

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

OCTOBER 9, 2001

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson (before 1:00 p.m.)
GEOFFREY H. GRIFFIS	Chairperson (after 1:00 p.m.)
ANNE MOHNKERN RENSHAW	Vice Chairperson
DAVID LEVY	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Commissioner
ANTHONY HOOD	Commissioner

COMMISSION STAFF PRESENT:

Jerrily R. Kress, Director  
Sheri M. Pruitt, Secretary, BZA  
Beverly Bailey, Office of Zoning  
Paul O. Hart, Office of Zoning  
John K. A. Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

David R. King, Chief of Staff, Office of  
Planning  
Julie Wagner, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.  
Marie Sansone, Esq.

<u>AGENDA ITEM</u>	<u>PAGE</u>
PRELIMINARY MATTERS (morning session) . . . . .	7
PRELIMINARY MATTERS (afternoon session) . . . . .	51
 <u>APPLICATION OF JEROME BAUMAN:</u>	
<u>16768 ANC-6A</u> . . . . .	63

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

(10:10 a.m.)

CHAIRPERSON REID: Good morning, ladies and gentlemen. First of all, the Board would like to profusely apologize for the delay. This was a morning on which we had a very ambitious schedule and some very pressing and serious issues to take into consideration.

Nonetheless, I'm going to preface my opening remarks with we have decided that in the interest of trying to expedite the morning schedule we would like to resequence the order of what we're going to do. The hearing -- we had a hearing planned this morning, but, as we understand it, there is a request for a continuation of all of the cases. And as such, what we're going to do is to address that, dispose of that, and then go into our meeting segment.

So with that having been said, I will open the -- this morning's hearing with the following opening remarks.

The hearing will please come to order. This is the October 9th public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today is Vice Chair, Anne Renshaw; Board Member Geoff Griffis; David Levy representing the National Capital Planning Commission; and representing the Zoning Commission is Anthony Hood.

Copies of today's hearing agenda are available to

1 you, and they are located to my left near the door. All persons  
2 planning to testify, either in favor or in opposition, are to  
3 fill out two witness cards. These cards are located on each end  
4 of the table in front of us. Upon coming forward to speak to  
5 the Board, please give both cards to the Reporter sitting on my  
6 right.

7 The order of procedure for special exceptions and  
8 variances: 1) statement and witnesses of the applicant, 2)  
9 government reports, including the Office of Planning and the  
10 Department of Public Works, etcetera; the report of the Advisory  
11 Neighborhood Commission; parties or persons in support; parties  
12 or persons in opposition; and closing remarks by the applicant.

13 Cross examination of witnesses is permitted by  
14 the applicant or parties. The ANC within which the property is  
15 located is automatically a party in the case. The record will  
16 be closed at the conclusion of each case, except for any  
17 material specifically requested by the Board, and the staff will  
18 specify at the end of the hearing exactly what is expected.

19 The Sunshine Act requires that the public hearing  
20 on each case be held in the open before the public. The Board  
21 may, consistent with its rules of procedures and the Sunshine  
22 Act, enter executive session during or after the public hearing  
23 on a case for the purpose of reviewing the record or  
24 deliberating on the case.

25 The decision of the Board in these contested

1 cases must be based exclusively on the public record. To avoid  
2 any appearance to the contrary, the Board requests that persons  
3 present not engage the members of the Board in conversation.

4 Please turn off all beepers and cell phones at  
5 this time, so as not to disrupt these proceedings, or put it on  
6 vibrator.

7 The Board will now consider any preliminary  
8 matters. Preliminary matters are those which relate to whether  
9 a case will or should be heard today, such as requests for  
10 postponement, continuance, or withdrawal, or whether proper  
11 notice and adequate -- proper and adequate notice of the hearing  
12 has been given.

13 If you are not prepared to go forward with a case  
14 today, or if you believe that the Board should not proceed, now  
15 is the time to raise such a matter. Are there any preliminary  
16 matters?

17 MS. BAILEY: Madam Chair, good morning, and good  
18 morning to everyone. My name is Beverly Bailey with the Office  
19 of Zoning, and there is a preliminary matter for the first case.  
20 That happens to be the application of Mr. Jim Barnett,  
21 Application Number 16732.

22 Let's see. Mr. Keenan Kellar, who is a party in  
23 opposition, has requested that that case be postponed.

24 Is Mr. Kellar in the audience, or is his  
25 representative here? Would you please sit at the table?

1                   Mr. Kellar, you may put your request to the  
2 Board.

3                   MR. KELLAR:    Joining me this morning is Lloyd  
4 Jordan, who is counsel for the applicant. I'm Keenan Kellar.

5                   We made a request for a continuance or a  
6 postponement of the hearing based upon the fact that our  
7 negotiations between the applicants and the party opponents  
8 broke down at approximately 8:30 p.m. on Tuesday, last Tuesday.

9                   Up until that time, we had been engaged in an  
10 attempt to settle differences between the applicants and the  
11 party opponents and the surrounding neighbors, rather than  
12 preparing a case in opposition. And based upon the fact that we  
13 had an eleventh hour breakdown, and then we had a request on  
14 Friday at close of business to reinitiate those negotiations.  
15 We would like to request this postponement.

16                   I believe Mr. Jordan will speak to the position  
17 of the applicants with regard to our request.

18                   CHAIRPERSON REID:   Okay. Thank you.

19                   MR. JORDAN:       Certainly.     Lloyd Jordan with  
20 Holland & Knight representing Jim Barnett. Yes, we are also  
21 joining in requesting a continuance because we believe now that  
22 some opening ground for probably finalizing the solution to this  
23 problem can be presented to this Commission at a later date.

24                   CHAIRPERSON REID:   All right. Board members,  
25 comments? I wholeheartedly support that position that you're

1 taking. We always like to see, where there are differences  
2 among an applicant or opposition, that there be some attempt to  
3 try to reconcile the differences and come to some meeting of the  
4 minds or at least some compromises to get closer together. And  
5 I have no problem with such a request to allow you an  
6 opportunity to do so.

7 Any other comments, Board members? Do you just  
8 want to put it to a vote?

9 BOARD MEMBER GRIFFIS: I would make a quick  
10 comment, Madam Chair. I am in total concurrence with it. I  
11 think we like to see things, obviously, resolved or coming  
12 before us in a clean manner.

13 My concern is specifically to this case but also  
14 a general comment, and that is this has been continued once  
15 before. It is on the schedule for today. We had a fairly  
16 aggressive schedule, and I would hope that the next time, and  
17 generally speaking, that there is preparation and that this is  
18 viewed as a deadline to reach and to come before us with this  
19 matter worked out.

20 I think it's encouraging to know that there have  
21 been meetings up to this point. We can't always have them  
22 decided as we'd like or reconciled, but I would underscore the  
23 fact that we take these very seriously, obviously, and we would  
24 hope that the parties and applicants would view this as a  
25 serious deadline.

1 MR. KELLAR: I would agree that we also take it  
2 very seriously. Given the fact that the differences are between  
3 the immediate neighbors of the applicant, we think it's very  
4 important that we take this opportunity.

5 And as I said, one of the reasons that we have  
6 been able to agree on this continuance is that the reason that  
7 the negotiations broke down on Tuesday appears to have opened --  
8 again, ground appears to have opened again on Friday.

9 And then, rather than again just, you know,  
10 plowing ahead, essentially litigating our differences when we  
11 don't necessarily have differences, we thought that it would be  
12 most responsible to try and present the Board with a set of  
13 facts to actually clearly resolve, once we've actually clearly  
14 figured out where we agree and disagree.

15 As the Board probably realizes, when people find  
16 themselves in opposition with one another, the toughest thing is  
17 to get them to figure out when they actually agree with one  
18 another. And that's where we are right now.

19 COMMISSIONER HOOD: Madam Chair?

20 VICE CHAIRPERSON RENSHAW: Madam -- go ahead, Mr.  
21 Hood.

22 COMMISSIONER HOOD: I'll yield to you.

23 VICE CHAIRPERSON RENSHAW: All right. I would  
24 just like to ask both parties how much time they need, so that  
25 we can -- if I put this in a motion, I'd like to have a date

1 mentioned. So how much time are you talking about?

2 MR. JORDAN: Thirty days would be sufficient,  
3 because we've knocked out a lot of the issues, and I think we're  
4 down to just maybe a final one.

5 CHAIRPERSON REID: Okay. Then, we go to Ms.  
6 Pruitt.

7 COMMISSIONER HOOD: I just --

8 CHAIRPERSON REID: I'm sorry. Momentarily --

9 COMMISSIONER HOOD: -- wanted to say I do concur  
10 with the continuance. I just want to make sure that the  
11 disagreement between the applicant and the community, that you  
12 still have to address the three-prong test that comes in front  
13 of this Board.

14 While you may address those issues, you still  
15 have a burden of proof in front of the Board of Zoning. So I  
16 just wanted to make you cognizant of that. Thank you.

17 MR. KELLAR: Yes. That we are very clear about,  
18 and we also realize that as party opponents we cannot actually  
19 resolve issues that exist with regard to the Board and with  
20 regard to the burden of proof of the applicant, but that we may  
21 be able to resolve subsidiary issues surrounding the application  
22 itself.

23 MR. JORDAN: And the applicant is aware of that  
24 and, in fact, was ready to present that today to meet those  
25 burdens, but we feel it's in the best interest --

1 COMMISSIONER HOOD: I just wanted to make that  
2 point, just in case they were listening. So, thank you.

3 (Laughter.)

4 CHAIRPERSON REID: Thank you so much, Mr. Hood.

5 Okay. Now, are we ready to go to Ms. Pruitt?

6 All right.

7 DIRECTOR KRESS: Yes. In reviewing our schedule,  
8 as you all --

9 CHAIRPERSON REID: Or Ms. Kress.

10 DIRECTOR KRESS: -- I gave them -- I gave it to  
11 you. The very first opening we have is on December 11th. We're  
12 really booked, unless someone else continues, which I hope they  
13 won't because it's difficult to keep rescheduling. But that is  
14 the first date.

15 We have already advertised through the 27th of  
16 November, and so the first date we have is -- we have a tight  
17 afternoon already in December -- December 11th is the first time  
18 that I see that we have available.

19 CHAIRPERSON REID: Does that sound like that's  
20 something that you can work around?

21 MR. JORDAN: If that's the first date, yes, we  
22 can --

23 CHAIRPERSON REID: Okay. Well, then, so be it.

24 VICE CHAIRPERSON RENSHAW: Madam Chair, I would  
25 like to move a second, and we hope final, continuance for

1 Application Number 16732, the Application of Jim Barnett for a  
2 variance from the side yard requirements under Section 404, a  
3 variance from the rear yard requirements under Section 405, and  
4 a variance for non-conforming structure provisions under Section  
5 2001.3, to allow an addition to an existing non-conforming  
6 structure to be used as a five-unit apartment house in an R-4  
7 District at 1841 Park Road, Northwest.

8 COMMISSIONER HOOD: Second.

9 CHAIRPERSON REID: All in favor?

10 (Ayes.)

11 Opposed?

12 (No response.)

13 MS. BAILEY: Staff will record the vote as four  
14 -- I'm sorry -- five to zero to reschedule the application. The  
15 motion was made by Mrs. Renshaw, seconded by Mr. Hood. Mr.  
16 Griffis, Mr. Levy, and Mrs. Reid in agreement. This case is  
17 scheduled for December 11th. Afternoon?

18 DIRECTOR KRESS: Go ahead and make it afternoon.

19 MS. BAILEY: Afternoon session.

20 CHAIRPERSON REID: All right. Thank you very  
21 much.

22 All right. Ms. Bailey, are there any other  
23 preliminary matters?

24 MS. BAILEY: Yes, Madam Chair, there is. The  
25 next one has to do with the next application of this morning,

1 and it's Application Number 16735. It's an application for the  
2 name of Beverly J. Anderson, and Mrs. Anderson has a medical  
3 emergency.

4 It is advisable to reschedule this application  
5 for 2002. At that time, staff will be in contact with Mrs.  
6 Anderson to identify an appropriate date for her.

7 CHAIRPERSON REID: Okay. We have been made aware  
8 of the exceptional circumstances that -- under which Mrs.  
9 Johnson -- Mrs. Anderson is requesting this continuation. Is  
10 there any other comment, Board members? Or do we go straight to  
11 the vote?

12 BOARD MEMBER GRIFFIS: I would move that we  
13 continue Case 16735 to a date 2002.

14 VICE CHAIRPERSON RENSHAW: Second.

15 CHAIRPERSON REID: All in favor?

16 (Ayes.)

17 Opposed?

18 (No response.)

19 I would say that I wish Mrs. Anderson Godspeed.

20 MS. BAILEY: Staff will record the vote as five  
21 to zero to reschedule the application in the year 2002. The  
22 motion was made by Mr. Griffis, seconded by Mrs. Renshaw. Mrs.  
23 Reid, Mr. Levy, and Mr. Hood in agreement.

24 And, Madam Chair, the last preliminary matter to  
25 do with Application Number 16784. That's Comcast Cablevision of

1 the District. There is a request in that case for a  
2 postponement. The request came in from the applicant and  
3 Council Member Adrian Fenty, and the ANC is in support of the  
4 request for continuance of this case.

