" and "vehicle" both mean motor
6 vehicle. Are we needing to condition the definition,
7 or can we do that in a finding? I think it would be
8 more appropriate as a finding, defining it. It's
9 certainly not a condition we would want to enforce,
10 measure, unless we want to restate that. Yes?

11 VICE CHAIRPERSON MILLER: I would agree.
12 I don't think it has to be stated as a condition. And
13 when the order is written up, it could be in a
14 footnote or in -- wherever.

15 CHAIRPERSON GRIFFIS: Excellent. We can
16 just have it as a clarification or a finding in the
17 hearing as it was defined for the purposes of this
18 specific application.

19 Proposed condition number 2, which is
20 analogous to ANC 1, which -- uses received goods, will
21 refuse deliveries from trucks exceeding 40 feet in
22 length. It's also similar to Office of Planning's
23 condition number 3.

24 Obviously, that went to the reduction in
25 the impact of the loading dock size, not being able to

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1 move a 55-foot truck in. I guess that's what they
2 are.

3 Questions? Concerns? Do you --

4 VICE CHAIRPERSON MILLER: I think that's
5 very -- that's critical.

6 CHAIRPERSON GRIFFIS: Okay. We'll refuse.
7 Okay, good.

8 Third, which is ANC 2. Owner would
9 propose that the District of Columbia Department of
10 Transportation -- that relocated 17th Street loading
11 zone be limited to vehicles not exceeding 40 feet in
12 length.

13 Concern with that? There should be. That
14 condition is -- is patently useless. The owner will
15 propose -- they could do that today. They can propose
16 anything. If we want to have that intent actually
17 maintained, let's look at what the intent is and write
18 that with some measurable, enforceable, and actually
19 some outcome to the condition.

20 This was the point of -- there was -- I
21 think it was 60 feet, linear feet, or what have you,
22 and the location of the street loading.

23 VICE CHAIRPERSON MILLER: We also got into
24 our record, perhaps even after this was submitted, a
25 memorandum from DDOT that discusses how they will

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1 coordinate with the applicant and the ANC with respect
2 to establishing one-way street patterns, modifications
3 to curbside regulations, and monitoring truck
4 operations, so -- and addressing traffic circulation.

5 So I think we -- that should be,
6 obviously, in our decision, that this is what's going
7 to be happening, and perhaps we don't need this as a
8 condition.

9 CHAIRPERSON GRIFFIS: Or it should be --
10 might be specifically noted, if we do feel it's -- it
11 actually would reduce the possibility of a detrimental
12 impact. But I agree, let's start looking at pulling
13 these into condition -- proposed condition number 7,
14 which goes to no C of 0 would be issued until after
15 the D.C. Department of Transportation has approved a
16 truck management plan.

17 I mean, that's what all of these elements
18 and issues are, right? Are we okay with giving that
19 amount of authority to DDOT in terms of issuance of a
20 C of 0? Or is that any concern? Is it -- I'd just
21 bring it up.

22 I don't have any difficulty with that,
23 especially in this case. I think it's very clear on
24 the specific elements. It's not something that's
25 opening up an undefined or unreachable goal and

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1 situation.

2 I mean, it's very clear in putting a truck
3 management plan together, and certainly they would
4 want to make it accommodating prior to opening for
5 their own use purposes. That is, the tenant, and
6 obviously the city, should be able to instruct based
7 on its knowledge and concern.

8 VICE CHAIRPERSON MILLER: Right. We also
9 have indication that they've already started to work
10 with the applicant on this. So I think that's
11 appropriate.

12 BOARD MEMBER ETHERLY: So to be clear, Mr.
13 Chairman, where we are, has proposed condition number
14 3 been disposed of?

15 CHAIRPERSON GRIFFIS: I would say we start
16 adding into condition number 7, no Certificate of
17 Occupancy under the truck management plan, which would
18 include, but not be limited to, looking at the loading
19 zone on 17th Street, or defining a loading zone on
20 17th Street.

21 I think we don't want to lose some of the
22 specifics. They were critical aspects of how -- what
23 was going to be -- how it was going to be utilized.
24 But, you know -- confusing?

25 VICE CHAIRPERSON MILLER: So what are you

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1 saying? And loading zone?

2 CHAIRPERSON GRIFFIS: Under 7, we'll put
3 some specific items, if we think that they need to be
4 included or addressed in the truck management plan.
5 If they don't, then leave it out.

6 BOARD MEMBER ETHERLY: Or, conceivably,
7 could you simply append the language that's referenced
8 in Exhibit Number 97, which is DDOT's memorandum?
9 Perhaps at the close of the current number 7, insert
10 everything following, "DDOT will coordinate with the
11 applicant," all the way through to "as described in
12 the truck management plan," just append that at the
13 conclusion of Exhibit -- of proposed condition number
14 7?

15 CHAIRPERSON GRIFFIS: Yes, I think that
16 makes -- might make some sense in terms of the
17 language, and it reads, "DDOT will continue with the
18 applicant and the applicable ANC regarding proposed
19 rulemaking, to establish one-way street patterns on
20 17th Street, as well as modifications to curbside
21 regulations described in the truck management plan."
22 Is that what you're saying? Also, monitor truck
23 operations at the grocery store and make additional
24 adjustments that may be necessary to improve safety
25 and provide adequate traffic circulation.

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1 BOARD MEMBER ETHERLY: Actually, I'd say
2 that's what I was getting at, but that might also
3 already be captured in proposed condition number 14,
4 which is referred to as ANC 12. So maybe it's already
5 included. Either way, I have no objection with
6 condition number 7, as it's proposed.

7 CHAIRPERSON GRIFFIS: Good. Okay. I
8 think what we're saying, though, in terms of number 3
9 is that it's going to be incorporated. It's either
10 going to be covered in 14, 7, or another one that
11 we're about to get to.

12 BOARD MEMBER ETHERLY: Okay.

13 CHAIRPERSON GRIFFIS: So let's move ahead,
14 then. Proposed condition number 4, Uses, "Receiving
15 goods through the enclosed loading area will be
16 limited, the number of deliveries, to 40 weekdays, 40
17 Saturdays, and 15 on Sundays, along with newspapers."

18 Ms. Miller? Keep it in, reword it, edit?
19 Comments by anyone?

20 BOARD MEMBER ETHERLY: I have no
21 objection, Mr. Chair.

22 CHAIRPERSON GRIFFIS: Yes?

23 VICE CHAIRPERSON MILLER: I just need a
24 minute, because I -- I thought that the -- the point
25 of contention is on the number of deliveries. And in

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1 the cover letter to applicant's proposed findings and
2 conclusions of law, they reference 40 deliveries.

3 So I'm not sure why this says -- well, I'm
4 just not sure why this is identified as ANC 3, because
5 I thought that the ANC wanted fewer deliveries, like
6 20 or something like that. Just so that we're clear
7 what -- whose condition we're looking at.

8 CHAIRPERSON GRIFFIS: Right. I don't
9 think that it should be -- to be clear, I wasn't sure
10 that they were adopting the ANC's conditions. ANC
11 condition number 3 reads --

12 VICE CHAIRPERSON MILLER: 20.

13 CHAIRPERSON GRIFFIS: -- "Harris-Teeter
14 will limit the number of truck deliveries to
15 approximately 20 on weekdays, 10 on Sundays, and
16 newspapers only on -- or newspapers only on Sundays."
17 In fact, in the hearing it was -- if I recall
18 correctly, there was direct testimony saying that they
19 have always said that it would be, you know, 20. It
20 wasn't -- in the hearing it came out it was 40, and I
21 think that's the fact of the matter, and that's what
22 we have presented before us.

23 The issue comes down to whether or not
24 that -- the direct link from the loading dock goes to
25 the adverse impact of the number that it takes to

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1 service an establishment like this. Or like the
2 building -- it's not just this one tenant we're
3 talking about either, which we'll get into a little
4 bit later.

5 VICE CHAIRPERSON MILLER: I think this is
6 the time, though, to give the ANC the great weight and
7 discuss, you know, if we're going to adopt the 40, why
8 we would adopt 40 over the ANC's proposal for 20 and
9 10, and --

10 CHAIRPERSON GRIFFIS: Okay. How do you
11 see that the ANC established the 20 and the 10?

12 VICE CHAIRPERSON MILLER: I don't think
13 they did. I don't think they made the case that there
14 is an adverse impact from the difference between 40
15 and 20, even though it's more traffic. I think that
16 the -- based on the testimony, I recollect that the 40
17 was necessary for the feasibility of the operation of
18 the grocery store.

19 CHAIRPERSON GRIFFIS: Okay.

20 VICE CHAIRPERSON MILLER: So I would be in
21 favor of the condition as proposed by the applicant.

22 CHAIRPERSON GRIFFIS: Okay. Other
23 comments?

24 BOARD MEMBER MANN: I would also support
25 that and say that the applicant based that number on

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1 legitimate operational requirements, and they didn't
2 just pull that number out of the air. And they also
3 have agreed to try to limit the number of deliveries,
4 to the extent that they can, by coordinating
5 deliveries and loading the trucks in a different way.
6 But, I mean, they all sprung from legitimate
7 operational requirements.

8 And, again, if they weren't requesting
9 relief from that loading dock size, I mean, then we
10 wouldn't even be addressing that condition. They
11 could have as many deliveries as they wanted.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. GLAZER: Mr. Chair, and members of the
14 Board, sorry to interrupt, but I wondered if you could
15 clarify the issue about the newspapers. The language
16 in proposed condition number 4 in the applicant's
17 proposed order is slightly different from the
18 language.

19 In the other proposal, it -- one says
20 newspapers only, and the other one doesn't. And it's
21 not clear to me what the Board's intent is with
22 respect to this.

23 CHAIRPERSON GRIFFIS: Anyone want to
24 provide their own clarity? I see the language as
25 fairly clear, and I'm not sure where the Board is

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1 going with it, whether it adopts it or not. But it's
2 fairly clear in the testimony that was presented.

3 Normal deliveries are required on Sunday.
4 And then, on -- in addition to those, there are
5 newspaper deliveries that come in on Sunday, and that
6 they were talking about -- the ANC's first condition
7 was that I'm not sure if they were wanting this, or
8 perhaps at some point of discussion it was stated that
9 there would not need to be any deliveries on Sunday.

10

11 But that was -- that was clarified in my
12 mind that that's not a -- that's not a wavering issue,
13 that there were less deliveries required, but there
14 are deliveries required. Now, whether we'd prohibit
15 those or not, that's up to us.

16 The importance of the newspapers, I'm not
17 really -- you know, I'm not sure we need to
18 differentiate, but --

19 VICE CHAIRPERSON MILLER: Well, I mean, I
20 think that the conditions should be clear on their
21 face, you know, because they're going to be there for
22 a long time for the public to look at. And I think
23 that I agree with the Assistant Attorney General that
24 this is not clear, and so I -- I would be willing to
25 even scratch the newspapers part. I can't imagine

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1 that they -- we didn't hear any evidence that they are
2 going to cause a big adverse impact by their delivery.

3 CHAIRPERSON GRIFFIS: There it is. So
4 your position, Ms. Miller, on condition number 4 is --
5 you indicated that the ANC didn't provide persuasive
6 or substantive back -- go ahead.

7 VICE CHAIRPERSON MILLER: No. Just
8 looking at this, unless for some reason by my taking
9 out the newspapers now it's going to affect -- limit
10 the newspapers, because they're not included in the 15
11 or 40 or, you know, so maybe we have to do something
12 here.

13 CHAIRPERSON GRIFFIS: How do you read
14 that? 15 on Sundays, along with newspapers. Is that
15 15 -- the newspapers are a part of the 15?

16 VICE CHAIRPERSON MILLER: Does it read
17 including newspapers, is that the --

18 CHAIRPERSON GRIFFIS: Yes.

19 VICE CHAIRPERSON MILLER: I don't know.
20 I don't know what they intended. I --

21 CHAIRPERSON GRIFFIS: I read them as
22 separate. There are 15 deliveries, in addition to
23 there will be newspaper deliveries on Sundays. They
24 don't sell a daily newspaper?

25 VICE CHAIRPERSON MILLER: So not including

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1 newspapers?

2 CHAIRPERSON GRIFFIS: Do you want to
3 preclude it?

4 VICE CHAIRPERSON MILLER: Not including.
5 No, I just mean that -- I don't really want to limit
6 the newspapers. That's my only point. It's just
7 really a language thing here.

8 CHAIRPERSON GRIFFIS: It seems to me
9 what's being stated is that we're allowing 15
10 deliveries on Sundays, and we're also allowing, with
11 that, the delivery of newspapers. Is that correct?

12 BOARD MEMBER MANN: Yes, although I think
13 that it should be -- I think newspapers can be
14 delivered on any day. I don't know that it was even
15 specific to Sundays.

16 CHAIRPERSON GRIFFIS: Right.

17 BOARD MEMBER MANN: But maybe we should
18 just end the sentence with, "On Sundays," period, and
19 then say, "Newspaper deliveries are not included in
20 the deliveries above." Or, "Newspaper deliveries are
21 also allowed in addition to the deliveries stated
22 above."

23 CHAIRPERSON GRIFFIS: I see.

24 BOARD MEMBER ETHERLY: But do any of my
25 colleagues recall any -- I mean, I know that both the

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1 language of newspapers is reflected in both of the
2 proposed conditions, both of the sets of proposed
3 conditions. But do my colleagues recall any specific
4 testimony to the number of newspaper deliveries? I'm
5 inclined just to nix that language altogether.

6 CHAIRPERSON GRIFFIS: But would that -- do
7 you understand that that would effectually remove one
8 of the other deliveries anticipated? So it's -- we
9 allow 39 deliveries of all other items, and one
10 delivery of newspaper? Is that what you're saying, if
11 we took that language out? It seems to me you read
12 this and it says, "Look, these are our servicing
13 deliveries -- 40 on weekdays." That does not count
14 the newspaper trucks that come in and drop off
15 newspapers. So it's in addition to those.

16 BOARD MEMBER ETHERLY: Well, I would lean
17 -- I would lean towards, then, perhaps the language
18 that someone had suggested about just parceling the
19 newspapers out. But I have no frickin' clue --

20 CHAIRPERSON GRIFFIS: Yes.

21 BOARD MEMBER ETHERLY: -- how to
22 quantify --

23 CHAIRPERSON GRIFFIS: You know, what's
24 interesting is that --

25 BOARD MEMBER ETHERLY: -- that, being --

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1 in all honesty.

2 CHAIRPERSON GRIFFIS: Right. No, I think
3 it's -- I think we've gotten to the level of
4 absurdity, so we need to move on.

5 BOARD MEMBER ETHERLY: I don't know how
6 the record is going to reflect "frickin,'" so if
7 someone can help me spell that out.

