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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

SEPTEMBER 28, 2010

+ + + + +

ORIGINAL

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH H. MOLDENHAUER, Chairperson
JEFFREY L. HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

GREGORY SELFRIDGE, Commissioner
MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
STEVEN COCHRAN
PAUL GOLDSTEIN
STEPHEN MORDFIN

The transcript constitutes the minutes from the Public Hearing held on September 28, 2010.

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2 (10:05 a.m.)

3 CHAIRPERSON MOLDENHAUER: Good
4 morning. This hearing will come to order.

5 Good morning, ladies and
6 gentlemen. This is the September 28th, 2010
7 Public Hearing of the Board of Zoning
8 Adjustments for the District of Columbia.

9 My name is Meridith Moldenhauer,
10 Chairperson. Joining me today, to my right Mr.
11 Jeff Hinkle, representative of the National
12 Capital Planning Commission and to my left is
13 Michael Turnbull, a representative of the
14 Zoning Commission.

15 Copies of today's agenda are
16 available to you and are located to my left in
17 the wall near the door. Please be advised
18 this proceeding is being recorded by a court
19 reporter and is also being webcast live.
20 Accordingly, we must ask you to refrain from
21 any disturbing noise or actions in the hearing
22 room.

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1 When presenting information to the
2 Board, please turn on your microphone and
3 speak into the microphone, first stating your
4 name and home address. When you have finished
5 speaking,
6 please turn off your microphone so that no
7 background noise or sounds are being picked
8 up.

9 All persons planning to testify,
10 either in favor or in opposition are to fill
11 out two witness cards. These cards are
12 located to the left on the table near the door
13 and on the witness tables.

14 Upon coming forward to speak to
15 the Board, please give both cards to the court
16 reporter sitting to my right.

17 The order of procedure for an
18 appeal application will be as follows:
19 One, statement and witnesses of the appellant;
20 zoning administrator and the government
21 officials' case; cases from the owners, lessee
22 or operator of the property involved if not

1 the appellant; ANC within which the property
2 is located; intervener's case if permitted by
3 the Board; and then rebuttal and closing
4 statements by the appellant.

5 Pursuant to Section 3117.4 and
6 3117.5, the following time constraints will be
7 maintained.

8 Pursuant to Section 3117.4 and
9 3117.5, the following time constraints will be
10 maintained.

11 The applicant, appellant, persons
12 and parties, except in ANC and support,
13 including their witnesses, will be
14 given 60 minutes collectively. Appellees,
15 persons and parties except in ANC in
16 opposition, including witnesses, will be given
17 60 minutes
18 collectively. Individuals will be given three
19 minutes. Organizations will be given five
20 minutes.

21 These time restraints do not
22 include cross-examinations or questions from

1 the Board. Cross-examination of witnesses is
2 permitted by the Applicant or parties. The
3 ANC, within which the property is located is
4 automatically a party to a special exception
5 or variance case.

6 Nothing prohibits the Board from
7 placing reasonable restrictions on cross-
8 examination, including time limitations and
9 limitations on the scope of cross-examination.

10 The record will be closed at the
11 conclusion of each case except for any
12 materials
13 specifically requested by the Board. The
14 Board and the staff will specify at the end of
15 the hearing exactly what is expected and the
16 date when the persons must submit that
17 evidence to the Office of Zoning. After the
18 record is closed, no other information will be
19 accepted by the Board.

20 The Sunshine Act requires that the
21 Public Hearing on each case be held in the
22 open and before the public. The Board may,

1 consistent with its rules and procedures of
2 the Sunshine Act, enter into executive session
3 during or after the public hearing on a case
4 for
5 the purposes of reviewing the record or
6 deliberating on the case.

7 The decision of the Board in these
8 contested cases must be based exclusively on
9 the public record. To avoid any appearance to
10 the contrary, the Board requests that the
11 persons present not engage Members of the
12 Board in any conversation.

13 Please turn off all cell phones
14 and beepers at this time, not to disturb the
15 proceedings. The Board will now hear any
16 preliminary matters. Preliminary matters are
17 those that relate to whether a case will or
18 should be heard today, such as a request for
19 postponement, a continuance or withdrawal or
20 whether proper, or whether proper or adequate
21 notice for a hearing has been given.

22 If you are not prepared to go

1 forward with the case today or you believe
2 that the Board should not proceed, now is the
3 time to raise such a matter.

4 Mr. Secretary, are there any
5 preliminary matters?

6 MR. MOY: Madam Chair, staff would
7 suggest that we take up any preliminary
8 matters as the case is called. There is one
9 minor item on Application 18118 which can be
10 addressed at the time the case is heard.

11 Application 18107 of Joanne E.
12 Bell has been withdrawn from the agenda.

13 CHAIRPERSON MOLDENHAUER: Thank you
14 very much, Mr. Moy. Then at this point in
15 time, all individuals wishing to testify
16 before the Board, please stand and Ms. Bailey
17 will administer the oath.

18 (Whereupon, the witnesses were
19 sworn.)

20 DANICA PETROSHIUS

21 APPLICATION NO. 18106-6A

22 MS. BAILEY: Madam Chair, Members

1 of the Board, to everyone good morning. The
2 first Application is No. 18106. It's the
3 Application of Danica Petroschius -- excuse the
4 pronunciation -- pursuant to 11 DCMR, Section
5 3104.1, for a special exception to allow a
6 third floor addition with roof deck to an
7 existing flat that is a two-family row
8 dwelling under section 223, not meeting the
9 lot occupancy requirements -- that's the
10 requirements of section 403. The property is
11 zoned R-4. It's located at 243th Street, N.E.,
12 (Square 917, Lot 60.)

13 Is the applicant here for 18106?

14 CHAIRPERSON MOLDENHAUER: Thank
15 you. Please come forward. Once you have taken
16 a seat at the table you can turn on the
17 microphone and introduce both of yourselves
18 for the record. Thank you.

19 MS. PETROSHIUS: Hi. I am Danica
20 Petroschius. I am at 243 8th Street, N.E.

21 MR. FOWLER: Michael Fowler,
22 architect, 1819 D Street, S.E.

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1 CHAIRPERSON MOLDENHAUER: Thank
2 you both very much. We have reviewed the
3 record. This is a very thorough record. We
4 feel that the case is very well articulated
5 before us. So we can look to you if you would
6 like to present anything additional, you can
7 do so, otherwise you can rest on the record
8 and we can move forward to see any additional
9 statements by the Office of Planning.

10 MR. FOWLER: We would like to rest
11 on the record.

12 CHAIRPERSON MOLDENHAUER: Okay.
13 Thank you. At this point in time we have a new
14 order. I am going to look to the office and
15 see if there is any individuals in the
16 audience in support or in opposition of this
17 case.

18 (No response.)

19 CHAIRPERSON MOLDENHAUER: Seeing
20 none, then at this time I will turn to the
21 Office of Planning for their report.

22 MS. BROWN-ROBERTS: Okay, good

1 morning, Madam Chair, members of the Board.
2 Maxine Brown-Reports from the Office of
3 Planning. I also will stand on the record.
4 There's nothing else that I have to add to our
5 report except to say that we recommend of
6 approval of the proposed special exception
7 request. Thank you.

8 CHAIRPERSON MOLDENHAUER: Thank you
9 very much. Do any Board Members have questions
10 for the Office of Planning?

11 (No response.)

12 CHAIRPERSON MOLDENHAUER: Seeing
13 none, does the applicant have any questions
14 for the Office of Planning?

15 (No response.)

16 CHAIRPERSON MOLDENHAUER: Seeing
17 none, then we can move forward and I would ask
18 if anybody from ANC-6A is present.

19 (No response.)

20 CHAIRPERSON MOLDENHAUER: Seeing no
21 one, I will reference that we have our Exhibit
22 No. 26, which states that at a regularly held

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1 and noticed public meeting on September 2010,
2 the commission with a quorum present voted
3 5:0:0 to support the special exception request
4 under 223 and this letter satisfies our
5 standard and would be receiving great weight.

6 In addition to that, we have other
7 letters of support in the application from
8 neighbors and obviously as indicated
9 previously the Office of Planning is in
10 support.

11 I will then turn back to the
12 applicant for any closing remarks.

13 MR. FOWLER: No, none.

14 CHAIRPERSON MOLDENHAUER: Okay.
15 Well then I appreciate that and at this time
16 we will conclude the portion of this hearing
17 and go directly into deliberation.

18 And I will start us off and I will
19 indicate that I am going to incorporate the
20 analysis that the Office of Planning report
21 has under their 223. I think that it is very
22 thorough. I think that the applicant has done

1 a good job in maintaining the fact that this
2 addition is not going to be seen from 8th
3 Street, that there is going to be no
4 substantial impairment into the light and air
5 on the neighboring properties and that the
6 addition is also conforming with the community
7 and does not in any way impact the zoning
8 requirements.

9 In addition to that, as I
10 indicated earlier, we have a letter of support
11 from the ANC, a letter of support from the
12 applicant's neighbors and I will open up the
13 floor for any additional deliberations from
14 Board Members.

15 MEMBER TURNBULL: Madam Chair, I
16 would just point out that in Exhibit No. 6
17 there's a few photographs of the row houses,
18 and I think what's critical here is that you
19 have a whole string of row houses that have a
20 corbel cornice line, which I think is a very
21 significant part of the architecture and I
22 think Fowler Architects has done a very good

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1 job of pulling the addition back so that it
2 doesn't interrupt the character of the street
3 line.

4 So, again, and it's backed such a
5 way that the addition does not impact any of
6 the views into the neighbors, so I think they
7 have done a very good job and I think it's
8 well done.

9 The only thing -- and I don't -- I
10 just want to clarify, we have two exhibits, 8
11 and 9, from adjacent neighbors. No. 9 is --
12 well No. 9 doesn't really say the name of the
13 owner but it's at 245 8th Street. It's just, I
14 can't read the initial, there's not a typed
15 name underneath so I wonder if we could
16 clarify who the owner is. I mean it is --

17 And the other thing is that on the
18 other one, Exhibit No. 8, which is from Ms.
19 Connie Avery, I just want to clarify that it
20 says, "I am the adjacent property owner at 243
21 8th Street, N.E. My neighbors Greg Whitsoll
22 and Danica Petroschius of 243 8th Street," -- I

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1 mean she's got the same address. I think she
2 means 241. I just wanted to correct --

3 MS. PETROSHIUS: Yes, she means
4 241. Thank you.

5 MEMBER TURNBULL: Yes, I think
6 that's -- I just wanted to correct that for
7 the record, and the only other thing I just
8 wanted to say, on Exhibit No. 9, it would be
9 good to have the actual name of the individual
10 and I don't think we -- I mean it's not that
11 critical but it would have been good to have.
12 It looks like P-A-N or C-A-N or --

13 CHAIRPERSON MOLDENHAUER: What
14 we'll do is we'll break, since this is
15 actually part of our deliberation, we will
16 break for a deliberation to hear a quick bit
17 of testimony if the applicant can just provide
18 a clarification on that.

19 MS. PETROSHIUS: Sorry, do you want
20 me to tell you?

21 CHAIRPERSON MOLDENHAUER: Yes, I
22 would appreciate that. Thank you.

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1 MS. PETROSHIUS: All right. His
2 name is Nasser, N-A-S-S-E-R, Danesh, D-A-N-E-
3 S-H, at 245.

4 CHAIRPERSON MOLDENHAUER: Thank you
5 very much.

6 MEMBER TURNBULL: Thank you. I
7 didn't want to -- I just wanted the record to
8 be complete on this but I think, as I say, the
9 record is pretty complete.

10 CHAIRPERSON MOLDENHAUER: Thank you
11 very much, Mr. Turnbull. I appreciate that it
12 is important to clarify those things and make
13 sure that we have all of the facts in regards
14 to support especially when we are referencing
15 a support letter in a case where we are
16 relying upon that to grant the extension, to
17 grant the relief requested.

18 That being said, is there any
19 additional deliberation?

20 MEMBER HINKLE: Madam Chair, I just
21 want to echo Mr. Turnbull's comment regarding
22 the architecture. I think the architect did a

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1 fine job in pulling the proposed addition back
2 from the street so that it doesn't affect the
3 character of the street and the houses along
4 it. Nothing else to add.

5 CHAIRPERSON MOLDENHAUER: Thank you
6 very much. I absolutely agree with that. I
7 think it's very important.

8 MOTION TO APPROVE APPLICATION NO. 18106

9 CHAIRPERSON MOLDENHAUER: That
10 being said, then I will submit a motion, a
11 motion to approve Application No. 18106 for a
12 special exception relief under 223 to
13 construct a third storey addition to the
14 existing flat at 243 8th Street N.E.,
15 obtaining relief for non-conforming lot area,
16 lot width and lot occupancy.

17 Motion has been made. Is there a
18 second?

19 MEMBER HINKLE: Second.

20 VOTE TO APPROVE APPLICATION NO. 18106

21 CHAIRPERSON MOLDENHAUER: Motion's
22 been made and seconded. All those in favor

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1 say aye.

2 (Chorus of ayes.)

3 MR. MOY: I'm sorry, Madam Chair,
4 who seconded the motion?

5 CHAIRPERSON MOLDENHAUER: Mr.
6 Hinkle did.

7 MR. MOY: Mr. Hinkle. The staff
8 will record the vote as 3:0:2. This is on the
9 motion of the Chairperson, Ms. Moldenhauer, to
10 approve
11 the application, seconded by Mr. Hinkle, in
12 support of the motion Mr. Turnbull, no other
13 Board Members participating, and this is for
14 approval for the special exception of 223, not
15 meeting the lot occupancy requirements of 403.
16 Again, the final vote is 3:0:2.

17 CHAIRPERSON MOLDENHAUER: Thank
18 you very much Mr. Moy, and since there is no
19 opposition, we would like to waive our
20 requirements and ask for a summary order to be
21 issued.

22 MR. MOY: Very good. Thank you.

1 CHAIRPERSON MOLDENHAUER: Thank
2 you. Thank you very much.

3 MR. FOWLER: Thank you.

4 CHAIRPERSON MOLDENHAUER: We can
5 call the next case.

6 DOGS BY DAY LLC, AND GREENPETS
7 APPLICATION NO. 18118, ANC-1C

8 MS. BAILEY: Application 18118.
9 This is the Application of Dogs by Day LLC and
10 Greenpets, pursuant to 11 DCMR Section 3104.1,
11 for a special exception to allow an animal
12 boarding use with accessory dog training and
13 retail under section 735 and pet grooming
14 under section 736. The property is located in
15 the Reed-Cooke/C-2-B District, the premises
16 are at 1711 Florida Avenue, N.W. (Square 2562,
17 Lot 95.)

18 CHAIRPERSON MOLDENHAUER: Good
19 morning. Introduce yourselves for the record.

20 MS. WELCH: Linda Welch, owners of
21 Dogs by Day and Greenpets.

22 MR. SULLIVAN: Marty Sullivan from

1 Sullivan, Styles and Barros.

2 CHAIRPERSON MOLDENHAUER: Okay.
3 Thank you. I think that we have a fairly full
4 record. I think that the Board does have some
5 questions for you so if you would like we can
6 start off with some questions by the Board
7 prior to you starting your applicant's
8 statements.

9 MR. SULLIVAN: Okay.

10 CHAIRPERSON MOLDENHAUER: Okay.
11 Some of the things that I would be looking for
12 you to potentially clarify, we have -- I know
13 that the lot is a very large lot that the
14 applicant is submitting the relief for, but
15 there is just some confusion and maybe it's
16 just not clear in the record, as to what
17 percentage of this property is going to
18 actually be used for the dog facility, what
19 portion is going to be, I guess, maintained as
20 a parking garage with Colonial Parking, and
21 exactly how that is going to work out in
22 regards -- maybe providing us some of the

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1 pictures that we have in our exhibits and then
2 explaining to us how that is going to -- the
3 configuration will work.

4 In addition to that, I think that
5 there may be a question, Mr. Sullivan in
6 regards to the tenant being the applicant
7 here, which is improper. The property owner
8 has to be the applicant and so that may be an
9 issue that you may need to supplement the
10 record for in regards to authorization or
11 maybe there's something that we are missing in
12 the record and you can clarify that.

13 In addition to that, I just wanted
14 you to speak as to -- we have extensive
15 letters of recommendation in this application
16 but if you can provide some specific
17 statements as to discussions with the
18 neighbors. Looking at some of the exhibits we
19 have there are residential properties on V and
20 Florida that, while maybe they don't abut the
21 property, they are very close in proximity and
22 discussions with those, or maybe actually

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1 pointing out letters of support from
2 individuals in that location.

3 So that being said, those are my
4 questions. I don't know if Board Members have
5 any other kind of points of focus for the
6 applicant.

