

GOVERNMENT OF THE DISTRICT OF COLUMBIA

+ + + +

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

+ + + +

PUBLIC HEARING

+ + + +

WEDNESDAY,

FEBRUARY 18, 1998

+ + + +

The public hearing convened in Room 220, 441 4th Street, N.W.,  
Washington, D.C. 20001, pursuant to notice, at 9:36 a.m., SHEILA CROSS REID,  
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID, Chairperson  
BETTY KING, Vice Chairperson  
SUSAN MORGAN HINTON  
JERRILY KRESS  
LAURA M. RICHARDS

STAFF PRESENT:

MADELIENE H. DOBBINS, Director  
TRACEY WITTEN ROSE  
JOHN NYARKU  
PAUL HART

APPEARANCES:On Behalf of the Applicant The Catholic University of America:

of: ALLISON PRINCE, Esquire  
Wilkes, Artis, Hedrick & Lane  
1666 K Street, N.W.  
Washington, D.C.  
(202) 457-7849

On Behalf of the Applicant 1776 Massachusetts Avenue Associates, LLP:

of: ALLISON PRINCE, Esquire  
Wilkes, Artis, Hedrick & Lane  
1666 K Street, N.W.  
Washington, D.C.  
(202) 457-7849

On Behalf of the Applicant C. Austin Fitts:

CARL ROWAN, Esquire  
Suite 350  
3201 New Mexico Avenue, N.W.  
Washington, D.C. 20016  
(202) 895-1371

On Behalf of Opponent Adams:

LESLIE NETTLEFORD, Esquire  
Kass & Skalet, P.L.C.C.  
1050 17th Street, N.W.  
Washington, D.C. 20036  
(202) 659-6500

On Behalf of Applicant Trinity Housing Corporation of Washington:

GWENDOLYN SIMMONS, Esquire  
Hessel and Eloise, P.C.  
1050 17th Street, N.W.  
Washington, D.C.

**C O N T E N T S**PAGECase Number 16315

LaVern A. Lacy	9		
		Sean Harrigan	10
		Postponement	11

Case Number 16314

Tyrone Davis	12		
		Mildred Linzy	13
		Concluding Remarks	Mildred Linzy 22
		Board's Decision	24

Case Number 16316

The Catholic University of America	25		
		Allison Prince, Esquire	26
		Concluding Remarks	Allison Prince 29
		Board's Decision	29

Case Number 16317

1776 Massachusetts Avenue Associations, L.P.	30		
		Allison Prince, Esquire	30
		Stuart Miller	33
		Steven Muse	36
		Robert L. Morris	51
		Concluding Remarks	Allison Prince 58
		Board's Decision	62

Case Number 16288

Ira Clements	66		
		Michael Clements	66
		Postponement	240

**CONTENTS** (Continued)PAGECase Number 16318

Shew F. Hom and Sau W. Hom	68	
Wai Hom	69	
Cross-examination	92	
Opposition	Louise Kinney	105
	Elizabeth Noyes	114
	Peter Seligmann	115
	Susan Seligmann	121
	Verna Movern	213
Concluding Remarks	Wai Hom	217
Board's Decision	224	

Case Number 16319

C. Austin Fitts	133	
Ron M. Friday	134	
Direct Examination	138	
Opposition	Leslie Nettleford,	152
	Esquire	
Concluding Remarks	Ron M. Friday	154
Board's Decision	169	

Case Number 16298

Trinity Housing Corporation of Washington	172	
Gwendolyn R. Simmons, Esquire		173
Marion F. Brooks	175	
Dr. Athel Q. Liggins	187	
ANC-1A Report	Robert W. Tucker	182
Opposition	Sherrill Berger	179
Postponement	210	

Case Number 16299

Anoop Singh	225	
Paul Gaiser	225	
Board's Decision	222	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

(9:36 a.m.)

CHAIRPERSON REID: Good morning. The hearing will please come to order. Good morning, ladies and gentlemen. This is the February 18th public hearing of the Board of Zoning Adjustment of the District of Columbia.

Joining me today are Betty King; Susan Morgan Hinton, representing the National Capital Planning Commission. And representing the Zoning Commission is Jerrily Kress.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons wanting to testify, either in favor or in opposition, are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon coming forth to speak to the Board, please give both cards to the reporter, who is sitting to my right.

The order procedure except for special exception and variance cases will proceed as follows: statement and witnesses of the applicants; government reports, including Office of Planning, Department of Public Works, ANC, et cetera; persons or parties in support; persons or parties in opposition; closing remarks by the applicant.

If an appeal application is on the agenda, it will be subsequent to this. The order procedure for appeal applications will be as follows: statement and witnesses of the applicants, the Zoning Administrator or other government official, the owner, lessee, or operator of property involved, if not, the appellant, the ANC within which the property is located; intervenor's case, rebuttal and closing statements by appellant. Cross-examination of witnesses is permitted for persons or parties with direct interest in the case.

The record will be closed at the conclusion of each case except

1 for any materials specifically requested. The Board and the staff will specify at the  
2 end of the hearing exactly what is expected.

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

7 At this time, the Board will consider any preliminary matters.  
8 Preliminary matters are those which relate to whether a case will or should be heard  
9 today, such as requests for postponement, continuance, or withdrawal, or whether  
10 proper and adequate notice of the hearing has been given. If you are not prepared  
11 to go forward with the case today or if you believe that the Board should not  
12 proceed, now is the time to raise such a matter.

13 Does the staff have any preliminary matters?

14 MS. ROSE: Yes, Madam Chair. The staff has three preliminary  
15 matters this morning. The first case of the morning, 16314 of Tyrone Davis, the  
16 affidavit of posting indicates that the property was posted on February the 11th, as  
17 opposed to February the 3rd. As required by the Board's rules, the applicant would  
18 need an eight-day waiver for the Board to proceed this morning.

19 Is the applicant present? Would you please come forward?

20 CHAIRPERSON REID: Would you please come forward? You  
21 want to sit at the mike.

22 MS. LINZY: Mildred Linzy is my name, and I'm the one that  
23 posted the sign that was posted in the window. You said it wasn't posted in the  
24 proper time limit?

25 MS. ROSE: Timely, yes.

26 MS. LINZY: Do you remember when it was posted?

27 MS. ROSE: Yes.

1 MS. LINZY: It was posted on about February the -- I was here --  
2 about February the 2nd. And I didn't bring the thing here until I took the pictures and  
3 everything and brought it here I think on that date that you quoted.

4 MS. ROSE: Okay. So maybe it was just erroneously filled out?

5 MS. LINZY: Yes because I did post it in -- it said five years prior  
6 to the hearing.

7 MS. ROSE: Right.

8 MS. LINZY: And it was posted five years prior to the hearing.

9 MS. ROSE: Fifteen days prior to the hearing.

10 MS. LINZY: Fifteen days or whatever. It was. It was posted in  
11 due time.

12 MS. ROSE: Okay.

13 VICE CHAIRPERSON KING: Is there any opposition in this  
14 case?

15 MS. ROSE: I don't know.

16 CHAIRPERSON REID: No, not according to the record that I  
17 have.

18 MS. ROSE: Is there anyone here in opposition?

19 CHAIRPERSON REID: Are we determining that it was posted in  
20 a timely fashion?

21 MS. ROSE: Yes.

22 CHAIRPERSON REID: Okay. All right. Thank you. You may  
23 be seated.

24 CASE NUMBER 16315

25 MS. ROSE: The next preliminary matter relates to 16315. No  
26 affidavit of posting has been received. Is the applicant in the LaVern Lacy case  
27 present or a representative of the applicant? LaVern Lacy, the applicant's name.

1 VICE CHAIRPERSON KING: There was a postponement  
2 requested for that, was there not?

3 MS. ROSE: Exactly. So that might be the reason that it wasn't  
4 posted.

5 CHAIRPERSON REID: There was a letter in the file that  
6 requested a postponement.

7 DIRECTOR DOBBINS: Even when an applicant requests  
8 postponement, we ask them to send the representative to speak to the Board about  
9 any other reasons or to answer any questions that the Board might have.

10 CHAIRPERSON REID: There is no one present in the LaVern  
11 A. Lacy application? There is? Come forward, please.

12 MS. ROSE: Sir, a microphone so we'll pick you up.

13 CHAIRPERSON REID: Speak into the mike, please.

14 MR. HARRIGAN: Creative Energy is the company; correct?

15 CHAIRPERSON REID: Your name?

16 MR. HARRIGAN: Sean Harrigan, 7305 Baltimore Avenue.

17 We're just asking for a postponement. That's why I'm here on  
18 behalf of Creative Energy, on behalf of Lacy. That's what I was trying to tell you.

19 CHAIRPERSON REID: Okay.

20 VICE CHAIRPERSON KING: Did you post the property?

21 MR. HARRIGAN: Yes.

22 VICE CHAIRPERSON KING: When?

23 MR. HARRIGAN: Fifteen days prior to --

24 VICE CHAIRPERSON KING: Today?

25 MR. HARRIGAN: Today, yes. It was actually February 1st when  
26 we posted it. Everything, all of the paper, has been turned in. An emergency came  
27 up with the gentleman who handles all of this for our office. He couldn't make it.

1 I told him I would come in here and come down here because  
2 there needed to be a representative. And they told us you would give us a new date  
3 today.

4 CHAIRPERSON REID: Okay. And we also have the letter  
5 requesting a postponement from Barry Flats.

6 MR. HARRIGAN: Right. That's who I'm representing.

7 CHAIRPERSON REID: Do we give them another date?

8 DIRECTOR DOBBINS: The Board consensus is going to grant  
9 the postponement?

10 CHAIRPERSON REID: What is the position of the Board in this  
11 matter?

12 VICE CHAIRPERSON KING: Grant the postponement and give  
13 them another date.

14 CHAIRPERSON REID: Okay. By consensus, yes.

15 MS. ROSE: The new date will be May the 6th at 9:30 a.m.

16 MR. HARRIGAN: May the 6th?

17 MS. ROSE: Yes.

18 MR. HARRIGAN: Okay. Thanks a lot.

19 MS. ROSE: The last preliminary matter relates to 16317, 1776  
20 Massachusetts Avenue Associates, Limited Partnership. We do not have an  
21 affidavit of posting in this case. Could you come forward?

22 The applicant is going to check for a copy of the affidavit in her  
23 file.

24 MS. PRINCE: Allison Prince with Wilkes, Artis, Hedrick and  
25 Lane.

26 We properly and timely posted and filed an affidavit. I'm just  
27 looking for our copy. I have a copy in the file if you would like for me to submit it for

1 the record. It demonstrates that the property was posted properly.

2 MS. ROSE: Then the Board can proceed with this case.

3 CHAIRPERSON REID: Is that the end of the preliminary matters  
4 that you have?

5 MS. ROSE: That's all the preliminary matters, yes.

6 CHAIRPERSON REID: Are there any other preliminary matters  
7 for the Board?

8 (No response.)

9 CHAIRPERSON REID: Okay. The first case?

10 CASE NUMBER 16314

11 MS. ROSE: The first case of the morning is 16314, the  
12 application of Tyrone Davis, pursuant to 11 DCMR 3108.1, for a special exception  
13 under Subsection 2003.1 to change a nonconforming use (sewing shop,  
14 dress-making design with no more than 5 students, to another nonconforming use,  
15 sale of clothes, retail, or, in the alternative, pursuant to 3107.2, for a variance from  
16 the use provisions of Subsection 201.1 to allow the retail sale of clothes on the first  
17 floor of an existing structure in an R-1-B district at premises 3603 18th Street,  
18 Northeast, Square 4204, Lot 191.

19 Would all persons planning to testify in this application please  
20 rise to take the oath? Would you raise your right hand?

21 (Whereupon, Mildred Linzy, witness in Case Number 16314, was  
22 duly sworn.)

23 MS. ROSE: You may come forward and be seated.

24 MS. LINZY: Mildred Linzy, 5613 Duchaine Drive, Lanham,  
25 Maryland 20706.

26 MS. ROSE: Okay. You may be seated. Give your statement.

27 MS. LINZY: I'm here to try to get the shop opened up. I know

1 it's not in the right zone and they said it would have to be rezoned. And I was going  
2 to use the shop as a boutique.

3 This shop would serve even the communities for the elderly  
4 people that cannot get downtown or to a shopping center. And during the summer  
5 months, I plan to employ a couple of the neighborhood teenagers to work in the  
6 shop there.

7 And adjacent to the shop is a beauty shop. So it would not be  
8 out of line with what's there, and it would not deface any of the property or obstruct  
9 anything that's in that neighborhood. It would be strictly a boutique shop for ladies'  
10 apparel there in this facility.

11 CHAIRPERSON REID: Are you familiar with the test that you  
12 have to prove in order to be able to get your relief that you're requesting? Are you  
13 familiar with the procedure here?

14 MS. LINZY: I am not quite familiar with the procedures. I've  
15 gone through a lot of things here to get to this point. And from here henceforth I  
16 don't know any of the procedures that I would have to adhere to or go through.

17 DIRECTOR DOBBINS: Madam Chairman, if she would possibly  
18 describe the property, the way it looks, the --

19 CHAIRPERSON REID: We are going to help you to work  
20 through what steps that you need to go through in order to be able to present your  
21 case properly. The property that you are referring to needs to be described so that  
22 we can get a better idea as to what the property is and how it's situated and the  
23 layout.

24 MS. LINZY: Okay. The property is the first floor level of a -- I  
25 think at the top is an apartment dwelling there. Adjacent to that, it's a beauty shop.

26 It has a big display window in the front of the property. There are  
27 no steps leading up to the property. It's flat on the ground. You enter directly from

1 the street.

2 The property on the inside, it's a big, open space. It has a  
3 restroom, a dressing room, and another little utility room there. It has a front  
4 entrance and a back entrance to the property.

5 VICE CHAIRPERSON KING: You say it has a display window in  
6 front?

7 MS. LINZY: Yes, it does.

8 VICE CHAIRPERSON KING: Therefore, it is totally unsuitable  
9 for residential use?

10 MS. LINZY: It is unsuitable for residential.

11 CHAIRPERSON REID: Okay. You have to meet a  
12 three-pronged test in order to be able to get the relief that you are trying to obtain  
13 granted to you. And that would be to demonstrate that there is something unique or  
14 different about your property that would make it an unusual circumstance.

15 And I would suppose that, looking at the picture here, it appears  
16 that this building could not be used as residential because of the fact that it had  
17 previously been used commercially and that the design of it is not conducive to  
18 residential use.

19 MS. LINZY: Right. In the previous years, I think back, way back  
20 when, maybe 30 years ago, it was a restaurant there before it became the sewing  
21 shop with the five employees or five students in that particular place.

22 It was never used as a residential place. That particular shop  
23 was never used for residential purposes.

24 CHAIRPERSON REID: Are you aware of any adverse impact in  
25 the community or the neighborhood that granting the application would cause; for  
26 example, traffic problems or any kind of parking problems or noise or anything that  
27 would be disruptive to the other people who live around you?

1 MS. LINZY: No. It would not be because mostly I will be doing  
2 this on appointments only. You know, it wouldn't be like a lot of traffic. And it's a  
3 small boutique shop. So it would not even attract teenagers or crowds or anything  
4 lie that because I wouldn't be really catering to that type of clientele there.

5 CHAIRPERSON REID: Okay. Is it a neighborhood facility?

6 MS. LINZY: Yes, but they have other little shops and things in  
7 that area. As I stated, it's a --

8 VICE CHAIRPERSON KING: But you yourself will be catering to  
9 people in the neighborhood?

10 MS. LINZY: Yes, I would.

11 CHAIRPERSON REID: We were not sure as to the type of relief  
12 that you were requesting, whether or not it was a special exception or a variance.  
13 And we are now going to make a determination as to which type of relief you are  
14 actually requesting.

15 MS. LINZY: I thought I had made that a special exception.

16 CHAIRPERSON REID: Special exception is what you are  
17 asking for?

18 MS. LINZY: Yes, right. That's right.

19 CHAIRPERSON REID: Okay. I have no problem with that.

20 MEMBER HINTON: It sounded to me from the description that  
21 the intent of the business is to serve the neighborhood, people who are in the  
22 neighborhood.

23 And that would make it a neighborhood facility, which would  
24 mean the relief that we could grant would be special exception, rather than variance.

25 CHAIRPERSON REID: Yes. Once we determine that it's a  
26 neighborhood facility, then that helps us to be able to guide you further.

27 VICE CHAIRPERSON KING: Have you had any conversations

1 with residents in the neighborhood or with the advisory neighborhood commission or  
2 anything of that nature?

3 MS. LINZY: No, I haven't, only with just getting the addressees  
4 and things. And I talked to the people in the beauty shop next door but none of the  
5 neighbors. I have not.

6 CHAIRPERSON REID: The ANC was noticed on the 8th of  
7 January. So they have been notified. They have not submitted anything to the  
8 record. So that's okay.

9 Any other discussion? Any other questions? Ms. Hinton?

10 MEMBER HINTON: No.

11 CHAIRPERSON REID: Ms. King, do you have any other  
12 questions?

13 VICE CHAIRPERSON KING: No. I'm ready to make a motion, if  
14 you wish.

15 CHAIRPERSON REID: All right.

16 DIRECTOR DOBBINS: Madam Chairman, if you're going to  
17 proceed with this as a special exception, --

18 CHAIRPERSON REID: A special exception.

19 DIRECTOR DOBBINS: -- you might want to ask about the  
20 operations in terms of the times and the days and things like that so you have  
21 testimony on record about that in the event that you need to make conditions  
22 associated with this.

23 CHAIRPERSON REID: What are your days of operation and the  
24 times of operation, for the record?

25 MS. LINZY: Okay. It will be Tuesdays through Saturdays, and  
26 the time will be from 9:00 to 5:00.

27 CHAIRPERSON REID: Are there any parties in support of this

1 application? Parties in opposition? Okay. Seeing none, we don't have a report  
2 from the Office of Planning, do we? Do we have a report from the Office of  
3 Planning?

4 DIRECTOR DOBBINS: No, there's no report.

5 CHAIRPERSON REID: No report?

6 DIRECTOR DOBBINS: No staff report in the record. But you  
7 probably want to ask also about parking to make sure that most of the traffic is either  
8 pedestrian traffic and neighborhood traffic --

9 CHAIRPERSON REID: Most of the people that come to your  
10 shop come from the neighborhood. Are they pedestrians or do they have to drive to  
11 your shop?

12 MS. LINZY: Oh, no. They would be walking. It's nearby for  
13 pedestrians.

14 CHAIRPERSON REID: Most of them are pedestrians?

15 MS. LINZY: Right, yes.

16 CHAIRPERSON REID: All right. How many people work at your  
17 shop?

18 MS. LINZY: Well, starting off, it will be two people there.

19 CHAIRPERSON REID: Starting off?

20 MS. LINZY: Yes.

21 CHAIRPERSON REID: You mean that --

22 MS. LINZY: And then, like I said, in the summer months, we  
23 plan to hire, you know, a couple of the teenagers to do things around in the shop.  
24 So it will be four during the summer and two during the regular seasons.

25 CHAIRPERSON REID: Two to four?

26 MS. LINZY: Yes.

27 MEMBER KRESS: Two plus yourself or --

1 MS. LINZY: No. One plus myself.

2 CHAIRPERSON REID: And how do they get to the facility? Do  
3 they walk, too, or do they --

4 MS. LINZY: The person that will be working with me?

5 CHAIRPERSON REID: Yes.

6 MS. LINZY: It would be my husband. So we would come  
7 together.

8 (Laughter.)

9 CHAIRPERSON REID: Okay. And then the summer, the other  
10 two --

11 MS. LINZY: From the neighborhood.

12 CHAIRPERSON REID: In the neighborhood?

13 MS. LINZY: Right.

14 CHAIRPERSON REID: They would be walking as well?

15 MS. LINZY: Right.

16 CHAIRPERSON REID: All right. Do you have any closing  
17 remarks?

18 MS. LINZY: No. Just I'm anxious about doing this because I  
19 think it would be a help to the community there, and it will alleviate some of the elder  
20 -- I understand that this is a community where we have elderly people. And they  
21 cannot get out to shopping centers and downtown, bus transportation or however.  
22 And I feel like this would be a community thing. And it will be a help to the  
23 community.

24 Plus, it will enhance, you know, the students or teenagers that  
25 are around for me to get the people in during the summer to work, during the  
26 Christmas season to work, where they will not have to travel or spend transportation  
27 money to get to other facilities to work.

1                   So I think this would be a good community shop there. And it will  
2                   enhance the community a great deal.

3                   CHAIRPERSON REID: All right. You might want to request a  
4                   summary order, which is a request for a decision today, a bench decision and  
5                   summary order.

6                   MS. LINZY: Pardon me?

7                   CHAIRPERSON REID: You might want to request a bench  
8                   decision.

9                   MS. LINZY: Okay.

10                  CHAIRPERSON REID: A bench decision means that you will  
11                  get a response today; and a summary order, which means you'll get an expedited  
12                  order.

13                  MS. LINZY: Okay. I would request --

14                  CHAIRPERSON REID: So request -- okay.

15                  MS. LINZY: I will request a decision today.

16                  CHAIRPERSON REID: Okay. Board members?

17                  VICE CHAIRPERSON KING: I would move that we grant the  
18                  special exception. It's clear that the property is not useable for residential purposes.  
19                  There seems to be not only no adverse community impact, but it seems to me that  
20                  this operation would be an asset to the community and would due to the hours of  
21                  operation and the small number of staff people involved not have a significant  
22                  impact in terms of traffic and parking.

23                  And, therefore, I move that we give a summary judgment and an  
24                  expedited order in order to grant the application.

25                  MEMBER KRESS: I agree, and I would second that motion.

26                  DIRECTOR DOBBINS: Does the Board intend to put the  
27                  conditions associated with number of employees and hours as part of the decision?

1 VICE CHAIRPERSON KING: It's a small shop and a small  
2 operation. I'm not sure that we need to. Do you think we need to?

3 DIRECTOR DOBBINS: I think you do. It's a special exception.

4 VICE CHAIRPERSON KING: Okay. The conditions are that the  
5 hour of operation shall be Tuesday through Saturday from 9:00 a.m. to 5:00 p.m.  
6 and that there shall not be more than four employees. Anything else?

7 CHAIRPERSON REID: Anything else?

8 (No response.)

9 CHAIRPERSON REID: Okay. Ready to vote? All those in  
10 favor?

11 (Whereupon, there was a chorus of "Ayes.")

12 CHAIRPERSON REID: Those opposed?

13 (No response.)

14 MS. ROSE: Staff will record the vote as four to zero with Ms.  
15 King, Ms. Kress, Ms. Hinton, and Ms. Reid to grant the application with conditions.

16 CHAIRPERSON REID: And to grant summary order?

17 MS. ROSE: And a summary order, yes. That's all. Thank you.

18 CASE NUMBER 16316

19 MS. ROSE: The next application is 16316 of The Catholic  
20 University of America, pursuant to 11 DCMR 3108.1, for a special exception under  
21 Section 210 for further processing of an approved campus plan to allow additions to  
22 an existing dining hall at premises 620 Michigan Avenue, Northeast, Squire 3821,  
23 Lot 43.

24 Would all persons planning to testify in this application please  
25 rise to take the oath? Please raise your right hand.

26 (Whereupon, all witnesses in Case Number 16316 were duly  
27 sworn.)

1 MS. ROSE: You may be seated.

2 CHAIRPERSON REID: There is a request from the ANC for  
3 waiver for late delivery. Do we have to deal with that as a preliminary matter before  
4 we begin? No.

5 There is a letter from the ANC for waiver of the seven-day  
6 requirement. Do we want to vote on that or do we just --

7 VICE CHAIRPERSON KING: Grant it.

8 CHAIRPERSON REID: Grant the waiver? Okay. We will so  
9 waive for the ANC. All right.

10 Ms. Prince, do you want to continue? Ms. Prince, Board  
11 members feel that we have read the record and would like to probably expedite this  
12 particular hearing.

13 We are all familiar with the case. And we are going to check to  
14 see. If there is no opposition, then we'll basically just ask questions to clarify areas  
15 that may be cloudy and proceed in that manner.

16 Is there anyone here in opposition to this particular application?

17 (No response.)

18 CHAIRPERSON REID: All right. Board members? If you'll  
19 maybe just give a brief summation? Just make it --

20 MS. PRINCE: Sure.

21 CHAIRPERSON REID: Just give us the salient points for the  
22 record.

23 MS. PRINCE: I am Allison Prince with Wilkes, Artis, Hedrick and  
24 Lane.

25 This is a very minor special exception application involving a  
26 3,500 square foot addition to the existing north dining hall on the campus of Catholic  
27 University.

1                   The 1990 campus plan calls for such an addition. This addition,  
2                   however, is only a fraction of the size of what was originally proposed, which was  
3                   25,000 square feet.

4                   Susan Purvi from Catholic is here to talk about it. Otherwise, I'm  
5                   happy to submit her testimony for the record. Kenneth Terzian, the architect, is also  
6                   here.

7                   But, in summary, there really will be no adverse impacts. The  
8                   building has an interior location. There will be no increase in enrollment, no change  
9                   in traffic patterns, just simply no effect as a result of the addition.

10                  So I urge you to grant immediate approval of the application if  
11                  there is no opposition. We're not aware of any opposition.

12                  VICE CHAIRPERSON KING: You've met with the ANC, have  
13                  you? And this material that we waived in supports them? And there are no  
14                  residential properties anywhere near, located anywhere near, the dining hall?

15                  MS. PRINCE: Not anywhere near. The closest dividing property  
16                  is Metro tracks.

17                  CHAIRPERSON REID: Were you going to make a brief  
18                  statement as well?

19                  MS. PRINCE: If you'd like me to have the witnesses present  
20                  their testimony, I can.

21                  CHAIRPERSON REID: No.

22                  MS. PRINCE: Otherwise, we can submit it for the record.

23                  CHAIRPERSON REID: No. They don't have to. That's not  
24                  necessary. I just thought if they desired to say something, I would give them the  
25                  opportunity.

26                  MEMBER KRESS: I would just also note for the record that we  
27                  did hear from Public Works. And Public Works stated that the project had no

1 measurable adverse impact as well.

2 CHAIRPERSON REID: Any questions?

3 VICE CHAIRPERSON KING: No, none at all.

4 CHAIRPERSON REID: Ms. Hinton?

5 MEMBER HINTON: No questions.

6 CHAIRPERSON REID: No questions. Okay. We did receive a  
7 letter from the ANC, ANC-5C. And they are in support of the application. They had  
8 a -- wait one second. Let me see where that's in here. There is a quorum, and they  
9 are in support. They would be afforded the great weight that they are entitled to.

10 Are there any persons in support who would like to speak?

11 We've already asked about opposition.

12 (No response.)

13 CHAIRPERSON REID: All right. Closing thoughts by the  
14 applicant?

15 MS. PRINCE: I would just ask for the Board's immediate  
16 approval of this application and the granting of a summary order.

17 CHAIRPERSON REID: Do you have a motion?

18 VICE CHAIRPERSON KING: I move that we issue a summary  
19 order approving this application. It is well within the framework of the approved  
20 campus plan. There is clearly no adverse community impact. And, in fact, the  
21 advisory neighborhood commission has supported it.

22 And Catholic University, unlike some of their brother and sister  
23 universities, has the luxury of having a much larger campus, not abutting dissatisfied  
24 neighbors. I congratulate them on that.

25 And I move that we grant the application and issue a summary  
26 order.

27 MEMBER KRESS: I second.

1 CHAIRPERSON REID: All those in favor?

2 (Whereupon, there was a chorus of "Ayes.")

3 CHAIRPERSON REID: All those opposed?

4 (No response.)

5 MS. ROSE: Staff will record the vote as four to zero with Ms.

6 King, Ms. Hinton, Ms. Kress, and Ms. Reid to grant the application and issue a

7 summary order.

8 CASE NUMBER 16317

9 MS. ROSE: The next application is 16317, the application of

10 1776 Massachusetts Avenue Associates, Limited Partnership, pursuant to 11 DCMR

11 3108.1 under Subsection 508.1, to construct a new office building in an SP-1 district

12 at premises 1750 Massachusetts Avenue, Northwest, Square 158, Lots 818, 47, 48,

13 and 49.

14 Would all persons planning to testify in this application please

15 rise to take the oath? Would you raise your right hand?

16 (Whereupon, all witnesses in Case Number 16317 were duly

17 sworn.)

18 MS. ROSE: You may be seated.

19 MS. PRINCE: Good morning, members of the Board. I'm

20 Allison Prince with Wilkes, Artis, Hedrick and Lane. And I'm here today on behalf of

21 1776 Massachusetts Avenue Associates, Limited Partnership, owner of the subject

22 site.

23 We are here today seeking special exception approval to allow

24 for the construction of a new office building on a site that is currently used as a

25 parking lot.

26 The proposed building will fill in the gap in the existing

27 streetscape along Massachusetts Avenue, which is highlighted by numerous historic

1 buildings. This site is located in two historic districts, the Dupont Circle and  
2 Massachusetts Avenue historic districts.

3 The design of the building has been granted conceptual design  
4 approval from the Historic Preservation Review Board. Last month the HPRB found  
5 that the building was highly compatible with the historic district.

6 As the architect will describe in much greater detail, the building  
7 has been designed in a manner that is sensitive to neighboring properties. For  
8 example, the lot occupancy at 50 percent allows for significant open space, far more  
9 open space than would be provided if they had built out to the permitted 80 percent  
10 lot occupancy.

11 Last month ANC-2B voted not to oppose the application. I  
12 should note that we didn't find a copy of the letter in your record, although one was  
13 sent to us. So if you don't have it, I have it for you.

