

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY  
APRIL 29, 2014

+ + + + +

The Regular Hearing convened in Room 220 South, 441 4<sup>th</sup> Street, NW, Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Lloyd J. Jordan, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:  
LLOYD J. JORDAN Chairman  
MARNIQUE HEATH Member  
ANTHONY J. HOOD, Member, Zoning Commission

BOARD STAFF MEMBERS PRESENT:  
CLIFFORD MOY, Secretary  
MARY NAGELHOUT, ESQ., Office of General Counsel  
JOHN NYARKO, Zoning Specialist  
ALLISON MYERS

OFFICE OF PLANNING STAFF PRESENT:  
ARTHUR JACKSON  
STEPHEN MORDFIN

The transcript constitutes the minutes from the Public Hearing held on April 29, 2014

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1 P-R-O-C-E-E-DI-N-G-S

2 (9:59 a.m)

3 BZA CHAIR JORDAN: All right. So we  
4 can call our first case on the docket, please.

5  
6 Okay. That would be Application No.  
7 18741. This is the application of BB&H Joint  
8 Venture. Mr. Chairman, this is a request for a  
9 special exception to continue an accessory  
10 parking lot under Section 214. The property  
11 here is at 4422 Connecticut Avenue, N.W.,  
12 Square 1971, Lot 822.

13 BZA CHAIR JORDAN: Would the  
14 parties please come to the witness table.

15 Okay. One second. Let me just catch  
16 up with myself here. I=m having a computer  
17 difficulty for a minute.

18 Okay. Then let=s--please introduce  
19 yourself, starting from my left, going right,  
20 please.

21 MR. AUBINOE: Alvin Aubinoe. I  
22 represent--

1 BZA CHAIR JORDAN: Aubinoe?

2 MR. AUBINOE: Aubinoe.  
3 A-u-b-I-Bo-e. I represent BB&H. I manage that.  
4 The owners. The property.

5 BZA CHAIR JORDAN: Okay. Make  
6 sure your microphone is on, please.

7 MS. HARRISON: Good morning,  
8 ladies and gentlemen. My name is Nicola  
9 Harrison. I am an attorney with Troutman  
10 Sanders LLP, and I am counsel for BB&H Joint  
11 Venture on behalf of Potomac Foods Company II,  
12 Inc., the Applicant and with me is co-counsel,  
13 Karina Sigar.

14 MS. SAGAR: Hello. I=m Karina Sigar.  
15 I=m also from Troutman Sanders LLP, and I=m here  
16 on behalf of Potomac Foods II Inc. as well.

17 MS. WILLIS: My name is Clara Willis  
18 and I work for Potomac Foods, and I=m the  
19 district manager for the Burger King located on  
20 Connecticut Avenue.

21 BZA CHAIR JORDAN: Okay.

22 MR. JAMES: My name is Mark James.

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1 Good morning, Board. And I am the regional  
2 operations manager for Potomac Foods II, Inc.

3 BZA CHAIR JORDAN: Your name again?  
4 James...

5 MR. JAMES: Mark James.

6 BZA CHAIR JORDAN: Mark James.

7 I=m sorry. Mr. Abun--

8 MR. AJALLI: Aubinoe.

9 BZA CHAIR JORDAN: Aubinoe. You=re  
10 here representing who?

11 MR. AJALLI: Well, I manage the  
12 property for BB&H.

13 BZA CHAIR JORDAN: And who=s the  
14 Applicant? The Applicant is BB&H. Okay. And who  
15 represents BB&H?

16 MS. HARRISON: We do.

17 BZA CHAIR JORDAN: Do we--you=re  
18 the lawyers for BB&H. Do we have a--well, okay,  
19 that=s fine. We=ll--

20 MR. AJALLI: I misspoke. I don=t  
21 represent BB&H. I mean, I represent the  
22 property management of BB&H.

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1                   BZA CHAIR JORDAN: So you=re--they  
2 contract with your company to manage the  
3 parking. Is that what you=re saying?

4                   MR. AJALLI: So to speak; yes.

5                   BZA CHAIR JORDAN: BB&H owns the  
6 property?

7                   MR. AJALLI: Yes.

8                   BZA CHAIR JORDAN: Okay. BB&H owns  
9 the property. Your company does what?

10                  MR. AJALLI: I manage the property  
11 for BB&H. Potomac Foods is the tenant of the  
12 property.

13                  BZA CHAIR JORDAN: Potomac Foods.  
14 Is that the Burger King?

15                  MR. AJALLI: Yes.

16                  BZA CHAIR JORDAN: Okay. So you=re  
17 not here representing BB&H. You=re here--

18                  MR. AJALLI: I=m just making a  
19 statement.

20                  BZA CHAIR JORDAN: A statement. I  
21 got you. Counsel, who=s representing BB&H?  
22 Who=s the spokesperson for BB&H?

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1 MS. HARRISON: That would be me.

2 BZA CHAIR JORDAN: No, you=re not  
3 the spokesperson. If I want facts in regards--I  
4 have to have that from a person who can provide  
5 me factual information, if I have questions for  
6 BB&H. Counsel cannot--I mean, unless, you  
7 know--you know, counsel testifying is no longer  
8 serving as counsel.

9 So we can step through this, but  
10 there=s going to be some questions that come up,  
11 and we=ve had this before, where--counsel is  
12 counsel, and I think we need to draw some lines  
13 here. Counsel is counsel.

14 But when we have to get factual  
15 information, we--and other people also have  
16 representatives. We=ve had architects come in  
17 and try to talk in regards to their client. But  
18 it becomes a issue of what can be  
19 cross-examined, what discussions can be had,  
20 and, you know, I=m just--I put that out there  
21 for people in subsequent hearings, because  
22 we=ve had those issues, and it becomes--you

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1 know, when someone raises their hand, and gets  
2 sworn in here, and the statements that they make  
3 in regard to an Applicant ought to be something  
4 that we can hold them accountable to. Right?

5 MS. HARRISON: Correct,  
6 Chairperson, and--

7 BZA CHAIR JORDAN: And for  
8 instance, you two didn't stand up and get sworn  
9 in, did you?

10 MS. HARRISON: We did, actually.

11 BZA CHAIR JORDAN: You did? Okay.  
12 Then you can testify, and we--so we can take you  
13 outside that mode, if you want to. But anyway,  
14 I just want to say that for the record.

15 Now is anyone here from  
16 ANC--where's my note? Yes. Please come  
17 forward.

18 I can't read my scribble, even on my computer.

19 Please identify yourself.

20 MR. TOPE: Hello, Board. I'm Adam  
21 Tope, the chair of ANC-3F.

22 BZA CHAIR JORDAN: And last name

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1       again?

2                   MR. TOPE:   Tope. T-o-p-e.

3                   BZA CHAIR JORDAN:   Tope. And have  
4       you given your witness card to the court  
5       reporter?

6                   All right. This matter=s for us on  
7       a special exception, a request to continue  
8       under Section 214, an accessory parking lot.

9                   As you=re aware, there=s opposition  
10       from the ANC, who believe very strongly against  
11       this. There=s been some substantial, what=s  
12       been alleged, a substantial impact on the  
13       neighborhood, or a failure to follow conditions  
14       that have been set on previous uses, the  
15       previous approval that was given on the parking  
16       lot.

17                   As well as Office of Planning has  
18       issues with that, although they don=t oppose  
19       it, but haven=t recommended its approval. But  
20       I guess it kind a says the same thing. But we=ll  
21       get to that.

22                   And I believe the ANC still has the

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1 same position on this application. I don=t know  
2 if you had some subsequent conversations.  
3 Okay. So we=re going to ask you to, you know,  
4 prove what=s required under 214 and how--in  
5 particular, you need to address how you=re  
6 going to meet the conditions that have been set  
7 forth, that were given before, and that=s been  
8 proposed this time. That=s what I want to hear.

9

10 Mr. Hood?

11 ZC CHAIR HOOD: Mr. Chairman, I  
12 also would like to--and I=ve been involved with  
13 this case once before, maybe not the immediate  
14 past, but before. I=d like to know why the  
15 conditions weren=t followed in that, if you can  
16 let us know, as the chairman=s already  
17 mentioned, in your presentation.

18 MS. HARRISON: Sure.

19 MEMBER HEATH: In addition to that,  
20 I=d also be curious to know why there was a gap  
21 between the time when the last approval ran out,  
22 and when you=re coming back to us again for

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1 another request for special exception.

2 BZA CHAIR JORDAN: Okay.

3 MS. HARRISON: Certainly. It is the  
4 Applicant=s position that the use of the  
5 parking lot is in harmony with the general  
6 purpose of the zoning regulations, and that it  
7 will not affect the neighboring property  
8 adversely.

9 This parking lot has been in use, as  
10 a parking lot, since 1982. This Burger King has  
11 been a long-standing member of the Van Ness  
12 community. It=s been in operation for over 40  
13 years, I believe, and we believe it adheres to  
14 the requirements of Section 214. In compliance  
15 with Section 214.2, the parking lot is in an  
16 open area, no portion of which extends above the  
17 adjacent finished grade.

18 The parking spaces are located, in  
19 their entirety, within 200 feet of the Burger  
20 King property to which they are an accessory.  
21 They are separated from that Burger King  
22 property only by an alley.

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1           The parking lot surface is  
2 currently paved with materials that form an  
3 impervious surface.

4           BZA CHAIR JORDAN: You know, we  
5 want you to hit the points we talked about.  
6 We=ve read the file. All this stuff that you--we  
7 can read the text also. Just get to the mustard,  
8 would you. We appreciate it.

9           MS. HARRISON: Okay. Yes, sir.

10           All right. Just one moment. Going  
11 through the Office of Planning recommendation  
12 might be the simpler way to address the points  
13 that you have raised. We have requested an  
14 application for a period of five years from this  
15 year. It=s our understanding that OP and the  
16 ANC-3F would agree to only three years, based  
17 on the fact that not all of the conditions were  
18 adhered to.

19           BZA CHAIR JORDAN: Let=s make sure  
20 we=re clear. The ANC is not agreeing to that.

21           MS. HARRISON: Correct. But ANC did  
22 submit some proposed conditions, if the Board

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1 is inclined to approve our application for a  
2 period of three or five years.

3 One of the concerns was the  
4 dumpsters that have been on the property.

5 There are dumpsters currently  
6 there. Our client wasn't sure where else they  
7 could feasibly go in order to be emptied, and  
8 they do need dumpsters to service the Burger  
9 King property.

10 After discussing with Mr. Jackson,  
11 the dumpsters and potential other areas where  
12 they could be placed, our clients agreed to move  
13 the dumpsters from where they're currently  
14 located, adjacent to the accessory parking lot,  
15 to two of the existing parking spots on the  
16 actual Burger King property.

17 There are eight parking spots on the  
18 Burger King property. Two of those are ADA  
19 compliant parking spots. If another two of  
20 those are used for the dumpster, there'll be a  
21 total of four regular spaces available, and two  
22 ADA spaces available.

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1                   BZA CHAIR JORDAN: But presently,  
2 the dumpsters--where are the dumpsters located  
3 presently?

4                   MS. HARRISON: There are 17 parking  
5 spaces in the parking lot, the accessory  
6 parking lot. There=s a strip of curb, and right  
7 on the other side of that strip of curb are the  
8 two dumpsters.

9                   BZA CHAIR JORDAN: And the  
10 dumpsters were supposed to be on the Burger King  
11 lot itself, not an accessory parking lot;  
12 wasn=t it? Isn=t that correct?

13                  MS. HARRISON: Based on the 2009  
14 order, that is correct. The Burger King--

15                  BZA CHAIR JORDAN: So it didn=t  
16 happen?

17                  MS. HARRISON: Correct. It did not  
18 happen. The Burger King lot is very compact. I  
19 don=t know if the members of the Board have had  
20 the opportunity to go to this Burger King. It  
21 is quite a compact property with the  
22 drive-through area, and these eight spots.

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1                   BZA CHAIR JORDAN:    That wasn=t  
2                   known at the time when the conditions were set?

3                   MS. HARRISON:    Yes, it was.

4                   BZA CHAIR JORDAN:   Okay. So let=s  
5                   move on.

6                   ZC CHAIR HOOD:    So the intent of the  
7                   decision of the conditions that were placed in  
8                   2009--I=m going back even further--were not  
9                   going to be adhered to--even at the hearing. We  
10                  already knew that at that hearing. Am I correct?

11                  MS. HARRISON:    Yes.

12                  ZC CHAIR HOOD:    So we already knew  
13                  that. So we just came, just came down and  
14                  said--but I want to go a little further. You  
15                  just came in and said anything. Not necessarily  
16                  you. But just came down and told the Board  
17                  anything to get an approval.

18                  Would that be a correct assumption?

19                  MS. HARRISON:    I wasn=t here at the  
20                  2009.

21                  ZC CHAIR HOOD:    I know you weren=t.  
22                  I=m just asking.

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1                   BZA CHAIR JORDAN: That=s the point  
2 why we have--why I say the representatives for  
3 the Applicant ought to be here. Just what you  
4 said--highlight it, underline it, put it in  
5 yellow, red, whatever color. What you just said  
6 is the issue--what I was talking about. You  
7 weren=t here.

8                   MS. HARRISON: I understand, and  
9 that is why we--

10                  BZA CHAIR JORDAN: We recognize you  
11 weren=t here.

12                  MS. HARRISON: Okay.

13                  ZC CHAIR HOOD: Mr. Chairman, and  
14 the reason I have a problem--while I didn=t  
15 participate in this case in 2009, in my tenure  
16 here, I=ve had something to do with this case,  
17 and to come back now and find out that we sat  
18 down here, and came up with conditions--and  
19 tell you the truth, it=s going to be  
20 hard-pressed for me. I kind a agree with the  
21 ANC. Mr. Chairman, I don=t--I have some  
22 problems with that, when you sit down here, you

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1 give conditions, you expect for Applicants,  
2 whether it be the manager of the property, or  
3 the Applicant who=s the tenant, to carry out  
4 those conditions, and you come back 15 years  
5 later--you know, we=ve still got problems. I=ve  
6 got problems with that. I=m going to tell you  
7 that.

8 Let me just be Acool@ right now,  
9 because I=m going to tell you--I have serious  
10 problems. Because that was a waste of time.

11 BZA CHAIR JORDAN: Couldn=t say it  
12 better myself. But continue, please. That=s the  
13 burden you=re dealing with as we sit here.

14 MS. HARRISON: I understand their  
15 position. The dumpsters were actually  
16 scheduled to be moved yesterday, after  
17 discussing with Mr. Jackson, where they would  
18 be feasibly able to be located, to still be  
19 accessible by Waste Management.

20 Waste Management wasn=t able to  
21 come by yesterday, but within the next 30 days,  
22 they should be moved to the two parking spots

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1 that we've talked about with Mr. Jackson, to  
2 locate them on, to get them away from the  
3 accessory parking lot.