5 Are any of those parties present today? Would  
6 you please have a seat at the table?

7 MR. DONOHUE: Good morning, Madam Chair. Edward  
8 Donohue on behalf of the applicant, Comcast. With me is Maurice  
9 Smith, Director of Regulatory Affairs for Comcast.

10 CHAIRPERSON REID: Okay.

11 MR. DONOHUE: I'd like to apologize for the late  
12 filing of this request for a continuance. Apparently, Friday  
13 was a very busy day for a lot of folks.

14 It became clear to the applicant that the Office  
15 of Planning thought that there were more appropriate locations  
16 for the facility that's the subject of this special exception.  
17 And on Friday we agreed to a request that the Board defer the  
18 matter. And the request, as is styled, is to defer  
19 indefinitely.

20 And the reason is to try to address the concerns  
21 of the Office of Planning and also to try to respond to the  
22 issues and concerns raised by the community, the Advisory  
23 Neighborhood Commission, ANC-4A, and Council Member Fenty. We  
24 met with the ANC on Tuesday of last week, and the ANC is not in  
25 support of this facility at this location.

1                   So with those thoughts in mind, we immediately  
2 submitted our request and provided copies to all parties,  
3 including the ANC, the Office of Planning, and the Councilman's  
4 Office.

5                   CHAIRPERSON REID:    So, in other words, you're  
6 saying that -- two things.  One is that you want to request a  
7 continuation without a date certain.

8                   MR. DONOHUE:   That was the thought, Madam Chair.

9                   CHAIRPERSON REID:    And then once you feel that  
10 you -- either you have or you have not reached a point of being  
11 able to reconcile and mitigate, then come to the staff to  
12 schedule -- get together on the calendar.

13                  MR. DONOHUE:   That was our thought.

14                  CHAIRPERSON REID:   And in the interim, you want  
15 to have the opportunity to try to have further discussions or  
16 negotiations with the ANC and the community.  Is that my  
17 understanding?

18                  MR. DONOHUE:   Working through the Office of  
19 Planning with another location, which is how OP is putting it to  
20 --

21                  CHAIRPERSON REID:   I see.  So, in other words,  
22 you're saying that it may even boil down to your selection of a  
23 more forgiving site elsewhere in the city.

24                  MR. DONOHUE:   That's the Office of Planning's  
25 position, and so --

1 CHAIRPERSON REID: Okay.

2 MR. DONOHUE: -- in order to develop that, and  
3 explore the options that they're putting to us, we're going to  
4 need some time.

5 CHAIRPERSON REID: All right. I'm sorry.

6 MR. JONES: I'm James H. Jones. I am the Chair  
7 of ANC-4A and also -- Reba, do you want to introduce yourself?

8 MS. DIGGS: My name is Reba Diggs, and I'm  
9 representing the Brightwood Community Association and others in  
10 Brightwood that are closest to the facility.

11 MR. JONES: Our statement is that we welcome the  
12 opportunity to participate with Comcast in helping them to find  
13 an alternative in order to move this bunker-like structure that  
14 they've put in a residential community on --

15 CHAIRPERSON REID: Now don't get into testimony.  
16 Just stay with the facts, so that we can --

17 MR. JONES: I will stay with the facts, Madam  
18 Chair.

19 CHAIRPERSON REID: Okay. Thank you.

20 MR. JONES: What we would like to do is to oppose  
21 a continuance at this point. The community has spent all summer  
22 on this issue, and people have taken off from work to come here.  
23 It's inconvenient. Let's face it, this is not the season to be  
24 in a crowded building. So we are taking risks there.

25 We are just drained and tired and would like a

1 decision one way or the other, and we would request that the  
2 application be denied. And if they want to come back again,  
3 that's fine. That gives us a year at least. But this constant  
4 business of having to come here, having to meet, having to spend  
5 all our time on this issue that should not be before us in the  
6 beginning --

7 CHAIRPERSON REID: Okay. Now, what I think I'm  
8 hearing you say, sir, is that at least at this time this  
9 particular matter is going to be requested to be taken out of  
10 the realm of the BZA, and that you all want time to determine  
11 how you want to handle this.

12 And if, in fact, it is decided that they go  
13 forward, then you'll make that decision. Or if, in fact, you  
14 are able to achieve the other alternative, which is another  
15 site, then you won't even have to come -- well, your community  
16 won't have to come here in the first place. So it's just being  
17 like at this point in time taken off the table. There is no  
18 continuation being requested here today. You're just  
19 withdrawing -- is that how -- no?

20 DIRECTOR KRESS: That's not what he's saying.  
21 But I would make the point that if it's going to be on another  
22 site it's appropriate that that's a different application. We  
23 don't take the same application and --

24 CHAIRPERSON REID: But they didn't say -- because  
25 they're saying that they would like for it to be -- he said they

1 are considering it being. I don't think that he's saying that  
2 they are going to make that decision right now. I think that --

3 MR. DONOHUE: That's correct.

4 CHAIRPERSON REID: -- that's something yet to be  
5 determined. And today, as far as the Board is concerned, I  
6 don't know what action you want us to take, because you're  
7 saying that you're not -- you're really not asking for a  
8 continuation.

9 MR. DONOHUE: Madam Chair, the suggestion of  
10 Office of Planning was that there were other locations more  
11 appropriate for this kind of facility.

12 CHAIRPERSON REID: So what --

13 MR. DONOHUE: Those haven't been identified.

14 CHAIRPERSON REID: What specifically are you  
15 asking -- what action are you requesting from this Board today?  
16 I guess we need to get that -- I'm sure -- I mean, I'm not  
17 certain what you're -- exactly what you're asking us to do.

18 MR. DONOHUE: We request that the matter be  
19 deferred, and the request was for an indefinite deferral. If,  
20 under the Board's calendar, you'd prefer to set a date certain,  
21 I'd recommend you set it out 90 or more days.

22 CHAIRPERSON REID: I think the appropriate  
23 action, having taken the counsel from the Director, is to  
24 withdraw. And if, in fact, at some future date you -- it is  
25 appropriate to come before us, or to schedule it, do so. And if

1 it's not, then you won't.

2 MR. DONOHUE: Madam Chair, may I be heard briefly  
3 on that?

4 CHAIRPERSON REID: Okay.

5 MR. DONOHUE: This is a rather unique set of  
6 circumstances, because the property in question was acquired by  
7 Comcast. They own the property. They did make improvements.  
8 They are approximately 70 percent complete under a permit that  
9 was issued by DCRA.

10 A stop work order was issued, and we were  
11 directed to come to the Board of Zoning Adjustment on the  
12 property. Comcast -- and Mr. Smith can speak to the particulars  
13 -- Comcast has got a significant investment in this property, as  
14 well as in the system upgrade.

15 In order to consider the suggestion that there  
16 are better sites, we're going to need some time. But that's not  
17 -- it's not clear to us that there is another site. That hasn't  
18 even been identified.

19 CHAIRPERSON REID: Okay. I think that we have it  
20 now. Board members, obviously, we've heard this particular --  
21 the complexity of this particular application before us and the  
22 request that was before us. And it's a matter of whether or not  
23 the Board feels that it is appropriate -- the request to  
24 continue to defer to a time uncertain is appropriate or not.  
25 And if that is the case, what we can do is just vote it up or

1 down.

2 BOARD MEMBER LEVY: Madam Chair?

3 CHAIRPERSON REID: Yes.

4 BOARD MEMBER LEVY: Could I just request that the  
5 community representatives restate their position, because I  
6 don't think that we're clear. I'm not clear on that.

7 CHAIRPERSON REID: Okay.

8 BOARD MEMBER LEVY: Thanks.

9 MR. JONES: Briefly, our position is that we need  
10 a decision. We'd like to move forward on this hearing. And if  
11 we are not going to do that, we would like for the applicant to  
12 consider withdrawing the application.

13 CHAIRPERSON REID: Okay. Does that clear it up  
14 for you?

15 BOARD MEMBER LEVY: Yes, thank you.

16 CHAIRPERSON REID: All right. All right. Is  
17 there a motion?

18 VICE CHAIRPERSON RENSHAW: Madam Chair, I just  
19 want to state that it is in our material that Council Member  
20 Fenty is asking for a continuance of the hearing. Is that  
21 correct? I just want to be -- do you have it on record? Thank  
22 you.

23 MR. JONES: May I speak to that?

24 VICE CHAIRPERSON RENSHAW: Yes. Mr. Jones, if  
25 you would, please.

1 MR. JONES: That request was done, if you look at  
2 the date of that --

3 VICE CHAIRPERSON RENSHAW: September 20.

4 MR. JONES: Yes. And that -- a lot has happened  
5 since that time. Since that time -- and I don't want to get  
6 into the hearings -- but we've had meetings and decisions have  
7 been made subsequent to that.

8 The issue was that this application was placed on  
9 an accelerated pace, and that was one of the reasons why Fenty  
10 was making that request was because we did not have enough time  
11 to develop our reports, to do the things that you all require us  
12 to do in order to -- to take our positions.

13 And, therefore, he was asking for that in order  
14 to allow us time to do it, because specifically what had  
15 happened was that I got a letter from your office indicating  
16 that we had seven days to file a report, and that was impossible  
17 because our ANC meeting took place only seven days from the  
18 report.

19 CHAIRPERSON REID: Okay. That's --

20 MR. JONES: And so that's the reason why he was  
21 asking for that kind of thing.

22 CHAIRPERSON REID: Excuse me. I'm sorry. I  
23 didn't mean to cut you off. I understand that we do have a  
24 representative from Mr. Fenty's office here. Could you please  
25 come and speak to the matter? I'm sorry. And you are?

1 MS. ADAMS-SIMMONS: My name is Gerri Adams-  
2 Simmons, and I'm President of the Brightwood Community  
3 Association. We have a person on -- to speak on our behalf.

4 CHAIRPERSON REID: Okay. Well --

5 MS. ADAMS-SIMMONS: But in terms of this  
6 discussion, I would like --

7 CHAIRPERSON REID: Excuse me. First of all, we  
8 can't -- you have to speak into the mike. I just wanted you to  
9 identify yourself. But we'll determine whether or not you can  
10 speak in just a couple of minutes.

11 MS. ADAMS-SIMMONS: Thank you.

12 CHAIRPERSON REID: All right. Thank you.

13 MR. WASHINGTON: Hello. My name is Jason  
14 Washington. I'm on the staff of Council Member Adrian Fenty.

15 The September 20th letter, like Commissioner  
16 Jones was saying, no longer applies because of the October 5th  
17 letter from Comcast and Mr. Donohue. I know in the best  
18 interest of the community they would like to see this removed I  
19 think. We support the neighbor's decision, but -- remove the  
20 facility.

21 But to the letter -- the September 20th letter  
22 that asked for a continuance should no longer apply to the --

23 CHAIRPERSON REID: Okay. I didn't know if you  
24 were asking for the request to be removed or the actual facility  
25 itself. Okay. So you're saying that that letter is now null

1 and void. Okay.

2 All right. Yes, ma'am.

3 MS. DIGGS: The community --

4 CHAIRPERSON REID: Identify yourself, please.

5 MS. DIGGS: Again, I'm Reba Diggs. I'm  
6 representing the Brightwood Community. The community put  
7 extensive time, though we had little time, into polling citizens  
8 about this structure being -- this commercial structure being in  
9 a residential area. And we filed with the Board a significant  
10 number of petition signatures and letters.

11 So at this point, the community would like to see  
12 us proceed with the hearing or Comcast withdraw it. That's  
13 briefly our position.

14 CHAIRPERSON REID: Thank you.

15 Okay. Board members, I guess what we need to do  
16 is move as to whether or not we are going to grant the  
17 continuation or not. Is there a motion?

18 COMMISSIONER HOOD: Madam Chair, I just want to  
19 throw this out. I'm having a problem with Comcast saying that  
20 they're looking at other sites, and in the meantime we are  
21 holding the community and the folks who live around there in  
22 abeyance. I can tell you, that's what I'm sitting here having a  
23 problem juggling. So I'm --

24 CHAIRPERSON REID: But depending on what action  
25 we take today, then it would send a signal as to what the next

1 course of action would be for Comcast.

2 COMMISSIONER HOOD: Well, I guess I'm saying that  
3 because I haven't got past that point. So, I mean, even taking  
4 action today, being consistent with just something we just did  
5 last week. And I try to always be consistent.

6 I don't think that from what I'm hearing from  
7 Comcast, I don't know if they've made up their mind whether  
8 they're going to try to press forward. I believe the Office of  
9 Planning -- I thought they -- did they recommend denial? And I  
10 don't want to get too much into the merits of the case. So much  
11 stuff was in front of me, and I may be getting this case mixed  
12 up with another one. I'll be frankly honest.

13 MR. DONOHUE: Madam Chair, maybe I can clear that  
14 up. I indicated in my opening remarks that much of this  
15 developed on Friday. Yesterday was a holiday for a lot of  
16 people, and we don't have -- we don't have a report from the  
17 Office of Planning. We don't have the alternate sites that OP  
18 thinks are more appropriate even identified.

