

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY
SEPTEMBER 23, 2003

The public hearing was convened in Room 200 South, 441 4th Street, N.W., Washington, D.C., pursuant to notice at 9:46 a.m., Geoffrey Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Board Member
CURTIS ETHERLY, JR.	Board Member
DAVID ZAIDAIN	Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD	Vice Chairperson
PETER MAY	Commissioner

OFFICE OF ZONING STAFF PRESENT:

BEVERLY BAILEY	Office of Zoning
CLIFFORD MOY	Office of Zoning
JOHN K.A. NYARKU	Office of Zoning

OTHER AGENCY STAFF PRESENT:

JOEL LAWSON	Office of Planning
JOHN MOORE	Office of Planning
KAREN THOMAS	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

SHERRY GLAZER, ESQ.

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

(9:46 a.m.)

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. I would ask that this hearing please come to order. This is the 23rd of September, 2003, Public Hearing of the Board of Zoning Adjustments, the District of Columbia. My name is Geoff Griffis, Chairperson.

With me today is Mr. Etherly, Vice Chair and also Ms. Miller. Representing the Zoning Commission with us this morning is Mr. May, and representing the National Capitol Planning Commission is Mr. Zaidain.

Copies of today's hearing agenda are available to you. They are located on the wall close to the door where you entered into the hearing room. Please pick it up, and you can see where you might be on our morning schedule.

Several things of great import. First of all, all hearings before the Board of Zoning Adjustment are recorded. Therefore, we ask several things of you. Before coming forward to speak to the Board, you will need to fill out two witness cards. Witness cards are located at the table where you entered into and the table in front of us. Those two

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1 witness cards go to the recorder, who sits to my
2 right.

3 Also, when you come up to speak to the
4 Board, make yourself comfortable. You will need to
5 turn on a microphone and first state your name and
6 your address for the record. You only need to do that
7 once and then we can proceed.

8 I would also, noting that it is being
9 recorded and we are giving full attention to those who
10 are testifying in front of that people refrain from
11 making any sort of disruptive noises or actions, and
12 if you would, turn off all your cell phones and
13 beepers at this time so that we don't disrupt the
14 testimony that is happening in front of us.

15 The order of procedure today for special
16 exceptions and variances will be first, we'll hear
17 from the applicant and witnesses thereof. Second, we
18 will hear any government reports attendant to the
19 application such as the Office of Planning, Department
20 of Transportation and any other agencies that have
21 submitted. Third, we will hear the report from the
22 advisory neighborhood commission, the ANC. Fourth
23 would be parties or persons in support, and fifth
24 would be parties or persons in opposition. Sixth,
25 finally, we will have closing remarks by the

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1 applicant.

2 Cross examination of witnesses is
3 permitted by the applicant and parties in the case.
4 The ANC within which the property is located is
5 automatically a party in the case.

6 The record will be closed at the
7 conclusion of each hearing except for any material
8 that is explicitly and quite directly requested by the
9 Board. We will be very specific in what is to be
10 submitted and when it is to be submitted into the
11 Board. Of course when that it received, after which
12 the record would then be finally closed and no other
13 information would be accepted.

14 The Sunshine Act requires that public
15 hearings on each case be held in the open and before
16 the public. This Board may, however, consistent with
17 its rules of procedure and the Sunshine Act enter
18 executive session during or after a hearing on a case.

19 That would be for the purposes of reviewing the
20 record and/or deliberating on the case.

21 The decision of this Board in contested
22 cases must be based exclusively on the record. So, it
23 is very important to put all the evidence that you
24 want and testimony into the record, and it also is
25 very important not to engage Board members in

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1 conversation during the proceedings of a hearing and
2 case, so that we don't give the appearance of not
3 solely deliberating on the record that has been
4 established before us.

5 We will at this point consider any
6 preliminary matters for cases in the morning session.

7 Preliminary matters are those which relate to whether
8 a case will or should be heard today, such as requests
9 for postponements, continuances, withdrawals, or
10 whether proper and adequate notice of the case has
11 been provided.

12 If you are not prepared to go forward with
13 a case today or if you believe that the Board should
14 not proceed with a case on this morning's agenda, I
15 would ask that you come forward and have a seat,
16 indicating you have a preliminary matter for the
17 Board.

18 I will ask if Staff has any preliminary
19 matters for the Board after I wish them a great good
20 morning. Ms. Bailey on my very far right, Mr. Moy,
21 Ms. Glazer, Corporation Counsel, is with us today.
22 Any preliminary matters, Ms. Bailey?

23 SECRETARY BAILEY: Mr. Chairman, members
24 of the Board, good morning. The preliminary matters
25 are all case specific, Mr. Chairman, so they will be

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1 dealt with when the cases are called.

2 CHAIRPERSON GRIFFIS: Very well. Then
3 let's call the first case of the morning.

4 SECRETARY BAILEY: And this is Application
5 17021 of Estelle Goldman, pursuant to 11 DCMR 3104.1
6 for a special exception to continue the use of a
7 nonconforming retail grocery deli last approved by BZA
8 Order No. 16261 dated November 12, 1977, with hours of
9 operation expanded to 24 hours a day under Section
10 2003. This site is located in the Foggy Bottom
11 overlay district, and it's also zoned R-3. It's
12 located at premises 912 New Hampshire Avenue, N.W.,
13 first floor and the basement. It's also located in
14 Square 28 on Lot 122.

15 All those persons wishing to testify,
16 would you please stand to take the oath? Please raise
17 your right hand. Do you solemnly swear or affirm that
18 the testimony you are about to give in this proceeding
19 will be the truth, the whole truth, and nothing but
20 the truth? Thank you.

21 Mr. Chairman, there are requests for party
22 status, and I think the Applicant does want to make a
23 statement to the Board at this point.

24 CHAIRPERSON GRIFFIS: Well, we could flip
25 a coin, or you are at the table. You had something to

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1 address to the application?

2 MR. BROWN: Yes, Mr. Chairman, and I think
3 it may streamline the whole process.

4 CHAIRPERSON GRIFFIS: And you are?

5 MR. BROWN: Patrick Brown from Greenstein
6 DeLorman Lux, counsel for Estelle Goldman and 711.

7 The Applicant wishes to withdraw that
8 portion of the application which was requesting that
9 the hours of operation be extended to 24 hours a day
10 from its current and longstanding 7 a.m. to 11 p.m.
11 Clearly, that was the source of great concern to the
12 ANC, the Office of Planning, and members of the
13 community.

14 CHAIRPERSON GRIFFIS: Okay. So, for
15 clarification then, the application is requesting a
16 continuation of the use and for hours 7 to 11?

17 MR. BROWN: That's correct, which has been
18 the approved use for the last 20 years.

19 Also, I have to admit that neither of my
20 witnesses are here. They are apparently, last report,
21 stuck in traffic, but again, having I think narrowed
22 this case to the point where we're really talking
23 about simply renewal of a longstanding use, and if you
24 look at the Office of Planning report, as well as the
25 comments from the ANC and the community, the only

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1 source -- there are two issues.

2 One was the 24-hour operation, which is no
3 longer relevant and is moot, and the other is the
4 length of the approval. Obviously, my client would
5 prefer a longer approval period. This is a time
6 consuming, expensive process.

7 The Office of Planning as well as the ANC
8 --

9 CHAIRPERSON GRIFFIS: Okay. Actually,
10 before you go too far into this, let's establish the
11 parties in this case. Do you have a time when your
12 witnesses might be here? Do you have an estimation?

13 MR. BROWN: We're beyond that.

14 CHAIRPERSON GRIFFIS: Okay. We could call
15 the next case and we could get to this after.

16 MR. BROWN: Well, the other thing is, Mr.
17 Chairman, having narrowed this case to what we're
18 talking about --

19 CHAIRPERSON GRIFFIS: I agree. I don't
20 think we need a lot of testimony on this. I think the
21 issues are very clear and concise for the Board's
22 deliberation. My anticipation is that we take about
23 30 minutes to get through this. For the entire case,
24 I'd like to hear from, of course, the others that are
25 here to testify. The issues in the record are very

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1 clear. As I say, we can have a little bit more.
2 There's no need to be redundant on it, and the Board
3 can take that a deliberate on it.

4 So, with that, let's move to party status.

5 We have three, as indicated. We have Talisman
6 Exhibit No. 27, Klotz Exhibit No. 25, and Klein
7 Exhibit No. 40. I will review quickly for the Board,
8 the client application indicates that they are
9 immediately next door. The others are also in fair
10 proximity, which goes to the elements of their concern
11 -- noise, trash, your basic disturbance.

12 First of all, are all the parties that
13 have requested status present today? Is Mr. Klotz
14 here? Indeed. Mr. Talisman is here? Very well, and
15 Ms. Klein?

16 MR. KLEIN: I'm her husband. She's not
17 feeling well.

18 CHAIRPERSON GRIFFIS: I see. So, your
19 going to be representing the Klein party?

20 MR. KLEIN: Well, we were concerned about
21 the 24-hour request.

22 CHAIRPERSON GRIFFIS: Okay. While you're
23 getting comfortable in our plush chairs, just state --
24 of course, anyone that is present and anyone else that
25 shows up is open to testify, either in support or in

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1 opposition of the application. Once one requests a
2 party status, it's an elevated status within the
3 hearing. It's a full participant in the hearing. Of
4 course, you are granted the opportunity to conduct
5 cross examination, but you also have the
6 responsibility and the burden of submitting
7 documentation, further evidence, or submission
8 summaries, conclusions of law that the Board would
9 request. That is what comes with being granted party
10 status.

11 Are you interested in pursuing party
12 status at this time, Mr. Klein?

13 MR. KLEIN: Our concern was with the 24-
14 hour extension, which is now moot.

15 CHAIRPERSON GRIFFIS: I see.

16 MR. KLEIN: So, not really.

17 CHAIRPERSON GRIFFIS: Okay. Very well.
18 Then we can withdraw Exhibit No. 40 of the application
19 for party status. Mr. Klein, of course you are still
20 able to give testimony if you feel so moved.

21 With that brief statement, are the other
22 parties of different mind Applicant

23 MR. TALISMAN: I'm Mr. Talisman. There
24 are some issues beyond just the 24-hour issue.
25 They're asking for unlimited extension of time.

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1 CHAIRPERSON GRIFFIS: Okay. You still
2 have issues so, Mr. Talisman, as you've stated
3 probably not on the record, that you are still
4 concerned and still want to pursue your party status,
5 is that correct?

6 MR. TALISMAN: Yes.

7 CHAIRPERSON GRIFFIS: Very well, and Mr.
8 Klotz, you are the same?

9 MR. KLOTZ: Yes.

10 CHAIRPERSON GRIFFIS: Very well. So, we
11 have two requests for party status. I don't see any
12 great concern or further questions that I need to have
13 of the requests. Any Board members have any issues
14 that they want to bring up? Concerns?

15 And the representative for the ANC is here
16 today? And who's going to be representing --

17 MR. TYLER: My name is Geoffrey Tyler.

18 CHAIRPERSON GRIFFIS: Okay, Mr. Tyler,
19 that's fine. I just want to make sure that you're
20 here, Mr. Tyler, and we do have the letter that
21 indicates that you would be here representing the ANC.

22 If there aren't any other questions that
23 are concerns, Mr. Brown, do you have any objections to
24 the granting of party status to Mr. Talisman and Mr.
25 Klotz? I hope I'm saying that correctly. You can

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1 correct me. Very well.

2 MR. BROWN: No objection.

3 CHAIRPERSON GRIFFIS: Can you turn your
4 microphone one?

5 MR. BROWN: I'm sorry. No objection.
6 Given that I think we've narrowed this case down to
7 the lengthy approval, I would like to remain focused
8 in on that so that we have a 20 minute case.

9 CHAIRPERSON GRIFFIS: Excellent, and the
10 Board absolutely agrees to that. This will be very
11 narrow.

12 Okay, very well, if there are no
13 objections, then I take it there is a consensus of the
14 Board to grant party status to Mr. Talisman and Mr.
15 Klotz. Let's proceed with that.

16 Oh, I'm sorry. Mr. Tyler, did you have
17 any objections to the request for party status of Mr.
18 Klotz or Mr. Talisman?

19 MR. TYLER: No, sir.

20 CHAIRPERSON GRIFFIS: No objection from
21 the ANC, very well. Then we can proceed with those
22 two in party status.

23 MR. TYLER: Mr. Chairman, could I say
24 something? I was sort of the secondary
25 representative. I'm behind Mrs. Maria Tyler, the

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1 commissioner for the district, and she has now
2 arrived.

3 CHAIRPERSON GRIFFIS: Excellent. Anything
4 else? So, the representative for the ANC is present,
5 and so we can proceed. If there are no other
6 preliminary matters for the Board, let us move quickly
7 into this. Mr. Brown, let me turn it over to you for
8 brief opening and testimony

9 MR. BROWN: Good morning, Patrick Brown
10 again. I'm happy to announce that Nancy Wade, the
11 market manager from 7-11 hasn't arrived. We've laid
12 out in our prehearing statement I think all the
13 elements that closely track the Office of Planning
14 report, so I don't want to belabor that.

15 Again, the issue is the length of the
16 approval. We've got a 20-year history here. By the
17 way of background, the first approval was for three
18 years, the second was for six years, the third was for
19 five, and the most recent one in 1997 was for three.

20 I think, if you look at the record, 7-11
21 and their franchisee who, unfortunately, is not here,
22 have embraced the management agreement and embraced
23 the Board's orders and conditions and done a
24 commendable job. Are they perfect? No, but if you
25 look at the site here, and I've got photos in the

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1 record, of the exterior, you've got a well maintained,
2 good looking exterior, and the written submissions lay
3 out the steps 7-11 and the franchisee have taken to be
4 a good neighbor.

5 The propose, without question to go
6 forward here, subject to the existing management
7 agreement with such hours of operation and other
8 operational concerns that were expressed and remain
9 important to the community.

10 CHAIRPERSON GRIFFIS: Mr. Brown, I'm not
11 assuming you are in all of these cases, but do you
12 have any indication of why the time seemed to have
13 fluctuated?

14 MR. BROWN: I was not in any of these
15 cases, and I have no idea. Historically, and Ms. Wade
16 I think, who has been in most if not all of them, can
17 elaborate.

18 CHAIRPERSON GRIFFIS: Very well. Do you
19 want to do that now?

20 MR. BROWN: Sure.

21 CHAIRPERSON GRIFFIS: Before you do that,
22 if you wouldn't mind standing and giving your
23 attention to Ms. Bailey to my right, she'll swear you
24 in.

25 SECRETARY BAILEY: Please raise your right

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1 hand. Do you solemnly swear or affirm that the
2 testimony you are about to give in this proceeding
3 will be the truth, the whole truth, and nothing but
4 the truth?

5 MS. WADE: I do.

6 SECRETARY BAILEY: Thank you.

7 MS. WADE: Most likely it was due to the
8 fact that there were some operational issues, and
9 several of the ANC members would come by the store,
10 and they would have some issues with the exterior and
11 interior. We have worked over the years very
12 diligently to make sure that those issues have always
13 been resolved and remain resolved.

14 So, in my mind, it's mostly because there
15 is fear that without those kinds of real stringent
16 time frames that things would revert back to the old
17 ways. In all honesty, I'm sure that's why.

18 CHAIRPERSON GRIFFIS: Okay, thank you.

19 MR. BROWN: Rather than launch into
20 testimony, I welcome the Board to ask Ms. Wade or
21 myself any questions. Again, we have laid it out, and
22 it tracks very closely what the Office of Planning has
23 said and is not inconsistent with the other
24 submissions. So, I welcome any questions, and we'll
25 move forward.

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1 CHAIRPERSON GRIFFIS: I think that's a
2 good way to proceed. Do you want to just briefly
3 describe what your exterior management entails in
4 terms of clean-up, in terms of monitoring, and then
5 landscaping and upkeep?

6 MS. WADE: The franchisee is in charge of
7 upkeep and landscaping, and I think they've done a
8 pretty good job. There is always room for
9 improvement. As a matter of fact, our market has been
10 identified as a model market, and as such, we've
11 actually been assessing that location for making some
12 additional improvements there.

13 CHAIRPERSON GRIFFIS: But for instance,
14 landscaping, do you have a landscaping with a company
15 that's on contract that comes in once a month or --

16 MS. WADE: He has somebody who comes in
17 every now and again and refurbishes it, adds mulch,
18 trims up the bushes, and plants flowers.

19 CHAIRPERSON GRIFFIS: What's every now and
20 again, twice a year? Seasonally?

21 MS. WADE: Seasonally, if not more often
22 than that.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. WADE: Just to make sure it's weeded.
25 The flowers look good.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. BROWN: Mr. Chairman, I will point
3 out, these pictures were taken mid-day Friday, right
4 after Isabel. If you look closely, the place is in
5 pretty good order.

6 CHAIRPERSON GRIFFIS: Right, but I'm sure
7 you're aware some of the submissions are indicating
8 that yes, you geared up for the application and
9 relandscaped and made it look perfect. I mean, so
10 that's what I'm just trying to assess outside of and
11 anticipating that further comment. You know, what is
12 the yearly maintenance so that we can address it.

13 MS. WADE: If I may interject, one of the
14 checks and balances is me. I'm out in the stores very
15 often as well as we have a field consultant that
16 visits the stores at least once or twice a week.

17 CHAIRPERSON GRIFFIS: And what's your
18 region of management?

19 MS. WADE: Pardon me?

20 CHAIRPERSON GRIFFIS: Where are you?

21 MS. WADE: I had 75 stores. They include
22 Washington, D.C., Baltimore City, and points in
23 between.

24 CHAIRPERSON GRIFFIS: So you're local?

25 MS. WADE: Yes. I live in Howard County.

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1 CHAIRPERSON GRIFFIS: We won't hold that
2 against you.

3 MS. WADE: Thanks. Anyway, one of my
4 passions is landscaping and making sure that the
5 franchisees are maintaining landscaping.

6 CHAIRPERSON GRIFFIS: Do you think it's
7 good for business to have a clean, well-landscaped
8 storefront?

9 MS. WADE: Absolutely, not only business
10 but security and safety and the impression that it's a
11 well kept operation and it's not an easy target.

12 CHAIRPERSON GRIFFIS: Okay. And then just
13 trash clean-up and such. I note in the photographs,
14 of course there's a trash contained adjacent to the
15 entrance right on your property. There seems to be
16 one as you go towards and sidewalk and there seems to
17 be one public one on the sidewalk.

18 MS. WADE: Right.

19 CHAIRPERSON GRIFFIS: What else do you do?

20 MS. WADE: Every shift or as often as
21 possible, the sales associates go out to the perimeter
22 and police the area.

23 CHAIRPERSON GRIFFIS: And what does that
24 mean?

25 MS. WADE: Meaning that they pick up trash

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1 that customers have deposited on the ground and put it
2 where it belongs.

3 CHAIRPERSON GRIFFIS: Okay. And is a
4 trash filled front good for business?

5 MS. WADE: Absolutely not.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. WADE: Same reason.

8 CHAIRPERSON GRIFFIS: And the exterior
9 lighting, the fixtures are --

10 MS. WADE: They're small, but I believe
11 that that is what is allowable by the Fine Arts
12 Committee or whatever the zoning allows for this area.

13 CHAIRPERSON GRIFFIS: Right. They picked
14 those fixtures?

15 MS. WADE: It's whatever they -- I guess
16 what they approved.

17 CHAIRPERSON GRIFFIS: Indeed.

18 MS. WADE: I don't think they picked.

19 CHAIRPERSON GRIFFIS: Okay. They seem to
20 be a residential scale, in fact, look like residential
21 fixtures. There's three. They seem to flank the
22 entrance to the door, and they are on during business
23 hours all the time, dawn to dusk, or dusk to dawn?

24 MS. WADE: Dusk to dawn.

25 CHAIRPERSON GRIFFIS: Okay. What other

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1 kind of complaints have you heard in the past, let's
2 say two years?

3 MS. WADE: Other than what I've read in
4 the brief, I haven't really personally heard of any
5 real complaints with the operation of the store in the
6 past two years.

7 CHAIRPERSON GRIFFIS: Haven't really?

8 MS. WADE: No, I haven't heard.

9 CHAIRPERSON GRIFFIS: Okay.

10 MS. WADE: Nobody's called me up to say,
11 you know, there's a problem with your store in Foggy
12 Bottom, Ms. Wade.

13 CHAIRPERSON GRIFFIS: I see. How do you
14 get rid of graffiti around the area?

15 MS. WADE: We have a maintenance
16 department, and we key in a maintenance call into the
17 computer, and they come out and sandblast it or
18 whatever they do to get rid of graffiti.

19 CHAIRPERSON GRIFFIS: So that happens when
20 it occurs? You make the call and they come in?

21 MS. WADE: As immediate as possible, for
22 the same reason that we need to make sure the store
23 looks like a secure place.

24 CHAIRPERSON GRIFFIS: How long ago did
25 your trash can get tagged?

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1 MS. WADE: Well, probably very recently.

2 CHAIRPERSON GRIFFIS: Okay. Hopefully Mr.
3 Kong shopped at the store on the way in or out of
4 painting that. That being said, any other question of
5 the Board? Mr. Etherly.

6 VICE CHAIRPERSON ETHERLY: Thank you very
7 much, Mr. Chair. Just very briefly, Ms. Wade. Thank
8 you very much for your testimony. With regard to
9 deliveries that are made to the location, could you
10 speak a little bit to what type of schedule may be
11 utilized? Of course, that was an issue that was
12 involved in the agreement between yourself and the ANC
13 during one of the prior approvals. Could you speak a
14 little bit to the delivery schedule?

15 MS. WADE: We work really hard to try to
16 maintain our store staff and the store manager has
17 worked really hard to maintain what was in the
18 management agreement, which I believe is nothing
19 before 9:00 in the morning and then as many deliveries
20 as possible before 5:00 in the afternoon, with the
21 exception of our largest delivery truck, which is the
22 McLean's delivery truck, before 10:00. So, when I
23 know that there has been some kind of slip-up with
24 that delivery, then I'm on the phone immediately with
25 the vendors to let them know that that's a big no-no.

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1 VICE CHAIRPERSON ETHERLY: Okay, and is it
2 also your understanding that with regard to weekends
3 that that same delivery schedule agreement still
4 applies?

5 MS. WADE: Yes, absolutely. You know,
6 because of the residence.

7 VICE CHAIRPERSON ETHERLY: Okay, because
8 some of the submissions have evidence, shall we say, a
9 concern that there have been deliveries made to the
10 location prior to 7 a.m. in some instances on the
11 weekend. Now, whether or whether or not that's true,
12 you know, obviously that still remains to be seen, but
13 I just wanted to make sure that there was some
14 attention being paid to the agreement that was in
15 place between the ANC and the store.

16 MS. WADE: As soon as we know of that
17 situation, we really do rectify it.

18 VICE CHAIRPERSON ETHERLY: Okay. Thank
19 you, Mr. Chair.

20 CHAIRPERSON GRIFFIS: Anything else? Can
21 you explain why the BZA ordered expired and you
22 weren't here in 2000?

23 MS. WADE: Actually, I had been
24 transferred to Baltimore and only had the Baltimore
25 area north, and recently came back. That is really

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1 one of the reasons why I feel that three years is
2 really tough for us because if we're moved around, it
3 takes somebody to remember that this is coming up, and
4 we just weren't reminded. Actually, when I came back,
5 I was the one that reminded everybody, hey, do you
6 guys know where we are with the C of O for Foggy
7 Bottom. In all honesty, it slips through the cracks.

8 CHAIRPERSON GRIFFIS: This is a great
9 concern for the Board, of course, in all sorts of
10 applications, no matter what the use is. We see this,
11 and the difficulty for the Board is we're limited in
12 what we can do. It really becomes an enforcement
13 issue of which we don't do, nor have the jurisdiction
14 for. Try as we might. they haven't given us that.

15 But the issue does -- clearly we don't
16 like to see it. I think we have several options. We
17 could deny this outright just to say look, you weren't
18 here, so why should we hear you again. I don't think
19 that that becomes a very judicial or rational mode of
20 dealing with the situation, but I will say that the
21 Board, not just because of this case but from several
22 cases, is working hard on trying to set up a system
23 within which we can be notified or the applicant can
24 be notified. Of course it is your burden.

25 With that, and keeping in mind when you

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1 came back, there was somebody that slipped or no one
2 was monitoring it. Is there any sort of thought of
3 how you're going to deal with this in the future if,
4 you know, you land the California region and decide to
5 give up this crazy weather here in the D.C. area.
6 What is the record-keeping? What is the system of
7 reminding whoever is on site that they have an
8 expiration date?

9 MS. WADE: Well, we have a real estate
10 department, and honestly, I've been working with them
11 to try to figure out a way to trigger something in our
12 system that says that this is coming up. So, we're
13 working on that to make sure it doesn't happen again
14 because I mean, I've been with the company for 30
15 years. I might want to retire.

16 CHAIRPERSON GRIFFIS: Right. So, you are
17 addressing it and trying to set up a system of which
18 an automatic reminder might come. Very well. Yes?

19 VICE CHAIRPERSON ETHERLY: Mr. Chair, if I
20 could just follow up on that real briefly. With
21 regard to the overall question of implementation or
22 continued adherence to the management agreement
23 between the ANC, whether or not that still continues
24 to be the case, could you speak to who is the
25 responsible person, either with Southland or on site

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1 to help insure that the components of that agreement
2 are continuing to be enforced? Shall we say would
3 that be yourself, Ms. Wade, or would that be the local
4 franchisee, real estate department?

5 MS. WADE: Considering the fact that it's
6 basically a partnership, we're all responsible, and
7 the franchisee first and foremost because they're
8 there on a day to day basis, and they are very devoted
9 to making sure that they're serving the customer in a
10 manner that meets and exceeds the management agreement
11 requirements.

12 VICE CHAIRPERSON ETHERLY: Okay.

13 MS. WADE: And so am I.

14 VICE CHAIRPERSON ETHERLY: And at this
15 point, this is a question for Mr. Brown. At this
16 point, there's no plan to introduce a franchisee for
17 testimony today, correct?

18 MR. BROWN: He was scheduled to be here,
19 and his whereabouts are unknown. I would note in the
20 existing management agreement that the franchisee, it
21 was signed by his mother. The son is now day to day
22 operations, but they are a party to the management
23 agreement in their own right, so they've undertaken
24 those obligations independent of 7-11 and in
25 conjunction with 7-11.

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1 VICE CHAIRPERSON ETHERLY: Okay, thank
2 you. Thank you, Mr. Chair.

3 CHAIRPERSON GRIFFIS: Ms. Miller?

4 MEMBER MILLER: I just have a few
5 questions for Ms. Wade. You stated that you've been
6 in your position for 30 years. Have you been
7 responsible for this 7-11 throughout the term of all
8 the BZA orders?

9 MS. WADE: For 15 years of that time, I've
10 been involved in the store.

11 MEMBER MILLER: And would you say have the
12 conditions changes in the different orders during that
13 period of time?

14 MS. WADE: I would say that over the past
15 eight years that the operation has improved
16 continuously.

17 MEMBER MILLER: I mean the conditions you
18 are under the order with the ANC.

19 MS. WADE: The last management agreement
20 was by far the most stringent order, and it's okay,
21 actually. We can meet it and exceed it.

22 MEMBER MILLER: So it has changed?

23 MS. WADE: Yes, it has, and the
24 neighborhood has changed in the past 15 years.
25 According to the residents and sitting in on the ANC

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1 meeting, it obviously has changed in the past several
2 years.

3 MEMBER MILLER: Okay, and my last question
4 just goes to one of the primary issues that we're
5 considering is your request that the term of this
6 order or the next order be for ten years. Can you
7 explain why you think that's a good idea?

8 MS. WADE: Because we have demonstrated
9 the fact that we can operate according to the
10 management agreement and that we have open lines of
11 communication with the ANC membership. They just need
12 to pick up the phone and call the local management,
13 and we will take care of any issues that they have
14 with the store.

15 The store definitely services the
16 community, and I really believe that they are devoted
17 to giving good customer service, and in doing that,
18 that means every aspect of the operation, from the
19 outside to the inside of the store needs to be taken
20 care of in a way that exceeds our customers'
21 expectations.

22 MEMBER MILLER: Thank you.

23 CHAIRPERSON GRIFFIS: Any other questions
24 of the Board?

25 Anything else, Mr. Brown?

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1 MR. BROWN: No.

2 CHAIRPERSON GRIFFIS: Very well. Let's go
3 to the parties' cross examination. If they would come
4 up if they have any questions, Mr. Talisman, Mr.
5 Klotz, or the ANC representative?

6 If you are going to conduct cross
7 examination, I'd ask everybody to come up at this
8 time. We'll get plenty of chairs. It will move it
9 along a little quicker. Please.

10 If you wouldn't mind, you can just touch
11 the button on the base of that. The light will come
12 on, and if you wouldn't mind just giving me your name
13 and address for the record.

14 MR. TALISMAN: My name is Harold Talisman,
15 and I reside at 837 New Hampshire Avenue, N.W.

16 Ms. Wade, you've said that you have been
17 operating in accordance with the management agreement.

18 Isn't it true that one of the requirements of the
19 management agreement was that the authorization would
20 only be for three years, and you'd have to renew the
21 authorization after that period of time, and you have
22 not done that?

23 MS. WADE: That is correct.

24 MR. TALISMAN: Who is Posha, Inc?

25 MR. BROWN: The current certificate of

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1 occupancy is in the name of Posha, Inc. It was part
2 of the application. That's the franchisee. That's a
3 corporate entity.

4 MR. TALISMAN: Was that the franchisee
5 under the previous BZA order?

6 MR. BROWN: The franchisee has been the
7 same since 1984. It's a family, but their corporate
8 entity is Posha.

9 MS. WADE: Franchisees have the ability to
10 become incorporated, and so that's their incorporated
11 name.

12 MR. TALISMAN: Okay. Pasha, Inc. is not
13 mentioned in the application at all. It's not an
14 applicant, is that right?

15 MR. BROWN: Perhaps it's better for me to
16 answer that question. When filing the application, we
17 used the model of the previous approvals, which was
18 always in the name of the property owner, in this case
19 Estelle Goodman, on behalf of 7-11. So, we tracked
20 the prior four orders.

21 CHAIRPERSON GRIFFIS: Well, that would be
22 required for submission of the application, is the
23 property owner would have to sign, is that correct?

24 MR. BROWN: That's correct, but the
25 approval would authorize not only 7-11 but also in

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1 this case the franchisee to obtain the C of O for the
2 proposed use.

