

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT  
PUBLIC HEARING

+ + + + +

TUESDAY, SEPTEMBER 28, 2004

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS L. ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Deputy Secretary
BEVERLEY BAILEY	Zoning Specialist
JOHN NYARKU	Office of Zoning
ALBERTO BASTIDA	Secretary, zc

OFFICE OF PLANNING STAFF PRESENT:

JOHN MOORE	Office of Planning
TRAVIS PARKER	Office of Planning
STEPHEN MORDFIN	Office of Planning
KAREN THOMAS	Office of Planning

D.C. OFFICE OF THE ATTORNEY GENERAL STAFF PRESENT:

ALAN BERGSTEIN, ESQ.

This transcript constitutes the minutes from the public hearing held on September 28, 2004.

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

9:51 a.m.

CHAIRPERSON GRIFFIS: Good morning, everyone. Let me call to order the 28 September 2004 morning session of the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is Vice Chair Ms. Miller, also our esteemed colleague, Mr. Etherly will be joining us momentarily. Representing the National Capital Planning Commission with us is Mr. Mann and our Zoning Commission Member will also be joining us, as she has been detained, but will be along shortly and that will be Ms. Mitten.

Copies of today's hearing agenda are available for you. They are located where you entered into the hearing room on the wall. Please, pick one up and you can see what we will get through this morning and, frankly, this afternoon also. Let me bring a few very important aspects to everyone's attention.

First of all, all proceedings before the Board of Zoning Adjustment are recorded. They are recorded in two fashions now. The most important being the Court Reporter, who is sitting on the floor to my right, is creating the official transcript. We

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1 are also being broadcast live on the Office of  
2 Zoning's website. So we ask attendant to both of  
3 those that people, please, refrain from making any  
4 disruptive noises or actions in the hearing room, so  
5 that we don't have any sort of interruption to the  
6 important testimony that we are going to hear in  
7 establishing our official record.

8 To that, additionally, I would ask that  
9 people turn off cell phones and beepers, at this time,  
10 so we don't have them ringing off the hook.

11 The order of procedure for special  
12 exceptions and variances is, first, we hear the case  
13 presentation by the applicant and witnesses. Second,  
14 any Government reports attendant to the application.  
15 Third would be the report from the Advisory  
16 Neighborhood Commission within which the property is  
17 located. Fourth is persons or parties in support of  
18 the application. Fifth is persons or parties in  
19 opposition to the application. And sixth, finally, is  
20 closing remarks or any rebuttal witnesses by the  
21 applicant.

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

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1 is able to conduct cross examination. Of course,  
2 nothing prohibits this Board from placing reasonable  
3 restrictions on the cross examination, including time  
4 limits and substantive limitations. I don't see that  
5 as a large issue for us today, but I will give  
6 instruction if need be.

7 The record will be closed at the  
8 conclusion of each hearing on a case, except for any  
9 material that is specifically requested by the Board,  
10 and we will be very specific on what is to be  
11 submitted and when it is to be submitted into the  
12 Office of Zoning. After that material is received,  
13 the record would be finally closed and no other  
14 information is accepted into the record.

15 The Sunshine Act requires that all Public  
16 Hearings be held in the open and before the public.  
17 This Board may consistent with the Sunshine Act and  
18 its Rules of Procedure and Regulations enter into  
19 executive session. Executive session is used by the  
20 Board to review the records and also to deliberate on  
21 cases.

22 The decision of the Board in contested  
23 cases must be based exclusively on the record that is  
24 created before us, so that is why I have said so many  
25 important things about establishing the record and two

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1 additional items, I would ask that people avoid any  
2 conversation with Board Members today, so that we do  
3 not give the appearance of gaining information outside  
4 of that which is created before us today.

5 Secondly, when coming forward to speak to  
6 the Board, you're going to make yourself very  
7 comfortable at the table in front of us and you will  
8 need to speak into a microphone. The microphone  
9 should be on, so that you can be recorded into the  
10 record. I would ask that people state their name and  
11 address once prior to addressing the Board, and that  
12 way, obviously, we can give credit to your testimony.

13 That being said, we will now consider any  
14 preliminary matters. Preliminary matters are those  
15 which relate to whether a case will or should be heard  
16 today, such as requests for postponements,  
17 continuances or withdraws or whether proper and  
18 adequate notice has been provided. If you are not  
19 prepared to go forward with a case today or you  
20 believe a case should not proceed today or have any  
21 other preliminary matters, I would ask that you come  
22 forward and have a seat at the table as an indication.

23 If there is no indication of preliminary  
24 matter, which there seems to not be, I would say a  
25 very good morning to the Office of Zoning Staff who is

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1 with us, Ms. Bailey, Mr. Moy is also going to be with  
2 us and Mr. Bastida is with us for our first case in  
3 the morning.

4 Ms. Bailey, are you aware of any  
5 preliminary matters for our attention this morning?

6 MS. BAILEY: Mr. Chairman, Members of the  
7 Board, no, sir, I am not aware of any.

8 CHAIRPERSON GRIFFIS: Very well. And not  
9 seeing any indication from those present today as  
10 having preliminary matters, I would ask then that all  
11 people that are wishing to testify today, thinking  
12 about it or affirming that they will testify, if you  
13 would, please, stand, give your attention to Ms.  
14 Bailey and she is going to swear you in.

15 MS. BAILEY: Please, raise your right  
16 hand.

17 (Whereupon, the witnesses were sworn.)

18 MR. BASTIDA: Good morning, Mr. Chairman,  
19 Members of the Board. The first case of the morning  
20 is the Civil Infraction Appeal of Case No. 03-OAD-  
21 2417-E of William Robinson vs. The Department of  
22 Consumer and Regulatory Affairs, appealing the  
23 decision of an Administrative Law Judge sustaining a  
24 notice of infraction issue for construction of front  
25 steps without a demolition permit at premises 1610 H

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1 Street, S.E., Square 1092, Lot 24, in violation of the  
2 Zoning Act. Thank you.

3 CHAIRPERSON GRIFFIS: Thank you very much.

4 Board Members, let's move ahead into this. We have  
5 had a similar occasion to address issues like this,  
6 and let me open it up to the forum. Ms. Miller?

7 VICE CHAIR MILLER: Mr. Chairman, this  
8 seems like a case that was sent to us mistakingly,  
9 thinking that this Board has subject matter  
10 jurisdiction, because it falls within the Zoning Act.

11 But, in fact, this Board does not have subject matter  
12 jurisdiction over this case, as I see it, because it  
13 does not involved a violation of the Zoning  
14 Regulations or the Height Act.

15 It is an appeal of a decision by  
16 Administrative Law Judge in the Office of Adjudication  
17 of DCRA in which the appellant is alleging that he --  
18 in which the appellant was found not to be entitled to  
19 a hearing on the merits for violation of D.C. Code 6-  
20 641.09, which is construction without a demolition  
21 permit. We addressed this case in full in a decision  
22 called Koharis, which was in April of 2004. It's  
23 Civil Infraction Appeal No. 03-0001, in which DCRA  
24 fully brief this and we found that the Civil  
25 Infractions Act provides for appeals involving the

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1 Height Act or Zoning Regulations to go to the BZA, not  
2 all infractions of the Zoning Act.

3 There is some confusion with respect to  
4 how the law was codified that has caused some  
5 appellants to come to this Board, and apparently the  
6 Office of Board of Appeals and Review to send it here.

7 So I would move that we dismiss for lack of subject  
8 matter jurisdiction and that we send to the Office of  
9 OAH and we give to the appellant a copy of the Koharis  
10 decision, which sets forth in full interplay between  
11 the different laws and why, in fact, jurisdiction is  
12 not before us.

13 CHAIRPERSON GRIFFIS: Very well. We have  
14 a motion. Is there a second?

15 BOARD MEMBER MANN: Second.

16 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.

17 Ms. Miller, I think that's very well put and I think  
18 for a lay person not an attorney, what we're looking  
19 at is that perhaps some of the error arises out of the  
20 actual form, the important notice in the written form  
21 that talks about the forms of which one appeals and  
22 that there may well be an error in that, and perhaps  
23 even as you have indicated in the writing of the Code  
24 as opposed to legislation that was passed that should  
25 have been accurately reflected in the Code.

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1           Let me digress a little bit and get out of  
2 the legal realms of this, and I find it frustrating to  
3 get these types of cases, not because it frustrates  
4 the Board and our time, but rather it, obviously, is a  
5 frustration within the process if someone wants to  
6 remedy this to continue on to work or to correct  
7 manners. Here they are spending so much time trying  
8 to find the proper forum to be heard, and I think that  
9 this Board will do all that it can in terms of  
10 instruction and our analysis, which has been very  
11 substantive and detailed, in trying to clear up this  
12 matter, so that we don't send people from one door to  
13 the next.

14           Clearly, it's not serving anybody and I  
15 know nobody involved in this wants this to continue to  
16 happen. So I think it's apt to actually attach the  
17 Koharis or provide that order as I do believe it is  
18 written quite clearly in this. That being said, I  
19 think there are some very clear simple steps that can  
20 be taken and one may be -- the first and primarily may  
21 well just be rewriting the important notice, which is  
22 what it is called and it is attached, of the appeal  
23 rights.

24           So anything else? Yes?

25           VICE CHAIR MILLER: I would add that also,

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1 but in this particular case, the appellant didn't come  
2 here based on directions in the appeal notice, but  
3 actually this --

4 CHAIRPERSON GRIFFIS: Understood.

5 VICE CHAIR MILLER: This Administrative  
6 Law Judge didn't even understand the law.

7 CHAIRPERSON GRIFFIS: Right.

8 VICE CHAIR MILLER: And also, I do want to  
9 also put on the record again that with respect to the  
10 inconsistency in the Code, that is going to be  
11 corrected soon.

12 CHAIRPERSON GRIFFIS: Right.

13 VICE CHAIR MILLER: That counsel is  
14 working on that.

15 CHAIRPERSON GRIFFIS: Yes. I think the  
16 jargon of everyone's misunderstanding starts at the  
17 same level and I understood that the appellant in this  
18 case was referred here, and as we are stating  
19 incorrectly referred, but that's the whole point. The  
20 bottom line, the big picture is let's stop this from  
21 happening, so we don't waste everybody's time and we  
22 actually get to the substance of these things.

23 Of course, the reverse just to argue  
24 against the motion briefly is well, we could establish  
25 we have time jurisdiction ourselves and take it on,

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1 but perhaps the lawyers might have some stomach ache  
2 with that, so we'll move on.

3 VICE CHAIR MILLER: Sure. I would tend to  
4 disagree with that.

5 CHAIRPERSON GRIFFIS: Indeed. Very well.  
6 Any others, deliberation to the motion? The motion  
7 before us has been seconded. The motion is dismissed  
8 for lack of substance jurisdiction. I believe we will  
9 run with Ms. Miller's actual phrasing of it. If there  
10 is no further deliberation then, I would ask for all  
11 those in favor to signify by saying aye.

12 ALL: Aye.

13 CHAIRPERSON GRIFFIS: Aye. And opposed?  
14 Abstaining? Very well. I just want to take this  
15 quick opportunity. Mr. Robinson, are you present?  
16 Mr. Robinson, do you have any questions about what we  
17 have just done?

18 MR. ROBINSON: No, other than what you  
19 said, it's just been a year and a half process to get  
20 here, not only with the Judge sending me here, but I'm  
21 still trying to find a proper audience for my case.

22 CHAIRPERSON GRIFFIS: Right. And I  
23 appreciate you saying that. All that may not make it  
24 totally on the record, but clearly you've indicated  
25 your frustration with being referred and you are, in

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1 fact, diligently looking for a proper forum to deal  
2 with this and clarify it.

3 Do we have any suggestions of not official  
4 steps, but perhaps the next step of how we can get  
5 quick clarification of this? Ms. Miller, ideas?

6 VICE CHAIR MILLER: Well, I think that if  
7 Mr. Robinson would go over to the Office of Zoning, if  
8 they could give him a copy of the Koharis decision, I  
9 think it really lays everything out. So if you were  
10 to go to OAH, you know, even before an order was  
11 issued in this case, you would have something in hand  
12 if you want to expedite.

13 CHAIRPERSON GRIFFIS: Right. If that  
14 makes sense, you can just go right next door and I  
15 believe someone at the Office of Zoning can assist you  
16 in getting that. Okay. Well, I wish we could have  
17 put an end to this today, but, obviously, we are  
18 unable to. So I'll give DCRA also an opportunity to  
19 ask any procedural questions or clarifications just to  
20 be so fair and judicial. Nothing?

21 MS. BELL: Nothing.

22 CHAIRPERSON GRIFFIS: Excellent. Thank  
23 you. Appreciate it. Let's move on then and call the  
24 next case in the morning.

25 MS. BAILEY: Application No. 17208 of

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1 Pablo Martinez, pursuant to 11 DCMR 3104.1, for a  
2 special exception to allow a rear deck addition to an  
3 existing flat, that's a two-family dwelling, under  
4 section 223, not meeting the lot occupancy  
5 requirements, section 403, rear yard requirements,  
6 section 404, and court requirements, section 406, the  
7 property is located in the R-4 District at premises  
8 1207 Clifton Street, N.W., Square 2865, Lot 41.

9 There is a request for party status in  
10 this case, Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Excellent. Thank  
12 you for that indication. Is Mr. Stofferson here? Mr.  
13 Stofferson, Robert Stofferson, 1209 Clifton Street,  
14 N.W.? Mr. Stofferson had submitted an application for  
15 party status and it is actually fully filled out. I  
16 believe if he was present today, that I am inclined to  
17 grant the party status request. However, him not  
18 being present today, of course, Board Members I know  
19 we are all of like mind of the importance of the  
20 participation within a case as a party if granted  
21 that.

22 It was fairly clear to me actually looking  
23 at this and anticipating that he might not be here in  
24 his statement in saying efforts should be spent to  
25 ensure the enforcement of BZA's denials and also

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1 indicating like why did he waste his time last time  
2 this was here, and what purpose would it serve if he  
3 showed up today. So having him not here, I think we  
4 can take this into the record as written testimony and  
5 something I think we will take very seriously, but I  
6 would move denying the party status of Mr. Stofferson,  
7 at this time. Is there a second?

8 UNIDENTIFIED SPEAKER: Second it, Mr.  
9 Chair.

10 CHAIRPERSON GRIFFIS: Thank you, Mr.  
11 Etherly. Any further discussion, deliberations? Very  
12 well. I would ask for all those in favor of the  
13 motion to signify by saying aye.

14 ALL: Aye.

15 CHAIRPERSON GRIFFIS: And opposed?  
16 Abstaining? Very well. Let us move on then and let's  
17 introduce everybody that is before us now.

18 MR. MARTINEZ: Good morning. My name is  
19 Pablo Martinez and I am the homeowner of 1207 Clifton  
20 Street.

21 CHAIRPERSON GRIFFIS: And your address?

22 MR. MARTINEZ: 1207 Clifton Street, N.W.

23 CHAIRPERSON GRIFFIS: Okay.

24 MS. D'AMICO: My name is Jessica D'Amico.  
25 I also live at 1207 Clifton Street with Mr. Martinez.

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1 MR. SPALDING: Phil Spalding, 1929 13<sup>th</sup>  
2 Street and I'm a Commissioner with ANC-1B.

3 CHAIRPERSON GRIFFIS: Okay. So welcome  
4 again, Mr. Martinez. We have before us now a 223, as  
5 opposed to the last application, of course, which was  
6 a variance and some of the Board Members did sit on  
7 that and so we have a little bit of familiarity with  
8 this situation. Let me ask a couple of quick  
9 questions. You live in the residence now?

10 MR. MARTINEZ: (No audible answer.)

11 CHAIRPERSON GRIFFIS: You indicated yes.  
12 Did you build the deck or you purchased the property  
13 with the deck?

14 MR. MARTINEZ: I purchased the property  
15 and the previous owner was supposed to build a deck  
16 and we went to closing and I had to find a third  
17 contractor to build the deck, so I had it built. I  
18 didn't build it myself. I had it built.

19 CHAIRPERSON GRIFFIS: You had it built?

20 MR. MARTINEZ: Yes.

21 CHAIRPERSON GRIFFIS: Right. Okay. And  
22 there it is. It hasn't changed at all, at this point?

23 MR. MARTINEZ: No, it has not changed.

24 CHAIRPERSON GRIFFIS: Okay. And just for  
25 clarity, of course, this section is coming in under

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1 special exception under 223, you are going to  
2 reconfigure that if so approved?

3 MR. MARTINEZ: Yes, yes.

4 CHAIRPERSON GRIFFIS: I see. Okay. Any  
5 other preliminary questions from the Board?

6 VICE CHAIR MILLER: I wasn't on the Board  
7 when this case came before. Did you build the deck  
8 without a permit or with a permit?

9 MR. MARTINEZ: It was built without a  
10 permit, without my knowledge.

11 VICE CHAIR MILLER: But you were the  
12 owner?

13 MR. MARTINEZ: Yes.

14 VICE CHAIR MILLER: Was the contractor  
15 working for you?

16 MR. MARTINEZ: Yes, he was.

17 VICE CHAIR MILLER: Okay.

18 MR. MARTINEZ: This is -- if I may explain  
19 this? This is my first home and there are so many  
20 things that come into play when you're purchasing a  
21 home. I know I should have been much more vigilant in  
22 also checking the references of the contractor.

23 VICE CHAIR MILLER: Okay. So basically,  
24 you just relied on the contractor? You didn't know  
25 that you were supposed to get a permit?

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1 MR. MARTINEZ: Yes, yes. I put too much  
2 faith in my contractor believing that they were -- I  
3 believed that they were going to get the permit and  
4 they didn't.

5 VICE CHAIR MILLER: Okay. Thanks.

6 CHAIRPERSON GRIFFIS: Very well. Let me  
7 just address some of the statements from the  
8 application for party request and there is obviously a  
9 very strong note of frustration as to why after a BZA  
10 denial that the deck is still there. You know, I can  
11 understand the frustration of that as to what was  
12 remedied with this whole situation. I think it might  
13 be absolutely clear. I may be mistaken, but generally  
14 speaking if there is actions that are then proceeding  
15 to remedy a situation as in another application of the  
16 BZA, that DCRA may not be as motivated or may not go  
17 out for total enforcement, meaning they would not have  
18 gone out and asked you or required you to remove the  
19 entire deck.