19 But the thought from the Director of OP was that,  
20 given time, a more appropriate site that Office of Planning  
21 could support could be found. That's really all I know. I  
22 think it's important to remember that Comcast is a franchisee --  
23 cable franchisee in the District of Columbia, has got to work  
24 with the Office of Cable Television on its requirements,  
25 council-imposed requirements on system upgrades.

1                   Certainly, we've got to work with the Office of  
2 Planning. Certainly, we've got to work with the community with  
3 issues that have been identified. They are sincerely  
4 interested. We know that. But we're going to need a little  
5 time in order to develop these thoughts and have the input from  
6 OP for the sites if things are appropriate.

7                   COMMISSIONER HOOD: Let me just say, what if --  
8 and I don't know if we can legally do this, but I'm going to  
9 throw it out there anyway. What if we -- if it was dismissed,  
10 you all came back and we waived the fees, any fees that you had  
11 to pay to come back in front of this Board?

12                   MR. DONOHUE: I don't know that that helps us.  
13 The fees are -- what's invested here is much more than the fees  
14 that are filed with the Board of Zoning Adjustment. What's  
15 invested in this system is an upgrade in the neighborhood of  
16 \$70- or \$72 million. There's a lot of moving parts.

17                   And what the Comcast is simply asking for the  
18 Board is to give us time to develop this part of the system  
19 upgrade, this part of the network, and work with OP toward that  
20 end.

21                   COMMISSIONER HOOD: What percentage -- one more  
22 question, Madam Chair. What percentage have you completed?

23                   MR. DONOHUE: This is Maurice Smith, Director of  
24 Regulatory Affairs. Let me have him address that.

25                   MR. SMITH: The site is 70 percent complete at

1 its present location.

2 COMMISSIONER HOOD: And after 70 percent, you  
3 found out you had to come in front of the Board of Zoning  
4 Adjustment.

5 MR. SMITH: Well, no. I mean -- yes, I mean,  
6 ultimately.

7 CHAIRPERSON REID: I'm sorry. I'm sorry. We  
8 cannot have this disruption. If, in fact, that continues, I'm  
9 going to have to ask whoever is responsible for it to leave the  
10 room. Thank you very much.

11 COMMISSIONER HOOD: Madam Chair, I didn't ask  
12 that for an applause. I asked that because I'm trying to make  
13 my mind up on which -- how I'm going to deal with this. So if  
14 he can continue.

15 BOARD MEMBER GRIFFIS: If I might interject  
16 quickly, because what I'm hearing is three things. First of  
17 all, the applicant -- we don't need to go into the specifics,  
18 but what I'm hearing is that there's a commitment to work on  
19 finding alternative sites. But there's not 100 percent  
20 commitment of not opening the existing site that's before us  
21 today. Is that correct?

22 MR. DONOHUE: That's correct.

23 BOARD MEMBER GRIFFIS: Therefore, going for a  
24 continuance it is basically giving a base insurance that you  
25 would have this site that could go forward in terms of bringing

1 the case to the BZA, and with approval it would continue; with  
2 dismissal, it would not.

3 So, obviously, the community today is looking to  
4 hear this case today. I think the question ought to be asked  
5 whether you're prepared to present the case today.

6 MR. DONOHUE: Well, it's a difficult question.  
7 We're prepared to present a zoning case today. What was  
8 communicated to us on Friday was a very sincere, very emphatic  
9 request to defer the hearing. That's what we did.

10 CHAIRPERSON REID: By whom?

11 MR. DONOHUE: By the Office of Planning.

12 CHAIRPERSON REID: Okay. All right.

13 COMMISSIONER HOOD: Madam Chair, I think we need  
14 to hear from the Office of Planning. I would like to.

15 CHAIRPERSON REID: Please.

16 MS. WAGNER: I'm Julie Wagner. I'm with the D.C.  
17 Office of Planning. I actually cannot speak on this case. I'm  
18 here for another case. But we are actually making a phone call  
19 right now to get Andy Altman here. He's upstairs.

20 MR. BERGSTEIN: Madam Chair, I just want to  
21 explain to the Board the difference between withdrawal and  
22 denial. Your rules permit an applicant to withdraw an  
23 application at any time, but that the fees aren't refunded upon  
24 the withdrawal.

25 Without special leave of the Board, an

1 application will not be accepted for filing again for at least  
2 90 days after withdrawal of the application, which means that it  
3 could be accepted before 90 days with special leave.

4 If an appeal or an application is denied, that  
5 is, if you have the hearing today and the request is denied,  
6 then no new appeal or application can be instituted within a  
7 one-year period. So I just wanted to lay out the distinction  
8 between the choice of the applicant and either withdrawing,  
9 which allows a maximum 90-day period which could be made less by  
10 the Board, or going forward on the merits, and if it's denied  
11 then there is no allowance for a period of less than a year.

12 CHAIRPERSON REID: Do you want to discuss that?

13 MR. DONOHUE: Yes.

14 CHAIRPERSON REID: Are you -- now, given the  
15 parameters of the choices that are presented to you, do you need  
16 to discuss it, or are you prepared to tell us what you want to  
17 do at this time?

18 MR. DONOHUE: I'm sorry, Madam Chair. I thought  
19 we were going to wait for the Office of Planning. Is that not  
20 the case?

21 CHAIRPERSON REID: Well, yes, we can. But -- you  
22 may do that, but based on what Mr. Bergstein has told you, you  
23 may want to make a decision. You know, it's up to you.

24 DIRECTOR KRESS: There is a third alternative  
25 Alan didn't mention, which is the Board can dismiss this if the

1 information is not put together and they're not ready to go.  
2 The Board also has a third option of dismissing it, and in that  
3 case they can also reapply within three months.

4 CHAIRPERSON REID: So with the dismissal --

5 DIRECTOR KRESS: And anything new, any new site  
6 is -- they can apply any time. We're talking about this site.

7 CHAIRPERSON REID: Dismissal or withdrawal, three  
8 months.

9 DIRECTOR KRESS: Right.

10 CHAIRPERSON REID: If they go today and it's  
11 denied, a year.

12 DIRECTOR KRESS: A year.

13 CHAIRPERSON REID: At least a year. So those --

14 MR. DONOHUE: That's correct.

15 VICE CHAIRPERSON RENSHAW: And the fourth is that  
16 we go forward with the case, and it's -- I believe the applicant  
17 has said that he is prepared. But I'd like to wait and hear  
18 from Andy Altman.

19 CHAIRPERSON REID: Did you say you were or were  
20 not prepared, sir?

21 MR. DONOHUE: We are prepared to present a zoning  
22 case, if that's the requirement of the Board.

23 COMMISSIONER HOOD: Madam Chair, I do want to --  
24 we didn't have an Office of Planning report, so --

25 CHAIRPERSON REID: Yes. I saw that. I saw that.

1 Thank you. Also, Mr. -- I'm sorry. Give me your name.

2 MR. DONOHUE: Donohue.

3 CHAIRPERSON REID: I think Mr. Donohue said that  
4 they hadn't gotten one.

5 All right. So you are representing the Office of  
6 Planning in this case?

7 MR. KING: Yes.

8 CHAIRPERSON REID: Okay.

9 MR. KING: Madam Chair, my name is David King.  
10 I'm Chief of Staff in the Office of Planning. The  
11 recommendation of the Office of Planning in this matter is that  
12 the application be withdrawn at this time.

13 And our view is that -- the background there is  
14 that there's been negotiations between the community and our  
15 office -- conversations, rather, between our community and the  
16 office and the applicant, and it's our understanding that we  
17 will be working with the applicant in finding an alternative  
18 site.

19 If, for whatever reason, that falls through, the  
20 applicant can always reapply. Our position is they should, at  
21 this time, withdraw the -- or our recommendation is withdrawal  
22 of the application.

23 CHAIRPERSON REID: Okay.

24 MR. DONOHUE: Madam Chair, I know the Board's got  
25 a busy morning. Is it appropriate for us to get five minutes to

1 -- so I can speak with my client?

2 CHAIRPERSON REID: Okay. All right.

3 MR. DONOHUE: Thank you.

4 CHAIRPERSON REID: Thank you. We'll stand in  
5 recess for approximately five minutes. Given the circumstances,  
6 there's a very weighty type of decision that has to be made  
7 instantaneously, I think it's most appropriate.

8 (Whereupon, the proceedings in the foregoing  
9 matter went off the record at 10:48 a.m. and went  
10 back on the record at 10:51 a.m.)

11 CHAIRPERSON REID: All right. Okay. We will now  
12 resume with the morning's hearing.

13 MR. DONOHUE: Madam Chair, Edward Donohue on  
14 behalf of the applicant Comcast of the District of Columbia.

15 Could we get clarification on the time periods  
16 that we were given before about the reinstating the --

17 CHAIRPERSON REID: Okay. Ms. Kress, could I ask  
18 you to do that, please, as far as the options and the  
19 timeframes, so that we're clear on it.

20 DIRECTOR KRESS: The options are that if you're  
21 not -- if you choose today to withdraw, then you can resubmit  
22 within 90 days. Also, if the Board today, because you're not  
23 ready to go forward, if you say you're not ready to go forward,  
24 the Board also has the option of dismissing the case, which then  
25 leaves 90 days to go forward.

1                   It really appears if you're ready to go forward  
2 there's only the two, which is then to hear the case today, and  
3 then make the decision. And if it's denied, then it would be a  
4 year before you could come back. So those are really the  
5 actions that can -- or withdrawal was the first, and the 90  
6 days. Dismissal is the second, but not if they're ready to go  
7 ahead. Then, dismissal isn't an option. That's 90 days. If  
8 the case goes ahead and it's denied, then that's one year before  
9 they can refile again.

10                   MR. BERGSTEIN: We're just checking on whether or  
11 not it's subject to the general waiver requirements -- the one  
12 year. You know, for good cause the Board could waive this.  
13 We're just seeing whether or not that's a waivable rule.

14                   CHAIRPERSON REID: Mr. Donohue, does that clarify  
15 things for you?

16                   MR. DONOHUE: Right up until that last comment  
17 from the Corporation Counsel.

18                   (Laughter.)

19                   DIRECTOR KRESS: Alan, withdraw that, please.

20                   (Laughter.)

21                   MR. DONOHUE: If you'd care to, that's fine.

22                   MR. BERGSTEIN: It's an important point. You can  
23 appreciate that.

24                   DIRECTOR KRESS: Because it's waivable doesn't  
25 mean the Board will necessarily do that. I'm telling you what

1 the regs say. The Board could, if Alan so decides, maybe waive  
2 something. But that doesn't mean they will.

3 CHAIRPERSON REID: Is that clear as mud?

4 MR. DONOHUE: Was that clear to you, Madam Chair?

5 CHAIRPERSON REID: I say, was it clear as mud?

6 MR. DONOHUE: Yes.

7 CHAIRPERSON REID: We did have it clear, and  
8 then, you know, it kind of got a little muddied in the  
9 translation. But does that give you enough information to  
10 decide what you want to do today? I mean, that's the bottom  
11 line.

12 MR. DONOHUE: We'd like to request a withdrawal  
13 of this application.

14 CHAIRPERSON REID: All right. Then, the Board  
15 would so acknowledge the withdrawal. There is no action that's  
16 necessary from us in that regard. And unless there are any  
17 comments by any Board members, then that would then basically  
18 dispose of the matter.

19 MR. DONOHUE: Thank you for your time.

20 CHAIRPERSON REID: Thank you. And you have 30 --  
21 90 days, if you choose to, to --

22 DIRECTOR KRESS: To reapply. But they can  
23 reapply any time.

24 MS. DIGGS: Is this resubmittal for the same  
25 site?

1                   DIRECTOR KRESS: Yes, that's correct. For a new  
2 site, they can submit any time. They have no -- they have no  
3 constraints. They can come tomorrow and submit for a new site.  
4 It's for this site they have to wait 90 days.

5                   MS. DIGGS: Because they came in like bingo, had  
6 that bunker there, and never came to us.

7                   CHAIRPERSON REID: Okay. But at this point in  
8 time, now they have withdrawn, which means that if they choose  
9 to come back to that site, it would have to be within 90 days.  
10 If they choose another site, then they can bring that to the BZA  
11 at any time and that may or may not affect you. Okay?

12                   DIRECTOR KRESS: Not within 90 days, at the  
13 earliest 90 days, and then any time thereafter.

14                   CHAIRPERSON REID: Oh, no -- no earlier than 90  
15 days.

16                   DIRECTOR KRESS: No earlier than 90 days.

17                   CHAIRPERSON REID: Oh, okay. No earlier than --

18                   MR. BERGSTEIN: Not without special leave of the  
19 Board. It provides for special leave of the Board for less than  
20 90 days, but they would have to -- I'm sorry. That's what it  
21 says.

22                   (Laughter.)

23                   I'm sorry. That's what the rules say. Without  
24 special leave of the Board and --

25                   CHAIRPERSON REID: You know, that's what

1 attorneys are for, you know? I mean, they make sure that if you  
2 don't understand it that, you know, they can make it a little  
3 bit more complicated, so that you have to dig --

4 MR. BERGSTEIN: I didn't write that rule.

5 CHAIRPERSON REID: -- a little harder --

6 (Laughter.)