14 MEMBER KRESS: We have it.

15 MS. PRINCE: Great. The Department of Public Works also  
16 expressed no opposition to the application with one exception. DPW noted that the  
17 proposed semicircular drive does not comport with DPW's standards and  
18 recommended disapproval of that drive.

19 As you are aware, this Board does not have jurisdiction over  
20 public space. For that reason, we would urge you to allow the applicant to work  
21 through this issue directly with the Department of Public Works and the Historic  
22 Preservation Review Board, which are the two bodies that have the appropriate  
23 jurisdiction.

24 I should note that the Historic Preservation Review Board did  
25 grant conceptual design approval to the one-way drive in its meeting last month.

26 In summary, the proposed building has been designed in a  
27 manner that is sensitive and highly compatible with the existing neighborhood. The

1 use, height, bulk, and design are in harmony with existing buildings.

2 There will be no dangerous or objectionable traffic conditions.

3 And we strongly urge your favorable consideration of this application.

4 We have three witnesses: Stuart Miller from the limited  
5 partnership that owns the site; Steven Muse from Muse Architects, the project  
6 architect; and Bob Morris, the traffic engineer. I'd like to proceed now with the  
7 testimony of Stuart Miller if there are no questions.

8 MR. MILLER: Good morning, members of the Board. My name  
9 is Stuart Miller. And I am the Managing Agent of 1776 Massachusetts Avenue  
10 Associates, Limited Partnership, owner of the subject site.

11 The limited partnership also owns the 1776 Massachusetts  
12 Avenue building immediately west of the subject site.

13 As Ms. Prince has described, the property is currently being  
14 used as an accessory parking lot for 1776 Massachusetts Avenue. The lot contains  
15 approximately 35 parking spaces.

16 Prior to its use as accessory parking for 1776 Mass. Avenue, the  
17 lot served as accessory parking for 1746 Massachusetts Avenue, a building located  
18 immediately east of the subject site that was formerly occupied by the Canadian  
19 Chancery.

20 We are proposing the construction of a small, five-story office  
21 building that will be ideal for a single user. As architect Steven Muse will describe,  
22 the design of the building will be compatible with the Dupont Circle and  
23 Massachusetts Avenue historic districts, in which this property is located.

24 The building relates well with its immediate neighbors and  
25 provides as an appropriate transition between the historic 1746 Massachusetts  
26 Avenue building to the east and the larger and the more modern 1776  
27 Massachusetts Avenue building to the west.

1                   We have made several efforts to ensure that the building will not  
2                   create any adverse impacts on adjacent properties. For example, the building will  
3                   occupy only 50 percent of the site while 80 percent lot occupancy is permitted.

4                   In addition, the rear yard is greatly in excess of the minimum  
5                   required under the zoning regulations. The generous rear yard will allow significant  
6                   light and air into the interior of the square.

7                   The building design will be complemented by a small,  
8                   semicircular driveway off of Massachusetts Avenue. We believe that this driveway,  
9                   which has been approved in concept by the Historic Preservation Review Board, is  
10                  critical for the building.

11                  The driveway will be extremely helpful to both the users of the  
12                  building and the immediate neighborhood because it will reduce traffic congestion  
13                  immediately in front of the building. The drive will also only be for one-way traffic. It  
14                  will serve as a drop-off only, and parking will be prohibited in this driveway.

15                  As the architect demonstrated to the Historic Preservation  
16                  Review Board, the drive is highly consistent with the historic districts. We strongly  
17                  urge you to approve the driveway as proposed with the strict ban on the parking in  
18                  the driveway.

19                  In summary, we believe we are proposing an appropriate,  
20                  well-designed use for the site. The building will be an important addition to the  
21                  streetscape and its use, height, bulk, and design will be in harmony with the existing  
22                  uses and buildings in the neighborhood.

23                  VICE CHAIRPERSON KING: Did Ms. Prince say that we didn't  
24                  have the authority and should not fuss with the driveway?

25                  MS. PRINCE: Well, we showed the driveway in the plans. And I  
26                  would --

27                  MR. MORRIS: You'll see it in the --

1 MS. PRINCE: I would ask your approval of the plans with full  
2 recognition that DPW and HPRB have ultimate jurisdiction of the driveway.

3 VICE CHAIRPERSON KING: Okay.

4 MS. PRINCE: So yes, technically we're not asking you to  
5 approve the driveway. We're asking you to do nothing with the driveway. But it  
6 shows on the plans.

7 VICE CHAIRPERSON KING: Okay.

8 MS. PRINCE: If the Board has no questions for Mr. Miller, we  
9 can proceed with the testimony of Steven Muse, the project architect.

10 VICE CHAIRPERSON KING: I am going to have some  
11 questions about access to the parking, but I think it would be easier to do that after  
12 seeing the plans.

13 MS. PRINCE: Great.

14 MR. MUSE: I think you have a set of reduced drawings in front  
15 of you that might make it a little bit easier to follow the presentation that we're about  
16 to go through. If you don't have a set, we have some more copies with us here  
17 today.

18 What I'm going to do first is if you turn to Page 2, up in the upper  
19 left-hand corner, we're going to review some of the factual backup to this building  
20 that we're proposing today.

21 The lot, as Mr. Miller has described, is two lots east of the corner  
22 of 18th and Mass. Ave. It is immediately adjacent to the Moore House and to 1776  
23 Mass. Ave.

24 It's a lot that's being used as a parking lot today. This lot is  
25 zoned SP-1, which is why we're here today. The lot size presently is slightly greater  
26 than 13,000 square feet.

27 The allowable lot occupancy is 80 percent. The floor-area ratio

1 for this site is 2.5, which allows us to build a building slightly less than 33,000 square  
2 feet.

3 There's a height limit on the property of 65 feet, and there is an  
4 additional allowance of 18 and a half feet for architectural and mechanical features.

5 There's no front yard required. There is no side yard required.  
6 But if we do produce a side yard, it has to be two inches in width for every foot of  
7 height in the building, which would be a side yard of ten feet, ten inches.

8 There is a rear yard requirement of two and a half inches of  
9 width for every foot of height. And, once again, at 65 feet, that gives us a 13-foot,  
10 6-inch rear yard setback.

11 We do have parking required on the site. When you do the  
12 equation for parking and take the deduct allowed for the proximity to Metro, we are  
13 required to park 13 spaces on the site.

14 With that as the sort of zoning backup to what we're doing, what  
15 we're proposing is a 5-story building that occupies 53 percent of the lot. And, once  
16 again, this is in or as related to the allowable 80 percent lot coverage.

17 We are proposing to build 32,870 square feet, which is the  
18 maximum allowed on the property. We're doing this with a building that is slightly  
19 greater than 7,000 square feet for the first 4 floors and slightly less than 5,000  
20 square feet for the fifth floor. We are proposing to build to the 65-foot height limit  
21 and also to build to the 18-foot, 6-inch limit for the mechanical penthouse.

22 We have a two-level parking garage below grade. We're  
23 proposing to put 32 spaces on the property. And, once again, this is related to the  
24 13 spaces that are required.

25 With that as sort of the zoning information behind what we're  
26 doing, I'll start with the site plan. Starting with the front of the property on  
27 Massachusetts Avenue, we are proposing to build to the property line. We think this

1 is very important to maintain the wall of buildings that exists presently along  
2 Massachusetts Avenue.

3 We think it's a terrific block of buildings. We've always seen this  
4 lot as what we call the missing tooth in the block. And we're proposing to fill that in  
5 with a wall at the front edge of the property.

6 To the east of the property next to the Moore House, we're also  
7 proposing to build right to the property line. The Moore House, as you know, sits  
8 back from the property line approximately ten feet for most of its distance. So this  
9 does give us a side yard to the east. And we're proposing to build to that property  
10 line.

11 There is a small portion of the Moore House that does come out  
12 to the property line and meets our property with a blank party wall. And we're  
13 proposing to build our building up against that party wall and put the core of our  
14 building against that side.

15 To the west of the property adjacent to 1776, we are proposing  
16 to have a side yard. This would be the ten-foot, ten-inch side yard, as required by  
17 zoning.

18 We're doing this for three reasons: number one, to allow the  
19 windows that exist presently on 1776 to remain; number two, to allow us to have  
20 windows on our building to that side; and, number three, we believe that the balance  
21 of the side yard created by the Moore House and the side yard that we'll be creating  
22 to the west gives a good balance to the presence of this building on the avenue.

23 And the fourth side is the south edge of the property. But, once  
24 again, we have a zoning requirement of a 13-foot, 6-inch setback. We are  
25 proposing to hold this building back an average of 65 feet from the rear property line.

26 We're doing this for several reasons as well. Number one, as I  
27 will mention in a few minutes, this helps us accommodate all parking and service off

1 the rear of the property.

2 But, more importantly, this allows us to maintain a very wide and  
3 open courtyard to the rear of the property. This is a wedge-shaped block, and we  
4 have one of the deeper sites on the block. This allows us to maintain a good  
5 condition of light and air, which is both good for our building and also good for the  
6 neighbors.

7 With that as sort of the four edges of this building, this gives us  
8 two spaces to design. The first one is to the south. And, as I mentioned a few  
9 seconds ago, one of the nice things about this property is that we do have alley  
10 access off of 18th Street.

11 So ramping down to parking, the two levels of parking below this  
12 building and service on the main level of this building, we're able to access all of this  
13 off of the alley on 18th Street. So we don't have to have any access off of Mass.  
14 Ave.

15 VICE CHAIRPERSON KING: Where is 17th? Where is the alley  
16 that comes from 17th Street?

17 MR. MUSE: No. It's 18th. No. There's an alley off of 18th that  
18 enters behind 1776 and ends in this property. It's not a through alley.

19 VICE CHAIRPERSON KING: And how did the cars proceed  
20 when they came in and came out?

21 MR. MUSE: When you're driving in off of 18th?

22 VICE CHAIRPERSON KING: Yes.

23 MR. MUSE: Then you're ramping down to parking below.

24 VICE CHAIRPERSON KING: Now, is it possible in that alley to  
25 have two cars, one going in each direction? I mean, what if somebody is coming out  
26 when somebody else is coming in?

27 MR. MUSE: We have a ten-foot-wide alley. We also have

1 dimension. But that's behind 1776. And we'll be working to use both of those  
2 together to accommodate the traffic through there.

3 VICE CHAIRPERSON KING: So two-way traffic will be possible  
4 in that alley?

5 MR. MUSE: Yes.

6 VICE CHAIRPERSON KING: The second space that we have to  
7 work with is the one in front of the building. And, as Mr. Miller mentioned, we are  
8 proposing a drop-off in this location.

9 We're doing this for two reasons. Number one, we believe that  
10 it's an important formal precedent. Most of the buildings along this side of Mass.  
11 Ave. do have this forecourt situation. Again, it is an important precedent to maintain  
12 formally in terms of the presence of this building on the avenue.

13 But, number two, unlike the other buildings, we have 32 parking  
14 spaces below this building. We are not making a forecourt per se but making a  
15 single-lane drive, as you can see here on the drawing, as compared to the size of  
16 the one on the Moore House.

17 This would not be used for parking, simply used for drop-off. We  
18 feel that it would ease the traffic condition that exists presently on the avenue.

19 VICE CHAIRPERSON KING: In that regard, what does DPW  
20 object to about it? Why is it? Because clearly from the written material I have seen,  
21 there is a preponderance of circular driveways in front of the buildings on that block.  
22 What does DPW object to?

23 MR. MUSE: They have requirements based on the angle of the  
24 drive coming into the property --

25 VICE CHAIRPERSON KING: I see.

26 MR. MUSE: -- and also the width of the drive.

27 VICE CHAIRPERSON KING: I see.

1 MR. MUSE: I think your comment is well-taken. None of the  
2 drives on this avenue conform to their requirements.

3 VICE CHAIRPERSON KING: And do they --

4 MR. MUSE: They're preexisting.

5 VICE CHAIRPERSON KING: Preexisting to the DPW regs? Is  
6 that it?

7 MR. MUSE: Yes.

8 VICE CHAIRPERSON KING: I see.

9 MR. MUSE: Moving to the next, one thing that I probably just  
10 should pass out to make it easier for you to view this, to put this in context, the site  
11 that we're dealing with is the parking lot in the center of that middle row.

12 We'll be glad to pass this row of photographs down so you can  
13 see the buildings that are in the immediate context. We have photographs of the  
14 buildings along our side of Mass. Ave., the condition behind our site to the south,  
15 and also the condition directly across the street on Massachusetts Avenue.

16 The next set of drawings is both the floor plan for Floors 2  
17 through 4 and then the top floor, where, once again, we are making a terrace on the  
18 south side of the building and reducing the square footage of that floor from about  
19 7,000 square feet to about 5,000 square feet.

20 The roof plan is a mechanical penthouse that all the mechanical  
21 equipment has been sized schematically and will all be held within this penthouse.  
22 And none of this equipment will be visible from the street.

23 Next plan is the two levels of parking down below, once again  
24 ramping off the deep section of the site to the south and accommodating 32 parking  
25 spaces below this building.

26 VICE CHAIRPERSON KING: Will those be used for visitors or  
27 for the workers in the building?

1 MR. MUSE: Both. The next drawing, the site section, might be  
2 the most telling about our strategy towards this site, coming in off of Massachusetts  
3 Avenue and creating a 65-foot wall to match the height limit.

4 Stepping back for the mechanical penthouse, stepping down with  
5 the rooftop terrace for the fifth floor, and stepping down to the very deep courtyard to  
6 the rear, once again, the average is 65 feet from the rear of the property, as  
7 opposed to the required 13-foot, 6 inches, and then the two levels of parking below.

8 When designing the main facade of this building, we were  
9 looking at several different issues. First was the presence of a number of the really  
10 wonderful buildings along this block. We wanted our building at 1750 to match the  
11 presence that they did have.

12 And building to the 65-foot limit pretty much puts us at the  
13 cornice line of the Moore House to the east. And with adding the side yard to the  
14 west to complement the ten-foot side yard between the Moore House and our site,  
15 we have what appears to be a freestanding presence, which, once again, is very  
16 much in keeping with the rest of the buildings along this block.

17 We have fit the five floors of our building within the height of the  
18 four floors of the Moore House. We have a ground floor of approximately 12 feet, 6  
19 inches in height. And this allows us to align our ground floor cornice with the ground  
20 floor cornice of the Moore House. And we have introduced the arch over the entry  
21 to pick up some of the nicer arch features of the Moore House itself.

22 We have then compressed three floors of approximately nine  
23 feet of ceiling height into the midsection of this building and created another cornice  
24 at that point, which pretty much aligns with the cornice of the Moore House as well.  
25 We have topped it off with the penthouse of the building. And then we've set back to  
26 the mechanical penthouse itself.

27 While we looked to the east for the basic proportions of these

1 facades. We looked to the west, to the idea that these office buildings really have to  
2 have more glass to function well as an office building.

3 We've entered this as a double-hung window system, of two  
4 windows in a bay to the left-hand side, three windows in the center, and two  
5 windows to the right. That gave us a system that allows for a lot of glass but still  
6 keeps the window system in scale with the more historic buildings on the block.

7 In looking at materials for this building, as you see from the  
8 photographs that we passed out, further to the east along Mass. Ave., there are  
9 some really wonderfully rich masonry buildings, very deep reds and oranges, that  
10 we think are terrific to work with in the context of this block.

11 Our immediate neighbors and to the north side of the street is  
12 what we call the warm gray side of the street. It's limestone and pre-cast, very much  
13 in the warm gray materials. We have blended these two to come up with the  
14 material selection for this building.

15 The primary material will be a deep red masonry. What you see  
16 rendered in the drawing is slightly more orange than we would like to see it in the  
17 rendering. And I will talk about that in a second. It is intended to get very deep red  
18 masonry. And it will be complemented by the banding of limestone.

19 Now, with many Washington buildings, as you leave the primary  
20 facade and turn the corner, you sort of bail out into a different system. We're  
21 maintaining the same system of design throughout the four facades of this building.

22 So as we turn to the west and face 1776 Mass., you see that we  
23 have the same system of two windows to the front, seven in the middle, two  
24 windows paired next to it, capped by the mechanical penthouse, and then stepping  
25 down to the smaller section to the south of the site.

26 At the south elevation, the four-story section that you see here is  
27 the portion of the building that is projected to the south. We then step back to the

1 top floor and to the mechanical penthouse; and on the east side of the building, a  
2 pair of windows to the south, a pair of windows to the north, and a blank section in  
3 the middle, where we're up against the Moore House and where we put the core of  
4 the building.

5 This is a sketch that we made early on in the office to show Mr.  
6 Miller. The notion behind this was to show this section of the block and to show how  
7 this building would fit in. As I mentioned before, we have always seen this as the  
8 missing tooth of this block. And we always look at our work as only being successful  
9 if we've really made the whole block better and if this building really fits in well.  
10 That's what we've intended to do.

11 I think Mr. Miller liked this drawing, but, at the same time, we did  
12 go one step further with a rendering, which you have in front of you. We think it's a  
13 pretty good description of this building with three exceptions.

14 Number one, we feel that in the rendering, the balustrade is  
15 being shown heavier than we'd like it to be. What appears to be a single line is  
16 really meant to be much more voided than what we have here. And that's a detail  
17 that we're working on.

18 Number two, the masonry that you see, which is coming out  
19 slightly orangey in these photographs of this rendering, is intended to be a very deep  
20 red masonry.

21 And, number three, the drop-off in front -- this rendering was  
22 made before we really studied the drop-off. And it's not rendered as a single-lane  
23 drive, which is the intention of what you see behind the site plan.

24 And, with that, we'd be glad to answer any questions that you  
25 have.

26 VICE CHAIRPERSON KING: Where are you located in  
27 relationship to 18th Street and, say, the Yeager Clinic and so forth? Are you

1 mid-block? Where are you in that block?

2 MR. MUSE: Eighteenth Street is -- yes?

3 MR. MORRIS: Yeager is right here.

4 VICE CHAIRPERSON KING: Oh, that's 18th Street?

5 MR. MORRIS: Yes.

6 VICE CHAIRPERSON KING: Oh, the Yeager Clinic is right  
7 there. So you're standing on 18th Street?

8 MR. MUSE: Standing on 18th Street.

9 VICE CHAIRPERSON KING: Okay. Great. I know where it is.

10 MR. MUSE: South side of Mass. Ave., standing on 18th Street.

11 VICE CHAIRPERSON KING: And Sites is down at this end;  
12 right?

13 MR. MUSE: Yes.

14 VICE CHAIRPERSON KING: Okay. Thanks.

15 MR. MUSE: Once again, we'd be glad to answer any questions  
16 you have about this building.

17 CHAIRPERSON REID: Ms. Hinton?

18 MEMBER HINTON: No questions.

19 CHAIRPERSON REID: Ms. Kress?

20 MEMBER KRESS: I don't have a question. I would just like to  
21 make a comment. I did this morning on my way in stop and look at the site in the  
22 context of the preparation I had done for the meeting today.

23 And I personally feel that this is a as-designed very appropriate  
24 design, that it's very well-scaled, fits nicely into the neighborhood in the context.  
25 And I think it would be a very good addition in that area.

26 MR. MUSE: Thank you.

27 MS. PRINCE: I would like to proceed with our final witness, Bob

1 Morris, our traffic engineer.

2 MR. MORRIS: Good morning. I'm Robert L. Morris, traffic  
3 engineer and transportation planner; my home address, 9109 Rouen Lane,  
4 Potomac, Maryland 20854.

5 I have prepared a traffic analysis, which I believe is in the  
6 material before you. I'll just touch on the highlights, if I may. The traffic volumes I've  
7 indicated in my report and shown the levels of service at adjacent intersections,  
8 Levels C and D, which are well within the acceptable limits as determined by the  
9 Department of Public Works.

10 The most important aspect for the transportation viewpoint is  
11 availability of public transportation. We have six buses that go through Dupont  
12 Circle. And, of course, we have the red line Metrorail station at Dupont Circle within  
13 a two-minute walk of this site.

14 Mr. Muse has gone over in detail the parking aspects. The  
15 circular driveway, I don't know if there's anything I can add to that. The very small  
16 trip generation that would result from this building would certainly have no adverse  
17 impact on traffic conditions in the area.

18 And so my bottom line is that from a traffic engineering  
19 viewpoint, this is an appropriate use of the subject site.

20 CHAIRPERSON REID: Are there any questions for Mr. Morris?

21 MEMBER HINTON: I have one thing. Could you address the  
22 question about the alley since the official alley width is only ten feet, which won't  
23 allow two-way traffic?

24 How does the Board know that the space on this adjacent lot will  
25 always be available for traffic to get to this building?

26 MR. MORRIS: The owner of the adjacent property has provided  
27 that. And that I suppose could be a condition.

1 MS. PRINCE: Yes. We do have common ownership. So we're  
2 in a unique position to be able to control the use of that open space at the rear of  
3 1776.

4 VICE CHAIRPERSON KING: And should the new building be  
5 sold to someone else, would there be an easement to allow the use of the 1776  
6 property for --

7 MS. PRINCE: That is certainly something that could be  
8 considered if that's an issue for the Board.

9 MEMBER HINTON: It surprises me that it wasn't an issue for  
10 DPW. Is this normal that two-way traffic would be expected to use a ten-foot alley?

11 MR. MORRIS: Ms. Hinton, it is normal. Ms. King asked about  
12 the access from 17th Street, I believe. And if you're familiar with the alley, the alleys  
13 come in from both directions, but they don't connect.

14 And if you're familiar with that, it's a two-way alley. And it's a  
15 very narrow ten feet as you come out into 17th Street. And it's operated like that for  
16 many, many years.

17 VICE CHAIRPERSON KING: It doesn't go all the way to the  
18 property of 1750?

19 MR. MORRIS: That's correct. It does not. Only the alley  
20 coming from 18th Street goes to 1750.

21 VICE CHAIRPERSON KING: And the two alleys are the same  
22 width. Is that correct?

23 MR. MORRIS: Well, they vary in width, but as you come in to  
24 17th Street, it's, as I say, really a narrow ten feet. But this alley behind 1750 is ten  
25 feet plus, as already stated, the additional width from 1776.

26 MEMBER KRESS: What is that additional width? Do you know?

27 MS. PRINCE: About eight feet, as I recall.

1 MEMBER HINTON: So the parking that is on the lot now  
2 currently uses that alley to get into the parking lot?

3 MR. MORRIS: That's correct.

4 MEMBER HINTON: So basically this proposal isn't changing the  
5 number of cars that are going to be using the alley. Is that right?

6 MR. MORRIS: That's correct.

7 VICE CHAIRPERSON KING: How many parking spaces are  
8 there in the present lot?

9 MR. MILLER: Thirty-five.

10 VICE CHAIRPERSON KING: So it reduces by three, actually,  
11 except that there will be visitors.

12 MEMBER HINTON: That's all I have.

13 CHAIRPERSON REID: Okay.

14 VICE CHAIRPERSON KING: Where is the trash pickup?  
15 Where is the dumpster?

16 MR. MORRIS: Seventeen seventy-six?

17 VICE CHAIRPERSON KING: Seventeen fifty.

18 MR. KIRWAN: Right here.

19 CHAIRPERSON REID: Do you have any other witnesses?

20 MS. PRINCE: I have no other witnesses.

21 CHAIRPERSON REID: Okay. All right. We'll move now to the  
22 staff reports, the report from the ANC. I didn't see a letter in my packet from the  
23 ANC.

24 MEMBER KRESS: I have it.

25 CHAIRPERSON REID: I think that I have it. I had a note that --  
26 okay. We do have a letter from ANC-2B. And it states that they unanimously  
27 passed the application, resolution to grant the application, and that they're not

1           opposed to the granting of the special exception to allow for construction at 1750  
2           Mass. Avenue.

3                           It does not indicate that there was a quorum present. So,  
4           therefore, while we acknowledge their submission, it cannot be afforded the great  
5           weight that they would normally be entitled to.

6                           Okay. Persons in support of this application? Those that are in  
7           opposition to the application?

8                           VICE CHAIRPERSON KING: We have two letters on record  
9           from Stuart Rubens and from Gordon Odgod.

10                          CHAIRPERSON REID: Are you familiar with the opposition  
11           listed, these two letters, Ms. Prince?

12                          MS. PRINCE: I am not familiar with the second letter. It was not  
13           in the record as of 4:00 o'clock yesterday.

14                          CHAIRPERSON REID: Yes. We just received that.

15                          MS. PRINCE: I am familiar with the letter from the resident of  
16           the Palladium. At the ANC meeting, the ANC after considering some of the  
17           comments from Palladium residents still voted unanimously to support the  
18           application.

19                          The Palladium issues were light in air. They basically wanted  
20           the lot to be maintained as open space to preserve their views, which the ANC did  
21           not find particularly compelling. Nor did we.

22                          CHAIRPERSON REID: That you talked to --

23                          MS. PRINCE: We did. I spoke to the resident of the Palladium,  
24           who appeared at the ANC meeting. And his issue was he felt that the lot should be  
25           maintained as open space.

26                          CHAIRPERSON REID: Yes.

27                          MS. PRINCE: There wasn't a lot to work with.

1 CHAIRPERSON REID: Okay. In the other -- go ahead. You  
2 can go ahead.

3 VICE CHAIRPERSON KING: Do you want a copy of the Odgod  
4 letter so that you can respond to the issues? We might give them a minute to --

5 MEMBER KRESS: Particularly Number 3, particularly Item  
6 Number 3 at the bottom.

7 VICE CHAIRPERSON KING: Yes.

8 MS. PRINCE: This appears to be a letter from another  
9 Palladium resident. And that request in Number 3 appears to be quite reasonable.  
10 And since Mr. Miller represents 1776 as the owner of both sites, that's a commitment  
11 that we can make today.

12 MEMBER KRESS: Great.

13 CHAIRPERSON REID: Terrific.

14 VICE CHAIRPERSON KING: We can put that as a condition.

15 CHAIRPERSON REID: All right. Closing remark by the  
16 applicant? Make your closing remark.

17 MS. PRINCE: Except Mr. Miller is noting to me that, instead of  
18 7:00 a.m., it needs to be 6:00 a.m.

19 MR. MILLER: Rush hour traffic.

20 MS. PRINCE: So that building cleaning crews would not be  
21 allowed to throw trash into dumpsters in areas facing residents during the hours of  
22 11:00 p.m. to 6:00 a.m. So they can live with 6:00 a.m. but not 7:00 a.m.

23 I have not had a chance to review the other conditions. Is there  
24 any other condition you'd like me to review?

25 VICE CHAIRPERSON KING: Well, I think I raised them. It was  
26 the question of the trash pickup and the entrance from the alley from 17th Street.  
27 But clearly that's not feasible because --

1 MS. PRINCE: Absolutely not feasible.

2 VICE CHAIRPERSON KING: -- it doesn't reach the property.

3 MS. PRINCE: Exactly. And the Mass. Ave. entrance is not an  
4 option.

5 CHAIRPERSON REID: Okay.

6 VICE CHAIRPERSON KING: Just Number 3.

7 CHAIRPERSON REID: Okay. Do you want to give your closing  
8 statement?

9 MS. PRINCE: I believe we've demonstrated that the proposed  
10 building is compatible with the neighborhood and will present no adverse impact  
11 related to its use, height, bulk, or design. And you have the additional assurance  
12 that the HPRB retains final design authority over the building. We need to go back  
13 for final approval.

14 I don't think there will be any objectionable traffic conditions.  
15 DPW has reviewed this, as you know. There's just been this minor opposition in the  
16 form of two letters. No one has come down to request party status.

17 And, for that reason, we would greatly appreciate your  
18 immediate approval of the application and the grant of a summary order, if possible,  
19 because there's a lot of interest in the building. And we'd like to be in a position to  
20 proceed as soon as possible.

21 We've been not only to the ANC but also to the Dupont Circle  
22 Conservancy. And since we were at the HPRB last month, there has been a lot of  
23 notice of this proposal.

24 And we have received remarkably favorable comments  
25 considering this is the Dupont Circle neighborhood. And no opposition from ANC-2B  
26 is as good as it gets, as you know.

27 So, for that reason, we'd greatly appreciate your action.

1 VICE CHAIRPERSON KING: Is a summary order possible?

2 DIRECTOR DOBBINS: Yes. You have no opposition of any  
3 party in this case.

4 VICE CHAIRPERSON KING: No party.

5 CHAIRPERSON REID: Okay. Board members?

6 VICE CHAIRPERSON KING: I move that we approve this  
7 application with a summary order. It's clear that they are well below the density and  
8 so forth that is permitted with a building of this type.

9 We will not speak to the issue of the circular driveway, deferring  
10 to the Department of Public Works on that issue and, of course, on the historic  
11 preservation issues to the Historic Preservation Review Board.

12 However, there seems to be no -- clearly there is no adverse  
13 impact on that neighborhood. Although we are sympathetic to the neighbors who  
14 would like to keep open space, it is not economically sound to require that the  
15 owners of the property not build anything on it. And I think that what is proposed will  
16 have the minimum impact on the neighbors.

17 And, therefore, I would move that we approve it.

18 MS. PRINCE: May I add one -- I forgot to mention I think it's  
19 built into your order, but just so that I have it on the record, we obviously need  
20 flexibility to address any final comments that come from HPRB.

21 VICE CHAIRPERSON KING: Absolutely.

22 MS. PRINCE: So perhaps that needs to be directly stated in the  
23 order.

24 VICE CHAIRPERSON KING: As I mentioned, that was my intent  
25 in saying that we would defer to the Historic Preservation Review Board on final  
26 design because they are the arbiters of that in the historic district.

27 And then the condition. We agree to establish a condition that

1 no trash can be put in the dumpsters between the hours of 11:00 p.m. and 6:00 a.m.

2 MEMBER KRESS: Or picked up.

3 VICE CHAIRPERSON KING: Or picked up. I mean, there must  
4 be silence in the matter of the dumpsters during those hours. As noted, well, we  
5 can't impose anything on 1776, but you might note the impact that your neighboring  
6 property is having. But for our condition, it would be incumbent upon 1750 that there  
7 be silence in the matter of the dumpsters during those hours.