20 So with that, let us move on and get right  
21 into presentation of your case at this point. Who is  
22 going to do it?

23 MR. MARTINEZ: Good morning, Chairman  
24 Griffis, and Members of the Board. My name is Pablo  
25 Martinez and this is Jessica D'Amico and we live at

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1 1207 Clifton Street. We are seeking a special  
2 exception to modify our existing deck as part of a  
3 retroactive permit process. Granting the special  
4 exception is consistent with the general intent and  
5 purpose of Zoning Regulations and the deck does not  
6 have a substantial adverse effect on the immediate  
7 neighbors.

8 We have submitted drawings, pictures and  
9 supporting documents in our case, and the proposed  
10 modifications of the deck would bring us to a lot  
11 occupancy of 65.8 percent, which is well within the  
12 range of granting a special exception. We have sought  
13 and received the support of many of our neighbors in  
14 this process. Included in the materials we have  
15 submitted are letters and signatures from neighbors on  
16 Clifton Street and the surrounding streets. They  
17 agree that the deck does not have a negative impact on  
18 the neighborhood and feel that the special exception  
19 should be granted.

20 We have tried to take every step possible  
21 to comply and hope that with the granting of this  
22 special exception, we can get our permit and be able  
23 to modify our deck to bring it into compliance.

24 CHAIRPERSON GRIFFIS: Good. Thank you  
25 very much. If approved and built as shown in the

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1 drawings submitted in Exhibit 10, which is showing  
2 essentially a 9 foot deck off the rear of the  
3 property, would it substantially or adversely impact  
4 the use and enjoyment of the adjacent neighbors?

5 MS. D'AMICO: No.

6 MR. MARTINEZ: No.

7 CHAIRPERSON GRIFFIS: How about would it  
8 impact the light and air available to the neighbors'  
9 properties?

10 MR. MARTINEZ: No.

11 CHAIRPERSON GRIFFIS: Do you find that  
12 this might visually intrude on the architectural  
13 character of the neighborhood?

14 MR. MARTINEZ: No.

15 CHAIRPERSON GRIFFIS: Has there been any  
16 comments that you are aware of from surrounding people  
17 that indicate otherwise?

18 MR. MARTINEZ: No.

19 MS. D'AMICO: There has been lots of  
20 neighborhood buzz, but so many people have come over  
21 and also said they love it.

22 CHAIRPERSON GRIFFIS: What are some of the  
23 negative comments that you have heard?

24 MS. D'AMICO: I think just that it's size  
25 was the biggest issue, which modifying the deck would

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1 eliminate that. When it was built, people said wow,  
2 that's big. A lot of people said I wish I could do  
3 that. I want to do that. We had another neighbor who  
4 went out and got a permit and did that as well. It's  
5 had a lot of positive impact in the neighborhood as  
6 well.

7 CHAIRPERSON GRIFFIS: Did what as well?

8 MS. D'AMICO: Build a deck.

9 CHAIRPERSON GRIFFIS: Oh, I see.

10 MS. D'AMICO: Built it. In other words,  
11 people think it is a great use of urban space that you  
12 can have a useable rear space and get your car  
13 underneath in a really tight alley in a neighborhood  
14 where more and more construction and apartment  
15 buildings are coming.

16 MR. MARTINEZ: I may also add that the  
17 apartment or the building being -- the renovation at  
18 1205 also, because of our -- of this construction,  
19 built a parking pad.

20 MS. D'AMICO: For their rear space.

21 MR. MARTINEZ: For their rear space  
22 because parking is becoming a bigger and bigger issue  
23 in our community.

24 CHAIRPERSON GRIFFIS: Okay. Any other  
25 questions, clarifications, Board Members? We welcome

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1 Ms. Mitten this morning. How are you?

2 COMMISSIONER MITTEN: Thank you. Fine.

3 CHAIRPERSON GRIFFIS: Okay. And,  
4 obviously, you have testified to the fact that it was  
5 a 65.8 lot occupancy, at this point, proposed with the  
6 new addition, and you are fairly certain on that one.  
7 Is that correct?

8 MS. D'AMICO: Yes.

9 MR. MARTINEZ: Yes.

10 CHAIRPERSON GRIFFIS: Okay. Did that  
11 count in the area way, in the elbow, that small area  
12 way in its calculations, that's existing?

13 MS. D'AMICO: I'm not sure what you mean  
14 by that.

15 CHAIRPERSON GRIFFIS: Who did your lot  
16 occupancy calculations?

17 MS. D'AMICO: We did.

18 MR. MARTINEZ: We did it.

19 CHAIRPERSON GRIFFIS: Interesting. Okay.  
20 Do you -- let me ask you a very quick question. Your  
21 building sets back a little bit towards the rear. You  
22 have a little walkway or a little area way, correct?

23 MR. MARTINEZ: Yes.

24 CHAIRPERSON GRIFFIS: Adjacent to the next  
25 property. That area doesn't have a building on it?

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1 MR. MARTINEZ: No.

2 CHAIRPERSON GRIFFIS: Did you --

3 MS. D'AMICO: It's counted as an open  
4 court, is it not?

5 MR. MARTINEZ: It's counted as open court,  
6 because it's less than 5 feet, so it's added into the  
7 -- am I correct?

8 CHAIRPERSON GRIFFIS: I don't know. What  
9 are you going to say?

10 MS. D'AMICO: It's counted as the open  
11 court. The lot occupancy of the court is completely  
12 added on. We basically just took --

13 CHAIRPERSON GRIFFIS: So you counted that  
14 in towards the lot occupancy?

15 MS. D'AMICO: Absolutely. As if the house  
16 -- as if the footprint of the house didn't, you need  
17 this court --

18 CHAIRPERSON GRIFFIS: Was a rectangle.

19 MS. D'AMICO: -- just took it that way.

20 CHAIRPERSON GRIFFIS: Okay. Good.

21 MS. D'AMICO: Yes.

22 CHAIRPERSON GRIFFIS: Probably could have  
23 used calculations on the last application. So that  
24 being said, I think it's very clear to me. Any other  
25 questions of the applicant at this time from Board

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1 Members? If not, let's move ahead then and go to  
2 Government reports. The Office of Planning is here to  
3 present their report. Good morning.

4 MR. MORDFIN: Good morning, Chairman, and  
5 Members of the Board. My name is Stephen Mordfin with  
6 the Office of Planning. This application is to  
7 increase the lot occupancy to 65.8 percent, reduce the  
8 area of the closed court to 88.65 feet and 4.5 feet  
9 and would reduce the rear yard to 8.6 feet per section  
10 223 of the Zoning Regulations for a flat within the R-  
11 4 District.

12 The Office of Planning recommends approval  
13 of the application, because a flat is a permitted use  
14 within the R-4 District and the proposal is not in  
15 conformance with the lot occupancy rear yard and court  
16 dimensions and because light and air will be -- will  
17 not be unduly affected, because the deck is an open  
18 structure and will be set back off the alley and  
19 adjoining properties. Three, because privacy and use  
20 and enjoyment will not be unduly compromised, because  
21 the deck will not interfere with or provide access to  
22 windows of other properties, and is not elevated in  
23 such a manner so as to interfere with the use of  
24 adjoining rear yards.

25 Four, the deck will not be visible from --

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1 will be visible from the alley only and will not  
2 substantially intrude upon the character, scale and  
3 pattern of houses, because it is similar to other  
4 building additions along the alley. Five, because the  
5 proposed lot occupancy is 65.8 percent less than the  
6 maximum 70 percent permitted. Lastly, the Office of  
7 Planning recommends that the area beneath the deck,  
8 not being close with walls or a garage to prevent the  
9 appearance of additional bulk within the rear yard.

10 Therefore, the Office of Planning  
11 recommends that the application be approved subject to  
12 the condition that the area beneath the deck remains  
13 open and is not enclosed with walls and/or a garage  
14 door. And that concludes the presentation of the  
15 Office of Planning.

16 CHAIRPERSON GRIFFIS: Good. Thank you  
17 very much. Why wouldn't you enclose the area below?

18 MR. MORDFIN: I'm sorry, why wouldn't --  
19 would we recommend that the area below not be  
20 enclosed?

21 CHAIRPERSON GRIFFIS: Yes, yes.

22 MR. MORDFIN: So as to not create  
23 additional bulk, the appearance of additional bulk  
24 within the alley, to create a more open area within  
25 the alley, because then as that area becomes enclosed,

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1 it makes it appear more tight within the alley.

2 CHAIRPERSON GRIFFIS: I see. But that  
3 would preclude them from putting up any sort of visual  
4 barrier from the grade level on the rear of the  
5 property. Is that correct?

6 MR. MORDFIN: Yes.

7 CHAIRPERSON GRIFFIS: Okay. I guess they  
8 would put the onus on the adjacent neighbors if they  
9 wanted to sunbathe back there in privacy. They could  
10 put a solid fence up. Is that correct?

11 MR. MORDFIN: Well, a solid -- I think a  
12 solid fence is -- yes, then the neighbors could put up  
13 a solid fence if they were so permitted. But this is  
14 more than just a fence. This is part of a deck and an  
15 enclosed area below it which is used for parking, and  
16 I think that contributes a different feel to the alley  
17 than a fence.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. MORDFIN: Running along the alley.

20 CHAIRPERSON GRIFFIS: I see. Okay. Other  
21 questions from the Board? Ms. Miller?

22 VICE CHAIR MILLER: Do other neighbors  
23 have their parking pad enclosed in that alley?

24 MR. MORDFIN: Not in that alley. Within  
25 the square there are garages, but within that alley

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1 behind Clifton Street, I don't recall any other  
2 garages that are enclosed.

3 VICE CHAIR MILLER: Because we have had a  
4 lot of cases with people wanting to enclose their  
5 parking for security reasons, and so is that a concern  
6 in this neighborhood?

7 MR. MORDFIN: The application did not  
8 indicate that security was a concern as a reason for  
9 enclosing the parking.

10 VICE CHAIR MILLER: But you think it's  
11 important to put on a condition that it not be  
12 enclosed, because it would be out of character with  
13 the neighborhood and make it too bulky?

14 MR. MORDFIN: Yes.

15 VICE CHAIR MILLER: Okay. With respect to  
16 the calculations for lot occupancy, do you check their  
17 calculations in any way or just rely on them?

18 MR. MORDFIN: We relied. We rely on the  
19 application. I did not recalculate their numbers.

20 VICE CHAIR MILLER: And do you have  
21 confidence in their numbers?

22 MR. MORDFIN: I assume that their  
23 application, that what they applied for was what they  
24 actually needed.

25 VICE CHAIR MILLER: Okay. Thank you.

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1 CHAIRPERSON GRIFFIS: Any other questions  
2 of the Office of Planning from the Board? Does the  
3 applicant have any cross examination of the Office of  
4 Planning?

5 MS. D'AMICO: I just have one quick  
6 question with regard to exactly what type of wall or  
7 any type of wall do you mean? Would that decision  
8 preclude even an open or lattice type fence? When you  
9 say enclosure, does that include that sort of fence as  
10 well?

11 MR. MORDFIN: No, because an open or a  
12 lattice, that's similar to what is running across the  
13 top of the deck, because otherwise you would not have  
14 any type of railing at the edge of the deck to prevent  
15 anyone from going over the edge.

16 MS. D'AMICO: So what you're saying really  
17 is just a solid wall.

18 MR. MORDFIN: A solid wall.

19 MS. D'AMICO: Okay. Thank you.

20 MR. MORDFIN: Yes.

21 CHAIRPERSON GRIFFIS: But you're also  
22 asking a condition of not allowing a garage door to be  
23 put on.

24 MR. MORDFIN: Correct. But the garage  
25 door is also at the ground level.

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1 CHAIRPERSON GRIFFIS: Right.

2 MR. MORDFIN: And that is solid. It's not  
3 a lattice, a garage door is not lattice or see-  
4 through. A garage door is a solid door.

5 CHAIRPERSON GRIFFIS: Okay. All right.  
6 There it is. Ms. Miller?

7 VICE CHAIR MILLER: I just want to  
8 understand. Would that preclude the roll-down door  
9 for the garage?

10 MR. MORDFIN: A garage roll-down? Yes.

11 VICE CHAIR MILLER: Okay. Not just a  
12 permanent door, but a roll-down as well?

13 MR. MORDFIN: I think that a roll-down  
14 door is a permanent door on a garage. A garage door  
15 is meant to be opened and closed.

16 VICE CHAIR MILLER: Okay.

17 CHAIRPERSON GRIFFIS: Does the ANC have  
18 any cross examination of the Office of Planning?

19 MR. SPALDING: No, we don't.

20 CHAIRPERSON GRIFFIS: Very well. I don't  
21 have any other Government reports attendant to this  
22 application, unless others are aware of any, that  
23 would mean we can move speedily on to the ANC Member  
24 for the presentation of their case.

25 MR. SPALDING: Phil Spalding. I'm

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1 representing ANC-1B and you have our letter which  
2 reflects our consideration of this application at our  
3 August meeting. We did vote unanimously 8-0 to  
4 support this application, and I was designated to  
5 appear before the Board on this.

6 The Commission has appeared before the  
7 Board on the previous application and we supported  
8 that application as well. We see no difficulty with  
9 the redesigned deck and Mr. Martinez appeared before  
10 the Commission with support letters from community  
11 members and neighbors. And we will stand by the  
12 letter we have submitted to you.

13 CHAIRPERSON GRIFFIS: Good. Thank you  
14 very much. Was Mr. Stofferson at the ANC?

15 MR. SPALDING: No, he wasn't.

16 CHAIRPERSON GRIFFIS: Have you talked to  
17 or has any member talked to him?

18 MR. SPALDING: No, we have not received  
19 any commentary from Mr. Stofferson. I was here at the  
20 last hearing where Mr. Ewers and Mr. Stofferson were  
21 here.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. SPALDING: And participated, but there  
24 was no participation on their part. We are going  
25 through regular notification using the methods the

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1 OANC suggests, but they haven't appeared at any of our  
2 meetings.

3 CHAIRPERSON GRIFFIS: Okay. All right.  
4 That's just a point of clarification for me. Ms.  
5 Miller, questions?

6 VICE CHAIR MILLER: Were OP's conditions  
7 discussed at the ANC meeting?

8 MR. SPALDING: No, they weren't. We  
9 didn't have the Office of Planning's report at that  
10 point. I do think it's an interesting set of  
11 clarifications whether you can have an open fence or a  
12 closed wall there, but no, that wasn't a consideration  
13 at the ANC meeting.

14 VICE CHAIR MILLER: Okay. Thanks.

15 CHAIRPERSON GRIFFIS: Anything else? Any  
16 questions? Applicant have any cross examination of  
17 the ANC?

18 MR. MARTINEZ: No.

19 CHAIRPERSON GRIFFIS: Very well. Let's  
20 move ahead then and I would ask for anyone here  
21 attendant to Application No. 17208, either in support  
22 or in opposition, to come forward, at this time, to  
23 provide testimony. Not noting any indication of  
24 persons here to give testimony, I think we can move  
25 on. Mr. Martinez, any closing remarks that you might

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1 have?

2 MR. MARTINEZ: No. No, we don't have any  
3 closing remarks.

4 CHAIRPERSON GRIFFIS: Did you have any  
5 comment on the condition that the Office of Planning  
6 is requesting?

7 MR. MARTINEZ: I was -- initially, I was  
8 kind of a little bit confused, but I spoke with Mr.  
9 Mordfin and he explained exactly what it was. But I  
10 wouldn't enclose it, because it would make it much  
11 more difficult to get the car in the back.

12 CHAIRPERSON GRIFFIS: I see.

13 MR. MARTINEZ: So I wouldn't -- that's the  
14 whole reason it's open right now.

15 CHAIRPERSON GRIFFIS: Right.

16 MR. MARTINEZ: Is because the car can get  
17 in and out really easy.

18 CHAIRPERSON GRIFFIS: Okay. Good.  
19 Anything else then, Board Members? Any other  
20 comments? With the application before us, I think,  
21 it's appropriate to move ahead today on this, and I  
22 would move approval of Application No. 17208 of Mr.  
23 Martinez. This occurs under section 223 as the  
24 property is not meeting the lot occupancy of the rear  
25 yard of the court area requirements of 1207 Clifton

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1 Street, N.W., and I would ask for a second.

2 BOARD MEMBER ETHERLY: Second.

3 CHAIRPERSON GRIFFIS: Thank you, Mr.  
4 Etherly. Clearly, I believe that 223 has been met by  
5 the testimony today and also the submissions as it  
6 relates to whether it would tend to adversely or  
7 unduly impair light and privacy use of the adjoining  
8 neighbors. I think the 9 foot projection of the deck  
9 off to the first floor level clearly does not tend to  
10 move into the direction of having adverse impact to  
11 the adjoining. I think it has also been stated in the  
12 record and it shows fully how the special exception  
13 has been met. I'll open it up for any other  
14 deliberations, at this time, if there are comments.

15 VICE CHAIR MILLER: I just have a comment  
16 with respect to the condition --

17 CHAIRPERSON GRIFFIS: Oh, I forgot about  
18 that.

19 VICE CHAIR MILLER: -- of the Office of  
20 Planning that the area beneath the deck remains open  
21 and is not enclosed with walls and/or a garage door.  
22 Based on the discussion this morning, I'm wondering if  
23 we might just amend it to say not enclosed with solid  
24 walls and/or a garage door to give room for the  
25 lattice type of fencing or whatever that was

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1 discussed?

2 CHAIRPERSON GRIFFIS: Excellent. I would  
3 accept that amendment to the motion. Any opposition  
4 to doing so? If not, then is there anything else?  
5 Deliberation on the motion? The motion has been  
6 amended. It has been seconded. I would ask for all  
7 those in favor to signify by saying aye.

8 ALL: Aye.

9 CHAIRPERSON GRIFFIS: And opposed?  
10 Abstaining? Very well. Good luck, Mr. Martinez.  
11 Take that old deck down soon.