7 MEMBER TURNBULL: No, Madam Chair,
8 I think you have touched on, I think, the most
9 prominent ones. It was the same ones that I
10 had. I just wanted to clarify, I think Ms.
11 Welch, you did say that you are the owner of
12 both of those --

13 MS. WELCH: Yes, I am.

14 MEMBER TURNBULL: businesses.

15 MS. WELCH: Yes.

16 MEMBER TURNBULL: Okay. Are they
17 still separate with separate entities?

18 MS. WELCH: They are.

19 MEMBER TURNBULL: They are.

20 MS. WELCH: They are about to
21 become one under this -- under one roof in
22 this new location.

1 MEMBER TURNBULL: Okay. Thank you.

2 CHAIRPERSON MOLDENHAUER: Okay.
3 Then at this point we will turn back to the
4 applicant.

5 MR. SULLIVAN: Thank you. As
6 regards to the applicant, the application form
7 has 1711 Florida Avenue Property LLC as the
8 owner and under the hearing notice section of
9 the form as well, it says owner 1711 Florida
10 Avenue Property LCC and tenant, Planet Pet,
11 and I actually got letters of authorization
12 from both, I believe, the -- yes, there's a
13 letter of authorization from the owner of the
14 building as well.

15 So I may have referred to --

16 CHAIRPERSON MOLDENHAUER: Do you
17 know what exhibit that is?

18 MR. SULLIVAN: I'm sorry?

19 CHAIRPERSON MOLDENHAUER: Do you
20 know what exhibit that is?

21 MR. SULLIVAN: It's the second page
22 of the application package. I have the cover

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1 letter and then the first page after the cover
2 letter is the letter of authorization from the
3 applicant -- the owner. Stewart Schuler is the
4 representative of the owner.

5 CHAIRPERSON MOLDENHAUER: I see
6 that. It's our Exhibit No. 5, and it's the
7 second page in our Exhibit No. 5, which does
8 indicate the letter of authorization from 1711
9 Florida Avenue Properties, LLC. Thank you, I
10 appreciate the clarification of that.

11 MS. GLAZER: Madam Chair, if I can
12 interrupt. That authorization appears to
13 authorize the law firm. It's the owner
14 authorizing the law firm. I don't believe it's
15 the owner authorizing the tenant.

16 MR. SULLIVAN: I didn't know that
17 was a requirement to tell you the truth. I
18 mean, the author is authorizing me to
19 represent it before the Board. The
20 relationship between the landlord and the
21 tenant, I don't think that comes under the
22 jurisdiction of the Board.

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1 CHAIRPERSON MOLDENHAUER: So you
2 are saying that you are here representing the
3 property owner and you may have a witness who
4 is the tenant?

5 MR. SULLIVAN: I represent the
6 tenant and the landlord.

7 CHAIRPERSON MOLDENHAUER: I'm fine
8 with that, I think, if we have a letter of
9 authorization from the property owner, unless
10 OAG thinks that we need another point of
11 clarification in the record.

12 MS. GLAZER: I'm just not sure who
13 the applicant is, whether it's the owner or
14 the tenant.

15 MR. SULLIVAN: The applicant is the
16 owner as it's required to be.

17 MS. GLAZER: Yes.

18 MR. SULLIVAN: For convenience
19 sake, we may have referred to the tenant as
20 the applicant because for all intents and
21 purposes, as is usually the case, the operator
22 and the owner of the business that is the

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1 tenant that's going to be exercising this
2 special exception.

3 CHAIRPERSON MOLDENHAUER: Yes, I
4 mean, I am fine, I look at my Exhibit No. 1,
5 which is the application, and that application
6 indicates that the owner, 1711 Florida Avenue
7 Property LLC is the actual applicant and then
8 I also have the self-certified form, which
9 indicates that the owner and the applicant is
10 1711 Florida Avenue Property LLC. So I will
11 refer to those as the forming documents. If
12 there are supplemental documents that
13 potentially refer to the tenant, I will just -
14 - I will base my documentation on those first
15 initial submissions, the application and the
16 self-certified form.

17 But in the future, I know it gets
18 confusing at times, but do just to make sure
19 that the clarification is there in regards
20 when you submit your pre-hearing statement.
21 That would be appreciated.

22 MS. GLAZER: Madam Chair. I think

1 that's fine. But the caption, then, should be
2 amended to reflect that. I think the caption
3 currently reads "Dogs by Day."

4 MR. SULLIVAN: I think the caption
5 came from the Office of Zoning, not from me.

6 MS. GLAZER: (Off-mic.)

7 CHAIRPERSON MOLDENHAUER: Are you
8 on the record?

9 MS. GLAZER: Can you hear me now? I
10 don't have a problem with anything that
11 counsel or Madam Chair has said, but the
12 caption should be amended and if it's OZ's
13 error in reflecting Dogs by Day, that should
14 be changed.

15 CHAIRPERSON MOLDENHAUER: So at
16 this point in time, then, for the record, I
17 will request that the caption be revised so
18 long as the applicant, I think, which I have
19 heard, is fine with that in making the caption
20 indicate that the applicant is 1711 Florida
21 Avenue Properties, LLC.

22 I think that addresses some of our

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1 preliminary matters. Now if you want to,
2 we'll turn back to you to start your
3 presentation addressing some of the other
4 issues that we brought up.

5 MR. SULLIVAN: Thank you. One other
6 point of clarification I would like to point
7 out. The original application requested
8 special exception relief under section 735 and
9 then after discussion with the Office of
10 Zoning, it was decided that we need to include
11 736 and I thought that my discussion with the
12 Office of Zoning sufficed for that, because
13 the hearing notice from the beginning has
14 always included 736 and in fact all the
15 requirements are almost exactly the same. They
16 are exactly the same as the requirements of
17 735.

18 My initial position was that pet
19 grooming was subsumed in the animal boarding
20 use because of the definition of pet grooming.
21 It says if you have more than 10 and they are
22 overnight you are an animal boarding use. But

1 for good measure, the Office of Zoning said
2 let's notice that under both sections and then
3 you will also notice that the ANC resolution
4 and I think in the Office of Planning analysis
5 were both with the understanding that it was
6 735 and 736.

7 CHAIRPERSON MOLDENHAUER: My
8 eyesight is not that good and the pictures are
9 not close enough. The large, public notice
10 that was given, I am looking at the affidavit
11 of posting, was the description there for
12 both, or was it for only one?

13 MR. SULLIVAN: Yes, that's both.
14 Because the hearing notice from day one was
15 always with both sections and the poster is
16 derived from the exact same source as the
17 hearing notice.

18 CHAIRPERSON MOLDENHAUER: If the
19 hearing notice included both and the affidavit
20 of posting included both, I would be fine
21 indicating that notice would be sufficient and
22 waiving our requirements as long as OAG

1 doesn't find a problem with that.

2 MS. GLAZER: I think if the Board
3 determines that there was actual notice as to
4 both sections, it would be appropriate to
5 waive that requirement.

6 CHAIRPERSON MOLDENHAUER: Okay,
7 then unless there's any other Board Members
8 who object, I will waive that requirement,
9 seeing that based on the record, it appears
10 that there was actual notice as to both
11 sections, both to the community and to the
12 public in regards to the affidavit.

13 MR. SULLIVAN: Thank you. I would
14 just like to mention a point about the
15 residential zone. I clarified with the zoning
16 administrator before we got started that even
17 though we are across the street, that is not
18 considered abutting a residential zone or a
19 residential use, so we technically meet that
20 requirement and we do have some -- we have had
21 discussions with the immediate neighbors so
22 Linda will talk more about that. So if there's

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1 no other preliminary questions we can move on
2 to Linda's testimony.

3 CHAIRPERSON MOLDENHAUER: Thank
4 you.

5 MR. SULLIVAN: Thanks.

6 MS. WELCH: Thank you Madam Chair,
7 Board Members. Would you like me to clarify
8 the space? That was a question of yours. We
9 occupy approximately 5,555 feet of that large
10 block. About 2,000 of that is for retail and
11 about 3,000 of that in the lower 3,000 is dog
12 care.

13 The parking garage is behind us
14 and we don't occupy anything on the second
15 floor. We are only on first floor use. There's
16 a music studio that's up there. Okay?

17 So to answer your questions about
18 the neighbors, we met with them a couple of
19 times, actually we have seen them three times
20 now, to discuss -- mostly their concerns were
21 parking and what the building was going to
22 look like, so we had lengthy discussions about

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1 that.

2 The conclusion was, with the
3 parking, is that we were just going to wait
4 and see what happened. They were worried that
5 it might be congested there if people were
6 coming to drop off their dogs, but we assured
7 them, just where we are on 14th Street as
8 well, that double parking is illegal anywhere
9 so people will find a place to park along the
10 street. There's also a parking garage that is
11 attached to the building that they can go into
12 and park there, and I have found in the three
13 or four months that I have been over there
14 pretty regularly that I never have an issue
15 finding parking any time.

16 So we left it with the neighbors
17 that we were going to wait and see what really
18 happened once we did get moved in there and if
19 we still had an issue then we would talk about
20 it.

21 Currently on Florida Avenue, there
22 is no restriction to parking. People can park

1 there all day and I think the neighbors like
2 that, so they didn't want us having to come in
3 an and ask for meters or anything like that
4 yet. So I think we have that piece resolved.

5 We showed them copies of the sign
6 that we will be putting up and -- which they
7 asked for so we gave that to them. But that
8 was basically -- they wanted to make sue we
9 would be mindful of their flower gardens when
10 we do our dog-walking and that was our
11 conversation with them. They seemed like they
12 are going to be great neighbors, so --

13 CHAIRPERSON MOLDENHAUER: Do you
14 have any letters of support from those
15 neighbors or from those individuals in that
16 area?

17 MS. WELCH: We don't. I don't. Did
18 you get anything? We have had emails from them
19 but none --

20 MR. SULLIVAN: Not that we know of,
21 but basically they expressed to us -- the main
22 representative of the nearby neighbors said

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1 that they are not going to oppose this, but to
2 my knowledge, I don't know if we have letters
3 in the record from them exactly.

4 CHAIRPERSON MOLDENHAUER: Okay.
5 Where do -- I know that we have got letters
6 and different addresses all throughout these
7 letters of support, but kind making it a
8 little more -- in a simple fashion, can you
9 describe where most of your clients come from
10 throughout the district?

11 MS. WELCH: They are within a mile
12 radius of where we are currently, on 14th
13 Street. Lots and lots of neighborhood folks.
14 There are a few that will come a little
15 further but I would say 75 percent of our
16 client base comes from Logan Circle, Adams
17 Morgan, Dupont Circle and Shaw neighborhoods.

18 CHAIRPERSON MOLDENHAUER: And how
19 do they currently drop off their pets?

20 MS. WELCH: A large majority walk.
21 They walk and then some do bring their dogs in
22 the car but we have, I would say predominantly

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1 they have come on foot.

2 CHAIRPERSON MOLDENHAUER: And this
3 would be a convenient location for them to
4 continue walking?

5 MS. WELCH: We are hoping so. We
6 did a poll of our customers. Most of them seem
7 very enthusiastic. The few that felt that it
8 might be too far to travel, we started our No
9 Dog Left Behind policy and we are going to go
10 and pick those dogs up and bring them to the
11 daycare at the owner's convenience.

12 CHAIRPERSON MOLDENHAUER: And so
13 with a pick-up program, would your vehicle
14 then go into the garage or would it be parked
15 on the street?

16 MS. WELCH: It would depend, I
17 suppose, if we had one dog or do we have
18 multiple dogs and the hours. The garage is --
19 our daycare is open from 7 a.m. in the morning
20 until 11 p.m. and the store however, which is
21 the garage entrance, is only open starting at
22 10 so if they came in prior to 10 they would

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1 have to go into the Florida Avenue which means
2 they would park somewhere probably along the
3 street.

4 CHAIRPERSON MOLDENHAUER: How many
5 employees will you have at the location?

6 MS. WELCH: We have 25 full time
7 employees.

8 CHAIRPERSON MOLDENHAUER: And can
9 you provide some information on -- or maybe
10 your counsel wants to jump in on the parking
11 requirements and those things.

12 MR. SULLIVAN: Well, I would first
13 like to ask about the specific special
14 exception requirements and if you could
15 describe how your operation has in the past
16 and will handle odor control and noise control
17 and waste disposal.

18 MS. WELCH: Sure. We use really
19 large HEPA filters throughout our facility and
20 they control the odor perfectly. We also clean
21 -- we have good cleaning schedule. In a 24-
22 hour period the whole, entire facility gets

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1 cleaned every six hours and then as far as
2 waste, we have someone who comes, a company
3 called Parliament, who comes and picks up the
4 waste three times a week, Monday, Wednesday
5 and Friday and we keep it in large canisters,
6 double-bagged and then when we know that they
7 are coming, at the appropriate time we set the
8 cans outside and they do pick-up and that's
9 happened for -- we have used them for nine
10 years. And your question -- I'm sorry, I got
11 off track.

12 MR. SULLIVAN: Noise control.

13 MS. WELCH: Noise. Well, we have a
14 no-bark policy which is pack animals are going
15 to do what the lead pack tells them to -- what
16 the lead in the pack tells them to do, so we
17 have trained our handlers. Our handlers, by
18 the way, a number of them have been with us
19 since the day we opened, so we have very well-
20 trained handlers, and we can keep the noise
21 down and once the dogs realize that they are
22 away from their home, they are not protecting

1 their house or their people or their things,
2 they are just dogs, there is no reason for
3 them to bark unless they get excited and
4 overly playful.

5 It does happen from time to time,
6 but we really keep a lid on it. We don't --
7 it's just too -- you know 80 dogs barking at
8 once is just too much, so we have a no-bark
9 policy.

10 MR. SULLIVAN: You currently
11 operate in other location and could you talk
12 a little bit about how that operation works
13 and the -- your relationship with your
14 surrounding community there?

15 MS. WELCH: Sure. We have been
16 there since '99, June of '99 is when we
17 opened, and it just -- we kind of grew with
18 the neighborhood. I think you all remember
19 14th Street 12 years ago. So the neighborhood
20 and we have grown with it. We have been a big
21 support to community organizations. We support
22 the MidCity Business Association, Think Local

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1 First. We are also huge advocates of a lot of
2 local rescues, any kind of animal shelter, we
3 have had hundreds and hundreds of dogs adopted
4 through our facility. We employ local people
5 that live in the area. So I think we are a
6 real asset to a community and we seem to have
7 a pretty good reputation. People seem to know
8 who we are and like us as a business.

9 MR. SULLIVAN: And there is -- the
10 dogs will not be kept in any external yard on
11 the property, is that correct?

12 MS. WELCH: No, there really isn't
13 any place to do that and I guess that -- no,
14 they won't. There's a large indoor playroom
15 and a couple of side playrooms and that's what
16 we are using currently. We have no outdoor
17 space currently either, but we do something
18 called a power walk where we take dogs out for
19 walks if the owners have requested it, four
20 dogs at a time, which is the limit for D.C.
21 and we take them on a 20-minute run -- walk
22 around the facility, some side streets and

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1 that combined with the playroom where they can
2 run around and be dogs is plenty of exercise
3 for them.

4 MR. SULLIVAN: Thanks. Can you talk
5 a little bit about the reason you are moving
6 and your time constraints.

7 MS. WELCH: Yes sure. So about two-
8 and-a-half years ago we realized that we might
9 be having an issue with the current landlord
10 and we really did try to resolve it to stay
11 but unfortunately they just -- it was just too
12 exorbitant, the amount of rent that they
13 wanted to charge us. We just couldn't make it
14 work.

15 So we started over two years
16 looking for a space and we looked at I think
17 just about every available space in our
18 neighborhood area. Nothing seemed to fit the
19 protocol for the special exception. So
20 finally, though in the 11th hour this space on
21 Florida Avenue became available to us and it
22 seems to meet all the requirements and we have

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1 been working diligently to prepare for the
2 move because our landlord is giving us not
3 even an extra minute to stay. We have to be
4 out the end of this month at midnight and they
5 close the doors.

6 Our issue with that is that we
7 have -- we take care -- we have 1,500 active
8 clients, that means a client that has been
9 with us in the last four months and we take
10 care of an average of 80 dogs a day and there
11 really isn't an alternative place for these
12 folks to take their dogs at this point, so
13 being down even for a day would be very
14 problematic and that's been a fear among our
15 clientele so we are working diligently and I
16 do appreciate -- I know we were scheduled at
17 a later date for this hearing so I really
18 appreciate being able to speak now because
19 this is so important that we stay open. It
20 could severely hamper our business and I have
21 to think, I have 25 people who have been with
22 me, some of them, almost 12 years. So that's

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1 the reason for the urgency.

2 MR. SULLIVAN: Thank you. I believe
3 we are done with Ms. Welch's testimony.

4 CHAIRPERSON MOLDENHAUER: Thank you
5 very much. Do any Board Members have any
6 questions for the applicant?

7 MEMBER TURNBULL: Yes Madam Chair,
8 I have two. The waste, does that get picked up
9 outside the front door or out back?