3 CHAIRPERSON GRIFFIS: Right, but that's
4 not unheard of.

5 MR. BROWN: No.

6 CHAIRPERSON GRIFFIS: A property owner
7 would get an approval or a denial from this Board, and
8 a tenant or user would pull a C of O.

9 MR. BROWN: That's correct.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. TALISMAN: The certificate of
12 occupancy says that it's an unlimited certificate.
13 Now, do you know whether or not the DCRA was informed
14 when you applied for the certificate of occupancy that
15 there was a limit in terms of how long the
16 authorization was for the special exception?

17 CHAIRPERSON GRIFFIS: I think that's an
18 excellent question. The problem is it goes beyond our
19 jurisdiction and relevancy because there's a
20 disconnect between -- well, I can say personally I
21 feel there is a disconnect perhaps between this Board
22 and DCRA when they issue the certificate of
23 occupancies, although it may well have an expiration
24 on the approval for that use.

25 I think that's what I was trying to

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1 address probably more generally than -- well, keeping
2 it very general. That is the issue that I think that
3 is difficult in terms of enforcement and also in terms
4 of reminders to applicants. So, I appreciate your
5 question but I think we need to move on.

6 MR. TALISMAN: Okay. The last
7 authorization you entered into a management agreement
8 with the ANC, is that right?

9 MS. WADE: That's correct.

10 MR. TALISMAN: And that had various
11 requirements in it. Are you willing to live within
12 those requirements right now?

13 MS. WADE: Absolutely.

14 MR. TALISMAN: Are you aware that one of
15 those requirements was that this be restricted to a
16 three-year operation and that you'd have to re-apply
17 again for renewal?

18 MS. WADE: Yes, I'm aware of that.

19 MR. TALISMAN: Okay, and you did not do
20 that, is that right?

21 MS. WADE: That's correct. I had
22 testified earlier that it absolutely slipped through
23 the cracks. It was totally our error. As soon as I
24 realized it, we made application.

25 MR. TALISMAN: That's all I have.

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1 CHAIRPERSON GRIFFIS: Thank you. Yes?

2 MR. KLOTZ: Ben Klotz, K-L-O-T-Z. I live
3 at 2403 I Street, N.W., just a few doors from the 7-11
4 store. I would like to ask Ms. Wade, since this is
5 the first time we've met, and I'm glad to know I can
6 call you up, except I didn't know of your existence
7 before this time.

8 I've lived there longer than the store has
9 been there, actually, and I can't remember seeing you.

10 So, I wanted to ask you how often do you come to
11 check up on this store?

12 MS. WADE: I visit with the field
13 consultants at least once a month.

14 MR. KLOTZ: Once a month?

15 MS. WADE: Once a month. I have 75 store,
16 so I'm very busy.

17 MR. KLOTZ: Do you ever -- well, do you
18 ever come there around 10:00 at night, 11:00?

19 MS. WADE: Yes, as a matter of fact, I do.
20 We conduct night rides, and I try to conduct night
21 rides with each of the field consultants on a rotating
22 basis. I bring with me our loss prevention manager.

23 MR. KLOTZ: Have you ever seen delivery
24 trucks there after 10:00 at night?

25 MS. WADE: I have not personally seen

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1 that, but I know that it has happened, and like I had
2 testified earlier, when we find that to be the case,
3 then I'm the phone immediately, and it has happened
4 recently with -- especially with this hurricane
5 situation, we've had some issues.

6 MR. KLOTZ: What are the delivery times,
7 by the way?

8 MS. WADE: No later than 10:00 at night.

9 MR. KLOTZ: And no earlier than seven?

10 MS. WADE: Than 9:00 in the morning.

11 MR. KLOTZ: From nine to seven. Then
12 perhaps you can explain to me --

13 MS. WADE: Nine to ten.

14 MR. KLOTZ: Nine to ten.

15 MS. WADE: Well, okay.

16 MR. KLOTZ: Perhaps you can explain to me
17 why on my nightly dog walks at around 11:00, I often
18 see delivery trucks in front of the 7-11 store with
19 their motors or air conditioners running, making quite
20 a noise.

21 CHAIRPERSON GRIFFIS: At what time?

22 MR. KLOTZ: Near 11, about 10:45. In
23 fact, the last two nights, right up until 11. I walk
24 my dog daily, in the mornings and in the evenings, and
25 I've been coincidentally doing it about the time the

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1 store opens at seven and the time it closes at 11.
2 You know how dogs are. They need this walk. So, I do
3 see these trucks.

4 CHAIRPERSON GRIFFIS: Okay.

5 MS. WADE: I would like to respond to
6 that. Like I said, very recently with the weather,
7 we've had some issues with trucks being late. The
8 franchisee has e-mailed me. I've passed that e-mail
9 on to the vendor, and we are working diligently to
10 make sure that doesn't happen because we know that
11 -- you know, I've tried to impress upon them how
12 important it is that we maintain the integrity of our
13 management agreement. So, we really are right on it,
14 and so is he.

15 CHAIRPERSON GRIFFIS: How long do
16 employees stay after closing?

17 MS. WADE: Not very much longer than
18 11:00. They pretty much get whatever they need to do
19 to get ready for the morning coffee, and they leave.

20 CHAIRPERSON GRIFFIS: So it doesn't seem
21 to make much sense to have deliveries on or about
22 11:00 when employees should be leaving?

23 MS. WADE: No. I mean really, the
24 franchisee is in my face the next morning as soon as I
25 get in. Well, they all have my cell phone number too,

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1 so it's ringing off the hook.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. WADE: He really does diligently try
4 to manage that situation.

5 CHAIRPERSON GRIFFIS: Anything else?

6 MR. KLOTZ: I have a question about the
7 employee that picks up the trash from the yards now.
8 Do you have any idea what his radius of operation is?
9 Does he just do it in front of the store, or does he
10 go down the street picking up things?

11 MS. WADE: I actually wish Sam was here,
12 but my understanding, that they go out to the gutter
13 and a little bit beyond the store on either side. I
14 certainly encourage it, and I know that if I come to
15 the store, I pick trash up on my way in if need be.
16 So, we are all responsible and understand how
17 important it is, especially in a residential area like
18 Foggy Bottom.

19 MR. KLOTZ: Is he a full-time employee?

20 MS. WADE: Yes, he is. He's there every
21 day.

22 MR. KLOTZ: I mean, does he partake of the
23 benefits of being a full-time employee such as health
24 insurance and things of that sort?

25 MS. WADE: Well, we have several employees

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1 there, and I know that the franchisee takes good care
2 of all of them, and I'm fairly certain they do have
3 health benefits, but the major employee there, the
4 store manager, is her son, Sam. So, I'm sure she's
5 taking good care of him.

6 MR. KLOTZ: I don't know what the word
7 tronology is, but do they sort of partake the Fair
8 Employment practices?

9 CHAIRPERSON GRIFFIS: We're going way
10 beyond our scope here.

11 MR. KLOTZ: Okay, sorry.

12 CHAIRPERSON GRIFFIS: And no matter what
13 the answers, I have no jurisdiction to deal with the
14 issue.

15 MR. KLOTZ: Okay. Well, that's basically
16 it.

17 CHAIRPERSON GRIFFIS: Yes?

18 MR. KLOTZ: Thank you.

19 CHAIRPERSON GRIFFIS: Okay, thank you very
20 much. The ANC, any cross examination?

21 MS. TYLER: There is no cross examination.

22 CHAIRPERSON GRIFFIS: Indeed. Then let's
23 move on to government reports. We do have a report
24 from the Office of Planning. Why don't we begin with
25 that.

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1 MR. LAWSON: My name is Joel Lawson. I'm
2 representing the Office of Planning. I'm actually
3 here on behalf of Steve Mordfin, who is the author of
4 the report and the planner who was in charge of this
5 application. He was not able to attend today. So,
6 I'm here representing OP.

7 Given that, I'm more than happy to let the
8 report stand and to remain available for questions, if
9 there are any.

10 CHAIRPERSON GRIFFIS: Excellent.

11 MR. LAWSON: As long as they're easy
12 questions.

13 CHAIRPERSON GRIFFIS: Right. Let me
14 clarify, do the parties have copies of Office of
15 Planning's memo, and the ANC also has a copy of the
16 memo, and you've reviewed it? Very well. Questions
17 from the Board to the Office of Planning?

18 Ms. Miller.

19 MEMBER MILLER: I just would like Office
20 of Planning to comment if you could on what you think
21 an appropriate term should be for the next order.

22 MR. LAWSON: The report from Mr. Mordfin
23 addresses this to some extent. I know that Mr.
24 Mordfin recommended that a three-year limit be
25 established for continuation to correspond to the

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1 existing agreement between the ANC and the applicant,
2 as well as to agree with what the ANC was
3 recommending.

4 I think that there are kind of two
5 operative things here. First of all, that the
6 agreement have a short enough term that if there are
7 difficulties that there is a reasonable I guess
8 anticipation of recourse. The second kind of factor I
9 think is that the continuation probably -- it would
10 make sense that it be a fairly regular period. That
11 would allow the corporation, the applicant, to more
12 reasonably I guess schedule coming back on a regular
13 basis and possibly anticipate and put into their
14 database on a regular basis that they need to come
15 back for continuation.

16 So, the fairly short time period was
17 certainly to make sure that there was recourse should
18 there be problems with the applicant meeting the terms
19 of the agreement between the ANC and themselves.

20 CHAIRPERSON GRIFFIS: Any other questions
21 from the Board? Does the applicant request
22 examination of the Office of Planning? Does the ANC?
23 Parties?

24 MS. DOROTHY MILLER: I'm Commissioner
25 Dorothy Miller, and I'm Chair, and we wrote you a

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1 letter that Mr. Tyler would be representing the ANC
2 today.

3 CHAIRPERSON GRIFFIS: Okay.

4 MS. DOROTHY MILLER: No questions
5 otherwise.

6 CHAIRPERSON GRIFFIS: Any response from
7 the Office of Planning?

8 MR. LAWSON: None.

9 CHAIRPERSON GRIFFIS: Thank you for that
10 clarification. Then let's move on. I don't have any
11 indication of any other given reports attendant to
12 this application. Is the Applicant aware of any other
13 submissions?

14 MR. BROWN: No.

15 CHAIRPERSON GRIFFIS: Very well. Let's
16 move to the ANC. First of all, Board members, we need
17 to waive in the submission from the ANC. Does the
18 Applicant have any objection to accepting this
19 submission from the ANC?

20 MR. BROWN: No objection.

21 CHAIRPERSON GRIFFIS: Do the parties have
22 any objection to accepting the late filing from the
23 ANC?

24 Why don't you come up and start getting
25 prepared? Not seeing any indication of that, Board

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1 members, any concerns? We would then take that as a
2 consensus of the Board and waive our rules of
3 timeliness and accept the ANC report into the record.

4 The date on this I have indicated as September 18, a
5 receipt date -- well, it's Exhibit No. 45.

6 Yes?

7 MS. TYLER: Yes, regarding your latest
8 question, do we ask whether parties are willing to go
9 along with the recommendations of the ANC.

10 CHAIRPERSON GRIFFIS: Oh, no, I didn't ask
11 that. I asked whether they had any objection to
12 waiving in your report. With that, no need to be
13 concerned. I turn it over to you to present your
14 case, which is very substantial in its submission, so
15 you're certainly welcome to summarize after you give
16 me your name and address for the record.

17 MS. TYLER: Thank you, Mr. Chairman. My
18 name is Maria Tyler. I am the ANC Commissioner for
19 2A-03, and for the area in which the 7-11 is located.

20 I will be quite brief. There are only a few points
21 left after this very thorough discussion.

22 CHAIRPERSON GRIFFIS: Okay. Let me just
23 interrupt you for a quick second because Dorothy
24 Miller had just come up and indicated that Geoffrey
25 Tyler was going to represent the ANC. I appreciate

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1 the spelling of his name also. It indicates that if
2 in fact in the event that Ms. Maria Tyler is not
3 available. So, that's why we have you in front of us.

4 MS. TYLER: Yes.

5 CHAIRPERSON GRIFFIS: So, let's proceed.

6 MS. TYLER: Thank you, but maybe I will
7 need some assistance because my mind is not yet quite
8 there. But I promise next time at the hearing it will
9 be better, and if it's not good enough, I will let Mr.
10 Geoffrey Tyler go on.

11 A few points after this very thorough
12 discussion and the questioning and your observations,
13 Mr. Chairman. Implementation is indeed a very
14 important point. As I brought out in my letter to Ms.
15 Wade, with whom I've had very good relations, and she
16 is really a wonderful person to work with, but it
17 still falls on the lap inordinately on residents who
18 are already under pressure, as you know, from very
19 many angles. So, that implementation point really
20 needs to be perhaps strengthened.

21 The other point that I would like to say
22 is the importance of the time limit. Why? I think in
23 part, it has been already addressed by the Office of
24 Planning. The time limit is there in order to achieve
25 what we have achieved. Thank goodness we have on one

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1 side Ms. Wade as a partner to work with, but it may be
2 different. At one time in the 90's, I was faced with
3 the voice of a gentleman who was totally, totally
4 unaware what the requirements of the city are, or any
5 regulations, and threatened me with signatures I don't
6 know how many, 2,000 or something. I asked him
7 whether he was going to extend his radius to
8 Pennsylvania or something like that, but in any case,
9 these things do happen.

10 Now, also the importance of a relatively
11 short time limit is the fact that circumstances which
12 I believe somebody addressed already. Circumstances
13 in the city change because for example, since the very
14 first one in 1982, we had -- well, for our
15 neighborhood the most important change that occurred.

16 That was that the Zoning Commission established the
17 overlay, Foggy Bottom Overlay, and rezoned the area to
18 R3.

19 In that area, our requirements or
20 objective that are outlined what the overlay means in
21 terms of achieving this kind of purely residential and
22 liveable area. For example, on the basis of that
23 overlay, for just an example for the present
24 situation, the management agreement would have to be
25 adjusted. I agree that the old one should stay. I

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1 mean, I agree with that, but it needs in addition to
2 what is in the old one, it needs adjustment to take
3 account of the change that has occurred. In detail,
4 it has not been addressed.

5 For example, we had a very, very long
6 negotiation, including with Mr. Fulton in Texas or
7 what is it. Very long, regarding the placement of the
8 ramp so that it is in harmony with historic
9 preservation and in harmony with what the overlay
10 requires.

11 Also, we had a very prolonged discussion
12 in terms of the landscaping, again covered by the
13 overlay but not covered in the conditions at that time
14 because things change. We are not static.

15 So, in any case, that I would just like to
16 bring that out, that that short time limit is fairly
17 important. The meetings can become shorter and
18 shorter as we work better and better to achieve it.

19 Then the adjustment of the memorandum of
20 agreement, as I foresee it and as we hope we might
21 achieve here, should be really the order should be
22 really made subject we recommend to the -- or linked
23 to the memorandum of agreement.

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. TYLER: I hope that that is not a

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1 problem, it can be done.

2 In the last summary order of the BZA,
3 there was acknowledgement of the memorandum of
4 agreement, but not a really strong statement, well
5 strong, but it's a statement that the conditions
6 outlined in the memorandum of agreement are binding by
7 this order.

8 Then the final approval I guess be made
9 subject again based on the continuation of the present
10 agreement and the adjustment to the changing
11 circumstances that the approval by the BZA be made
12 subject to the final signing of the memorandum of
13 agreement.

14 CHAIRPERSON GRIFFIS: Okay.

15 MS. TYLER: And I think that is all, and I
16 thank you, Mr. Chairman. To repeat again, the time
17 limit, a short time limit is extremely useful. It
18 probably was the major factor why we could achieve
19 what we did achieve.

20 CHAIRPERSON GRIFFIS: Excellent. Thank
21 you very much, Ms. Tyler.

22 First of all, let me address the
23 management agreement. I think it's very important,
24 obviously, to have that communication, to have those
25 agreements. What will go into a BZA order if it is

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1 approved are conditions, and those conditions will be
2 authored by us which relate directly to the elements
3 and that are brought up today.

4 To require a compliance for the management
5 agreement. This Board has felt goes beyond often our
6 jurisdiction. We have found, in looking at previous
7 orders that have come up, management agreements have
8 been arranged for type of tenants, maintenance of
9 public space. All these things when it comes back
10 down to us, which is one of the initial issues in this
11 case, is compliance and enforcement.

12 Bottom line, we cannot condition things
13 that we cannot look for enforcement and compliance.
14 So, that's why this Board doesn't often just sign on
15 to management agreements that are done because they
16 are important, and they beyond the scope of what this
17 Board has.

18 What is importance is for you to evidence
19 further, and I think you've done an excellent job. I
20 think we have a good handle on it, but to evidence
21 those conditions that you think might adversely or
22 tend to adversely affect the surrounding area, of
23 which we can create conditions that will mitigate or
24 eliminate those kind of conditions. So, when and if
25 we proceed and you find that we don't incorporate the

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1 management plan within the order, that would be the
2 reason why.

3 Anything else from the Board? Board
4 questions? Ms. Miller?

5 MEMBER MILLER: Ms. Tyler, can you tell me
6 how long you've live in the neighborhood?

7 MS. TYLER: Since 19 -- I hope it was 19
8 and not 18, but 1967.

9 MEMBER MILLER: Okay, so you've been there
10 ever since the 7-11 has been operating?

11 MS. TYLER: Yes, it's a dear neighborhood.
12 It's absolutely precious, and we hope it will not be
13 usurped.

14 MEMBER MILLER: So you lived there when
15 there was that -- there was one order that allowed
16 them to operate for five years before coming back for
17 the next order.

18 MS. TYLER: Yes. There was an order in
19 '82. That was when they changed from so to speak ma
20 and pop store to the 7-11. Then there was an order in
21 '84 very quickly thereafter which was apparently it
22 went through quite well. I had not participated in
23 that order.

24 MEMBER MILLER: My question is, I mean,
25 there's a big difference, I think, between three years

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1 and ten years, but not necessarily between three years
2 and five years, and I'm wondering how did the five
3 year period work out. Do you remember?

4 MS. TYLER: Now, the five year period was,
5 just one second. It was in -- I believe it was in
6 '84. I have it written down. I would just ask you
7 for -- the five year period was in '92, the '92 order.

8 The '92 order was the only one that was
9 opposed by ANC2-A with the conditions that the BZA put
10 in. The ANC has never objected to it. They didn't
11 support, but they never objected with these conditions
12 to an agreement, but in '92, we had so many
13 difficulties.

14 The period before '92 was a havoc around
15 the 7-11. It was really bad. Even my colleagues who
16 live in different districts were the ones who raised
17 the question. It was just the ANC, as I say, opposed
18 it why? Because the ANC at that time went for one
19 year approval.

20 Of course, I realize now that that is not
21 a workable situation, but still, to make the point how
22 pretty bad it was, they did not support, not support,
23 they denied the -- they did not recommend the
24 approval. So, that was the only time.

25 Then between '92 and '97, it was an awful

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1 lot of work. That's all I can say. The
2 implementation was an awful lot of work. At least
3 there were these conditions and they were very
4 important. The conditions, you know, our city changes
5 regulations and zoning regulations, and in this case,
6 the most important one has been our overlay. It's
7 extremely important.

8 CHAIRPERSON GRIFFIS: Good. Thank you
9 very much, and I'm sure the Zoning Commissioner
10 present today appreciates that also in terms of the
11 overlay and the kudos for that. Any other questions
12 from the Board?

13 VICE CHAIRPERSON ETHERLY: Just very
14 briefly because I don't think we necessarily confirmed
15 it, but first of all, good morning to you, Mrs. Tyler.
16 Just to confirm, the ANC did, of course, host at a
17 regular monthly meeting in September a discussion and
18 a vote on this application, of course, correct?

19 MS. TYLER: September. That is this
20 month?

21 VICE CHAIRPERSON ETHERLY: Yes.

22 MS. TYLER: Yes, of course.

23 VICE CHAIRPERSON ETHERLY: And the ANC did
24 vote with a quorum present?

25 MS. TYLER: Unanimously.

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1 VICE CHAIRPERSON ETHERLY: Unanimously.

2 MS. TYLER: Yes,

3 VICE CHAIRPERSON ETHERLY: Okay, and that
4 vote was, I'm sorry?

5 MS. TYLER: Five to zero because we have a
6 vacancy. Sir, did you get ours?

7 VICE CHAIRPERSON ETHERLY: Oh, yes, I did.
8 I just wanted to be sure that a question was stated
9 on the record.

10 MS. TYLER: It wasn't included in my
11 statement, but I did not want to make it so long after
12 this very, as I said, articulate questioning.

13 VICE CHAIRPERSON ETHERLY: And I
14 appreciate that, Ms. Tyler. Thank you. I just wanted
15 to be sure that we have that included.

16 CHAIRPERSON GRIFFIS: Okay. Anything else
17 from the Board? Very well, Applicant, cross
18 examination of the ANC? Mr. Brown?

19 MR. BROWN: No.

20 CHAIRPERSON GRIFFIS: No cross
21 examination. Do any of the parties have any cross
22 examination of the ANC? None indicated. Very well,
23 thank you very much.

24 Just to make this last piece, and then
25 let's move on to, and Mr. Talisman and Mr. Klotz, if

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1 you would prepare yourself to come up and give
2 testimony.

3 Ms. Tyler, looking over the management
4 agreement, there are two questions. First of all,
5 there was some indication in the record that a new
6 management agreement might be signed or is in
7 negotiation. Is that correct?

8 MS. TYLER: You mean a new one after the
9 one that has lapsed?

10 CHAIRPERSON GRIFFIS: Right.

11 MS. TYLER: Well, of course we would like
12 to sign the agreement.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. TYLER: With the --

15 CHAIRPERSON GRIFFIS: Do you have a draft
16 over to the Seven-11?

17 MS. TYLER: No.

18 CHAIRPERSON GRIFFIS: Okay, as it's still
19 in formulation.

20 MS. TYLER: But it will be easy because
21 the old one is not too bad.

22 CHAIRPERSON GRIFFIS: No, it's not too
23 bad.

24 MS. TYLER: And the overlay can be
25 incorporated.

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1 CHAIRPERSON GRIFFIS: Okay. First of all,
2 us proceeding does not preclude you from continuing
3 that and for signing a management agreement, and I
4 would encourage that to happen. It also obviously
5 continues the communication. That's important.

6 But to hit home my point of last, in terms
7 of adopting full the management agreement, you have in
8 the old management agreement under Section 15,
9 conditions relating to derelicts and panhandlers.
10 Things do change, don't they?

11 Southland Corporation together, and I'm
12 reading it, with the Seven-11 franchise will insure
13 that one, hospitality will not be extended to
14 derelicts and other people loitering in front of the
15 store that encourage their presence in the area.
16 Noting full well the intent of that, if we were to
17 condition that in the BZA order, I can imagine quite a
18 few judges that might be interested in taking a look
19 at it, and that's where I mean, that there are things
20 that are well out of our jurisdiction that preclude us
21 from adopting full management plans

22 I think the issue at hand that you're
23 trying to address is an important one, and that should
24 continue between the ANC, the community, and the
25 Seven-11 store.

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1 That being said, thank you very much. Are
2 the parties -- yes? Only because your name starts
3 with a G. One brief thing.

4 MR. TYLER: You would understand then.

5 CHAIRPERSON GRIFFIS: Yes.

6 MR. TYLER: Sir, I fully understand what
7 you just said about management agreements, but by the
8 same token, if the decision is made today that we
9 should continue to negotiate for a management
10 agreement, there's no obligation on either side to
11 conclude one.

12 CHAIRPERSON GRIFFIS: I understand.

13 MR. TYLER: Many of the things, things
14 that in the past, for example, the last bench order,
15 my understanding left it by mentioning the management
16 agreement, it was signed and agreed.

17 CHAIRPERSON GRIFFIS: That's correct.

18 MR. TYLER: In effect implicitly at least
19 included the conditions.

20 CHAIRPERSON GRIFFIS: Yes, it's an
21 important point, and I think if you look at the
22 conditions in the previous order, they're taken
23 directly from the management agreement. I don't see
24 any reason why not to look in the same direction for
25 that.

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1 Secondly, the management agreement would
2 be enforceable outside of this Board anyway. So,
3 there's two points of what would be the leverage,
4 essentially to get people to the table to talk to it.

5 Well, conceivably this will have an expiration date.

6 So, it would behoove the applicant in this case to
7 continue that negotiation. So, I don't see any
8 leverage being taken away. I think from the testimony
9 that I'm hearing today, I think that everyone is
10 amenable to doing it. It doesn't make good business
11 sense to have a storefront full of litter, dark, dead
12 landscape, and a bunch of hooligans -- I like that
13 word --

14 MS. TYLER: But that's exactly the right
15 one.

16 CHAIRPERSON GRIFFIS: Indeed. And in the
17 same respect, that's not what the residential
18 community wants. So, I see some good balance here,
19 but I appreciate that comment.

20 Anything else then from the Board for the
21 ANC? We thank you both for coming down.

22 Are the parties ready to present their
23 case? Come on down.

24 Gentlemen, who's first?

25 MR. TALISMAN: I'm Harold Talisman. I

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1 have really very little to add since most of the
2 points have been covered.

3 CHAIRPERSON GRIFFIS: Excellent.

4 MR. TALISMAN: I do want to make just one
5 point, and that is that it appears to me totally wrong
6 for the party, for the Applicant to be rewarded by
7 extending the time beyond three years after it just
8 ignored the previous three year limitations. It seems
9 to me to now say oh, we're going to give you five
10 years or ten years or maybe make it unlimited, is to
11 in effect be rewarding them for not living up to the
12 previous requirement.

13 CHAIRPERSON GRIFFIS: Good point.

14 MR. TALISMAN: That's totally wrong.
15 That's all I have.

16 CHAIRPERSON GRIFFIS: Oh, thank you. Then
17 let's take all of them and then we will put you in
18 front of cross examination.

19 MR. KLOTZ: Okay. My comments will be
20 brief. Thank you.

21 As I say, I walk my dog between seven and
22 11, and one thing I've learned about the dog, if the
23 dog is misbehaving, you do not put it on a longer
24 leash. So, the question here is is the Seven-11 store
25 behaving or misbehaving. I think they're on a fairly

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1 long leash as it is because if I were to sum up the
2 testimony I'd planned to give, I would say this, that
3 the store has been almost on a daily basis, its trash
4 finds its way into my yard. Delivery men leave their
5 trucks at crosswalks.

6 I remember one day when the meter maid was
7 giving the guy a ticket, and he was objecting because
8 he had his truck with motor running unoccupied at a
9 crosswalk, right on the corner of 24th and New
10 Hampshire. So, not only are they creating a safety
11 problem there on a daily basis, but there is the
12 pollution from these diesel fumes.

13 Then in addition, their customers and sometimes even
14 their employees, my neighbors tell me, park
15 temporarily in neighbors' driveways.

16 So, coming back to the trucks at 11:00, it
17 isn't just during foul weather that they're there.
18 They're there almost on a nightly basis at 11:00 even
19 in good weather.

20 So, I don't think this particular dog
21 deserves a longer leash. That's all I have to say.

22 CHAIRPERSON GRIFFIS: Thank you. An
23 interesting analogy. If Seven-11 was to comply 100
24 percent with the conditions that were listed in the
25 previous order, would that remedy your concerns?

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1 MR. KLOTZ: I'm not -- I'm not sure I
2 understand the question. It's rather hypothetical.

3 CHAIRPERSON GRIFFIS: If you wouldn't mind
4 turning on your mike. Well, first of all, I've heard
5 you indicate that the delivery times which are out of
6 compliance of the conditions. If the delivery times
7 were to go back to the conditions as stated or were
8 addressed in terms of deliveries between eight and
9 nine or eight and ten, nine and ten, whatever they
10 were in the management agreement, is that something
11 that you would find sufficient in addressing your
12 concerns?

13 MR. KLOTZ: I think I would have to
14 disagree with your premise because we've gone through
15 this kind of problem with the hospital across the
16 street where the BZA, quite wisely, decided to limit
17 the operating hours of their loading dock. Yet it
18 took us two years, not me, but many of our colleagues,
19 Mr. Talisman, to try to get this cycle approved, these
20 hours approved, and talking to the president of the
21 hospital, who is actually very sympathetic in trying
22 to enforce these rules.

23 CHAIRPERSON GRIFFIS: What are you saying,
24 that no matter what condition, they're not going to
25 comply?

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1 MR. KLOTZ: There is always an excuse for
2 the truck coming late. Either the driver didn't know
3 --

4 CHAIRPERSON GRIFFIS: Okay, so that's what
5 you're saying. So, are you proposing that we deny and
6 remove the Seven-11 from this site?

7 MR. KLOTZ: No, just that they not be
8 given a longer leash so that we have the opportunity
9 to call them to task when these out of hour deliveries
10 occur.

11 CHAIRPERSON GRIFFIS: Okay, so you're
12 proposing a three year?

13 MR. KLOTZ: Yes.

14 CHAIRPERSON GRIFFIS: Okay, excellent.
15 I'm clear. Any other questions from the Board? Cross
16 examination questions? ANC have any cross examination
17 of the parties?

18 MS. TYLER: Only that I believe it wasn't
19 the resolution. I think these two gentleman have just
20 done it perfect.

21 CHAIRPERSON GRIFFIS: Okay. I can't have
22 you talk out there because you're not on the record,
23 but if you have any cross examination, that would be a
24 time to do that.

25 That being said, anything further from the

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1 Board? Questions to the parties?

2 If not, let's go to the Applicant for
3 their closing remarks. I thank you both for being
4 here. Mr. Brown?

5 MR. BROWN: Just very briefly, and I think
6 as the application has been narrowed to the existing
7 seven to 11 p.m. use, clearly met the special
8 exception test. Reminding the Board that there is a
9 management agreement in place now. This is the first
10 time that we've been asked to modify that, but we
11 certainly will wait to hear from the ANC and how
12 they'd like to do that, but there is one in place.

13 The conditions have been in the orders
14 over time, and I suggest a middle ground on the time.

15 In previous orders, it's been as long as six years.
16 If we were to extend the approval time for the order
17 from three to five years, I think we'd still achieve
18 the objectives of giving it a limited time frame in
19 accountability, at the same time, taking some of the
20 burden off of Seven-11 as far as just the
21 administrative process of coming here, recognizing
22 that we're going to have a new management agreement in
23 place that incorporates any changes that have occurred
24 since the last one.

25 CHAIRPERSON GRIFFIS: Of course you

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1 haven't seen that new management agreement yet.

2 MR. BROWN: No, I have not.

3 CHAIRPERSON GRIFFIS: I note your request
4 from three to five years, maintain the same conditions
5 as previously approved. Very well.

