

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

APRIL 27, 2004

+ + + + +

The Public Hearing convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE MILLER	Vice Chairperson
JOHN A. MANN	Board Member (NCPC)
DAVID ZAIDAIN	Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD	Vice Chairperson
JOHN PARSONS	Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Acting Secretary
JOHN NYARKU	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON	Office of Planning
DAVID McGHETTIGAN	Office of Planning
JOHN MOORE	Office of Planning

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OFFICE OF CORPORATION COUNSEL STAFF PRESENT:

LORIE MONROE, ESQ.

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

(9:55:29 a.m.)

MS. MILLER: The hearing will please come to order. Good morning, ladies and gentlemen. My name is Ruthanne Miller. I'm the Vice Chair of the BZA. Our esteemed Chair is currently in jury duty, so I'll be conducting the hearing until he gets here.

This is the public hearing of the Board of Zoning Adjustment of the District of Columbia. Joining me today is Mr. John Mann from NCPC, and Mr. Anthony Hood from the Zoning Commission, as well as Ms. Lori Monroe from Office of Corporation Counsel, and Cliff Moy from the Zoning Office.

Copies of today's hearing agenda are available to you and are located to my left in the wall bin near the door. Please be advised that this proceeding is being recorded by a court reporter, and it also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room.

When presenting information to the Board, please turn on and speak into the microphone, first stating your name and home address. When you're finished speaking please turn your microphone off so that your microphone is no longer picking up sound or

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1 background noise.

2 All persons planning to testify either in  
3 favor or in opposition are to fill out two witness  
4 cards. These cards are located to my left on the  
5 table near the door and on the witness table. Upon  
6 coming forward to speak to the Board, please give both  
7 cards to the reporter sitting to my right.

8 The order of procedure for special  
9 exceptions and variances is; one, statement of  
10 witnesses of the application; two, government reports,  
11 including Office of Planning, Department of Public  
12 Works, et cetera. Number three, report of the  
13 Advisory Neighborhood Commission. Four, parties or  
14 persons in support. Five, parties or persons in  
15 opposition. Six, closing remarks by the applicant.

16 Okay. We don't have appeals this morning,  
17 so I'll move on. Pursuant to Section 3117.4 and  
18 3117.5, the following time constraints may be  
19 maintained. The application, appellant persons and  
20 parties except an ANC in support, including witnesses,  
21 60 minutes collectively. Appellees, persons and  
22 parties, except an ANC in opposition, including  
23 witnesses, 60 minutes collectively. Individuals,  
24 three minutes.

25 These time constraints do not include

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1 cross examination and/or questions from the Board.  
2 Cross examination of witnesses is permitted by the  
3 applicant or parties. The ANC within which the  
4 property is located is automatically a party in a  
5 special exception or variance case. Nothing prohibits  
6 the Board from placing reasonable restraints on cross  
7 examination, including time limits and limitations on  
8 the scope of cross examination.

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

17 The Sunshine Act requires that the public  
18 hearing on each case be held in the open before the  
19 public. The Board may, consistent with its rules of  
20 procedure and the Sunshine Act, enter Executive  
21 Session during or after the public hearing on a case  
22 for purposes of reviewing the record or deliberating  
23 on the case.

24 The decision of the Board in these  
25 contested cases must be based exclusively on the

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1 public record. To avoid any appearance to the  
2 contrary, the Board requests that persons present not  
3 engage the members of the Board in conversation.  
4 Please turn off all beepers and cell phones at this  
5 time so as not to disrupt the proceedings.

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

15 Mr. Moy, does the staff have any  
16 preliminary matters?

17 MR. MOY: Good morning, Madam Chair and  
18 Members of the Board. Yes, we do. We do have one  
19 preliminary matter in the morning, which is case  
20 number 17150 of First Baptist Church. There's a  
21 request for a continuance, and that's the only  
22 preliminary matter for the morning.

23 MS. MILLER: Okay. Thank you. I think  
24 what I'd like to do with respect to that case is make  
25 that the second case on the agenda. Mr. Hood is here

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1 for the Reid case, and I think what I'd like to do is  
2 proceed with the Reid case first, which shouldn't take  
3 that long, and then take the First Baptist Church  
4 case.

5 MR. MOY: Yes, ma'am. The Staff would  
6 suggest before we do that, if I may, if I could  
7 administer the oath to those wishing to testify this  
8 morning.

9 MS. MILLER: Yes, go right ahead.

10 MR. MOY: Those wishing to testify this  
11 morning, please stand so I may administer the oath.

12 ALL WITNESSES SWORN

13 MR. MOY: Thank you. The first case then  
14 is case number 17142 of Joseph F. and Sandra L. Reid,  
15 pursuant to 11 DCMR 3104.1, for a special exception to  
16 allow an accessory garage addition to an existing  
17 single-family row dwelling under Section 223, not  
18 meeting the lot occupancy requirements (Section 403)  
19 in the R-4 District at premises 639 A Street, N.E.,  
20 Square 868, Lot 42.

21 Staff would remind the Board that this is  
22 a continued case from its public hearing on April the  
23 6<sup>th</sup>, 2004.

24 MS. MILLER: Thank you. And would you  
25 identify yourself for the record, please.

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1 MS. REID: Yes. My name is Sandy Reid. I  
2 reside at 639 A Street, N.E. in Washington, D.C.,  
3 which is the same premises of this proposed garage  
4 structure.

5 MS. MILLER: Okay. And my understanding is  
6 where we are in this case is, there was a concern at  
7 the last hearing that perhaps the way the plans were  
8 previously that this looked like a two-story structure  
9 instead of a one-story structure.

10 MS. REID: That's correct.

11 MS. MILLER: And that you have revised the  
12 plans so that it now ?- we have a mezzanine above the  
13 garage instead of what could have been considered as  
14 another story.

15 MS. REID: Correct.

16 MS. MILLER: Okay. So at this point, we  
17 have looked at the plans and find that they are  
18 sufficient, that they fulfill that requirement, and  
19 are looking at it as one-story within the 223.

20 Are there further comments that you wanted  
21 to make on your case?

22 MS. REID: Are you telling me that it's  
23 approved?

24 MS. MILLER: I'm saying that we can now  
25 analyze it in the 223 standards. Before it was

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1 outside the scope of that because it looked like a  
2 two-story and you would have had to seek other relief.

3 MS. REID: May I request a bench decision?

4 MS. MILLER: Yes.

5 MS. REID: Now?

6 MS. MILLER: Yes. Well, we can go into our  
7 analysis now. I just wanted to make sure there wasn't  
8 anything else that you wanted to state for the record  
9 before we went into the ?-

10 MS. REID: Not at this time, no.

11 MS. MILLER: Okay. I think at this point  
12 then I'll make a motion and then we can discuss this  
13 case under motion. I would move to grant a special  
14 exception to allow an accessory garage addition to an  
15 existing single-family row dwelling under Section 223,  
16 not meeting the lot occupancy requirements at premises  
17 639 A Street, N.E., and this is for the application  
18 number 17142 of Joseph F. and Sandra L. Reid. Do I  
19 have a second?

20 MR. MANN: Second.

21 MS. MILLER: Okay. This case involves  
22 space in the rear that is currently used for parking,  
23 and the garage is being placed in that spot, and it  
24 will provide security and covered parking. It's in  
25 the Capitol Hill District. We have in the record that

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1 the Historic Preservation Officer approved the  
2 concept. The lot occupancy allowed in R-4 District in  
3 which this is located is 60 percent. The proposed  
4 garage will increase lot occupancy to 67.9 percent,  
5 7.9 percent in excess of what is allowed. That's why  
6 this is proceeding under 223, which permits lot  
7 occupancy up to 70 percent, provided the 223 criteria  
8 are met.

9 I think that the Office of Planning did a  
10 very good analysis showing that this case has met the  
11 requirements of 223. Light and air to neighboring  
12 properties won't be impaired, they did an analysis  
13 there. On each side of the lots there's at least 10  
14 feet of space between the rear of the principal  
15 premises and accessory structures, and the low height  
16 of the accessory structure on the square and the  
17 three-story heights of the dwellings diminish any  
18 potential that the air and light provisions to the  
19 neighboring properties will be affected by the  
20 proposed accessory garage.

21 OP found that it would not impair or  
22 compromise the privacy of the use and enjoyment of  
23 neighboring properties. It's presently used as  
24 parking. I think all the adjoining properties also  
25 have these types of garages; and that, in fact, this

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1 will add to the security of the property by filling a  
2 void that currently exists where people can come in.  
3 The garage is not visible from the street, so it won't  
4 intrude upon the character, scale, and pattern of  
5 houses along the street frontage. Basically, all the  
6 evidence shows that it's in harmony with the zoning  
7 regulations and the map, and the surrounding premises,  
8 so I don't see any problem with this. Do my fellow  
9 board members have any comments they want to make?

10 MR. MANN: No, I think that you've  
11 addressed pretty much everything, and the revised  
12 plans came back in a way that would make the proposed  
13 project in conformance.

14 MS. MILLER: I'd also like to add that I  
15 note that the ANC also voted in support of this  
16 application.

17 MR. HOOD: I would agree, Madam Chair. I  
18 think you have definitely hit the highlights and the  
19 points, and very thorough, I might add. And I will  
20 voting in support of this motion.

21 MS. MILLER: Then I would say that we  
22 could call the vote now. All those in favor say aye.  
23 All those opposed. All those abstaining.

24 (Vote taken.)

25 MR. MOY: The Staff would record the vote

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1 as 3-0-2 to approve the application on the motion of  
2 Madam Chair, Ms. Miller, second by Mr. Mann. Also in  
3 favor of the motion to approve is Mr. Hood. We have  
4 two members participating not present with the final  
5 vote as 3-0-2.

6 MS. MILLER: Mr. Moy, I'm sorry, I forgot  
7 to mention that. I believe we have a proxy from the  
8 Chairman in favor of the special exception.

9 MR. MOY: I'm sorry. Well, in that case  
10 then the final vote would be 4-0-1.

11 MS. MILLER: Thank you.

12 MS. REID: What is the next step? Will  
13 you be issuing a letter? Do I need to have any  
14 documentation signed-off on?

15 MS. MILLER: Okay. I believe this is  
16 going to be a summary order.

17 MR. MOY: Yes, ma'am.

18 MS. MILLER: That's the next step, you'll  
19 get a copy of the summary order, which usually gets  
20 issued fairly quickly. It could even be this week.

21 MS. REID: Okay. Wonderful.

22 MS. MILLER: You could check in with the  
23 Office of Zoning on that though.

24 MS. REID: Okay. Thank you very much.

25 MS. MILLER: Okay. Thank you. Okay. The

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1 next case we can call then.

2 MR. MOY: Yes, ma'am. The next case is  
3 Application 17150 of First Baptist Church, SW, Inc.,  
4 pursuant to 11 DCMR 3103.2 for a variance from the  
5 number of stories requirements under Subsection 400.6,  
6 a variance from the lot occupancy requirements under  
7 Section 403, and a variance from the non-conforming  
8 structure provisions under Subsection 2001.3, to allow  
9 the construction of a four story addition (church,  
10 offices and classrooms) to an existing church building  
11 in the R-4 District at premises 710 Randolph Street,  
12 N.W., Square 3131, Lots 41 and 833.

13 MS. MILLER: Good morning. Would you all  
14 identify yourselves for the record, please.

15 MR. MALONE: My name is Samuel Malone,  
16 Trustee of First Baptist Church.

17 MS. MILLER: And state your address, as  
18 well.

19 MR. MALONE: My address is 4661 Cherry  
20 Valley Drive, Rockville, Maryland 20853.

21 MS. MILLER: Okay. Thank you.

22 MR. CLARK: My name is Alonzo Clark. I'm  
23 also a Trustee of First Baptist Church. I live at 923  
24 Millponds Court in Mitchellville, Maryland 20721.

25 MS. MILLER: Thank you.

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1 MR. WRITELL: My name is Thomas Writell.  
2 I've been retained by the First Baptist Church to  
3 provide architectural services. My address is 2930  
4 McComb Street, N.W., Washington, D.C.

5 MS. MILLER: Excuse me. When you're not  
6 speaking, it helps to shut off your microphone so that  
7 we don't have that buzzing sound. Okay.

8 MR. JONES: Good morning. My name is  
9 Timothy Jones. I am the Advisory Neighborhood  
10 Commissioner for Single Member 4C-08, which  
11 encompasses First Baptist Church, as well as the  
12 Chairman of the 4C Commission. My address is 727 Rock  
13 Creek Church Road, N.W.

14 MS. MILLER: Okay. I think we also have a  
15 request for party status in this case from Mr. King.  
16 Is he here? Okay, so we won't deal with that now  
17 then.

18 Okay. I understand then that you're here.  
19 You're going to be requesting a continuance in this  
20 case. Is that correct or not? We have a letter from  
21 the ANC saying that all parties, I believe, were  
22 agreeable to a continuance in this case. Is that  
23 correct?

24 MR. JONES: That is correct, yes.

25 MS. MILLER: Okay. Let's hear from the

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1 Applicant first then.

2 MR. CLARK: Madam Chair, may we address  
3 that. We did meet with the ANC on their April 13<sup>th</sup>  
4 meeting, and we did discuss a continuance. We did  
5 tell the commission at that time that we were in favor  
6 of the continuance if it were just for a few days.

7 MS. MILLER: I'm sorry. You're in favor  
8 of continuance if what?

9 MR. CLARK: If it were for 30-days or so.

10 MS. MILLER: Okay.

11 MR. CLARK: Okay. We were given the  
12 impression that that is what they would request, like  
13 a 30-day continuance. If that is the case, we agree  
14 with that.

15 MS. MILLER: Okay.

16 MR. CLARK: We did meet with some  
17 residents before and found out some of their concerns.

18 We were not able to resolve all of those, but we have  
19 made ourselves available to resolve them. So my  
20 question, I guess I would like to ask someone is what  
21 period of time are we talking about? It's true we  
22 agreed to like a 30-day continuance, but if it's three  
23 to five months, that's something that we may have to  
24 talk about.

25 MS. MILLER: Okay. We've looked at our

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1 calendar. There is a date open June 29<sup>th</sup>, because  
2 another case has dropped out. Normally if you didn't  
3 take your date today, you might not get another date  
4 until July, but there were two dates open, June 29<sup>th</sup>  
5 and May 18<sup>th</sup>, so if ?- May 18<sup>th</sup> is very close because  
6 we would need new filings by next week. So if there's  
7 really an opportunity to work things out, then the  
8 June 29<sup>th</sup> is available.

9 MR. CLARK: Madam Chair, we agree to it.  
10 June 29<sup>th</sup> you said?

11 MS. MILLER: June 29<sup>th</sup>.

12 MR. CLARK: Yes.

13 MS. MILLER: It would be in the morning at  
14 9:30.

15 MR. CLARK: Right. Okay. We agree.

16 MS. MILLER: Mr. Jones, is that date  
17 agreeable to you?

18 MR. JONES: Yes, it is.

19 MS. MILLER: We had a chance to look at  
20 the filing, and since you have this time, I just want  
21 to give you an idea of what we would like to be  
22 looking at on June 29<sup>th</sup>. We expect that you would  
23 submit another pre-hearing statement 14-days prior to  
24 June 29<sup>th</sup>, and the staff will tell you the exact date  
25 on that. We would suggest that you take a look at the

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1 Office of Planning report. I don't know if you've  
2 seen that yet. You have? Okay. And it may even be  
3 helpful to meet with them, but they set forth the test  
4 for the variance, and that's what we're going to be  
5 looking at, and whether you meet those specific tests.

6 So in your pre-hearing statement, you'll want to  
7 address those tests.

8 We noticed that there seemed to be  
9 concerns about parking, and so we would suggest that  
10 you address those concerns. Other than that, I don't  
11 have any other comments. Do you have any questions,  
12 further questions?

13 MR. CLARK: No, Madam Chair, we have no  
14 questions at this time.

15 MS. MILLER: Okay. Well, thank you. Then  
16 we'll see you on the 29<sup>th</sup>.

17 MR. CLARK: All right. Thank you.

18 MR. MOY: Madam Chair, just a real quick  
19 ?-

20 MS. MILLER: Yes, I'm sorry.

21 MR. MOY: Not all. For the parties, to  
22 just go over once again then the next hearing date is  
23 scheduled for June the 29<sup>th</sup>, and the documents that the  
24 Chair has requested of the applicant and parties,  
25 particularly the applicant, the pre-hearing statement,

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1 those submissions would be due, the deadline would be  
2 June the 15<sup>th</sup> at 3:00 in the afternoon. Thank you.

3 MS. MILLER: Okay. Thank you very much.  
4 We can call the next case.

5 MR. MOY: The next case is 17151,  
6 Application 17151 of Pappas and Georgilakis, pursuant  
7 to 11 DCMR 3104.1, for a special exception to continue  
8 to operate an existing 27 space parking lot which was  
9 last approved by BZA Order number 16212, under Section  
10 213 in the R-2 District at premises 4926 Wisconsin  
11 Avenue, N.W., Square 1671, Lot 30.

12 MS. MILLER: Good morning. Could you  
13 identify yourselves for the record, please.

14 MR. GELFARB: Yes. My name is Ken  
15 Gelfarb. I'm here on behalf of the Applicant as  
16 counsel.

17 MR. DEODES: My name is Nick Deodes.

18 MS. MILLER: Would you give your addresses  
19 as well, please. I'm sorry.

20 MR. GELFARB: My business address is 1828  
21 L Street, N.W., Suite 500, Washington, D.C. 20036.

22 MS. MILLER: Thank you.

23 MR. DEODES: My name is Nick Deodes.  
24 I'm the property manager of the property. My business  
25 address is 7910 Woodmont Avenue, Suite 410, Bethesda,

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1 Maryland 20814.

2 MS. MILLER: Thank you.

3 MR. PAPPAS: My name is Peter Pappas, and  
4 I reside at 5400 Falmouth Road in Bethesda, Maryland.

5 MS. MILLER: Thank you. I see we also  
6 have a request for party status in this case. Is Mary  
7 Quirk here? Would you come forward, please. Oh, no,  
8 I'm sorry, to the table.

9 MS. QUIRK: There's no air circulation in  
10 this room. I'm trying to sit near the fan, and I'd  
11 just like to be able to hear, and I'm sitting in the  
12 front.

13 MS. MILLER: Okay. So my understanding is  
14 you're going to withdraw your request for party  
15 status.

16 MS. QUIRK: I'd like to hear things first.

17 MS. MILLER: You can absolutely hear ?-  
18 you can hear without being a party.

19 MS. QUIRK: I would like to hear things  
20 first, yes.

21 MS. MILLER: You can hear without being a  
22 party, and you can also come forward later and present  
23 testimony without being a party.

24 MS. QUIRK: Thank you so much.

25 MS. MILLER: Okay. So the request for

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1 party status is withdrawn. Okay. So we're ready to  
2 hear your case. Just as a preliminary matter, it  
3 looks like the order had expired and so you're  
4 operating without an order right now. Is that  
5 correct?

6 MR. GELFARB: That is correct. It was due  
7 to an oversight and there was a change in ownership,  
8 and as soon as it was brought to our attention, we  
9 immediately filed for a new special exception.

10 MS. MILLER: Okay. Why don't you then  
11 begin with your presentation.

12 MR. GELFARB: Thank you. We're here today  
13 to request that the Board of Zoning Adjustment grant a  
14 special exception under Section 215 of the D.C.  
15 Zoning Ordinance, allowing the applicant to continue  
16 to operate a 27 space parking lot at the rear of 4926  
17 Wisconsin Avenue.

18 As I mentioned, the applicant acquired the  
19 property about two years ago in January of 2002.  
20 There are 27 spaces in the lot. The lot is used by  
21 tenants in the commercial building next to the lot, as  
22 well as some other neighboring businesses and students  
23 at Georgetown Day School.

24 The special exception, as you mentioned,  
25 has expired.

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1 MS. MILLER: I'm sorry. Can I interrupt  
2 you right there because we do have a question with  
3 respect to who is actually using the lot, because  
4 there is that regulation that Office of Planning  
5 brought up about 213.7, that requires a majority of  
6 parking serve residential uses or short-term parking  
7 needs of retail service and public facility uses in  
8 the area. Did you see the Office of Planning's report  
9 yet?

10 MR. GELFARB: Yes, I did.

11 MS. MILLER: Okay. So can you ?- you may  
12 have been intending to go in this direction anyway,  
13 but you can explain in a little detail who is using  
14 the spaces, like what employees, and how does it work?

15 MR. GELFARB: Sure. Roughly half of the  
16 spaces are used for retail and public use, which I  
17 would consider the school to be a public use.