7 -- to be able to understand it.

8 MR. DONOHUE: We're reasonably clear.

9 CHAIRPERSON REID: Okay. Thank you, Mr.  
10 Bergstein.

11 MS. DIGGS: Can I just clarify, then, that the  
12 residents of the area, we have no option at this point about the  
13 case going forward. We just accept --

14 CHAIRPERSON REID: It's the applicant --  
15 basically, Comcast is the applicant who filed the case. And  
16 they're the ones who have asked for the -- who have withdrawn.  
17 The ANC could ask for a continuation or -- that's about it, a  
18 continuation. They could ask for a --

19 DIRECTOR KRESS: I think there's some confusion  
20 about whether an appeal would be a reasonable thing to do.  
21 There's no need to appeal, because DCRA has acknowledged that  
22 that permit was issued incorrectly, and that that's not a valid  
23 permit. And so normally if that was a valid permit then it  
24 would be in the community's interest to perhaps appeal, but  
25 that's not the case here.

1                   So this is an unusual situation, and I have  
2 sympathy for the applicant in that, because there has been  
3 confusion about this all the way. But I think we're clear on  
4 where it is now, and he does not have a valid permit.

5                   MR. JONES:     The ANC is satisfied with the  
6 decision of the Board.

7                   CHAIRPERSON REID:   Thank you.   Okay.   All right?  
8                   Thank you very much.

9                   Okay.   Then, that will then conclude the -- this  
10 morning's hearing.   Thank you very much.

11                   We still have the matter of -- I'm sorry.   I'm  
12 sorry.   Please, if you have any discussion or any unnecessary  
13 noise to make, please do so out in the lobby.   That does not  
14 mean that -- we still have this morning's matter, which is the  
15 meeting regarding -- decision meeting regarding George  
16 Washington University.   So those of you who are here for that  
17 matter, please don't leave.

18                   We will recess for about five minutes to clear  
19 the room and to get ready for the meeting.   Thank you.

20                   (Whereupon, at 10:58 a.m., the public hearing  
21 went off the record.)  
22

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

2 (12:58 p.m.)

3 CHAIRPERSON REID: Thank you very much for your  
4 indulgence for our meeting this morning. This has been I guess  
5 the world's longest recess. Nonetheless, we're back, and the  
6 next item on the agenda for today is the election of officers.

7 And, Board members, as you well know, my term is  
8 expiring. It has expired. I am leaving. And as such, we will  
9 now have the election of a new officer. I have to resign first.

10 Then, I would have -- what I'll do now is to  
11 resign my position as Chairperson of the Board of Zoning  
12 Adjustment and -- as of 2:00, and I will now open the floor for  
13 the election of the chair vacated by myself. There will be no  
14 election as to the Vice Chair, because of the fact that we --  
15 that chair -- that position is not being vacated.

16 COMMISSIONER MITTEN: Madam Chair, I would like  
17 to move approval of Geoff Griffis as Chair of the BZA.

18 BOARD MEMBER LEVY: Second.

19 CHAIRPERSON REID: Okay. All in favor?

20 (Ayes.)

21 VICE CHAIRPERSON RENSHAW: Comment?

22 CHAIRPERSON REID: Comment.

23 VICE CHAIRPERSON RENSHAW: All right. Thank you,  
24 Madam Chair. Just a moment for a comment before we officially  
25 take the vote to install Geoff Griffis as Chair. I have had the

1 benefit of serving with Geoff Griffis now for a while, several  
2 months, and we welcome him to the top seat.

3 I just want to say that it is always good to be  
4 an Avis rather than a Hertz, so I don't -- I will continue as  
5 Vice Chair and look forward to supporting this Board in that  
6 capacity and as -- again, as the Avis, we always try harder.

7 Thank you.

8 CHAIRPERSON REID: That was very well put. Thank  
9 you very much.

10 All in favor?

11 (Ayes.)

12 All right. Thank you.

13 Mr. Griffis, I would like to congratulate you on  
14 your ascension to the Chair. I feel that your having been on  
15 the Board for a considerable amount of time that you will  
16 definitely have -- that you will preside with dignity and with  
17 fairness and certainly with the amount of efficiency and wisdom  
18 that you have already portrayed to us. I congratulate you and  
19 wish you well as you now take over the helm of this Board.

20 And as for myself, I have had most adequate and  
21 overwhelming comments and praises and compliments in my parting.

22 And I just like -- would like to just say, once again, I thank  
23 you very much for the time that I have been here and the  
24 opportunity for having had -- been able to serve the city. I've  
25 enjoyed it very much.

1 Thank you.

2 VICE CHAIRPERSON RENSHAW: Madam Chair, I just  
3 want to state on behalf of the Board our appreciation for the  
4 work that you have done for so many years of service. Even  
5 though we gave you a rowdy send-off several weeks ago, we are  
6 very pleased that you have been able to extend your stay with us  
7 and participate in these closing cases of your career on the  
8 Board of Zoning Adjustment.

9 And while we cannot replay the tape of the many  
10 good things that were said in your little unofficial ceremony  
11 several weeks ago, I know that you will remember our words and  
12 you will feel confident that we will carry on in your spirit  
13 through the days ahead, which will not be easy for us. These  
14 cases never are.

15 But with your good humor and guidance, we have  
16 come this far, and I am sure we will be able to carry on and  
17 remember those good words that you've always told us that --  
18 just keep going and brighter days are ahead. Thanks.

19 CHAIRPERSON REID: Thank you so much.

20 CHAIRPERSON GRIFFIS: Ms. Reid, Madam Chair, I  
21 absolutely thank you for, first, your support, but also for this  
22 opportunity to have been able to serve with you and for the  
23 training that you've given me.

24 I want to thank the Board support for the vote,  
25 and I want to be concise and short and say I look forward to

1 working with all of you and continuing and look forward to a  
2 strong bond and working relationship with Madam Vice Chair.

3 Thank you.

4 CHAIRPERSON REID: Thank you very much.

5 I just also would like to, once again, thank our  
6 Director, Jerrily Kress, who -- she and I go back, way back, and  
7 we've been through a lot together. And I'd just like to  
8 acknowledge again the wonderful job she has done as the Director  
9 of the Office of Zoning and the many improvements that she has  
10 brought to the fold, as well as all of the staff who has worked  
11 so hard, diligently, Corporation Counsel, and everyone who has  
12 participated in making my watch as Chair a very meaningful and  
13 significant one.

14 Thank you very much.

15 And with that, I will hit the gavel for the last  
16 time and pass it over.

17 (Applause.)

18 CHAIRPERSON GRIFFIS: We have not had a lunch  
19 break. We've been in meeting session since 8:00 this morning,  
20 going straight through. I would ask for 45 minutes, if that's  
21 --

22 VICE CHAIRPERSON RENSHAW: Thirty.

23 CHAIRPERSON GRIFFIS: Can we do it in 30? Thirty  
24 minutes would put us back 'til 1:35.

25 I'm sorry. Did you have a comment, Mr. Brown?

1 Yes, indeed.

2 MR. BROWN: I have a preliminary matter that has  
3 to do with an item on the afternoon agenda. Perhaps if we could  
4 clear that up quickly before your lunch, you'd enjoy your lunch  
5 more and also allow people who are here to move forward.

6 CHAIRPERSON GRIFFIS: Quite frankly, I'd rather  
7 just take a quick and brief and we'll be back in 30 minutes, and  
8 I promise to hold it to that. Otherwise, we're going to get  
9 started, we're going to have to call the hearing, we're going to  
10 get into the issues, we'll hear preliminaries, and then it will  
11 be 2:00 and the afternoon will be going. So if that's  
12 acceptable, thank you very much.

13 MR. BROWN: Okay. Thank you.

14 CHAIRPERSON GRIFFIS: We'll see you at 1:40.

15 (Whereupon, the proceedings in the foregoing  
16 matter went off the record for a lunch break at  
17 1:06 p.m. and went back on the record at 1:40  
18 p.m.)

19 CHAIRPERSON GRIFFIS: Good afternoon. The  
20 hearing will please come to order.

21 This is the October 9th public hearing of the  
22 Board of Zoning Adjustment of the District of Columbia. I am  
23 Geoff Griffis, Chairperson. Joining me today is Vice Chair Anne  
24 Renshaw; representing the National Capital Planning Commission  
25 is David Levy; and also representing the Zoning Commission is

1 Mr. Hood.

2 Copies of today's hearing are available to you.  
3 They are located to my left near the door where you came in.  
4 All persons planning to testify, either in favor or in  
5 opposition, are to fill out two witness cards. These cards are  
6 located at each -- at the end of the table in front of us. Upon  
7 coming forward to speak to the Board, please give both cards to  
8 the Reporter who is sitting to my right.

9 The order of procedure for special exceptions and  
10 variances is, first, statement and witnesses of the applicant;  
11 second, government reports, including Office of Planning and  
12 Department of Public Works, etcetera; third, report of the  
13 Advisory Neighborhood Commission; fourth, parties or persons in  
14 support; fifth, parties or persons in opposition; and, sixth,  
15 closing remarks by the applicant.

16 Cross examination of witnesses is permitted by  
17 the applicant or parties. The ANC within which the property is  
18 located is automatically a party in the case. The record will  
19 be closed at the conclusion of each case, except for any  
20 material specifically requested by the Board, and the staff will  
21 specifically at the end of the hearing exactly state what is  
22 expected.

23 The Sunshine Act requires that a public hearing  
24 on each case be held in the open before the public. The Board  
25 may, consistent with the rules of procedures and the Sunshine

1 Act, enter into executive session during and after the public  
2 hearing on a case for purposes of reviewing the record and  
3 deliberating on the case.

4 The decision of the Board in these contested  
5 cases must be based exclusively on the public record. To avoid  
6 any appearance to the contrary, the Board requests that persons  
7 present not engage the members of the Board in conversation.

8 Please turn off all beepers and cell phones at  
9 this time, so as not to disrupt these proceedings.

10 The Board will make every effort to conclude the  
11 public hearing as near as possible to 6:00 p.m. If the  
12 afternoon cases are not completed at 6:00 p.m., the Board will  
13 assess whether it will -- it can complete the pending case or  
14 cases remaining on the agenda.

15 At this time, the Board will consider any  
16 preliminary matters. Preliminary matters are those that relate  
17 to whether a case will or should be heard today, such as  
18 requests for postponement, continuance, or withdrawal, or  
19 whether proper and adequate notice of the hearing has been  
20 given.

21 If you are not prepared to go forward with a case  
22 today, or if you believe that the Board should not proceed, now  
23 is the time to raise such matter. First, does the staff have  
24 any preliminary matters?

25 MS. BAILEY: Mr. Chairman, good afternoon. As

1 you know, there is a preliminary matter. Mr. Brown is seated at  
2 the table, and he is ready to go.

3 CHAIRPERSON GRIFFIS: Thank you.

4 Mr. Brown?

5 MR. BROWN: Thank you, Mr. Chairman.  
6 Congratulations. Patrick Brown from Greenstein, DeLorme &  
7 Luchs. I'm counsel for Mr. Jacobsen, Jacobsen Builders, in the  
8 special exception 16740.

9 I'd like to request a continuance. I think this  
10 makes sense for a number of reasons. Hopefully you've received  
11 the Office of Planning report that I received midday on Friday.

12 It makes some very specific comments, but also the general  
13 advice, which I think is well taken, is that the applicant and  
14 the community should continue or sit down and meet to resolve  
15 their differences.

16 Speaking for Mr. Jacobsen, he has no desire and  
17 doesn't think it appropriate to engage in a -- what would be a  
18 hotly-contested case here this afternoon. He is desirous and  
19 has made it clear from the very beginning that he is desirous of  
20 working out a situation with the community that meets with their  
21 expectations, needs, desires, as a way of going forward.

22 That very much remains the case. He is willing  
23 to, with the help of the Office of Planning, continue to discuss  
24 with the neighbors, including mediation, and to finance that  
25 mediation in -- probably in large part, but that can be worked

1 out, and, again, with the goal being not to have a fight but to  
2 resolve a difficult situation for everybody involved.

3 I'd leave it at that. I think it makes sense to  
4 work something out. The Office of Planning has made some very  
5 specific comments, all of which my client is prepared to accept.

6 But that's just the Office of Planning. We'd very much like to  
7 get the input and participation of the community, so that the  
8 end result can meet their needs as well as my client's.

9 Thank you.

10 MR. NETTLER: Mr. Chair, members of the Board,  
11 Mr. Hood, my name is Richard Nettler, an attorney with Robins,  
12 Kaplan, Miller & Ciresi. I represent one of the parties -- or  
13 two of the parties in opposition to this matter -- the Chain  
14 Bridge Road University Terrace Preservation Committee and the  
15 Palisade Citizens Association.

16 And, unfortunately, we do not support a  
17 continuance of this matter, and I'd like to go into some depth  
18 as to why we do not believe that it is appropriate at this time  
19 to do that.

20 CHAIRPERSON GRIFFIS: Before you do that, can I  
21 just make clarification also? We have a second party, if I'm  
22 not mistaken.