6 Any last clarifications from the Board?
7 Anything else, Mr. Brown?

8 MR. BROWN: No.

9 CHAIRPERSON GRIFFIS: Excellent. Any
10 other clarifications?

11 I would like to do this. Well, let's say
12 three very brief things. Let's set this for decision
13 making. I'd like to look at anything very quickly. I
14 don't think we're going to need additional time.

15 However, what I would like to do is
16 request from the parties, the ANC, and the Applicant,
17 a brief summary of their statement of time. I think
18 what we are looking at is a range. It seems to me
19 that what's been proposed is three, five, and ten
20 years. You could address all of those, of course,
21 giving great priority to the one you are advocating.
22 Of course, I think we're pretty clear on it, but just
23 for justification and to allow further information on
24 that.

25 Secondly, and in addition to that, and

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1 these will be very brief, any proposed conditions that
2 the ANC, the parties, or the Applicant has for the
3 order. I think one of the things that we do look at,
4 this current Board, when an application expires is,
5 and all applications are new. Certainly we look to
6 the history and the basis of what's come before us.
7 This is a new day, and it's a new time for this.

8 So, I feel that we do have a lot of
9 flexibility. I think most of the conditions that are
10 in there are excellent. Compliance of course comes to
11 be another question.

12 Lastly, I did say three things. Oh,
13 timing. Let's get timing on when you think a draft
14 management agreement and the management agreement
15 would be set. That won't preclude us from acting as
16 we feel in accordance to the record that's been
17 established here. Let's put it in the record and have
18 it before the Board of what the process is for this
19 management agreement. If best, just what sort of
20 changes are going to occur in it so we can also
21 -- it will help us in terms of crafting any conditions
22 if conditions need to be crafted.

23 That being said, I'd like to give you a
24 week to get that in. Seven days, so that means that
25 submission would come in, and we'd have decision

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1 making a week after that. I don't think that there's
2 going to be more that needs to be created. I think it
3 actually will be fairly redundant to what we've heard
4 today.

5 Ms. Bailey, would you help me with dates
6 on that?

7 SECRETARY BAILEY: A week from today, Mr.
8 chairman, is September 30, and a week from September
9 30 is October 7. So, the submissions would be due
10 September 30, and the decision would be made October
11 7.

12 CHAIRPERSON GRIFFIS: Very well. Any
13 concerns, clarifications, questions? Mr. Zaidain?

14 MEMBER ZAIDAIN: Yes. Actually, I just
15 have a concern, and this is something that Ms. Miller
16 and I kind of were mentioning to each other. When we
17 get into these discussions about time frames, you
18 know, one party says they want ten years, another
19 party says they want three, et cetera, et cetera. I
20 don't want us to get into a position where we're
21 trying to split the difference and almost sounding
22 arbitrary. So, I would encourage all the parties to
23 give us some substantial evidence on which to base a
24 time frame, something hard and fast on what makes a
25 lodge in on this. I don't want us to be pulling a

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1 time frame out of a hat.

2 CHAIRPERSON GRIFFIS: Very well said, and
3 I think that's exactly what we're looking for, is some
4 substantiation of why a time period, and we've heard
5 some good testimony, but I appreciate you saying that.
6 That should absolutely be included. Okay.

7 SECRETARY BAILEY: Mr. Chairman, I'm
8 sorry. I was just reminded that the policy in the
9 Office of Zoning has changed, and for all submissions,
10 they are to be filed by 3:00 on that day. So, before
11 or by 3:00 p.m., all submissions are to be filed.

12 CHAIRPERSON GRIFFIS: Excellent, and then
13 before everyone leaves, you should have contact
14 information for everyone else participating in this.
15 Of course, if a party submits anything into the
16 record, they need to serve it on the Applicant, the
17 ANC and the other parties in the case.

18 So, anticipating that this is probably a
19 page or a page and a-half of submission of facts might
20 be doable, you all need to coordinate that and make
21 sure that you know where things are going.

22 Mr. Brown?

23 MR. BROWN: I want to clarify one point.
24 Is it the Board's expectation as part of the
25 submissions that you will see a revised management

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1 agreement?

2 CHAIRPERSON GRIFFIS: Absolutely not.
3 We're not going to have that kind of time.

4 MR. BROWN: Okay.

5 CHAIRPERSON GRIFFIS: And that's why I'm
6 only giving the opportunity for an indication of time
7 that that might be happening in terms of negotiation
8 and more importantly, evidencing any elements that,
9 for instance, the ANC thinks that that absolutely has
10 to be changed within the management agreement. They
11 can get that to you. You can respond to it if needed,
12 or the Board will take that under advisement. Is that
13 clear? Okay.

14 Ms. Miller?

15 MEMBER MILLER: I just want to ask the
16 question to the ANC. Is seven days enough time for
17 them to get that in. Have they a meeting or whatever
18 you think you need to do to respond to that?

19 CHAIRPERSON GRIFFIS: The ANC is concerned
20 if they say it's not enough time, will they have time
21 to actually participate in these filings. No, I'm of
22 great hesitancy to put this off to our first meeting
23 in November. The longer it goes -- well.

24 MS. TYLER: This management agreement we
25 could of course circulate without a meeting to the ANC

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1 commissioners, but it is still a very short leash that
2 we have.

3 CHAIRPERSON GRIFFIS: Okay, and to be very
4 clear, the Board is not looking for the management
5 agreement. The Board is looking for the discussion
6 points of which are concerns in the community that
7 need to be incorporated in a management agreement.

8 MS. TYLER: I totally agree with you what
9 you said before because actually, the agreement as it
10 is written with as far as I'm concerned, and I'm
11 speaking for my district in which the Seven-11 is
12 there, the only thing that needs to be -- not the only
13 thing, but the one thing, and it's a sentence, is the
14 overlay district. This is such an important zoning
15 matter.

16 CHAIRPERSON GRIFFIS: Perfect. That's all
17 we need to see then.

18 MS. TYLER: Exactly, and that will be very
19 brief.

20 CHAIRPERSON GRIFFIS: Easy. So your
21 submission is just down to three-quarters of a page.
22 This is fabulous.

23 MS. TYLER: No -- well, yes, three-
24 quarters of a page.

25 CHAIRPERSON GRIFFIS: Very well. Anything

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1 else? Clarifications, questions of the Board? If
2 not, thank you all very much. Appreciate your
3 patience. A little bit more than 30 minutes, but
4 let's move it along.

5 We will set this for publishment and
6 deliberation of the Board. It is on October 7. No
7 other additional testimony will be taken in this case,
8 but you will hear our deliberations.

9 Ms. Bailey, when you're ready, let's call
10 the next case.

11 SECRETARY BAILEY: Application Number
12 17048 of Greg Gay and Marlane Liddell, pursuant to 11
13 DCMR 3104.1 for a special exception to allow a two-
14 story rear addition to a single family dwelling under
15 Section 223, not meeting the lot area requirements
16 (Section 401) and lot occupancy requirements (Section
17 403). The property is located in R-4 District at
18 premises 1118 East Capitol Street, N.E., and it's also
19 located in Square 988 on Lot 818.

20 Please stand to take the oath. Do you
21 solemnly swear or affirm that the testimony you are
22 about to give in this proceeding will be the truth,
23 the whole truth, and nothing but the truth? Thank
24 you.

25 CHAIRPERSON GRIFFIS: Is anyone else here

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1 attendant to this application to give testimony? I
2 didn't see anyone else sworn in. If I could just have
3 you both introduce yourself for the record first.

4 MR. GAY: I'm Greg Gay. I'm with my wife
5 the owner of the property at 1118 East Capitol.

6 MR. OSSOLINSKI: I'm Matthew Ossolinski,
7 the owner's architect.

8 CHAIRPERSON GRIFFIS: Excellent. Thank
9 you both. Mr. Gay, are you aware of any concerns of
10 adjacent neighbors, any opposition to this
11 application, opposition to your project?

12 MR. GAY: No, Mr. Chairman, I am not. In
13 fact, we've taken the occasion to -- well, we posted
14 the property as required but also sent letters to 39
15 neighbors in the immediate area, requesting that they
16 at least support us or at least indicate their lack of
17 approval of those. I've gotten back eight saying that
18 yes, they're all for it. Well, two of them say they
19 have no objection and six that say they approve and
20 support.

21 CHAIRPERSON GRIFFIS: Did you promise a
22 barbecue on your new deck? No, I'm just kidding.

23 MR. GAY: No, sir.

24 CHAIRPERSON GRIFFIS: Okay, that being
25 said, this is a 223, of which I think is one of the

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1 most excellent sections in the regulations, and I
2 won't go into my normal diatribe on that. So, what
3 I'd like to do is really speed this up. What I'm
4 going to have you do is just give a quick opening, and
5 I'm going to ask a question that you're going to need
6 to address. Then I think we can go directly to Board
7 questions and move this along.

8 These are very straightforward. However,
9 we have one great concern. The zoning calculations of
10 the submission Z-04, proposed plans dated 5-22-03, can
11 you explain how you get the 70 percent from your lot
12 occupancy?

13 MR. OSSOLINSKI: Yes. We did include the
14 noncompliant court in --

15 CHAIRPERSON GRIFFIS: Is he getting picked
16 up? Okay, thank you.

17 MR. OSSOLINSKI: We did include the
18 noncompliant court in the existing lot occupancy of 66
19 percent.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. OSSOLINSKI: Therefore, the addition
22 which takes up approximately a third of that court
23 does not increase the lot occupancy at all since it's
24 built in something that already is considered lot
25 occupancy.

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1 CHAIRPERSON GRIFFIS: So but the total lot
2 area is 1630, is that correct?

3 MR. OSSOLINSKI: That's correct.

4 CHAIRPERSON GRIFFIS: I mean, you have
5 1,629.9, and 70 percent of that equals what?

6 MR. OSSOLINSKI: Seventy percent should
7 equal -- I didn't bring my calculator with me but it
8 should equal 1143.13 square feet.

9 CHAIRPERSON GRIFFIS: Let's check that. I
10 did my math late last night. Yes, it appears that 70
11 percent of 1629.9 is about 1,141.

12 MR. OSSOLINSKI: So, two square feet less?

13 CHAIRPERSON GRIFFIS: Yes, tragically.

14 MR. OSSOLINSKI: We would be willing to go
15 two square feet less, if that will --

16 CHAIRPERSON GRIFFIS: What's the width of
17 the addition where the fireplace is, roughly? It's
18 probably 14?

19 MR. OSSOLINSKI: It's 12 foot --

20 CHAIRPERSON GRIFFIS: Twelve feet?

21 MR. OSSOLINSKI: 12'3".

22 CHAIRPERSON GRIFFIS: So, for 12 feet,
23 you've got to make up two feet. You're setting back a
24 matter of inches?

25 MR. OSSOLINSKI: That's correct.

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1 CHAIRPERSON GRIFFIS: Fascinating. Very
2 well. Well, of course to continue with the Section
3 223, we would have to have it come into compliance of
4 no more than 70 percent lot occupancy. So, I think
5 the best way to proceed with this is to have your
6 direct testimony, as you've been sworn in to tell the
7 truth, that -- oh, heck, how do we do this? That the
8 plans would be revised to appropriately reflect 70
9 percent lot occupancy.

10 MR. OSSOLINSKI: I think that's easily
11 done.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. OSSOLINSKI: There are several things
14 that we can do. We do have the fireplace as part of
15 that equation as well.

16 CHAIRPERSON GRIFFIS: Oh, did you count
17 the fireplace towards the lot occupancy?

18 MR. OSSOLINSKI: Yes.

19 CHAIRPERSON GRIFFIS: That is fascinating.
20 The fireplace would not as it's an allowed projection
21 up to two feet into -- well, would that go to lot
22 occupancy, though? Who wants to answer that?

23 MR. OSSOLINSKI: It can project into a
24 rear yard, but we're not going into that.

25 CHAIRPERSON GRIFFIS: Right. No, I agree.

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1 MR. OSSOLINSKI: It's required of their
2 yard, so we included it.

3 MEMBER ZAIDAIN: Why would it be excluded?

4 CHAIRPERSON GRIFFIS: I don't know. I'm
5 fishing.

6 MR. OSSOLINSKI: If it's in a required
7 rear yard or side yard.

8 CHAIRPERSON GRIFFIS: Right, I understand
9 that.

10 MEMBER ZAIDAIN: But that's not the case
11 at this point.

12 CHAIRPERSON GRIFFIS: Who's got the --
13 let's pull the definition out right away and see what
14 includes the building area.

15 MEMBER ZAIDAIN: It just talks about the
16 open and closed courts.

17 CHAIRPERSON GRIFFIS: Okay.

18 MEMBER ZAIDAIN: Projections in open
19 spaces.

20 CHAIRPERSON GRIFFIS: Okay. Well, we'll
21 let that --

22 MEMBER ZAIDAIN: What is your reading of
23 the projection into open spaces?

24 CHAIRPERSON GRIFFIS: Well, that's not at
25 issue. I mean, the issues is the lot occupancy,

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1 whether it counts towards it. Be that as it may, I
2 think what we need to do is look at this as a 70
3 percent lot occupancy. What we'll do is just have you
4 submit the plans because of course the plans are the
5 first condition of any order that goes out that would
6 reflect that with the calculations appropriate. I
7 don't think that that would -- you're not following,
8 Mr. Zaidain?

9 MEMBER ZAIDAIN: No, I don't understand.
10 It's clear in the building area definition, it says
11 this term shall not include any projections into open
12 spaces. So, I'm wondering if the chimney does or does
13 not fall into that.

14 CHAIRPERSON GRIFFIS: Does corporation
15 counsel have any comment or opinion on that? I would
16 tend to agree.

17 MEMBER ZAIDAIN: I mean, that's the first
18 time I've taken a detailed look at that. I was just
19 wondering why a chimney would not fall into that.

20 CHAIRPERSON GRIFFIS: As a projection into
21 open space.

22 MEMBER ZAIDAIN: It doesn't say into a
23 required, an open space.

24 CHAIRPERSON GRIFFIS: Right. Well, there
25 we have it.

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1 MEMBER ZAIDAIN: Can you get that on the
2 record. I don't hear that a lot, so could you please
3 get that on the record?

4 MS. GLAZER: I'll repeat it. I think Mr.
5 Zaidain is correct.

6 CHAIRPERSON GRIFFIS: Okay, in which case
7 then the chimney would not -- wow. What's the amount
8 of that projection into open space?

9 MR. OSSOLINSKI: Approximately eight feet,
10 eight square feet.

11 CHAIRPERSON GRIFFIS: Eight square feet?

12 MR. OSSOLINSKI: Right.

13 CHAIRPERSON GRIFFIS: Well, that will do
14 it, eh? Okay. Well, we'll get --

15 MEMBER ZAIDAIN: Can we hold that decision
16 in abeyance? I mean, and discuss it more, or should
17 we --

18 MR. OSSOLINSKI: I'll be happy to talk
19 about it as a 70 percent lot occupancy, in those
20 terms.

21 MEMBER ZAIDAIN: Okay, why don't we do
22 that?

23 CHAIRPERSON GRIFFIS: Okay, and we'll just
24 get clarification on the chimney.

25 MEMBER ZAIDAIN: Right.

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1 CHAIRPERSON GRIFFIS: Very well, that's
2 fine. I don't see any big harm in that. It seems to
3 make total sense. Because the chimneys are also
4 defined in the allowable projections, so it's not as
5 if it's going to grow into this occupiable chimney
6 space.

7 MEMBER ZAIDAIN: Squirrels may be living
8 in it, but no --

9 CHAIRPERSON GRIFFIS: I've been in one,
10 but that being said, let's move ahead. Of course, 223
11 outlines quite specifically its requirements. Do you
12 have any brief opening statement or clarification
13 outside of what we've just gone through?

14 MR. OSSOLINSKI: No, or outside the
15 submittal that we've already made. I would just be
16 repeating it. The only new information is -- well,
17 background information.

18 Officially, the client purchased the house
19 in 1997. He's made no additions to it. Since that
20 time he's made no substantial improvements to it.
21 It's an existing family house. It has a certificate
22 of occupancy as such, current certificate of
23 occupancy.

24 Then I don't know if I need to go down all
25 the list of the four criteria.

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1 CHAIRPERSON GRIFFIS: I'm going to run it
2 down.

3 MR. OSSOLINSKI: I'd be happy to do that,
4 but in the interest of time, if you have any
5 questions.

6 CHAIRPERSON GRIFFIS: Excellent. Any
7 preliminary questions from the Board? Mr. May?

8 COMMISSIONER MAY: I had just a question
9 about the court width. Should we go into that at this
10 point?

11 CHAIRPERSON GRIFFIS: Okay.

12 COMMISSIONER MAY: Okay. With the
13 addition of the back, not the addition in the open
14 court, you've extended out, and you're very
15 particularly leaving a certain width. As I read it,
16 it was five feet?

17 MR. OSSOLINSKI: That's correct.

18 COMMISSIONER MAY: I'm not sure how that
19 works with the requirement for having a six foot, or a
20 minimum of three inches per foot. So, if you want to
21 explain how that works.

22 MR. OSSOLINSKI: Our approach to this, the
23 area that Mr. May is discussing is this area right
24 here as the extension of the existing court. Our
25 approach to this was that since we are reducing the

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1 size of the existing noncompliant court, that we are
2 not by extending that court and yet making it five
3 feet or greater, we are not extending or increasing a
4 noncompliance of the property.

5 We are left with less noncompliance, even
6 though a five-foot court technically is in
7 noncompliance, you're right, it does have to have the
8 number of inches per foot of height, which would make
9 us something like six to seven feet in width there, we
10 are not increasing our noncompliance. So, we would
11 suggest that that would be allowed as part of --
12 normally as part of the zoning code.

13 COMMISSIONER MAY: To make sure I'm clear,
14 the reason why the court is in noncompliance is
15 because it's five feet as opposed to --

16 MR. OSSOLINSKI: As opposed to six and a-
17 half.

18 COMMISSIONER MAY: All right.

19 MR. OSSOLINSKI: Based on the I think it's
20 four inches per height for an open court.

21 CHAIRPERSON GRIFFIS: Anything else, Mr.
22 May?

23 COMMISSIONER MAY: Yes. I'm not sure how
24 to phrase this. I guess there are a couple of hiccups
25 in that argument. I mean, the idea you're sort of

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1 simply -- you're actually shortening the noncompliant
2 court, okay, I mean, that's good and it's certainly
3 not a problem from the zoning code point of view to do
4 that, but when you look at simply the extension of the
5 building as creating a condition in itself where the
6 court is not compliant, I'm not sure that you get any
7 benefit from the fact that you've filled in more of
8 the court elsewhere.

9 MR. OSSOLINSKI: I would just ask the
10 Board for a favorable interpretation on that and
11 consider it holistically as opposed to what we turned
12 in.

13 COMMISSIONER MAY: Okay, thanks.

14 CHAIRPERSON GRIFFIS: Well, I think for
15 further clarification of that, Section 223 is for the
16 addition to one family or flats.

17 MR. OSSOLINSKI: Right.

18 CHAIRPERSON GRIFFIS: And that is for
19 those that are not compliant with certain of the
20 requirements, and the section of which 406 is one of
21 them, right? So, 406 establishes the courts. So, Mr.
22 May, what I'm understanding your concern is well, what
23 is the possibility. Section 223 allows special
24 exception for this addition to be put on, to be put on
25 a structure that is noncompliant with its court.

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1 So, what you're saying is conceivably they
2 have two options. Either they create a compliant
3 court or they extend the noncompliant court. They
4 don't create something outside of those two?

5 COMMISSIONER MAY: Well, if they extend
6 the noncompliant court, then they have an occupancy
7 issue, right, because the noncompliant court has to be
8 counted into the building area.

9 CHAIRPERSON GRIFFIS: Right.

10 COMMISSIONER MAY: So --

11 CHAIRPERSON GRIFFIS: But they have.
12 You've calculated that.

13 MR. OSSOLINSKI: No, a particular kind of
14 noncompliant court, a noncompliant court less than
15 five feet.

16 CHAIRPERSON GRIFFIS: Right, right, which
17 goes to building area.

18 MR. OSSOLINSKI: Right, so we're asking to
19 --

20 COMMISSIONER MAY: No, but what I thought
21 you were suggesting is that you essentially extend the
22 building out the way it is, which would have to be
23 counted into the building occupancy.

24 CHAIRPERSON GRIFFIS: Right, I'm saying
25 that's one way that it seems to be very

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1 straightforward which would come under 223, but you're
2 right, it would then max it out for 223 review. So,
3 there seems to be an advantageous way to do it, not
4 only for that, but also I think architecturally it
5 looks like it's pretty more of a niche within that
6 elevation in stepping that addition back from the
7 original structure. It also opens it up there. It
8 steps it away from the adjacent property which seems
9 to go to the some of the case in 223.

10 COMMISSIONER MAY: I'm just not sure under
11 what provision of the zoning code we're allowed to
12 build a new court that's only five feet wide.

13 CHAIRPERSON GRIFFIS: I think under 223 in
14 that it won't comply with the requirements of 406.

15 COMMISSIONER MAY: Right.

16 CHAIRPERSON GRIFFIS: That's the way I
17 read it. I mean, we're talking about an addition, so
18 it's clearly new, and we're looking at a court that is
19 noncompliant, which is 406, which allows us under a
20 special exception 223 to review it.

21 COMMISSIONER MAY: But 223 doesn't give
22 you new flexibility with extending nonconformities in
23 this, you know, carte blanche across those sections.
24 I mean, where the flexibility is introduced is in the
25 specific provisions, lot occupancy, for example, where

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1 we go to 70 percent. Going to 70 percent doesn't
2 allow you to create or extend an existing
3 nonconformity except if it's allowed elsewhere. I
4 mean, if this were a side yard and if it was only five
5 feet wide, you could continue the side yard at five
6 feet. I mean, that's something that's allowed.

7 COMMISSIONER MAY: So you're saying that
8 even under 223, they should be required to have a
9 compliant court?

10 MR. OSSOLINSKI: I think so.

11 CHAIRPERSON GRIFFIS: But that doesn't
12 make -- I understand your logic, but in terms of
13 implementation, it wouldn't make any sense. I mean,
14 the point of 223 was to look at these townhouses that
15 are noncompliant. They were built before the zoning
16 regulations were adopted, most of them.

17 COMMISSIONER MAY: No, I understand the
18 point and the justification for 223. I just don't see
19 how 223 gives us the flexibility in this case to build
20 an open court that's noncompliant, because that's
21 really what's being done.

22 CHAIRPERSON GRIFFIS: That's where I don't
23 -- that's where I have to take the next step because
24 223, its initial, and the purpose of it is for an
25 addition, and assuming that we're on noncompliant

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1 aspects of an existing structure, one would assume
2 that there's going to be noncompliance within those
3 that are allowed to be reviewed under special
4 exception.

5 COMMISSIONER MAY: But again, I don't see
6 any language within the code, and I'd be happy if
7 somebody could point me to it, but I mean, we're given
8 specific authority to allow 70 percent lot occupancy
9 here as opposed to 60, and that's the flexibility that
10 comes in from 223.

11 CHAIRPERSON GRIFFIS: Yes.

12 COMMISSIONER MAY: There's not flexibility
13 granted to build smaller courts.

14 CHAIRPERSON GRIFFIS: Okay. I disagree
15 because I think in the wrapping of 223, it includes
16 401, 403, 405, 406, under 2001.3 which is
17 nonconforming structures devoted to conforming uses.
18 So, it indicates to us that look, you're going to look
19 at a batch of nonconformities. We need to bundle it
20 all, make sure it doesn't adversely affect anybody
21 around it or the public good, and move ahead.

22 COMMISSIONER MAY: But see, 223 allows
23 additions when it doesn't comply with 401, 3, 4, 5, 6,
24 and 2001.3. All it does is says okay, if you have
25 something that doesn't comply with those, you can

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1 still put an addition on. That's all that it says.
2 It doesn't say that you can extend any of those
3 nonconformities, except with lot occupancy.

4 CHAIRPERSON GRIFFIS: But it doesn't say
5 that the addition has to fully conform with all the
6 regulations as laid out in Chapter 4.

7 COMMISSIONER MAY: I thought that that was
8 implied in having the regulations in the first place.
9 I mean, aren't we supposed to be building compliant
10 structures as the sort of starting point?

11 CHAIRPERSON GRIFFIS: No, under 223.
12 Under 223 I think the base assumption is that this is
13 nonconforming.

14 COMMISSIONER MAY: Well, it's a
15 nonconforming building to start with, but it doesn't
16 mean that you can continue a nonconformity except
17 where that authority is explicitly granted.

18 CHAIRPERSON GRIFFIS: That's where my
19 disconnect comes because the practicality is that if
20 you have a nonconformity and you're going to put an
21 addition to it, conceivably, and I think in most of
22 these townhouses with these little areaways, you're
23 going to logically be looking at putting an addition
24 that is nonconforming, and it may well be the same or
25 the same points as the nonconformity of the existing

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1 structure.

2 MEMBER ZAIDAIN: Can I interject to make
3 sure I understand Mr. May's argument before the
4 architects go off on their on here? 223 Allows us to
5 review under special exception those residences that
6 do not come in compliance with 401, 403, 404, 405,
7 406, and 2001. So, immediately one has to assume that
8 they are in noncompliance with at least one of those
9 sections.

10 CHAIRPERSON GRIFFIS: Right.

11 MEMBER ZAIDAIN: But however, under Mr.
12 May's argument, if they come in being noncompliant in
13 one of those, this project must make them compliant to
14 those?

15 CHAIRPERSON GRIFFIS: The addition has to
16 comply.

17 MEMBER ZAIDAIN: The addition has to
18 comply.

19 COMMISSIONER MAY: Except where there is
20 flexibility granted by the rest of this portion of the
21 code or anywhere else. Flexibility is granted
22 explicitly. I mean, simply because it's nonconforming
23 for one of these areas doesn't mean that you get to do
24 whatever you want.

25 MEMBER ZAIDAIN: Well, a part of that

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1 thinking to this project, if they wanted to do the
2 addition, they would have to widen the court to make
3 it compliant, which I think under six and a-half feet.

4 COMMISSIONER MAY: Are you sure? If it's
5 R-4, I thought it was a minimum of ten. Am I wrong?

6 MEMBER ZAIDAIN: No, it's four inches per
7 foot.

8 COMMISSIONER MAY: Minimum ten, I thought.

9 MEMBER ZAIDAIN: Minimum of six.

10 COMMISSIONER MAY: Minimum of six?

11 MEMBER ZAIDAIN: Yes.

12 COMMISSIONER MAY: There's also a
13 requirement for a minimum of ten, but I've forgotten
14 exactly how that kicks in, but it doesn't kick in on
15 an 18-foot wide lot, that's for sure. I mean, I guess
16 what we could do is look at the other -- I mean, what
17 you're essentially saying, Mr. Chairman, is that if
18 you don't comply with any of those sections that are
19 listed at the top, then the BZA has authority to be
20 flexible in granting additional nonconformity in any
21 one of those areas?

22 CHAIRPERSON GRIFFIS: I think we have
23 special exception authority over the addition.

24 COMMISSIONER MAY: Well, I think that we
25 have that, so long as there's a compliant court, and

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1 if there's not a compliant court, then I think that
2 there needs to be a variance.

3 MR. OSSOLINSKI: Mr. Chairman?

4 CHAIRPERSON GRIFFIS: Yes.

5 MR. OSSOLINSKI: Section 2001.3 says the
6 addition or enlargement itself shall conform to the
7 use and structure requirements and shall not increase
8 or extend any existing nonconforming aspect of the
9 structure. I would say that we are not increasing or
10 extending the nonconforming aspect of the structure
11 because in this particular case, we are filling in
12 part of that court. It is actually left less
13 noncompliant than it is today by doing the structure.

14 CHAIRPERSON GRIFFIS: Yes, but --

15 MR. OSSOLINSKI: Sometimes that happens.

16 CHAIRPERSON GRIFFIS: But there's no
17 middle ground. It either is or it isn't. I
18 understand your point, and actually, your statement
19 doesn't help you case.

20 COMMISSIONER MAY: Yes. It's not a no net
21 loss of compliance. I mean, what you're saying is the
22 condition is going to be better. However, better is
23 not compliant.

24 MEMBER ZAIDAIN: Can we hear from court
25 counsel? Turn your mike on, please.

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1 MS. GLAZER: Can you hear me now?

2 MEMBER ZAIDAIN: I certainly can.

3 MS. GLAZER: I believe that the Chair is
4 correct in that the intention of this Section 223 was
5 to permit a very liberal approach towards allowing
6 additions to one-family dwellings where various area
7 requirements were not met or could not be met, and I
8 think that's exactly the purpose of 223, is to avoid
9 having homeowners come in and apply for variances of
10 the area requirements.

11 So, I think the fact that the court is
12 noncompliant, it's expected that at least one of the
13 area requirements would not be met. I don't know if
14 I've answered anything.

15 MEMBER ZAIDAIN: Well, it seems to me
16 that's the way the Board has always operated. It has
17 always been my understanding that that is the
18 intention of 223, but the lot occupancy of 70 percent
19 caps, you know, how much we can grant because
20 obviously at 70 percent, we're not going to be hearing
21 under special exception a huge addition to a
22 nonconforming structure.

23 Until today, I haven't heard Mr. May's
24 argument. I mean, that seems to me that's what the
25 intention of 223 is.

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1 CHAIRPERSON GRIFFIS: Last word, Mr. May?

2 COMMISSIONER MAY: I just don't understand
3 how the authority to do anything where any flexibility
4 is granted with anything other than lot occupancy. I
5 just don't -- it's not explicit here. I mean, maybe
6 I'm being too strict in my interpretation, and I'd
7 like to give it a little bit more thought and research
8 it more myself before being able to make a decision on
9 it. I may well find that, I mean, that you're exactly
10 right, but you know, my reading of it right here and
11 now is I don't see how the court itself can't comply.
12 I think it has to comply.

13 CHAIRPERSON GRIFFIS: Okay. This is what
14 we're going to do. We're going to proceed under 223.
15 We'll set this for decision making. We'll get some
16 clarification. If in fact, the Board has moved to
17 change the dynamic of this, we will deal with it at
18 that appropriate time. Questions?

19 MR. OSSOLINSKI: In that procedure, if you
20 deal with it at that time, which means I guess we're
21 not getting a bench decision today, could we,
22 contingent on your views then, request a variance for
23 that in light of the fact that we have the support.

24 CHAIRPERSON GRIFFIS: You mean change your
25 application right now?

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1 MR. OSSOLINSKI: Well, no, change the
2 application if you --

3 CHAIRPERSON GRIFFIS: Absolutely. If it
4 came down to the fact that it looks like this is a
5 variance, we're going to have to open the record
6 again.