18 MS. MILLER: Does that mean that there are  
19 monthly contracts on some, but not all the spaces?

20 MR. GELFARB: I believe there are monthly  
21 contracts on basically all the spaces. I might defer  
22 to one of the witnesses, the property manager, to  
23 specifically go through the users. But what we found  
24 is that this is really the use that the community  
25 wants for the lot, and as I stated, you've got roughly

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1 half the use for retail. There's a tanning salon that  
2 uses spaces. There's a flower shop that uses spaces.  
3 There's the school that uses spaces.

4 MS. MILLER: So basically though it's not  
5 like ?- I think we were under the impression maybe  
6 that their employees used it, and they sat in that  
7 spot all day. Is that not the case? A business might  
8 rent the space and then use it for its customers, or  
9 how does that work?

10 MR. DEODES: My name is Nick Deodes. I  
11 was going to give you ?- should I start from the  
12 beginning to get to your answer?

13 MS. MILLER: I'm sorry. This is a key  
14 issue, but you can ?-

15 MR. DEODES: That's fine.

16 MS. MILLER: Anyway you want to testify.

17 MR. DEODES: I just wanted to say that  
18 before I answer the question, if I may. I was born in  
19 Washington, D.C., not too many of us born in  
20 Washington. I've been licensed in real estate in  
21 Washington since 1975. I have a lot of respect for  
22 the District. We want to do what's right and keep our  
23 neighbors happy up there in northwest. There's a  
24 tremendous need for parking up there. We get calls,  
25 an astronomical amount of calls daily almost for

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1 availability.

2 Now to answer your question, ma'am. The  
3 lot has ?- we have a building in front of the lot  
4 that has two tenants. Wells Fargo Mortgage does home  
5 mortgage, sells mortgages, and the At The Beach  
6 Tanning Salon. The neighbors don't, as I learned at  
7 ANC meeting ?- and we inherited the lot in its  
8 operation two years ago, January of 2002, and we  
9 basically just maintained the same operation. And  
10 after going to an ANC meeting a month or so ago, I  
11 learned why it's kind of evolved the way it has.

12 The neighbors don't like people coming in  
13 and out, coming in and out. We tried to ask if we  
14 could do like evening, stay open a little longer and  
15 have a restaurant, have a valet, just one person drive  
16 cars back and forth to help some of the businesses  
17 there on Wisconsin. They don't want that. They  
18 really want, come in in the morning, you park and when  
19 you close up your business you go home. They don't  
20 want the in and out all day long.

21 Now because of that, Wells Fargo has most  
22 of the ?- Wells Fargo itself has about the use of 15  
23 of the spaces. Some of them are monthly rental, and  
24 some of them are part of their rental agreement for  
25 the space in the building, so it's kind of different.

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1 Then you have ?-

2 MS. MILLER: I'm sorry. Some are monthly  
3 rental, some are what?

4 MR. DEODES: Some are part of the lease  
5 for the space that they rent in the building for their  
6 offices. That was thrown in when we inherited their  
7 lease. They were allowed let's say 7 spaces with the  
8 lease, and then the other 8 they're renting.

9 MS. MILLER: Okay.

10 MR. DEODES: Okay. And then there's  
11 local businesses there who have the need for parking  
12 for employees. Okay. They're not necessarily in and  
13 out every day. Some will, obviously, go in and out to  
14 lunch or whatever, but not so much as customer  
15 parking. They leave the street and the meters for the  
16 customers to come to the doors, because this is  
17 inconvenient. It's in the back. So that, I think  
18 answers ?- I hope that answers the question as to how  
19 the spaces are utilized.

20 MS. MILLER: Well, then there's the  
21 students use them?

22 MR. DEODES: And there's some students,  
23 yes. We could have the whole thing full of students,  
24 but that's a different issue. I think it's more  
25 important to have the local people there, the local

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1 businesses use it, as opposed to the ?- I think we're  
2 a better neighbor if local businesses can have an  
3 employee park there, as opposed to the students. The  
4 students only use it for the seven, eight months of  
5 school. And I would say we've got probably four or  
6 five student cars there, and we're getting away from  
7 that. We have people who have called us.

8 MS. MILLER: But how is that, do you have  
9 a contract? It's Georgetown Day, right?

10 MR. DEODES: Georgetown Day.

11 MS. MILLER: Do you have a contract with  
12 them, or just there are spaces available?

13 MR. DEODES: The contract is cancelable.  
14 We have to just write them, give them written notice  
15 that we're cancelling.

16 MS. MILLER: But you currently have a  
17 contract with them for a certain number of spaces?

18 MR. DEODES: Well, each contract would be  
19 for one space for 30-days.

20 MR. HOOD: Madam Chair, could we just  
21 pause for one second while we make a transition?

22 MS. MILLER: Yes, sure.

23 MR. HOOD: So we can switch seats.

24 MS. MILLER: Yes.

25 MR. HOOD: Thank you.

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1 MS. MILLER: We have a new commissioner  
2 coming in. Thank you, Mr. Hood.

3 MR. HOOD: Thank you.

4 MS. MILLER: Okay. Mr. Parsons from the  
5 Zoning Commission has joined us. And we're just  
6 exploring how the parking spaces are used now. So  
7 apparently, you have these 30-day contracts for each  
8 space, and you can decide what you're going to do with  
9 them every 30-days basically.

10 MR. DEODES: You could do that, yes.

11 MS. MILLER: I mean, is that what ?- and  
12 currently, you're using them for students ?-

13 MR. DEODES: If we haven't had any  
14 issues, I don't see any reason to take action. We have  
15 been managing it since January of 2002, and my office  
16 has never received a call, a complaint about anything.  
17 One time there was a broken ?- somebody broke some  
18 glass, and as a matter of fact, I personally went and  
19 swept it up, so that's the only time I've ever had a  
20 call.

21 MS. MILLER: How often are you there?

22 MR. DEODES: How often am I there?  
23 Weekly. It can vary, it can be twice a week, it can  
24 be once a week. I do a lot of driving. I drive not  
25 including to and from work, 25,000 miles a year.

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1 MS. MILLER: Okay.

2 MR. DEODES: Not including going back ?-  
3 and I just visit properties. It's a routine.

4 MS. MILLER: I was just curious because  
5 maintenance is always a question.

6 MR. DEODES: One other thing I'd like to  
7 say.

8 MS. MILLER: Yes.

9 MR. DEODES: We had the opportunity to  
10 meet with Ms. Quirk this morning here in the hall. I  
11 had not had the opportunity to meet with her before.  
12 At the ANC meeting she was unable to attend for  
13 personal reasons, and couldn't address her concerns.  
14 But this morning in the hall, I did my best to  
15 address her concerns and assure her that we would take  
16 actions, to be more stringent on things that concerned  
17 her.

18 Prior to coming today, prior to being here  
19 today, we had been asked by everyone who has been  
20 involved to do something. We've had extra cleaning,  
21 we've painted the walls, we've done tar patching, we  
22 removed graffiti. We've done everything that was  
23 asked of us. There's one more thing that I need to  
24 attend to, and that's basically it.

25 MS. MILLER: I'll let you get back to your

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1 presentation, but I just want to ask one more question  
2 while it's fresh in my mind.

3 MR. DEODES: Please.

4 MS. MILLER: And that is, there was a  
5 previous order in this case. Were you all operating  
6 in the same way? You weren't before the board on the  
7 previous order, I guess.

8 MR. DEODES: No, ma'am.

9 MS. MILLER: Okay.

10 MR. DEODES: First time.

11 MS. MILLER: Are you aware of how the  
12 parking lot was being operated when it was reviewed by  
13 the previous board? Is it the same way or is it  
14 changed?

15 MR. DEODES: My understanding is it's  
16 basically the same operation. The gate that was  
17 installed previously is the same gate to allow in and  
18 out entrances, the same gate. In fact, it's the same  
19 basic terms as the order before that. 15919 was a  
20 1994 order also under Section 213 of the zoning  
21 ordinance, and then the most recent order, as you  
22 mentioned, 16212, and really we're just continuing a  
23 long tradition at that location.

24 MS. MILLER: How about the tradition of  
25 the monthly contracts for spaces, was that the way it

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1 was being operated then?

2 MR. DEODES: Yes, it was. Yes, ma'am.  
3 Yes, ma'am. We inherited probably 16 or so monthly  
4 contracts at the time of purchase.

5 MS. MILLER: Okay.

6 MR. DEODES: In addition to the Wells  
7 Fargo use that's in their lease specifically.

8 MS. MILLER: All right. You can continue.  
9 Thank you.

10 MR. GELFARB: Thank you. The initial  
11 application that we filed, we were seeking the ability  
12 to have evening hours for valet parking for local  
13 restaurants, and we were also seeking a 10 year term  
14 of the order. At the ANC meeting, there were some  
15 concerns raised, and in response to those concerns we  
16 went back and said we will limit to the existing  
17 hours, and we will limit to another five-year term,  
18 and so did amend the application.

19 The ANC did unanimously support the  
20 application. Similarly, the Office of Planning, and I  
21 presume that Mr. Moore will speak to that, recommends  
22 approval, a conditional approval. But nonetheless,  
23 they do recommend approval.

24 With regard, as the witness has said, the  
25 concerns of the neighbors, we've cleaned up the lot

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1 extensively. We've agreed to meet with the ANC  
2 periodically. We've been a good neighbor, and so  
3 we're going to seek that the BZA approve the  
4 application, and that's our presentation.

5 MS. MILLER: Is anyone here from the ANC?  
6 Okay.

7 MR. GELFARB: If I may add, I believe the  
8 ANC letter of support should be in the file.

9 MS. MILLER: We do have their report. Do  
10 my board members have questions at this time? Okay.  
11 I'm going to have some questions about the conditions,  
12 but I think I'll wait for Office of Planning first.

13 MR. GELFARB: I'm happy to go through each  
14 condition if need be, but I didn't want to delay  
15 things if you don't feel it's necessary.

16 MS. MILLER: Right. I think we'll get  
17 back to the specifics of that after we hear from  
18 Office of Planning. But I would like to just explore  
19 a little bit further the issue of extended hours. I  
20 guess you went back to the 6:00 hour, and you  
21 originally wanted to go to 11.

22 MR. GELFARB: We went back to the 7 p.m.

23 MS. MILLER: 7 p.m. Okay.

24 MR. GELFARB: Right.

25 MS. MILLER: Which is what it is under the

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1 current order.

2 MR. GELFARB: That's correct.

3 MS. MILLER: Okay. Because we hear  
4 different things in neighborhoods about there's a dire  
5 need for parking, versus it's disruptive to residents  
6 that might be close by. And I'm wondering if you can  
7 elaborate a little further as to what is the situation  
8 there. And I'm sure Office of Planning will, as well.

9 Is there a need for parking in the evening, and how  
10 close are the residences to the parking lot? And how  
11 big was the turnout at the ANC meeting? Do you have a  
12 feel that that was representative of the community?

13 MR. GELFARB: As far as the business need,  
14 I may defer to Mr. Deodes who is the property  
15 manager, and would probably speak best to that, and  
16 then I can come back and talk a little bit about how  
17 the ANC approached the situation.

18 MR. DEODES: We have always thought that  
19 there's a few nice ?- I go way back when this park  
20 ?- in the 60s when they had bars and clubs all up and  
21 down that strip, and they'd have 400 kids in there.  
22 And then they'd come out and pour into this parking  
23 lot and the neighbors were going crazy. I know all  
24 about all that. I remember hearing about it in the  
25 news.

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1 MS. MILLER: When was that?

2 MR. DEODES: In the 60s and 70s.

3 MS. MILLER: 60s and 70s. Okay.

4 MR. DEODES: But those things have  
5 changed now, and those nightclubs and night life, it's  
6 not really there. You get some fine dining there.  
7 And as we all like, it's human nature going out for  
8 fine dining, white tablecloth, you're going to spend -  
9 you might spend \$40, \$50 a person for the bottle of  
10 wine and a nice meal. You can pull up to the door in  
11 valet, it's going to help your business. And there's  
12 one or two nice restaurants that are there. And we  
13 wanted to explore the possibility of them using the  
14 lot. Of course, it would help us economically. I'm  
15 not going to forget that, but we went to that ANC  
16 meeting. There was 35, 40 people there. There was  
17 quite a nice crowd. And some of the neighbors who  
18 live right there next to that lot just vehemently ?-  
19 if they had their way, they would chain off the entire  
20 alley at 7 p.m., and nothing could come in and out of  
21 there. That's the way some of them felt, but they  
22 were reasonable. And we saw that that upset them, and  
23 there was no reason to pursue it, because if we can  
24 operate the way it has been operating, then we can  
25 live with it. If they can live with it, we can live

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1 with it.

2           When he mentioned we cleaned it up, we  
3 have it cleaned all the time, and there's a issue with  
4 trash blowing there. We've got a lot of businesses in  
5 that 4900 block and they have dumpsters. Some of them  
6 all the tops are open and the stuff blows around. We  
7 don't have a fast-food parking lot where we're  
8 generating tops and straws, and Wendy's and McDonald's  
9 napkins, anything like that. We have very minimal  
10 trash from our users. And we have a big dumpster  
11 behind the building, and I have it there on purpose so  
12 that when we do have heavy cleanup, the men can just  
13 put it right in there.

14           MS. MILLER: Let me ask you this. Are  
15 there enough spaces on the street for the customers  
16 for the restaurants?

17           MR. DEODES: During the day the streets  
18 are a battle to park.

19           MS. MILLER: Okay.

20           MR. DEODES: At night when you go to 6:30  
21 and it's street parking, you can look around and find  
22 some spaces off a couple of blocks away. You're going  
23 to be parking in front of homes. You're not going to  
24 be parking in that ?- if you're at all familiar, I'm  
25 sure ?- I'm speaking as though you are all familiar

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1 with Wisconsin Avenue. You now, right out in front of  
2 that block is commercial, and then across the street  
3 is a triangle and there's some commercial ?- I mean,  
4 there's no residents right around that triangle, and  
5 you can park on both sides there. The triangle like  
6 splits it so you get one, two, three, four good sides  
7 of parking, but it's all metered and it doesn't stop  
8 until 6:30. And before 6:30 to go in and have a meal  
9 and spend an hour or two, you're going to get  
10 ticketed.

11 MS. MILLER: So there are no spaces  
12 provided for those customers in your lot? I mean, why  
13 wouldn't you provide spaces for them then during the  
14 day for lunch?

15 MR. DEODES: Why wouldn't we?

16 MS. MILLER: Would you not set aside  
17 spaces?

18 MR. DEODES: Because it has evolved this  
19 way, and I've not explored that, to be honest with  
20 you. I've never explored that. It evolved this way,  
21 and this is simple enough to be managed, and not have  
22 it ?- we cannot ?- it would economically foolish to  
23 have an attendant there between the hours of, what is  
24 it, 6:30 and 7, or 7 and ?-

25 MS. MILLER: No, I don't mean that.

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1 Excuse me. I thought that you said it was a battle  
2 during lunch time, during the day.

3 MR. DEODES: Oh, if you want to ?- for  
4 me, it's no problem. If I need to visit the property  
5 during the lunch hours for management or maintenance  
6 purposes, I can pull in the lot.

7 MS. MILLER: No, I know that. I thought  
8 you said that it's a battle to find a parking space on  
9 the street during the day.

10 MR. DEODES: Yes, it is difficult.

11 MS. MILLER: Okay. And one of the  
12 businesses that the parking lot abuts, I guess, is a  
13 restaurant. Right?

14 MR. DEODES: Yes.

15 MS. MILLER: Okay. So can't that  
16 restaurant have a contract for a certain number of  
17 spaces for its customers?

18 MR. DEODES: We could, but we'd have to  
19 remove people that we have and switch it over. And  
20 they'd have to be willing to do it. I have not  
21 broached it because I didn't have it to offer, quite  
22 frankly. But then that would create the possible  
23 problem that the neighbors don't want, and that's the  
24 in and out, in and out, in and out.

25 MS. MILLER: Okay. When the students

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1 aren't there though in the summer, you have extra  
2 spaces to give to ?-

3 MR. DEODES: Yes, seven months, eight  
4 months the most. Some of them have some summer  
5 school.

6 MS. MILLER: So what do you do with those  
7 spaces?

8 MR. DEODES: They just sit empty.

9 MS. MILLER: Okay.

10 MR. DEODES: We have two empty spaces all  
11 the time, because I thought it was prudent to keep  
12 them in case there's a breakdown or whatever, and for  
13 snow removal. We can't push that snow in the alley so  
14 we pile it ?- you know, this past year we had a  
15 little bit of snow and we used those spaces for snow  
16 removal. We just piled it up there.

17 MS. MILLER: So in the summer, could you  
18 use those spaces for a restaurant if you needed to, if  
19 they were interested?

20 MR. DEODES: If we were permitted to, I  
21 think we could. Yes.

22 MS. MILLER: Okay. And also with respect  
23 to the time - you were asking for 10, just so you  
24 wouldn't have to come back so often. Is that it?

25 MR. DEODES: Oh, you mean the length of

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1 the duration?

2 MS. MILLER: The length of the order.

3 MR. DEODES: I'm in shock as to the cost  
4 of this process. For just the legal fees, the  
5 application fees, you know, I'm sure you're all aware  
6 of the cost, and the amount of time going to the ANC  
7 meetings and over and over. It's racked up to almost  
8 the equivalency of a year's parking rents.

9 MR. GELFARB: If I may just add ?-

10 MR. DEODES: And that's why we'd like a  
11 longer period, so we can absorb that over the time.

12 MR. GELFARB: The other reason was that  
13 we've had a good track record over the last two years,  
14 so we've proven ourselves over the last two years, and  
15 that was the thinking.

16 Getting back to your question regarding  
17 the ANC and the situation there, what we thought we  
18 would do is sort of improve our relationship with the  
19 surrounding property owners there. Most people are  
20 supportive of what we're doing. There were a couple  
21 who were opposed, and our thinking was that we would  
22 go to more of the ANC meetings and in the next couple  
23 of years improve our relationship, and have all those  
24 folks adamantly and strongly support us, and that was  
25 our thinking, especially with regard to the valet

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1 situation, because the valet parking would free up  
2 spaces in front of people's houses. And it would work  
3 well for the restaurants also.

4 One of the problems with this lot is it's  
5 not directly accessory to the restaurant, and so it  
6 really would work best as a valet situation. And so  
7 our thought would be that to have a professional valet  
8 set up and work with the neighbors, convince them that  
9 it will work out well. There's not going to be a lot  
10 of noise. It's going to work out well, and that's our  
11 plan going forward.

12 MS. MILLER: Did you explain to the ANC  
13 about the cost of coming here?

14 MR. GELFARB: Yes, we did discuss that  
15 with them, and they understood that. And like I said,  
16 they did wholeheartedly 4-0 support us with regard to  
17 the revised application.

18 MS. MILLER: Okay. Any questions?

19 MR. MANN: You've been very thorough, and  
20 I think explored an awful lot of questions that I had.

21 MS. MILLER: All right. Then I guess we  
22 can hear from the Office of Planning then.

23 MR. MOORE: Good morning, Madam Chair, and  
24 members of the board. I'm John Moore of the Office of  
25 Planning. The Office of Planning stands in general

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1 support of the application. I'd just like to explore  
2 a little bit 213.7.

3 After the explanation the applicant has  
4 given this morning, I think it's up to the board in  
5 terms of how you define what is short-term. They seem  
6 to have inherited a situation that they've simply  
7 continued. Technically, as I've reviewed it, it  
8 didn't qualify short-term. I discussed this with the  
9 applicant's attorney, but I think that it's up to the  
10 Board to determine if the community interest is being  
11 served by the contract parking that they're doing in  
12 the lot right now.

13 With respect to the valet parking, we  
14 couldn't consider that because the applicant, as  
15 you're aware, withdrew the two amendments that would  
16 have talked about the valet parking and the time  
17 frame. So when that was withdrawn, the Office of  
18 Planning simply supported the conditions that was  
19 previously approved. And that's basically it, with  
20 one observation, as indicated in the photographs, is  
21 that as the applicant said, it is probably the issue  
22 where that is part of a tunnel, and wind may blow  
23 debris up into the area.

24 The issue that the Office of Planning  
25 found during its tour is that the lot is supposed to

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1 be monitored on a daily basis according to the  
2 previous condition, and if that is happening, then  
3 there wouldn't be any real build-up of trash around  
4 the perimeter of the property. With that being said,  
5 the Office of Planning would support the application.

6 MS. MILLER: I think the way the parking  
7 lot is being operated is in the spirit of 213.7.

8 MR. MOORE: Yes.

9 MS. MILLER: Okay. And do you have a  
10 comment about the duration of the order, even though  
11 they withdrew it. Certainly, it's within our  
12 discretion to make the order as long as we choose.

13 MR. MOORE: Had the amendment stayed, the  
14 Office of Planning would have recommended an expanded  
15 time frame of seven years.