8 CHAIRPERSON GRIFFIS: We want to get into
9 the timing, and the timing allowed for loading, and if
10 they load off of 17th Street. Don't papers usually
11 come before 7:00 a.m.? I mean, conceivably, I think
12 -- I think we probably should remove that from the
13 condition, that element of deliveries. It seems to be
14 a little bit -- a very independent kind of vendor that
15 is servicing not just this specifically but the area
16 in total.

17 BOARD MEMBER ETHERLY: But I know that for
18 the language, and not to be flip about it, I know that
19 the ANC and other interested parties are anticipating
20 that there will be additional -- conceivably would be
21 additional vehicular impact by virtue of those
22 deliveries.

23 But I'm just not sure how to kind of
24 capture the --

25 CHAIRPERSON GRIFFIS: Yes.

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1 BOARD MEMBER ETHERLY: -- the
2 quantification of that. So --

3 CHAIRPERSON GRIFFIS: Well, here's where
4 it came out, as I read this. I think -- and this
5 wasn't addressed in the hearing, but it seems like the
6 ANC was saying, "We don't want any deliveries on
7 Sunday," except for --

8 BOARD MEMBER ETHERLY: Except --

9 CHAIRPERSON GRIFFIS: -- the newspapers.

10 BOARD MEMBER ETHERLY: -- newspapers.

11 CHAIRPERSON GRIFFIS: And that's where
12 this newspaper delivery starts to come in.

13 VICE CHAIRPERSON MILLER: I think maybe we
14 don't have to go too far down on this right now, but
15 I think our intent might be when we rewrite this
16 condition to say that newspapers are not limited by
17 this condition, because I think it goes to what Mr.
18 Etherly was saying -- when we have a condition and we
19 don't have any testimony or evidence as to why it
20 should be included, I think that we should not include
21 it, because I would hate to impose the limitation
22 where we don't understand why there should be one.

23 CHAIRPERSON GRIFFIS: I disagree with that
24 on this specific case, because we do have -- we have
25 plenty of testimony. We're talking about loading.

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1 We're talking about truck generation, trip generation,
2 to this. And that's one of them.

3 I think where the differentiation is, and
4 the reason why it shouldn't be in this condition, is
5 there wasn't enough testimony to decide what that
6 impact is, because, as I said, the hours are probably
7 different, the timing is very different perhaps. I
8 don't think that falls into the specific use in
9 servicing the proposed tenants in this application.

10 BOARD MEMBER ETHERLY: So you would not --

11 CHAIRPERSON GRIFFIS: I would not include
12 it. So we're just -- we are just conditioning the 40
13 deliveries, not including the newspapers.

14 BOARD MEMBER ETHERLY: But you wouldn't --

15 CHAIRPERSON GRIFFIS: So the condition
16 does not cover the newspapers.

17 BOARD MEMBER ETHERLY: But would you
18 include the language of not including newspapers?

19 CHAIRPERSON GRIFFIS: Possibly.

20 VICE CHAIRPERSON MILLER: We know what our
21 intent is.

22 CHAIRPERSON GRIFFIS: Right.

23 VICE CHAIRPERSON MILLER: I think we're in
24 agreement. I don't think we're in disagreement.

25 BOARD MEMBER ETHERLY: Yes, I agree.

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1 VICE CHAIRPERSON MILLER: Okay.

2 CHAIRPERSON GRIFFIS: Number 5? Uses
3 other than the office. Uses -- will accept deliveries
4 solely within the 17th Street loading dock, or its
5 side door from the 17th Street loading zone.
6 Deliveries would not be allowed on the Kalorama Road
7 pedestrian or vehicular entrances. Condition does not
8 apply to routine dropoffs and pickups, Postal Service,
9 FedEx, and UPS.

10 Any difficulty with the language there?
11 Any changes required? Any opposition to that?

12 BOARD MEMBER ETHERLY: No opposition.

13 CHAIRPERSON GRIFFIS: Okay. And that
14 actually adopts almost directly some of the ANC's
15 condition -- the word in the ANC condition number 4.

16 Condition number 6, we're getting into
17 hours of -- for the 17th Street loading zone.
18 Comments? We'd limit the 17th Street loading zone
19 from Monday to Friday 7:00 to 4:00, Saturday 7:00 to
20 4:00, and after 8:00 a.m. on these days the dock
21 manager will direct vehicles delivering goods flowing
22 through the enclosed loading area to do so inside that
23 area, rather than from the 17th Street loading zone,
24 if this would not disrupt other deliveries underway or
25 scheduled.

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1 Is everyone clear on what they're saying?
2 Okay. As I read this, what it's saying is, look,
3 you're going to have a dock manager, right, that's
4 going to make sure that, you know, trucks are coming
5 in and getting out and someone doesn't just sit there.
6 Okay?

7 So you have that person, and the truck is
8 coming up, but the loading dock is empty. And they're
9 pulling up on 17th Street, because it's faster, it's
10 right there. He's going to be responsible for
11 directing them to get off the street into the loading
12 dock, bring it inside. It seems to be fairly rational
13 and make some sense.

14 BOARD MEMBER ETHERLY: I'd have no
15 objection to that proposed language. I will note that
16 there is a one-hour difference with regard to the
17 Saturday loading hours, as proposed by the applicant,
18 7:00 a.m. to 4:00 p.m., versus the ANC's suggestion of
19 7:00 a.m. to 3:00 p.m.

20 Based on my recollection of the testimony
21 presented, I don't recall any specific impacts that
22 were necessarily identified with respect to the
23 difference in the hour on Saturday. So I'd be
24 inclined to stick with the 4:00 p.m. language there,
25 but I just wanted to identify that difference between

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1 the two proposals.

2 CHAIRPERSON GRIFFIS: Okay. Excellent.

3 Any other comments on that one? Okay.
4 Ms. Miller, the vagueness, you were indicating
5 vagueness of what? When they have to, or how they get
6 them off the 17th Street loading zone?

7 VICE CHAIRPERSON MILLER: I don't -- I
8 don't recall saying that, commenting. I mean, I think
9 it's a little wordy, but it's -- I don't remember
10 making that comment.

11 CHAIRPERSON GRIFFIS: Okay. Any
12 difficulty with the intent?

13 VICE CHAIRPERSON MILLER: No.

14 CHAIRPERSON GRIFFIS: Okay. Let's move
15 ahead, then. What?

16 VICE CHAIRPERSON MILLER: Before you --
17 before you flip the page, I know we discussed
18 number 7, but I'm really not clear how it was
19 resolved. And I'm wondering if it just should be left
20 the way it is.

21 CHAIRPERSON GRIFFIS: I think it may well,
22 just for simplicity. In my mind, when I looked at
23 this, and I had read this -- and, frankly, it's a very
24 important aspect -- that seems to be the -- the
25 crucial condition. And all of these other specifics

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1 that we're putting in are important, but fall under
2 that condition.

3 I mean, every element from the time on the
4 17th zone to the direction to the loading dock
5 manager, all of that I am hoping is part of the truck
6 management plan that's being worked out with DDOT.

7 VICE CHAIRPERSON MILLER: Good. That's
8 why I think it looks good, clean, and simple maybe the
9 way it is. Okay.

10 CHAIRPERSON GRIFFIS: Okay. You are a
11 modernist. No detail. Clean line.

12 Okay. Condition number 8, ANC 7A, hours
13 for the overhead door and operate -- at the loading
14 dock will be limited to Monday-Friday 8:00 to 4:00,
15 Saturdays 8:00 to 4:00, Sundays 10:00 a.m. to
16 2:00 p.m., along with up to three more openings and
17 closings after those hours, but ending prior to
18 9:00 p.m. each day.

19 If you recall, this is a situation -- it's
20 the utilization of the loading dock. It's inside when
21 that door comes up and goes down. And the aspect was
22 is that there are deliveries that are required off-
23 hours, and those will be brought inside. Clearly,
24 they're not going to be allowed with our condition of
25 time constraints on 17th Street. They're going to

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1 have to get them in. Understood?

2 VICE CHAIRPERSON MILLER: Yes.

3 CHAIRPERSON GRIFFIS: Okay. Questions?
4 Comments? Further clarifications on those conditions,
5 or objection to that condition? Okay. Yes?

6 BOARD MEMBER ETHERLY: I'll make the same
7 observation. There is a difference in the hours as
8 presented by the applicant versus the ANC.

9 CHAIRPERSON GRIFFIS: Right.

10 BOARD MEMBER ETHERLY: But, once again, I
11 don't recall specific testimony that spoke to whether
12 or not there was a heightened nature of impact as you
13 get -- as you get into the later hours of the day.

14 So I would -- I would have no objection to
15 the time component. I'll note that there is reference
16 in the ANC submittal to the issue of soundproofing or
17 sound-dampening technologies for use with respect to
18 the overhead door.

19 CHAIRPERSON GRIFFIS: Right.

20 BOARD MEMBER ETHERLY: So I'll just kind
21 of highlight that. I don't have a particular
22 perspective one way or the other on whether or not
23 that language should be included in the condition.

24 CHAIRPERSON GRIFFIS: Okay. Good. I
25 think it absolutely should. What the applicant has

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1 done, as you know, is made it a separate condition.

2 BOARD MEMBER ETHERLY: Separate condition,
3 yes.

4 CHAIRPERSON GRIFFIS: So we can address
5 that with this. Let me just address this time,
6 because some of the testimony that was brought up was
7 the time and the importance of time in the 2:00 hour
8 was when the trucks would cross the sidewalk. And it
9 had to do with the amount of people that were walking,
10 but also the school hours and children walking on that
11 sidewalk.

12 I think that the impact is mitigated one
13 -- you have a curb cut there. There's always caution
14 that you have to provide. But with a loading dock
15 manager, that's another aspect that I think is going
16 to be critical in terms of directing the backing up.
17 I mean, it's a tight -- none of us should be unaware
18 from the testimony how tight that's going to be to get
19 into those loading docks.

20 That manager -- I think a critical
21 responsibility is going to be making sure that it's
22 safe and that the trucks come in without hitting the
23 building, and certainly that no one walks into his
24 passage. But that is the only thing that I saw that
25 impacting in terms of the time. So I would not have

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1 any hesitation in accepting and crafting the condition
2 number 8 close to what is written here.

3 VICE CHAIRPERSON MILLER: I just want to
4 make a comment while it's on my mind, and that is that
5 -- and we have said that we don't just blindly accept
6 conditions, even though they are agreed to, by all of
7 the parties. And so that's what we're doing is, you
8 know, analyzing each condition.

9 But we have -- we have, in many instances,
10 and we didn't do it in this one, and I wish we had,
11 asked for a rationale for each condition, because I --
12 I think that that's what we're doing here is we're
13 kind of trying to remember or figure out what the
14 rationale might be, and that in the future maybe we
15 ought to ask for rationales.

16 CHAIRPERSON GRIFFIS: I think we're doing
17 a darn good job of remembering, finding our
18 rationalization for it. But you're absolutely right.
19 The whole point of the fact is that the conditions go
20 directly to something that has been brought to a
21 persuasive level of being a potential adverse impact.
22 And conditioning -- conditioning variances also is a
23 -- is a unique aspect, and I think this rises to the
24 level of having that done.

25 Okay. Going next to this, Mr. Etherly,

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1 has gotten us to condition number 9. I think it's
2 critically important. "The overhead loading dock door
3 shall be equipped with soundproofing and sound-
4 dampening technologies." I would add that a level of
5 continuance here to be -- I would add something to
6 say, "Be maintained in good and operable condition,"
7 these technologies. I mean, just buying into that.
8 We want to make sure that it lasts and works.

9 I think it's an important point, based on
10 the fact of -- as is in the testimony and the record.
11 The basis of this condition is its proximity to a
12 residential zone.

13 Okay. 10? "Overhead door shall be
14 closed, except when vehicles enter and exit, unless
15 the overhead door would otherwise need to operate
16 again within the following 15 minutes. An exterior
17 sign denoting such must be provided." That also runs
18 along -- Office of Planning had proposed something of
19 that nature.

20 Makes sense. Programming -- I don't see
21 any difficulty with that. That's obviously something
22 else that the dock manager will be in charge of doing,
23 and I think that's an important feature -- would be
24 the first indication that the door is broken, it needs
25 repair.

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1 Okay. Next condition? 11, "Loading dock
2 side door will be accessible for deliveries for goods
3 only Monday-Saturday 7:00 to 4:00, Sundays for
4 newspapers only." Here we have that newspaper issue
5 again.

6 BOARD MEMBER ETHERLY: That particular
7 condition tracks fairly closely the language of the
8 ANC proposal, of course, again, with the discrepancy
9 -- discrepancy of hours, being an hour earlier and two
10 hours later. I'll continue to kind of hold my line in
11 terms of erring on the side of the applicant here.

12 Part of my thinking with some of these
13 hours gets to the issue of as you spread out, or as
14 you provide for a somewhat heightened window of
15 vehicular traffic, I think that is going to enable the
16 applicant to err on the side of spreading out the
17 vehicular impact of deliveries, such that because
18 you're not squeezing in as many vehicles in a smaller
19 window, you don't necessarily, I think, encounter the
20 issue of having to just keep a constant steady, steady
21 flow of traffic.

22 You're able to kind of spread this out a
23 little bit, so that's a little bit of my thinking with
24 respect to sticking with the 7:00 a.m. to 4:00 p.m.
25 window as is proposed in proposed condition number 11

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1 by the applicant.

2 CHAIRPERSON GRIFFIS: Okay. Others?

3 VICE CHAIRPERSON MILLER: I would agree.
4 And I don't think we have testimony or evidence, you
5 know, to -- that showed any adverse impact per se from
6 the difference.

7 CHAIRPERSON GRIFFIS: But isn't this
8 talking about peace on Saturday morning? The
9 difference between 7:00 and 8:00?

10 VICE CHAIRPERSON MILLER: Yes. But what
11 Mr. Etherly was saying was, well, it might be noisier
12 at 8:00 if you have to have more trucks coming at 8:00
13 per se. I mean, we're just kind of speculating.

14 BOARD MEMBER ETHERLY: This is true. I
15 mean, I think the question is -- is a good one, and I
16 think that is the spirit of a good portion of the ANC
17 discussion here. But I tend to still think that part
18 of the balance here is you're balancing peace on each
19 weekday and weekend morning with, okay, where do you
20 also draw the line in terms of closing off the
21 delivery.

22 I think Ms. Miller hit it right on the
23 head in that to an extent we're kind of speculating
24 here, because there wasn't an extensive amount of
25 testimony on this, but I think it is somewhat common

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1 sensical that -- that, yes, you want to ensure that
2 there is peace and quiet to -- wherever possible.