7 MR. OSSOLINSKI: The way you've
8 interpreted it in the past, and given that we have
9 support --

10 CHAIRPERSON GRIFFIS: We'll just be clear.
11 We'd have to open the record and hear testimony on
12 the case for a variance. Rather than do that now,
13 which you're probably not prepared to do, let's just
14 hold that, and if it happens, we'll deal with it at
15 that point.

16 MR. OSSOLINSKI: So we'd have to go
17 through this process all over again?

18 CHAIRPERSON GRIFFIS: Wouldn't you love
19 it? Possibly. We may look at something to remedy
20 that. Do we have further information on this?

21 MS. KRESS: I would just add, I'm Jerrily
22 Kress, and I'm the Director of the Office of Zoning.
23 Hearing all of the testimony, I would just add that I
24 agree with the interpretation our corporation counsel
25 gave. I just came out to discuss that a second with

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1 her, and that that was the very reason 223 was put
2 forward, and the nonconforming are aspects was
3 considered to be a reason for establishing the 223
4 rather than requiring the many variances that would be
5 necessary.

6 CHAIRPERSON GRIFFIS: Good. Thank you
7 very much. In light of that and in light of reading
8 your statement on 2001.3 which is item B, your
9 reflecting on that again for a moment, 2001.3 is also
10 included within Section 223 as part of its
11 nonconformance. So, it's even saying of this stuff
12 for additions, enlargements and additions that would
13 be a matter of right, we have included that in the
14 Section 223 for special exception saying, and lot
15 occupancy is the other piece to it, saying there has
16 to be some relief, and that's what we're looking at.

17 I have little concern that we are
18 incorrect in pursuing this as a special exception, but
19 as we have so many resources available to us as
20 volunteers on this Board, are there others that wanted
21 to make or address -- very well, then let's proceed.

22 COMMISSIONER MAY: Mr. Chairman, can I ask
23 another question?

24 CHAIRPERSON GRIFFIS: Yes.

25 COMMISSIONER MAY: Toward corp counsel or

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1 Director Kress, I guess I don't mean to be suggesting
2 that there isn't flexibility granted by 223. It's
3 just that the flexibility I did not think extended to
4 redefining effectively how lot occupancy is
5 recalculated. In other words, you could extend a
6 nonconforming court. There is the ability to do that
7 within 223. However, that determines how you
8 calculate the lot occupancy. You can't reinvent the
9 definition of the court in the process and then not
10 count it toward lot occupancy.

11 So in other words, they could do this, but
12 the area of that open court, since it is not a
13 compliant open court, would still have to be counted
14 in because it's at six feet. I guess maybe what I'm -
15 -

16 MR. OSSOLINSKI: Well, if it's less than
17 five feet.

18 COMMISSIONER MAY: Yes, but the existing
19 one is not less than five feet. This is an odd
20 situation where we have a noncompliant court that's
21 four feet. We're planning to build a new court that's
22 five feet that I guess technically doesn't have to be
23 included if it were existing. Maybe that's the way to
24 make it work, I guess. I'm sort of talking myself
25 into it as I do it.

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1 MS. KRESS: I'm learning as you speak.
2 I'm sorry I'm not up on every detail, so I appreciate
3 what you're saying.

4 COMMISSIONER MAY: I mean, the court
5 itself is in the neighborhood of four feet, and then
6 extending it by a certain distance at a width of only
7 five feet so that, by the way you define building
8 area, it doesn't count in the lot occupancy.

9 MS. KRESS: So then again, just talking
10 out loud, then the four foot part would have to, but
11 perhaps the five foot part wouldn't?

12 COMMISSIONER MAY: That's what the
13 argument that they're making here, and I guess what I
14 was wondering about was whether the flexibility in
15 223, in effect, allows you to re-define the court in
16 the new construction. I mean, because if you build a
17 new court, in order for it to be compliant with court
18 requirements, it has to be a minimum of six feet.

19 If you were taking the existing
20 nonconforming court and extending it, clearly that's
21 allowed within 223, but it also defines that you have
22 to count the court in the building area. I mean, if
23 you make the court a little bit wider, then
24 theoretically you can take it out of the lot
25 occupancy, but then you lose that extending the

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1 existing nonconformity aspect. I guess that where it
2 sort of --

3 MR. OSSOLINSKI: We shouldn't be forced to
4 extend the same noncompliance. If we can make it less
5 noncompliant in our extension, we should be allowed to
6 do that.

7 COMMISSIONER MAY: That's logical, but I
8 don't think that works in the code because there's no
9 such thing as less noncompliant. It's a compliant or
10 noncompliant question.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. OSSOLINSKI: Well, we're not extending
13 that noncompliance.

14 CHAIRPERSON GRIFFIS: Let's leave it at
15 that.

16 MR. OSSOLINSKI: There is discussion about
17 that.

18 CHAIRPERSON GRIFFIS: For now. Let's run
19 through the 223. I have full confidence in looking at
20 2001.3. It says you can't increase, extend, or create
21 new, and that is under 223, which is a special
22 exception, as is lot occupancy. It seems like it's
23 all under our jurisdiction to give that flexibility,
24 noting that 223 was made for residential, single
25 family dwellings that are nonconforming. We will look

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1 for further deliberation on this issue of variance
2 versus special exception.

3 223.2 Indicates first that this won't tend
4 to adversely affect the availability of light and air
5 to neighboring properties. On initial question to Mr.
6 Gay, it was indicated that no one in the surrounding
7 area has evidenced that type of issue, and you
8 proposing the building, don't see how it would. Is
9 that correct?

10 MR. GAY: That is correct.

11 CHAIRPERSON GRIFFIS: Okay, we can turn on
12 the mike for the next.

13 MR. GAY: Yes, it is.

14 CHAIRPERSON GRIFFIS: Of course, that will
15 also go to the privacy and use of any of the adjacent.
16 It seems fairly straightforward and in the testimony
17 that's submitted, the plans being one of the most
18 important, it won't in any way affect the use of
19 privacy.

20 Clearly the photograph showed this is an
21 attached townhouse, so it's very difficult to see from
22 the street any of the additions that are happening, is
23 that correct?

24 MR. GAY: That is correct.

25 CHAIRPERSON GRIFFIS: Indeed. I think

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1 those go to the critical aspect of 223 with the
2 aspects that are attendant to this application. Are
3 there other questions from the Board of the
4 submissions made? Very well. If the applicant
5 doesn't have anything else at this time, let's go to
6 the Office of Planning, who has submitted their
7 report.

8 MR. MOORE: Good morning, Mr. Chair and
9 members of the Board. The Office of Planning will
10 stand by its report as submitted and support the
11 application.

12 CHAIRPERSON GRIFFIS: Good, thank you.
13 Has the Applicant had a chance to review the Office of
14 Planning memo?

15 MR. OSSOLINSKI: No. I asked for it this
16 morning and was told I could not get it.

17 CHAIRPERSON GRIFFIS: That depends who you
18 asked. You obviously didn't ask the right person.
19 It's part of the record, so it was in the file in the
20 Office of Planning.

21 MR. OSSOLINSKI: That's what I asked for,
22 and I was told I couldn't see it.

23 CHAIRPERSON GRIFFIS: Well, be that as it
24 may, we can give you a copy right now. As it is, they
25 have recommended approval, and so I cannot imagine

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1 that there is a whole host of cross examination that
2 you would like to conduct of the Office of Planning.
3 Would you agree?

4 MR. OSSOLINSKI: Yes.

5 CHAIRPERSON GRIFFIS: Okay. Any other
6 questions of the Board, clarifications? In which
7 case, let's move on to the -- I don't have any other
8 government reports except for the ANC, which has
9 submitted Exhibit No. 26, support of the application.
10 Is a representative of ANC6-A here? Not noting any,
11 we'll note for the record that that was submitted, and
12 it is timely. Is that correct? It is noted as timely
13 filed and meets our requirements for giving great
14 weight.

15 No other person has indicated that they
16 are here attendant to this. Oh, we do have the
17 Capitol Hill Restoration Society that are of the 12th
18 of September, which unanimously supported the
19 application. So, I assume you presented this to the
20 Capitol Hill Restoration Society.

21 MR. GAY: That's correct.

22 CHAIRPERSON GRIFFIS: Okay. Are you aware
23 of any other submissions who are review bodies that
24 looked at this application that I haven't noted?

25 MR. GAY: Not in some capacity, no.

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1 CHAIRPERSON GRIFFIS: Okay. That being
2 said, I'll turn it over to you for last comments,
3 remarks, closings.

4 MR. OSSOLINSKI: Sure. Well, we obviously
5 would ask your support for this in light of the
6 support we've received from neighbors, the lack of
7 opposition from people who have been solicited to give
8 opposition. From neighbors there were none. No one
9 has approached the owner with any concerns indicating
10 opposition.

11 The ANC has unanimously, I believe,
12 supported it. CHRS has unanimously supported it, and
13 in addition, if you provide your approval for this,
14 the approved submittal will not have any greater --
15 let me rephrase that -- will remain less percentage
16 lot occupancy than the two adjacent townhouses there
17 as well. So, it's within those aspects of the intent
18 of the zoning.

19 Also, we ask your approval in light of
20 approvals that you've indicated here today that you've
21 given in similar situations. Your interpretations
22 have been that way in the past.

23 I guess I'm not going to get a bench
24 decision, so that's it. Thank you.

25 CHAIRPERSON GRIFFIS: Good. Yes,

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1 unfortunately not, but we appreciate the testimony
2 that's here today. I would say in the last remarks
3 that, first of all, the Board can put great reliance
4 on the Office of Planning's report. It would behoove
5 you to read it now that you have it, and it lays out
6 very succinctly how this application meets the test
7 for the special exception and the requirements under
8 223, and we certainly appreciated that report and its
9 graphics, some interesting ones, and good pictures.

10 So, that being said, what I'd like to do
11 is afford the Board a week to deliberate briefly on
12 the special exception variance. We'll set this for
13 decision making next Tuesday. That will be for a
14 special public meeting, and we'll call a special
15 public meeting for this application and this
16 application only. It will be first thing in the
17 morning. We'll set it at 9:00, and we'll be out of
18 that by 9:15.

19 So, conceivably what happens at that time,
20 we will either have deliberation of the decision on
21 the special exception case or we will have
22 deliberation on the variance special exception and
23 make it their attendant. My point being if we had in
24 deliberation affirmatively decided that this is a
25 special exception, that we could then pursue the

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1 deliberation on the special exception case. If it
2 comes on the other side, that it is in fact a
3 variance, then we will at that special meeting take up
4 a schedule, a brief continuation of a hearing for an
5 amended application. Is that clear?

6 MR. OSSOLINSKI: I think so Does that
7 mean that if you agree with Mr. May's interpretation
8 and that in order to get this particular plan at 70
9 percent approved, that we could bypass the procedure
10 through the ANC and CHRS again?

11 CHAIRPERSON GRIFFIS: That's an excellent
12 question.

13 MR. OSSOLINSKI: Given their unanimous
14 support?

15 CHAIRPERSON GRIFFIS: My understanding is
16 yes, that the Board would amend the application. The
17 substance of the application wouldn't be. I think we
18 would set this for a public hearing or a continuation
19 of a public hearing and do a limited re-notice to the
20 ANC, but basically affording them the opportunity to
21 respond to the amended by the Board application, but
22 it wouldn't require the full notification, meaning the
23 45 days and setting up to 90 days. Is that clear?

24 MS. KRESS: Mr. Chair, I disagree. I
25 believe it does. A variance is a much more difficult

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1 kind of a situation than a special exception. That's
2 why 223 was developed, and I'm not saying this is the
3 way it's going to go. We'd just like to because I
4 believe Board Member May has brought up a nuance that
5 we haven't quite faced before that we need to look
6 into. I'm not saying it will happen, but if it does
7 happen, I do believe it will have to basically start
8 over again. I'm sorry.

9 CHAIRPERSON GRIFFIS: Even though the
10 material facts in the case wouldn't change?

11 MS. KRESS: Is there any way you could
12 make your court the six feet that's required instead
13 of the five and then be able to count it and be under
14 your 70 percent? Again, I don't know the details of
15 this case, so please forgive me.

16 MR. OSSOLINSKI: It would be, for the use
17 of the space as we see it, it would be difficult for
18 us to do, and we're saying six, six and a-half and,
19 you know, for the width of it at 12'3" right now,
20 trying to have as you see there a feature element of
21 the fireplace and a door going out to the outside,
22 things like that, I think it would be difficult at
23 best for us to do. It's not as easy.

24 I mean, we had thought about this, and
25 thought that we were going in accordance with past

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1 interpretation and in accordance with our
2 interpretation of 223, and had designed it.

3 CHAIRPERSON GRIFFIS: Okay. I'm sorry to
4 cut you off.

5 MR. OSSOLINSKI: It's pretty hard.

6 CHAIRPERSON GRIFFIS: Here's the
7 situation. We're not going to get into redesigning
8 this right now, and we're not going to redesign it to
9 comply with that issue if it's not actually required.
10 So, give us a week. We'll know something faster than
11 Tuesday. Tuesday we will show in a public hearing our
12 deliberation on it.

13 It's unfortunate, but believe me, I think
14 this is the safest way to go about this. So, with
15 that, you're certainly welcome to be present. We
16 won't hear any additional testimony at that time, and
17 conceivably not need to hear additional testimony as
18 we proceed with this. We will call this first in the
19 morning.

20 We're available for that, is that correct?

21 Oh, Ms. Bailey? That's on the 30th, that's correct?

22 That's our next? Okay, I would set the schedule for
23 9:15 for a special public meeting on the 30th, and
24 then we'll go directly into our public hearing at
25 9:30. Sound good? Excellent.

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1 MR. OSSOLINSKI: Mr. Chair, may I?

2 CHAIRPERSON GRIFFIS: Yes.

3 MR. OSSOLINSKI: This issue came up in the
4 ANC, for the record, this issue came up in the ANC,
5 the zoning committee meeting, and also in CHRS zoning
6 committee meeting. We explained it the way that we've
7 explained it here now, and it was accepted. If there
8 are transcripts of those meetings, I can find those.

9 CHAIRPERSON GRIFFIS: No, it wouldn't be
10 any use to us. Now if it was with the Zoning
11 Administrator and there was an interpretation, that
12 would be valuable

13 MR. OSSOLINSKI: I say that only towards
14 the process should it go toward a variance.

15 CHAIRPERSON GRIFFIS: Yes, okay. All
16 right, well, I appreciate that. We'll take that under
17 consideration also. Unfortunately, we have to move
18 on, or not unfortunately, but unfortunately the
19 situation we haven't been able to put to rest.

20 Let's call the next case in the afternoon.

21 I appreciate your patience with us, and also the last
22 applicants of this morning's patience with us as we
23 have gotten through this. That being said, Ms.
24 Bailey, when you're ready.

25 SECRETARY BAILEY: The last case, Mr.

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1 Chairman is Application 17049 of SMC-United Industrial
2 LP, pursuant to 11 DCMR 3104.1 for a special exception
3 to allow the continuation of a parking lot under
4 Section 213. The parking lot was last approved
5 pursuant to BZA Order No. 16164. The site is located
6 in the R-1-B District at premises 2310 and 2320 31st
7 Street, N.E., Rear 3070 V Street, N.E. It's also
8 located in Square 4365 on Lots 805 and 806.

9 Please stand to take the oath, sir, and
10 please raise your right hand. Do you solemnly swear
11 or affirm that the testimony you are about to give in
12 this proceeding will be the truth, the whole truth,
13 and nothing but the truth? Thank you.

14 CHAIRPERSON GRIFFIS: Thank you both very
15 much for your patience. Let's get right into it. Do
16 you want to introduce --

17 MR. COLLINS: Yes, thank you, Mr. Chair
18 and members of the Board. My name is Christopher
19 Collins with the law firm of Holland & Knight. Seated
20 to my right is Mr. Fred Farshey with SMC-United
21 Industrial Limited Partnership, the Applicant in this
22 case.

23 This is a special exception to reinstate
24 the prior parking lot use. It's been in place for
25 about 45 years or more. We were last at the Board in

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1 1996 with the last renewal. In 1999 there were some
2 modifications of conditions related to the fact that
3 it was an anticipated change in tenancy.

4 To summarize, we do meet all the
5 requirements of Section 213 and 2303. It's the same
6 as the prior cases have been. We do have support from
7 the Office of Planning, the Department of
8 Transportation, the community, and the ANC. We're
9 unaware of any opposition to this case. We did submit
10 a prehearing statement which you have a booklet which
11 has our case and all the exhibits that we intend to
12 rely upon.

13 You can flip through those quickly. Tab A
14 is the site. B is the zoning map which shows that we
15 are in the R-1-B zone. Tab C is the plat of the
16 property. D is some photos of the property. E is the
17 statement of the outline of the testimony. I may have
18 skipped over one. Then F is a series of prior
19 conditions. G is the site plan showing the
20 landscaping that has been in place. H is the history
21 of prior orders dating back to 1957, and then I is the
22 agreement between the Applicant and the ANC and the
23 community organizations.

24 So, with all that information, Mr. Chair,
25 I'd entertain your thoughts as to how to proceed. We

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1 could stand on the record and be available for
2 questions if you'd like.

3 CHAIRPERSON GRIFFIS: I think that's
4 appropriate. We can run through this. Of course I've
5 said that the last two applications, very quickly.

6 A couple of quick questions. First of
7 all, the previous order expired on April 14, 2003, is
8 that correct?

9 MR. COLLINS: That's correct.

10 CHAIRPERSON GRIFFIS: And you were
11 indicating that there may have been a tenant change
12 which is what delayed the application coming in?

13 MR. COLLINS: No, in 1999, we requested a
14 modification of conditions of the prior order.

15 CHAIRPERSON GRIFFIS: I see.

16 MR. COLLINS: From 1998, because it was
17 anticipated at that point that the postal service, who
18 is the tenant of the warehouse, was leaving. So,
19 rather than tie the approval to postal vehicles, we
20 tied it to vehicles of the tenant of the warehouse.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. COLLINS: And that's what happened.

23 CHAIRPERSON GRIFFIS: And then just the
24 delay in putting in the application?

25 MR. COLLINS: Yes. We put it in as

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1 quickly as we could, Mr. Farshey and I, and it got in
2 in June instead of April.

3 CHAIRPERSON GRIFFIS: Okay. A little
4 different, same issue but different than this morning,
5 of three years, matter of months. So, clearly, there
6 is a record keeping, although it may not be absolutely
7 precise.

8 MR. COLLINS: Just as an aside, Mr. Chair,
9 there used to be a time back in the day, as they say,
10 when the Office of Zoning Administrator would send
11 notices to owners when their applications were
12 expiring, when BZA cases with time limits were
13 expiring. That is no longer the case, if that's
14 something that was within the budget, then you know,
15 other availabilities of the Office of Zoning, that
16 would probably help applicants throughout the city.

17 CHAIRPERSON GRIFFIS: I think that's an
18 excellent comment, and I can tell you honestly that
19 that is a part of the discussions that are happening
20 of how is a notification to be done, who's to conduct
21 it without overburdening a small office with a huge,
22 somewhat bureaucratic responsibility, but hopefully
23 something will come out very soon.

24 Also, I have a note that the certificate
25 of occupancy is not on file. Is that correct?

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1 MR. COLLINS: That is correct. The
2 certificate of occupancy is not on file. We applied
3 for, in order to get the C of O, we had to apply for
4 addresses, and we got the addresses just recently, and
5 Mr. Farshey might be able to answer that issue.

6 MR. FARSHEY: Good morning. My name is
7 Fred Farshey. I'm a general partner in SMC-United
8 Industrial Partnership. We had applied for a
9 certificate of occupancy belatedly, unfortunately, and
10 we were told we needed to get addresses for the
11 properties before they would process the application.

12 Then we went in and we got the addresses
13 for the properties and our zoning. The BZA expired,
14 frankly.

15 CHAIRPERSON GRIFFIS: Interesting. So
16 basically you own lot and squares but there was no
17 street address attendant to those?

18 MR. FARSHEY: In all those, yes.

19 CHAIRPERSON GRIFFIS: And that's a whole
20 process to get an actual number assigned to a lot.

21 MR. FARSHEY: To get a number, right.

22 CHAIRPERSON GRIFFIS: Okay, and so that
23 obviously had to preclude the certificate of occupancy
24 being issued.

25 MR. FARSHEY: That's right.

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1 CHAIRPERSON GRIFFIS: I wonder why they
2 were able to issue a C of O previously but not now.
3 Not our issue.

4 Okay, well that clarifies. What we'll do
5 is we'll have that -- well, we'll have that submitted
6 into the record when it's available, I would guess,
7 although -- I don't think it's --

8 MR. COLLINS: It's a chicken and egg
9 situation. We can't get a C of O now until we have
10 the BZA approval.

11 CHAIRPERSON GRIFFIS: Exactly so. So,
12 we'll proceed without it at this point. That being
13 said, any other questions, clarifications from the
14 Board?

15 I note one of the requirements, of course,
16 is the screening from the residential, and the record
17 shows that, or it states that the adjacent actual
18 residential lots are owned by you, sir, is that
19 correct?

20 MR. FARSHEY: Yes.

21 CHAIRPERSON GRIFFIS: And so, therefore,
22 the actual what is being proposed in a continuation of
23 the existing condition, but the residential parcel
24 that's owned by you is actually now becoming the
25 buffer to the other residential zone?

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1 MR. FARSHEY: That's right. That's 28 and
2 29, right.

3 MR. COLLINS: And has been for 45 years.

4 CHAIRPERSON GRIFFIS: And as I say, as a
5 continuation of the existing condition.

6 MR. COLLINS: If you'd like, Mr. Chair, I
7 notice that our submission did not have a plat which
8 showed Lots 28 and 29. I do have that if you'd like
9 to see for the record.

10 CHAIRPERSON GRIFFIS: Well, yes, we might
11 as well have it in. They're on Square 4365?

12 MR. COLLINS: Right.

13 CHAIRPERSON GRIFFIS: Okay. I think I can
14 figure out where they are.

15 MR. COLLINS: They are directly to the
16 north. There's two plats I've submitted, both from
17 the Sanborn Atlas Map. The first is the tax lot which
18 shows Lot 806 with an arrow pointing as you hold the
19 map, pointing toward the right. The parking lot is on
20 the eastern, or the right-hand portion of Lot 806.
21 If you look north of Lot 806, you'll see Lots 29 and
22 then 28. Those are the two residentially zoned lots
23 that are now vacant and owned by the Applicant.

24 Then the western portion of Lot 806 is
25 also vacant. That's the lot where the parking lot is

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1 located, but that's all vacant and greenery,
2 undeveloped.

3 CHAIRPERSON GRIFFIS: So Lot 29?

4 MR. COLLINS: And 28.

5 CHAIRPERSON GRIFFIS: and 28.

6 MR. COLLINS: Are owned by the Applicant
7 and serve as the buffer to the north.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. COLLINS: And then the buffer to the
10 west is just the undeveloped portion of Lot 806. It's
11 just all green space.

12 CHAIRPERSON GRIFFIS: I see. And is that
13 proposed under this application, obviously to pave
14 that and park it?

15 MR. COLLINS: Oh, no.

16 CHAIRPERSON GRIFFIS: That western
17 portion?

18 MR. COLLINS: No, no, that would require a
19 separate application.

20 CHAIRPERSON GRIFFIS: Right. Okay, I'm
21 clear. Questions, clarifications on that issue? All
22 right, further questions, clarifications? Ms. Miller?

23 MEMBER MILLER: I'm not sure if this is
24 the time, but in DOT's report, they say that the
25 Applicant needs to provide striping for the northern

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1 and southern sections of the lot.

2 MR. COLLINS: Right.

3 MR. FARSHEY: The striping has been faded
4 away. We need to go back and re-stripe. We're going
5 to be doing that.

6 MEMBER MILLER: You're going to be doing
7 that?

8 MR. FARSHEY: Yes.

9 MR. COLLINS: Would you like to talk about
10 the repaving?

11 MR. FARSHEY: We're going to probably
12 resurface the parking lots and re-stripe. The
13 surfaces requires repair also.

14 CHAIRPERSON GRIFFIS: Right. Your
15 anticipation of timing for that? Do you have any?

16 MR. FARSHEY: We're going to push to do it
17 before the winter, but unfortunately, construction,
18 everything in construction is delayed now because of
19 the season this year.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. FARSHEY: Certainly no later than next
22 spring.

23 CHAIRPERSON GRIFFIS: Okay, so it's your
24 anticipation that within the year, you're going to
25 resurface?

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1 MR. FARSHEY: Yes.

2 CHAIRPERSON GRIFFIS: And of course, in
3 that resurfacing, you would have to come into
4 compliance with the regulations which would be
5 attendant to our conditions, and that would be the
6 proper surface and the striping?

7 MR. FARSHEY: Right.

8 CHAIRPERSON GRIFFIS: Okay. Anything else
9 to follow up on that? Good, then if it's acceptable
10 to the Applicant, let's move on to government reports.
11 We'll hear from the Office of Planning unless there's
12 anything additional?

13 MR. FARSHEY: No, sir.

14 CHAIRPERSON GRIFFIS: Very well, then
15 Office of Planning is here present and did submit
16 their comprehensive report and is recommending
17 conditional approval. I'll let them lay out the rest.

18 MS. THOMAS: Good morning, Mr. Chairman,
19 members of the Board. I'm Karen Thomas, presenting
20 the Office of Planning staff report, consenting SMC-
21 United Industrial Partnership request for special
22 exception relief under 213 to continue use of its
23 previously approved surface parking lot in an R-1-B
24 zone.

25 Based on the Applicant's submission and a

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1 review of the previous decisions by the Board, we
2 believe that it meets the physical requirements of
3 Section 213 of the regs, as well as the requirements
4 of Section 2303. The Applicant anticipates using the
5 parking lot in the same manner, and there's no reason
6 to expect the continuation of parking at the subject
7 site to result in inconsistencies with the general
8 purpose and intent of the zoning regulations.

9 Outside visit observed that the parking
10 lot was free of refuse and debris. The parking lot is
11 screened from existing contiguous residential
12 properties by existing green space to the northwest of
13 the lot. However, we recommend that the landscaping
14 of the front of the lot be improved and maintained.

15 At this time, we have no information of
16 any violations of the existing order which may prevent
17 the continued use of the parking lot. Therefore, we
18 recommend approval of the continued use of the lot,
19 subject to conditions of line and modified in its
20 previous order 16164, as well as improvement and
21 maintenance of landscaping along the parking lot's
22 frontage.

23 That concludes our report. Thank you.

24 CHAIRPERSON GRIFFIS: Good. Thank you
25 very much. When you say improved landscaped, what are

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1 you referring to, or what are you recommending?

2 MS. THOMAS: Well, it's sort of in poor
3 condition. So, we would recommend that they probably
4 redo plantings of evergreens and stuff to the front of
5 the lot, just to make it visually appealing.

6 CHAIRPERSON GRIFFIS: Okay, so you're not
7 asking for kind of a new landscape conception or
8 design or anything of that nature?

9 MS. THOMAS: No, not really, just
10 improving the quality.

11 CHAIRPERSON GRIFFIS: Just the improved
12 state of the plants and the maintenance of those?

13 MS. THOMAS: That's correct.

14 CHAIRPERSON GRIFFIS: Okay.

15 MEMBER ZAIDAIN: Just to make sure I'm
16 clear, you're referring to this area of the lot?

17 MS. GLAZER: Right, that area at the
18 front, of the entrances, yes.

19 CHAIRPERSON GRIFFIS: So the east? Is
20 that the east?

21 MS. THOMAS: To the east of the lot.

22 CHAIRPERSON GRIFFIS: Okay.

23 MEMBER ZAIDAIN: And this site plan is a
24 little troubling because there's no scale or anything,
25 but I would assume that these bushes and everything

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1 are in public space. Is that true? Anyone?

2 CHAIRPERSON GRIFFIS: This illustration
3 showing these?

4 MEMBER ZAIDAIN: Yes. If those are
5 adjacent to the road, I would assume they're in public
6 space.

7 CHAIRPERSON GRIFFIS: They look to be
8 representing trees.

9 MEMBER ZAIDAIN: Or trees. Yes, that's my
10 problem with this. I have no idea what we're looking
11 at.

12 MS. THOMAS: If you look at the photos.

13 CHAIRPERSON GRIFFIS: Yes, let's go to the
14 photos.

15 MS. THOMAS: It's part of their report, in
16 the Applicant's submission.

17 MR. COLLINS: It's Tab D, behind Tab D
18 there's a photo of the front of lot looking into the
19 lot.

20 MEMBER ZAIDAIN: The panoramic, okay.
21 Actually, I only see one tree there, if I'm looking at
22 this correctly.

23 MR. COLLINS: I think if you look at the -
24 -

25 MEMBER ZAIDAIN: That may not still be

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1 there after the hurricane this past week. I'm not
2 sure.

3 MR. COLLINS: If you look at the last
4 photo under Tab D, which is really a compilation of
5 three photos overlain. Can you see that?

6 MEMBER ZAIDAIN: Right, that's what I'm
7 looking at.

8 MR. COLLINS: Okay. If you look on the
9 left-hand photo between the white car and the red
10 truck, there's a tree. Then in the middle photo, if
11 you look behind what looks like a blue car perhaps,
12 that tree is actually in the tree box area. Then the
13 car behind it, it looks like a black car. There's
14 kind of a bush tree kind of thing. That's as well
15 between the sidewalk and the curb. It's hard to tell
16 on these photos.

17 MEMBER ZAIDAIN: Well, I would, and this
18 is a question I think of the Applicant. I would
19 assume that you guys have discussed options in terms
20 of improving the landscaping and cleaning this area
21 up? Yes?

22 MR. FARSEY: We do keep the area pretty
23 clean. At one time we did put in some new shrubbery,
24 and someone walked away with it. So, we didn't
25 attempt to do more after that. So, we just keep the

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1 place clean. We haul all the trash that people drop,
2 and we keep the trees trimmed. That's about what we
3 do right now.

4 CHAIRPERSON GRIFFIS: In the resurfacing,
5 is your perimeter fence going to be affected?

6 MR. FARSHEY: No, it's within the fence
7 area.

8 CHAIRPERSON GRIFFIS: And what's the
9 condition of that fence?

10 MR. FARSHEY: The fence is in excellent
11 condition. That we check.

12 CHAIRPERSON GRIFFIS: Is it regularly
13 painted or --

14 MR. FARSHEY: We do paint it when
15 required.

16 CHAIRPERSON GRIFFIS: Who requires you to
17 paint it?

18 MR. FARSHEY: This was replaced. No,
19 generally we replace them. You know, this was
20 replaced about three years ago. If you keep them for
21 ten, 15 years, you probably need to repaint them, but
22 we tend to replace rather than wait until we paint.