16 MS. MILLER: Seven. And does Office of  
17 Planning have any comments on the conditions?

18 MR. MOORE: Well, as indicated in our  
19 report, we think that the previous conditions should  
20 be continued. I'm sure that you're going to keenly go  
21 through them, because as I've seen this Board do  
22 recently, certain conditions are not controllable by  
23 this Board. And I think that you will try to weed  
24 those out.

25 MS. MILLER: I'm sure we will. Do you

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1 have any comments with respect to specific ones that  
2 you think fall in that category?

3 MR. MOORE: No.

4 MS. MILLER: Okay. Thank you. Do you  
5 have any cross examination for Office of Planning?

6 MR. GELFARB: No, I do not.

7 MS. MILLER: Okay. And there's nobody  
8 here from the ANC. Is that correct? Are there any  
9 parties or persons in support of this application that  
10 want to come forward? Not seeing any, are there any  
11 parties or persons in opposition? Okay. Yes, this  
12 would be the time to come forward. You can come to  
13 that table and turn on the mic. Could you identify  
14 yourself for the record, name and address.

15 MS. QUIRK: Yes. Cathy Quirk, 4228  
16 Fesenden Street, N.W., D.C., born and raised in that  
17 house, neighbor to that lot all my life. And they did  
18 address my concerns before we met this morning, that  
19 we have reasonable hours of operation. I've been there  
20 through my whole life with all of the bad times, and  
21 the really bad times, the shootings, the cars on fire,  
22 all that nonsense that was going on. I lived through  
23 all of that. And the intent has been met, which is  
24 monthly parking to relieve us during the day from the  
25 commuters, because we are rained upon by commuters

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1 during the day. And the intent has been met, and all  
2 of my concerns; on the trash and the cleanliness. And  
3 in the evening, there's plenty of parking.

4 If I get home during the day, parking is  
5 tight. But when I get home after work, although I  
6 take public transportation, when I get home there's  
7 plenty of parking in the evening. I agree with  
8 everything that they've said, and that they're really  
9 trying to make a good start, because the last people,  
10 Starwood, Urban, they looked good on paper and came  
11 through with nothing. And so we're all here. I'm  
12 really pleased that they came to the ANC meetings, and  
13 that I met them this morning, and that the spirit of  
14 things is being met, as you all said. Indeed, that is  
15 the spirit. And the intent is not for short-term  
16 parking in and out all day long. The configuration  
17 and the pedestrian issues, and the school children  
18 issues, that was some of the flavor of things, so  
19 thank you.

20 MS. MILLER: Thank you.

21 MR. MOY: Madam Chair, if I may, a staff's  
22 point for clarification, that Ms. Mary Quirk had filed  
23 a party status, so the staff would just like  
24 clarification as to what to do with her filing.

25 MS. MILLER: Oh. My understanding was

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1 that Ms. Quirk had removed her request for party  
2 status. Is that correct?

3 MS. QUIRK: Yes, that's fine.

4 MS. MILLER: Thank you very much.

5 MS. QUIRK: Thank you.

6 MS. MILLER: Do you have any closing  
7 remarks?

8 MR. GELFARB: Yes, just a couple of quick  
9 points. Without, and I don't want to restate the  
10 application and I do go through in the application a  
11 section where I discuss how the conditions are met,  
12 and so I won't reiterate that. I will speak very  
13 briefly about 213.7 though, and it does say - it  
14 relates to a majority of the parking spaces, so it  
15 doesn't require that every space be used for  
16 residential uses or short-term parking needs of retail  
17 service and public facility uses.

18 MS. MILLER: Do you think you meet that in  
19 any way?

20 MR. GELFARB: Excuse me? Oh, well, as I  
21 said, I think ?-

22 MS. MILLER: You meet the spirit is what  
23 you think.

24 MR. GELFARB: Yes, I think we meet the  
25 spirit. I think the public facility use arguably is

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1 covered by the students of Georgetown Day, which is a  
2 school. I would argue that that is a public facility.

3 MS. MILLER: And how many spaces is that,  
4 seven?

5 MR. GELFARB: Approximately.

6 MS. MILLER: Approximately seven right  
7 now. Okay.

8 MR. GELFARB: I would also say that the  
9 spirit of 213.7 is really commuter-type parking, where  
10 somebody may park and then hop on the Metro, and go  
11 downtown. And that's really not what's happening  
12 here. This isn't commuter parking to the extent that  
13 you have people taking the Metro and parking. This is  
14 really people that are working in this area. I think  
15 Wells Fargo arguably could be seen as a retail use in  
16 that it is open to the public for mortgage brokerage  
17 services, et cetera.

18 The other thing I would like to mention is  
19 that if the Board in its discretion believes a seven  
20 year term is appropriate, obviously we would prefer  
21 that. And in closing, I thank you for your time.

22 MS. MILLER: Okay. And finally, I just  
23 want to draw your attention to the conditions of the  
24 previous order, which is what's being proposed to us  
25 to adopt in general, and ask you if you have any

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1 comments on any that you think don't need to be there,  
2 shouldn't be there, or should be reworded a little  
3 differently. This is your opportunity.

4 MR. GELFARB: I thank you for that  
5 opportunity, and I will take a quick look through  
6 that.

7 MS. MILLER: Okay.

8 MR. GELFARB: If I can just indulge you  
9 for a minute. I want to pull out the conditions. My  
10 only comment on that would be condition 4, "The  
11 property shall be cleared of all trash and debris on a  
12 daily basis". It would seem to me that the line  
13 should be "cleaned as needed", and if it is not truly  
14 needed on a daily basis, it doesn't generate any of  
15 its own trash. It is literally just a parking lot,  
16 that there may be some flexibility at the discretion  
17 of the property manager. Obviously, these guys  
18 professionally manage and there's a contract with a  
19 cleaning service, but we would prefer that it be  
20 cleaned as needed.

21 MS. MILLER: Do they check it on a daily  
22 basis?

23 MR. DEODES: As a practical matter, the  
24 tenants that rent from us will call us if there's an  
25 issue, as a practical matter - even in the shopping

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1 center. If you own a piece of property and there's a  
2 problem, somebody is going to call you and tell you  
3 there's a problem on a daily basis.

4 As far as checking it on a daily basis,  
5 the manager of Wells Fargo is in and out of there  
6 every day. He will call me and say, "Nick, you've got  
7 an issue. Take care of it", whatever - because we  
8 could have it cleaned today, and tonight late at night  
9 somebody could go throw something there and we'd have  
10 an issue in the morning. And that's, I think the  
11 answer to your question. As a realistic matter, it is  
12 checked on a daily basis because it's occupied on a  
13 daily basis. And we go by, as I said earlier, we go  
14 by there at least once, twice a week. The owner  
15 himself is not too far from there. He cuts through  
16 from work through that ?- that's one of his travel  
17 paths too, and so we do check it out daily.

18 MR. GELFARB: All the other terms and  
19 conditions are acceptable to the applicant.

20 MR. PARSONS: Madam Chair, it appears as  
21 though they've come to some agreement with the ANC  
22 about this matter. And their condition suggestion is  
23 picked up at least once a week.

24 MS. MILLER: Once a week. Okay. Thank  
25 you.

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1 MR. DEODES: That we do. We do more than  
2 that. As needed is more than that, so that's not an  
3 issue.

4 MS. MILLER: I mean, in reality do some of  
5 the tenants pick up trash if they see it, like from  
6 Wells Fargo?

7 MR. DEODES: I think that's possible.

8 MS. MILLER: Possible, okay.

9 MR. GELFARB: Especially if they're  
10 parking in the lot, I think they would.

11 MR. DEODES: I, myself have gone there  
12 and swept that lot at times, do what's necessary.

13 MS. MILLER: Mr. Parsons, you have the ANC  
14 report in front of you. I don't have mine right here,  
15 but I noticed there was a little different language in  
16 the ANC report about either meeting with the ANC once  
17 a year as a condition, versus there's some language in  
18 number 15 of the previous order that talks about  
19 maintaining a liaison. Do you have any preferred  
20 language as far as your relations with the ANC go?

21 MR. DEODES: Well, we gave our word that  
22 we would go to the meetings at least once a year,  
23 maybe twice a year. I have no problem doing that. I  
24 don't know if it needs to be written in the document  
25 or not. That's all I can say about it.

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1 MS. MILLER: Okay.

2 MR. DEODES: If I said I'd do it, I'll do  
3 it. As long as I can walk, I'll do it.

4 MS. MILLER: Okay. Any other questions?

5 MR. PARSONS: Well, the way they phrase it  
6 is once every nine to twelve months. When you do  
7 that, it's once every twelve months. Right?

8 MR. DEODES: Yes, that's what I'm saying.

9 MS. MILLER: Once a year sounds good.

10 MR. DEODES: That's what I'm saying.

11 MR. PARSONS: And then this graffiti  
12 issue, is that a current phenomenon, or is it  
13 something you suffered through for years?

14 MR. DEODES: Say that again, sir?

15 MR. PARSONS: Is this something that just  
16 occurred, the graffiti issue, or is it something ?-  
17 your wall is attractive to graffiti artists?

18 MR. DEODES: No. There was only one area  
19 of graffiti, and that would have been on the south  
20 side - outside portion of the south wall. There's  
21 only two walls. There's a south wall and a west wall,  
22 and then on the east is a guard rail, and on the west  
23 wall somebody put some zig-zags. It was not foul  
24 language or anything that bad, but some zig-zags had  
25 been there. And I can't tell you how long they've

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1       been there. I mean, a couple of months and they asked  
2       us to remove it, because I believe ?- it was spoken  
3       about at the ANC. There had been a recent rash of  
4       graffiti through the area, and I think that's when  
5       this occurred, and everybody was addressing it.

6                   I didn't see any reason to have it cleaned  
7       because we had to paint the wall as a promise and  
8       condition of coming today. We were going to repaint  
9       the whole wall anyway, so I didn't clean it right away  
10      because I knew I was going to have the whole place  
11      painted, and that's been completed. The painting is  
12      complete.

13                   MR. PARSONS: So us placing a condition  
14      that graffiti be removed regularly, which is what the  
15      ANC is suggesting, do you have any problem with that?

16                   MR. GELFARB: Let me talk for one second  
17      off the record, if I could.

18                                   (Off the record.)

19                   MR. GELFARB: Okay. If we can go back on  
20      the record, now. To answer the Chair's question about  
21      which form of interaction we would prefer with the  
22      ANC, I think our preference is the language that's in  
23      the existing order with regard to a liaison with the  
24      ANC and the homeowners would be our preferred  
25      methodology. We probably still will go periodically

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1 to ANC meetings, just to stay in touch.

2 And then similarly, the ANC language  
3 regarding the graffiti removal is acceptable to us.  
4 And, obviously, the trash removal language is  
5 acceptable to us also. That's in the ANC resolution.

6 MS. MILLER: Okay. And we have a copy of  
7 the conditions attached to BZA Application number  
8 16212, except that our's ends at the bottom of page  
9 ?- at number 15 it's cut off. We don't seem to have  
10 a second page on that. Can you pass that to staff?  
11 Are there more conditions, or is that the last  
12 condition? Okay. Our staff is just going to make  
13 copies of that so we have the complete language, so it  
14 will be right.

15 MR. PARSONS: Madam Chair, I may have  
16 missed this because I arrived late. There's a  
17 condition in here about lighting. Do you light this  
18 lot?

19 MR. DEODES: At the entrance is a  
20 telephone pole that has our electric meter for the  
21 operation of the electronic gate that controls entry  
22 and exit. And at the top of that pole is a  
23 streetlight. And also, on the east face of the  
24 parking lot which is guardrail - you see the  
25 guardrail in the closest picture to me?

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1 MR. PARSONS: Yes.

2 MR. DEODES: Okay. All along that alley  
3 are telephone poles with streetlights on top of each  
4 one. And some of them may be burned out right now,  
5 and I've called in to try to get them to come and fix  
6 them. It's up to the state.

7 MR. PARSONS: So the question is no, you  
8 do not ?-

9 MR. DEODES: We do not have a light,  
10 except for the one at the entrance that's on that  
11 telephone pole.

12 MR. PARSONS: So you pay for that? Your  
13 electric meter ?-

14 MR. DEODES: I'm not sure, to be honest  
15 with you. I'm not sure if that goes through our meter  
16 or not, because our meter is on that pole too. I'd  
17 have to look into it, but I don't know, Mr. Parsons.

18 MR. PARSONS: You've never changed the  
19 bulb.

20 MR. DEODES: No, sir. I haven't had a  
21 need to.

22 MR. PARSONS: I just wonder why we need  
23 number 14 then. If that's really a public alley  
24 light, it would seem to me that the ?- I know the  
25 intention of this kind of language is to have low

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1 lights that focus down on the lot. And here you've  
2 got a light on a telephone pole that's spilling out  
3 into the community, and you've got no control over it.

4 You've got enough ambient light in the area that you  
5 don't need to light this.

6 MR. DEODES: You would. And if you lit  
7 that parking lot up like a giant food store, the  
8 neighbors will have a heart attack.

9 MR. PARSONS: Of course. So maybe it's  
10 all right as it stands, because it says, "Any lighting  
11 used to illuminate the lot", you're not using any  
12 lighting.

13 MR. DEODES: No, not specifically, we  
14 aren't.

15 MR. PARSONS: Right.

16 MR. DEODES: I think there's more than  
17 ample lighting with that public.

18 MS. MILLER: Okay. I think we have  
19 everything we need. I was going to suggest though, if  
20 we've gotten all the information we need from the  
21 applicant, we can also go down the conditions  
22 ourselves and decide if we really need them or not.  
23 Okay?

24 MR. DEODES: Thank you.

25 MS. MILLER: So at this time then, if

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1 you're interested in a bench decision, we could give  
2 you a bench decision.

3 MR. GELFARB: That would be great.

4 MS. MILLER: Okay.

5 MR. GELFARB: Yes.

6 MS. MILLER: I think we can discuss this  
7 under motion then. I would move to approve the  
8 application of number 17151 of Peter G. Pappas and  
9 Patricia Georgilakis, pursuant to 11 DCMR 3104.1, for  
10 a special exception to continue operating an existing  
11 27 space parking lot last approved by BZA Order number  
12 16212, under Section 213 of premises 4926 Wisconsin  
13 Avenue, N.W. And do I have a second?

14 MR. PARSONS: Second.

15 MS. MILLER: Okay. I think in general  
16 this is a parking lot that has been operating  
17 successfully under a previous BZA order. It has a  
18 good track record. Office of Planning has recommended  
19 approval of the special exception, and has submitted  
20 an extensive analysis as to how it meets the  
21 requirements for a special exception. It's a parking  
22 lot behind retail establishments, including Wells  
23 Fargo Bank, At the Beach Tanning Salon, some  
24 restaurants, and it's also close to the Georgetown Day  
25 School. And it does seem to be operating successfully

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1 within the community serving the needs of the  
2 community, including the nearby schools, the  
3 residences and the businesses.

4           There was a question in this case with  
5 respect to Regulation 213.7, which addresses providing  
6 short-term parking for residents and businesses, but  
7 Office of Planning has concluded and I think we would  
8 conclude also that this lot meets the spirit of this  
9 regulation. Also, it has the flexibility to provide  
10 greater short-term parking should the neighbors and  
11 residents want that with respect to the nearby  
12 residences. It has 30-day contracts which are  
13 flexible and can be changed, and as of now, the way  
14 it's been operating it's serving the community, so I  
15 think it meets that regulation.

16           Office of Planning has gone through the  
17 special exception test, showing how it meets it. It's  
18 within 200 feet of an existing commercial/industrial  
19 district, contiguous to or separated only by an alley  
20 from the commercial/industrial district, and that the  
21 provisions of Chapter 23 are complied with.

22           I don't think we need to go through all  
23 the specifics of those regulations. They're in the  
24 Office of Planning's report, but I think we do need to  
25 take a look at the conditions that were presented to

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1 us. The conditions are basically almost the same as  
2 are in the previous order, with a couple of  
3 modifications based on the testimony today, and  
4 meeting with the ANC. And the ANC has supported this  
5 application, as well.

6 Does anybody have any other comments in  
7 general before we go to the conditions? Okay. So the  
8 conditions that I'm working from are those that were  
9 set forth in ?- I'm looking at BZA Order Number  
10 15919, 1994. Is that what you're looking at? Okay.  
11 Wait a minute. This is what I have before, so let's  
12 all look at the same one. It may have been adopted in  
13 the later order, as well, so we just want to be  
14 looking at the same page.

15 Okay. I have 16212 before me. Is that  
16 what we'll start with? Okay. So the first condition  
17 goes to the period of years that the order will  
18 control. And this order presently says five years.  
19 We've had some discussion about how it's costly for  
20 the applicant to come back in that period of time, and  
21 they have a good track record. And Office of Planning  
22 has said ?- I believe that they presented seven years  
23 as a good amount of time, so I would go along with the  
24 seven years. How do you all feel?

25 MR. MANN: That's fine. The applicant

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1 didn't sound like he had any issue with that.

2 MS. MILLER: I think applicant would  
3 prefer it. And I know they don't want to feel like  
4 they're reneging with ANC, but I don't think that is  
5 the situation here. I think we're just looking at the  
6 big picture.

7 And I also would say that if there are  
8 problems with the parking lot, that we do have  
9 compliance review mechanism now, that there's an  
10 enforcement that there didn't used to be. And also,  
11 people are free to come forward - it may be a little  
12 costly, but they can ask to modify an order if there's  
13 a certain kind of problem or relief that they need.  
14 Okay. So we'll change that to seven years.

15 Hours of operation - I guess we heard  
16 testimony that they explored the possibility of  
17 keeping the lot open at night, and providing valet  
18 parking, but the neighbors were opposed to that at  
19 this time; and, therefore, they are not asking for  
20 that any more, so I think that the operation hours  
21 would remain the same, unless you all have a different  
22 view.

23 Number three, the lot shall be secured  
24 during all hours that it is not in operation. I don't  
25 think that's a problem. Number four is what we were

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1 going to change, I believe. That deals with clearing  
2 of the trash and debris, and we were going to pick up  
3 the ANC language, which is ?- who has that in front  
4 of them?

5 MR. PARSONS: Which is at least once a  
6 week.

7 MS. MILLER: Okay. So the property shall  
8 be cleared of all trash and debris at least once a  
9 week. Okay. That's the new number four.

10 Number five says, "There shall be no trash  
11 containers kept on the lot. Trash shall be disposed  
12 of by the business the parking lot serves." Does  
13 somebody have a comment on that? I don't totally  
14 understand this prohibition against trash containers  
15 being kept on the lot.

16 MR. DEODES: Well, we didn't discuss it  
17 ?-

18 MS. MILLER: We didn't discuss that yet.

19 MR. DEODES: There didn't seem to be any  
20 ?-

21 MS. MILLER: You said something about  
22 that.

23 MR. DEODES: You wouldn't want that. It  
24 would ?- a trash receptacle sitting in a parking lot  
25 like that is just going to be a magnet for dumping.

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1 MS. MILLER: Oh, I see. There's a good  
2 reason for this then.

3 MR. DEODES: So you wouldn't want that  
4 there.

5 MS. MILLER: So you're saying that the  
6 condition is fine with you.

7 MR. DEODES: Right.

8 MS. MILLER: We don't usually engage ?-

9 MR. DEODES: We have a dumpster at the  
10 rear of the building, which can be served by the  
11 company that can lift it and empty it. You couldn't  
12 get in ?- a big truck couldn't get in and out of that  
13 parking lot anyway.

14 MS. MILLER: Okay.

15 MR. PARSONS: That's what this means.

16 MR. DEODES: Yes.

17 MS. MILLER: Yes, I didn't understand it,  
18 and you got it.

19 MR. DEODES: Yes.

20 MS. MILLER: Okay. Let's just skim down  
21 then the rest of them and see if there's any problems  
22 with any of them. If we want to take any out.

23 MR. PARSONS: It would seem number six is  
24 the place if we want to insert graffiti removal,  
25 because it deals with the wall.

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1 MS. MILLER: Okay.

2 MR. PARSONS: And graffiti should be  
3 removed from it expeditiously.

4 MS. MILLER: The ANC says regularly. I'm  
5 sorry. Expeditiously. Is there some graffiti there  
6 now?

7 MR. PARSONS: No, the wall was painted ?-

8 MR. DEODES: Yes. There wasn't as of  
9 yesterday. There was no graffiti yesterday.

10 MR. PARSONS: It's still wet.

11 MR. DEODES: I haven't been there today.  
12 But we will remove it expeditiously. That's fine.

13 MS. MILLER: All right. Graffiti will be  
14 removed expeditiously. Okay.

15 MR. PARSONS: We want to respell bumper in  
16 number 10.

17 MS. MILLER: Right. Okay. I think the  
18 ?- now you probably know this better than I do. I  
19 believe that it was brought to my attention that  
20 number 10, 11, and 12, and maybe 13 are all required  
21 by our regulations anyway, and whether or not we need  
22 to include them.