3 But I think -- I think, again, spreading
4 it out through a somewhat larger window deals with I
5 think what was the chief issue here, which is that of
6 vehicular impact. And I think the sooner you get --
7 the sooner you can get it started -- that doesn't mean
8 I would suggest, well, let's extend the darn thing to
9 5:00 a.m. or 4:00 a.m.

10 I mean, obviously, you then begin to
11 invoke other regulations that aren't the purview of
12 this Board. But I think -- I just don't recall
13 testimony that significantly spoke to any vehicular
14 issues in particular that would be caused by an
15 earlier start and a later finish.

16 CHAIRPERSON GRIFFIS: Okay. Good
17 clarification.

18 Condition 12, as proposed by the
19 applicant, there will a dock manager on duty whenever
20 exterior loading is underway for goods flowing through
21 the enclosed loading area, or vehicles are moving in
22 and out of the dock area, as well as from 6:30 a.m. to
23 9:00 a.m. school days.

24 Any difficulties to --

25 BOARD MEMBER MANN: I don't necessarily

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1 understand the 6:30 a.m. when they can't start
2 accepting deliveries until 7:00 anyway. But I -- it
3 seems like they're dictating what time somebody needs
4 to be at work to make sure that operations occur
5 adequately starting at 7:00.

6 VICE CHAIRPERSON MILLER: Well, first of
7 all, the applicant has proposed this. So, you know,
8 I think they have the problem. And I think we had
9 testimony --

10 CHAIRPERSON GRIFFIS: The ANC proposed the
11 time, but go ahead.

12 VICE CHAIRPERSON MILLER: Oh. But this
13 says -- but the applicant agreed to it, though.

14 CHAIRPERSON GRIFFIS: I understand.

15 VICE CHAIRPERSON MILLER: Okay. And we
16 did hear testimony about conflicts and safety issues
17 with school children, and I think this addresses that.
18 I mean, I can understand that the dock manager should
19 be there ahead of time of when the trucks are going to
20 come, you know, so I think that's why it's there. So
21 I would support that.

22 CHAIRPERSON GRIFFIS: Good. 13,
23 deliveries to -- limited to hand carts and dollies
24 only, goods not to exceed what can pass through a door
25 that is no more than 48 inches wide. Fascinating

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1 condition, actually. If you recall the testimony,
2 that's the size of the door that they have -- 48
3 inches. That's a pretty big door.

4 Any difficult with that, in the wording?
5 I think it's obviously -- well, better -- okay.

6 (No response.)

7 If there's no opposition to that, we'll
8 move to 14, in which the owner is agreeing to support
9 the DDOT changing regulations of local streets that
10 could channel or restrict routes of delivery vehicles
11 or hours that could be presented within the limits of
12 the loading dock, etcetera. This includes support for
13 one-way changes that would result in Kalorama being
14 one way westbound from 16th to 17th Streets, etcetera.

15 Comments?

16 VICE CHAIRPERSON MILLER: I don't think
17 it's an appropriate condition, but I do think that it
18 should be represented in the decision as a finding of
19 fact that the owner has agreed to do that.

20 CHAIRPERSON GRIFFIS: I would agree. I
21 have great concern in conditioning something like
22 this, because what we're conditioning is a position to
23 take on something that is going to be reviewed,
24 analyzed, and designed. I wasn't that persuaded that
25 we had -- maybe we didn't ask for enough testimony.

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1 That may be our fault. But I -- certainly, the time
2 was given for ample testimony to discuss this one way
3 or traffic patterns, and the like.

4 It didn't seem like it was arising
5 directly out of the dimensional requirements of the
6 loading dock. However, we also didn't get deeply into
7 that.

8 I think it was very well illustrated how
9 small the streets are surrounding the existing
10 streets, and the difficult nature of -- of servicing
11 this. But that being said, I'm not sure we want to
12 condition a position of -- of the owner.

13 BOARD MEMBER ETHERLY: Is this potentially
14 an area where DDOT's language in their December 29th
15 submittal could be captured and included in the
16 condition? I think the spirit here is trying to
17 ensure that whatever -- whatever DDOT deems to be most
18 appropriate for ensuring adequate and safe operation
19 of the applicant's operations are -- that those
20 regulations are captured somehow. So this --

21 CHAIRPERSON GRIFFIS: I think it's totally
22 captured. I think that's exactly where we need to go,
23 Mr. Etherly, and that is DDOT's short paragraph that
24 they submitted -- it says that they'll review the
25 proposed truck management plan prepared by the

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1 applicant, in general agreement with the proposed use
2 of the loading docks and curbside loading zones.

3 And then, it goes on, as we've already
4 indicated, it's going to look at all of these aspects.
5 Further, it says they will also monitor operations and
6 make any additional adjustments that are necessary to
7 improve safety and provide adequate traffic
8 circulation.

9 Well, there it is. I mean, that allows
10 them to be able to, one, take a look at the flow of
11 traffic in the area now, as it starts going, and to
12 adjust it as it's implemented. I mean, I don't think
13 DDOT has a one-time position and responsibility on
14 this. It's going to be ongoing.

15 VICE CHAIRPERSON MILLER: I have proposed
16 language, actually, that we could -- for a possible
17 condition.

18 CHAIRPERSON GRIFFIS: Good.

19 VICE CHAIRPERSON MILLER: Pulling from
20 DDOT's memo at Exhibit 97, we could possibly say that
21 the applicant will coordinate with DDOT and the ANC
22 regarding proposed rulemaking to establish one-way
23 street patterns on 17th Street, N.W., and Kalorama
24 Road, N.W., as well as modifications to curbside
25 regulations as described in the truck management plan.

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1 BOARD MEMBER ETHERLY: No objection, Mr.
2 Chair.

3 VICE CHAIRPERSON MILLER: Picking up from
4 that, what do you think of that? Or maybe a little
5 less specific, but that they will coordinate on that
6 issue?

7 CHAIRPERSON GRIFFIS: Yes. I mean, I
8 don't have any major problem with that. I mean, we
9 might want to include the neighborhood association in
10 that also. But I don't -- it just seems redundant.
11 And if we're saying they can't get a C of O until DDOT
12 approves the truck management plan, the truck
13 management plan deals with all of these issues. And
14 then, we're going to condition that they have to
15 coordinate with that?

16 Well, you know, I think they're going to,
17 if they can't open their store without it. But I
18 don't have any difficulty in --

19 VICE CHAIRPERSON MILLER: I don't know.
20 I don't feel strongly about it either. I mean, I
21 think we have a representation from DDOT that they're
22 going to coordinate with the ANC and the applicant, so
23 maybe it's not necessary.

24 BOARD MEMBER ETHERLY: Okay. With that
25 rationale, Mr. Chair, I'm comfortable erring on the

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1 side of textual efficiency in taking it out.

2 CHAIRPERSON GRIFFIS: Okay. 15, "Waste
3 from the grocery store use will be stored in a
4 container to be located within the enclosed loading
5 area. The contents will only be collected weekdays
6 between 9:00 and 3:00, Saturdays 10:00 and 2:00, if
7 needed, but only during weekdays with a Friday or
8 Monday holiday -- only during weekends with a Friday
9 or Monday holiday." Sounds thorough. 15.

10 16 -- this is a fascinating one. "Plastic
11 recycling from the grocery store use will be stored in
12 the loading area, or within empty trailers, prior to
13 transport to recycling center. The applicant has to
14 remove to North Carolina or Harris-Teeter's recycling
15 center." Probably makes some sense.

16 Questions? Clarifications? Any objection
17 to including, Ms. Miller, into your motion that
18 condition, number 16?

19 VICE CHAIRPERSON MILLER: No.

20 CHAIRPERSON GRIFFIS: I think it's very
21 important to do it. There wasn't extensive testimony,
22 but nor did we need that type of testimony. And
23 talking about the utilization of space as it directly
24 links to the dimensional requirements of loading and
25 how it's all used, I think it's important to have

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1 those type of functions indoors, which obviously can
2 be, then, condition 17, under an extermination plan.

3 BOARD MEMBER ETHERLY: Mr. Chair?

4 CHAIRPERSON GRIFFIS: Yes.

5 BOARD MEMBER ETHERLY: If I could, just to
6 be sure about the language for 16, you're -- you're
7 going to track the applicant's language there, or the
8 proposed ANC language? The only difference was there
9 was kind of specificity to --

10 CHAIRPERSON GRIFFIS: Right.

11 BOARD MEMBER ETHERLY: -- specific. I
12 just wanted to make sure I was clear on that.

13 CHAIRPERSON GRIFFIS: Yes.

14 BOARD MEMBER ETHERLY: Okay. You're
15 taking out the reference to --

16 CHAIRPERSON GRIFFIS: Right. We're not
17 going to tell them where to ship it.

18 BOARD MEMBER ETHERLY: Thank you.

19 CHAIRPERSON GRIFFIS: Okay. 17 is,
20 "Extermination program would be put into effect, to
21 include with full preventative services and aggressive
22 monitoring to ensure no problem areas develop."

23 BOARD MEMBER ETHERLY: No objection.

24 VICE CHAIRPERSON MILLER: Is there a typo
25 here?

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1 CHAIRPERSON GRIFFIS: Yes, I think there
2 is a typo, but we can correct that. Okay. All right.
3 Okay. Good. We'll move on.

4 BOARD MEMBER MANN: Is that for the
5 loading dock area? Is that the idea, or for --

6 CHAIRPERSON GRIFFIS: As I read that, they
7 would have no problem areas. There's a lot of
8 problems with this one -- I mean, a lot of problems.
9 I mean, if you just take it apart, and having not gone
10 to law school I won't, but, you know, I mean, until
11 problem areas develop? When did they develop? Are
12 they -- we're not responsible, because we didn't
13 develop those areas?

14 Anyway, I think that whole point and
15 intent, and I think we're going to reword this, but
16 the intent is to have in place a consistent
17 extermination plan for the property. Right? Okay.

18 18, which is parallel to Office of
19 Planning's condition number 2. "The area under the
20 dome identified as 'unoccupiable' shall not be
21 converted to useable space." Mr. Mann brought this up
22 before. We can keep it in, but he made the pertinent
23 point that if they were to come back it would go
24 beyond the allowable FAR, and, therefore, would take
25 a variance from the FAR allowable 1.8 in the Reed-

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1 Cooke overlay.

2 I think what it goes to, if we were going
3 to condition it, we'd have to be fairly decided that
4 what we're doing is conditioning this because we're
5 trying to limit the amount of use of this. So we're
6 thinking even though -- I mean, it's loosely based,
7 but by limiting that allowable we're saying that --
8 well, I don't know if we're saying that at all. Okay.

9 VICE CHAIRPERSON MILLER: I absolutely
10 would like to be clearer on the rationale for
11 including this condition, if someone wants to shed
12 some light on that. I mean, if they're not allowed as
13 -- if they're not allowed as a matter of right, why
14 does it need to be a condition --

15 CHAIRPERSON GRIFFIS: Well, I guess --

16 VICE CHAIRPERSON MILLER: -- is my
17 question. Well, I was just looking back at the OP
18 report. It says, "OP has concerns that the remaining
19 area could be easily converted to office space and
20 thereby increase the FAR of the building without a
21 permit. To minimize the probability of this taking
22 place, the applicant has proposed that the remaining
23 area will be separated from the office space by a
24 partition wall constructed of eight-inch steel studs
25 and two layers of drywall on either side of the

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1 studs."

2 Well, I don't -- I guess it doesn't do any
3 harm. It just gives a greater assurance that it's not
4 going to be occupied.

5 CHAIRPERSON GRIFFIS: Very well. Then,
6 you don't have any opposition to maintaining condition
7 18 as stated?

8 VICE CHAIRPERSON MILLER: No. I guess in
9 this case, then, I would just give OP the benefit of
10 the doubt and give them great weight.

11 CHAIRPERSON GRIFFIS: Excellent position.
12 Very well.

13 Anything else, Ms. Miller, on your motion
14 that's been conditioned with upwards of 17 conditions?
15 Possibly 16, once we finish.

16 VICE CHAIRPERSON MILLER: I have one more
17 comment to make with respect to giving ANC -- the ANC
18 great weight. I think they -- they said something to
19 the effect that if certain conditions weren't
20 accepted, then we should consider a 46-foot berth.
21 But I don't recall any testimony at the hearing about
22 the impact of that, and I don't think that that is
23 justified in this case.

24 CHAIRPERSON GRIFFIS: Well, there was some
25 testimony on that, but I agree -- I won't take too

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1 much of the time, but that's where we got into the
2 discussion of when we view a truck on the street, from
3 a layperson's perspective, what's the dimension?
4 What's the size? What are we actually talking about
5 at a 40 foot, and a 55 foot, and the differentiation
6 between the large, you know, semi's I think we
7 understand.

8 But in terms of the other delivery, I
9 wasn't sure that the Board fully understood that. I
10 know I didn't personally understand, and I thought
11 that there was good illustration brought, and so that
12 the impact, I would tend to agree, would not change
13 substantially, if at all, the elements that we were
14 looking at in terms of the number of deliveries, or
15 whether precluding anything above 40 feet trucks would
16 -- would have the impact of, you know, diminishing the
17 deliveries or increasing deliveries.

18 Okay. Did you find that we have, then,
19 met the five conditions of the ANC for their support,
20 or not?

21 VICE CHAIRPERSON MILLER: I believe we did
22 not.

23 CHAIRPERSON GRIFFIS: That's correct. We
24 didn't do --

25 VICE CHAIRPERSON MILLER: Because I think

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1 certainly one of them was the number of deliveries.

2 CHAIRPERSON GRIFFIS: Right.

3 VICE CHAIRPERSON MILLER: Yes. However,
4 I think that we have given them great weight by
5 addressing why we disagree with that condition.

6 CHAIRPERSON GRIFFIS: Okay.

7 VICE CHAIRPERSON MILLER: I have nothing
8 further to add on my motion.

9 BOARD MEMBER ETHERLY: I would -- just to
10 kind of round that discussion out, Mr. Chair, I would
11 agree with Ms. Miller's -- I'm in support of the
12 motion and would agree with Ms. Miller's assessment of
13 kind of our approach to the ANC aspect of this.

14 I think there has been substantial work
15 done by both the ANC, Reed-Cooke, and other interested
16 parties with regard to this application -- yeoman's
17 work if you will -- in regard to addressing a number
18 of very complicated issues. And I think while there
19 may be aspects of this that parties and interested
20 persons may not be entirely in agreement with, I just
21 think it has been an excellent amount of work put
22 together on this.

23 I'll note, just for the benefit of our
24 deliberation, that there are also some substantive
25 differences in terms of the proposed findings of fact

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1 that are laid out by the ANC and the applicant. And
2 I'm sure the Board will take that into consideration
3 as we kind of put together our own findings of fact
4 here.