23 MR. NETTLER: Yes.

24 CHAIRPERSON GRIFFIS: Okay. Very good.

25 MR. NETTLER: If I might go forward, then.

1                   This matter arises out of an action that was  
2 taken almost a year ago, a legal action that was taken to  
3 essentially destroy a significant part of the community that was  
4 protected by an overlay. The community immediately responded to  
5 that and met with the -- Mr. Jacobsen, the applicant, and made  
6 it very clear what steps were necessary to get -- even get to  
7 the point where there could be discussion.

8                   Nothing was done in response to those suggestions  
9 at that time. Nothing was done in response to those suggestions  
10 at an ANC meeting that took place earlier this year. Nothing  
11 was done, actually, until an expedited request was made for a  
12 hearing on this application when it was filed in May of this  
13 year.

14                   Following the filing of that application, we  
15 submitted -- we sent letters to the applicant also suggesting  
16 ways in which there might be a way of even discussing the  
17 matter. Nothing was done in response to those letters. It  
18 wasn't until the eve of the ANC meeting, just like the -- the  
19 day of the BZA meeting today -- the eve of the ANC meeting in --  
20 last July, early last July, that the applicant was willing to  
21 sit down and discuss things.

22                   At that point, a hurried meeting did not serve  
23 any purpose. Furthermore, at that point, though, there was to  
24 be a hearing before this Board in July. And but for an  
25 unfortunate incident involving a relative of Mr. Jacobsen's, we

1 presume that he was prepared to go forward with his presentation  
2 at that hearing.

3           Nevertheless, he requested a continuance until  
4 today. We then agreed to meet after that time, and we did meet.

5           The applicant met with the community after that time, at the  
6 end of August. Some very substantial comments were made on the  
7 proposal that is before you, and actually that has been changed,  
8 but the proposal that was presented.

9           None of those -- no response was made to those  
10 comments that were made by the community. Instead, on the day  
11 of the ANC meeting, the second ANC meeting at which the ANC  
12 again reiterated its opposition to this, changes were presented,  
13 again not responding to any of the comments that have ever been  
14 made on this matter.

15           I think that it is wise to point out what the  
16 Office of Planning, in our view, is suggesting. What the Office  
17 of Planning is suggesting, and what we are suggesting, is, one,  
18 this application be denied; two, that this site be stabilized  
19 and reforested --

20           CHAIRPERSON GRIFFIS: Can I interrupt you just  
21 for a second? If you wouldn't mind just succinctly talking to  
22 just -- it's getting a little perhaps into the case.

23           MR. NETTLER: It goes to the point that he's  
24 making that the Office of Planning has made some suggestions  
25 that provide a basis for having a discussion in the future. We

1 believe --

2 CHAIRPERSON GRIFFIS: Is the basis of what you're  
3 saying -- my understanding is what I'm hearing is that  
4 communication has tried to progress, has maybe pits and starts.

5 You do not see the fact that continuing this would bring any  
6 sort of reconciliation.

7 MR. NETTLER: We do not see that continuing this,  
8 one, would bring any reconciliation. We think that the more  
9 appropriate approach, whether you hear this today or -- or  
10 whether it gets denied today, if the applicant is unable to go  
11 forward, or if the applicant should even withdraw this  
12 application, is for the site to be stabilized, which it never  
13 has been, and for the applicant to do the forestation measures  
14 that are suggested, and that might form a basis for having some  
15 reasonable way of moving forward.

16 CHAIRPERSON GRIFFIS: Right.

17 MR. NETTLER: But in the present context, it  
18 simply does not exist.

19 MR. STOYBER: Thank you, Chairman. My name is  
20 Carlton Stoyber. I'm also a party in interest here. I am the  
21 immediate next-door neighbor to this property, and I can be very  
22 brief because I would merely like to echo the statement of Mr.  
23 Nettler that I also would be very much opposed to the granting  
24 of an extension here.

25 Certainly, my personal interest, having resided

1 next to this devastated site for a year, is to get some  
2 resolution to this issue at this point. And I do not think that  
3 the various conversations we have had with the applicant up to  
4 now give me any -- any reason to believe that some accommodation  
5 could be reached through further discussion.

6 We want our day in court. We would like to put  
7 our information on the record for the Board. We have spent a  
8 lot of time, a lot of money hiring expert witnesses that we  
9 think the Board should hear. So that's my view.

10 Thank you.

11 MR. NETTLER: Yes. And I think, to add to that,  
12 a number of people have come down here as you see, have -- came  
13 down here the last time this was presented. The Park Service  
14 has been here twice. There has been a lot of effort put into  
15 this, and we think it's about time to either go forward with it  
16 or not.

17 MR. BROWN: Mr. Chairman, could I add one point?

18 And one of the points that the Office of Planning mentions in  
19 their report, and I think it should be a concern shared by  
20 everyone, is that we not miss the opportunity to do something  
21 productive and useful for this site.

22 Something happened. I can guarantee you we will  
23 never agree about who is responsible for it. The challenge I  
24 think that OP points out is the bigger picture of how we proceed  
25 from here. My client has made it clear, and I've made it clear

1 to Mr. Nettler, a position that I'm very uncomfortable with as  
2 an attorney representing somebody like Mr. Jacobsen is how open  
3 we are -- I mean, absolutely open to specific comments on any  
4 aspect of this property.

5 The house, the reforestation, I cannot -- in 14  
6 years, I cannot recall an instance where I've had the authority  
7 to make that kind of open-ended statement to an opposing party.

8 Sit down, participate with us, you tell us what you want, and  
9 if it's reasonable you're going to get it. So that's our  
10 negotiating posture, which is unilateral disarmament.

11 We'd like the opportunity to take advantage of  
12 that unique circumstance, and I think the opportunity to keep  
13 this process moving toward a -- what I believe -- and I know the  
14 people who live in this area -- a good resolution for everybody.

15 So I leave it at that.

16 CHAIRPERSON GRIFFIS: Thank you, Mr. Brown. I  
17 mean, I, frankly, feel very strongly that a resolution needs to  
18 be made in this case. No one is being served in this condition  
19 that it's happening now. Now the situation is that we need to  
20 decide whether we move forward today or not.

21 I would entertain comments from Board members if  
22 they are so inclined.

23 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I would  
24 -- I, too, having gone through the file, with sadness I must  
25 say, because we are alarmed when a piece of property is in the

1 state that this is in. And I would consider it wise to move  
2 ahead at this point and hear this case and resolve the issues  
3 before us.

4 I am concerned about what Mr. Nettler put forth  
5 that the site has never been stabilized. And I am worried about  
6 the soil erosion on this property, and very concerned that the  
7 laws of the District governing soil erosion are being adhered  
8 to, which, if Mr. Nettler is saying that the site has never been  
9 stabilized, this doesn't sound like those laws are being  
10 enforced or even being considered.

11 So I would recommend -- in fact, I would move,  
12 Mr. Chairman, that we proceed with this case and would look for  
13 a second from my Board members.

14 BOARD MEMBER LEVY: I'll second that.

15 CHAIRPERSON GRIFFIS: Quick question, if I might.  
16 We should probably establish before I call the vote that the  
17 applicant is prepared to move forward today.

18 MR. BROWN: Mr. Chairman, if, in fact, the  
19 continuance is not granted, I'm authorized to withdraw the  
20 application. We're not prepared to go forward in the contested  
21 case. We don't think that's appropriate.

22 I would point out one thing. We may have  
23 differences of opinion. Based on directions from the city, the  
24 site has been stabilized in accordance with their procedures.  
25 But, again, we're arguing about things. What we're asking to do

1 is solve problems.

2 So, again, I'd ask Mrs. Renshaw and the other  
3 members to consider the long-term benefit of continuing this  
4 matter and allow us to solve problems. Alternatively, again, my  
5 client has no -- no stomach for a fight with the community, and  
6 we'll simply withdraw the case with the request that the future  
7 filing fee and time limitation be waived for future filing,  
8 should he choose to do that.

9 With that --

10 CHAIRPERSON GRIFFIS: Mr. Brown, I would ask that  
11 you take 45 seconds or so to collect your thoughts before I call  
12 the vote.

13 MR. BROWN: Mr. Chairman, I guess I don't  
14 understand the inquiry question.

15 CHAIRPERSON GRIFFIS: It would be my impression  
16 that if I call the vote right now, a continuance would be  
17 denied.

18 MR. BROWN: I understand that. And then, if it  
19 would be the Board's preference to allow me to withdraw the case  
20 prior to the vote on the continuance, again, with my request  
21 that leave to refile should that be appropriate, and in the  
22 future without the limitation period and waiving the fee.

23 (Pause.)

24 MR. NETTLER: Mr. Chair, if I might respond.

25 CHAIRPERSON GRIFFIS: Yes.

1 MR. NETTLER: As to the -- if the Board is  
2 inclined to deny the continuance and the applicant is going to  
3 proceed to withdraw, before the Board denies the continuance or  
4 otherwise, I think as far as the fee and the timeframe goes, I  
5 think that is -- this is not the time to resolve that issue.  
6 That should be resolved at the time that he seeks to file an  
7 application, if he should do so within that timeframe and not  
8 today.

9 And I would also suggest that if it is withdrawn,  
10 the Board issues an order authorizing it to be withdrawn, that  
11 it consider the Office of Planning suggestions in its order  
12 authorizing it being withdrawn, because we do have a serious  
13 problem on the site, and the Department of Consumer and  
14 Regulatory Affairs needs to deal with it.

15 MR. BROWN: Mr. Chairman, I don't want to  
16 complicate matters any further. But I can't impress upon the  
17 Board enough Mr. Jacobsen has met with the city, been advised  
18 about his obligations for stabilization.

19 He did not -- this is not a pretty site. But  
20 it's stable. It's not eroding. Grass was planted. Standard --

21 CHAIRPERSON GRIFFIS: Be that as it may -- in  
22 fact, just for clarification, I think Ms. Renshaw stated  
23 correctly we, as a Board, looking at the case and the  
24 photographs were and are concerned. Like I say, we do not have  
25 any authority over that, and, therefore, you know, we state that

1 opinion and hope that something is reconciled. But I do not  
2 think we're getting into that.

3 I would, then, ask Ms. Renshaw to restate the  
4 motion.

5 VICE CHAIRPERSON RENSHAW: I will restate the  
6 motion as follows, that this Board deny the request for a  
7 continuance.

8 CHAIRPERSON GRIFFIS: And that was seconded by  
9 Mr. Levy. All those in favor?

10 (Ayes.)

11 Any opposed?

12 (No response.)

13 MS. BAILEY: Staff will record the vote as four  
14 to zero to -- one, to deny the request for a continuance. The  
15 motion was made by Mrs. Renshaw; Mr. Levy seconded. Mr. Griffis  
16 and Mr. Hood is in agreement. The third Mayoral appointee not  
17 present, not voting.

18 CHAIRPERSON GRIFFIS: Did you want to use a  
19 moment at the mike before I call the other case?

20 MR. BROWN: Yes. I'd like to follow up on my  
21 earlier reference. I'm not so sure I need the Board's leave,  
22 but the regulations say I can withdraw the case at any time. I  
23 would like to do so now and thank the Board for its assistance.

24 And, hopefully, in the future we have the opportunity to  
25 resolve the matter.

1 CHAIRPERSON GRIFFIS: Thank you, Mr. Brown. And  
2 I think I speak for the Board when I say that we look forward to  
3 a real resolution of this situation, and hopefully it can occur  
4 quickly.

5 Thank you very much.

6 Ms. Bailey, when you are ready, you could call  
7 the next case.

8 MS. BAILEY: The next case is Application Number  
9 1674 -- I'm sorry, 16768, Jerome Bauman, pursuant to 11 DCMR  
10 3104.1 for a special exception to allow a change of non-  
11 conforming use from a grocery to a grocery/deli under Section  
12 2003 in an R-4 District at premises 1452 D Street, Northeast.  
13 The property is located in Square 1056 on Lot 90.

14 Please remain standing and raise your right hand.

15 (Whereupon, an oath was administered to those  
16 persons planning to testify.)

17 Thank you. Please be seated.

18 CHAIRPERSON GRIFFIS: Good afternoon, sir.

19 MR. OLIPHANT: Good afternoon, Mr. Chairman.

20 CHAIRPERSON GRIFFIS: If you wouldn't mind  
21 turning your mike on. You just push the button there. There it  
22 is. And then state your name and address, please.

23 MR. OLIPHANT: Adam L. Oliphant, 1452 D Street,  
24 Northeast, Washington, D.C., zip 20002.

25 CHAIRPERSON GRIFFIS: Very good. You're welcome

1 to proceed when you're ready.

2 MR. OLIPHANT: I will simply read from the  
3 letter, the attached letter that I sent originally.

4 The property referenced in this -- in the  
5 attached application for special exception is a convenience  
6 grocery store applicant has operated since 1978. The granting  
7 of said special exception for grocery/deli would allow the  
8 applicant to provide a small deli section to meet the customer  
9 demand for prepared takeout food.

10 Such foods would include prepare hot/cold  
11 sandwiches, hot/cold beverages, salads, and limited menu of  
12 steamed vegetables. The necessary sanitation equipment, two-  
13 compartment sink, garbage disposal, mop sink, etcetera, has been  
14 in place for a number of years to serve the grocery store.