4 One of the conditions as well was  
5 that at no time shall delivery, vendor, or trash  
6 trucks be permitted to enter the accessory  
7 parking lot. I don't believe that is an issue.  
8 There are no delivery vendor or trash trucks  
9 that use this parking lot. The trucks that do  
10 deliver to the Burger King property come by  
11 during daytime hours. I believe that was the  
12 concern in the past 2009 meeting. That has not  
13 been raised by anybody and our client has  
14 scheduled deliveries during the daytime hours  
15 so as not to impact the neighborhood or cause  
16 unnecessary noise or disruption during  
17 inconvenient hours.

18 Condition 4 was that two trash cans  
19 shall be maintained on the parking lot and  
20 emptied at least once per day, or more often if  
21 they're overflowing with trash.

22 There are currently two trash cans

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1 on the property. Mr. Jackson expressed concern  
2 that one of them had some damage to it. So we  
3 have since ordered another trash can to replace  
4 the damaged trash can, and there are--our  
5 clients can testify whether they have actually  
6 arrived yet and been installed.

7 But there are two trash cans on the  
8 property, and they are entered more than once  
9 per day, from what I understand.

10 Condition 5, the parking service,  
11 and fence along the western boundary shall be  
12 maintained in good condition at all times.

13 The parking service entrances are  
14 maintained. Our client has contracted to fill  
15 in the bumps and potholes that were of concern  
16 with the ANC. That should also be completed  
17 within the next 30 days, and at the same time,  
18 the restriping on the property will be updated,  
19 and--

20 BZA CHAIR JORDAN: So until you  
21 made this application, and all this period of  
22 time that this property=s been sitting there,

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1 and you=ve been under the previous conditions,  
2 you=re sitting here now telling us that these  
3 things are now going to happen. Is that correct?

4 MS. HARRISON: Some of these things  
5 have happened, and some of them have not  
6 happened. The landscaping has been maintained,  
7 continuously, from what I understand. My  
8 clients can testify more in depth. They have  
9 more personal knowledge than I do as to that,  
10 and the landscaping has been maintained. I  
11 believe, from what I understand, they maintain  
12 the striping approximately every two years.  
13 They update the painting, and the guard rails,  
14 and the wheel bumps for the parking spots,  
15 approximately every two years.

16 So after inspection by ANC, and the  
17 Office of Planning, they=d like them to be  
18 updated again, and so they are scheduled to be  
19 repainted and maintained within the next month.

20 I don=t believe there=s any issue  
21 with refuse or debris on the property. The  
22 Office of Planning has not voiced any concern

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1 about that, and I don=t believe the ANC has  
2 either. The landscaping is well-maintained on  
3 the property. There are holly shrubs on the back  
4 lot of the property, adjacent to the fence and  
5 the garage door that abuts the residential  
6 area, as well as on the side of the property.  
7 Extermination services are performed on the  
8 property, from what I understand. Our clients  
9 can attest to that as well, as well as in the  
10 Burger King, and outside the Burger King main  
11 lot, there are extermination services that are  
12 currently performed on the property.

13 We appointed an ANC liaison in 2009.  
14 It is Mr. Brian Timmons. We have a letter in  
15 which Mr. Brian Timmons was appointed. He has  
16 been the liaison since that time, and he  
17 continues to be. If ,at any point in time, that  
18 changes, we will distribute a letter notifying  
19 all the interested parties, who that new person  
20 is, and their contact information as well.

21 The annual reports have not been  
22 provided, continuously, since 2009. When we

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1 recognized this, we submitted an annual report  
2 to all the required parties in mid April. I have  
3 a copy of that with me, if the Board--

4 BZA CHAIR JORDAN: When did that  
5 happen?

6 MS. HARRISON: April 15th.

7 BZA CHAIR JORDAN: Of this year?

8 MS. HARRISON: Yes.

9 BZA CHAIR JORDAN: When was it  
10 supposed to happen?

11 MS. HARRISON: Annually.

12 BZA CHAIR JORDAN: Uh-huh.

13 MS. HARRISON: I believe I already  
14 addressed the wheel stop, signage and guard  
15 rail striping, and the repainting of the  
16 directional arrows will happen at the same time  
17 as well, to refresh those.

18 MR. SULLIVAN: Excuse me. May I say  
19 something.

20 BZA CHAIR JORDAN: Counsel, you--  
21 you=re here as a witness.

22 MR. SULLIVAN: I don=t know--

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1                   BZA CHAIR JORDAN: You=re here as a  
2 witness. So no, you cannot at this point. You=ll  
3 have the opportunity. Go ahead, go ahead.

4                   MS. HARRISON: Those are the ten  
5 conditions that the Office of Planning  
6 addressed in its report, and that really  
7 pertain to the 2009 order. If you have more  
8 specific questions, I=m happy to address those.  
9 Or if you=d like to hear from my clients, more  
10 in depth, on any of those conditions, I=m happy  
11 to--

12                  BZA CHAIR JORDAN: It=s your case,  
13 counsel. You need to present that which you  
14 think needs to be presented; right?

15                   [Counsel Harrington confers with  
16 clients]

17                  MS. HARRISON: At this time, I  
18 would like the Board to hear from my clients,  
19 if that=s--I=m amenable to that.

20                  MR. JAMES: Do I need to state my  
21 name every time? Mark James.

22                  BZA CHAIR JORDAN: No. I believe

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1 we=re okay. Thank you.

2 MR. JAMES: I guess from the heart,  
3 we haven=t really addressed all the issues. I  
4 think from an internal standpoint, in the  
5 Burger King world, once we leave the Board, and  
6 we promised these things last year, Ms. Willis  
7 was at the hearing last year, and I was at the  
8 hearing, the prior hearing, I believe in 2006.  
9 I think we=ve made many attempts to be good  
10 neighbors, and to follow the Board=s  
11 recommendations throughout the time. We=ve  
12 missed a couple things, like the dumpster, and  
13 I think a big disconnect with us and the ANC,  
14 in my opinion, could be the simple step of  
15 missing the most important thing, which is  
16 probably the annual report, and that way, w  
17 could be in conversations with  
18 the ANC.

19 I think we=ve done a poor job at  
20 that. So what we=ve asked Troutman Sanders to  
21 do was to actually provide that annual report  
22 on their calendar, and have them be in charge

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1 of that. But I think, in my opinion, this is  
2 where the disconnect is, cause moving the trash  
3 can=s simple. It=s not something that we=re  
4 ignoring. I think it=s just something that was  
5 overlooked.

6 So, you know, we want to be good  
7 neighbors. We=ve been there for a long time.  
8 Potomac Foods II has been the operator of the  
9 Burger King for over 25 years there.

10 So that=s all I want to say.

11 Clara.

12 MS. WILLIS: I don=t really have  
13 anything to add to that. I think Mark has said  
14 how I feel also, unless someone had a question  
15 of me.

16 BZA CHAIR JORDAN: Well, first, let  
17 me--let=s make sure we=re clear. Conditions are  
18 not recommendations. That becomes the order and  
19 becomes the law in regards to how that  
20 property=s operated. So it=s not a  
21 recommendation, and it might just been a slip  
22 by you, but it seems as though that that=s the

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1 way the conditions have been looked upon by the  
2 operator of the site, or the owner of the site,  
3 that they were recommendations.

4 And they=re not recommendations.  
5 They become the law of how that use is going to  
6 operate.

7 And so that gives me some pause. So  
8 we didn=t do what was required for the  
9 conditions for the dumpsters. The community  
10 liaison. I heard you say that there had been one  
11 appointed just recently, in April or something?  
12 Or when?

13 MS. HARRISON: The community  
14 liaison was actually appointed in 2009, and it  
15 has been the same person since that time. Mr.  
16 Brian Timmons.

17 BZA CHAIR JORDAN: All right. What  
18 about the allegations that there=s been  
19 parking--that car washes are being held in this  
20 lot, and cars are being temporary stored on this  
21 lot?

22 Can you provide me the answer to

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1 that?

2 MS. WILLIS: Cars are not being  
3 temporarily stored on the lot, and as far as car  
4 washing taking place on the lot, car washes are  
5 not taking place on the lot. Sometimes, if  
6 there--there=s an overflow, they may dry a car  
7 like somewhere similar on the proximity in our  
8 space, but those cars are moved out very  
9 quickly.

10 BZA CHAIR JORDAN: I don=t  
11 understand what that means. Some time there was  
12 something--

13 MS. WILLIS: Well, the car wash--if  
14 the car wash itself--

15 BZA CHAIR JORDAN: There=s a car  
16 wash near there?

17 MS. WILLIS: Yes, there=s a car wash.  
18 That=s what they=re referring to.

19 BZA CHAIR JORDAN: Got you.

20 MS. WILLIS: There=s a car wash.

21 BZA CHAIR JORDAN: Okay. There=s a  
22 car wash next door.

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1 MS. WILLIS: Right.

2 BZA CHAIR JORDAN: And then  
3 sometimes, they=re putting their car on  
4 your--on the lot. Is that what I understand?

5 MS. WILLIS: Not for any long  
6 length of time.

7 BZA CHAIR JORDAN: Whether it=s 5  
8 minutes, 2 seconds, 3 minutes, and then they=re  
9 coming out and wiping cars down, possibly, on  
10 the lot. Is that a possibility? Is that what I=m  
11 understanding?

12 MS. WILLIS: That=s possible. It=s  
13 not an ongoing situation. It=s only--

14 BZA CHAIR JORDAN: Have you talked  
15 to them and told them not to do that?

16 MS. WILLIS: Yes. We have.

17 BZA CHAIR JORDAN: And they--okay.  
18 Then what did you do?

19 MS. WILLIS: Well, actually, the  
20 management company is also the one that owns the  
21 property that we=re located on, so we try to  
22 work well with them, and--

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1                   BZA CHAIR JORDAN: Okay. We'll do  
2 that when the witness makes his statement.

3                   Okay. So there=s not--well, let=s  
4 go--cause there=s also some issues about  
5 stormwater runoff because of the water, I guess  
6 from--I guess from the car wash, and people  
7 wiping down these cars, and doing other things  
8 on this lot. Is that something you know about?

9                   MS. WILLIS: No.

10                  BZA CHAIR JORDAN: Okay. Board, any  
11 other questions you have for these folks?

12                  [No response]

13                  BZA CHAIR JORDAN: And you indicate  
14 that the lot has been stripped, the lining marks  
15 have been stripped, and up to date, and kept  
16 current. How often?

17                  MR. TOPE: That=s done on, sir, on  
18 a two--biannual basis. However, we have a  
19 maintenance company that does come by and  
20 stripe, not necessarily repave or reseal the  
21 lot. But the stripes are refreshed, probably  
22 every six months.

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1                   BZA CHAIR JORDAN: And why haven=t  
2 you kept the dumpsters on your lot, on the  
3 Burger King lot?

4                   MR. TOPE: Quite honestly, sir,  
5 I--that=s--that was not a condition in 2006,  
6 when I was here, I believe, and what we talked  
7 about in 2006 was corralling the garbage cans,  
8 and then the--through discussion through that,  
9 if I can recall correctly, they decided that  
10 was--that the corral--that they--that was fine  
11 where they were, as long as we maintained  
12 the--the problem was the rodents. That  
13 everybody thought the rodents were coming from  
14 the trash cans there.

15                   Quite honestly, you know, it  
16 slipped--it slipped us, so--

17                   BZA CHAIR JORDAN: Mr. Hood.

18                   ZC CHAIR HOOD: Yes. Let=s go back  
19 to the liaison. You mentioned that you had a  
20 liaison since 2009. But I noticed in the ANC  
21 report--unless--and Chairman Tope will mention  
22 that when it comes up, I=m sure.

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1                   Apparently, the ANC didn=t know  
2 anything about the liaison, at least the way I  
3 read it. What happened with that? Was the  
4 liaison active? Did you just appoint him and  
5 didn=t tell nobody? I mean, what happened? I  
6 don=t understand.

7                   MS. HARRISON:       We prepared a  
8 letter, in 2009--our firm prepared a letter in  
9 2009, in which it was said that Brian Timmons  
10 was the liaison. I don=t believe that was sent  
11 out again because the liaison has not changed  
12 since that time. I=m not quite sure where the  
13 disconnect happened and why the ANC was unaware  
14 of that. But in 2009, Mr. Timmons was appointed  
15 as the ANC liaison.

16                   ZC CHAIR HOOD:   Does he live in the  
17 neighborhood? Mr. Timmons?

18                   MS. HARRISON:   Do you know?

19                   MR. TOPE:       No. He does not.

20                   ZC CHAIR HOOD:   Okay. You know,  
21 from listening to this--and I think I was at  
22 2006--but I know I heard this before. Do you

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1 remember me? Okay. So you know I=m really  
2 aggravated.

3 MR. TOPE: Yes, sir.

4 ZC CHAIR HOOD: It=s 2024

5 MR. TOPE: Yes, sir. Yeah. No doubt  
6 about it.

7 BZA CHAIR JORDAN: You aggravated?

8 ZC CHAIR HOOD: More than  
9 aggravated.

10 BZA CHAIR JORDAN: Oh, boy. You all  
11 did some work to get him aggravated.

12 ZC CHAIR HOOD: But I think that--I  
13 don=t know what happened, why the conditions  
14 weren=t met. It appears to me that everybody  
15 tried to put everything together in the  
16 last--according to what I=m hearing about the  
17 dates--in the last month again, as some  
18 applicants do, because they know they weren=t  
19 in compliance, right before they come down  
20 again.

21 To me, that=s unacceptable. Thank  
22 you, Mr. Chairman.

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1                   BZA CHAIR JORDAN:     Any other  
2                   questions? Or counsel, do you have any  
3                   other--if you want to use Mr.--I keep  
4                   forgetting your name.

5                   MR. AUBINOE:    Aubinoe.

6                   BZA CHAIR JORDAN:     Aubinoe.  
7                   Getting close. If you want to use him as a  
8                   witness, to testify to some of the things  
9                   that--you know, you can do so.

10                  MS. HARRISON:    Would you like to?

11                  MR. AUBINOE:    Sure.

12                  MS. HARRISON:    Okay. Please, Mr.  
13                  Aubinoe.

14                  MR. AUBINOE:    Thank you. I think  
15                  the disconnect really is the owner=s allowing  
16                  the tenant to--to handle the rear parking lot.  
17                  I also think the liaison should be terminated,  
18                  and someone who can enforce the rules, so to  
19                  speak, can actually check out the property.

20                  BZA CHAIR JORDAN:     Now who=s the  
21                  liaison again?

22                  MR. AUBINOE:    Brian Timmons.

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1                   BZA CHAIR JORDAN:     And Brian  
2 Timmons is who?