8 DIRECTOR DOBBINS: Madam Chairman, members of the  
9 Board, I still think that so that it's very clear, the point that Ms. Prince made about  
10 the flexibility should be included as a specific condition, as opposed to just being  
11 stated in the order someplace.

12 VICE CHAIRPERSON KING: Okay. Would you --

13 DIRECTOR DOBBINS: And it would relate to the driveway,  
14 saying that it shall comply with the final design standards of HPRB and any public  
15 works regulations.

16 VICE CHAIRPERSON KING: I accept that. That was my intent,  
17 too.

18 DIRECTOR DOBBINS: Okay.

19 CHAIRPERSON REID: Okay.

20 MEMBER RICHARDS: I second it.

21 CHAIRPERSON REID: Okay. Are we ready to vote? All those  
22 in favor?

23 (Whereupon, there was a chorus of "Ayes.")

24 CHAIRPERSON REID: Those opposed?

25 (No response.)

26 MS. ROSE: Staff would report the vote as four to zero, Ms. King,  
27 Ms. Reid, Ms. Kress, and Ms. Hinton, to grant the application and for the issuance of

1 a summary order.

2 DIRECTOR DOBBINS: With conditions.

3 MS. ROSE: With conditions.

4 MS. PRINCE: Thank you.

5 CHAIRPERSON REID: That concludes the morning session.

6 We're joined at 2:00 o'clock.

7 (Whereupon, a luncheon recess was taken at 10:51 a.m.)

8

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

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

(1:59 p.m.)

CHAIRPERSON REID: This hearing will please come to order.  
Good afternoon, ladies and gentlemen. This is the February 18th public hearing of the Board of Zoning Adjustment, the District of Columbia.

Joining me today are Betty King; Susan Morgan Hinton, representing the National Capital Planning Commission. And representing the Zoning Commission is Jerrily Kress.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify, either in favor or in opposition, are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon coming forth to speak to the Board, please give both cards to the reporter, who is sitting to my right or in front of us.

The order procedure except for special exception and variance cases will proceed as follows: statement and witnesses of the applicants; government reports, including Office of Planning, Department of Public Works, ANC, et cetera; persons or parties in support; persons or parties in opposition; closing remarks by the applicant. Cross-examination of witnesses is permitted for persons or parties with direct interest in the case.

The record will be closed at the conclusion of each case except for any materials specifically requested. The Board and the staff will specify at the end of the hearing exactly what is expected.

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

The Board will make every effort to conclude the public hearing

1 as near as possible to 6:00 p.m. If the applicants' cases are not completed at 6:00  
2 p.m., the Board will assess whether it can complete the pending case or cases  
3 remaining on the agenda.

4 At this time, the Board will consider any preliminary matters.  
5 Preliminary matters are those which relate to whether a case will or should be heard  
6 today, such as requests for postponement, continuance, or withdrawal, or whether  
7 proper and adequate notice of the hearing has been given. If you are not prepared  
8 to go forward with the case today or if you believe that the Board should not  
9 proceed, now is the time to raise such a matter.

10 Does the staff have any preliminary matters?

11 MS. ROSE: No, Madam Chair.

12 CHAIRPERSON REID: Okay. If not, is there anyone here who  
13 has a preliminary matter? Come forward, please.

14 CASE NUMBER 16288

15 MR. M. CLEMENTS: Good morning.

16 CHAIRPERSON REID: Excuse me. Talk into the mike. And  
17 state your name and address.

18 MR. M. CLEMENTS: I'm here on behalf of Ira Clements. I was  
19 here about 30 days ago to obtain an attorney. My name is Michael Clements. I'm  
20 here on behalf of Ira Clements.

21 He had obtained an attorney, Clinton Jackson. And I went to his  
22 office. I got a call this evening about 12:30 stating that he couldn't show up today.  
23 He had an emergency. And he wanted me to come by and see if he could get one  
24 day next week because he couldn't show up.

25 CHAIRPERSON REID: So basically you'd like to postpone in  
26 order to have your attorney represent you?

27 MR. M. CLEMENTS: Yes. But his secretary stated to me that

1 she didn't want to -- the last time you gave me a long time before we came back.

2 CHAIRPERSON REID: Yes.

3 MR. M. CLEMENTS: She wanted to know if it could be -- if you  
4 wasn't full, that he could appear next week.

5 VICE CHAIRPERSON KING: No. We don't have a meeting  
6 next week.

7 CHAIRPERSON REID: We don't meet until March. The next  
8 hearing date would be in March.

9 MS. ROSE: No. It would be in May.

10 CHAIRPERSON REID: In May?

11 MS. ROSE: May the 6th.

12 CHAIRPERSON REID: Oh, okay. It would have to be in May,  
13 the secretary has informed us. Would that be suitable for you?

14 MR. M. CLEMENTS: Could I call him first --

15 MS. ROSE: Yes.

16 MR. M. CLEMENTS: -- and make sure?

17 CHAIRPERSON REID: Okay. You want to call? If there's a  
18 possibility of them coming today, maybe we could go forward with the other cases  
19 and put you at the end.

20 MR. M. CLEMENTS: Okay.

21 CHAIRPERSON REID: So do you want to check on that and --

22 MR. M. CLEMENTS: I'm going to see if she can send out  
23 someone else in his office because that's so far off.

24 CHAIRPERSON REID: Okay. And then we'll get back to you a  
25 little later to see what the status is.

26 MR. M. CLEMENTS: Okay. Thank you.

27 CHAIRPERSON REID: Thank you.

1 Are there any other preliminary matters?

2 (No response.)

3 CHAIRPERSON REID: Okay. We'll proceed with the first case.

4 CASE NUMBER 16318

5 MS. ROSE: Then the first case of the afternoon would be  
6 16318, the application of Shew F. Hom and Sau W. Hom, pursuant to 11 DCMR  
7 3107.2, for a variance from the use provisions of Subsection 201.1 to allow a  
8 two-unit apartment, two-family flat, on the first and second floors of an existing  
9 building in an R-1-B district at premises 3624 Norton Place, Northwest, Square  
10 1914, Lot 46.

11 Would all persons planning to testify in this application please  
12 rise to take the oath? Please raise your right hand.

13 MS. ROSE: Are you going to be testifying or just representing  
14 him?

15 MR. W. HOM: Representing him.

16 MS. ROSE: Is he going to be testifying?

17 MR. W. HOM: My father doesn't speak English very well.

18 VICE CHAIRPERSON KING: Is he going to testify through you?

19 MR. W. HOM: Yes.

20 VICE CHAIRPERSON KING: Then he will need to take the oath.

21 MS. ROSE: Then he will need to take the oath.

22 MR. W. HOM: Okay.

23 MS. ROSE: Would you please stand and take the oath?

24 (Whereupon, all witnesses in Case Number 16318 were duly  
25 sworn.)

26 MS. ROSE: You may be seated. Please state your name and  
27 home address.

1 MR. W. HOM: My name is Wai Hom. That's W-A-I. And I live at  
2 11117 Snowshoe Lane, Rockville, Maryland, zip code 20852.

3 MS. ROSE: Okay.

4 CHAIRPERSON REID: Proceed.

5 MR. W. HOM: Well, I am here to represent my father and to  
6 explain the facts and answer questions. Is it appropriate now to --

7 CHAIRPERSON REID: Yes.

8 MR. W. HOM: Okay. My father bought the subject property  
9 back in 1976. And at that time, the owner lived there as well as rented out the place.  
10 Essentially it was divided into three separate apartments. The owner lived in one  
11 and rented out other floors.

12 And so my father bought it in 1976 with the intent to continue the  
13 property as a rental property. And it wasn't until this past summer that he found out  
14 through a friend that he needed to get a certificate of occupancy. And so he applied  
15 for one. And, of course, he got rejected because the house isn't zoned for that. And  
16 so we are going through this process for a zoning variance.

17 And I guess in talking with the various neighbors, I found out that  
18 the house had been used as a rental property not only by the previous owner but the  
19 owner before that, which takes it back into the mid 1950s at least, which --

20 CHAIRPERSON REID: Can you speak up just a little, please?

21 MR. W. HOM: Yes. So I know that the property has been rented  
22 out since at least the mid 1950s because the neighbor immediately next to the rental  
23 property moved in in 1956. And in talking with her, she said that essentially it was  
24 rented out then and probably prior to her moving in.

25 VICE CHAIRPERSON KING: How large is this house? How  
26 large? I'm not very good at square feet.

27 MR. W. HOM: Yes.

1 VICE CHAIRPERSON KING: But, I mean, how many rooms are  
2 there in each of the three floors? I mean, is it the same size and shape as the  
3 residential properties --

4 MR. W. HOM: Yes.

5 VICE CHAIRPERSON KING: -- that surround it?

6 MR. W. HOM: Yes.

7 VICE CHAIRPERSON KING: So that it's not larger or different in  
8 any way than the houses on either side which are single-family homes?

9 MR. W. HOM: No, it's no larger or smaller. There's three rooms  
10 and a bathroom and a kitchen area on the first and second floor. And then there's a  
11 bathroom and a kitchen area in the basement. And it's essentially one big open  
12 area.

13 But I guess it's only for the first and second floor that my parents  
14 intend to rent out or are renting out.

15 VICE CHAIRPERSON KING: So it's a basement and two floors  
16 above ground? Is that it?

17 MR. W. HOM: Yes. And there's an attic, of course, but that's not  
18 rented out.

19 MEMBER HINTON: How many total units are in the building?  
20 Are there three units, two of which are rented?

21 MR. W. HOM: Yes.

22 CHAIRPERSON REID: Just a moment.

23 (Pause.)

24 CHAIRPERSON REID: Okay. Is there any other information  
25 that you would like to give us or any --

26 MR. W. HOM: I'm sorry? What was --

27 CHAIRPERSON REID: Is there anything else you'd like to say?

1 MR. W. HOM: Well, I guess I submitted some materials and  
2 from most of the surrounding neighbors stating that they're aware of the zoning  
3 variance and had no objections to it.

4 And I guess on the same block on the other side of the alley,  
5 there are other houses that are rental properties. But they're zoned R-5-B. And  
6 that's on Wisconsin Avenue.

7 CHAIRPERSON REID: Okay. We're going to try to help walk  
8 you through the process that you need to go through in order to be considered for  
9 the relief that you're asking for as far as variances are concerned.

10 And one thing is that you have to meet the burden of proof to  
11 demonstrate that there is -- we're going to help you through the procedure in regard  
12 to obtaining a variance or getting relief.

13 And that is that you're going to have to meet what we call a  
14 three-pronged test. You have to demonstrate that there is something unique or  
15 unusual about your property.

16 Mrs. King asked you: Was there anything about your property  
17 that was different from any of the other properties on that block or right next to you  
18 or behind you? And you said no.

19 I'm wondering if -- when you purchased the property, it had  
20 tenants in it; correct?

21 MR. W. HOM: Yes.

22 VICE CHAIRPERSON KING: Has there ever been a certificate  
23 of occupancy for this house?

24 MR. W. HOM: I went downtown and --

25 VICE CHAIRPERSON KING: In the 23 years that your father  
26 has owned it, has there been a certificate of occupancy?

27 MR. W. HOM: No. He was never aware that he needed to do

1 this.

2 MEMBER HINTON: How many years?

3 MR. W. HOM: Since 1976. July of 1976 is when he bought it.

4 VICE CHAIRPERSON KING: Almost 22 years. And your  
5 contention is that you have evidence that it was in the early '50s it was a rental  
6 property?

7 MR. W. HOM: Yes.

8 VICE CHAIRPERSON KING: In '56?

9 MR. W. HOM: I hope that two of my father's neighbors sent in,  
10 signed and sent in, a statement stating that it's been rented out since at least the  
11 mid '50s.

12 MEMBER HINTON: We have those in the record.

13 VICE CHAIRPERSON KING: Do we?

14 MEMBER HINTON: Two letters from neighbors, yes.

15 VICE CHAIRPERSON KING: Is that what we were just given?

16 MEMBER HINTON: No. They were in the very back couple of  
17 sheets of my package.

18 VICE CHAIRPERSON KING: Okay.

19 MEMBER HINTON: If I could ask a question?

20 CHAIRPERSON REID: Sure.

21 MEMBER HINTON: Is there one unit in the basement?

22 MR. W. HOM: Yes.

23 MEMBER HINTON: And then one unit on the first floor?

24 MR. W. HOM: First floor.

25 MEMBER HINTON: And one on the second?

26 MR. W. HOM: Yes.

27 VICE CHAIRPERSON KING: But you're not renting out the

1 basement? You're not asking for a certificate of occupancy for that?

2 MR. W. HOM: No, we're not.

3 VICE CHAIRPERSON KING: Can I see the letter from the  
4 neighbors who say it's been rented since the '50s? I didn't get a copy?

5 MEMBER HINTON: Yes.

6 CHAIRPERSON REID: Okay. Let's do this. Let's come back to  
7 the issue of uniqueness. We are going to come back to the issue of uniqueness or  
8 unusual circumstances and look at the second prong of the test, which would be --

9 MEMBER HINTON: Before we do that, can I have a question for  
10 the staff?

11 CHAIRPERSON REID: Okay.

12 MEMBER HINTON: I need to clear something up. Ms. Rose, if  
13 there are three units in the building, wouldn't they need to have a variance for all  
14 three units?

15 MS. ROSE: It sounds more like an apartment, as opposed to a  
16 flat, because a flat would just be two units. And I don't know if it was a  
17 misunderstanding between the applicant and the Zoning Administrator's office or  
18 when they filed for their permit, it ended up here. Maybe he didn't understand that  
19 there would be more than tow units because they're only renting out two.

20 MEMBER HINTON: Right.

21 MS. ROSE: But ultimately there's still three.

22 MEMBER KRESS: See, the confusion, for a single-family  
23 residence, you really don't need a C of O.

24 MS. ROSE: You don't need a C of O at all.

25 MEMBER KRESS: And so I think where they're getting  
26 confused is that they're thinking they don't need the C of O for their own residence  
27 but they do for the rental.

1 MS. ROSE: Right.

2 MEMBER KRESS: In this case where they're all in one building,  
3 that's not true. And you need a C of O for all three units.

4 MS. ROSE: Right.

5 VICE CHAIRPERSON KING: But is the basement unit inhabited  
6 at all?

7 MR. W. HOM: I'm sorry? What?

8 VICE CHAIRPERSON KING: Is somebody living in the  
9 basement?

10 MR. W. HOM: No.

11 VICE CHAIRPERSON KING: No. And you don't have any  
12 intention to rent it out?

13 MR. W. HOM: My parents use it as a storage area.

14 CHAIRPERSON REID: So that unit is storage, a storage area?

15 MR. W. HOM: Yes, but --

16 VICE CHAIRPERSON KING: It's not a --

17 MR. W. HOM: It still has a kitchen in it, but --

18 CHAIRPERSON REID: Yes, but it's not in use.

19 VICE CHAIRPERSON KING: And you don't intend to have it  
20 inhabited by --

21 MR. W. HOM: No. I guess when we got into this, I guess it was  
22 my parents' intent to disconnect the basement unit to see what would happen with  
23 the zoning variance. And if they had to remove the second floor unit, then they  
24 would just do it all at once.

25 VICE CHAIRPERSON KING: Ultimately they want to have three  
26 units in it or they want to have two units?

27 MR. W. HOM: Two.

1 VICE CHAIRPERSON KING: Only two ever, ever, ever?

2 MR. W. HOM: Yes.

3 VICE CHAIRPERSON KING: No intention of ever having three?

4 MR. W. HOM: No.

5 VICE CHAIRPERSON KING: And the two units will be on the  
6 first and the second floor? The basement will never be inhabited?

7 MR. W. HOM: Sure, yes.

8 CHAIRPERSON REID: It never has been?

9 MR. W. HOM: No. It has in the past.

10 VICE CHAIRPERSON KING: It has been in the past?

11 MR. W. HOM: But my parents just over the years have needed it  
12 for storage and didn't need the rental income from that unit.

13 MEMBER KRESS: Then I guess we can proceed as if it is a flat,  
14 then. I was confused. But if they're not going to use that lower level, then we can  
15 proceed as a flat.

16 CHAIRPERSON REID: As I was saying, we'll come back to the  
17 first prong of the test. Now, the impact issue in regard to adverse impacts or a  
18 substantial detriment to the public good in regard to this particular application, we  
19 have received several letters of support. And it does not appear that there is any  
20 problem as negatively impacting upon the neighborhood in regard to traffic or noise,  
21 light, parking.

22 VICE CHAIRPERSON KING: Did you read the stuff we just  
23 gave you?

24 MEMBER KRESS: We have a pile here --

25 VICE CHAIRPERSON KING: We just got a pile of letters in  
26 opposition.

27 MEMBER KRESS: -- that was just handed to us that is in

1 opposition. I don't know if you've had -- we might want to break for a second so you  
2 can --

3 CHAIRPERSON REID: Oh, no, no, no, no. I'm sorry. What had  
4 happened was we just got a pile of things. The Board members and I talked and  
5 said that once we got through with this part, we would then recess for a few minutes  
6 so we could read it. And I had not read it. So that's a change in position.

7 All right. Then I guess we should do that now. Okay. Why don't  
8 we recess for about five or ten minutes?

9 VICE CHAIRPERSON KING: Oh, please not that long.

10 CHAIRPERSON REID: Five?

11 VICE CHAIRPERSON KING: Two. It's only half a dozen pages.

12 CHAIRPERSON REID: Five minutes so that we can look over  
13 the material and digest. Then we'll come back. Okay?

14 (Whereupon, the foregoing matter went off the record at 2:18  
15 p.m. and went back on the record at 2:25 p.m.)

16 VICE CHAIRPERSON KING: Madam Chairman, can I ask a  
17 question?

18 CHAIRPERSON REID: Sure.

19 VICE CHAIRPERSON KING: The fact that this is in an historic  
20 district, although we have evidence that the multi-family use of the property predates  
21 the institution of the Cleveland Park historic district, what is the implication? I mean,  
22 does the Historic Preservation Review Board play a role in this or is it entirely --

23 MEMBER KRESS: No.

24 VICE CHAIRPERSON KING: It's entirely up to us?

25 MEMBER KRESS: It's entirely up to us.

26 VICE CHAIRPERSON KING: There's no impact of historic  
27 preservation rules?

1                   MEMBER KRESS: You've read the case that's been made, but  
2 no, not of historic preservation rules.

3                   VICE CHAIRPERSON KING: I mean, there aren't any special  
4 rules that apply that would impact on it?

5                   MEMBER KRESS: No, not to my knowledge.

6                   VICE CHAIRPERSON KING: Okay.

7                   CHAIRPERSON REID: Okay. Mr. Hom?

8                   MR. W. HOM: Yes?

9                   CHAIRPERSON REID: Based on the materials that we've just  
10 received, -- and I apologize for that because we obviously would have not had them  
11 to discuss with you before -- we would like to go ahead with the case and to hear the  
12 whole case in its entirety. And then we'll be better able to assess the situation.

13                  MR. W. HOM: Sure.

14                  CHAIRPERSON REID: You do understand when I was  
15 explaining to you about the three-pronged test for your property? You should be  
16 able to demonstrate that the property has some unique and unusual condition and  
17 that it would pose undue hardship for you to be able to use it as a single-family  
18 home.

19                         And then we go to the adverse impact and then look at whether  
20 or not it impairs the purpose and integrity of the zoning regulations. So let's just  
21 proceed to continue to have your witnesses to testify. And then we'll proceed  
22 through the case. Thank you.

23                  MR. W. HOM: Okay.

24                  CHAIRPERSON REID: We will proceed through the case. We  
25 will go ahead and proceed through the case at this time. So if you want to have --  
26 can you come forward to a mike or --

27                  VICE CHAIRPERSON KING: Is it not proper for the applicants

1 to put on their case and then for the opponents to come afterwards? These people  
2 are here in opposition. You're here in opposition to the application?

3 CHAIRPERSON REID: Okay. No. I thought that you were a  
4 part of his.

5 Okay. Then we'll move now to government reports or staff  
6 reports.

7 VICE CHAIRPERSON KING: It is clear to me that Mr. Hom has  
8 not had an opportunity to make his case that there is something extraordinary about  
9 his property that would create a hardship if he were not able to have two rental units  
10 in it. I think he needs to be given an opportunity to do that.

11 MR. W. HOM: Well, I guess in preparing for coming before you,  
12 I looked over previous cases. Basically what I found was that if a property was used  
13 as a rental prior to the current zoning regulations that came into effect in 1958, that  
14 there was a hardship demonstrated, if I read the paperwork correctly, and that, even  
15 though it was not formally recognized through certificates of occupancy and that it  
16 was a nonconforming use, that the fact that it was used in places prior to 1958 was  
17 cause for a hardship --

18 VICE CHAIRPERSON KING: In your research, did you find that  
19 any of the previous owners who had rented out units there had a certificate of  
20 occupancy, particularly one that predated 1958?

21 MR. W. HOM: In the cases that I looked at --

22 VICE CHAIRPERSON KING: No. I'm talking about your specific  
23 case.

24 MR. W. HOM: I'm sorry.

25 VICE CHAIRPERSON KING: Has there ever been, to your  
26 knowledge, a certificate of occupancy for this building to be used as a multiple  
27 dwelling?

1 MR. W. HOM: I made an inquiry at the place where you --

2 VICE CHAIRPERSON KING: Department of Consumer and  
3 Regulatory Affairs?

4 MR. W. HOM: Yes, at 614 H Street.

5 VICE CHAIRPERSON KING: H Street, yes.

6 MR. W. HOM: And they told me none had ever been issued  
7 before.

8 VICE CHAIRPERSON KING: I see. Your argument is, I take it,  
9 that you should be grandfathered in because this predates 1958. But, on the other  
10 hand, it was never recognized as a multiple dwelling, prior to '58 or at any time since  
11 then.

12 MR. W. HOM: That's true, but I guess in at least two of the  
13 cases where variances were approved, there was no prior approval as a multiple flat  
14 or apartment unit.

15 VICE CHAIRPERSON KING: Which are the cases you're  
16 referring to? Do you have them there?

17 MR. W. HOM: One, two, nine, five, six.

18 VICE CHAIRPERSON KING: Can you enter them into the  
19 record? Can we see them? Will you give them to the secretary? Okay. Let's get  
20 these copied for the record. Thank you for bringing that to our attention, very  
21 apropos.

22 MEMBER HINTON: If I could just add, I think that what you're  
23 saying is the unique condition in your property is that it has been configured for two  
24 flats since the mid 1950s. And the hardship, then, to you as the owner would be to  
25 reconfigure the interior of the building in order to have it be only one residential unit.

26 Is that the hardship you would experience, that you would have  
27 to change the interior?

1 MR. W. HOM: We would have to change the interior. And then I  
2 guess my parents don't feel that they would generate enough income to cover  
3 expenses to rent it out as a single-family home. And I guess, really, the conversion  
4 should also include the basement.

5 MEMBER HINTON: I'm sorry? I couldn't hear the last one.

6 MR. W. HOM: The conversion should also include the basement  
7 if we're denied the variance.

8 CHAIRPERSON REID: The conversion wouldn't.

9 MR. W. HOM: To remove the kitchens from the second floor and  
10 the basement.

11 CHAIRPERSON REID: Very well. Mr. Hom, is there anything  
12 else you'd like to say at this time?

13 MR. W. HOM: No.

14 CHAIRPERSON REID: Okay. You'll have an opportunity to  
15 have closing remarks.

16 VICE CHAIRPERSON KING: And cross-examination of any  
17 other witnesses.

18 CHAIRPERSON REID: Is there anyone in regard to this case  
19 who is seeking party status? Is there anyone who is here for this case who is  
20 seeking party status?

21 VICE CHAIRPERSON KING: That means that you're an  
22 immediate neighbor and have a vested interest.

23 CHAIRPERSON REID: Come forward, please. State your name  
24 and address for the record.

25 VICE CHAIRPERSON KING: Please into the microphone.

26 CHAIRPERSON REID: Talk into the mike, please.

27 MS. KINNEY: I am Louise Kinney, 3420 36th Street, Northwest.

1 Thirty-sixth Street abuts the Norton Street property. And I have my full building lot  
2 on Norton Place, I mean.

3 VICE CHAIRPERSON KING: How distant are you from 3624?

4 MS. KINNEY: I'm at the corner.

5 VICE CHAIRPERSON KING: And where are they?

6 MS. KINNEY: They're at the other corner. It's --

7 VICE CHAIRPERSON KING: Do you mean you're a block away  
8 from them?

9 MS. KINNEY: Norton Street is only one short block.

10 VICE CHAIRPERSON KING: I know it is. I drove it. You're at  
11 one end of the block, and they're at the other end of the block?

12 MS. KINNEY: Correct. But my lot would be the first house, my  
13 building lot. See, I have a building lot that's my side and back.

14 VICE CHAIRPERSON KING: Your property abuts the subject  
15 property, the applicant's property? No.

16 MS. KINNEY: I face 36th Street. Norton dissects 36th. It's only  
17 one block long. I have a building lot on Norton Place. My back yard and side yard  
18 are a building lot. I just haven't built on it yet. But realtors are after them all the  
19 time. So it's clearly right and recorded as a building lot.

20 MS. NOYES: Elizabeth Noyes.

21 CHAIRPERSON REID: Just one moment, please.

22 (Pause.)

23 MEMBER KRESS: Practically, if we could assume that all three  
24 of these young women are in very near proximity, perhaps one of them could speak  
25 for the three of them in party status so we don't have three of them cross-examining.

26 Maybe we could go ahead and identify where the other members  
27 or the other people --

1 CHAIRPERSON REID: Okay. That's a good idea.

2 MEMBER KRESS: -- live and then perhaps just to help us,  
3 rather than having three people who have --

4 CHAIRPERSON REID: Have one spokesperson.

5 MEMBER KRESS: -- and three people testifying --

6 VICE CHAIRPERSON KING: No, no. What we are trying to do  
7 is expedite matters. Presumably, the three of you are working together. When we  
8 grant party status, that means anybody who has party status has the right to  
9 cross-examine other witnesses. And if there are three people cross-examining, it's  
10 going to prolong the process.

11 What Ms. Kress has suggested is that if you're here together, if  
12 you work together on this issue, do you want to designate one of the three of you as  
13 a spokesperson who will represent you or do you each want to apply for separate  
14 party status and make your own separate statements?

15 MS. KINNEY: I think we had originally decided that one of us  
16 would speak and the others would help. This has all happened very quickly. And so  
17 we don't have a game plan.

18 VICE CHAIRPERSON KING: All right. Who was --

19 MEMBER KRESS: That's a perfect game plan, actually.

20 VICE CHAIRPERSON KING: That's perfect. That's great. We  
21 applaud.

22 MS. KINNEY: In fact, we need each other.

23 MEMBER KRESS: No, no. That's fine.

24 VICE CHAIRPERSON KING: Who would be the spokesperson?

25 MS. NOYES: Is it okay if we say that the two of us live across  
26 the street in different houses?

27 CHAIRPERSON REID: Give your name and your address,

1 please, individually.

2 MS. SELIGMANN: I am Susan Seligmann. And I live at 3613  
3 Norton Place, which is directly opposite the Homs' dwellings.

4 MS. NOYES: And I'm Elizabeth Noyes. I live at 3611 Norton  
5 Place, which is right across the street.

6 CHAIRPERSON REID: Which one will be the one who is going  
7 to represent the three of you?

8 MEMBER KRESS: In the primary way. That doesn't mean you  
9 can't --

10 MS. NOYES: In a primary, yes. Okay. We all --

11 MEMBER KRESS: We would like to declare you to have party  
12 status. And then one of you would be directing the cross-exam. But when you  
13 testify for yourselves, the others of you can add to that testimony if that's all right.

14 MS. SELIGMANN: My name is Susan Seligmann, as I stated for  
15 the record. Thank you very much for giving us the opportunity to come here before  
16 you today.

17 I brought a photograph of Norton Place from early days that  
18 hangs in my entry hall. And I just for the point of reference wanted to show it to you.

19 CHAIRPERSON REID: Excuse me. Excuse me. This is  
20 cross-examination time. So after giving your name --

21 MS. SELIGMANN: We can't make a statement?

22 CHAIRPERSON REID: You will have an opportunity to make  
23 the statement, but we have to proceed in an order.

24 MS. SELIGMANN: I beg your pardon. I misunderstood. I'm  
25 sorry.

26 CHAIRPERSON REID: Yes. So this is the time for just  
27 cross-examination, where you --

1 VICE CHAIRPERSON KING: Is there anything that the --

2 CHAIRPERSON REID: No. This is the time where you are  
3 allowed to ask questions of the applicant only.

4 MS. SELIGMANN: We'll get there. We're working on it.

5 CHAIRPERSON REID: Now, do you have questions to ask the  
6 applicant, to cross-examine the applicant?

7 MS. SELIGMANN: Yes. Could we confer for a moment?  
8 Because we haven't had a chance to think in those terms.

9 CHAIRPERSON REID: Sure. Okay.

10 MS. SELIGMANN: I'm really sorry. We're unfamiliar with your  
11 procedures.

12 CHAIRPERSON REID: No problem. No problem.

13 MS. SELIGMANN: We're strictly residents.

14 (Pause.)

15 CHAIRPERSON REID: Are you ready now, Ms. Seligmann?

16 MS. SELIGMANN: I believe so. I think I have it.

17 CHAIRPERSON REID: All right. Mr. Hom, we ask you to please  
18 come to the mike so that she could direct her questions to you.