23 CHAIRPERSON GRIFFIS: Have you ever done a
24 cost analysis of replacement costs and the life cycle
25 of all this and actually putting in a more permanent,

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1 maybe aluminum or what may look like a wrought iron
2 fence around this?

3 MR. FARSHEY: We've done some wrought
4 iron. We're beginning to do more of them on these
5 because everybody likes it.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. FARSHEY: We've done it at the
8 Bladensburg Road intersection, and we're going to do
9 one at the South Dakota intersection also.

10 CHAIRPERSON GRIFFIS: Any thought of doing
11 that here?

12 MR. FARSHEY: Not really here, no, we
13 haven't planned to do that.

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. FARSHEY: Over time we do. Once we
16 start something, we go through a cycle.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. FARSHEY: But that cycle may be ten
19 years.

20 CHAIRPERSON GRIFFIS: Right, and the
21 parking spaces on the inside on the property to the
22 fence, do they park right to the fence?

23 MR. FARSHEY: No, we have wheel stops
24 against the fence.

25 CHAIRPERSON GRIFFIS: About how much room

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1 do you have on that side?

2 MR. FARSHEY: Generally three feet you've
3 got to leave so the fence doesn't get damaged.

4 CHAIRPERSON GRIFFIS: Is there a potential
5 to do some sort of landscaping on the property within
6 the fence?

7 MR. FARSHEY: Possibly we could put some
8 pots maybe, but again, I'm not sure along that street.

9 MR. COLLINS: There's a real trade-off
10 here between trying to accommodate all the vehicles
11 and having landscaping within the area previously. In
12 previous hearings, the landscaping requirement was met
13 by the fact that the half, fully one-half of Lot 806
14 is landscaped.

15 CHAIRPERSON GRIFFIS: Right, the
16 percentage of green area, which you stated, and I
17 concur. I mean, I'm noting the concerns of the Office
18 of Planning, and I understand their point. I'm sure
19 you do also, is couldn't we make this look a little
20 nicer?

21 MR. FARSHEY: We'll certainly look into
22 it. We also have the railroad tracks there.

23 CHAIRPERSON GRIFFIS: Exactly, and then
24 who's it looking nicer for is another good question.

25 MR. FARSHEY: We take care of that twice a

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1 year, and we go in there.

2 CHAIRPERSON GRIFFIS: Right, and if the
3 shrubs are walking away, it's hard to start requiring
4 them. Well, I guess my personal opinion, I'm not a
5 big fan of landscaping around parking lots. First of
6 all, parking lots tends to obviously trash and litter
7 gets in and blows around. There's nothing to stop it
8 but the bushes. The bushes are harder to clean out.
9 I find that the maintenance and actually the -- maybe
10 I shouldn't go on, but aesthetically, putting
11 landscaping in bushes next to a surfaced parking lot,
12 it seems like it needs a hardscape to define the
13 parking lot.

14 I'd love to require a beautiful brick
15 wall, four feet with wrought iron fencing above it.
16 It would be very appropriate if this was a very highly
17 used, perhaps a residential leading corridor, but that
18 doesn't seem to be the case here.

19 Well, Board members, any other comments of
20 how we pretty up a chain link fence that's cordoning
21 off a surface parking lot?

22 MEMBER ZAIDAIN: I'm a big fan of vines,
23 but we don't have to go into that kind of detail.

24 CHAIRPERSON GRIFFIS: Right.

25 MEMBER ZAIDAIN: I do think it's important

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1 that we state, if this does come out on our approval,
2 the type of situation that we at least have some
3 standard for maintaining the landscaping, or some
4 condition.

5 CHAIRPERSON GRIFFIS: I absolutely agree,
6 and I was trying to address the improvement that OP is
7 saying.

8 MEMBER ZAIDAIN: Right.

9 CHAIRPERSON GRIFFIS: If we condition this
10 where we say -- we need to be very specific of what
11 we're talking about. I think that's what OP is
12 leading us to do or requesting that we do. If we say
13 improve, let's lay it out directly. What are the
14 improvements that are going to be made. Mr. May?

15 COMMISSIONER MAY: Thank you, Mr.
16 Chairman. I guess, I mean, I understand and agree
17 with a lot of the points that are being made about the
18 potential improvements for the landscaping. I think
19 what strikes me, and maybe this is just a bad
20 photograph, but it doesn't look like even the lawn is
21 particularly well maintained or that the space right
22 at the fence has been weeded. We have, I mean, stuff
23 will grow anywhere there's a chance, so we have a lot
24 of unplanned shrubbery coming up right at the fence
25 there.

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1 If it were simply just a very cleanly
2 maintained cut lawn with no weeds, then I think it
3 would go a long way to improve the look of it, even
4 without putting in shrubs that are going to walk away.

5 Lawn isn't going to walk away. So, it's too bad the
6 weeds don't walk away.

7 CHAIRPERSON GRIFFIS: Right.

8 COMMISSIONER MAY: But I just think it
9 could be nicer. I also think there's an impromptu
10 expansion of the parking lot going on there with cars
11 parking in the driveway into it, which means
12 technically they are in the front yard.

13 CHAIRPERSON GRIFFIS: You mean the postal
14 trucks that are sitting in the drive row?

15 COMMISSIONER MAY: Yes, and the BMW.

16 CHAIRPERSON GRIFFIS: Right.

17 COMMISSIONER MAY: I don't know whether, I
18 mean, maybe it's an enforcement question, but there
19 shouldn't be vehicles parked in the driveway.

20 MR. FARSHEY: Frankly, this has been a
21 special situation in the last two years since the
22 Anthrax attack. In fact, if you look at the
23 photographs, you see --

24 CHAIRPERSON GRIFFIS: The yellow tubes?

25 MR. FARSHEY: Those yellow, yes. They're

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1 air conditioning the whole 100,000 square foot
2 building.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. FARSHEY: And we accommodated the Post
5 Office when they had to move out of the Brentwood.
6 So, even on V Street, they have put offices on the
7 public space in some restaurants. They've had to make
8 do, and we've cooperated with them. They cooperate
9 with us to keep it as neat as we can, but obviously
10 there are things we would like to see definitely also
11 as owners. They're beginning to now move back to the
12 Brentwood.

13 CHAIRPERSON GRIFFIS: Okay, so this is a
14 temporary situation?

15 MR. FARSHEY: It's a temporary situation.
16 We never allow this to go on on a constant basis.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. FARSHEY: On our properties. We have
19 four other parking lots. If you check those, you'll
20 see, you know.

21 CHAIRPERSON GRIFFIS: I think that's
22 important. Mr. May brings up an excellent point. I'm
23 glad you were able to address it.

24 Okay, anything further? Office of
25 Planning?

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1 MEMBER MILLER: I'll just weigh in for one
2 second. I'm not an expert on landscaping, so I'm not
3 one to say what I would impose on you to do, but I
4 don't see -- I think it is an opportunity to make that
5 area a little more attractive. So, you know, whatever
6 you come up with would be, I'd love to see, whether
7 it's vines on the fence or whether it's, you know,
8 improved seeding of the grass. There's no reason that
9 all these cars that are going there don't have a more
10 attractive environment.

11 CHAIRPERSON GRIFFIS: Excellent. Okay,
12 with that, let's move on. We do have the report from
13 the Department of Transportation, and of course, as
14 noted by Ms. Miller previously, they were recommending
15 approval of Exhibit No. 25 but did note a few of the
16 aspects, one being striping.

17 F-B also, as Mr. Collins has laid out, is
18 also in favor, and that is Exhibit No. 24. They had
19 noted one condition, and that was that they be able to
20 meet with the Applicant which then was satisfied,
21 interestingly enough. So, obviously that meeting went
22 very well.

23 Other than that, I don't have any other
24 submission then to this application unless the
25 Applicant is aware of any other that were put into the

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1 record, or Board members.

2 MR. COLLINS: Other than Tab I, which was
3 the agreement between the ANC. That was the result of
4 the meeting with the ANC and Gateway Community
5 Association, South Central Neighborhood Association.

6 CHAIRPERSON GRIFFIS: Okay, excellent.
7 And you concur with their condition of approval for
8 ten years, is that correct?

9 MR. COLLINS: Yes, it's an agreement all
10 employees have signed and Mr. Farshey.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. COLLINS: This is a new ANC. By
13 virtue of redistricting, this ANC took over from ANC5-
14 A, which has this jurisdiction for years. So,
15 although it's different, it's some new people, some of
16 the same people, but it was a very cordial meeting,
17 and we were pretty happy.

18 CHAIRPERSON GRIFFIS: Well, having
19 reviewed the agreement, it doesn't seem that there's
20 anything that was -- am I correct in looking at this
21 and not seeing any new conditions that weren't already
22 included in the previous order?

23 MR. COLLINS: The agreement did not
24 include all the conditions of the prior order. It
25 didn't include things like in your standard order,

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1 paving four inches and things of that nature.

2 CHAIRPERSON GRIFFIS: Yes. It was not
3 -- but there were no new conditions that were raised?

4 MR. COLLINS: No, no new conditions.

5 CHAIRPERSON GRIFFIS: The one condition
6 that I noted throughout this and also the agreement
7 was that that lot would be -- actually, this agreement
8 says periodically monitored. The condition order is
9 monitored and patrolled when unattended. That I'm
10 assuming is happening. Is that correct?

11 MR. FARSHEY: We lock the gates at night,
12 but then again, the Post Office has been on three
13 shifts, two shifts, three shifts. So, they're there
14 sometimes during 24 hours. So, there's not been 100
15 percent, but in normal conditions all those gates are
16 locked at night.

17 CHAIRPERSON GRIFFIS: I see, and who locks
18 those gates?

19 MR. FARSHEY: Either our facility
20 maintenance guys or the tenant.

21 CHAIRPERSON GRIFFIS: And your facility
22 maintenance, is he on site?

23 MR. FARSHEY: On V Street, on site.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. FARSHEY: Yes. We have other

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1 buildings on that street.

2 CHAIRPERSON GRIFFIS: I see, and --

3 MR. COLLINS: When he refers to V Street,
4 it's the warehouse that abuts with the yellow tubes
5 going in.

6 CHAIRPERSON GRIFFIS: Understand.

7 MR. COLLINS: The front to that is V
8 Street.

9 CHAIRPERSON GRIFFIS: Okay, and he's there
10 how --

11 MR. FARSHEY: He's there every day.

12 CHAIRPERSON GRIFFIS: Every day for an
13 eight hour day?

14 MR. FARSHEY: Eight hour shift, right.

15 CHAIRPERSON GRIFFIS: And does he have any
16 responsibility about passing by at night or monitoring
17 it off hours?

18 MR. FARSHEY: We do go from time to time.
19 I even go out there from time to time, maybe once
20 every two, three months.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. FARSHEY: Just to make sure the lights
23 are on, gates are locked, things like that. If
24 they're not, then we go back to our procedure and make
25 sure we are enforcing it.

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1 CHAIRPERSON GRIFFIS: I see, okay.

2 MR. FARSHEY: But with the Post Office,
3 we've had, you know, they operate sometimes 24 hours,
4 so you know.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. FARSHEY: Now they are going -- they
7 are now going back to Brentwood, so you wouldn't be
8 seeing that, I don't think, going forward.

9 CHAIRPERSON GRIFFIS: Okay, I think I'm
10 clear. Any other final conclusions?

11 MR. COLLINS: What I have done is taken
12 the conditions of the agreement, the conditions of the
13 prior orders, and put them all into one document, and
14 I'd like to submit that for the record as draft
15 conditions of the approval.

16 CHAIRPERSON GRIFFIS: Yes. Condition
17 number five indicates that Lot 28 and 29 located to
18 the north of the facility will remain as vacant
19 landscaped buffer area between residential and
20 commercial land use?

21 MR. COLLINS: Yes, that's always been in
22 the string of orders.

23 CHAIRPERSON GRIFFIS: That has?

24 MR. COLLINS: Yes.

25 CHAIRPERSON GRIFFIS: I didn't catch that.

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1 VICE CHAIRPERSON ETHERLY: That is,
2 precluding any change in the use of Lots 28 and 29, is
3 that your intention?

4 CHAIRPERSON GRIFFIS: Oh, number five,
5 yes.

6 MR. COLLINS: That's been in the prior
7 orders.

8 CHAIRPERSON GRIFFIS: It has.

9 MR. COLLINS: And we've complied with
10 that.

11 VICE CHAIRPERSON ETHERLY: That's to
12 restrict the development of that essentially?

13 MR. COLLINS: Well, that was -- back then,
14 yes it was.

15 VICE CHAIRPERSON ETHERLY: Okay.

16 CHAIRPERSON GRIFFIS: How can we do that?

17 MEMBER ZAIDAIN: What, can we do that?

18 CHAIRPERSON GRIFFIS: Make a condition on
19 this property, the use, development, and future
20 aspects of an adjacent property?

21 MEMBER MILLER: Because they own it.

22 CHAIRPERSON GRIFFIS: But that ownership
23 could change. That would preclude him from selling
24 the lots? What happens if he wants to sell it
25 tomorrow?

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1 MEMBER ZAIDAIN: It wouldn't preclude him
2 from selling. It would preclude whoever owns it
3 because the zoning regs of the land of not being able
4 to develop it.

5 CHAIRPERSON GRIFFIS: Right, so he sells
6 it and then the next case is the variance from the
7 condition of the special exception for the parking lot
8 so that they can build a townhouse on that lot.

9 MEMBER ZAIDAIN: I could see us hearing
10 that, yes.

11 CHAIRPERSON GRIFFIS: Yes. I don't want
12 to hear that.

13 COMMISSIONER MAY: What alternative is
14 there?

15 CHAIRPERSON GRIFFIS: I think there's two
16 alternatives. First of all, I don't think we have the
17 jurisdiction to have that condition in our order. I
18 think it ought to be taken out because it goes to the
19 regulation of use of an adjacent lot which isn't
20 attendant to this application.

21 I would say that a condition that we could
22 put is upon development or upon removal of the
23 adjacent buffer on Lot 28 to 29, an appropriate buffer
24 to the residential would be constructed in accordance
25 with the regulations. I mean, really, I understand

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1 that you may never want to sell that property, but how
2 are we conditioning that he couldn't? Do you agree?

3 COMMISSIONER MAY: Well, I mean, I think
4 there may be a technical issue in rolling that
5 adjacent property into the overall order, but I mean,
6 if they sell it and if the order still applies on that
7 property, then they have to come in for some sort of
8 relief.

9 MEMBER MILLER: Mr. Chairman, they have to
10 come in for some relief, but I don't think they have
11 to come in for a variance. They could come in to
12 change the condition of the special exception.

13 CHAIRPERSON GRIFFIS: As long as they come
14 in six months to be timely for a modification of an
15 order, but I wouldn't anticipate that. It's just
16 setting us up. It's cumbersome, and I think it's a
17 poorly --

18 COMMISSIONER MAY: You make a good point
19 that that's being done in lieu of the treatment that's
20 required by the Code.

21 CHAIRPERSON GRIFFIS: Right.

22 COMMISSIONER MAY: So, I think if you say
23 that it's either going to be maintained or if for some
24 reason this is disposed of, it goes to that the
25 appropriate buffer be constructed in accordance with

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1 the regulations.

2 CHAIRPERSON GRIFFIS: I think that's much
3 more appropriate, and I think that condition can hold
4 well no matter what happens.

5 COMMISSIONER MAY: I don't have any
6 problem with that.

7 CHAIRPERSON GRIFFIS: Okay.

8 COMMISSIONER MAY: I mean, it saves
9 trouble later on.

10 CHAIRPERSON GRIFFIS: Right, exactly.

11 MEMBER MILLER: But if we say let the
12 appropriate buffer be constructed, then somebody may
13 be coming in here challenging the buffer.

14 CHAIRPERSON GRIFFIS: No, because the
15 zoning lays out what is appropriate residential
16 buffers in landscaping, a wall, whatever it is. I
17 mean, it's fairly explicit.

18 COMMISSIONER MAY: I mean, I'm having
19 second thoughts about this now because what we're
20 doing is in effect what we're saying is that I mean,
21 that condition of having those additional properties
22 not developed as a buffer, is the basis on which all
23 the support has been given. If we were to change that
24 here and now and say oh, no, you can go ahead and sell
25 the property. Just build a nice wall or build the

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1 shrubs or whatever is required by the Code, I mean,
2 those sorts of things are required, but it's not a use
3 that's normally granted.

4 So, I mean, it's a special exception use
5 to begin with, so it's not like it's an automatic that
6 complying with the regulations as they apply to other
7 zones is going to be sufficient in this neighborhood.

8 CHAIRPERSON GRIFFIS: I understand your
9 point. Mr. Collins, do you have any comments?

10 MR. COLLINS: Yes. It seems to me that if
11 your solution, Mr. Chair, is a good one, that if the
12 property is developed, then the appropriate buffer
13 will be constructed. It seems to me that the only
14 people who might have a different view on the matter
15 if the lots are developed are the new residents of
16 those lots.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. COLLINS: There's a legal doctrine
19 called coming to the nuisance that if something is
20 already there and you move in, you can't then complain
21 that the airplanes are flying on the runway next to
22 your house if you built a house next to the runway.
23 So, the only people who would really have any issue
24 would be those who moved in.

25 MEMBER MILLER: I would beg to differ

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1 though, because that's part of the agreement by the
2 ANC that those lots not be developed, be used as a
3 buffer.

4 COMMISSIONER MAY: I think if we wanted to
5 change it, maybe the thing to do is to seek their
6 opinion on that change. I mean, get their opinion on
7 that change. Otherwise, go with it as it is.

8 CHAIRPERSON GRIFFIS: Okay, so you know
9 how to push my limits.

10 MEMBER ZAIDAIN: Well, I mean, but the
11 thing is, the problem that I have is if we go with it
12 as it is, if I understood, is that what Mr. May just
13 said?

14 CHAIRPERSON GRIFFIS: Yes.

15 MEMBER ZAIDAIN: Then it's going to put
16 the burden on somebody whoever buys Lots 28 to come
17 back here for relief to develop property they just
18 bought. I mean, they're going to have to compensate
19 for a buffer. I mean, how would we deal with that?
20 If somebody comes in for Lot 28 and says you know, I
21 just bought this property. It's got this condition on
22 it. You know, how can we deal with the buffer for
23 this parking lot then deal with now for Lot 28?

24 I mean, my suggestion would be is to put
25 some provision in there that if Lots 28 and 29 were

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1 developed, then this parking lot should come back to
2 us for review under special exception to make sure
3 that buffer is compensated for. That way they can
4 address the ANC conditions.

5 CHAIRPERSON GRIFFIS: That would be done
6 by just maintaining this, I think. All right, I don't
7 want to spend a lot of time on this. It seems to me
8 if this was totally new, this Board would not write a
9 condition of that nature.

10 As it has been a condition, it's obviously
11 not being objected to by the Applicant. We're making
12 more of this, and probably more of a principle that
13 anything else, but it's an important one. I mean, I
14 think one of our major focuses, not that it concerns
15 you, but is in writing conditions on orders that are
16 realistic, measurable, enforceable, and don't get us
17 into trouble.

18 All those I think could happen with this,
19 but I think probably the easiest solution, unless
20 there's any outrageous objection, is to keep this in.

21 We'd obviously address it if it came up, and we can
22 note -- yes?

23 MS. GLAZER: But Mr. Chair, am I to
24 understand correctly that this lot is outside of the
25 special exception property that's being discussed?

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1 CHAIRPERSON GRIFFIS: It sure is.
2 Absolutely.

3 MS. GLAZER: I just think from a legal
4 perspective there's a problem with whether the Board
5 has the authority to impose a condition on a separate
6 property that's not part of the special exception
7 property. I think that the parties can agree to
8 anything they want.

9 CHAIRPERSON GRIFFIS: Right.

10 MS. GLAZER: But if it's a condition being
11 imposed by the Board, it has to be reasonable and has
12 to be part of the property.

13 CHAIRPERSON GRIFFIS: That's exactly my
14 point. I don't think we can condition it.

15 MEMBER MILLER: Mr. Chairman, though, we
16 are relying on this landscaping area instead of
17 requiring something else.

18 CHAIRPERSON GRIFFIS: That's right.

19 MEMBER MILLER: So we have to have it in
20 the condition.

21 CHAIRPERSON GRIFFIS: We don't have to.

22 MEMBER ZAIDAIN: Can we just state that if
23 those lots are sold or developed that this special
24 exception must come back to us?

25 MEMBER MILLER: I'd go along with that.

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1 MEMBER ZAIDAIN: Is that legal? That way
2 the buffers have been eliminated and then it would
3 have to come back.

4 CHAIRPERSON GRIFFIS: Mr. Zaidain, what
5 you're saying is, see if you concur with this for
6 clarification -- I need my lunch. And also, the
7 Applicant, if they would agree. This won't be exact,
8 but here's what I propose, is that condition five, Lot
9 28 and 29 being found to be in the common ownership
10 located north to the facility for as long as will
11 remain the landscape buffer of the area for
12 residential, commercial, there should be maintained
13 neat and orderly condition. Then we could have a note
14 at the development or change of ownership and use,
15 that this would come in for, I don't know for what.

16 MEMBER ZAIDAIN: Special exception.

17 MS. GLAZER: Well, you could require --
18 it's just a suggestion. You could require the
19 Applicant to notify the Board --

20 MEMBER ZAIDAIN: Could you turn your mike
21 on?

22 MS. GLAZER: Okay, so corporation counsel
23 is saying we could just condition that a notification
24 come into the Board upon the disposition or change of
25 disposition of Lots 28 and 29.

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1 MS. GLAZER: For review --

2 MEMBER ZAIDAIN: I can't hear anything
3 she's saying. Got to use that mike.

4 MS. GLAZER: I'm sorry. I turned it off.

5 MEMBER ZAIDAIN: That's all right.

6 MS. GLAZER: It's just that I'm trying to
7 offer a practical suggestion, that perhaps the
8 Applicant could proffer that he will agree to notify
9 the Board at such time as the adjacent lots are sold,
10 and the special exception could be reviewed for the
11 limited purpose of assessing an appropriate buffer at
12 that time.

13 MR. COLLINS: We would agree to that.

14 CHAIRPERSON GRIFFIS: Okay. I think that
15 remedies the situation. I think we should just let it
16 go at that.

17 Okay, the other piece was -- oh, just
18 Exhibit No. 2. You were indicating that you might
19 submit a revised site plan. Were you still
20 anticipating doing that?

21 MR. COLLINS: I didn't have the exhibit
22 number for what is Exhibit G in our statement.

23 CHAIRPERSON GRIFFIS: Okay, so Exhibit No.
24 10 I believe is what you were referring to.

25 MR. COLLINS: Exhibit G to our book, to

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1 our prehearing statement, Tab G.

2 CHAIRPERSON GRIFFIS: Right, which would
3 be the same as --

4 MR. COLLINS: It's number 10.

5 CHAIRPERSON GRIFFIS: Okay.

6 MR. COLLINS: Is it 10?

7 CHAIRPERSON GRIFFIS: Yes, it's case
8 Exhibit No. 10. I think condition nine addresses
9 probably not 100 percent of what the Office of
10 Planning concerns are, but I think the intention of
11 that and the direction has been noted, and I think
12 that there can be improvements to the existing
13 conditions, which would bring into total compliance
14 with condition number nine.

15 Okay, is there anything else addressed in
16 those? Is the Board ready to seize the day with this?

17 COMMISSIONER MAY: What period? I mean,
18 they requested ten years. OP has recommended five
19 years.

20 CHAIRPERSON GRIFFIS: Oh, is that correct?
21 I'm sorry, I overlooked that.

22 COMMISSIONER MAY: And the ANC and the
23 community associations have all supported ten years.

24 CHAIRPERSON GRIFFIS: Oh, you're saying
25 the Office of Planning's recommendation was for all

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1 the conditions of the previous order 16164. Did the
2 Office of Planning have any additional comments on the
3 time?

4 MS. THOMAS: No, no objection.

5 CHAIRPERSON GRIFFIS: To ten years?

6 MS. THOMAS: To ten years. Well, the only
7 thing is that I still have concern about the
8 landscaping, maintenance of the general. That's the
9 issue, the appearance of the lot with respect to
10 landscaping. That would be the only concern I would
11 have for a ten year approval.

12 MEMBER ZAIDAIN: Actually I have a
13 suggestion in that regard. On condition nine, and
14 just to clarify our concern about the lawn, not
15 necessarily about the landscaping because landscaping
16 could imply just maintaining the bushes, but I'd like
17 to propose that the second sentence in condition nine
18 be changed to landscaping and lawn areas shall be
19 maintained at a healthy growing condition, just to
20 reflect that, you know, we want to make sure that a
21 healthy conditioned lawn is acceptable to us, as long
22 as it is indeed healthy and healthy growing condition.

23 CHAIRPERSON GRIFFIS: Okay.

24 MEMBER ZAIDAIN: I have no idea if that
25 makes you any more comfortable, but I just thought we

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1 should be a little bit more specific.

2 MS. THOMAS: That's fine. I mean, my only
3 concern is that with these industrial areas that abut
4 so close to residential areas, you know, it should be
5 something that's at least visually appealing.

6 MEMBER ZAIDAIN: Right. Well, I think
7 that other language, if the lawn area becomes, you
8 know, brown and barren, there will be some recourse.

9 MEMBER MILLER: What is the recourse? I
10 think that's the issue here.

11 MEMBER ZAIDAIN: Violation of the order.

12 MEMBER MILLER: And who's going to be
13 monitoring this?

14 MEMBER ZAIDAIN: DCRA. That's what we
15 have to work with. I mean, we can't --

16 MR. FARSHEY: I think the community keeps
17 a pretty good watch on things like that. We work with
18 the community very closely. In fact, we do some of
19 the landscaping in the areas off the community also to
20 make sure the areas adjacent to our properties are in
21 good shape from a landscaping and from also trash and
22 that sort of thing standpoint.

23 I think 15 years ago, in one of the orders
24 we had at one time, the community made the specific
25 point because they didn't think we were regularly

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1 picking up, and we were regularly taking care of.
2 They thought only when they came to us that we would
3 go in. Since then, we've made this a routine, and
4 that's really one of the reasons the community
5 supports us, because we're very friendly with the
6 community and we communicate with them regularly. So,
7 they're the best policing for this sort of thing.

8 Frankly, other than this Post Office in
9 the last maybe 12 months, I didn't think our
10 maintenance was anything less than, you know, good
11 quality.

12 MR. COLLINS: If you look at the last BZA
13 order from 1996, that the order was issued in 1998,
14 that's in the record here in our tabs, you'll see that
15 there was significant concern expressed within the
16 community. It was not a summary order. It was a full
17 order, and it went through the issues. Since that
18 time, many of those same people are still involved.
19 This was, relatively speaking, a love-fest with the
20 community in terms of getting this meeting, having
21 this agreement signed in one meeting was a major
22 accomplishment, but it was very easy to do.

23 CHAIRPERSON GRIFFIS: No, I appreciate
24 that. I think it's important. Ms. Miller?

25 MEMBER MILLER: I just want to make a

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1 final comment on the landscaping because that's the
2 only thing that's hanging me up right now, because
3 we're thinking about extending the period to ten
4 years. I know you have the support of the community,
5 but OP has said that the landscaping needs
6 improvement. The photos show that it needs some
7 improvement, and I don't really hear anything coming
8 back to this Board about how you are going to do any
9 improvement.

10 MR. FARSHEY: I think one of the first
11 things we are going to do is follow Mr. May's
12 suggestion. We need to go and clean up. There is I
13 see some weeds that have grown. I mean, some of that
14 shrubbery is really just outgrown weeds. We would
15 look again to put some shrubbery on that public grassy
16 area. I mean, we would look into that. We would look
17 into maybe putting something at our gates, also to
18 avoid having cars just park on the aprons.

19 CHAIRPERSON GRIFFIS: It may well be worth
20 doing --

21 MR. FARSHEY: We'd bring our landscape
22 company and see what ideas we come up with.

23 CHAIRPERSON GRIFFIS: Because it may well
24 be worth putting in some small trees on that grass
25 area that aren't as easily walked away with.

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1 MR. FARSHEY: Well, sometimes, depending
2 on when you do it.

3 CHAIRPERSON GRIFFIS: Understandable, but
4 that may mean there's a little bit heavier monitoring
5 for the first month or so as they root.

6 MR. FARSHEY: Right.

7 CHAIRPERSON GRIFFIS: And then because I
8 think, you know, a couple of good, healthy trees along
9 there and no so huge would be quite an improvement.

10 Okay, any other questions? Very well, if
11 not, I think -- I don't see any reason not to proceed
12 today unless any Board members have concerns that we
13 need to have remedied or further additions to that.
14 So, I would move approval of this special exception to
15 allow a continuation of the parking lot under Section
16 213 at the premises of 2310 and 2320 31st Street,
17 N.E., with the conditions as has been amended by the
18 Board based on the draft conditions of the Applicant
19 in 17049, and ask for a second.

20 MEMBER ZAIDAIN: Second.

21 CHAIRPERSON GRIFFIS: Thank you, Mr.
22 Zaidain. Of course, just to highlight for everyone's
23 understanding, that would be for a period of ten
24 years. It does come with the amendments on condition
25 number five, the brief amendment on condition number

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1 nine, and with a great direction to the Applicant to
2 pursue the improvement of landscaping on that and of
3 course to be fully compliant with condition number
4 nine, which is the maintenance of such landscape and
5 lawn areas.

6 Further deliberation of the motion before
7 it's seconded? Mr. Zaidain, anything else?

8 Very well, then all those in favor,
9 signify by saying aye.

10 (Chorus of ayes.)

11 CHAIRPERSON GRIFFIS: Opposed?

12 (No response.)

13 Thank you very much. Why don't we record
14 that vote briefly?

15 SECRETARY BAILEY: The application is
16 approved for ten years. The motion was made by Mr.
17 Griffis, seconded by Mr. Zaidain, Mr. Etherly, Mr.
18 May, and Ms. Miller are in support, with conditions as
19 discussed by the Board.

20 CHAIRPERSON GRIFFIS: Good, and I think we
21 can do that in summary fashion unless the Applicant
22 would love to see a full order on this.

23 MR. COLLINS: No, thank you.

24 CHAIRPERSON GRIFFIS: Indeed. Why don't
25 we do that?

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1 MEMBER MILLER: Mr. Chairman?