12 MS. D'AMICO: Can we ask one question  
13 regarding --

14 CHAIRPERSON GRIFFIS: Turn your microphone  
15 on, please.

16 MS. D'AMICO: -- regarding the order and  
17 the permit situation? It's my understanding that we  
18 can't actually go for a permit until we receive the  
19 written order. Is that correct?

20 CHAIRPERSON GRIFFIS: That's correct. Our  
21 official action is the issuance of an order.

22 MS. D'AMICO: Okay. So would the Board  
23 recommend that we can sort of take the minutes from  
24 this meeting today to DCRA?

25 CHAIRPERSON GRIFFIS: Nope. It will be of

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1 no use to you.

2 MS. D'AMICO: Okay. Just wait?

3 CHAIRPERSON GRIFFIS: However, Board  
4 Members, is there any objection to issuing a summary  
5 order in this case?

6 VICE CHAIR MILLER: No objection.

7 CHAIRPERSON GRIFFIS: Okay. Very well. I  
8 suggest that we issue a summary order. What you can  
9 do is step next door and get a brief indication of  
10 when that might be issued.

11 MS. D'AMICO: Okay.

12 MR. MARTINEZ: Okay.

13 CHAIRPERSON GRIFFIS: And then don't  
14 pester them, but they are very fast in getting them  
15 out, and I think they will probably give you an idea  
16 of when you are going to have that in hand.

17 MR. MARTINEZ: Thank you.

18 MS. D'AMICO: Thank you very much.

19 CHAIRPERSON GRIFFIS: Good. Anything  
20 else? Very well. Let's go to the next case then.

21 MS. BAILEY: Application No. 17207 of 1515  
22 14<sup>th</sup> Street LLC, pursuant to 11 DCMR 3104.1, for a  
23 special exception to allow a roof structure not  
24 meeting the setback requirements under section 411,  
25 and pursuant to 11 DCMR 3103.2, a variance from the

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1 roof structure height requirements under section 1902,  
2 and a variance from the residential recreation space  
3 requirements under section 773, to construct a mixed-  
4 use development containing art galleries, retail and  
5 apartment units in the Arts/C-3-A District at premises  
6 1515 14<sup>th</sup> Street, N.W., Square 241, Lots 114, 115, 116  
7 and 841.

8 CHAIRPERSON GRIFFIS: Good. Thank you  
9 very much. Let's jump right into this.

10 MR. GLASGOW: Thank you. Mr. Chairman,  
11 Members of the Board, good morning. For the record,  
12 my name is Norman M. Glasgow, Jr. of the Law Firm of  
13 Holland and Knight. Here with me today are Mr.  
14 Giorgio Furioso, to my immediate right. He is on  
15 behalf of the applicant and is the owner of the site.

16 Next is Ms. Suman Sorg, who is now coming to the  
17 table. She and Greg Bordinowski are here on behalf of  
18 Sorg Associates, the architects in the case. And  
19 seated to the far end of the table is Mr. Steven Sher  
20 of Holland and Knight who will be an expert land  
21 planning witness.

22 I believe that Ms. Sorg has been accepted  
23 as an expert witness by this Board before. I know she  
24 has testified many times before this body and she is  
25 also offered as an expert witness in architecture.

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1 CHAIRPERSON GRIFFIS: Very well. Did you  
2 submit resumes?

3 MR. GLASGOW: We can submit a resume.

4 CHAIRPERSON GRIFFIS: Let's just have that  
5 for the record in this.

6 MR. GLASGOW: Okay.

7 CHAIRPERSON GRIFFIS: Board Members, any  
8 questions of Ms. Sorg, at this time? Very well. I  
9 would see no reason not to establish Ms. Sorg as an  
10 expert in architecture based on the obvious experience  
11 and authority. Let's move ahead.

12 MR. GLASGOW: Fine. Thank you. If there  
13 are no preliminary questions, I would like to proceed  
14 with a brief opening statement and then with the  
15 testimony of the witnesses.

16 CHAIRPERSON GRIFFIS: Actually, one  
17 preliminary question. Of course, we have a note that  
18 the lots will be combined prior to construction. You  
19 are obviously aware of that. Is that correct?

20 MR. GLASGOW: Yes, that is correct.

21 CHAIRPERSON GRIFFIS: And that's in  
22 process?

23 MR. GLASGOW: Yes, a subdivision.

24 CHAIRPERSON GRIFFIS: Okay.

25 MR. GLASGOW: Yes.

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1 CHAIRPERSON GRIFFIS: Good.

2 MR. GLASGOW: All right. The applicant is  
3 requesting a variance from the roof structure height  
4 requirements, a variance from the 15 percent  
5 residential recreation space requirement, a special  
6 exception from the roof structure setbacks and a  
7 special exception for rear yard setback in the Arts/C-  
8 3-A District for the property of 1515 14<sup>th</sup> Street, N.W.  
9 The last area of relief was one added by the Office  
10 of Planning as set forth in its report.

11 I understand that the Members of the Board  
12 have a copy of the applicant's statement which was  
13 submitted prior to the hearing. Also, I understand  
14 that a copy of the Office of Planning's report and the  
15 ANC report, both in support of the application, are  
16 part of the record.

17 CHAIRPERSON GRIFFIS: Absolutely so.

18 MR. GLASGOW: Okay. Thank you. We note  
19 that the ANC unanimously has voted to support this  
20 project. The applicant is unaware of any opposition  
21 to this mixed-use, principally residential project,  
22 located within the Arts Overlay. From a technical  
23 standpoint, as will be explained by the applicant's  
24 statement and the report of the Office of Planning,  
25 the subject site is affected by several unique and

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1 exceptional situations or conditions stemming from  
2 retention of the historic building on the site which  
3 occupies the southern portion.

4 I think it is shown there in the drawings  
5 as outlined by Mr. Bordynowski. This significantly  
6 impacts the placement of the new building's core and  
7 the ability to provide residential recreation space.  
8 The site plan shows significant setbacks which deal  
9 with the historic structure. In addition, the  
10 provision of residential recreation space on the roof  
11 requires a variance from the provisions of section  
12 1902 as the height of the roof structure exceeds 83  
13 feet 6 inches.

14 I think we have had that several times in  
15 the Arts Overlay District where, in effect, you have a  
16 conflict between the 83 foot 6 inch height requirement  
17 and putting residential recreation space on the roof.

18 As will be explained, it's not possible to do both at  
19 the same time. And that's partly an ADA requirement  
20 to get access to the roof and also there is OSHA  
21 requirements that impact that.

22 The standards for the rear yard special  
23 exception are complied with as will be discussed by  
24 the testimony of the witnesses and explained on pages  
25 5 and 6 of the Office of Planning report. It is

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1 noteworthy in this regard that the rear yard waiver is  
2 minimal. For the upper portions of the building, the  
3 rear yard waiver is only 3.5 feet at two points. If  
4 you could point that out, Mr. Bordynowski? Thank you.

5 And otherwise it is two points from the main face of  
6 the wall.

7 The separation between the rear wall of  
8 the applicant's proposed building and the rear of the  
9 buildings to the east, which front on Kingman Place,  
10 is approximately 75 feet, which is more than the width  
11 of Kingman Place itself, which is 60 feet in width.  
12 And there is a section that shows that relationship.  
13 If there are no further questions, I would like to  
14 proceed with the testimony of the witnesses. The  
15 first witness is Mr. Giorgio Furioso.

16 CHAIRPERSON GRIFFIS: Any questions from  
17 the Board? Let's proceed.

18 MR. GLASGOW: Okay. Mr. Furioso, would  
19 you, please, identify yourself for the record and  
20 proceed with your testimony?

21 MR. FURIOSO: Good morning. My name is  
22 Giorgio Furioso. I live at 1612 16<sup>th</sup> Street, which is  
23 about two blocks actually from this site. I'm going  
24 to give you just a small brief overlay -- overview,  
25 rather, of what I wanted to do on this project and try

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1 to keep the more expert witnesses to the details of  
2 the reason why we're here.

3 I bought this 1515 Street building with  
4 this lot about some -- almost a year and a half ago,  
5 in which I wanted to bring arts to the arts corridor  
6 of 14<sup>th</sup> Street, which has been an arts corridor for a  
7 long time, and I have essentially a lifelong sort of  
8 past in the arts, and so the idea was to take the  
9 historic building and keep it as much in tact as  
10 possible. It used to be the Hudson Car Dealership,  
11 that was its original intent when it was built.

12 So what you have now is mostly art  
13 galleries on the second and third floor and they are  
14 struggling to find the right retailer on the first  
15 floor. We thought we would do all art galleries, but  
16 the cost is really prohibited in terms of purchasing  
17 the building for the building above and other expenses  
18 in restoring the building, rather than renovating the  
19 building. We decided to restore it, rather than just  
20 renovate it. In terms of both, all the windows and  
21 the plaster work on the first floor.

22 The building is challenging and certainly  
23 difficult to do in terms of both from its  
24 architectural, as you can see rendering, and also from  
25 its site restriction. One of the things I had asked

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1 Suman when we talked about doing this building is that  
2 I wanted to do something that was as artistic as the  
3 neighborhood. In other words, that I wanted to bring  
4 somebody to the neighborhood other than fresh fields.

5 And in that, I wanted to be as respectful  
6 as possible of the historic building. That's why we  
7 sat the building some 40 feet back before we actually  
8 came up behind it. This is 14<sup>th</sup> Street which is 110  
9 feet wide and we never thought we would have to  
10 actually set back the seventh floor, which really  
11 brings us to the first problem of the recreational  
12 space. When we originally designed the building, we  
13 were seven floors up front and that roof area would  
14 have given us the, essentially, almost 15 percent. We  
15 are somewhere at 10 something percent already. But at  
16 over 15 percent in terms of private recreational  
17 space.

18 The setback also on the old building made  
19 it difficult as well, in terms of the roof structure.

20 We're no where near our FAR, so we're below our FAR  
21 potential. I think no one on the block actually  
22 achieved it, but I thought we were going to when I  
23 bought the property. And then the elevator issue,  
24 essentially, is that looking at the layout in order  
25 for us to provide as much parking for the neighborhood

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1 as possible for these condos, I know it's self-serving  
2 because you really want to have parking in your condo.

3 You want to have that as a way of selling the unit,  
4 but it is, quite frankly, if you look at all of the  
5 other projects on our block, none of them are doing  
6 what we are doing.

7 Essentially, they are parking in the back.

8 It's a very easy way to construct parking and very  
9 less costly than what we are doing. We're putting a  
10 car elevator which brings you downstairs and then  
11 allows you to have over 32, I think it's 32 or 34, I  
12 don't remember, parking spaces for the 30 units, the  
13 condo units. That's a pretty hefty cost for us to do.

14 And one of the things we looked at is how we could do  
15 that car elevator, the two stairways and all of that  
16 and still maintain a reasonable core for that parking,  
17 and it just didn't work.

18 So we ended up with the elevator on the  
19 north side of the building. And then, you know, as  
20 Chip said, you know, getting to the roof sort of  
21 brought us beyond the setback. If we looked at the  
22 elevator in another position, it actually was going to  
23 be more unsightly. In fact, it being on the north  
24 side tends to have it the least visible, because there  
25 is a 16 foot little building between us and the next

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1 development. If you put it any place else, you're  
2 almost never going to see that elevator penthouse,  
3 because of the tight sight of that little 16 foot  
4 space.

5 Other than that, you know, we are  
6 challenged here to try to even build this building and  
7 hopefully we can be successful in the relief that we  
8 are asking for. Thank you.

9 CHAIRPERSON GRIFFIS: Good. Thank you  
10 very much. Has there been discussion with the  
11 adjacent neighbor?

12 MR. FURIOSO: About?

13 CHAIRPERSON GRIFFIS: About your project?

14 MR. FURIOSO: Yes, we tried to have many  
15 conversations with our adjacent neighbor. I'm not  
16 here to say that they are operating totally in the up  
17 and up, but it's a challenge when somebody doesn't  
18 respect all of the other guidelines of retail, living,  
19 residential, parking. We have tried to have  
20 conversations with them, but in terms of them having  
21 any issues with us, they haven't had any issues with  
22 us.

23 CHAIRPERSON GRIFFIS: They don't have any  
24 filings in this record?

25 MR. FURIOSO: No, no.

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1 CHAIRPERSON GRIFFIS: Okay. A couple of  
2 quick questions. I think we'll get through the --  
3 well, let's get through the whole panel and then we'll  
4 take questions.

5 MR. FURIOSO: Okay.

6 MS. SORG: Good morning, Board Members,  
7 I'm Suman Sorg of Sorg and Associates. I'm going to  
8 let Greg Bordynowski from my office really talk about  
9 the details of the exact dimensions and exceptions,  
10 but I just want to say that from a design standpoint,  
11 we were -- I was really challenged by Giorgio to come  
12 up with something interesting, which took the HPRB by  
13 surprise, needless to say, and it took some time to  
14 get them on board. They are very excited about the  
15 project.

16 From a design standpoint, one of the  
17 earliest things we thought of was, and this was really  
18 Giorgio's inspiration, that we not impact the existing  
19 historic building by pulling the building, the new  
20 building that will straddle the historic building  
21 forward, which has been done in the neighborhood quite  
22 a bit all along the street. We voluntarily pushed  
23 this building 40 feet back from the street facade,  
24 which is part of the constraint now on the building.

25 The other thing is that it's a sculpture-

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1 based design based on cubist architecture of the time  
2 when the other building -- cubist painting of the  
3 time. We're doing cubist architecture. Cubist  
4 painting of the time which, you know, depends on form  
5 quite a bit and we didn't want things like elevator  
6 penthouses and other things to impact that too much.

7 CHAIRPERSON GRIFFIS: What was the  
8 painting?

9 MR. FURIOSO: There were several of them.  
10 Mostly of Brock and Picasso of the time.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. FURIOSO: That this building would  
13 have been built at.

14 CHAIRPERSON GRIFFIS: What else do we need  
15 to know?

16 MR. BORDYNOWSKI: Hi, Member of the Board.  
17 My name is Greg Bordynowski. I'm a project manager  
18 for this job. I want to talk about the specifics of  
19 the building and the zoning relief we are requesting.  
20 The first part of relief is for the residential  
21 recreation space, which is, you know, with a small  
22 site like this the only place we can get it is on the  
23 roof, and by setting the building back so far from the  
24 existing building, that limited somewhat our ability  
25 to capture that space.

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1           The second thing was when HPRB decided  
2 that the building needed to be set back slightly in  
3 the front, that's the upper portion of the upper left  
4 hand corner of the drawing here, in order to get the  
5 height more down and in keeping with the rest of the  
6 block. That limited the available area further for  
7 residential recreation space, because it would have  
8 required us to have another area with two means of  
9 egress and two means of access through an existing  
10 apartment which was completely untenable.

11           The third thing that impacted our ability  
12 to get 15 percent on the roof is that we are backed up  
13 against an R-5-B Zone, which forces the building back  
14 at the rear. As you can see, the building is required  
15 to be set back from the back part of the building and  
16 that further limited our ability to achieve the 15  
17 percent. I would like to say that we did achieve 11  
18 percent of public recreation space and have provided  
19 about 15 percent including all of the private  
20 terraces, private gardens for the apartments in the  
21 building. So in terms of, I think, meeting the intent  
22 of the law, I think we have done as best as we can,  
23 given the other laws that are constraining us.

24           The second thing I would like to talk  
25 about is the positioning of the elevator which was

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1 carefully considered. The positioning on the north  
2 side of the building, essentially, keeps it out of the  
3 drive. I don't know if you can see this down on the  
4 floor here. There is the --

5 CHAIRPERSON GRIFFIS: No, we can't.

6 MR. BORDYNOWSKI: No. The parking garage  
7 is -- the building is only 58 feet wide, the site, and  
8 in order to get a parking garage, the only place to  
9 put a drive isle would be in the center, which you can  
10 see here. That forces the elevator either to one side  
11 or the other. If we had put the elevator on the south  
12 side of the lot as opposed to where we have it, it  
13 would show up right here, which would, essentially,  
14 put it in the setback, which would make it extremely  
15 visible from 14<sup>th</sup> Street, because the existing historic  
16 building is about another 58 feet wide and I think  
17 that would have been an eye sore. So therefore, we  
18 put the elevator core where it is now.

19 The second thing that was problematic was  
20 meeting the height requirements for the elevator.  
21 Now, the elevator is only there to meet ADA, because  
22 it's a public space, you have to have an elevator  
23 servicing it, otherwise, it doesn't meet that  
24 requirement. We looked at great expense at an  
25 elevator that does not have access from -- doesn't

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1 have the machinery overhead. It has side mounted  
2 machinery in order to limit the height and Giorgio was  
3 amenable to that idea.

4 However, we discovered that later that the  
5 OSHA requirements cause you to have three more feet  
6 above the elevator regardless of where it is, so that  
7 if a workman is up there, he won't be crushed by the  
8 elevator rising. So the height is, essentially,  
9 driven by these three things.

10 CHAIRPERSON GRIFFIS: So what's the total  
11 height of the enclosure for the elevator?

12 MR. BORDYNOWSKI: I don't remember off the  
13 top of my head.

14 CHAIRPERSON GRIFFIS: All right. We'll  
15 get it. Just so we know you're clearly not going  
16 18.6, but you're going --

17 MR. BORDYNOWSKI: No, no.

18 CHAIRPERSON GRIFFIS: Plus three.

19 MR. BORDYNOWSKI: No, it's about 6 feet  
20 above what the 83.6, so that would make it 89.6.

21 CHAIRPERSON GRIFFIS: Yes. The total  
22 structure itself?

23 MR. GLASGOW: It's 75 foot height, so  
24 we're at 89.6 over the 75, so that would be 14.6.

25 MR. BORDYNOWSKI: 14.6.

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1 CHAIRPERSON GRIFFIS: 14.6 is your  
2 enclosure. Okay.

3 MR. BORDYNOWSKI: And actually, we set  
4 that as close to the center of the building, so it  
5 would have as little impact on the 14<sup>th</sup> Street, first  
6 of all, and second of all on the property's behind.

7 CHAIRPERSON GRIFFIS: Are you still doing  
8 a side mount or no? You're doing a conventional?

9 MR. BORDYNOWSKI: We're still doing, I  
10 think, it's an Eco-Space Elevator.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. BORDYNOWSKI: Is what we're looking at  
13 right now. If Giorgio can afford to build it, I hope  
14 so. I don't think it will -- it won't change the  
15 height of this thing regardless.