19 MS. SELIGMANN: Actually, I think Mr. Hom is a little too young  
20 to answer this question. I'm sorry.

21 CROSS-EXAMINATION

22 BY MS. SELIGMANN:

23 Q According to Mrs. Verna Movern, who is the end house on your  
24 block, the next to the end, she says that during the tenancy of the Wolfes, there  
25 were not two apartments in that building. And the Wolfes I guess owned it through  
26 this year. Is that right?

27 MS. KINNEY: No, no. Mrs. Wolfe sold it to the Homs.

1 BY MS. SELIGMANN:

2 Q When Mrs. Wolfe was owning, --

3 A Yes.

4 Q -- there were not apartments there. And I don't think you can  
5 answer it because it is a matter of age.

6 A So your question is --

7 VICE CHAIRPERSON KING: His father is here.

8 MR. W. HOM: When we moved into the neighborhood at 3626  
9 Norton Place in 1965, Mrs. Wolfe definitely was renting out the basement. And I  
10 don't remember the man's name, but he was a very large man. That might trigger  
11 your memory. But she was definitely renting out the basement.

12 And I believe she lived on the top floor, the second floor. I'm  
13 pretty sure that before we bought it, that the first floor was rented out also to various  
14 people.

15 When I spoke to Mrs. Movern, yes, her recollection was that, at  
16 least what she told me was that, when she moved in in the late or mid to late '50s,  
17 that the property had always been used as a rental of one type or another.

18 BY MS. SELIGMANN:

19 Q Well, I guess the real telling point is the issue comes down to the  
20 two kitchens. When did you put the two kitchens in?

21 A They were there prior to us buying the 3624 Norton Place  
22 property. And it's -- I guess if the Zoning Board will look at the sales contract, it does  
23 state that there are three kitchens. And two tenants come with the property or -- I  
24 don't know what the right term is.

25 VICE CHAIRPERSON KING: You may want to see the contract  
26 of sale, -- you can have my copy -- which talks of three refrigerators, three stoves,  
27 and all of the furniture and so forth. Have you seen it?

1 CHAIRPERSON REID: What year is reflected there, please?

2 VICE CHAIRPERSON KING: Nineteen seventy-six, June 18th,

3 1976.

4 MS. SELIGMANN: This is from '76?

5 VICE CHAIRPERSON KING: Yes. That is when the Homs

6 bought the house.

7 MS. SELIGMANN: Oh, I see.

8 CHAIRPERSON REID: Okay. Next question, please.

9 BY MS. SELIGMANN:

10 Q So this property was purchased by your dad and mom in '76;

11 correct?

12 A Yes.

13 Q Okay. It's our information from our neighbor, Mrs. -- from Verna

14 is that it was substantially different.

15 Are there three apartments there?

16 A Yes.

17 Q And you use three? You rent three?

18 A No. Two.

19 Q Where does the older gentleman live who does the tai-chi?

20 A He drifts in and out. And occasionally my parents will let him

21 stay there, but --

22 Q I see him there a lot.

23 A Well, he bounces around a lot. He --

24 Q Does he pay rent?

25 A No.

26 Q Never?

27 A He's like a brother to my father. So my father doesn't charge

1 him.

2 Q What is his name?

3 A I don't know what his name is.

4 CHAIRPERSON REID: I don't think that that is relevant to this  
5 particular proceeding.

6 MS. SELIGMANN: That there are three apartments and not  
7 two?

8 MEMBER KRESS: Yes. I think that's relevant.

9 CHAIRPERSON REID: My understanding is that there are two.

10 MEMBER KRESS: I think that's relevant.

11 MS. SELIGMANN: Yes. I think that's --

12 CHAIRPERSON REID: The guy's name?

13 MEMBER KRESS: Oh, the person's name, no.

14 CHAIRPERSON REID: No. That's what I was referring to.

15 MEMBER KRESS: Oh, I'm sorry.

16 CHAIRPERSON REID: I'm just trying to keep it relevant.

17 BY MS. SELIGMANN:

18 Q Isn't that correct there are three apartments there?

19 A There are three apartments in the building, but my parents only  
20 rent out two. They use the third one mostly as storage but also to let my father's  
21 kind of like his close cousin, brother stay there occasionally because there is still a  
22 bed there. But they don't charge him rent.

23 Q I see him almost every morning doing tai-chi in the alley and  
24 walking up and down the street with the paper. So I assumed he was your tenant.  
25 He's been there for a number of years.

26 A Well, yes. He actually has lived in my parents' house on  
27 occasion, too.

1 CHAIRPERSON REID: Next question? Are you all --

2 MS. SELIGMANN: We were just conferring for a moment -- I'm  
3 so sorry -- to see if there was anything further.

4 MS. SELIGMANN: Our question for you, Madam Chairperson,  
5 is: What is the relevance of the date, '74 versus '58, in terms of the grandfathering  
6 issue?

7 It is an historic district. And certainly that changes the tone of  
8 things a bit as we proceed.

9 CHAIRPERSON REID: Nineteen fifty-eight is when the zoning  
10 regulations, the ones that we're operating under now, were enacted. So this is what  
11 he was referring to as far as it being before that date, which he is contending would  
12 allow him to be grandfathered.

13 MS. SELIGMANN: That was '54?

14 CHAIRPERSON REID: '58.

15 MS. KINNEY: '58, where the zonings were instituted.

16 MS. SELIGMANN: But you have no record of it being zoned as  
17 anything other than a single-family dwelling; correct?

18 MEMBER KRESS: You know, we're hopping ahead here, but  
19 there has been some misunderstanding. We are not rezoning any property. That's  
20 not what's going on. And from several of the letters -- and I'm hopping ahead, and  
21 perhaps I'm out of order here.

22 But I think it's very important you understand we're not talking --  
23 before us is not rezoning. What's before us is to offer a variance and to allow this  
24 particular use. It will not touch or change the underlying zoning ever.

25 MS. SELIGMANN: What is the precedent of allowing --

26 MEMBER KRESS: There is a precedent. You have a point with  
27 your precedent. I'm sorry. I shouldn't be talking. I just want you to understand that

1 we are not proposing to change the zoning or he's not proposing to change the  
2 zoning. And what we're thinking and considering is not about changing the zoning.

3 CHAIRPERSON REID: Several of the letters of opposition refer  
4 to there being a rezoning issue, which is not the case.

5 MEMBER KRESS: This Board can't do that. Only the Zoning  
6 Commission can do that.

7 MS. SELIGMANN: If the variance were to be entertained, what  
8 would be the life expectancy of that? Would it be during the life of the current  
9 owners or would that be something that could convey in the event of a sale?

10 I think that's what's critical to us, that certainly the Homs are  
11 wonderful neighbors and --

12 MEMBER KRESS: We're out of order, but may I answer that?

13 MS. SELIGMANN: We don't want to wish them any harm. I  
14 mean --

15 MEMBER KRESS: It can convey, but the way it is, if, for  
16 example, this were grandfathered and we saw that it had existed prior to 1958 and  
17 presupposing a lot of things here now because I'm learning things as you're asking  
18 questions, we would look at that perhaps favorably and say we will allow this  
19 variance.

20 That variance, once in place, would transfer with the property,  
21 yes. But as soon as for one instant that, for example, if only two units were being  
22 used, instead of three, and we have a two-unit/three-unit problem that we've got to  
23 address, let's say, for example, if anyone ever moved in and was not renting, then  
24 that variance would be lost.

25 You see what I'm saying? Once it is used in another manner,  
26 which is its rightful use, which is a single-family residence, then that variance would  
27 be lost.

1 I doubt that would happen. This variance probably, if granted,  
2 would be given to that unit and stay unless there was a change in the neighborhood  
3 or someone wished to buy that house and totally renovate it and turn it into a  
4 single-family residence, which is, of course, a right.

5 MEMBER HINTON: Ms. Kress, my understanding is what you  
6 have said is true for a nonconforming use, that if a nonconforming use is ever  
7 discontinued, the owner loses the right. But with a variance, once it's granted, it  
8 remains with the property forever.

9 MEMBER KRESS: I'm sorry. I'm sorry. She's correct.

10 MEMBER HINTON: And it could be converted back to a  
11 one-unit. And at any time because the variance was granted, it could be converted  
12 back to two or three units, whatever was granted. It could always go back. Once it's  
13 granted, it can never be taken away.

14 MEMBER KRESS: I'm sorry. I was mixing it up with the  
15 grandfathering.

16 CHAIRPERSON REID: With the nonconforming, yes.

17 MEMBER KRESS: I was mixing it up with the grandfathering.

18 CHAIRPERSON REID: Okay.

19 MEMBER HINTON: If I could just add, that's part of what's  
20 important about the date. Uses that exist before the zoning regulations change  
21 become what's called a nonconforming use. And they have a right to continue as  
22 long as they are used in that same way.

23 And so that's why it's important to find out if this was used that  
24 way before the regulations were in order or if it somehow happened after the  
25 regulations were in place, then it's not a nonconforming use.

26 MEMBER KRESS: It has to continuously have been used that  
27 way. This is what I was mixing. I was saying it incorrectly. If during the time period

1 since 1958 there was a time where this was used as a single-family residence only,  
2 then that negates the grandfathering.

3 MS. SELIGMANN: That is what Mrs. Movern can attest to.  
4 She's, unfortunately, not here. And you spoke, I believe, Ms. Hinton, directly to what  
5 my concern is, that the variance, in effect, is like rezoning because you have given  
6 something a change in status that forever will hold. And this is what has all of here  
7 and why the neighbors particularly are concerned. So I appreciate it.

8 We're total novices at this, but we love our street. We love our  
9 historic district. And we want to come before you and just make an impression on  
10 you that it matters a lot to us.

11 MEMBER KRESS: But your case is really to prove to us that at  
12 some point since the mid '50s, this was used as a single-family residence because  
13 that is the major issue?

14 MS. SELIGMANN: Will we be given another opportunity to  
15 testify before you? Because I believe that we would have to bring Mrs. Movern here  
16 because --

17 CHAIRPERSON REID: No, no. I thought you meant today that  
18 you would be able to. No. Sorry. Not after today. But also, for the record and also  
19 for your information, there was an appraisal that was done in 1976, at the time of the  
20 purchase, that also indicated that there were 3 kitchens and 3 baths at the premises.

21 MS. SELIGMANN: But that was in '76, which was a different  
22 issue than --

23 CHAIRPERSON REID: '76. I was speaking specifically of the  
24 time of their purchase of the property.

25 MS. SELIGMANN: I don't think we would dispute that. I think  
26 the problem is the continuous use prior to that; right? That's what our burden of  
27 proof is. So we have to establish that today; correct?

1                   Excuse me. Mrs. Noyes would like me to be sure for the record  
2                   that you understand that two adjacent properties, 3624 and also, I believe, 26, are  
3                   owned by the Homs. And they live in one as a single-family dwelling with perhaps  
4                   an apartment for this friend in there; and then the adjacent property. And they are  
5                   semidetached.

6                   MEMBER HINTON: And later in this hearing, you'll have a  
7                   chance to put your case on the record. And that's when you can tell us everything  
8                   from your point of view.

9                   MS. SELIGMANN: Great. Thank you very much.

10                  CHAIRPERSON REID: Do you have any further questions?

11                  MS. SELIGMANN: At the moment, no. We would like to try to  
12                  produce the longest, our 90-year-old, resident. So if we can get her here, we will.  
13                  Thank you.

14                  CHAIRPERSON REID: All right. Thank you.

15                  Now we move to the government reports and staff reports or  
16                  ANC report. We have a letter from the ANC, ANC-3C, in which they have no  
17                  objection to the application and defer the matter to the BZA regarding whether the  
18                  use variance criteria had been met in this case. There was a quorum. The vote was  
19                  four to three. And we will be able to give them the great weight to which they are  
20                  entitled.

21                  Are there persons or parties in support of this application? Okay.  
22                  Now, persons or parties in opposition to the application? So now you come back.

23                  MS. KINNEY: You want us up again?

24                  CHAIRPERSON REID: Yes. This is your --

25                  MEMBER HINTON: If I could just mention as you're coming up,  
26                  there are two letters of support in the record.

27                  CHAIRPERSON REID: Okay.

1 MS. KINNEY: Now what is our procedure?

2 MEMBER HINTON: Now is the time that you put your case on  
3 the record. This is when you understand what it is that's being requested and you  
4 tell us from your point of view what you think about it. And this is your chance to  
5 identify if the Board were to grant the application, how the neighborhood would be  
6 adversely impacted.

7 How would it be a problem for your neighborhood if this were to  
8 go ahead? Ms. Seligmann?

9 CHAIRPERSON REID: Thank you. You may begin.

10 MS. SELIGMANN: We can each speak at this point; right?

11 CHAIRPERSON REID: Sure. Give us your name.

12 MS. KINNEY: You will have to help us with the terminology.

13 There are certain legal terms that we really don't understand.

14 The major thing that we're concerned with is the impact on the  
15 zoning that permitting multiple-dwelling houses would have. Cleveland Park is a  
16 very old neighborhood. It is an historic neighborhood, which I realize is not your  
17 concern, but it is our concern.

18 It is bordered by Wisconsin on one side, Connecticut on the  
19 other, and two cross streets that are very busy streets. It's a little pocket of serenity  
20 and charm.

21 Rosedale is an historic monument, landmark. That's the  
22 property on which Norton Street and all of our other streets are. And the houses are  
23 all part of the historic district.

24 These little houses up there at Wisconsin are very important to  
25 us and down at Connecticut because the merchants, of course, operate very  
26 successfully along Wisconsin Avenue and along Connecticut Avenue and they make  
27 inroads into our little pocket of peace, if you will, which we don't feel is necessary.

1 And we feel that every one that is done just makes another problem.

2 What the history of Mr. Hom's house is I don't know. I hope we'll  
3 be able to clarify that. But even if there were this history, the neighborhood is very  
4 upset.

5 They did not understand the ramifications of all of this. Nor did I,  
6 and I still don't. People started telephoning me and started telephoning Susan and  
7 started telephoning Elizabeth to find out what we could do about what they had  
8 done, which was sign this seemingly harmless "Could we have some tenants in our  
9 house with our parents, our senior citizen parents?" kind of thing.

10 And everybody likes the Homs. And they just went ahead and  
11 signed it. Then they got upset. And that's when all the brouhaha occurred. Within a  
12 week, we have gotten signatures from at least 30 people and still counting. The  
13 phone is still ringing because people feel absolutely militant about any  
14 encouragement or any exception.

15 Simply whether it technically or legally breaks the law, changes  
16 the law, it has an impact on it because it's a variance. And it means that you are  
17 setting up a new attitude for others to follow.

18 I don't see what else. Do we have any other major points? I  
19 have all the signatures. More will be coming in. But if they're not considered  
20 relevant to what you all have to do -- do you want copies of them? You've got  
21 copies of most of them, but more have come in in 24 hours.

22 What I say in the letter, the covering letter, was that we feel that  
23 the D.C. zoning laws are designed to help keep our communities intact and  
24 protected. Stop me if I'm wrong on any of these things.

25 Norton Place consists of a single-family block of 11 residences  
26 and goes from the property of the Rosedale historic estate to Wisconsin Avenue.  
27 And it is our goal to protect these single-family residences and the domestic quality

1 of this small tree-shaded street.

2 It serves as a buffer to the commerce and traffic of Wisconsin  
3 Avenue. That's one of the things the architects and zoning people are usually  
4 talking about in their writing, what's a buffer to what. Well, our thin line of residences  
5 serves as a buffer to Wisconsin Avenue.

6 The parking is a great problem. Any extra residents add to the  
7 parking, the traffic. In Cleveland Park, we pretty much clean our own streets. We're  
8 a very close neighborhood. We fill our own potholes even. I don't think we're  
9 supposed to do, but some of us do it sub rosa.

10 We take care of each other. And we're pretty crowded as it is,  
11 and any extra families I think would change the complexion, if you will, of the  
12 neighborhood.

13 The people who signed, Mr. Hom wanted me to make it clear to  
14 you -- and several of them have written notes. We now have 100 percent of Norton  
15 Place does not want the extra residences. Whether they were there or will be there  
16 or have been there, they don't want multiple-residence dwellings or multiple-dwelling  
17 residences.

18 Their explanation was that they like these people and they really  
19 -- I didn't know them very well, and I was never approached, by the way. Nobody  
20 asked me to sign anything. So I didn't know about this.

21 Their explanation was that they did not fully understand the  
22 ramifications of the Hom application. And I can see where there could have been a  
23 problem.

24 I want to thank you all very much for letting us know, though,  
25 because, for some strange reason -- and I've been through many zoning battles in  
26 the many years that I've lived here. I'm one of the few cave-dwellers alive in the  
27 area, I think.

1 I've always been notified and had plenty of information and could  
2 proceed in an orderly and ladylike fashion to say "Yea" or "Nay" or forget it entirely.

3 I didn't know anything about this until I heard from you all. And  
4 at least a dozen other people in the neighborhood said the same thing. And I think  
5 this is unfortunate.

6 I don't know why the Historical Society didn't call us, -- I lecture  
7 for them; Sue is a member; Elizabeth is a member -- why we didn't get in on that. I  
8 called immediately when people started calling me to find out where these other  
9 hearings, these other steps have been.

10 So I apologize for that. And if we seem a little bit disorganized,  
11 it's because we are. We have been typing letters at night and collecting signatures.  
12 And we have I don't know how many more signatures than the ones that you all  
13 have.

14 MEMBER KRESS: May I ask a question?

15 CHAIRPERSON REID: Sure.

16 MEMBER KRESS: One of the things that you point out, and I  
17 think rightly so, in your letter is the issue of precedence. Are there many other  
18 homes in that area that have rentals in them that could come to us and ask for this  
19 same kind of thing if we did set a precedence here?

20 I mean, if you have been talking to all of your neighbors, this is  
21 very important because the only reason we would be considering this or I would be  
22 considering this is because it's the pre-1958 were that to be true. Are there a lot of  
23 others like that, do you think, in this neighborhood that could also come to us and  
24 ask for this same thing?

25 MS. KINNEY: Without research, definitely I think that people -- it  
26 would open the door.

27 VICE CHAIRPERSON KING: No. Are there others that have

1 had long-term rentals in their buildings?

2 MEMBER KRESS: Currently.

3 MS. KINNEY: Not that I know of. We're not supposed to do  
4 that. Everybody knows that when they buy a house.

5 MEMBER KRESS: But if you got everyone on that street to sign  
6 --

7 MS. KINNEY: Yes. We didn't get them to sign. They  
8 volunteered.

9 MEMBER KRESS: -- and they were volunteering, that would  
10 seem to implicate that they themselves are not having that rental unit. Isn't that  
11 correct or is that --

12 MS. KINNEY: That's the way it looks to me. We have about 36  
13 signatures and, as I say, more coming. And I don't really know this data. I do know  
14 that people live there for years and years and years. These people get old, older,  
15 and want someone else in the house with them or maybe need the funds.

16 There must be reasons to use this as a precedent, "You let them  
17 do it. Let my mother do it."

18 MEMBER KRESS: But they could only do it if they had had this  
19 long-term lease prior to 1958. You see what --

20 MS. KINNEY: Well, I've done the history of Cleveland Park and  
21 Rosedale, just happen to have them with me. But I don't know that. I don't know  
22 that. I don't see how I could find out unless they applied for a permit or whatever  
23 you --

24 MEMBER KRESS: Or you saw them walking in and out, as you  
25 have seen others of the same residence or something. You might have some  
26 indication.

27 MS. KINNEY: No. I think I only know one woman who has a

1 Jamaican who lives in her top floor and takes care of her at night -- she has multiple  
2 sclerosis now -- and works days, I guess.

3 VICE CHAIRPERSON KING: But that is a resident employee.

4 MS. KINNEY: Yes.

5 CHAIRPERSON REID: That's not a separate unit.

6 MS. KINNEY: Yes.

7 VICE CHAIRPERSON KING: Not a rental unit.

8 MS. KINNEY: No. I don't know, but I would think it would be,  
9 could be, people who would want to use this. I would.

10 VICE CHAIRPERSON KING: But what Ms. Kress was saying is  
11 that the precedent that we would follow would be that there was an active rental unit  
12 uninterrupted since prior to 1958. And you're not aware that other neighbors on  
13 Norton Place have had uninterrupted rental units in operation in their houses since  
14 prior to 1958?

15 So the precedent that we would be setting would be exclusive to  
16 that. If we did decide to look favorably on this application, it would only apply to  
17 somebody whose property had been a multiple dwelling for the last 40 years.

18 MS. KINNEY: Our only witness to that would be --

19 MS. NOYES: She's coming.

20 MS. KINNEY: She's in very bad shape.

21 CHAIRPERSON REID: Did you wish to speak?

22 MS. NOYES: Yes.

23 CHAIRPERSON REID: You have to speak into the mike. Give  
24 your name.

25 MS. NOYES: It's Elizabeth Noyes.

26 CHAIRPERSON REID: And the address?

27 MS. NOYES: Three, six, one, one Norton Place.

1 CHAIRPERSON REID: Okay.

2 MS. NOYES: Verna Movern is on her way. She has a crutch. It  
3 will take her a while to get here. She's going to get a cab. Her memory, she says  
4 that she used to have roomers, Mrs. Wolfe.

5 Verna lives directly next door to the building that we are  
6 discussing. Those two are attached. Verna is not attached. Mrs. Wolfe --

7 CHAIRPERSON REID: Excuse me. Excuse me. In regard to  
8 Ms. Movern, why don't we wait and let her --

9 MS. NOYES: Let her talk.

10 CHAIRPERSON REID: -- speak for herself?

11 MS. NOYES: Because she is not going to say what I thought  
12 she would.

13 CHAIRPERSON REID: Okay.

14 MS. NOYES: It's a lot vaguer. But I think it will come out --

15 CHAIRPERSON REID: But it's better to have her speak. Why  
16 don't we just wait a while until she comes and let her speak?

17 MEMBER KRESS: And since you have party status, she will be  
18 like your witness. And so you can ask her questions to help her answer you.

19 CHAIRPERSON REID: She lives next door; correct? Did you  
20 say she lived next door to the subject property?

21 MR. W. HOM: Yes.

22 MS. NOYES: She lives next door to the Homs.

23 CHAIRPERSON REID: Okay.

24 MS. NOYES: And she's lived there since 1954.

25 MR. SELIGMANN: My name is Peter Seligmann. I live across  
26 the street from our very good neighbors the Homs.

27 I would just observe that there are -- I have observed -- I have

1           only lived there since 1976. No. Wrong. When did we move there? Nineteen  
2           eighty-six. Nineteen eighty-six. Nineteen eighty-six, ten years later. I moved there  
3           in 1986.

4                           And since then, I have seen other houses where there are  
5           tenants, but I have no idea. Not having been in the houses, I have no idea whether  
6           or not there are units. And I'm not sure they just are boarders that come down to  
7           use the common kitchen or the houses are divided into different units, whether they  
8           have a cooking plate or not, no idea.

9                           And I think that is in one other house on the block, Norton Place.  
10          I don't know of any other situation like that, although I know that there would be -- I  
11          think everybody in times when they need to generate more revenue would love the  
12          idea of being able to have another tenant in the basement apartment.

13                          And probably many of these apartments do have the ability to be  
14          converted into basement apartments to generate additional income, which I've --

15                          MEMBER KRESS: But unless it's been continuous without  
16          break since prior to 1958, we'll really come after somebody who does that. You'll  
17          have some DCRA folks on your door.

18                          MR. SELIGMANN: Great. What I wanted to also state was I  
19          have no idea, having not lived here in 1954 or in 1958, the condition of when this  
20          house was converted from a single-family dwelling into a multiple-family dwelling.

21                          And I think that it's very important since this is a very important  
22          precedent and an important variance for the community that the judging body  
23          understand that prior to -- because I don't think anybody here knows. The Homs  
24          arrived in '76. We arrived in '86. And I'm not even sure --

25                          MS. NOYES: '89.

26                          MS. KINNEY: '60s.

27                          MR. SELIGMANN: So we don't know what happened in 1958.

1 VICE CHAIRPERSON KING: There are letters in evidence from  
2 people who say that it was a rental unit in the '50s.

3 MR. SELIGMANN: Are there? We haven't seen those.

4 MS. SELIGMANN: We need to see them.

5 MEMBER KRESS: May we ask you: Do you know a G. Robert  
6 Lang or a John Geriakas, if I'm saying it right?

7 MR. SELIGMANN: Geriakas? Yes.

8 MS. SELIGMANN: That's an interesting case.

9 MEMBER KRESS: These are the two letters that we have on  
10 our files saying that it's been rented out to multiple tenants since the mid 1950s.

11 MR. SELIGMANN: We know both of them, and they are both on  
12 Wisconsin Avenue and have apartment buildings in their houses on Wisconsin  
13 Avenue.

14 VICE CHAIRPERSON KING: Are you purporting that that  
15 disqualifies them from saying what happened in that --

16 MR. SELIGMANN: I am not purporting anything. I'm saying that  
17 --

18 VICE CHAIRPERSON KING: -- house in the 1950s?

19 MR. SELIGMANN: I have no idea what they know about 1950. I  
20 have no idea. I mean, I don't know when they moved there. I don't have any idea  
21 whether or not they have -- what firsthand knowledge they have.

22 I know that there is an interest on the commercial owners on  
23 Wisconsin Avenue to convert much of Wisconsin and the adjacent streets into  
24 multiple-family dwellings. We have entered into commercial properties, and there  
25 are other discussions about commercial properties that are single-family dwellings  
26 that are being converted to commercial properties on Wisconsin Avenue.

27 And we have had people come to us and ask whether or not we

1 would oppose houses right on Wisconsin Avenue being converted to commercial,  
2 not to, Homs' but other properties.

3 So I don't know about the --

4 VICE CHAIRPERSON KING: If it should convey --

5 MR. SELIGMANN: I don't have any idea about the knowledge or  
6 the motivations of the people that are claiming that this house was multiple-family in  
7 the mid '50s, no idea.

8 The concern that I have as just a resident there is -- and I really  
9 want to again go back. This is a very delicate situation for us because we have lived  
10 across from the Homs for ten years and think of them as very good neighbors. So  
11 we are concerned to doing anything that could be misinterpreted as malicious  
12 towards them because we don't feel that. We admire them and their family.

13 Our concern is that for ten years, we have made a big  
14 investment in the city and our community to make it a historic district and to raise our  
15 children. We have three daughters that we have raised on that street and are  
16 raising still.

17 And our concern is that the area, the investment that we have  
18 made will be impacted. Our concern is that the investment we have made in this  
19 community will be impacted by having a variance that will allow the street, the very  
20 small street, to begin to kind of memorialize multiple-family dwellings. And that's the  
21 main interest.

22 So although you have said that it's not a change of zoning, it's a  
23 permanent variance. It could be a precedent-setting variance. And that's our  
24 concern, and that's why we're here, because we do not want to have this community  
25 that we have invested so much into have a permanent change of character,  
26 advertently or inadvertently.

27 And we have no objection to people -- we don't object to the

1 multiple people that are living across the street from us. They're nice people. We'd  
2 just as soon have them be able to continue to live there but not have a change in  
3 variance and not have it be a demonstration that this is an adjustment to the zoning.

4 So that's really all I wanted to say.

5 CHAIRPERSON REID: Thank you, Mr. Seligmann. The  
6 secretary informed me that you were not sworn in.

7 MR. SELIGMANN: Excuse me? Excuse me?

8 CHAIRPERSON REID: Our secretary just informed us that you  
9 were not sworn in. So do you mind standing and --

10 MEMBER KRESS: Swearing that what you have said is the  
11 truth.

12 CHAIRPERSON REID: Retroactively.

13 MS. ROSE: Raise your right hand.

14 (Whereupon, Peter Seligmann, a witness in Case Number  
15 16318, was duly sworn.)

16 MEMBER HINTON: If you show that to us, you have to leave it  
17 in our record.

18 MS. SELIGMANN: Oh, I do?

19 MEMBER HINTON: Yes.

20 MS. SELIGMANN: And when can I get it back?

21 MEMBER HINTON: Never. It has to stay in the record.

22 MS. SELIGMANN: Okay. You can't see it. Thank you for  
23 advising me.

24 MS. NOYES: May I show my house?

25 MS. SELIGMANN: You have to leave it in the record.

26 MEMBER HINTON: You have to leave it in the record.

27 MS. SELIGMANN: It's such a nice picture, Elizabeth. Let's send

1 it.

2 MS. KINNEY: I have something to say.

3 MS. NOYES: I have another picture that may be not as nice, but

4 --

5 MS. SELIGMANN: I brought the photo, actually, because it's  
6 earlier this century and I wanted you to see the character of Norton Place. And it  
7 still remains like that.

8 I wanted one of my daughters, actually, to draw a picture for the  
9 body today, but she said, "Mom, just take that picture." So that's how that  
10 happened.

11 Our house happened to have been owned by one of the Hudson  
12 Valley painters named Girand. And it's a very important house within the historic  
13 neighborhood. We subsequently learned that. We bought it unwittingly because we  
14 love Norton Place.

15 I think the most important points that were made today and what  
16 I want to emphasize in terms of your thinking are the fact that the zoning issues  
17 along Wisconsin Avenue are critical. And this is the first creep that we've had into  
18 the streets along this area, along this area.

19 I worked on the down-zoning of Wisconsin when they wanted to  
20 change the character of the commercial area. And so I know how hard it is to keep  
21 something intact. And I really hope you'll consider keeping our zoning intact.

22 I don't know what we can do about our friends the Homs. I don't  
23 want them to lose their revenue or anything, but if that has to come in order to keep  
24 our zoning, then I think we'll have to figure something out to help them.

25 I would say that the creeping has started around the corner. And  
26 the Geriakas property is the cornerstone of that. They converted a single-family  
27 home into numerous dwellings. I have no idea how many are in there. It's on the

1 corner of Norton Place and Wisconsin. But I'd venture to guess there are at least  
2 eight.