2 CHAIRPERSON GRIFFIS: Yes.

3 MEMBER MILLER: How would the conditions
4 appear then? Would they be in the summary fashion in
5 the order?

6 CHAIRPERSON GRIFFIS: Well, yes,
7 conditions absolutely have to be part of the order. I
8 mean, the conditions are the order.

9 MEMBER MILLER: That's fine. I'm used to
10 seeing these summary orders that don't really
11 elaborate the conditions.

12 CHAIRPERSON GRIFFIS: Well, actually
13 what's happened in the past in this application is
14 oftentimes it's a summary order and they say and we
15 adopt the previous application. I don't particularly
16 like seeing it that way. I think it ought to be all
17 inclusive. So, we will do that with this one, and we
18 have in fact changed some of them. So, this will be a
19 stand-alone summary order, if that suffices. Anything
20 else?

21 MEMBER MILLER: No.

22 CHAIRPERSON GRIFFIS: Perfect. I almost
23 forgot to understand how to call for a voice vote with
24 a morning like we've had. If there's anything further
25 for us this morning?

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1 SECRETARY BAILEY: Mr. Chairman, that's
2 all for this morning.

3 CHAIRPERSON GRIFFIS: That's all?

4 SECRETARY BAILEY: Yes, sir.

5 CHAIRPERSON GRIFFIS: Great. Thank you
6 very much then. I would adjourn the 23 September,
7 2003 morning session.

8 Thank you very much. I appreciate your
9 patience. Sorry it went so long.

10 (Whereupon, the above-referenced matter
11 was adjourned at 12:40 p.m.)

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

(2:00 p.m.)

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the September 23, 2003 afternoon session of the public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Geoff Griffis. I am Chairperson. Joining me today is the Vice Chair, Mr. Etherly. Also, Board member Miller is with us this afternoon. Representing the Zoning Commission for this afternoon's hearing is Mr. Hood, and representing the National Capitol Planning Commission is Mr. Zaidain.

I do appreciate everyone's patience this afternoon as we're getting started a little late in the afternoon, but I anticipate that we will get through the afternoon very expeditiously.

Copies of today's hearing agenda are available to you. They are located close to the door you entered into. They are located on the wall in our new framing there.

There are several things that I need to bring to everyone's attention that is a requirement in our public hearings before the Board of Zoning

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1 Adjustment. First of all, everyone should note that
2 all proceedings are being recorded. Therefore,
3 several things attendant to that, I would ask first
4 that when coming forward to speak to the Board that
5 you fill out two witness cards. Witness cards are
6 located at the table you entered into and also at the
7 table where you will give testimony. Those two
8 witness cards go to the recorder, who is sitting to my
9 right.

10 I would ask that when you come to address
11 the Board that the microphone be on, and we'll give
12 you technical assistance with that, and that you state
13 your name and your address for the record. Then you
14 can proceed to address the Board.

15 I would also ask the people to turn off
16 all their cell phones or beepers at this time so that
17 we don't have any disruptions during the hearing.

18 The order of procedure for specials
19 exceptions and variances is first, we will hear
20 statements and witnesses of the Applicant. Second, we
21 hear any government reports attendant to the
22 application, such as the Office of Planning,
23 Department of Transportation, et cetera. Third would
24 be the report from the Advisory Neighborhood
25 Commission, the ANC. Fourth would be parties or

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1 persons in support of the application. Fifth is
2 parties or persons in opposition. Sixth, finally we
3 hear from lastly, closing remarks by the applicant.

4 Cross examination is permitted by the
5 applicant or parties in the case. The ANC within
6 which the property is located is automatically a party
7 in the case. The record will be closed on each case
8 at the conclusion of the hearing except for any
9 material that is specifically requested by the Board,
10 and we will be very specific on what is to be
11 submitted and when it is to be submitted into the
12 Office of Zoning.

13 Upon receipt of that, of course the record
14 would then be finally closed, and no other information
15 would be accepted into the record.

16 The Sunshine Act requires that this Board
17 conduct all cases and public hearings in the open and
18 before the public. This Board may, however,
19 consistent with its rules of procedure and the
20 Sunshine Act, enter into executive session. That is,
21 for the purposes of reviewing the record or
22 deliberating on a case.

23 The decision of the Board in contested
24 cases must be based exclusively on the record, the
25 record that is created during this public hearing

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1 process. Therefore, we ask several things. Of
2 course, one, that you give us all the information
3 needed, and two, that you not engage Board members in
4 conversation today so that we do not give the
5 appearance of deliberating solely on the record that
6 is created before us.

7 The Board will be making every effort to
8 conclude this hearing, the afternoon session, by 6:00.

9 I don't anticipate getting close to that. If we do,
10 I will update the schedule when we might recess the
11 hearing for the afternoon.

12 It is now appropriate for us to hear any
13 preliminary matters. Preliminary matters are those
14 which relate to whether a case will or should be heard
15 today, such as requests for continuance,
16 postponements, withdrawals, or in fact if a case has
17 been properly noticed. If you believe that the Board
18 should not hear a case that's on the agenda this
19 afternoon or you are not prepared to go forward with a
20 case today, now is the time to bring that to the
21 attention of the Board.

22 I will take an indication of the
23 representatives here having a preliminary matter by
24 coming forward and having a seat at the table. I will
25 first ask, and wish a good afternoon to Mr. Moy,

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1 representing the Office of Zoning, and ask if he has
2 any preliminary matters for the Board in the
3 afternoon.

4 MR. MOY: No, Mr. Chairman. They are all
5 very case specific.

6 CHAIRPERSON GRIFFIS: Then let's call the
7 first case in the afternoon.

8 MR. MOY: The first application is
9 Application No. 17052 of Government of the District of
10 Columbia Office on Aging, pursuant to 11 DCMR 3104.1
11 for a special exception to construct a Senior Wellness
12 Center under Section 205, and elderly development
13 center, in the R-1-B District at premises 1901 Evarts
14 Street, N.E. That's in Square 4124. Lot 50.

15 Mr. Chairman, we do have a submission this
16 morning from the Department of Transportation, their
17 report on this application. That completes my
18 briefing, Mr. Chairman.

19 CHAIRPERSON GRIFFIS: Good. Does that
20 report need to be waived in?

21 MR. MOY: Yes, sir.

22 CHAIRPERSON GRIFFIS: Any objection of the
23 Board to waiving and accepting the Department of
24 Transportation's report? I think we have a consensus
25 of the Board to accept that into the record.

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1 Very well, then we're ready to proceed?
2 Is the Applicant's representative here?

3 MR. MOY: Mr. Chairman, should I
4 administer the oath if anyone wishes to testify?

5 CHAIRPERSON GRIFFIS: Oh, yes, please.

6 MR. MOY: If there's anyone this afternoon
7 who plans on testifying, would you please stand and
8 raise your right hand? Do you solemnly swear or
9 affirm that the testimony you are about to give in
10 this proceeding is the truth, the whole truth, and
11 nothing but the truth? All right, you may be seated.

12 Thank you.

13 MS. PACE: Shall I begin?

14 CHAIRPERSON GRIFFIS: Please.

15 MS. PACE: Good afternoon. I am E.
16 Veronica Pace, Executive Director of the D.C. Office
17 on Aging. My office is located in this building on
18 the ninth floor. Our mission is to advocate, plan,
19 implement, and monitor programs in health, education,
20 employment, and social services which promote
21 longevity, independence, dignity, and choice for our
22 senior citizens.

23 We are a funding agency for 24 community
24 based organizations which service focal points for
25 aging programs and services. In fact, most of our

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1 direct services funded by the D.C. Office on Aging are
2 provided at the community level.

3 Today we are before you for a special
4 exception request because we want to make
5 modifications to our existing Senior Wellness Center
6 located at 1901 Evarts Street, N.E. A model program
7 for health promotion and disease prevention activities
8 for exists at this center.

9 The Senior Wellness Center provides
10 services that promote good health habits, enhance
11 social, mental, spiritual, and physical well being,
12 and help to prevent necessary and costly medical
13 problems sometimes associated with the aging process.

14 Specifically, seniors gain access to health
15 regiments, activities, and programs tailored to their
16 needs.

17 The programs address a holistic,
18 complimentary, integrative approach to senior health
19 and wellness. Programs also combine calisthenics,
20 isometrics, stretching, dance, weight training,
21 flexibility, and endurance with nutrition education
22 and screening for diseases such as diabetes,
23 hypertension, cancer, HIV/AIDS and cardiovascular
24 disease, among many.

25 The facility has classrooms, a

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1 multipurpose and nutrition room, fitness area, office
2 space for a small staff. The model city Senior
3 Wellness, Center, the old discontinuing operating
4 senior center in Washington, D.C., we relocated to
5 this new facility when it was built in 1990.

6 The needs of the seniors attending this
7 facility has grown throughout the years. Based on
8 funding available under the Office on Aging's capital
9 authority, we will be able to make some modification
10 and enhancements to meet the changing needs of Center
11 participants.

12 We have had discussions with the community
13 and Advisory Neighborhood Commission, ANC5-B, about
14 our plans to update this facility. The ANC member for
15 this area has sent a letter of support.

16 We presented the same plans to the
17 community at a briefing on September 10. Over 75
18 senior citizens were in attendance. Overwhelmingly,
19 they endorsed our plans to upgrade this facility. We
20 have members from Ward 5 here today in support of our
21 application. Based on annual assessments, seniors who
22 use this facility feel that this Center has made a
23 profound positive difference in their lives.

24 I will now turn the discussion over to our
25 architect, Raymond Novitske, of Dynamic Corporation,

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1 along with our project manager, Mr. Virgin Green from
2 the Office of Property Management, to explain how we
3 will meet the special exception requirement.

4 I thank you.

5 CHAIRPERSON GRIFFIS: Thank you very much.

6 Yes, I think a very quick kind of walk-through. We
7 have the entire record, and I think the Board
8 understands the plans. This is clear this is a
9 special exception, so there are just certain things
10 that we will need to run through in terms of, you
11 know, not impairing the use or enjoyment of adjacent
12 properties. If you wouldn't mind, you could just run
13 through quickly the plans.

14 MR. NOVITSKE: My name is Ray Novitske,
15 and I have an outline of my presentation I'd like to
16 submit for the Board.

17 CHAIRPERSON GRIFFIS: Good. You can hand
18 it to Mr. Moy. Can you turn that microphone on?

19 MS. PACE: He has a hand mike ready.

20 CHAIRPERSON GRIFFIS: That will work. And
21 the proposed addition is to expand the fitness center,
22 director's office, reception, and a few other --

23 MR. NOVITSKE: That's correct.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. NOVITSKE: The other modifications

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1 we're making are on the inside of the building.
2 Basically we are a part of one property, and that
3 property is zoned R-1-B. That property also includes
4 some other elderly care facilities, but not an elderly
5 developmental center.

6 It's bordered by Ewart Street on the
7 north, Queen's Chapel Road on the east, and then 20th
8 Street comes in on the northeast corner.

9 Across the street is Langdon Elementary
10 School. Single family houses off to the right --
11 excuse me, off to the east side. Then the other
12 elderly care facility is on the property to the west
13 and to the south.

14 I'll try to be brief. I won't go through
15 all of these because you have the information. Our
16 addition is expanding in two locations, as you
17 mentioned, one out to the back to the south and then
18 one to the north where the lobby and entrance drive
19 will be revised a little bit.

20 The building now is one story in height
21 and will always remain one story in height. As
22 Veronica Pace has mentioned, you've got a good handle
23 on what's going on on the inside.

24 At the heaviest, we have 55 visitors a
25 day. That doesn't mean every day, but certain days of

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1 the week, we have 55, and those 55 people come at
2 various times, not all at once. It's staggered.
3 Arrivals and departures are staggered.

4 CHAIRPERSON GRIFFIS: The third area of
5 expansion, although it's not necessarily on purview,
6 but it's the parking.

7 MR. NOVITSKE: Right. I was going to get
8 into the special exceptions.

9 CHAIRPERSON GRIFFIS: Oh, okay, that's
10 fine.

11 MR. NOVITSKE: So, in conclusion, what I'm
12 asking for is to grant a special exception here.
13 Being in an R-1 District, and elderly development
14 center is allowed with a special exception granted.

15 Point number 205.2 talks about meeting all
16 the regulations. We are meeting the zoning
17 regulations, and we are going to meet all of the
18 construction code requirements.

19 Point three talks about circulation. I
20 want to get into that. Right now, the existing site
21 is configured so that there is an entry and an exit
22 for vehicles. Entry drive to the front of the Center
23 and then out to Evarts Street.

24 There are four spaces to the right as
25 you're coming in and four spaces to the right as

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1 you've leaving. No parking in the front, and then two
2 accessible spaces. So, there's a total of ten spaces
3 altogether.

4 What we're doing with our modifications is
5 narrowing down the front entry a little and putting a
6 canopy out so that the seniors arriving and departing
7 have a little cover as they leave the building in the
8 weather. We're also adding some parking spaces off to
9 the east.

10 Right now, there are eight employees, and
11 if we follow the zoning regulations strictly, we would
12 need two, one for every four employees. There are ten
13 spaces on site now. We felt that given some of the
14 parking problems, there are problems in the area with
15 an elementary school being across the street, and a
16 lot of the residents parking on the street, that this
17 was a good opportunity to expand the parking and maybe
18 use up some of the parking. So, we are adding seven
19 more spaces to the ten that are already there. One of
20 those spaces is an accessible van space as required.

21 A lot of the 55 people that come come by
22 private transportation. They arrive by some vans.
23 Some of them drive, and a few of them walk and take
24 public transportation. Again, I wanted to mention
25 that they're not all coming at the same time.

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1 205.5 Deals with noise and impact in the
2 neighborhood. We have no outdoor play area since this
3 is not a child development center. All the activities
4 and noise, if there is noise, take place on the
5 inside. They take place during the hours of nine to
6 four, Monday through Friday. Again, their arrival and
7 departure is staggered.

8 All of the loading and unloading and
9 arrival takes place on site. It's not in a public
10 space. It's not on the street. It's done in the
11 sidewalk area. It all is visible from Evarts Street
12 so that it is a clear indication of where you are to
13 come and arrive if you are not familiar with the
14 Center.

15 205.6 Deals with screening. Since we are
16 increasing the parking, we felt that it would be
17 necessary to screen that especially from the
18 residences which are across the street to the east.
19 So, we will be providing some broad leaf evergreens to
20 screen that part of the parking from their view.

21 CHAIRPERSON GRIFFIS: Is that
22 representative of what you're proposing?

23 MR. NOVITSKE: Yes.

24 CHAIRPERSON GRIFFIS: I mean like count
25 and the placement?

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1 MR. NOVITSKE: Yes.

2 CHAIRPERSON GRIFFIS: Okay, and was that
3 actual plan submitted into the record?

4 MR. NOVITSKE: Yes, it was. I believe it
5 was.

6 CHAIRPERSON GRIFFIS: I wonder why I don't
7 have one. Oh, I see. The trees just aren't colored
8 on the one we have. That's fine.

9 MR. NOVITSKE: If you want, I'll color it
10 for you.

11 CHAIRPERSON GRIFFIS: No, that's all
12 right. I can do my own coloring.

13 MR. NOVITSKE: Okay. Also, the Center is
14 less than 3,000 square feet, so we're really not
15 required to screen the Center.

16 To the south, we've got a very steeply
17 sloping site, as indicated in the photographs that
18 were submitted, and there's a lot of trees down to
19 the south, too, to screen the Center from any
20 property.

21 South and to the west, we have an existing
22 elderly care facilities. There are no off-site play
23 areas, so we don't have to deal with 205.7.

24 205.8 talks about other nearby
25 child/elderly development centers within 1,000 feet.

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1 There are none. There are elderly care facilities
2 which are new homes on the property, but they're not
3 elderly development centers.

4 So, in summary, we feel that we've met the
5 requirements for a special exception in an R-1-B zone
6 under 205. It's used as an elderly center now, and
7 we're not changing the use at all. The community
8 supports it, and as indicated, we are meeting all the
9 requirements of 205.

10 It does not adversely affect the
11 neighborhood. It's in general harmony with R-1-B
12 zoning. There are no noisy activities planned
13 outside. There are none that go on now.

14 Vehicle traffic comes in off-site. Unload
15 and parking is off-site. We are screening the parking
16 with the evergreens to the east, and property is
17 already sufficiently screened to the south from the
18 west, and we are meeting all of the zoning
19 requirements.

20 Thank you.

21 CHAIRPERSON GRIFFIS: Excellent. Thank
22 you very much. A quick question in terms of service
23 loading, delivery trucks and such. That happens also
24 right out in front?

25 MR. NOVITSKE: It happens out in front.

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1 CHAIRPERSON GRIFFIS: And has there been
2 any problems with circulation or space or any of that
3 type?

4 MR. NOVITSKE: No, there hasn't been.

5 CHAIRPERSON GRIFFIS: Okay, and the drive
6 aisles obviously can facilitate a truck?

7 MR. NOVITSKE: There are no large trucks.
8 Most of them are vans that come in, van deliveries.

9 CHAIRPERSON GRIFFIS: Okay. Any other
10 questions of the Board at this time? Any other
11 witnesses? Is the ANC represented today?

12 MS. EDWARDS: Good afternoon.

13 CHAIRPERSON GRIFFIS: Good afternoon.

14 MS. EDWARDS: I'm Ellen Odellas Van
15 Edwards. Senior, District of Columbia, 2003. I
16 reside at 4523 7th Street, N.E., Washington, D.C.
17 20017.

18 First the Model City Wellness Center is my
19 home center. Having been a client there for several
20 years, on their behalf I would like to say that I
21 indeed look forward to the much needed renovations
22 that are proposed.

23 It is proposed that a canopy be installed
24 at the entrance into the building. That will surely
25 be a great asset. When the seniors exit from their

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1 mode of transportation, that is, cars or van or bus,
2 they will not have to fight the elements to gain entry
3 into the building. There are some of us who have to
4 use canes, wheelchairs, or other to gain entrance into
5 the building.

6 We won't have to worry about slipping or
7 possibly falling when we have to fight those bad
8 weather days. Those of us who have walking
9 limitations or have to worry about really rushing
10 getting out of the elements in order to get entrance
11 into the building.

12 Because the Center is definitely growing
13 with the influx of new clients, the extension of the
14 back area is highly recommended as the addition of
15 space will surely find comfort for all of those, and
16 we will not have to be crowded.

17 Last but definitely not least, the
18 addition of the seven parking spaces is a Godsend.
19 Even though many spaces are already there, as the old
20 saying goes, a half a loaf is better than nothing.
21 Many of us are able to drive our own cars to the
22 Center, but as it now stands, if we don't get there
23 very early, we have a problem finding a parking space.

24 There are parking spaces on the ground, but as I
25 state, we have to really get there early to get those

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1 spaces that are there.

2 The Center is in competition with the
3 Langdon School which is across the street, and there
4 is no parking on that side. Additionally, there are
5 several other buildings adjacent to the Center. In
6 view of the aforementioned hindrances, we must park on
7 the side street and walk up an incline. In fact,
8 there have been several times when I couldn't find a
9 place to park, and I've returned home.

10 I pray that this proposal to renovate the
11 Model City Wellness Center be implemented. Thank you.

12 CHAIRPERSON GRIFFIS: Thank you very much.

13 We appreciate you giving the personal touch to what
14 is often very static in presentation to us in the
15 record.

16 MR. WASHINGTON: Good afternoon. My name
17 is Glenn Washington, and I'm a member of the Wellness
18 Senior Center. This lady here, she covered most of
19 the things that we all feel has to be done there, and
20 she did a very good job of it.

21 I drive to the Center, and the parking is
22 very scarce there. The additional parking spaces that
23 is proposed is more than welcome. It is a very good
24 Center. I've been there for about six years, and I
25 take part in most of the activities there. So, it's

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1 very beneficial to all.

2 So, the proposed renovation is a Godsend,
3 and I have letters and petitions to support that
4 renovation. Thank you very much.

5 CHAIRPERSON GRIFFIS: Good. Thank you
6 very much. Have you put the letters into the record
7 yet?

8 MR. WASHINGTON: Yes, for the record.

9 CHAIRPERSON GRIFFIS: You already
10 submitted them?

11 MR. WASHINGTON: We have the record right
12 here.

13 CHAIRPERSON GRIFFIS: Yes, they weren't
14 submitted previously?

15 MR. WASHINGTON: Right.

16 CHAIRPERSON GRIFFIS: Okay. If you have
17 the copies, then give them to Mr. Moy, and they'll go
18 into the record.

19 MR. WASHINGTON: All right.

20 CHAIRPERSON GRIFFIS: Very well, thank you
21 very much.

22 MR. WASHINGTON: Thank you.

23 CHAIRPERSON GRIFFIS: And quite a stylish
24 hat and matching shirt, I must say.

25 MR. WASHINGTON: Yes. This is our logo.

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1 CHAIRPERSON GRIFFIS: Indeed.

2 MR. WASHINGTON: We had a part in
3 designing this.

4 CHAIRPERSON GRIFFIS: Oh, very nice.

5 MR. WASHINGTON: The colors I picked out.

6 CHAIRPERSON GRIFFIS: Excellent. Well, we
7 need a picture for the record.

8 MR. WASHINGTON: Okay.

9 CHAIRPERSON GRIFFIS: I'm kidding there.
10 Anything else?

11 MS. PACE: No, so that means you're going
12 to take a vote now and vote yes, right?

13 CHAIRPERSON GRIFFIS: No, we've got a lot
14 more to get through, but thank you very much for the
15 case presentation, as well as the submissions that are
16 in the record which the Board has thoroughly read,
17 reviewed, and I do believe started to deliberate.

18 Let us move on quickly to our requirements
19 and go to government reports. The Office of Planning
20 has submitted a report, Exhibit No. 26, and they are
21 recommending approval. Let us go to the Office of
22 Planning representative here with us today, and they
23 will go through their memo.

24 MR. MOORE: Good afternoon, Mr. Chair and
25 members of the Board. The Office of Planning does

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1 stand by his recommendation for personal reasons. I'm
2 getting old myself.

3 CHAIRPERSON GRIFFIS: And we all hope to
4 be there some day, if not there already.

5 Very well, so the Office of Planning is
6 standing on the record. Have you had an opportunity
7 to review the Office of Planning's memo?

8 MS. PACE: I'm aware of it, yes.

9 CHAIRPERSON GRIFFIS: Okay. Board
10 members, any questions to the Office of Planning at
11 this time? Again, a very comprehensive, well
12 photographed. I believe you created the graphics
13 yourself, is that correct, showing the addition?
14 Okay. I thought you'd spray painted the picnic table
15 yellow until I realized that --

16 MEMBER ZAIDAIN: I was just going to ask
17 you a question about that. This is the area? I
18 wasn't sure if a big roller just got out there and
19 painted the whole thing yellow, including the tables.

20 CHAIRPERSON GRIFFIS: For those of you
21 that haven't, the Office of Planning gave an
22 embellishment on an actual photograph that shows the
23 site location and where the addition is proposed. Any
24 questions for the Board to the Office of Planning? Is
25 there any cross examination of the Applicant to the

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1 Office of Planning?

2 MS. PACE: No.

3 CHAIRPERSON GRIFFIS: Very well. Thank
4 you very much to the Office of Planning for that
5 report. We also have submitted into the record from
6 Human Services a letter from DHS, Exhibit No. 22. Is
7 there a representative for DHS here? Very well, we
8 can move on. They were in support of this
9 application.

10 I do not have any other attendant
11 government agency reports. Oh, I'm sorry, that's
12 right, the late report from Mr. Laden has come in.
13 Good.

14 It summarizes by saying the proposed
15 expansion will not create dangerous or otherwise
16 objectionable traffic conditions or cause a large
17 increase in the traffic volume for the neighboring
18 streets. Accordingly, DDOT has no objection to the
19 proposal. We will enter that into the record and give
20 it an exhibit number.

21 Let's move on then to ANC5-B. I believe
22 that it was indicated that they're not represented
23 today, is that correct? No one from the ANC is here?
24 Okay.

25 The submission that we have from ANC5 --

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1 right. We have the letter from the single member
2 district, not the full ANC. So, we can take that into
3 the record. Of course, we don't have the official
4 report from the ANC to be given great weight at this
5 time, but we will certainly note that in its testimony
6 from the SMD member.

7 Did we have two commissioners that wrote
8 in? Oh, indeed. Commissioner Henderson and
9 Commissioner Scats? Is that how they pronounce the
10 name? Okay, very well.

11 VICE CHAIRPERSON HOOD: Commissioner
12 Skats.

13 CHAIRPERSON GRIFFIS: Skats. Exhibit No.
14 25, Exhibit No. 24, both in support. That is all the
15 notes I have in terms of the attendant submissions on
16 this.

17 Is there anyone else here to give
18 testimony either in favor or in opposition to this
19 application? That would be Application 17052 for the
20 special exceptions. Not noting anyone else here to
21 give testimony, you can give your brief closing
22 remarks.

23 MS. PACE: Thank you. We look forward to
24 having you come and view the additions and
25 enhancements.

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1 CHAIRPERSON GRIFFIS: Can we come play
2 outside and make noise?

3 MS. PACE: No, that won't be allowed, but
4 you'd be welcome to come in and learn how to age well
5 and to achieve longevity.

6 CHAIRPERSON GRIFFIS: Not a bad lesson to
7 learn anytime during life. I appreciate it, and I
8 appreciate you all coming down here. We're not done
9 yet.

10 VICE CHAIRPERSON HOOD: Mr. Chairman?

11 CHAIRPERSON GRIFFIS: Yes.

12 VICE CHAIRPERSON HOOD: In looking at the
13 diagram, I just wanted to know for the sake of my own
14 personal knowledge, what was the men's parlor? Even
15 though that's not a part of the addition. It's
16 already there. What takes place in the men's parlor?

17 MS. PACE: No, the men's parlor will be a
18 feature that's added to that facility.

19 VICE CHAIRPERSON HOOD: Oh, added, okay.

20 MS. PACE: And it is an area, a room
21 that's designated solely for support group discussion,
22 health dialogue, among men.

23 VICE CHAIRPERSON HOOD: Okay.

24 MS. PACE: You're in a younger generation,
25 Commissioner Hood, and --

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1 VICE CHAIRPERSON HOOD: Right now.

2 MS. PACE: Yes, but an earlier generation
3 didn't come along at a time where they discuss
4 personal issues in a room along with, you know,
5 everybody, or mixed audience, or both sexes. You
6 know, things were discussed privately.

7 VICE CHAIRPERSON HOOD: Right.

8 MS. PACE: And men's things were discussed
9 with men. So, there are many activities that they
10 certainly do together, as they can certainly testify.

11 On other issues when you're talking about prostate
12 cancer, when you're talking about sexuality issues,
13 when you're talking about issues that just are solely
14 important to men, they're best done in a smaller
15 session, and just among men, as they tell me, and it
16 works.

17 We know it works at our Congress Heights
18 facility. We have men coming in again and again and
19 again. You can go there any time of the day. Prior
20 to establishing a men's parlor, that was not the case,
21 because women outnumber men two to one.

22 VICE CHAIRPERSON HOOD: Okay, thank you.

23 MS. PACE: And we're trying to do
24 something about that disparity.

25 VICE CHAIRPERSON HOOD: Good. Thank you.

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1 CHAIRPERSON GRIFFIS: Thank you very much.
2 Any other further questions from the Board,
3 clarifications? If not, I would move approval of the
4 special exception to --

5 MS. PACE: 17052.

6 CHAIRPERSON GRIFFIS: Indeed, thank you
7 very much. I got a lot of things going on up here. I
8 was just about to allow you to do a whole host of
9 stuff. Allowing an addition to the renovation of the
10 Senior Wellness Center under Section 205 in the R-1-B
11 District, the premises of 1901 Evarts Street, N.E.
12 That is Square 424, Lot 50, and I would ask for a
13 second.

14 VICE CHAIRPERSON HOOD: Second.

15 CHAIRPERSON GRIFFIS: Thank you very much.
16 I think it goes without saying the record is
17 absolutely full on this. The application meets the
18 special exception requirements, and not only that, I
19 think it's pretty impressive that it has done such an
20 excellent job in being an important and integral part
21 in the immediate community and the overall community.
22 I certainly look forward to seeing the addition to
23 this, and do note that it will be successful based on
24 its use and the support of the community that it
25 serves and the surrounding community in which it is

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1 located.

2 Any other comments, deliberation on this?

3

4 VICE CHAIRPERSON HOOD: And also which was
5 so elaborately discussed, that he meets all the tests
6 in 3104.1 and 205, and I would agree with your
7 comments.

8 CHAIRPERSON GRIFFIS: Good. Thank you
9 very much. Others?

10 Very well then. All those in favor,
11 signify by saying aye.

12 (Chorus of ayes.)

13 CHAIRPERSON GRIFFIS: And opposed?

14 (No response.)

15 CHAIRPERSON GRIFFIS: Then we can record
16 the vote.

17 MR. MOY: Yes, sir. The staff would
18 record the vote as 5-0-0, the motion of the Chairman,
19 seconded by Mr. Hood, and Mr. Zaidain, Ms. Miller, and
20 Mr. Etherly in favor of the motion.

21 CHAIRPERSON GRIFFIS: Great. Thank you
22 very much, Mr. Moy. Thank you all very much. I
23 appreciate seeing you down here this afternoon.
24 Thanks for your patience.

25 Why don't we call the next case?

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1 MR. MOY: Would that be a summary order,
2 Mr. Chairman?

3 CHAIRPERSON GRIFFIS: Yes, I don't see any
4 reason to do a full on that. Unless there is any
5 objection from the Board, we can do a summary order.

6 MR. WASHINGTON: If you want one of these
7 shirts, I'll send it to you.

8 CHAIRPERSON GRIFFIS: Oh, that would be
9 great. Thank you.

10 MS. PACE: He can't accept it. The rules
11 don't allow it.

12 CHAIRPERSON GRIFFIS: I'll put it on the
13 Office of Zoning wall.

14 MR. MOY: The next application is
15 Application No. 17053 of the Government of the
16 District of Columbia Office on Aging, pursuant to 11
17 DCMR 3104.1 for a special exception to allow an
18 addition to and a renovation of a senior wellness
19 center under Section 205, and elderly development
20 center, in the R-5-A District at premises 3001 Alabama
21 Avenue, S.E. That's U.S. Reservation Number 672,
22 Parcel No. 214/185.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. PACE: I am E. Veronica Pace,
25 Executive Director of the D.C. Office on Aging. I

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1 believe you already know our mission, and I won't
2 repeat it here, but it will be in the record.