16 CHAIRPERSON GRIFFIS: Sure. I understand  
17 that.

18 MR. BORDYNOWSKI: Yes.

19 CHAIRPERSON GRIFFIS: I was just more  
20 interested. Okay.

21 MR. BORDYNOWSKI: Yes, in the end it was a  
22 goal to try and keep everything as low as possible.

23 CHAIRPERSON GRIFFIS: Right.

24 MR. BORDYNOWSKI: The next thing I would  
25 like to talk about is the rear yard special exceptions

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1 and essentially what we are looking for is a small  
2 increase in the rear yard in order to actually get the  
3 apartments to fit in this project. We feel that we  
4 meet the requirements for impact on light and air,  
5 because the building is fairly minimal, as you can  
6 see, from the distance to the nearest building's  
7 behind. The building actually steps three times in  
8 its bulk in the back. Once at the second floor, again  
9 at the sixth floor, making the seventh floor setback  
10 actually quite a bit.

11 Most of the building is setback quite far.

12 It's only this point here and this point here which  
13 project out about 18 inches beyond this, which is the  
14 main face of the building here. You can see. And  
15 then from there above, we, essentially, have this  
16 whole part sitting back and following the 45 degree  
17 slope required by the R-5-B Zone.

18 MS. SORG: One thing I might add about the  
19 two points that are protruding is that we wanted the  
20 design as it happens in the front to somewhat be in  
21 the back, so you don't have just a facade design, so  
22 that's why we need a little more play in the back.

23 MR. BORDYNOWSKI: Giorgio was particularly  
24 concerned that we not do a one building in the front  
25 and then another building in the back, as he said, and

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1 actually that was one of his charges.

2 CHAIRPERSON GRIFFIS: And I see new stucco  
3 in the back. Right. Okay. What is the material on  
4 the front elevation outside of the glass?

5 MR. BORDYNOWSKI: The front elevation here  
6 you can see is limestone here on this mass, and then  
7 the rest of it, essentially, an alternating pattern of  
8 glass and metal panel. So you have glass here and  
9 then metal panel and then glass and metal panel.

10 MS. SORG: The panels we are considering  
11 are either stainless or titanium.

12 MR. BORDYNOWSKI: Sandblasted titanium.

13 CHAIRPERSON GRIFFIS: Right, right, right.

14 MR. FURIOSO: Stuff you can buy off the  
15 shelf.

16 CHAIRPERSON GRIFFIS: Exactly. Check the  
17 reflectivity of that stuff, so the neighbors don't  
18 complain. What was that building that -- well, that's  
19 a digression. Okay. Let's move ahead. Anything  
20 else?

21 MR. BORDYNOWSKI: No, I think that's all.

22 CHAIRPERSON GRIFFIS: Oh, wait. The image  
23 that you just put up, that's interesting. That's the  
24 rear, is that correct?

25 MR. FURIOSO: Yes.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. BORDYNOWSKI: Oh, yes, that's correct.

3 CHAIRPERSON GRIFFIS: And it sets back  
4 underneath at the first four levels, three levels?

5 MR. BORDYNOWSKI: Yes.

6 CHAIRPERSON GRIFFIS: How come I didn't  
7 see that? Oh, I see. That's behind the existing  
8 building.

9 MR. FURIOSO: Right.

10 CHAIRPERSON GRIFFIS: Understood. Okay.  
11 Good. Go ahead.

12 MR. SHER: Mr. Chairman, Members of the  
13 Board, for the record, my name is Steven E. Sher, the  
14 Director for Zoning and Land Use Services with the Law  
15 Firm of Holland and Knight. I think you've pretty  
16 much had the case succinctly summarized by both Mr.  
17 Furioso and the architects, so I'm not sure that I  
18 have a whole lot to add beyond that which is already  
19 in the outline, which is part of your package.

20 You know, what you have is, essentially, a  
21 design driven by the retention of the existing three  
22 story contributing building, which then has the new  
23 building wrapping around it in somewhat of an L shape.

24 As Mr. Bordynowski indicated, you can either put the  
25 roof structure in the middle on the south or on the

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1 north. If you put it in the middle, it's disruptive  
2 to both garage floor plate below and the roof floor  
3 plate above, so you are then forced to put it on  
4 either one side or the other requiring relief from the  
5 Board on the setback requirement.

6 From the visual site lines and other  
7 things, it seems like the most appropriate place to  
8 put it is on the north side of the property and that's  
9 what the design before you shows. As indicated in  
10 order to get the elevated service to the roof, you  
11 need the additional height in order to be able to use  
12 that roof for residential recreation space. As  
13 indicated earlier, there are other terraces at other  
14 levels, but they are accessible to the individual  
15 units, which face those terraces, and not to the  
16 residents of the building as a whole.

17 If you took all the outdoor space  
18 together, you would be at slightly over 15 percent,  
19 but when you count only that which is on the main  
20 roof, which is accessible to everybody, we're at less  
21 than that and that is what requires the relief there.

22 And then the setback on the rear yard, the basic  
23 issue there is the separation between windows facing  
24 each other. And as indicated, the windows that are in  
25 the houses which face Kingman Place to the east are in

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1 excess of 70 feet. There is some variation in the  
2 rear setbacks of those houses from the wall of this  
3 building to the walls of those houses.

4 Again, as Mr. Bordynowski indicated,  
5 you've got the setbacks at various levels as the  
6 building goes higher. You have an additional rear  
7 yard setback requirement imposed by the Arts Overlay,  
8 which is not what is in the underlying C-3-A District,  
9 which occasions that setback at the higher levels. So  
10 that's the basis for the relief that we're seeking. I  
11 think we have adequately documented that and I believe  
12 have met the tests for the Board to grant that relief.

13 CHAIRPERSON GRIFFIS: Fine. Excellent.  
14 Thank you very much. And we do have the outline  
15 which, as has been said before, is very assisting in  
16 reviewing the application. Anything else? Mr.  
17 Glasgow?

18 MR. GLASGOW: No, sir, this completes the  
19 applicant's direct presentation.

20 CHAIRPERSON GRIFFIS: Okay. Let's go to  
21 Board questions then. First of all, a couple of  
22 technical questions. The elevator that services the  
23 parking, it actually is going to move horizontally?  
24 Does it go down a rail? I know it will move  
25 vertically.

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1 MR. FURIOSO: It's not like the Miner's  
2 Building, which is where this came from. I was a  
3 partner with Summit.

4 CHAIRPERSON GRIFFIS: Right.

5 MR. FURIOSO: At the Roosevelt and they  
6 were the first ones to do a totally automated parking  
7 and I waited to see how successful that was, and so  
8 we're just doing an elevator. I think that's  
9 challenging enough.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. FURIOSO: Because when the elevator is  
12 out of service, people can't get their cars out.

13 CHAIRPERSON GRIFFIS: Right. Can't get  
14 their cars out, which is difficult. It's more  
15 technical really, I'm not going to spend a lot of time  
16 to it, but the footprint on the Parking Floor Plan is  
17 set away from the property line and the auto elevator  
18 room is below it. So it seems like it would have to  
19 shift at some point or is it that that just goes into  
20 vault space underneath?

21 MR. FURIOSO: No, the vault space you are  
22 looking at is actually the front of the building. The  
23 back of the building we are within our setback  
24 requirements on the 20 feet setback.

25 CHAIRPERSON GRIFFIS: Oh, yes.

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1 MR. FURIOSO: I think there's a  
2 calculation in the middle of the alley and you go back  
3 a certain amount of feet. We're not asking for any  
4 relief there, I don't believe.

5 CHAIRPERSON GRIFFIS: No, I know you're  
6 not asking. Okay. I figured it out. Not to worry.

7 MR. FURIOSO: The vault is the front to  
8 try to capture another few more parking spaces.  
9 Though that is still up to, I believe, the -- when you  
10 go for a permit.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. FURIOSO: Whether they allow you to do  
13 that.

14 CHAIRPERSON GRIFFIS: It's not part of our  
15 review.

16 MR. FURIOSO: Right.

17 CHAIRPERSON GRIFFIS: At this point.

18 MR. FURIOSO: Right.

19 CHAIRPERSON GRIFFIS: No, I was just  
20 seeing how it aligned, which it does make sense, if  
21 that goes on underneath. Okay. Let me ask anyone  
22 that could, perhaps the architect or whoever else on  
23 the team, Mr. Furioso, we have had applications along  
24 14<sup>th</sup> Street, which probably won't surprise you, and, in  
25 fact, probably almost every one won on this side of

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1 14<sup>th</sup> Street, also of which we had opposition. The  
2 opposition was for the setback of the penthouse and  
3 the massing of the building. Why does this not have  
4 opposition?

5 MR. FURIOSO: My name, no.

6 CHAIRPERSON GRIFFIS: Yes.

7 MR. FURIOSO: It just puts the fear of  
8 God, no. I guess, you know, as a developer, I've been  
9 living in the community for some 20 years. I do one  
10 project at a time. I take great care. It's a very  
11 European kind of standard. It's not about how much  
12 money, but, you know, these buildings are going to be  
13 here a very, very long time.

14 CHAIRPERSON GRIFFIS: So if I understand  
15 your opinion, your opinion is that --

16 MR. FURIOSO: That the neighbors  
17 understand.

18 CHAIRPERSON GRIFFIS: They like you, but  
19 they didn't like the other guys?

20 MR. FURIOSO: Well, no. I think that this  
21 building has a lot more, I hate to say this but, value  
22 to the neighborhood than a building that somehow pales  
23 and resembles every other building up and down 14<sup>th</sup>  
24 Street.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. FURIOSO: And I think they --

2 CHAIRPERSON GRIFFIS: All right. Well,  
3 without digressing into a design critique of the  
4 others --

5 MR. FURIOSO: Okay.

6 CHAIRPERSON GRIFFIS: Because the  
7 opposition, I mean, I look at the substantive facts  
8 that people bring us.

9 MR. FURIOSO: Sure.

10 CHAIRPERSON GRIFFIS: And a lot of their  
11 testimony as I recall was, you know, that the massing  
12 it was, obviously, going to impair the light and the  
13 air getting to their properties. And I was wondering  
14 is there something different with your property as  
15 opposed to those on that square?

16 MR. FURIOSO: Well, there is. There is a  
17 slight -- I think there is two issues. One, well, I  
18 think there's three issues, quite frankly. I think in  
19 our portion of our building, the building seems to be  
20 setback, the townhouses a little bit more than the  
21 further north part of Kingman.

22 CHAIRPERSON GRIFFIS: Okay. So the north  
23 of Kingman wraps and sets on the alley. Is that  
24 correct?

25 MR. FURIOSO: The other one is you're

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1 talking about the Georgetown Restoration, Solo  
2 Piazza's Building is the one.

3 CHAIRPERSON GRIFFIS: Right. I don't know  
4 which one.

5 MR. FURIOSO: Well, anyway, that's the  
6 project that is north of us that probably had some  
7 opposition and didn't get even 75 feet. I believe it  
8 only got 65 feet from HPRB as well. I think all the  
9 parking actually on the back makes the neighbors --  
10 they are more frustrated, because they can't pull into  
11 their property line to get out of their garages,  
12 because now there is going to be cars in the alley.  
13 And by us having our building setback with a garage,  
14 we actually give them relief by being able to actually  
15 pull onto our property to get out.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. FURIOSO: So I think there is some  
18 consideration there for them that we could have done  
19 the same parking and really kind of buttoned up their  
20 garages in a way that might have made it very  
21 difficult for them to get out.

22 CHAIRPERSON GRIFFIS: I see. What I  
23 understand you saying is that there is two distinct  
24 differences or uniqueness of this one site, but also  
25 the building as it is set. The buildings directly

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1 adjacent in the rear are setback further off the  
2 alley?

3 MR. FURIOSO: A little bit more further on  
4 this part of where we are.

5 CHAIRPERSON GRIFFIS: Right. And then,  
6 secondly, the utilization of the open area in the rear  
7 yard.

8 MR. FURIOSO: Right.

9 CHAIRPERSON GRIFFIS: Is differently  
10 addressed here.

11 MR. FURIOSO: Right.

12 CHAIRPERSON GRIFFIS: And your's is going  
13 to be just a hardscape? Is it going to have any sort  
14 of --

15 MR. FURIOSO: No, it's a hardscape as it  
16 is right now designed. It's a hardscape only.

17 CHAIRPERSON GRIFFIS: Okay. Okay. Good.  
18 Any other questions, clarification from the Board?  
19 Mr. Mann?

20 BOARD MEMBER MANN: I read the report from  
21 HPRB, Ann Dennis, I think it was now several weeks or  
22 months old and I was wondering what the current status  
23 was of HPRB review and your coordination with them?

24 MS. SORG: We have been showing this  
25 design as it evolves to Steve Callcott. We owe him

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1 another meeting quickly. We have kept him abreast on  
2 the materials we select, in selecting which, you know,  
3 as the pricing comes in, we are working with him on  
4 the window systems, but we do owe him a meeting, which  
5 we're hoping to set soon.

6 BOARD MEMBER MANN: But you would continue  
7 to some extent to play kind of that balancing game of  
8 zoning relief versus HPRB requirements and then try to  
9 strike the appropriate balance at the right time?

10 MS. SORG: Yes, very much. Very much so.

11 CHAIRPERSON GRIFFIS: Others? Ms. Miller?

12 VICE CHAIR MILLER: I think your design is  
13 really amazing and we don't have any jurisdiction over  
14 design, but I mean it's just fascinating to look at  
15 that picture. I wanted to make sure I --

16 CHAIRPERSON GRIFFIS: We do over the roof  
17 structure now.

18 VICE CHAIR MILLER: Oh.

19 CHAIRPERSON GRIFFIS: In 411. If you want  
20 to take after it, go ahead.

21 VICE CHAIR MILLER: I don't want to take  
22 after it.

23 CHAIRPERSON GRIFFIS: Okay.

24 VICE CHAIR MILLER: I just want to  
25 understand on the left hand side it's all very

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1 colorful, you know, and different textures, etcetera.

2 And then above the historic building it looks very  
3 plain and I just want to understand what that -- is  
4 there really going to be a difference there or are  
5 they going to be the same kind of cubism design?

6 MS. SORG: No, it's the same as this  
7 rendering that's meant to depict the grays area above  
8 the existing building, meant to depict distance.

9 VICE CHAIR MILLER: Okay.

10 MS. SORG: But it's actually the same  
11 materials that wrap around, you know, into a little  
12 court as well as into the surface of the building that  
13 is going to be above the historic building.

14 VICE CHAIR MILLER: Thank you.

15 MS. SORG: So it's the same materials and  
16 same shapes.

17 VICE CHAIR MILLER: What is an Eco-Space  
18 Elevator? Somebody talked about there might be an  
19 Eco-Space Elevator?

20 CHAIRPERSON GRIFFIS: It's the machinery  
21 that is different.

22 VICE CHAIR MILLER: Oh, it is? It sounded  
23 like it was different.

24 MR. BORDYNOWSKI: It's just a new  
25 technology that uses less power and doesn't have a big

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1 machine room over the top. It has a small wheel and  
2 it uses straps. And it's --

3 MR. FURIOSO: It's like an under-slot.

4 MR. BORDYNOWSKI: I'm not sure everything  
5 that it does, but it's supposed to be more energy  
6 efficient and it's supposed to be -- it takes up less  
7 space in the penthouse.

8 VICE CHAIR MILLER: Would that effect the  
9 height of the elevator or not?

10 MR. BORDYNOWSKI: Not at this point.

11 VICE CHAIR MILLER: Okay.

12 MR. BORDYNOWSKI: Because, as I said, the  
13 thing that drives it, we thought it would be the  
14 machine, the location of the equipment. I think we  
15 will locate the equipment on the side of the elevator  
16 regardless and then the overhead is, essentially,  
17 driven by the OSHA requirement.

18 VICE CHAIR MILLER: Okay. And then I just  
19 have a legal question for Mr. Glasgow and that goes  
20 to, I think, OP has made a recommendation that you  
21 need special exception relief for rear yard  
22 requirements, that you didn't see. Will you be asking  
23 the Board to amend the application?

24 MR. GLASGOW: Yes, we would like the Board  
25 to amend the application for that.

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1 VICE CHAIR MILLER: Okay.

2 CHAIRPERSON GRIFFIS: And that's what was  
3 stated in terms of what was shown on the plans, the  
4 two points that are actually intruding within the rear  
5 yard, that's what we're looking at in terms of the  
6 scope of relief specifically.

7 MR. GLASGOW: Absolutely. Yes, that and  
8 the wall itself is 2 feet into the rear yard. That  
9 main wall that was being shown.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. GLASGOW: And then the two points are  
12 an additional 18 inches.

13 CHAIRPERSON GRIFFIS: Right.

14 MR. GLASGOW: So we're asking for 3.5  
15 feet, but 1.5 feet of that is by the points.

16 CHAIRPERSON GRIFFIS: Is that clear?

17 VICE CHAIR MILLER: Yes.

18 CHAIRPERSON GRIFFIS: Because, obviously,  
19 we would measure the rear yard for the six-tenths of  
20 the exterior wall, which those points would establish.

21 MR. GLASGOW: Right.

22 CHAIRPERSON GRIFFIS: Okay. Any other  
23 questions? Yes, Mr. Mann?

24 BOARD MEMBER MANN: Yes, regarding the  
25 existing three story building, I was actually just a

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1 little bit unclear as to what the proposed use of that  
2 is. Is there going to be any residential use within  
3 the envelope of the existing structure?

4 MR. FURIOSO: No, actually, that was  
5 really intentional on my part. I really wanted the  
6 commercial building to be a commercial building and  
7 not turn into another loft, which is what seems to be  
8 very popular on 14<sup>th</sup> Street. It's just that I thought  
9 you kind of lose that public accessibility to that  
10 entity as a commercial building. And actually, when  
11 you go through it, we were able to retain the old  
12 stairway and quite a bit of the old building, so as  
13 the art galleries, they are almost, you know, having  
14 very little effect on the space. When you come in you  
15 see all the ceilings, the concrete floors, the  
16 stairways, so it's quite nice to be able to see most  
17 of the building. I mean, it still gets cut up,  
18 because there's more than one tenant, unfortunately.