10 MS. WELCH: Currently, in our
11 location now it gets picked up in the
12 alleyway.

13 MEMBER TURNBULL: Okay.

14 MS. WELCH: We are now discussing
15 with the folks where to pick it up now. Does
16 it come, you know, the side of the garage, do
17 we just take it out that way, or do we take it
18 through the Florida Avenue where the big roll-
19 up door is, do we take it out that way and put
20 it there? We don't have a resolution to that
21 yet. We are still working that out. We should
22 know this week, though.

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1 MEMBER TURNBULL: Okay. The other
2 question. I believe you testified you are on
3 the first floor?

4 MS. WELCH: We are.

5 MEMBER TURNBULL: All right. I just
6 want to correct, I mean, the Office of
7 Planning report on page 2 said the new
8 location would be in the north-west corner of
9 Champlain Street and Florida Avenue and it
10 would be located on the 2nd floor of a brick
11 enclosed parking garage in the space that was
12 formerly used for offices. So that's
13 incorrect?

14 MS. WELCH: That's incorrect, yes.
15 That's the upstairs. We are on the ground
16 level.

17 MEMBER TURNBULL: I wanted to just
18 -- referring to exhibit 7 with the page three
19 with the photos? The store front that I am
20 looking at in the top picture?

21 MS. WELCH: Oh.

22 MEMBER TURNBULL: Is that --

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1 MS. WELCH: That's not us. That's
2 across the street.

3 MEMBER TURNBULL: That's not you.
4 That's across the street. Do we have a picture
5 that looks at --

6 MS. WELCH: Down below, the picture
7 down below is the building.

8 MR. SULLIVAN: There's a -- it's on
9 the first floor. And there's a -- the entrance
10 door is right here. I don't have a picture of
11 the entrance door but it faces this way,
12 because you can't really see it from this side
13 anyway.

14 MEMBER TURNBULL: So there really
15 are no windows, though?

16 MS. WELCH: There's no windows so -
17 -

18 MEMBER TURNBULL: Oh, okay.

19 MS. WELCH: Which is I think a good
20 thing.

21 MEMBER TURNBULL: Okay.

22 MS. WELCH: It helps with the sound

1 barrier and it's just --

2 MEMBER TURNBULL: I was just
3 curious. I was confused. I was looking at all
4 these pictures and I am -- my first thought
5 when it said second floor, I said well how do
6 they get up to these --

7 MS. WELCH: Yes.

8 MEMBER TURNBULL: All these dogs
9 going up all these stairs.

10 MS. WELCH: Yes.

11 MEMBER TURNBULL: Okay so you are
12 on the first floor and you're really in this
13 section here and the entrance is down a bit.
14 Okay. All right. Thank you.

15 MEMBER HINKLE: Thank you Madam
16 Chair. I was just curious. Does this move
17 allow you to expand or are you looking to
18 expand your operations or are you looking to -
19 -

20 MS. WELCH: It does, which is
21 marvelous. It does provide us some more space
22 so we can offer a few more services and have

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1 a larger retail presence.

2 MEMBER HINKLE: Sure. Sure.

3 MS. WELCH: So that's very
4 positive.

5 MEMBER HINKLE: And you said the
6 access to the retail is on the first floor and
7 so you'll be able to just go off the street?

8 MS. WELCH: You can come in through
9 Florida Avenue or you can come in through the
10 garage, there's a back entrance as well. That
11 entrance to the garage, those only open at 10
12 a.m. when the retail -- because it goes
13 directly into the retail space.

14 MEMBER HINKLE: Okay. Thank you.

15 CHAIRPERSON MOLDENHAUER: Thank you
16 very much. I don't believe there are any other
17 questions and at this time we will move on and
18 I'll look to the audience to see if there's
19 any individuals present in support or in
20 opposition of this application.

21 (No response.)

22 CHAIRPERSON MOLDENHAUER: Seeing

1 none, then we will turn to the Office of
2 Planning for their report.

3 MR. MORDFIN: Good morning Chair,
4 members of the Board, I am Stephen Mordfin
5 with the Office of Planning and the subject
6 application is in conformance with the
7 provisions for the granting of a special
8 exception to permit animal boarding, grooming
9 and the sale of pet supplies because the
10 subject property does not abut a residence
11 zone, the use would take place entirely within
12 a soundproof masonry building without windows
13 that open, animal waste would be collected
14 three times per week and kept within heavily-
15 lined containers, the building would be
16 equipped with HEAP filters and no external
17 yards or other external facilities would be
18 provided.

19 The application will always be in
20 conformance with the provisions of the Reed-
21 Cooke overlay district, provided the applicant
22 obtains a new certificate of occupancy for the

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1 use.

2 Therefore the Office of Planning
3 recommends approval of the application and
4 thank you.

5 CHAIRPERSON MOLDENHAUER: Thank you
6 very much and just for a preliminary matter,
7 we did receive the OP report late but we'll
8 waive those requirements and obviously have
9 the Office of Planning report entered into the
10 record.

11 Thank you. I don't -- your report
12 doesn't touch on the standard of 736 so if you
13 could just do that orally for the record, I
14 would appreciate that.

15 MR. MORDFIN: The reason we hadn't
16 reviewed 736 is because animal grooming, and
17 when we had put together these regulations
18 initially, there was concern that people would
19 drop off animals for animal grooming and then
20 just leave them there the whole day and pick
21 them up maybe at the end of the day, and
22 within the community there were people

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1 thinking well, what's the difference between
2 that and animal boarding if the animal stays
3 the whole day whether or not it's been
4 groomed.

5 But as for touching on the
6 requirements, the requirements for 735 and for
7 736 -- so for 736, which is the pet grooming,
8 the requirements that the establishment be
9 located and designed to create no
10 objectionable condition to adjacent properties
11 resulting from animal noise, odor or waste and
12 in this case, as with the boarding, the waste
13 will be placed within heavily-lined containers
14 and it will be collected three times a week
15 and placed out prior to collection by the
16 company that will pick that up.

17 There will be HEAP filters
18 installed in the building which will deal with
19 the odor issue and also as for animal noise,
20 it is a masonry constructed building and
21 therefore that should help contain the noise,
22 and the applicant has also indicated, and I

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1 did tour the facility when we wrote these
2 regulations I don't remember how many years
3 ago.

4 I was amazed. I think they told me
5 that day that I went in there, there were 60
6 dogs in there and there were 60 dogs in there
7 but I couldn't see -- I saw them but I
8 couldn't hear them. They weren't barking and
9 also I didn't smell anything that -- it was
10 just a fresh-smelling building so that is the
11 way, my experience is, that this applicant
12 runs her business.

13 The application does indicate that
14 waste will be placed in disposal containers as
15 per 736.3 with HEAP filters. The grooming
16 establishment will not abut a residential zone
17 district because as per OAG has informed the
18 Office of Planning that abutting means that it
19 is not across an alley or across a street and
20 in this case, the entire square is
21 commercially zoned.

22 There are no external yards, so

1 there can be no external yards used in this
2 case, and the sale of pet supplies and
3 accessories is permitted with pet grooming and
4 in this case the applicant is going to take
5 advantage of that, and the last is that the
6 Board may impose any additional requirements
7 and the Office of Planning doesn't recommend
8 any additional requirements.

9 CHAIRPERSON MOLDENHAUER: Thank you
10 very much. Do any Board Members have any
11 questions for the Office of Planning?

12 (No response.)

13 CHAIRPERSON MOLDENHAUER: Seeing
14 none, does the applicant
15 have any questions for the Office of Planning?

16 MR. SULLIVAN: Now we don't.
17 Thanks.

18 CHAIRPERSON MOLDENHAUER: Thank you
19 very much. Then at this point in time I would
20 turn to ANC-1C. Is there anybody in the
21 audience representing ANC-1C?

22 (No response.)

1 CHAIRPERSON MOLDENHAUER: Seeing no
2 one, what I will do then is I will reference
3 our Exhibit No. 32, which indicates that at a
4 duly held meeting, ANC-1C with a quorum
5 present of six of eight commissioners, voted
6 to approve the application.

7 They approved it, though, based on
8 the following conditions: one, the patrons
9 arriving by automobile will be instructed for
10 parking options both public and private by
11 signage inside the premises, electronically
12 such as on a website and on a voicemail
13 message machine and also in printed material.

14 And the second condition is that
15 lighting shall be limited to background area
16 lighting and excluding the use of spotlights
17 or neon lights or flashing lights.

18 So that is the letter based on the
19 issues that would actually be receiving great
20 weight. I'll just turn back to the applicant
21 and ask you to address those two conditions
22 and if the applicant has accepted those

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1 conditions.

2 MS. WELCH: Do you want me to
3 answer that? Okay, so in regards to the
4 parking, we have it on our brochures that we
5 are just getting printed now. We don't have a
6 phone message yet but we will. We have signs
7 being printed now to show people where to
8 park. And we have sent out some preliminary
9 letters to our clients discussing that point,
10 just letting them know where they can be
11 parking, what the requirements are and to
12 please obey all parking laws.

13 And signage, we sent that over to
14 the neighbors so they can see there are no
15 spotlights. There are no flashing lights.
16 There's no neon that's going to be used. The
17 sign is going to have a dimmer on it that
18 after hours will come down 50 percent, so it
19 shouldn't be an issue for anybody.

20 And there's a huge tree -- I don't
21 know if you can see it from the picture --
22 that obstructs the front of the space, so I

1 think that will help, too, to -- if there's
2 any issue at all. You can kind of see it in
3 the picture.

4 CHAIRPERSON MOLDENHAUER: Thank
5 you. At this point I will turn back to the
6 applicant for any other closing remarks. I
7 have no additional questions and I will turn
8 to any Board Members if they have any
9 additional questions prior to the applicant's
10 closing remarks.

11 (No response.)

12 CHAIRPERSON MOLDENHAUER: Seeing
13 none.

14 MR. SULLIVAN: Just to reiterate
15 the timing issue. We actually turn into a
16 pumpkin at midnight on Thursday and DCRA has
17 been very helpful in getting all the other
18 steps in place, hopefully, for an approval
19 here, so we obviously ask for a bench decision
20 and summary order. Thank you.

21 CHAIRPERSON MOLDENHAUER: Thank you
22 very much. Then at this point in time, we will

1 conclude our hearing and enter into a
2 deliberation discussion.

3 I will start us off. This is
4 application No. 18118 to permit an animal
5 boarding establishment and an animal grooming
6 establishment. I think the record is very
7 full. We have an operator who has been
8 operating in another location and there hasn't
9 been from the record any other issues at that
10 prior location.

11 The applicant has presented
12 sufficient evidence to illustrate that they
13 actually satisfy the different requirements
14 under 735 and 736, both indicating that they
15 do not abut -- we have heard testimony from
16 their counsel in regards to, even though there
17 are properties that are residential on, as I
18 said, indicated V and Florida that, based on
19 their interpretation and the definition of
20 abut, it doesn't have actually abut since
21 there is no residential properties on that
22 block or on that square.

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1 In addition to that we have heard
2 I think sufficient testimony to support
3 section 735.3, which talks about the need to
4 produce no noise or odor objectionable to the
5 nearby properties.

6 We have heard, also, about their
7 waste disposal containers that the applicant
8 is working with the -- having additional HEAP
9 filters, that they are going to be taking out
10 the trash twice, three times a week and that
11 they have a no bark policy.

12 We heard testimony from the Office
13 of Planning indicating that upon a site visit
14 he was quite impressed by the number of
15 animals that were on site and the limited
16 noise that was being created. I commend that.
17 My dog I know would make noise, but I think
18 that we have sufficient information that shows
19 that the applicant has satisfied those
20 different standards. I think that the
21 applicant also indicated that they have worked
22 with the neighborhood. We have extensive

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1 letters of support -- obviously because of the
2 numbers I am not going to reference all of
3 them -- but we have Exhibit No. 26, we have
4 25, we have a grouping of them in 23 and 22,
5 including over 35 and 28 letters of support
6 from individuals.

7 And so in addition to that we
8 also, as I indicated, have the ANC report,
9 which indicates a letter of support and the
10 conditions that they have requested, the
11 applicant has conceded to and indicated that
12 they have already taken efforts to address
13 both of those, which is very positive,
14 especially considering that it sounded like
15 the neighbors' main concern was one of parking
16 and so I am happy to hear that the applicant
17 has already jumped on top of that and taken
18 efforts to modify the brochure, to provide
19 notices, to make sure that their clients
20 conform and uphold the parking requirements
21 and understand the different local parking
22 options at the new site.

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1 That being said, I am in full
2 support of this application for both relief
3 that is being requested and I will open up the
4 floor to any additional deliberation from
5 Board Members.

6 MEMBER HINKLE: Thank you Madam
7 Chair. I think your discussion was pretty
8 thorough and I agree that the record is very
9 full on this application and you know, I
10 understand that this type of use is -- can be
11 difficult to locate in these dense, urban
12 neighborhoods that we have in the district,
13 but I think the applicant has shown through
14 their track record that they do a good job of
15 mitigating any negative or impacts and I think
16 that is evidenced in the strong community
17 support that we have seen in the testimony and
18 the materials.

19 So, I don't have anything else to
20 add except for I am inclined to support this
21 application as well.

22 CHAIRPERSON MOLDENHAUER: Thank you

1 very much. Any additional comments?

2 MEMBER TURNBULL: Madam Chair, I
3 would just concur with yours and Mr. Hinkle's
4 analysis of this case and I think the Office
5 of Planning report, in their discussion of 735
6 is pretty thorough, and although they don't
7 discuss 736, the requirements are comparable.

8 So I think that the applicant has
9 met the requirements for a special exception
10 and I would also be in support.

11 CHAIRPERSON MOLDENHAUER: Thank you
12 very much then --

13 MEMBER TURNBULL: And if you can
14 keep 60 dogs or 80 dogs from not braking,
15 that's -- I mean we are minding my daughter's
16 dog for a week and a half now, and it's
17 interesting.

18 MOTION TO APPROVE APPLICATION NO. 18118

19 CHAIRPERSON MOLDENHAUER: That
20 being said, at this point in time, then, thank
21 you for adding additional deliberation points
22 but I will submit a motion, a motion to

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1 approve Application No. 18118 for the
2 applicant, which is 1711 Florida Avenue
3 Properties LLC, pursuant to 11 DCMR 3104.1 for
4 a special exception to allow an animal
5 boarding use with an accessory dog training
6 and retail under section 735 and a pet
7 grooming under section 736, with the
8 conditions provided under the ANC letter.

9 With the motion made, is there a
10 second?

11 MEMBER TURNBULL: Second.

12 CHAIRPERSON MOLDENHAUER: Motion
13 has been made and seconded, all those in
14 favor, say aye.

15 (Chorus of ayes.)

16 MR. MOY: Staff would record the
17 vote as 3:0:2, this on the motion of
18 Chairperson Ms. Moldenhauer to approve the
19 application for relief for a special exception
20 from sections 735 and 736. Also in support,
21 seconding the motion, Mr. Turnbull, also in
22 support of the motion Mr. Hinkle. Again the

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1 approval is also a condition as conditioned by
2 -- as stated in the ANC letter Exhibit No. 32.
3 Again, the vote is 3:0:2 to 711 Florida Avenue
4 LLC.

5 CHAIRPERSON MOLDENHAUER: Thank you
6 very much, and with no parties in opposition,
7 we would like to waive our requirements and
8 have a summary order issued.

9 MR. MOY: Very good. Thank you
10 Madam Chairperson.

11 CHAIRPERSON MOLDENHAUER: Thank you
12 very much.

13 MR. SULLIVAN: Thank you.

14 PRIMAL FITNESS INC.

15 APPLICATION NO. 18105, ANC-6C

16 MS. BAILEY: The last case of the
17 morning is Application No. 18105. It's the
18 application of Primal Fitness Inc., pursuant
19 to 11 DCMR Section 3103.2 for a variance from
20 the use provisions to operate a fitness center
21 under subsection 330.5. the property is zoned
22 R-4. It is located at 219 M Street N.W.,

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1 (Square 555, Lot 805.)

2 CHAIRPERSON MOLDENHAUER: Thank you
3 very much. Will the parties please step
4 forward to the tables? Good morning. If you
5 could introduce yourself for the record.

6 MR. TOOROCK: Good morning. Madam
7 Chair. My name is Mark Toorock. I am the owner
8 of Primal Fitness.

9 MR. VALENTINE: Good morning Madam
10 Chairman and Board Members. My name is Ray
11 Valentine. I am the owner of 219 M Street,
12 N.W.

13 CHAIRPERSON MOLDENHAUER: Okay,
14 just for a point of clarification. Mr.
15 Valentine, you are the applicant as the owner.
16 As you heard earlier in another case, the
17 owner is always the applicant and the tenant
18 is here obviously as a witness to address any
19 of the issues.