23 MR. PARSONS: Strobe lighting, as well.

24 MS. MILLER: Strobe lighting, as well. I  
25 mean, sometimes it's a good idea to take them out

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1 because it's simpler to see what the requirements are  
2 that are different. Otherwise, we could leave them  
3 in. It doesn't matter. Do you have an opinion on it?

4 MR. PARSONS: Yes, I think we ought to  
5 leave them in.

6 MS. MILLER: Okay.

7 MR. PARSONS: I don't think people need to  
8 go to two sources ?-

9 MS. MILLER: Go to the regs to look up  
10 what are the regulations required. Okay. Good, So  
11 let's leave them in.

12 MR. PARSONS: As long as we respell  
13 bumper.

14 MS. MILLER: Then we get to 15, I think,  
15 which is the relationship with the ANC. And I think  
16 that the applicant said they liked the language that's  
17 in there, number 15, which reads ?-

18 MR. GELFARB: That may be missing a word,  
19 I think, after ongoing.

20 MS. MILLER: "The applicant shall maintain  
21 through its designated represented an ongoing liaison  
22 with Advisory Neighborhood Commission 3E and the  
23 properties owners in the square to resolve any issues  
24 that might arise due to the operation of the parking  
25 lot." Okay. Is that all right with everyone?

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1 MR. MILLER: I think that's fair.

2 MS. MILLER: Okay. Then I think we've  
3 covered this and we're ready to vote, unless anyone  
4 has anything else. Okay. Did I have a second?

5 MR. MANN: You had a second, yes.

6 MR. PARSONS: We both seconded

7 MS. MILLER: Okay. All those in favor say  
8 aye. All those opposed. All those abstained.

9 (Vote taken.)

10 MS. MILLER: The ayes have it.

11 MR. MOY: Staff would record the vote as  
12 3-0-2, that is on the motion of Madam Chair, Ms.  
13 Miller, seconded by I believe Mr. Parsons, unless you  
14 want Mr. Mann. Anyway, staff will work that out. We  
15 have Mr. Griffis, Mr. Etherly not participating on  
16 this case.

17 MS. MILLER: Thank you.

18 MR. GELFARB: Thank you.

19 MS. MILLER: We can call the next case.

20 MR. MOY: The next case is Application  
21 number 17152 of International Campaign for Tibet,  
22 pursuant to 11 DCMR 3104.1, for a special exception  
23 to waive the rear yard setback requirements under  
24 Subsection 774.2, to allow an addition to an existing  
25 building in the DC/C-3-C District at premises 1825

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1 Jefferson Place, N.W., Square 139, Lot 30.

2 MS. MILLER: Good morning. Could you  
3 identify yourself for the record.

4 MS. GIORDANO: Good morning. My name is  
5 Cynthia Giordano from Arnold & Porter Law Firm,  
6 representing the applicant. I'll just go ahead and  
7 introduce the witnesses now. We have Mr. John Ackerly  
8 with the Campaign for Tibet, the applicant; Mr. Kane,  
9 who has been very involved in helping the organization  
10 with their real estate process, and he has just a few  
11 words to say about the project; Suman Sorg from Sorg &  
12 Associates, the project architect; and Nate Gross from  
13 my office is going to address the special exception  
14 criteria. And we can do this expeditiously if the  
15 Board is familiar with the materials. We will keep  
16 our testimony short so you can get to lunch on time.  
17 I'm sorry, go ahead.

18 MS. MILLER: Well, we have an application  
19 for party status, so before you get too far ?-

20 MS. GIORDANO: All right. That's fine.  
21 It's my understanding that that was going to be  
22 withdrawn, but why don't we go ahead and take that up.

23 MS. MILLER: Okay. Is there a Peter  
24 Gambrill here? Okay. It's your understanding that  
25 he's withdrawing this.

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1 MS. GIORDANO: I can ask Mr. Ackerly to  
2 address that. He met with him yesterday.

3 MR. ACKERLY: We met with Peter yesterday,  
4 and discussed the case with him, and he said he was  
5 going to withdraw that because it was based on the  
6 light in two of his windows, and he realized that  
7 regardless of a special exception the light was going  
8 to remain about the same through those windows, so he  
9 said he didn't have any problem with it.

10 He does want us to pay for his attorney's  
11 fees to look over stuff and things like that, which  
12 we're going to agree to.

13 MS. GIORDANO: There's a crane over-swing  
14 and a party wall extension agreement that his attorney  
15 will look at, but it was our understanding that he  
16 wasn't going to appear today, but he was going to mail  
17 in a request to withdraw his party status.

18 MS. MILLER: Okay. Then I would recommend  
19 that we deny the request for party status since he's  
20 not here, and we don't have any other indication that  
21 he intends to participate, and really couldn't  
22 participate by being here. Okay. So the party status  
23 application is denied. Is anybody here from the ANC?  
24 No. Okay.

25 MS. GIORDANO: There's a letter in the

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1 record from the ANC in support of the application. We  
2 will go ahead and provide our testimony. Basically,  
3 this application is for a minor special exception,  
4 rear yard special exception. And Mr. Ackerly will  
5 address the objectives of the organization in  
6 expanding this building, and give a little bit of  
7 background on the applicant. And Mr. Kane will also  
8 provide a few comments along those lines.

9 MR. ACKERLY: Thank you, Madam Chairwoman  
10 and Members of the Board. I'm the President of the  
11 International Campaign for Tibet. My name is John  
12 Ackerly. I live at 512 Elm Avenue, Tacoma Park,  
13 Maryland. I was with the group when we started in  
14 1988. We've rented in various locations in D.C. We  
15 have 13 employees. About half of them are Tibetan-  
16 Americans and half Americans, and our goal is to  
17 improve the human rights situation in Tibet.

18 Maybe you've had a chance to go there,  
19 probably not. It's a spectacular country, average  
20 elevation 12,000 feet, ringed by the Himalayas, but  
21 the human rights situation is atrocious. It's been  
22 occupied by China since 1950, and a lot of our work is  
23 aimed at human rights advocacy, trying to bring  
24 awareness to this issue. We engage in a lot of  
25 amnesty, international style advocacy, identifying

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1 human rights violations and specific prisoners,  
2 engaging in letter-writing campaigns.

3 We had some success. One 26-year old  
4 Tibetan Buddhist Nun served half of her life in  
5 prison, is now out and working with us in our offices  
6 here. We also work on humanitarian issues. The  
7 refugees continue to come out of Tibet into India,  
8 Nepal. India is very receptive to the refugees, but  
9 India is very poor, so we raise money to provide  
10 health and education funds for those refugees.

11 The third main area of our work is with  
12 the Dalai Lama and his advocacy for non-violence. As  
13 you may know, this issue ?- the Tibetans have always  
14 kept this as a non-violence cause. And one thing that  
15 is a real privilege for us to do is to arrange for the  
16 Dalai Lama's meetings when he comes here with the  
17 White House, State Department, Congress and community  
18 organizations. Last year we did have him at the  
19 National Cathedral, and next year we have MCI booked,  
20 so we're looking forward to him coming again.

21 And basically, we've very excited about  
22 moving to this new building on Jefferson Place. We've  
23 always wanted to have our own home here in the  
24 District for the International Campaign for Tibet, and  
25 as a community center for local Tibetans.

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1           The Tibetan population in D.C. is really  
2 quite small. It's only I think 500 people, but they  
3 are very engaged in trying to maintain their identity.

4       They have language classes for their kids, and  
5 religious observances, the Dhali Lama's birthday and  
6 so forth. And Jefferson Place, we feel is a beautiful  
7 space. The one thing that we couldn't do without a  
8 special exception is have a conference room, a meeting  
9 room of any size. And we really would like to have a  
10 room where we can hold meetings. We do leadership  
11 training for Tibetan youth. We have meetings of human  
12 rights groups, local, amnesty, Human Rights Watch. We  
13 get together and strategize on human rights situation  
14 in Tibet, so things like that. We need a room that  
15 otherwise isn't available in the current building.

16           To make this space really effective and  
17 useful, having that extra space in the back would make  
18 all the difference. So I'll just leave it at that,  
19 unless someone has questions. We can go through the  
20 rest of the presentations.

21           MS. MILLER: Do my board members have  
22 questions now? No. Continue.

23           MR. KANE: Good morning, Ms. Miller, and  
24 other Board Members. Thank you for allowing me to  
25 testify in support of the application of the

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1 International Campaign for Tibet, which is being  
2 considered this morning. I've been a member of the  
3 organization for a number of years, supporting their  
4 efforts to assist the Tibetan community.

5 The ICT's mission is vitally important to  
6 improving human rights for Tibetans and helping secure  
7 basic freedoms for Tibetans under the Chinese rule.  
8 Recently, I've become an active volunteer on their  
9 historic building renovation efforts.

10 By way of background, I've been involved  
11 as a project manager on a number of historic  
12 preservation projects in Washington over the past 21  
13 years, including Gallery Row in the PADC area, Alban  
14 Towers, and I'm currently the GSA Project Manager for  
15 the redevelopment of the old post office on  
16 Pennsylvania Avenue. I also have had the privilege of  
17 sitting on D.C.'s Historic Preservation Review Board  
18 for the past 10 years.

19 I joined the project after Ms. Sorg's  
20 preservation plans for the building were complete.  
21 Sorg's design has drawn accolades from those that have  
22 seen it and have reviewed it. The HPO staff approved  
23 Sorg's preservation plans in an over-the-counter sign-  
24 off. The HPO staff evidently felt that the plans were  
25 of exemplary preservation quality that they didn't

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1 need to be fully reviewed by the HPRB, which is a  
2 strong compliment to the preservation plans developed  
3 for this building.

4 As you've heard, the ANC approved the  
5 plans unanimously. Jack Evan's office has sent in a  
6 letter of support, as well as the neighbors on the  
7 other side of the building. The design skillfully  
8 addresses the space needs of the ICT organization so  
9 that they can continue to support their vitally  
10 important mission, while preserving another District  
11 historic structure.

12 Critical to these plans, and the most  
13 important from a preservation point of view is that  
14 the bulk of the building is pushed to the back of the  
15 lot, and doesn't loom over the front facade of the  
16 historic building. And to accomplish this important  
17 preservation goal, ICT needs your approvals for these  
18 waivers. So as a volunteer with the ICT, as someone  
19 who lives in close proximity to the building, and as a  
20 preservationist in the District, I ask you to support  
21 ICT's application today and allow us to build the Sorg  
22 & Associate's skillfully designed building. The ICT  
23 building will then become another welcome renovated  
24 building on the street. Thank you for your time.

25 MS. MILLER: Mr. Kane, can I ask you a

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1 question. If the building or the addition is pushed  
2 back for historic preservation goals. Right?

3 MR. KANE: Yes.

4 MS. MILLER: Could they have gotten their  
5 space as a matter of right if they didn't serve those  
6 goals, and instead just went up?

7 MR. KANE: You know what, I think I'm  
8 going to defer to Nate.

9 MS. MILLER: Okay.

10 MS. GIORDANO: I think Ms. Sorg can  
11 address that, as well. Are you ready?

12 MS. SORG: Yes.

13 MS. GIORDANO: Thank you. Suman Sorg from  
14 Sorg & Associates.

15 MS. MILLER: Okay. Good morning.

16 MS. SORG: Good morning, Madam Chairwoman.

17 To answer your question, it's actually a three-  
18 story building with a basement, and to have made the  
19 rear taller, much taller than the front would have  
20 impacted the view of the building from Jefferson  
21 Street, so we were doing everything in our power, and  
22 I can show you a section that illustrates that, which  
23 is this section here. It shows Jefferson Street here.

24 This is the existing building in dark. That is the  
25 addition, and then behind that is the alley. So most

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1 of the mass of the building is designed so that it  
2 doesn't impact any view from across the street of  
3 Jefferson Street, so that's why it's kept low.

4 MS. MILLER: I can see the appeal of that.  
5 I was just curious if that was true though.

6 MS. GIORDANO: I think the answer to your  
7 question is yes.

8 MS. MILLER: Okay. I mean, it might be  
9 horrible. I just was curious. Okay. Thank you.

10 MS. SORG: Let me just go quickly through  
11 the design so you can understand what's happening.  
12 This is the site plan of the building. This is  
13 Jefferson Place which is approximately 50 foot right-  
14 of-way. There's an alley in the back which is 10  
15 feet, and this is the property in question.

16 The main entrance is from the front of the  
17 building. There is a parking entrance from the back.

18 The building essentially from the basement on up,  
19 from the first floor on up just stacks up  
20 rectangularly over the backyard, what was originally  
21 the backyard. On the ground floor there will be an  
22 entrance into the parking. It has two standard  
23 parking spaces for small cars. Of course, there's no  
24 parking requirements because this is an historic  
25 building.

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1           One of the big problems that I had is that  
2 the majority of the space in the addition is eaten up  
3 by the fire exit that's required. And in a way, this  
4 fire exit helps the existing building, where the  
5 existing building does not really have a required  
6 means of egress. In other words, it has the old stair  
7 that's open all the way through, and doesn't have a  
8 regulation fire stair. This is what we're going to  
9 put into the new addition.

10           As you go up onto the second floor, there  
11 will be more offices. The current building will be  
12 continued to be used as offices. The third floor also  
13 we envision basically office space in this zone. You  
14 have the fire stair and some bathrooms. Some part of  
15 the space is being taken over by an atrium. In other  
16 words, we had to cut out some of the floor space  
17 because we needed to get light and air into the  
18 existing building. Otherwise, it would be sort of an  
19 80 foot building without light and air into the center  
20 part of the building.

21           And the here on the fourth floor is where  
22 you see the space that John was talking about, the  
23 community space, the meeting space that we need on the  
24 top floor, which can then open on into the deck, and  
25 then this is the roof plan showing the very top of the

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1 building.

2           The look of the building we're proposing  
3 is very transparent, mostly ?- this is the ground  
4 floor with the parking from the rear. This is the  
5 second, third, and then the fourth floor meeting room,  
6 which will be decorated by Tibetan craftsmen. It's a  
7 very transparent kind of building, so this is the  
8 alley side elevation. This is the elevation looking  
9 at it from one of the party walls. And then this is  
10 looking at it from the other party wall, and this is  
11 looking at it from the deck looking back towards the  
12 fourth floor addition.

13           There are currently some ?- the front of  
14 the building is in very good shape. This is the front  
15 on Jefferson Street, and that's going to continue to  
16 be restored. We're going no alteration to that  
17 whatsoever, except perhaps a Tibetan flag.

18           The inspiration for the building design  
19 comes from Tibetan Nepalese architecture. And here is  
20 what's the issue, I think these pictures talk to the  
21 issue. This is the property in question. These are  
22 the two neighbors. They're currently down the street  
23 buildings that have no setback. And this building,  
24 for example, if you go back to the site plan, this  
25 building here, this red building is right at this lot

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1 right here. And this brown building is at that lot  
2 right there. And none of them have any setback. They  
3 shoot straight up to whatever, 90 feet, quite high.

4 On the ground floor, of course, we are not  
5 required to have a setback. We're required to have a  
6 setback from the center line of the property at 20  
7 feet above grade. We plan to have sort of an open  
8 area for the parking, so on the ground floor ?- and  
9 there has come up some questions on how do you access  
10 the ground floor, but at the ground floor level you  
11 really just have a parking space or two in back. And  
12 that will be here.

13 MS. MILLER: The existing building, is it  
14 required to have a rear yard setback right now? And  
15 if it does, is it in conformity with that?

16 MS. SORG: No, it doesn't require that.

17 MR. GROSS: Well, there hasn't been any  
18 construction for many years, Madam Chair, so it really  
19 hasn't been an issue. It's well set ?- it's a pretty  
20 shallow building at the present time, so it doesn't  
21 even approach any question of being in violation of  
22 the rear yard requirement.

23 MS. MILLER: Okay. We were just wondering  
24 if it was conforming or non-conforming.

25 MR. GROSS: It's conforming now, yes.

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1 MS. MILLER: Okay.

2 MS. SORG: So then on the first floor,  
3 above the first floor we start the offices and then  
4 the top fourth floor will have the meeting room which  
5 you can walk out of the roof of this building. It  
6 goes straight up three stories. The site plan gives  
7 you an idea of the relief we are asking for much more  
8 clearly, which is if that's 12 feet from the center  
9 line of the property, the alley, we are asking only to  
10 go up to the alley itself, and then straight up. The  
11 height of the building currently is about 42 feet, and  
12 then the very top of the original roof is about 52.  
13 And the allowable height is 70. Are there any  
14 questions you'd like to ask me?

15 MS. GIORDANO: Mr. Gross will address the  
16 special exception criteria.

17 MR. GROSS: Good morning, Madam Chair and  
18 Members of the Board. I'm Nathan W. Gross, residing  
19 at 4424 Alten Place, N.W. I would like to just  
20 summarize some of the more important factors in  
21 support of approval.

22 By way of general background and following  
23 up on the Chair's question, there are some other  
24 factors involved here. One is, there's an existing  
25 eight foot setback from the front property line;

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1 which, of course, in a historic district will be  
2 maintained. It's a small lot, and then by keeping the  
3 height relatively low for reasons that Ms. Sorg  
4 emphasized, it tends to push the addition towards the  
5 rear. And that's what Mr. Ackerly mentioned, there's  
6 a certain dynamic of the necessary dimension for the  
7 meeting room on the top rear, which is important to  
8 maintain. And so for all those reasons, the addition  
9 tends to go to the rear.

10 The other one is basically full building  
11 preservation, which the historic preservation staff  
12 liked and the applicant wanted to do. And so this  
13 addition is not kind of partial demolition of the rear  
14 as you often see. This is basically entirely behind  
15 the existing historic building.

16 Turning to the special exception criteria  
17 in 774.3 and .4, the emphasis is on the spacing across  
18 the alley from a facing building wall, and the affect  
19 on windows, light, air, and privacy. In this case,  
20 the building across the alley is 1818 N Street, which  
21 is a 90 foot building. It does occupy 100 percent of  
22 the lot, and it's built to the alley for the first 20  
23 feet. Then it has a conforming setback to 14 feet,  
24 which as I said, the effect of creating a 24 foot  
25 setback including the 10 foot alley. And you take

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1 that together with the fact that this building is only  
2 47 feet high on the alley, and most of the windows in  
3 the other building are higher, there's not really a  
4 privacy issue. And, of course, we're not really  
5 creating a light or air problem either being a lower  
6 and smaller building.

7 Also, almost half of the rear of this  
8 addition will actually face up the north/south alley,  
9 so there isn't any question of affecting the light,  
10 air, and privacy of a building there. And then, of  
11 course, overall it's quite a bit smaller than the  
12 dimensions allows in a C-3-C zone, which allows a 6.5  
13 FAR. This is a 3.64 FAR, virtually half, and likewise  
14 the 47 feet is virtually half of the 90 allowed as a  
15 matter of right. Although, as Ms. Sorg mentioned, the  
16 width of the street here would restrict the height to  
17 70 feet in any case.

18 Regarding parking, we have filed the  
19 historic preservation certification with the Zoning  
20 Administrator to obtain the parking waiver. This has  
21 been caught in a backlog. We expect approval  
22 momentarily. The actual need for parking is fairly  
23 small. Most of the staff use public transportation  
24 now. They're in the neighborhood already. Some of  
25 them bicycle to work. And, of course, being in a

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1 commercial district, there are lots of other options  
2 by way of parking lots and garages available.

3 Deliveries will be from the front, but  
4 these will not be very substantial. They'll mostly be  
5 boxes of printed material, and boxes of paper handled  
6 by hand dolly.

7 Regarding consistency with the intent of  
8 the zone plan, I think this is pretty straightforward.

9 This is a continuation of a long-existing office use  
10 in this building in a commercial zone. And no  
11 particular issues there. And no adverse affect on  
12 neighbors.

13 I think the meeting with ?- I was not at  
14 the meeting yesterday with the neighbor who had some  
15 concerns, but basically his situation regarding the  
16 windows would not really be different. If this  
17 addition did set back to 7 feet above the 20 foot  
18 level, the effect on his windows would be virtually  
19 identical because his building is so shallow. And I  
20 think he recognized that some day, he or the  
21 subsequent owner may want to build an addition to the  
22 rear also. And finally, that this addition is not as  
23 big as it could have been, so all things considered I  
24 think he apparently was mollified. And that concludes  
25 my comments, Madam Chair.

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1 MS. MILLER: Are there any questions from  
2 the Board?