15 Therefore, the only new equipment necessary is  
16 portable. No structural changes to the existing building are  
17 planned or required.

18 Then there's a list of the attachments.

19 And finally, the applicant, therefore, prays that  
20 you will grant a special exception for this property as a  
21 grocery/deli.

22 CHAIRPERSON GRIFFIS: Thank you, Mr. Oliphant.  
23 In your letter, you stated, as you just indicated, enclosures  
24 that are attached, which would be the application, of course.  
25 Item number 1, the application before the Board of Zoning

1 Adjustment. Forgive me. That's not what I'm actually looking  
2 for.

3 But I have -- oh, maybe it is, in fact. Is that  
4 the application from 1997?

5 MR. OLIPHANT: No. That's a new application.

6 CHAIRPERSON GRIFFIS: It is the new one.

7 MR. OLIPHANT: Yes.

8 CHAIRPERSON GRIFFIS: That's fine.

9 MR. OLIPHANT: Yes, yes.

10 CHAIRPERSON GRIFFIS: And currently --

11 MR. OLIPHANT: In 1997, I didn't realize I had a  
12 six-month time period, and I had a good deal of illness and  
13 death in my family and wasn't paying as much attention I guess  
14 as I should.

15 CHAIRPERSON GRIFFIS: Can you speak to me about  
16 the six-month period? The order was for only six months?

17 MR. OLIPHANT: Right.

18 CHAIRPERSON GRIFFIS: So it expired six months  
19 after January 22nd --

20 MR. OLIPHANT: After that date, right.

21 CHAIRPERSON GRIFFIS: -- 1997?

22 MR. OLIPHANT: Correct. Nothing changed since  
23 then. In other words, I just -- they just said I had to  
24 resubmit the whole thing again and pay the fee and all --  
25 everything again.

1 CHAIRPERSON GRIFFIS: We do have photographs.  
2 But I -- I am -- and if other Board members are not they can  
3 stop me -- but would you walk me through the program of the  
4 specific site? The C of O indicated that it was grocery on the  
5 first floor basement.

6 MR. OLIPHANT: Right.

7 CHAIRPERSON GRIFFIS: The application now is for  
8 a grocery/deli. There's a ZA --

9 MR. OLIPHANT: Right.

10 CHAIRPERSON GRIFFIS: -- letter that speaks to  
11 changing the basement. Just talk to me about the program, what  
12 is actually going to happen.

13 MR. OLIPHANT: Changing the basement?

14 CHAIRPERSON GRIFFIS: Yes. And I'll -- don't  
15 worry about that. You just walk me through what it actually is,  
16 and I'll get that letter out and see.

17 MR. OLIPHANT: Okay. In other words, we are  
18 allowed presently to have, you know, meats and that kind of  
19 thing. So what we'll do is simply add a steam table to that  
20 deli case, and preparation tables, and that sort of thing in the  
21 back, like you used to have in the old stores. That's basically  
22 the change.

23 CHAIRPERSON GRIFFIS: Ms. Sansone, perhaps this  
24 is a question to you. I'm --

25 MR. OLIPHANT: In other words, if you're asking

1 whether we're going to try to have sit down or anything, no.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. OLIPHANT: It's just a small section --

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. OLIPHANT: -- where we have prepared  
6 sandwiches and salads and that sort of thing.

7 CHAIRPERSON GRIFFIS: Takeout deli stuff. So  
8 then the basement would still remain the storage.

9 MR. OLIPHANT: Oh, yes.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. OLIPHANT: Yes, absolutely.

12 CHAIRPERSON GRIFFIS: But is it my understanding,  
13 then, that this -- based on the 1997 order, this is actually  
14 operating without a special exception, so that we're going for a  
15 special exception on the entire program, the grocery and deli?  
16 And it is not before us because there's a deli addition to this?

17 MR. OLIPHANT: It's been a grocery for -- I guess  
18 since 1923, so I -- I don't know -- I wouldn't know how the  
19 original -- what the original permission was. I wouldn't have  
20 any idea. When I bought it, it was already grocery and allowed  
21 as grocery for the last 23 years that I've been there, and --

22 MS. SANSONE: Mr. Chairman, I was a little  
23 confused by the Zoning Administrator's letter myself. But there  
24 is a type of special exception for changing a non-conforming use  
25 within a structure to another non-conforming use. And that --

1 so the grocery store was -- had been there so long it was a non-  
2 conforming use prior to the 1958 regulations --

3 MR. OLIPHANT: Correct.

4 MS. SANSONE: -- and the addition of the deli  
5 falls within that provision. It's 2003.1. It is cited in the  
6 Zoning Administrator's letter, but there is some added confusion  
7 because he goes on to talk about neighborhood facility, which  
8 doesn't -- I don't believe that's a term in the zoning  
9 regulations. I think --

10 CHAIRPERSON GRIFFIS: It's not a term that I  
11 could find.

12 MS. SANSONE: I think the case was properly  
13 advertised in the public notice for the special exception under  
14 this Section 2003.1.

15 SECRETARY PRUITT: And also, if you look at the  
16 1997 order, it is under Section 2003.1, from a grocery store to  
17 a grocery/deli on the first floor and basement. That's what was  
18 advertised.

19 CHAIRPERSON GRIFFIS: But I guess my question is,  
20 if this order in 1997 expired, they're not necessarily under  
21 this order. And, therefore, what do are we doing? Are we --  
22 where do we go back to? And you're saying we go back to, in  
23 fact, the '20s when it was a grocery store, and that's the  
24 continuing non-conforming use, and, therefore, the special  
25 exception -- that's clear to me. Is that clear to other Board

1 members?

2 BOARD MEMBER LEVY: Mr. Chairman?

3 CHAIRPERSON GRIFFIS: Yes.

4 BOARD MEMBER LEVY: Just to clear up a few things  
5 in my own mind, two questions I guess. One, so you've been  
6 operating a grocery store continuously.

7 MR. OLIPHANT: For 23 years.

8 BOARD MEMBER LEVY: Continuously.

9 MR. OLIPHANT: Right.

10 BOARD MEMBER LEVY: Okay. So this 1997 order --  
11 I need someone to explain to me why this expired in six months.

12 MR. OLIPHANT: I think --

13 BOARD MEMBER LEVY: I don't understand that  
14 point.

15 MR. OLIPHANT: Mr. Levy, I think that was the  
16 limitation under the regulation at that point, and it's been  
17 changed since to I think someone told me two years.

18 BOARD MEMBER LEVY: I guess what I'm asking is  
19 that do all orders expire within six months if they're not acted  
20 upon? Because that's not -- it doesn't seem to be specified in  
21 this order.

22 COMMISSIONER HOOD: Mr. Levy, I don't think we  
23 have a time limit. I'm trying to follow this myself.

24 DIRECTOR KRESS: Well, there is the six months,  
25 as you are aware, that for change in use you have to get your C

1 of O.

2 MR. OLIPHANT: A new C of O.

3 DIRECTOR KRESS: A new C of O.

4 MR. OLIPHANT: Right.

5 DIRECTOR KRESS: And that's true of any change of  
6 use you do. And if you're doing construction, you've got two  
7 years. But if you're just doing use, you've only got six months  
8 to get it.

9 MR. OLIPHANT: It's still six months?

10 DIRECTOR KRESS: Yes. Once you get -- you have  
11 to file for the C of O. Once you get the BZA approval, and  
12 there isn't any -- okay. I didn't think so. There is no time  
13 constraint about how long you can have the special exception  
14 once you get it. It's just that when the BZA gives it to you,  
15 you have to go file for the C of O and get it within six months  
16 or you lose it.

17 MR. OLIPHANT: Okay. I understand now.

18 DIRECTOR KRESS: Okay.

19 MR. OLIPHANT: Having paid the \$1,200 twice, I'm  
20 clear now.

21 (Laughter.)

22 DIRECTOR KRESS: But if they approve it this  
23 time, unless they put a year's validity on it, it would be  
24 permanent.

25 SECRETARY PRUITT: On the order it does not have

1 any -- any -- there are six conditions, and none of them deal  
2 with any timeframes whatsoever. So this is in perpetuity.

3 BOARD MEMBER LEVY: Mr. Chairman, it's been  
4 brought to my attention by counsel that we're actually missing  
5 the second page of the order.

6 SECRETARY PRUITT: We found out that this is one  
7 of the few orders that's done on both sides.

8 DIRECTOR KRESS: Oh, is that what happened?

9 SECRETARY PRUITT: Yes.

10 DIRECTOR KRESS: Oh.

11 BOARD MEMBER LEVY: We have three conditions.

12 SECRETARY PRUITT: Right. We can get you --

13 BOARD MEMBER LEVY: Thanks.

14 MR. OLIPHANT: I know there have been major  
15 changes to the rules since my last filing in '97. So I would --  
16 I based the new filing on those new rules. I went and got a  
17 copy of that.

18 CHAIRPERSON GRIFFIS: Excellent. Okay.

19 MR. OLIPHANT: And we were --

20 DIRECTOR KRESS: The six months hasn't changed.  
21 That's been the same for quite a few years.

22 MR. OLIPHANT: Okay. As soon as I leave here,  
23 I'm going to get the C of O.

24 CHAIRPERSON GRIFFIS: We were missing a copy. I  
25 don't know if you caught that -- missing a copy of one of the

1 pages on the past order. So not your fault. It's a copying  
2 problem. We're just having copies made, and we'll get it to  
3 everybody in the --

4 MR. OLIPHANT: I have the old order here if you  
5 would like it.

6 CHAIRPERSON GRIFFIS: I think we have it.

7 MR. OLIPHANT: Okay.

8 CHAIRPERSON GRIFFIS: We're going to get copies.

9 MR. OLIPHANT: Sure.

10 CHAIRPERSON GRIFFIS: Thank you. In the meantime  
11 --

12 COMMISSIONER HOOD: Mr. Chair, I did want to ask  
13 some questions -- a question.

14 CHAIRPERSON GRIFFIS: Yes, sir.

15 COMMISSIONER HOOD: Mr. Oliphant I believe is  
16 your name?

17 MR. OLIPHANT: Yes.

18 COMMISSIONER HOOD: Are you familiar with Mr.  
19 James E. Coleman?

20 MR. OLIPHANT: Yes, I am. I mostly certainly am.  
21 I found the exception last Thursday on the same day -- the  
22 objection last Thursday in the file. I came to check my file to  
23 see if there were objections. We've been neighbors for 23 years  
24 now, 23-1/2 years.

25 So I was amazed that there was an objection in

1 the file, given that my wife had told me before I left to come  
2 down here that he had said come over to -- because the furnace  
3 wasn't working. So I went over and we repaired the furnace, and  
4 I said, "Mr. Coleman, why did you not say something to me if you  
5 had objections to my application?" And he said, "Sit down.  
6 What application?"

7 I said, "I've applied for an exception," and I  
8 began to explain. And he said, "My wife typed up a letter for  
9 me to sign," he said, "but I had no idea what it was."

10 (Laughter.)

11 He said, "I'm so sorry. What do I need to do to  
12 straighten it out for you?" And I explained it to him. So he  
13 said, "Type me up a letter, or if I need to call someone, I'll  
14 do that."

15 Ms. Bailey called, fortunately, the next day. I  
16 got the letter typed for him. He signed it the next day, and I  
17 brought a copy of it and gave to Linda outside in the file, and  
18 she has the time-stamped copy that she gave me -- that he  
19 withdrew the objection.

20 COMMISSIONER HOOD: Do we have that, Mr. Chair,  
21 because I -- I haven't seen it. The only -- that's why I was  
22 going to ask you --

23 CHAIRPERSON GRIFFIS: Let us just check for a  
24 moment. There were papers on our -- while we're having that  
25 also copied, perhaps, given the understanding, of course, that

1 this letter will be rescinded, it still brings up some issues --

2 MR. OLIPHANT: Sure.

3 CHAIRPERSON GRIFFIS: -- in terms of the use, and  
4 maybe you want to speak to that letter. I would look  
5 specifically at leaf and snow removal, and then also trash. I  
6 note that the first page of the past BZA order had issues about  
7 the trash being located -- the receptacles located on the  
8 private property, and now I'm looking at the second page, that  
9 trash would be collected once per week.

10 Can you talk to me about the program that you  
11 have and how you institute it, what are the specifics?

12 MR. OLIPHANT: Sure. We -- most of our trash is  
13 cardboard, and the former hauler that we had was charging us  
14 something like \$180 a month to take all the trash away.  
15 Presently, we store the cardboard inside in the back storage  
16 room. I take it to Georgetown Recycling and recycle the  
17 cardboard.

18 So my trash receptacle now is a little one-half  
19 cubic yarder that we put out one day a week for them to pick up.

20 We generate two or three bags of trash a week now, where it  
21 used to be a huge amount because of all of that cardboard. We  
22 don't have that anymore.

23 I think what she may be referring to is the fact  
24 that when we have blowing wind -- and in the fall last year,  
25 take for instance, we had a -- when we -- the big leaf fall

1 came, it rained for three solid days. I was just concerned --  
2 and I said to her husband, "Please say to her that if she had  
3 some concern, just say so."