3 So that's a single-family, attached dwelling on that corner  
4 opposite, the alley, where, in fact, the Homs live. So this is a problem that's going to  
5 start to invade this neighborhood. And to take a strong action today would be very  
6 important for that, for the future of our street.

7 The parking and the trash are the two most difficult aspects of  
8 allowing any kind of multiple use. These homes have garages, but they don't use  
9 them as garages. They are additional apartments. And the trash is a huge problem,  
10 particularly in that alley.

11 VICE CHAIRPERSON KING: Excuse me. Can I interrupt? Are  
12 you saying that the Homs, in addition to having the two floors and the possible third  
13 unit, also have a fourth unit in their garage? Is that what you just testified?

14 MS. SELIGMANN: No. The garage area would be what is  
15 converted into an apartment. I've never been in there.

16 VICE CHAIRPERSON KING: Has it been converted into an  
17 apartment? Is that what you're testifying?

18 MS. SELIGMANN: I've never been in there. So I don't know.

19 VICE CHAIRPERSON KING: I see. Thank you.

20 MS. SELIGMANN: But I've seen this man, this tenant, there,  
21 who is there all the time. So I don't know where he exactly lives, but he lives in the  
22 building, in addition to the two apartments that they enter from the front. See, they  
23 have to enter those flats from the front of Norton Place. So I see them. And then I  
24 see him in the alley.

25 I don't know if it's garage or basement, frankly. Excuse me. I  
26 should correct that.

27 MEMBER HINTON: Your reference to the inhabited garages

1 was other garages along your block or along this alley?

2 MS. SELIGMANN: No. In the alley. But I don't know who lives  
3 in them or how it works, but garages get converted in there.

4 MS. KINNEY: May I explain that?

5 MEMBER KRESS: I have to say you do know that's an  
6 enforcement problem because I doubt very seriously anyone has come before us -- I  
7 think somebody here would know -- to have those garages.

8 Now, it doesn't mean you can't turn that garage into an extra  
9 space for yourself to use.

10 MS. SELIGMANN: Right.

11 MEMBER KRESS: But if you're turning it into a rental and it  
12 hasn't been continuously rented since prior to 1958, then you need to report that if  
13 that's troublesome to you because I believe that's probably existing in  
14 noncompliance.

15 MS. SELIGMANN: Okay. That's good. But the summary to my  
16 statement, I just want to say that I would urge you today to take whatever action  
17 necessary to protect the R-1-B designation without a variance. It's really critical to  
18 those of us who have purchased our properties to live in single-family  
19 neighborhoods, and we appreciate your consideration.

20 Thank you.

21 CHAIRPERSON REID: Let me ask you a question. On the one  
22 hand, I'm hearing you be very concerned about any change or any type of zoning  
23 relief that may come about as a result of this hearing today. But, on the other hand,  
24 I also hear you say that you are very fond of the Homs and that you're not trying to  
25 maliciously impact upon their lives.

26 My question then becomes: In the time that you have known  
27 them as neighbors, in regard to adverse impact, have you known or have you

1 experienced any problems as far as noise, traffic, parking, trash, or the like?

2 MS. SELIGMANN: In terms of the Homs? No. If it were only  
3 the life expectancy --

4 CHAIRPERSON REID: Have any of you had any problems or  
5 noticed any problems with the Homs in regard to parking, traffic, noise, or trash, or  
6 anything that would cause you some disturbance or some disturbance in your  
7 community?

8 MS. SELIGMANN: Is this any provision in the law that would  
9 permit for their tenancy to offer that to continue and then revert back to single-family  
10 dwelling? Is there any provision? Is there a small provision? I understood that  
11 there was something --

12 CHAIRPERSON REID: Somebody write that for me on that.  
13 The secretary --

14 MS. SELIGMANN: -- available on that through their ownership  
15 or something.

16 MS. ROSE: If this variance isn't granted, then it would have to  
17 be a --

18 CHAIRPERSON REID: No. I think her question was: After their  
19 use, once they -- as long as they're there --

20 MEMBER KRESS: Can we write a variance that basically says  
21 for this owner --

22 MS. ROSE: No.

23 CHAIRPERSON REID: Specifically.

24 MEMBER KRESS: -- as long as they're the owner --

25 CHAIRPERSON REID: And then after they sell, it would revert  
26 back to --

27 MEMBER KRESS: -- and then after they sell, it reverts. To my

1 knowledge, there isn't, but that's the question she --

2 MS. ROSE: The variance runs with the land.

3 MEMBER HINTON: And there's no way to allow this kind of  
4 relief under special exceptions. There's no provision in the regs that would allow it.  
5 For special exception, we can put a time limit on it. But there's no special exception  
6 that would allow what the Homs are asking for. It has to be a variance, and that has  
7 to run forever with the land.

8 MS. SELIGMANN: But what they're asking for, is there another  
9 way to phrase it or is there another provision that you could --

10 MEMBER HINTON: Those are the two options that are open to  
11 us: special exception or a variance. There is not.

12 MR. SELIGMANN: If they had a special exception, it could use a  
13 time limit?

14 MEMBER HINTON: The use that they're asking for is not  
15 allowed as a special exception. That alternative is not available. The only way this  
16 can be legally allowed is through a variance. And that has to be forever if it's  
17 approved.

18 MS. KINNEY: You asked if we thought the Homs had caused  
19 any unwelcome impact on the family. And my answer would also be not to my  
20 knowledge, but I live at the other end of the block. So I am not a good witness.

21 But I do know what the identical homes that stretch along  
22 Wisconsin Avenue in that block that is one side of Norton have done to the  
23 neighborhood, to the Cleveland Park neighborhood. They're all now businesses.  
24 That's a commercial strip. They're using the houses as businesses.

25 CHAIRPERSON REID: Excuse me. But we want to stay  
26 germane to this particular case and this --

27 MS. KINNEY: What we have seen is an example there. We are

1 impacted is what I'm saying already.

2 CHAIRPERSON REID: Okay. Specifically we're referring to the  
3 subject property and this particular case. See, we wanted to make sure that we  
4 don't drift too far away.

5 MS. KINNEY: Well, I'm trying not to. They have all taken in  
6 tenants is the point.

7 CHAIRPERSON REID: Okay. Thank you.

8 MS. KINNEY: They have a business on one floor, a tenant in the  
9 basement, a tenant on the second floor. And the amount of traffic, trash, even  
10 though basically they seem to be relatively nice people, is overwhelming. And it's  
11 right on that corner that is just crowded with everything now, --

12 CHAIRPERSON REID: Thank you.

13 MS. KINNEY: -- people cars, and so forth.

14 CHAIRPERSON REID: Thank you.

15 Okay. Now, we will move -- does that conclude the testimony of  
16 the opposition? That picture, is that something that you can leave with us?

17 MS. NOYES: Yes, I can.

18 CHAIRPERSON REID: If you'd submit it? Okay.

19 MS. NOYES: I would like to.

20 MS. KINNEY: Did you autograph it?

21 CHAIRPERSON REID: Would you tell us what it is?

22 MS. NOYES: It is my house.

23 CHAIRPERSON REID: Okay. Would you --

24 MS. NOYES: It is my house. And I think it's one of the original  
25 Sears and Roebuck houses that has been expanded. On both sides of that house,  
26 there are large, old, three-story homes. It's a little cottage in between two very large  
27 houses. And that's the neighborhood except across the street.

1 CHAIRPERSON REID: All right. If there's no more testimony,  
2 then we would move now to the cross-examination of the applicant.

3 VICE CHAIRPERSON KING: No, no.

4 CHAIRPERSON REID: Mr. Hom, I'd ask: Could you come back  
5 here? Mr. Hom, do you have any cross-examination of the opposition based on  
6 their testimony?

7 MR. W. HOM: No, I really don't have any questions for them, but  
8 since they are my parents' neighbors, my parents realize that this isn't directed  
9 directly towards them in a malicious manner.

10 CHAIRPERSON REID: This is questioning. Do you have a  
11 question based on anything that they have said or any of the testimony that they  
12 have given here today?

13 MR. W. HOM: I have no questions.

14 CHAIRPERSON REID: Okay.

15 MEMBER KRESS: May I ask one question?

16 CHAIRPERSON REID: Sure.

17 MEMBER KRESS: I just wanted to ask. Are you aware of the  
18 zoning surrounding Norton Street --

19 CHAIRPERSON REID: Place.

20 MEMBER KRESS: -- and that it does change on Wisconsin  
21 Avenue, it is a different zone?

22 MS. KINNEY: Oh, yes.

23 MEMBER KRESS: And that's why the larger residential is there.  
24 There's a very clean demarcation.

25 MS. KINNEY: Yes.

26 MS. SELIGMANN: Then it reverts back to single-family when  
27 you get on the other side of Norton; right?

1 MS. KINNEY: No.

2 VICE CHAIRPERSON KING: But there is a strip of Norton right  
3 by Wisconsin that is --

4 MS. KINNEY: Could I see that? Is it a --

5 MEMBER KRESS: Yes. This is R-5-B on one side and R-5-A  
6 on the other side of Norton.

7 VICE CHAIRPERSON KING: So the people who live on Norton  
8 Street right next to Wisconsin Avenue have different zoning than the rest of Norton  
9 Place?

10 MEMBER KRESS: Across the street is --

11 MS. NOYES: Which is a huge house with a yard. Oh, my  
12 goodness.

13 VICE CHAIRPERSON KING: But they have a completely  
14 different --

15 MS. NOYES: But they're zoned for something else. Yes, I  
16 would imagine along Wisconsin eventually that's going to be an apartment building.

17 CHAIRPERSON REID: Just a moment, please. Let's try to be  
18 considerate of one another. And one person can speak at a time. Thank you.

19 All right. You have no questions?

20 MR. W. HOM: I have no questions.

21 CHAIRPERSON REID: Okay. All right. Before concluding this  
22 case, we understand that there is Mrs. Movern, who will be coming. So we will  
23 temporarily set this aside and allow Ms. Movern to come and then bring you back  
24 up. And you will then have an opportunity to give your closing remarks after Mrs.  
25 Movern has spoken. Okay?

26 MR. W. HOM: Okay.

27 CHAIRPERSON REID: Thank you.

1 Next case?

2 MS. SELIGMANN: Thank you very much.

3 MS. KINNEY: Thank you.

4 CASE NUMBER 16319

5 MS. ROSE: The next application of would be 16319 of Austin  
6 Fitts, pursuant to 11 DCMR 3107.2, for a variance from the provisions of Subsection  
7 401.6 to allow the subdivision of land without street frontage; and a variance from  
8 the provisions of Subsection 2507.2 to allow construction, alteration, and repair for  
9 human habitation of an existing structure located on an alley lot which does not abut  
10 an alley that is 30 feet or more in width and does not have access to a street through  
11 an alley or alleys not less than 30 feet in width in a DCOD/R-5-B district at premises  
12 1720 and the rear of 1726 19th Street, Northwest, Square 110, Lot 58 and the  
13 remainder of Lot 39.

14 Would all persons planning to testify in this application please  
15 rise to take the oath? Will anybody be testifying in this application?

16 MR. ROWAN: No. Just representing them. Austin Fitts is the  
17 applicant. Her registered agent is Ron Friday, who is appearing with me, Carl  
18 Rowan, her attorney.

19 CHAIRPERSON REID: Who is going to be testifying on behalf  
20 of the applicant?

21 MR. FRIDAY: Mr. Rowna is going to be making a presentation.

22 MR. ROWAN: It appears to be uncontested. If in this matter you  
23 require testimony, her registered agent, Ron Friday, is here.

24 VICE CHAIRPERSON KING: Then he needs to be sworn.

25 CHAIRPERSON REID: Then he has to be sworn in.

26 MR. ROWAN: Okay. Very good.

27 MS. ROSE: Would you raise your right hand?

1 (Whereupon, Ron M. Friday, witness in Case Number 16319,  
2 was duly sworn.)

3 MS. ROSE: Please be seated.

4 MR. FRIDAY: Good afternoon, Madam Chairperson and  
5 members of the Board. My name is Ron M. Friday. I'm here representing  
6 Application Number 16319. C. Austin Fitts. And we're here before you today to  
7 request a variance.

8 I'll just read this opening statement, and also I have some copies  
9 of the statement for you all here.

10 CHAIRPERSON REID: Mr. Friday, is there any authorization  
11 from the owner of the property to allow you to speak for him or her?

12 MR. FRIDAY: Yes. I filled out a registered agent -- a letter from  
13 the owner that should be in your -- it was given to your office, BZA office.

14 CHAIRPERSON REID: Just a moment.

15 MR. FRIDAY: Very good.

16 CHAIRPERSON REID: We'll check that.

17 MR. FRIDAY: Okay. Thank you.

18 CHAIRPERSON REID: Mr. Friday, do you have a copy of the  
19 authorization that you just discussed?

20 MR. FRIDAY: No, I don't have a copy with me.

21 VICE CHAIRPERSON KING: You're not referring to this piece of  
22 paper, are you?

23 MR. FRIDAY: No. No, ma'am. This is a letter from the owner.

24 MR. ROWAN: The letter was submitted at the same time the  
25 filing fee was filed. It may be attached.

26 CHAIRPERSON REID: We have it.

27 MR. FRIDAY: You have it? Okay. Very good.

1 CHAIRPERSON REID: All right. Very well.

2 MR. FRIDAY: May we proceed?

3 CHAIRPERSON REID: Okay. Mr. Friday, you need to ask for  
4 waivers for us to waive the rules to allow you to submit your statement.

5 MR. FRIDAY: What do you mean a "waiver"?

6 MEMBER HINTON: The statement of the applicant is due into  
7 the record 14 days before the hearing. So for you to submit any information today,  
8 you need a wavier.

9 MR. FRIDAY: Okay.

10 MEMBER HINTON: You need to ask for a waiver.

11 MR. FRIDAY: Okay. I would like to ask for a waiver to submit  
12 testimony today, Madam Chairperson.

13 CHAIRPERSON REID: We grant that waiver.

14 MR. FRIDAY: This is an application of C. Austin Fitts, pursuant  
15 to 11 DCMR 3107.2, for a variance from the provisions of Subsection 401.6 to allow  
16 the subdivision of land without street frontage; and a variance from the provisions of  
17 Subsection 2507.2 to allow construction, alteration, and repair for human habitation  
18 of an existing structure located on an alley lot which does not abut an alley that is 30  
19 feet or more in width and does not have access to a street through an alley or alleys  
20 not less than 30 feet in width in a DCOD/R-5-B district at premises 1720 and the  
21 rear of 1726 19th Street, Northwest, Square 110, Lot 58 and the remainder of Lot  
22 39.

23 A little background. The premise is a single-family dwelling and  
24 is owned by C. Austin Fitts. It is one of just a handful of carriage houses still in  
25 existence in the District of Columbia. Such dwellings were the parking lots of their  
26 era and were, therefore, built to the rear of the main residencies.

27 This particular dwelling is bordered by 19th and 20th Streets,

1 Northwest and R and S Streets, Northwest near Capital Hilton Hotel. By adding  
2 street frontage access to the premises by the alley, it's both simple and ample for  
3 purpose of mail delivery. And the United States Postal Service has provided the  
4 address of 1735 Frasier Court, Northwest.

5 For reasons that defy easy explanation, the premises rest on two  
6 lots with a dividing line that runs through the middle of the structure. Additionally,  
7 one of the two alleys that border the premise is less than 30 feet wide.

8 This combination of factors has a profound impact on Mrs. Fitts'  
9 ability to conduct common and necessary renovation and maintenance on the  
10 premise because under existing law, she cannot properly obtain a building permit  
11 because one alley is less than 30 feet wide unless she agrees to build a fire wall  
12 through the middle of her home to separate the two lots.

13 Further, she cannot simply ask the DCRA to combine the lots  
14 because of the lack of street frontage. This is clearly a Catch-22 situation that  
15 makes it impossible for the applicant to have full use and enjoyment of the premises.

16 I'm going to ask Mr. Rowan to show you some of these things at  
17 the easel there.

#### 18 DIRECT EXAMINATION

19 BY MR. ROWAN:

20 Q Mr. Friday, if you would, you're familiar with this residence and  
21 location?

22 A Yes, sir.

23 Q And do you have photographs of the location that might help the  
24 Board --

25 A Right, if I may.

26 Q -- to understand what we're looking at here?

27 A They are all numbered on the back.

1 Q The premises that we're talking about here today, is it accurate  
2 to say that it is reflected by the heavy border outline on this flat?

3 A That's correct.

4 Q And if you are to look at Photographs Number 1 and 3 --

5 VICE CHAIRPERSON KING: Where are these photographs?

6 Are these the ones --

7 MR. ROWAN: Okay. They're --

8 MR. FRIDAY: Yes. They're right here.

9 VICE CHAIRPERSON KING: Okay. Great. This is 4.

10 MR. FRIDAY: We had Photograph 1. Excuse me.

11 VICE CHAIRPERSON KING: Photograph 1?

12 MR. FRIDAY: Photograph 1.

13 BY MR. ROWAN:

14 Q Do Photographs 1 and 3 accurately reflect a photograph of the  
15 carriage house taken from the 30-foot alleyway which fronts on 19th Street?

16 A Yes, it does.

17 Q And your other photographs that you have, 2 and 4, reflect  
18 photographs taken of the carriage house from the alleyway which fronts on S  
19 Street?

20 A Yes, it does.

21 Q And is it also accurate to say that the entirety of the premises  
22 that we're talking about here of these lots exist within the four walls of this carriage  
23 house?

24 A That's correct. It's one structure that sits on this lot.

25 MEMBER HINTON: Could you say that again, please?

26 MR. ROWAN: We wanted to make it clear that the premises --  
27 this reflects the home. It's like a condominium. Everything that goes along with this

1 lot exists within the walls of this structure. We're not here today talking about  
2 anything that would reflect on development of other property. This is it.

3 BY MR. ROWAN:

4 Q And is it your understanding that carriage houses are a rarity in  
5 the District of Columbia?

6 A That's correct. This particular dwelling is very unique in its style.  
7 I mean, it's a home that sits in the middle of an alley, quite frankly.

8 Q And because of that fact, is it accurate to say that any effort by  
9 the homeowner to conduct ordinary maintenance that would require a building  
10 permit is stymied by the fact that: one, being in a location on an alley less than 30  
11 feet, they can't get a building permit; and, two, that because this house happens to  
12 exist on two lots, that in order to do work within the house, the city would require a  
13 fire wall to be built similar to one built down the middle of this room?

14 A That's correct.

15 VICE CHAIRPERSON KING: Mr. Rowan, I presume that your  
16 request variance would obviate the need for the fire wall. Is that what you're  
17 suggesting?

18 MR. ROWAN: Yes. If this line simply no longer existed, if the  
19 line through the middle of Ms. Fitts' home no longer existed, and this was one lot,  
20 that would eliminate the problem.

21 VICE CHAIRPERSON KING: Does the Board of Zoning  
22 Adjustment have the ability to merge lots, I mean, to change --

23 MEMBER KRESS: No. What we do is we basically -- I'm sorry.  
24 I wasn't listening. That's done over at DCRA, but DCRA is basically saying: No, we  
25 can't do it for the various reasons stated. So what we can do is --

26 VICE CHAIRPERSON KING: Oh, I see. If we grant the  
27 application, then he can go to DCRA and get them --

1 MEMBER KRESS: And then allow --

2 MR. ROWAN: That's correct.

3 VICE CHAIRPERSON KING: And you'll allow him to merge two  
4 lots?

5 MR. ROWAN: Correct.

6 VICE CHAIRPERSON KING: Okay. That was my confusion. I  
7 wasn't aware that we had the power to merge lots, but we do have the power to  
8 unlock the door that will merge lots.

9 MR. ROWAN: Absolutely.

10 BY MR. ROWAN:

11 Q And, Mr. Friday, you have personally traveled to this location and  
12 are familiar with it?

13 A Yes, I have.

14 Q How would you characterize the ability of vehicles to move in  
15 and around this carriage house?

16 A Well, we can just go back to the photographs here. You can see  
17 that there are cars. This is Photograph 3 I'm holding. There are cars that are  
18 parked, at least three cars that are parked, across the alleyway that shows the width  
19 of the alley. And there's easy access, both to and fro, from this residency.

20 In fact, I believe in the days when this was probably built, you  
21 know, this probably was necessary, this provision, on the books because you had  
22 carriages then. And unless there was some reason we go back to carriages, it suits  
23 the purpose for easy access in and out the alleyway.

24 Q And you're saying that the requirement of 30 feet in an alley was  
25 to keep horses far enough apart --

26 A Yes, that's correct.

27 Q -- and turning radius?

1                   A           That's right. That's correct.

2                               MEMBER KRESS: Could I ask you: Do you know why today  
3 the fire department requires certain widths in alleys?

4                               MR. FRIDAY: Well, not exactly. I would imagine it's for their  
5 vehicles to get to a certain location. And in this alleyway, if you can, like I say, go  
6 back to Picture 3, it's clearly wide enough for a fire truck or an emergency vehicle to  
7 pass. So it shouldn't be a problem.

8                               MEMBER KRESS: If the properties were merged or --

9                               MR. FRIDAY: It doesn't affect the width of the alley.

10                              MEMBER KRESS: Because then they wouldn't have to go down  
11 the narrower --

12                              MR. FRIDAY: Right, right. It wouldn't affect the alley. It wouldn't  
13 affect it.

14                              VICE CHAIRPERSON KING: Mr. Friday, have you or your client  
15 met with an advisory neighborhood commission -- I don't see anything in here -- or  
16 any of the neighbors and so forth? Have you met with the community to detect any  
17 objection to this?

18                              MR. FRIDAY: No, we have not. It's my understanding that the  
19 ANC was notified through notice here from this office.

20                              VICE CHAIRPERSON KING: That's correct.

21                              MR. FRIDAY: And I don't know if you received anything.

22                              VICE CHAIRPERSON KING: No, but you didn't --

23                              MR. FRIDAY: To my knowledge, we hadn't --

24                              VICE CHAIRPERSON KING: You didn't make any attempt to --

25                              MR. FRIDAY: No, we had not.

26                              VICE CHAIRPERSON KING: -- contact the neighbors?

27                              MR. FRIDAY: No, we had not.

1 MR. ROWAN: I might add as an administrative matter that just  
2 prior to coming down here today, we received a fax from a neighbor. The neighbors  
3 who are in the area had no objection.

4 This particular neighbor, a Mr. Adams, also had no objection. He  
5 just wanted to make sure it was brought to the Board's attention for completeness of  
6 the record that he had brought a lawsuit against the former owner of the property  
7 years ago on an easement matter and just wanted to make sure that anything that  
8 was done here today wouldn't hurt his easement.

9 So, as a matter of courtesy, I told him I would bring this to your  
10 attention and provide his letter for the record. He indicated that he had sent a letter  
11 here, but I don't know if it has arrived yet. It wasn't here yesterday.

12 But there were no objections from the community.

13 BY MR. ROWAN:

14 Q Mr. Friday, if I may ask, this dwelling has been occupied for  
15 many years?

16 A Yes. It's been a single-family dwelling for some time. And the  
17 purpose and the use will stay the same. It won't change. So that's not an issue  
18 today.

19 MEMBER HINTON: Do you know how long it's been occupied  
20 as a single-family dwelling?

21 MR. FRIDAY: Not exactly. Mr. Rowan, do you have any  
22 knowledge of that?

23 MR. ROWAN: This goes back I think more than ten years. It's a  
24 renovated building, but at least ten years.

25 MEMBER HINTON: How were the original renovations done  
26 when you have had the same problem with one single family on two lots?

27 MR. ROWAN: Would you like me to answer that question

1 directly or do it by question by the witness?

2 MEMBER HINTON: Testimony should come from the witness.

3 MR. ROWAN: All right.

4 BY MR. ROWAN:

5 Q Mr. Friday, to your knowledge, has a building permit been issued  
6 for renovation work on this particular dwelling?

7 A Yes, it has.

8 Q And was that building permit issued properly or in error, to your  
9 knowledge?

10 A Well, when we went before -- when I spoke with the Zoning  
11 Administrator regarding this matter, she explained to me that she wouldn't have  
12 anything to do with it, that it's a matter that must come before the BZA Board.

13 But when I researched the applicant's building permit, her zoning  
14 employee issued a permit. And her name escapes me now. But it was clearly done  
15 through the Zoning Office. It must have been, you know, they had an oversight or  
16 something.

17 And at that point, we were trying to get the matter resolved at  
18 that level, but she insisted that we come before you. And that's why we're here  
19 because we -- in fact, we had Mr. Nunley from the Zoning Office visit the site with us  
20 on a visit. And he looked at the property, and he seen the things that had been  
21 done, security systems and stuff put in. And he was saying: Well, this looks like the  
22 work is being done already.

23 And we told him there was a building permit issued. And that's  
24 why we can't understand why we could not have gotten the lots combined there.  
25 And he said: If you had a building permit, I don't see why.

26 So we went back to the Zoning Administrator. She didn't want to  
27 do anything with it and referred us back to you guys. And that's why we're here.

1 MEMBER HINTON: Do you have a copy of that previous  
2 building permit?

3 MR. FRIDAY: I believe it was submitted with the --

4 VICE CHAIRPERSON KING: Isn't this it? I think --

5 MR. FRIDAY: Yes.

6 MEMBER HINTON: No. This is the current one. This is 1997. I  
7 thought you were talking about --

8 MR. ROWAN: That is the one that our client applied for.

9 MR. FRIDAY: Yes, right. Exactly.

10 VICE CHAIRPERSON KING: May 1997?

11 MR. ROWAN: Yes.

12 MR. FRIDAY: Correct.

13 MEMBER HINTON: My question is -- I'm sorry. Maybe I  
14 misunderstood what you said, but I thought you said about ten years ago, this  
15 structure was converted into a residential unit.

16 MR. ROWAN: I'm sorry. Not by our client. Our client bought the  
17 residence just a couple of years ago and has commenced a renovation project  
18 requiring the building permit that was issued and after finishing some of the work  
19 and going back to get additional permits was confronted with this issue and is sort of  
20 in the Catch-22 position of having received a permit to do the work, now being  
21 unable to finish because somebody caught the fact that this is a carriage house and  
22 has these two problems of street frontage in an alley.

23 One of the reasons that we have asked for the variance on the  
24 issue of the building permit is simply because, even though the work was done  
25 properly by permit, it was a permit improperly issued. And we want to make sure  
26 that the residence is in full compliance with the law.

27 MEMBER HINTON: I don't think so. So there is more work that

1 you need to do that you haven't been able to get a permit for?

2 MR. ROWAN: Eventually. I mean, within the interior of the  
3 house, there will be something that needs to be done.

4 VICE CHAIRPERSON KING: But all of this work has been done  
5 already?

6 MR. ROWAN: It has been done, yes.

7 BY MR. ROWAN:

8 Q And, Mr. Friday, would it be correct to say that Ms. Fitts was  
9 advised that in the future, for any building permit, that she will have to come before  
10 the BZA and go through this process?

11 A That's correct. That's correct.

12 VICE CHAIRPERSON KING: But should we grant your  
13 application and should DCRA merge the lots, then --

14 MR. FRIDAY: We don't need to come back before you.

15 VICE CHAIRPERSON KING: -- then there would be no need to  
16 come back?

17 MR. ROWAN: Yes.

18 MR. FRIDAY: That's correct.

19 MR. ROWAN: That solves the problem.

20 VICE CHAIRPERSON KING: Carl, would you explain this to  
21 me? What is the easement? I mean, I've skimmed it, but would you explain to me  
22 what we are to avoid doing so that we don't screw up Mr. Adams?

23 MR. ROWAN: Okay. I don't think there's any issue at all. There  
24 was an easement issue that was raised, a title issue, with a prior owner that --

25 VICE CHAIRPERSON KING: Title to what?

26 MR. ROWAN: Title to an easement. I've just glanced at this  
27 while we've been sitting here. There was an easement in the back area of the

1 dwelling.

2 MR. FRIDAY: Courtyards.

3 MR. ROWAN: Yes, to allow an individual whose home is right  
4 here to walk across this little piece of dirt that leads to the alley.

5 VICE CHAIRPERSON KING: And nothing that you're asking us  
6 to do today would in any way infringe Mr. Adams' easement?

7 MR. ROWAN: Absolutely not.

8 VICE CHAIRPERSON KING: I wanted that to be on the record.

9 MR. ROWAN: I have no further questions of Mr. Friday.

10 MR. FRIDAY: Yes. Well, just to sum up, I believe that this  
11 subject site is affected by a unique and exceptional condition. And, as previously  
12 stated, the premises is on a handful of carriage houses remaining in the District of  
13 Columbia. Its existence is the very definition of an exceptional situation of condition.  
14 Further, issues of street frontage and alley width are uniquely applicable to these  
15 very few structures.

16 The combination of these facts places a unique burden on the  
17 owner of the premises to either allow the unabated deterioration of the premises or  
18 engage in drastic alteration that would serve to destroy the unique characteristics of  
19 carriage houses that are the basis of their desirability.

20 So I guess, to summarize, the requested relief will have  
21 absolutely no detrimental impact on the common good. The issue of combining the  
22 lots is purely an administrative exercise with no public or zoning impact.

23 It should also be noted that the four walls of the premises  
24 encompass the entirety of the lots at issue. Variance relief would not convey any  
25 developmental rights or constructural privileges outside of the premises.

26 So the applicant is requesting that the Board will grant relief and  
27 if we could possibly receive that today.

1 CHAIRPERSON REID: Very well. Is there anyone here in  
2 support or opposition of this particular case? You're in support?

3 MS. NETTLEFORD: I'm actually --

4 VICE CHAIRPERSON KING: She refused to be sworn in. She  
5 hasn't been sworn in. You weren't sworn in, were you?

6 MS. NETTLEFORD: I was not sworn in. My name is Leslie  
7 Nettleford. I'm from the firm of Kass and Skalet. We're representing Mr. Adams'  
8 interest in this.