3                   MR. AUBINOE:     Potomac Foods.

4                   BZA CHAIR JORDAN:     Okay.

5                   MR. AUBINOE:     So--so I=m here  
6 offering--I feel partly responsible. I really  
7 was unaware of all these issues that have been  
8 ongoing for years, and so I=m here to try to talk  
9 to the ANC, and make it right. And to stand by  
10 and actually maybe put somebody in charge, that  
11 can actually check, to make sure that  
12 these--this neglected parking lot is--is kept  
13 up, and we abide by the stipulations that you  
14 set for us.

15                  BZA CHAIR JORDAN:     You=ve not had  
16 previous conversations with the ANC?

17                  MR. AUBINOE:     No.

18                  BZA CHAIR JORDAN:     Why is that?

19                  MR. AUBINOE:     Never. I mean, I  
20 recognize you two on the end, but I haven=t  
21 talked to anybody.

22                  BZA CHAIR JORDAN:     They=re not with

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1 the ANC. This is the ANC.

2 MR. AUBINOE: I know.

3 BZA CHAIR JORDAN: This is the ANC.  
4 Okay. And you=ve not had previous conversation?

5 MR. AUBINOE: NO.

6 BZA CHAIR JORDAN: Okay.

7 ZC CHAIR HOOD: I have a question.  
8 Can you have all that done in three months?

9 MR. AUBINOE: Absolutely.

10 ZC CHAIR HOOD: Okay. Just asked  
11 the question. Thank you.

12 MR. AUBINOE: The--the other thing  
13 I wanted to stipulate is that the car wash,  
14 which I also manage on--on Lot 817, when the  
15 people leave the car wash, they use the alley,  
16 right and left, to exit the property.

17 Occasionally, there=s be a car that  
18 would pull up to Lot 823, if somebody complains  
19 about something, but it=s not on their lot.

20 BZA CHAIR JORDAN: It=s not on  
21 whose lot? I=m sorry.

22 MR. AUBINOE: It=s not on the

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1 parking lot in question.

2 BZA CHAIR JORDAN: Okay.

3 MR. AUBINOE: Okay. Now  
4 occasionally, if someone gets in--in their car  
5 on Lot 823, they might take a right turn,  
6 instead of backing up in to the alley and cut  
7 through the parking lot. But all the work is  
8 done, for the car wash, is done on 817 and Lot  
9 823.

10 BZA CHAIR JORDAN: So have you--so  
11 that the cars from the car wash are not coming  
12 on the accessory parking lot?

13 MR. AUBINOE: Well, occasionally,  
14 if--if one car=s parked--if someone complains  
15 about their car wash, then they might take it  
16 to the lot directly behind the car wash and tidy  
17 up whatever needs to be done, and then that  
18 person would hop back in the car and possibly  
19 drive left. They can also drive right, and they  
20 can also back up.

21 So occasionally, they will cut  
22 through the parking lot, but the work is not

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1 being done on the parking lot. That brings me  
2 to--I read the ANC requests, and--and I'm  
3 really concerned about the pervious blacktop  
4 that they wanted us to put down there. With it  
5 being wet all the time, I don=t think it=s a good  
6 idea.

7 I agree, from looking at the  
8 pictures this morning, that it=s been  
9 neglected, the parking lot, that is, and needs  
10 to be resurfaced. But I would really recommend  
11 against doing the--the pervious material that  
12 they requested because it=s a very wet area all  
13 the time.

14 I also noticed on some--on the lot  
15 next to--adjacent to 817, or contiguous to 817,  
16 on the other side, they were granted a 7 year  
17 term, and, you know, as the ownership,  
18 obviously, we want--we want to have as long a  
19 term as possible, and I think by having the  
20 right liaison that=s responsible to make sure  
21 these conditions are met, I think that=s the big  
22 disconnect.

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1           Not only do you not have the  
2 ownership watching the store, but you  
3 don=t--you have the liaison that=s really not  
4 paying attention, and that=s why I want to step  
5 in for the ownership and make sure this happens.

6           BZA CHAIR JORDAN: Well, you know,  
7 it=s not that easy. The owner--it=s the owner=s  
8 property and these orders run for the owner and  
9 the property. It=s not the tenant, and it=s  
10 recumbent upon the owner, I guess through your  
11 company as having a contract for managing that  
12 parking lot, to adhere to what the requirements  
13 are of law.

14           So we=re not going to--we=re not  
15 going to sit here--I think there=s a serious  
16 credibility issue here--serious credibility  
17 issue. I just want--I mean, it=s a serious  
18 credibility issue. And it=s funny how we come  
19 to this table, or come upon this application,  
20 and now we=re going to do all the stuff that we  
21 talked about doing before but didn=t really  
22 mean it.

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1                   ZC    CHAIR   HOOD:        They    must  
2    have--didn=t think I was going to still be here.

3                   BZA CHAIR JORDAN:    But the record  
4    also speaks for itself, and the community is  
5    there, and that is one--I mean, there=s a  
6    community around this place. And I=m hearing  
7    you sit here and say, you know, well, no, we  
8    haven=t had a conversation with the ANC. We want  
9    to have conversation. Well, nobody stopped you  
10   from having it. I haven=t even heard we tried  
11   to have conversation and they refused to have  
12   conversation.

13                   Then I see the ball being passed  
14   from--well, the tenant is saying, well, we then  
15   left these things up to the management company,  
16   and the management company says, well, we think  
17   that the tenant should manage it better.

18                   No. That=s what I=m hearing. And  
19   these conditions are not recommendations.  
20   They have to be followed. So, you know, you  
21   pointing it back to those guys, and they  
22   pointing it back to you, just gets it more and

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1 more muddled for us, and this is not the time  
2 to come in here and try to play--play good,  
3 because your--your pattern and practice shows  
4 us what your future may be.

5 The Board have any other questions?  
6 Or you have any other witnesses that you want  
7 to put forth on this?

8 MS. HARRISON: I would just like to  
9 address--you asked about runoff, Chairperson,  
10 and our client has installed shrubbery, and I  
11 believe they=re willing to install shrubbery in  
12 response to the ANC=s concern. Our client is  
13 also willing to install the bike rack that the  
14 ANC requested, if the Board approves the use.

15 Our client is willing to address the  
16 pervious paving issue. We spoke with Mr.  
17 Jackson about that. The neighboring bakery that  
18 has been given, I believe seven years, as Mr.  
19 Aubinoe testified.

20 BZA CHAIR JORDAN: The Office of  
21 Planning has listed, I guess, probably ten  
22 conditions, and which we may add some more.

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1 Point out to me the conditions that you're not  
2 comfortable with.

3 Excuse me just one second. Mr.  
4 Jackson, does your conditions also include  
5 DDOT's conditions?

6 MR. JACKSON: Not necessarily, Mr.  
7 Chairman.

8 BZA CHAIR JORDAN: All right.

9 MR. JACKSON: We talked with DDOT,  
10 and we mentioned the pervious surface to them,  
11 but at this point I haven't seen the report.

12 BZA CHAIR JORDAN: I don't see  
13 anything that's really--well, any big  
14 difference between--no; no. I guess their  
15 condition is they've grabbed your conditions,  
16 and put them back. I think that's what they did.

17 MR. JACKSON: Which one? I'm sorry.  
18 On the mike.

19 MEMBER HEATH: Were the conditions  
20 you were reading coming from the ANC's  
21 additional conditions?

22 MS. HARRISON: No, but I can go

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1 through those right now.

2 BZA CHAIR JORDAN: No, I don=t need  
3 to--we=re going to talk about the ANC  
4 conditions, cause some of which this Board can  
5 order, and we=ll talk through that. But I want  
6 you to look at what OP has submitted. Office of  
7 Planning. And what conditions are here, that  
8 you cannot live with?

9 MS. HARRISON: I believe we can  
10 live with all of them, Chairperson.

11 ZC CHAIR HOOD: I mean, if we get  
12 that far.

13 MS. HARRISON: Correct. The  
14 pervious paving, we would just request the same  
15 amount of time that was given to the neighboring  
16 bakery, so that can be coordinated, and it can  
17 be installed, over time. But our client doesn=t  
18 have any objection to any of these, I believe,  
19 and we=re very happy to submit a post-hearing  
20 statement, detailing what efforts are made in  
21 the next 30 days, so that the Board is able to  
22 ensure accountability, and that these

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1 conditions are being implemented and adhered  
2 to.

3 Several of these should be taken  
4 care of within 30 days. The dumpsters being  
5 moved, as well as the restriping and the  
6 maintenance. We=re also willing to install  
7 shrubbery if the--I believe the ANC wanted  
8 additional shrubbery, and that would address  
9 the run-off issue as well, to the extent that  
10 there is one.

11 BZA CHAIR JORDAN: Okay. Do we have  
12 any other questions of the Applicant?

13 [No response]

14 BZA CHAIR JORDAN: Is there  
15 anything else you want to present to the Board?  
16 Going once. Going twice.

17 MS. HARRISON: No. Thank you.

18 BZA CHAIR JORDAN: All right. Let=s  
19 turn now to Office of Planning. Mr. Jackson,  
20 please.

21 MR. JACKSON: Good morning, Mr.  
22 Chairman and members of the Board. My name=s

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1 Arthur Jackson, D.C. Office of Planning.

2 You have the report, the Office of  
3 Planning=s report. First, I=d like to say that  
4 I really appreciate the Applicant=s  
5 willingness to discuss some of the issues that  
6 were raised by the meeting. I think our  
7 conversations--I did say the Board would be  
8 very concerned about the fact that their--the  
9 requirements weren=t initially addressed, and  
10 during our conversations ,what I suggested to  
11 them was--well, let=s put things in context.

12 If we would turn to the Office of  
13 Planning report, to page five, figure two,  
14 there=s a map of the site, and you can see on  
15 the map of the site the highlighted area on Lot  
16 17--1971, is the existing parking lot. Then  
17 across from there, there=s another rectangle  
18 off of Connecticut Avenue. That=s the location  
19 of the Burger King restaurant.

20 Under the dumpsters,  
21 dumpster--well, this--this little identifier  
22 kind a drifted during the printing. But under

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1 the dumpster sign is actually where the car wash  
2 is. the car wash is a drive-through car wash,  
3 where you come in from Connecticut, turn around  
4 and come out, and come down the alley, and you  
5 exit.

6 You=ll see a lot immediately across  
7 from the car wash, just north of the accessory  
8 parking lot. That=s a building that=s currently  
9 used--I believe that=s the building that=s  
10 currently used for the--by the car wash for  
11 supplies and such for the car wash, and that=s  
12 where cars will park when they=re sometimes  
13 being wiped down.

14 So there is a lot immediately across  
15 there. I think it=s associated with the car wash  
16 use. And then north of there, there are two lots  
17 north of there that go toward Albemarle. That=s  
18 another accessory parking lot that came through  
19 earlier for approval, and that=s the same lot,  
20 that they=re under the same management, that=s  
21 going to be moving toward impervious  
22 surface--have a pervious surface in response to

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1 an Office of Planning request.

2 If you look, go to the last page of  
3 Office of Planning requests, we highlighted the  
4 actual conditions that we thought the Applicant  
5 had not addressed. Two, four, seven, eight,  
6 nine and ten.

7 And now the fact that the Applicant  
8 has a scheduled time for maintenance of the  
9 parking lot in terms of the striping, Office of  
10 Planning would agree to include in the  
11 requirements, that the same time, so that they  
12 will be agreeing to do the striping, add it  
13 every two years, or how frequently it is done.  
14 If that=s a management process, and it is a  
15 scheduled event, then I think that that  
16 would--it would be reasonable to make that a  
17 condition as opposed to just keep it clean.

18 The issue that we=d raised about the  
19 existing dumpsters was that we didn=t think  
20 they were substantial enough. They appeared new  
21 and they appeared damaged. So it appears as if  
22 they weren=t substantial enough to deal, to

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1 stand in that area, and be--and maintain shape.

2 You=ll note, on the photographs  
3 that were provided, provided by the Applicant,  
4 that the dumpsters stand on a narrow median, and  
5 so they=re probably getting hit from both sides  
6 by vehicles.

7 So we suggested to the Applicant  
8 maybe, may consider to do something more  
9 substantial. But in any case, that they  
10 shouldn=t be damaged the way they were, because  
11 the damaged dumpster--or the dumpsters are  
12 enclosed in concrete, or very thick concrete.  
13 And it=s thin concrete. So when it shatters,  
14 it=s all over the ground too. So that adds to  
15 litter.

16 So we continue to encourage them to  
17 do something a little better than that. The  
18 Applicant also indicated in the application,  
19 that they--they indicated that they did not do  
20 extermination beyond the Burger King property,  
21 but that they have set up a berm, that should  
22 keep the rodents from going beyond the

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1 property.

2 We would think whatever=s the most  
3 suitable approach in the public area, would be  
4 the best one. Now the community is saying that  
5 that doesn=t work, and maybe some additional  
6 uses--maybe additional approaches are  
7 necessary. However, if that if that system is  
8 working, that=s why we do not emphasize doing  
9 additional extermination out there, because  
10 extermination in public areas is sometimes hard  
11 to control.

12 With regard to the other responses  
13 from the Applicant, in terms of the dumpsters,  
14 I got--the suggestion by the Office of Planning  
15 was--going back to that map--that you see the  
16 five parking spaces, five or six parking spaces  
17 behind the actual Burger King.

18 The two southern ones, the ones  
19 closest to the adjacent--next to the adjacent  
20 building to the south, at the bottom of the  
21 picture, is where we were suggesting they put  
22 the dumpsters. However--

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1                   BZA CHAIR JORDAN:    Back by the  
2                   green--the trees, or something like that?

3                   MR. JACKSON:    No. Right down in  
4                   here. (Indicating)

5                   BZA CHAIR JORDAN:    Oh. Down--

6                   MR. JACKSON:    On the Burger King  
7                   property.

8                   BZA CHAIR JORDAN:    Okay. Got it.  
9                   Yes. I thought that was on the back side. Okay.

10                  MR. JACKSON:    No, no, no. We--the  
11                  thought was that they would grade the property  
12                  such that it formed a plateau, put a retaining  
13                  wall there, and so you=d actually have--the  
14                  dumpsters are the same level of the  
15                  driveway--of the alley, such that the truck  
16                  could pull in, do a point turn, dump the  
17                  dumpsters--dump within the dumpsters and then  
18                  keep moving. So they could still access it  
19                  directly from the alley.

20                  Now if Waste Management, or whoever  
21                  your contractor is, can deal with it on that  
22                  slope, that that=s good. That that=s

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1 sufficient. But I was just making the  
2 observation that they have the space for the  
3 dumpsters. They have more than enough parking  
4 with the accessory parking lot, so it seems like  
5 they could commit some of that space to serving  
6 this facility.

7 BZA CHAIR JORDAN: Let me ask you a  
8 question. I think kind of condition four of the  
9 previous conditions was kind of ambiguous. It  
10 says dumpsters on the parking lot.

