

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

JULY 6, 2004

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:03 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS, Chairperson  
CURTIS ETHERLY, JR., Board Member  
RUTHANNE MILLER, Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Acting Secretary  
BEVERLEY BAILEY, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

JANICE SKIPPER, ESQ.  
LORI MONROE, ESQ.

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AGENDA ITEM

APPLICATION OF MARK LEE PHILLIPS, MOTION FOR RECONSIDERATION

17079 ANC-6B . . . . . 5

APPLICATION OF ALEX AND AMANDA MARSHALL

17172 ANC-2B . . . . . 6

APPEAL OF LARRY & LOUISE SMITH AND MARY ANN SNOW

17085 ANC-6B . . . . . 23

REMAND - APPEAL OF ADVISORY NEIGHBORHOOD COMMISSION 4A

16839 ANC-4A . . . . . 35

APPEAL OF STEPHANIE MENCIMER, ET AL

17092 ANC-2F . . . . . 41

APPLICATION OF HOWARD HEU (PARKHILL, INC.)

17124 ANC-6C . . . . . 71

APPLICATION OF ANN SPIEGAL

17168 ANC-2C . . . . . 81

APPLICATION OF NORTHWEST SETTLEMENT HOUSE THE PUBLIC

17160 ANC-2C . . . . . 86

APPLICATION OF AMAZING LIFE GAMES PRE-SCHOOL, INC.

17163 ANC-4C . . . . . 105

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

10:03 a.m.

1  
2  
3 MR. GRIFFIS: We will be joined perhaps  
4 physically and perhaps in other ways with zoning  
5 commissioners as they are on each of the cases that we  
6 will be deciding today in our public meeting. Of  
7 course, this is an opportunity for the Board to review  
8 and deliberate and make decisions on the cases that  
9 have already been heard.

10 We do not take additional information  
11 during these sessions. However, the copies of today's  
12 hearing agenda, or rather meeting agenda, are  
13 available for you. We have an awful lot to accomplish  
14 today so let me just get through very quickly.

15 First of all, everyone should know having  
16 been through the hearings but I need to say that  
17 everything, of course, is being recorded by the court  
18 reporter sitting to my right creating a transcript of  
19 our deliberation. And these sessions are also being  
20 broadcast live on the Office of Zoning's website. Let  
21 us continue on that and let me just ask people to turn  
22 off cell phones or beepers or any noise making devices  
23 so that we don't lose our train of thought up here as  
24 we get through all this.

25 I'm going to update the agenda. We have a

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1 couple of conflicts with schedules so we are going to  
2 be juggling the 13 items on our agenda for this  
3 morning a little bit. I will read through how we will  
4 proceed in the first five cases and then we'll update  
5 as we go on.

6 We are going to start with 17079 which is  
7 Mark Lee Phillips. Second we will go to 17172 which  
8 is Marshall Height House addition. 17085, Smith and  
9 Snow appeal, will be third. Shagnon OAG, 16839 will  
10 be four and Mencimer appeal, 17092, will be number  
11 five.

12 Case No. 17175 of the Douglas Development  
13 Corp., 17179 of the Heritage Foundation, and 17150 of  
14 First Baptist Church, S.W., are at the very end of the  
15 agenda and I can tell you right now at this point the  
16 Board is anticipating moving those to next week for a  
17 special public meeting for decisions on those. I  
18 don't anticipate that we would have any other  
19 additional comments on those at this time but I will  
20 update as we go forward.

21 Let me run through them again. That takes  
22 us through 17092 which is five. 17124, Howard Heu  
23 would be six. 17168, Spiegall four unit, would be  
24 seven. 17160, Northwest Settlement House would be  
25 eight and 17163, Amazing Life Games, would be nine.

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1  
2 With that then, let me say a very good  
3 morning to Ms. Bailey from the Office of Zoning. Also  
4 Mr. Moy who is with us today, and ask Ms. Bailey, do  
5 you have any preliminary matters that you are aware  
6 of?

7 MS. BAILEY: Mr. Chairman and members of  
8 the Board, good morning. Staff has no preliminary  
9 matters at this point, Mr. Chairman.

10 MR. GRIFFIS: Very well. Then let's  
11 announce the first case for decision.

12 MR. MOY: Good morning, Mr. Chairman, and  
13 members of the Board. The first case is a motion for  
14 reconsideration of Application No. 17079 of Mark Lee  
15 Phillips pursuant to 11 DCMR 3104.1 for a special  
16 exception to increase the number of sleeping rooms in  
17 the bed and breakfast home occupation from two to four  
18 or six under Subsection 203.8 and the provisions  
19 governing special exceptions within the Capitol Hill  
20 Overlay District under Subsection 1202.1 in the CAP/R-  
21 4 District at premises 417 A Street, S.E., Square 18,  
22 Lot 27. On May 3, 2004, Gene Barry, a party opponent,  
23 filed a motion for reconsideration and staff will  
24 leave it at that, Mr. Chairman.

25 MR. GRIFFIS: Thank you very much. Noting

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1 the Board has looked at this motion for  
2 reconsideration and, in fact, was prepared to move  
3 forward with this today.

4 However, it has come to our attention that  
5 this was not served on the applicant or other  
6 participants in the case which is required for any  
7 sort of official action or request from the Board so  
8 there's not much we can do with it until that is done.

9 I say we send back the notice and have them serve  
10 this on all those concerned in the application. We'll  
11 pick it up at an appropriate time if and when we have  
12 responses to that.

13 Mr. Moy, should we set this actually? No,  
14 we'll set it for a special public meeting if it  
15 doesn't coincide with our regular meeting dates and  
16 pick it up at that time.

17 MR. MOY: Yes, sir. That's fine. The  
18 next case then would be Application No. 17172 of Alex  
19 and Amanda Marshall pursuant to 11 DCMR 3104.1 for a  
20 special exception to allow a two-story rear addition  
21 to an existing single-family dwelling under Section  
22 223 not meeting the court requirements under Section  
23 406 in the D.C./R-5-B district at premises 1519 P  
24 Street, N.W., Square 194, Lot 6.

25 Staff notes for the record that on June

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1 22, 2004, the applicant amended the application to  
2 withdraw to request for zoning relief under Section  
3 405 which is the side yard requirements.

4 Also, on June 22 the Board completed its  
5 public testimony on the application and scheduled its  
6 decision on July 6, 2004. The Board left the record  
7 open to allow an opportunity for ANC-2B to submit any  
8 comments on the amended application. At this time the  
9 staff has not received any submissions from the ANC.

10 MR. GRIFFIS: Thank you, Mr. Moy. Well  
11 said. Board members, as you recall, there was the  
12 adjacent property owners in opposition that brought up  
13 quite a bit of issues and that really went to the  
14 substantial testimony on whether there was the  
15 diminishing of view and also the diminishing of light  
16 be it direct or be it ambient.

17 Of course, it is for the addition and  
18 nonconforming. Also I think for import for us to take  
19 up is the Office of Planning had actually submitted in  
20 essentially a compromise that was allowing for the  
21 reconfiguration of the interior stair that would be  
22 built in addition to the structure but would not  
23 entail the full length of the building and the  
24 addition in the rear.

25 Of course, it was going to replace what I

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1 think was uncontested and I think it is fairly  
2 straightforward, replacing the addition in the back  
3 that was of different construction type and actually  
4 in pretty bad repair.

5 Let me open it up for discussion. I think  
6 it's important to look at really the documentation in  
7 the record in terms of the photographs that clearly  
8 show, be it the Office of Planning's or be it the  
9 applicant's or also the adjacent neighbors'  
10 photographs, all of them are somewhat illustrating the  
11 same idea and certainly the same area.

12 It shows how it would be impacted or the  
13 adjacent property would be impacted if the building  
14 mass was to move out towards and onto the property  
15 line. I'll open it up for any comments to begin with  
16 and then we can get through this. Anything.

17 MS. MILLER: I think the evidence that we  
18 heard and looked at was somewhat mixed with respect to  
19 the affect on the neighbors of their light and air and  
20 privacy. Where I'm at is I'm inclined to give great  
21 weight to Office of Planning who found that the  
22 availability of light and air to the neighboring  
23 properties will be affected by the proposed  
24 development and go with their compromise.

25 MR. GRIFFIS: So you're saying you're

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1 favoring granting the special exception with the  
2 conditions that would limit the area of which the  
3 addition could be put onto the existing structure?

4 MS. MILLER: That's correct.

5 MR. GRIFFIS: Okay. I would note also  
6 that the ANC-2B did weigh on this and was opposed to  
7 the application. I tend to agree. I'm really not  
8 myself in terms of deliberation on this so strongly  
9 moved in one direction or the other. I can say in  
10 terms of -- one of the testimonies we heard was in  
11 terms of the historic character of this building,  
12 whether the addition would fall within that.

13 I was certainly not persuaded that the  
14 argument that we heard was one that was full within  
15 our jurisdiction to rely on what our regulations are  
16 fairly clear on saying. It wouldn't visually intrude.

17 Going further than that in terms of whether it broke  
18 the historic character seems to be in the purview of  
19 HPRB more so than ours.

20 I don't think anyone has indicated in the  
21 testimony nor in my deliberation looking at the  
22 elevations, whether the front or the rear, would say  
23 that this addition would visually intrude meaning it  
24 would look so out of place. It is, as the record  
25 shows, a very eclectic block. This building seems to

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1 fit that quite a bit.

2 It's really caught, this structure. It's  
3 set back so far and being the historic area in nature  
4 that this is, they can't build into the front of the  
5 building and, therefore, the rear and side is what is  
6 left available. It is a very small structure.  
7 Clearly there is a need to reconfigure the interior.  
8 But, of course, it's the balance in this special  
9 exception of how we take into the account the adjacent  
10 residents and what they have come to know and rely on  
11 and how much is appropriate in terms of light and air.

12 There was some discussion in the hearings  
13 about whether we needed shadow studies or further  
14 studies of some angles and such. I don't see the need  
15 for an addition. I think it was very clear on the  
16 graphic documentation that was submitted and the  
17 impact it would have.

18 Where does that leave me? It seems  
19 especially with the aspect of the adjacent property in  
20 terms of the bay window that is set in to the side  
21 area or the area by the adjacent really was to capture  
22 and certainly anticipated having that light and air  
23 and view. Really what it comes down to is view and  
24 how much would be impacted and to what level it would  
25 be impacted.

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1 I tend to agree that the addition of that  
2 area, essentially the compromise that Office of  
3 Planning seems to in some respects facilitate  
4 diminishing or lessening any impact or negative impact  
5 to the adjacent properties. I would note that the  
6 design actually takes into account stepping back away  
7 from the bay window where the entrance would come.

8 I also noted that the applicant had  
9 indicated that they would not have vision glass that  
10 would directly look into the adjacent properties.

11 Really what we're talking about is whether it's  
12 a full dimension in the rear of the building and  
13 whether that would have a visual and light impact or  
14 not.

15 I think, in fact, the compromise as  
16 offered to be a condition would tend to have the  
17 desirable affect of maintaining that open area and the  
18 openness of both the properties and the enjoyment of  
19 the light and view. I think it is probably  
20 appropriate to move in that direction. Again, let me  
21 open it up to others for any comments.

22 MR. ETHERLY: Mr. Chair, if I may, I'm  
23 going to echo a phrase that you used as you opened  
24 your remarks on this particular case and that was not  
25 necessarily being moved one way or the other here.

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1           The challenge here as I think clearly  
2 there as testimony in the record and evidence in the  
3 record that spoke to visual impacts and light and air  
4 impacts on the adjacent property. You also referenced  
5 some of the impacts that had been alleged with respect  
6 to that first floor garden unit.

7           Let me just deal with that very quickly.  
8 I didn't find that particular aspect of the testimony  
9 to be very persuasive from some of the photographic  
10 evidence that was offered. Not being an expert in sun  
11 and shadow I would still, nevertheless, hazard a guess  
12 that the light that is available to that garden space  
13 probably is fairly limited and fleeting, although I  
14 believe it is indeed present at some point during the  
15 day.

16           That being said, however, I do believe  
17 that the visual impacts that were alleged with regard  
18 to the second floor unit in particular of the adjacent  
19 condominium property does, indeed, give me some pause.

20           I believe the Office of Planning's suggestion was a  
21 helpful one in terms of moving the design towards a  
22 direction that would, shall we shall, make less of an  
23 impact on the adjacent property but I think those  
24 impacts still exist.

25           Where I think I'm landing on this, Mr.

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1 Chairman, is with respect to kind of a close call such  
2 as this with the great weight that is required to be  
3 given by this body to ANC opinion, I'm going to side  
4 with the ANC on this particular piece because I'm not  
5 necessarily convinced that the OP report is going to  
6 get us all the way there in terms of some of the  
7 changes that are being proposed to mitigate, shall we  
8 say, the impacts visually on the adjacent condominium  
9 property.

10 I'll leave it at that. I'll leave it at  
11 that. It's a close call for me but I'm going to give  
12 it time to be the run in this case.

13 MS. MILLER: Mr. Etherly, I just want to  
14 make sure that I understand what you're saying. My  
15 understanding of great weight for the ANC means that  
16 we look at their issues and address them. I don't  
17 know that they addressed the conditions that were  
18 proposed by Office of Planning to which we also give  
19 great weight.

20 I need to pull my ANC report but I  
21 understand that the ANC was concerned about the effect  
22 on open space and light and air in general and that  
23 the Office of Planning was as well and that their  
24 condition, at least in my view, do address that.

25 MR. ETHERLY: Okay. I kind of come out of

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1 a different, no pun intended, side of the fence on  
2 that one. The ANC report, Exhibit 27, gives a fairly  
3 straightforward recitation of the factors that, of  
4 course, we bound to look at with regard to special  
5 exception noting the impact on light and air available  
6 to the neighboring property and undue compromise of  
7 the privacy or use and enjoyment of the neighboring  
8 property and the substantial visual intrusion.

9 It is a fairly, once again, kind of boiler  
10 plate recitation. But I think what the ANC is getting  
11 at in that particular regard is that when you look at  
12 the property as it exist now and the light and air  
13 that are available to the adjacent units, I just don't  
14 think there is any way to get around it that you are  
15 going to have an impact there.

16 Perhaps that does raise a question of does  
17 the OP recommendations or suggestions for design  
18 modification get you around those impacts. There was,  
19 of course, discussion at pages 5 and 6 of the OP  
20 report with regard to some of the mitigation measures  
21 that would include, for example, louvers and/or  
22 translucent glass on all north facing windows for the  
23 proposed addition; maintenance of the existing setback  
24 along the eastern property line with regard to an  
25 upper floor redesign.

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1 I think, once again, these are all  
2 measures that are heading in the right direction but  
3 are you simply tinkering around the edges of what is a  
4 problem that you just can't get away from, and that is  
5 the visual impact on the adjacent property and the  
6 light and air impact on the adjacent properties. I  
7 just don't think there is any way that you can avoid  
8 that.

9 I am very sensitive to, for what it's  
10 worth, the predicament, the set of circumstances that  
11 the applicant finds themselves in with regard to this  
12 particular property. It is a unique situation to say  
13 the least. It is a compelling question to deal with.

14 What do you do to kind of mitigate the need to expand  
15 and grow and perhaps bring this particular property up  
16 to a standard from a space standpoint that is more  
17 consistent with a contemporary family but it's a  
18 stretch for me to get there with the record as it  
19 stands right now.

20 MR. GRIFFIS: Thank you, Mr. Etherly.  
21 Anything else?

22 MR. ETHERLY: I'll note to the extent that  
23 it might be helpful if perhaps my colleagues could  
24 walk me through the Office of Planning Report as it  
25 relates to the design modification, I am open to some

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1 dialogue on that but, once again, I'm just concerned  
2 about the visual impacts and the light and air  
3 impacts.

4 MR. GRIFFIS: Very well. Let me run  
5 through my understanding of what is the compromise in  
6 the Office of Planning. It is limiting the addition  
7 to the area that would enclose the proposed new stair,  
8 the interior stair. It was limitedly talked about but  
9 I think very straightforward in the evidence and the  
10 fact that the stair splits this two-room house so a  
11 new stair in the area way would allow for a larger  
12 flow of space. Then in the rear the addition would  
13 continue with the width from property line to property  
14 line in order to create a kitchen and then, of course,  
15 on the upper floor the bedroom with the new bathroom.