19 BOARD MEMBER MANN: But it would be  
20 commercial retail?

21 MR. FURIOSO: It's all commercial. It's  
22 all commercial retail. All three floors.

23 BOARD MEMBER MANN: In that customers  
24 would go into the galleries?

25 MR. FURIOSO: Right.

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1 BOARD MEMBER MANN: I see.

2 CHAIRPERSON GRIFFIS: Okay. Anything else  
3 from the Board, questions?

4 VICE CHAIR MILLER: I have one more  
5 question.

6 CHAIRPERSON GRIFFIS: Yes?

7 VICE CHAIR MILLER: What will your  
8 residential recreation space look like?

9 MR. FURIOSO: Actually, the thing that we  
10 are exploring the most is to do a green roof, which  
11 would be the second green roof, I think. K Street did  
12 a green roof and we're looking at trying to do that as  
13 a way of helping curb some of the runoff water issues  
14 that the city seems to want us to try to address a  
15 little bit. So a green roof right now is what we're  
16 looking at.

17 VICE CHAIR MILLER: It's a green roof,  
18 but?

19 MR. FURIOSO: It's not pavers, if that's  
20 what you mean.

21 VICE CHAIR MILLER: No, but it also has  
22 like --

23 MR. FURIOSO: It has benches.

24 VICE CHAIR MILLER: Things up there?

25 MR. FURIOSO: Yes, oh, yes. Actually, if

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1 you were to look at any of my other buildings, you  
2 will find that we take a lot of care. At 13 and N we  
3 did so at Solo Piazza and there is a lot of enormous  
4 amount of greens and more trees than you can imagine  
5 on the first floor and then there is an enormous  
6 garden on the roof area as well. So there will be --  
7 we can't put as many trees though when you do a green  
8 roof, which is kind of interesting. It kind of like  
9 cuts you on the tree side, but allows you to do green  
10 on the ground. So it's going to be a balancing act of  
11 that, but it will be certainly -- people will be able  
12 to go and sit and enjoy that space. It won't be just  
13 a visual, you know, astroturf.

14 CHAIRPERSON GRIFFIS: All right. I don't  
15 want to take too much time on this, but you brought up  
16 the aspect that you are proposing a green roof. In  
17 terms of the terminology used in lead?

18 MR. FURIOSO: Yes.

19 CHAIRPERSON GRIFFIS: And somehow you're  
20 going to put a green roof on that is actually  
21 occupiable?

22 MR. FURIOSO: Yes, it is occupiable.

23 CHAIRPERSON GRIFFIS: Okay.

24 MR. FURIOSO: As long as you don't do  
25 plantings of large trees and big shrubs, you can

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1 actually step on it. You can have a chair.

2 CHAIRPERSON GRIFFIS: You can go out on  
3 foot and walk through the wild grass?

4 MR. FURIOSO: Yes. It kills the grass.

5 CHAIRPERSON GRIFFIS: Yes, quickly.

6 MR. FURIOSO: Usually pretty quickly. So  
7 I'm saying that that's a balancing act of whether you  
8 do a little path.

9 CHAIRPERSON GRIFFIS: I see.

10 MR. FURIOSO: But, you know, you want to  
11 try to make it green as a way of really having that  
12 sort of idea of controlling some of that runoff, if we  
13 can do that.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. BORDYNOWSKI: The building is  
16 structurally designed to hold a green roof.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. BORDYNOWSKI: And actually, after  
19 talking with several people who were involved in other  
20 green roof projects, you can do sort of a blend of  
21 plantings and pavers that are set on the earth so it  
22 still functions the same way from a storm water  
23 management point of view, but also allows access and  
24 useability.

25 CHAIRPERSON GRIFFIS: Fascinating. Okay.

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1 Maybe put some walkable moss on it or something.  
2 Okay. What do we got? Any other questions? Anything  
3 else? Good. Let's move ahead then and we'll get back  
4 to any other questions of opposing, if need be. Let's  
5 go to the Office of Planning, which is recommending  
6 approval on this application. It is Exhibit 25. A  
7 very good morning.

8 MR. PARKER: Good morning to you, Mr.  
9 Chairman, Members of the Board. My name is Travis  
10 Parker with the Office of Planning. I'll try and find  
11 a creative way to restate the points that have already  
12 been made. We have two variances and two special  
13 exceptions in this application. I'll speak first on  
14 the two variances, since I believe that they are  
15 related, the variance for roof structure height and  
16 residential recreation space.

17 The existing layout of the lot doesn't  
18 leave any space on the ground floor for outdoor  
19 recreation space or indoor, for that matter, leaving,  
20 as the applicant stated at the very beginning of their  
21 presentation, the roof as the main location to put  
22 residential recreation space in this building. And as  
23 we have seen before in other applications, that brings  
24 us in conflict with the Zoning Regulations with the  
25 height requirements for roof structures in the Arts

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1 District.

2           Therefore, OP feels that there is a  
3 practical difficulty and the unique situation is a  
4 result of the historic building on the site and the  
5 small area remaining on the lot. We have not found  
6 any substantial detriment to the Code or to the  
7 surrounding neighborhood, as we have seen this similar  
8 situation many times before.

9           The two special exceptions are for roof  
10 structure setback and for rear yard. The rear yard  
11 setback meets the standards of section 774. The 3  
12 feet that we are looking at extending into the  
13 required rear yard will have no effect on the  
14 properties to the rear. There is a significant  
15 distance and there is an alley separation. And the  
16 roof structure setback, we spoke about or the  
17 applicant has spoke about, there is a clear reason why  
18 it has to be -- the elevator has to be on the new part  
19 of the building and it's just for design reasons and  
20 aesthetic reasons.

21           It clearly is a better situation to have  
22 it on the north end of the building. And OP did not  
23 find that there would be significant impacts for light  
24 and air or the other standards of a special exception  
25 to effect the neighboring properties in any adverse

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1 manner. For those reasons and the reasons that the  
2 applicant has already gone through, OP does recommend  
3 approval of all four measures of relief requested.  
4 And I'll be happy to answer any questions.

5 CHAIRPERSON GRIFFIS: Excellent. Thank  
6 you very much. An excellent and thorough report was  
7 very assisting in reviewing the entire record of this.

8 Does the Board have any questions of the Office of  
9 Planning? Not noting any, does the applicant have any  
10 cross examination of the Office of Planning?

11 MR. GLASGOW: None.

12 CHAIRPERSON GRIFFIS: Is the ANC present  
13 today, 2F? Very well. Let's move ahead then. We do  
14 not that the Historic Preservation has been indicated  
15 and also submitted in the applicant's filing as  
16 Exhibit 24, Tab F. I don't have any other Government  
17 reports attendant to this application, unless the  
18 applicant is aware of any? No, very well. Let's move  
19 ahead. The ANC report. As indicated, they are not  
20 here present. We will make note of Exhibit 23, which  
21 was a unanimous vote of the ANC, and I do believe it  
22 meets all our requirements for granting of great  
23 weight. It was timely filed.

24 Any other clarifications, questions on the  
25 ANC from the Board, the applicant? Very well. Let's

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1 move ahead then. I would ask that anyone present  
2 today to give testimony in support or opposition to  
3 come forward at this time. We're going to need to  
4 make a lot of room. Okay. Not having anyone present  
5 to give testimony in Application 17207, I believe we  
6 can go to any closing remarks the applicant might  
7 have.

8 MR. GLASGOW: Just very briefly, Mr.  
9 Chairman. We believe we have met the burden of proof  
10 for all the areas of relief requested. We would ask  
11 the Board to grant a Bench decision and a summary  
12 order. Thank you.

13 CHAIRPERSON GRIFFIS: Thank you very much.  
14 Board Members, last questions, clarifications? I  
15 believe that this application is ready to go forward  
16 with action today, and I would move approval of  
17 Application 17207 of 1515 14<sup>th</sup> Street.

18 COMMISSIONER MITTEN: Second.

19 CHAIRPERSON GRIFFIS: Oh, thank you very  
20 much. My hesitation was I was going to make probably  
21 not a very humorous joke, but that being said --

22 COMMISSIONER MITTEN: I saved us from  
23 that.

24 CHAIRPERSON GRIFFIS: Ms. Mitten saves the  
25 day once again.

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1 COMMISSIONER MITTEN: I hope.

2 CHAIRPERSON GRIFFIS: Well, I don't know  
3 actually, we have -- well, no. The motion, of course,  
4 has been seconded. It is, of course, for the special  
5 exception and variances made out in this application.

6 Let me first speak to, I think, it was very strong,  
7 very clear noting that this Board doesn't have a lot  
8 of questions on it, the application was well put  
9 together. But specifically and directly, the factor  
10 of the uniqueness and practical difficulty arising out  
11 of the historic building having to be maintained in  
12 its massing, that also, as stated and now in this  
13 hearing, the requirements of additional zoning that  
14 would be -- that is required to be provided, that  
15 being the overlay, the Arts and also the establishment  
16 of the certain setbacks that are specific to this  
17 area, I think all combined, have lend itself to the  
18 rising of the practical difficulty and the need for  
19 the request for the variance.

20 Speaking specifically for myself, another  
21 unique aspect of this, I think, is the design and I  
22 don't think it's beyond our deliberative process to  
23 take that into account, the fact that architecture is  
24 a basis of uniqueness. The mere fact of this being an  
25 existing site with an existing building lends itself

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1 to which is directly the test that we hear in  
2 variances, it lends itself to the unique circumstance  
3 and unique ways to solve those problems that are  
4 created on the site.

5 Often times as it is evident in this  
6 application, there is not the ability to fully comply  
7 with the regulations. I think the uniqueness of the  
8 design, the architectural design, and the massing  
9 really is what we're looking at in this sense have  
10 lent itself to some practical difficulty in total  
11 compliance. I think it is absolutely appropriate and  
12 it's a design decision about where the overrun for the  
13 elevator goes, in terms of the placement and in terms  
14 of the requirements that we would have.

15 I think the Board is not going to question  
16 that placement, but to look at what is there and I  
17 think it was appropriately done to put it over the  
18 new. All that being said, it is really tied to how  
19 the building is designed, based on how it addresses  
20 the specifics of the site itself. Whether this would  
21 impair the intent and integrity of the Zone Plan, I  
22 don't think any of the relief would, in fact, do that.

23 If this is really fulfilling a lot of the new  
24 regulations and certainly the overlay, which was  
25 anticipated for some time, and I think was well-

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1 written, and obviously well-intentioned here, the  
2 building is going to implement those pieces of which  
3 the regulations were trying to really direct the  
4 redevelopment and the rejuvenation of 14<sup>th</sup> Street.

5 The fact of how again very specifically it  
6 is, but the fact of how you want to assemble all of  
7 the retail spaces into the existing building, I think  
8 also should be supported, if not applauded, to really  
9 take that as a separate building and maintain it. And  
10 its availability to the public, I think, will be  
11 fabulous. But it also lends itself to the difficulty  
12 of providing the other aspects, in terms of, you know,  
13 that could be a free open gymnasium for the  
14 residential building itself. It also wouldn't really  
15 comply with what I've understood you to have as a  
16 design direction of keeping that more publicly  
17 accessible and, of course, the regulations really push  
18 the residential rec to be outdoors for numerous  
19 reasons that this Board has explored, none of which  
20 are definitive.

21 We still have the residential recreation  
22 requirements in our Zoning regulations, but that being  
23 said, it's obvious that you are maximizing. I was  
24 also very persuaded in terms of de minimis relief were  
25 requested with the residential rec. Believe me, as

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1 I've said, I think we have seen every building on the  
2 14<sup>th</sup> Street corridor coming in and often times  
3 residential rec is in conflict with space. Either it  
4 is going to be with the retail or it's going to be  
5 parking or something has to give.

6 We always get the well-combined of these  
7 private terraces we have close to, and often times  
8 that's a valuable calculation for us to understand how  
9 to best utilize, but often times we have these private  
10 balconies are more like a wonderful term, but like  
11 Juliet balconies that are kind of, you know, 2 feet  
12 and you might set up a potted plant out there.  
13 Whether that is actually recreating, I don't know. We  
14 don't know what recreation, recreating is by  
15 definition in the regulations. It obviously gives you  
16 openness.

17 But my point, maybe I should get to it, is  
18 the fact that the actual open space that you -- the  
19 private open spaces that are being provided in this  
20 are substantial. I mean, they are actually useable,  
21 which really lends itself, I think, to the  
22 persuasiveness of the de minimum request for the roof  
23 top or the relief in the residential recreation space.

24 Okay. Without losing the further  
25 attention of my Board Members, I'll turn it over to

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1 others if they have other things to say.

2 COMMISSIONER MITTEN: Not that I'm trying  
3 to compete with the Chair, I just wanted to say one  
4 thing, which is the reason I think, and this is just  
5 an editorial comment, it doesn't really bear on the  
6 special exception relief and the variance relief, but  
7 the reason why I think this project is so important  
8 for 14<sup>th</sup> Street is because, first of all, you persuaded  
9 the Historic Preservation Review Board to be open-  
10 minded enough to allow this project.

11 CHAIRPERSON GRIFFIS: Yes.

12 COMMISSIONER MITTEN: But this, I believe,  
13 is the first project that I have seen that actually is  
14 a piece of art in the Arts corridor, instead of just  
15 making gestures at, you know, providing space for  
16 artists and meeting those requirements, this is really  
17 getting at the core of what was intended. So I'm  
18 thrilled to be here to be able to vote in support of  
19 this.

20 CHAIRPERSON GRIFFIS: Good. Thank you  
21 very much. Yes, I think the critical aspect of this,  
22 which I know you are all more aware of than we are or  
23 understand, is the implementation of it. I mean, how  
24 it is actually detailed and constructed, which will  
25 make it so successful. Okay. Ms. Miller?

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1                   VICE CHAIR MILLER:     I just want to  
2 reiterate also. I think it is a beautiful building  
3 that has worked with the constraints of the overlay  
4 working around a historic building and accommodating  
5 parking, a residential recreation space and just  
6 everything in a beautiful manner. I just also want to  
7 offer a friendly amendment, if it wasn't included in  
8 your motion, to add the special exception from the  
9 rear yard requirements.

10                   CHAIRPERSON GRIFFIS: Oh, I'm sorry, yes.

11                   VICE CHAIR MILLER: That wasn't originally  
12 in the application.

13                   CHAIRPERSON GRIFFIS: I took it as a  
14 consensus of the Board to amend the application as it  
15 has been relayed out to, but that's an excellent  
16 clarification that will be, unless there's any  
17 opposition or further discussion required on that. I  
18 don't note any. Very well. Anything else from the  
19 Board? If not, we have a motion before us. It is for  
20 approval. It has been seconded. I ask for all those  
21 in favor to signify by saying aye.

22                   ALL: Aye.

23                   CHAIRPERSON GRIFFIS: Aye. And opposed?  
24 Abstaining? Very well. Thank you all very much. If  
25 the Board Members don't have any opposition, I think

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1 we can issue a summary order on this and waive our  
2 regulations for full findings and full order.

3 VICE CHAIR MILLER: No objection.

4 CHAIRPERSON GRIFFIS: Good. Excellent.

5 Very well then. Thank you very much.

6 MR. FURIOSO: Thank you. Thank you for  
7 your time.

8 CHAIRPERSON GRIFFIS: Thank you. Good  
9 luck.

10 MR. FURIOSO: Thank you.

11 CHAIRPERSON GRIFFIS: Okay. Ms. Bailey,  
12 is there any other business before the Board this  
13 morning?

14 MS. BAILEY: No, Mr. Chairman, that's it.

15 CHAIRPERSON GRIFFIS: We're starting a  
16 trend, finishing early. Very well. If there's  
17 nothing further for the Board, we can adjourn the  
18 morning session of the 28 September 2004.

19 (Whereupon, the hearing was recessed at  
20 11:16 a.m. to reconvene at 1:09 p.m. this same day.)  
21  
22  
23

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

2 1:09 p.m.

3 CHAIRPERSON GRIFFIS: Very well. Good  
4 afternoon, ladies and gentlemen. Let me call to order  
5 the afternoon session of 28 September 2004 of the  
6 Board of Zoning Adjustment of the District of  
7 Columbia. My name is Geoff Griffis, Chairperson, and  
8 joining me today is the Vice Chair, Ms. Miller, and  
9 also Mr. Etherly will be joining us momentarily.  
10 Representing the National Capital Planning Commission  
11 is Mr. Mann and representing the Zoning Commission  
12 with us this afternoon is Ms. Mitten.

13 Copies of today's hearing agenda are  
14 available for you. They are located where you entered  
15 into the hearing room on the wall there. We ask that  
16 you pick one up and you can see what we'll accomplish  
17 this afternoon and where you are on our schedule.  
18 Please, be aware that proceedings before the Board of  
19 Zoning Adjustment are recorded. They are recorded in  
20 two fashions. First and most importantly is the Court  
21 Reporter, who is sitting on the floor to my right, who  
22 is creating the transcript, the official transcript,  
23 which will be part of the record in each of these  
24 cases.

25 Secondly, we are being broadcast live on

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1 the Office of Zoning's website. So hopefully everyone  
2 wore bright clothes that accentuate their features,  
3 but importantly and seriously, we ask several things.

4 First of all that you refrain from making any  
5 disruptive noises or actions in the hearing room, so  
6 that we don't disrupt the proceedings and the  
7 testimony that we are being presented today. I would  
8 also ask that you turn off cell phones and beepers for  
9 the same reasoning.

10 When coming forward to testify you will,  
11 of course, need to have filled out two witness cards.

12 Witness cards are available at the table close to  
13 where you entered into, and also on the table in front  
14 of us where you will give testimony. Those two cards  
15 go to the recorder prior to coming forward to speak to  
16 the Board. You will then have a seat, make yourself  
17 comfortable. I will need you to state your name and  
18 your address once. Obviously, this is to tie all the  
19 important things you will be telling us to the record  
20 as it's being created.

21 The order of procedure for special  
22 exceptions and variances is, first, we hear from the  
23 applicant, any witnesses and their case presentations.