11 MR. JACKSON: Yes.

12 BZA CHAIR JORDAN: Was that--it=s  
13 my understanding that meant the Burger King  
14 parking lot.

15 MR. JACKSON: No. Oh, yes.

16 BZA CHAIR JORDAN: Except not the  
17 accessory parking lot but next to the Burger  
18 King--

19 MR. JACKSON: Oh, no. That was off  
20 the Burger King parking lot.

21 BZA CHAIR JORDAN: Okay.

22 MR. JACKSON: Now the Board came up

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1 with this condition, but my impression was--and  
2 that your--the condition was based on the fact  
3 that the commercial use is not allowed on a  
4 residential district, ergo, a dumpster that=s  
5 serving a commercial use should not be there.

6 If it had been an apartment  
7 building, as allowed in a residential district,  
8 then the dumpsters be there. Now that was  
9 my--okay. So looking at the photograph on page  
10 three, figure three, figure one, that=s the  
11 current location of the dumpsters that  
12 you--that the BoardB

13 BZA CHAIR JORDAN: Where you have--  
14 just above C-3-A on the diagram there?

15 MR. JACKSON: No; no. Well, no,  
16 that--

17 BZA CHAIR JORDAN: You=re on  
18 another diagram.

19 MR. JACKSON: I=m on figure one.

20 BZA CHAIR JORDAN: Oh, okay. I=m  
21 sorry.

22 MR. JACKSON: It=s a actual

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1 photograph. You can see the dumpsters  
2 are--there are two dumpsters--

3 BZA CHAIR JORDAN: Oh, yes. There  
4 they are. Okay.

5 MR. JACKSON: --in front of that  
6 bright red car, that are--

7 BZA CHAIR JORDAN: Red car?

8 MR. JACKSON: Well--

9 BZA CHAIR JORDAN: I=ve got a green  
10 car.

11 (Laughter)

12 ZC CHAIR HOOD: You didn=t get a  
13 color copy? We=ve got color copies. Ours is with  
14 a green dumpster, a gray car with red tail  
15 lights, and green trees. What are you looking  
16 at?

17 BZA CHAIR JORDAN: Well, I=ve got a  
18 black and white.

19 MR. JACKSON: Oh. Office of  
20 Planning hasn=t got a lot of money. We had to  
21 cut corners. But the issue, though, is those--

22 BZA CHAIR JORDAN: That=s why we=re

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1 electronic and that=s how we=re looking at  
2 these.

3 (Laughter)

4 MR. JACKSON: I understand, Mr.  
5 Chairman. Okay. So these are the dumpsters you  
6 wanted to move. So the two dumpsters are about  
7 nine feet--about eight feet wide, each about  
8 eight feet wide. The parking spaces are nine  
9 feet wide. So they would fit.

10 BZA CHAIR JORDAN: Let me ask you,  
11 before we leave that. That little--what do you  
12 call it? Where the gray--

13 MR. JACKSON: I don=t know what  
14 color car yours is, but the gray car that=s  
15 sitting, you know, just behind the dumpster--

16 BZA CHAIR JORDAN: Yes. South of  
17 the dumpsters here. Is that path in between  
18 there the two different lots, the accessory lot  
19 and the parking lot of Burger King lot?

20 MR. JACKSON: The Burger King lot  
21 is behind the railing.

22 BZA CHAIR JORDAN: Behind the

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1 railing.

2 MR. JACKSON: Right.

3 BZA CHAIR JORDAN: Where there=s a  
4 little car sitting there.

5 MR. JACKSON: And in fact I believe  
6 it comes out to--you can see the crack in the  
7 asphalt.

8 BZA CHAIR JORDAN: I see it.

9 MR. JACKSON: And the concrete  
10 triangle. That is the edge of the Burger King  
11 lot.

12 BZA CHAIR JORDAN: All right. And  
13 what about the lot where those dumpsters are?  
14 that=s the accessory lot.

15 MR. JACKSON: That=s the accessory  
16 parking. That=s part of the accessory parking  
17 lot.

18 BZA CHAIR JORDAN: And go back to  
19 the left corner. Go to the back of that left  
20 corner.

21 MR. JACKSON: Right.

22 BZA CHAIR JORDAN: What are those

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1 things sitting there? It looks like postal  
2 vehicles? What are those?

3 MR. JACKSON: Yes. Well, the postal  
4 vehicles are there for lunch.

5 BZA CHAIR JORDAN: Okay. So there  
6 for lunch.

7 MR. JACKSON: That=s my  
8 best--that=s my impression. But I didn=t ask  
9 anybody. Now the fencing that=s actually  
10 screening the property from the neighboring  
11 property. Do you see that along, just beyond the  
12 postal vehicles? Then the trees and  
13 landscaping.

14 BZA CHAIR JORDAN: Yes.

15 MR. JACKSON: It appears that the  
16 fencing and the accessory buildings on the  
17 neighboring properties really form an  
18 effective screen.

19 That landscape is in good shape  
20 but--and I think this visit, this photograph is  
21 an old photograph, so it does not show the  
22 additional landscaping that they put out there.

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1                   BZA CHAIR JORDAN: Do you know what  
2 all the activity is in the right-hand corner?  
3 Upper right-hand corner?

4                   MR. JACKSON: That is the  
5 neighboring property where they have--the  
6 building--that building back there behind the  
7 dumpsters and those tents, that=s the building,  
8 the accessory building for the parking--

9                   BZA CHAIR JORDAN: For the car  
10 wash.

11                  MR. JACKSON: For the car wash.  
12 And those tents are being used by the car wash.

13                  BZA CHAIR JORDAN: Is this property  
14 separated in some kind a way?

15                  MR. JACKSON: No. It=s actually  
16 just--it=s continuous pavement. Basically, the  
17 only way you=d know that there was a separation  
18 is that you look at aerial.

19                  BZA CHAIR JORDAN: Okay. There you  
20 go.

21                  ZC CHAIR HOOD: Those tents. What  
22 are those tents being used for?

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1                   MR. JACKSON: Now I don=t know how  
2 old this photograph is, cause remember, this is  
3 from a vendor that=s not under D.C. control. But  
4 I=m assuming that=s part of the car wash  
5 operation.

6                   BZA CHAIR JORDAN: Gotcha. Yes.  
7 It=s probably where they bring the cars up  
8 there, and they stay out of the sun until cars  
9 come up. I=ve seen that kind a thing--

10                  MR. JACKSON: Cause this looks like  
11 a summer photograph.

12                  ZC CHAIR HOOD: So Mr. Chairman--

13                  MR. JACKSON: But again, this could  
14 be several years old.

15                  ZC CHAIR HOOD: Now again, where=s  
16 the placement that we=re talking about putting  
17 these two dumpsters in?

18                  MR. JACKSON: Okay. If you go back  
19 to figure three--figure two.

20                  BZA CHAIR JORDAN: Figure two. What  
21 page is that?

22                  MR. JACKSON: Page six.

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1 BZA CHAIR JORDAN: Page six.

2 ZC CHAIR HOOD: Okay.

3 MR. JACKSON: Now the OP suggestion  
4 was that they build a plateau--they fill in  
5 where the two parking spaces are, right next to  
6 the building next door, I think that=s--

7 BZA CHAIR JORDAN: On that figure,  
8 where are you pointing?

9 MR. JACKSON: The bottom. See where  
10 it says AWide.@

11 BZA CHAIR JORDAN: Wide. Yes.

12 MR. JACKSON: Yes. Right there are  
13 two parking spaces, that they put the dumpsters  
14 there.

15 BZA CHAIR JORDAN: Okay.

16 MR. JACKSON: The suggestion  
17 that--would be that it be filled in, and plateau  
18 sort of sit there. But if the service company  
19 can actually do it with the dumpsters leaning,  
20 or on the slope, then that=s acceptable too.  
21 It=s just that those parking spaces are  
22 slumping down from the alley.

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1                   So that=s the suggested location.  
2                   I=m not sure if those are the same dumpsters the  
3                   Applicant was considering, but it would be out  
4                   of the way of these turning--the circular drive  
5                   that=s--that the drivers are using to access  
6                   the--

7                   BZA CHAIR JORDAN:   So presently the  
8                   dumpsters--if you look at where it says  
9                   Alley--the A portion--that=s where those  
10                  dumpsters are?

11                  MR. JACKSON:   Well, you see the  
12                  white car?

13                  BZA CHAIR JORDAN:   Yes.

14                  MR. JACKSON:   Okay. The two squares  
15                  right in front of--

16                  BZA CHAIR JORDAN:   I see them. I see  
17                  them. Yes.

18                  MR. JACKSON:   Those are the  
19                  dumpsters.

20                  BZA CHAIR JORDAN:   So you mean just  
21                  move them back over--okay.

22                  MR. JACKSON:   That was the

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1 suggestion.

2 BZA CHAIR JORDAN: Got it. Okay.

3 MR. JACKSON: But now if--however  
4 the Applicant makes that work is acceptable to  
5 OP, that that=s safely and can access, can allow  
6 their service provider to access it ,and will  
7 not create any more traffic congestion.

8 BZA CHAIR JORDAN: Is it desirous  
9 to require the Applicant to subdivide--well,  
10 not to subdivide--to fence off their parking  
11 area from the adjacent car lot--

12 MR. JACKSON: Well, it probably  
13 would be advisable to have some indication, on  
14 the ground, about where one ends and one begins.

15 BZA CHAIR JORDAN: Maybe even by--

16 MR. JACKSON: Well, I thinking  
17 fencing--you see that access in to the parking  
18 lot, really, from the alley, from the north,  
19 really crosses the neighboring property. So  
20 both properties are being used for ingress and  
21 egress. The other property owner=s not in for  
22 repeal, but I think that property=s being used

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1 to access this site.

2 I would just suggest that maybe a  
3 clear demarcation of where the line is, cause  
4 when you're out there, you really can't tell,  
5 either if--and probably striping's the most  
6 convenient thing to see, if that would work,  
7 would help things. Such that you have striping  
8 indicating where you can park, and striping  
9 indicating how traffic circulation should go.

10 You also have something indicating  
11 where their property ends, and where the car  
12 wash cars should not extend beyond. If  
13 that--that's one possibility.

14 But we--and we took to heart the  
15 community's complaints, concerns. We think the  
16 term, shorter term would be reasonable, and  
17 even if the Board wanted to go a little further  
18 than OP has suggested. But we think--we really  
19 think it is time for the Applicant, who's been  
20 in this area for a long time, and by all  
21 indications plans to be there a whole lot  
22 longer, to go ahead and bring this property to

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1 a point where they are the good neighbors they  
2 claim they want to be. So hopefully that will  
3 happen in the near future.

4 That completes the brief comments  
5 in the Office of Planning report and we will  
6 answer any additional questions.

7 BZA CHAIR JORDAN: I think you've  
8 done a yeoman's job, and we've certainly butted  
9 in enough. Board, any other questions for  
10 Officer Jackson? I had to throw that in. It's  
11 been like a couple of months now, I haven't said  
12 that. But no, I really appreciate your report,  
13 and the diligence here, and it really helped us  
14 understand where the issues are.

15 But I'm thinking another guard  
16 rail, possibly, that separates that little area  
17 there. That would be very helpful. I'm just  
18 thinking; you know.

19 Does the Applicant have any  
20 questions of the Office of Planning?

21 MS. HARRISON: No. Thank you.

22 BZA CHAIR JORDAN: Okay. Mr. Tope,

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1 do you have any questions of the Office of  
2 Planning?

3 MR. TOPE: No.

4 BZA CHAIR JORDAN: I meant to ask:  
5 Mr. Tope, do you have any questions of Office  
6 of Planning?

7 MR. TOPE: No.

8 BZA CHAIR JORDAN: Okay. And I  
9 meant to ask: Did you have any  
10 cross-examination questions you would like to  
11 ask the Applicant, because the ANC is always a  
12 party in these proceedings.

13 MR. TOPE: I don=t. Thank you.

14 BZA CHAIR JORDAN: Great. Thanks,  
15 you saved me, cause I skipped over you.

16 Okay. Is anyone here from  
17 Department of Transportation?

18 (No response)

19 BZA CHAIR JORDAN: We do have a  
20 report from Department of Transportation that  
21 has issued, that they have no objection to the  
22 relief, and certainly have included their--the

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1 conditions that were previously given, and the  
2 conditions offered by Office of Planning in  
3 support. Let me do this a little bit out of  
4 order, but I'm going to get back, so we have more  
5 time with the ANC.

6 Is there anyone wishing to speak in  
7 support of this application? Anyone wishing to  
8 speak in support of this application?

9 (No response)

10 BZA CHAIR JORDAN: Anyone wishing  
11 to speak in opposition?

12 (No response)

13 BZA CHAIR JORDAN: Then let's turn,  
14 now, to the ANC, and get their input, please.

15 MR. TOPE: Sure. Thank you very  
16 much for the opportunity to speak.

17 I have very little to add, in  
18 addition to the report that we sent you. I guess  
19 our view is to oppose this, as we've stated, for  
20 numbers of noncompliance reasons. If you  
21 choose not to oppose it, we listed a bunch of  
22 different conditions.

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1                   We=d like to see--I think I=ll just  
2 speak quickly about the permeable surface.  
3 Basically, ANC-3F borders Soapstone Valley,  
4 and Rock Creek Park, and all the runoff from  
5 Connecticut Avenue, and all the houses, flows  
6 in to that. D.C.=s spending millions and  
7 millions of dollars to rebuild Soapstone Creek,  
8 and do a ton of work to deal with the run-off.

9                   One of the Abig picture@ items that  
10 our ANC has done in the past year or two is  
11 trying to get property owners to minimize  
12 run-off, and we=ve been very happy that UDC=s  
13 new building will create no run-off. B.F.  
14 Saul=s new huge apartment building will create  
15 no run-off. And we=re very happy that you  
16 supported the neighboring property where the  
17 bakery is, two sites up, that they would  
18 transition the permeable paving over the course  
19 of their, I think seven years.

20                   And basically we look at it as a Abig  
21 picture@ thing. This is a parking lot. It serves  
22 no purpose other than parking. So maybe the

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1 owners could work with us to convert the  
2 permeable parking--permeable paving over to  
3 the life of their order since it, you know, is  
4 not cheap. But it will help the neighborhood to  
5 minimize run-off.

6 I really have nothing else to add,  
7 in addition to our report, but I'm happy to  
8 answer your questions.

9 BZA CHAIR JORDAN: I'm kind a  
10 understanding from the ANC report, as a soft  
11 opposition, as long as the  
12 recommendations--some of the recommendations  
13 that you recommended makes the landing easier  
14 for you to accept. Would that be correct?

15 MR. TOPE: Yes. I mean, we would  
16 like to see them do what you ask them to do, and  
17 we have no issue filing complaints. We did it  
18 with UDC. We made a deal with them. The deal=s  
19 not upheld. We filed a complaint. I'm happy to  
20 do it here, and that=s my new thing.