9 We did not have any knowledge prior to this time that you were  
10 actually going to enter it in. We have been trying to contact his office back and forth.  
11 So our only goal here today was just to make sure that Mr. Adams' interest was not  
12 changed in any way by this Court's granting this item.

13 And I believe you have a copy of the February 13 letter. Copies  
14 were made. I was told that I needed to come in today in order to present this  
15 information.

16 And, just to sort of clarify, as you can see, there are two lots  
17 there. And it was Lot 805 that the previous owner -- they put a door in there. They  
18 put steps in there so they could have access to an alleyway. And the way the court  
19 held was that they were not permitted to do that.

20 So our whole purpose today was just to make sure that nothing  
21 was going to happen whereby Lot 805 would have an easement to that right-of-way  
22 that counsel previously pointed out to you.

23 VICE CHAIRPERSON KING: Do you feel that we have  
24 sufficiently entered it into the record that they have no intention to interfere with the  
25 easement?

26 MS. NETTLEFORD: Right. You have made your statement,  
27 and he responded to it. So we're fine.

1 CHAIRPERSON REID: You're satisfied with that response?

2 MS. NETTLEFORD: Yes.

3 CHAIRPERSON REID: Government reports or ANC, staff  
4 reports? ANC-2B. I did not see anything in the record. They were noticed on  
5 January 8th, I think, but we have nothing from them. So they would not be given the  
6 great weight to which they would be ordinarily entitled.

7 So now we come to closing remarks.

8 MR. FRIDAY: Well, again, if I might thank the Madam  
9 Chairperson and the members of the Board for allowing us an opportunity to come  
10 before you. And we just ask that the Board render a full decision for us if you can.  
11 Thank you very much.

12 CHAIRPERSON REID: Board members?

13 VICE CHAIRPERSON KING: It seems to me that this is a  
14 classic example of extraordinary circumstances. I can't think of anything more  
15 extraordinary.

16 Since the ANC did not respond and there has been no appeal  
17 from anybody except Mr. Adams, whose interests seem according to his  
18 representative to be well-protected, I move that we grant the application and give the  
19 summary order.

20 MEMBER KRESS: I second that motion.

21 CHAIRPERSON REID: Okay. All those in favor of the motion?

22 (Whereupon, there was a chorus of "Ayes.")

23 CHAIRPERSON REID: Those opposed?

24 MEMBER HINTON: Before we vote, I think there's something  
25 that we need to talk about. It seems to me from the relief that's noted by the Zoning  
26 Administrator, that this property was illegally converted for human habitation. It  
27 never had a variance. It always needed a variance for that to happen.

1 VICE CHAIRPERSON KING: Oh, you mean years and years  
2 ago, prior to the current owner?

3 MEMBER HINTON: Well, prior to 1980, which is what the  
4 attorney has said. It happened about ten years ago. Whenever it happened, there  
5 was never a variance granted. And one needed to be granted for it to happen.

6 So what this Board needs to consider, you know that we cannot  
7 take into account --

8 VICE CHAIRPERSON KING: Oh, I see.

9 MEMBER HINTON: -- what is already existing. We have to  
10 base our decision on whether this variance to convert this building for human  
11 habitation is for -- that's what we've granting.

12 VICE CHAIRPERSON KING: That's the Number 2 on --

13 MEMBER HINTON: Right.

14 VICE CHAIRPERSON KING: Isn't it?

15 MEMBER HINTON: Right. And --

16 VICE CHAIRPERSON KING: Where is the book? Let's look at  
17 2507. Have you --

18 MEMBER HINTON: What it basically says is that --

19 VICE CHAIRPERSON KING: Oh, you've got it?

20 MEMBER HINTON: Yes.

21 -- should not happen on an alley that has less than 30 feet wide.

22 VICE CHAIRPERSON KING: But, Susan, if we grant the first  
23 variance and if it becomes one plot of land, then they are fronting on an alley that's  
24 30 feet wide. It's not --

25 MEMBER HINTON: Well, you have to read the regulation. It  
26 says that it has to have access to a street from an alley that's 30 feet wide, those  
27 two parts of it. Look in the reg.

1                   So, even if they combine the lots, even if we grant the first  
2                   variance, they still need the second variance.

3                   VICE CHAIRPERSON KING: No, no. I understand that. But is  
4                   this alley that says "To 19th Street, Northwest," arrow, not 30 feet wide?

5                   MEMBER HINTON: One of them is, but --

6                   VICE CHAIRPERSON KING: Oh, that one is 30 feet wide, this  
7                   one that's -- oh, I see.

8                   MEMBER KRESS: So where does the other alley go that's 30  
9                   feet wide?

10                  CHAIRPERSON REID: The one that goes to the --

11                  VICE CHAIRPERSON KING: That's the only one that's 30 feet  
12                  wide.

13                  MEMBER KRESS: And it goes to where?

14                  MR. ROWAN: That goes to --

15                  VICE CHAIRPERSON KING: S Street?

16                  MR. ROWAN: -- S Street. And then the other alley goes out to  
17                  19th.

18                  MR. FRIDAY: Right.

19                  MEMBER KRESS: By combining the properties, to continue  
20                  your thought, then the property itself can be considered with Variance Number 1 to  
21                  be fronting on the 30-foot alley?

22                  MEMBER HINTON: I don't think so.

23                  VICE CHAIRPERSON KING: Susan --

24                  MEMBER HINTON: If you look at the language, it says, "an  
25                  existing structure." It doesn't say, "an existing property." So the ZA isn't saying that  
26                  because it's two separate lots. The ZA is saying it's an existing structure.

27                  VICE CHAIRPERSON KING: But, Susan, if this survey, which

1 clearly must be, both lots front on one alley that is 30 feet wide.

2 CHAIRPERSON REID: Yes, but that's the alley. And then the  
3 alley also --

4 MEMBER HINTON: That alley may not be 30 feet for its whole  
5 length. We have no map that shows that. I'm just --

6 VICE CHAIRPERSON KING: Oh, I see what you're saying.

7 MEMBER HINTON: If what you're saying is true, it doesn't need  
8 a variance at all. So that's what I'm trying to understand.

9 MEMBER KRESS: Yes, it does. It needs the variance  
10 absolutely because the one property is not large enough to be a part of the  
11 subdivision. I mean, they can't just go get the subdivision without us.

12 CHAIRPERSON REID: And if we concede that the property  
13 abuts the alley, the 30 feet wide, and then that 30-foot alley --

14 VICE CHAIRPERSON KING: Mr. Friday, does the 30 feet  
15 continue all the way to the street?

16 CHAIRPERSON REID: Just a moment, Mrs. King, please.

17 VICE CHAIRPERSON KING: I beg your pardon.

18 CHAIRPERSON REID: You'll have your opportunity in just a  
19 moment.

20 We can't ascertain whether or not that alley that's 30 feet wide  
21 goes all the way to the street. Is that what the problem is, Ms. Hinton?

22 MEMBER HINTON: What I am saying is there are two reliefs  
23 that are noted. The first one has to do with the subdivision, which is 401.6, to allow  
24 subdivision of land without street frontage. That's the subdivision issue. It's  
25 subdivision of land. It has no street frontage.

26 The second one is to allow construction, alteration, or repair for  
27 human habitation of an existing structure located on an alley that does not abut an

1 alley that is 30 feet or more in width. So that's what I'm trying to understand.

2 If we're being told that this alley is 30 feet all the way to a street,  
3 there's no need for that variance.

4 CHAIRPERSON REID: Why do you need a variance?

5 MEMBER HINTON: If there's a need for the variance, then  
6 there's something that we're not understanding.

7 MR. FRIDAY: May I speak, please?

8 CHAIRPERSON REID: Sure.

9 MR. FRIDAY: I think what happened here is that the department  
10 realized -- in fact, it's unfortunate that we are even here, as Ms. Hinton is even  
11 stating, because, really, the provision should have been one variance, and that  
12 variance would have been the street frontage, because the second one has already  
13 been addressed.

14 I mean, they have already been issued permits to conduct  
15 construction work at this site by the department. And we have the permits already  
16 on file.

17 But the Administrator, Zoning Administrator, did not want to  
18 rescind that. I mean, in fact, Mr. Nunley took ill. He was going to do a notice that  
19 would have reflected only one particular issue here. That would have been the  
20 street frontage.

21 But Mrs. Hicks refused to rescind that and said: You just go  
22 before the Board and leave it as it was. So, I mean, that's why we're here.

23 But it's not an issue, the construction part. That's already been  
24 addressed because, in fact, the habitation was there. She has been living there for  
25 --

26 MEMBER HINTON: The habitation, if it occurred without a  
27 variance, it is not legal. You have to understand that. It is not legal. It doesn't

1 matter --

2 MEMBER KRESS: If it's not a --

3 MEMBER HINTON: It doesn't matter if it's been 10 years. Ten  
4 years, 15 years, it doesn't matter. Without a variance, it was not legal. Okay?

5 And what you said about the permit, I don't understand why the  
6 permit was issued without the variance. It seems to me that it should not have been.

7 And when the zoning officials found out that it was issued in  
8 error, they should have revoked it immediately. Sending you here after they've  
9 allowed you to do the work --

10 VICE CHAIRPERSON KING: Makes no sense.

11 MEMBER HINTON: Is ridiculous.

12 VICE CHAIRPERSON KING: No sense.

13 MR. ROWAN: That's part of our problem. We're dealing with a  
14 situation that occurs probably five times in the entire city, a carriage house. The  
15 zoning regulations are written for the 99.99 percent of the houses that have street  
16 frontage. These are unique.

17 I would have to make a phone call back to my office to find out  
18 the entirety of the occupation of this house. I can only refer to the time that Ms. Fitts  
19 has been there and the time that the previous owner was there.

20 Perhaps -- I don't know if you have information since you are  
21 raising the issue about the previous owner how far that goes back. It may go back  
22 much farther.

23 All that we know is that our client has been going around in an  
24 ever-closing circle trying to figure out how to comply with the law with regard to a  
25 house that she lived in for years and is trying to fix up.

26 And she has no control over the size of the alleys at this point.  
27 She can't change it. I mean, there's nothing that she can do to change the character

1 of the carriage house. And so we're here today simply trying to figure out the most  
2 expeditious way to remedy a situation that has long existed and is going to in no way  
3 change the character of the neighborhood.

4 MEMBER HINTON: We need to verify whether this 30-foot  
5 public alley does, in fact, have access to a street. Do you have a map that would  
6 show that?

7 MR. ROWAN: I do not have a map, although the photograph --  
8 this alley has access to a street as it turns the corner. It's 30 feet wide all the way  
9 down to where it dead-ends and then turns left and then it's narrower than 30 feet in  
10 the little -- in a portion, like the driveway that leads to the street. But everything --

11 MEMBER HINTON: Well, then that's the problem. The  
12 regulation says it has to be 30 feet wide all the way to a street. So, from what you  
13 have just said, that's not the case. Is that correct?

14 MR. ROWAN: Yes, that's correct. That's correct.

15 MEMBER HINTON: Then that's why you need this variance.

16 MR. ROWAN: Yes.

17 MEMBER KRESS: And if that's the case, I have a concern  
18 about the fire department. I mean, I really have a concern about safety and fires in  
19 this alleyway that's now being inhabited.

20 And we don't have any reports from -- did the fire department --  
21 well, they had to have signed off on this, too.

22 MR. ROWAN: Yes. The fire inspectors have inspected. They  
23 have set all the inspections. They've looked at the area. Large trucks of all types  
24 are back there every day doing work in the alleyway. There's absolutely no problem  
25 on getting to and from the --

26 MEMBER KRESS: Do you know where the nearest fire hydrant  
27 is?

1 MR. ROWAN: Well, this property is -- in terms of worst-case  
2 scenario, no fire truck can get into the area. This is about 25 feet to the street here,  
3 with hydrants on -- this is S Street.

4 MEMBER KRESS: See, this is really hard without a whole map  
5 here to see how this relates to everything. Unfortunately, the scale on the zoning  
6 maps are so small --

7 MR. ROWAN: Right.

8 MEMBER KRESS: -- that you can't really see anything.

9 MR. ROWAN: I'm not a fire expert, but I can tell you that the fire  
10 inspectors have come to this location, have walked it, have inspected it and  
11 approved it.

12 It's probably not the ideal situation to have any house in the  
13 alley, and there are only five of them that exist, to my knowledge, but that's where  
14 five families live around town.

15 Unfortunately, in the situation that they're in, they basically have  
16 a choice of selling and moving and leaving a vacant -- actually, who could you sell it  
17 to if you can't -- I mean, not many people need it as a carriage house any more -- or  
18 letting it deteriorate until it just falls down around their ears or doing illegal,  
19 unpermitted work. And nobody wants to do that.

20 That's why we're here.

21 MR. FRIDAY: We're building a fire wall down the middle of the  
22 house.

23 CHAIRPERSON REID: Ms. King?

24 VICE CHAIRPERSON KING: I've made my motion. I stick by it.

25 MEMBER KRESS: Yes. I stand by the second. And the motion  
26 does apply to both 1 and 2, as put forth in Ed Nunley's letter. Both of those  
27 variances are needed and required.

1 I would just like to add to my second. I am somewhat consoled  
2 by the fact that you're only 25 feet away in the other direction, which we hadn't even  
3 asked, which hopefully and I know is within the lengths of fire hoses. I mean, I  
4 obviously care for the safety of the people in this city. So understand this isn't as  
5 easy as it looks on the surface.

6 MR. ROWAN: I might add that this going to 19 Street is a  
7 parking lot that's open. And you can drive right up to the building.

8 MEMBER KRESS: But it may not stay that way forever. Thank  
9 you.

10 CHAIRPERSON REID: Are we ready now for a vote?

11 MS. NETTLEFORD: Is it possible for me to make one more  
12 comment at this time? I just wanted to clarify. I wanted to make sure that it's clear  
13 that we don't have any problem with the construction that's going to take place  
14 because, as you stated, you're not going to be building any stairs out in there.

15 But basically you are also asking that the lots be combined.

16 MR. ROWAN: On paper.

17 MS. NETTLEFORD: On paper.

18 MR. ROWAN: Right.

19 MEMBER KRESS: On paper.

20 MS. NETTLEFORD: Okay. So there's not actually --

21 MR. ROWAN: No.

22 MS. NETTLEFORD: -- going to be any access between?

23 MR. ROWAN: No.

24 MS. NETTLEFORD: Because what I want to avoid is that later  
25 you say, "Well, Lots 58 and 805 are combined. It's just one big lot." Therefore, the  
26 easement affects this whole entire property.

27 MEMBER HINTON: That is exactly what is happening. If we

1 grant this, Lots 58 and 805 will become one new lot. That's what this subdivision is  
2 for.

3 VICE CHAIRPERSON KING: Yes, but they have made it clear  
4 that they have no intention of interfering with the easement that was granted you by  
5 the court.

6 MR. ROWAN: We would state that for the record and that our  
7 client's only interest is being able to avoid coming back and spending your time to  
8 get a variance to have an electrician come in and do some work. That is the only  
9 interest. There's no interest in terms of --

10 MEMBER KRESS: Well, I need to ask the lawyers. And you're  
11 representing your client.

12 MS. NETTLEFORD: Right.

13 MEMBER KRESS: Is he word enough or do you need some  
14 legal document that carries this court case from a single piece of property over to  
15 the new combined property?

16 MS. NETTLEFORD: I think we would be more comfortable if we  
17 had some agreement from the parties in writing because I just want it to be clear. I  
18 mean, this is reflecting two separate pieces of property. That's what this court order  
19 pertains to.

20 VICE CHAIRPERSON KING: Let's make it a condition of our  
21 motion that the owners, Ms. Fitts, shall give to Mr. Adams in writing an undertaking  
22 that his easement will survive the merging of the two lots --

23 MR. ROWAN: No problem whatsoever.

24 VICE CHAIRPERSON KING: -- and that that be a condition of  
25 our order.

26 MEMBER KRESS: I accept that as the seconder.

27 CHAIRPERSON REID: Okay.

1 MS. NETTLEFORD: That would be acceptable to us.

2 CHAIRPERSON REID: And that order will in no way impact  
3 upon the court order. Should we also include that?

4 VICE CHAIRPERSON KING: No. We don't --

5 MEMBER KRESS: I guess we need to call for the vote again.

6 CHAIRPERSON REID: Okay. Now are we ready to vote?

7 Okay. All those in favor of the motion?

8 (Whereupon, there was a chorus of "Ayes.")

9 CHAIRPERSON REID: All those opposed?

10 (No response.)

11 MS. ROSE: Staff will record the vote as four to zero, with Ms.

12 King, Ms. Kress, Ms. Hinton, and Ms. Reid, to grant the application and for the

13 issuance of a summary order.

14 MEMBER KRESS: Oh, yes.

15 CHAIRPERSON REID: All right. Thank you.

16 MEMBER HINTON: We need witness cards.

17 MR. ROWAN: They're right here.

18 MEMBER HINTON: You really should hand your witness cards

19 to the court reporter prior to testifying.

20 CHAIRPERSON REID: Just a moment, please. We're going to  
21 go back to Case Number 16318.

22 MS. SIMMONS: Excuse me. May I just interject something  
23 here? We are the fourth case on the agenda, and we have a witness who must  
24 leave. Well, I have two alternatives to propose: we change the order or we let her  
25 come under oath, and we read in the statement that she was going to give. Is either  
26 possible?

27 VICE CHAIRPERSON KING: Does she have the statement in

1 writing?

2 MS. SIMMONS: She has the statement in writing.

3 VICE CHAIRPERSON KING: Well, we're not at the appropriate

4 --

5 MS. SIMMONS: And I am proposing that she be put under oath  
6 and that we read it in so that she can leave. Of course, you won't be able to ask her  
7 any questions, but we'll try and get around that.

8 VICE CHAIRPERSON KING: Which case are you?

9 MS. SIMMONS: We are 16298, application of Trinity Housing  
10 Corporation of Washington.

11 VICE CHAIRPERSON KING: You're next after this?

12 MS. SIMMONS: Right. But she was -- well, she had to leave at  
13 4:00. And she's staying as long as she can.

14 My name is Gwendolyn Simmons, and I am counsel for the  
15 applicant.

16 MEMBER KRESS: Are there parties? Have we identified: Are  
17 there parties to this? I mean, is that a problem because they --

18 CHAIRPERSON REID: Is there anyone in opposition to the  
19 application?

20 MEMBER KRESS: Yes. Is there anyone here in --

21 CHAIRPERSON REID: Is there anyone in opposition to --

22 VICE CHAIRPERSON KING: To the Trinity Housing  
23 Corporation.

24 CHAIRPERSON REID: -- the Trinity Housing Corporation,  
25 16298, Case Number 16298? Opposition? Okay.

26 MEMBER KRESS: Well, we need to ask if you can qualify as a  
27 party. Otherwise he doesn't get to cross.

1 VICE CHAIRPERSON KING: The lady in yellow and the  
2 gentleman in the PAC --

3 MEMBER KRESS: Oh, I didn't see the lady in yellow. Excuse  
4 me.

5 VICE CHAIRPERSON KING: -- rugby shirt are the two people  
6 who are --

7 MEMBER KRESS: Can we determine if they're parties so we  
8 know whether we have that problem or not?

9 MEMBER HINTON: We really shouldn't be doing all of this  
10 before we call the case.

11 CHAIRPERSON REID: All right. We're going to proceed.  
12 Unfortunately, we will not be able to bring the previous case up at this time because  
13 this case has to go forward because of a time problem. And we will bring you up as  
14 soon as we can.

15 MS. SIMMONS: Thank you.

16 CASE NUMBER 16298

17 MS. ROSE: The next application is 16298, the application of  
18 Trinity Housing Corporation of Washington, pursuant to 11 DCMR 3108.1 and  
19 3107.2, for a special exception under Subsection 213.1 to establish parking lots in a  
20 residential district, a variance from Subsection 213.2 to establish a parking lot that is  
21 not located in its entirety within 200 feet of an existing commercial or industrial  
22 district in a residential district, and a variance from Subsection 213.3 to establish a  
23 parking lot that is not contiguous to or separated only by an alley from a commercial  
24 or industrial district in a residential district for parking lots in the R-5-B district at  
25 premises 1417, 1493, and 1507 Meridian Place, Northwest, Square 2684, Lots 556,  
26 557, and 558.

27 Would all persons planning to testify in this application please

1 rise to take the oath? Please raise your right hand.

2 (Whereupon, all witnesses in Case Number 16298 were duly  
3 sworn.)

4 MS. ROSE: You may be seated.

5 MS. SIMMONS: Shall I begin?

6 CHAIRPERSON REID: Yes, with your name and your address,  
7 please.

8 MS. SIMMONS: I am Gwendolyn R. Simmons. I am counsel for  
9 the applicant. I am with the firm of Hessel and Eloise, P.C. They are located at  
10 1050 17th Street, Washington, D.C.

11 As I mentioned, we are representing the applicant, Trinity  
12 Housing Corporation of Washington, and its sponsor, Trinity AME Zion Church, in  
13 these proceedings.

14 The applicant is seeking a special exception from 11 DCMR,  
15 Subsection 213.1, pursuant to 11 DCMR 3108.1, and variances from DCMR  
16 Subsections 213.2 and 213.3, pursuant to 11 DCMR 3107.2, in order to construct a  
17 parking lot on Square 2684, Lots 556, 557, and 558.

18 We intend to demonstrate here today that the property meets all  
19 the necessary standards set forth in the zoning regulations for the Board to grant the  
20 requested special exception and variances.

21 As we will explain, this property has been in limbo for at least the  
22 past 15 years and that, during that time, it has had at least 2 owners and has been  
23 the subject of several proposals concerning its development.

24 We will present testimony that through time-consuming and  
25 painstaking analysis, both the applicant and the District of Columbia Redevelopment  
26 Land Agency, the former owner of the property, finally reached an agreement as to:  
27 how, subject to any necessary zoning modifications, the property should be

1 developed; that all measures necessary to proceed with the development have been  
2 taken; and that all that remains before proceeding is the approval of this Board.

3 We will present testimony that in its present state, the property is  
4 not and cannot be of more than very little use to its owner or to the community. We  
5 will show that the development of this lot as proposed will greatly enhance its use  
6 and benefit to the community.

7 First, Ms. Marion Brooks from the Department of Housing and  
8 Community Development will testify as to the history of the property, its former  
9 ownership by the Redevelopment Land Agency, and how it came into the  
10 possession of its current owner, the applicant. She will testify as to the  
11 Redevelopment Land Agency's determination as to the best use of the property and  
12 how the agency has restricted the property to that use.

13 Next Mr. Randall Marshall of the architectural firm of Navy,  
14 Marshall and Associates, P.C., which designed the parking lot, will give an overview  
15 of the proposed design and construction and will confirm that the parking lot will  
16 conform to all the regulations in 11 DCMR, Section 2303.

17 Finally, Dr. Athel Q. Liggins, President of the Board of Directors  
18 of Trinity Housing Corporation of Washington and Chairman of the Board of  
19 Trustees of Trinity AME Zion Church, will testify to: the church's and the  
20 community's need for additional parking; how with the development of the lot, this  
21 need will be accommodated with the harmony and spirit of the zoning regulations;  
22 the community's involvement in the decision to develop the property as a parking lot;  
23 and the hardship the applicant, the church, and the neighborhood are undergoing  
24 and will continue to undergo unless the property is developed as proposed.

25 We will begin now with Ms. Brooks.

26 MS. BROOKS: Good afternoon. Madam Chair and members of  
27 the Board, I am Marion Brooks, a Real Property Disposition Coordinator and Project

1           Manager with the District of Columbia Department of Housing and Community  
2           Development. And I will be referring to them in the future as DHCD or the  
3           department.

4                           The department provides staff for the District of Columbia  
5           Redevelopment Land Agency, RLA. And on behalf of DHCD and RLA, I have been  
6           extensively involved with the development and sale of Square 2684, Lots 556, 557,  
7           and 558, also known to us at DHCD as Parcel 20.

8                           I would like to give a brief history of Parcel 20 and explain to you  
9           the role of DHCD and RLA in the development of the site. On March 11th, 1996,  
10          RLA, which owned Parcel 20, transferred the site to Trinity Housing Corporation of  
11          Washington pursuant to a sales contract and a special warranty deed.

12                          Prior to its ownership by RLA, the site had been occupied by  
13          houses and apartment buildings. But, for at least 15 years, the property had been  
14          vacant and undeveloped.

15                          The middle lot, Lot 557, was and still is asphalt-paved. During  
16          RLA's ownership tenure, Lot 557 and Lot 558, which remained an undeveloped  
17          grassy area, were informally used for parking by Trinity AME Zion Church under a  
18          subsequent right of entry.

19                          Originally RLA, in response to an unsolicited proposal from the  
20          church, planned to sell Parcel 20 to Trinity Housing Corporation of Washington, a  
21          nonprofit corporation sponsored and established by the church in order for the  
22          corporation to develop the property along with privately owned contiguous parcels  
23          into housing for the elderly. Unfortunately, the corporation was unable to purchase  
24          the land from the contiguous landowners, as planned, and the housing project could  
25          not go forward.

26                          RLA staff and the corporation then considered the possibility of a  
27          two-phase development, Phase 1 being a parking lot which in five years or more

1 could be converted into three-bedroom townhouses, which would be Phase 2.

2                   However, the RLA at a meeting of its board on April the 15th,  
3 1993 directed the staff to reconsider the residential portion of the two-phase plan  
4 because the sites are located in a high-density residential area, where parking is a  
5 premium.

6                   The staff followed the board's instructions and found that: one,  
7 there was a critical need for residential parking in the area compounded by the need  
8 for parking by the Trinity AME Zion Church members on Sundays and Wednesday  
9 nights. They also found that the city's urban renewal plan supported the use of the  
10 sites for accessory parking and that the size of the property, its configurations, and  
11 its lack of ready accessibility made it unfeasible for other types of development.

12                   The staff then recommended to the board that the site be  
13 developed for accessory parking. On June 17th, 1993, the RLA board based on its  
14 own staff's recommendation approved the plan to develop the site into a parking lot  
15 for the church's and the community's use.

16                   On March 11th, 1996, RLA and the corporation entered into a  
17 sales contract and special warranty deed, both of which restricted use of the  
18 property to a parking lot. Any other future uses must first be approved by RLA.

19                   RLA and DHCD have expended a great deal of time and energy  
20 analyzing the best use of Parcel 20. We determined that additional housing would  
21 be detrimental to the community because it would add to the existing congestion.  
22 We also determined that the accommodation of the churches and the surrounding  
23 residential community's parking demands would be the best use of Parcel 20 under  
24 the circumstances.

25                   Therefore, we wholeheartedly support the efforts of the church to  
26 obtain the Board of Zoning Adjustment's approval of its application for the special  
27 exceptions and variances necessary to develop this parcel.

1 Thank you very much.

2 CHAIRPERSON REID: Thank you. Do you have any  
3 questions?

4 MS. BROOKS: Does anyone have any questions?

5 CHAIRPERSON REID: Excuse me one second. Are any of the  
6 people who are in opposition seeking party status? Come to the mike and tell us  
7 how close you live to the property and how you qualify for party status. Speak in the  
8 mike.

9 MS. BERGER: Thank you very much.

10 I'm Sherrill Berger. And I'm a resident at 3510 Center Street,  
11 Northwest, in Washington, D.C. in the particular area of 16298 application.

12 We need definition. We're just country bumpkins here. We don't  
13 quite know what goes on. So we need definition as to what your meaning of subject  
14 --

15 CHAIRPERSON REID: Well, party status is for those who are  
16 living next to or close to the subject property and which you may be affected. And  
17 you will also get notices. And you can cross-examine.

18 MS. BERGER: Thank you very much.

19 Then I am a party.

20 CHAIRPERSON REID: How close are you to the subject  
21 property?

22 MS. BERGER: I am within 200 to 300 feet from the affected  
23 property.

24 CHAIRPERSON REID: How close exactly? That's too vague.

25 MS. BERGER: I live at 3510 Center Street, and the property is  
26 located directly at Meridian and Center Street, which is less than a block.

27 CHAIRPERSON REID: Okay.

1 MS. BERGER: Do you want the lot squares?

2 CHAIRPERSON REID: No, no. That's okay. All right. I said  
3 okay. You can have party status. I have no problem with it unless any of the Board  
4 members do.

5 MS. BERGER: I did receive a letter from the Board of Zoning.  
6 So I would think that that's evidence of my location.

7 CHAIRPERSON REID: Okay.

8 MR. TUCKER: My name is Robert Tucker. I am the chair and a  
9 commissioner of the area that they is requesting to have rezoned.

10 I am also here to request that a postponement be made until we  
11 talk to the community and get input from the community on this. And I have a letter  
12 stating that.

13 VICE CHAIRPERSON KING: You're from the advisory  
14 neighborhood commission?

15 MR. TUCKER: Yes, I am.

16 VICE CHAIRPERSON KING: Are you the commissioner in --

17 MR. TUCKER: I am a commissioner for single member district  
18 1A-02 that the lot is in. And I'm also the chairperson for 1A.

19 MEMBER KRESS: Excuse me. And you're requesting a  
20 postponement?

21 MR. TUCKER: Yes, ma'am.

22 MEMBER KRESS: Again state your reason, please.

23 MR. TUCKER: May I read this to you?

24 CHAIRPERSON REID: What is it?

25 MR. TUCKER: It's my testimony.

26 VICE CHAIRPERSON KING: No. What is your reason?

27 MR. TUCKER: It's stating my reason for a postponement.

1 CHAIRPERSON REID: Okay.

2 MR. TUCKER: Okay. First, good afternoon. My name is Robert  
3 Tucker. I am the Chair of ANC-1A and a single-member District Commissioner of  
4 1A-02. They're where the proposed parking lot is located.