24 Second, we have Government reports, any Government  
25 agency that has submitted reports attendant to each of

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1 the applications. Third, we will hear from the  
2 Advisory Neighborhood Commission within which the  
3 property is located. Fourth, we will hear from  
4 persons or parties in support of the application.  
5 Fifth would be persons or parties in opposition to the  
6 application. And sixth, finally, we return to the  
7 applicant for their closing remarks or any sort of  
8 rebuttal testimony that they might need to provide.

9 Cross examination of witnesses is allowed,  
10 permitted by the applicant and parties in each case.  
11 The ANC within which the property is located is  
12 automatically a party in each of these cases and  
13 proceedings and, therefore, will be able to conduct  
14 cross examination. We do have total jurisdiction over  
15 limiting time and direction of cross examination, but  
16 I think I will bring that up if need be and give  
17 specific direction as that is being conducted.

18 The record will be closed at the  
19 conclusion of the hearing on the case, except for any  
20 material that is specifically requested by this Board,  
21 meaning if we feel that there is additional  
22 information that we need, we will ask for it and we  
23 will be very specific on what is to be submitted and  
24 when it is to be submitted into the Office of Zoning.

25 After that material is received, of course, everyone

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1 should be well-aware that the record would then be  
2 finally closed and no other information is accepted  
3 into the record.

4 The Sunshine Act requires that this Board  
5 conduct its hearings in the open and before the  
6 public. This Board may enter into executive session,  
7 which would be in accordance with the Sunshine Act and  
8 also our Rules of Procedure. The purpose of the  
9 executive sessions for this Board is for reviewing the  
10 record of each case and/or deliberating on each of  
11 these cases. We will make every effort to conclude  
12 this afternoon's hearing by 6:00. I don't see any  
13 difficulty in making that today. I will update folks  
14 if that is not the case.

15 At this time, the Board will consider any  
16 preliminary matters. Preliminary matters are those,  
17 which relate to whether a case will or should be heard  
18 today such as requests for postponements, continuances  
19 or withdrawals or whether proper and adequate notice  
20 has been provided. If you are not prepared to go  
21 forward with the case this afternoon or you believe  
22 that a case should not proceed, I would ask that you  
23 come forward and have a seat at the table as an  
24 indication of having a preliminary matter that needs  
25 the Board's attention. Let me say a very good

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1 afternoon to our Office of Zoning Staff with us, Ms.  
2 Bailey on my very far right and also Mr. Moy.

3 Ms. Bailey, are you aware of any  
4 preliminary matters for the Board's attention at this  
5 time?

6 MS. BAILEY: Mr. Chairman and Members of  
7 the Board, good afternoon. Staff has none, Mr.  
8 Chairman.

9 CHAIRPERSON GRIFFIS: Excellent. And  
10 having no indication from the hearing room of other  
11 preliminary matters, let me ask then that those people  
12 wishing to testify today, if you would, please, stand  
13 and give your attention to Ms. Bailey. She is going  
14 to administer the oath.

15 MS. BAILEY: Please, raise your right  
16 hand.

17 (Whereupon, the witnesses were sworn.)

18 MS. BAILEY: The first case, Mr. Chairman?

19 CHAIRPERSON GRIFFIS: Yes, please.

20 MS. BAILEY: Application No. 17212 of  
21 Harold Foster and Cheryl Tlam, pursuant to 11 DCMR  
22 section 3104.1, for a special exception to allow the  
23 construction of a one-story sunroom addition to an  
24 existing single-family detached dwelling under section  
25 223, not meeting the rear yard requirements, that's

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1 section 404. The site is located in the R-1-B  
2 District at Premises 4527 Q Street, N.W., Square 1367,  
3 Lot 33.

4 CHAIRPERSON GRIFFIS: Good. Thank you  
5 very much. When did this come in, today?

6 UNIDENTIFIED SPEAKER: Today.

7 CHAIRPERSON GRIFFIS: Good afternoon. Let  
8 me have you both introduce yourselves for the record  
9 and you're going to need to turn your microphone on.  
10 There's a button on the base of it. Perfect. And  
11 sometimes we get horrible feedback, so if you hear  
12 that, of course, you can turn all the microphones off  
13 except for the one that is being spoken into. There  
14 it is.

15 MS. TLAM: I am Cheryl Tlam and my  
16 husband, Harold Foster.

17 CHAIRPERSON GRIFFIS: Hi.

18 MS. TLAM: We have lived in the house on Q  
19 Street for 17 or 18 years now. It's a very small  
20 house on a lot that, we found out in the course of  
21 this project, was nonconforming. It has got a  
22 narrower street frontage and a smaller square footage  
23 than current zoning allows, but it was built in 1941  
24 or something, long before the current zoning came into  
25 effect.

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1           So we need a special exception to put the  
2 small one-story addition on the rear of the house,  
3 because there is no possibility of putting it on the  
4 side yard, we only have like a 5 foot side yard, and  
5 the front of the house has got nice character. It  
6 backs up to Q Street, which is now quite busy and the  
7 front of the house is just in line with its housemates  
8 on both sides. So the back yard seems to be the right  
9 place to put a small addition, and there is a 15 foot  
10 kind of unused public alley space behind the house  
11 that's just overgrown.

12           CHAIRPERSON GRIFFIS:       Is there any  
13 vehicular access to the 15 foot easement or public  
14 alley?

15           MR. FOSTER: No, sir.

16           CHAIRPERSON GRIFFIS: That's so odd.

17           MS. TLAM: Yes. It's just never -- as far  
18 as we can tell, it has never been used as an access  
19 alley. It's overgrown with trees.

20           MR. FOSTER: There's an elm tree right in  
21 the middle of it that's about ready to --

22           CHAIRPERSON GRIFFIS:       Yes, so your  
23 photographs show. It would be kind of hard to get a  
24 car through that one.

25           MS. TLAM: Yes, and in fact, there is an

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1 electric light post.

2 CHAIRPERSON GRIFFIS: Damn.

3 MS. TLAM: That's kind of smack in the  
4 middle of the easement, too, so it doesn't seem like  
5 it was ever the intent for it to be an access route.

6 CHAIRPERSON GRIFFIS: Understood. Okay.  
7 Anything else?

8 MS. TLAM: So we don't feel that our  
9 addition will have any impact on our neighbors. I  
10 have letters from the neighbors two houses to each  
11 side of us and the four houses behind us, all of whom  
12 are either supportive of the addition or have  
13 absolutely no objections. I don't know if you're  
14 interested in seeing those letters or not.

15 CHAIRPERSON GRIFFIS: They are not in the  
16 record now?

17 MS. TLAM: I presented them at the ANC  
18 hearing and --

19 CHAIRPERSON GRIFFIS: Okay. You can  
20 provide them for the record.

21 MS. TLAM: Okay. Meaning leave copies  
22 with them today?

23 CHAIRPERSON GRIFFIS: That would be great.

24 MS. TLAM: Okay. And that's about it. We  
25 brought some boards if you want to see what it looks

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1 like.

2 CHAIRPERSON GRIFFIS: Do you want to show  
3 us?

4 MS. TLAM: It's fascinating.

5 MR. FOSTER: I get to play the tripod.  
6 Which one you do want first?

7 MS. TLAM: Well, let's --

8 CHAIRPERSON GRIFFIS: We have some  
9 submitted into the record.

10 MS. TLAM: Okay. It's the same old thing.

11 CHAIRPERSON GRIFFIS: Yes, okay. And it's  
12 just -- okay. Let me ask you a couple quick questions  
13 then. In your opinion, in looking at this or in any  
14 sort of opinions you have heard from the surrounding  
15 neighbors, do you believe that this would or would not  
16 unduly affect the light and air available to your  
17 neighbor's property?

18 MR. FOSTER: No, sir, I don't think it  
19 would.

20 CHAIRPERSON GRIFFIS: I kind of phrased  
21 that question just a little bit indirectly, didn't I?  
22 Will this impair the light and airflow into your  
23 neighbor's property?

24 MR. FOSTER: No.

25 CHAIRPERSON GRIFFIS: Okay. How about the

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1 use and privacy of the adjacent properties?

2 MR. FOSTER: No, it shouldn't.

3 CHAIRPERSON GRIFFIS: Okay.

4 MS. TLAM: I don't think so.

5 CHAIRPERSON GRIFFIS: Do you find that  
6 this addition would somehow detract or move away from  
7 the architectural character of the neighborhood?

8 MS. TLAM: No, I think it will enhance it.

9 CHAIRPERSON GRIFFIS: Okay. And of  
10 course, in demonstrating the other aspects of the 223,  
11 you did submit graphic representation of what is being  
12 proposed. The lot occupancy clearly falls under that  
13 which is allowable to submit under 223.3.

14 Have you heard any comments or any sort of  
15 feedback from surrounding areas or do you have in your  
16 mind of any other or additional screening or lighting  
17 or any sort of exterior or building materials that we  
18 should prescribe that you have to use?

19 MS. TLAM: Everybody that I sent -- when I  
20 informed the neighbors, I had included a sheet that  
21 showed the elevations of the back and where it went  
22 and everything. I sort of sent them a letter like  
23 this.

24 CHAIRPERSON GRIFFIS: Sure.

25 MS. TLAM: So that they would be fully

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1 informed and most people, if they comment at all, just  
2 like the design.

3 CHAIRPERSON GRIFFIS: Okay. This is a  
4 design-built project, is it not?

5 MS. TLAM: It is.

6 MR. FOSTER: Yes.

7 CHAIRPERSON GRIFFIS: What is the material  
8 on the exterior of the addition?

9 MS. TLAM: The siding, because it faces  
10 north, they were using some sort of like a concrety-  
11 like siding. I forget what it's called.

12 CHAIRPERSON GRIFFIS: Cementitious fiber?

13 MS. TLAM: Yes.

14 CHAIRPERSON GRIFFIS: Cementitious fiber?

15 MS. TLAM: That sounds right.

16 CHAIRPERSON GRIFFIS: Like a hardy board?

17 MS. TLAM: That's it.

18 CHAIRPERSON GRIFFIS: Indeed.

19 MS. TLAM: Yes, yes. Sorry.

20 CHAIRPERSON GRIFFIS: Okay. Good. Any  
21 other questions from the Board, clarifications? Why  
22 don't we move ahead then. Unless there is anything  
23 else you want to provide at this immediate moment, we  
24 can go to the Office and Planning and we will return  
25 to you for any closing remarks that you might have.

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1 MS. TLAM: Okay.

2 CHAIRPERSON GRIFFIS: Excellent. The  
3 Office of Planning is here with us? Yes, indeed. A  
4 very good afternoon to you. Oh, I have a quick  
5 question. Who's in the photographs?

6 MR. FOSTER: Which?

7 CHAIRPERSON GRIFFIS: I was expecting to  
8 see one of you.

9 MS. TLAM: Oh, it's actually the  
10 architect.

11 CHAIRPERSON GRIFFIS: It is? Aha, a  
12 little free advertising. Well, we're going to have to  
13 hold that against you. Okay. Let's go to the Office  
14 of Planning's report.

15 MR. MOORE: Good afternoon, Mr. Chair and  
16 Members of the Board. I am John Moore of the Office  
17 of Planning and we stand in support of the application  
18 on the record, therefore.

19 CHAIRPERSON GRIFFIS: Excellent. Thank  
20 you. Do you have the Office of Planning's report?

21 MS. TLAM: That's the ANC?

22 CHAIRPERSON GRIFFIS: No.

23 MS. TLAM: No, I don't think I have that.

24 CHAIRPERSON GRIFFIS: Office of Planning?  
25 Okay. It would probably be best if you all have

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1 copies. It's an excellent document that you ought to  
2 probably have just for your own records. I have a  
3 quick question. You have an illustration, as always,  
4 great illustrations in this that actually show  
5 diagrammatically what is being proposed, but you also  
6 have one that's indicating the addition. That's on  
7 the adjacent property, is that correct, on page 2?

8 MR. MOORE: Yes.

9 CHAIRPERSON GRIFFIS: Wow. Okay.

10 MR. MOORE: Much larger than this one's  
11 going to be.

12 CHAIRPERSON GRIFFIS: Pardon me?

13 MR. MOORE: Much larger than this one's  
14 going to be.

15 CHAIRPERSON GRIFFIS: I would say so. I  
16 can't imagine that came to us. Okay. Then let's go.

17 MS. TLAM: They are nice people though.

18 CHAIRPERSON GRIFFIS: They are nice  
19 people, I'm sure. There is no comment regarding that.

20 Okay. If there is nothing further, any Board  
21 questions? Does the applicant have any cross  
22 examination of the Office of Planning, any questions?

23 Do you want a moment to look at their report? They  
24 are, of course, recommending approval of your project.

25 MR. FOSTER: We agree with everything.

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1 CHAIRPERSON GRIFFIS: Good. Yes, I would  
2 take a moment at your leisure to take a look at that.

3 I do not have any other indication of any other  
4 Government reports attendant to this application,  
5 unless the applicants or other Board Members, we can  
6 move on to ANC-3D which did submit, thank you, Exhibit  
7 No. 27. Is this timely? Did we just get this? Okay.

8 If there is no objection, I think we could waive our  
9 requirements for timely submissions and accept this  
10 into the record.

11 Not noting any objections from the Board,  
12 why don't we proceed with this? It is dated September  
13 15<sup>th</sup> and this was given to us today. Excellent. And  
14 they do recommend approval with a vote of 6-0-0 and  
15 the quorum, of course, is four. You obviously  
16 presented to the ANC. You were there at this vote,  
17 correct? Any issues come out of that that we ought to  
18 be aware of?

19 MS. TLAM: They seemed very --

20 CHAIRPERSON GRIFFIS: Microphone needs to  
21 be on.

22 MS. TLAM: They seemed very happy with the  
23 scale of it and so forth.

24 CHAIRPERSON GRIFFIS: Excellent. Okay. I  
25 don't have anything else attendant to this

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1 application, at this time, to go through. Are there  
2 any Board questions, clarifications? Very well.  
3 We'll turn it over to you for any closing remarks you  
4 might have.

5 MS. TLAM: Okay. So you approve it and  
6 then the process is --

7 CHAIRPERSON GRIFFIS: I don't know if we  
8 approve it.

9 MS. TLAM: Oh, sorry.

10 CHAIRPERSON GRIFFIS: We haven't gotten to  
11 that point.

12 MS. TLAM: All right. Sorry.

13 CHAIRPERSON GRIFFIS: No, that's okay.  
14 I'm trying to be humorous, which is not always  
15 successful with me. Other quick questions? This is a  
16 time --

17 MS. TLAM: Okay.

18 CHAIRPERSON GRIFFIS: -- for you to do any  
19 closing remarks, summations, which is not required and  
20 with this application, which is very straightforward,  
21 you probably don't need to.

22 MS. TLAM: Okay. No further comments.

23 CHAIRPERSON GRIFFIS: Good. This will be  
24 your last opportunity, obviously, to address the Board  
25 before it goes into its own deliberation, because I

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1 see no reason why we wouldn't do a Bench Decision on  
2 this. So I would move approval of Application 17212  
3 for a special exception. Of course, this is under 223  
4 for the rear one-story addition of the sunroom. Of  
5 course, the requirements for them coming in under  
6 where the property is not meeting the rear yard  
7 requirements at 4527 Q Street, N.W. And I would ask  
8 for a second.

9 VICE CHAIR MILLER: Second.

10 CHAIRPERSON GRIFFIS: Thank you very much.

11 I think the test is very clear in terms of 223, which  
12 is the more onerous in the general umbrella of the  
13 special exception. 223 is actually an excellent  
14 aspect of our Zoning Regulations that do allow  
15 existing nonconforming single-family homes to adapt to  
16 life within the city and that's why we have it.

17 I see no reason not to support the motion  
18 of approval on this. It has been shown in the  
19 evidence that it doesn't impair the intent and  
20 integrity of the Zone Plan and it also wouldn't unduly  
21 impair the light, air, use, privacy or architectural  
22 character of the surrounding area. Anyone else?  
23 Further deliberation?

24 That being said, we have a motion before  
25 us that has been seconded for approval. I would ask

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1 for all those -- wow.

2 BOARD MEMBER ETHERLY: Signify by saying  
3 aye.

4 CHAIRPERSON GRIFFIS: Gee. A motion is  
5 before us. I would ask for all those in support of  
6 the motion to signify by saying aye.

7 ALL: Aye.

8 CHAIRPERSON GRIFFIS: And opposed,  
9 abstaining? Very well. I don't see any reason why we  
10 wouldn't issue a summary order on this. Unless there  
11 is an objection from the Board, we can waive our  
12 regulations and issue a summary order on that.  
13 Questions, process questions? Okay. Very well.  
14 Thank you very much for coming down this afternoon and  
15 good luck and enjoy the new addition.

16 MS. TLAM: Thank you. Now, should I leave  
17 those letters with you?

18 CHAIRPERSON GRIFFIS: Absolutely. We're  
19 going to take it into the record.

20 MS. TLAM: Okay.

21 CHAIRPERSON GRIFFIS: So the record will  
22 be full. You can give it to Ms. Bailey on my right  
23 and she will submit it into the official record.

24 MS. TLAM: I should make a copy. I'll  
25 find a copy machine and drop them back off with Ms.

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1 Bailey.

2 CHAIRPERSON GRIFFIS: Okay. You can  
3 probably go right next door and use the copy machines  
4 in the Office of Zoning and then put it into the  
5 record.

6 MS. TLAM: Okay. Thank you so much.

7 MR. FOSTER: Thank you very much.

8 CHAIRPERSON GRIFFIS: Thank you very much.  
9 Let's move ahead then to the second case in the  
10 afternoon.

11 MS. BAILEY: And that is No. 17209 of  
12 Parkmont School, Inc., pursuant to 11 DCMR section  
13 3103.2, for a variance from the off-street parking  
14 requirements under subsection 2101.1, and pursuant to  
15 11 DCMR section 3104.1, a special exception to operate  
16 a private secondary school, 65 students and 12 staff,  
17 last approved under BZA Order No. 16473. The property  
18 is located in the R-1-B District at Premises 4842 16<sup>th</sup>  
19 Street, N.W., Square 2654, Lot 34.