21 BZA CHAIR JORDAN: It=s just that  
22 they have not been good neighbors, to some

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1 extent.

2 MR. TOPE: I=d say it=s very  
3 simple. You tell them what to do, and if they  
4 follow it, we=re happyB

5 BZA CHAIR JORDAN: I=m saying in  
6 the past, they have not been.

7 MR. TOPE: I mean, I classify not  
8 being a good neighbor as not following your  
9 order. So yes.

10 BZA CHAIR JORDAN: Okay. Now one of  
11 the concerns that you raise was that the--they  
12 were allowing the cars from the car wash to park  
13 in the lot. Are you clear--now, hearing the  
14 testimony of Office of Planning, and that  
15 there=s an area for the car wash that=s not  
16 separated from the area of the accessory  
17 parking lot. Are you aware of that?

18 MR. TOPE: Yeah. So it--their  
19 driveway, their parking lot touches the car  
20 wash=s parking lot, and that=s different than  
21 how their parking lot is--has a divider between  
22 Zips, which is the dry cleaner in that store.

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1 The issue we see is that the car wash has a  
2 number of problems in the neighborhood blocks,  
3 the one on Connecticut Avenue, things with  
4 that, but that=s not really relevant here. But  
5 what=s important is particularly on weekends,  
6 like I=m sure this weekend, after all this rain,  
7 it=ll be so busy that they basically just pull  
8 cars in to that area, and dry them off.

9 They=re not usually washing them in  
10 the Burger King=s area, but they=re drying them  
11 off. So I guess if this is supposed to be an  
12 accessory to the Burger King, then that=s what  
13 it should be used for. If it=s supposed to be  
14 a drying-off area for a car wash, then I don=t  
15 know--maybe the car wash should go buy the  
16 parking lot and ask you for permission to do  
17 that.

18 I don=t know. But maybe building a  
19 divider is a simple solution to it, though not  
20 probably the prettiest thing; but it would  
21 probably work.

22 BZA CHAIR JORDAN: Okay. Board, any

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1 questions of Mr. Tope?

2 ZC CHAIR HOOD: Yes. Mr. Chairman,  
3 I have a question. Mr. Tope, you heard this  
4 discussion about the liaison. Were you aware of  
5 Mr.--I forgot his name--

6 MS. HARRISON: Timmons.

7 ZC CHAIR HOOD: Timmons. Were you  
8 aware that Mr. Timmons was the liaison?

9 MR. TOPE: So I was not aware of  
10 that. I started in ANC in 2010, so that may be  
11 the reason. I think if you require them to have  
12 a liaison, maybe asking that annually they just  
13 send us a letter who it is, would make sure that  
14 as commissioners change over every two years,  
15 that someone knows who it is.

16 ZC CHAIR HOOD: Is Ms. Karen Perry  
17 still a ANC commissioner?

18 MR. TOPE: She is.

19 ZC CHAIR HOOD: Okay. Have you ever  
20 heard her talk about a liaison?

21 MR. TOPE: No. I spoke with her and  
22 she didn=t know who it is, so--

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1 ZC CHAIR HOOD: All right.

2 MR. TOPE: She=s been on it for a  
3 while as you know.

4 ZC CHAIR HOOD: I exactly know  
5 that. That=s why I asked that question. Thank  
6 you.

7 BZA CHAIR JORDAN: Board, any other  
8 questions of Mr. Tope?

9 (No response)

10 BZA CHAIR JORDAN: Does the  
11 Applicant have any questions of Mr. Tope?

12 MS. HARRISON: Just a couple.

13 BZA CHAIR JORDAN: Sure.

14 MS. HARRISON: Mr. Tope, would you  
15 have any objection to the pervious paving being  
16 installed along the same lines as the  
17 neighboring bakery?

18 MR. TOPE: That=s fine, which is  
19 over the course of how many years?

20 MS. HARRISON: I believe it has  
21 until June 2020.

22 MR. TOPE: I think it=s something

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1 like that; yeah. So something like that, cause  
2 I appreciate that it=s kind of expensive, so one  
3 time it would be tough. That=s fine.

4 MS. HARRISON: Okay. And if the  
5 Applicant were to paint a divider, or something  
6 along those lines, when it=s restriping the lot  
7 within the next 30 days, would that somewhat  
8 address your concerns with the car wash?

9 MR. TOPE: I mean, it=s possible it  
10 works. I don=t know if you--if you plan to have  
11 someone peak out the back of the Burger King and  
12 see what they=re doing, and talk to them when  
13 they go over that line. I guess it=s possible.  
14 But I guess I will say that if it doesn=t work,  
15 and I happen to be back there and see it, we=ll  
16 probably file a complaint and we=ll be back here  
17 some day, so--

18 MS. HARRISON: In terms of the  
19 liaison, would the ANC be satisfied if the  
20 liaison was included in the annual report, or  
21 would you like a separate letter, notifying you  
22 who the liaison is, on a semiannual basis?

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1                   MR. TOPE:     It doesn=t matter;  
2                   however you want.

3                   MS. HARRISON:   We have a copy of the  
4                   letter, I believe, that we=re happy to pass up,  
5                   if the Board would like to see it, for the 2009  
6                   liaison.

7                   BZA    CHAIR    JORDAN:       This    is  
8                   cross-examination. We=re not at the point of  
9                   you doing rebuttal or anything like that. So you  
10                  want to--

11                  MS.    HARRISON:        No    further  
12                  questions for the ANC.

13                  BZA CHAIR JORDAN:   Let me ask you,  
14                  Mr. Tope. One of your conditions--one, our  
15                  conditions have to tend to negate some impact  
16                  based upon the use, under the zoning  
17                  regulations, whether it might be some detriment  
18                  to the community. The car share one does not  
19                  necessarily follow that, and that would be  
20                  hard-pressed for the Board to put forth that  
21                  condition, and also be challengeable.

22                  The condition that you offer,

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1 additionally, about the van-accessible  
2 parking, what are you trying to do with that?  
3 Why is that being--the handicapped van  
4 accessory parking.

5 MR. TOPE: My understanding--I'm  
6 not--it's one of the commissioners thought  
7 there may be some kind of ADA requirement in a  
8 parking lot to have a van-accessible area. I'm  
9 not honestly, entirely sure what the law is on  
10 that.

11 BZA CHAIR JORDAN: Got it. All  
12 right. I was just trying to understand your  
13 justification for those things. Just, you know,  
14 some of these we'll have to strike, and some  
15 that we, you know, we can't put in to play, if  
16 we go forward with this, and I'm not saying that  
17 we're going to be going forward with this. Got  
18 to make an assessment from the Board.

19 Any other questions of Mr. Tope?

20 (No response)

21 BZA CHAIR JORDAN: We really  
22 appreciate you coming down, and it's very

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1 helpful to actually see ANC in the room and have  
2 a discussion. So we can talk to you, and talk  
3 back and forth, and have some--but we know that  
4 it=s kind a, you know, pressing, coming down  
5 to these hearings, but we do appreciate your  
6 report, and comprehensive as it very well may  
7 be.

8 We=d now--is there the--

9 MR. AUBINOE: May I ask one  
10 question?

11 BZA CHAIR JORDAN: No. You can=t.

12 MR. AUBINOE: Okay.

13 BZA CHAIR JORDAN: Now we=re going  
14 to turn back to--I did anyone else in  
15 opposition. So now we=re going to turn back to  
16 the Applicant, and you might want to ask, under  
17 rebuttal, whatever question he=s trying to get  
18 in. Turning back to the Applicant for any  
19 rebuttal.

20 MS. HARRISON: I think first, we=d  
21 like to address the ANC=s proposed conditions,  
22 if the Board does approve the special exception

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1 relief. We've worked with our client and they  
2 are willing to address several of these.

3 Condition 1 was installation of a  
4 permanent bike rack in the parking lot. Our  
5 client is willing to do that.

6 The pervious paving, as we've  
7 already stated, we're willing to do, preferably  
8 on the time line, up until 2020, which is the  
9 same as the neighboring bakery.

10 Our client=s willing to install  
11 increased shrubbery to deal with the run-off as  
12 well, and we're open to suggestions from the ANC  
13 and the Board or Office of Planning as to where  
14 that shrubbery should go.

15 And in terms of the van-accessible  
16 parking space, we are willing to designate a  
17 spot with a 96-inch wide access aisle per the  
18 ADA. There are two spots that are  
19 ADA-accessible on the main lot, but we're also  
20 willing to designate another one on the  
21 accessory parking lot.

22 Okay. They had also suggested a

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1 car-sharing location. That=s something that we  
2 are currently looking into. We=ve been trying  
3 to reach out to Zips to address that. There are  
4 14 other spots within a mile radius of the  
5 Burger King and accessory parking lot that have  
6 car-sharing locations. So there does seem to be  
7 a fair number of spots already available in the  
8 neighborhood. But we are looking in to that as  
9 well.

10 And we=d like to ask Mr. Aubinoe to  
11 address the pervious paving--

12 BZA CHAIR JORDAN: Well, I already  
13 heard him. Go ahead.

14 MR. AUBINOE: I=m sorry. I was just  
15 curious as to if the ANC had any other  
16 alternative methods to achieve their goals,  
17 other than the pervious pavement. That was it.

18 BZA CHAIR JORDAN: Okay. That=s a  
19 discussion you guys can have at some other  
20 point, and with Office of Planning, and decide  
21 what is the best way of getting that handled.

22 And these discussions, you know,

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1 these are things that, as I said, you know,  
2 we=ve kind of had these discussions some time  
3 before, and then coming here, having these  
4 discussions, and, you know, we talk about  
5 people being good neighbors and being in their  
6 backyard, and these things should be worked out  
7 long before you come here, because it gives a  
8 real bad impression to the Board of, one,  
9 credibility of issues with the Applicant, about  
10 what they=re going to say and they=re going to  
11 do.

12 And we--part of the requirements  
13 for getting the continuation, or special  
14 exception, is that its impact upon the  
15 community, and here, the ANC has probably been  
16 screaming that there=s been an impact on the  
17 community, certainly before we get to this  
18 point, and you have not had those kind of  
19 discussions with the ANC.

20 I don=t think they=ve been hiding  
21 themselves. Did you attend the ANC meeting? Is  
22 that--did you--

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1 MS. HARRISON: We did, on March  
2 18th, and that was the first time that we  
3 realized there was this strong opposition, and  
4 we have tried to account for their concerns  
5 since that time.

6 I realize the Board does feel like  
7 it=s rushed, in a last-minute effort, but our  
8 client I hope has demonstrated its willingness  
9 to address these as it=s started looking in to  
10 these things.

11 It=s already ordered the trash  
12 cans. Within the next 30 days, it=s hoping to  
13 have the restriping done, the dumpsters moved,  
14 hopefully this week, and we will submit a  
15 post-hearing statement addressing the  
16 continuing efforts that are made, that will  
17 hopefully show the Board that our client does  
18 want to be a good neighbor and be in compliance,  
19 and is actively taking affirmative steps to do  
20 so.

21 BZA CHAIR JORDAN: Okay. Is there  
22 anything else you want to present to the Board?

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1           Okay. Then I guess it=s not--you can  
2 do a closing, if you want, but, you know, I  
3 think we already know what you=re going to close  
4 and say. You=re going to request relief. But  
5 take a minute to close, if you wish. Just a  
6 closing statement. That=s all.

7           MS. HARRISON: Okay.

8           BZA CHAIR JORDAN: Just a closing  
9 statement. Just simply, you know, tell us what  
10 you think in a minute, and then what you=re  
11 requested relief is.

12           MS. HARRISON: Okay. Well, our  
13 client would request that the Board approve the  
14 special exception relief. We=ve requested a  
15 five year period, based on the ANC and Office  
16 of Planning concerns, and reports. We  
17 understand that three years is more likely, and  
18 we are aware of the Board=s concerns, and we  
19 have heard the ANC=s concerns as well.

20           We would very much like to address  
21 those. We have already started taking steps to  
22 address those, and going forward, we will be

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1 much more diligent about submitting annual  
2 reports, so that the ANC is aware of what=s  
3 occurring, and the Board is also aware.

4 BZA CHAIR JORDAN: Okay. Then we  
5 will close the hearing with the evidence we=ve  
6 already gotten here.

7 Is the Board ready to deliberate on  
8 this matter? All right. So I guess we can do  
9 so. I=m seriously concerned about the  
10 credibility of the Applicant, the Applicant=s  
11 fallback, and the Applicant fall-fall,  
12 fallback. The Applicant being the property  
13 owner. The Applicant management and the  
14 operator of--the tenant. It doesn=t show, to  
15 me, that there=s been any good faith to meet the  
16 conditions that were previously granted.

17 But the previous conditions--the  
18 failure to follow previous conditions becomes  
19 more of an enforcement issue, and not  
20 necessarily one that we can solely reject, the  
21 request of special exception under. However, we  
22 can include those things as they go to its

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1 impact upon the community, how this thing will  
2 go forward.

3 Those conditions were put in place  
4 to mitigate adverse impact, and those things  
5 have not been completely done.

6 So that=s how those--the failure to  
7 follow conditions, as I see them, play in to  
8 whether or not we go forward with this.

9 I certainly want--you know, the ANC  
10 took the time and effort to, one, write a very  
11 detailed report for us. They=ve also--the  
12 chairman has been here with us, has expressed  
13 their concern.

14 But the ANC, also in the report  
15 said, well, their opposition is soft--we have  
16 opposition, but if you do these things,  
17 conditions that they have suggested, then we  
18 can swallow it--I don=t want to say live with  
19 it--but swallow it, and that would help  
20 mitigate the impact.

21 And with that, I think I could  
22 possibly support it, depending on where the

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1 other Board members are.

2 Anyone else want to Aweigh in?@ Ms.  
3 Heath.

4 MEMBER HEATH: I=d have to say that  
5 I=m extremely concerned with the egregious  
6 violation of the previous conditions, which as  
7 the Board chair pointed out are law, and I=m not  
8 at a point of feeling completely comfortable  
9 that you are going to adhere to them this time.

10 I feel a little bit better about the  
11 fact that you now have legal representation who  
12 will assist you in making sure that annual  
13 reports are submitted. It=s my understanding  
14 that Troutman Sanders will now make sure that  
15 annual reports are submitted, and if the ANC is  
16 actively involved in making sure that you all  
17 are--that you have a liaison on board, and that  
18 there=s communication, I would feel a little  
19 bit more comfortable.

20 But I do think that, you know,  
21 without those things in place, I=m not  
22 comfortable, ta all, with approving this

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1 request. It=s really just based on those  
2 changes happening, that I would feel at all  
3 comfortable approving the request.