20 I am going to ask if Mr. Amos is
21 present, Robert Amos is the ANC
22 representative. Since you are a party I am

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1 just going to ask you to come forward at this
2 time.

3 Thank you. Just for clarification
4 it helps out, and I will ask you for your
5 testimony at the time which the procedure asks
6 for that.

7 Then at this time what I am going
8 to do is I am going to turn to the applicant
9 to begin its presentation of the case.

10 MR. VALENTINE: Thank you very much
11 Madam Chairwoman and Board Members. Again, my
12 name is Ray Valentine. I am the owner of 219
13 M Street, N.W., which is an historic firehouse
14 located at the intersection of New York and
15 New Jersey Avenue.

16 What we have been attempting to do
17 for a number of years is to get a tenant in
18 the property. We have been thwarted by that
19 because of the situation in which the building
20 is zoned. It is in a residential zoned area,
21 it's zoned residential, I believe it's R-4,
22 but the building is not suitable for

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1 residents. It's a former firehouse and over
2 the years, we have again attempted to get
3 tenants in there.

4 For a number of years, the co-
5 owner, my brother, William D.C. Valentine and
6 I, rented it from the District government and
7 I believe it was 1982-83, the law was passed
8 that allowed surplus property to be sold, so
9 we have owned it since then.

10 Prior to that, we were there from
11 '75 on. Over the years we conducted business
12 out of there. We did electro-mechanical
13 repair, we actually did government contracting
14 with the city, with the communications
15 equipment and we installed, we built and
16 installed the initial lottery machines. They
17 were all assembled and installed right at that
18 location.

19 The -- we have not been in there
20 for a number of years. The building had been
21 vacant. At certain times we tried to get
22 tenants in there and we again had a problem

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1 getting a certificate of occupancy.

2 I do have, with your indulgence I
3 can give you a summary that might answer some
4 of the questions. It has examples of when we
5 applied for certificate of occupancies as far
6 back as 2000 and what was the result of that.

7 CHAIRPERSON MOLDENHAUER: I don't
8 know if that's going to be necessary and I can
9 look to my other Board Members. I think that
10 previously in the hearing in 2008, the Board
11 determined that there were some potential
12 concerns as to the third prong, as to whether
13 this use would substantially impact or create
14 a detriment to the public good or impact in
15 the zoning plan. I think that I don't see a
16 need to potentially rehash the first and
17 second prong of the standard unless other
18 Board Members feel that there potentially is
19 one, and I'm looking and seeing that my other
20 Board Members agree with me.

21 I think that the main concern --
22 the reason why the Board only issued a nine-

1 month period of time for a C of O was because
2 of these concerns, to see how they worked out
3 in real life, and to see if that was actually
4 something that would potentially outweigh, as
5 the third prong, create some substantial
6 detriment in which the Board could then not
7 issue this variance or continue to issue this
8 variance.

9 So I would actually ask that you
10 address those issues and I have some great
11 concerns over some of the conditions that were
12 required upon you that were not satisfied and
13 I really want you to speak onto those issues
14 and I am sure you are quite aware of the
15 letters of opposition we have in our file and
16 address those as well.

17 MR. VALENTINE: Thank you. The --
18 several of the issues we have taken care of,
19 the issues with respect to the parking. The
20 building has in front of it because of it's in
21 an old firehouse and has a setback, there's an
22 area where cars can be parked and we have not

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1 marshaled that parking general as part of the
2 neighborhood.

3 It's been used by both tenants in
4 our building and the properties adjacent. We
5 have a carry-out, a hair salon and Ms. Keys'
6 variety store and we haven't said you can't
7 park there.

8 I haven't sought any relief as far
9 as getting a parking -- I forget what it's
10 called -- which would allow us the active use
11 of the parking area, but it's been something
12 in which the neighbors have been more or less
13 cooperative about.

14 And the issue with blocking the
15 sidewalk: we went to primarily the folks in
16 the barber shop and they have agreed that they
17 won't block the sidewalk so that issue has
18 been taken care of.

19 The issue with respect to the
20 damage to 215 New York Avenue, where the
21 weights were dropped, we have repaired the
22 wall where the damage was. We actually

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1 repaired I believe it was two of the walls and
2 that work was done over the last month or so.

3 And with respect to the weights
4 being dropped, I will defer to my tenant on
5 that.

6 MR. TOOROCK: Madam Chair, members
7 of the Board, obviously there are issues which
8 have affected Ms. Keys in the past and we have
9 gone to great lengths to try to abate those
10 issues and try to be a good neighbor to Ms.
11 Keys.

12 The original thing we did was
13 actually cut the concrete between the two
14 buildings based on her feeling that the
15 vibrations were causing cracks in her walls,
16 so we decoupled the concrete between the two
17 buildings. That was done over two years ago.

18 After that, the vibration was
19 still present so we did extensive testing with
20 the weights in our building, with Ms. Keys
21 present, with Mr. Valentine present on a cell
22 phone and until we got a satisfactory result

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1 where we actually moved any of the heavy
2 weightlifting to a back area of the gym. It's
3 now all done in a small room in the back area
4 of the gym over a period of about only six
5 hours a week, is that activity taking place.

6 We also have just recently gotten
7 hold of a vibration meter which unfortunately
8 has been a difficult and expensive process to
9 get a registered person to come and use the
10 vibration meter, we got a quote for \$11,000
11 which our business simply won't support.

12 But we did our own test with the
13 vibration meter and at 15 feet from the actual
14 dropping of the weights, it doesn't register
15 above street traffic. We also did a sound test
16 meter and the noise from the street is 94
17 decibels and the noise from dropping the
18 weights at eight feet was 92 decibels, and
19 that was as much as Mr. Woody, the co-owner of
20 the gym could lift and he is the strongest guy
21 in the gym.

22 So we have gone through great

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1 lengths. We have also built a supplemental
2 platform where that heavy weightlifting occurs
3 in that back room, which is the furthest
4 removed area of the gym from Ms. Keys'
5 building. We have put down supplemental
6 padding. We did -- actually it was Brenda's
7 nephew did the plastering for us, so again, we
8 have made great efforts to be a good neighbor
9 to Ms. Keys and to abate these issues, and
10 further we did offer both a while ago and
11 recently to buy OSHA-specific floor matting in
12 case the vibration is still an issue so that
13 when Ms. Keys is in her store she could stand
14 on that matting and we intend to provide that
15 for her as well.

16 CHAIRPERSON MOLDENHAUER: I'm just
17 trying to -- I'm looking at this. The second
18 condition for the 2008 order was that the
19 applicant install an appropriate sensor or
20 monitoring device on the west wall of the
21 adjacent building to the east of the property
22 in order to detect any vibration impacts on

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1 the adjacent property or building.

2 Mr. Valentine, why was that not done?

3 MR. VALENTINE: The monitoring
4 devices that are available for something like
5 that is cost-prohibitive.

6 CHAIRPERSON MOLDENHAUER: But it
7 was a requirement of the order. I mean, you
8 would not get this use without satisfying
9 that. Do you understand that?

10 MR. VALENTINE: I understand. I
11 understand. And I had looked and looked and
12 looked and again the least amount that I had
13 found up until recently was for \$11,000. We
14 were told that it could be done for \$6,000 but
15 we don't have anyone certified to actually
16 operate it so the results at that expense, I
17 just couldn't see the reason for doing it that
18 way.

19 What had happened was in all of my
20 time seeking these devices, I actually came
21 across products but it was only because I had
22 out there so long looking. One of the

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1 consultants actually called me and said call
2 this person up I think he's got something that
3 can help you on that.

4 CHAIRPERSON MOLDENHAUER: So now
5 you have a product. Is that correct? I am
6 trying to understand this.

7 MR. VALENTINE: I believe they do.
8 I don't know that much about it. I would like
9 to defer.

10 CHAIRPERSON MOLDENHAUER: So you do
11 now have a product that measures the
12 vibration?

13 MR. TOOROCK: Yes, Madam Chair, may
14 I provide my opinion or further clarification
15 on this matter?

16 CHAIRPERSON MOLDENHAUER: I would
17 like you to answer the question first, that
18 you actually have a vibration detecting device
19 that monitors the east -- the adjacent
20 building to the east.

21 MR. TOOROCK: We have rented a
22 device temporarily. The clarification I would

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1 like to give is directly pertinent to that, if
2 I may.

3 CHAIRPERSON MOLDENHAUER: Please go
4 ahead.

5 MR. TOOROCK: I believe that that
6 condition was set based on a report from a
7 structural engineer, whose report was
8 submitted during the first hearing and I
9 believe that the intent of that was that we
10 would monitor the wall for cracks after the
11 repair, now that we would have consistent
12 vibration monitoring set in place.

13 So, I mean, to set in place a
14 consistent vibration monitoring system that
15 would cover that would be far more than
16 \$11,000. \$11,000 is for a portable unit with
17 one sensor, so I don't know of any system or
18 any frankly reasonable requirement -- I'm sure
19 NASA has something like that but to actually
20 monitor vibrations on an ongoing level would
21 be an extremely scientific and expensive and -
22 - it would be an extremely difficult process

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1 which certainly Primal Fitness wouldn't be
2 able to support.

3 So we have rented the device to
4 show the effects of the vibration and I have
5 printed results of our preliminary tests,
6 however that is for a device again for an
7 operator to come out for a day is \$6,000 so
8 obviously that kind of thing is not feasible
9 on an ongoing basis and again, it is just my
10 opinion and I could be incorrect in this, that
11 the original recommendation was that after the
12 wall's repaired, we monitor the situation to
13 make sure that the cracks don't reoccur and I
14 believe that that was the original intent, not
15 that we actually consistently monitor
16 vibration.

17 So if I may add to that, the
18 vibration from trucks going by in the street
19 is significantly more. I mean, we have trucks
20 going by that weigh 60,000 tons and they
21 create significantly more vibration than a
22 person dropping a 240 pound weight.

1 And those trucks go by
2 consistently and are much closer to the
3 proximity of Ms. Keys' store than our weight
4 room.

5 CHAIRPERSON MOLDENHAUER: I am
6 going to turn actually to Mr. Turnbull to see
7 if you have any additional insight into this
8 issue of the vibration monitoring device.

9 MEMBER TURNBULL: That's because I
10 am the only one left.

11 CHAIRPERSON MOLDENHAUER: Yes
12 exactly.

13 MEMBER TURNBULL: We had a very
14 aggressive hearing a couple of years ago on
15 this and I was just going back to the hearing,
16 some of the notes, the testimony that was
17 done, and Chairperson Miller at the time had
18 mentioned that the applicant will install
19 monitoring devices to detect adverse impacts
20 on the neighbors. Applicant will support
21 monitoring report to ANC after six months. Do
22 you remember that?

1 MR. TOOROCK: I do, and if I may
2 give explanation for that. On several
3 occasions, I went to Ms. Keys asking her when
4 I could hire someone to do the plastering.
5 There was a disagreement over who could do the
6 plastering and when and how it could be done,
7 and finally we settled on having her nephew do
8 it. I did have concerns as he is not a
9 professional plasterer, that his plastering
10 job would hold up to frankly any level of
11 vibration, the ambient vibration from the
12 street or otherwise.

13 However we finally succumbed to
14 that very recently. I have receipts where we
15 paid her nephew \$600 to plaster not only the
16 abutting wall but also the opposite wall in
17 her facility and I have receipts for about
18 \$400 worth of materials for that.

19 So I have emails, unfortunately I
20 don't have them printed, but going back to
21 very close to the time of that trial, of me
22 asking Ms. Keys when we could get access to

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1 her place to do that. There were discussions
2 with Mr. Valentine as to whether he would do
3 the plastering as he has done considerable
4 construction work in the past, or otherwise
5 hire a professional to do the job.

6 And so there was quite a
7 substantial period between the time when I
8 first offered to get the plastering done and
9 the time when we finally met through
10 discussion to have the plastering done and
11 again, I feel that my -- although I don't have
12 them printed, I apologize -- I feel that my
13 chain of emails shows earnest efforts to get
14 that done way back at the time of the
15 occurrence.

16 I have other documents with me
17 from February 2, 2009 when we went and
18 attempted to complete the rest of the process
19 of getting a business license, so it's not as
20 if we waited a year and a half and then said,
21 okay, let's plaster the wall. We actually
22 started these efforts back pretty close to the

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1 time of that judgment which I think was
2 September 2008, is that correct?

3 So February 2009 I am already
4 applying for things in the business license
5 and we had our surety bond and all the other
6 requirements and I do have the emails again
7 dating back a considerable amount of time in
8 trying to get the wall plastered. So it wasn't
9 possible to install a monitoring device on a
10 plastered wall if the wall in fact hadn't been
11 plastered yet.

12 MEMBER TURNBULL: Well, I think one
13 of the -- our concern was to set up some
14 benchmarks to know where we are, and what is
15 happening and I think if we -- and I'm not
16 sure -- you mentioned some sound readings for
17 various things, but that's -- is that
18 confirmed by a professional or is that just
19 somebody reading?

20 MR. TOOROCK: It's not. We have a
21 video which unfortunately I don't have
22 present, but it is a sound pressure level, SPL

1 meter, that measures sound pressure levels and
2 we actually have a double video, so we have a
3 video from the recording itself, recording the
4 device as we are dropping the weights and
5 moving away from the device, and then a video
6 from another camera that is moving away from
7 the device, so that you can see that you can't
8 actually hear the weights being dropped within
9 about 20 feet of the room, and that at street
10 level, the noise of the traffic is far greater
11 than any noise that we create in the gym.

12 So, while it has not been
13 confirmed by a professional, I feel that it's
14 extremely objective and extremely clear that
15 a regular sound level device -- again the
16 reason for that test was to take the
17 subjectivity out of it, so while certainly Ms.
18 Keys' comfort is at the top of our concern,
19 there may be a disagreement between what
20 constitutes loud and where that noise comes
21 from and showing that the traffic in the
22 street is in fact much louder than the

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1 weights, I felt was pertinent to the issue.

2 MEMBER TURNBULL: No, I would
3 agree. I think what the Board wanted to do was
4 to be objective, to set some standards and
5 then monitor it and make sure that we were
6 within those parameters in operating it and
7 that Ms. Keys felt comfortable with it.

8 CHAIRPERSON MOLDENHAUER: Yes, I
9 think that what -- I am actually creating a
10 little list here because I think that we do
11 need some additional information and I am
12 creating a list of supplemental documents that
13 we would want you to provide and then provide
14 us time to review that.

15 You know, one would be these email
16 chains showing the timeliness of your
17 satisfaction of that condition. Two would be
18 documentation of the value Mr. Valentine for
19 the device, the actual cost of the device
20 because you know obviously you are testifying
21 to that, but I would like to see something
22 supporting or corroborating that testimony and

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1 if you indicate that you went through a long
2 time -- obviously, you know, one of our
3 concerns and one of my personal concerns, I
4 wasn't on the case before, is letting a
5 property owner who from my view is showing
6 that they have failed to satisfy the
7 conditions in which our orders are granted
8 upon, and allowing that to continue.

9 So I want to be confident that
10 your statements are accurate and that
11 potentially any good cause for the delay in
12 those satisfactions is actually proven.

13 So I would want to see again,
14 documentation of the value and the time frames
15 in which you were trying to obtain that, to
16 make sure that that was -- that you were
17 having a good faith effort to obtain that in
18 a timely manner.

19 And then I would also like to
20 actually see if -- and I will ask you to work
21 with staff on this in regards to the video
22 documentation, I don't know in what form they

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1 want to obtain that or get that to the Board
2 Members and how we will be able to then
3 include that in our record but I'll ask you to
4 work with the staff on that, but get copies of
5 the video documentation.

6 Also, and I think the Board
7 Members would also -- I think this would be
8 helpful -- understanding the process of this
9 meter -- this device. You are talking about
10 the fact that it's \$6,000 to have an
11 individual operate this device. To me that
12 says, to a reasonable mind, someone needs to
13 be educated to -- in this process and it costs
14 a lot of money to educate somebody and train
15 somebody in using this device to adequately
16 understand how it measures vibration and
17 sound.

18 So to some degree that actually
19 gives me pause that you are operating it
20 without any specific instructions and they
21 trying to interpret its readings in a certain
22 way. So I would like to see some sort of

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1 written documentation from you as to how this
2 device is operated, how you operated it in
3 conformance with those procedures and then
4 obviously this video documentation showing
5 what type of readings you obtained.

6 Go ahead Mr. Valentine.

7 MR. VALENTINE: Excuse me Madam
8 Chairwoman. I guess because I have been the
9 one that has been calling and emailing quite
10 a bit about this, the -- I can show you --
11 well I'd have to just get them to send their -
12 - I never got a formal price quote but they
13 can probably give me one on that, which is not
14 a problem.

15 But I think also what could have
16 happened was I went back to the engineer,
17 Vince Ford, about the way he had written it
18 up, and his impression of monitoring devices
19 is what is called shock device, which I
20 discovered won't work in that particular
21 situation and he is thinking that you can put
22 these devices on the wall and you can't.