20 CHAIRPERSON GRIFFIS: Good afternoon.

21 MR. MCCLAIN: Good afternoon.

22 MR. CRONHEIM: Good afternoon.

23 CHAIRPERSON GRIFFIS: I'm going to have  
24 you introduce yourselves and then you're welcome to  
25 proceed.

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1 MR. CRONHEIM: All right. I'm Craig  
2 Cronheim representing Parkmont School on behalf of  
3 Hogan and Hartson. I'm here with Ron McClain, the  
4 Headmaster of Parkmont School.

5 MR. MCCLAIN: And I'm Ron McClain.

6 CHAIRPERSON GRIFFIS: Excellent. And your  
7 address?

8 MR. MCCLAIN: 4842 16<sup>th</sup> Street, N.W.

9 CHAIRPERSON GRIFFIS: Okay. Good. We  
10 obviously have two attendant issues for this. One is  
11 the special exception and then we also have the  
12 variance for the parking requirements. I will leave  
13 it up to you, but obviously we'll address both. We  
14 probably have -- well, you can take them one at a time  
15 or however you want to present, but I'll turn it over  
16 to you for a case presentation.

17 MR. CRONHEIM: Sure. Well, Parkmont has  
18 been operating for some time with 65, with a capacity  
19 of 65 students and up to eight faculty members or  
20 staff under the special exception and the variance  
21 that has just come due. We are applying for,  
22 basically, an extension of both of those, but also  
23 with an expansion that will accommodate up to 12  
24 faculty members with the same maximum capacity for the  
25 students. The actual current capacity of the school

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1 is not a full 65. It's, I believe, around 53  
2 students.

3 In terms of the special exception, the  
4 character and the nature of the school remains the  
5 same even with the slightly -- would remain the same  
6 with a slightly increased staff capacity. There would  
7 be an additional need for possibly parking  
8 accommodations, we believe, and that ties into the  
9 variance as well. We believe that the current parking  
10 situation where there are three spots at the school  
11 and the Carter Barron block nearby more than  
12 accommodate the needs of the school without imposing  
13 upon either Carter Barron or the neighbors at all.

14 CHAIRPERSON GRIFFIS: And when we're  
15 talking about the request for the increase in faculty  
16 to 12, are we looking at that's the total number of  
17 faculty people? That's not an iteration of two part-  
18 times make one full-time? Are we talking about FTEs  
19 or are we actually talking bodies?

20 MR. MCCLAIN: We're talking bodies.

21 CHAIRPERSON GRIFFIS: Excellent.

22 MR. MCCLAIN: Yes.

23 CHAIRPERSON GRIFFIS: Okay. Good.

24 Anything else?

25 MR. CRONHEIM: No, I just --

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. CRONHEIM: -- I'll answer questions.

3 CHAIRPERSON GRIFFIS: Tell me a little bit  
4 about what would, essentially, be unique and what the  
5 practical difficulty is in terms of providing the  
6 parking on-site?

7 MR. MCCLAIN: When the school first came  
8 to the Board for approval about 20 years ago, it had a  
9 plan to provide the parking on-site and it involved  
10 doing some paving of the yard, and the neighbors  
11 objected to that plan. They thought it would make it  
12 look less residential and more institutional. And the  
13 school was then compelled to go out and find another  
14 solution that would be accommodating from the  
15 neighbors' point of view, but then solve the site.

16 And at that point, they ended up with the  
17 arrangement where they were going to use Carter  
18 Barron, which has a public lot that is very under-  
19 utilized at the south end of that whole National Park  
20 site right off 16<sup>th</sup> Street. So the school came back to  
21 the Board, at that point, and asked if that could be a  
22 satisfactory solution to our parking requirements for  
23 staff and for students.

24 CHAIRPERSON GRIFFIS: Okay. Let me see if  
25 I understand what you said and in terms of -- and also

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1 in the submissions in the record. This is a corner  
2 lot, somewhat triangular.

3 MR. MCCLAIN: Right.

4 CHAIRPERSON GRIFFIS: Unique in shape, but  
5 it also has a large image as part of a residential  
6 area.

7 MR. MCCLAIN: Yes.

8 CHAIRPERSON GRIFFIS: And so, obviously,  
9 if you started paving over, I understand you say if  
10 you started paving over and creating all this surface  
11 parking, it would detract from the residential  
12 character of the surrounding area, which really  
13 relates also to the 206 requirements for the special  
14 exception, but goes directly to this.

15 So based on the history and the comments  
16 and the past orders and also -- well, the past orders  
17 in terms of the requirements for landscaping, you have  
18 never, obviously, paved the area, but you also find it  
19 practically difficult to provide more parking without  
20 having additional paving, which would go against the  
21 previous decisions and agreements with the  
22 neighborhood?

23 MR. MCCLAIN: Yes.

24 CHAIRPERSON GRIFFIS: I see. Okay. How  
25 far away is Carter Barron?

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1 MR. MCCLAIN: It's one block. We're at  
2 the corner of Blagdon Avenue which, you know, dips  
3 down to Beach Drive and 16<sup>th</sup>.

4 CHAIRPERSON GRIFFIS: Yes.

5 MR. MCCLAIN: The entrance to the Carter  
6 Barron slot comes right off of Colorado, which is one  
7 block north of us. It's probably 150 yards.

8 CHAIRPERSON GRIFFIS: Right.

9 MR. MCCLAIN: I would say roughly from our  
10 property to that walkway.

11 CHAIRPERSON GRIFFIS: Okay. And is ANC-4C  
12 represented today? The ANC is not represented today.  
13 Mr. Mann, didn't you see something in the nature of  
14 the ANC report that was -- would have actually been  
15 filed. Have you seen the ANC report?

16 BOARD MEMBER MANN: Yes.

17 CHAIRPERSON GRIFFIS: It came to us today  
18 actually.

19 MR. MCCLAIN: Okay.

20 CHAIRPERSON GRIFFIS: So I don't know when  
21 it was submitted in.

22 MR. MCCLAIN: I don't know. I don't know  
23 that I have seen the letter. I was the one who spoke  
24 with the ANC two weeks ago.

25 CHAIRPERSON GRIFFIS: Okay. Mr. Mann,

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1 well, you made a quick comment as we were handed this  
2 in looking at it, which is the appropriate one. You  
3 just clarified that the ANC has indicated that Carter  
4 Barron is, approximately, seven blocks away.

5 MR. MCCLAIN: Seven blocks away?

6 CHAIRPERSON GRIFFIS: Right. That's what  
7 it says, which is kind of interesting.

8 MR. MCCLAIN: Well, Carter Barron is a big  
9 site. I'm sorry.

10 VICE CHAIR MILLER: Well, I just want to  
11 say that, apparently, we have got two ANC-4C  
12 resolutions.

13 CHAIRPERSON GRIFFIS: Oh.

14 VICE CHAIR MILLER: And the second one  
15 doesn't say that, so maybe that was a typo that they  
16 have corrected. Go ahead.

17 MR. MCCLAIN: Whose name is on it? Are  
18 the names on the --

19 CHAIRPERSON GRIFFIS: Timothy Jones and  
20 Jacqueline Mitchell.

21 MR. MCCLAIN: Did he write one and did she  
22 write one?

23 CHAIRPERSON GRIFFIS: I don't know that we  
24 could tell.

25 MR. MCCLAIN: Or did they both write them?

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1 VICE CHAIR MILLER: No, they are both  
2 signed.

3 MR. MCCLAIN: By both of them? Mr. Jones,  
4 I believe, is the Commission --

5 CHAIRPERSON GRIFFIS: Chairman.

6 MR. MCCLAIN: -- Chairman, yes.

7 CHAIRPERSON GRIFFIS: How do you know that  
8 one's second?

9 VICE CHAIR MILLER: Look at the time.

10 BOARD MEMBER MANN: Actually, they are  
11 time dated and the first one doesn't have any number  
12 of blocks and the second one says seven blocks.

13 CHAIRPERSON GRIFFIS: Interesting. Okay.  
14 Well, I don't think it causes any concern for the  
15 Board, does it? And do people need direct -- the  
16 distance, I think, is pretty clear that we're  
17 somewhere in the range of one to seven blocks. Carter  
18 Barron is a big place.

19 MR. MCCLAIN: Well, it is a big place.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. MCCLAIN: We didn't actually have that  
22 discussion at the ANC, so I'm not sure.

23 CHAIRPERSON GRIFFIS: Right, distance.  
24 You have to cross two streets to get to the edge of  
25 the Carter Barron section?

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1 MR. MCCLAIN: Blagdon and Colorado.

2 CHAIRPERSON GRIFFIS: Okay. And what are  
3 the ages of the students?

4 MR. MCCLAIN: I have students who are 11  
5 to 18.

6 CHAIRPERSON GRIFFIS: Okay. And the  
7 parking that's provided is mostly for the faculty. Is  
8 that correct?

9 MR. MCCLAIN: Right.

10 CHAIRPERSON GRIFFIS: And so in terms of  
11 us looking at, you know, all the aspects of this,  
12 would there be a dangerous situation of crossing  
13 streets for faculty or students if parking is not  
14 provided on-site?

15 MR. MCCLAIN: No, not for the age of the  
16 people we're talking about here.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. MCCLAIN: You know, there is a light  
19 at Colorado and at Blagdon because they have added --  
20 in the last three years or four years they have added  
21 three stop signs down Blagdon, which has substantially  
22 slowed down the traffic there.

23 CHAIRPERSON GRIFFIS: Oh.

24 MR. MCCLAIN: And made it much safer for  
25 all of us in the neighborhood.

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1 CHAIRPERSON GRIFFIS: Okay. Good. Yes,  
2 Ms. Miller?

3 VICE CHAIR MILLER: Have your faculty been  
4 parking there for 20 years?

5 MR. MCCLAIN: Yes.

6 VICE CHAIR MILLER: And what kind of an  
7 arrangement do you have with, it's the National Park  
8 Service property?

9 MR. MCCLAIN: It's National Park Service  
10 property. It's a public parking lot, except for the  
11 one or two weeks a year that it's taken over by the  
12 Tennis Foundation for their tournament, so the staff  
13 park in the same slots that people do. I don't know  
14 what the original intention of that site was. I mean,  
15 I guess people park there who commute and catch the S  
16 Bus downtown, but it's --

17 VICE CHAIR MILLER: And there's no charge  
18 for parking there?

19 MR. MCCLAIN: There's no charge.

20 VICE CHAIR MILLER: Anybody can just park  
21 there?

22 MR. MCCLAIN: Yes. I mean, I don't know  
23 myself roughly, but I think there are several hundred  
24 sites there and there is an average of somewhere  
25 between 20 and 30 cars there on a daily basis of which

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1 on a daily basis, we might have four to six or seven  
2 cars.

3 VICE CHAIR MILLER: And is that the only  
4 place that your faculty park other than the three  
5 designated spots?

6 MR. MCCLAIN: Yes.

7 VICE CHAIR MILLER: How about is there a  
8 drop-off place on your property for the children?

9 MR. MCCLAIN: No. That's like a major  
10 issue, I know, with elementary schools because of the  
11 amount of traffic. You know, we have 53 students  
12 right now. My guess is that somewhere between 10 and  
13 15 of them are driven to school, that most of them  
14 come on public transportation either north or  
15 southbound on the S Bus Lines, and so they drop off,  
16 you know, in the morning and they drop off along  
17 Blagdon.

18 They don't have a line like you would  
19 associate with the neighbor. We have several  
20 elementary schools even in our neighborhood. You  
21 always have a parking line and there needs to be some  
22 management of that, but we don't have that kind of  
23 backup. We're right across the street on Blagdon from  
24 a fairly active and large church and so the parking,  
25 it's congested on Blagdon, reflects a lot of funerals

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1 and a lot of evening activities and things like that,  
2 but not a lot of cars that we're bringing in on a day-  
3 to-day basis.

4 VICE CHAIR MILLER: What kind of program  
5 do you offer at your school?

6 MR. MCCLAIN: I have a very small school.  
7 It has been around for more than 30 years. It has  
8 been in this site for the 20. It works with -- by and  
9 large a lot of children have had some difficulty in  
10 public school frequently because of some learning  
11 difficulties, so I have a very eclectic group of kids  
12 in terms of their learning styles. And also, because  
13 the school has one of the most generous financial aid  
14 programs among the independent schools in the  
15 District, I have a very socio-economically diverse  
16 group of kids, as well, from the city and from the  
17 surrounding areas.

18 So it's an eclectic group in a number of  
19 different ways, but that's probably the -- I don't  
20 know if I should be more specific than that, but I  
21 have a lot of kids who were in public school at some  
22 point or other who needed another option. I have very  
23 small classes and kind of a flexible academic program  
24 that is supportive of them. 80 percent of them end up  
25 going to college within a year of the time they

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1 graduate from high school, so that's where they are  
2 primarily headed in that way.

3 VICE CHAIR MILLER: And how are your  
4 relations with the surrounding neighbors and  
5 community? Do you have any complaints about how you  
6 have been operating?

7 MR. MCCLAIN: We have had very good  
8 relationships. I have been there as the principal for  
9 the last 14 years and have a very good relationship  
10 with the adjoining neighbors. You know, every couple  
11 of years somebody will call me and tell me somebody is  
12 loitering or not doing something they should be doing,  
13 and I think we have done a really good job of  
14 addressing those things when they come up and I think  
15 they feel very quick to point things out to us if  
16 something does come up, but it has been pretty quiet,  
17 a quiet time.

18 VICE CHAIR MILLER: Okay. Thank you.

19 CHAIRPERSON GRIFFIS: Good. Do you have  
20 any illustrations of the existing landscape?

21 MR. CRONHEIM: Only the pictures that were  
22 included in our original application.

23 CHAIRPERSON GRIFFIS: Okay. Here's where  
24 we're going with this. Of course, this is a new  
25 special exception. We have been asked to look at the

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1 prior conditions. Well, this Board can't just adopt  
2 prior conditions, because we're going to be making our  
3 own findings of fact, so these questions may seem like  
4 we didn't read the record or the past orders.

5 MR. CRONHEIM: Yes.

6 CHAIRPERSON GRIFFIS: But we need to  
7 establish the firm record for us then to move ahead  
8 with. So what I would do is have you just briefly  
9 describe the landscaping noting that there are  
10 photographs in, and what kind of measures that you  
11 utilize to maintain the landscaping and what the  
12 landscaping entails.

13 MR. MCCLAIN: That was an issue. We did  
14 not talk about that the last time I was here, but when  
15 the building was first set aside.

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. MCCLAIN: There was a lot of  
18 discussion about that and I have seen some of that.  
19 We have worked with a professional landscaper for the  
20 last four and a half years. We think it's been pretty  
21 successful. The neighbors have employed him after we  
22 brought him into our neighborhood, so they have been  
23 pleased with his work.

24 The landscaping consists of maintaining  
25 the grounds, which I think we're doing an excellent

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1 job of, and paying attention to some of the boundaries  
2 with the adjoining neighbors. So we have both a fence  
3 and then, I think, a fairly handsome set of trees that  
4 separate us from one neighbor and the other neighbor  
5 is the one who shares the landscaper with us, and we  
6 have done a pretty good job of cleaning up the  
7 grounds, so I think it's considered attractive by them  
8 and as well as by ourselves.

9 CHAIRPERSON GRIFFIS: Okay. And then you  
10 have kind of perimeter bushes? You have bushes?

11 MR. MCCLAIN: We have perimeter bushes  
12 around the front. In the last six years we have had a  
13 fairly regular line of bushes around the Blagdon side.  
14 We replaced a very expensive stone wall seven years  
15 ago on the Blagdon side that takes that.

16 CHAIRPERSON GRIFFIS: I see.

17 MR. MCCLAIN: So it's got a combination of  
18 bushes and then what I call hedge.

19 CHAIRPERSON GRIFFIS: Right, hedge.

20 MR. MCCLAIN: Around part of it, around  
21 part of the front.

22 CHAIRPERSON GRIFFIS: Okay. So the  
23 perimeter of the property is landscaped or screened.

24 MR. MCCLAIN: Yes.

25 CHAIRPERSON GRIFFIS: And the field of the

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1 property is primarily grass and trees?

2 MR. MCCLAIN: Yes, grass, trees.

3 CHAIRPERSON GRIFFIS: And then close to  
4 the building, of course, has additional landscaping of  
5 varying sizes be it bushes, shrubs and actually some  
6 pine and some lower trees?

7 MR. MCCLAIN: Yes. And there's a fair  
8 number of good sized trees on the property we just  
9 spent --

10 CHAIRPERSON GRIFFIS: That's on the 16<sup>th</sup>  
11 Street side, what you're talking about?

12 MR. MCCLAIN: Well, actually, they are on  
13 both sides.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. MCCLAIN: You can see them from  
16 Blagdon.

17 CHAIRPERSON GRIFFIS: Okay.

18 MR. MCCLAIN: And they require, you know,  
19 some regular attention.

20 CHAIRPERSON GRIFFIS: Do you have any  
21 plans of removing any of the existing trees?

22 MR. MCCLAIN: No, not unless we get  
23 indication. We had two of them come down in the last  
24 12 years, because they got -- and we're doing a better  
25 job of trimming them, so that we know what their

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1 health is like.

2 CHAIRPERSON GRIFFIS: Indeed.

3 MR. MCCLAIN: And we share some of that  
4 with the neighbors as well.

5 CHAIRPERSON GRIFFIS: For firewood?

6 MR. MCCLAIN: No, we take care of at least  
7 one of their trees as part of --

8 CHAIRPERSON GRIFFIS: Oh, I see.  
9 Excellent, excellent. Okay. I don't think I have any  
10 other questions at this time. Board Members, other  
11 questions? Mr. Mann?

12 BOARD MEMBER MANN: Yes. Do you ever make  
13 the school or the grounds available to any other  
14 organizations like an ANC or neighborhood groups?

15 MR. MCCLAIN: No, we're restricted from  
16 doing that by the conditions of the original exception  
17 and we have avoided that.

18 BOARD MEMBER MANN: And if you could,  
19 would you? Have there been any requests for anything  
20 like that?

21 MR. MCCLAIN: Oh, yes. I mean, you get  
22 requests all the time. We have had requests from if  
23 not the ANC, at least one of the local political  
24 organizations at one point or campaigns. Sure, every  
25 year you get three or four requests, sometimes from

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1 small religious groups. There is a number of churches  
2 in that area, as all of you know, and sometimes there  
3 will be overflow activities that they are trying to  
4 find some space for. We get regular calls for that.