5 But I just -- I just think it can't be
6 emphasized enough that there just was a tremendous
7 amount of work done on the part of the applicant and
8 the ANC and other interested parties in terms of
9 pulling together these proposed conditions. So I just
10 wanted to emphasize that for the record.

11 Thank you, Mr. Chair.

12 CHAIRPERSON GRIFFIS: Thank you very much,
13 and I think that is absolutely critical -- to make
14 sure that everyone understands -- is that we will be
15 establishing and going through and reviewing as we
16 start to draft our own order for issuance.

17 Very well. Others?

18 (No response.)

19 Okay. Is there anything else, then?

20 (No response.)

21 Very well. If there's nothing further
22 from the Board's perspective, let's move ahead. We do
23 have a motion before us. It has been seconded and
24 conditioned. I'll open it up -- ask for any further
25 discussion or deliberation on that. Any other

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1 conditions?

2 (No response.)

3 Not noting any indication of further
4 discussion or deliberation, let me ask for all those
5 in favor of the motion signify by saying aye.

6 (Chorus of ayes.)

7 And opposed?

8 (No response.)

9 Abstaining?

10 (No response.)

11 Mr. Moy, if you wouldn't mind.

12 SECRETARY MOY: Yes, sir. The staff would
13 record the vote as four to zero to zero, and that's on
14 the motion of Ms. Miller to approve the application as
15 -- with conditions, seconded by Mr. Mann. Also in
16 support of the motion, the Chair, Mr. Griffis, and Mr.
17 Etherly.

18 Mr. Chairman, we also have an absentee
19 ballot from Mr. Jeffries, who also participated on the
20 case, and his -- his ballot is to approve the
21 application with such conditions as the Board may
22 impose, which would give a final vote as five to zero
23 to zero.

24 CHAIRPERSON GRIFFIS: Excellent. Thank
25 you, Mr. Moy. We appreciate that.

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1 That being said, let's move on to the next
2 case for discussion.

3 SECRETARY MOY: Yes, sir. That case is
4 Application Number 17405 of MacArthur Laverock, LLC,
5 on behalf of Cathie E. and Philip C. Guzzetta,
6 pursuant to 11 DCMR 3104.1, for a special exception to
7 permit an addition to a single-family detached
8 dwelling under Section 223, not meeting the rear yard
9 requirements under 404 in the R-5-A District, at
10 premises 4598 Laverock Place, N.W. That's in Square
11 1356, Lot 36.

12 On December 13, 2005, the Board completed
13 public testimony on the application and scheduled its
14 decision on January 10, 2006. The record was closed,
15 except for the filing of a stamped surveyor's plat.
16 That plat was filed with the office on January 3,
17 2006, and is identified in your case folders as
18 Exhibit 34/34A.

19 The staff would conclude its briefing by
20 saying that the Board is to act on the merits of the
21 application.

22 CHAIRPERSON GRIFFIS: Excellent. Thank
23 you very much, Mr. Moy. We appreciate that,

24 And we also welcome Mr. Turnbull with us,
25 representing the Zoning Commission this morning on

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1 this case.

2 Let me open it up. This is a 223. We had
3 seen this earlier on as part of a different
4 application. This application, of course, stands on
5 its own 223 for the addition of a rear deck. There is
6 and was positions of opposition on this, in terms of
7 how this might negatively impact the privacy and use
8 of the adjoining neighbor, which is an institutional
9 neighbor.

10 There was also an issue that was brought
11 up in this case presentation as to the original
12 application and its requirements for screening, and
13 the type of screening that that was.

14 I'll open it up to others for
15 deliberation, but I think we ought to do this under a
16 motion. And I would move approval of Application
17 Number 17405 of the Laverock, LLC, and that is
18 pursuant to the special exception under 223, of which
19 this is not meeting the rear yard requirement, and ask
20 for a second.

21 BOARD MEMBER ETHERLY: Second, Mr. Chair.

22 CHAIRPERSON GRIFFIS: Thank you very much,
23 Mr. Etherly.

24 Getting right to this, of course, what was
25 also interesting on this case is that there is an

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1 owner that has moved into the property. However, the
2 developer has come back with what I think is a showing
3 of their responsibility to remedy the situation as
4 this addition or porch was put on during construction,
5 and, obviously, was not part of the original
6 application as it was reviewed or it went through in
7 this area from the Board.

8 Opening it up, I didn't see anything
9 persuasive in terms of the testimony that indicated
10 that this would somehow impair the light or air or
11 privacy of use of the adjacent properties. It is at
12 the rear, adjacent to an open area. As I said, it's
13 an institutional neighbor.

14 The distance, as I recall, estimating it
15 during the hearing, was hundreds of feet between the
16 structures and open. There was issue of whether it
17 was appropriate for the current owner to be able to
18 stand out on that deck and look into the institutional
19 back yard and what was happening there, but that is
20 not cured if this is not built, as one could look out
21 their windows or, frankly, be in the rear yard, as it
22 is. Plus, who wouldn't want to look out on the deck
23 and see those -- well, I won't say.

24 Okay. Others? Just for comments.

25 VICE CHAIRPERSON MILLER: Yes. I think in

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1 this case -- came before us because the deck was built
2 without a permit, and it was built after this Board
3 had, in fact, granted a variance allowing other
4 construction. And I think that was of major concern
5 to the community, and rightfully so, and of concern to
6 this Board.

7 But I think, as the Chair said, this was
8 the response, the solution, to come back to the Board
9 and seek special exception relief for the deck. And
10 I would agree that there wasn't really a case made
11 that there was an adverse impact from the deck itself
12 with respect to light and air on abutting properties,
13 or other criteria but -- set forth in the special
14 exception test.

15 But what I'd also like to draw attention
16 to is to give the ANC the great weight by addressing
17 -- they make six points, I think, in Exhibit 26 that
18 I think would be useful to -- to address and would
19 help clarify why we're reaching -- well, why we may be
20 reaching this decision.

21 Number 1 -- I'm reading from page 3 --
22 number 1 says that the -- well, it says the deck
23 should be removed for the following reasons.
24 Number 1, the plans submitted for a variance granted
25 on July 27, 2004, and the plans built are not the same

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1 and do not meet the requirement of Title XI, Section
2 3125.8.

3 Okay. The variance -- that's not before
4 us. What's before us is just the special exception
5 relief.

6 CHAIRPERSON GRIFFIS: Right. It's an
7 enforcement issue, not a zoning issue. Okay.

8 VICE CHAIRPERSON MILLER: And, again,
9 number 2 goes to the variance under BZA Order
10 Number 17193, which I think is the same point.

11 Number 3, Bogdan Builders did not seek
12 additional relief prior to installing the deck. I
13 don't see how that addresses a special exception test.
14 Do any of you guys?

15 CHAIRPERSON GRIFFIS: Procedural question.
16 Okay.

17 VICE CHAIRPERSON MILLER: Four, Bogdan
18 Builders did not install the agreed-upon evergreen
19 buffer and substituted a wooden fence in its place.
20 I think, again, that goes to the previous order, and
21 what we're looking -- what we were looking at in this
22 case and trying to focus on is whether that buffer had
23 something to do with adverse impacts on the abutting
24 property, and I think we can address that in our
25 analysis under the special exception. But this --

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1 this point does not. It's just -- it's saying they
2 didn't do what they agreed to do.

3 Fifth goes to -- any other comments on
4 that one?

5 CHAIRPERSON GRIFFIS: Well, it seems to me
6 that there was some ambiguity of exactly what was
7 required by our first relief application. Of course,
8 an applicant developer is required to build according
9 to plan. But we are very specific on conditions that
10 relate directly to the application of relief sought of
11 what is mandated. I mean, that's what we condition.

12 VICE CHAIRPERSON MILLER: That's true.

13 CHAIRPERSON GRIFFIS: So there's
14 flexibility in building, based on the plans submitted,
15 except those that waver from what we have required.
16 And I was looking at that as, yes, the landscape plan
17 showed more of an evergreen screening. However, the
18 intent, in my personal opinion, in view of the
19 application and this application, the intent of the
20 screening was fulfilled with a wooden fence.

21 VICE CHAIRPERSON MILLER: I think that's
22 true. I think to a certain extent this is one area
23 where it -- it did get a little blurred between the
24 previous order and the special exception relief,
25 regarding the adverse impact. And I think that there

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1 was testimony that it -- that they found problems in
2 trying to implement planting that evergreen buffer.
3 Okay.

4 With respect to number 5, there's no
5 proven hardship in this case. Hardship isn't a test
6 for special exception.

7 CHAIRPERSON GRIFFIS: Right.

8 VICE CHAIRPERSON MILLER: Let's see.
9 Granting a four-foot rear yard setback would establish
10 a precedent that would render -- this is six -- would
11 render rear yard setbacks meaningless and
12 substantially impair the intent, purpose, and
13 integrity of the zone plan as embodied in the zoning
14 regulations and map.

15 I think we've often said that special
16 exceptions are looked at on a case-by-case basis, and
17 granting one does not establish a precedent that
18 renders zoning regulations meaningless.

19 Also, the Office of Planning didn't find
20 that this would impair the intent, purpose, and
21 integrity of the zone plan.

22 So those -- those -- I just wanted to make
23 sure that we covered the ANC's concerns.

24 CHAIRPERSON GRIFFIS: Excellent. I think
25 it's absolutely appropriate to do, and I'm glad you

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1 did.

2 Others?

3 COMMISSIONER TURNBULL: No, I think --
4 both of your comments I think reflect what a lot of us
5 are thinking, that there is several issues that are
6 involved here. But I think you've touched on them
7 very well, and I think we concur -- I concur with
8 that.

9 CHAIRPERSON GRIFFIS: Excellent. Any
10 other comments, then?

11 (No response.)

12 I think it was important to bring up the
13 -- also, the reliance on the Office of Planning's
14 analysis of the special exception under 223 in this
15 case. That being said, we do have a motion before us.
16 It has been seconded. If there is any further
17 discussion, now would be the time.

18 (No response.)

19 Not noting any requirement for additional
20 deliberation, I would ask for all those in favor of
21 the motion signify by saying aye.

22 (Chorus of ayes.)

23 Opposed?

24 (No response.)

25 Abstaining?

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1 (No response.)

2 SECRETARY MOY: Staff would record the
3 vote as five to zero to zero. This is on the motion
4 of the Chair, Mr. Griffis, to approve the application,
5 seconded by Mr. Etherly. Also in support of the
6 motion, Mr. Mann, Ms. Miller, and Mr. Turnbull.

7 CHAIRPERSON GRIFFIS: Excellent. Thank
8 you very much, Mr. Moy.

9 The next case?

10 SECRETARY MOY: The next case for decision
11 is Application Number 17402 of Karl H. Lass Family
12 Trust, pursuant to 11 DCMR 3103.2, for a variance from
13 the residential recreation space requirement under
14 Section 773, and a variance from the area and width
15 requirements for a closed court under Section 776, to
16 allow an addition to an existing multiple dwelling in
17 the C-2-C District at premises 1109 M Street, N.W.
18 That's in Square 314, Lot 3.

19 On December 20, 2005, the Board completed
20 public testimony on the application and scheduled its
21 decision on January 10, 2006. The Board requested the
22 following post-hearing documents: 1) draft or
23 proposed findings of fact and conclusions of law,
24 including conditions. This was filed by the applicant
25 on December 30, 2005, and is identified in your case

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1 folders as Exhibit 33.

2 The office has also received a response to
3 that filing by the party in opposition, who filed a
4 list of proposed conditions. And that is identified
5 in your case folders as Exhibit 35.

6 Staff will conclude by saying that the
7 Board is to act on the merits of the application.

8 VICE CHAIRPERSON MILLER: My understanding
9 is that there is also a request from Saxa House
10 Condominium Association to -- for the Board to admit
11 their proposed findings and conclusions of law that
12 were submitted one day late. I would recommend that
13 we grant their motion. There isn't any prejudice to
14 the parties. They faxed the pleading to the parties.
15 Okay.

16 BOARD MEMBER ETHERLY: No objection, Madam
17 Chair.

18 VICE CHAIRPERSON MILLER: So by consensus,
19 then, we'll do that.

20 SECRETARY MOY: Thank you.

21 VICE CHAIRPERSON MILLER: I think I would
22 just like to jump right into this variance analysis.
23 They've applied for two variances, one dealing with
24 the residential recreation requirement, and one
25 dealing with the closed court.

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1 So we have three criteria. One is that
2 the property is unique, one is that -- or subject to
3 some extraordinary or exceptional condition. Second,
4 that there is some practical difficulty in complying
5 with the regulations as a result of that uniqueness.
6 And, third, that granting the variance won't cause
7 substantial detriment to the public good, or impair
8 the intent, purpose, integrity of the zone plan or
9 zoning -- zoning map.

10 Okay. So with respect to uniqueness,
11 there was a contention that the property is not
12 unique. So I think -- in my view, I think it is
13 unique. It's long and narrow. It's 125 feet in
14 length by 23.5 feet in width.

15 The neighboring property, which is the
16 Saxa House Condominium Association, the party in
17 opposition, says it's not unique because their
18 property is similar. However, the courts and we have
19 found that just because there's one other like it
20 doesn't mean that it's not unique or subject to
21 exceptional conditions.

22 Also, there already is a building on it,
23 and there is also great precedent that when there's a
24 building already existing that's a unique -- that can
25 be a unique constraint on the property.

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1 And also, it's in a historic district, and
2 HPRB has put specific design constraints on the
3 building. So I think there is also a confluence of
4 factors, which is also supported by Gil Martin that --
5 that supports a finding of uniqueness.

6 And I don't know if anybody else wants to
7 add an opinion on that.

8 (No response.)

9 Okay. And also, when we get to the
10 practical difficulties discussion, the practical
11 difficulties do, in fact, arise out of the unique
12 qualities. For instance, they're going for a
13 residential recreation requirement, and they are only
14 23.5 feet in width. And the regulations, at least for
15 roof top under 773.3, require no dimension less than
16 25 feet in width. So they couldn't meet that
17 requirement because of narrowness of the property.

18 Because there is already an existing
19 building there, if we're looking -- I think we might
20 as well look at the residential rec first. The ground
21 area in front of the building is public space, so they
22 can't put it there. So now they can't -- they don't
23 have qualifying space on the roof, and they don't have
24 qualifying space in front of the building.

25 The only available outdoor space -- and

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1 the regs call for 50 percent of the residential
2 recreation space to be outdoors -- is in the rear
3 yard, and that's being devoted to parking. And we
4 could take away the parking, but actually the parking
5 is actually a more valuable use to the residents and
6 would -- and to the community, because if you don't
7 have the parking there, then it puts more cars on the
8 street.

9 They are limited by the historic
10 preservation constraints on the height of the building
11 and the footprint. So it's not like they could build
12 higher to create more space for residential rec.