3 MR. PARSONS: Ms. Sorg, could you put up  
4 the exhibit showing the elevation, the one with the  
5 yellow roof. What is the function of that space that  
6 you ?-

7 MS. SORG: That's the meeting room.

8 MR. PARSONS: The meeting room.

9 MS. SORG: The fourth floor meeting room  
10 starts here, and this including story, that's the top  
11 meeting ?-

12 MR. PARSONS: So there's no occupiable  
13 space up there. It's simply a device to light the  
14 space below.

15 MS. SORG: The third story

16 MR. PARSONS: Yes.

17 MS. SORG: Yes.

18 MR. PARSONS: And was that design reviewed  
19 by the Historic Preservation staff?

20 MS. SORG: Yes.

21 MR. PARSONS: I wanted to query you on  
22 that, because you spent time telling us that the  
23 Historic Preservation Review staff wanted the building  
24 addition to the rear, but that specific amenity wasn't  
25 mentioned in the written material as to what the

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1 reaction was to that as an addition to the Historic  
2 District. I assume this is within the Dupont Circle  
3 Historic District. Right?

4 MS. SORG: Yes. Well, Steve Talbott  
5 looked at it, and his biggest ?- he didn't really  
6 actually care about what the design was in the back.  
7 He was only interested in anything, even the nailing  
8 of the front desk could be seen from the front, so  
9 that's all he was concerned about. And these are the  
10 things we shared with him, these drawings.

11 MR. PARSONS: But he did see the previous  
12 one we looked at.

13 MS. SORG: Yes.

14 MR. PARSONS: And the color of the roof,  
15 is that a representation of the ?-

16 MS. SORG: Yes, the roof is ?- Mr.  
17 Parsons, we are ?- you know, it's a money thing right  
18 now.

19 MR. PARSONS: It's a muddy thing?

20 MS. SORG: Money thing.

21 MR. PARSONS: Money thing.

22 MS. SORG: I think we want to have it, but  
23 I think it could be a casualty of the value of the ?-

24 MR. PARSONS: The whole concept?

25 MS. SORG: No, just the roof.

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1 MR. PARSONS: Well, is it a tile roof or  
2 something?

3 MS. SORG: Yes, it was a ?-

4 MR. PARSONS: Oh, so it may go to standing  
5 seam or some other ?-

6 MS. SORG: Yes, or it could be flat.

7 MR. PARSONS: Oh.

8 MS. SORG: This is very nice, but we're  
9 holding on to them because we think that's what you've  
10 got in your record. But right now the pricing is  
11 coming in, and it's one of those things.

12 MR. PARSONS: Oh.

13 MS. SORG: That's one of the things that  
14 could be a casualty in value engineering.

15 MR. PARSONS: Who invented value  
16 engineering?

17 MS. SORG: It wasn't an architect.

18 MR. PARSONS: That's right. Well, I've  
19 always admired your work, and I think this is a good  
20 idea. If this organization ?- if Tibet was free,  
21 when Tibet is free, I suppose your organization  
22 wouldn't dissolve, but it may even get larger. And if  
23 you were to move on, this architectural embellishment,  
24 which is trying to make a statement about your mission  
25 would remain in this historic. And it's just an

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1 intellectual exercise we're going through up here as  
2 to whether we do encourage this kind of treatment,  
3 which would seem foreign to a different tenant in the  
4 future, 50 years from now or whatever. But since it's  
5 being valued out, maybe I shouldn't concern myself  
6 with it. But it's curious that the Historic  
7 Preservation Review Board said if I can't see it, I'm  
8 really not interested.

9 MS. GIORDANO: That is pretty much ?-  
10 maybe Mr. Kane can speak to this better than I can.  
11 Pretty much the standard for a historic district is  
12 whether it's visible from the public space.

13 MR. KANE: I don't want to speak  
14 specifically for Stephen, but from the Board's point  
15 of view, if you can't see it from the street, we  
16 usually allow them greater leeway in the back,  
17 specifically for something like this which helps  
18 identify the cultural mission of the building. It can  
19 be quickly changed in 50 years if something wanted to  
20 take that off.

21 MR. PARSONS: I'm reminded of this  
22 horrible building on 16<sup>th</sup> Street. I assume you've seen  
23 it. It has nothing to ?- I'm getting off on a  
24 tangent and I shouldn't do this. We've got to do  
25 something about this - this horrible blue and red

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1 light at night right over the White House. What are  
2 we going to do?

3 MR. KANE: It's unbelievable. How many  
4 iterations have you seen ?- have you seen how many  
5 iterations the lights can go through there?

6 MR. PARSONS: Yes.

7 MR. KANE: We on the board, and I know  
8 this is digressing - we on the board have been very  
9 aware of that, and that that was allowed to come  
10 through. We voted for it, and we hadn't seen that  
11 before. And now that we're aware of it, we're asking  
12 each of the applicants as to whether they'll be lit  
13 like that.

14 MR. PARSONS: The Washington Monument is  
15 essentially closed down because of construction, but I  
16 had the luxury of going up there at night for a  
17 lighting demonstration. It's just unconscionable how  
18 you look across from the Washington Monument at the  
19 White House, and above it is this box.

20 MR. KANE: But as you know, we only have  
21 control of the first I think 18 inches. If something  
22 is set back 18 inches from the window, we don't have  
23 control of it, so you can post those types of lights -  
24 neon, whatever. But I agree with you ?-

25 MR. PARSONS: This is a moral issue.

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1 We've got to get to this owner and solve it.

2 MR. KANE: It's pretty bad. I agree with  
3 you.

4 MR. PARSONS: It's just awful. I'll stop  
5 that. We can talk about that later.

6 MS. SORG: Mr. Parsons, I have a slightly  
7 different view on this. I know this is not part of  
8 this case, but I feel that if this building were to be  
9 built like this and it had this flavor of  
10 architecture, that it would be part of the history of  
11 the city, and it could still ?- I mean, there are  
12 plenty of buildings that are of a certain design  
13 character occupied by a new tenant, but they still  
14 remind us of the evolution of the city.

15 MR. PARSONS: Well, that's a good point of  
16 view. Sure.

17 MS. SORG: Right. Not that this is being  
18 designed for that purpose, and I think ?- I'm almost  
19 certain it's a moot point, because we probably can't  
20 afford it.

21 MR. PARSONS: That's too bad. It would be  
22 a little jewel in this canyon of buildings. It would  
23 be wonderful. Okay. Sorry for all that. Thank you.

24 MS. MILLER: I just have a couple of  
25 questions. Has the existing building been certified

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1 by the State Historic Preservation Officer as  
2 contributing to the character of the Historic  
3 District? I think it may have been represented that  
4 it's a contributing building, but is there a  
5 certification?

6 MR. GROSS: Yes, there has been. It has  
7 been submitted to the Zoning Administrator for the  
8 parking waiver.

9 MS. MILLER: Okay. Is it in our record?

10 MR. GROSS: No. I was speaking with Ed  
11 Riese, the Zoning Administrator's Assistant last week  
12 to see if we could get it for today, but it's caught  
13 in a backlog, and he ?-

14 MS. GIORDANO: I think she means the  
15 certification.

16 MS. MILLER: I do. I mean the  
17 certification.

18 MR. GROSS: Oh, the certification - we  
19 could provide that, sure.

20 MS. MILLER: Okay.

21 MR. GROSS: We have not though.

22 MS. MILLER: Okay.

23 MR. GROSS: I guess that's an oversight.  
24 I'm sorry. We can do that.

25 MS. MILLER: Yes, do that.

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1 MR. GROSS: Okay.

2 MS. MILLER: Okay. Thank you. And I have  
3 a question that was raised in Office of Planning's  
4 report, and Office of Planning is going to be  
5 testifying, but just for the record. They raised an  
6 issue about the proximity of the ground floor addition  
7 to the alley, that it might impact service to other  
8 lots, and I was wondering if someone could address  
9 that.

10 MS. SORG: Yes, I think on the ground  
11 floor we are permitted a zero setback, so that you can  
12 officially, after you come up straight to the property  
13 line ?- what's happening on the ground floor is  
14 actually the two party walls have to come back to hold  
15 the addition from above, so the structure actually  
16 comes out all the way because of the building above on  
17 these four floors. But you can come in on the 10 foot  
18 alley, and then turn into the parking spaces here, and  
19 then move back out, and then go east or north - I can  
20 show you that on the site plan. So there is a ?-  
21 that's the site plan, and that's the parking  
22 situation. You come in on this 10 foot alley, and you  
23 can go into this parking area here. And then here the  
24 alley gets ?- this is where these three alleys get  
25 quite wide, so you can actually come out and then go

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1 north.

2 MS. MILLER: Okay. Is there anything else  
3 from the applicant right now? Otherwise, we can move  
4 to Office of Planning.

5 MS. GIORDANO: That concludes our  
6 presentation.

7 MS. MILLER: Unless Board Members have any  
8 other questions. Okay. Office of Planning.

9 MR. LAWSON: Thank you, Madam Chair and  
10 Members of the Board. My name is Joel Lawson. I'm a  
11 development review specialist with the D.C. Office of  
12 Planning.

13 OP's report of April the 20<sup>th</sup> provides  
14 analysis of this BZA case, and I'm more than happy to  
15 let that more or less stand. Just a bit of an update  
16 though; subsequent to filing the report, OP discussed  
17 the proposal in the alley with issues in general with  
18 the Department of Public Works. That wasn't in our  
19 report, because this happened after the report was  
20 submitted.

21 The DPW representative noted in a  
22 telephone conversation that trash collection trucks  
23 are about 10 feet wide when the rearview mirrors are  
24 extended. With these mirrors collapsed, they are  
25 almost 9 feet wide. He noted that their vehicles are

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1 frequently damaged by structures, such a fences,  
2 bollards and buildings when they are placed close to  
3 or on the edge of an alley which is as narrow as this  
4 one.

5 Presumably, vehicles such as moving or  
6 delivery truck, which also utilize alleys, experience  
7 the same problems. And presumably, these vehicles  
8 also damage the private property. DPW stated that  
9 they would support the provision of a setback to  
10 increase effective alley width by even a few feet to  
11 help protect vehicles and buildings. A report in  
12 writing from DPW has not, however, been received as of  
13 yet.

14 In this BZA case, the setback of ground  
15 floor level is not required, and the requested  
16 variance would not impact alley accessibility. As  
17 such, OP continues to support the application.  
18 However, OP reiterates that it would be of benefit to  
19 the provision of district services and overall alley  
20 functionality to provide a setback for the entire  
21 building, possibly to be in line with the rear wall of  
22 the building to the east.

23 This would provide the required room to  
24 minimize damage to service and emergency vehicles. It  
25 would also minimize the possibility of damage to the

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1 proposed addition, and would provide additional  
2 maneuvering space for the parking for this building,  
3 which is somewhat tight.

4 OP has recommended this design change to  
5 the applicant, and I believe they've already addressed  
6 that. Although not innately related to the special  
7 exception request, OP feels that such a modification  
8 is reasonable given the density gained through the  
9 application, and desirable to the applicant to protect  
10 the building and vehicles from future damage.

11 Finally, and this is a bit of an aside as  
12 well, OP believes that an amendment to the zoning  
13 regulations to establish a minimum effective alley  
14 width throughout the district to provide for building  
15 setback requirement on narrow alleys would be a  
16 benefit, and will forward such proposal to the Zoning  
17 Commission. This concludes our testimony, and we are  
18 available for questions. Thank you.

19 MS. MILLER: Are there any board  
20 questions? I just want to clarify. Did you say you  
21 recommended design changes and the applicant has  
22 agreed to them?

23 MR. LAWSON: No. To be honest, this issue  
24 came up very late in the day, as I said after the OP  
25 report even came in, certainly well after the design

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1 was completed. I discussed DPW's concerns with the  
2 representative for the applicant, and that's as far as  
3 the discussions went.

4 MS. MILLER: Okay. Thank you. Does the  
5 applicant have any cross examination questions? Do  
6 you want to comment then on the status of any design  
7 changes?

8 MS. GIORDANO: I think we have addressed  
9 that to some extent. Ms. Sorg, did you want to add  
10 anything?

11 MR. SORG: Well, I think it will be  
12 difficult to set the entire building back by two feet  
13 because that would take out approximately 400 feet, I  
14 mean 40 feet at every level, 20 feet by 2 feet, which  
15 you're not really gaining that many square feet, to be  
16 honest. Most of it is going into the core of the  
17 building, so that would be a big hardship on the  
18 design. And we'd like to proceed with the design as  
19 it is.

20 MS. MILLER: Okay. Thank you. Do we have  
21 any other government reports?

22 MR. LAWSON: I'm sorry, I should have  
23 mentioned that. I didn't receive any other government  
24 reports subsequent to filing the Office of Planning  
25 Report. The Office of Planning report notes comments

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1 from the Department of Transportation, which basically  
2 noted no concern with the application, did note that  
3 it would be difficult to use the parking space. The  
4 report doesn't note this. Subsequent conversations  
5 with them noted that it would be difficult to use the  
6 parking space for more than one vehicle, just again  
7 because of difficulties in maneuverability.

8 The Department of Housing and Community  
9 Development noted support for the application. And,  
10 of course, the comments from the Historic Preservation  
11 Office which, obviously, also supports the  
12 application.

13 MS. MILLER: Thank you. I think I asked  
14 this before, but is there anybody here from the ANC?  
15 Okay. Nobody is here. Are there parties or persons  
16 in support who wish to testify? Not seeing any, are  
17 there parties or persons in opposition who wish to  
18 testify? Okay. Not seeing any, then do you have any  
19 closing remarks you'd like to make?

20 MS. GIORDANO: In closing, I would just  
21 ask that the Board consider a bench decision in this  
22 case. There's no opposition, and time is of the  
23 essence in moving the project forward.

24 MS. MILLER: What we're inclined to do is  
25 just put this off one week to our decision making next

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1 week. And primarily, that's driven by the fact that  
2 we don't have in our record the certification that  
3 this is a contributing building or historic landmark.

4 And you can get that in the record within the next  
5 few days?

6 MR. GROSS: I believe so. Yes, ma'am, we  
7 will.

8 MS. MILLER: Okay. Then we would have  
9 everything in our record then. Rather than making a  
10 decision contingent, that's a little messier, and I  
11 don't think one week is too great a delay. So that's  
12 what we'll do. Is that okay, Mr. Moy? Will that fit  
13 in our calendar to add this to the public decision  
14 making?

15 MR. MOY: Yes, that would be fine.

16 MS. MILLER: Okay. And then do you want  
17 to ?- I guess Mr. Moy will articulate what we're  
18 waiting for. That is probably the only document that  
19 I recall.

20 MR. MOY: Yes. My understanding, that's  
21 the only thing that the office would be waiting for  
22 then, would be the certification document. As soon as  
23 you can, then of course we'll take that up at our next  
24 public meeting, which is next Tuesday, May 4<sup>th</sup>.

25 MS. MILLER: I think that concludes this

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1 case then. Thank you very much.

2 MS. GIORDANO: Thank you.

3 MS. MILLER: And does that conclude the  
4 morning's agenda, Mr. Moy?

5 MR. MOY: Yes, Madam Chair.

6 MS. MILLER: Then we will be adjourned  
7 until 1:30, or 1:00 I think we're scheduled for a  
8 public meeting.

9 MR. MOY: That's correct, for a special  
10 public meeting.

11 MS. MILLER: Okay. We're adjourned to  
12 1:00.

13 (Whereupon, the proceeding in the above-  
14 entitled matter went off the record at 11:53:52 a.m.  
15 and went back on the record at 1:53:20 p.m.)

16 MR. GRIFFIS: Good afternoon, ladies and  
17 gentlemen. Let me call to order the 27 April, 2004  
18 afternoon hearing of the Board of Zoning Adjustment in  
19 the District of Columbia. My name is Geoff Griffis. I  
20 am Chairperson. Joining me today is the Vice Chair,  
21 Ms. Miller. Representing National Capitol Planning  
22 Commission, with us for part of the afternoon, is Mr.  
23 Zaidain. Copies of today's hearing agenda are  
24 available to you. They are on the wall located where  
25 you entered into the hearing room. Please pick one up

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1 and you can see what we're going to accomplish this  
2 afternoon.

3 There are several things of very important  
4 note in the openings. First of all, all hearings and  
5 procedures before the Board of Zoning Adjustment are  
6 recorded. They are now recorded in two fashions.  
7 First and most importantly, the court reporter who is  
8 sitting on my right on the floor is transcribing  
9 everything said and making the official transcript,  
10 which is part of the record. The second, we are being  
11 broadcast live on the Office of Zoning's website, so  
12 attendant to both of those recordings, we ask several  
13 things of you. First of all, I'd ask that everyone  
14 turn off their cell phones and beepers at this time so  
15 we don't have any disruption of the proceedings as we  
16 go forward.

17 Also, I would ask that when you come  
18 forward, first of all, you will need to have filled  
19 out a witness card. Witness cards are available to  
20 you at the table in front of me where you will give  
21 testimony, also the table where you entered into the  
22 hearing room. Probably fill out two of those. Both  
23 of those go to the recorder who sits to my right prior  
24 to coming forward.

25 When coming forward, I'll need you to

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1 state your name and your address once for the record,  
2 and then you can proceed. You will need to speak into  
3 a microphone. The microphone should be off. And as a  
4 note, we get terrible feedback if we have a lot of  
5 microphones on the testimony table on, so I'm just  
6 going ask you to be aware of turning your microphones  
7 off when you finish speaking, and I'll give further  
8 direction as we go if we get into trouble in that  
9 frame.

10 The order of procedure for special  
11 exceptions and variances. First, we hear from the  
12 applicant, their case, and any witnesses. Second, we  
13 hear government reports attendant to the application.

14 Those are, such as the Office of Planning's report or  
15 DDOT's report. Third, we have the report from the  
16 Advisory Neighborhood Commission within which the  
17 property is located. Fourth, we will hear from  
18 parties or persons in support of the application.  
19 Fifth would be parties or persons in opposition to an  
20 application. And sixth, finally, we would have  
21 closing remarks by the applicant.

22 Cross examination of witnesses is  
23 permitted by the applicant and parties in a case. The  
24 ANC within which the property is located is  
25 automatically a party in the case and, therefore,

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1 obviously is afforded the opportunity to cross  
2 examine. Cross examination, of course, is a very  
3 vital part of our public process and hearings. We do,  
4 however, have the ability to restrict cross  
5 examination in time or in direction and substance.  
6 And if need be, I will go further into that and give  
7 direction as we proceed.

8 The record will be closed at the  
9 conclusion of each hearing on each case except for  
10 material that the Board specifically requests, and the  
11 Board will be very specific on what is to be  
12 submitted, and when it is to be submitted into the  
13 Office of Zoning. After that material is received, of  
14 course, it should go without saying, the record would  
15 then be finally closed, and no other information would  
16 be accepted into the record.

17 The Sunshine Act requires that public  
18 hearings on each case be held in the open and before  
19 the public. This Board may, however, enter into  
20 Executive Session during or after a case, and this  
21 would be in accordance with our rules of procedure and  
22 the Sunshine Act, and would be utilized for the  
23 purposes of reviewing records or deliberating on a  
24 specific case.

25 The decision of this board in contested

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1 cases must be based exclusively on the record that's  
2 created before us, so it's important, of course, to  
3 say everything you want to into a microphone so it  
4 becomes part of the transcript, but I would also ask  
5 the people present today not engage board members in  
6 conversation so that we do not give the appearance of  
7 receiving information outside of the record that is  
8 created today.

9 We will make every effort this afternoon  
10 to conclude the hearing by 6:00. If need be, I will  
11 address the schedule if we get even close to that  
12 hour.

13 At this time, the Board will consider any  
14 preliminary matters. Preliminary matters are those  
15 which relate to whether a case will or should be heard  
16 today, such as a request for postponements,  
17 continuances, or withdrawals, or whether proper and  
18 adequate notice has been provided for the application.

19 If you are not prepared to go forward with a case  
20 today, or you believe the Board should not proceed  
21 with case today, I'm going to ask that you come  
22 forward and just have a seat at the table as an  
23 indication of a preliminary matter.

24 I will ask staff first if they have any  
25 preliminary matters, and also wish a very good

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1 afternoon to Mr. Nyarku who is on my very far right  
2 with the Office of Zoning, Mr. Moy, closer to me, with  
3 the Office of Zoning, and Ms. Monroe, representing  
4 Corporation Counsel in-between them. Good afternoon,  
5 Mr. Moy.

6 MR. MOY: Thank you, Mr. Chairman. Good  
7 afternoon to you and members of the Board. We do have  
8 one preliminary matter and it is a request for a  
9 continuance to case number 17095 of Sun Service, Inc.

10 MR. GRIFFIS: Excellent. Then if you're  
11 ready to proceed, I'm going to ask that you come up.  
12 And anyone that will give testimony today or is even  
13 thinking about giving testimony, if they would give  
14 their attention to Mr. Moy, and please stand. He is  
15 going to administer the oath.