5 I am here to request a hearing to be postponed for the following  
6 reason. At our regular scheduled meeting on Wednesday, February 11, at which a  
7 quorum was present, ANC-1A was unable to make a decision related to the permit  
8 zoning changing to permit a parking lot in residential zoning because certain  
9 information was not available to us.

10 The plan for the improved lot, a copy of the agreement between  
11 Trinity AME Zion Church and ANC, incorporated by reference, in the land dispute of  
12 RLA Parcel 20.

13 Although Mr. Liggins, who represents Trinity Housing, was  
14 present at the meeting, he did not have these items for the ANC to consider.  
15 Another ANC meeting with residents of the affected community would be necessary  
16 before the ANC can come to a formal decision.

17 Two, having secured a copy of the above-mentioned Parcel 20  
18 parking agreement, it appeared not to have been implemented. They have no sign  
19 of Lot 2 announcing community parking allowed between 10:00 p.m. and 6:00 a.m.

20 There is no community bulletin board located near the lot  
21 announcing activities sponsored by the church and within the community and  
22 stipulated regarding use of the lot. There are no security gates, nor have residents  
23 been issued access cards.

24 A copy of the agreement dated October the 8th, 1993 is  
25 attached. It seems only reasonable to require that this plan be put into effect before  
26 any further zoning actions are taken since the disposition of public owner land on the  
27 14th Street urban renewal plan required that there be a public benefit, community

1 parking on the church lot, where that will benefit.

2 An informal arrangement will not work. This should be in writing  
3 and communicated to the community as outlined in the agreement.

4 Thank you for your cooperation.

5 CHAIRPERSON REID: Board members, in regards to the  
6 request for the postponement, are these grounds in the opinion to --

7 MEMBER HINTON: If a plan of the parking lot was not available  
8 to the ANC, I would think that that would be sufficient.

9 CHAIRPERSON REID: Or the agreement. They have  
10 requested copies of the agreement.

11 MEMBER HINTON: I also wanted to ask the commissioner: Is it  
12 the goal of the ANC that an agreement will be signed before this hearing? Is that  
13 part of the reason you're asking for postponement?

14 MR. TUCKER: It is. Yes, it is. Plus, also I definitely want to get  
15 the input of the community in that area, especially on Meridian Place, where the  
16 parking lot is at.

17 You know, I took some pictures of the area if you all want to see  
18 them so you can get a general idea of exactly what it is that they're requesting here.

19 MEMBER HINTON: Normally wouldn't their opportunity to give  
20 input to the ANC have been at the ANC meeting? I'm assuming that meeting was  
21 noticed.

22 MR. TUCKER: Yes. We have a community first last Tuesday of  
23 every month. But this was not brought into our attention until we had our ANC  
24 meeting, which is every second Wednesday of the month.

25 MEMBER HINTON: So you want this community meeting to  
26 occur to discuss this issue and have that opinion taken to the ANC before the ANC  
27 make --

1 MR. TUCKER: Make a decision. Yes, ma'am.

2 MEMBER HINTON: I understand. I understand the  
3 requirement.

4 MS. SIMMONS: If you look at Exhibit H-2 of our application,  
5 attached to -- yes?

6 CHAIRPERSON REID: Which letter?

7 MS. SIMMONS: Well, but you should -- I mean, may I please  
8 finish? Attached to Part 1 of the sales agreement is an agreement between the  
9 church and the ANC, which was signed, which is dated October 8th, 1993.

10 It states that at a meeting on September 17th, Ms. Berger, who  
11 was present at a meeting where this agreement was adopted --

12 CHAIRPERSON REID: Excuse me. Under Tab H, as in Harry?

13 MS. SIMMONS: Yes.

14 CHAIRPERSON REID: That's not what's under my Tab H.

15 MS. SIMMONS: That's the sales contract, H-2.

16 CHAIRPERSON REID: Okay. You're right.

17 MS. SIMMONS: Ms. Berger was at a meeting where it was  
18 decided that the property would be used as a parking lot and the terms under which  
19 it would be used.

20 I do not know when Mr. Tucker became chair of this ANC, but  
21 the point is the ANC as a body has already entered into the agreement. I would like  
22 to further state -- and I may need Mr. Liggins' input on this, but he did attend the  
23 ANC meeting last week.

24 There was to be another ANC meeting last night, at which he  
25 would present the plans and whatever additional information the members wanted.  
26 He went to the meeting, waiting an hour. Nobody came. The door wasn't even  
27 open.

1                   So they have had a chance to look at the plans had they wanted  
2 to. They had a chance to come down here and review the record had they wanted  
3 to. And they didn't do that.

4                   Secondly, there was a comment on Mr. Tucker's part that the  
5 church has not honored the agreement into which it entered with the ANC. It can't  
6 honor that agreement until the exceptions and the variances are granted. It can't  
7 develop that lot and post signs as to its use and put a gate around it and landscape  
8 it and pave it or do any of that until the exceptions and the variances are granted.

9                   So Mr. Tucker is, in effect, trying to defeat the very thing that  
10 would allow the church to honor the agreement. So we certainly oppose under  
11 these circumstances any postponements.

12                   CHAIRPERSON REID: Okay. Just a moment. We have  
13 questions. Ms. Hinton?

14                   MEMBER HINTON: I have two questions. Did I understand you  
15 to say that the plan for the parking lot was not available at the ANC meeting?

16                   MS. SIMMONS: The plans were not available at that meeting.  
17 But, as I understand it, another meeting was scheduled for last night before this  
18 hearing, specifically for the ANC to view those plans.

19                   That meeting did not occur because the ANC was not there. Dr.  
20 Liggins was there with the plans.

21                   CHAIRPERSON REID: Who scheduled the meeting?

22                   MS. SIMMONS: Dr. Liggins?

23                   DR. LIGGINS: I beg your pardon?

24                   MS. SIMMONS: Who scheduled the meeting?

25                   CHAIRPERSON REID: Who scheduled the meeting? And do  
26 we have --

27                   DR. LIGGINS: They scheduled it the week before. It was a

1 rainy night. I went to the meeting. They sent me a notice.

2 CHAIRPERSON REID: Who? I'm sorry, sir. Who is "they"?

3 DR. LIGGINS: The ANC.

4 CHAIRPERSON REID: The ANC scheduled the meeting?

5 DR. LIGGINS: Mr. Tucker and Mrs. McIntyre. Mrs. McIntyre  
6 called me at exactly 1:15 about a meeting at 7:00 o'clock, which I said, "Fine."

7 CHAIRPERSON REID: Do you have any written notification of  
8 such a meeting?

9 DR. LIGGINS: Do I have any written notification?

10 CHAIRPERSON REID: Yes.

11 DR. LIGGINS: Only thing from my secretary that gave me the  
12 slip indicating the time of the meeting. I have that.

13 CHAIRPERSON REID: So the notification was by telephone? Is  
14 that what you're saying?

15 DR. LIGGINS: Yes. It was notification by telephone. And I  
16 attended the meeting. And at the time, I didn't know what they wanted. They didn't  
17 say.

18 When I got there, the main thing I was concerned about is how  
19 we can cooperatively work with this community to let them know that we are  
20 developing this land to enhance the beauty of the neighborhood as well as providing  
21 spaces so that their people when they come home at nighttime -- many of them said  
22 -- and I've talked to many of them. And they said that they couldn't find places to  
23 park. So now they use our lot.

24 We allow them to do that. That's fine. And this is for their own  
25 safety, too, because some of them had to walk two and three blocks even to get  
26 there if they didn't do that.

27 But last night, I went there. They were scheduled. And Mr.

1 Tucker said and Mrs. McIntyre and the rest of them said if we're going to call down  
2 to zoning and see about postponing it. And if not, then we will have you to come  
3 back Tuesday night. And I said: Well, you let me know.

4 And they said: It's scheduled for Tuesday night.

5 And I brought the plans with me last night. And I have them with  
6 me now, the large plans.

7 CHAIRPERSON REID: Again, that was verbal?

8 DR. LIGGINS: Yes. And nobody was there. That's right.

9 CHAIRPERSON REID: Someone told you there was as meeting  
10 of the ANC. And then someone --

11 DR. LIGGINS: Well, at the meeting when they met, this was all  
12 decided. There was six ANC people there. And Mrs. Berger was there. And they  
13 all decided that we would meet there last night.

14 CHAIRPERSON REID: On Tuesday, the 17th?

15 DR. LIGGINS: Yes, last night.

16 CHAIRPERSON REID: Okay.

17 DR. LIGGINS: And I brought all of the plans.

18 CHAIRPERSON REID: Okay.

19 MEMBER HINTON: I had one other question. You refer to an  
20 agreement that the ANC has signed. I don't find that in my Tab H.

21 MS. SIMMONS: Let me find it for you, if I may. May I approach?

22 MEMBER HINTON: Sure. I'm looking under H-2.

23 MS. SIMMONS: I apologize. The tab is there. There it is.

24 And I would also like to note Ms. Berger's presence at the  
25 meeting where that agreement was approved. Where is it?

26 MEMBER HINTON: It appears to be about almost halfway  
27 through. It's part of Exhibit E, at the bottom of the page.

1 MS. BROOKS: Madam Chairman, might I make a comment?

2 CHAIRPERSON REID: Just a moment. Just a moment, please,  
3 while we're looking at this agreement.

4 (Pause.)

5 CHAIRPERSON REID: Okay. We've read the agreement. It  
6 was signed by the ANC Commissioner Vivian Brown.

7 DR. LIGGINS: Yes, that's right.

8 CHAIRPERSON REID: Just a moment.

9 MEMBER HINTON: It seems to me that this agreement is  
10 limited to -- it states certain interim measures. And could you explain how that  
11 relates to the case that's in front of us today? This was signed in 1993. This is five  
12 years later.

13 MS. SIMMONS: It's five years later, but that's how long it's taken  
14 to put everything in place. The property was not transferred until 1995. And this  
15 agreement was an integral part of the transfer.

16 It was intended to demonstrate the community's agreement that  
17 the parcel be made into a parking lot upon its transfer from RLA.

18 MEMBER HINTON: Okay. I understand that.

19 MS. SIMMONS: This was a required part of the agreement.

20 MEMBER HINTON: And it relates to the transfer. But what's in  
21 front of the Board today is not the transfer of properties. Is that correct?

22 CHAIRPERSON REID: Correct.

23 MS. SIMMONS: What is --

24 MEMBER HINTON: Has the transfer occurred?

25 MS. SIMMONS: The transfer has occurred, yes. And I'm saying  
26 that the development of this parcel -- that one of the conditions to developing this  
27 parcel was that there be community agreement with the development of the parcel

1 into a parking lot upon transfer. That's why this agreement is attached to the sales  
2 contract.

3 It was intended that the property be developed in that manner  
4 upon its transfer.

5 MEMBER HINTON: I understand that. But I guess my point is  
6 that that does not negate any rights that the ANC has today to have or express an  
7 opinion about what's happening at this Board hearing. Just because something was  
8 agreed to in the transfer of land five years ago, that doesn't mean that they don't  
9 have a right to an opinion now.

10 MS. SIMMONS: And I think my point is they have had a chance  
11 to get the information that they have requested. And the meeting that occurred last  
12 week, I think procedurally what happened is that it was effectively continued until  
13 last night. But no one showed up last night until Dr. Liggins showed up.

14 Now, there were some problems with notice for this property,  
15 which were not the fault of the application. There was a problem with notices going  
16 out late from the Zoning Office.

17 We were concerned about that, especially insofar as the ANCs  
18 go. We asked if notices should be resubmitted. They said no, that the ANCs had  
19 proper notice from the previous time; if they wanted additional notice, they should  
20 have shown up at the first hearing so they would have known it was continued. In  
21 spite of that, we still sent letters, notice to both ANCs, telling them of this impending  
22 action.

23 In addition to that, Mr. Tucker is well-aware of the posting on the  
24 property. He was there when Mr. Liggins posted. They had notice. And they have  
25 had time to have their concerns addressed.

26 MEMBER HINTON: Except at the scheduled ANC meeting to  
27 hear this and discuss this issue, the applicant did not bring the plans.

1 MS. SIMMONS: The applicant had no idea what they wanted.  
2 And once he found out, he certainly promptly complied. They were the ones who  
3 were not where they were supposed to be when he did comply with their request.

4 MEMBER HINTON: Only because the applicant didn't have the  
5 information at the time of the regularly scheduled meeting. Had the plans been  
6 there, there wouldn't have been a need for a second meeting.

7 MS. SIMMONS: The applicant had no way of knowing that they  
8 wanted to view the plans.

9 CHAIRPERSON REID: I think what Ms. Hinton is saying is when  
10 the applicant came to the meeting, then that would have been part of the preparation  
11 for the meeting in the first place.

12 MS. BROOKS: Excuse me. May I?

13 CHAIRPERSON REID: Okay. I'm sorry. You did ask.

14 MS. BROOKS: Yes. I think there's a little confusion here. The  
15 Redevelopment Land Agency requires, has a very strict requirement, by law to have  
16 community participation in all dispositions of their profits.

17 The irony of it is that the reason why we even have a parking lot  
18 is because the ANC at the time we were considering the housing unit objected to the  
19 housing because they said the housing would bring too much density and there was  
20 already some parking being done. And they would prefer to see parking being made  
21 to allow people to have somewhere to park.

22 That is the impetus behind how we got to a parking lot  
23 development. It was from the community. And the community was actively involved  
24 under a different ANC chair.

25 It would seem to me -- and perhaps I'm wrong -- that the ANC if  
26 it's particularly just something they want, they should be bound by the actions of  
27 previous agency members, as opposed to every time a new ANC chair, a new ANC

1 person comes in, everything has to start all over again.

2 Normally we don't put exhibits like ANC agreements into our land  
3 disposition agreement contracts, but because the use of this property for community  
4 and church property was so critical, the RLA board made sure that that was a part of  
5 the contract of sale, which is recorded downtown.

6 I just think it's kind of ironic that now the ANC is asking for a  
7 postponement to consider something that they said they wanted. They're upset  
8 because what is in the agreement hasn't occurred. As counsel pointed out, it cannot  
9 occur because those things that the church has agreed to do is a part of the  
10 development of the parking lot.

11 So I'm sure you all have your issues, but I think that we're not in  
12 opposition, unlike it may appear, because everybody wants a parking lot.

13 And the ANC may want to reconsider, but I don't think there are  
14 going to be any changes in what they want. They still want and need a parking lot.  
15 The church is willing to develop it for their use and the neighboring community.

16 MEMBER HINTON: Well, I don't know how you can make that  
17 statement. We've heard from the ANC that they're not prepared to put a position  
18 into the record. So for you to say that you think that they're going to --

19 MS. BROOKS: No. I'm saying they already have put a position  
20 into --

21 MEMBER HINTON: Five years ago they put an opinion in the  
22 record on the transfer of land. That's not what's in front of us today.

23 MS. BROOKS: I thought -- well, I'm not sure I --

24 MS. SIMMONS: May I just -- I'm not sure I understand the  
25 distinction. The transfer of land was based upon developing the property into a  
26 parking lot. What is before you today are measures that must be taken for that to  
27 occur. So I'm not sure I understand the distinction.

1 VICE CHAIRPERSON KING: This Board is not bound by  
2 anything that has happened prior to this. You're bringing the case to us asking for  
3 approval of an application. And we can listen with great sympathy to everything that  
4 has gone before, but we cannot be bound by any undertaking of DHCD or RLA or  
5 the church.

6 I think the bottom line and what probably Mrs. Hinton is getting at  
7 is that this body by law must give great weight to the opinion of the advisory  
8 neighborhood commission.

9 Now, it is true that every two years there are elections and that  
10 advisory neighborhood commissioners come and go and so forth. But if the young  
11 woman from DHCD is convinced that the ANC is going to want to have a parking lot,  
12 it seems to me that in the interest of harmony and so forth, that you might agree to a  
13 postponement -- I mean, it's been a long time coming already -- in order to satisfy  
14 the needs of your neighbors. That is something that the DHCD and RLA insists that  
15 there be that communication.

16 It occurred five years ago, but five years have come and gone.  
17 And this is a new group of people. I think they would profit from seeing your very  
18 handsome drawings and the planting and so forth that you anticipate. It looks to me  
19 to be something that would be welcomed by your neighbors.

20 But I think it's a mistake for you to oppose going to the neighbors  
21 to talk about it again since you have new leadership in the ANC.

22 MS. BROOKS: May I just say that I know the ANC indicated that  
23 they were in opposition to the hearing, but from the presentation of why they were in  
24 opposition, it didn't have anything to do with whether or not this should be a parking  
25 lot.

26 CHAIRPERSON REID: I think that what we're hearing from the  
27 ANC is that they would like to be considered and given the respect that they are due

1 as the entity that represents the community interest. And they do not feel that has  
2 been done. This is what they're asking. They're asking to be recognized as such.

3 I don't think it's an issue as to the granting of the variance or not  
4 granting the variance. I think that it's more they want to be heard. And they don't  
5 feel that since it has been now five years since there was this "agreement," quote,  
6 unquote, if, in fact, which we would assume that it has changed, the ANC  
7 membership, or those people who were there has changed somewhat, that this  
8 entity that's in existence today would like to review and be able to question any  
9 plans or any post that you may have. I think that's the bottom line on this.

10 MS. SIMMONS: May I just make one more point? If the  
11 property can't be used as a parking lot, it can't be used as anything. It does have  
12 that restriction put on it.

13 VICE CHAIRPERSON KING: Yes, but we have to give great  
14 weight to what the ANC says. And at the present time, the current chairperson of  
15 the ANC does not feel -- and I presume he was not part of the negotiations five  
16 years ago -- that he and his colleagues have sufficient information on which to make  
17 a recommendation pro or con, to which we will then be required to give great weight.

18 It would be a shame if they gave a negative opinion simply  
19 because they didn't have the information.

20 MS. SIMMONS: May I confer with Dr. Liggins for a moment?

21 (Pause.)

22 DR. LIGGINS: What I am bringing up at this point, I went  
23 through the neighborhood. And I was checking. Now, when I went to the meeting  
24 for the ANCs, there was only one person present from the neighborhood. And that  
25 was Ms. Berger.

26 But I went through the neighborhood. And I asked the people:  
27 What do you think about what we had proposed with you? We had a meeting. We

1 had a community meeting with the people.

2 And they have given me several letters, which I have with me  
3 several today, of neighbors of Mrs. Berger's. And the people in the neighborhood,  
4 the community people, they all expressed a desire to have the parking lot and what  
5 we're planning to do for them.

6 Now, we are a smaller representative of the community than  
7 maybe the ANC. And this is the reason why I wanted to bring this out because we  
8 contacted all the neighbors. We talked to them. They wrote letters to this effect. I  
9 have them, and I'll give them to you for your files if you want them. And here they  
10 are.

11 And so this is very important. I think if we're talking about the  
12 community people, the community people have expressed themselves here.

13 CHAIRPERSON REID: Mr. Liggins, I understand what you're  
14 saying. However, at this juncture, I think that the question on the floor is simply:  
15 Would you be not opposed to a postponement based on the testimony from the ANC  
16 representatives?

17 DR. LIGGINS: I would if they hadn't been notified in plenty of  
18 time and if we hadn't made all the preparations in the past, having community  
19 meetings at our church and all of these things and talking with the neighbors. I  
20 would say, "Well, we didn't do our homework."

21 But we did our homework. And we did everything that was  
22 necessary. And what we're trying to do, if the ANCs are representing the people  
23 and these are the people, then they would be pushing with us. We would all be on  
24 the same thing saying, "Let's develop that and move it right so that you can have a  
25 beautiful neighborhood there." It looks terrible now.

26 CHAIRPERSON REID: Mr. Liggins, is your answer yes or is it  
27 no?

1 DR. LIGGINS: I'm sorry?

2 CHAIRPERSON REID: Is it yes? Is your answer yes or no?

3 DR. LIGGINS: Yes or no? No, I would not be in favor of the  
4 postponement. No.

5 CHAIRPERSON REID: Okay. Thank you. All right.

6 MR. TUCKER: I would like to say something.

7 CHAIRPERSON REID: Very quickly, please, because we need  
8 to move forward with this case.

9 MR. TUCKER: Mr. Liggins claims he had a community meeting.  
10 We were never notified. And as far as the meeting he claimed that we were  
11 supposed to set with him, it was understood that if we could get a postponement  
12 through phone, we would call him and verify an emergency meeting.

13 We couldn't get a postponement through a phone. We didn't  
14 have an emergency meeting. I was told to be here to ask for a postponement.

15 DR. LIGGINS: That's not true.

16 MR. TUCKER: That is true. You never sent us a letter for  
17 communication as far as having a community meeting with you all. You all never  
18 communicated with the community or the ANC to let us know what you all are doing.

19 And I've been the chairman for this year, but I've also been a  
20 commissioner for two years.

21 CHAIRPERSON REID: Okay. Thank you.

22 MR. TUCKER: Thank you.

23 CHAIRPERSON REID: Very quickly, Mrs. Berger.

24 MS. BERGER: I'd like to make some clarification here that in  
25 1983, a group of us in the neighborhood --

26 CHAIRPERSON REID: This is just the issue of postponement.

27 MS. BERGER: I would like to have that the permanent variance

1 be postponed until we have a community meeting.

2 CHAIRPERSON REID: Well, that was already on the floor.

3 MS. BERGER: Okay.

4 CHAIRPERSON REID: Thank you, Ms. Berger.

5 MS. BERGER: All right.

6 CHAIRPERSON REID: I think that what the Board has decided  
7 is to put it to a vote as to whether or not to grant the postponement. Is there a  
8 motion? Does anyone want to make a motion as to whether we should or should  
9 not grant the postponement?

10 (No response.)

11 CHAIRPERSON REID: Okay. I would move that we grant the  
12 postponement.

13 MEMBER HINTON: I'll second.

14 VICE CHAIRPERSON KING: Until a date certain?

15 MEMBER HINTON: Yes.

16 VICE CHAIRPERSON KING: What is the first date that we can  
17 reschedule?

18 MEMBER HINTON: My recommendation would be that we ask  
19 the ANC when the next regularly scheduled ANC meeting is and that we make it a  
20 date after that so that this issue can be addressed at a regularly scheduled ANC  
21 meeting, that everyone will know in advance that it's going to be there.

22 CHAIRPERSON REID: And they will have time to have met with  
23 the communities addressing the concerns.

24 VICE CHAIRPERSON KING: No. The ANC. The question now  
25 is meeting with the ANC, which is a published meeting to which all of the community  
26 can -- let's not impose two meetings on them.

27 CHAIRPERSON REID: Okay.

1 VICE CHAIRPERSON KING: The ANC is responsible for getting  
2 a quorum, setting a date of a regular meeting, and publicizing it to the community.

3 I don't want to impose upon the applicants the need to have both  
4 a meeting with the ANC and a meeting with the, quote, unquote, "community."

5 CHAIRPERSON REID: My position was that it would be done  
6 simultaneously.

7 VICE CHAIRPERSON KING: Not simultaneously. Single  
8 meeting.

9 MEMBER HINTON: Could we ask, Commissioner, could you tell  
10 us when the next ANC meeting is:

11 MR. TUCKER: Our next scheduled ANC meeting is Wednesday,  
12 the 11th. But we're going to need time to have a community meeting, to get the  
13 flyers out, to let them know about the meeting for the community.

14 VICE CHAIRPERSON KING: The 11th of March?

15 MR. TUCKER: Yes, of March.

16 VICE CHAIRPERSON KING: That's three weeks from today.

17 MR. TUCKER: We really need April because when you're  
18 dealing with the community, you've got to get them to know what's going on.

19 Our next meeting is Tuesday, the 24th. That's the community.  
20 We have to let them know exactly what's going on then. We give them flyers. Every  
21 time we pass out a flyer for the community meeting, I put it in the mailboxes.  
22 Nobody ever shows.

23 I would appreciate them bringing the plans then so the  
24 community would know. I can make sure they know.

25 MS. SIMMONS: You want them to bring the plans on --

26 MR. TUCKER: If you can bring the plans on Tuesday.

27 MS. SIMMONS: Dr. Liggins, are you available for a meeting on

1 -- is it Tuesday evening?

2 MR. TUCKER: Tuesday at 7:00 o'clock p.m.

3 MS. SIMMONS: Tuesday evening at 7:00, this coming Tuesday.

4 DR. LIGGINS: This coming Tuesday evening?

5 MS. SIMMONS: Yes.

6 MR. TUCKER: When we get our monthly meeting.

7 DR. LIGGINS: I've met with them so many times, but okay.

8 MR. TUCKER: I've got the flyers going out --

9 MS. SIMMONS: Okay. We appreciate that. All right.

10 And then what about your ANC?

11 MR. TUCKER: Our ANC meeting is the 11th.

12 VICE CHAIRPERSON KING: The 11th of March.

13 MS. SIMMONS: You want --

14 MR. TUCKER: Of March.

15 VICE CHAIRPERSON KING: Do you need Dr. Liggins or

16 anybody else at the ANC meeting?

17 MR. TUCKER: I'm going to talk to the rest of the commission

18 today because they're waiting to hear back of what happened. And I'll let them know

19 that they've all got to be at our neighborhood meeting the 24th to see the plans if he

20 brings the plans to the neighborhood meeting.

21 And that will also give the community a chance to see what's

22 going on.

23 VICE CHAIRPERSON KING: May I make a suggestion --

24 MR. TUCKER: Yes, ma'am.

25 VICE CHAIRPERSON KING: -- that the ANC write an official

26 letter and hand-deliver it to Dr. Liggins?

27 You live near there, don't you?

1 DR. LIGGINS: Well, they can send it to the church.

2 VICE CHAIRPERSON KING: Oh, hand-deliver a letter to the  
3 church expressing exactly when and where and what you want --

4 DR. LIGGINS: Absolutely.

5 VICE CHAIRPERSON KING: -- from the applicant, --

6 MR. TUCKER: Okay.

7 VICE CHAIRPERSON KING: -- where you want them to be,  
8 when you want them to be there, and what you want them to bring with them so that  
9 there can be no misunderstanding. And you can hand-deliver that in the next day or  
10 so so that he has it in hand well before the meeting next Tuesday.

11 CHAIRPERSON REID: What's the next available date after that,  
12 Ms. Dobbins?

13 DIRECTOR DOBBINS: The next date that you would have for  
14 assigning a case would be May 6th. Now, if you intend to add this to an existing  
15 agenda, you can also do that. The Board will decide how to deal with that.

16 Now, you have your meetings that have already been advertised  
17 and scheduled. The next one is March 4th. You have I think five cases on the  
18 afternoon. That's one of your -- is it 4th? Okay. So March 18th would be your next  
19 meeting date. Now, the Board will deal with this.

20 VICE CHAIRPERSON KING: I will not be available on the 18th.

21 DIRECTOR DOBBINS: You will not be? Did you want to  
22 redirect? That's a regular meeting date. Did you want to read the last half of the  
23 record in this case?

24 VICE CHAIRPERSON KING: I can.

25 DIRECTOR DOBBINS: Okay. You have I think four cases  
26 scheduled for March 18th.

27 VICE CHAIRPERSON KING: Put it on then, and I'll read the

1 record.

2 DIRECTOR DOBBINS: You want to add that to the end of the  
3 agenda March 18th. Is that correct?

4 MEMBER KRESS: I have no problem with it.

5 VICE CHAIRPERSON KING: The 18th is not the Howard  
6 conference plan, is it?

7 DIRECTOR DOBBINS: No. That's not coming yet.

8 VICE CHAIRPERSON KING: Okay.

9 DIRECTOR DOBBINS: All right. The Board has determined that  
10 this application, -- what is it? -- 16298, will be continued. This is a continuation until  
11 March 18th, the last case in the afternoon. The hearings start at 1:00. This will be  
12 Case Number 5, but it will be the last case.

13 MEMBER HINTON: It should be presented to stay until the end  
14 of the hearing.

15 MS. SIMMONS: I am assuming that Ms. Brooks would have to  
16 return. She's given her testimony.

17 DIRECTOR DOBBINS: I do insist that persons here will return,  
18 cross-examination or whatever.

19 MS. SIMMONS: Okay. Thank you.

20 CHAIRPERSON REID: I don't think we completed the rebuttal.  
21 Did we?

22 MEMBER HINTON: No because the parties. We didn't do the  
23 parties until afterwards. So the parties haven't had time to cross-examine.

24 DIRECTOR DOBBINS: There has been no cross-examination.

25 MEMBER HINTON: The parties have not crossed.

26 CHAIRPERSON REID: No. I mean the motion to continue.  
27 Don't we have to vote on that? We had a motion.

1 VICE CHAIRPERSON KING: It was your decision.

2 DIRECTOR DOBBINS: You technically can --

3 CHAIRPERSON REID: For the continuation?

4 DIRECTOR DOBBINS: The continuation. You have decided to  
5 do it. So it's a consensus to continue the case.

6 CHAIRPERSON REID: Oh, okay.

7 DIRECTOR DOBBINS: The Board has a consensus to continue.

8 CHAIRPERSON REID: Thank you.

9 Now can we please have the case for Mr. Homs, 16318?

10 DIRECTOR DOBBINS: Has it been read into the record? Has it  
11 been read already?

12 CHAIRPERSON REID: This is 16318. We just have to finish up  
13 the previous case.

14 MR. GAISER: My client has to leave. We've been here all day  
15 waiting in order.

16 MEMBER HINTON: This is the first case on the agenda. We  
17 want to finish that before we get to your case. They are ahead of you.

18 CHAIRPERSON REID: All right. Are we ready?

19 CASE NUMBER 16318 (Continued)

20 DIRECTOR DOBBINS: Just for purpose of the transcript, let's  
21 indicate that this is Application 16318. It's being continued from an earlier time this  
22 afternoon, the application of Shew F. Hom and -- I'm not sure how to pronounce all  
23 of these -- Sau W. Hom.