16 Mr. Etherly, you bring up an interesting  
17 point of what was evidenced and the ANC was clearly  
18 concerned with a loss of open and green space is what  
19 their letter said. A phrase that was brought up in  
20 the hearing was the light ways or the space in between  
21 the structures that were there that seemed to be  
22 fairly unique but also feed quite a bit of the light  
23 that got through the block to the adjacent properties  
24 and actually on both sides.

25 I tend to agree, Mr. Etherly, with what

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1 you're saying in terms of what does this compromise  
2 do? Does it diminish it enough to mitigate the impact  
3 to still allow the view, the light, and the air to  
4 circulate through to 1517 and also, frankly, to 1519.

5 I'm not sure it does.

6 I mean, in some respects I think if we  
7 allow for the added in stairs, we find the fact that  
8 it wouldn't unduly impair those aspects. I don't see  
9 how the rear addition would impair. Really the stairs  
10 come at a pivotal point for the view of the adjacent  
11 properties above the first floor. Let me see if Ms.  
12 Miller has a final comment on this.

13 MR. ETHERLY: Just as we continue to talk  
14 about this, I want to be sure that I'm kind of clear.

15 Don't get me wrong. I'm not alleging that there is  
16 this pathway of light that just cuts through these  
17 properties such that you have a variable cornucopia of  
18 sunshine at any given point in time. I think clearly  
19 at this point you already have some impacts by virtue  
20 of the existing situation.

21 I'm caught trying to deal or resolve the  
22 question of do you increase the impacts by virtue of  
23 the application as is currently proposed and, if so,  
24 are there some ways mitigating that? I'm just not  
25 sure if the Office of Planning piece takes us in that

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1 direction.

2 MS. MILLER: I just want to say that I  
3 think a lot of good evidence came out of the hearing  
4 and I don't recall if the ANC was at the hearing. I  
5 don't have them in my notes participating.

6 MR. GRIFFIS: They were.

7 MS. MILLER: They were? Okay. Then I  
8 didn't get much input. I guess they were going to go  
9 back and do a report if they found it necessary.  
10 Maybe you can address this as well. I was left with  
11 the impression at the end of that hearing that the  
12 compromise did go a long way and those that were  
13 opposed found that it went a long way.

14 I know with respect to the historic  
15 patterning that we are really not relying too much on  
16 but the compromise did go a long way. I remember Ms.  
17 Egg saying, yes, that would substantially make a  
18 difference.

19 I guess finally we don't have the benefit  
20 of going to the site and actually looking at it and  
21 that's why with a variety of testimony I tend to just  
22 at this point rely on Office of Planning and give them  
23 their great weight. They do go there and they do  
24 evaluate it. That's where I'm still at.

25 MR. ETHERLY: Okay. I appreciate that,

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1 Mrs. Miller. I think the Office of Planning Report  
2 was very helpful and all of the photographic evidence  
3 was very helpful in terms of setting forth the  
4 illustration of the predicament that both the  
5 applicants and adjacent property owners find  
6 themselves in here.

7 I agree that while it might have been  
8 helpful for some additional feedback from the ANC on  
9 some of the proposed measures, mitigation measures  
10 that were contained in the Office of Planning Report,  
11 I think the ANC was fairly definitive and decisive  
12 with regard to what they were concerned about.

13 Once again, I'm simply at a point where  
14 I'm going to opt to side with that particular position  
15 because I just don't think the mitigation measures  
16 really are going to eliminate the ultimate problems  
17 which still exist and that is the impact on light and  
18 air and privacy. I appreciate the idea of a  
19 translucent window but I think that still doesn't get  
20 around to resolving visual impact that is nevertheless  
21 going to hit the parties in opposition of the adjacent  
22 property.

23 MS. MILLER: Okay. I don't want to  
24 belabor this point but I just want to note that I  
25 don't think we can give the ANC great weight with

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1 respect to whether or not the compromise mitigates the  
2 problems with the air and light because they didn't  
3 address the compromise.

4 MR. ETHERLY: I am not going anywhere in  
5 that direction. I think, once again, the ANC was very  
6 decisive and very clear with respect to the resolution  
7 and I will take the resolution and accord it great  
8 weight based on the language that they use in the June  
9 24th report and leave it at that.

10 I agree with my colleagues that it is  
11 incumbent upon us to take a look at the Office of  
12 Planning Report and make a determination as to whether  
13 those efforts would be sufficient. I appreciate the  
14 Office of Planning taking that step. As I said at the  
15 top, I think this is a very close case,  
16 extraordinarily close.

17 Often times we are confronted with  
18 applicants and property owners who are attempting to  
19 do some things to help maximize the use and enjoyment  
20 of their property but we are stuck also with the  
21 responsibility of trying to balance those efforts with  
22 the interest of adjacent property owners.

23 With that in mind, Mr. Chair, I would be  
24 at this point inclined to make a motion if we are at  
25 that stage, Mr. Chair and it would be my motion to

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1 deny Application No. 17172 of Alex and Amanda Marshall  
2 pursuant to 11 DCMR 3104.1 for a special exception to  
3 allow a two-story rear addition to an existing single-  
4 family dwelling under Section 223 and invite a second.

5 MR. GRIFFIS: I would second the motion.

6 MR. ETHERLY: Mr. Chair, I think we've had  
7 very adequate discussion but, once again, I think it's  
8 very important for what it is worth, once again, that  
9 this was, in my opinion, a very close case. I believe  
10 that the record does support impacts with regard to  
11 air, light, and privacy on adjacent property owners  
12 that despite the excellent efforts of the Office of  
13 Planning to offer some mitigation steps, I still think  
14 those particular impacts just aren't averted in this  
15 particular case.

16 MR. GRIFFIS: Thank you, Mr. Etherly. I  
17 think you have stated that well. I think this is a  
18 very peculiar case, one with a siting of the buildings  
19 themselves both 1517 and also 1519. Also the fact  
20 that I don't think this precludes an addition to the  
21 rear of the building but just maintaining that area  
22 which has become as well stated throughout all of this  
23 and relied upon for both properties.

24 If you look at it, this is a 22-foot wide  
25 parcel. What is essentially being limited here in

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1 terms of addition by maintaining the area ways on both  
2 sides is almost a typical row dwelling dimension so it  
3 probably ought to be looked at maximizing the rear of  
4 the property and the additions toward the rear and  
5 then possibly reorienting a stair inside that envelope  
6 in order to make this much more accommodating.

7         There's only so much that can be asked of this  
8 particular property, I think, which was fairly clear  
9 in the hearing. It is small and it is quite unique.  
10 I think it is an amazing design challenge to really  
11 maximize the utilization of this property. But  
12 looking at it in necessity, I think you've been  
13 convincing in the fact that even with the stair  
14 addition once you enclose that area the impact is  
15 similar on 1517.

16         Whether it carries all the way back to the  
17 rear of the portion or just is in the middle center of  
18 it, it's hard to really see that there wouldn't be  
19 something of detriment created there. Others? Did  
20 you have final comments, Ms. Miller?

21         MS. MILLER: It would be the same thing.  
22 Just basically I'm going to oppose the motion because  
23 I would have voted to approve it with conditions  
24 offered by Office of Planning which I believe would  
25 have mitigated the problems with effect on air and

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1 light.

2 MR. GRIFFIS: Good. Thank you very much.

3 The motion before us has been seconded. Let me ask  
4 for all those in favor of the motion signify by saying  
5 aye.

6 MEMBERS: Aye.

7 MR. GRIFFIS: And opposed?

8 MS. MILLER: Ms. Miller.

9 MR. GRIFFIS: Why don't we record the  
10 vote.

11 MR. MOY: Yes. Staff would record the  
12 vote as two to one to zero. This is on the motion of  
13 Mr. Etherly to deny the application, seconded by Mr.  
14 Griffis. We also have two absentee votes, one from  
15 Mr. Hood and one from Mr. Mann. Mr. Hood has voted to  
16 deny the application so he would be in support of the  
17 motion. Mr. Mann has voted to approve the application  
18 so he would be opposed to the motion. That would give  
19 a total vote of three to two to zero to deny the  
20 application.

21 MR. GRIFFIS: Thank you very much. Let's  
22 move on.

23 MR. MOY: Next case is the appeal of  
24 Application No. 17085 of Larry and Louise Smith and  
25 Mary Ann Snow pursuant to 11 DCMR 3100, 3101 from the

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1 administrative decision of the Zoning Administrator,  
2 et al., in the issuance of building permit numbers  
3 B424724, B451616, etc., to Chris Doefler and/or Folger  
4 Park north, LLC, for the construction of three flats,  
5 two family dwellings.

6 The appellant alleges that the Zoning  
7 Administrator did not properly apply the provisions of  
8 Subsection 401.2, etc. The CAP/R-4 zone subject  
9 premises are located at 206, 208, and 210 D Street,  
10 S.E., Square 763, Lots 26, 27, and 28.

11 On June 22, 2004, the Board acted on the  
12 motion of the property owner which is folger Park  
13 North, LLC, represented by Richard Agoulia which was  
14 to dismiss the appeal based on timeliness. After  
15 deliberating the Board voted to deny the motion to  
16 dismiss by a vote to five to zero to zero.

17 The Board then scheduled its decision on  
18 July 6, 2004, also requesting proposed findings of  
19 fact and conclusions of law by all parties. These  
20 were filed by the firm of Robbins, Kaplan, Miller, and  
21 Ciresi, LLP, identified in your case folders as  
22 Exhibit 56. Also by Lisa Bell in behalf of DCRA, the  
23 appellee.

24 This is in your case folders identified as  
25 Exhibit 57. And from the firm of Hutton and Williams,

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1 LPP, Exhibit No. 58. This is also a reformatted brief  
2 which was filed earlier on June 30th as Exhibit 55.  
3 That completes the staff's report, Mr. Chairman.

4 MR. GRIFFIS: Good. Thank you very much,  
5 Mr. Moy.

6 Let me just first without getting into the  
7 facts of this appeal immediately but we will quickly  
8 get to it, it's fairly clear that almost all  
9 applications that come in have opinions either in  
10 opposition or support and I think it should be clearly  
11 stated that the Board weighs those for their factual  
12 basis and how they actually impact the zoning test  
13 that is before us to be decided.

14 I think we go great lengths to remove  
15 ourselves from any sort of investing in personal  
16 opinions and seeing where things weigh. I bring this  
17 up in light of the last case, but also this case and,  
18 frankly, probably six others today that we'll be going  
19 through. I think it should be clear by the Board's  
20 actions and deliberations that we take in great  
21 concern relations and communications.

22 I've said it before and I probably haven't  
23 said it in a long time but when we finished our work  
24 on these cases, the folks that have been involved in  
25 bringing applications and opposing or supporting it

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1 have to go home and they do live next to each other.

2 I would hope and I think the Board  
3 strongly hopes that a certain level of civility is  
4 given in accord with going through this public process  
5 but also, most importantly, in creating the further  
6 foundation for living within the same neighborhood  
7 that community and, of course, in this great city.

8 Well, there it is. I think we need to get  
9 right into -- of course, we've been through the public  
10 hearing on this particular piece of property and also  
11 now the appeal. What has been dropped out of the  
12 appeal has been summarized to a single issue.

13 It's a single issue of whether these row  
14 dwellings should have been granted a permit or did the  
15 Zoning Administrator err in granting a permit based on  
16 the fact that there may have been or is a requirement  
17 for the provision of a side yard on one or two of  
18 these properties.

19 Let me first say that in this case and in  
20 others that the Board has heard on this issue, I have  
21 not heard anyone and specifically in this case it is  
22 absolutely a consensus of opinion that there is great  
23 ambiguity in our regulations regarding Section 405.

24 There is not only ambiguity and unclarity  
25 but there is direct contradictions in reading through

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1 the sections. I think the Board has had to wrestle  
2 with this extensively on several issues. I believe  
3 that this case may well, I certainly hope it would,  
4 bring clarity and perhaps maybe a bit of finality to  
5 this.

6 My analysis goes in this direction. First  
7 of all, it starts fundamentally with row dwellings in  
8 the zone in which this is situated, in the R zone  
9 where row dwellings are permitted. By definition, of  
10 course, the row dwelling in its pardon 199.1 defined  
11 as a structure without side yards. It is a matter of  
12 right type of construction in the R zone.

13 Once we look then to how you would --  
14 well, let's go right into 405.1 and 405.2 and looking  
15 at the rest of the regulations regarding the side  
16 yards. The pertinent aspects is -- well, quite  
17 frankly I think if you read the regulations 405.1, 2,  
18 and 6, you see that there is an exemption of the row  
19 dwellings from the side yard requirements.

20 In 405.9, the table, if you were to go  
21 quickly to indicate where or what side yard and where  
22 it is to be provided looking at the zoned districts,  
23 you would see that it would not be required unless one  
24 was provided and, if provided, then it would need to  
25 be dimensioned according to the regulations.

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1 I think then if you go to the conflict,  
2 the conflict is the reading of 405.3. There are two  
3 aspects of 405.3 that I have difficulty with and  
4 depending on what time of day and what state of mind  
5 you're in reading it, it may come up with different  
6 aspects and that's where I find it so difficult in  
7 terms of its own wording and its own reading.

8 In R-2, R-3, R-4, and R-5 districts when a  
9 one-family dwelling, flat, or multiple dwelling is  
10 erected that does not share a common division wall  
11 within existing building or a building being  
12 constructed together with a new building, it shall  
13 have a side yard on each resulting free-standing side.

14 One aspect of this is that if you have --  
15 the beginning sentence of 405.3 seems to indicate that  
16 it is defining a detached house because I think one  
17 could read this with some assurance that if you had a  
18 structure that had "a", as the wording says, that  
19 shares a common division wall. Each of these  
20 properties share a common division wall, one common  
21 division wall. Doesn't that remove you from 405.3?  
22 Would you need to read the rest?

23 If you read through the rest of the  
24 section itself, it talks of existing building or a  
25 building being constructed together with a new

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1 building. Well, is that going to timing? Is it  
2 indicating that as you sequence the construction of  
3 this, is it basing it on the fact that you would have  
4 control or that a whole row of dwellings was being  
5 built at a single time and that is when this would be  
6 invoked?

7 Then how many does this invoke? Is it  
8 just two and does it exempt you from if you are doing  
9 more than two or three? It doesn't seem to be clear  
10 at all and I think reading 405.3 in a vacuum, one, is  
11 not the correct course in looking and deciding this  
12 particular appeal.

13 And, two, I don't think it can be read in  
14 a vacuum based on the fact that we have 405.1, 405.2,  
15 405.6, and 405.9 which all go to indicate that a side  
16 yard is not required. Then fundamentally going back  
17 to the beginning deliberation, my own deliberation, is  
18 how do we require a matter of right structure within  
19 the zoning regulations? How do we require a matter of  
20 right structure to not be matter of right based on one  
21 section out of four or five?

22 Now, in the filings, of course, there is  
23 quite an extensive amount of submissions one talking  
24 about the Office of Planning's Report and, of course,  
25 the Office of Planning's Report is in the record. The

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1 Office of Planning, I think, was well said in how it  
2 started out its deliberation, or rather its analysis  
3 of the side yard requirement. It said that it's not  
4 entirely clear if a side yard is required. No one  
5 has, I think, definitively stated that one is.

6 Let me lastly just put this, I think, into  
7 some context. What I think is important to do is not  
8 read the regulations and think of it as so much -- of  
9 course, I'm not an attorney but so much as legal  
10 wording and what are the legal aspects to all this.  
11 For me let's put it into practicality, common sense,  
12 and what our city actually is.

13 There is a sports club that is adjacent  
14 across the alley of the townhouses that are now  
15 constructed. It sits right on the alley line. It  
16 does not look like a new building. I don't know. I  
17 didn't go through the entire case to see if there was  
18 evidence of when that was built. Here we have a  
19 condition of a structure that is built right on the  
20 alley line.

21 If interpreted as those have in this case  
22 that the side yard is required, then that building  
23 would not have been able to be built. I can't think  
24 of a neighborhood of row dwellings of which we  
25 probably hold in great esteem in terms of its visual

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1 character, its density character. What gives the  
2 uniqueness to Washington neighborhoods all of which  
3 combine row dwellings and row dwellings that end at  
4 alleys and also end in large rows of the dwellings.