13 And they made the case that if they were
14 going to -- with respect to indoor requirements, this
15 is a small space, fairly small space -- it's not like
16 a huge condominium -- they'd have to take -- they only
17 have nine units, and they'd have to take away one of
18 the units and convert it to residential recreation
19 space, and that would make the project unfeasible.

20 It would -- there was testimony that it
21 would raise the cost of the remaining eight units.
22 That would put it beyond comparable units on the
23 market. So I found that compelling, and I don't --
24 well, let me move on to closed court. Do you have
25 comments? No, okay. No other comments on the

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1 residential rec. Okay.

2 Closed court -- the regulation 776
3 requires that a closed court contain a minimum area
4 equal to twice the square of the width of the court
5 based upon the height of the court.

6 I think in this case there's a bay window
7 on the first two levels, so that there's actually less
8 court space on the first two levels and then greater
9 court space above. I don't recall any evidence that
10 there'd be substantial detriment to the public good
11 from this limited court space, and I don't think that
12 it was feasible to create more court space. In fact,
13 I recall something like they'd have to cut floor area
14 from all five levels, which would, again, render the
15 project economically infeasible.

16 With respect to the third prong, no
17 substantial detriment to the public good and will not
18 substantially impair the intent, purpose, and
19 integrity of the zone as embodied in the zoning
20 regulations and map.

21 With respect to the residential recreation
22 space, I think -- there was some discussion about how
23 the units had room for past recreation. You know, I
24 just think it just basically wasn't feasible to
25 provide more, and there is recreation in the

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1 surrounding area. And there certainly -- I think we
2 didn't have any evidence of adverse impact from there
3 not being additional space provided.

4 With respect to the closed court, this --
5 this court is also located far away, on the other side
6 -- it's not abutting the neighboring property that is
7 opposing this application. It -- I don't think there
8 were -- I don't think we heard testimony of adverse
9 impacts from that at all.

10 The fact that above the second floor
11 there's sufficient light and air to enter the -- I
12 think the deviance is only 1.4 feet. It complies with
13 historic preservation concerns. So I don't think
14 there was really adverse impact from that.

15 What we heard was the neighboring property
16 opposes this because of the impact of the building
17 itself on its property, by the fact that is particular
18 property is being built to the property line, which is
19 -- it is allowed to do as a matter of right, and by
20 the fact that the other building is built to its
21 property line.

22 I don't think that the -- I think this is
23 probably where we need to discuss, really, the issues
24 that were raised. But I -- before we do that, I just
25 want to say that it's also located in ANC-2F, and they

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1 have supported the application.

2 There was -- there was testimony about an
3 adverse impact related to the rear passageway, but it
4 really wasn't clear. Certainly -- well, it's clear
5 that it isn't related to the relief being requested,
6 and it seemed to me that some of the impact is due to
7 their own building to their property line.

8 So that's what -- I think we have some
9 conditions if they -- that the party opponent
10 requested that we might want to look at, we should
11 look at as well. But do you all want to comment on
12 any of this before looking at the conditions?

13 BOARD MEMBER ETHERLY: I'll just for the
14 record that I think you provided a very -- more than
15 adequate summary of the relevant facts in the case,
16 and I'm more than happy to associate myself with all
17 of your remarks in their entirety, especially as it
18 related to some of the issues that were raised by the
19 party in opposition. So as we begin to talk a little
20 bit about the conditions, I definitely will be looking
21 at it through the prism that you've laid out. So I'm
22 prepared to move forward.

23 VICE CHAIRPERSON MILLER: Okay. Then, I
24 think what I would do is make a motion on the
25 application, and then we can discuss any -- whether or

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1 not any conditions are in order or not, in which case,
2 then, I would move to grant the Application
3 Number 17402 of Karl H. Lass Family Trust, pursuant to
4 11 DCMR Section 3103.2, for a variance from the
5 residential recreation space requirement under Section
6 773, and a variance from the area and width
7 requirements for a closed court under Section 776, to
8 allow an addition to an existing multiple dwelling in
9 the C-2-C District of premises 1109 M Street, N.W.

10 BOARD MEMBER MANN: Second.

11 VICE CHAIRPERSON MILLER: Okay. We have
12 conditions that were requested in Exhibit Number 35.
13 Do you all have that?

14 BOARD MEMBER ETHERLY: Yes.

15 VICE CHAIRPERSON MILLER: Okay. 35.

16 You ready?

17 BOARD MEMBER ETHERLY: Yes.

18 VICE CHAIRPERSON MILLER: The first one
19 deals with HVAC equipment. It says the rooftop HVAC
20 equipment must be located so as to minimize the noise
21 and visual intrusion on the outdoor rooftop patio on
22 the neighboring building.

23 I think in this case -- well, I think that
24 this is governed by the building code, and it's not
25 really related to the relief that's being granted in

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1 this case. So I would not be in favor of including
2 this as a condition. Do you agree?

3 BOARD MEMBER ETHERLY: I would agree,
4 Madam Vice Chair.

5 VICE CHAIRPERSON MILLER: Okay. Two,
6 redesign the extension of the structure above the
7 shared rear staircase that serves as egress for 1111 M
8 Street and may potentially be the rear egress for 1109
9 M Street, to provide a safe fire code consistent and
10 aesthetic passage with proper pedestrian clearance,
11 such as by beginning the buildout at the third floor,
12 not second, in order to provide safe passage and
13 sufficient air and light.

14 Again, I think that this isn't related to
15 the relief requested. It's certainly not -- I mean,
16 obviously, it's not related to residential rec, and
17 it's not related to the court. And I don't think it's
18 their obligation, and I think it also raises --
19 certainly, fire code is -- is building code issues.

20 So I would be in favor of not including
21 this.

22 BOARD MEMBER ETHERLY: I would agree.

23 VICE CHAIRPERSON MILLER: Okay. The next
24 one says, "Consistent with the building plans
25 presented to the Board by the applicant, there will be

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1 no window openings on the west side of the building.
2 Any window openings on the wall should be set back at
3 least three feet from the property line."

4 I think what -- well, this order will say
5 that -- will grant the variance consistent with the
6 plans that are -- you know, have been presented and
7 are in the record. And I think that's as far as we
8 need to go with respect to -- I don't think we need to
9 get into the question of windows. It doesn't relate
10 to the relief being requested. Okay.

11 BOARD MEMBER ETHERLY: I would agree,
12 Madam Vice Chair.

13 VICE CHAIRPERSON MILLER: So I think
14 that's -- that's all I have. Anybody else?

15 BOARD MEMBER ETHERLY: Mr. Mann may be
16 going exactly to where I was planning to go, so I'll
17 defer to Mr. Mann.

18 BOARD MEMBER MANN: I was just going to
19 ask the Chair if she wanted to address the proposed
20 condition from the applicant.

21 VICE CHAIRPERSON MILLER: Where is that?

22 BOARD MEMBER MANN: Exhibit 33, page 10 of
23 12. The condition is the Board grants the applicant
24 the flexibility to modify the plans submitted in this
25 application to conform with the final plans approved

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1 by HPRB during the building permit review process.

2 VICE CHAIRPERSON MILLER: I think -- I
3 don't have -- well, I don't -- I don't have a problem
4 saying something like that in the order, provided we
5 say that it doesn't affect the zoning relief granted
6 in this case, something to that effect. What do you
7 think?

8 BOARD MEMBER ETHERLY: I'd have no
9 objection to that, Madam Vice Chair. My colleagues
10 will recall from the testimony here that there was
11 quite some substantial discussion at the HPRB with
12 regard to the visual -- the visual and architectural
13 impacts of the proposed project, both in terms of the
14 rear of the property, of course, but then also to an
15 extent from the standpoint of the street frontage.

16 I think we've had occasion to perhaps
17 employ language similar to this in the past, so I
18 would have no objection with it, and I would agree.
19 I think the spirit of your comment is -- to the extent
20 that it doesn't, as you said, impact the zoning relief
21 sought herein, I'd be comfortable with that language.

22 BOARD MEMBER MANN: I agree. Just to
23 clarify, did you say that you would or would not have
24 that as a condition?

25 BOARD MEMBER ETHERLY: I would. I would

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1 include it as a condition, just in case if there are
2 any minor changes that need to be -- need to be
3 implemented.

4 BOARD MEMBER MANN: I know we've often
5 included that sort of language in orders. But do
6 we --

7 BOARD MEMBER ETHERLY: But not as --

8 BOARD MEMBER MANN: -- not include it as
9 a condition? That's why I don't --

10 BOARD MEMBER ETHERLY: I'm flexible either
11 way. I thought we might have, but if -- if we can
12 include that in the body of the -- of the order
13 itself, so it's understood that that flexibility is
14 there.

15 BOARD MEMBER MANN: That's fine.

16 VICE CHAIRPERSON MILLER: I would agree.
17 I think it's -- I think we should, yes, include it in
18 the body. It could be like our last line, not
19 necessarily as a condition, but we will state
20 something to that effect.

21 Any other comments?

22 COMMISSIONER TURNBULL: No. I think my
23 only comment was that I think -- I think the
24 applicant, as a good neighbor, made a gesture on the
25 first floor of his plan, which he was not obligated to

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1 do, and that gesture of not building on a certain
2 percentage of that ground floor, which actually
3 accommodates the next-door building, yes, I think it
4 was a good gesture, which, again, he was not obligated
5 to do, which I think does alleviate some of their
6 concerns.

7 And, I mean, it's an awkward building.
8 It's an awkward situation, but it's not this
9 applicant's problem. But he has dealt with certain
10 issues that relate to that in I think a very equitable
11 manner.

12 VICE CHAIRPERSON MILLER: That's a good
13 point.

14 Okay. Then, I think we're ready to vote.
15 All those in favor, say aye.

16 (Chorus of ayes.)

17 All those opposed?

18 (No response.)

19 All those abstained?

20 (No response.)

21 Okay. Mr. Moy?

22 SECRETARY MOY: Yes, ma'am. The staff
23 would record the vote as four to zero to one. This is
24 on the motion of the Chair, Ms. Miller, to approve
25 with conditions, seconded by Mr. Mann. Also in

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1 support of the motion, Mr. Etherly and Mr. Turnbull.
2 We have Mr. Griffis recused from the case.

3 VICE CHAIRPERSON MILLER: Thank you.

4 (Pause.)

5 CHAIRPERSON GRIFFIS: Very well. Let us
6 continue. As I see on the schedule, as we have
7 reordered it, the next note of business is to call
8 into session the FMBZA, and I will do so, noting the
9 fact that we have been joined by Mr. Parsons.

10 And the Director of the National Capital
11 Planning Commission is not able to be with us today,
12 but we will proceed for the deliberation of a motion
13 to amend one of our final orders under the FMBZA.

14 Mr. Moy?

15 SECRETARY MOY: Yes, sir. Thank you, Mr.
16 Chair. Yes, there is a filing of a -- from the
17 applicant, a motion to amend the language of the final
18 order to Application Number 17382 of the Embassy of
19 Oman. This application was pursuant to 11 DCMR 1002,
20 to permit the expansion of a chancery for the Embassy
21 of the Sultanate of Oman to house the Military Attache
22 and the Cultural Attache in the D/R-1-B and R-1-B
23 Districts, at premises 2535 Belmont Road, N.W. That's
24 in Square 2501, Lots 6 to 8, 15 through 19, and 805.

25 On October 11, 2005, as a matter of

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1 background, the FMBZA completed public testimony on
2 the application and voted not to disapprove the
3 application. And this was by a vote of five to zero
4 to zero. On December 13, 2005, the office received
5 this request by the applicant, and it is identified in
6 your case folder as Exhibit Number 43, which is to
7 amend or correct the final order, which was the final
8 order that was issued on November 23, 2005.

9 Staff will conclude by saying that
10 attached to that letter is a list of proposed language
11 changes to the final order, which is on page 2 and 3
12 of the final order. And staff will conclude at this
13 point, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Excellent. Thank
15 you very much, Mr. Moy.

16 Let's put it to the Board. I would move
17 that we amend our final order to Application 17382.
18 Basically, let's bring it back before us -- would be
19 the motion. Is there a second?

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

22 CHAIRPERSON GRIFFIS: Thank you, Mr.
23 Etherly. Is there discussion on that procedural
24 question? Any opposition speaking to that motion?

25 (No response.)

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1 I'd ask for all those in favor of the
2 motion signify by saying aye.

3 (Chorus of ayes.)

4 And opposed?

5 (No response.)

6 Very well. Now that we've opened this
7 record, I think we can go to the substance of amending
8 the order. And they have provided -- as Mr. Moy had
9 stated, they have provided text to review for the
10 amendment of the final order, in order to include all
11 of the facts and details that we put in.

12 Are there any other comments directly to
13 that or in addition to that? Let me start with Mr.
14 Parsons.

15 COMMISSIONER PARSONS: Thank you. I'm
16 supportive of this, but I -- I'm reminded of the
17 little bit of confusion we had during the hearing.
18 There was an exhibit on the easel, which is now
19 Exhibit Number 37, which had a landscape plan colored
20 -- a series of plants shown along the back wall.

21 And when I came to review the record, as
22 it was placed in, I was unable to read that -- the
23 notations on it. And I think I have a cure to this,
24 but it -- there are 11 plants shown along that wall in
25 an effort to try to screen this from the Rock Creek

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1 Park. But it specifies on that list, or in the same
2 place, plant three white pine and plant three spruce.
3 So that's a total of six instead of 11.

4 Well, I also feel they're the wrong
5 species for this small area. So what I'd like to
6 recommend is that we get very specific. As opposed to
7 the language shown here -- now I'm at the bottom of
8 the first page of their suggested language. That is
9 page 3, fourth paragraph.

10 I'm on the fifth line of that, and it
11 says, "The design of the building, including the
12 height and exterior appearance and features, and with
13 the landscaping" -- and I would insert the following,
14 taking out "as proposed."

15 "As shown on Exhibit 37, except that the
16 11 plants indicated will be arbor vitae, six to eight
17 feet high (*thuya occidentalis*)" -- and I'll give this
18 to the staff. That's the -- that's the botanical name
19 of this plant that I think is much more appropriate,
20 and will at the same time save them money, because
21 they're not as expensive.

22 So that is my suggestion, because -- to do
23 that again, if I went over it too quickly.

24 VICE CHAIRPERSON MILLER: Just say where
25 you're inserting this in the order again.

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1 COMMISSIONER PARSONS: Well, on their
2 language, in Mr. Collins' letter, at the bottom you'll
3 see he has underlined sections -- additions that he is
4 suggesting. And I'm in that fourth paragraph, the
5 bottom of that page.