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1 They don't work in that particular
2 situation and I discovered this from talking
3 to a number of folks in the business. The
4 shock devices are generally used on packaging
5 and I am saying this just to kind of clarify
6 one of the things that I think we all went
7 down the wrong road with respect to that
8 initially.

9 The -- one of the reasons why I
10 went down the wrong road is primarily because
11 the people that I was talking to, as I
12 discovered later, are specialist in vibration,
13 but most of them are in the machinery
14 vibration department. Now, as it turns out,
15 again I called another company and I didn't
16 realize I was beginning to call companies I
17 had called before, and the company I called
18 was located I believe in Dulles, and they said
19 I spoke to you a year ago. Here's the guy.
20 Give this guy a call. I mean this is just the
21 -- I don't know if it was serendipitous or not
22 because I would not have called the guy and I

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1 wound up calling a guy who said I have got
2 what you want. This is the type of device.

3 And so I really didn't find it on
4 the internet or anything. I found it just from
5 backtracking and calling, but most of the
6 vibration monitors that are in circulation
7 today was actually for machinery. Most of the
8 time it's for machinery that turns, and that's
9 what he told me, that I'm looking in the wrong
10 place.

11 I don't remember the term that he
12 used, but after I began asking, using that
13 term, and it has something to do with health
14 or human -- I would have to look in my notes
15 just to see what the term was -- but he turned
16 me onto a guy and that's how we got this
17 equipment.

18 Now this equipment, we asked -- I
19 asked is this something that we could actually
20 get proficient in. Well, we can get the
21 equipment to give us a reading. Will that make
22 us experts? Not likely. Are the people who

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1 manufacturers, representatives, are they
2 available to do that? He actually is. And he
3 is a representative that understands the use
4 of the equipment and he said he would be
5 available. I don't know if I had mentioned
6 this to Mr. Toorock or not.

7 But he is not too far away -- they
8 are right up in Annapolis and so he said that
9 if it comes down to being certified, I don't
10 know if he's certified or not but he said he
11 could get his hands on someone who is
12 certified to make sure that the equipment, the
13 readings and all, are correct.

14 Problem is, is that all of this
15 has just taken an inordinate amount of time.
16 I found out about this guy about a month and
17 a half ago, but we weren't able to get the
18 equipment until last Thursday. So I just
19 wanted to say it's been an ongoing process and
20 again, after talking with Vince Ford who said,
21 you know, he thought that you could do that
22 monitoring just like that and you can't do it.

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1 You can't do it.

2 What he is thinking about are
3 shock mounts and that device would just sit on
4 that wall and never do anything. It's not made
5 for that.

6 MR. TOOROCK: Madam Chair, may I
7 add to that?

8 CHAIRPERSON MOLDENHAUER: Yes.

9 MR. TOOROCK: Thank you. I just
10 wanted to follow up what Mr. Valentine said by
11 saying that that is essentially what I meant
12 when I said that I believe the interpretation
13 of Mr. Ford's original report, to interpret
14 that as a vibration monitoring device, I
15 believe that that was not the interpretation
16 that was intended by Mr. Ford and again Mr.
17 Valentine has said that -- I'm sure you have
18 seen them on the box, you get that little vial
19 that turns red if the box has been dropped.
20 That is what he was talking about. A \$2 thing
21 you stick on the wall. And a \$2 thing you
22 stick on the wall would certainly be a

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1 reasonable cost for us to do.

2 However I don't think he meant
3 full time scientific vibration monitoring.
4 It's just not a normal cause of -- it's not
5 something someone would normally do and I also
6 believe, frankly, that it doesn't adequately
7 address the issue.

8 The issue is Ms. Keys' comfort, so
9 I believe that what we need is for other
10 people -- I know that Mr. Amos from the ANC
11 has come by the gym. He is familiar with the
12 area. Mr. Valentine and Ms. Keys were present
13 for tests we did where we dropped the weight
14 and we were standing with a cell phone in Ms.
15 Keys' store and asking if it was okay now, is
16 it okay now, as we added padding, we moved the
17 weights further back in the room and I think
18 it's also extremely important to discuss how
19 often this activity occurs.

20 When you look at vibration
21 monitoring, you would think that there is some
22 kind of constant vibration, where in fact, the

1 activity only takes place for about six hours
2 out of the week, so we are talking about a
3 very limited time scope, and during that time,
4 not all weights are dropped. Most of the time
5 the person lifts the weight, and returns it to
6 a rack.

7 So I would say that we may be
8 talking about -- and I would need Mr. Woody's
9 testimony here -- but we may be talking about
10 120 occurrences of a week of someone actually
11 dropping a weight and most of the time they
12 are setting the weight down, so the actual
13 dropping of the weight may be as few as 20 or
14 30 times in a week.

15 So you know to say that vibration
16 monitoring is the answer, I think really what
17 we need to do is just continue to make efforts
18 to make this have no impact on Ms. Keys. So,
19 that's -- again that's my opinion, as to what
20 you know -- what we are really trying to do
21 here is make Ms. Keys comfortable while
22 continuing our business operation.

1 CHAIRPERSON MOLDENHAUER: I think
2 that it is not just personally about Ms. Keys.
3 It's about adjacent property owners. This
4 property use, if permitted, would be permitted
5 to run throughout the life span of this
6 property. And so we are concerned about any
7 longevity of use and the longevity of any
8 property owner or the neighborhood in general.

9 That being said I have some
10 specific questions. You talked about the
11 number of individuals that actually drop
12 weights. So if you can tell me, I guess, what
13 your normal hours of business are in regards
14 to when you have the most individuals in the
15 gym, that would be great.

16 MR. TOOROCK: Yes, if I may, may I
17 address your previous statement first, Madam
18 Chair about the neighboring people and
19 property owners?

20 CHAIRPERSON MOLDENHAUER: It was a
21 statement, it wasn't really a question, but do
22 you have a specific comment?

1 MR. TOOROCK: I do. I actually have
2 a letter of recommendation from our neighbor
3 on our west side and I feel that that is
4 extremely pertinent because his wall actually
5 abuts ours.

6 CHAIRPERSON MOLDENHAUER: I believe
7 we have that. That's in our record. That's
8 from a gentleman, Mr. DeGross.

9 MR. TOOROCK: Mr. DeGross, but
10 there's another one from Mr. Terrence
11 McPartlin, who is also in that building and
12 then further, I am unable to provide it at the
13 moment, but John McKenna, who owns the
14 building, said that he would be happy to also
15 provide a record, and I need to point out that
16 Ms. Keys is not the owner of the building, and
17 the owner of the building has supplied no
18 complaint nor support for us.

19 CHAIRPERSON MOLDENHAUER: Thank
20 you. If you can now address the question
21 presented about the hours of operation and
22 when you have the most number of members in

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1 the facility?

2 MR. TOOROCK: Yes, may I actually
3 call Mr. Woody to do that as he is much more
4 versed in the day to day operations?

5 CHAIRPERSON MOLDENHAUER: That
6 would be fine. Mr. Woody, were you sworn in as
7 a witness? Okay.

8 MR. WOODY: Thank you Madam Chair.
9 I am Jesse Woody, co-owner, manager of daily
10 operations of Primal Fitness. When we are
11 talking about the regular daily operations,
12 our classes run two in the morning, 6:30 and
13 7:15 a.m., between 11 and 2, an open gym
14 session --

15 CHAIRPERSON MOLDENHAUER: Did you
16 say 2 a.m.?

17 MR. WOODY: 6:30.

18 CHAIRPERSON MOLDENHAUER: Oh, okay.

19 MR. WOODY: Two classes in the
20 morning, two classes.

21 CHAIRPERSON MOLDENHAUER: Okay.

22 MR. WOODY: I am not getting up

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1 quite that early, trust me.

2 CHAIRPERSON MOLDENHAUER:
3 Clarification for the record, okay, two
4 classes at -- sorry.

5 MR. WOODY: 6:30 and 7:15, between
6 11 and 2 open gym and then 4:30, 5:00, 6:00
7 and 7 p.m. all one hour classes.

8 Out of those actual classes, the
9 dropping of weights consistently is actually
10 talking place with our Olympic Weightlifting
11 team. That essentially takes place between
12 about 1 and 2 p.m. and between 7 and 8 p.m. in
13 the evenings. As of right now, there are three
14 consistent members of this Olympic
15 Weightlifting team, the most consistent of
16 this would be myself. I regularly lift around
17 three days a week.

18 In our regular classes, we do
19 utilize some of these movements, basic barbell
20 movements, but since the issues have arisen
21 with Ms. Keys, we have essentially completely
22 stopped the dropping of any barbells in the

1 front room where it was considered damaging to
2 the building, whatever, and anything that does
3 get
4 dropped, which is all below 50 pounds,
5 dumbbells, is double padded so I think that
6 when we are talking about the heavier dropping
7 of weights, as Mr. Toorock said, we might be
8 looking at a total of three hours and in that
9 total of three hours, each hour might have 20
10 total dropped loads over 100 pounds.

11 CHAIRPERSON MOLDENHAUER: Now, when
12 you are talking about the six o'clock -- a lot
13 of the letters and I'm sure you guys have
14 copies of these, a lot of the letters that we
15 had in regards to opposition referenced a lot
16 of your outdoor running programs and I
17 understand from prior testimony as to how
18 Primal Fitness, some of the concepts, I think
19 there was a specific name as to the parkour --
20 can you address which -- you said you have two
21 groups and you said 6:30 a.m., 7:15 and then
22 4:30, 5 and then 6 -- which one of those -- do

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1 all those groups run outside?

2 MR. WOODY: Periodically, all of
3 those groups do regular running outside. When
4 we are talking about the actual parkour
5 training, that is only taking place in our 6
6 and 7 p.m. classes in the evenings so I think
7 that's what you are talking about
8 specifically.

9 CHAIRPERSON MOLDENHAUER: I am
10 curious in general about all running outside.

11 MR. WOODY: Yes so --

12 CHAIRPERSON MOLDENHAUER: But the
13 parkour takes place at night from 6 to 7?

14 MR. WOODY: Yes ma'am.

15 CHAIRPERSON MOLDENHAUER: Okay.

16 MR. TOOROCK: Madam Chair, may I
17 further address the definition of running
18 outside, because I feel that that's very
19 pertinent to the issue. Running outside for
20 our typical class, includes three laps of
21 warm-up jogging, so that would be 10 to 12
22 people running around the block, literally

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1 around the block, jogging, as part of their
2 warm-up, separated by about a five-minute
3 period.

4 So the warm-up would be jog around
5 the block, do 10 pull-ups, 10 push-ups, 10
6 squats and then jog around the block, do 10
7 push-ups, 10 pull-ups, 10 squats, so the
8 running portion of that is that 45 seconds to
9 a minute to get around the block for --?

10 MR. WOODY: Yes about a minute and
11 a half, thereabouts.

12 MR. TOOROCK: So again, this is not
13 -- it's not a constant stream of people. It's
14 not like we are holding a marathon or some
15 kind of road race that obstructs things. We
16 have got about 12 people spread out over the
17 course of 20 minutes for that warm-up period
18 during those classes,
19 and I would say that that is a fairly regular,
20 80 percent of our classes have that as the
21 warm-up?

22 MR. WOODY: Yes, there's almost --

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1 90 percent of the time I would say there's
2 some running involved.

3 MR. TOOROCK: Okay, and then every
4 once in a while I would say, probably once
5 every two weeks, we have a sprint involved in
6 our work-out which would be run from the front
7 of our building to the street sign on the
8 corner and back for time and that takes about
9 less than 20 seconds, right? So I mean, again,
10 while the issue of running in the neighborhood
11 is certainly present, I think it's extremely
12 important to understand the quantity and
13 quality of that and the frequency of it, so we
14 are talking about a lap around the block is
15 the running in the neighborhood.

16 We were actually asked by
17 neighbors and some ANC members if we would
18 include the alleyways in our run, because they
19 feel it cuts down on crime, and we have done
20 that and modified routes and our warm-ups
21 actually go through the alleyways and people
22 feel that that helps keep the neighborhood

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1 safer.

2 CHAIRPERSON MOLDENHAUER: The
3 reason why I ask is I mean, I'm trying to
4 ascertain -- I mean we have letters in our
5 record that indicate that individuals are
6 running and that neighbors -- and we have I
7 would say four, five or six letters that
8 neighbors are feeling as though they are
9 being, for purposes of trying to summarize,
10 mauled over in regards to the grouping.

11 And so if you can address -- Mr.
12 Woody, are you with these groups or do you
13 have any trainers at the gym?

14 MR. WOODY: No, I am with pretty
15 much every group that trains there.

16 CHAIRPERSON MOLDENHAUER: So can
17 you talk to me about the interaction with the
18 group and other pedestrians on the street --
19 on the sidewalks rather.

20 MR. WOODY: I actually had
21 discussions with a number of my clients when
22 we first got our first complaint, I think Rob

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1 spoke to me personally, about some people
2 complaining about people running through
3 groups of people in the middle of the street.

4 I myself, along with everybody
5 that I actually mentioned to as far as our
6 clients, was actually really surprised that
7 that would be an issue because we all kind of
8 issued that obviously you don't want to go
9 running and elbowing your way through groups
10 of people on the sidewalk, so I guess it
11 essentially turned into their words versus
12 ours.

13 All of my clients say they would
14 never do such a thing. The two or three, four
15 people in the neighborhood say that we are
16 running over old ladies and pushing them into
17 the middle of the street and I think that
18 there's kind of a discrepancy there.

19 But I have had multiple
20 discussions with clients to make sure that
21 they are not being unkind to the people, the
22 pedestrians on the street. We have modified a

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1 number of our running routes. We used to go to
2 the left, east side, out of the building,
3 which ran directly in front of the take-out
4 restaurant, the barber shop.

5 There's a lot more foot traffic
6 there, a lot more people just kind of standing
7 around. So we actually took a completely
8 different route where there are much fewer
9 people, much fewer pedestrians coming up and
10 down the street, which seems to have made a
11 difference.

12 We have also done a lot of
13 adjusting of our work-outs so that I am only
14 sending out three to five people at a time in
15 the biggest of groups, whereas there might
16 have been times in the past where I might send
17 out eight or 10 so we have tried to do as well
18 as we can.

19 Yet again, I mean, this is one of
20 these things where I am getting second or
21 third hand notice that people are getting run
22 into. Nobody every approaches me directly so

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1 I really am not exactly sure where this is
2 taking place, who specifically was complaining
3 and if I could talk to them about what the
4 exact occurrence was I might have a little
5 better idea of what we needed to do to change
6 it.

7 But as I said it seems ridiculous
8 enough to me, I don't know anybody that would
9 think it would be a good idea, no matter how
10 fast you are trying to go, to elbow your way
11 through a group of people on the sidewalk. So
12 that's pretty much as far as it got.

13 MR. TOOROCK: Madam Chair, may I
14 add what I feel is a relevant piece of
15 information at this time?

16 CHAIRPERSON MOLDENHAUER: Yes.

17 MR. TOOROCK: We actually have --
18 Mr. Valentine collected signatures on a
19 petition in support of Primal Fitness and
20 these are 28 signatures from people who I
21 believe are entirely within two blocks of the
22 gym along that running route.

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1 CHAIRPERSON MOLDENHAUER: Okay. We
2 don't have it in our record. If you can
3 provide that to Ms. Bailey, we will make a
4 copy of that. Does that provide their
5 signature along with their address?

6 MR. TOOROCK: It does have their
7 addresses, yes, and they are all, again, in
8 extreme proximity to the gym, including the
9 owners of the carry-out and other people
10 immediately on our block.

11 CHAIRPERSON MOLDENHAUER: If you
12 can provide that to us for a copy for our
13 record. Thank you both. Do you have any
14 additional testimony on your own? I don't have
15 any other questions at this time. Other Board
16 Members I think may.

17 MEMBER TURNBULL: Madam Chair, I
18 just, continuing on with your line of
19 questions, and we do have -- and it's Exhibit
20 No. 23 -- a letter from Mr. Raymond Stroud.
21 He's the facilities manager at the Northwest
22 Church Family Network, 216 New York Avenue. I

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1 am just going to -- he quoted -- let me just
2 quote part of --

3 He says, "I have on several
4 occasions witnessed groups of these members
5 running around the block and seeing women with
6 babies and toddlers having to move out of the
7 way while they run past without a care. This
8 has so enraged me. I have also been enraged to
9 see grown men out in front of the Primal
10 Fitness club and running around the
11 neighborhood without shirts on while
12 elementary and high school girls go to and
13 from school."

14 So it sounds like they may not be
15 knocking them down but these other people are
16 intimidated and just get out of the way.

17 MR. TOOROCK: May I comment on
18 that?

19 MEMBER TURNBULL: And they may be
20 afraid to go to your place and talk to you
21 about it. You can be a very intimidating
22 fellow, Mr. Toorock. I saw that in the last

1 hearing.