16 WITNESSES SWORN

17 MR. GRIFFIS: And while you're getting  
18 ready, I do apologize for starting our afternoon a  
19 little bit late. It is all my responsibility as I was  
20 called into federal jury duty, and couldn't get out  
21 too quickly to get over here where we have a heck of a  
22 lot more fun. But with that, why don't I have you  
23 introduce everybody that's in front of me.

24 MR. BATRA: Simi Batra at 1710 Euclid  
25 Street, N.W.

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1 MR. LYDEN: Peter Lyden, 1726 Euclid  
2 Street, N.W.

3 MR. GUNES: Bekir Gunes. I'm on Sun  
4 Service Company.

5 MR. GRIFFIS: Okay. And you are  
6 representing?

7 MR. GUNES: Sun Service.

8 MR. GRIFFIS: Okay. Excellent.

9 MR. LYDEN: We are both with the Reid Cook  
10 Neighborhood Association.

11 MR. GRIFFIS: You guys are with the Reid  
12 Cook Neighborhood Association, and you're the  
13 applicant.

14 MR. GUNES: Correct.

15 MR. GRIFFIS: Okay. And you submitted the  
16 letter, of course, dated 26 April, requesting a  
17 continuance of this afternoon's hearing in order to  
18 afford yourself a little bit more time for negotiation  
19 and getting your application complete. Is that  
20 correct?

21 MR. GUNES: Yes, sir.

22 MR. GRIFFIS: Okay. Anything else you  
23 want to add to that? Very well.

24 MR. BATRA: Well, we would strongly oppose  
25 that. I mean, first of all, their permit has been

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1 argued arguably either six months, or two years and  
2 six months, and negotiations with a new location or  
3 someone irrelevant to this case.

4 Secondly, we understand the building  
5 they're looking at is also in the Reid Cook Overlay.  
6 It's across the street, as a matter of fact, so the  
7 same issue - we'll be back in a couple of months with  
8 the same permitting issue then. It's the same would  
9 apply to this building as it would the new one.

10 MR. GRIFFIS: Okay. But this only applies  
11 to one specific property. You know, frankly we can't  
12 even take under account that there might be another  
13 property or anything else that's going on across the  
14 street. If that was to be, it would be a totally new  
15 application. We'd have to go through the entire  
16 process.

17 MR. BATRA: Fair enough. But they are  
18 ongoing at this location, and whether or not they have  
19 negotiations somewhere else, I don't see it's entirely  
20 relevant to this building. As you said, we're kind of  
21 focusing on this building today.

22 MR. LYDEN: Looking at 1701, this was a  
23 matter of convenience for lack of a better term is the  
24 way this was started. It was never done through a  
25 formal BZA Hearing, or any kind of a hearing.

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1 MR. GRIFFIS: Let me just have you turn  
2 your microphone off on the two ends. Thank you.

3 MR. LYDEN: And the neighborhood  
4 understood that during the construction of the P.M.  
5 Hoffman Building, the garage, that there was a lack of  
6 property. And frankly, a bunch of us in the  
7 neighborhood discussed this. We were going to come  
8 down and fight it, and then decided that it was in the  
9 best interest of the business community not to, not to  
10 fight it, not to cause a ruckus while the construction  
11 was ongoing.

12 The construction was completed, and the  
13 valet service continues on. And we have stated our  
14 case. You have it in writing as part of the record,  
15 and you also have the opposition for the neighborhood  
16 who has had to endure this operation. So we asked  
17 that we move today to take care of this case and come  
18 to judgment.

19 MR. GRIFFIS: Understood. So the  
20 community is looking to get this resolved because it's  
21 an ongoing situation, if I understand you correctly.  
22 Okay.

23 MR. LYDEN: The original intent and  
24 purpose of allowing this to ?-

25 MR. GRIFFIS: Was temporary for any

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1 construction.

2 MR. LYDEN: Yes, and it's over.

3 MR. GRIFFIS: Right. Okay. This is what  
4 I think is advantageous to do at this point. The  
5 Board is very concerned that this is an ongoing  
6 situation that needs to be remedied. We have the  
7 application before us. Quite frankly, looking at this  
8 it's not ready to go today. I would like to set this  
9 for the 29<sup>th</sup> of June in the afternoon. We're going to  
10 squeeze it in. We have I think not a problem hearing  
11 the entire case.

12 We had at last left the record open to  
13 receive certain materials from the applicant, and  
14 we'll keep the record open for that. To be precise  
15 though, we are going to be looking for a more full  
16 application addressing all the variance requirements  
17 and the test for the variance. Obviously, I'm stating  
18 common sense. If you're looking for an approval, that  
19 that would have to be met. Other than that, I do not  
20 believe that we need to require additional  
21 information. Are you clear on what's being requested?

22 MR. GUNES: Yes, but that time, 25<sup>th</sup> June  
23 I'm leaving for overseas so I'm not going to be in  
24 U.S. one month.

25 MR. GRIFFIS: When do you return?

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1 MR. GUNES: July 25<sup>th</sup>.

2 MR. GRIFFIS: Oh, so you're going the 25<sup>th</sup>  
3 to the ?-

4 MR. GUNES: I already have my tickets.

5 MR. GRIFFIS: Are you going to be prepared  
6 to go on the 27<sup>th</sup> of July?

7 MR. GUNES: I'm coming back July.

8 MR. GRIFFIS: But on the 27<sup>th</sup>?

9 MR. GUNES: June 25<sup>th</sup> I'm leaving.

10 MR. GRIFFIS: To the 25<sup>th</sup> of July you're  
11 coming back. Correct?

12 MR. GUNES: Correct.

13 MR. GRIFFIS: We would love to have your  
14 company on the 27<sup>th</sup> of July in the afternoon.

15 MR. GUNES: Okay.

16 MR. GRIFFIS: Is that feasible?

17 MR. GUNES: Yes.

18 MR. GRIFFIS: Okay.

19 MR. BATRA: Mr. Chairman, if we could just  
20 for the record note our objection.

21 MR. GRIFFIS: Of course.

22 MR. BATRA: He's had ample opportunity to  
23 put forth his case, and it's already been two months  
24 since the last time we were here, where he had the  
25 directive to give you this information and it hasn't

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1       been done, so we don't feel like the applicant has met  
2       their initial burden. We probably already have enough  
3       to rule off right now based on that alone.

4                   MR. GRIFFIS: Okay. Understood. And we  
5       will note the objection. And I would give the  
6       direction, of course on the 27<sup>th</sup> this will go. We'll  
7       have the hearing. If you're not prepared to go, there  
8       are several things that may happen. One, the Board  
9       may just dismiss the case outright. Hopefully, things  
10      will be figured out by that time.

11                   I think, you know, the Board may make  
12      errors, and perhaps the error we do make is giving  
13      ample amount of time for applicants to do what they  
14      need to. Again, I don't think we'd go beyond the July  
15      date, even if this wasn't opposed. Clearly, we need  
16      to get on with our business also, so I can't imagine  
17      any circumstance that would bring this to a  
18      continuance again, so we would certainly hope that  
19      things were pulled together, or however you want to  
20      deal with it at the end of July.

21                   MR. BATRA: Kind of a question. I think  
22      there's an implication or a perception at least that  
23      the continuance allows operation. Is it fair to say  
24      that the scheduling for the BZA has nothing to do with  
25      the operation here? There's a temporary letter that

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1 you saw last two months ago. I think it's in the file  
2 now from the DCRA. Is it fair to say that the DCRA  
3 wants to cut off this kind of ?- this activity. They  
4 can do so without regard to BZA's schedule?

5 MR. GRIFFIS: I'm not the person to answer  
6 that.

7 MR. BATRA: Okay. So you're not extending  
8 their operation.

9 MR. LYDEN: Who is? Who would we seek  
10 relief from, the person that granted this?

11 MS. MONROE: I honestly don't know. I  
12 think I would go to DCRA and ask. They deal with all  
13 enforcement issues. The other possibility is we have  
14 an enforcement and compliant officer here in the  
15 Office of Zoning, and you might want to talk to him,  
16 because he can direct you as to who would enforce  
17 properly.

18 MR. LYDEN: Okay.

19 MR. GRIFFIS: I guess, to be absolutely  
20 direct, I mean obviously our jurisdiction doesn't go  
21 to enforcement. Even if we approve this, we wouldn't  
22 go out and enforce it. That would be DCRA, so any  
23 sort of enforcement ?-

24 MR. LYDEN: So let me see, they went  
25 around you in the first case, so whoever went around

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1 you is the person we should go to.

2 MR. GRIFFIS: I guess that's one way of  
3 describing it.

4 MR. LYDEN: Okay.

5 MR. BATRA: I did go to the DCRA, and they  
6 indicated since the BZA hearing was so imminent, they  
7 would just wait a week. But I'm afraid that if we  
8 keep postponing it, I think now just wait another  
9 three months, because I think one way or the other  
10 you'll decide, so let's it continue until ?- because  
11 I think by not submitting an application today, he's  
12 giving himself three more months of an illegal  
13 operation. That's kind of how everyone is going to  
14 perceive this now, so I feel like he's benefitted from  
15 not being prepared two times in a row. It's kind of  
16 unfair.

17 MR. GRIFFIS: Indeed. And I think we  
18 fully understand that. What you need to understand is  
19 what our actual jurisdiction is. I mean, we're fairly  
20 straightforward here. An application comes in, we  
21 process it and it goes out. DCRA has quite a large  
22 role in terms of compliance monitoring, enforcement,  
23 approvals. I think it's excellent advice, if you want  
24 while you're here, to talk to the compliance officer  
25 within the Office of Zoning, and get some direction

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1 from him. And then DCRA is going to be the place that  
2 you're going to have to deal with. Okay. Anything  
3 else?

4 MR. LYDEN: Okay. Thank you for your  
5 time.

6 MR. GRIFFIS: Any other questions?  
7 Everybody is clear?

8 MR. MOY: Yes, sir.

9 MR. GRIFFIS: Good. Thank you for your  
10 time. We appreciate your taking the trip down here  
11 this afternoon. We will hopefully see you all on the  
12 27<sup>th</sup>.

13 Okay. That being said, Mr. Moy, next  
14 case.

15 MR. MOY: Yes, sir. The next case is  
16 Application number 17153 of Kenneth and Susan Rosenau,  
17 pursuant to 11 DCMR 3104.1, for special exceptions to  
18 allow a home occupation, law office comprising 1,125  
19 square feet, and employing two paralegals or clerks  
20 who do not reside on the premises, under Subsections  
21 203.4(b) and (d), and 2003.10(b), on the first floor  
22 and part of the second floor of a flat two-family  
23 dwelling in the R-5-B District at premises 1304 Rhode  
24 Island Avenue, N.W., Square 242, Lot 65.

25 MR. GRIFFIS: Good afternoon. Mr. Gell.

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1 MR. GELL: Mr. Chairman, I'm Stephen Gell.  
2 I'm an attorney in Washington. I don't know if I  
3 should give you my address. I don't usually do that,  
4 but I've heard you say ?-

5 MR. GRIFFIS: You mean this is the first  
6 time you've listened to me? All right. Go ahead.

7 MR. GELL: What we filed is a special  
8 exception to permit a law office on the first and  
9 second floors of a residential dwelling just off of  
10 Logan Circle.

11 I would just say preliminarily that when  
12 we filed it, we thought we needed another special  
13 exception for the size of the area that they're using  
14 for the office. That's not the case because they're  
15 still under the 25 percent, and the regulation reads  
16 it's the greater of either 250 feet or 25 percent, so  
17 we're just asking for one special exception; that is  
18 to permit one additional employee. They're allowed  
19 one employee who does not live there, but they want  
20 two.

21 MR. GRIFFIS: So you're saying that  
22 203.4(b) is not required relief from.

23 MR. GELL: That's correct.

24 MR. GRIFFIS: Okay.

25 MR. GELL: And without further ado, I'd

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1 like to introduce the attorneys who are asking for the  
2 special exception, Mr. and Mrs. Kenneth Rosenau. Ken  
3 and Susan Rosenau have a statement. I think Susan is  
4 going to make the statement, and I'll have perhaps  
5 something to say afterwards, but I'll leave it there.

6 MR. GRIFFIS: And other here are attendant  
7 to this application. They are going to give  
8 testimony. If I could just see a show of hands of  
9 others to give testimony. Excellent. Thank you.

10 MS. ROSENAU: My name is Susan Rosenau.  
11 My husband, Ken, and I live at 1304 Rhode Island  
12 Avenue, N.W. We're lawyers and we're applying for a  
13 special exception to allow us to operate our home law  
14 office with two paralegals rather than one. There's  
15 one additional employee, an attorney who lives in the  
16 house and is permitted by the rules to practice there,  
17 as well.

18 We believe our request will have little or  
19 no negative impact on the neighborhood. There's  
20 nothing on the exterior of our house to show there's a  
21 law office outside. On the inside, there's a small  
22 brass plaque which cannot be even seen from the  
23 outside, or from the street. The regulations allow us  
24 to have a sign on the outside, but we do not.

25 We have lace curtains on the front windows

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1 on the first floor, which obscures the view of the  
2 office on the first floor. Those curtains were put up  
3 in November, 2003 so it would not look like an office  
4 from the outside. I have photographs if the Members  
5 of the Board would like to see what the house looked  
6 like. We can bring them up if the Board Members would  
7 like to see.

8 MR. GRIFFIS: You're submitting them as  
9 evidence?

10 MS. ROSENAU: Certainly.

11 MR. GRIFFIS: Okay. Do you have enough  
12 copies?

13 MS. ROSENAU: We only have the one. I'm  
14 sorry.

15 MR. GELL: We only have two copies. We'd  
16 be glad to make some additional ones. We don't know  
17 how relevant they would be to your deliberations.

18 MR. GRIFFIS: Why don't you put one in and  
19 we'll just pass it down. We'll get copies.

20 MR. GELL: You submitted these as part of  
21 the affidavit.

22 MR. GRIFFIS: Oh, they're already in.

23 MS. ROSENAU: There were copies with our  
24 application, as well.

25 MR. GRIFFIS: Okay. We'll use the ones we

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1 have.

2 MS. ROSENAU: These curtains were put up  
3 in November, 2003 so it would not look like an office  
4 from the outside. We have very little client traffic.

5 Normally, we have perhaps eight client visits a  
6 month. That is because of the nature of our practice,  
7 as I will describe later.

8 We encourage any clients who do visit us  
9 at our office to come by Metro, bus or taxi, because  
10 of the parking problems in our neighborhood. Our two  
11 paralegals take the bus to work. We will always  
12 encourage our employees to do so to avoid taking up  
13 valuable street parking.

14 We have a very specialized practice, and  
15 the nature of our practice is important to our  
16 decision to practice from a home office. The largest  
17 portion of our practice is called Bio Ethics. It's a  
18 cross between law and medicine. We are on a short  
19 list of law firms in D.C. where the D.C. Superior  
20 Court and local hospitals use in difficult cases where  
21 a person is ill and cannot make their own medical  
22 decisions, and do not have family who can make those  
23 medical decisions for them.

24 Other cases involve children whose parents  
25 don't want to give their children necessary medical

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1 care. Ken will often be appointed a patient's  
2 guardian by the court, and need to make every medical  
3 decision from that point onward. We do this work for  
4 Children's Hospital, Washington Hospital Center,  
5 Georgetown University Hospital, and the National  
6 Rehabilitation Hospital, as well as getting cases  
7 directly from the court.

8 These situations tend to present  
9 themselves and tend to flare up at any time of the  
10 night or day, or the weekend, and having a home office  
11 makes it possible for us to be prepared to handle them  
12 whenever they arise. We have our files, our books,  
13 our computers, everything we need immediately at hand.

14 The other side of the coin is that the  
15 clients in those cases virtually never come to the  
16 house. We go to them. Either there's a hearing at  
17 the courthouse, at the hospital, or we visit the  
18 patients at the hospital, or all of the above.

19 The other big area of practice in our firm  
20 is appeals in criminal cases. These clients never  
21 come to the house, come to the office. In many cases,  
22 we never meet them at all. They're often in jail in  
23 Ohio, Georgia or other states. We communicate by mail  
24 or phone. But even in other types of cases, in  
25 appeals or medical cases, being a lawyer isn't like

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1 being a doctor. We don't do most of our work with the  
2 client in the room. You meet once in the beginning of  
3 the relationship, and then rarely thereafter.

4 Having our home office addresses another  
5 issue for us. I have serious disabilities which make  
6 a home office critical to my ability to practice. As  
7 you can see, I suffer from severe weight problems. I  
8 also suffer from arthritis in my knees, hips and  
9 ankles, and from serious depression. I have to take  
10 many medications for these problems throughout the  
11 day. I cannot walk more than short distances. And  
12 particularly in the morning, my medications make  
13 driving difficult. Not having to commute to work is a  
14 very big help to me.

15 Our house is first and foremost our home.

16 We love our home and our neighborhood. We have gone  
17 to great pains to preserve the historic character of  
18 our house which is in the Logan Circle Historic  
19 District. We did not chop up the rooms or alter the  
20 wonderful woodwork we found there. In fact, we  
21 enhanced it, and we have no plans to do anything in  
22 any other way.

23 We have gone in our neighborhood and asked  
24 for signatures on a petition to ask for people's  
25 support for the application that we are presenting

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1 today, and if the Board is interested, as our attorney  
2 is bringing up there, you can see the supporters that  
3 we have gotten through the petition. We have quite a  
4 few signatures, and the support of our ANC, as the  
5 Board already knows. And we hope that you will  
6 provide us with the exception that we have requested.

7 Thank you.

8 MR. GRIFFIS: Thank you very much.

9 MS. ROSENAU: We'd be happy to answer any  
10 questions.

11 MR. GRIFFIS: So if I understand you, in  
12 the recent submission, also your oral testimony today,  
13 doing the guardianship-type law and the bioethics  
14 aspects; one, it's a 24-hour on-call situation, and  
15 it's not something that you could just be beeped for.

16 You need all your records and everything there.  
17 Okay.

18 MR. ROSENAU: We often get calls from the  
19 hospital.

20 MR. GRIFFIS: You need your microphone on.

21 MR. ROSENAU: We often get calls from the  
22 hospitals asking for guidance on, for example, what a  
23 court appointed guardian can and can't do. I had one  
24 yesterday about whether a court appointed guardian  
25 could move a patient from an organic medical unit into

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1 an in-patient locked psychiatric unit. Where is the  
2 borderline between the mental health statute and the  
3 guardianship statutes? Questions like that just can't  
4 be answered on the fly, and being able to have the  
5 home office has really helped us with things like  
6 that.

7 MS. ROSENAU: Or will be as simple as  
8 asking for consent to a particular procedure, and  
9 having that client or that patient's file immediately  
10 on-hand, rather than having to jump in a car and try  
11 to drive to the office and get that patient's file and  
12 look it up, we'll be able to just open it up and look  
13 up the information, rather than have that delay in the  
14 middle of the night. It would be extremely awkward.  
15 I mean, not impossible, but the point is not really  
16 impossibility. It's just making a practice where we  
17 have a lot of different patients in that situation.  
18 It makes it much more workable.

19 MR. GELL: And how far away are you from  
20 the Metro? When you say that your employees ?-

21 MR. ROSENAU: We're about between three  
22 Metro stations. Both employees come up the 14<sup>th</sup> Street  
23 bus line, which is just on the corner.

24 MR. GRIFFIS: I see.

25 MR. ROSENAU: The Metro stations, there's

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1 one between 7<sup>th</sup> and 8<sup>th</sup>, just north of the Watha Daniels  
2 Library off Rhode Island, Dupont Circle, and then the  
3 one south of us at I guess it would be either  
4 McPhearson or Metro Center. I'm not sure which is  
5 closer.

6 MR. GRIFFIS: I see.

7 MR. ROSENAU: I just wanted to echo one  
8 point. I mean, just one case in particular; I'm  
9 guardian to a 94-year old man, a retired physician,  
10 who is on his fifth aspiration pneumonia this year.  
11 And I've gotten calls since January 1<sup>st</sup> on at least six  
12 or seven occasions, usually from Anova or Fairfax  
13 Hospital where he's been off and on resident. They'll  
14 call me at 6:30, 7:00 in the morning to get permission  
15 to do things, and change his status, and change  
16 things. It's the nature of our practice. We're on  
17 call 24/7.

18 MR. GRIFFIS: Understood. And if someone  
19 drives, you don't have any provision of parking for a  
20 visitor.

21 MR. ROSENAU: There's no parking space at  
22 our house. We don't even have a parking space at our  
23 house.

24 MR. GRIFFIS: Right.

25 MR. ROSENAU: So at the moment ?- well,

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1 first of all, Melissa lives at 12<sup>th</sup> and Mass., so for  
2 her, she walks. Sue lives on Connecticut Avenue and  
3 she comes down Connecticut and then cuts over. And  
4 the former employee we had came up the 14<sup>th</sup> Street bus  
5 lines.