6 VICE CHAIRPERSON MILLER: All right.

7 COMMISSIONER PARSONS: You don't have
8 this?

9 CHAIRPERSON GRIFFIS: Yes, you do. It's
10 right there.

11 COMMISSIONER PARSONS: So the idea is to
12 take out the words "as proposed," which I think is too
13 confusing, and we'll end up in confusion when they get
14 to get a building permit anyway. And essentially what
15 it does is replaces their call for three white pine
16 and three spruce with a uniform hedge-like device that
17 will grow to about 20 feet high.

18 CHAIRPERSON GRIFFIS: Good. Comments?

19 VICE CHAIRPERSON MILLER: Yes. I'm sorry,
20 just to get nit-picky here. So now that I've found
21 where you're inserting it, can you read it again?

22 COMMISSIONER PARSONS: Read it again?

23 VICE CHAIRPERSON MILLER: Yes, because I
24 didn't have the language in front of me when you --

25 COMMISSIONER PARSONS: Right. So we're

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1 taking out the words "as proposed."

2 VICE CHAIRPERSON MILLER: Got that. Okay.

3 COMMISSIONER PARSONS: "As shown on
4 Exhibit 37, except that the 11 plants indicated will
5 be arbor vitae, six to eight feet high (thuya
6 occidentalis)."

7 VICE CHAIRPERSON MILLER: Okay. And then
8 the language --

9 CHAIRPERSON GRIFFIS: Are you getting all
10 of this?

11 VICE CHAIRPERSON MILLER: -- will have no
12 adverse impact on the -- right?

13 COMMISSIONER PARSONS: Yes, and then
14 continue on. Right.

15 VICE CHAIRPERSON MILLER: Okay.

16 CHAIRPERSON GRIFFIS: Can you give us the
17 Latin spelling of that? Okay. I think it's an
18 excellent point, and the point was is we were called
19 just to put it -- frame it in their minds. As we
20 looked at this, there was the landscape plan that
21 wasn't that detailed in terms -- and readable, as it
22 was distant.

23 COMMISSIONER PARSONS: Right.

24 CHAIRPERSON GRIFFIS: As it came into the
25 record, it was reviewed with this opportunity to put

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1 back into specificity the order which was issued. I
2 think it's absolutely appropriate to make sure, one,
3 that the numerical count of the proposed add up to the
4 11, and then to give an exact species.

5 Okay. Anything else, then?

6 VICE CHAIRPERSON MILLER: I just have one
7 question. I'm sorry.

8 CHAIRPERSON GRIFFIS: Sure.

9 VICE CHAIRPERSON MILLER: What follows
10 then is in parentheses, supposedly where the preceding
11 information is referenced, and what you just added
12 probably is not referenced in the -- in the
13 parentheses that follows?

14 COMMISSIONER PARSONS: Is not referenced
15 where?

16 VICE CHAIRPERSON MILLER: Let's say where
17 it says, parentheses, "Transcript at pages 21, 25,"
18 right?

19 CHAIRPERSON GRIFFIS: He calls that an
20 actual exhibit of the landscape plan.

21 VICE CHAIRPERSON MILLER: But it won't
22 show up in that exhibit, will it? The new plans that
23 he is putting in?

24 CHAIRPERSON GRIFFIS: The --

25 VICE CHAIRPERSON MILLER: Do we need to

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1 reference the -- this transcript in that parentheses
2 as well?

3 CHAIRPERSON GRIFFIS: No. I think we --
4 it's going to be written in the order, and it will
5 also state the exhibit of which he is basing his edits
6 on.

7 VICE CHAIRPERSON MILLER: Right. But Mr.
8 Parsons is specifically stating that certain plant
9 species be used. They're in here.

10 CHAIRPERSON GRIFFIS: It's going to say it
11 right there. He just read you the text that he is
12 proposing to put in the order.

13 COMMISSIONER PARSONS: For instance, the
14 October 20 letter that's mentioned in that line --

15 VICE CHAIRPERSON MILLER: Yes.

16 COMMISSIONER PARSONS: -- encloses a
17 reduction in the landscape plans. So that's --

18 VICE CHAIRPERSON MILLER: Okay.

19 COMMISSIONER PARSONS: -- needs to be
20 referenced, because there's -- they're both the same.
21 One is a reduction, and the other one is the full
22 scale that was on the board before us that day.

23 VICE CHAIRPERSON MILLER: Okay.

24 COMMISSIONER PARSONS: I mentioned
25 Exhibit 37, but they go on to mention another item.

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1 They don't -- they don't mention its exhibit number,
2 but it's the October 20 letter.

3 VICE CHAIRPERSON MILLER: Okay. I guess
4 my question is, is there going to be any confusion
5 with -- is the previous like six trees referenced in
6 this parentheses, is there going to be confusion
7 between what you just said and then what's in the
8 parentheses?

9 CHAIRPERSON GRIFFIS: Can't be.

10 COMMISSIONER PARSONS: I don't think so.

11 VICE CHAIRPERSON MILLER: Okay.

12 COMMISSIONER PARSONS: And I don't recall
13 any discussion of the trees in the transcript.

14 VICE CHAIRPERSON MILLER: Okay.

15 COMMISSIONER PARSONS: It was, "We're
16 going to landscape it."

17 VICE CHAIRPERSON MILLER: Okay.

18 CHAIRPERSON GRIFFIS: Good. Any other
19 comments, questions, on the other text? Page 2, first
20 paragraph? Page 2, second paragraph?

21 What's being into place, as we're all very
22 well aware, is addressing the one story, former squash
23 courts, page 2, last paragraph, elements of historic
24 preservation.

25 Very well. If there's no other further

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1 questions, I would move to adopt those edits as stated
2 into our -- and amend our final order in the
3 Application 17382, and ask for a second.

4 COMMISSIONER PARSONS: Second.

5 CHAIRPERSON GRIFFIS: Thank you, Mr.
6 Parsons.

7 We have a motion before us that has been
8 seconded. Is there further discussion, deliberation?

9 (No response.)

10 Not noting any further discussion or
11 deliberation, I'd ask for all of those in favor
12 signify by saying aye.

13 (Chorus of ayes.)

14 And opposed?

15 (No response.)

16 Abstaining?

17 (No response.)

18 Very well.

19 SECRETARY MOY: Staff would record the
20 vote as four to zero to zero, on the motion of the
21 Chair, Mr. Griffis, to adopt the edits and amend the
22 final order, as discussed, seconded by Mr. Parsons.
23 Also in support of the motion, Mr. Etherly and Ms.
24 Miller.

25 Staff also has an absentee ballot from Ms.

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1 Gallagher, who participated on the case. And her
2 ballot is to approve the motion, but, of course, staff
3 reminds the Board that she wasn't here to hear the
4 edits.

5 CHAIRPERSON GRIFFIS: Indeed. Okay.
6 Thank you, Mr. Moy. Let's move ahead.

7 We'll welcome back, then, in participation
8 Mr. Mann. And call the next case.

9 SECRETARY MOY: The next case is
10 Application Number 17399 of Lot 74, LLC, and Vasal
11 Jahabin or Jana -- well, I'll leave it at that --
12 pursuant to DCMR 3103.2 and 3104.1, for a special
13 exception under 2514.2, to allow the regulations
14 applicable to that portion of a lot in a lesser
15 restrictive use zone district to be extended to that
16 portion of the lot in a more restrictive use zone
17 district, a special exception under 2108 to reduce the
18 amount of parking required for a commercial portion of
19 the development by no more than 25 percent, a special
20 exception under 214 to locate accessory parking spaces
21 elsewhere than on the same lot on which the primary
22 use is located, a special exception under 411 from the
23 roof structure setback requirements, and a variance
24 from the R-4 minimum lot area requirement under 401.3,
25 to allow the construction of a commercial building and

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1 two flats, with accessory parking on the Arts/C-2-A
2 District, and the R-4 District, at premises 1939 12th
3 Street, N.W. That's in Square 305, Lots 72, 73, and
4 74.

5 Staff would also note that the application
6 has been amended to add zoning relief from the
7 residential recreation space requirements under
8 Section 773.

9 On December 6, 2005, the Board completed
10 public testimony on the application, and scheduled its
11 decision on January 10, 2006. The Board requested
12 proposed findings of fact and conclusions of law, and
13 the applicant filed this draft order on January 4th,
14 and it is identified in your case folders as Exhibit
15 Number 39.

16 And the staff would just conclude by
17 saying that the Board is to act on the merits of the
18 application.

19 CHAIRPERSON GRIFFIS: Excellent. Thank
20 you very much, Mr. Moy, and I think it is important to
21 understand that the application was amended to include
22 the relief from the residential recreation under
23 Section 773.

24 I would also note that Mr. Moy did
25 indicate that relief from 411 -- for the setback,

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1 which is 411.11, and I do believe that that was also
2 -- well, that's an issue that the Board will address.
3 And we were also discussing 411.5, if I'm not
4 mistaken, the different levels of the penthouse
5 structures, which was not in the advertisement as
6 read, as with the appropriate application.

7 Okay. Very well. Good. Let's just get
8 right into it. I think we ought to start with -- I
9 would suggest let's start with a discussion of the
10 special exceptions in 2500 for the -- moving the zone
11 boundary lines. There was a very interesting and
12 informative discussion during the hearing, and I know
13 the Board has spent some time on its own deliberating,
14 and then together in Executive Session on elements of
15 the Office of Planning's analysis of how one
16 calculates that, and then what the applicant was
17 proposing.

18 What is of -- of basis is the calculation
19 of the .9 FAR. Let me put it in context as I see it,
20 and as I read the regulations, that we have a zone
21 boundary line that is moving to the lesser restrictive
22 to the more restrictive. And the lesser restrictive
23 runs with that boundary line.

24 Now, there is an issue and there's a
25 provision in the regulations that talk about how you

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1 calculate what's on the other side, what's left over
2 of that other zone. And that would be critical, and
3 that would be even more discussion for our purposes,
4 if it was all on a single lot.

5 However, what is being shown to us here in
6 this application is that it's actually two different
7 lots, and, therefore, how would we be able to
8 prescribe what the FAR calculation would be on a lot
9 that's adjacent. And so what I'd -- I find listening
10 to others in their discussion that it is appropriate
11 to pursue and proceed as the applicant has proposed
12 this, and as I read the regulations, and as they have
13 in terms of the calculations of the allowable massing
14 and density, FAR height, etcetera.

15 Others?

16 VICE CHAIRPERSON MILLER: Do you want to
17 address the specific criteria under 2514.2?

18 CHAIRPERSON GRIFFIS: Sure.

19 VICE CHAIRPERSON MILLER: Okay.

20 CHAIRPERSON GRIFFIS: Starting with?

21 VICE CHAIRPERSON MILLER: Starting with
22 2514.2(a), the extension shall be limited to that
23 portion of the lot in the more restrictive use zone
24 district, but not exceeding 35 feet.

25 CHAIRPERSON GRIFFIS: Right. In this

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1 instance, the request, of course, goes into the R-4.
2 It's 34 feet, 8 inches, so it falls into -- meets that
3 requirement. Okay?

4 VICE CHAIRPERSON MILLER: Okay.

5 CHAIRPERSON GRIFFIS: Go ahead.

6 VICE CHAIRPERSON MILLER: 2514.2(b) says
7 in authorizing an extension the Board shall require
8 compliance with Section 2514.1(d). I think that's
9 when we get into the FAR question. That was a big
10 topic of the hearing.

11 CHAIRPERSON GRIFFIS: Right. And that's
12 what I was addressing before. What 2514.1(d) states
13 is if you are moving your -- your lessor -- so in this
14 instance the -- the commercial zone or the C-2-A, if
15 you move that zone boundary line, and what's left over
16 is an R, an R-1 to R-4. Well, in that R-1 and R-4,
17 the regulations state what an FAR is allowable to be,
18 right?

19 But as you read it, and as I've read it,
20 my understanding is that that aspect of the regulation
21 speaks to that there is a zone boundary line that
22 crosses and still has left over R zone or the R-4 on
23 that same lot.

24 For instance, in the hypothetical on the
25 extreme, if -- if we were to move this zone boundary

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1 line, there is no ending of that calculation. Right?
2 What's left over is as far north as you go I think is
3 R-4, right? So is all of that R-4 off of their
4 property? Every single lot? Where would it stop? I
5 mean, there's no -- there's no question of ownership
6 here or non-ownership. But it goes to a specific lot.

7 Oh, dear. I thought we were starting with
8 the easy stuff.

9 VICE CHAIRPERSON MILLER: I want to look
10 back in my notes. But I -- it just might be the time
11 to address Office of Planning's contention that it
12 didn't meet this criteria. We had a lot of discussion
13 about whether bulk was included, I think, within FAR,
14 and --

15 CHAIRPERSON GRIFFIS: I think we can go
16 there if you would like. But I don't think we need
17 to.

18 VICE CHAIRPERSON MILLER: Well, I would
19 think that we would need to -- just to give Office of
20 Planning the great weight as to why we may not -- may
21 or may not agree with their conclusions.

22 CHAIRPERSON GRIFFIS: Well, I don't think
23 we -- I don't think we get to that level of analysis.
24 I mean, I think it's an excellent and appropriate
25 analysis, but let's look at the -- SK-4 in the

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1 applicant's submission of their drawings. We have two
2 lots -- Lot 74 and Lot 72.

3 Even their drawings break out Lot 74. Lot
4 74 is the split-zone lot. On the south side, if it's,
5 you know, north-south, that way, whatever. But on the
6 left side of Lot 74 is the Arts/C-2-A. On the right
7 side, even though it's not labeled that -- on the
8 right side, it's R-4.

9 The zone boundary line is moving 34 feet,
10 8 inches, which goes right to that property line, to
11 the property line of Lot 74.

12 Now, what you're saying is, let's just
13 take this as a -- as an aside for illustrative
14 purposes, that this Lot 72 is not owned by this
15 applicant. Having that -- having -- not owning that
16 doesn't preclude them from moving this zone boundary
17 line, correct? Do you agree? Okay.

18 So they have moved that to the property
19 line, right? Where is the jurisdiction in the
20 regulations that would prescribe that on an FAR in the
21 R-4? They've stated in, actually, their conclusions
22 and finding I think very succinctly -- maybe I should
23 have started with it -- is that there is no R-4 left
24 over once you move that zone boundary line. There is
25 nothing to recalculate. That's what I'm saying is

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1 that --

2 VICE CHAIRPERSON MILLER: Okay.

3 CHAIRPERSON GRIFFIS: -- it's a good
4 analysis, and I'm not sure we're deciding it
5 definitively either one way or another -- I don't
6 think we get to that level of discussion. If they had
7 combined these two lots, that would be a different
8 scenario perhaps, and we would reach that discussion.

9
10 I'm not sure I would -- I would come out
11 differently, but I don't think we even need to get to
12 that level.