4 I don't know how clear I can make it that her  
5 husband and I have been very close neighbors for a number of  
6 years. When his previous wife was dying of cancer a few years  
7 back, and he had just had heart surgery, and they were over  
8 there cold, they know they can call me and say, "Come take care  
9 of the furnace. Come take care of whatever is necessary."

10 The new wife -- I just installed a new basin  
11 upstairs for her, so -- a new vanity upstairs, so I've got to go  
12 have a talk with her and say, "Now, what is it you're bothered  
13 by?"

14 The loitering -- so we don't -- we pick up every  
15 day, very simply.

16 CHAIRPERSON GRIFFIS: Clean up the sidewalk.

17 MR. OLIPHANT: Yes. Oh, yes. Yes. If it's  
18 windy, yes, we're going to have more to pick up. The reality is  
19 that, what's really funny, most of the trash we pick up is not  
20 ours. But that's in the nature of having a property. Trash  
21 blows. It doesn't care where it stops. It's our job to get it  
22 up. It's that simple.

23 CHAIRPERSON GRIFFIS: When you indicated "we pick  
24 it up," it would be you and?

25 MR. OLIPHANT: My wife.

1                   CHAIRPERSON GRIFFIS:     Indeed.     And you both  
2 basically staff the store?

3                   MR. OLIPHANT:    Yes, we live above.

4                   CHAIRPERSON GRIFFIS:     Indeed.

5                   MR. OLIPHANT:     Yes.     We live above.     The  
6 loitering problem -- let me speak to that, because that is  
7 important.   For the whole time we've been there, as you know,  
8 that part of Washington has had some drug problems.   And I've  
9 made it very clear to the drug dealer, "You can't do it here."  
10 You know, I know most of them.   I gave them pencils to go to  
11 elementary school with when they didn't have money, so I know  
12 who the guys are.

13                                 And one young fellow said, "Mister, I don't know  
14 why you're hassling us."   I said, "Your mom lives around the  
15 corner.   Why aren't you selling drugs on her front porch?"   "You  
16 know my mama won't allow that."   I said, "Well, I won't either."  
17     So that's kind of how we are about that.

18                                 The young men that hang in front of her house, I  
19 know who they are, and I spoke to her husband about it about two  
20 weeks ago.   It's a young fellow who has just been released from  
21 jail, and he's got some kind of unsavory friends.

22                                 So Mr. Coleman and I agreed that between the two  
23 of us we can clean that up.   But they're not my customers.   I  
24 wanted to make that clear.   We do not allow loitering.   And if  
25 there's any question, you can call 5D.   They'll tell you.

1 CHAIRPERSON GRIFFIS: Indeed. Regarding  
2 loitering, do you have a sign posted or anything like that, or  
3 it's just basically you maintaining the situation out front?

4 MR. OLIPHANT: No. We just maintain a certain  
5 atmosphere. On the other hand, we've had people run in who  
6 somebody was chasing. We've had --

7 CHAIRPERSON GRIFFIS: Sure.

8 MR. OLIPHANT: -- a woman who somebody was trying  
9 to rape. And people -- they'll tell people, "Go to Sunshine.  
10 They'll call the police for you," and what have you. But  
11 loitering we just don't tolerate.

12 We get new people come into the community who  
13 don't know us, and they'll think, well, I'll go here and drink a  
14 beer. And we have to tell them, "No, no, no, no, no."

15 CHAIRPERSON GRIFFIS: right.

16 MR. OLIPHANT: Usually, the neighborhood, though  
17 -- we've been there so long -- our kids went to the local public  
18 school, so we -- we kind of know everybody.

19 CHAIRPERSON GRIFFIS: Much stronger than a sign.

20 MR. OLIPHANT: Yes.

21 CHAIRPERSON GRIFFIS: Also, in terms of the 1997,  
22 I understand item number 5 was, "Applicant shall submit to the  
23 Office of Planning for its approval the proposed architectural  
24 embellishment and lighting." Was there some sort of planned  
25 renovation or exterior lighting that was done?

1 MR. OLIPHANT: The gentleman from Planning, he  
2 didn't have any specific ideas. He said, "Could you do some  
3 kind of an architectural?" And I said, "Yes, we plan to." On  
4 the windows where there's the old-fashioned grating that has  
5 been there, I guess, since the '50s, long before we got there,  
6 we want to take that down and put up an architectural kind of  
7 scroll grating that still gives us security, but that allows you  
8 to see in better from the street, and what have you. So we want  
9 to do that.

10 The lighting that we have is just simple -- we've  
11 got three quartz fixtures. Okay? And that is mainly so the  
12 customers and our neighbors feel comfortable walking in the  
13 neighborhood. But that's pretty much it. So I never really  
14 understood -- he never was clear whether there was a specific  
15 type of lighting or anything that he wanted.

16 We use a simple -- if you look on the side of the  
17 building, you will see some simple cylinder lights. And we were  
18 looking for something that had a little more rustic look to it,  
19 but since I allow the kids to play ball out there, it also has  
20 to be durable. You know? On the 15th Street side, not on my  
21 neighbor's side.

22 I always have allowed the kids to roller skate,  
23 and what have you, because there is no playground in our  
24 neighborhood. So we kind of give some flexibility for that. I  
25 don't consider girls jumping rope loitering. So I just wanted

1 to make that clear.

2 VICE CHAIRPERSON RENSHAW: Mr. Chairman?

3 CHAIRPERSON GRIFFIS: Yes.

4 VICE CHAIRPERSON RENSHAW: I would like to ask  
5 our applicant if with the change in your operation, the proposed  
6 change in your operation to a deli situation, are you going to  
7 be changing your hours? What are the hours and the days that  
8 you operate? And will they stay the same?

9 MR. OLIPHANT: Presently, we are operating seven  
10 days a week, 7:30 in the morning until 10:00 at night. My wife  
11 and I have raised our children. We don't think we ought to work  
12 quite as hard. So we are considering closing at 9:00 now and  
13 giving us a little break. We are even considering closing on  
14 Sunday evenings, because we don't get to go to the Kennedy  
15 Center as often as we would like to.

16 So we are not considering expanding our hours, if  
17 that's what you're asking, not by any stretch.

18 VICE CHAIRPERSON RENSHAW: That's what I was  
19 getting to.

20 (Laughter.)

21 MR. OLIPHANT: No. No. At my age, I'm going the  
22 other way.

23 VICE CHAIRPERSON RENSHAW: You had spoken about  
24 in your application -- I'm trying to find it in the papers. But  
25 you spoke in part about the community's request or the community

1 demand, and would you speak to that, please?

2 MR. OLIPHANT: Yes. I don't know how well you  
3 know that neighborhood, but all we have is fast food chains.  
4 And over the years, I've got a number of parents, two-parent  
5 families, and I've got a number of single-parent families, and  
6 they've asked me over the years, "Could you come up with  
7 something? We hate on the days when we're tired for the kids to  
8 eat McDonald's. We'd really like to have a nice meal, a nice  
9 family meal."

10 So the heart of what we're trying to do is put  
11 together family meals where you come in and you pay a set price,  
12 and there's enough potatoes and enough beans and enough this for  
13 a family of two or four or whatever at a decent price. That's  
14 really what -- that's the heart of what we're trying to do.

15 The sandwiches are mostly for kids who want a  
16 nice sandwich, a healthy sandwich, and our lunch crowd during  
17 the day. We get a lot of workmen who stop through during the  
18 day, and workmen in the neighborhood when there is renovation  
19 and whatever going on. They have always come in and asked, "You  
20 don't have sandwiches?" So that's basically who we'll be  
21 catering to. That's basically the idea.

22 VICE CHAIRPERSON RENSHAW: Is this home cooking?

23 MR. OLIPHANT: Yes. Yes. Yes, all of it will be  
24 done right there. The one thing that we won't have, because  
25 being in a residential neighborhood a grill really creates a lot

1 of grease and a lot of odor, and what have you, so we won't have  
2 any grilled foods. It just -- it's -- it doesn't make you the  
3 best neighbor, so we're going to stay away from that.

4 VICE CHAIRPERSON RENSHAW: Did you just listen to  
5 your customers' requests, or did you put out any kind of a  
6 questionnaire?

7 MR. OLIPHANT: No.

8 VICE CHAIRPERSON RENSHAW: How did you decide  
9 that this is what you wanted to do?

10 MR. OLIPHANT: We always -- I started with \$600  
11 worth of merchandise on the shelf, and I had so little  
12 merchandise that we had five faces of Tide and six faces of  
13 this. And the reason for that was we wanted to be customer-  
14 driven. The customers came in and said, "We want this kind of  
15 washing powder. We want this kind of that. We want this."

16 The same is true of scholarships. Some years  
17 back when my kids were still in school we had college  
18 scholarships that we gave, and that was generated out of the  
19 community. People came and said, "So-and-so's dad is in jail,  
20 or dead, or whatever, and he's got a partial scholarship to UDC  
21 but he doesn't have any money for books," and that kind of  
22 thing. So we'd come up with something to do that.

23 VICE CHAIRPERSON RENSHAW: What does your ANC  
24 say? Did you appear before your ANC?

25 MR. OLIPHANT: No, she didn't come, and the

1 reason is because she -- her husband, her children, and her  
2 mother all shop at the store, I imagine. So we haven't heard a  
3 word from her. I was thinking they may call me, but nobody  
4 called.

5 VICE CHAIRPERSON RENSHAW: All right. Because I  
6 see here that the ANC report -- there is no ANC report in our  
7 file.

8 MR. OLIPHANT: Okay. That may be it.

9 VICE CHAIRPERSON RENSHAW: I just wondered why.

10 MR. OLIPHANT: Right. Right. In '97, the ANC,  
11 they called us. We know them, you know, they always know us.  
12 Again, they usually know us because the churches and the civic  
13 organizations, when they're having Spring Day, when they're  
14 having Parents' Day, when they're having Family Day, we  
15 contribute sodas and this and that, and what have you. So  
16 that's usually --

17 CHAIRPERSON GRIFFIS: Great. Any other comments?

18 Well, first of all, a quick statement. I think  
19 that this is a very strongly needed use, and it's obvious that  
20 you're an important part of the community. And so I would move  
21 that we approve Application Number 16768 for special exemption  
22 to allow the change of non-conforming use from a grocery to a  
23 grocery/deli under Section 2003 at premises 1452 D Street,  
24 Northeast.

25 COMMISSIONER HOOD: Second.

1 VICE CHAIRPERSON RENSHAW: Mr. Chairman?

2 CHAIRPERSON GRIFFIS: Yes.

3 VICE CHAIRPERSON RENSHAW: I just wanted to say  
4 that the applicant has described for the Board the -- how he is  
5 going to operate his deli, and I believe that to be in harmony  
6 with the general purpose and intent of the zoning regulations.  
7 And as there is no opposition, his one letter of opposition has  
8 been withdrawn, we can say that it's not going to adversely  
9 affect the use of the neighboring property. And it is in  
10 accordance with the zoning regs and the zoning map.

11 CHAIRPERSON GRIFFIS: Why don't we have a vote.  
12 All those in favor?

13 SECRETARY PRUITT: Excuse me, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Yes.

15 SECRETARY PRUITT: Before you vote, are you  
16 approving this with the same three conditions as listed in 1997?

17 CHAIRPERSON GRIFFIS: Well, you know, perhaps  
18 before I call the vote we can have a quick discussion on that,  
19 if the Board members would take a quick moment and review those.

20 My inclination was this: I think the testimony was fairly  
21 strong and pertinent to the fact that -- well, I'm not going to  
22 go into that. Does anyone have comments on the six conditions?

23 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I would  
24 recommend that we keep the conditions. It sounds like the  
25 applicant is abiding by the conditions, and he certainly is

1 sensitive to the trash and to the loitering and the covers of  
2 the window, and I would say to keep them in place.

3 COMMISSIONER HOOD: Mr. Chairman, I think we need  
4 to go through the six and deal with them. I don't know if  
5 number 5 would still apply. I do agree with keeping number 4,  
6 and right now I don't have 3, 2, and 1 in front of me. But  
7 also, I just would not be in favor of number 5 still applying.

8 VICE CHAIRPERSON RENSHAW: Okay.

9 COMMISSIONER HOOD: And, obviously, I don't  
10 believe number 1 even applies either. It's just you and your  
11 wife now.

12 MR. OLIPHANT: Right. I wanted to ask because I  
13 -- our last time through was the first time. I was very much  
14 concerned about that, because a part of what my mission  
15 statement was in educating kids is that I've always hired kids  
16 from the neighborhood, even to the degree that in the evening,  
17 so that -- because, see, a lot of kids in my neighborhood who  
18 don't have money. It's that simple.

19 And I have a basic rule: if I catch you  
20 stealing, you're going to the back room, but not for what you  
21 usually go to the back room for. We have a talk. You stole  
22 something that costs 50 cents. You could have picked up the  
23 trash and made two bucks, buy the 50-cent item, go home with a  
24 buck fifty in your pocket. This way, we call the authorities  
25 and you start something bad. We don't want to do that.