5 I can't see how the Zoning Commission even  
6 looking at the legislative history of 405.3 would have  
7 set forth to prohibit a condition of which was already  
8 in existence and which gave great character to  
9 neighborhoods such as Capitol Hill and Adams Morgan  
10 and, of course, most importantly, the Columbia Heights  
11 neighborhood which has extensive amount of row  
12 dwellings that fall within the provision of which  
13 405.3 may, but I don't think securely, be interpreted  
14 to prohibit row dwellings in such circumstances.

15 I think if we go into the intent also of  
16 the regulations, there is the submission by the Hutton  
17 Williams that talks about somewhat the regulatory  
18 intent of side yards. I think it's not the most  
19 deciding factors but I think it is important to  
20 understand why side yards are and where they are  
21 required and it is, of course, for light and air  
22 filtration.

23 I think looking at how rows of dwellings  
24 are set up and where they stop, they usually terminate  
25 at an open space. Yet, open space is not necessarily

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1 provided on the instant piece of property or lot, but  
2 rather that adjacent whether it abuts the rear yards  
3 or an alley or some other accommodation that does  
4 create the open spaces. I think it's important to  
5 understand the overall impact which is really what  
6 that goes to as we look at finding definition to the  
7 side yard requirements.

8 Now, of course, the Board's decision on  
9 the Southeast Citizens for Smart Development appeal,  
10 16935, there was an extensive discussion of this in a  
11 previous case. I think the important aspects and the  
12 only reason why I reference that is I think it really  
13 went to show how this Board in its deliberation on  
14 that particular case looked at a previous case, the  
15 Prichard case, which has been well cited and probably  
16 too often. The deliberation and decision on that was  
17 based specifically and wholly on the facts presented  
18 in Prichard and the specific and unique aspects and  
19 areas of that.

20 I think looking at this specific appeal  
21 and also the last, but this specific appeal, if we  
22 were to uphold and grant the appeal, I think it would  
23 lead to a fairly absurd outcome of prohibiting row  
24 dwelling developments in numerous cases. And it  
25 wouldn't necessarily just be at an end row. It would

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1 be in an in-fill situation where you had two  
2 properties that were vacant.

3 Or perhaps in some of the other  
4 neighborhoods that are being continually invested in  
5 where you have a row dwelling that has fallen into  
6 disrepair and is taken down and the adjacent is a  
7 vacant site. You would have to coordinate your  
8 development with an adjacent property owner to make  
9 sure that you built simultaneously.

10 That seems to be a situation that I cannot  
11 ever imagine that our regulations, one, would be  
12 written well enough to undertake, but also I don't  
13 think that we would base the regulation or requirement  
14 for open space based on a coordinated effort of  
15 individual property owners in order to in-fill in the  
16 middle of a row of dwellings.

17 I think that's all I need to say at this  
18 point. Let me open it up for others.

19 MS. MILLER: I would just say that I  
20 concur with your points which were pretty  
21 comprehensive on the subject and I think address the  
22 regulations well, as well as the intent behind them.

23 MR. GRIFFIS: Very well. Then let's  
24 continue under a motion. I believe in looking at the  
25 facts of the case and going into a full deliberation,

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1 I do not find that the Zoning Administrator undertook  
2 any reversible error at this time and I would move  
3 denial of the Appeal No. 17085, Larry and Louise Smith  
4 and Mary Ann Snow pursuant to the DCRA's issuance of  
5 the three foundation permits as noted in the case  
6 filing for the Folger Park construction of 206 to 210  
7 D Street, S.E., Washington, D.C. I would ask for a  
8 second.

9 MS. MILLER: Second.

10 MR. GRIFFIS: Okay. Any further  
11 deliberation? Comments? If there are none, then I  
12 would ask for all those in favor of the motion signify  
13 by saying aye.

14 ALL: Aye.

15 MR. GRIFFIS: And opposed.

16 MR. MOY: Staff would record the vote as  
17 three to zero to zero. This is on the motion of the  
18 Chairman, Mr. Griffis, to deny the appeal, seconded by  
19 Ms. Miller. We also have two absentee votes, one from  
20 Mr. Hood and one from Mr. Mann. Both have voted to  
21 grant the appeal so that would give the final vote as  
22 three to two to zero.

23 MR. GRIFFIS: Good. Thank you, Mr. Moy.  
24 Lastly, I had forgotten that I wanted to address the  
25 filings of Hutton and Williams in their last

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1 paragraph. This won't have any pertinence to the vote  
2 but there was a suggestion by Mr. Julio that we take  
3 each lack of side yard objection on each case as kind  
4 of an ad hoc basis and pick them up as they come. I  
5 think that is an interesting suggestion.

6 I absolutely do not support it because it  
7 would not logically base what I think we have come up  
8 with in terms of a full and strict understanding of  
9 the side yard requirement. It would put it more into  
10 the arena of basically hearing complaints and, if  
11 there were complaints, then we would try and figure  
12 out the regulations.

13 The regulations stand for all situations  
14 and properties that are analogous and not just based  
15 on hearing and deciding complaints. I'm certain they  
16 didn't mean to go that far and I pushed it a little  
17 bit with my own comments. There that is. Okay. If  
18 there is nothing further on that case then, Mr. Moy,  
19 why don't we move on.

20 MR. MOY: Yes, sir. The next item is a  
21 remand from the District of Columbia Court of Appeals.

22 This is the appeal of Application No. 16839 of the  
23 Advisory Neighborhood Commission 4A pursuant to 11  
24 DCMR 3100 and 3101 from the decision of the Zoning  
25 Administration for the issuance of a certificate of

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1 occupancy No. 183666 dated August 31, 2001, for an  
2 elderly development center serving 30 persons ages 22  
3 through 85 years old and seven staff, NAC-2A district  
4 at premises 5511 14th Street, N.W., Square 2800, Lot  
5 9.

6 The Board decided this appeal on July 2,  
7 2002. This remand was originally scheduled before the  
8 Board on June 22, 2004. The Board rescheduled this  
9 remand to July 6, 2004. Staff will end here, Mr.  
10 Chairman.

11 MR. GRIFFIS: Good. Thank you very much.

12 Once in a blue moon the Court of Appeals doesn't  
13 agree with us. Is that correct, Mr. Moy? Is that  
14 what you said?

15 MR. MOY: Yes.

16 MR. GRIFFIS: That's what I thought it  
17 was. Right. It is not often that we are overturned  
18 and remanded and I think that says a lot, but in this  
19 particular case we were. It's an interesting order to  
20 read and I know we have all read it.

21 The DCCA basically indicated that we made  
22 a mistake and have vacated the order. Really what is  
23 before us we have two courses of action. I think the  
24 court has made that very clear. One is following  
25 their logic in admitting that we were incorrect and

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1 granting the appeal. The other is, as they have  
2 recommended, also conduct further proceedings.

3 I think what is at issue here and, again,  
4 I think often -- not often but when we do get into  
5 difficult situations where deliberation and clarity  
6 seem to be elongated, it is based in the ambiguity and  
7 confusion or conflict of the regulations. Somewhat  
8 this falls right into that category.

9 As you may all recall, I do recall sitting  
10 on this case. It really revolved around the  
11 definition of child/elderly development center.  
12 Clearly we were incorrect in indicating that the  
13 Zoning Administrator could interpret similar functions  
14 and fit it into the definition. However, the  
15 definition is very precise in one aspect and that is  
16 of age and imprecise in terms of operation.

17 All that being said, I think it would be  
18 wise for the Board to conduct further proceedings on  
19 this and I would suggest that we request from all  
20 participants in this case to submit in writing to the  
21 Board for our review.

22 Actually, what we can do is have them  
23 submit to the record and to serve on everybody and  
24 then we can have a time for responses for those  
25 aspects and then the final submission to the Board we

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1 can, of course, be seen reading those all along. That  
2 would be as to whether Metro Day would somehow fit the  
3 definition and classification of another use that  
4 would be allowable within this area. That would be my  
5 recommendation.

6 Yes, Ms. Miller.

7 MS. MILLER: With respect to timing, it  
8 would seem to me that Metro and DCRA logically would  
9 go first to see if they could identify another use  
10 classification that Metro Day could fall within  
11 because I don't believe that Shagnon would do that.  
12 Then Shagnon could respond if they find some other use  
13 classification.

14 MR. GRIFFIS: Good clarity.

15 MR. ETHERLY: I'm in agreement, Mr. Chair.

16 MR. GRIFFIS: Good. Thank you. I was  
17 going to go through and highlight some of the ALJ,  
18 Judge Clickman, that wrote this but let me move on  
19 with it out of expedition of time.

20 Mr. Moy, why don't we look at the calendar  
21 and look for submissions on that.

22 MR. MOY: Well, Mr. Chair, if you want to  
23 allow two weeks to submit in writing or three weeks.  
24 Three weeks would take us to July 27th. If we do  
25 that, then time for responses another two weeks.

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1 MR. GRIFFIS: I think that makes sense.

2 MR. MOY: Then the next two weeks would  
3 take us to September 8th to receive responses and the  
4 Board could set this for special public meeting on  
5 September 15th. Is that doable or would you prefer  
6 more time?

7 MR. GRIFFIS: I think that is absolutely  
8 fine. September 15th we'll set it for a special  
9 public meeting. Frankly, at that time after receiving  
10 all the written submissions, the Board may, in fact,  
11 decide that further processing, meaning an actual  
12 hearing, would be required or it would fully  
13 deliberate and decide it on that day. Setting it for  
14 the special public meeting is appropriate.

15 MR. MOY: I gave a long time in August  
16 because, if you recall, the Board is in recess in the  
17 month of August so there's quite a bit of time for  
18 response if we have submissions in writing, again, for  
19 July 27th. The parties actually have the entire month  
20 of August plus a week in September given vacation time  
21 and Labor Day weekend. Then to submit responses on  
22 the 8th of September, special public meeting on the  
23 15th.

24 MS. BAILEY: Mr. Chairman, clarification.  
25 September 14th is the date that the Board will meet

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1 in September.

2 MR. MOY: Oh, I'm sorry. That's right.

3 MR. GRIFFIS: Excellent.

4 MR. MOY: That would be September 7th and  
5 then September 14th.

6 MR. GRIFFIS: Okay.

7 MR. MOY: My calendar is off.

8 MS. MONROE: Mr. Chair and Mr. Moy, excuse  
9 me. You said September 8th and then September 7th,  
10 both dates.

11 MR. MOY: I just changed it to September  
12 7th and September 14th respectively. I was looking at  
13 Wednesday.

14 MS. MONROE: I didn't want to interrupt.

15 MR. GRIFFIS: Is someone clear on it?  
16 What do we have, September 14th, special meeting?

17 MR. MOY: For the moment.

18 MR. GRIFFIS: Excellent. And why don't  
19 you just reiterate the dates again.

20 MR. MOY: Okay. Dates again to submit in  
21 writing from parties Tuesday, July 27th; responses,  
22 Tuesday, September 7th; special public meeting on  
23 Tuesday, September 14th.

24 MR. GRIFFIS: Good. Very well. Anything  
25 else?

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1 MR. MOY: No. Just that Mr. Parsons was  
2 also in agreement to conduct further proceedings.

3 MR. GRIFFIS: Excellent. So we can take  
4 it as a consensus of those voting members to set this  
5 off for further processing.

6 MR. MOY: Yes, sir.

7 MR. GRIFFIS: Okay.

8 MR. MOY: Ready for the next case? Next  
9 case is the appeal of Application No. 17092 of  
10 Stephanie Mencimer, et al., pursuant to 11 DCMR 3100  
11 and 3112 from the administrative decision of Denzel  
12 Noble, Acting Zoning Administrator, Department of  
13 Consumer and Regulatory Affairs, from the issuance of  
14 certificate of occupancy No. C057903 dated July 23,  
15 2003, to Wag Time, LLC, a 24-hour dog boarding and  
16 grooming with accessory retail sales of pet supplies.

17 The appellant alleges that the  
18 aforementioned use is not permitted in the Arts/R-3-A  
19 district. The subject property is located at 1412 Q  
20 Street, N.W., Square 209, Lot 878. The staff notes  
21 for the record that this appeal was amended on March  
22 30, 2004, to include the CFO No. 69395 which was  
23 issued on July 28, 2004.

24 On May 11, 2004, the Board completed  
25 public testimony on the appeal and scheduled its

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1 decision on July 6, 2004. The Board requested parties  
2 to submit proposed findings of fact and conclusions of  
3 law. The Board has received such filings from Bennet  
4 Ruskoph of the District of Columbia Department of  
5 Consumer Affairs in your case folders as Exhibit 91.

6 Council for the intervenor of Mid-City  
7 Development in your case folders as Exhibit 92N from  
8 the law firm of Coe, Rayward, and Breverman, LLP, in  
9 your case folders as Exhibit 93. That completes the  
10 staff's briefing, Mr. Chairman.

11 MR. GRIFFIS: Good. Thank you very much,  
12 Mr. Moy.

13 Ms. Miller.

14 MS. MILLER: Mr. Chairman, appellants in  
15 this case allege that the Zoning Administrator erred  
16 in determining that a dog boarding as a principle use  
17 is permitted as a matter of right in the C-3-A zone.  
18 In this case there are no regulations that provide for  
19 this kind of use, that being dog boarding.

20 There were two certificates of occupancy  
21 at issue. One was the six-month temporary certificate  
22 that had certain conditions attached to it that  
23 expired January 31, 2004, and then a permanent  
24 certificate of occupancy was issued. Both are on  
25 appeal basically. But the basic issue is whether or

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1 not this use is permitted as a matter of right in the  
2 C-3-A zone.

3 741.1 says that use is permitted as a  
4 matter of right in the C-2 district, are permitted in  
5 the C-3 as a matter of right and 721 sets forth matter  
6 of right uses in C-2. 721.4 states that other service  
7 or retail use similar to that permitted in 721.2 and  
8 721.3 shall be permitted as a matter of right.

9 In essence, the Zoning Administrator  
10 determined that dog boarding was a use similar to  
11 veterinary hospital, pet store. We also heard public  
12 bath, physical culture, or health service which are  
13 three matter of right uses set forth in 721.2.

14 I believe that what is before the Board is to  
15 evaluate whether or not -- to look at how the Zoning  
16 Administrator determined that dog boarding was similar  
17 to the other uses that were allowed as a matter of  
18 right. Then for us to determine whether we believe  
19 that the use is similar.

20 We heard testimony and evidence with  
21 respect to the method of determining similarity of use  
22 for purpose of being included among the matter of  
23 right uses. Certainly Mr. Armand Lorenko, a former  
24 Zoning Administrator, testified that it is customary  
25 to compare and assess the relative impacts of the

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1 established and nonestablished uses based on their  
2 relative external effects on the proposed locations  
3 and surrounding premises. I think that is a really  
4 basic criteria here to look at the external effects.  
5 We heard a lot of testimony on that.

6 We also heard that from DCRA that one  
7 could look at the degree to which the uses are  
8 normally associated which I believe we heard a lot of  
9 testimony from DCRA that animal hospitals and pet  
10 stores all deal with animals or whatever they normally  
11 associate together. And then someone also suggested  
12 that we could look at all the uses that are outlined  
13 as a matter of right and determine what qualities they  
14 share in common.

15 And the other way of looking to determine  
16 whether a use is similar was not necessarily testified  
17 to at the hearing but came in a letter which I thought  
18 was quite convincing which looked at other  
19 jurisdictions to see how they treated doggy daycare  
20 facilities as compared to pet shops or veterinary  
21 hospitals. that was actually something that came to  
22 my mind when I was listening to the evidence in the  
23 record like what do other jurisdictions do.

24 So the first thing is when we look at what  
25 did the Zoning Administrator assess in this case? I

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1 would just like to start with reviewing what I  
2 remember and what I've pulled out of the evidence. My  
3 general assessment is that it was quite lacking. I  
4 think Mr. Lorenko captured it in his sentence that  
5 basically a dog slept here is something he said and  
6 that is what these have in common. I don't think  
7 personally that is sufficient.

8 I did hear DCRA testify, Ms. Deguney, that  
9 she looked at past BZA decisions, she called attorneys  
10 in OCC regarding court cases. She didn't take a site  
11 visit even to a veterinary hospital which was  
12 considered the most similar use. There's no evidence  
13 of any analysis of similarities or comparison of  
14 external effects. There is an exhibit that shows she  
15 concluded Pet Spy was allowed because public bath,  
16 physical culture, health service are matter of right.