3 Again, we're doing a similar project, just
4 a different location in the city, and some change in
5 feature, of a Senior Wellness Center that provides
6 good health habits, enhanced social, mental,
7 spiritual, and physical well being, and helps to
8 prevent unnecessary costly medical problems associated
9 with the aging process.

10 The Washington Seniors Wellness Center,
11 the first senior center specifically designed for
12 wellness, quite frankly is the first that was designed
13 in the country, not just in the District of Columbia,
14 was relocated to this new facility when it was built
15 in 1993.

16 The needs of seniors attending this
17 facility have grown throughout the years. Based on
18 funding available under the Capitol Authority for the
19 D.C. Office on Aging, we will be able to make some
20 modification and enhancements that will meet the
21 changing needs of the Center participants.

22 We have had discussions with the community
23 and the ANC7-B about our plans to update this
24 facility. Advisory Neighborhood Commission ANC7-B, at
25 their August 21 meeting, unanimously approved our

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1 plans.

2 We also presented the same plans to the
3 community at a briefing on September 11 with the
4 seniors who use this facility. They too have
5 overwhelmingly approved our plans to upgrade the
6 facility.

7 We have members of the Ward 7 community
8 here today in support of our application.

9 We know this Center helps senior to age
10 positively in their community. I will now turn the
11 discussion over to our architect, Mr. Raymond Novitske
12 of Dynamic Corporation.

13 CHAIRPERSON GRIFFIS: Good.

14 MS. PACE: Again, along with our project
15 manager, Mr. Virgil Green, D.C. Office of Property
16 Management, who will explain the special exception
17 requirement.

18 CHAIRPERSON GRIFFIS: One quick question,
19 a preliminary. The submissions that are required, of
20 course, for the full application, did you submit
21 photographs that showed the placard on the building in
22 this application?

23 MS. PACE: Yes.

24 CHAIRPERSON GRIFFIS: You did?

25 MS. PACE: Yes.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MS. PACE: We have another set if you
3 would like it, but we did submit it.

4 CHAIRPERSON GRIFFIS: That's fine. It's
5 there. Thank you. Is this the same base architect as
6 the other building?

7 MR. NOVITSKE: Yes, it is.

8 CHAIRPERSON GRIFFIS: Did you do it?

9 MR. NOVITSKE: No.

10 CHAIRPERSON GRIFFIS: No, okay.

11 MR. NOVITSKE: I did not do the original.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. NOVITSKE: I do have an outline of a
14 presentation again I would like to submit.

15 CHAIRPERSON GRIFFIS: Excellent.

16 MR. NOVITSKE: This property again is very
17 similar to the previous Senior Wellness Center. The
18 difference is, of course, the site plan and the
19 property itself.

20 We are at the north corner of U.S.
21 Reservation 672, so the property is not owned by the
22 District of Columbia. It's owned by the National Park
23 Service, but it was part of a transfer of jurisdiction
24 in 1972 for the purpose of recreation and related
25 purposes.

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1 So, the Center was built after the
2 transfer, and it did meet the U.S. Park Service review
3 at that time. It was built in 1993. It was not
4 subject to zoning regulations at that time until now,
5 after 1998.

6 It's on the corner of Alabama Avenue, S.E.
7 and 30th Street, S.E. To the east is a small public
8 alley with some single family residences. To the
9 south on the property is Washington Elementary School,
10 which is on Erie Street.

11 The site is very heavily wooded and very
12 heavily sloping. It is used as a park now. I believe
13 that there are some tennis courts off in the corner
14 also.

15 Our proposal adds to the south side and to
16 the west side of the property. The south addition
17 will actually take up part of the parking lot which is
18 there now, and given the tight area of this and the
19 sloping back, we felt that increasing the parking at
20 this site would not be very feasible to do. So, what
21 we've done with the parking count is actually
22 maintained the ten spaces total that we had.

23 Our building, again, is one story in
24 height. It contains classrooms, meeting rooms,
25 fitness center, as Ms. Pace had mentioned. Again, the

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1 usage here is similar to the previous site, about 55
2 visitors a day at the most.

3 We made the special exception 205.2 in
4 that we will follow all the zoning and all of the
5 construction codes, and that's the zoning and the
6 zoning. Sorry for the typo.

7 The existing site circulation will be
8 maintained. Currently we enter off of 30th Street,
9 drop off in the front, and loop around back to the
10 parking, or continue to exit the site on Alabama
11 Avenue, S.E. That circulation will stay.

12 Our parking lot, as I mentioned
13 previously, was here originally. That will be pushed
14 down to the south.

15 So, all of the drop-off and site
16 circulation takes place on site. It does not impact
17 public streets or the public sidewalks, and it is
18 visible from the public spaces, so that it is very
19 clear where the circulation takes place.

20 We meet the parking requirements for the
21 zoning for an elderly developmental center, again
22 being eight employees. We will be required to have
23 two, one for each employee. There are ten on-site
24 parking spaces now, eight normal and two accessible.
25 Those will be maintained.

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1 205.5, We have no outdoor play area on the
2 site. Again, the noisy activities, if you consider
3 our seniors noisy, take place inside and not outdoors.

4 The activities take place between nine and five,
5 Monday through Friday. The arrivals and departures
6 are staggered throughout the day, so there is no mass
7 entrance or exodus from the site.

8 As far as screening goes, we have, as I
9 said, a very heavily sloping site to the east and to
10 the south, full of trees. So the property is not
11 really visible from neighboring properties at that
12 point. To the east, we have a sloping site again, and
13 residences are separated by a green space. To the
14 west, we have a shopping center.

15 Directly across the street from our center
16 is a parking lot for the shopping center. So, there
17 are no residences there to be impacted, so we did not
18 provide any additional screening beyond what the site
19 already has.

20 There are no off site play areas, and
21 there are no nearby child or elderly development
22 centers within 1,000 square feet.

23 So, specifically, we feel that we meet the
24 requirements for Section 205. The property is
25 currently used as an elderly development center, and

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1 it will be continued in that use. The neighborhood
2 supports it. It provides a service to the
3 neighborhood.

4 The current use is also consistent with
5 the National Park Service transfer of jurisdiction.
6 We do not impact the neighborhood adversely. Parking
7 is not a real problem here, given the fact that 30th
8 Street does have on-street parking, and there are no
9 other activities along this course of 30th Street that
10 need that on-street parking. So, some of the
11 residents who do visit, some of the visitors can park
12 on 30th Street.

13 There has been an issue which is not in
14 your submission which came up at the neighborhood
15 meetings ,and that is that there is a cut-through
16 tendency of people during rush hour not wanting to
17 wait at the light to turn onto Alabama Avenue, and
18 instead like to cut through the Center here. We feel
19 that that's probably not in the interest of the
20 seniors that are using the Center.

21 The solution has been suggested, and we
22 will probably end up doing some, if this is acceptable
23 to you, too, is to put a chain across the entrance to
24 keep cars from cutting through there only at the
25 morning rush hour before the seniors arrive at the

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1 Center.

2 CHAIRPERSON GRIFFIS: Oh, I see. So, that
3 wouldn't impact anybody that would need to or be
4 required to? Who would be responsible for putting
5 the chain up and taking it down?

6 MS. PACE: The Center.

7 CHAIRPERSON GRIFFIS: So the staff people
8 in the Center.

9 MS. PACE: The Center staff, the director,
10 yes.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. NOVITSKE: So, we feel that we've met
13 the requirements and ask for a special exception.
14 Thank you.

15 CHAIRPERSON GRIFFIS: Thank you very much.
16 Questions from the Board?

17 MEMBER ZAIDAIN: I have a question and
18 part of a lead to a clarification. You gentlemen met
19 with NCPC about this project.

20 MR. NOVITSKE: We had a preliminary
21 meeting at the office, and --

22 MEMBER ZAIDAIN: I think I was in that
23 meeting, wasn't I?

24 MR. NOVITSKE: Yes.

25 MEMBER ZAIDAIN: Yes. Sorry. As I was

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1 looking at the project here, bells were ringing. So,
2 I think I should recuse myself from this case.

3 CHAIRPERSON GRIFFIS: Okay. I think that
4 would probably be appropriate, as you've reviewed it
5 under another circumstances. It won't be a problem in
6 continuing with four, though, and you're welcome to
7 stay with us, Mr. Zaidain.

8 Very well. Any other questions from the
9 Board, or clarifications? Let's move on then and go
10 to government reports and go to the Office of Planning
11 and have them note their report.

12 MEMBER MILLER: Good afternoon, Mr. Chair,
13 members of the Board. The Office of Planning again
14 stands in support of this application. I would like
15 to add that there is also a very heavy support in the
16 comprehensive plan for the Center specifically. I
17 just wanted to mention it.

18 CHAIRPERSON GRIFFIS: Yes, and excellent
19 point to highlight in your report, which I also noted.
20 You noted that the Center, it primarily operated nine
21 to four, is that correct?

22 MS. PACE: Yes.

23 CHAIRPERSON GRIFFIS: Okay. Any other
24 questions from the Board regarding the Office of
25 Planning's report? Does the Applicant have any cross

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1 examination of the Office of Planning?

2 MS. PACE: No.

3 CHAIRPERSON GRIFFIS: Very well. Thank
4 you very much.

5 We also, again, have a report from DDOT
6 that supports the application. It is Exhibit No. 25.

7 We also have the report from DHS, Exhibit No. 22,
8 also in support, each of which were requirements of
9 the regulations to be referred to.

10 ANC7-B which unanimously recommended
11 approval, is ANC7-B represented? Very well, we'll
12 take note of the revised report with the signature of
13 the chairperson.

14 We also had -- didn't this come in today?

15 Oh, I see. Exhibit No. 27 is the revised report,
16 which is now in the record. I believe it was received
17 on the 22nd of September.

18 Again noting, there is submissions in the
19 record in support. Fascinating, okay. Okay, that's
20 all the other attendant agencies.

21 As far as anyone here to give testimony
22 either in support or in opposition to this application
23 at this time, are you ready to give testimony?

24 MS. PRYDE: Good afternoon, ladies and
25 gentlemen. My name is Delores Duncan Pryde. I reside

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1 at 2926 W Street, S.E., Washington, D.C., 20020. I
2 have been a member of the Washington Senior Wellness
3 Center since it was in the shopping center in Fairfax
4 Village in Southeast D.C.

5 I live approximately three and a-half
6 blocks from the Center, and I've lived in that home
7 since 1968. It was a great idea when the current
8 wellness center was constructed, and the addition is a
9 great programmatic response to the needs of our
10 seniors now.

11 The addition will serve by enlarging the
12 fitness space, freeing up space for other core
13 activities, and also providing a room where the
14 gentlemen can concentrate on their activities and
15 their interests. Studies show that there is a need,
16 and the men's parlor will become a welcome addition to
17 our existing facility. Of course, the ladies can
18 enjoy the space when requested.

19 We have been assured that the construction
20 site will be fenced, no interruption of utilities, and
21 that our programs can go on as before.

22 Being an active member has enabled me to
23 avail myself of nutrition and fitness classes in
24 addition to high blood pressure screening, diabetes,
25 and arthritis dialogues, and arts and crafts. Other

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1 members can crochet, quilt, practice Tai Chi, line
2 dancing, and play games. We all enjoy fellowship in
3 our inner cafe. Can't you see the need for the
4 expansion?

5 Of course, we would love to have had
6 additional parking, but we understand why that is not
7 practicable. As we continue to choose wellness over
8 wheelchairs, thank you for the opportunity to speak in
9 favor of a needed and worthwhile project.

10 May I say they were talking about noise
11 and nuisance not long ago, and I would reiterate that
12 need always outweighs nuisance and noise. I was there
13 when the current wellness center was constructed and
14 also there when the Good Hope Marketplace was
15 constructed. So, we're okay.

16 Thank you very much.

17 CHAIRPERSON GRIFFIS: Thank you very much,
18 and very well said.

19 Any other questions to the Board? Yes?

20 VICE CHAIRPERSON HOOD: I just wanted to
21 thank Ms. Pryde for clarifying something I wanted to
22 ask, but I was a little hesitant because it wasn't in
23 our purview. I was just wondering how women didn't
24 have a room but they can use the men's parlor when
25 requested. Thank you.

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1 MS. PRYDE: Well, I don't think we can
2 segregate.

3 VICE CHAIRPERSON HOOD: Right.

4 MS. PRYDE: I don't think so.

5 VICE CHAIRPERSON HOOD: Okay. I was
6 sitting here thinking that, but I said well, I'll just
7 leave it alone.

8 MS. PRYDE: I don't think we can
9 segregate, so I think if we want to use say the pool
10 table, I think maybe if they asked us to come and
11 shoot a game of pool, I think we'll be able to.

12 VICE CHAIRPERSON HOOD: Sounds good.

13 MS. PACE: Women do play pool also, but
14 when it comes to that personal dialogue, that's where
15 you need a separate space. At our Congress Heights
16 facility, the men open it up to the women on an as
17 needed or scheduled basis. They share.

18 CHAIRPERSON GRIFFIS: The men still have
19 to clean up, though, right?

20 MS. PACE: Yes.

21 CHAIRPERSON GRIFFIS: Okay. It sounds
22 like all ages could enjoy a center like this.

23 MS. PACE: Oh, you have to come see it.
24 They have a barber chair, barber pole. They own --
25 well, I'll let you come see it.

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1 CHAIRPERSON GRIFFIS: Indeed.

2 MS. PACE: TV, all kinds of, you know,
3 other attachments and stuff, to make them welcome and
4 engaged, and they do come.

5 CHAIRPERSON GRIFFIS: Great. Thank you
6 very much, and I must say that you are all commended,
7 and those that were here previously, for putting
8 together good applications. Most importantly, without
9 noting any opposition coming in, it's clear that the
10 functioning of the facility, all of it is tied
11 together very well, which is very important, of
12 course, for any sort of use. It's astounding how many
13 applications this Board sees for specific uses that
14 are often not in favor with the surrounding area, and
15 that always becomes a very practical difficulty for us
16 in trying to rationally judge how it might comply or
17 not comply with the regulations.

18 So, all that being said, I think it's been
19 very well done. Is there anything further from the
20 Board that we need questions, clarifications?

21 Then, are there any closing remarks? Yes,
22 we ought to hear from Mr. Green, after all. He's been
23 here all day. If you have anything to say. Not
24 required, of course, but we appreciate you being here.

25 MR. GREEN: Only my full support of the

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1 entire project.

2 CHAIRPERSON GRIFFIS: Excellent. Thank
3 you.

4 MS. PACE: The vote for 17053.

5 CHAIRPERSON GRIFFIS: I'm sorry?

6 MS. PACE: The vote for 17053.

7 CHAIRPERSON GRIFFIS: Yes. No, I know
8 what I need to do.

9 MS. PACE: Okay.

10 CHAIRPERSON GRIFFIS: I'm trying to get a
11 couple of other things cleared up here before we move
12 onto that. Indeed. It's nice to have a little
13 leisurely afternoon after the morning we've had.

14 I would then move for approval of
15 Application 17053 for the special exception also to
16 allow an addition and renovation of the Senior
17 Wellness Center under Section 205 at the premises 3001
18 Alabama Avenue, S.E., and would ask for a second.

19 VICE CHAIRPERSON ETHERLY: Second, Mr.
20 Chair.

21 CHAIRPERSON GRIFFIS: Thank you very much,
22 Mr. Etherly. It goes without saying, and I also think
23 there's great reliance on this Board on the Office of
24 Planning's report in terms of further iteration of the
25 tests and how this application meets the special

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1 exception test for their addition, and for any sort of
2 traffic management element, as one might say, in terms
3 of cutting off the people that are a little too
4 impatient to wait for a traffic light.

5 I do believe it causes a very dangerous
6 situation, not only for employees that might be there
7 opening up the Center or anyone else that might be on
8 site, but also for the traffic coming and going off of
9 Alabama, that traffic light there for a certain
10 purpose. Of course, that's out of our jurisdiction,
11 but I think it's excellent that you're looking to
12 address the situation.

13 That being said, others? Any other
14 comments on that? Then we have a motion before us.
15 It has been seconded. I'd ask for all those in favor
16 signify by saying aye.

17 (Chorus of ayes.)

18 CHAIRPERSON GRIFFIS: And opposed.

19 (No response.)

20 MR. MOY: The staff would record the vote
21 as 4-0-1 on the motion of the Chairman, seconded by
22 Mr. Etherly, the Vice Chair, Ms. Miller and Mr. Hood
23 voting to approve, one Board member recused from the
24 case, not present, not voting.

25 CHAIRPERSON GRIFFIS: Good. Actually, the

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1 summary order we can issue, I don't see any difficulty
2 with that. We can just reflect the fact that Mr.
3 Zaidain actually recused himself from this case and
4 therefore was not voting.

5 That being said, I thank you all very
6 much. We appreciate your patience and being down here
7 this afternoon, and why it went so expeditiously.

8 MS. PACE: Thank you very much.

9 CHAIRPERSON GRIFFIS: We're going to just
10 take ten minutes and let you guys move out, and then
11 we can set up for the next application, and we'll call
12 that. Now we'll go find Mr. Zaidain and make sure he
13 hasn't taken off for the rest of the afternoon.

14 MS. PACE: Thank you.

15 (Whereupon, the foregoing matter
16 went off the record at 2:56 p.m.
17 and went back on the record at
18 3:16 p.m.)

19 CHAIRPERSON GRIFFIS: Okay, let's resume.
20 Yes, Ms. Bailey, when you're ready.

21 SECRETARY BAILEY: Mr. Chairman and
22 members of the Board, the last case of the day is
23 Application No. 17058 of the Government of the
24 District of Columbia Fire Department, and it's
25 pursuant to 11 DCMR 3103.2 for a variance from the use

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1 provisions under Subsection 320.3, a variance from the
2 lot occupancy requirements under Section 403, and a
3 variance from the rear yard requirements under Section
4 404, to allow the construction of a Ready Rescue
5 Apparatus Storage Facility in the R-3 District at
6 premises 915 Gallatin Street, N.W. The property is
7 located in Square 3002 on Lot 64.

8 Please stand, all those persons who will
9 be testifying, to take the oath. Please stand, and
10 please raise your right hand. Do you solemnly swear
11 or affirm that the testimony you're about to give in
12 this proceeding will be the truth, the whole truth,
13 and nothing but the truth? Thank you.

14 Mr. Chairman, very briefly, we did not
15 have the affidavit of posting until just a few moments
16 ago. I was informed that the property was posted, but
17 I do have a copy that I can pass to the Board at this
18 time, and perhaps the Applicant can give a little
19 better explanation than I.

20 CHAIRPERSON GRIFFIS: Okay. Why don't we
21 get just a brief explanation of that submission, and
22 we'll just put that into the record. Thank you.

23 If you wouldn't mind turning on your
24 microphone, and you can just give me your name and
25 address for the record.

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1 MR. ZIVIC: My name is Bruce Zivic. I'm
2 with Zivic & Hurdle Architects. Mr. Chairman, it was
3 my responsibility to get that affidavit in. We did
4 post the placard out on the property on August 14 at
5 around 11:00. We did send in the affidavit signed and
6 sealed. We had some problems with the original
7 photographs, and that's why we didn't do it earlier.
8 We did send it certified mail on the 17th. We checked
9 this morning for that certification, and come to learn
10 that it wasn't delivered until yesterday afternoon
11 around 2:30 and was signed for by Mr. A. Boling, who
12 I'm not sure if he's on your staff or not, but signed
13 for it.

14 We did bring a copy of the affidavit as
15 well as the photographs.

16 CHAIRPERSON GRIFFIS: Okay. Well, clearly
17 the most important piece is that it's posted properly.
18 That's one of the most important announcements. I
19 think we can move on.

20 Let's go -- let me just turn it over to
21 you. You can outline your case presentation or
22 whoever is -- why don't you introduce yourself also?

23 MR. HERLIHY: Good afternoon. I'm Thomas
24 Herlihy, Deputy Fire Chief, District of Columbia Fire
25 Department. I'm here this afternoon to request a

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1 zoning variance for 915 Gallatin Street, N.W., so that
2 the Fire Department can build a much needed Ready
3 Reserve Facility.

4 When built, this Ready Reserve Facility
5 will be used to store fully stocked and equipped fire
6 engines, ladder trucks, ambulances, and other types of
7 specialized fire and rescue equipment. This stored
8 equipment will be immediately available and will
9 provide the department with an enhanced ability to
10 rapidly deploy supplemental resources as additional
11 staffing becomes available, and large scale emergency
12 incidents and other periods of peak demand.

13 Events such as 9-11, the World Trade
14 Organization protest, and Hurricane Isabel this past
15 week clearly demonstrate that the Fire and EMS
16 Department must be able to quickly deploy additional
17 resources in periods of high demand. This Ready
18 Reserve Facility is a key component of the
19 department's emergency response plan, and the
20 department looks forward for your support of this
21 important project.

22 With me today is Mr. Bruce Zivic, the
23 architect of the proposed building, and he will
24 present the technical justification of our request for
25 a use and area variance.

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1 CHAIRPERSON GRIFFIS: Good, and of course
2 you know, the use variance is the highest test that we
3 have for a variance. So, we'll be going through very
4 specific tests for that. But, be that as it may,
5 let's continue.

6 MR. ZIVIC: Mr. Chairman, Bruce Zivic
7 again. I do have a brief outline here, not one to
8 share, unfortunately, with the Board, but I will -- is
9 there a time limit that you have for this presentation
10 so I just don't gab on?

11 CHAIRPERSON GRIFFIS: Well, we'd like to
12 get home reasonably for dinner.

13 MR. ZIVIC: Okay, I won't -- if you want
14 me to slow down and there are some other things that
15 need some clarification, I'll be happy to do it.

16 CHAIRPERSON GRIFFIS: Take your time. I
17 mean, frankly, this is the last case in the afternoon.
18 We don't often find ourselves at 3:30 in the
19 afternoon on the last case, but I think you have ample
20 time.

21 MR. ZIVIC: Thank you. A couple of
22 salient events that have happened. Up to this point
23 on July 14, we had submitted our variance request to
24 the Zoning Board. Prior to that, we had met with the
25 staff and discussed this application so that we could

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1 present ourselves reasonably.

2 On August 14, we had posted the placard on
3 the property, right on the front sign there, and had
4 been due diligence, reviewing that every couple of
5 days to make sure that it's up there and it would
6 stand the entire time without replacement.

7 On September 16, just last week, we had
8 met with ANC4-D to review our application. The
9 presentation I'm bringing here this afternoon is that
10 presentation we made to ANC4. In essence, it's broken
11 into two parts, the existing property and the proposed
12 project we're putting on.

13 The site -- does this show any better with
14 the lights out, or is this fine with everybody?

15 CHAIRPERSON GRIFFIS: So far it's okay. I
16 think we can turn off the perimeter light. Oh, there
17 it is.

18 MR. ZIVIC: Georgia Avenue runs north-
19 south in this exit, and Gallatin Street intersects and
20 runs perpendicular. Existing Engine Company 24 sets
21 on this piece of property here that was built around
22 1995. Also, there are, and these areas in here I
23 believe are zoned C-2-A.

24 The site in question is right behind
25 Engine Company 24. Around the perimeter of the site

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1 are townhouses to the north and to the east, as well
2 as some apartment buildings to the south, and this is
3 the Verizon building, also to the south.

4 The site sits itself right in behind
5 Engine Company 24, and is surrounded by a public
6 alleyway that goes all the way around the perimeter
7 and then continues on down this way and out.

8 I've got some existing shots with the key
9 plan here. This is Engine Company 24 with the parking
10 lot associated, and this is our proposed facility,
11 which goes wall to wall, in essence, on this site. It
12 uses a reference point. So, from the south looking
13 northeast, there is a view of the rear of those
14 townhouses. You can see that there are some cars and
15 vehicles that are often stored and repaired out here,
16 much to the dismay of the neighborhood, from my
17 understanding. There are also some other townhouses
18 up along here.

19 This is dead center in the front of the
20 site looking all the way back. Again, this is
21 property that has never been developed according to
22 records that we've been able to locate. There's no
23 structure that's ever been on this site. Currently
24 it's used by the Fire Department for training on
25 putting out car fires and such.

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1 Again, another view looking back at the
2 Verizon building, and Engine Company 24 from the rear
3 elevation. Looking back the alleyway again, a view of
4 the townhouses that surround the property to the east
5 side.

6 This is a photograph of Engine Company 24
7 as it was developed in the mid-90's, showing the
8 enhancements it has made to the street, not only from
9 being a piece of architecture, but you can see the
10 landscaping is, I think, enhanced the neighborhood.

11 CHAIRPERSON GRIFFIS: Were you the
12 architect on that?

13 MR. ZIVIC: No.

14 CHAIRPERSON GRIFFIS: I see.

15 MR. ZIVIC: Unfortunately. I'm not sure
16 what they were thinking at the time.

17 A site plan here that we've drawn up again
18 with Gallatin Street and Georgia Avenue being the
19 reference points. Engine Company 24, the existing
20 building, as well as the parking in the rear.

21 The facility that we're proposing will be
22 pretty much wall to wall within that site. If you
23 remember, there were some -- a fence that surrounded
24 the perimeter on the property line. Our facility
25 plans on doing that on both sides as well as the

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1 front, and with a little bit of additional room left
2 over in the rear because it's just the way that the
3 structural system worked out here.

4 The proposed use of this facility, as
5 Chief Herlihy had mentioned, was to use this as
6 apparatus storage. What we've got in the front here
7 are in essence two long bays that could quite easily
8 house a ladder truck as well as a pumper truck. So,
9 within this bay here, there could be those four
10 vehicles. For instance, two ladders and two pumpers.

11 So, you get an idea of some of the scale that we're
12 talking about here. This is not a working fire
13 station. This is a ready rescue facility, so that
14 we're not talking about quick alarms here. As Chief
15 Herlihy had mentioned, this is only in the event of an
16 emergency or swapping out vehicles that need to come
17 out of storage.

18 So, the longer trucks will be out in the
19 front here to take advantage of the broad radius we
20 can use for turning out of here. On the alley side
21 here, there is also two doors to each bay that will
22 allow for smaller vehicles like EMS vehicles, smaller
23 response vehicles can be stored back in here.

24 Again, this is just an enlargement of that
25 same floor plan. There is, due to the almost

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1 imperceptible as you're standing there grade on the
2 property, nevertheless, there is a fold in the slab
3 here that will allow the larger vehicles to stay on
4 this lower slab, and about four foot up, we'll have
5 vehicle storage for smaller apparatus.

6 Included is a mezzanine area that will
7 house ancillary sort of gear and equipment for the
8 support of these fire stations, whether they be a
9 smaller thing like axes, emergency gear, anything, and
10 some archive records will be maintained up in this
11 mezzanine storage area.

12 This is a view, somewhat of a
13 comprehensive view standing along Gallatin Street with
14 the existing Engine Company 24, very similar to that
15 photograph that I had shown you earlier. The facility
16 that we're designing is in essence the sister facility
17 to that building. We, as a gesture to the
18 neighborhood and trying to be good neighbors here,
19 we've embraced the design concepts of Engine Company
20 24 and incorporated them into the new structure.

21 A little bit of a closer look at that, you
22 can see that -- I'm not sure if you can recollect some
23 of the detailing that was part of Engine Company 24,
24 we've recaptured that, same colors, similar materials.

25 Similar roof materials will be used between those two

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1 facilities.

2 Rear elevation, a relatively simple metal
3 siding. What sort of looks incorrect here is that
4 this roof, this pop-up for the mezzanine will be much
5 more towards the front, as this demonstrates here.

6 On the side elevations, we did try to,
7 understanding that we're viewing those townhouses, we
8 tried to make at least some gestures to get some
9 architectural articulation in here. They are actually
10 relatively modest score lines with changes of color in
11 the EIFS material and such to make it a reasonable
12 presentation to the adjacent neighborhood.

13 This is the same elevation. It will be
14 viewing the fire station, and those three doors where
15 we said where the smaller vehicles will gain access to
16 the building. Then just a comprehensive overall plan
17 of just all of the elevations at one time.

18 That pretty much ends the slide
19 presentation portion of this.

20 For the use variance in this, it is
21 currently zoned at R3, and I don't know if we need to
22 go back to the site plan or not, but the site is 100
23 foot wide by 165 foot deep. R3 requires minimum
24 zoning widths for a residential development to be 20
25 foot wide. What we would end up with, if it were to

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1 be developed as allowed, would be 20-foot wide lots by
2 160 foot deep.

3 Another approach might be to turn those
4 lots so that in the 165 foot length, we divide it into
5 20-foot wide lots, and we would have 100 foot deep
6 lots that were 20 foot wide, and we could do eight of
7 them. However, the problem is is now that you've got
8 a situation where the front of these townhouses are
9 going to either view the rear of the fire station or
10 they're going to view the rear of those other
11 townhouses. Neither one of those seemed to be very
12 attractive alternatives.

13 CHAIRPERSON GRIFFIS: You'd also be
14 creating seven alley lots.

15 MR. ZIVIC: Right. I mean, we couldn't
16 see any, you know, for us to just lay it out --

17 CHAIRPERSON GRIFFIS: Which actually in
18 the R3, the zoning prohibits development of
19 residential and alley lots.

20 MR. ZIVIC: Well, this is great, so this
21 works to our advantage.

22 CHAIRPERSON GRIFFIS: Yes.

23 MR. ZIVIC: The other thing is that there
24 may be some contaminated soils within this property.
25 There are environmental assessment, just going to the

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1 first level of that, there were some recorded
2 underground tanks in and around the vicinity, although
3 there has been no record of anything on the site. If
4 there was any contaminated soil there, and quite
5 frankly, there's nothing there that leads us to
6 believe that there are. We have done some soil
7 borings on site, and you know, the most simplest of
8 evaluations, that is, smelling the dirt as it comes
9 out of the ground, there was no petroleum odor that we
10 could detect.

11 So, we are relatively sure that there is
12 no contaminated soil here. However, if there were
13 some, as there are on other fire station sites, there
14 is a fund that would eliminate that material and get
15 it out of there.

16 In terms of being an exceptional undue
17 hardship to the owner, and then again, the owner in
18 this particular case are the people of the District.
19 I mean, this isn't a private ownership. This is
20 District property, and the development of this really
21 is going to be for the people of D.C.

22 There is the opportunity to locate vital
23 emergency equipment at this location, and it can be
24 manned relatively easily. One of the nice things
25 about this site is not only is it already owned by the

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1 city, but being in the proximity it is to Engine
2 Company 24, it is not, from my understanding, an
3 operational extension of 24, only so much that
4 somebody from Engine 24 can maintain the one office
5 that we have within this facility, on a very
6 infrequent basis. For the most part, this facility is
7 going to be vacated and pretty quiet.