6 MR. GRIFFIS: Right.

7 MR. ROSENAU: And frankly, clients rarely  
8 come because we go to the hospitals, and the people  
9 are locked up in jail. They'd like to come, but  
10 they're locked up. It's the nature of criminal  
11 appeals.

12 MR. GRIFFIS: Understood. Ms. Miller.

13 MS. MILLER: Are you actually operating  
14 out of your home now as a business, and the reason  
15 this is coming before us now is because you need to  
16 hire another employee?

17 MR. ROSENAU: We're operating now out of  
18 the house. We want to do it right. We have the two  
19 paralegals, in essence, one for each of us. And we  
20 want to be right in terms of what the law is.

21 MS. MILLER: Okay. Did you meet with the  
22 ANC?

23 MR. ROSENAU: Yes. And the CDC  
24 Subcommittee, as well.

25 MS. MILLER: And did you go to an ANC

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1 meeting?

2 MR. ROSENAU: We went to an ANC meeting.  
3 They sent a letter. I've seen a copy of it, saying  
4 that they supported the application. They had some  
5 conditions about keeping up I think they said shades  
6 when we have curtains, but all of us agree that we're  
7 all talking the same language. Okay. I'm sorry.  
8 "Shades, and employees will use public transportation  
9 to and from work."

10 Somebody at the ANC meeting thought that  
11 maybe our clients would be parking in the alley. We  
12 told them if anybody ever parks in the alley, we'd pay  
13 for the tow truck because I know what it's like from  
14 having lived in D.C. for 30 years, if you're blocked  
15 in, if somebody is blocking an alley.

16 We invited our neighbors to come and  
17 visit. We, in fact, had an open house so they could  
18 come and see. We sent invitations up and down the  
19 block. And something that we've already done, which  
20 is that there's no signage visible from the sidewalk.

21 Alternatively, will make arrangements for off-street  
22 parking. The Washington Plaza Hotel has apparently  
23 public spaces for rent. If any of our employees  
24 actually drives, we'd rent them a monthly space.

25 MS. ROSENAU: If they have to drive.

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1 MR. ROSENAU: At the moment, that's not a  
2 problem.

3 MS. MILLER: Do you have problems with any  
4 of the conditions that they have mentioned?

5 MR. ROSENAU: No. Actually, we proposed  
6 those conditions to them in our letter to them. They  
7 basically adopted what we had sent to them.

8 MS. MILLER: How long have you been  
9 operating your business there?

10 MR. ROSENAU: I began in 1980, Susan  
11 joined me in 1994.

12 MS. ROSENAU: I don't think that's the  
13 question.

14 MS. MILLER: No, that is. I'm going to  
15 the point, is I'm wondering if there have been any  
16 complaints about your operations during the time  
17 you've been there.

18 MR. GELL: You mean at that address.

19 MS. MILLER: Yes, at that address.

20 MR. ROSENAU: Oh, I'm sorry. We moved the  
21 house May 21<sup>st</sup>, and the office May 28<sup>th</sup>. I don't think  
22 we've had any complaints from any neighbors. I know  
23 we had a BZA - a ticket for \$500. I don't know the  
24 correct term.

25 MR. GELL: A citation.

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1 MR. ROSENAU: Citation, thank you.

2 MS. ROSENAU: May I?

3 MR. GRIFFIS: Sure.

4 MS. ROSENAU: There was a neighbor who did  
5 complain at an ANC meeting because he realized that we  
6 were operating back in the fall. We weren't at the  
7 time aware that you needed a special permit, and that  
8 was how it came to our attention that we needed a  
9 special permit, because DCRA sent an inspector to us.  
10 That essentially set this process into operation.

11 MS. MILLER: Okay. I got it. Thank you.

12 MR. GRIFFIS: Any other questions from the  
13 Board?

14 MR. GELL: That's pretty much the story.  
15 I think you have all the facts in front of you.

16 MR. GRIFFIS: Excellent.

17 MR. GELL: I'm very grateful to the ANC  
18 for having supported us in this.

19 MR. GRIFFIS: Good. Thank you. Is the  
20 ANC represented today? Anyone from the ANC? Very  
21 well. Let's move on to the Office of Planning then.  
22 Mr. McGhettigan, good afternoon. How are you?

23 MR. MCGHETTIGAN: Good afternoon, Mr.  
24 Chair. For the record, my name is David McGhettigan  
25 from the D.C. Office of Planning. Thank you. And I

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1 have gone through my report and addressed each of the  
2 special exceptions test under 203.10, and the  
3 operations as described in the Rosenau's application  
4 seem to have no adverse effects from their home  
5 occupation from the relief requested for just one  
6 additional employee. And so the Office of Planning  
7 recommends approval of the application.

8 MR. GRIFFIS: Thank you. Board have  
9 questions of the Office of Planning? Ms. Miller.

10 MS. MILLER: Does the Office of Planning  
11 have any comment on the conditions that were proposed  
12 by the ANC?

13 MR. MCGHETTIGAN: If they ?- any  
14 conditions that would make sure that this operation  
15 does not adversely effect the community, like the ones  
16 recommended by the ANC, and evidently by the  
17 applicant, should be supplied, should be asked for.

18 MR. GRIFFIS: Does that mean you agree  
19 with the conditions?

20 MR. MCGHETTIGAN: I'm saying that if there  
21 is a condition like that controls the operation of the  
22 home occupation, that it is important to its impact on  
23 the community, then you should consider it.

24 MR. GRIFFIS: Okay. I think I understand.

25 Cross examination of the office of planning.

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1 MR. ROSENAU: No. I just wanted to say we  
2 put up the curtains. We're not taking them down.

3 MR. GRIFFIS: I understand.

4 MR. ROSENAU: We put up a sign inside.

5 MR. GRIFFIS: I understand. Any other  
6 questions? Mr. Gell, cross examination of the Office  
7 of Planning?

8 MR. GELL: No, I have no questions.

9 MR. GRIFFIS: Excellent. Thank you. I  
10 don't have any other government reports attendant to  
11 this application, unless the applicant is aware of  
12 any. Very well. We do have as much talked about  
13 Exhibit 23, which is the letter from the ANC-2F. Not  
14 having a representative from the ANC, I think we can  
15 take it for a strong letter that it is, and afford it  
16 the great weight for our deliberation. As we have  
17 noted for the record, this was a unanimous vote of 6-0  
18 in support of this application, and that support is  
19 conditioned on five elements. Shades to be drawn at  
20 all times in the front windows, and I think we've gone  
21 through all of them, except for 4 which seems to be  
22 one of my favorite. The neighbors will be welcome on  
23 the premises to monitor compliance.

24 You said you proffered all of these to the  
25 ANC. Is that correct?

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1 MR. GELL: Pretty much. I mean, the word  
2 may be slightly different, but that's pretty much what  
3 we had offered them.

4 MR. GRIFFIS: I see. Okay.

5 MR. GELL: We became aware of the fact  
6 that some of the neighbors did have concerns. We  
7 found out what they were, and we looked at the  
8 situation and said we think we can meet those needs.

9 MR. GRIFFIS: Okay.

10 MR. GELL: The only thing I might add is  
11 that shades is a very specific word. If there's some  
12 way you could make it more flexible, so that some  
13 covering that would prevent people from the sidewalk  
14 seeing that it's a office, then they'd have some  
15 flexibility to put up venetian blinds, or shades, or  
16 curtains, or whatever.

17 MR. GRIFFIS: If we get to that level, I  
18 think we can handle that.

19 MR. GELL: Thank you.

20 MR. GRIFFIS: Okay. Anything else?

21 MR. GELL: That's all.

22 MR. GRIFFIS: Excellent. Thank you. Very  
23 well, if there's nothing, then let's go to persons ?-  
24 actually, anyone here that wants to give testimony as  
25 a person. Why don't we clear the table and we'll pull

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1 up everybody at the same time. Again, I'll ask that  
2 you come forward and have a seat, make yourself  
3 comfortable. You will need to state your name and  
4 your address for the record. Persons to give  
5 testimony either in support or in opposition.  
6 Anybody. Anybody that's going to address the board,  
7 this is the opportunity, this is the time. Just two.

8 Very well. It's funny how that is. You know, I  
9 asked for a show of hands, and I think there were four  
10 or five, and now we're down to two. Excellent.  
11 You're going to have to speak very slowly so that  
12 we're ?- no, I'm kidding.

13 Okay. With that, what I'm going to ask -  
14 we can start with you. You can turn your microphone  
15 on. You're going to state your name and your address  
16 for the record. And then if you wouldn't mind, state  
17 whether you're in support or in opposition of the  
18 application, and then go ahead. Of course, persons  
19 are afforded three minutes. We can set this timer and  
20 you can see the clock go down. It makes a nasty noise  
21 at the end. I'm not going to do that today. I'm  
22 going to watch the clock, and so if I interrupt you,  
23 just note that it has been about three minutes. So  
24 with that, good afternoon.

25 MS. ALDRIDGE: Good afternoon, Mr.

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1 Chairman, Board. I'm Elizabeth Aldridge, and I live  
2 at 13 Logan Circle, which is very close to where the  
3 Rosenaus live, and work. I brought a letter from my  
4 brother who owns three buildings on Logan Circle, and  
5 who was unable to come today, and asked me to read it  
6 to you.

7 MR. GRIFFIS: Okay. Did you have  
8 something also you wanted to say?

9 MS. ALDRIDGE: Well, maybe in terms of  
10 what's been said earlier, I would say there's no  
11 problem with electronics these days to network from  
12 some other office to their home if they want to do  
13 something at 2:00 in the morning, or 6:00, or  
14 whatever. They could still have a computer set up if  
15 somebody called and said we need to do something right  
16 this minute, and it's midnight. They could always  
17 access their records. They wouldn't have to be on the  
18 spot.

19 MR. GRIFFIS: Okay.

20 MS. ALDRIDGE: So that diminishes the  
21 necessity, I think, of having a home office, I would  
22 think.

23 MR. GRIFFIS: Okay. And you do know, just  
24 for clarification, that the home office is allowed.  
25 And what we're assessing is whether an additional

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1 employee ?-

2 MS. ALDRIDGE: No, I was not aware that  
3 any home office was allowed. I thought it was all  
4 residential, so that concerns me too, because I think  
5 it just opens the door to commercial properties. This  
6 is a totally residential, and historically designated  
7 residential circle, I think the only one left in the  
8 city.

9 MR. GRIFFIS: Right.

10 MS. ALDRIDGE: And we don't want it to  
11 become office buildings and banks. We want it to stay  
12 residential as it was historically.

13 MR. GRIFFIS: Indeed.

14 MS. ALDRIDGE: And I think this is just a  
15 creeping way of ?- the law office is probably fine,  
16 but what's the next thing going to be?

17 MR. GRIFFIS: Indeed.

18 MS. ALDRIDGE: I think it opens the doors  
19 to more exceptions.

20 MR. GRIFFIS: Well, to address that, I  
21 don't think it does. First of all, the regulations  
22 allowing home occupation have been in effect for  
23 probably 30 years, and you see it hasn't taken over  
24 areas. Secondly, it doesn't mean it's a commercial  
25 conversion of a property, but rather someone that

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1 lives there is able to also have a home occupation or  
2 a home office.

3 MS. ALDRIDGE: Which I was not aware of.

4 MR. GRIFFIS: Okay.

5 MS. ALDRIDGE: It still concerns me, but I  
6 appreciate your telling me that the 7/Eleven is not  
7 next.

8 MR. GRIFFIS: That's absolutely right.

9 MS. ALDRIDGE: Okay. Well, may I read the  
10 letter from my brother?

11 MR. GRIFFIS: Yes. You can continue to  
12 address us personally, and give your testimony, and  
13 then you can just submit that letter into the record,  
14 and we'll read it, or read it. It's your choice.

15 MS. ALDRIDGE: Okay. I just wanted to say  
16 it's kind of what he's saying, that about 30 years ago  
17 we started restoring the three buildings, one after  
18 the other on Logan Circle, and along with a lot of  
19 other people we're intrigued by its history, and by  
20 the fact that it was still residential, and we want to  
21 keep it that way. And this makes me very nervous to  
22 find out that there's a law office operating in the  
23 area, but as you say, that's not against the law, so I  
24 guess I'm arguing the wrong case.

25 MR. GRIFFIS: Well, somewhat, but not

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1 necessarily. I mean, I think we take note of your  
2 point of opposition. Have you been aware of anything  
3 that is objectionable to the use?

4 MS. ALDRIDGE: Absolutely not, and I think  
5 probably that's the one thing that's going to be  
6 there, it wouldn't matter. It's just I'm concerned  
7 that there will be something else.

8 MR. GRIFFIS: Okay.

9 MS. ALDRIDGE: And they say well, this is  
10 a precedent.

11 MR. GRIFFIS: Indeed.

12 MS. ALDRIDGE: And yes, we'll allow this  
13 next thing.

14 MR. GRIFFIS: This may give you maybe a  
15 little bit more confidence in our system. First of  
16 all, any application that comes before us does not  
17 create a precedent. Each application has to be viewed  
18 individually on its own merits, so this board doesn't  
19 look back on do we have similar cases, how many of  
20 these have we granted in the neighborhood? Well, we  
21 can't deny this one, so we're not based on precedents.

22 MS. ALDRIDGE: All right. That is  
23 assuring.

24 MR. GRIFFIS: Pardon me?

25 MS. ALDRIDGE: That's reassuring. Thank

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1 you.

2 MR. GRIFFIS: Okay. And let me also say,  
3 under 203.7, of course, dressmaking, sewing and  
4 tailoring as a home occupation is also allowed, just  
5 to give some flair to what might be in this historic  
6 district down in Logan. It might be interesting to  
7 have a dressmaker back, but that's a real digression,  
8 so let me turn it to you.

9 MS. ALDRIDGE: Thank you. I think that  
10 I've expressed how I feel.

11 MR. GRIFFIS: Very well. Thank you very  
12 much.

13 MS. ALDRIDGE: Thank you very much.

14 MR. GRIFFIS: And we appreciate you being  
15 here this afternoon. And if you would not mind, do  
16 you have copies of the letter?

17 MS. ALDRIDGE: Yes.

18 MR. GRIFFIS: Excellent. You can just  
19 give it to the staff member here, and we will put it  
20 into the record, and the board will review that when  
21 it's in front of them. Yes.

22 MS. APPLGATE: Hi. My name is De'Borah  
23 Applegate. I'm a resident at 1317 Rhode Island  
24 Avenue, and I've lived there for about two years. And  
25 I had the great pleasure of meeting Mr. and Mrs.

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1 Rosenau about two or three weeks ago at their open  
2 house that they provided for the neighbors on Rhode  
3 Island Avenue. They sent fliers around, and I'm glad  
4 I went because I think I had the best lemonade I've  
5 ever had. They were very gracious. They opened their  
6 house up to neighbors on the street they had not met  
7 before. They gave a tour of their house, showed us  
8 their offices, showed us the beautiful work that they  
9 did to keep the house in a historical setting.

10 I'm a realtor, and I had seen the house  
11 when it was empty and tried to sell it to families and  
12 people that were also interested in putting bed and  
13 breakfast there, so they did a great job maintaining  
14 the historic character that it has. I didn't see much  
15 changed at all, and if anything, they embellished what  
16 was there.

17 They're great neighbors. I did think that  
18 they had moved a law firm or some type of business  
19 there, and I talked to other neighbors and heard that  
20 maybe that that's what they had done, in fact. I  
21 don't think, in my opinion, it has impacted the  
22 neighborhood in a negative way. If anything, it's  
23 brought more professionalism to the neighborhood.

24 It has also brought good neighbors.  
25 They've maintained their yard, their outdoor area, the

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1 public area, the street, and I'm glad to have them  
2 part of the neighborhood. I'm glad the house is not  
3 vacant any more also, so I have no objection to the  
4 extra paralegal that they need to conduct their  
5 business.

6 MR. GRIFFIS: I see. In your experience  
7 on this block or any others, do you find that there is  
8 a benefit for having somebody home during the day  
9 time?

10 MS. APPLGATE: Of course. We have had  
11 numerous daytime burglaries with front doors being  
12 broke open in the day, so of course. They have  
13 different hours, as they spoke. They're up early in  
14 the morning. They come and go late at night. Having  
15 someone there in the day time is valuable, whether  
16 it's a group home, or an individual office, or a  
17 condominium complex, I think it's very valuable.

18 MR. GRIFFIS: Thank you. Ms. Miller.

19 MS. MILLER: I was just wondering, have  
20 you had a chance to see the conditions that are in the  
21 ANC report?

22 MS. APPLGATE: I have, and I attended the  
23 ANC meeting.

24 MS. MILLER: Do you have an opinion as to  
25 whether they're necessary, or an opinion on them at

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1 all?

2 MS. APPLGATE: I certainly do. There was  
3 one comment made from a neighbor that they could see  
4 the computer screen, the terminal, and I guess that  
5 bothered them. I'm a realtor and I have a home  
6 office. I don't have any employees, but I have my  
7 computer screen in my window too, and I've never  
8 received any complaints.

9 I see people that are not in business that  
10 have their computer screen in front of their window.  
11 I think that was ?- in my opinion, that's a petty  
12 complaint, and I don't think that they should have to  
13 put up curtains. It doesn't look like a business. I  
14 only knew it was a business because I heard that from  
15 another neighbor. It does not look like a business  
16 any more than my windows, or any place else that I  
17 pass by.

18 And I also stated at the ANC meeting that  
19 as far as traffic and visitors, my building is the  
20 Rockingham, and we get a lot of deliveries for people  
21 in my building from UPS, Fed-Ex, Giant Grocery Store  
22 that makes deliveries, so we get much, much more  
23 traffic where I live versus their building, "a  
24 business and commercial."

25 I don't think it's fair that they have to

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1 put up the curtains or some kind of shades. I think  
2 that's unreasonable. That's just a personal opinion  
3 though. The other ones, I think are probably fair.

4 MS. MILLER: So you were at the ANC  
5 meeting. Were these conditions discussed by the  
6 community?

7 MS. APPELEGATE: They were made known to  
8 them, yes. And I think some of the concerns were made  
9 by the neighbors, brought up to them, and that's why  
10 they had made those concessions on their part. I  
11 think some of them are unreasonable, but if that's  
12 what they need to do to get the approval, I guess  
13 that's probably what they'll have to do.

14 MS. MILLER: Okay. Thank you.

15 MS. APPELEGATE: You're welcome.

16 MR. GRIFFIS: Are you aware, is Rhode  
17 Island residentially zoned parking?

18 MS. APPELEGATE: It is zone 2 parking.

19 MR. GRIFFIS: Right.

20 MS. APPELEGATE: Right.

21 MR. GRIFFIS: Okay. Anything else? Very  
22 well. Any cross examination, Mr. Gell?

23 MR. GELL: I was just wondering if it  
24 would be possible to ask Ms. Aldridge, now that she  
25 has heard a little bit about the law surrounding this

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1 case and knows a bit more about what we're about,  
2 whether she might feel that it would be okay for the  
3 board to make its decision today. I don't know if the  
4 board felt that it might have to ?-

5 MR. GRIFFIS: That's an interesting cross  
6 examination question.

7 MR. GELL: And obviously, not ?-

8 MR. GRIFFIS: Very well. Why don't we do  
9 this then. Let me just finish the panel, and then  
10 we'll take all the questions that you might have of  
11 everybody, so you can mull over the question of cross  
12 examination, Mr. Gell, which is do you think the  
13 board is able to make a decision today based on your  
14 understanding of the regulations that you've just been  
15 walked through? Is that about it?

16 MR. GELL: Yes. One additional thing that  
17 I'd simply like to add is, again on the  
18 shades/curtains, that the only place that anybody  
19 walking by could see in if there were no curtains  
20 would be the first floor. And so as not to perhaps  
21 run into some technical violation ?-

22 MR. GRIFFIS: Let's get through the  
23 testimony. I'll give you an opportunity to do a brief  
24 closing, and we can kind of sum up all those issues.  
25 Good afternoon.

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1 MR. DURHAM: Good afternoon. My name is  
2 Wil Durham, and a former D.C. government housing  
3 inspector, now full-time realtor in the city. And I  
4 live directly across the street from these nice folks,  
5 and ?-

6 MR. GRIFFIS: Which one do you like  
7 better?

8 MR. DURHAM: I like them both.

9 MR. GRIFFIS: Okay.

10 MR. DURHAM: I like them both. I stay  
11 focused on what I'm doing.

12 MR. GRIFFIS: Excellent.

13 MR. DURHAM: But I'm a lover of houses,  
14 and this is a very beautiful home that they moved  
15 into. And they've simply made it all the more  
16 beautiful. I don't know how they have time to  
17 decorate outside, but I see them out puttering around  
18 and that kind of thing.