17 Well, what was interesting also was this  
18 temporary certificate of occupancy where it was there  
19 for six months, and yet there's a question as to  
20 whether the Zoning Administration can even issue that  
21 kind of temporary certificate of occupancy.

22 That being said, they then paid no  
23 attention to the impacts of the community's experience  
24 under that certificate of occupancy when evaluating  
25 whether to issue the permanent certificate of

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1 occupancy. There was testimony by Mr. Overlander and  
2 Mr. Lorenko who are both qualified as experts in  
3 zoning that in determining similarity of uses you have  
4 to look at the impacts.

5 Proceeding on, we did hear a lot of  
6 evidence regarding impact that go to whether or not  
7 the uses are similar or dissimilar. there was  
8 comparisons to pet shops and veterinary hospitals and  
9 it seemed as we proceeded that veterinary hospitals  
10 was the use that the DCRA determined was most similar.

11 One of the basic impacts that we heard  
12 testimony on and looked at evidence on was noise. We  
13 have in our record a noise study, results of Wag Time  
14 by Miller, Beam, and Pagnalli, Inc., who are  
15 consultants in acoustics, vibration, and audio visual  
16 system designs. That is attachment 15 to Exhibit 26.

17 They went out and did measurements of  
18 noise impact from an adjacent neighbor of Wag Time and  
19 measured the noise from parking dogs and found that it  
20 exceeded the allowable noise levels in both day and  
21 night. We have noise tables showing the decibels of  
22 dogs barking.

23 This is a compelling piece of evidence for  
24 me which was just in the midst of the letters that  
25 were submitted, a report of the Baltimore County

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1 Planning Report in which they looked at the  
2 differences between kennels and animal boarding places  
3 and proposed that there be different regulations for  
4 them in their community. I think primarily  
5 because these kind of facilities required conditions  
6 such as buffers or space for outdoor runs or things  
7 like that.

8 We have documentation of complaints during  
9 Wag Time's operation. We have a letter at Exhibit 68  
10 from Council Member Jack Evans reflecting that his  
11 office receive repeated complaints from neighbors  
12 regarding noise levels and odors stemming from animal  
13 waste and cleaning chemicals.

14 We heard evidence of experts who  
15 testified, or they were qualified as experts,  
16 testified the difference between dog kennels and  
17 veterinary hospitals. Feel free to jump in.

18 MR. GRIFFIS: Indeed. Let me do that.  
19 First of all, let's go back to what you were talking  
20 about in terms of the temporary C of O that was  
21 actually condition. I think it was decided by this  
22 Board but certainly in the processing and the evidence  
23 shows that is an expired C of O. What is at issue is  
24 the appeal of the current C of O which, of course is  
25 no conditions and straightforward certificate of

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1 occupancy.

2 I think one of the things that you  
3 indicated was interesting in terms of what import the  
4 temporary C of O has and that is the elements and  
5 aspects that the Zoning Administrator had accepted to  
6 issue that C of O from the building owner and what  
7 kind of elements that it addressed. I think we'll  
8 touch on that again.

9 Really what it comes down to is you have  
10 indicated in the C-2 and the C-3 the use is a matter  
11 of right which is the Section 721 and 741. It is very  
12 clear that there is a numerated list of uses as a  
13 matter of right or those similar to. Clearly there is  
14 the discretion to find uses that are similar.

15 I think it makes a great livable document  
16 in allowing that because how will we predict what will  
17 eventually come in the future if this is to continue  
18 on as a regulation. Be that as it may, it really came  
19 down to Ms. Oginay's statement on the record when she  
20 was testifying.

21 What she had to do was find out what is  
22 the level. What is the threshold of matter of right  
23 uses that is being established in the C-2 and,  
24 therefore, within the C-3. Clearly, she indicated  
25 one. The introduction of animals starts in the C-2

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1 zone and, therefore, would go into the C-3.

2 The second is, as you've indicated, the  
3 two other pieces of the pet store and the veterinary  
4 hospital. Her statement on the record as I wrote it  
5 down whether it was exact or not was she needs to  
6 figure out for this use what is the matter of right  
7 use, the threshold. How bad can it be within the  
8 limits of the law. Right? What is the highest  
9 intensity of whatever we're talking about.

10 Specifically in this is the kennel. What is the  
11 highest that fits within these matter of right uses.  
12 Fundamentally, I think you are breaking out into two  
13 real aspects of deliberation here.

14 The first is did the Zoning Administrator  
15 in their interpretation in trying to fit this into a  
16 matter of right use go through a deliberative process  
17 that would give us the understanding and the basis for  
18 which we can understand that analysis that was  
19 establishing the similarity of use.

20 The other is in going a step further, I  
21 think, is really what you are indicating here, are we  
22 stepping in the shoes of the Zoning Administrator and  
23 indicating that no, this is not matter of right uses  
24 if I'm following the direction of your deliberation  
25 that we decide that it, in fact, is not similar of

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1 use.

2           Going to that one first, I am a little  
3 concerned about doing that only because I'm not sure  
4 that I have the full knowledge of the exact comparison  
5 with veterinary hospital or pet store's operation. It  
6 is fascinating to look at the regulations that were  
7 put into the record of the surrounding jurisdictions  
8 and actually how substantially they try and buffer  
9 this type of activity.

10           I guess going to that aspect of whether it  
11 was directly comparable or not, I'm not seeing  
12 immediately or -- here is one small aspect. I'm not  
13 seeing immediately how a veterinary hospital would be  
14 precluded from having boarding aspect or even that of  
15 an outdoor run in our zoning regulations.

16           MS. MILLER: I basically want to respond  
17 to one factor of dissimilarity that I just think is  
18 overwhelming to me and that is the fact that these dog  
19 boarding facilities are not governed by any licenses  
20 or regulations like pet shops are and veterinary  
21 hospitals.

22           Therefore, there is more of a need for  
23 conditions which I believe the conditions that were  
24 imposed on the temporary certificate of occupancy  
25 we're addressing. There is a void there that the

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1 other two don't have and I think that can be quite, as  
2 we saw, detrimental to the neighboring properties. I  
3 mean, they just don't have the same restrictions as  
4 veterinary hospitals and pet stores.

5 The VA came forward and said at one point,  
6 "Okay, we'll accept these conditions that no more than  
7 20 dogs are permitted outside at any one time. Use of  
8 the outdoor space at the rear of the property is only  
9 permitted during certain hours and the dogs must be  
10 supervised. They were going to try to construct a  
11 proposed temporary cover over part of the rear yard.  
12 It is said to help minimize noise impact.

13 What we heard from DCRA was, "Okay, we  
14 have a noise ordinance and that will cover it." I  
15 think that zoning goes a lot further than that. If we  
16 went to that standard, then you wouldn't need to have  
17 these different types of zoning if everything just was  
18 subject to the noise ordinance.

19 The same with all the waste that is  
20 generated from these facilities. They are just not  
21 even covered by the basic licensing standards that the  
22 veterinary hospitals are the pet shops. I think that  
23 does it for me, that one alone.

24 MR. ETHERLY: If --

25 MS. MILLER: Now -- I'm sorry.

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1 MR. ETHERLY: I'm sorry.

2 MS. MILLER: I didn't address the question  
3 about what prevents a pet shop from having an outdoor  
4 run or what prevents a veterinary hospital. Maybe  
5 they are not prevented but that is not inherent to  
6 what their mission is all about or their principal  
7 use.

8 The principal use for a dog boarding is to  
9 take care of these healthy dogs, whereas a veterinary  
10 hospital is dealing usually with sicker dogs or  
11 whatever and they are there for -- you know, they are  
12 not there for that purpose to be exercising outside or  
13 whatever.

14 MR. GRIFFIS: So you're saying if the  
15 veterinary hospital was to board it would be more of  
16 an accessory use or accessory aspect to the main  
17 principal aspect which is dissimilar in your mind?

18 MS. MILLER: Yes.

19 MR. GRIFFIS: Okay.

20 MR. ETHERLY: To perhaps bridge between  
21 the two comments, I think most importantly I'm in  
22 agreement with the essential finding here and that is  
23 there was error on the part of the Zoning  
24 Administrator in finding a similarity between the  
25 operations of the subject property, Wag Time, and the

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1 use of veterinary hospital and some of the other uses  
2 that were alluded to as being similar. I am in  
3 agreement with that.

4 I am somewhat -- let me pause here. I  
5 think what it then does is beg the next question once  
6 you find that, what do you do with this case. I think  
7 the record, the testimony, all the discussion we heard  
8 clearly highlighted that this is, no pun intended,  
9 indeed an animal of a different color so to speak.  
10 With the growing complexity, if you will, the broad  
11 menu of services that are offered by establishments of  
12 this type.

13 I do agree with my colleague, Mrs. Miller,  
14 that does bear some analysis. I just don't think this  
15 is the appropriate venue in which to conduct that  
16 analysis or to try to assess just how different a  
17 boarding facility that offers other services may,  
18 indeed, be from a veterinary hospital.

19 I think the record has been very helpful  
20 on both sides of the fence in terms of laying out  
21 exactly what's happening at Wag Time from their  
22 operational standpoint and what the neighbors have  
23 experienced. As Mrs. Miller noted, some of the  
24 additional evidence that has been brought into the  
25 record has helped to show how other jurisdictions are

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1 dealing with the issue.

2 I would agree with the Chair in terms of  
3 probably pausing at the point of finding the error.  
4 Perhaps what we're talking about what I'm offering  
5 yes, there was an error here and remand this case to  
6 use that phrase informally. Essentially remand it  
7 back for further action on the part of the Zoning  
8 Administrator that is consistent with our order.

9 That, perhaps, will be for the Office of the  
10 Attorney General to work out in terms of giving us  
11 guidance on our to work that. I do agree that there  
12 was an error in that the operations are substantially  
13 different in my thinking enough from those of the  
14 veterinary hospital primarily because of the noise and  
15 the other intended effects that tend to have more of  
16 an impact beyond the four corners of the specific  
17 facility.

18 I agree with Mrs. Miller that when you  
19 look at a veterinary hospital operation, while Mrs.  
20 Miller didn't say this explicitly, I think the  
21 direction of her comments do speak to the fact that  
22 much of those operations take place inside. Of  
23 course, I'm sure there is probably a veterinary  
24 hospital at some location here in the United States or  
25 elsewhere that may indeed have other services that

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1 take place outside.

2           Once again, I think getting into that  
3 comparison trying to sort that out here is somewhat  
4 beyond our expertise. Where I fall in this is I do  
5 believe there was error here and would be supportive  
6 of granting the appeal but probably looking for moving  
7 this case back for further action by the Zoning  
8 Administrator consistent with that particular  
9 position.

10           I'll just note for the record for what  
11 it's worth it just was an absolute joy reading the  
12 findings of facts and conclusions of law. I mean, I  
13 have learned much more than I think I ever need to  
14 know about the amount of fecal matter and waste and  
15 things like that that's produced. Some of the  
16 information and some of the terms have just been  
17 thoroughly amusing.

18           I say that to add a little bit of  
19 lightness to the day but not to, of course, trivialize  
20 or minimize the importance of this issue to the  
21 operator of the business and, of course, to the  
22 residents who brought the concerns forward. I never  
23 thought I would see terms such as piggery and I think  
24 the other word that I saw was rivetering. It's just  
25 been a cornucopia of new terms for me.

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1           That's where I fall, Mr. Chair, in this  
2 regard. I think there was error here in that as the  
3 Zoning Administrator took a look at like operations,  
4 finding the similarity between this particular  
5 operation and the operations of a veterinary hospital.

6 I don't think that similarity is supported here.

7           But let me note for the purposes of the  
8 Zoning Administrator here that it's a difficult  
9 assessment to make. As Mrs. Miller noted, there is a  
10 void here in terms of the law as it relates to the  
11 oversight of these type of suboperations which are  
12 very complex.

13           It's just simply not easy enough to say,  
14 as Mr. Lorenko noted, that a dog slept here. It's a  
15 much more complex operation that is at work at Wag  
16 Time. As such, it's a difficult analysis for the  
17 Zoning Administrator to conduct but I think the  
18 difference is substantial enough between this  
19 operation and those of a pet shop or a veterinary  
20 hospital that that similarity just simply was not  
21 supported here.

22           MR. GRIFFIS: Good. Thank you very much.

23 I think you have said it correctly that this was a  
24 big job for the Zoning Administrator to undertake and  
25 the difficulty is in the small steps that DCRA took in

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1 granting the certificate of occupancy, I think there  
2 should have been more analysis and more perhaps fact  
3 base for them to make their case in front of us not  
4 anticipating that they would have had to but clearly  
5 just to make their own decision.

6 When you come down to the fact that the  
7 conditions that were proffered that were accepted and  
8 yet weren't looked at in terms of external impacts I  
9 think how does one -- I'm still struggling to  
10 establish the fact of how the Zoning Administrator  
11 made the comparison or made the assessment that there  
12 was similar in nature.

13 I think what Mr. Etherly is saying, which  
14 I agree to, is I don't think it's conclusive whether  
15 it is or it is not but I think the error is that the  
16 Zoning Administrator can't produce the evidence of  
17 which they have found it similar.

18 We've heard great testimony and evidence  
19 in the record that a veterinary hospital and pet store  
20 are not prohibited or limited in number and size or  
21 anything of that nature but there are so many  
22 dissimilarities that were evidenced and more in the  
23 facts of the case in terms of the external effects  
24 that we seem to be hitting quite a bit on.

25 Mr. Lorenko's testimony, I think, was very

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1 persuasive. That was the whole aspect and that really  
2 goes back to how I started with Ms. Oginay stating  
3 correctly that she had to assess how bad it can be  
4 within the limits of the law. Mr. Lorenko was saying  
5 you have to look at what the external effects are.

6 We have great evidence that the dog kennel  
7 has a certain type of external effect and then there  
8 was no comparison by the Zoning Administrator that  
9 says yes but those are so similar they are identical.

10 It is clear that they can easily go into a matter of  
11 right. Without that clarity from the Zoning  
12 Administrator's analysis, I don't see how we could  
13 support that they did not conduct an irreversible  
14 error.

15 I think Ms. Miller has brought up an  
16 interesting point, too, in assessing all of the  
17 dissimilarities of looking to the fact if a vet or a  
18 pet store does board, it is an accessory use. It is  
19 not the principal function. How does that impact? I  
20 don't think I can be conclusive of how that differs  
21 except that it raises the question in my own mind that  
22 there is a difference.

23 Going again to the surrounding  
24 jurisdictions and the regulations it is interesting to  
25 look at their regulations and also their legislative

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1 history that was cited in the record for us to review.

2 The go to great lengths in some of the surrounding  
3 jurisdictions.

4 I purposely didn't spend a lot of time  
5 looking at the more suburban or rural jurisdictions  
6 but rather ones that had more urban settings so that  
7 we knew that clearly the District of Columbia has one  
8 regulation that I think is 10,000 square feet of open  
9 space per dog. We're probably not getting those in  
10 the District in the city.

11 Let me digress quickly here because, first  
12 of all, I think dog kennels are an important service  
13 and probably the demand for which as our population  
14 grows is also going to grow. I think that there has  
15 to be in some way in our regulations the provisions  
16 that allows them and allows them either by special  
17 exception or, frankly, allows them in a certain zoned  
18 district.

19 We don't have that now and I think it will  
20 not go at a loss no matter what the outcome of today's  
21 proceedings are that the BZA will be requesting that  
22 the Zoning Commission pick this issue up very quickly  
23 in terms of holding their public process and then  
24 writing regulations that go about this.

25 Our regulations, I think it would be

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1 important as that goes to look -- the Zoning  
2 Commission may well want to look at some of the cites  
3 that have been presented to us. It is interesting to  
4 see the type of buffers I've indicated and the  
5 setbacks. Also talking about the type of noise that a  
6 dog barking is. We have decimal levels and all of  
7 this.

8 What was interesting to me in one of the  
9 cites in the regulations in the surrounding area was  
10 there's a difference -- sound is very complicated and  
11 i don't pretend to be an acoustical expert. We can  
12 look at the different decibel levels and the levels of  
13 which and how that might impact us. But then there is  
14 a different type of sound, one that is kind of  
15 shocking or jarring.