13 VICE CHAIRPERSON MILLER: Well, I think we
14 -- then, it sounds like you agree with the applicant's
15 conclusion that the provision is not applicable.

16 CHAIRPERSON GRIFFIS: Right.

17 VICE CHAIRPERSON MILLER: So we don't --
18 so that is addressing OP's contention, if we find it's
19 not applicable.

20 CHAIRPERSON GRIFFIS: Good. 2417(c).

21 VICE CHAIRPERSON MILLER: 2514.2(c)?

22 CHAIRPERSON GRIFFIS: Yes.

23 VICE CHAIRPERSON MILLER: "The extension
24 shall have no adverse effect upon the present
25 character and future development of the neighborhood."

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1 CHAIRPERSON GRIFFIS: It's an important
2 issue to look at when you're changing the entire zone.
3 You know, you're moving it, and conceivably it could
4 be in R-1. But this is obviously in R-4.

5 Was there anything in the evidence that
6 we've -- that was brought before that would somehow
7 persuade anybody that it would preclude the
8 development of the zone in the R-4, or preclude what
9 would -- you know, any future development in the area?
10 I don't think there is.

11 Of course, it is part of the Arts overlay
12 also, which has its own requirements, and this portion
13 of which Lot 74 is -- seems to be addressing those
14 very well in terms of its design and provision of use
15 in that, and addressing the arts.

16 Okay. Next?

17 VICE CHAIRPERSON MILLER: Next, if we're
18 going to stay -- yes, we might as well stay within
19 this section. 2514.2(d) says that "The Board may
20 impose requirements pertaining to design, appearance,
21 screening, location of structures, lighting, or any
22 other requirements it deems necessary to protect
23 adjacent or nearby property."

24 I'd also comment that HPRB has already
25 given them conceptual design approval.

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1 CHAIRPERSON GRIFFIS: Okay. Let's address
2 that. But let me -- a quick comment. First of all,
3 I think that -- I think that the primary elevations
4 and the detail in what's showing in terms of
5 materiality I find quite good.

6 But more importantly, jurisdictionally,
7 there wasn't anything that rose to the level of what
8 we're looking at that would -- that -- I always find
9 that we needed to get in and prescribe any design
10 aspects, lighting, or screening, except for -- and I
11 made comments -- the alley access. Was there any way
12 to somehow protect or enclose that?

13 And as you all recall, I'm sure, there was
14 discussion about the room, the availability of being
15 able to do that. And what they have done is provided
16 what they could in that realm.

17 So I think any additional requirements on
18 that end, either would not be able to be complied with
19 or wouldn't actually do what was proposed, in terms of
20 the access to the parking, and etcetera.

21 Anything else on that? Comments?

22 (No response.)

23 Moving on, then, let's go to Section 214,
24 which deals with the accessory parking spaces. And
25 what that is is -- is trying to shift the location of

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1 the parking spaces from Lot 74 onto Lot 72.

2 As you may recall, in the R-4 there is a
3 single space required for each of the flats. There is
4 the potential of having two spaces that would be able
5 to accommodate two from the -- from Lot 74.

6 The criterion that needs to be satisfied,
7 of course, is the accessory parking spaces would be in
8 an open area or in an underground garage. The two
9 accessory residential spaces on Lot 72 would be
10 located at grade and open to the back, as you see if
11 we look at SK-5, which is the proposed site plan
12 showing the indication of where those spaces would be
13 provided.

14 14 is the distance to the 200-foot radius.
15 Obviously, it's adjacent, directly adjacent, and meets
16 that criterion. 214.4, congruous and separated only
17 by an alley, that they're connected to the adjacent
18 lot, and 214.5 is a provision that 22 of the parking
19 lots shall be complied with. That means, of course,
20 that the driveway's access lanes and areas are paved
21 with all of the requirements, which we're very well
22 aware and familiar with.

23 There was nothing in the record that
24 showed that that would not be a provision that was
25 provided with, and obviously would be looked at as

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1 required, both during the permitting and also in the
2 construction phases.

3 Other items, discussions on that?

4 (No response.)

5 The last is 214.6. Is there any comment
6 on whether it would be deemed economically impractical
7 or unsafe to locate accessory parking spaces within
8 the principal building?

9 VICE CHAIRPERSON MILLER: I think they
10 made the case that it wasn't feasible, and that if
11 they were to do it they'd have to do this expensive
12 excavating, which would be economically impractical
13 and unrealistic. So, yes, I think they made their
14 case.

15 CHAIRPERSON GRIFFIS: Okay. And I would
16 tend to agree. Obviously, there's a certain amount of
17 space left over once the building is placed in
18 essentially a mixed use building, and that space
19 doesn't accommodate the full 10 spaces required. And
20 in order to accommodate that, you'd have to ramp below
21 the building perhaps. For two spaces, that seems
22 impractical. Here they have an opportunity to provide
23 it -- an adjacent property.

24 214.7, accessory parking spaces not be
25 located in facilities in relation to parking lot shall

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1 be so designed that they are not likely to become
2 objectionable to adjoining or nearby properties.
3 There was not evidence or testimony that was brought
4 up in terms of the negative impact that this might
5 have.

6 I think we did walk through some of the --
7 the aspects of it, but I believe it does comply with
8 that, as I haven't been brought -- it hasn't been
9 brought to my attention how it would not comply with
10 that area of the regulations.

11 Others?

12 VICE CHAIRPERSON MILLER: I just want to
13 note that Office of Planning is in support of
14 approving relief from Section 214.

15 CHAIRPERSON GRIFFIS: Okay.

16 VICE CHAIRPERSON MILLER: All right. Just
17 to cross T's and dot I's, 214.8, applicant has
18 indicated that they have submitted, let's see, the
19 application to the D.C. Department of Transportation
20 for review and report. So I think we can move to the
21 roof structure issues now.

22 CHAIRPERSON GRIFFIS: Excellent. Let's
23 take up 411.11. In the submission in the hearings, it
24 was discussed that the -- the question was put to the
25 Board of whether 411.11 would be required for relief,

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1 and that is the setback, and it's based on a fact of
2 a recent ruling and an appeal from the Board.

3 Is there comments on that?

4 VICE CHAIRPERSON MILLER: I don't have the
5 language in front of me, but I believe that there was
6 a footnote to that effect suggesting that it would not
7 be required based on a recent appeal in the Kalorama
8 case. And I think that is correct, that relief would
9 not be required in this case, based on that -- our
10 decision in that case.

11 To be more specific, the case that they
12 referred to, and that I'm referring to, is Appeal
13 Number 17109 of Kalorama Citizens Association.

14 CHAIRPERSON GRIFFIS: If I understand you
15 correctly, Ms. Miller, it's your recollection from
16 reading our order and understanding our decision that
17 411.11 is not required for relief in this application.
18 Is that correct?

19 VICE CHAIRPERSON MILLER: Yes.

20 CHAIRPERSON GRIFFIS: I would -- I would
21 agree. However, 411.5 is, without that setback -- of
22 course, we have two different varying heights. 411.5
23 requires a single height, single enclosure. It is
24 fairly clear that this would not have any detrimental
25 impact to the adjacent properties -- in fact, would --

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1 would more come in line with the intent of 411 in that
2 aspect of it.

3 And so I think we can move on from that
4 discussion, going to the minimum lot requirement in
5 the R-4, under 401.3. Setting it up here, of course,
6 with the lot, the adjacent lot, which is now the --
7 still the R-4, it is being subdivided to allow for two
8 flats to be placed on that. The minimum dimension of
9 the R-4 lot would be 18 feet. These are inches below
10 that, because of -- because of the given size of the
11 lot itself.

12 It was talked about, if it was moved, and
13 how it could move, and where it would move, and the
14 impact of the adjacent property, in terms of the
15 access into units and the circulation, the location of
16 the egress stairs and elevators. It was shown -- or
17 it was presented by the applicant -- this would be
18 practically difficult to fully comply with that
19 dimensional requirement as stated in the regulation.

20 Let me open it up to others for comments
21 on that.

22 BOARD MEMBER MANN: I think part of that
23 was substantiated also by the evidence that there are
24 certain minimum requirements that they had to achieve
25 for handicap accessibility.

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1 CHAIRPERSON GRIFFIS: Right. In terms of
2 the door pulls and the clearances around those. Is
3 that right? I see.

4 Okay. Anything else?

5 VICE CHAIRPERSON MILLER: Okay. Since
6 this is a variance, I think we ought to just touch
7 upon the criteria and address them. One is -- the
8 first being that it's -- whether it's unusual or
9 exceptional. And applicant has suggested that it is,
10 because of its -- because of split zone, and it's a
11 very shallow site. I think that that is criteria for
12 exceptional, unless anybody has any other comments on
13 that.

14 And I think that they have made the case
15 for strict application of the regulations, resulting
16 in a practical difficulty.

17 I just want to comment I think on the --
18 the variance. I think they say it's a 1.6 percent
19 variance, and they compare it to the two percent
20 flexibility that the Zoning Administrator has. I
21 don't think we need to do that. I think that the --
22 that the authorization of the Zoning Administrator in
23 our jurisdiction and authorization is very different.

24

25 But I think that, to me, 1.6 certainly can

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1 fall within what's considered de minimis and -- and
2 that is -- that is a criteria that we can apply here,
3 just to find that it is de minimis.

4 And then, there's adverse impact, which I
5 don't see either.

6 CHAIRPERSON GRIFFIS: Okay.

7 VICE CHAIRPERSON MILLER: It's not that
8 it's necessarily unique, like one of a kind. It's
9 that it has exceptional situation that leads to a
10 practical difficulty in complying with the
11 regulations.

12 CHAIRPERSON GRIFFIS: Okay. So let me see
13 if I understand your unique situation, or the
14 situation in which it has found itself -- as stated,
15 its -- its proximity to a commercial zone, its size
16 for the R-4, which it's de minimis relief required in
17 order to bring it in for subdivision, or compliant
18 subdivision with relief.

19 So what you're saying is you're looking at
20 only inches below 18 foot dimensional requirement, and
21 only, what, 30 square feet below 1,800 square feet
22 required. Even if you could get the 1,800 square
23 feet, you couldn't get the 100-foot depth, because the
24 depth isn't there either in order to comply with the
25 required dimensions of the regulations. Is that

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1 right?

2 VICE CHAIRPERSON MILLER: Right. I mean,
3 because they're shallow and they can't be increased
4 because of -- of the way that they're bounded. For
5 instance, there's a public alley to the east and 12th
6 Street to the west, so they can't be any bigger. And
7 they can't do it to the north because of the width of
8 the residential units and the mixed use buildings on
9 Lot A.

10 So I think they make certainly the case
11 that -- that ties the condition of the shallowness to
12 the inability to comply with the regulations, the
13 practical difficulty of complying with the
14 regulations.

15 CHAIRPERSON GRIFFIS: Okay. And OP's
16 position was, look, you own the one to the --
17 adjacent. Why not take some of the dimensional
18 footage out of that one to make it compliant? And
19 that's where the issue, as Mr. Mann had brought up, is
20 the dimensional requirements for the circulation for
21 the number of units, only out of the units the
22 efficiency -- is it -- you know, is it even more than
23 practically difficult to take that and subdivide that
24 also? Interesting.

25 Anything else on that?

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1 (No response.)

2 If not, we can move on. Let's go to
3 773.3, which is the residential recreation space
4 requirements. And in terms of the variance, I don't
5 think we need to belabor this too much. I think the
6 case has been made for the practical difficulty of not
7 being able to comply with the residential recreation
8 space.

9 I would say, one, the uniqueness of this
10 is -- is the smallness of nature and the number of
11 units; two, the mixed use project that is actually
12 required, so that there is additional requirements
13 that burden this specific piece of property in terms
14 of what is allowed in density and what can be
15 provided. I mean, one could do all residential
16 recreation space and parking, but then why build the
17 building, right?

18 I mean, as we start looking at how many
19 requirements are put on to smaller lots of this --
20 like this applicant, you see that they don't always
21 equal out and balance out, and I think that we found
22 that with the residential recreation space
23 requirements in this application.

24 I don't think it would impair the intent
25 and integrity of the zone plan, and certainly wouldn't

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1 be against the public good. There is -- additionally,
2 there is a provision of recreational spaces --
3 private, obviously don't count towards the regulations
4 and requirements; and, most importantly, the
5 liveliness of the area and those adjacent areas to the
6 project.

7 That being said, I'll open it up to
8 others, if they have comment. Additional comments?

9 BOARD MEMBER MANN: Weren't there also
10 issues in this particular case of -- that any
11 authorized space that there was might not have been
12 able to meet the minimum dimensions of 25 feet by 25
13 feet?

14 CHAIRPERSON GRIFFIS: Oh, that's an
15 excellent point to bring up. Absolutely. I think
16 that if we look at SK-12, which is the roof plan, we
17 see where there are more private areas. But you can
18 see that the dimensional requirements would be
19 difficult to make. I don't -- there is one portion of
20 which the length of it would meet the 25, but all
21 dimensions of the outside residential rec space would
22 have to meet that 25-foot dimensional requirement. So
23 absolutely excellent point.

24 As you -- and that goes to the other
25 aspect of the smallness of the size of the property,

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1 as you look at how much space actually is available.
2 I mean, if you have to park it on the surface, and,
3 you know, you have your roof left over but you have to
4 put your mechanical and -- and the rest -- so there it
5 is. Well put, Mr. Mann.

6 Anything else?

7 (No response.)

8 Very well. I think we have addressed,
9 then, all of those elements of relief that were
10 requested in Application 17399.

11 Now, I do believe that we -- in fact, I
12 know for a fact that the Office of Planning, which did
13 an excellent analysis and briefing and presentation to
14 the Board on all of those elements, of which we've
15 addressed those, but had additional elements that were
16 brought to the Board's attention.

17 Two specifically I will note. One,
18 whether the -- in the R-4 district whether the
19 mezzanine, as proposed, actually should be calculated
20 as a story, and, therefore, as proposed the
21 development would not meet the regulations. It would
22 need additional relief.

23 I've lost the other one. Oh, whether --
24 whether the certain amount of accommodations that are
25 put in the roof structure on the commercial zone are

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1 actually compliant with our regulations.

2 Going to the first, it's interesting when
3 you read 411 and what is allowed, and, of course, you
4 get -- you get a bonus FAR for those, as well as all
5 of the requirements. You get a bonus FAR in order to
6 provide roof structures, but roof structures are --
7 are defined very completely of what they are and how
8 they are to be used, one of which, of course -- and it
9 is stated well in 411.1, I believe it is -- "when
10 accessory to swimming pools. Penthouses for storage,
11 and toilets incidental and accessory to roof swimming
12 pools, shall be subject to the conditions and variable
13 floor area ratio credit specified in this section."