1 So all of their parents have kind of known that.

2 So to that end, I've had an employment scheme, if you can call  
3 it that, where I would have kids -- the youngest kids who have  
4 to be home before dark, I'd have them come in and they could  
5 work in the store and stock groceries, and what have you,  
6 between the time school was out, say until dark. You know, Mom  
7 says it's dark, you've got to be home. So, Johnny, you can stay  
8 'til this time. Larry, you can come in now at 7:00, and you get  
9 to work from 7:00 'til 10:00 stocking, and what have you.

10 So I wanted to know whether this maximum of three  
11 employees is going to affect that.

12 VICE CHAIRPERSON RENSHAW: Well, how about I  
13 withdraw my comments about the conditions? And if Mr. Hood  
14 would like to go through them and just recommend that they be  
15 eliminated or extended, whatever.

16 CHAIRPERSON GRIFFIS: But can we get  
17 clarification on the employee -- if I can interrupt you quickly.

18 For instance, the students or the kids that you have employed,  
19 would they be full-time? Are they --

20 MR. OLIPHANT: No. No, no, no.

21 CHAIRPERSON GRIFFIS: Indeed. So I think that if  
22 we want to entertain the three employees, we might just indicate  
23 that that's full-time employees.

24 MR. OLIPHANT: Right. That's fine. That would  
25 be fine.

1 COMMISSIONER HOOD: If anything, Mr. Chair, to  
2 make it so he can still employ the kids.

3 CHAIRPERSON GRIFFIS: Yes, absolutely. It seems  
4 to be -- I'm not sure, frankly, why we used to limit that  
5 anyway. But --

6 VICE CHAIRPERSON RENSHAW: You have only -- you  
7 have just yourself and your wife at the present time?

8 MR. OLIPHANT: For the time being. We'll need  
9 probably one or two other people once we, you know, start to  
10 gear up, because cooking requires, naturally, some more people.

11 But, again, our scheme has been over the years to hire people  
12 from the neighborhood and sort of make the job fit them.

13 I had two semi-retired women who worked -- their  
14 work week was five hours a day for six days a week, and that  
15 worked fine for them. So when we say "full-time," it doesn't --  
16 I may have, in this 23 years, had four people who worked 40  
17 hours. We gear it around what your needs are. You're a  
18 student. You're in school. You need to work 25 hours a week.  
19 We'll make a job for it.

20 CHAIRPERSON GRIFFIS: Okay. I think --

21 COMMISSIONER HOOD: Mr. Chair, can we just --

22 CHAIRPERSON GRIFFIS: Indeed.

23 COMMISSIONER HOOD: -- we're going to go on with  
24 the conditions.

25 CHAIRPERSON GRIFFIS: Okay. Sure. Mr. Hood, why

1 don't you -- do you want to run down them and --

2 COMMISSIONER HOOD: I don't know whether we  
3 should maintain condition number 1 where it says, "There shall  
4 be a maximum of three employees employed at the site." Do we  
5 want to keep that, maintain that?

6 VICE CHAIRPERSON RENSHAW: Well, the applicant --

7 COMMISSIONER HOOD: Mr. Chair, you just want me  
8 to run over all of the conditions or --

9 CHAIRPERSON GRIFFIS: Why don't we -- yes, why  
10 don't we get a quick opinion on each of them. I would indicate  
11 that if we have three employees we indicate that -- a word of  
12 "full-time" employees, three full-time employees.

13 COMMISSIONER HOOD: Full-time.

14 VICE CHAIRPERSON RENSHAW: And that would be an  
15 eight-hour shift at one time. Okay.

16 COMMISSIONER HOOD: The next condition is, "No  
17 additional signage shall be erected at the site."

18 MR. OLIPHANT: Fine. That's fine. I don't wish  
19 to.

20 COMMISSIONER HOOD: Okay. So we'll still leave  
21 that in as a condition.

22 CHAIRPERSON GRIFFIS: That's fine with me.

23 COMMISSIONER HOOD: Okay. "The applicant shall  
24 make every effort to locate the trash receptacles on his private  
25 property."

1 MR. OLIPHANT: That's already done.

2 COMMISSIONER HOOD: Okay.

3 MR. OLIPHANT: In other words, there is a narrow  
4 space between the back of my building and the barber shop.  
5 That's my property.

6 CHAIRPERSON GRIFFIS: Okay.

7 COMMISSIONER HOOD: We'll still leave that in,  
8 because you've already taken care of it.

9 MR. OLIPHANT: Right. Right.

10 COMMISSIONER HOOD: Okay. The next one is,  
11 "Trash shall be collected at least once per week."

12 MR. OLIPHANT: Yes, that's done.

13 COMMISSIONER HOOD: We'll still leave that in.

14 "The applicant shall submit to the Office of  
15 Planning for its approval a proposal for architectural  
16 embellishment and lighting." I am in favor of taking that one  
17 out. Colleagues, I don't know, Mr. Chair, what your pleasure  
18 is.

19 CHAIRPERSON GRIFFIS: Well, we would certainly  
20 turn to Office of Planning for their opinion on that, but they  
21 are not here. And so I would be inclined -- it seems to me that  
22 this one was perhaps part of the discussion that was preemptory  
23 of the Office of Planning was anticipating a proposal for  
24 architectural and lighting -- that we don't have in this case  
25 before us today any sort of evidence that indicates that there

1 are architectural problems or lighting problems.

2 I would say that we'd be safe enough to remove  
3 it, encourage you to beautify your property as you wish, if  
4 that's acceptable.

5 BOARD MEMBER LEVY: I'd agree to that.

6 VICE CHAIRPERSON RENSHAW: I would, too. But I  
7 would just perhaps like to suggest that we have a condition that  
8 says that your lighting will not spill over onto your neighbor's  
9 property, and just have that as a reminder perhaps.

10 MR. OLIPHANT: Yes, that I agree with.

11 CHAIRPERSON GRIFFIS: If I could interject. From  
12 what I've heard today in the case, you're in fairly constant  
13 contact with your neighbors. I can't imagine, if you're shining  
14 into their bedroom, that they're not going to complain to you.

15 I wonder if -- do we want to make that a  
16 stringent condition? I'm not sure how it's enforced or --

17 VICE CHAIRPERSON RENSHAW: Well, how is anything  
18 enforced?

19 CHAIRPERSON GRIFFIS: I understand.

20 MR. OLIPHANT: You make a good point. As a  
21 matter of fact, the light next to my one neighbor is set --  
22 instead of shining straight down, which would put some of it on  
23 his front porch, it's tilted so that the edge of it shines right  
24 down on my property.

25 CHAIRPERSON GRIFFIS: Why don't we indicate that

1 one of the conditions is to provide proper exterior lighting on  
2 the site, not to --

3 MR. OLIPHANT: Infringe on --

4 CHAIRPERSON GRIFFIS: -- adversely impair the --

5 VICE CHAIRPERSON RENSHAW: That's good.

6 COMMISSIONER HOOD: And the last condition is,  
7 "The metal mesh cover for over the windows shall be replaced by  
8 a mesh of metal works of a more residential character."

9 MR. OLIPHANT: Right. And could I -- since I've  
10 been out of so much cash, could you specify a little more time  
11 for me to get that done?

12 BOARD MEMBER LEVY: Could I just ask a question,  
13 Mr. Chairman?

14 CHAIRPERSON GRIFFIS: Yes.

15 BOARD MEMBER LEVY: What is actually on the  
16 window now? It's hard to tell from the photograph.

17 MR. OLIPHANT: Expanded steel mesh. You know,  
18 the old-fashioned expanded steel mesh. And if I could paint it  
19 white or something in the meantime, because right now I'm trying  
20 to get the deli started and paying some guys another thousand  
21 dollars to put up the wrought iron doesn't generate any income.

22 BOARD MEMBER LEVY: What is the -- it appears to  
23 be white in this photograph.

24 MR. OLIPHANT: Oh, that's on the front side.

25 BOARD MEMBER LEVY: Oh, this is a different

1 window.

2 MR. OLIPHANT: Right.

3 BOARD MEMBER LEVY: What's on this window? Is  
4 this boarded up or --

5 MR. OLIPHANT: No, no, no.

6 BOARD MEMBER LEVY: -- closed or --

7 VICE CHAIRPERSON RENSHAW: Mr. Levy is looking at  
8 Exhibit Number 3.

9 BOARD MEMBER LEVY: Thank you, yes.

10 MR. OLIPHANT: Right. Look at the other one.

11 BOARD MEMBER LEVY: So what is this material on  
12 the window in Exhibit Number 3?

13 VICE CHAIRPERSON RENSHAW: You have to speak into  
14 your mike.

15 MR. OLIPHANT: Okay. You can't see the window  
16 there. They've done it in black. That material is just siding.  
17 That's the way that's been the whole time. This is the window  
18 that has the expanded mesh. There. Let me get you a better  
19 picture.

20 BOARD MEMBER LEVY: Okay. So that's not -- okay.  
21 So that is not actually a window any longer.

22 MR. OLIPHANT: No. It hasn't been since I've  
23 been there. Okay. There you go. There's the expanded mesh.

24 BOARD MEMBER LEVY: Okay. Thanks for showing  
25 that to me.

1 MR. OLIPHANT: I want to put architectural rod on  
2 there instead.

3 VICE CHAIRPERSON RENSHAW: Mr. Chairman, and Mr.  
4 Hood --

5 CHAIRPERSON GRIFFIS: Yes.

6 VICE CHAIRPERSON RENSHAW: -- I just noticed one  
7 other thing on this picture that the applicant has -- Mr.  
8 Oliphant has supplied. It's in color, so it's easier to see.  
9 And that is I note some graffiti back here.

10 MR. OLIPHANT: Yes, it's time to paint.

11 VICE CHAIRPERSON RENSHAW: It's time to paint.  
12 Right. And I would perhaps offer a suggestion that graffiti be  
13 removed immediately, because we are told that if you leave it on  
14 it's an encouragement for more graffiti. So --

15 MR. OLIPHANT: And other vandalism.

16 VICE CHAIRPERSON RENSHAW: And vandalism. The  
17 quicker you get it off -- so perhaps a line in --

18 CHAIRPERSON GRIFFIS: I think that's an excellent  
19 -- well, I think it's an excellent recommendation and should be  
20 strongly stated.

21 MR. OLIPHANT: Incidentally, I might share with  
22 you why that graffiti is there. We had a group of kids --

23 CHAIRPERSON GRIFFIS: Actually, you know what? I  
24 think we're going to quickly move on with this --

25 MR. OLIPHANT: Sure.

1 CHAIRPERSON GRIFFIS: -- because we've got a few  
2 more things to do, and a couple of things to clarify. In terms  
3 of item 6, which is the metal mesh cover over windows, I just  
4 wanted to make a quick statement on that.

5 I'm not really sure what the intent was in terms  
6 of that condition. I --

7 MR. OLIPHANT: Very honestly, Mr. Chairman, I  
8 wasn't there. I wasn't clear.

9 CHAIRPERSON GRIFFIS: Thank you. I don't -- I'm  
10 not sure what direction to actually give on that. I mean, we  
11 could -- in terms of, you know, a full renovation or in terms of  
12 window treatments as a security, I think that perhaps is better  
13 solved with the tenant and owner, rather than us trying to  
14 somehow condition that. So I would ask -- I would suggest that  
15 we remove number 6.

16 BOARD MEMBER LEVY: I would agree.

17 COMMISSIONER HOOD: I would agree, Mr. Chair.

18 CHAIRPERSON GRIFFIS: All right. Then, I just  
19 also wanted to clarify for the applicant that we are approving  
20 -- or we have a motion to approve the special exception, which  
21 is changing the non-conforming use from a grocery store to a  
22 grocery/deli. And a deli has a very specific definition, but we  
23 won't go into that right now, and that is for just the first  
24 floor and the basement levels.

25 MR. OLIPHANT: That's right.

1 CHAIRPERSON GRIFFIS: Okay. Do we need a  
2 restatement of all of the conditions and the motion?

3 VICE CHAIRPERSON RENSHAW: Why not?

4 COMMISSIONER HOOD: Mr. Chair, I think we had a  
5 motion, it's been seconded, and I think we had discussion. And  
6 the discussion -- the record will speak for itself. I believe  
7 we've already done the conditions, and we can let staff fine-  
8 tune it. That'll save us from having to read off the whole case  
9 again.

10 DIRECTOR KRESS: And the staff will also pass  
11 those by you rather than rereading them here. When the order is  
12 prepared, we'll make sure it gets sent to you, and you can  
13 doublecheck them then.

14 CHAIRPERSON GRIFFIS: Excellent. I would, then,  
15 call for all those in favor?

16 (Ayes.)

17 Opposed?

18 (No response.)

19 I thank you very much.

20 MR. OLIPHANT: Mr. Chairman, the Board, I thank  
21 you very much, and hopefully in another six months, by spring, I  
22 can bring you some pictures and you can see --

23 VICE CHAIRPERSON RENSHAW: How about bringing us  
24 some food.

25 MR. OLIPHANT: I heard that about lunch today, so

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I guess I'll do that. You all have a good day.

CHAIRPERSON GRIFFIS: Thank you.

(Whereupon, at 2:38 p.m., the proceedings in the foregoing matter were adjourned.)