16 One that isn't easily dismissed or kind of  
17 become background or white noise. I guess I could say  
18 on the record -- well, I like dogs and I like dog  
19 barkings but it is a shocking and jarring noise. It  
20 isn't easily set aside. Once you have that  
21 compounding, I think it's an important aspect that our  
22 regulations are going to need to reflect is how we  
23 integrate that type of function into the different  
24 areas of the city.

25 Now, one of the pieces again that we

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1 haven't touched upon, and I think it's important to  
2 understand, there's a lot of testimony in the record  
3 that this is adjacent to an R-5 zone. It's adjacent  
4 to a residential zone. Our regulations don't address  
5 it at all. We look at it as in the 3-C zone.

6 The matter of right use is starting to establish  
7 in the C-2 and carrying through.

8 Again, that may be something of further  
9 issue and I think it does go to what the Zoning  
10 Administrator possibly should have understood at least  
11 in finding that this was similar matter of right use  
12 is, as we have stated, what was the impact to that  
13 area and looking at the type of impacts, the level of  
14 impacts of that which are matter of right and  
15 comparing it back to what was here.

16 The temporary C of O I thought gave a  
17 great opportunity for estoppel which the Zoning  
18 Administration might be able to go in and make an  
19 assessment and say, "Well, it's been going on for a  
20 certain amount of time. It's clear in its similarity  
21 or not similarity." There is testimony in the record  
22 that the Zoning Administrator didn't look back at that  
23 and didn't use that for any sort of informative  
24 analysis of granting the current certificate of  
25 occupancy.

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1 Yes?

2 MS. MILLER: I just want to jump in and  
3 say what is very basic to me is that matter of right  
4 uses don't require and can't have any conditions. I  
5 think based on all the evidence that we have heard,  
6 this type of operation requires some type of  
7 conditions which was evident in the temporary one.  
8 And particularly because it has no other regulations.  
9 That could change.

10 There was a reference in DCRA's evidence  
11 that there were doggy daycare facility regulations  
12 that have been drafted and not approved yet and we  
13 don't know where they are or whatever happened to  
14 them. I can't see the scenario of granting this  
15 appeal and sending it back to the Zoning Administrator  
16 to take some other kind of action other than provoking  
17 the C of O unless he's going to come up with some  
18 credible similarities.

19 To me the dissimilarities that we have  
20 found in here are really very basic and important. I  
21 would think that if there is a next zoning step here,  
22 it would be for the Zoning Commission to take a look  
23 at drafting regulations governing this type of  
24 facility as we know has been done in these other  
25 jurisdictions that have recognized basic differences.

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1           Let me just say there are some  
2 similarities but I think the differences are quite  
3 strong and I think other jurisdictions have drafted  
4 regulations because of these outdoor runs that are a  
5 principal part, it seems. Maybe they don't have to be  
6 or maybe we need regulations that just don't allow  
7 outdoor runs. I don't know.

8           We have just seen in this case all the  
9 adverse impacts associated with this type of business  
10 so unregulated. It's only regulated by the broadest  
11 noise ordinance or public health ordinance which  
12 doesn't do the trick.

13           MR. ETHERLY: Mr. Chair, I agree in  
14 substantial part with Ms. Miller's comments and, of  
15 course, 3100.4 in appeal format does provide us with  
16 the authority to essentially formulate an order or  
17 decision in any such way that may be necessary to  
18 carry out our decision and additionally does give us  
19 the ability to act essentially in the shoes of the  
20 officer at issue here, the Zoning Administrator.

21           I'll just reiterate my concern with doing  
22 that is, as Mrs. Miller has very explicitly laid out,  
23 I think, it is a rather complicated assessment to make  
24 and my only concern is venturing into, I think, what  
25 is clearly a legislative void at minimum at the Zoning

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1 Commission level in terms of an area that merits some  
2 action. Or, perhaps even more appropriately, at the  
3 council level.

4 I agree to an extent that the record has  
5 been very extensively peppered with, I think, a strong  
6 factual evidence as relates to noise, as related to  
7 once again the types of external effects that a dog  
8 run may contain, waste handling and all those types of  
9 things.

10 But my concern is perhaps just being a  
11 little over zealous in taking that additional step and  
12 creating here the rule that would essentially  
13 determine how the Zoning Administrator looks at this.

14 Once again, I'm acknowledging that I've also heard on  
15 the appellee's side the complexity of the operations  
16 that are contained at Wag Time. Let me just  
17 put a pin in this. If we were to take that step, I  
18 would entertain more hearing. I really don't want to  
19 go there.

20 MS. MILLER: Okay. Maybe --

21 MR. GRIFFIS: The issue that I hear Mr.  
22 Etherly stating is that if we went further to say that  
23 we decided that this is not a matter of right use in  
24 the C-2 or C-3, then aren't we actually prohibiting  
25 this type of operation anywhere in the city because we

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1 haven't accepted going up further into C-4 or  
2 manufacturing.

3 By mere fact that it isn't specifically  
4 addressed or identified in our regulations, we  
5 actually precluded all across the city. I think that  
6 is a very severe step to take at this time is what I  
7 understand you to be saying.

8 MR. ETHERLY: Actually, initially I didn't  
9 agree with you but I think what you have outlined is  
10 probably what the nuclear scenario would be, I think.

11 I hear where Mrs. Miller is about to come from. I'm  
12 thinking right now just more practically in terms of,  
13 okay, if there's an error the question now arises what  
14 do we do with this thing. Okay?

15 We can punt and simply send it back to the  
16 Zoning Administrator but, quite frankly, the Zoning  
17 Administrator will probably be in the same situation  
18 that they were in at the outset which is how do we  
19 analyze this. Perhaps they will look at our order and  
20 have some sense of, "Let me then look at some external  
21 effects. Let me look at noise. Let me look at other  
22 types of external effects that may have some impacts  
23 here."

24 And also give consideration to the  
25 adjacency of the residency zone in this particular

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1 instance and then make an appropriate decision that  
2 way. But my concern is, once again, we are  
3 essentially looking at implementing some legislative  
4 rules here that I think are more appropriately saved  
5 for another venue. That's my concern here but it's a  
6 very practical question. What do we do with this now  
7 that we've found the error to exist?

8 MS. MILLER: Let me just say that I don't  
9 follow what you're saying about, No. 1, implementing  
10 legislative rules. No. 2, I mean, this is not a  
11 direct comparison but we just were dealing with the  
12 Shagnon case where the court said you can't read the  
13 regulation that way to include that use.

14 It's a different type of regulation but  
15 basically we are doing the same kind of thing. No,  
16 you can't read the regulation to find that this is a  
17 matter of right use because it's not similar. They  
18 had every opportunity in this proceeding to come  
19 forward and show how it was similar. Are we  
20 saying again go back and see if you can do a better  
21 research job to see if it's similar? I think we have  
22 so much evidence in this case.

23 MR. GRIFFIS: Before this goes too long,  
24 first of all, Shagnon has no relevancy here. The  
25 remand that we were given indicated that we could not

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1 fit within a definition and it's stated in definition  
2 Section 199.1, child/elderly development center, as  
3 opposed to 721 and 741 which indicates and gives in  
4 the direct regulation the possibility. It says, "Or  
5 similar uses to that listed." It's open season for  
6 finding similar uses.

7 MS. MILLER: I understand that and we went  
8 through that analysis. All I'm saying is we're  
9 finding that it didn't fit -- I think we're finding  
10 that it didn't fit within the similar use and there's  
11 nothing wrong with our finding that. I think that's  
12 part of our job. We heard all this testimony.

13 MR. ETHERLY: I understand what we're --  
14 I'm sounding like a broken record here. I understand  
15 where Mrs. Miller is coming from but I don't want to  
16 be underhanded about this. By that I simply mean if  
17 we find an error, simply leave it at that.

18 We essentially could be back in the same  
19 spot because, once again, the Zoning Administrator  
20 could take a look at this record, take a look at the  
21 deliberation, take a look at the order that is  
22 ultimately drafted and probably take away some clear  
23 guidance as to what should be looked at in analyzing  
24 this particular operation and this issue from the  
25 standpoint of whether or not there are similarities

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1 between those issues that are enumerated in the zoning  
2 regs in C-2's district.

3 MS. MILLER: The only other thing I would  
4 like to say is that based on the way things are right  
5 now I feel the similarities are so strong that we can  
6 find that. But that's not to preclude that, for  
7 instance, they make reference to these regulations  
8 governing doggy daycare facilities floating out there  
9 somewhere.

10 Now, if those come forward, they might tip  
11 the balance. I don't know what's in those  
12 regulations. It's not to say forever that it can't  
13 fit into this category. I would just say based on the  
14 regulations as they exist right now in our record, it  
15 could not and should not be a matter of right use.  
16 I'm prepared to make a motion at this point if that is  
17 amenable to you all.

18 Okay. Then I would move that we grant  
19 Appeal No. 17092 of Stephanie Mencimer, et al.,  
20 pursuant to 11 DCMR 3100 and 3112 from the  
21 administrative decision of Denzel Noble, Acting  
22 Administrator, DCRA, from the issuance of certificate  
23 of occupancy No. C057903 dated July 23, 2003, and  
24 certificate of occupancy No. C069395 dated January 28,  
25 2004, to Wag Time, LLC, for 24-hour dog boarding and

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1 grooming with accessory retail sale of pet supplies on  
2 the grounds that the Zoning Administrator erred in  
3 determining the dog boarding as a principal use is  
4 permitted as a matter of right in the C-3-A zone.

5 MR. GRIFFIS: Is there a second?

6 MR. ETHERLY: Second, Mr. Chair.

7 MR. GRIFFIS: Thank you. Speak to the  
8 motion? Very well. What I understand the Board is  
9 saying and Ms. Miller specifically is going through  
10 and enumerated that, in fact, the error was created by  
11 the Zoning Administrator based on the lack of evidence  
12 presented by the Zoning Administrator to find a  
13 comparative similarity and the preponderance of the  
14 evidence given to the dissimilar nature and those  
15 range from going down to whether the kennel is similar  
16 to a veterinary hospital is licensed and, therefore,  
17 under the guidance and control of other regulations,  
18 finding that dissimilar in nature.

19 Also, in terms of the 24-hour operation of  
20 it which goes to -- and the outdoor area, the noise  
21 goes to essentially the external effects as they have  
22 been categorized here in terms of excessive noise and  
23 orders that the dog kennels may well present as  
24 dissimilar to the veterinary hospital or pet store of  
25 which there was some testimony given in terms of the

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1 veterinary hospital that animals would be more likely.

2           Rather, the principal use of that would be  
3 always accompanied with a care giver or on a lease and  
4 accompanied by a person. The pet store would be also  
5 similar to that. Again, the pet store there was some  
6 evidence in the record that indicated that pet shops  
7 would have puppies and not full-grown dogs and the  
8 number of dogs would be dissimilar to that of a 24-  
9 hour car or daycare for dogs.

10           Additionally, I think I understand the  
11 board to be saying that the Zoning Administrator  
12 didn't come up with the matrix of analysis, one might  
13 say. How was the threshold of similarity established.

14           What were the situations in the veterinary  
15 hospital that were looked at and the pet shops that  
16 were looked at that drew the analogy and comparative  
17 standards of likeness that determined it to be a  
18 matter of right use. That was lacking in terms of the  
19 evidence presented.

20           Ms. Miller, I'll leave it for you to  
21 summarize further if need be.

22           MS. MILLER: I guess if we are just going  
23 to be highlighting, I think that the most basic  
24 grounds for finding dissimilarity in those cases, at  
25 least in my view, is the fact that these types of dog

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1 boarding facilities are not subject to the same type  
2 of stringent licensing regulations that veterinary  
3 hospitals and pet shops are.

4 I would like to see more of a reason that  
5 they would need to be conditioned as is evidenced in  
6 the record in this case. I think we have basically  
7 covered the ground so I don't think I'll reiterate any  
8 more.

9 MR. GRIFFIS: Very well. Any others?  
10 That being said, we have a motion before us. It has  
11 been seconded. I would ask all those in favor of the  
12 motion signify by saying aye.

13 ALL: Aye.

14 MR. GRIFFIS: Any opposed?

15 MR. MOY: Staff would record the vote as  
16 three to zero to one. This was on the motion of Ms.  
17 Miller, the Vice Chair, to grant the appeal, seconded  
18 by Mr. Etherly. We have a Zoning Commission member  
19 not participating on the appeal. Finally, we also  
20 have an absentee ballot from Mr. David Zaidain and he  
21 has voted to grant the appeal which would give a final  
22 vote as four to zero to one.

23 MR. GRIFFIS: Good. Thank you very much.

24 Let's move on.

25 MR. MOY: The next case is Application No.

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1 17124 of Howard Heu of Parkhill, Inc., pursuant to 11  
2 DCMR 3103.2 for a variance from the lot occupancy  
3 requirements under Section 403 and a variance from the  
4 off-street parking requirements under Subsection  
5 2101.1 to allow the construction of a new flat two-  
6 family dwelling in the R-4 district at premises 601  
7 Massachusetts Avenue, N.E., Square 866, Lot 809.

8 The Board convened its public meeting on  
9 May 4, 2004, and granted the applicant's request for a  
10 continuance. The Board rescheduled its decision to  
11 June 8, 2004. When the Board reconvened on June 8,  
12 2004, the Board decided to request additional  
13 information of the applicant and scheduled its  
14 decision on July 6, 2004.

15 The additional information was to include  
16 site plan including a proposed building footprint,  
17 revised building floor plans first including the first  
18 and second floors and new calculations towards zoning  
19 relief being sought. On June 15, 2004, the Board  
20 received a letter from the applicant requesting an  
21 extension of time because of the schedule demands with  
22 their architect. The applicant had requested an  
23 extension of a deadline to Monday, June 28, 2004.

24 Finally, the Board also requested the  
25 Office of Planning submit a supplemental report based

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1 on the new information. The applicant has submitted  
2 their filing and it is in your case folders identified  
3 as Exhibit 42. The Office of Planning has also filed  
4 a supplemental report which is in your case folders  
5 identified as Exhibit 43.

6 To conclude, the staff has also received  
7 an absentee ballot from Carol Mitten and on her ballot  
8 she is requesting the Board that her attached  
9 statement be read into the record during the  
10 deliberation. The staff is prepared to move in the  
11 Chair's direction or any other direction the Chair  
12 would like to give the staff. That completes the  
13 staff's briefing, sir.

14 MR. GRIFFIS: Thank you. Does that mean  
15 you want to shift around chairs? Sit where you're  
16 comfortable, Mr. Moy. It's fine with me.

17 Let's open it up and then I think we can  
18 read into the record the attachment to the proxy vote  
19 of Ms. Mitten which probably would be very  
20 informative. Let me highlight that we did give an  
21 awful lot of time to the applicant on this to really  
22 address all of the circumstances that they were faced  
23 with.

24 Let me refresh everyone's recollection  
25 which probably doesn't need to happen but, of course,

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1 the initial and the supplemental recommendation from  
2 the Office of Planning is to deny this application. I  
3 note that Historic Preservation has worked with the  
4 applicant. They are in the process there. The ANC  
5 was also not supportive in this aspect.

6 This is a difficult one. I don't think we  
7 would contest the fact that this is a unique shaped  
8 lot. It has some unique characteristics outside of  
9 the geographic shape and size and I'll return to that.

10 Specifically, this was granted a use variance some  
11 time ago to allow the cleaners on the corner and what  
12 is being proposed at this juncture is to build a  
13 matter of right flat onto the site in conjunction with  
14 the commercial aspect of it.

15 Now, I'm a great proponent for mixed use.

16 Certainly I am sure this cleaner services the  
17 surrounding neighborhood. I also think that the  
18 design that was presented was an excellent idea in  
19 concept in terms of one taking down a building even in  
20 this historic district that could not be found to be  
21 contributing to the historic district and recreating  
22 or creating a corner aspect that I think fit much  
23 better into the character of the surrounding area.

24 But I'm afraid that is where my support  
25 seems to end. What is being asked is not to come in

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1 for a slight increase in the lot occupancy due to the  
2 shape of the lot and the practical difficulties of the  
3 lot but to almost completely fill the lot, going to 80  
4 percent lot occupancy on this.