2 MR. TOOROCK: I'm sorry about that.
3 I don't mean to be intimidating. This was
4 raised at an ANC meeting and someone asked me
5 do people go out in front of the gym without
6 shirts on and I said yes. And he said are
7 there young girls in the neighborhood and I
8 said yes there are and he asked me if I had
9 any comments on that and I simply asked if
10 those young girls had ever been to the beach.

11 It is not a crime to not wear a
12 shirt and I don't feel that testimony of being
13 enraged that a grown male jogging without a
14 shirt on -- I don't feel that that's out of
15 the ordinary and I feel that that person's own
16 testimony shows that he is enraged at our
17 activities, including his rage at activities
18 that are perfectly within acceptable social
19 parameters, such as not having a shirt on.

20 MEMBER TURNBULL: Well, let's not
21 go down that road. I was simply reading that
22 as part of his overall statement. What I am

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1 getting at, and for the ANC we are looking at
2 standards of behavior, on how this reacts with
3 the neighborhood and how you are going to be
4 a good neighbor in reacting with everyone
5 else.

6 Do you do any of your parkour
7 training, I mean I advised the other Board
8 Members to go on YouTube and look at some of
9 the videos on parkour. Some of that is very
10 intensive work-out. Do you do any of that in
11 the
12 neighborhoods? Do you jump fences on any of
13 the neighbors' property?

14 MR. TOOROCK: If I may comment on
15 that?

16 MEMBER TURNBULL: Do you go across
17 to the school and use the school as a parkour
18 training ground?

19 MR. TOOROCK: We have used the
20 school in the past. We have not recently due
21 to failed efforts. Unfortunately I was --

22 MEMBER TURNBULL: Failed efforts

1 for what?

2 MR. TOOROCK: I am explaining that,
3 sir. About two years ago I was working to
4 contact the principal of the school. I was
5 actually in touch with the head of the Parent
6 Teacher Organization, who had seen us training
7 there. I made attempts to contact the
8 principal. I in fact called him and
9 unfortunately the principal, I'm not sure if
10 he resigned or was fired but there was a
11 change of the principal.

12 We have made attempts to contact
13 the new principal at the school and we have
14 not trained there in the meantime. I'd like to
15 further say that yes, looking up a video of
16 parkour on YouTube could be very misleading.
17 Actually, American parkour and Primal Fitness
18 are both members of the President's Council on
19 Physical Fitness and Exercise. We have kids'
20 classes. We offer free classes for people in
21 the neighborhood so I mean, while it's easy to
22 paint a picture of people jumping from rooftop

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1 to rooftop and terrorizing people, that's
2 simply not the case. We use parkour for a lot
3 of good.

4 I have been invited by the U.S.
5 Embassy of --

6 CHAIRPERSON MOLDENHAUER: I'm going
7 to interrupt you because I think we are really
8 going to want to hear the specific answer and
9 I understand to support and explain to us the
10 benefits, and I think we all understand the
11 benefits of working out and being healthy. I
12 definitely understand that. That's not
13 something that you need to express and
14 support.

15 I think the question is, let me
16 just try to focus this on a zoning issue. When
17 we look at variances, we look at how
18 neighborhoods are affected. If you bring in a
19 certain retail establishment that is not
20 permitted in a residential area, we are going
21 to say, how many customers are going to be
22 parking and that is going to be affecting the

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1 neighboring streets?

2 Here, we have a type of use which
3 is not permitted in a residential area and we
4 are talking about how it's going to impact. We
5 are talking about how it's going to impact on
6 the sidewalks, on the use of the sidewalks in
7 regards to runnings, trails, using as certain
8 things which are part of your use.

9 And so I think Mr. Turnbull has a
10 specific question, how do you accomplish your
11 parkour training through the neighborhoods, so
12 that we can understand how that use
13 potentially affects or creates any issues with
14 the neighboring sidewalks or neighboring
15 properties?

16 MR. TOOROCK: Yes. During the
17 parkour training which we have done outside in
18 the past, I have to say we have never had a
19 negative interaction with a neighbor barring
20 one person Mr. Gene -- what was his last name
21 -- Mr. Gene Coke who seems to make it a point
22 to complain and actually threatened some of my

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1 clients with his dog and threatened one of my
2 client's parents.

3 But apart from him, we have never
4 had a negative interaction directly with a
5 neighbor that I am aware of. When we are
6 training we are certainly not trying to be in
7 anybody's way and we actually avoid people.
8 There is no point in us being near people. We
9 simply use the outdoors kind of akin to
10 climbing a tree to do exercise.

11 So there is not necessarily any
12 negative impact on the neighborhood and we
13 actually strive to avoid any negative impact.

14 You know the reason I point out
15 these other activities, like the fact that we
16 do neighborhood trash cleanups, is to show
17 that we are actually actively working to be
18 good neighbors. So we wouldn't go out and pick
19 up trash in the park and then somehow trash
20 the park or disturb other people's use of the
21 park.

22 We are there to be a positive

1 force. I have a letter from Si Kailian who is
2 the, I believe she is the vice-president of
3 the Mount Vernon Square Neighborhood
4 Association talking about our positive efforts
5 in the community.

6 And I think that that -- it shows
7 through to everything we do. We are working to
8 be good, positive neighbors and a good,
9 positive force in the neighborhood, in our
10 community, in all of these areas.

11 MEMBER TURNBULL: My question,
12 let's get back to what I was getting at. Are
13 you using neighborhood -- the neighbors'
14 property to do your training? Are you going
15 through their yards, jumping their fences, are
16 you using their property?

17 MR. TOOROCK: No, we absolutely do
18 not use any neighbor's property.

19 MEMBER TURNBULL: That's what you
20 could have said 10 minutes ago.

21 MR. TOOROCK: I'm sorry, sir.

22 MEMBER TURNBULL: That's the

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1 question. We were talking about use. And we
2 are talking about the impact on the neighbors.
3 Are you using their property? Are you doing
4 anything to intimidate while they are on their
5 property? That's the whole point of this.

6 MR. TOOROCK: No sir, we absolutely
7 do not use neighbors' property and we
8 absolutely do not to anything to intimidate
9 our neighbors.

10 CHAIRPERSON MOLDENHAUER: Again, I
11 am trying to understand exactly what you then
12 do, and if you can very succinctly tell me, if
13 you have, I mean, Mr. Woody, you told me the
14 different times in which you train, so at 6
15 o'clock, what do you do? And if you do
16 anything inside, I don't care about that. What
17 activities do you do outside, with your
18 clientele?

19 MR. WOODY: As of right now, the
20 only outdoor activities that we do is simple
21 running of laps around the block.

22 CHAIRPERSON MOLDENHAUER: Okay. And

1 that's just around the block?

2 MR. WOODY: We run between the
3 block of M Street, Morgan and Kirby and then
4 we have a larger loop that goes to N Street
5 and 1st Street and New York Avenue.

6 CHAIRPERSON MOLDENHAUER: Okay. And
7 you don't do any outdoor pull-ups or sit-ups
8 or --

9 MR. WOODY: No.

10 CHAIRPERSON MOLDENHAUER: Do you do
11 any jumping where you jump onto blocks or jump
12 onto anything to climb --

13 MR. WOODY: No, pretty much all of
14 our outdoor activity is relegated to laps for
15 warm-ups and then the occasional lap in the
16 timed work-out but all the other stuff is
17 taking place inside of the gym.

18 Yes, and as he was saying, the
19 parkour classes, now all of our regular
20 training of the skills -- climbing, jumping
21 boxes, rolling, all takes place inside of the
22 gym and the only outdoor they do is running

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1 for warm-ups.

2 CHAIRPERSON MOLDENHAUER: I
3 appreciate that succinct answer. Mr. Turnbull,
4 do you have any other questions?

5 MEMBER TURNBULL: No I think I'm
6 fine.

7 CHAIRPERSON MOLDENHAUER: Mr.
8 Hinkle do you have any questions? Not at this
9 time? Okay. Do the applicant have any other
10 comments, are you, have you concluded of your
11 testimony, you also have a point in time at
12 closing to provide a closing comment. If you
13 can articulate this on the record, that you
14 are -- you need to turn on your microphone
15 sir, thank you.

16 MR. VALENTINE: I'm sorry, no
17 questions or comments at this time.

18 CC. Okay thank you.

19 MS. MONROE: Madam Chair, I just
20 want to say one thing. You guys, you have to
21 be aware that every document that you
22 reference, if it's not in the record, it's

1 irrelevant. I mean, if you have a letter, you
2 said, the petition we got in, but you had a
3 letter from somebody else? The Mount Vernon
4 Neighborhood Association, whatever, if it's
5 not in the record, it's not going to help us
6 at all. So whatever, on either side, whatever
7 you have, you need to get in, and you need to
8 get it up here so we can have a copy and put
9 it in the record. Just, I want you to be aware
10 of that.

11 MR. TOOROCK: Thank you.

12 CHAIRPERSON MOLDENHAUER: Sir, Mr.
13 -- you need to be on the record if you can
14 just turn your microphone on and then say what
15 you were about to say.

16 MR. VALENTINE: Madam Chair, if I
17 can just give -- this is some historical
18 documentation that I think what I said
19 earlier, it may reference that. That's all. It
20 might be good to have it for the record then,
21 and I have 20 copies of it so I'd like to give
22 you the copies right now.

1 CHAIRPERSON MOLDENHAUER: If you
2 can provide that to Ms. Bailey, she will make
3 a copy of that and we will have it entered
4 into the record.

5 MR. VALENTINE: Thank you.

6 MR. TOOROCK: May I also provide --
7 these are 20 letters of support, including the
8 two direct adjacent neighbors and the vice-
9 president of Mount Vernon Square Neighborhood
10 Association.

11 CHAIRPERSON MOLDENHAUER: Yes, if
12 you have that, please provide that again to
13 Ms. Bailey. She'll make copies for the record.

14 MR. TOOROCK: Thank you.

15 CHAIRPERSON MOLDENHAUER: At this
16 point in time we will then conclude the
17 applicant's statement and we will turn to any
18 individuals in the audience in support or in
19 opposition.

20 Good morning. If you could state
21 your name and address for the record.

22 MS. KEYS: Good morning. My name --

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1 excuse me -- my name is Brenda Keys. I am at
2 215 New York Avenue, N.W., B & M Grocery
3 Store.

4 CHAIRPERSON MOLDENHAUER: Okay. Ms.
5 Keys as an individual witness you will be
6 given three minutes to testify and so we will
7 put that time up there and you will be
8 provided three minutes to present your
9 testimony.

10 MS. KEYS: Okay. First of all, I
11 want to say Mark Toorock does not live in D.C.
12 He has moved to Europe. He has not been here.
13 He came here for this meeting. He does not
14 attend any of the meetings.

15 I also want to show you the
16 plaster that fell in my store in July, the end
17 of July. I picked this up as one of the walls
18 had started cracking. That is just before my
19 walls were repaired. Mr. Toorock stated that
20 he has constantly tried to contact me, which
21 is not true. My contact has been with Mr.
22 Valentine.

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1 Kelly Binbaum did do the repair.
2 He is the repair man of the neighborhood. He
3 just renovated the complete barber shop. He
4 renovated my house. Any work in the
5 neighborhood, he is a reputable repairman.

6 Yes, they do climb on -- they have
7 been seen climbing on the church, climbing the
8 church walls. They have been to Bundy School,
9 Yale Laundry, Loft, the construction site.

10 They were up -- I personally went
11 down there and saw them climbing up on the
12 construction site. Yes, they do run through
13 the neighborhood, throughout the day, not, no
14 one particular time, throughout the day.

15 Saturday morning I stood there at
16 my doorway, I saw three people rush across an
17 old man and he stopped because he didn't know
18 what was happening. He turned the other way.
19 Two other people came and he just stopped in
20 a daze because he didn't know what was
21 happening, to see people come running up
22 behind him like that.

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1 If you check with the police
2 department, we have no crime reports in that
3 area. Police don't even -- we don't even see
4 police, so for them to say they walk the alley
5 and run the alley -- that's not true.

6 When we was at one of the meetings
7 and they said something to Mr. Toorock about
8 the men running around shirtless, he agreed at
9 that meeting he would have the men put on
10 shirts. He showed the Primal Fitness shirt. He
11 said the men would wear those shirts. That
12 lasted for about a week, a week only.

13 And I also wanted to say for the
14 record, the last time we were here, there was
15 an ANC member present who never made a remark,
16 and you all ask why the ANC didn't report? He
17 never said anything. He said right down here
18 and never mentioned a word. The ANC meetings
19 we had last month, the ANC, they voted that
20 they did not want to support this group.

21 One week later, we went back
22 before the whole committee. I don't know what

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1 happened. Mr. Amos asked me, what have the ANC
2 person -- he said what happened? Why did the
3 man change his mind? I don't know. Both of us
4 was mystified about what happened from one
5 week to the other, that he changed his mind
6 and says, we are going to support the group.

7 So someone is -- I don't know what
8 is going on. My three minutes up?

9 CHAIRPERSON MOLDENHAUER: Yes it is
10 up. I will give you another, if you want to
11 summarize any additional comments?

12 MS. KEYS: Mr. Coke told me I can
13 also speak for him.

14 CHAIRPERSON MOLDENHAUER: Do you
15 have a letter of authorization?

16 MS. KEYS: Yes, he sent an email
17 yesterday.

18 CHAIRPERSON MOLDENHAUER: I believe
19 I had seen that in the record. Yes, yes, we
20 have it in the record, so we will give you
21 actually another three minutes to present on
22 his behalf.

1 MS. KEYS: Okay, and I am going to
2 speak for Mr. Coke, because Mr. Coke is
3 someone in the neighborhood who tries to hold
4 the neighborhood together and for them to say
5 he put his dog on one of their guests, it's
6 not true, Mr. Coke calls the policeman any
7 time he says this fitness center doing
8 something that's wrong. He's the one that has
9 run them out of the park. He's the one telling
10 the people who are sitting in the park, you
11 have a right to be here. When they come, they
12 tell everybody to get out, go.

13 And Mr. Coke tries to keep peace
14 in the neighborhood and I just want to speak
15 on his behalf.

16 CHAIRPERSON MOLDENHAUER: Thank
17 you. I appreciate that. Are there any other
18 comments you have? Ms. Keys?

19 MS. KEYS: Also, they said, free
20 classes for the neighborhood -- I haven't seen
21 anyone from my neighborhood go over there and
22 take any free classes.

1 CHAIRPERSON MOLDENHAUER: Okay. I
2 just have some questions for you. The repairs
3 were -- the plastering -- the building that
4 you rent was repaired?

5 MS. KEYS: The building was
6 repaired only because I came back to --

7 CHAIRPERSON MOLDENHAUER: I'm just
8 asking if it was.

9 MS. KEYS: Yes, in August of this
10 year.

11 CHAIRPERSON MOLDENHAUER: Okay. In
12 August of this year. Have you had any new
13 cracking on that plaster?

14 MS. KEYS: I have not had any new
15 plaster -- no new cracks as of yet.

16 CHAIRPERSON MOLDENHAUER: Okay. So
17 that's from August to current --

18 MS. KEYS: This is September.

19 CHAIRPERSON MOLDENHAUER: Okay, so
20 no -- when in August? The beginning of August,
21 end of August?

22 MS. KEYS: No, it was about the

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1 middle of August.

2 CHAIRPERSON MOLDENHAUER: Middle of
3 August, okay.

4 MS. KEYS: Yes I think the third
5 week of August.

6 CHAIRPERSON MOLDENHAUER: Okay, and
7 no new cracks.

8 MS. KEYS: Okay, may I say
9 something else Madam Chair?

10 CHAIRPERSON MOLDENHAUER: Sure.

11 MS. KEYS: Okay, for 28 years that
12 I have been in that store, I never had cracks
13 on my wall, I never had items to fall from my
14 shelf with the trucks passing by. I have never
15 had a problem until the fitness center came,
16 dropping the weights and they were used to
17 lift the big tires. They did stop that but
18 they still have the tires sitting out there,
19 but never there was a problem.

20 CHAIRPERSON MOLDENHAUER: Okay.
21 Since middle of August since that is the time
22 that the walls were fixed, have additional

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1 items been falling from your store or has that
2 been resolved?

3 MS. KEYS: They haven't fallen
4 since August.

5 CHAIRPERSON MOLDENHAUER: Okay. I
6 don't have any other questions for this
7 witness. Do any other Board Members have
8 questions for Ms. Keys?

9 MS. KEYS: Yes, but I still hear
10 the vibration.

11 MEMBER TURNBULL: As far as the
12 vibrations, do you feel anything?

13 MS. KEYS: Yes, you still feel it
14 and you hear it and I told last week, I told
15 Mr. Valentine and Jesse says I just complain
16 all the time because he told me that they
17 wasn't doing anything, you know, I'm not
18 crazy, nor am I senile. I know when I feel
19 something. I know when I hear something. As I
20 say, next month I will be closing my doors and
21 that sound just pounds on my head.