4 ZC CHAIR HOOD: Mr. Chairman, I  
5 would agree with both my colleagues= comments.  
6 I would make a suggestion, Mr. Chairman, and  
7 Board Member Heath, that we=ve heard a lot of  
8 testimony today. Eight years--from my  
9 standpoint, eight years later now, they=re  
10 ready to try to abide by some of the conditions  
11 that the Board has put in place over the years.

12 With everyone involved, and  
13 everything I=ve heard today, I would like to  
14 give them--we don=t necessarily do this for the  
15 status. I=ve heard you can get everything done  
16 in 30 days. I am not ready to move forward with  
17 even a three yearB

18 BZA CHAIR JORDAN: Interesting.

19 ZC CHAIR HOOD: --a three year  
20 approval at this point. With everything that  
21 she has mentioned about what she can do in 30  
22 days, I would say we revisit this in 45 days,

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1 and have a status of some of the things that she  
2 says she--I mean, the counsel has represented  
3 they can have done in 30 days, about some  
4 conditions that have been out here forever, and  
5 also work with the ANC.

6 I would like to see us give them a  
7 status--

8 BZA CHAIR JORDAN: Got you.

9 ZC CHAIR HOOD: --in about 45 days,  
10 come back, and then we will revisit how we move  
11 forward, and also give the ANC time to comment.  
12 You all meet with the ANC. When you come back,  
13 let=s know exactly who the liaison is. Let=s  
14 find out what=s the status of the dumpsters  
15 being moved. One is the progress. Are the rails  
16 up yet or not? Those are the kind of things I  
17 would like to see. And Mr. Chairman, it goes to  
18 your remarks of good faith efforts, and also  
19 being a good neighbor policy. That=s what we  
20 call it.

21 So I=m not ready to move forward.

22 BZA CHAIR JORDAN: So we can

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1 postpone the decision, probably 45 to 60 days,  
2 and give time. I think, Mr. Hood, if that=s your  
3 motion--

4 ZC CHAIR HOOD: That=ll be my  
5 motion.

6 BZA CHAIR JORDAN: That we continue  
7 this for decision--

8 MEMBER HEATH: I=ll second it.

9 BZA CHAIR JORDAN: --for 60 days, in  
10 the interim, we--there=s going to be some  
11 requirements that we find the compliance issues  
12 that were outlined are actually done. That  
13 there=s conversation with the ANC, and  
14 incorporate--I want a concise, consolidated  
15 state of conditions, including those things  
16 from the ANC.

17 Now I=m going to say, as I said  
18 before, we would not be issuing those things  
19 that are not related to the relief for the  
20 impact on the community, like the car-share and  
21 some other things, Mr. Tope.

22 But additionally, I would like to

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1 add a condition that the area, the parking area,  
2 the accessory parking lot, and the parking lot  
3 of the car wash, be separated by a guardrail  
4 designation or something like that. You can  
5 present that to the Board, and if Office of  
6 Planning, whatever they=re clear with having,  
7 just so we know where the lines of  
8 demarcation, and that the car wash realize that  
9 they can=t park cars, and clean cars on your  
10 lot, if that=s what=s going on.

11 Also, we need to supplement the  
12 record with a site plan and a landscaping plan.  
13 And the location where the dumpsters are going  
14 to be, and the location of the plants, the  
15 planting of shrubbery.

16 Mr. Moy, do we have a possible date?  
17 60 days?

18 MR. MOY: Yes, sir. Looking at the  
19 schedule docket for the Board, staff would  
20 suggest April the 8th.

21 BZA CHAIR JORDAN: April?

22 MR. MOY: I mean--excuse me. July the

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1 8th. I'm sorry. July the 8th.

2 BZA CHAIR JORDAN: Okay. I was  
3 going to say we've got a lot of time. On July  
4 the 8th. Then we need to have in to Mr.  
5 Moy--well, we want the AN--oh, you're going to  
6 having a conversation with the ANC, but I  
7 certainly would like the ANC to have an  
8 opportunity to make any comments, any separate  
9 comments.

10 So we normally would ask for you to  
11 submit your documents to us by July 1st, but we  
12 need to receive any comments from the ANC by  
13 July 1st. And then we need to have your  
14 information to the ANC, probably give you what?  
15 two weeks or two. Would that be--two weeks  
16 prior. What's two weeks before July 1st?

17 MR. MOY: That would be June 17, sir.

18 BZA CHAIR JORDAN: 17. So you've got  
19 some work to do and get these things done. Okay.

20 ZC CHAIR HOOD: Mr. Chairman, I  
21 know the ANC usually takes a break in July. Or  
22 is it August?

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1                   BZA CHAIR JORDAN: Sometimes we do.  
2                   It=s fine. Our meeting=s the third Tuesday of  
3                   every month, so we could probably deal with it  
4                   in June, I guess. That should be fine.

5                   So that would be--that=s the  
6                   decision of the Board. All those in favor,  
7                   signify by saying aye.

8                   (Chorus of ayes)

9                   BZA CHAIR JORDAN: Those opposed,  
10                  nay.

11                  The motion carries)

12                  BZA CHAIR JORDAN: Mr. Moy, do you  
13                  need to do a roll call?

14                  MR. MOY: The staff would record the  
15                  vote as three to zero, this on a motion of  
16                  Chairman Jordan, seconded by Ms. Heath, and  
17                  also in support--Mr. Hood.

18                  BZA CHAIR JORDAN: I thought Mr.  
19                  Hood made the motion.

20                  MR. MOY: Oh, Mr. Hood made the  
21                  motion. I=m sorry.

22                  ZC CHAIR HOOD: It might not have

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1           sounded like it. Do you want to make another?

2                       MR. MOY: I apologize.

3                       BZA CHAIR JORDAN: Mr. Hood made  
4           the motion, and then Ms. Heath seconded, and  
5           then we just added some stuff to it. So we=re  
6           good.

7                       MR. MOY: Okay. Very good. Thank you,  
8           sir.

9                       BZA CHAIR JORDAN: All right. Thank  
10          you very much. We=re going to take ten minutes  
11          and then we=ll start with the next case before  
12          lunch, so we can--

13                      MS. SIGAR: Thank you very much.

14                      (A brief recess was taken from 11:20  
15          a.m. until 11:30 a.m.)

16                      MR. MOY: The next case is the  
17          application of Funk, LLC. Mr. Chairman, this is  
18          a request for a special exception under  
19          subsection 2003.1, to allow the conversion of  
20          a nonconforming use to a cafe/restaurant in the  
21          R-4 District at 621 P Street, N.W.

22                      BZA CHAIR JORDAN: What=s this?

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1 18743? All right. I guess we=re still good  
2 morning. Yes. Good. So please introduce  
3 yourselves.

4 MS. MOLDENHAUER: Good morning,  
5 Chairman Jordan, and members of the Board. My  
6 name is Meredith Moldenhauer. I=m here on  
7 behalf of the Applicant and I=ll let each of the  
8 individuals introduce themselves.

9 MR. PIMENTEL: Good morning My name  
10 is Nick Pimentel.

11 BZA CHAIR JORDAN: Kinentel?

12 MR. PIMENTEL: Pimentel.

13 ZC CHAIR HOOD: Pimentel.

14 MS. AKKACH: Good morning My name  
15 is Sanaa Akkach.

16 BZA CHAIR JORDAN: Akkach?

17 MS. AKKACH: Akkach.

18 MR. CHEEK: Good morning My name is  
19 Stephen Cheek.

20 BZA CHAIR JORDAN: Cheek.

21 MR. CHEEK: C-h-e-e-k.

22 BZA CHAIR JORDAN: Okay. Here=s an

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1 interesting case, is brought before us seeking  
2 a change of use from structures--within a  
3 structure under 2003. Ms. Moldenhauer, as you  
4 know, we're well-versed, and read the  
5 application and all the file documents, and  
6 we've got some concerns, and if we can hit those  
7 concerns and deal with it. First of which we  
8 need to get an understanding, what has  
9 been--what is being alleged has been a  
10 continued nonconforming use.

11 What is a period of time--is a  
12 question of whether or not--what went on  
13 between 1992 and 1998. And there was--and tell  
14 me about, something about this office use and  
15 when did that start. And what you mean by the  
16 term of Acommercial use.@ Those are kind of  
17 where we are.

18 I understand that you--I don't  
19 think we necessarily need to see--cause you  
20 want this to fall up under--you're considering  
21 this a neighborhood facility; correct? I think  
22 the Board can take that, based upon the

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1 pleadings and the 20 ,30, 40 letters from  
2 neighbors in support, that this could be  
3 considered a neighborhood facility, and so I  
4 don=t think we need to hear that, unless the  
5 Board needs to hear any a that kind a stuff.

6 But the fundamentals, we really  
7 need to understand, timeline-wise, about the  
8 use, the nonconforming use.

9 MS. MOLDENHAUER: Just to kind a  
10 provide a little bit of a brief background, and  
11 then maybe focus on some of the evidence that  
12 we have in the record, and then provide an  
13 additional document which might help.

14 We believe obviously there has been  
15 a long-standing nonconforming use. We have in  
16 the submission a documentation of business and  
17 office use by the--I just want to make sure I  
18 get the name right. It=s the Bankers= Business  
19 Management Service. We=ve provided that in our  
20 initial submission.

21 BZA CHAIR JORDAN: And when was  
22 that use?

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1 MS. MOLDENHAUER: That use  
2 was--started in two thousand and--sorry. Let me  
3 see here. 2010. And continued to 2013.

4 BZA CHAIR JORDAN: 2010 to 2013.  
5 And when was that use adopted?

6 Is that something that can help us  
7 with the timeline? Okay. Cool. Thank you. Mr.  
8 Moy. So we can follow along with you.

9 MS. MOLDENHAUER: What we have here  
10 is documentation from the Washingtoniana Room.  
11 It=s called a Haines Directory, and these are  
12 clippings from that.

13 BZA CHAIR JORDAN: Okay. Take me--

14 MS. MOLDENHAUER: There were no--

15 BZA CHAIR JORDAN: Take me back to  
16 the use that was prior to the zoning regulations  
17 going into force. Let=s Awalk it@ that way.

18 MS. MOLDENHAUER: Oh. All the way  
19 back that far? Okay.

20 BZA CHAIR JORDAN: When it had a  
21 nonconforming use.

22 MS. MOLDENHAUER: It=s always been

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1 a nonconforming use since--in 1955, April 25th  
2 1955, there was a C of O numbered 46-25, if you  
3 go to the third page of the submission I just  
4 provided you--

5 ZC CHAIR HOOD: Third page?

6 MS. MOLDENHAUER: Third page.

7 ZC CHAIR HOOD: So we=re supposed  
8 to be able to see this, huh?

9 MS. MOLDENHAUER: Sorry. Fourth  
10 page maybe. Is the fourth and last page of the  
11 submission I just gave you.

12 BZA CHAIR JORDAN: Okay.

13 ZC CHAIR HOOD: I can see this one.

14 MS. MOLDENHAUER: It provides you a  
15 history.

16 BZA CHAIR JORDAN: Okay. Got it.

17 MS. MOLDENHAUER: So in 1955, pre  
18 the zoning regulations of 1958, there was a  
19 grocery use and a C of O identified as 46-25.

20 BZA CHAIR JORDAN: Got it.

21 MS. MOLDENHAUER: There=s also  
22 prior nonconforming use, as you see as the

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1 bullet point below, based on a history survey  
2 of Shaw East, indicating that it=d been a  
3 grocery use since the 1930's. But we don=t have  
4 C of O=s. But you can see that reference on page  
5 153 from that survey.

6 BZA CHAIR JORDAN: So it=s  
7 nonconforming use has been a grocery store?

8 MS. MOLDENHAUER: yes.

9 BZA CHAIR JORDAN: Gotcha.

10 MS. MOLDENHAUER: It was a grocery  
11 store, as you see, in >55, >64--

12 BZA CHAIR JORDAN: All the way up to  
13 1992.

14 MS. MOLDENHAUER: Yes.

15 BZA CHAIR JORDAN: Okay.

16 MS. MOLDENHAUER: And at that point  
17 in time, you can now then jump to the Haines  
18 directories, which then showed that it was--

19 BZA CHAIR JORDAN: Well, let me  
20 stop you there. Let me stop you there.

21 MS. MOLDENHAUER: Sure.

22 BZA CHAIR JORDAN: When did its use

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1 change from--under the law, when did its use  
2 change from a nonconforming use as a grocery  
3 store to any other use?

4 MS. MOLDENHAUER: I don=t believe  
5 there was actually any C of O that was ever  
6 obtained for an office use, and we=re--however,  
7 there was a continued use as a nonconforming--  
8 nonconforming grocery stores, and then  
9 business office use.

10 BZA CHAIR JORDAN: There--that=s a  
11 different use. Business office use is a  
12 different use than a grocery store.

13 MS. MOLDENHAUER: But it=s still an  
14 existing nonconforming use that would permit a  
15 continued--continuation of the nonconformity.

16 BZA CHAIR JORDAN: I hear what  
17 you=re saying. I=m not necessarily on page with  
18 that. I think the--unless you can show me  
19 contrary law, that the law means that the  
20 nonconforming use is the same nonconforming  
21 use, unless changed properly under the law, and  
22 we have an illegal use that may have changed it

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1 to an office or business use.

2 And that=s why I=m asking: Is there  
3 a document where we=ve gotten a legal change of  
4 use to an office or business use?

5 MS. MOLDENHAUER: No. We do not  
6 have that documentation.

7 BZA CHAIR JORDAN: Is that not a  
8 illegal use?

9 MS. MOLDENHAUER: No. I don=t  
10 believe it is.

11 BZA CHAIR JORDAN: Because?

12 MS. MOLDENHAUER: I think that the  
13 issue here is that both a office use and a  
14 grocery store use are both permitted under the  
15 same C-1 Zone District, and that those--also  
16 the--the reference of nonconforming continued  
17 use has to do with whether or not the intent--if  
18 you look at the regulations, it does not go to  
19 the existing C of O=s. It goes to the intent of  
20 the owner to not abandon the use.

21 And so here, I believe that while  
22 there may have been--

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1                   BZA CHAIR JORDAN: Not to abandon  
2 the nonconforming use.

3                   MS.        MOLDENHAUER:                The  
4 nonconforming use. Exactly. And so here, where  
5 the owner, obviously, many, many years ago, may  
6 not have intentionally walked through the  
7 proper steps in obtaining additional C of O=s  
8 for some of their tenants, we do believe,  
9 though, that it qualifies under the zoning  
10 regulations for continued intent to use it as  
11 the existing nonconformity that it had been  
12 prior to the regulations going into effect. And  
13 that even right now, today--

14                   BZA CHAIR JORDAN: Isn=t a grocery  
15 store use different than an office use,  
16 business use?

17                   MS. MOLDENHAUER: It is. But the  
18 zoning regulations should look at the last  
19 existing C of O, which was for a grocery store,  
20 and then that C of O currently could  
21 obviously--a new C of O for a grocery store  
22 could be obtained today, or tomorrow, if one,

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1       you know, applied for it.