24 CHAIRPERSON REID: Okay. And the witness needs to be  
25 sworn.

26 DIRECTOR DOBBINS: Are there witnesses who need to be  
27 sworn?

1 CHAIRPERSON REID: One, just one.

2 DIRECTOR DOBBINS: Okay. Please stand.

3 VICE CHAIRPERSON KING: Can she do it seated?

4 DIRECTOR DOBBINS: And would you raise your right hand?

5 You don't have to stand.

6 VICE CHAIRPERSON KING: Don't stand. Don't stand.

7 DIRECTOR DOBBINS: Don't stand. Never mind.

8 VICE CHAIRPERSON KING: Just raise your right hand.

9 DIRECTOR DOBBINS: Please raise your right hand.

10 (Whereupon, Verna Movern, a witness in Case Number 16318,

11 was duly sworn.)

12 DIRECTOR DOBBINS: You are sworn in, ma'am. Give your

13 name and your address, please, ma'am? Would you give your name and your

14 address, please, ma'am?

15 MS. MOVERN: Thirty-six twenty-two Norton Place, Northwest.

16 DIRECTOR DOBBINS: And your name?

17 MS. MOVERN: Verna Movern, M-O-V, as in Victor, E-R-N.

18 DIRECTOR DOBBINS: Thank you.

19 CHAIRPERSON REID: Do you want to give your testimony?

20 MS. MOVERN: Do you want to ask a question or what am I to

21 do?

22 VICE CHAIRPERSON KING: Mrs. Movern, you have lived at

23 your present residence for how long? When did you first move to Norton Place?

24 MS. MOVERN: I moved there in 1954. My sister and I bought it.

25 In 1960, we bought it. We rented it, and then we bought it. And as long as I was

26 there, I understood that the lady across the way -- there were seven detached

27 houses. And there was maybe -- oh, I don't know -- maybe 20 feet between us.

1 And there was a fence in between.

2 And, as we understood it, she rented rooms. And I never was  
3 aware that there were apartments. I wouldn't have any way of knowing because I  
4 never was there. But based on the turnover, they were mostly students. And I could  
5 tell by their demeanor. They were a little bit noisy and whatnot.

6 I never knew that there were apartments. I had no reason to go  
7 into the house to see whether they were.

8 VICE CHAIRPERSON KING: Did you know whether there were  
9 additional kitchens other than one central kitchen?

10 MS. MOVERN: I knew nothing about the inside of it. I just  
11 assumed that she was renting rooms. And I worked until 1970. I was employed.  
12 So, you know, I was only there, you know, in the evening.

13 VICE CHAIRPERSON KING: Yes.

14 MS. MOVERN: And there was some unpleasant, high music as  
15 young students, but that's all I knew. I knew nothing about the apartments. I wasn't  
16 in the house.

17 VICE CHAIRPERSON KING: Okay. And you've lived there  
18 uninterrupted since 1956? You've lived there for -- '54? Okay.

19 MS. MOVERN: We rented. And then I bought the house with  
20 my sister in 1960. And I'm still there.

21 VICE CHAIRPERSON KING: Good for you.

22 CHAIRPERSON REID: Mrs. Movern, basically you're saying  
23 that you were aware that there were tenants or someone living in the property,  
24 rentals, people were leasing at that property, but you never saw the interior to know  
25 how it was laid out?

26 MS. MOVERN: I never was in the house.

27 CHAIRPERSON REID: Okay. Thank you.

1 Any other questions, Board members?

2 MS. NOYES: May I add one thing? We brought a deed to the  
3 property from the city which mentions --

4 MS. KINNEY: Certified.

5 MS. NOYES: -- certified, which mentions nothing about  
6 apartments. And the man behind the desk said: This is the city deed. It would  
7 show apartments.

8 CHAIRPERSON REID: Okay.

9 MEMBER HINTON: While Mrs. Movern was still speaking, I just  
10 wanted to thank you for coming down. I know you made a special trip, and I'm sorry  
11 you had to wait so long.

12 MS. MOVERN: That's okay.

13 CHAIRPERSON REID: And, Mrs. Movern, to your knowledge,  
14 there has already been someone renting space in that particular building during the  
15 entire time?

16 MS. MOVERN: That's the way I understood it. As I say, I was  
17 away during the daytime. All I saw was at night. And, as I stated, the demeanor of  
18 the people there would indicate, you know, that they were mostly students because  
19 of the proximity to the universities, you know, like Georgetown and so forth. That's  
20 all I can tell you.

21 CHAIRPERSON REID: Thank you. Thank you very much for  
22 your testimony.

23 MS. KINNEY: May I speak?

24 CHAIRPERSON REID: Quickly, can you, for the record?

25 MS. KINNEY: I just wanted to be sure that you realize we just  
26 went over and got that deed. It is not in the record and the --

27 CHAIRPERSON REID: We have it.

1 VICE CHAIRPERSON KING: We have it. It's on the record  
2 now.

3 MS. KINNEY: Good.

4 CHAIRPERSON REID: Thank you.

5 MS. MOVERN: So what happens?

6 VICE CHAIRPERSON KING: Mr. Hom has a right to  
7 cross-examine if he wishes to.

8 CHAIRPERSON REID: Just a moment. Mr. Hom, did you have  
9 any questions to ask of Mrs. Movern or any of the other witnesses?

10 MR. W. HOM: No, I don't.

11 CHAIRPERSON REID: Okay. Thank you. Thank you for your  
12 testimony.

13 Mr. Hom, you'll have an opportunity to give your closing  
14 statement.

15 Okay. Thank you very much.

16 MS. KINNEY: Thank you.

17 CHAIRPERSON REID: Mr. Hom, come up and give your closing  
18 remarks, please.

19 MR. W. HOM: Well, I guess, in closing, I'd like to say that we  
20 realize our neighbors' concerns and really understand and appreciate them due to  
21 the bad experience with the units at Wisconsin Avenue, along Wisconsin Avenue.  
22 But that's entirely a separate issue.

23 Exactly when the unit was converted, I tried to research that by  
24 going to the D.C. archives and the national archives, but there weren't any building  
25 permits on file.

26 And essentially my parents are law-abiding citizens. We are just  
27 trying to do what is legally correct. No one in their right mind would ever self-inflict

1 this pain.

2 (Laughter.)

3 MR. W. HOM: You know, their intent is to follow the legal  
4 process and get the matter resolved, hopefully in their favor. We just ask that you  
5 take into consideration the uniqueness of the situation and the fact that its use  
6 possibly predates the current zoning regulations. And there really hasn't been  
7 much, if any, impact to the neighborhood.

8 When I went to the ANC meeting, it was reported out that many  
9 of the neighbors told did not realize that my parents operated a rental property. And  
10 that's because they're very selective in who they rent to.

11 So, basically, my parents respectfully request that you approve  
12 this variance request.

13 VICE CHAIRPERSON KING: Mr. Hom, if, if -- and I say "if"  
14 because we're not making a decision today, but if it were determined that we could  
15 grant this but only for two units; therefore, barring any use for residence, either of a  
16 paying tenant or a visiting relative in the basement, would that be acceptable?

17 MR. W. HOM: Yes. My parents discussed this.

18 CHAIRPERSON REID: Okay? All right. Thank you, Mr. Hom.

19 MR. W. HOM: When would a decision be made?

20 CHAIRPERSON REID: Ms. Dobbins, approximately when? Our  
21 next regularly scheduled meeting?

22 DIRECTOR DOBBINS: The decision date, you mean?

23 CHAIRPERSON REID: Yes.

24 DIRECTOR DOBBINS: It would be at your March -- there's  
25 nothing outstanding, as far as I understand, related to this case. The Board will  
26 consider a decision in this case at its March 4th public meeting.

27 If you intend to submit proposed findings of fact, which is a draft

1 order associated with the case, that would be due February 25th.

2 MR. W. HOM: I'm sorry. What was that again?

3 DIRECTOR DOBBINS: An applicant has the right to submit for  
4 the Board's consideration a draft order, and it's called proposed findings of fact and  
5 conclusions of law. And that means it's a written document saying how you think or  
6 what you think the findings of fact and conclusions of law should be made by the  
7 Board. If you intend to submit that--

8 CHAIRPERSON REID: The Board members have informed me  
9 that they would be interested in disposing of this case today.

10 DIRECTOR DOBBINS: There are no parties in opposition?

11 VICE CHAIRPERSON KING: There are.

12 DIRECTOR DOBBINS: Okay. One party in opposition, and  
13 you're prepared to discuss the issues? That's fine. That's fine.

14 Mr. Hom, would you like to request a summary, a bench  
15 decision?

16 VICE CHAIRPERSON KING: A summary order can't be done  
17 because there's opposition.

18 DIRECTOR DOBBINS: Madam Chair, members of the Board, if  
19 you intend to dispose of this today, the applicant doesn't even have to be concerned  
20 about it. You just do what you need to do. So they don't have to request it. The  
21 Board if it's heard enough evidence and can make its decision can proceed with a  
22 bench decision.

23 CHAIRPERSON REID: Let me do this. Let me hear from the  
24 Board members as to what they would like to do today as far as disposition is  
25 concerned and ask for a motion from the Board members. And let's see how we can  
26 proceed.

27 MEMBER HINTON: I'm prepared to decide today.

1 CHAIRPERSON REID: All right. Would you like to make a  
2 motion?

3 MEMBER HINTON: I would move approval of Application 16318  
4 --

5 CHAIRPERSON REID: Is there a second?

6 VICE CHAIRPERSON KING: Yes. I second.

7 MEMBER HINTON: -- in support because I believe with the  
8 information that's available, it's been demonstrated that this property has had renters  
9 in it, multiple renters, and other residents at the same time since before the zoning  
10 regulations were enacted in 1958.

11 And because it's been such a long-term use, that makes it a  
12 unique condition. And there would be an undue hardship on the owner at this time  
13 after 40-some years to have to change, reconfigure the interior of the property to put  
14 it back to a single-family residential unit.

15 I think that the opposition put a number of really important points  
16 on the record. And I would agree that this is R-1-B zoning. It is very low-density  
17 residential.

18 This is certainly not any indication by the Board that we would  
19 want the zoning or the character of the neighborhood to change, but I think because  
20 these units have been in the neighborhood for so long, that allowing them to  
21 continue will not change the nature of the neighborhood.

22 In addition, this case could not be used as a precedent for other  
23 rental units to be added because the only reason that we are able to go ahead is  
24 that the rental units have been in existence for such a long period of time. And any  
25 party that would want to come forward and add a rental unit would not be able to use  
26 this case as a precedent. It simply wouldn't apply.

27 And we did have testimony from the opposition that the rental

1 units have been in place for a long time and they have not caused any adverse  
2 impacts. No one could say anything that has happened because this one unit has  
3 been split into two. There was no parking, no noise, no trash, no adverse impacts  
4 that were identified or otherwise objectionable conditions to the neighborhood.

5 CHAIRPERSON REID: Thank you. Very good.

6 VICE CHAIRPERSON KING: And I would like to add a  
7 condition, as I indicated before, that the occupation of the house by people should  
8 be confined to the first and second floor, two separate floor-through units, with no  
9 either rental or guest accommodations made available anywhere else in the  
10 building.

11 MEMBER HINTON: I agree. I think that's very important that we  
12 make it clear in our order that only two units are allowed in the building: one on the  
13 first floor, one on the second floor.

14 MEMBER KRESS: I would just like to make one note on the  
15 issue of the creep, which is a big concern, which you did address. I would just like  
16 to again point out that the zoning on Wisconsin Avenue is different, more dense  
17 zoning. That is why what's built on Wisconsin Avenue and on that corner is different  
18 than the rest of what's on Norton Street.

19 I think that's very important and that what we're doing is  
20 somewhat precedent-setting. It is in a very tight, confined way precedent-setting.  
21 So other miscellaneous kinds of housing or people deciding they want to do this will  
22 not be looked at in -- it will only be looked at in the way we're looking at it right now  
23 and that you've heard us describe today.

24 No one can just decide, "Oh, I'd like to rent out my basement  
25 apartment" without coming here and going through the same process this has gone  
26 through.

27 And their chances will be much less likely than the chance of

1 succeeding than this project today. I can't say unequivocally they will not, but the  
2 chances are very slim that any other case coming before us unless it has been, as I  
3 said before, in continuous operation use in this manner since prior to 1958. I think  
4 anyone else is going to have a very difficult chance of having housing, additional  
5 housing, in their single-family residences.

6 I don't know if that helped or not.

7 CHAIRPERSON REID: The vote. All in favor?

8 (Whereupon, there was a chorus of "Ayes.")

9 CHAIRPERSON REID: All opposed?

10 (No response.)

11 CHAIRPERSON REID: Okay. At this point, we --

12 DIRECTOR DOBBINS: Staff will record the vote as four to zero  
13 to grant Application 16318 with one condition, Ms. Hinton, Ms. King, Ms. Kress, and  
14 Ms. Reid, to approve the application.

15 CHAIRPERSON REID: Okay. Thank you. The case is closed  
16 now, ma'am.

17 MEMBER HINTON: You are a party. It will be sent to you.

18 CHAIRPERSON REID: You will receive the information  
19 regarding our decision. Okay. Thank you.

20 And we're going to take a brief, five-minute, recess. We're going  
21 to take a short, five-minute, recess. And we'll be right back.

22 (Whereupon, the foregoing matter went off the record at 5:30  
23 p.m. and went back on the record at 5:37 p.m.)

24 CHAIRPERSON REID: We're back. And we have the last case  
25 of the day.

26 CASE NUMBER 16299

27 DIRECTOR DOBBINS: The last case of the day, 16299, the

1 application of Anoop Singh, pursuant to 11 DCMR 3107.2, for a variance from the  
2 minimum side yard requirement of Subsection 405.9 for an addition to an existing  
3 single-family structure in an R-1-B district at premises 4838 Van Ness Street,  
4 Northwest. This is Square 1502, Lot 824.

5 Persons intending to testify in this case, please stand and take  
6 the oath. Raise your right hands, gentlemen.

7 (Whereupon, all witnesses in Case Number 16299 were duly  
8 sworn.)

9 DIRECTOR DOBBINS: Thank you much. Have a seat.

10 CHAIRPERSON REID: Give your name and your address,  
11 please.

12 MR. GAISER: My name is Paul Gaiser. I'm an architect with  
13 PGA Architects in Bethesda, Maryland. And with me is the owner and resident,  
14 Anoop Singh. We're here today to ask for approval for a variance into a side yard.

15 This variance proposal was presented to the ANC. And I believe  
16 you have a copy of their letter in front of you. Ms. Hinton, do you have that letter,  
17 and everyone on the Board?

18 VICE CHAIRPERSON KING: Yes. It's in the file.

19 CHAIRPERSON REID: Oh, okay. Yes, I do have it.

20 MR. GAISER: In the context of the letter, basically they're  
21 recommending that this be approved. It was voted four to O at the last ANC  
22 meeting.

23 To our knowledge, we have no opposition to this. Has there  
24 been anything submitted to the file concerning our position? We're not aware of  
25 any.

26 CHAIRPERSON REID: We are unaware of any.

27 MR. GAISER: The simple situation here is that we have a house

1           whose distinguishing characteristic is that the kitchen is in the middle of the property,  
2           middle of the house itself. We're not asking for much space, just a small breakfast  
3           room bump-out.

4                           We do have a high, six-foot, fence adjacent to this addition and  
5           the landscaping that virtually shields this addition from any view to the street.

6                           It is a one-story addition. It's a very small bump-out. We have  
7           eight-foot minimum side yard setbacks on both sides. And the only other options  
8           that we have would be expensive ones, extremely expensive ones, moving the  
9           kitchen to the back of the house or pushing the dining room back. We didn't feel that  
10          that was a good option.

11                          VICE CHAIRPERSON KING: And you're required to have eight  
12          feet. And if you have the bump-out, how many feet will you have?

13                          MR. GAISER: We're asking for a five-foot variance of an  
14          eight-foot setback. We would have three feet left. I have original pictures there. I  
15          don't know how good the pictures I sent in came out, but I could pass those around if  
16          you'd like to see our condition.

17                          VICE CHAIRPERSON KING: Do we have your plan?

18                          MR. GAISER: I would certainly hope so by this point. If not, I  
19          have copies of that as well.

20                          VICE CHAIRPERSON KING: I don't have a plan. I mean, I don't  
21          have a --

22                          MR. GAISER: Can I bring this up to you?

23                          VICE CHAIRPERSON KING: Yes, please.

24                          (Pause.)

25                          VICE CHAIRPERSON KING: Next to the bump-out, as you call  
26          it, is that stairs going down to the basement?

27                          MR. GAISER: That is correct.

1 MEMBER KRESS: Which is existing?

2 MR. GAISER: Which is existing. And we're building over a  
3 small portion of that.

4 CHAIRPERSON REID: Any questions, Board members?

5 MEMBER HINTON: So you're adding space for a table with  
6 chairs and an additional door to the outside. Is that right?

7 MR. GAISER: We are moving the existing door to the outside, to  
8 the edge of the addition. That's correct.

9 MEMBER HINTON: And now that door will open towards the  
10 front of your lot?

11 MR. GAISER: That's correct.

12 MEMBER HINTON: And currently it opens towards the side?

13 MR. GAISER: Yes. And, again, we considered having it open to  
14 the side, but, again, to leave a three-foot-clear passage, we felt it was better to make  
15 that open towards the front.

16 Again, the pictures that I have up there show this six-foot-high  
17 fence. It seemed to us that it would be difficult to see this addition since it's a  
18 one-story bump-out, that hardly anyone would be aware of it.

19 MEMBER HINTON: And the height of the roof of the bump-out  
20 will be about what?

21 MR. GAISER: It's at the bottom portion of it. It's eight feet. And  
22 it's a shed roof that goes away from the property line, further diminishing the line of  
23 sight.

24 MEMBER KRESS: So how does this compare? Where is the  
25 height of the fence here?

26 MR. GAISER: The bottom of the shed roof is at eight feet. The  
27 fence is not drawn, but approximately a six-foot-high fence. You can see it better in

1 the pictures that I've passed around.

2 MEMBER KRESS: Right. I was just trying to see it. So  
3 basically we've got the bottom to the eave is eight-foot and this fence is six-foot?

4 MR. GAISER: That's correct.

5 MEMBER KRESS: And that looks like a 45.

6 MR. GAISER: Eleven feet, ten feet at the top of the roof,  
7 something like that.

8 MEMBER KRESS: Thank you.

9 MR. GAISER: The other pertinent point here is that visually  
10 because of the fireplace bump-out, which bumps out about two feet, a good portion  
11 of this addition will be hidden from the street as well.

12 VICE CHAIRPERSON KING: Where is that?

13 MR. GAISER: And that is shown on the plan or the pictures.

14 VICE CHAIRPERSON KING: Oh, I see.

15 MEMBER HINTON: Are you familiar with the three tests for a  
16 variance?

17 MR. GAISER: I am aware that you have to provide hardship.

18 MEMBER HINTON: Right. The first one is you have to identify  
19 some unique condition in the property that's creating a hardship to use it the way the  
20 zoning regulations would allow.

21 MR. GAISER: Right. I understand. And we consider that to be,  
22 at least in this case, exceptional narrowness.

23 MEMBER HINTON: Of what?

24 MR. GAISER: Of the property itself; in other words, two  
25 eight-foot side yard setbacks. Usually with side yard setbacks, you have a minimum  
26 on one side and more on the other side. We have two eight-foot setbacks on either  
27 side. So we don't have many options to expand to the side.

1                   MEMBER HINTON: That's not usual in the District of Columbia,  
2 is it? I mean, most side yards are required to be eight feet.

3                   MR. GAISER: It's eight-foot at a minimum. That's correct.

4                   MEMBER HINTON: Right. If you're going to talk about  
5 narrowness of the lot, you would need to show us that this lot is more narrow than all  
6 the other lots around it.

7                   CHAIRPERSON REID: How does it compare with the other  
8 properties?

9                   MR. GAISER: My sense is that the immediate property to the  
10 left is the same size lot. I don't know how big the house is. I think the houses in that  
11 block are all the same width. I don't know whether all the houses have eight-foot  
12 setbacks on both sides. I know they have eight-foot minimum, but I don't know  
13 whether they go to the property line.

14                   My point here is that I'm aware that eight-foot is a minimum as  
15 far as a side yard setback, but I'm not aware that most houses in the District have  
16 eight-foot on both sides. And that's my point.

17                   VICE CHAIRPERSON KING: Susan, you know, as he stated at  
18 the beginning of his testimony, the kitchen is in the middle of the house. And, of  
19 course, we all know, any of us who ever had anything done with a kitchen or  
20 bathroom knows, how catastrophically expensive it is to move a kitchen or a  
21 bathroom. Can we consider that to be a unique condition or difficulty?

22                   MEMBER HINTON: The applicant would have to demonstrate  
23 that it is. And unique by definition is the only one. So is this the only kitchen in the  
24 neighborhood that's in the middle of the house? That's their burden.

25                   So I don't know. And they're not really moving the kitchen.  
26 They're providing sort of an additional heating space.

27                   VICE CHAIRPERSON KING: That's true.

1                   MEMBER HINTON: It could be next to a kitchen in some other  
2 room.

3                   MR. GAISER: But not adjacent. In other words, a breakfast  
4 area by definition is typically adjacent to a kitchen. Frankly, our approach here is  
5 this is a very small bump-out. It's a very small project. To test the limits of the  
6 actual wording of the zoning variance is not our intent here.

7                   It's a very small bump-out. We're just looking for table space for  
8 two people in an existing kitchen without major expense is the bottom line.

9                   CHAIRPERSON REID: Yes, but Ms. Hinton is trying to guide  
10 you through this, discussing with you the need for meeting those three tests. So is  
11 there any other aspect of that property that would be deemed unique or unusual?

12                  MR. GAISER: I don't know. Could we have a minute?

13                  CHAIRPERSON REID: Yes.

14                  (Pause.)

15                  CHAIRPERSON REID: Yes?

16                  MR. SINGH: May I just say a few words? You know, we have  
17 lived many years through having a very small kitchen area. And, to the best of our  
18 recollection, we have seen the houses inside next door. And we think our kitchen is  
19 smaller than each one.

20                  VICE CHAIRPERSON KING: Are they all in the middle?

21                  MR. SINGH: Yes. You know, the problem is, for example, it's so  
22 small, the kitchen, that there is no place for even a child to sit. And we really need  
23 to have them seated in one area to have their meals. And there is no place at this  
24 moment for even one child to sit.

25                  By doing the small bump-out, we will be having just enough  
26 space for the two kids to sit, one of us to be there. And that's all it is.

27                  But I do believe the kitchen is smaller slightly than the ones on

1 each side. Now, I'm not sure if that helps you, but I think that is our recollection.

2 CHAIRPERSON REID: Let's see. Board members, can you  
3 think of how we can help him to meet this first test? That is kind of a stretch.

4 Lot size. The lot size is pretty uniform with the rest of the  
5 community, rest of the neighborhood?

6 MR. GAISER: The lot is 50 by 127.

7 MEMBER KRESS: I'm trying to be helpful. I don't know if it --

8 MR. GAISER: No. I understand. If we got you that information,  
9 would that be helpful in helping you make a decision?

10 MEMBER HINTON: What we're discussing is there's pending  
11 rulemaking by the Zoning Commission that allows proposals like this to come in as a  
12 special exception, rather than a variance.

13 MEMBER KRESS: In a variance, you have to meet every --

14 MEMBER HINTON: And a special exception is you don't have to  
15 have a unique condition of your property. Basically you have to show that there  
16 wouldn't be adverse impacts to the community.

17 MR. GAISER: I understand.

18 MEMBER HINTON: It's a much easier regulation.

19 MEMBER KRESS: And burden of proof on your part.

20 MEMBER HINTON: Right. And so we're thinking that it might  
21 be in your best interest -- it's coming out within a month.

22 MEMBER KRESS: We are voting on it this coming Monday for  
23 final action. Then it needs to be published for 30 days.

24 DIRECTOR DOBBINS: No, no.

25 MEMBER KRESS: It's just published. It's done.

26 DIRECTOR DOBBINS: The 30 days are over.

27 MEMBER KRESS: I'm sorry. I was thinking we were still in the

1 process.

2 DIRECTOR DOBBINS: The order has to be finalized and  
3 signed. And then it has to be published. So it could probably be final within the next  
4 two to three weeks.

5 MEMBER HINTON: Then to hear this under the new  
6 regulations, would it have to be renotified?

7 DIRECTOR DOBBINS: Yes.

8 MEMBER HINTON: But would it have to go back through the  
9 Zoning Administrator?

10 DIRECTOR DOBBINS: No, I don't think so.

11 MEMBER KRESS: Would it have to go back to the ANC?

12 DIRECTOR DOBBINS: The ANC didn't one way or the -- they  
13 just said to approve it. We could probably get their stamp of approval, but what you  
14 probably want to do is set another hearing date, set it for another hearing date, when  
15 it's going to be advertised and just go through the whole process so you can give  
16 notice, so that you can hear the case.

17 At the time that the case is heard, it should be heard under the  
18 then existing regulations, which means you want the regulation to be final at the time  
19 you hear it.

20 So if there is no great hurry, we can probably put it on the May 6  
21 agenda in the morning.

22 VICE CHAIRPERSON KING: It will be published by May 6?

23 DIRECTOR DOBBINS: Oh, sure.

24 CHAIRPERSON REID: And it would behoove you to do that --

25 VICE CHAIRPERSON KING: You know where we're going. It's  
26 going to be difficult for us to say yes to --

27 CHAIRPERSON REID: Yes because you can see us trying to

1 really grasp, clutch straws to make this work. And you don't want to take the chance  
2 of it being denied based on --

3 MR. GAISER: I understand.

4 DIRECTOR DOBBINS: And at this point, I'd ask the Board if it's  
5 their intent to waive an application fee.

6 MEMBER HINTON: Yes.

7 CHAIRPERSON REID: Yes.

8 DIRECTOR DOBBINS: That means the applicant can come  
9 back to me, and we can talk about how to get it processed as quickly as possible so  
10 that they can be here.

11 CHAIRPERSON REID: Did you all get that? That's important.

12 MR. GAISER: I'm sorry?

13 DIRECTOR DOBBINS: Oh, I was saying the Board has waived  
14 a new application fee. So I was suggesting that you come back to me after today  
15 and let us decide the best way to proceed with this.

16 MR. GAISER: Okay. That sounds great to us. We appreciate it.  
17 It is my understanding that we do not have to post a sign again, would have to post  
18 a sign?

19 DIRECTOR DOBBINS: You will. You will because it will be  
20 different relief. So I will tell you everything you need to do. You're going to be  
21 basically starting from scratch.

22 MR. GAISER: But we can get a date on May 6th?

23 DIRECTOR DOBBINS: We intend to put you on that agenda.

24 MR. GAISER: Okay.

25 DIRECTOR DOBBINS: That means it will be re-advertised,  
26 re-noticed, re everything.

27 VICE CHAIRPERSON KING: And you don't have to go back to

1 the Zoning Administrator.

2 DIRECTOR DOBBINS: Right. I'm going to forward it.

3 MEMBER KRESS: And there is a very good chance you will  
4 have a bench decision that day.

5 MEMBER HINTON: You will want to make sure you read the  
6 new regulations and review your own application to make sure it fits in.

7 MR. GAISER: I understand. Will you have a draft copy of that  
8 available?

9 DIRECTOR DOBBINS: I do. I do.

10 MR. GAISER: Okay. Great.

11 DIRECTOR DOBBINS: It's been published as a proposed  
12 rulemaking. So I'll give you a copy of that.

13 MR. GAISER: Great.

14 MEMBER KRESS: When they make their decision, what should  
15 we do? Are we very sure that -- I'm very sure he should go this way, but he needs  
16 the right to make that decision.

17 DIRECTOR DOBBINS: Why don't you just defer this?

18 MEMBER KRESS: Just defer it was what I was going to say,  
19 rather than do anything else.

20 DIRECTOR DOBBINS: Defer this or indefinitely.

21 MEMBER KRESS: Defer it definitely.

22 DIRECTOR DOBBINS: Until we get something going in the  
23 other direction.

24 MEMBER KRESS: If the new application doesn't work for you  
25 and you want to come back and try under the old, you can still. We haven't turned  
26 you down.

27 CHAIRPERSON REID: Okay?

1 MR. GAISER: Thank you very much.

2 CHAIRPERSON REID: Thank you. All right. That's it.

3 CASE NUMBER 16288 (Continued)

4 CHAIRPERSON REID: Okay. Case Number 16288. He asked  
5 for a postponement, but then he didn't return. So we'll just go ahead and reschedule  
6 him for a time certain?

7 DIRECTOR DOBBINS: Okay. If you're going to postpone it to a  
8 date certain, that would also be May 6. And that fills up your morning. We will get a  
9 notice out to him.

10 CHAIRPERSON REID: Okay. Is that it?

11 DIRECTOR DOBBINS: So the Board has postponed Application  
12 16288 to May 6, 1996 in the morning, with cases beginning at 9:30 in the morning.

13 CHAIRPERSON REID: Nineteen ninety-eight.

14 VICE CHAIRPERSON KING: Which will be his last  
15 postponement, don't you think?

16 DIRECTOR DOBBINS: '98.

17 VICE CHAIRPERSON KING: This is his second postponement.  
18 Don't you think --

19 MEMBER HINTON: Could we indicate in the letter that that's  
20 likely to be the last postponement since this is the third time? We've already  
21 entertained --

22 DIRECTOR DOBBINS: Okay. Last postponement.

23 CHAIRPERSON REID: This concludes today's hearing. Thank  
24 you.

25 (Whereupon, the foregoing matter was concluded at 5:57 p.m.)