5 One of the specific unique aspects of this  
6 corner lot is this kind of long tail that stretches  
7 for about 100 feet past the existing structure. The  
8 difficulty in that is that it wraps around the rear  
9 yards of the adjacent properties. I think it clearly  
10 shows in a lot of the submissions that we had the area  
11 of which the proposed addition was to go would create  
12 quite a detrimental impact to the adjacent properties.

13 Going directly to the case that needed to  
14 be presented for the variance, one can find that there  
15 is uniqueness that is created by this lot but I'm not  
16 convinced past the second threshold element of  
17 practical difficulty. What is the practical  
18 difficulty of building to 60 percent of lot occupancy  
19 which would make it matter of right.

20 I mean, we are asking a lot of this site  
21 already in the past approval of a use variance that  
22 was granted. We are now asking on top of that to look  
23 at a matter of right type of development. But on top  
24 of the matter of right type, meaning a flat, we are  
25 asking to go well beyond into 80 percent lot occupancy

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1 and even above 80 percent.

2 I don't see where the practical difficulty  
3 is in having to provide the 80 percent and not being  
4 able to just go to the matter of right lot occupancy.

5 You could still put a single family or even a smaller  
6 single unit and a larger unit on it within the 60 or  
7 within a fraction of the 60 percent lot occupancy.  
8 That is where I am initially. I'll open it up. Mr.  
9 Etherly.

10 MR. ETHERLY: Mr. Chair, I'm in complete  
11 agreement with you and would be prepared to support a  
12 motion.

13 MR. GRIFFIS: Good. Ms. Miller.

14 MS. MILLER: The same is true for me, Mr.  
15 Chairman.

16  
17 MR. GRIFFIS: Okay. Why don't we then as  
18 we have been asked to read into the record Ms.  
19 Mitten's statement.

20 MR. MOY: Yes, sir. Here goes. This is  
21 the statement from Carol Mitten and it begins, "I am  
22 opposed to the approval of the variance requested for  
23 relief from the lot occupancy requirements under  
24 Section 403 in this case. The applicant has not met  
25 the burden of proof for the relief being sought. I

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1 fully understand and agree with the uniqueness  
2 argument being made by the applicant. It is the  
3 practical difficulty argument that falls short.

4 I would like to address the arguments  
5 before it and Mr. Williams made for the submission,  
6 Exhibit No. 37. Although he also makes undue hardship  
7 arguments, I think the Board would be correct in  
8 ignoring those arguments for two reasons. First, this  
9 is clearly an area variance being requested and undue  
10 hardship is not relevant.

11 Second, there is no question that  
12 maximizing the building envelope as proposed would  
13 also maximize the value of the property to Mr. Heu.  
14 It is important for the Board to know that denying an  
15 area variance whereby an applicant seeks to maximize  
16 the value of his or her property when that property  
17 can already be put to profitable use does not in  
18 itself create an undue economic hardship.

19 In fact, the applicant is not compelled to  
20 construct an addition to the property at all in order  
21 to make economic use of the property. The current use  
22 is so beneficial to the applicant that it is  
23 essential that Mr. Heu cannot sustain the loss of his  
24 income for a purely residential development with a  
25 home for himself and his family plus a single rental

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1 unit.' See Lindsay Williams, May 4, 2004, letter to  
2 the Board, Exhibit No. 37.

3 I will now address the three arguments  
4 that Mr. Williams makes for practical difficulty.  
5 One, dimensional restrictions and zoning. The  
6 compelling reason for the footprint of the building  
7 being designed as it has been is to maximize the  
8 development of the property by constructing a flat in  
9 addition to the existing nonconforming commercial  
10 structure.

11 Whereas, flat is a permitted use in the  
12 zoning ordinance and the applicant is not compelled to  
13 construct an addition to accommodate a flat in order  
14 to gain economic use of the property. The applicant's  
15 own expert witness in architecture, Mr. Maden,  
16 confirmed on the record that if the addition was a  
17 single family residence rather than a flat, it could  
18 be accommodated within the 60 percent lot occupancy  
19 limitation. See page 53 of the transcript.

20 No. 2, dimensional restrictions in the  
21 building code. The argument again is premised on the  
22 applicant's preference to construct a flat. The  
23 argument evaporates if the addition is a single-family  
24 dwelling.

25 No. 3, procedural hardships given earlier

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1 appearance before HPRB. Each applicant determines for  
2 themselves the order in which they will approach the  
3 various bodies from which approvals must be gained in  
4 order to construct a project. There are no guarantees  
5 about how long the process will take and the applicant  
6 bears the responsibility for meeting the burden of  
7 proof before each body. If the applicant in this case  
8 had chosen to seek BZA approval first, then the issue  
9 about the delay with HPRB would be moot. To the  
10 extent that this hardship is even relevant, it is  
11 self-created.

12           Apart from the applicant's personal  
13 preferences to gain maximum economic benefit from the  
14 property, the only remaining argument that could  
15 support granting the variance is the notion that the  
16 extended structure would fill in a gap in the building  
17 frontage along 6th Street that currently allows an  
18 unusual view into the interior of the square block.  
19 Unfortunately, that design preference does not satisfy  
20 the burden of proof that the applicant must meet. I  
21 am not opposed to the variance request for off-street  
22 parking itself."

23           That completes her statement, Mr.  
24 Chairman.

25           MR. GRIFFIS: Thank you very much. Okay.

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1 Other aspects? We did quickly glean over the second  
2 aspect of request for relief which was the off-street  
3 parking requirements. I think the case is full on  
4 that in terms of my deliberation in terms of support  
5 of it.

6 One, not having the dimensional  
7 requirements, the alley access, and also the  
8 availability or the potential availability to do a  
9 curb cut, I would agree. So I think it would be  
10 appropriate to make a motion to deny in part and  
11 improve in part application 17124 and that would be to  
12 deny the variance for the lot occupancy requirements  
13 under 403 and to approve variance of the off-street  
14 parking requirements under 2101.1 at the premises 601  
15 Massachusetts Avenue, N.E.

16 MR. ETHERLY: Seconded.

17 MR. GRIFFIS: Thank you, Mr. Etherly. I  
18 think we have done an extensive deliberation and hit  
19 the points on this. I think the record is full on  
20 this aspect. I think Ms. Mitten's written submission  
21 goes to fully outlining all of those pertinent aspects  
22 that we have looked at and have found and deliberated.

23 Unless there's others, I would ask for all in favor  
24 of the motion signify by saying aye.

25 ALL: Aye.

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1 MR. GRIFFIS: Opposed?

2 MR. MOY: Staff would record the vote as  
3 three to zero to zero. This is on the motion to  
4 approve in part and deny in part. This is the motion  
5 of the Chairman Mr. Griffis to deny the variance for  
6 relief from lot occupancy requirement and to approve  
7 the variance for off-street parking requirement.

8 Seconded by Mr. Etherly. Also in support of the  
9 motion Ms. Miller, the Vice Chair. We also have again  
10 the absentee vote from Carol Mitten which would  
11 support the motion which would give a vote of four to  
12 zero to zero. We also have an absentee vote from Mr.  
13 Mann and he has voted to deny the application.  
14 Obviously this is a different motion than was  
15 proposed.

16 MR. GRIFFIS: Okay. Lacking clarity with  
17 a split motion, I think we would have to at this point  
18 record his vote as in opposition to the motion so it's  
19 four to one to zero.

20 MR. MOY: That's correct.

21 MR. GRIFFIS: Okay.

22 MR. MOY: Thank you, Mr. Chair.

23 MR. GRIFFIS: Thank you. We are going to  
24 take five minutes as we are now six cases into 13.  
25 This is our halfway mark. Let's just take five

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1 minutes and we'll resume.

2 (Whereupon, at 12:11: p.m. off the record  
3 until 12:41 p.m.)

4 MR. GRIFFIS: Let's resume and get into  
5 the next case which I believe -- well --

6 MR. MOY: Mr. Chairman, the next case is  
7 Application No. 17168 of Ann Spiegall pursuant to 11  
8 DCMR 3103.2 for a variance from the residential  
9 recreation space requirements under Section 773,  
10 variance from the nonconforming structure provisions  
11 under Subsection 2001.3 and a variance from the off-  
12 street parking requirements to allow for renovation  
13 including addition of an existing building into a  
14 four-unit apartment house in the C-2-A district at  
15 premises 500 and 502, Florida Avenue, N.W., Square  
16 475, Lot 19.

17 On June 15, 2004, the Board completed  
18 public testimony on the application and scheduled this  
19 decision on July 6, 2004. The Board requested post-  
20 hearing documents including revised drawings to  
21 include the site plan, first and second floor plans,  
22 elevation plans and roof plans. The applicant made  
23 this filing on Jun 22, 2004, which is one day later  
24 than the deadline of June 23rd and is in your case  
25 folders as Exhibit 28.

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1           The Board also has from the Office of  
2 Planning a supplemental report and that filing was  
3 submitted and is in your case folders under Exhibit  
4 29. That completes the staff's briefing, Mr. Chair.

5           MR. GRIFFIS: Thank you very much, Mr.  
6 Moy. Two things. First of all, we do welcome for our  
7 morning session Mr. Jefferies is with for the next two  
8 cases. Secondly, 17168 I did not participate in the  
9 case and so will not be participating in deliberation.

10           Ms. Miller, it's yours to handle.

11           MS. MILLER: Thank you. I'm not sure  
12 whether Mr. Moy said this or not so I'm just going to  
13 put on the record that at the hearing the agent  
14 changed the name of the applicant from Ann Spiegel to  
15 50502 Florida Avenue, LLC.

16           In this case the applicant is seeking to  
17 renovate two attached two-story buildings and convert  
18 them into a four-unit apartment house. It's in a C-2-  
19 A zone. The original Office of Planning Report  
20 indicated that the existing structures built in 1932  
21 do not conform to lot occupancy rear yard and court  
22 requirements of the zoning regulations.

23           There wasn't any opposition in this case  
24 and there is no report from the ANC. The applicant  
25 did submit revised drawings and clarifications of the

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1 area and width of the courtyard and updated zoning  
2 relief being sought, the lot occupancy and court  
3 requirements.

4 The applicant is seeking relief from the  
5 nonconforming structures devoted to conforming use  
6 under 2001.3. They are adding a spiral staircase in  
7 order to provide access to a roof deck that is being  
8 provided to comply with Section 773 which requires  
9 residential recreation space.

10 They are seeking a variance from 776  
11 dealing with courts. The previous structure did not  
12 comply with court area and width requirements. The  
13 stairway decreased the width further. The current lot  
14 occupancy of the property is 90 percent. The stairs  
15 add 3 percent to that.

16 We already dealt with a variance that they  
17 were originally seeking from parking finding that they  
18 didn't need it as the property predated the zoning  
19 regulations and they are not seeking an intensity of  
20 use of at least 25 percent. In fact, the use will be  
21 decreasing because one of the units was being used as  
22 a beauty salon and now is being used as a residential  
23 unit.

24 There is evidence in the record that the  
25 property is unique because of its size, shape, and

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1 topography and that there will be practical difficulty  
2 if the zoning regs are strictly applied. The  
3 requested variances will not result in substantial  
4 detriment to the public good or zone plan.

5 Exceptional conditions just quickly were that  
6 the building predated the zoning regs that occupies 90  
7 percent of the lot. It blocks alley access. It  
8 occupies the full frontage of both adjacent streets  
9 and its existing configuration.

10 That posed a practical difficulty in  
11 renovating and restoring the existing structure to a  
12 reasonable residential use. Basically by complying  
13 with the residential rec requirements it had to build  
14 the stairway which increased the lot occupancy even  
15 more as well as decreasing the court width.

16 I believe that it also there is no  
17 detriment to public good or zone plan because it, in  
18 fact, furthers the housing goals of the comprehensive  
19 plan which is cited by Office of Planning at page 2 to  
20 encourage the maintenance of existing housing stock  
21 and, where appropriate, the rehabilitation and new  
22 construction of detached and rowhousing in moderate  
23 density areas where this property is located. The  
24 variance allows for residential recreation space to be  
25 added to the roof top which is an amenity to the

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1 residential area.

2 I think at this point I would like to make  
3 a motion and then if there is further discussion under  
4 the motion. I would move pursuant to 11 DCMR 3103.2  
5 to grant application No. 17168, a variance from the  
6 nonconforming structure provisions under Section  
7 2001.3, a variance from the lot occupancy requirements  
8 of Section 772, and a variance from the court area and  
9 width requirements under Section 776 to allow the  
10 renovation including deck addition of an existing  
11 building into a four unit apartment house in the  
12 premises of 50502 Florida Avenue, N.W. in accordance  
13 with the plan submitted with this application on June  
14 23 as part of Exhibit 28.

15 MR. ETHERLY: Second, Madam Chair.

16 MS. MILLER: Is there further discussion  
17 on this application? Okay. All those in favor say  
18 aye.

19 ALL: Aye.

20 MS. MILLER: Opposed? Abstaining?

21 MR. MOY: Staff would record the vote as  
22 three to zero to one. This is on the motion of Madam  
23 Chair, Ms. Miller, to grant the application, seconded  
24 by Mr. Etherly. We have the Chairman Mr. Griffis not  
25 participating. We also have an absentee ballot

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1 submitted by Mr. John Mann and his absentee vote is to  
2 approve the application. That would give a final vote  
3 as four to zero to one.

4 MS. MILLER: Thank you.

5 MR. MOY: Would you like the summary  
6 order?

7 MS. MILLER: Yes. Thank you.

8 MR. MOY: The next case is Application No.  
9 17160 of Northwest Settlement House pursuant to 11  
10 DCMR, 3103.2 for a variance from the lot occupancy  
11 requirements under Section 403, a variance to increase  
12 the matter of right capacity of an existing child  
13 development center from 14 to 16 children under  
14 Subsection 330.5(d) and a variance from the off-street  
15 parking requirements under Subsection 2101.1 or, in  
16 the alternative, pursuant to 11 DCMR 3104.1, the  
17 special exception to allow a child development center,  
18 40 children and 12 staff under Section 205 in the R-4  
19 district at premises 448 Ridge Street, N.W., square  
20 513, lots 825, 826, 827, 828.

21 Staff would note at the hearing on May 25,  
22 2004, the applicant amended the application to delete  
23 the variance relief under 330.5(d) and to add Section  
24 209 community centers.

25 Also on May 25 the Board completed public

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1 testimony on the application and scheduled this  
2 decision on July 6, 2004. The Board requested post-  
3 hearing documents. The staff will not go over those.

4 However, the applicant made the filing and it is in  
5 your case folders as Exhibit 39.

6 The applicant, although not specifically  
7 requested by the Board, also filed a draft findings of  
8 fact and conclusions of law on June 29, 2004. That is  
9 Exhibit 42. Also, to conclude, the Office of Planning  
10 was requested to submit a supplemental report to  
11 address the special exception relief, Sections 205 and  
12 209, and the two 10-year time limit proposed by the  
13 applicant and that is in your case folders identified  
14 as Exhibit 40.

15 That would conclude the staff's briefing,  
16 Mr. Chair.

17 MR. GRIFFIS: Good. Thank you very much.

18 Let's take the variance request first, the lot  
19 occupancy, of course, in the R-4 district, and the  
20 off-street parking. Both of these weave very closely  
21 and intertwine with the special exception approvals  
22 under 205 and 334 as the application has been amended.

23 I think it is a very strong case in terms  
24 of the meeting the varying test requirements that is  
25 for the uniqueness. They are specifically enumerated

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1 in the facts of this case ranging from the atypical  
2 size, the large lot size. It has a width dimension or  
3 a street frontage dimension that is unique to this  
4 area and unique for typical neighborhoods and typical  
5 subdivision lot sizes.

6 The existing use and the existing  
7 structure that has been on the site also lends itself  
8 to its uniqueness, in terms of the parking and also  
9 lot occupancy, specifically parking. There are two  
10 aspects. One most importantly to establish the  
11 uniqueness is that it does not have an alleyway or a  
12 rear access as is normal or more traditional for  
13 accessing off-street parking requirements.

14 The lack of availability to do curb cuts  
15 in order to access off of the streetway. This would  
16 be, of course, based on the HPRB review and decision.

17 I think that summarizes essentially the uniqueness.  
18 In terms of the establishment of the practical  
19 difficulty out of that uniqueness, I think the case is  
20 very clear on how it's addressing all.