14 And so whether the -- and I'll read from
15 OP. OP believes that there is some question as to
16 whether the three-quarter boughs and overall amount of
17 space for these uses in a penthouse conforms with
18 411.1. Reading the regulations, I don't think it's --
19 I think it does. I mean, from the -- the exact
20 section and wording, I don't see, looking at that
21 regulation of which we are -- are charged with
22 reviewing, interpreting, and finding, I don't see how
23 it wavers from that aspect.

24 But I'll let others speak to that if they
25 have --

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1 (No response.)

2 Very well. Likewise, there's a question
3 about the mezzanine. And the mezzanine, of course --
4 in the provisions there's a certain amount of the area
5 that it may occupy. Basically, the dimension is about
6 a -- is a third of that floor, which is above and open
7 to.

8 And there was some question about the
9 design aspect of this and whether it is actually a
10 mezzanine or a full mezzanine or how you calculate the
11 floor when the roof or ceiling line is not consistent
12 and a consistent height.

13 And I don't know that we'll be definitive
14 on this, but I guess what I'm -- my point would be is
15 that I wasn't persuaded that we should require
16 additional relief from the applicant in reviewing that
17 aspect of this. I think it's an excellent discussion
18 that I think we would probably need another venue or
19 some other means to reach a conclusive end on that.

20 But for this, I don't see anything moving
21 us beyond the threshold of opening this up to require
22 additional relief, and, therefore, I won't really
23 continue on substantively discussing how they would
24 meet the relief, or need it, or not need it. But I
25 wasn't persuaded by the fact that it was something

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1 other than a mezzanine as defined by the zoning
2 regulations.

3 Others? Yes?

4 VICE CHAIRPERSON MILLER: I'll just concur
5 that my conclusion is that their interpretation of
6 mezzanine is consistent with the regulation and with
7 precedent of our Board decisions.

8 CHAIRPERSON GRIFFIS: Good. Anything
9 else, then?

10 VICE CHAIRPERSON MILLER: I would just
11 note that the ANC voted to support the application.

12 CHAIRPERSON GRIFFIS: Any other aspects of
13 the application that needs the Board's attention?
14 Nothing?

15 (No response.)

16 I'm just going to highlight in the
17 applicant's submission it also is in concurrence with
18 214, and it goes to the screening of the -- of
19 parking, and that they have actually listed that the
20 -- the spaces would be screened from all continuous --
21 contiguous residential property located in the R-4
22 district.

23 It doesn't show exactly on the site plan
24 of how that's going to be, but I think it is important
25 just to note that there will be screening provided

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1 along that -- along that edge to the R-4.

2 Okay. Anything else, then?

3 (No response.)

4 Very well. Is there a motion?

5 (No response.)

6 Okay. I would move approval of
7 Application 17399, which would allow the construction
8 of the five-story mixed use and the two flats on the
9 site. These are two lots that are split zone from the
10 Arts/C-2-A and the R-4. It is seeking special
11 exception and variance for the special exception from
12 214 -- 2514, also 214 and 411, 411.5 specifically, and
13 a variance from 401.3, and a variance from 773.3, and
14 would ask for a second.

15 VICE CHAIRPERSON MILLER: Second.

16 CHAIRPERSON GRIFFIS: Excellent. Thank
17 you very much. I would note, of course, that the
18 application is self-certified, but we have amended
19 that application in discussion according to the
20 applicant's representation at the hearing level.

21 I think we've gone through good
22 deliberation on all of the issues. I think the one
23 critical remaining was just the provision -- and it's
24 a small and diminished one of -- of the parking and
25 the screening. And, obviously, in complying with the

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1 regulations, it will have to be maintained free and
2 clear of debris, and lighted correctly. But I would
3 just state that -- that I think it's an important
4 aspect, especially in this area, which is seeing an
5 awful lot of new development happening.

6 I don't see any reason that I need to
7 restate my other deliberations on all of these issues,
8 and will open it up for others for comments, if they
9 have them.

10 (No response.)

11 Very well. Not noting any other further
12 comments required by the Board, we do have a motion
13 that is before us. It has been seconded. I would ask
14 for all those in favor, signify by saying aye.

15 (Chorus of ayes.)

16 And opposed?

17 (No response.)

18 Abstaining?

19 (No response.)

20 SECRETARY MOY: Staff would record the
21 vote as four to zero to one. This is on the motion of
22 Mr. Griffis to approve the application with the
23 amendments, seconded by Ms. Miller. Also in support
24 of the motion, Mr. Mann and Mr. Etherly. And we have
25 no Zoning Commission member who participated on this

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1 case.

2 CHAIRPERSON GRIFFIS: Excellent. Thank
3 you very much, Mr. Moy. Appreciate that.

4 And just for a note for all of those
5 arriving for our afternoon hearing, we are still in
6 our morning decision-making meeting, and this our last
7 case that we are about to call. And then, we will
8 need to break for a short lunch. I would imagine we
9 will call the afternoon session at about 2:00. You're
10 welcome to stay and hear our last deliberation as Mr.
11 Moy calls it for our --

12 MS. BAILEY: Mr. Chairman, excuse me.

13 CHAIRPERSON GRIFFIS: Yes.

14 MS. BAILEY: If I could just take you back
15 for a moment, just before you complete the case that
16 you just finished -- 17399. The applicant did ask for
17 flexibility to modify the approved plans based on
18 HPRB's final approval; and then, secondly, a summary
19 or full order on that case, Mr. Chairman.

20 CHAIRPERSON GRIFFIS: Excellent. Thank
21 you for interrupting and pointing out an important
22 point.

23 I don't see any reason why we wouldn't
24 issue a summary order, waive our rules and
25 regulations, unless there's any opposition from the

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1 Board members voting.

2 (No response.)

3 Not noting any opposition to that, we can
4 do it. In terms of the flexibility, I'll hear any
5 opposition from Board members on that. I think it's
6 absolutely appropriate, and we actually have a good
7 boilerplate sentence that we can put in our order in
8 order for that to proceed.

9 Is there any concern or opposition to
10 that? Ms. Miller?

11 VICE CHAIRPERSON MILLER: No. I just want
12 to comment that we addressed that in an earlier case
13 in which you were recused, and we just said we do have
14 that language, and it includes language to the effect
15 that provided it's consistent with the zoning relief
16 that's been granted in the case, or something, you
17 know, to that effect.

18 CHAIRPERSON GRIFFIS: Excellent.

19 VICE CHAIRPERSON MILLER: Okay.

20 CHAIRPERSON GRIFFIS: Thank you very much.
21 Anything else on that case?

22 (No response.)

23 Very well. Then, let's move ahead and
24 call the last case for our meeting this morning.

25 SECRETARY MOY: Yes, sir. That's the

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1 motion for modification of approved plans and the
2 waiver of the six-month time requirement, pursuant to
3 Section 3129. This is to -- towards Application
4 Number 17312 of the Washington International School.

5 For background, this application was
6 pursuant to 11 DCMR 3104.1, for a special exception
7 under Section 206, private schools, to construct an
8 addition of approximately 28,000 square feet to an
9 existing building, consisting of a library, a theater,
10 and classroom space, and pursuant to 11 DCMR 3103.2,
11 for a variance under Subsection 2117.4 from the
12 requirement that each required parking space be
13 accessible at all times, directly from improved
14 streets or alleyways via graded and unobstructed
15 private driveways in the R-1-A District at premises
16 3100 Macomb Street, Square 2084, Lot 837.

17 On December 19, 2005, the office received
18 the motion to modify approved plans, and the waiver of
19 the six-month time requirement. And that is in your
20 case file, identified as Exhibit 49.

21 I think with that, the staff would like to
22 conclude the briefing, sir.

23 CHAIRPERSON GRIFFIS: Excellent. Thank
24 you very much, Mr. Moy.

25 We do have the motion to modify the

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1 approved plans. We do need to waive their time
2 requirements. Is that correct, Mr. Moy?

3 SECRETARY MOY: Yes, sir.

4 CHAIRPERSON GRIFFIS: Indeed. Is there
5 discussion on that from the Board? Any opposition to
6 waiving our time requirements and accepting this and
7 moving ahead?

8 VICE CHAIRPERSON MILLER: No.

9 CHAIRPERSON GRIFFIS: Not noting any
10 opposition, we'll take it as a consensus of the Board
11 and move ahead to the substance of the motion of
12 modification of approved plans.

13 As indicated, they are asking to be able
14 to modify their plans in order to comply with the
15 requirements of the D.C. Fire and Emergency Medical
16 Services Department. By widening some of the
17 accessways, it will provide for the access of
18 emergency vehicles to the area and athletic center.

19 I don't see anything of great impact
20 actually going to -- that would move me to great
21 concern or deliberation on the specific aspects of it.
22 The one critical point, of course, is the parking
23 count. And from indications of the submission, the
24 actual parking number and spaces provided are not
25 changing. It's the configuration of those that would,

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1 in fact, be impacted.

2 There are some other -- I'd call them
3 aesthetic elements to this, and I don't know that they
4 rise to the level of being reviewed and analyzed from
5 the zoning regulations at this point. But I'll let
6 others comment on that.

7 (No response.)

8 Very well. If there's no other further
9 comments, I think it's appropriate to move ahead, and
10 I would move approval of the motion, which is dated
11 December 19, '05, for Application 17312 of the
12 Washington International School, and that is, of
13 course, to modify the plans as submitted, and amend
14 our final order, and ask for a second.

15 VICE CHAIRPERSON MILLER: Second.

16 CHAIRPERSON GRIFFIS: Thank you, Ms.
17 Miller.

18 Any further comments, deliberations?

19 (No response.)

20 Very well. Not noting any further
21 comments or need for deliberation on this fairly small
22 modification to the final plan and order, I would ask
23 for all those in favor, signify by saying aye.

24 (Chorus of ayes.)

25 And opposed?

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1 (No response.)

2 Abstaining?

3 (No response.)

4 BOARD MEMBER ETHERLY: Mr. Chair, I'll
5 just note for the record that, as I did not
6 participate in the original proceeding on this
7 hearing, I am not participating in the vote.

8 CHAIRPERSON GRIFFIS: Thank you.
9 Excellent. Thank you very much, Mr. Etherly, for that
10 clarification.

11 Very well. Let's move ahead, then. Mr.
12 Moy, you can record the vote.

13 SECRETARY MOY: Yes, sir. Thank you. The
14 staff would record the vote as four to zero to one, on
15 the motion of Mr. Griffis to approve the modification
16 of the plan, seconded by Ms. Miller. Also in support
17 of the motion, Mr. Mann and Mr. Parsons. And, as Mr.
18 Etherly said, he is -- did not participate on the
19 case.

20 CHAIRPERSON GRIFFIS: Any other business
21 for the Board, Mr. Moy?

22 SECRETARY MOY: Yes, sir. We have the
23 business of the Board elections for Chair and Vice
24 Chair.

25 CHAIRPERSON GRIFFIS: Very well. Anyone

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1 want to speak to that issue?

2 BOARD MEMBER ETHERLY: Mr. Chair, I'm more
3 than happy to start us off. I'd like to make a motion
4 at this time to offer -- not that we do slates here at
5 the Board of Zoning Adjustment, but it would be my
6 pleasure to offer as a motion the continued service of
7 both the Chair and the Vice Chair, Mr. Griffis as
8 Chair and Ms. Miller as Vice Chair, for their
9 continued leadership of this body as we move forward
10 into 2006.

11 I think it goes without saying that under
12 the leadership of both the Chair and the Vice Chair,
13 this Board has continued to move forward in terms of
14 conducting the business of the District of Columbia,
15 its residents, its businesses, and other members of
16 our broader community, both in a very effective and
17 expeditious manner.

18 And so I am very, very proud to offer
19 those words of support in that motion, and I would
20 invite a second for that.

21 BOARD MEMBER MANN: I'd be very happy to
22 second that.

23 BOARD MEMBER ETHERLY: Thank you very
24 much, Mr. Mann.

25 CHAIRPERSON GRIFFIS: Thank you, both,

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1 very much. I think, you know, in terms of
2 clarification of what we're doing, obviously we're
3 appointed, but each year we are required in our
4 regulations to hold elections for the officers in the
5 positions of Chair and Vice Chair.

6 And I think our regulations were smart
7 enough -- for the Zoning Commission, they say we have
8 to do it on the first meeting in January, knowing that
9 we'd be very late, so it would keep us from being
10 lengthy in our comments, so I will try and comply with
11 that intent and say thank you all very much, and I do
12 appreciate everyone's support and will accept the
13 continuation as Chairman.

14 I think this Board has come a long
15 distance in really being efficient and effective in
16 what we are charged, and also knowing exactly what we
17 are charged with, and I -- it would be my pleasure to
18 continue serving with great members that we have.

19 And I am actually honored that Mr. Parsons
20 is with us at this momentous occasion, because Mr.
21 Parsons is a great participant from the Zoning
22 Commission in our -- in our case hearings and
23 proceedings. And I'll let it go at that.

24 VICE CHAIRPERSON MILLER: I'd also like to
25 thank Mr. Etherly for nominating me as well for Vice

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1 Chair. I'm not going to do a long speech this year.
2 It has been an honor and a privilege to act as Vice
3 Chair, though, for the last couple of years. And it
4 has been an honor to work under the stewardship of the
5 Chair. And I want to thank my colleagues and the
6 staff and the Attorney General's office for their
7 support.

8 CHAIRPERSON GRIFFIS: Excellent. I think
9 it's absolutely important to talk about the staff just
10 very briefly, but it's -- we wouldn't be -- we
11 wouldn't be able to do the beginnings of that we
12 accomplish in these things, which obviously is a
13 service to the public and to the city, if it wasn't
14 for such a fantastic Office of Zoning. And that is
15 directly related to the individuals that staff it.

16 With that, then, I believe there is a
17 motion. If others -- and it's been seconded. Is
18 there any other comments required at this time?

19 (No response.)

20 If there are no other comments, we have a
21 motion before us. It's been seconded. Let me ask for
22 all those in favor, signify by saying aye.

23 (Chorus of ayes.)

24 And opposed?

25 (No response.)

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1 Excellent. Thank you all very much. We
2 do appreciate it.

3 Mr. Moy, is there any other business
4 before the Board in the morning session?

5 SECRETARY MOY: No. That should do it for
6 this morning, sir.

7 CHAIRPERSON GRIFFIS: Very well. Then, we
8 can publicly announce Ruthanne will buy us all lunch,
9 but we will be very brief.

10 Again, I'm going to call the afternoon
11 hearing as close to 2:00 as I can. We have some
12 business to accomplish, and we're going to grab a
13 quick bite, and we will be back at that time.

14 Thank you all very much.

15 (Whereupon, at 1:28 p.m., the proceedings
16 in the foregoing matter were adjourned.)

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