2                   And now the question is--we would  
3       like to have, based on the special exception  
4       standard, a neighborhood facility being  
5       granted for a restaurant use, in exchange for  
6       obviously a request for either a grocery store  
7       use or an office use, or some other use, that  
8       would be commensurate with the property having  
9       had a nonconforming residential use at the  
10      site. But rather, to bring it closer to the  
11      standard for, under the special exception  
12      standard, as a neighborhood facility for a  
13      restaurant, that the ANC supports, that all the  
14      neighbors support.

15                   And, you know, again, I think the  
16      zoning regulations go to the intent of the  
17      owner. And so I think that that=s where the  
18      Board may be able to find some solace, in the  
19      fact that, you know, that the intent of the  
20      owner--and we do have an affidavit from the  
21      owner, the landlord, indicating that it has  
22      been--a commercial grocery store is a

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1 commercial use, and it=s been her intention--

2 BZA CHAIR JORDAN: Commercial=s  
3 not a use.

4 MS. MOLDENHAUER: Commercial--

5 BZA CHAIR JORDAN: Is that correct?

6 MS. MOLDENHAUER: Commercial is  
7 not a use. Commercial is--what we=ve done there  
8 is we=re trying to provide a Aumbrella term@ to  
9 indicate that this nonconformity has always  
10 been maintained since pre-regulations of 1955.

11 BZA CHAIR JORDAN: Now you=ve sat  
12 in this chair. You know the difference between  
13 uses, between a grocery store and an office  
14 space use. Those are two different uses. And we  
15 also know that when we change uses, a use  
16 that=s not approved under the zoning  
17 regulations, or through the proper receipt of  
18 C of O=s, is a illegal use; correct?

19 MS. MOLDENHAUER: It is a use that  
20 is not--does not have the valid permitting.  
21 Yes.

22 BZA CHAIR JORDAN: Okay. And the

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1 use that was accepted as nonconforming was that  
2 use which was allowed--which was in existence  
3 at the time the zoning regulations came into  
4 effect in 1958; correct?

5 MS. MOLDENHAUER: Yes.

6 BZA CHAIR JORDAN: That changed. It  
7 changed some, on and about--what did you say?  
8 1992? So isn't it true that the grocery store  
9 use was abandoned?

10 MS. MOLDENHAUER: It's not a  
11 question of whether the grocery store use was  
12 abandoned. It goes to whether or not a  
13 nonconforming use was abandoned. What  
14 obviously we present is--

15 BZA CHAIR JORDAN: I understand your  
16 issue. I understand what you're presenting. But  
17 it's whether or not the Board's going to buy  
18 it. That's what you mean. I got you. I  
19 understand. Okay. I just want to--I think this  
20 was important because I didn't know--I was kind  
21 a getting lost in the timelines. At least I was.  
22 I was getting lost in the timelines, and I think

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1 it=s very helpful that you brought this  
2 document to show what happened, you know, all  
3 the period of time when grocery store use went  
4 to >92, and then from =92 to 2013 there was this  
5 business use.

6 What was the business use? It was  
7 this Bankers= Business something or other?

8 MS. MOLDENHAUER: Bankers=  
9 Business Management Services.

10 ZC CHAIR HOOD: Management  
11 Services. And that was use an--they used it as  
12 their office? Is that what that would be? Or  
13 something.

14 MS. MOLDENHAUER: Yes.

15 BZA CHAIR JORDAN: Also nineteen  
16 ninety--what period did that start?

17 MS. MOLDENHAUER: The Bankers=  
18 Business?

19 BZA CHAIR JORDAN: Yes.

20 MS. MOLDENHAUER: The first  
21 documentation that we have is in 2010.

22 BZA CHAIR JORDAN: 2010 to 2013.

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1 Got it. And between 1992 and--the grocery  
2 store. The last grocery store, as we have in  
3 this document here, was 1992. And when did that  
4 go out--1998?

5 MS. MOLDENHAUER: We have  
6 documentation we once obtained a C of O, but  
7 obviously not when--and so we also have  
8 a--sorry, let me flip the page. In 1994, we have  
9 confirmation that Salt & Pepper Market was  
10 still operating. So we believe that that Salt  
11 & Pepper operated for a period of time  
12 thereafter.

13 BZA CHAIR JORDAN: And that period  
14 of time is--

15 MS. MOLDENHAUER: We do not know,  
16 specifically, the period of time.

17 BZA CHAIR JORDAN: Okay.

18 MS. MOLDENHAUER: And I think if  
19 you go to 2005.1--

20 BZA CHAIR JORDAN: I thought I saw  
21 something--you had 1998. Would that be correct?  
22 There was something in the record that

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1 indicated 1998. I could be wrong. I=m just--I=m  
2 trying to get those timeframes straight. Now  
3 Chappell bought the property in 1998.

4 MS. MOLDENHAUER: I believe that=s  
5 what you=re looking at. 1998 is when the current  
6 owner acquired the property.

7 BZA CHAIR JORDAN: So--

8 MS. MOLDENHAUER: That might be the  
9 1998 that you were referencing.

10 BZA CHAIR JORDAN: Okay. So was  
11 the--what was the last--in 1994. What=s the  
12 name of that group? 1994.

13 MS. MOLDENHAUER: Salt & Pepper.

14 BZA CHAIR JORDAN: Salt & Pepper.  
15 Yes.

16 MS. MOLDENHAUER: Market.

17 BZA CHAIR JORDAN: Market. Okay.  
18 And so when the Chappell=s bought--the Chappell  
19 Group bought, the property was Salt & Pepper  
20 Market, or any other market in operation at that  
21 time?

22 MS. MOLDENHAUER: I do not know the

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1 answer to that. All I know is that at the time  
2 MS. Chappell purchased the property, there was  
3 a nonconforming use in the property.

4 BZA CHAIR JORDAN: When he bought  
5 the property, there was the office, the office  
6 use.

7 MS. MOLDENHAUER: I don=t know that.

8 BZA CHAIR JORDAN: Okay. We don=t  
9 know what it was.

10 MS. MOLDENHAUER: I don=t know what  
11 it was.

12 ZC CHAIR HOOD: So did Ms.  
13 Chappell--so when she bought it, it was empty?

14 MS. MOLDENHAUER: That=s not--I  
15 did not say that. I said I believe that there  
16 was a use in it. I don=t know whether it was the  
17 market use, or another nonconforming use.

18 BZA CHAIR JORDAN: Okay. How long  
19 did--when did that other use--and I=m pushing  
20 myself to say nonconforming--but that use, when  
21 did that go away?

22 MS. MOLDENHAUER: I do not have the

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1       specifics of that.

2                   BZA CHAIR JORDAN:   Okay. What was  
3       the use when the Chappell=s bought it. What was  
4       in there? What was the business?

5                   MS. MOLDENHAUER:   I do not have the  
6       specific--do--it was a market? Okay. Sorry. Let  
7       me let my clients testify to that, then. They  
8       live nearby, and so--so was a market.

9                   MR. CHEEK:       Yes. Just through  
10      conversation, cause she=s my neighbor, I know  
11      she bought it--when she bought it, she--

12                  BZA CHAIR JORDAN:   Who is she, and  
13      who--come on.

14                  MS. MOLDENHAUER:   Ms. Chappell.

15                  BZA CHAIR JORDAN:   Okay.

16                  MR. CHEEK:       Ms. Chappell. I=m  
17      sorry.

18                  BZA CHAIR JORDAN:   Ms. Chappell.

19                  MS. AKKACH:   The owner.

20                  BZA CHAIR JORDAN:   I=m sorry?

21                  MS. AKKACH:   The owner.

22                  BZA CHAIR JORDAN:   The owner of the

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1 property?

2 MS. AKKACH: Yes.

3 BZA CHAIR JORDAN: Okay.

4 MR. CHEEK: Of 621 P Street. Yes.

5 When she bought it, the Salt & Pepper Market was  
6 in there.

7 BZA CHAIR JORDAN: Okay. And Salt &  
8 Pepper stayed there now long?

9 MS. AKKACH: We=re not sure about  
10 that--how long it stayed.

11 BZA CHAIR JORDAN: Okay. Then what  
12 replaced Salt & Pepper?

13 MS. MOLDENHAUER: In 2002, based on  
14 the Haines Report, National Title Services.

15 BZA CHAIR JORDAN: National Title  
16 Services. Doesn=t sound like a grocery store.

17 MS. MOLDENHAUER: No.

18 BZA CHAIR JORDAN: Okay. So 2002.  
19 And then--

20 MS. MOLDENHAUER: And then the  
21 business, Bankers= Business Management  
22 Services.

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1                   BZA CHAIR JORDAN:   How long did  
2 National Title Services stay in operation?

3                   MS. MOLDENHAUER:   Based on the  
4 Haines Report, they stayed in operation from  
5 2002, and then we see a change in 2010.

6                   BZA CHAIR JORDAN:   In 2010 was  
7 Bankers= Business.

8                   MS. MOLDENHAUER:   Yes.

9                   ZC CHAIR HOOD:       Were those  
10 businesses Ms. Chappell=s businesses? The  
11 title business, was that her business?

12                   MS. MOLDENHAUER:   No. That was--

13                   MS. AKKACH:       No.

14                   MS. MOLDENHAUER:   That was her  
15 tenants.

16                   MS. AKKACH:       Yes. Tenants.

17                   ZC CHAIR HOOD:       Her tenants?

18                   BZA CHAIR JORDAN:   Okay.

19                   MS. MOLDENHAUER:   So would not have  
20 been the owner=s obligation to obtain the C of  
21 O. It would have been the tenant=s obligation.  
22 I just want to point the Board to Section

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1 2005.1, which has to do with the discontinuance  
2 of a nonconforming use, and it talks about a  
3 prima facie standard of no intent to resume  
4 active operation as a nonconforming use.

5 So I think that under the  
6 regulations, while I respectfully under the  
7 point that you're making, I do think that in  
8 this instance, that we've shown an extenuating  
9 intent of the owner, we have a written affidavit  
10 of the owner which indicates that there has  
11 never been an intent of hers to discontinue it.

12 Obviously, she's the owner. It's  
13 the tenant's obligation to obtain the proper  
14 certificates of occupancy of their business. My  
15 clients are now the current contract tenant,  
16 and they are seeking to follow the proper  
17 protocol, here, before this Board, and  
18 request the relief.

19 ZC CHAIR HOOD: My question for  
20 asking about Ms. Chappell was just to find out  
21 whether or not she ran a business in there at  
22 some point in time. That was it.

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1 MS. MOLDENHAUER: Not to our  
2 knowledge. No, she did not. She=s always been  
3 a landlord.

4 BZA CHAIR JORDAN: Okay. 2005.1  
5 says that there=s a presumption for three  
6 years. That doesn=t mean that it has a  
7 presumption for three years. That doesn=t mean  
8 that it has to be--not have the use for three  
9 years. It=s a presumption. So that whole avenue  
10 of intent, and the lack of continuation can be  
11 even a shorter period.

12 Do you agree?

13 (No response)

14 BZA CHAIR JORDAN: However, we at  
15 least know, even if we just even take away all  
16 the other stuff, we know some time in 19--we  
17 know that in 2002, this use changed from--I=m  
18 going to--just on paper, it changed from being  
19 a grocery store to become a business, a business  
20 office, which is a different use than a grocery  
21 store.

22 I=m quite aware of what the

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1 regulations say. I understand what has gone on.  
2 But arguably, that grocery store use--and I  
3 think it might have been gone even before  
4 that--but that grocery store use at least was  
5 gone in 2002. The grocery store use; right?  
6 You've got to--so we can hear it on the  
7 record--yes or no.

8 MS. MOLDENHAUER: There--

9 BZA CHAIR JORDAN: Was that a nod?  
10 Your head went up and down. I indicate for the  
11 record, that was an affirmative?

12 MS. MOLDENHAUER: Yes; yes. Based  
13 on our understanding, there was a business use,  
14 not a grocery store, at some point in time--

15 BZA CHAIR JORDAN: Got it.

16 MS. MOLDENHAUER: --2010 to two  
17 thousand--

18 BZA CHAIR JORDAN: Why are not just  
19 coming in as a use variance on this?

20 MS. MOLDENHAUER: We obviously--if  
21 the Board feels that a use variance is  
22 appropriate, we think that we would satisfy the

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1 standard for it, but we believe that based on  
2 the evidence that we have, that it--and the  
3 regulations, that this was an intent to not  
4 discontinue this use, and that this was an  
5 existing, you know, grocery store and then  
6 office use, and that this was the proper  
7 standard.

8 BZA CHAIR JORDAN: I really think  
9 we're swimming uphill, and I think this Aflies  
10 in the face@ of the **Gargen** case where there was  
11 even, you know--you're familiar with that case?

12 MS. MOLDENHAUER: Yes, and there=s  
13 also--you know, the Board=s recently approved  
14 **Beau Thai**, which was another nonconforming use,  
15 which was a transition to--a nonconforming use  
16 to, now, a neighborhood servicing facility.

17 And so we found that this was the  
18 appropriate relief.

19 BZA CHAIR JORDAN: I got you.

20 MS. MOLDENHAUER: If--

21 BZA CHAIR JORDAN: You want to kind  
22 a do some amendments and some other things?

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1 MS. MOLDENHAUER: I mean--

2 BZA CHAIR JORDAN: I mean, we  
3 don=t--we can go forward--

4 MS. MOLDENHAUER: No--

5 BZA CHAIR JORDAN: --if you wish,  
6 but--

7 MS. MOLDENHAUER: We would prefer,  
8 then, to potentially submit a hybrid  
9 application, amended here, verbally, and to  
10 orally articulate why, then, potentially, the  
11 variance standard would be satisfied on the  
12 record. But we--

13 BZA CHAIR JORDAN: The only problem  
14 is notice.

15 MS. MOLDENHAUER: And that=s one of  
16 the reasons we--my clients are  
17 obviously--they=re not a larger developer, and  
18 the timeframe would obviously be impacting of  
19 their intent to move forward with this  
20 business. So the community is fully aware of the  
21 intended use, and so I don=t think that there  
22 would be any harm, if the Board would allow us

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1 to waive our requirements and move forward with  
2 an oral modification.

3 And then the Board would have the  
4 authority, if it=s a hybrid, to either vote on  
5 the variance standard today, or the special  
6 exception standard today, and in that way we=re  
7 actually not removing the special exception  
8 standard if the chair believes that that would  
9 be an appropriate course of action.

10 ZC CHAIR HOOD: Ms. Moldenhauer,  
11 you say hybrid. What do you mean? There=s no  
12 such thing as--you know, I don=t like  
13 hybrid--cause it doesn=t exist.