19 I work at home a lot, phone work, and I  
20 work in my window too. I don't know if anyone has  
21 ever complained about me sitting in the window making  
22 phone calls, but they're right across the street from  
23 me, so I can see what's going on. No measurable  
24 negative impact on traffic or pedestrian, vehicle or  
25 otherwise. I didn't know there was a furor in the

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1 neighborhood until we had the neighborhood meeting  
2 regarding this matter, and I think the neighbors that  
3 were opposed, once they heard the Rosenau's position,  
4 what they actually ?- the impact to the neighborhood  
5 by their business, what they intended to do in the  
6 neighborhood, what their business was about so to  
7 speak. I think that just quelled a lot of the  
8 opposition. I think the opposition just died away at  
9 that point, and so I'm here just to say that I think  
10 they are fine neighbors. I know that they have a  
11 neighbor on one side that was really pretty sick, and  
12 they took the time - I know that their profession  
13 requires them, especially Mr. Rosenau, he works all  
14 times of day and night, but he took the time to lend a  
15 hand to make sure that this person got the treatment  
16 that they needed, and so forth. So I'm here to say  
17 that I think they're just fine neighbors, and they  
18 have a very, very low impact on the neighborhood,  
19 period - certainly not negatively.

20 MR. GRIFFIS: Excellent. Thank you very  
21 much.

22 MR. DURHAM: You're quite welcome, sir.

23 MR. GRIFFIS: Any questions from the  
24 Board? Okay. Mr. Gell, cross of the testimonies?  
25 Ms. Aldridge, would you mind just coming back up.

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1 Okay. You just have questions for Ms. Aldridge. Is  
2 that correct, Mr. Gell?

3 MR. GELL: Yes, along the lines that I had  
4 indicated earlier.

5 MR. GRIFFIS: Okay.

6 MR. GELL: Should I address?

7 MR. GRIFFIS: Sure.

8 MR. GELL: Ms. Aldridge, now that you  
9 understand that the granting of this special exception  
10 doesn't create a precedent that will prevent the Board  
11 from denying a special exception to somebody else if  
12 the facts don't fit, and also that the law has  
13 permitted home occupations for many years, do you feel  
14 that what you have said to the Board, the information  
15 that the Board now has, is sufficient for them to make  
16 a decision now and not have to do any further  
17 deliberations beyond today? I would also ask whether  
18 you could support us, but that isn't necessary, if  
19 you'd rather not.

20 MS. ALDRIDGE: No, I'm still a little  
21 concerned. For instance, first it was okay if they  
22 had one employee, but now you're asking for two. And  
23 to me, that's still creeping enlargement of  
24 professional/commercial business uses of homes around  
25 there, so I'm still concerned. I'm relieved that this

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1 doesn't set a precedent, but in a way it kind of does.

2 It looks like every appeal that comes before the  
3 Board will be just a little bit stronger, and I just  
4 think there's some place we have to draw a line in the  
5 sand.

6 MR. GELL: I understand.

7 MS. ALDRIDGE: So I'm afraid I'm still  
8 opposed.

9 MR. GELL: Okay, and that's fine. Do you  
10 have any objection to the Board making its decision  
11 today based on the evidence that they've heard?

12 MS. ALDRIDGE: No. I would like to make  
13 sure that they read my brother's letter.

14 MR. GELL: Okay.

15 MS. ALDRIDGE: And other than that, no.

16 MS. MONROE: Can I just say something?  
17 Generally speaking, when there is opposition, we  
18 usually do a full order. It wouldn't be a summary  
19 order, because that's ?- in past practice with  
20 opposition it's been a full order, which means you  
21 wouldn't get the decision, it wouldn't be a summary  
22 order. That's the way it's been.

23 MR. GRIFFIS: Understood. That doesn't  
24 preclude us from making a bench decision, although it  
25 would take and require a little bit more deliberation.

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1 Well, there it is. I think we were well aware of  
2 that going into this. Anything else, Mr. Gell?

3 MR. GELL: No. If you like, I'll repeat  
4 the two concerns we had about the conditions.

5 MR. GRIFFIS: I'm going to give you an  
6 opportunity to do a brief closing. I want to thank  
7 you all for coming down and giving your testimony, and  
8 we appreciate your being here. Certainly, we will  
9 take it into great deliberation. Okay, Mr. Gell.

10 MR. GELL: Yes. We fully appreciate the  
11 concerns the neighbors have who live in a wonderful  
12 residential district when they see that there's some  
13 aspects of commercialization coming in. And what we  
14 have found is that when it's been explained to them  
15 what the impact is and what the Zoning Commission had  
16 done many years ago, in deciding that in fact some  
17 people could, under certain very restrictive  
18 conditions, operate their businesses in their homes.  
19 They did almost unanimously decide that it would be  
20 certainly okay if the Rosenau's operation was not  
21 going to have some negative impact on the  
22 neighborhood. And when they looked at the Rosenaus,  
23 and heard them, and also considered the conditions  
24 that the Rosenaus had said they would be willing to  
25 agree to, they concluded that, in fact, this

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1 operation, this law office with the two employees who  
2 do not live there would be perfectly satisfactory.

3 We have not heard any other opposing  
4 statements since that time, except for the one that  
5 you heard today. And we did give you some petitions  
6 showing that 17 of the neighbors signed a petition  
7 saying that they support it, as well.

8 I had mentioned earlier on the conditions  
9 we would urge some flexibility on the window  
10 coverings, if the language could simply permit them to  
11 cover the windows any way they wish. They'd like to  
12 do it in a way that's going to be in keeping with the  
13 I guess federal style look of the neighborhood, and  
14 I'm not sure shades would necessarily do that. And  
15 that would only limit it to the first floor, since the  
16 second floor is really not an issue.

17 I'm just a little concerned that they  
18 might somehow be in technical violation at some point  
19 if someone on the second floor opens the shades, or  
20 the windows, or the curtains and nobody wants that, so  
21 other than that, we have no objection to the  
22 conditions.

23 MR. ROSENAU: Italian Renaissance.

24 MR. GELL: I'm sorry. I'm told it's  
25 Italian Renaissance. That's my testimony, and that's

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1 my statement.

2 MR. GRIFFIS: Good. Thank you. Follow-up  
3 questions? Does most of the operation of the office  
4 nature happen on the first floor?

5 MR. ROSENAU: Almost all of it. The xerox  
6 machine is on two, and my wife has her office on two.

7 MR. GRIFFIS: I see.

8 MS. ROSENAU: In the rear.

9 MR. GRIFFIS: In the rear of the building.  
10 Okay. Ms. Miller.

11 MS. MILLER: I just have one question.  
12 How about your hours of operation, is it any time  
13 during the day or night whenever you need to check a  
14 file? Is it basically that kind of thing?

15 MR. ROSENAU: I'm on call 24/7 to the  
16 hospitals.

17 MS. MILLER: Right.

18 MS. ROSENAU: Mainly, it's during normal  
19 business hours, but the nature is that with the  
20 guardianships and conservatorships, we can get called  
21 upon at any time. But we generally have 9 to 6  
22 business hours.

23 MS. MILLER: And the room that you use  
24 primarily as your office, is that in the front?

25 MR. ROSENAU: Actually, both of our

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1 offices are at the back of the house.

2 MS. MILLER: They're in the back of the  
3 house.

4 MR. ROSENAU: Yes.

5 MS. MILLER: But there's a computer in the  
6 front?

7 MS. ROSENAU: The first floor is the main  
8 portion of the office. That has three rooms that are  
9 offices, front, center and back. On the second floor,  
10 there is a very small area in the front where you  
11 can't even really see in. That has a xerox machine,  
12 and then my office in the back. That's the extent of  
13 the office.

14 MR. ROSENAU: So the front office where  
15 the bow window is, the people before us have put up  
16 floor to ceiling book shelves flanking the fireplace  
17 along one wall, so we basically, we just kept it  
18 exactly the same as it was, so we have a desk that's  
19 back about six, seven feet from the bay. And the  
20 monitor is on top of that. And since you're looking  
21 from the street up 13 steps to the front window,  
22 that's why it's visible.

23 MS. ROSENAU: Was visible.

24 MR. ROSENAU: Was visible. We're just  
25 shutting it off now.

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1 MS. ROSENAU: Putting the lace curtains  
2 made it no longer visible.

3 MS. MILLER: Okay. Thank you.

4 MS. ROSENAU: Thank you.

5 MR. GRIFFIS: Any other questions?  
6 Follow-up, Mr. Gell? Anything else?

7 MR. GELL: Thank you very much.

8 MR. GRIFFIS: Okay. Thank you all very  
9 much. Very well. I think we've heard the entire case  
10 on this, and I think it's been well filled out in the  
11 facts of the case. I note Ms. Monroe's concern about  
12 having an application opposed; however, I do believe  
13 that in the past, the Board has, in fact, rendered  
14 bench decisions, as long as we fully address and  
15 deliberate on all the aspects.

16 I'm fully prepared to move forward with  
17 that at this time, unless Board Members object to us  
18 proceeding. Not noting any objection, I think it's  
19 most apropos to begin our deliberation under our  
20 motion, and then craft the conditions that would be  
21 required under that motion. And we can have as much  
22 discussion as required to that; and, therefore, I  
23 would move approval of application 17153 for 1304  
24 Rhode Island Avenue, for a special exception which  
25 would allow the additional employee for a home

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1 occupation, which is a law office, which is comprising  
2 the requisite square feet on the first and part of the  
3 second floor of the two-family dwelling. And if I  
4 didn't say it, it's at 1304 Rhode Island Avenue, N.W.

5 I would ask for a second.

6 MS. MILLER: Second.

7 MR. GRIFFIS: Thank you very much. I  
8 think it's very clear on the requirements for a  
9 special exception for a home occupation, I think  
10 Office of Planning did an excellent job in laying out  
11 that full analysis and addressed all those points.  
12 The submissions by the applicant in written form, and  
13 also in oral testimony today clearly outline the fact  
14 that this does not tend to create any objectionable  
15 conditions that would relate to the additional  
16 employee at the premises 1304 Rhode Island Avenue.  
17 The additional testimony of adjacent neighbors in  
18 support today lends substance to that point.

19 Ms. Aldridge, who came in opposition, I  
20 think brings up an excellent point. I think all of us  
21 would be concerned if we thought that this was, in  
22 fact, the changing of a neighborhood. I think though  
23 this Board knows full well that we don't write the  
24 zoning regulations, we grant relief on unique or  
25 special exception cases for the zoning regulations.

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1 And to that, there are several things that I think  
2 ensure that this is not an expanse or a continuation  
3 of commercial occupation of a historic residential  
4 neighborhood. It is, in fact, the historic nature,  
5 and it would be difficult to change a lot of the uses,  
6 and a lot of the architectural style. Plus it relates  
7 to how we don't make this home occupation look like a  
8 business. I think anything structural or  
9 architectural on the exterior would have to obviously  
10 be reviewed by the Board, that would ensure that it  
11 kept with the historic nature, and its history is  
12 residential.

13 Also, in terms of ?- I think we've laid  
14 our fairly clearly special exceptions and variances  
15 for that matter. Special exceptions applications that  
16 come to us must prove their case individually for us,  
17 and I think the next one that came, if there were  
18 objectionable conditions, it would obviously not be  
19 granted. I haven't seen a substantial amount or  
20 really great substance any objectionable conditions  
21 that would be created with the addition of the  
22 employee.

23 I know that there was some concern also  
24 regarding if one of the home occupants and the  
25 professional left. And the regulations are very clear

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1 on that, and that's if the dynamic of the homeowner  
2 changes, or any aspect of that, obviously our special  
3 exception is not in full force as it would have been  
4 changed; and, therefore, further review, and possibly  
5 relief would be required. So again, I have great  
6 assurance that we are looking at not the expansion  
7 beyond what we've actually deliberated and been  
8 presented with today.

9           Going through the conditions of ANC-2F, I  
10 think it was well-intended the conditions of which  
11 were laid out. I have no difficulty supporting no  
12 signage on the exterior of the building, and it  
13 appears that the applicant also was in agreement with  
14 that.

15           Condition number four reads, "Neighbors  
16 will be welcome on the premises to monitor  
17 compliance." I am not sure what time they were  
18 thinking they were doing that, how often, or how many  
19 times unannounced they show up for the lemonade, which  
20 seems to be the hit in the city. But more to the  
21 point in all seriousness, compliance is not left to  
22 the neighbors. Compliance is, in fact, DCRA's. The  
23 neighbor's responsibility, if they actually thought  
24 that this order wasn't complied with, or any of the  
25 regulations, could contact the Office of Zoning, or

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1 directly DCRA, as in fact had been done in this case.

2 I don't think we can even condition number  
3 four in anything that we do as we don't have the  
4 jurisdiction to give the authority to the neighbors.  
5 If that's an agreement that wants to be worked out on  
6 their own, I think that's perfectly appropriate, but  
7 it's not our's to say it is or it isn't.

8 Also, in terms of the assistance of the  
9 neighbor's securing tow truck, I think that's a  
10 condition of great intention, and not something that  
11 we necessarily condition to a special exception. It's  
12 fairly clear if someone breaks the law and parks in  
13 the alley that everyone ought to call a tow truck, and  
14 maybe worse. But I'm not going to suggest any remedy  
15 in that sense. Again, I think that steps a bit beyond  
16 our jurisdiction in order to condition.

17 Employees will use public transportation  
18 to and from work, as condition number two.  
19 Alternatively, the applicant would make arrangements  
20 for off-street parking. I'm open for discussion on  
21 number two. Ms. Miller.

22 MS. MILLER: Okay. Yes, I have a problem  
23 with part of that for enforcement. I don't know how  
24 people would be enforcing the employees using public  
25 transportation, though it sounds like they do this

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1 anyway, and it's a good policy. I know parking is an  
2 issue. I don't have a problem with the second part  
3 that would say that the applicant would make  
4 arrangements for off-street parking when needed,  
5 something like that.

6 MR. GRIFFIS: The difficulty of writing a  
7 condition like that is who decides when it's needed,  
8 what's the threshold? What's interesting about this  
9 is that there is no parking required. Some of the  
10 assurance I have that it's not going to be creating a  
11 problem is that we have our parking enforcement  
12 mechanism in the city. It was testified today that  
13 there's residential permit parking. That only allows  
14 you to park there for two hours, and it is to ensure  
15 that spaces are adequately utilized by the neighbors  
16 or by the residents of the block.

17 There's nothing that would stop somebody  
18 from using that within the limits of two-hours, but I  
19 think that also precludes somebody from ?- if you  
20 ever worked in a office that didn't have parking and  
21 you were in a residential district, it's not often a  
22 job lets you get up and move your car every two hours,  
23 nor are you allowed to do that within that zone. The  
24 point is, I think we've pretty much taken assurance  
25 outside of our jurisdiction for that not being a

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1 problem.

2 MS. MILLER: Well, I would agree then that  
3 it shouldn't be a condition. And that, in fact, maybe  
4 it can be represented in the order that ?- I think we  
5 heard testimony today saying that the employees do  
6 take public transportation, and that the applicant  
7 will continue to encourage them to take public  
8 transportation. And that's maybe about as far as we  
9 should go.

10 MR. GRIFFIS: Well, no. Actually, I think  
11 I would go to the opposite. The applicant testified  
12 that if needed, they would make off-street parking  
13 arrangements. I think that is something we can  
14 evidence as a finding of fact, that if what they  
15 decided if they have an employee ?- the point is now  
16 they have employees that use public transportation,  
17 but employees change. This application is not for  
18 these specific people. I forget what their name was,  
19 but let's say Ellen, who takes the 14<sup>th</sup> Street bus.  
20 Well, maybe she's not there next year and there's  
21 another employee. We have to show that the entire  
22 condition of what we're granting won't create the  
23 objection, so if she decides to drive, doesn't live in  
24 the neighborhood, they feel that it's a burden, they  
25 would provide the off-street parking. But noted as a

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1 finding that that's what their testimony was, and I  
2 think would be appropriate.

3 MS. MILLER: So then I guess what you say,  
4 you're comfortable with noting as a finding that they  
5 will encourage employees to use public transportation  
6 to and from work.

7 MR. GRIFFIS: Sure.

8 MS. MILLER: Okay. All right.

9 MR. GRIFFIS: Okay. And now the ever-  
10 talked about shades/blinds versus window treatment. I  
11 think the intent of this is an excellent one, and that  
12 is to maintain the residential character of the  
13 neighborhood. I mean, I think it's fairly clear that  
14 you don't want to walk down what I picture from this  
15 application as quite a stunning block, and look up and  
16 see - well, I probably won't give specifics -  
17 something that gives an indication that it's a  
18 commercial building within a residential zone.

19 I'm not sure how we do this. Quite  
20 frankly, we could just condition the fact that the  
21 applicant will maintain the residential character of  
22 the property. Of course, what does that actually  
23 mean?

24 MS. MILLER: Again, I mean the other  
25 option is to put in the findings testimony that we

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1 heard that the applicant has covered the front windows  
2 with lace curtains, and the office nature of the  
3 premises is not apparent to the outside. I mean,  
4 something to that effect. I don't think it needs to  
5 be a condition, because it sounds like what we heard  
6 today sounds like it could be anybody's study or  
7 whatever that has a computer possibly visible from the  
8 street.

9 MR. GRIFFIS: Right.

10 MS. MILLER: I just didn't hear much  
11 testimony of people from the street seeing or being  
12 exposed to all this office activity.

13 MR. GRIFFIS: Right.

14 MS. MILLER: So I think the conditions  
15 that we've put on these orders should relate directly  
16 to adverse impacts that we've heard about, and we  
17 really ?- I didn't hear that.

18 MR. GRIFFIS: That's an excellent point.  
19 And to go even further, obviously, the home occupation  
20 is allowed, and so I'm not sure how we get the  
21 jurisdiction to go inside and put window treatment up,  
22 unless that was, I think as Mr. McGhettigan was aptly  
23 saying to us, unless we found that it actually  
24 addressed some of the potential adverse impact, and as  
25 you're saying also, Ms. Miller. So I really ?- if I

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1 understand you, Ms. Miller, I think I agree that I'm  
2 not sure we can condition a treatment of the first  
3 floor fenestration on this building.

4 And again, just to reiterate, I think  
5 anything that would fundamentally change structurally,  
6 or architecturally change this building, would go  
7 through a whole entire other review process. And  
8 obviously, it would have to maintain its historic and  
9 residential nature. So that being said ?-

10 MS. MILLER: I'd like to just make a  
11 general comment about these conditions and the ANC.  
12 We're giving this report great weight, and what that  
13 means is not that we are bound to follow the ANC's  
14 recommendations, but that we are bound to take them  
15 seriously and address them, and that's what we've been  
16 doing, is going through and seeing if the evidence  
17 supports them, and if they comply with the  
18 regulations, et cetera. So I just want to clarify for  
19 the community that that's what great weight means  
20 under our regulations and the law. Okay. So as it  
21 stands here, we have one condition, and that is the  
22 signage.

23 MR. GRIFFIS: I think so.

24 MS. MILLER: Okay.

25 MR. GRIFFIS: Anything else that we see

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1 would be needed?

2 MS. MILLER: I didn't see anything else.

3 MR. MANN: No, I think that addresses  
4 certainly every question that we had.

5 MR. GRIFFIS: Excellent. We have a motion  
6 before us, it has been seconded and conditioned. Let  
7 me just say within our deliberation, I think Ms.  
8 Aldridge's testimony also goes to the ANC's  
9 submission, which we've given great weight. And the  
10 last paragraph says that the ANC took note of  
11 considerable concern on the part of the nearby  
12 property owners that we do not - that the BZA not  
13 consider this case a precedent that would lead to  
14 other commercial uses of historic residential  
15 buildings and diminish the residential character, so I  
16 think that has been properly addressed at this point.

17 Unless there's anything else - if there's  
18 nothing further then we have the motion before us,  
19 seconded and conditioned. I'd ask for all in favor to  
20 signify by saying aye. And opposed?

21 (Vote taken.)

22 MR. MOY: The staff would record the vote  
23 as 3-0-2 on the motion by the Chair to approve the  
24 application, seconded by Ms. Miller. Also in favor of  
25 the motion, Mr. Mann. We have a board member and a

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1 zoning commission member not participating on the  
2 case.

3 MR. GRIFFIS: Thank you. Anything else?

4 MR. MOY: Not to my knowledge.

5 MR. GRIFFIS: Excellent. If that is the  
6 case, I can adjourn the 27 April, 2004 hearing. Thank  
7 you.

8 (Whereupon, the proceeding in the above-  
9 entitled matter went off the record at 3:08:15 p.m.)

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