8 We don't believe that this is going to
9 cause any substantial detriment to the public good.
10 There is, as I just mentioned, a very infrequent use
11 of this property.

12 It will only be used when vehicles need to
13 be retrieved. There's not going to be -- only in the
14 most unusual circumstances will it be used, like in a
15 9-11 event or with Isabel where there will be a lot of
16 firefighters that will show up and then start
17 extracting equipment from the facility. In between
18 those times, it will be very infrequent, only when
19 they need to swap out vehicles.

20 So, therefore, the traffic generation in
21 that area, we believe, is going to be low. It should
22 not increase traffic by any additional personnel for
23 the use of this facility. That is, that again, being
24 an extension operationally from Engine Company 24.
25 Whoever is stationed at 24 will be a person who will

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1 be checking into this building, so the parking is
2 already taken care of at Engine Company 24.

3 Noise levels are going to be very low.
4 Again, not being a fire station, there's again, only
5 in the most infrequent of events where vehicles are
6 coming out with the alarms on. They will be taken in
7 and out of there in a non-emergency type of situation,
8 and again, this is not a shop or a maintenance
9 facility, so we're not anticipating even changing
10 fluids within this facility. So, there will be no air
11 compressors.

12 Actually, there's not even going to be any
13 air conditioning equipment in here for just one small
14 little through wall unit for the one office that we're
15 going to have within the facility. So, the noise
16 level will be real low.

17 The lighting provided here_is going to be
18 security lighting is going to be required on this
19 facility, and the type of fixture that we're proposing
20 will be a gooseneck type that will reflect back onto
21 the building. So, it will provide some indirect
22 lighting onto the building. It will not be shooting
23 out and spilling into the neighborhood, the adjacent
24 neighbors.

25 The height of the facility is a little bit

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1 over the -- it is, the peak of the roof is over the
2 40-foot limit. However, there is a ceiling within
3 this mezzanine level at a 36-foot height. So, our
4 height, we do meet the height requirements of being
5 within the established criteria for this property.

6 We think that the design does enhance the
7 neighborhood. We, again, are trying to extend Engine
8 Company 24, which we thought was a good enhancement to
9 the community, and the local ANC had agreed with that
10 particular assessment.

11 Should I continue with the area variance
12 requirements, or should I stop for some discussion
13 that you might have on use variance?

14 CHAIRPERSON GRIFFIS: Let's hear it all,
15 and then we can get into all the questions.

16 MR. ZIVIC: For the area variance, again,
17 the unique property configuration, we talked about
18 that little bit earlier, of how it's going to be
19 difficult to develop that as an R-3. R-3 will only
20 allow a (inaudible) development of that site, and
21 under those guidelines.

22 However, we are going to cover 92 percent
23 of the site, only because we need that critical mass
24 to, number one, make it economically feasible to make
25 this facility efficient, but it's what we need in

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1 terms of the bay layout for the type of equipment that
2 we're storing. I mean, it's going to be pretty much
3 wall to wall fire apparatus and like safety equipment.

4 The exceptional condition of the property
5 that will result in peculiar exceptional or practical
6 difficulties or exceptional hardship or undue hardship
7 upon owner of the property, again, we're trying to
8 maximize the amount of storage that we can do on here.

9 I mean, if everybody probably recognizes just in
10 their own darn basements, is that you just don't ever
11 seem to have enough vehicles.

12 So, the fire station will be able to
13 accommodate all of the excess equipment that they
14 currently have, and will have additional space for
15 equipment that is unforeseen to come in in the future.

16 Again, addressing the causing a
17 substantial detriment to the public good, I think we
18 had already addressed all those issues regarding the
19 traffic flow, noise, lighting, design of the facility.

20 As I said earlier, we had made a
21 presentation to ANC4-D on the 16th of September, and
22 they had passed a resolution adopting, and I don't
23 believe there were any nays within that vote. So, I
24 believe it was unanimous as to their support for this
25 facility.

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1 So, in conclusion, we believe that we have
2 met the requirements and the tests for both the use
3 and the area variances as outlined. It really, this
4 project in this site, in this location, being adjacent
5 to Engine Company 24 makes a lot of economic sense for
6 the District, and in particular the Fire Department,
7 for them to develop this site.

8 We think that by not changing from an R-3
9 to a C-2-A or for this particular use here, in many
10 aspects, we think that this will be quieter than an R-
11 3. We will not be generating any traffic outside of
12 the occasional trucks coming in and out of here, which
13 are very infrequent.

14 Noise levels should be low. We're not
15 even going to have one residential unit. The one
16 residential unit will probably be here toward the
17 firemen's side of this thing. So, mechanical
18 equipment noise will be low. It will act as a buffer,
19 in essence, from I'm not sure if it's a visual buffer
20 from Engine Company 24 replacing it with another type
21 of structure very similar, but it will act as a noise
22 buffer.

23 I mean, there has been some concern in the
24 neighborhood as to the operation of Engine Company 24,
25 as mentioned at the ANC meeting, that the speaker that

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1 they have on the rear of 24 for the property, for the
2 speaker for the back of the property for the firemen
3 to hear what's going on, actually is bothersome to the
4 neighbors. We'd like to believe that this will not
5 only has the Fire Department promised to turn that
6 speaker down a little bit, but we think that we'll be
7 able to even help break that noise up a little bit
8 more with this building in the way.

9 So, we believe it's going to be low impact
10 on the site, and we have ANC support.

11 CHAIRPERSON GRIFFIS: Excellent. Thank
12 you very much. I think -- well, I would say you're
13 absolutely correct in terms of the sound being
14 disturbed in transmission over to the townhouses. I
15 mean, clearly if it hits that surface parking lot
16 that's existing, it's going to bounce all over the
17 place in the back of that.

18 A couple of quick things to note, and I
19 think we'll get to, but the Office of Planning's
20 report is exceptional in laying this out, as is based
21 on your own submissions. I'm particularly compelled
22 with the uniqueness of the adjacency of the Company
23 24. Not only do you have the uniqueness in the site
24 size, which as you've stated, doesn't conform with an
25 R-3 residential development or use.

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1 When you put the two together, clearly
2 there is an importance to some sort of adjacency if
3 not to this company but to some other company. So, as
4 I say, I'm particularly compelled with that, and it
5 would seem that there's a great hardship if this
6 couldn't be developed somewhere, and particular if it
7 couldn't be developed here.

8 The brick base that you're showing on the
9 elevations, that continues all the way around, is that
10 correct?

11 MR. ZIVIC: Correct. I lied. There is a
12 small wainscot that's provided on the rear of the
13 facility, and the brick that we're using within that
14 wainscot will match the brick of Engine Company 24.

15 CHAIRPERSON GRIFFIS: At the rear, okay.

16 MR. ZIVIC: Yes, so you're right. It does
17 go around the perimeter of the building.

18 CHAIRPERSON GRIFFIS: And you're not
19 concerned with the, as you've labeled it, the
20 synthetic stucco being at a touchable level?

21 MR. ZIVIC: No, there is a material that
22 you can put back there. It's a panzer material that's
23 a little bit heavier than your average EIFS, or
24 synthetic stucco, that will help with that.

25 CHAIRPERSON GRIFFIS: Good, and the front

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1 door is the main doors? What are they made out of?

2 MR. ZIVIC: These are going to be overhead
3 wood doors.

4 CHAIRPERSON GRIFFIS: Yes.

5 MR. ZIVIC: Substantial size.

6 CHAIRPERSON GRIFFIS: Yes.

7 MR. ZIVIC: But in essence, they are
8 sectional type of doors. They're going to be -- you
9 have the windows provided, as you often see, but we
10 will also put some trim on it, again, to be
11 sympathetic towards the other building.

12 CHAIRPERSON GRIFFIS: Right, and it seems
13 to be in context with the existing station. Okay.
14 Any other questions? Mr. Etherly, I know you had
15 something.

16 VICE CHAIRPERSON ETHERLY: I'll defer to
17 Mr. Zaidain for a moment when I get my thoughts
18 together, Mr. Chair.

19 CHAIRPERSON GRIFFIS: Okay.

20 MEMBER ZAIDAIN: I just had a question out
21 of curiosity. You said that the Company 24 Fire
22 Station was built in '95?

23 MR. ZIVIC: Right.

24 MEMBER ZAIDAIN: Was that properly
25 permitted?

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1 MR. ZIVIC: I can't address that.

2 MEMBER ZAIDAIN: Because I'm asking
3 because I believe it was '90 or '91 is when counsel
4 said that, you know, District operations have to be --

5 CHAIRPERSON GRIFFIS: Come under zoning.

6 MEMBER ZAIDAIN: Come under zoning, '91,
7 and I mean, I think the issue before us is to make
8 this fit, and I'm just wondering if the fire station
9 is in a similar situation. Should we not be
10 addressing that as well?

11 CHAIRPERSON GRIFFIS: It's an interesting
12 question. I'm not sure we can get the answer to it.
13 I seem to remember when that was done. I thought it -
14 - well, I don't know.

15 MEMBER ZAIDAIN: Because the R-3 doesn't
16 allow for the fire station either. I mean, this is
17 the same, we're in the same category here. So, I
18 can't imagine, unless there was a use variance for
19 that station as well.

20 MR. ZIVIC: The only history I can offer
21 for that, and it's hearsay on my part, is that
22 apparently when Metro was going through, one of the
23 stations, the exit for Metro was going to be where
24 there was a fire station. Metro had agreed to
25 purchase this property and develop this fire station.

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1 CHAIRPERSON GRIFFIS: Build it, correct.

2 MEMBER ZAIDAIN: Oh, okay. Interesting.

3 CHAIRPERSON GRIFFIS: That's a fascinating
4 question.

5 MEMBER ZAIDAIN: That's all I have.

6 CHAIRPERSON GRIFFIS: You know, it leads
7 to the other point. When it was decided for the
8 District that the government buildings would come
9 under compliant of permitting and zoning, and OP,
10 which they will illuminate even further, but they
11 brought it back to my attention at least, that there
12 is actually no use provision in the zoning for a fire
13 house or emergency preparedness. So, we're kind of
14 dealing with a use variance for a use that doesn't
15 exist in our own classifications.

16 MEMBER ZAIDAIN: Right.

17 CHAIRPERSON GRIFFIS: You know, what will
18 be interesting as this develops with the Zoning
19 Commission is whether fire houses are of the same
20 situation as schools that are --

21 MEMBER ZAIDAIN: Allowed by special
22 exception.

23 CHAIRPERSON GRIFFIS: Compatible to
24 residential zones. It seems to make some sense that
25 you would put fire houses in and among some tense

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1 residential area.

2 MEMBER ZAIDAIN: Sure.

3 CHAIRPERSON GRIFFIS: That's more
4 theoretical than anything else at this point.

5 MEMBER ZAIDAIN: Well, but I think I see
6 your point in terms of the tests we have to look at
7 for uniqueness.

8 CHAIRPERSON GRIFFIS: Right.

9 MEMBER ZAIDAIN: I mean, obviously this is
10 a use that is required in the District as a provision
11 of public services. That is not accounting for in the
12 zoning districts, period, not matter where they're
13 going to go.

14 CHAIRPERSON GRIFFIS: Right.

15 MEMBER ZAIDAIN: So, I mean, if that's not
16 a practical difficulty and a uniqueness
17 characteristic, then I don't know what is.

18 CHAIRPERSON GRIFFIS: Yes, indeed.

19 VICE CHAIRPERSON ETHERLY: Thank you very
20 much, Mr. Chair. Mr. Zivic, if you could, I believe
21 you had a number of photographs at the earlier portion
22 of the presentation I wanted to kind of come back to,
23 if I could, for a moment. I believe they're in our
24 exhibit as Exhibit No. 4. It's a series of ten
25 photographs.

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1 MR. ZIVIC: Those are the existing sites?

2 VICE CHAIRPERSON ETHERLY: Yes, sir.

3 MR. ZIVIC: The existing photographs?

4 VICE CHAIRPERSON ETHERLY: Yes, sir.

5 MR. ZIVIC: I'm sorry this is taking so
6 long.

7 VICE CHAIRPERSON ETHERLY: That's okay.
8 The presentation was very helpful.

9 MR. ZIVIC: Was there one particular
10 photograph that you were interested in?

11 VICE CHAIRPERSON ETHERLY: It was in
12 particular, actually, if you have one of the overhead,
13 if you have the overhead photo of the actual site.

14 MR. ZIVIC: Okay. It's one of the first
15 ones.

16 VICE CHAIRPERSON ETHERLY: Thank you.
17 That would be excellent. One of the things I just
18 wanted to clarify, as we talk about practical
19 difficulties, in terms of the use of the site for the
20 residential use that it's zoned for, I just wanted to
21 be sure I understood. If there was an effort made to
22 incorporate the proposed facility into the existing
23 Engine Company 24 footprint, so to speak, there was
24 discussion -- exactly. There was a discussion about
25 the need, and I'll make use of my laser pen as well

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1 here, so hopefully not to confuse anybody.

2 MR. ZIVIC: Okay.

3 VICE CHAIRPERSON ETHERLY: There was a
4 discussion about you would have to close the public
5 access points for this public alley. Is that correct?

6 MR. ZIVIC: Correct.

7 VICE CHAIRPERSON ETHERLY: Okay, and of
8 course the concern there on the part of the fire and
9 EMS would be the time it would take to go through that
10 process.

11 MR. ZIVIC: Right.

12 VICE CHAIRPERSON ETHERLY: Okay. I just
13 wanted to be sure I understood that argument
14 correctly.

15 MR. ZIVIC: At the ANC meeting, there was
16 one person who spoke to that alley, whether it would
17 remain open or not. We had explained to them that
18 under this proposal, that that alley would, and we're
19 talking this particular one, would remain open.

20 VICE CHAIRPERSON ETHERLY: Okay, so
21 presumably if you were to get approval for this
22 application, that alley would still remain open to the
23 public access?

24 MR. ZIVIC: Correct.

25 VICE CHAIRPERSON ETHERLY: Okay. Second

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1 question, and my final question, with respect to the
2 actual building, you did know that you do have some
3 external sound speakers on your existing facility here
4 to assist in terms of alerting personnel to any needs,
5 what have you, if they're on this site. Do you have
6 any plans to put any similar sound equipment on the
7 new proposed building? Will there be a need for that
8 type of amplification, either exterior or interior?

9 MR. HERLIHY: No, there wouldn't.

10 VICE CHAIRPERSON ETHERLY: Okay. One
11 final question, and this actually is it. Can you give
12 an indication of -- you talked about when you -- I'm
13 trying to phrase this in the correct way. With the
14 proposed building, you would be able to get two of the
15 larger vehicles onto that first floor, a pumper truck
16 and/or an additional ladder truck.

17 MR. ZIVIC: ACTually, substantially more.

18 MR. HERLIHY: I have it here. From the
19 front view, we could get four ladder trucks and eight
20 pumper trucks, eight fire engines.

21 VICE CHAIRPERSON ETHERLY: Okay, so that
22 would be in this portion here?

23 MR. HERLIHY: Right.

24 VICE CHAIRPERSON ETHERLY: Four ladder
25 trucks and eight pumers?

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1 MR. HERLIHY: That's correct.

2 VICE CHAIRPERSON ETHERLY: Okay.

3 MR. HERLIHY: And on the back side, we
4 could get up to 18 ambulances if we wanted to.

5 VICE CHAIRPERSON ETHERLY: Okay, thank
6 you. Thank you very much. You noted that of course,
7 because of the use of this facility, proposed uses as
8 ready rescue storage, it's not your anticipation that
9 on any type of regular basis, vehicles would need to
10 exit that facility with their emergency lights or
11 sirens activated. Of course, in perhaps extraordinary
12 circumstances, there might be a need for something
13 like that, but as a regular course, you don't
14 anticipate having to do any of that type of work?

15 MR. HERLIHY: Correct. That's correct.

16 VICE CHAIRPERSON ETHERLY: Thank you.
17 Thank you, Mr. Chair.

18 CHAIRPERSON GRIFFIS: Do we have that much
19 equipment just to store?

20 MR. HERLIHY: Well, we've been buying a
21 lot of equipment, and we're kind of in a crunch as the
22 cold weather comes because the fire engines that have
23 water in them have to be stored inside. So, we would
24 like to have this building built as quick as we could.

25 It's possible we may try to store some in the

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1 convention center, the old convention center, unless
2 that gets torn down, to see us through the winter.

3 We're also currently actively looking to
4 like lease different spots throughout the city because
5 the fire stations are getting full.

6 CHAIRPERSON GRIFFIS: So as opposed to a
7 few years ago when we didn't have enough trucks to
8 service all the companies around the city, we now have
9 in excess?

10 MR. HERLIHY: Right, and after 9-11, we
11 were able to get some local dollars as well as federal
12 dollars. We bought additional fire equipment. So,
13 the equipment that we have really isn't that old.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. HERLIHY: It's still within the
16 service life. So, we're trying to hold onto that and,
17 you know, as we talked about, have it fully equipped,
18 ready to go so that we call in our off duty shift,
19 they can come, jump on the fire truck, and go.

20 CHAIRPERSON GRIFFIS: I see. Clearly,
21 interior storage will maintain the life of these, or
22 elongate the life.

23 MR. HERLIHY: Right.

24 CHAIRPERSON GRIFFIS: Okay. Well, that's
25 good news all around. Any other questions from the

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1 Board at this time? Anything else at this point to
2 present? Mr. Etherly?

3 VICE CHAIRPERSON ETHERLY: One final
4 question. I'm recalling some of the public discussion
5 that used to take place around the facility that's
6 currently located along M Street, S.W., which I
7 believe is a maintenance facility, if I'm not
8 mistaken?

9 MR. HERLIHY: Right. It's a combination
10 of maintenance and fire station.

11 VICE CHAIRPERSON ETHERLY: No plans here
12 for -- I just want to be sure I'm clear. There will
13 be or will not be some maintenance associated with the
14 storage here?

15 MR. HERLIHY: No, there won't be any
16 maintenance, and we're in the process of renovating.
17 We just recently got capital dollars to renovate that
18 place on M Street, S.W. So, we're going to get that
19 all squared away so we can continue our maintenance
20 operations at that location.

21 VICE CHAIRPERSON ETHERLY: Thank you
22 again, Chief.

23 CHAIRPERSON GRIFFIS: Great. One last
24 clarification. Mr. Etherly said that the speaker on
25 Company 24 was to announce to the people in the new

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1 proposed facility? It's for the back yard of Company
2 24, is that correct?

3 MR. HERLIHY: Right, that's correct. It's
4 not really even for that particular area. When the
5 people are in the parking area reporting for work,
6 leaving from work.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. HERLIHY: It's for that.

9 CHAIRPERSON GRIFFIS: Playing basketball.

10 MR. HERLIHY: Right, right. We think
11 we've addressed that problem. If not, we'll look at
12 it again.

13 CHAIRPERSON GRIFFIS: Okay, excellent.
14 Anything further? If not, let's go to the Office of
15 Planning and have them run through their report.

16 MS. THOMAS: Good afternoon, Mr. Chairman
17 and members of the Board. I'm Karen Thomas,
18 presenting OP's report on the D.C. Fire Department's
19 request for variance relief from the use provisions of
20 Section 320 to allow a Ready Rescue Facility for
21 apparatus storage to be constructed on a vacant lot
22 located in an R-3 residential zoned district.

23 The Applicant is also requesting variance
24 relief from the area requirements of Sections 403 and
25 404. According to submitted plans, the proposed

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1 facility will occupy 92 percent of the 16,500 square
2 foot lot, and approximately 12 feet of the required
3 20-foot rear yard setback.

4 Municipal uses, including a fire station
5 and accessory buildings, are currently not
6 incorporated as a matter of right use in residents
7 districts, including the R-3 district. Therefore, the
8 Applicant's request includes a use variance as well as
9 area variance relief from the lot occupancy and rear
10 area setback requirements.

11 To grant the use variance, undue hardship
12 upon the owner to make reasonable use of the property
13 must arise out of some unique or exceptional condition
14 of the property, and the application would not be of
15 substantial detriment to the public good, no impaired
16 intent and purpose and integrity of his own plan. OP
17 agrees with the Applicant's submission that there are
18 exceptional conditions on the property, including the
19 fact that the lot size is not typical of the R-3 zone
20 district, which has a typical lot width of 20 feet.

21 Subdivision of this lot would create five
22 exceptionally long and narrow lots with frontage along
23 Gallatin Street, and this is approximately twice as
24 deep as any other residential lot in this square.
25 Subdividing the lot along its length would yield seven

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1 29 times 100 feet lots, subject to dedication of at
2 least ten additional feet to the western alley to meet
3 minimum alley width of 30 feet required for alley
4 dwellings. Homes in such lots, however, would also
5 face either east or west, which is the rear of the
6 main fire station or the rear of existing homes
7 abutting the alley, and this creates privacy issues
8 for those existing residences as well as the new
9 proposed residence.

10 In addition, the Applicant stated that
11 there may be soil contamination, and while there is no
12 substantial proof of that, the Applicant contends that
13 the possibility exists due to the underground storage
14 tanks in the immediate area of the property, and this
15 would create an exceptional condition since the lot
16 would not provide the best location for residential
17 uses without extensive remediation.

18 Therefore, the location among the existing
19 alley system and its adjacency to the fire station
20 would create undue hardship on the owner to develop a
21 prescribed matter of right residential use on the
22 property, including a family dwelling, community based
23 residential facility, child development center, or
24 youth residential care home.

25 Construction of residential units becomes impractical

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1 due to the alignment of homes along the alleys.

2 Finally, OP notes that there is no use
3 provision whatsoever for a fire station in any zone,
4 and currently, no matter where the use is proposed, a
5 use variance would be required. As previously stated,
6 we believe that the Applicant has established that the
7 property is unique by its exceptional situation and
8 condition. To that end, we concluded that the grant
9 of the use and area variances would not impair the
10 intent and purpose and integrity of the R-3 zone
11 requirements, even though the proposed municipal use
12 is not a designated use within the zone district.

13 We should mention as well that we did
14 question whether a rezone of the property from R-3 to
15 C-2-A might have been more appropriate, and we decided
16 that a map amendment would allow too broad a range of
17 use. The site has not been developed since 1958, and
18 the proposed use provides a buffer between residential
19 uses and the C-2-A zone district. We do not believe
20 that the intent of the regulations would be
21 compromised since they have made efforts to abide by
22 the other regulations of the zone, including the
23 height limit at 40 feet.

24 This concludes our presentation. Thank
25 you.

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1 CHAIRPERSON GRIFFIS: Thank you very much.
2 An excellent report. It was very helpful in figuring
3 the somewhat cumbersome and complexities often of use
4 variances. Does the Applicant have any cross
5 examination of the Office of Planning? Any questions?

6 MR. ZIVIC: No, sir.

7 CHAIRPERSON GRIFFIS: Board, questions of
8 the Office of Planning? Mr. Zaidain?

9 MEMBER ZAIDAIN: I have a question. Even
10 if you would have rezoned it to C-2-A, the fire
11 station still would not have been accounted for.
12 Under what use would you have allowed this to go to
13 under C-2-A?

14 MS. THOMAS: Well, we looked at the C-2-A
15 because that's what the existing Engine Company 24 is
16 zoned, and so we thought that maybe they carried it
17 over.

18 CHAIRPERSON GRIFFIS: That would help on
19 the area requirement.

20 MS. THOMAS: Right.

21 MEMBER ZAIDAIN: Right, but it wouldn't
22 address the use variance.

23 MS. THOMAS: It wouldn't address the use
24 variance.

25 MEMBER ZAIDAIN: Okay.

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1 MS. THOMAS: Because it's not allowed in
2 anything.

3 MEMBER ZAIDAIN: I didn't realize -- I
4 must have missed this. I didn't realize that the
5 engine company was zoned C-2-A. Okay, I see your
6 point. Thank you.

7 MS. THOMAS: Thank you.

8 CHAIRPERSON GRIFFIS: Good. Anything
9 else? Very well. That's all the other government
10 agency reports attendant to this application.

11 ANC4-D, we did get something from them.
12 Actually today it was delivered to the Board. It does
13 not meet the test for even great weight, but we will
14 note the amount of support. In fact, it was unanimous
15 for those four members that were in attendance, and
16 you indicated that there was talks with the ANC and of
17 course a presentation to it. Clearly we haven't
18 filled the hearing room with those in opposition to
19 this, and there has been time for that information to
20 get to them.

21 So, no adverse affects are coming into
22 evidence to that Board at this time.

23 MR. HERLIHY: If I may, I might add that
24 if you need or if there's an opportunity to resubmit
25 that, I think ANC4-D would be happy to comply with any

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1 particular format that you would like. How it was
2 submitted was the way it was prepared by ANC4-D.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. HERLIHY: Although there is a blank
5 spot for somebody to record the vote, the chairperson
6 of ANC4-D, Ms. Audrey Thompson, elected not to fill
7 that in because she thought that it was self-evident
8 where every member signed, whether they were present
9 or not, and where they voted for it or against it or
10 were absent.

11 So, actually, it's not really that clear,
12 but if you actually do look at that, what I think we
13 were trying to say is that there are six members on
14 there. Four people were absent, and Audrey Thompson,
15 the chairperson, indicated they were absent on that.
16 The four members that were present voted yes, that
17 they were in support of the resolution.

18 If we need further clarification or if
19 there is a need for that, then or an opportunity to
20 resubmit that in a different format by ANC4-D, we'll
21 try to comply.

22 CHAIRPERSON GRIFFIS: Thank you. We do
23 appreciate that. First of all, I would take it as a
24 consensus of the Board that I didn't hear any
25 opposition of accepting this into the report as it's

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1 not timely filed. I think we can easily do that.

2 There's a difference of course with great
3 weight and then accepting it and noting it, which as
4 it's in support of the application, would be
5 reflected. What else is missing in this report do
6 Board members see that wouldn't comply?

7 MEMBER MILLER: I don't think it says --
8 it talks about notice to the community, if I'm
9 correct, but I don't think it's a problem in this
10 case. I mean, we're accepting it for the vote, and
11 basically great weight would be an issue if we had to
12 address the issues that they raised if they disagreed
13 with your position, and they don't. So, it's really
14 not an issue.

15 MR. HERLIHY: Right. Okay, thank you.

16 CHAIRPERSON GRIFFIS: Yes. It certainly
17 doesn't diminish its message.

18 MR. HERLIHY: Okay.

19 CHAIRPERSON GRIFFIS: Even if it doesn't
20 make all of our strict procedural requirements. Okay,
21 that being said, that's all I have noted for
22 submissions, and noting that no others are here with
23 us in the darkened hearing room, I would assume no one
24 else is here to give testimony in favor or in
25 opposition to this application.

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1 So, why don't we, if there are no Board
2 questions at this time, I can turn over, if there are
3 any last conclusionary comments of the Applicant?

4 MR. ZIVIC: No, thank you..

5 CHAIRPERSON GRIFFIS: Very well. I think
6 it's appropriate to move ahead on this Application
7 17058, and I would move approval of the use under
8 Section 320.3, the lot occupancy variance, rear yard,
9 which would allow the construction of the Ready Rescue
10 Apparatus towards the facility of premises 915
11 Gallatin Street, N.W., and would ask for a second.

12 MEMBER ZAIDAIN: I'll second that, Mr.
13 Chair.

14 CHAIRPERSON GRIFFIS: Thank you very much,
15 Mr. Zaidain. I think as I had started this hearing
16 saying that the use variance is the hardest test to
17 make for us. It's a very high threshold. I think
18 this may well be the first one I've ever say on
19 successfully, and I think it goes directly to the use
20 test which you've laid out very well. Clearly the
21 size of this lot is exceptionally unique and does not
22 conform well, if at all, to an R-3 development or use.
23 The adjacency to the Company 24 lends itself also to
24 its uniqueness.

25 The three alley that frame that large lot

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1 also I believe lends itself to its uniqueness in terms
2 of its development capability. The adjacency, the
3 size, all of which do create a practical difficulty in
4 putting R-3 in an exceptional hardship if one could
5 not develop here based on the uniqueness of the
6 adjacency to the engine company.

7 There has been no evidence in the record
8 at this point to show how granting any of the area or
9 use variances would tend to impair the public good,
10 and certainly don't go to impair the intent and
11 integrity of the zone plan or map. The additional
12 uniqueness of course is the fact that we haven't
13 created the appropriate areas in the zoning map for
14 this type of facility, and so we are left with a bit,
15 and I think also a strong uniqueness of where is this
16 allowed, if not here.

17 That being said briefly on the lot
18 occupancy and also the rear yard, the area variance,
19 it's obviously very clear based on the hardship test
20 of if this is to be located, the difficulty on this
21 unique size site in conforming to an R-3 requirement,
22 render it impossible, not only a practical difficult
23 but impossible to develop a facility with this size,
24 space requirements that are needed for the proper
25 functioning of this. Certainly the last test has

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1 conformed with also in the area of variances.

2 That being said, other Board members
3 deliberated on the motion that's before us and
4 seconded. Is there anything further?

5 If there's nothing further, then I would
6 ask for those in favor of the motion to signify by
7 saying aye.

8 (Chorus of ayes.)

9 CHAIRPERSON GRIFFIS: And opposed?

10 (No response.)

11 CHAIRPERSON GRIFFIS: We can record the
12 vote.

13 SECRETARY BAILEY: The vote is recorded as
14 5-0-0 to approve the application. Mr. Griffis made
15 the motion. Mr. Zaidain seconded. Mr. Etherly, Ms.
16 Miller, and Mr. Hood are in agreement.

17 Is this a summary order, Mr. Chairman?

18 CHAIRPERSON GRIFFIS: I don't see any
19 reason it can't be a summary order. Other Board
20 members or staff think otherwise, I think it's
21 appropriate to do a summary order and get it out there
22 if that's possible. Great.

23 When does construction start?

24 MR. ZIVIC: As soon as we get a permit.

25 CHAIRPERSON GRIFFIS: Excellent. I thank

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1 you both very much. I appreciate your patience this
2 afternoon, and I know you have obviously more
3 important things to do. So, we wish you a very
4 excellent afternoon, and good luck with this.

5 MR. HERLIHY: Okay. Thank you very much.

6 CHAIRPERSON GRIFFIS: Any other business,
7 Ms. Bailey?

8 CHAIRPERSON GRIFFIS:

9 SECRETARY BAILEY: No, Mr. Chairman.

10 CHAIRPERSON GRIFFIS: Very well. Then I'd
11 like to adjourn the 23rd September, 2003 BZA Hearing.

12 (Whereupon, the above-referenced hearing
13 was adjourned at 4:05 p.m.)

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