14 MS. MOLDENHAUER: Sorry. Not--

15 BZA CHAIR JORDAN: The Court of  
16 Appeals have indicated that there=s a hybrid.  
17 That goes on that list that, Mr. Hood, that I=ve  
18 talked to the Council about.

19 ZC CHAIR HOOD: It does not exist in  
20 the zoning code.

21 MS. MOLDENHAUER: The simultaneous  
22 argument for both. So not removing the special

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1 exception but a simultaneous argument for both,  
2 after we satisfy the special exception standard  
3 and the variance entered, and then permitting  
4 the Board to make a evaluation as to which way,  
5 or if they deem to waive the standard.

6 BZA CHAIR JORDAN: We=ve been  
7 having this discussion about kind of new  
8 situations that the Court of Appeals have been  
9 issuing on regulations, and we=ve gone in front  
10 of Council having that same kind of discussion,  
11 and like Mr. Hood says--it=s like well, that=s  
12 not what we said under regulations, and that=s  
13 what we=ve talked about--the role of the Zoning  
14 Commission and its interrelation with  
15 decisions handed out by the Court of Appeals,  
16 and how that could be taken care of.

17 So that=s kind of where we=ve been  
18 having on that discussion.

19 Let me ask you something. And you  
20 know, I do see that the community=s been very  
21 much in support of this. We have at least what?  
22 30-40 letters from community in support of

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1 this. I think it clearly fits within the  
2 guidelines of a neighborhood facility based  
3 upon the evidence that=s in the file, in the  
4 record. My only concern with going forward is  
5 what is the undue hardship.

6 MS. MOLDENHAUER: And so let me  
7 just--

8 BZA CHAIR JORDAN: And the  
9 uniqueness of this property. Yes.

10 MS. MOLDENHAUER: So we, then, you  
11 know, if we were to amend the application, we  
12 would articulate that verbally, on the record  
13 now, that the property is unique. It=s a 100  
14 percent lot occupancy. It has, does have a--you  
15 know, as we know, uniqueness can go not only  
16 just to the physical aspects of the property,  
17 but also to the history of the property.

18 Here, we do have a unique situation  
19 where the property has been nonconforming since  
20 three zoning regulations, documented back to  
21 1955, that there was a unique situation here,  
22 where there had been a continuation of it. But

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1 unfortunately, certain tenants did not obtain  
2 the property documentation.

3 We also have a unique corner  
4 entrance. So this property was built with a  
5 corner access for--on street level, there=s no  
6 walk-up. This is actually--you can see from  
7 this image, here, that it has a unique physical  
8 makeup of the property that is aligned with a  
9 commercial use.

10 In that regard, that, then, I think  
11 directly relates to the practical difficulty,  
12 one being the fact that the current owner has  
13 intended to rent the property as commercial.  
14 She has entered into a lease with the current  
15 tenants that are here today.

16 BZA CHAIR JORDAN: And that=s  
17 different than the other properties,  
18 surrounding properties?

19 MS. MOLDENHAUER: Yes. And even the  
20 upstairs unit is a residential unit. And so this  
21 is commercial in nature. And the windows--as  
22 you can see, the windows are commercial in

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1 nature, very open, and lower, typically, than  
2 you can see, some of the other windows as you  
3 get further down the street, in regards to just  
4 being really kind of right on the sidewalk for  
5 privacy issues for a residential use.

6 In addition to that, there--

7 BZA CHAIR JORDAN: Are there  
8 commercial uses in the area? I mean on that  
9 block, in that square.

10 MS. MOLDENHAUER: No. That block is  
11 all residential.

12 BZA CHAIR JORDAN: And that  
13 particular unit, different than the other  
14 units, have been used as commercial. That first  
15 floor?

16 MS. MOLDENHAUER: That first  
17 floor. Yes. And in regards--we have got just  
18 minor edits to the plans, just kind of showing  
19 the outdoor space, and there was some confusion  
20 as to the black nature of some of the portions.  
21 I'm going to pass these out, and I'll walk  
22 through the practical difficulty in a moment.

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1                   BZA CHAIR JORDAN:   And it=s been  
2                   operated this way since at least 1930, as kind  
3                   of a commercial enterprise there?

4                   MS. MOLDENHAUER:   Yes, correct.  
5                   Cause the property does not have the plumbing,  
6                   or the degree of plumbing that would be required  
7                   for residential use. In addition to that, you  
8                   can see from the layout of the plans passed  
9                   out--let me get to the plans here.

10                  BZA CHAIR JORDAN:   Just go to the  
11                  hardship.

12                  MS. MOLDENHAUER:   There=s--that=s  
13                  what I=m trying to get to in the rest of the  
14                  plans.

15                  You can see from the picture of the  
16                  plans, there=s a--the floor on the first floor  
17                  was lowered, so it actually is--I don=t have  
18                  a--is on grade, and then you have a small  
19                  walk-up, like a small--not a mezzanine, but you  
20                  can kind of call it a higher level. It would not  
21                  be conducive for residential use. There=s no  
22                  kitchen on the first floor when you walk in.

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1 All of that will create a practical  
2 difficulty for the owner. Obviously, I  
3 represent the tenant here, who is intending to  
4 put a commercial use in here, but for the  
5 purposes of the zoning requirements for a  
6 variance standard, we would articulate that the  
7 practical difficulty would relate back to the  
8 owner, to try to rent this, or reconfigure this  
9 use for residential use. At this point in time,  
10 as I said, there=s no kitchen on the first  
11 floor.

12 They would need to completely  
13 renovate the entire layout. The lower level  
14 would most likely not be habitable. I don=t know  
15 that, per se, but I believe that based on the  
16 building code requirements, that the lower  
17 level would not be habitable. So you would have  
18 a very odd space, that space was obviously  
19 created for commercial purposes, and for  
20 commercial stores on the lower level and it  
21 shouldn=t provide any practical difficulty.  
22 And we don=t believe that this would create any

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1 public impact, because we have all the support  
2 from OP and from the ANC. Thank you.

3 BZA CHAIR JORDAN: Thank you.  
4 Board, any question? I think we can accept--I  
5 would accept the amended application. I think  
6 the notice issue--this has been noticed as a  
7 special exception. However, everyone in the  
8 neighborhood--and we=ve got--what=s the  
9 number? Forty? Forty letters of support from  
10 people in the neighborhood. The ANC--

11 ZC CHAIR HOOD: Thirty-nine, Mr.  
12 Chairman.

13 BZA CHAIR JORDAN: ANC--

14 ZC CHAIR HOOD: I=m not counting  
15 the one from Ms. Rhonda Chappell.

16 BZA CHAIR JORDAN: The ANC has  
17 voted in support of this particular use, and  
18 they=re aware that you=re going to have  
19 another--a restaurant that=s there. So unless  
20 the Board has any objections, I would accept  
21 this as an amended application. And does the  
22 Board have any other questions? I think, as

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1 amended, the application that counsel has  
2 identified, how it fits within a use variance  
3 here, I don=t have any other questions.

4 I would like to get Mr. Mordfin--you  
5 to Aweigh in,@ please. If that=s okay with you.  
6 Can we go to Office of Planning? Okay.

7 MR. MORDFIN: Good morning

8 BZA CHAIR JORDAN: Good morning

9 MR. MORDFIN: Yes. The Office of  
10 Planning supports this, supports the amended  
11 application. The property is unique. It is  
12 devekoped differently than all of the other  
13 ones around it. You=ve got the floor level is  
14 different. The door is different. The windows  
15 are different than for all of the surrounding  
16 residential uses, which doesn=t lead to  
17 privacy, but, rather, encourages more of people  
18 looking in from the sidewalk because someone is  
19 trying to sell things from inside. So that=s why  
20 the windows are lower than the door. And I think  
21 that does create a practical hardship in terms  
22 of creating a place in which--a residence. And

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1 so therefore we do support this.

2 BZA CHAIR JORDAN: Board, any  
3 questions?

4 (No response)

5 BZA CHAIR JORDAN: No. Any  
6 questions from Applicant?

7 MS. MOLDENHAUER: No questions,  
8 then. Thank you.

9 BZA CHAIR JORDAN: Okay.  
10 Department of Transportation. Have they  
11 Aweighed in@ on this?

12 MS. MOLDENHAUER: They have, yes,  
13 and they recommended no objection.

14 BZA CHAIR JORDAN: They  
15 recommended no objection. I guess they don=t  
16 feel always committed, so they always say no  
17 objections. And I don=t have that. Let me put  
18 that in my notes. And we do have the ANC=s strong  
19 support. ANC-6E has voted in support.

20 MS. MOLDENHAUER: They filed their  
21 submission yesterday. The Board has it.

22 BZA CHAIR JORDAN: We got it; we got

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1 it.

2 MS. MOLDENHAUER: We have copies.  
3 Thank you.

4 BZA CHAIR JORDAN: The ANC strongly  
5 supports this, and which we would give great  
6 weight, as well as--well, anyone wishing to  
7 speak in support of this application? We do have  
8 39 letters. We actually had 40 letters, but  
9 minus one cause it came from the owner, in  
10 support of this application for this first  
11 floor to be used as a restaurant, a neighborhood  
12 facility/restaurant.

13 Anyone else in support?

14 Anyone in opposition?

15 Seeing there=s nobody else in the  
16 room, unless one of you guys want to Aturn@ on  
17 the other, and then we have some problems;  
18 right?

19 (Laughter)

20 BZA CHAIR JORDAN: Then we would  
21 normally turn back to the Applicant for  
22 rebuttal and closing. But I think we=ve taken

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1 care of that. You know, just beat up the  
2 Applicant so badly here, that we don=t need to  
3 have any rebuttal. And so I would suggest that  
4 we move to deliberate--close the record and  
5 move to deliberations.

6 ZC CHAIR HOOD: Okay.

7 BZA CHAIR JORDAN: I believe that  
8 we did accept--the amended complaint shows that  
9 this property has--is unique, as been  
10 identified by counsel, and I=m not going to go  
11 back through that. It=s a corner entrance. The  
12 only building that has a corner entrance,  
13 street level. It has windows for a commercial  
14 facility and the other ones do not.

15 It=s unlike the other properties in  
16 the area. It=s a 100 percent lot occupancy. I  
17 think there=s a undue hardship in being able to  
18 convert this property that has been used for a  
19 long period of time, well before I was born, as  
20 a commercial operations, and it=s not suitable  
21 for a use, of residential use, which would be  
22 required under the zoning regulations.

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1                   That there had been an abandonment  
2 of a grocery store use, so we cannot continue  
3 that particular use. And so that it would  
4 present an undue hardship to the Applicant to  
5 operate this property outside of that, under  
6 the zoning regulations.

7                   With that, I would move that we  
8 grant a use variance to allow that first floor  
9 to be used for the restaurant use. That would  
10 be my motion.

11                   MS. MOLDENHAUER:     Can I have  
12 a--first floor and cellar.

13                   BZA CHAIR JORDAN:   First floor and  
14 cellar. Yes. First floor and cellar, I said  
15 that. With the conditions that the refuse be  
16 stored within the building and placed outside  
17 for removal on collection days only. No heavy  
18 cooking, such as deep frying or smoking of food  
19 shall be permitted.

20                   MEMBER HEATH:   So you made a motion.  
21 I would second.

22                   BZA CHAIR JORDAN:   Motion made and

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1 second. Any discussion on readiness?

2 (No response)

3 BZA CHAIR JORDAN: All those in  
4 favor of the motion, signify by saying aye.

5 (Chorus of ayes)

6 BZA CHAIR JORDAN: Those opposed,  
7 nay. The motion carries.

8 Mr. Moy.

9 MR. MOY: Staff would record the  
10 vote as three to zero. Okay. On the motion of  
11 Chairman Jordan, a second, Mr. Heath. Also in  
12 support Mr. Hood. And this is for the amended  
13 relief for a use variance, and I believe it=s  
14 the section in the R-4 under 330.5. And the  
15 motion carries--three to zero.

16 BZA CHAIR JORDAN: A summary order,  
17 please. Okay.

18 MS. MOLDENHAUER: Thank you very  
19 much.

20 BZA CHAIR JORDAN: You=re welcome.

21 Mr. Moy, do we have any other cases  
22 on the docket?

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1                   MR. MOY:       That completes the  
2 scheduled cases for the docket for today, Mr.  
3 Chairman.

4                   BZA CHAIR JORDAN:   And we have one  
5 other item of business for the Board today.

6                   MR. MOY:   Yes, sir.

7                   BZA CHAIR JORDAN:   In accordance  
8 with Section 405(c) of the Open Meetings Law,  
9 I move that the Board of Zoning Adjustment hold  
10 closed meetings on the following dates: May  
11 5th, 12th, and 19th. The meetings will start at  
12 4:00 p.m., and are to be held for purposes of  
13 obtaining legal advice from our counsel and  
14 deliberate upon, without deciding, cases  
15 scheduled to be publicly heard or decided by the  
16 Board on the day after the closed meeting. These  
17 cases are identifiable in the Board=s Public  
18 Hearing Agenda for May 6, 13th, and 20th. The  
19 closed meeting will be a telephonic meeting,  
20 and the notice of the meetings will certainly  
21 be posted on the Board of Zoning Adjustments  
22 board, and Register.

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1                   And I further move that the Board  
2 hold on Tuesday, May 13th, from 1:00 p.m to 3:00  
3 p.m., for the purposes of conducting internal  
4 training as provided under the Administrative  
5 Procedure Act, training in regards to  
6 residential parking permit and code of conduct.  
7 Is there a second?

8                   ZC CHAIR HOOD: Second.

9                   BZA CHAIR JORDAN: Motion made and  
10 second. Any discussion?

11                   (No response)

12                   BZA CHAIR JORDAN: Mr. Moy, roll  
13 call vote, please.

14                   MR. MOY: Yes, sir. When I call each  
15 of your names, if you can reply with a yes or  
16 no, yea or nay.

17                   Ms. Heath.

18                   MEMBER HEATH: Yes.

19                   MR. MOY: Chairman Jordan.

20                   BZA CHAIR JORDAN: Yes.

21                   MR. MOY: And Chairman Hood of the  
22 Zoning Commission.

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1 ZC CHAIR HOOD: Yes.

2 MR. MOY: Ms. Allen and Mr. Hinkle  
3 are not present and not voting, and the motion  
4 carries--three to zero, Mr. Chairman.

5 BZA CHAIR JORDAN: The motion is  
6 passed. I request that the Office of Zoning  
7 provide notice of the closed meetings in  
8 accordance with the Administrative Procedure  
9 Act, and Open Meetings Law.

10 All right. Then we--if there=s no  
11 other business, then we can stand adjourned.

12 MR. MOY: Thank you, sir.

13 BZA CHAIR JORDAN: Thank you.

14 (Whereupon, at 12:06 p.m., the  
15 hearing of the Board of Zoning Adjustment was  
16 adjourned)

17

18

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21