22 MEMBER TURNBULL: Now, Mr.

1 Valentine and Mr. Toorock have said that you
2 have been at -- they have had some setups
3 where they did some tests -- dropping?

4 MS. KEYS: That was in 2008.

5 MEMBER TURNBULL: So there hasn't
6 been anything since then?

7 MS. KEYS: No. No.

8 MEMBER TURNBULL: Your contact
9 should always be with Mr. Valentine.

10 MS. KEYS: My contact has been with
11 Mr. Valentine.

12 MEMBER TURNBULL: In fact I think I
13 remember at the time, Mr. Valentine pointed
14 that out, that he wanted to resolve any -- so
15 within the last year, you have not got
16 together to come back and do a test or check?

17 MS. KEYS: No.

18 MEMBER TURNBULL: Okay.

19 CHAIRPERSON MOLDENHAUER: No other
20 questions from Board Members for Ms. Keys?

21 MEMBER TURNBULL: Just --

22 CHAIRPERSON MOLDENHAUER: Not a

1 problem.

2 MEMBER TURNBULL: Ms. Keys, your
3 primary -- I guess your primary concern is the
4 impact of the weights dropping and doing
5 damage to your facility.

6 MS. KEYS: That's one concern. The
7 other one is the running through the
8 neighborhood.

9 MEMBER TURNBULL: Running through
10 the neighborhood.

11 MS. KEYS: Yes. May I make a
12 statement to you?

13 MEMBER TURNBULL: Sure, I mean, you
14 are on the record, I mean, it's not just to
15 me.

16 MS. KEYS: Okay. Okay. They made a
17 cut in the alleyway which they say will
18 relieve me feeling the vibrations of the
19 weights.

20 MEMBER TURNBULL: Yes, they did.

21 MS. KEYS: Which was -- it didn't
22 stop it. They admitted that. But if you take

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1 a walk through this alleyway now, you will see
2 how this alley is sinking because of the cut
3 that they put there, so eventually, one day,
4 something is going to happen back there in
5 that alleyway.

6 You know, we have had buildings to
7 collapse. I think we have had about five or
8 six buildings to collapse in my area.

9 CHAIRPERSON MOLDENHAUER: Okay, I
10 am actually just going to say that I don't
11 think that's relevant to the case at hand, so
12 I appreciate that testimony but unfortunately
13 that is not what we are looking at right now,
14 and that would be something for other agencies
15 in the city.

16 MS. KEYS: All right.

17 MEMBER TURNBULL: Well, your other
18 concern is them running in the neighborhood,
19 I mean just running? I mean, just I mean --
20 they have a right to go on the sidewalk.

21 MS. KEYS: They have a right to be
22 on the sidewalk but this is a residential

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1 neighborhood and the activities that they want
2 to do should not be in a residential
3 neighborhood.

4 MEMBER TURNBULL: But I mean we
5 have heard testimony that it is basically
6 running, jogging, can they do some --?

7 MS. KEYS: Yes, there was a time
8 they was dressed up with hoods on. They was
9 dressed up with ninja outfits. They had a
10 stretcher where they was carrying bodies
11 around the neighborhood. You see them with
12 slingshots, bow and arrows. This is not
13 acceptable in a neighborhood, residential --
14 they need to be in the woods somewhere.

15 MEMBER TURNBULL: Interesting.
16 Carrying bodies?

17 MS. KEYS: They put somebody on a
18 stretcher and they walked in and they had some
19 bales or something and walking down New Jersey
20 Avenue.

21 MEMBER TURNBULL: Okay. Thank you.
22 homes.

1 CHAIRPERSON MOLDENHAUER: Thank you
2 very much, Ms. Keys. I believe we have one
3 other witness.

4 MS. BAXTER: Hi, my name is Carrie
5 Baxter. I am a born and raised Washingtonian
6 and this is the first time that I have ever
7 known the D.C. government to allow a business
8 to operate for three years without a license.

9 Now, the noise coming from Primal
10 Fitness in Ms. Keys' shop is something that
11 you can hear and feel. I am completely against
12 Primal Fitness being in that location. They
13 need to be in a location that is strictly for
14 a commercial business such as that.

15 Now our neighborhood is primarily
16 residential. They run us down when they run
17 through the streets. It's 15 and 20 of them at
18 a time. There has been a point in time when
19 one of them was in my face, face to face, I
20 had to literally stop.

21 When we are walking our dogs, the
22 dogs don't know what to do, because they scare

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1 the dogs. They scare us, because there is so
2 many of us. They have no business in the
3 neighborhood. We have pictures, I wish I had
4 the picture with me showing when they scaled
5 Brenda's wall to her store.

6 We have neighbors that seen them
7 scale the church wall. When you walk out
8 Brenda's store, there's a fence there. They
9 have absolutely no respect for you. They walk
10 out of their door and jump right over the
11 fence which means you have to jump back to
12 keep them from knocking you down.

13 So I hope and pray that you give
14 this some serious consideration in terms of
15 giving them a variance to be in that location.

16 CHAIRPERSON MOLDENHAUER: Thank you
17 Ms. Baxter. I just have a question. When last
18 did you see them, or members of the gym, do
19 something like jump over a wall or scale a
20 wall?

21 MS. BAXTER: Well, I haven't seen
22 them lately.

1 CHAIRPERSON MOLDENHAUER: Okay. And
2 what do you mean by lately? In the last couple
3 of months? In the last year?

4 MS. BAXTER: I would say in the
5 last couple of months.

6 CHAIRPERSON MOLDENHAUER: Okay. And
7 when last did you encounter a group of about
8 15 to 20 people running? Has that been?

9 MS. BAXTER: It was this summer.

10 CHAIRPERSON MOLDENHAUER: It was
11 this summer.

12 MS. BAXTER: It was the early part
13 of this summer, several times.

14 CHAIRPERSON MOLDENHAUER: Have you
15 noticed a reduction in the group? I mean we
16 heard testimony, I'm just trying to see, have
17 you noticed in the group of people running?

18 MS. BAXTER: It's a reduction. It's
19 about 10, 15, maybe 15 of them now where it
20 used to be like a herd of cattle. But that
21 means absolutely nothing. They will start up
22 again as soon as they get the okay.

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1 CHAIRPERSON MOLDENHAUER: I don't
2 have any other questions for Ms. Baxter.

3 MEMBER TURNBULL: I just wanted to
4 clarify, Ms. Baxter, whereabouts do you live?
5 Do you live on this block?

6 MS. BAXTER: No. I live around the
7 corner, on Ridge Street. They don't run
8 through my block. But I am on at Brenda's
9 store. This is my sister, so I'm at her store
10 all the time either doing volunteer work for
11 her or just in the neighborhood walking my
12 dog, so I'm there.

13 MEMBER TURNBULL: But you are
14 within walking distance, you are only a block
15 away?

16 MS. BAXTER: Oh yes, I am right
17 around the corner.

18 MEMBER TURNBULL: Okay.

19 MS. BAXTER: And see, our neighbors
20 -- there are a lot of senior citizens in our
21 neighborhood, so they can't get out and do the
22 things that we do so a lot of them sit on

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1 their front and the sidewalk is narrow, so you
2 know, you have got all these people running
3 through your neighborhood, it's a small --
4 like one of the streets that Valentine lives
5 on, that's a narrow -- it's a small street.
6 It's not a neighborhood for runners. They need
7 to be somewhere else and they run on the
8 sidewalk all the time.

9 CHAIRPERSON MOLDENHAUER: Thank you
10 very much Ms. Baxter. Do any other Board
11 Members have questions for Ms. Baxter?

12 (No response.)

13 CHAIRPERSON MOLDENHAUER: Seeing
14 none, then at this point in time we would turn
15 to the Office of Planning's report.

16 MR. GOLDSTEIN: Good morning Madam
17 Chair, members of the Board. For the record my
18 name is Paul Goldstein.

19 As the Board suggested, I don't
20 know if there is any reason to go through the
21 uniqueness and undue hardship test so I'll
22 just move to the third prong. Suffice it to

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1 say that we believe they have met those first
2 two tests.

3 Granting relief should not harm
4 the zone plan, in that we don't believe that
5 the property can be used as zoned. The
6 building is not out of scale. It's not
7 changing. Believe they meet that aspect.

8 Regarding the public good,
9 certainly we are hearing a lot of testimony
10 about that. This is a difficult issue. I was
11 hoping, certainly when this application came
12 back around, that we wouldn't be hearing the
13 same old complaints that we heard two years
14 ago. That's I guess one reason the Board of
15 course put a time limit on this to see how it
16 was going.

17 I believe the applicant has made a
18 number of efforts to try to improve the
19 situation. I went to the property. I saw the
20 weight room in the back. I saw some of the
21 padding. They are bringing the building to a
22 higher standard. I have heard that they,

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1 before today as well, they are not doing the
2 parkour outside which has been my
3 understanding as well.

4 I think that they have made a
5 number of efforts to try to improve how this
6 building functions and how they interact with
7 the neighborhood. I am also concerned that the
8 order was not strictly complied with. I think
9 there might have been some overreaching in the
10 agreement on the monitoring of the wall.

11 I am not sure that there was a
12 full understanding of what they were
13 committing to. I am a little sympathetic to
14 the applicant, that maybe that wasn't -- it
15 wasn't thought out as well about what
16 compliance with that provision might mean.

17 But then again, it wasn't complied
18 with and it does concern me. The nine months
19 was not complied with that they had to return
20 in. That concerns me as well. I think there
21 were a number of efforts they were making, but
22 they didn't strictly comply with that too.

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1 I am a little unsure about the
2 best way to go forward to mitigate the
3 neighbors' concern on this. They have made
4 some changes structurally. I don't know if
5 there's a way that we can put in a measuring
6 that would satisfy the neighbor, that would
7 satisfy the Board and that we can feel
8 confident that it would get complied with.

9 I feel like there must be a way to
10 get to some middle ground here, but I am not
11 quite sure the best way to get there at this
12 point and would love to hear -- I think you
13 have asked them for some additional
14 documentation. Perhaps some of that would shed
15 some light.

16 I am not quite sure the best way
17 to resolve this issue entirely. Saying all
18 this, I believe the applicant -- in our report
19 we asked the applicant to address some of
20 these issues further. I think they have been
21 addressed to some extent.

22 We are generally supportive of

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1 this. It's a commercial street. It's busy.
2 It's loud. The traffic along it, they are on -
3 - they have got commercial uses all along the
4 stretch right by them. I think there are some
5 positives and I think there is some
6 appropriate placement of it along this street.

7 But again, it is tough. I am a
8 little in both minds and I think the Board has
9 kind of raised some of their own concerns
10 about it, is how can we resolve this
11 vibration? Does it need to be that the gym has
12 a different business model as far as dropping
13 weights, or is there some other way that we
14 can resolve this so we are not here again and
15 these complaints don't come up again? I am
16 still wavering on the best way to get to that
17 place.

18 That was a bit rambling, but I am
19 willing to take any questions that you may
20 have.

21 CHAIRPERSON MOLDENHAUER: Thank you
22 very much, Mr. Goldstein. So I guess -- I just

1 want a point of clarification. Are you saying
2 that you are still in recommendation of
3 approval potentially with conditions that
4 would try to mediate these concerns? I am just
5 trying to understand exactly.

6 MR. GOLDSTEIN: Yes, and that is
7 fine. I am still recommending support. I was
8 hopeful that we might come up with conditions
9 that can address some of these issues. That's
10 kind of what I was trying to get at at the end
11 of the report, to see if there's anything
12 further we can do to help stop this issue from
13 being a problem.

14 CHAIRPERSON MOLDENHAUER: Thank you
15 and I definitely agree with you and I think
16 that -- I don't know if it's apparent from
17 some of my questioning, but I do think that
18 there are -- if we do find that they -- I
19 think that's the next question -- if we do
20 find that they would satisfy the third prong,
21 I think there's potentially questions of
22 different conditions that could be implemented

1 on the use such as limitations on running
2 groups, limitations on the running trails and
3 different outdoor activities. Is that -- are
4 those types of conditions things that you
5 would have been considering?

6 MR. GOLDSTEIN: Something,
7 something of that nature.

8 CHAIRPERSON MOLDENHAUER: I don't
9 have any other questions for OP. Do any Board
10 Members have any questions for OP?

11 MEMBER TURNBULL: Maybe just a
12 couple of comments. I think Mr. Goldstein, I
13 think we would agree with you that a physical
14 fitness center of some sort is -- would -- it
15 makes sense that the firehouse could
16 definitely -- that this is a good fit.

17 It's got a two-storey space.
18 There's a lot of aspects to it that lend
19 itself to this type of a facility.

20 So I don't think the Board is
21 objecting to the use per se going into it. I
22 think they could make -- it makes the case for

1 it. I think our concern is just, as you were
2 talking about, is the -- how it fits into the
3 neighborhood and how the neighbors react.

4 And we have heard conflicting
5 testimony whether personal property is
6 actually being used by them or public in a way
7 that would be detrimental to the people of the
8 neighborhood.

9 I think that's our -- at least
10 that's my concern, is worry about the overall
11 -- not so much when they are in the building,
12 what they are doing, other than the noise and
13 the vibration and I think we have talked
14 about, with Mr. Valentine, the possibility of
15 setting up something to actually measure and
16 get some objective ratings and readings as to
17 what really can be -- I mean compared to the
18 bus traffic or truck traffic on New York
19 Avenue compared to the dropping of weights.

20 I think we need some benchmarks. I
21 think we need to know exactly what we are
22 dealing with. And if we need some safeguards,

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1 I think we need to condition the order to
2 address that.

3 But I think we want to go forward
4 and we can talk with Mr. Amos later about
5 maybe the ANC is really in a brokering
6 position that can help resolve this. I think
7 the ANC wants to go forward and get this thing
8 resolved and have a happy neighborhood here.

9 So, but I agree, I think we are
10 leaning towards -- I think approving it is not
11 so much an issue as to what we are approving
12 and how we go forward with it.

13 CHAIRPERSON MOLDENHAUER: Thank
14 you. Any other questions for the Office of
15 Planning?

16 MEMBER HINKLE: Well, I think I am
17 in agreement with Mr. Turnbull. Mr. Goldstein
18 mentioned that this is a fairly commercial
19 busy street and I want to go back to Ms.
20 Baxter's comment that this use should be in a
21 commercial area, and I'm not sure that it's
22 not in a commercial area, even though it's

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1 zoned residential.

2 So I just wanted to make that
3 point, that you know, I think the use is
4 appropriate where it's at, but as Mr. Turnbull
5 stated, there might be some issues to address
6 in terms of allowing this use in this
7 location.

8 CHAIRPERSON MOLDENHAUER: Thank
9 you. Does the applicant have any questions for
10 the Office of Planning?

11 MR. TOOROCK: I do not Madam
12 Chairman.

13 CHAIRPERSON MOLDENHAUER: Okay
14 thank you. I then at this point in time will
15 turn to the ANC and I believe that we have a
16 letter from the ANC rep indicating that Mr.
17 Ambrose -- is that correct -- Amos, sorry, I'm
18 trying to look for my file, I don't have it in
19 front of me -- Amos will be testifying on the
20 ANC's behalf so if you could introduce
21 yourself for the record.

22 MR. AMOS: Yes, my name is Rob

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1 Amos. I am the ANC-6C planning and zoning
2 committee citizen chairman of that and I live
3 at 206 N Street, N.W. so I have several hats
4 in this.

5 I am not only the chairman of the
6 ANC planning and zoning committee, I am also
7 a resident of the impacted area.

8 CHAIRPERSON MOLDENHAUER: Thank
9 you. If you can provide us with your
10 testimony.

11 MR. AMOS: This issue has been
12 quite heated for us in the ANC and in the
13 neighborhood since the early meetings in 2007
14 and 2008. After the zoning decision in 2008,
15 we were equally surprised and dismayed that
16 they did not come back to us nine months
17 afterwards as was stipulated in your decision.

18 We did not hear anything from
19 Primal Fitness specifically on the issue until
20 the letter came from zoning that they were in
21 violation of the zoning decision for the nine
22 months.

1 We have been talking amongst
2 ourselves as to why we hadn't heard anything
3 back and then we got the zoning letter and
4 then things started to come up again.

5 We did have them on our planning and
6 zoning committee schedule. The planning and
7 zoning committee meets the week before the
8 full commission meets.

9 We hear the full testimony at the
10 committee meeting and then we make a
11 recommendation for the vote to take place at
12 the full commission. At the full commission I
13 give a Reader's Digest type discussion of what
14 went on in the committee meeting without
15 having to go through the entire hour and a
16 half testimony again, and then the full
17 commission takes a vote on the issue.