21 First of all, in accommodating a new  
22 program of construction that would comply with all the  
23 codes and regulations which is, in fact, part of what  
24 needs to be sufficiently evidenced under 205 for a  
25 special exception approval. The availability for

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1 circulation classroom size, light and air into those  
2 classrooms.

3 The mass and the footprint of the building  
4 proposed was testified by the architect as being of  
5 required dimension. It also goes to the size of the  
6 lot and also accommodate the outside, the outdoor area  
7 in the usable space and fashion for the equipment. I  
8 think that relates directly to the uniqueness and  
9 creates practical difficulty of not complying strictly  
10 with lot occupancy.

11 Of course, with all those and then trying  
12 to provide on-site parking, of course, it's hard to  
13 provide on-site parking. When you can't get to the  
14 site for parking without an alleyway or a curb cut,  
15 there's really no way to get a car onto the site, if  
16 one was able to do that, how it was accessed, whether  
17 it be from street frontage which would reduce the  
18 footprint of the building. Obviously the  
19 complications are continual if you follow that  
20 extrapolation.

21 We had asked for a citation of Monaco  
22 which was often a controlling case for this Board. It  
23 has been noted and highlighted in the proposed  
24 findings of facts and conclusions by the applicant. I  
25 think the Board is well versed in Monaco and

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1 understands the application of the nonprofit status  
2 and how it relates to providing the uniqueness,  
3 especially the unique character as a nonprofit in  
4 order to provide its services and needs expanded room.

5 I think it is informative that Monaco is cited in  
6 this case.

7 Going to whether there would be any  
8 substantial detriment to the public good or the zone  
9 plan, I think the evidence is also very clear in terms  
10 of the variances that the public actually is being  
11 served as is evidenced by the program that is being  
12 provided.

13 In terms of the zone plan, the reduction  
14 and the parking, I believe we ensure that, in fact,  
15 the zone plan and public good would not be impaired by  
16 intent or purpose in the satisfaction of 205 and also  
17 334 which I think we can get to momentarily.

18 It's clear in terms of the off-street  
19 parking requirements it's hard, if not impossible, to  
20 provide it on site in terms of the zone plan or the  
21 public good. Ten spaces have been proffered to the  
22 utilized off site for employees and staff. Again,  
23 that will go to 205.4 in terms of providing sufficient  
24 off-street parking for the child development center.

25 We should note also toward the variances,

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1 and I'll move quickly into 334 and 205 that the ANC  
2 was in support of the application with two conditions.

3 Those two conditions I am prepared to put into any  
4 affirmative order and conditions to the special  
5 exceptions.

6 The Office of Planning also was  
7 recommending approval as was DDOT as well as the  
8 Department of Health. The Department of Health had  
9 indicated that the new programs would be available.  
10 There was no evidence submitted that they would not be  
11 able to be properly licensed. That moves us into the  
12 community service center and the child development  
13 center, 205.

14 Starting with 205, first of all, it is a  
15 special exception and 205.2, as indicated, the  
16 Department of Health says it is capable of meeting all  
17 code and license requirements. 205.3, the center  
18 would be located and designed to create no objectional  
19 traffic conditions, unsafe conditions, picking up and  
20 dropping off children and elderly persons.

21 That was, I think, well evidenced in the  
22 hearing in terms of what sort of detrimental impact.  
23 The Board did have some concern about drop-off and  
24 pickup. The facts in the case show that with the  
25 unique site width, the long dimension along the street

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1 frontage, in the applicant's negotiation with DDOT  
2 they've been able to secure 15 minute parking out in  
3 front of its long depth.

4 I think it is specifically four parking  
5 spaces. That would accommodate, as the evidence has  
6 shown, the amount of students that would be picking up  
7 and dropping up. They have also estimated at this  
8 immediate point that there is really very minimal  
9 traffic created.

10 However, if this was approved, we need to  
11 predict into the future in its success and in its  
12 growing numbers what it might be. I do think that the  
13 evidence shows that the availability of those short-  
14 term parking would accommodate the proper circulation  
15 along with the timing of pickups and drop-offs that's  
16 been proffered.

17 In terms of the off-street parking under  
18 205.4 10 spaces off site have been secured at this  
19 point by the applicant from their testimony and  
20 submissions. I think it is appropriate for the Board  
21 to condition in the order a special exception to  
22 require 10 spaces off site for staff and employees.

23 The outdoor play space, I think, is  
24 located and so designed to fulfill 205.5. In 205.6  
25 the Board did look at in terms of treatment and design

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1 aspects looking at the exterior lighting and the  
2 impacts that it might have on the surrounding area.  
3 We were giving a lighting plan and I think it  
4 sufficiently shows the thought process of which we'll  
5 not create any sort of adverse impact due to the  
6 light.

7 Also, somewhat was the noise that might be  
8 created in the outside area. I do believe that as we  
9 go through the conditions the timing and the  
10 animations -- when the child development center is in  
11 session, it has a large impact on the noise that might  
12 be created. I think the hours of operation show that  
13 this would not have an overall detrimental impact to a  
14 residential area as the timing would coincide  
15 essentially with business hours.

16 Going to the community service center,  
17 perhaps a little digression, I don't see that the same  
18 impact can be stated as a child development center to  
19 that of perhaps teenagers doing computer programming  
20 after school or computer learning or elderly or  
21 parenting classes.

22 Obviously those aren't known and certainly  
23 haven't been evidenced in this case as creating an  
24 absurd amount of noise. Although parents can get out  
25 of control sometimes but, be that as it may, we can

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1 move on.

2 205.8 indicates that the Board cannot  
3 approve a child/elderly development center in the  
4 square within a 1,000 feet of another child/elderly  
5 development center. It has been evidenced that there  
6 is, in fact, another child/elderly development center  
7 within 1,000 feet.

8 Of course, we must find that the  
9 cumulative effect of these facilities would not create  
10 some sort of adverse impact to the neighbors. I think  
11 the clear fact that was presented is that both of  
12 these have been in existence for many years without  
13 any sort of evidence of cumulative problems or adverse  
14 impacts.

15 Going through all those aspects of which  
16 we just had to go through in terms of traffic and  
17 parking and noise, it seems as though both the  
18 facilities are not identical but are similar but have  
19 been in somewhat peaceful coexistence.

20 Going to 334 in terms of community service  
21 center, I think this is the proper section of which  
22 this applicant should come under and so it was well  
23 done that they did take up 334. I think we have gone  
24 to the location in terms of it not becoming  
25 objectionable in the neighboring properties or

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1 conditions.

2 334.3 indicates that no structural changes  
3 shall be made except those required by municipal laws  
4 or regulations. This gives some concern at the outset  
5 of how are we approving a Section 334 community  
6 service center when we clearly have planned for an  
7 entire new facility.

8 I think it was evidenced in the record and  
9 the clarity I hope I can bring to it is this. When  
10 looking at the community service center, it seems that  
11 this section is to stand alone. What we have is  
12 actually a multi-use center. If we look at not being  
13 able to structurally modify the existing, then the co-  
14 compliance for the child development center could not  
15 be accommodated.

16 If those couldn't be accommodated or say  
17 you made separate buildings, there would have to be,  
18 and there are requirements, for a structural  
19 modification in order to sufficiently provide co-  
20 compliance egress and space standards for the  
21 community service center.

22 I do not believe that they are outside of  
23 complying with 334.3 in that I find that due to the  
24 municipal laws, regulations, and building codes, that  
25 the community service center does require the

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1 structural changes and modifications in order to  
2 sufficiently provide for the community service center  
3 as proposed.

4 That being said, let me open it up to  
5 others for discussion on any of those aspects.

6 MR. ETHERLY: Mr. Chair, I agree entirely  
7 with your summary. I think you have hit all the  
8 salient points that needed to be noted. Just to  
9 buttress a few of your particular points, there was  
10 testimony presented by the applicant that did note  
11 that 85 percent of its current enrollment at this  
12 point in time does walk to the site so that gives me  
13 further comfort with regard to some of the discussion  
14 that we heard via testimony regarding objectional  
15 traffic conditions.

16 With respect to 205.3 at this particular  
17 juncture 85 percent of the current enrollment does  
18 indeed walk to the site. Further with regard to staff  
19 on the site at this particular juncture, there is an  
20 indication that seven staff members at present have  
21 parking permits at the nearby Washington apartments  
22 which, of course, as you referenced, Mr. Chair, is one  
23 of the properties where a parking agreement or  
24 arrangement has been obtained by the applicant.

25 With the ten parking spaces that have been

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1 obtained by the applicant at Washington apartments and  
2 also Metropolitan Community Church, that gives me  
3 comfort that any parking needs can, indeed, be met in  
4 a more than reasonable way by the applicant. I am  
5 supportive of your summary, Mr. Chairman, and I am  
6 prepared to go forward.

7 MR. GRIFFIS: Excellent. Thank you very  
8 much. Others?

9 MS. MILLER: I also concur with your  
10 comments, Mr. Chairman. I probably will have some  
11 specific comments as we address the conditions.

12 MR. GRIFFIS: Okay. That being said,  
13 let's go directly into a motion then. I would move  
14 approval of Application 17160 of the Northwest  
15 Settlement House. That would be pursuant to two  
16 variances, one of lot occupancy and one of the off-  
17 street parking requirements. Also for special  
18 exception under 334 and 205 for the child/elderly  
19 development centers and community service center.  
20 This would be for the premises of 448 Ridge Street,  
21 N.W. I would ask for a second.

22 MR. ETHERLY: Second, Mr. Chair.

23 MR. GRIFFIS: Thank you, Mr. Etherly.  
24 Let's go directly into -- we have the motion and it's  
25 been seconded and take comments on the conditions.

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1 There was some opposition evidence and a lot of it  
2 went to parking. I think we are going to get to that  
3 specifically, what are the conditions.

4 Also one of the findings of fact was that  
5 the applicant was proposing drop-off and pickups at  
6 essentially a large amount of times. If you look at  
7 40 students which is being proposed for the child  
8 development center and you have pickups or drop-offs  
9 from 7:30 to 9:30 and pickups from 3:30 to 6:00, you  
10 realize that it almost staggers the time and obviously  
11 then would limit.

12 They were estimating in their submissions  
13 that approximately two an hour were being dropped off  
14 or picked up. Going to it, let me just run down all  
15 of them and then we can pick up any of the ones in any  
16 order that people would like. I would think condition  
17 No. 1 would be approval for 10 years commencing at the  
18 issuance of the certificate of occupancy.

19 The applicant also had agreed and  
20 proffered that they would set up a liaison to the  
21 Mount Vernon Square Neighborhood Association. I think  
22 that was an important aspect in talking especially  
23 with the new facility and also the 10-year period. I  
24 think we could accept that as a condition that has  
25 been proffered by the application.

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1           The third condition I would propose is  
2 that the child development center would not exceed 40  
3 students on site at one given time. Let me be clear  
4 on that condition in that I think that under 205  
5 really what we are more concerned with in terms of the  
6 impact that has been evidenced in this record on the  
7 child development, as testified, is the 24 and 16  
8 students that would be broken down; that is, the 16  
9 two to five-year-olds.

10           Rather, the 24 was the infant and  
11 toddlers, whatever breakdown was. It was 40.  
12 And not having a limit because there is evidence  
13 showing detrimental impact to a limit of teenagers for  
14 the community service center or elderly or the  
15 parenting, but rather just the daycare. It would be  
16 the 40 students on site at a given time.

17           The staff in the other zoned center would  
18 not exceed the equivalent of 12 full-time positions.  
19 The staff at the community service center would not  
20 exceed the equivalent of six full-time positions.  
21 This is also gives us the bright calculation of 10  
22 maximum hours of operation for the center would be  
23 from -- for the child development center would be from  
24 7:00 a.m. to 6:00 and for the community service  
25 center would be from 9:00, and I would propose, to

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1 8:00 p.m. as they do have occasional evening classes  
2 that utilize the facility.

3 Six would be, "The applicant shall  
4 implement a program to assist employees of the center,  
5 both the service center and the development center, to  
6 use nearby metro bus and metro rail service." Seven  
7 would be, "Applicant would provide written instruction  
8 to parents and teachers and staff utilizing the four  
9 restricted spaces out front and implementing the drop-  
10 off and pickup as programmed by the facility at the  
11 Ridge Street, N.W." Eight would be, "The applicant  
12 would provide 10 off-street parking spaces available  
13 for use by teachers and staff."

14 I have left out condition No. 7 actually  
15 that was offered by the applicant which read, "The  
16 applicant shall abide by the existing DDOT regulatory  
17 parking signage in front of the property," because  
18 that's redundant. If they don't, we hope they all get  
19 tickets. Or maybe not hope but they certainly will.  
20 I don't think we need to provide. You need to be law  
21 abiding in everything you do as a condition for this  
22 order.

23 Okay. Let's open it up for further  
24 comments. Yes.

25 MS. MILLER: I just have a couple of

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1 concerns. One is the restriction on the hours for the  
2 community service center. I think it was proffered by  
3 the applicant, but I would also note that Office of  
4 Planning didn't recommend any restrictions on the time  
5 for that, nor did the ANC.

6 I guess where I'm coming from is I imagine  
7 that this community service center could provide a lot  
8 of benefits to the community and perhaps be a place  
9 for all ages to go in the evening. We haven't really  
10 heard any evidence of adverse impact from activities  
11 related to the community from that aspect.

12 Anyway, I'm wondering if we could make it  
13 a little broader. I feel like in a way that we are  
14 being -- we don't have much evidence. We don't have  
15 any evidence in the record probably so we are being a  
16 little bit arbitrary here but I would feel more  
17 comfortable at least making the hours longer to 9:00  
18 or 10:00 providing some flexibility. This is a 10-  
19 year term we're talking about. It's a service to the  
20 community.

21 MR. GRIFFIS: My concern is that it is  
22 located right in the heart of an R-4 and is  
23 surrounded. We did have some limited testimony in  
24 opposition in terms of the concern of abutting  
25 neighbors and in terms of use. I think going to 8:00

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1 seems to be a rational time as the program is out late  
2 in the afternoon so what they want to utilize it for  
3 with the balance of the concerns of the adjacent R-4  
4 community.

5           Again, also in the record is that there  
6 are other community centers in the area that can be  
7 utilized that actually have a larger separation and  
8 buffering if needed to go beyond the 8:00 hour. I  
9 mean, I don't feel that strongly and I understand what  
10 you're saying but I do think this being within a mid  
11 block surrounded by R-4 that we should have some note  
12 of concern about the amount of use whether evidenced  
13 or not at this time.

14           Others on that? Okay.

15           MS. MILLER: I basically just wanted to  
16 raise it for discussion because, I mean, I guess the  
17 only evidence we have in the record I can't even call  
18 it evidence but, I mean, the applicant has asked until  
19 8:00 and that's all we have. I just note it as a  
20 concern.

21           The other concern I have is with respect  
22 to the 40 students in the child/elderly development  
23 center. I guess we can say that but I'm not sure if  
24 that means there can be other students in the  
25 community service part. I don't know how you monitor

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1 or enforce that. I guess the program would only have  
2 that amount of people. Anyway, just wanted to raise  
3 those concerns. I don't have a recommendation or a  
4 better way of phrasing it.

5 MR. GRIFFIS: I think it is an interesting  
6 concern. I would hope that it doesn't become  
7 problematic but I think there is going to be a clear  
8 differentiation between those enrolled in the  
9 development center and those that are coming into  
10 utilize the community center aspect. Yeah, it  
11 may open itself up to abuse but I certainly hope it  
12 wouldn't. It wouldn't necessarily need to. Okay.  
13 Anything else?

14 Good point Ms. Miller has just brought up  
15 in terms of by reference the fact that we would  
16 incorporate the two ANC conditions with setting up a  
17 liaison with Mt. Vernon which the applicant has also  
18 agreed to. The second was to provide off-site parking  
19 for the employees. They had actually requested that  
20 they have signed agreements with certain sites.

21 Clearly if we're looking at this as long-term we  
22 require that off-site parking of 10 be provided and  
23 obviously it should be within reasonable accommodation  
24 to the existing but the specific agreement and the  
25 specific site I don't think needs to be enumerated in

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1 the condition at this point as they may change. Is  
2 there anything else? Then we have a motion before us  
3 that has been seconded and conditioned. I would ask  
4 for all those in favor to signify by saying aye.