18 When we first met regarding this
19 in July, we talked for quite a while. It was
20 well over an hour, hearing both sides of the
21 issues. We had issues with parking and the
22 blocking of the sidewalk, running through the

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1 neighborhood, the men running through the
2 neighborhood shirtless was brought up again,
3 use of public space and the activities of the
4 outdoors being used as well as the lack of
5 repair to Brenda's store and the lack of
6 monitoring of the noise and vibration as
7 stipulated.

8 We heard testimony from both
9 parties. Mr. Valentine was there, Mr. Woody
10 was there, and Ms. Keys was there as well as
11 Mr. Cope and some other neighbors.

12 Also, I have also been the central
13 point for the rest of all the residents in our
14 neighborhood to funnel their complaints to,
15 and I have had conversations with Mr. Woody
16 regarding those complaints. And I was one of
17 those people that had been knocked off the
18 sidewalk with two of my dogs at that time with
19 the running.

20 I must say, after having
21 conversations with Mr. Woody during the July
22 meeting and afterwards of the July meeting, a

1 lot of the issues with the public access and
2 public use of space have ceased. When he
3 testified that they were now cut down to
4 smaller groups running through the
5 neighborhood, I have witnessed that, that they
6 are smaller groups.

7 He has talked to me on several
8 occurrences that he continues to reiterate to
9 his members not to knock the residents off the
10 sidewalks, to be more cognizant of the
11 residents.

12 Since the June/July time frame I
13 have not had any complaints come to me from
14 the residents regarding that and as I said, I
15 have noticed the smaller groups being cut down
16 to -- the larger groups cut down to smaller
17 groups.

18 I also, during this time period,
19 after the July meeting, had conversations with
20 Parks and Recreations about the commercial use
21 of the park space by Primal Fitness. They said
22 they would research it and after that point,

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1 the use of the park at New Jersey and 3rd
2 Street has ceased, as was the use on
3 Dumbarton, that's when they began using the
4 space inside.

5 So again, Mr. Woody said it had
6 been cut out and it had been cut out for us.

7 At the meeting we had in July, the
8 recommendation of the committee was not to
9 support the zoning variance. When we got to
10 the full commission, as Ms. Keys testified,
11 the commissioner for that SMD, Mark Dixon,
12 recommended that we not -- did not support or
13 support -- he asked that it be tabled for
14 another month so we could have further
15 discussion of the issue, which did take us by
16 surprise. We were not assuming that's what he
17 would say.

18 We had the month of August off and
19 we met again in September. We went through
20 another series of meetings with the committee
21 in September where Mr. Woody and Mr. Valentine
22 spoke with us and worked with us. At that

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1 point we started breaking apart the issues of
2 the public good versus the noise and the
3 vibration variance because our understanding
4 of the noise and vibration was that the
5 monitoring would take place. We would be able
6 to determine how much actual damage was
7 occurring to Brenda's shop based upon the
8 vibration of the weightlifting equipment.

9 We had another meeting. It wasn't
10 quite as heated as the one in July was, where
11 he had shown to us, where Mr. Woody had shown
12 to us that the issues that we had talked
13 about, the parking, the blocking of the
14 sidewalk, they had been addressed, because I
15 was the one that had witnessed the blocking of
16 the public space, the sidewalk.

17 I know walk through that area at
18 least once a day and have seen they are no
19 longer blocking that sidewalk and the cars
20 that were blocking were those that belonged to
21 the barber shop, the beauty studio, the salon
22 next door were the ones I had noticed. The

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1 running has ceased.

2 The ANC had thought, said that we
3 can't do anything about the men running
4 through the neighborhood shirtless. Any
5 resident of the area can run through the
6 neighborhood. They do run through the
7 neighborhood. If they choose not to put their
8 shirt on, we as the ANC can't make them put
9 their shirt on. So that was a non-issue as far
10 as we were concerned.

11 We were happy that they had broken
12 down the groups into smaller groups and were
13 being more noticeable of who was standing on
14 the sidewalks at that time and we were very
15 happy that they had ceased all use of the
16 public space.

17 At the committee meeting, we held
18 a vote and we voted to support the zoning
19 request. We made that recommendation to the
20 full ANC commission in September at our
21 meeting. It was September 13 we had at that
22 meeting, and at that meeting it was voted to

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1 support the zoning variance of Primal Fitness
2 with two caveats which are listed in our
3 support letter.

4 CHAIRPERSON MOLDENHAUER: Thank you
5 very much. And I just want to reference for
6 the record that we do have
7 a letter of support, which is our Exhibit No.
8 21, which indicates that on a duly noticed and
9 regular scheduled meeting on September 13,
10 that there was a quorum present and that the
11 ANC voted 5:3:0 to support the application
12 with two conditions.

13 Thank you. I appreciate your
14 testimony and it does provide some clarity as
15 to the back and forth and some of the
16 potential changes, I guess it sounds like have
17 been made by the individuals. So I just want
18 to make sure, you said that after the July
19 meeting, at the September meeting, you
20 understand that they stopped using any public
21 parks or any -- they have reduced any of
22 their, or eliminated actually rather would be

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1 more -- any of their outdoor use of
2 construction sites or parks or walls?

3 MR. AMOS: That is correct. After I
4 called Parks and Recreation and filed a
5 complaint against Primal Fitness for their use
6 of that particular -- that park area and so
7 forth, what I have noticed is that the use of
8 public space has ceased for their parkour
9 activities. It's just what we are observing
10 now is just the running through the
11 neighborhood, that's the jogging as he
12 explained.

13 CHAIRPERSON MOLDENHAUER: Okay.
14 Thank you. Do any Board Members have any
15 questions for --?

16 MEMBER TURNBULL: I just want to
17 say thank you for your testimony. It was
18 pretty clear and we always look to try to get
19 a good balance between people who are opposed
20 and people who are for, and I think -- and we
21 want to see this building used. We want to see
22 this put in and be part of the neighbor and I

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1 think our concern is that we will probably put
2 some conditions on this just to safeguard some
3 of the interests of the neighborhood.

4 CHAIRPERSON MOLDENHAUER: Thank
5 you.

6 MEMBER TURNBULL: But I guess the
7 only other thing is -- and although you have
8 been doing it all along -- is brokering -- and
9 I know that's part of your job -- but it's a
10 volunteer effort and you are doing a hell of
11 a job I think in trying to resolve all of this
12 so our commendations to you.

13 MR. AMOS: Thank you.

14 CHAIRPERSON MOLDENHAUER: Thank you
15 very much. At this point in time what we would
16 do is we would turn back to the applicant but
17 what I would like to recommend is this. There
18 are some things that we still need. So what I
19 would say is that I am going to list all the
20 additional things that we are going to still
21 request from you. We are going to postpone the
22 hearing and then at that point in time we

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1 would ask for everyone to come back. We are
2 going to continue the hearing, so there will
3 be an opportunity, based on some of the
4 additional submissions, for any additional
5 members or parties to comment on that.

6 And so then at that point in time
7 you can then provide your closing comments,
8 after you present the new evidence that we are
9 requesting. So what I am going to do is I'm
10 now going to list the documentation that we
11 are requesting and give you a deadline, which
12 means that we absolutely must have that
13 information in our record. If we don't have it
14 in our record -- and the reason why I'm being
15 so harsh is because again, I don't like seeing
16 conditions and orders not satisfied.

17 So I am going to hold you to a
18 very high standard, which actually is not that
19 high of a standard. It's saying we have a
20 requirement of a deadline. You have to get it
21 in. If you don't get the information in, we
22 are not going to accept anything late and then

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1 we will just consider that you haven't proven
2 those elements that we are looking for
3 additional information for.

4 So what we are going to OD is we
5 are going to then have a new hearing date of
6 October 26 in the a.m. I think, Mr. Moy that
7 we have enough room in that day? Tell me if
8 you don't believe we do. And then I am going
9 to ask that we get the additional information
10 to our office by -- get all the additional
11 information to our office by Wednesday October
12 20.

13 MR. MOY: That's good for the staff
14 too, Madam Chair.

15 CHAIRPERSON MOLDENHAUER: Okay.
16 Thank you. So the following list of documents
17 that I am going to ask any of the Board
18 Members to add on to will be required to be in
19 our office by -- the zoning office -- by
20 October 20.

21 That would be: one, email
22 correspondence regarding the plaster-work and

1 timeliness of that; two, any documentation or
2 new documentation if that's needed, if other
3 information was verbal, in regards to the
4 value of monitoring devices in regard to
5 vibrations; potentially -- sorry the value of
6 the vibration devices, you indicated that they
7 would cost about \$11,000 to purchase and about
8 \$6,000 for an individual to operate and
9 assess.

10 MR. VALENTINE: No. Let me clarify
11 on that, that the quotes that I was given,
12 these are verbal quotes, and I can get them to
13 give it to me in writing. They were basic
14 quotes to come in and do an assessment.

15 CHAIRPERSON MOLDENHAUER: Then,
16 that's fine.

17 MR. VALENTINE: It was not buying
18 equipment or anything like that.

19 CHAIRPERSON MOLDENHAUER: Okay. So
20 that's fine, if that's in writing, then we
21 will understand the distinction. I appreciate
22 that. So verbal -- or written quotes of

1 obtaining a reading of the vibrations. Okay?

2 MR. VALENTINE: And if I may, I am
3 sure that the prices are the same now so if I
4 -- if I --

5 CHAIRPERSON MOLDENHAUER: That's
6 fine if they are current, that's fine if they
7 are not an old estimate, I understand
8 previously you got oral estimates.

9 MR. VALENTINE: Yes.

10 CHAIRPERSON MOLDENHAUER: So any
11 additional information would be new
12 information you have and I understand that the
13 dates will be new.

14 MR. VALENTINE: That's what I
15 wanted to clarify --

16 CHAIRPERSON MOLDENHAUER: That's
17 fine.

18 MR. VALENTINE: that I don't have
19 any of that in writing but I can go back to
20 the folks and get that.

21 CHAIRPERSON MOLDENHAUER: That is
22 fine.

1 MR. TOOROCK: Madam Chair, if I may
2 clarify, I believe I misspoke earlier. I think
3 the cost of the device is \$4,000 and this is
4 the device we've rented and I believe I did
5 say \$11,000 but I believe I was incorrect.

6 CHAIRPERSON MOLDENHAUER: Okay,
7 well again, that's why we are going to request
8 that it's in writing and just show us a copy
9 of the receipt if you rented it, the \$4,000
10 cost so we can see that that was done and the
11 date that that was done.

12 MR. TOOROCK: I think that the
13 rental was \$300 but if we purchased it, it
14 would be \$4,000 --

15 CHAIRPERSON MOLDENHAUER: Okay if
16 you purchased it.

17 MR. TOOROCK: So I --

18 CHAIRPERSON MOLDENHAUER: Okay.

19 MR. TOOROCK: apologize that I
20 misspoke earlier.

21 CHAIRPERSON MOLDENHAUER: That's
22 why we would like to clarify these things in

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1 writing and if you can provide documentation
2 as to the cost of purchasing one of these
3 items and then the cost of renting them on the
4 day that you rented it.

5 I would also like to see written
6 documentation on the readings. Now, I have
7 heard from our staff, we do not accept video
8 documentation to the record. What we have done
9 in the past is we have accepted -- we have
10 been able to view, during a hearing, a
11 PowerPoint presentation or a video.

12 So if you would like, if you think
13 that it will be persuasive to the issue at
14 hand in regards to vibrations, you can, during
15 the continued hearing, present video during
16 the actual course of the hearing but not as
17 evidence that could be submitted earlier.

18 However I am asking that by the
19 20th, we receive some sort of written
20 documentation showing, or explaining to us the
21 different measurements that you took
22 previously, because you testified that you

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1 actually previously took measurements both in
2 the store and then on the street and I would
3 like to see written documentation of that.

4 MR. TOOROCK: Yes, Madam Chair. We
5 did not use the device inside the store. We
6 used it inside the gym. C H A I R P E R S O N
7 MOLDENHAUER: That's what I meant, the gym, the
8 location, I mean the premises.

9 MR. TOOROCK: Yes, yes.

10 CHAIRPERSON MOLDENHAUER: Yes,
11 thank you. Those are all of the documents that
12 I would like to see. Are there any other?

13 MS. MONROE: Can I just --

14 CHAIRPERSON MOLDENHAUER: Sure.
15 Yes. From OAG. I appreciate it.

16 (Simultaneous speaking.)

17 MS. MONROE: -- break the flow but
18 usually when we get a PowerPoint we usually
19 get the hard copy of the PowerPoint as well.
20 The problem with the video is if this gets
21 appealed or ever goes before a court, we
22 cannot give them -- they get the file on

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1 appeal. They are not going to get the video.

2 CHAIRPERSON MOLDENHAUER: Can't we
3 put a DVD in the file?

4 MS. MONROE: I don't know, because
5 I don't know what the court rules say. It
6 depends on the court you go to. I don't know
7 if that would ever happen. This is all
8 conjecture. I am just concerned about the fact
9 that, when we do see PowerPoints, we always
10 get the hard -- you know the copy, you know,
11 you print it out, you copy it.

12 So I don't know how the video
13 would work and I don't know how you guys want
14 to handle it. Maybe you can do a PowerPoint.
15 Maybe you can do something else.

16 CHAIRPERSON MOLDENHAUER: We will
17 leave that open for the applicant to make a
18 decision however they feel appropriate, but we
19 are just trying to confirm the documentation
20 as to what readings occurred and showing us
21 that evidence in writing.

22 MR. TOOROCK: I'll put photos of

1 the device with the reading on it and I think
2 that that would help as part of the PowerPoint
3 and then I'll submit the video on a DVD and if
4 it helps, it helps.

5 CHAIRPERSON MOLDENHAUER: Okay.
6 We'll figure that out and you can also work
7 with the office -- the staff, before the 20th
8 to determine whether we will accept a video or
9 not so that you don't waste your time in that
10 regard if the staff determines that we are not
11 going to accept a video.

12 Mr. Turnbull, Mr. Hinkle, are
13 there any other documents that --?

14 MEMBER TURNBULL: I was just
15 clarifying what you had said about the -- when
16 we talked about the device, whether you buy it
17 or rent it is immaterial to us. I mean
18 obviously it's in probably your interests to
19 rent it, as a less expensive way of trying to
20 get this data to us and then obviously the
21 hourly -- whatever you are going to be paying
22 for an engineer to certify that the results

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1 are accurate, I think that's part of the whole
2 documentation process, as to how you are going
3 to and what is involved in that test, so that
4 we have a fairly good idea of how you are
5 going to measure.

6 MR. TOOROCK: Could I ask that if
7 we are able to provide supporting
8 documentation as in a -- like I believe maybe
9 OSHA has requirements -- that say if a
10 vibration is in this frequency, and of this
11 magnitude then it can be felt, as opposed to
12 having to bring out the engineer, which again,
13 I think the cost of was about \$6,000.
14 Unfortunately, as a small business we are
15 already in peril of not continuing to operate
16 just based on legal fees for this entire
17 process. We are over \$15,000 in legal fees
18 through DCRA and an actual hearing with the
19 Office of the Attorney General for operating
20 without a business license even though we have
21 applied for that business license.

22 So frankly if we have to do that

1 the business is going to cease to exist.

2 CHAIRPERSON MOLDENHAUER: Provide
3 us what you can and we will obviously it.
4 That's your choice as a cost-benefit analysis,
5 what you want to pay for and what you don't.
6 We cannot make that determination or let you -
7 - tell you that something may be satisfactory.
8 All we can say is provide what you can and we
9 will make the determination based on that.

10 MR. TOOROCK: Yes. Thank you.

11 CHAIRPERSON MOLDENHAUER: Thank
12 you. I think that's everything, then. So we
13 have the list of the different items that were
14 I think fairly well articulated and we went
15 through them in detail. As I said we are going
16 to be continuing the hearing at the next
17 opportunity so if there is additional need for
18 additional testimony by any individuals, I
19 also recommend that any individuals in the
20 neighborhood observe what is happening. I ask
21 the ANC, continue to observe what is
22 happening.

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1 I'd like to have a better
2 understanding of the exact number of
3 individuals, maybe how often people see the
4 runners so that if there are conditions that
5 potentially are necessary or if there is
6 additional, factual information, we can
7 understand that. And I think that that would
8 be helpful at the next hearing.

9 So this case is then continued to
10 October 26. Thank you.

11 And we will reconvene this
12 afternoon around 1:30 since we are stopping a
13 little late.

14 MR. MOY: Madam Chair. Just for
15 clarification for the staff, for the 26th, are
16 you looking at the afternoon of the 26th?

17 CHAIRPERSON MOLDENHAUER: The
18 morning.

19 MR. MOY: The morning?

20 CHAIRPERSON MOLDENHAUER: The
21 morning.

22 MR. MOY: Okay, that's fine.

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CHAIRPERSON MOLDENHAUER: Perfect.

Thank you very much.

(Whereupon, the foregoing matter
went off the record at 12:36 p.m. and resumed
at 2:13 p.m.)