5 ALL: Aye.

6 MR. GRIFFIS: Opposed?

7 MR. MOY: Staff would record the vote as  
8 four to zero to zero. This is on the motion of the  
9 Chair, Mr. Griffis, to approve the application,  
10 seconded by Mr. Etherly to approve the application  
11 with conditions as discussed. We also have an  
12 absentee ballot from John Mann and his vote is to deny  
13 the application so that would give the final vote as  
14 four to one to zero.

15 MR. GRIFFIS: Thank you, Mr. Moy.

16 MR. MOY: The next and last -- summary  
17 order, Mr. Chair?

18 MR. GRIFFIS: That's what I was  
19 contemplating. I think we can waive our requirements  
20 and issue a summary order on this. I think it was  
21 fairly straightforward and has conditions that deals  
22 with all the facts in the case so why don't we do that  
23 unless there is any concern from Board members. Okay.

24 Let's call the last case of the morning  
25 then.

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1 MR. MOY: That is Application No. 17163 of  
2 Amazing Life Games Preschool, Inc., pursuant to 11  
3 DCMR 3104.1 for a special exception to establish a  
4 child development center, 28 children, four staff, and  
5 one or two parent volunteers under Section 205 in the  
6 R-1-B district at premises 1309 Faragot Street, N.W.,  
7 Square 2806, Lot 76.

8 On June 15, 2004, the Board completed  
9 public testimony on the application and scheduled its  
10 decision on July 6, 2004. The Board also requested  
11 post-hearing documents. One is a document filing from  
12 the Office of Planning. That was submitted on June  
13 21, 2005, and it is in your case folders as Exhibit  
14 No. 50.

15 The Board has also received a filing from  
16 the law firm of Jordan and Keys, LLP, on behalf of the  
17 applicant. This is a proposed findings of fact and  
18 conclusions of law which is identified as Exhibit 51  
19 and 52. Finally, the Board also allowed proposed  
20 findings of fact from other parties including ANC-4C.

21 ANC-4C has not submitted any filings. That completes  
22 the staff's briefing and the staff's understanding is  
23 that Mr. Griffis is not participating on this case.

24 MR. GRIFFIS: Thank you.

25 MS. MILLER: This case involves a

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1 relatively small child development center with just 28  
2 children and four staff that wants to locate on a  
3 residential street. It has come in with some support  
4 but an awful lot of opposition.

5 Office of Planning has recommended denial  
6 in this case. Council Member Fenty and the ANC are  
7 recommending denial. The Department of Health  
8 supported the application because the city needs child  
9 development centers in general. DDOT

10 expressed a lot of concerns and we also granted party  
11 status to Faragot Street Block Club that represented  
12 several neighbors opposed to the application.

13 Currently the applicant operates a similar  
14 program in the Adams Morgan neighborhood and the  
15 facility's hours are 8:30 to 6:00 which would be the  
16 same. They are not proposing to provide on-site play  
17 space but instead intend to use a playground that is a  
18 walk away and that has also raised some controversy.

19 Also, in this case pickup and drop-off of the children  
20 would be performed from the public right of way.

21 I think what I want to do this is governed  
22 by 11 DCMR 205 special exception for children  
23 development center. I just think maybe to organize  
24 evidence I want to highlight the provisions that are  
25 at issue here and then highlight some of the evidence

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1 under it and we can discuss it.

2 205.3 says that, "The center shall be  
3 located and designed to create no objectional traffic  
4 addition and no unsafe condition for picking up and  
5 dropping off children." I found that the evidence was  
6 mixed in this case. There was no detailed traffic  
7 study done for sure.

8 DDOT did visit the premises and they found  
9 that to the extend that there will be no off-site  
10 facility for drop-off and pickup, there is the  
11 potential for cars cruising around the block in search  
12 of a curb parking or, worse, double-parked to drop-off  
13 and pickup and create an unsafe condition for the  
14 children.

15 On the other hand, there's not a large  
16 amount of traffic that is expected, 22 cars during  
17 peak morning hours and only 13 in the afternoon. We  
18 had a lot of pictures in this case of parking spaces.

19 In my view I was swayed somewhat by applicant that  
20 there were plenty of parking spaces and that really  
21 wasn't a big issue for me.

22 On the other hand, though, there were  
23 neighbor's letters that addressed the speeding and the  
24 traffic that they are already experiencing due to  
25 schools and other nonresidential facilities in their

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1 neighborhood.

2 I think what is driving this particular  
3 case, I think, is that this block is inundated by  
4 nonresidential facilities including schools and  
5 churches and things of that nature. This is coming in  
6 on top of those uses and it's coming in in the middle  
7 of a residential block in a house. Not on a corner  
8 where there might be an opportunity for certain type  
9 of traffic circulation but right smack in the middle  
10 of the block.

11 Office of Planning was concerned about  
12 backups creating objectional traffic conditions and  
13 unsafe conditions for children. Also we heard  
14 evidence from Office of Planning that there are a lot  
15 of elderly who live on this block and, therefore,  
16 parking spaces that may be taken up by the school  
17 would be harder for this particular block than maybe  
18 another block.

19 I guess I'll just move through and then  
20 you can jump in at a later one. 205.4 says, "The  
21 center shall provide sufficient off-street parking  
22 spaces to meet the reasonable needs of teachers, other  
23 employees, and visitors."

24 They do have a garage that provides two  
25 parking spaces. They are going to have four and staff

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1 so they do meet the requirements of 2101.1 which  
2 requires one for every four and staff. What's left  
3 are visitors. I wasn't convinced that there would be  
4 enough street parking for the occasional visitors.

5 205.5 says that, "The center including any  
6 outdoor play space provided shall be located and  
7 designed so that there will be no objectional impacts  
8 on the adjacent or nearby properties due to noise,  
9 activity, visual, or other objectional conditions."

10 I think this goes to the same point about  
11 a lot of elderly on the block and handicapped and  
12 their ability to park will be made more difficult.  
13 205.7, "Any off-site play area shall be located so as  
14 not to result in endangerment to the individuals in  
15 attendance at the center in traveling between the play  
16 area and the center itself."

17 We heard a lot of testimony about children  
18 being walked to the playground. Office of Planning  
19 stated that they thought it would be unsafe because  
20 they had to walk through an alley that is also used by  
21 cars and trucks and that there were instances of  
22 speeding and drug activity in the alley, as well as  
23 drug activity in the playground that was also echoed  
24 by neighbors and supported by crime statistics that  
25 they entered into the record. We didn't have any

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1 expert in this case interpreting the crime statistics  
2 so we just had them for what they're worth.

3 205.8 says, "The Board may approve more  
4 than one child/elderly development center in a square  
5 within a thousand square feet of another child/elderly  
6 development center only when the Board finds that the  
7 cumulative effect of these facilities will not have an  
8 adverse impact on the neighborhood due to traffic,  
9 noise, operations, or other similar factors.

10 I think there was some dispute over this  
11 as well. Applicant stated they had obtained a listing  
12 of licensed child development centers from the  
13 Department of Health Child and Residential Care  
14 Facilities Division and determined that there are no  
15 other child development centers within a thousand feet  
16 of the property.

17 Office of Planning cited on page 7 of  
18 their report several community centers providing  
19 services to students on the subject square including  
20 Kingsbury which is a school for students with special  
21 needs, York Community Center and Faragot Streets and  
22 West Elementary School. There was dispute whether  
23 these schools had programs that brought them within  
24 the definition.

25 3104.1 says that, "The Board is authorized

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1 to grant special exceptions where in the judgement of  
2 the Board the special exceptions will be in harmony  
3 with the general purpose and intent of the zoning  
4 regulations and zoning maps and will not tend to  
5 affect adversely the use of neighboring property in  
6 accordance with zoning regulations and the zoning  
7 map."

8 This is in an R-1 district. 200.1 says,  
9 "The R-1 district is designed to protect quiet  
10 residential areas now developed with one-family  
11 detached dwellings and adjoining vacant areas likely  
12 to be developed for those purposes." 200.2 says, "The  
13 provisions of this chapter are intended to stabilize  
14 the residential areas and to promote a suitable  
15 environment for family life."

16 I think this is really what is at heart in  
17 this case, the threat to the residential life here.  
18 This block already is experiencing adverse impacts  
19 from an overabundance of nonresidential facilities on  
20 the block and within close proximity. At least that's  
21 what I discerned from the evidence.

22 The 1300 block of Faragot contains two  
23 large schools, one after-school care facility and two  
24 churches. We heard testimony about adverse impacts  
25 that include cut-through traffic, speeding, parking,

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1 and the desire of the community to really protect the  
2 residential character of their block from being taken  
3 over anymore by nonresidential uses.

4 We heard some testimony about census  
5 statistics that went to this being a more elderly  
6 community and that it wouldn't be serving the  
7 immediate neighborhood. Also, with respect to the  
8 overwhelming abundance of nonresidential facilities in  
9 the neighborhood we heard within a one-block radius  
10 there are three more churches and one more school.

11 With respect to the zone plan, and Office  
12 of Planning took this position, there is a loss of  
13 residential housing that is at issue and that is  
14 contrary to the goal of the comprehensive plan to  
15 encourage residential housing.

16 To summarize it up for me, I think both  
17 Office of Planning, to which we give great weight to,  
18 and the ANC, to which we give great weight, opposed as  
19 well as Carter Baron Neighborhood Association, Faragot  
20 Street Block Club, DDOT, and a variety of other  
21 neighbors.

22 I think this is really kind of unfortunate  
23 because it does seem like a very sweet little school  
24 but I think we have to look at the regulations in the  
25 R-1 district. It just seems like it's gotten to the

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1 point where this particular area is being overtaken by  
2 nonresidential uses.

3 MR. ETHERLY: Madam Chair, if I may, I  
4 agree with your summary wholeheartedly. As you noted,  
5 this is not about what is clearly a strong record of  
6 performance for Amazing Life Games at its present  
7 home. There is, of course, no question that it is  
8 providing an excellent service to the population that  
9 it serves. I just think, simply put, this is the  
10 wrong space, the wrong location for a wonderful  
11 program and that creates significant difficulty.

12 I think you have summarized very well  
13 really what are the key weaknesses in the application  
14 here that, in my estimation, just cannot be overcome  
15 at this point in time. 205.3 with regard to  
16 objectionable traffic conditions, there is still for  
17 me simply too much uncertainty as it relates to just  
18 the type of traffic that would be generated by Amazing  
19 Life Games if it were to operate at this particular  
20 site.

21 I believe the photographic evidence that  
22 was offered with regard to traffic was helpful in  
23 terms of demonstrating the availability of parking  
24 stock but I just wasn't certain enough with the case  
25 as it was presented the type of traffic needs that

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1 would be generated by Amazing Life Games. I think the  
2 difficulty there was you would probably -- we would be  
3 looking at a substantial turnover in the enrollment of  
4 the program as it current exist based on its move to a  
5 new location.

6 With that in mind, I just didn't have a  
7 clear enough sense of what type of traffic needs would  
8 be generated as a result of that. I was fairly  
9 comfortable with the staffing needs as they had been  
10 laid out by the applicant but, once again, with the  
11 drop-off needs that would surely arise by virtue of  
12 the operation of the daycare center, I just did not  
13 reach a comfort level there with respect to the drop-  
14 off and pickup for children.

15 With the regular street cleaning that was  
16 noted by the Department of Transportation and Office  
17 of Planning Reports as well, I think that would just  
18 further create some conflicts there that might not be  
19 resolved in a satisfactory way.

20 Similarly, 205.4, as you noted with regard  
21 to the all-street parking needs, I felt that was a  
22 point of concern. For me I would note that I think  
23 the real major stumbling block for the application  
24 here really comes to 205.7 with regard to the use of  
25 off-site play areas.

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1 I understand clearly what the applicant  
2 had in mind here with respect to the proximity of the  
3 Hamilton Street playground and using that property as  
4 a resource, as an amenity, if you will, but as a  
5 resource for their operations but I just did not see  
6 my way to a comfort level with regard to transitioning  
7 students in the facility to the playground.

8 Clearly the applicant has had what appears  
9 to be a very solid history in terms of supervision and  
10 working with its young people, but I think that would  
11 be asking quite a bit of any staff and operation to  
12 ensure day in and day out that a regular daily trip  
13 through an alley and through some other streets to get  
14 to the hamilton Street playground could happen day in  
15 and day out without incident.

16 We were, of course, provided with some  
17 additional crime statistics by the Office of Planning  
18 to support some of their discussions with local PSA  
19 officials around activities in this neighborhood.

20 While I believe this is a quiet residential  
21 block, there is enough activity there to suggest that,  
22 once again, there might be some concerns about the  
23 safety of the program and its participants and staff  
24 as they move from the subject site to the Hamilton  
25 Street playground. I'm in agreement with you on that,

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1 Madam Chair.

2 It's always a difficult decision when you  
3 are confronted with an organization that is attempting  
4 to maintain it's operations and find a new home as  
5 Amazing Life Games has to do in this particular  
6 instance but I do feel very strongly that this simply  
7 was not the right location for what is otherwise an  
8 excellent program.

9 I wish them all the best in finding a  
10 suitable home but I just felt that under Section 205  
11 that there were just a number of provisions in that  
12 section that simply did not support the case here.

13 MS. MILLER: Thank you. I just want to  
14 make one other point about what I found most  
15 compelling in this case which is different from many  
16 of the other cases that we get. In this case actually  
17 a residential dwelling was being taken out of the  
18 residential use and converted to a nonresidential use.

19 In many instances we hear about  
20 communities complaining about adverse impacts from  
21 institutional facilities. In this particular case we  
22 actually heard evidence that a lot of these neighbors  
23 did not actually oppose other institutional uses that  
24 had come up for special exceptions, etc. There were a  
25 variety of reasons I think given for that.

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1           One was there were instances where it was  
2 a continuation of use or it was already a church or  
3 being converted to another institutional use. It  
4 wasn't like these neighbors had a big problem with all  
5 institutional uses.

6           I think it was mainly taking this out of  
7 the housing stock and being converted from residential  
8 use to nonresidential use and the cumulative effect.  
9 Anyway, I found that different from most of the cases  
10 we do here.

11           At this point I have prepared to make a  
12 motion and that would be to deny Application No.  
13 17163, Amazing Life Games Preschool, Inc., pursuant to  
14 11 DCMR 3104.1 for a special exception to establish a  
15 child development center, 28 children, four staff, and  
16 one or two parent volunteers under Section 205 at  
17 premises 1309 Faragot Street, N.W.

18           MR. ETHERLY: Second it, Madam Chair.

19           MS. MILLER: Any further discussion? All  
20 those in favor say aye.

21           ALL: Aye.

22           MS. MILLER: All those opposed? All those  
23 abstaining?

24           MR. MOY: Staff would record the vote as  
25 two to zero to one on the motion of Ms. Miller to deny

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1 the application, seconded by Mr. Etherly, Mr. Griffis  
2 not participating on the case. We do have two  
3 absentee ballots submitted, one from Mr. John Parsons  
4 and John Mann. Both have voted to deny the  
5 application which would give the final vote as four to  
6 zero to one.

7 MS. MILLER: Thank you.

8 MR. GRIFFIS: Very well, Mr. Moy. Is  
9 there any other business for the Board in the morning  
10 session?

11 MR. MOY: We do have on the schedule the  
12 action on the minutes so I'll leave that to the Chair  
13 and the Board's discretion.

14 MR. GRIFFIS: The time is 1:30 and we have  
15 our afternoon people already showing up for our  
16 hearing and we haven't taken a short break for lunch.

17 I'm going to postpone the minutes. The Board will  
18 figure out when we actually do that. Perhaps the next  
19 public meeting next week.

20 We have also postponed three other cases  
21 for decision this morning noting our schedule starting  
22 our this morning at 8:00 and trying to get through 13  
23 cases. I think we have done a fairly good job of that  
24 but we do appreciate everyone's patience. We are  
25 going to break for lunch.

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1 I'm going to adjourn the morning session  
2 and we will be back shortly after 2:00. I would say  
3 about 2:05 we'll start our afternoon session. Thank  
4 you all very much.

5 (Whereupon, at 1:38 p.m. the public  
6 meeting was adjourned.)

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