5 BOARD MEMBER MANN: But you have to turn  
6 them down because of the existing restriction from  
7 the --

8 MR. MCCLAIN: We do and as it turns out,  
9 it's not a space that -- there's no room that's really  
10 conducive to having a very large group in it.

11 BOARD MEMBER MANN: Okay.

12 MR. MCCLAIN: We have one large space that  
13 we use, but that involves a lot of us sitting on the  
14 floor, so it's not something that would actually be  
15 very useful to other people. And it was a wise  
16 decision on the part of them to restrict it. The  
17 church takes up the parking most of the evenings and  
18 the school doesn't need to be involved with that, so  
19 we're happy with that, Mr. Chairman.

20 BOARD MEMBER MANN: Are there any other  
21 special events that are more school related that you  
22 have on a routine or annual or monthly basis?

23 MR. MCCLAIN: Well, on an annual basis, we  
24 probably have four or five events that take place in  
25 the evening. This Thursday we have Back to School

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1 Night.

2 BOARD MEMBER MANN: Yes.

3 MR. MCCLAIN: And on Saturday, one  
4 Saturday in May, we have an evening auction. On  
5 another Saturday in May we have a poetry festival that  
6 we sponsor for public and private school students  
7 around the District. It's 22 years-old. You know, we  
8 get about 115 people come in on a Sunday afternoon and  
9 kids from around town come in and read poetry and  
10 that's it. We have a very small number. We don't  
11 have a large extra curricular program like a lot of  
12 schools do. We have some study hall after school and  
13 then our children go home.

14 BOARD MEMBER MANN: Okay.

15 MR. MCCLAIN: So we're not there in the  
16 evenings, except for those five or six nights, and  
17 we're not there on weekends.

18 BOARD MEMBER MANN: So there is no desire  
19 on your part to change the status quo regarding the  
20 use of the school facilities for other than classroom  
21 activities?

22 MR. MCCLAIN: I have gotten used to having  
23 a restricted schedule that way myself.

24 BOARD MEMBER MANN: I see.

25 MR. MCCLAIN: So it works well for me.

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1 BOARD MEMBER MANN: Thank you.

2 MR. MCCLAIN: But no, we don't have any  
3 desire to have more flexibility about the use.

4 CHAIRPERSON GRIFFIS: Anything else?  
5 Previous conditions have also been for timing, and  
6 right now we're looking at five years from the date of  
7 the order. Comments on that?

8 MR. MCCLAIN: We have discussed ourselves  
9 asking for a longer period of time. It would  
10 certainly make our life easier. We are very attentive  
11 to the relationship we have with our 16<sup>th</sup> Street  
12 neighbor who expresses, I think, a very legitimate  
13 concern that if you were to expand it, although I  
14 think they have a lot of confidence in our current  
15 management of the facility and what has been going on  
16 there for the last 13 or 14 years, but they would like  
17 to know what would happen if it was a longer time  
18 period and then either the leadership of the school  
19 changed or even the potential ownership of the school  
20 changed. And we don't have any answer about how to  
21 sort of address that.

22 You know, they have written a very  
23 enthusiastic letter of support, which is part of the  
24 packet, but they also don't want to be left in a  
25 situation where they don't have some recourse if it

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1 feels like the school is not in alignment with what  
2 its obligations are. So we haven't, you know, really  
3 figured out some way to go ahead, you know, with their  
4 support on that. I mean, it would be institutionally  
5 much better for us to have a longer period of time.

6 CHAIRPERSON GRIFFIS: Okay. Yes, Ms.  
7 Miller?

8 VICE CHAIR MILLER: I just want to follow-  
9 up on Condition 4 that you were just talking about,  
10 that there should be no non-school related activities  
11 and you don't mind that.

12 My question is why do we need to have it?  
13 I mean, if you don't want to let your school out for  
14 other activities, you don't have to. I mean, you  
15 don't necessarily need a condition from the BZA.

16 MR. MCCLAIN: Right.

17 VICE CHAIR MILLER: To give you that  
18 capability. Is there something else?

19 MR. MCCLAIN: No, there is no advantage to  
20 us to keep it. It's also not a factor for us at this  
21 point. I think that you can understand how it was of  
22 interest initially, because the school was an unknown.

23 VICE CHAIR MILLER: Right, right.

24 MR. MCCLAIN: And the pattern, as you  
25 well-know better than anybody else in town, is for

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1 people to move into spaces and then the need to  
2 expand.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. MCCLAIN: And then suddenly, you know,  
5 what is the challenge to the neighborhood? We don't  
6 have any intentions of doing that.

7 CHAIRPERSON GRIFFIS: You have indicated  
8 you don't run an after school program of any sort.

9 MR. MCCLAIN: No.

10 CHAIRPERSON GRIFFIS: Do you do a summer  
11 program?

12 MR. MCCLAIN: We sometimes have a five  
13 week morning summer school that may include 8 to 10  
14 students.

15 CHAIRPERSON GRIFFIS: But in your opinion,  
16 is that school related or non-school related?

17 MR. MCCLAIN: Oh, sure, it's our students  
18 trying to get more credits towards high school  
19 graduation.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. MCCLAIN: It's our effort to help kids  
22 that need to be learning, you know, 12 months a year  
23 instead of 10 and a half months a year.

24 CHAIRPERSON GRIFFIS: So in your opinion,  
25 I'm hearing all the answers to the questions is that

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1 everything that the capacity and the facility is being  
2 used for and really can be used for is school related?

3 MR. MCCLAIN: Oh, absolutely.

4 CHAIRPERSON GRIFFIS: And you're not  
5 looking or have any interest, but that this has been  
6 an insurance to the surrounding area and the residents  
7 in past applications and possibly now as the assurance  
8 that this would not in any way have additional use on  
9 the weekends or during the summer, you know, fairs,  
10 circus comes to town, Cirque du Soleil in the back  
11 yard kind of thing. Okay. I think I'm clear on that.

12 Yes?

13 MR. MCCLAIN: Can I ask you about the  
14 neighbor's question?

15 CHAIRPERSON GRIFFIS: You can't ask us  
16 questions.

17 MR. MCCLAIN: Okay.

18 CHAIRPERSON GRIFFIS: No, go ahead.

19 MR. MCCLAIN: Well, you know, what is the  
20 answer? Is there an answer to that? I mean, is there  
21 anywhere --

22 CHAIRPERSON GRIFFIS: Is there an answer  
23 to that condition?

24 MR. MCCLAIN: Yes.

25 CHAIRPERSON GRIFFIS: About how to insure?

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1 MR. MCCLAIN: Yes. Well, they are  
2 concerned about, you know, if management changes and  
3 things like that. Are they more vulnerable if it's a  
4 10 year period versus a five year period?

5 CHAIRPERSON GRIFFIS: Actually, that's an  
6 excellent question. That's going to be part of our  
7 discussion that we are going to involve you in. I  
8 want to go to the Office of Planning to get even more  
9 information to fill that in, and then we'll get back  
10 to in terms of the timing. Let me also just say as we  
11 kind of -- it may seem like we really pick apart, not  
12 too badly, but pick apart some of the wording and the  
13 conditions of this.

14 One of the biggest directions from this  
15 Board is if we condition any order, we obviously have  
16 to have a reason for it, right, so there has to be a  
17 finding of fact why it's there. But more importantly,  
18 in crafting these things we need to understand what  
19 it's actually trying to do, so that it's  
20 understandable for people 2, 5, 10 years down the  
21 road, it's measurable in its impact.

22 And some of the problems I have with  
23 saying non-school related activities, well, I  
24 understand yes, that a carwash for -- well, that  
25 doesn't even fit. It's kind of an undefined term.

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1 What fits and what doesn't fit in? The poetry reading  
2 for other students around the city, is that school  
3 related? Well, it seems to be academically related  
4 and it's certainly connected to the school.

5 Anyway, we have run into a lot of  
6 different things where what is it measurable and what  
7 is it trying to preclude and what is it allowing and  
8 what is it not allowing, but I think that one maybe  
9 took up too much time. Okay. Anything else?

10 We will return to the timing aspect of the  
11 application itself. Okay. And we do have in the  
12 evidence the landscape, the landscape description, and  
13 also the photographs. If there's nothing else from  
14 the Board, is there anything else you want to provide  
15 us at this point?

16 MR. CRONHEIM: No.

17 CHAIRPERSON GRIFFIS: Okay. Then let's  
18 move on to the Office of Planning's report, which is  
19 an excellent and complete one and say oh, a very good  
20 afternoon.

21 MS. THOMAS: Good afternoon, Mr. Chairman,  
22 Members of the Board. My name is Karen Thomas for the  
23 Office of Planning. The Parkmont School is seeking a  
24 renewal of a previously approved special exception and  
25 variance with continued operation. The school is also

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1 requesting an increase in the number of faculty from 8  
2 to 12 full-time positions, and this would result in a  
3 change in a condition limiting the number of faculty  
4 outlined in Condition 3 of the previous approval.

5 Currently, there are 65 students and 8  
6 faculty members, and I think I should stand corrected  
7 on that. You said there were 53. To OP's knowledge,  
8 this school has not exceeded its enrollment. We  
9 believe it had effectively anticipated uncontrolled  
10 student enrollment during its decade of operation and  
11 this increase would improve the student/staff ratio in  
12 support of the school's academic offerings.

13 Since there is no change in the student  
14 enrollment or expansion of the campus, OP does not  
15 believe that traffic management in the immediate  
16 vicinity of the school would change from its current  
17 level. Since its inception, the applicant has agreed  
18 to work with the community to address any concerns  
19 with respect to parking in the neighborhood. Six  
20 vehicles park at the Carter Barron lot, which has 336  
21 spaces, and we see no objection to the continued use  
22 of the off-site parking location.

23 Based on the requirements of section  
24 206.2, OP believes that the school has not been  
25 objectionable to its immediate neighbors due to

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1 traffic or noise. The earliest Board decision  
2 determined that parking relief constituted an area  
3 variance. The practical difficulty arose due to the  
4 irregular shape of the lot, the slope of the site and  
5 the location of the building in relation to trees and  
6 other landscaping on the lot, which restricted the  
7 number of on-site spaces.

8 The Board conditioned the approval to  
9 state that only three spaces were to be provided and  
10 the existing paved area should not be enlarged, so  
11 that the green space on the lot would be maintained.  
12 The material facts of the last condition has not  
13 changed, so there is no objection to the variance  
14 relief and continued use of off-site parking by the  
15 school.

16 The school currently operates in  
17 conformance with the remaining conditions and the  
18 applicant is not requesting a change in the overall  
19 hours of operation. Therefore, we recommend an  
20 approval of the special exception and variance request  
21 for the continued operation subject to the conditions  
22 outlined in our report. Similarly, there is no  
23 objection to the modification of the original order to  
24 reflect the staff increase from 8 to 12 full-time  
25 staff persons. Thank you.

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1 CHAIRPERSON GRIFFIS: Good. Thank you  
2 very much. An excellent report and very thorough.  
3 Two items, one question and one comment. Looking at  
4 the background, just going back to the background in  
5 the Office of Planning's report, it was intriguing to  
6 me to read this, because we do do a lot of private  
7 schools and day care centers and the like, and they  
8 are not always the most friendly of atmospheres that  
9 we involve ourselves in and here was, as we look back  
10 on the history, the first time that this was being  
11 established.

12 There was quite a bit of opposition,  
13 obviously, that was in the record and as the years  
14 have gone on, I don't think people have been worn out  
15 in their opposition, but rather the operation of the  
16 school itself, and specifically with this one, has  
17 shown that it can be very compatible if not an  
18 attribute or a contributing neighbor to the  
19 surrounding area.

20 So I thought it was fascinating to see  
21 that kind of reflection of time and here we are with  
22 this, and I think it says a lot about the applicant  
23 also in terms of how they have run, one, the physical  
24 plant, the facility itself and the grounds, but also  
25 the program and the interaction with the community.

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1 So that was good.

2 The question to the Office of Planning is  
3 would you speak a little bit more about the time in  
4 terms of the five year term that is one of the  
5 conditions and whether there was, you know, a lot of  
6 analysis of it or not? Obviously, it's from the  
7 prior, the conditions from the prior approval, but I  
8 will let you speak to that specifically if you would  
9 like.

10 MS. THOMAS: I think if I can remember  
11 reading some of the transcripts when they did ask for  
12 a 10 year, there was some objection to that in that  
13 conditions might change and the community felt that it  
14 was easier to maintain a five year process and see if  
15 any situation has changed given the current state of  
16 private schools, the issues of private schools and  
17 their willingness to expand or their request to  
18 expand.

19 So they wanted to maintain that five year  
20 period. Especially since they asked for full-time, an  
21 increase in staffing, we would want to see how it  
22 would work out in terms of the parking situation.

23 CHAIRPERSON GRIFFIS: Okay. Understood.  
24 Of course, if they expanded it, you know, above what  
25 might well be approved in this application, they

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1 obviously have to come back in.

2 MS. THOMAS: Right.

3 CHAIRPERSON GRIFFIS: Anything? Is it  
4 also your understanding that any additions to the  
5 buildings would also be required to come in?

6 MS. THOMAS: Yes, that's correct. So we  
7 think if they had to expand, an addition to the  
8 building would probably mean an increase in students.

9 CHAIRPERSON GRIFFIS: Right.

10 MS. THOMAS: And they would have to come  
11 back in, so five years.

12 CHAIRPERSON GRIFFIS: Good.

13 MS. THOMAS: As opposed to 10. I mean, it  
14 gives the community some assurance. Like you said,  
15 it's some insurance for the community.

16 CHAIRPERSON GRIFFIS: But isn't there  
17 assurance if they will have to come back if anything  
18 changes?

19 MS. THOMAS: That's correct, yes.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. THOMAS: But I think the community  
22 always feels a little bit more comfortable --

23 CHAIRPERSON GRIFFIS: Sure.

24 MS. THOMAS: -- seeing a shorter time  
25 frame than a 10 year time frame.

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1 CHAIRPERSON GRIFFIS: Right.

2 MS. THOMAS: I guess it's just  
3 psychological.

4 CHAIRPERSON GRIFFIS: Okay. Any other  
5 questions from the Board? Ms. Miller?

6 VICE CHAIR MILLER: With respect to that  
7 Condition No. 4, "No non-school related activities on  
8 the subject premises," I think that our conditions are  
9 supposed to be tied to mitigating adverse impacts, and  
10 I'm wondering if you see an adverse impact that  
11 necessitates this condition in this particular  
12 situation?

13 MS. THOMAS: I believe that previously  
14 when this was written in, there was concern that the  
15 school would be rented out, space would be rented out  
16 to different groups that are not part of the school,  
17 and there was some concern with respect to traffic and  
18 parking, weekend events where the school may not have  
19 weekend events and that institution would be rented,  
20 space, any space would be rented out for different  
21 groups, you know, weekends and times when the school  
22 wasn't using the space. So I guess that was a  
23 condition that the community had asked for, as well,  
24 and we maintained it.

25 VICE CHAIR MILLER: Yes. I mean, it

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1 sounds like, I think, 20 years ago when the school was  
2 new, there were a lot of concerns about the unknown  
3 and how it's going to operate and now we have had a  
4 school in existence for 20 years and so now we have,  
5 you know, a real operating situation. Granted though,  
6 they have been operating under this condition and I  
7 was just wondering if you were aware of any  
8 circumstances now that, you know, would cause us to  
9 implement that kind of condition.

10 MS. THOMAS: No, I'm not aware of  
11 anything.

12 VICE CHAIR MILLER: Okay. Thank you.

13 CHAIRPERSON GRIFFIS: Any other questions  
14 from the Board of the Office of Planning? Does the  
15 applicant have any cross examination of the Office of  
16 Planning?

17 MR. CRONHEIM: No.

18 CHAIRPERSON GRIFFIS: Very well. Let's  
19 move on then to ANC-4C. Do we have the two documents  
20 that we received in? Okay. The substance of it,  
21 however, is the fact that it did support, unanimously  
22 support the Application No. 17209. What do you know?

23 VICE CHAIR MILLER: They want it to be  
24 resoled.

25 CHAIRPERSON GRIFFIS: Oh, that's true,

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1 resoled as in a shoe.

2 VICE CHAIR MILLER: Sorry.

3 CHAIRPERSON GRIFFIS: R-E-S-O-L-E-D.

4 Okay. Well, not being the best speller myself, I'm  
5 not going to chastise them for that one. Okay. I  
6 think the intent, obviously, is for the record we  
7 would have to, in fact, waive our regulations to  
8 accept it into the record. I don't imagine there's  
9 any opposition from the Board in doing so, taking it  
10 in. It has indicated the other requirements for being  
11 granted great weight. They do also speak to -- well,  
12 they speak to the special exception and also the  
13 variance request for the three parking spaces somewhat  
14 indirectly, but I think it was obviously presented to  
15 them. Is that correct?

16 MR. MCCLAIN: Yes.

17 CHAIRPERSON GRIFFIS: Okay. Very well.

18 Does the applicant have anything further to add on the  
19 ANC letter?

20 MR. MCCLAIN: No.

21 CHAIRPERSON GRIFFIS: Okay. I don't have  
22 anything else attendant to this application that was  
23 submitted in terms of agency reports, ANC, surrounding  
24 associations. We do have letters in support of the  
25 application, Exhibit 24, 25 and Exhibit 28, which

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1 would be from Baker, Pfund and Vernon.

2 Are you aware of any others that we should  
3 be aware of in terms of in the record?

4 MR. MCCLAIN: I think that's correct.

5 CHAIRPERSON GRIFFIS: 1765 Shepherd, 1401  
6 Ingraham Street and 4838 16<sup>th</sup> Street.

7 MR. MCCLAIN: Yes. Is there a letter from  
8 Boyd as well?

9 CHAIRPERSON GRIFFIS: Oh, what did I say,  
10 Vernon? Yes, Frederick Vernon Boyd.

11 MR. MCCLAIN: Right, that's the one.

12 CHAIRPERSON GRIFFIS: And Roberta.

13 MR. MCCLAIN: Okay. That's all that we  
14 have.

15 CHAIRPERSON GRIFFIS: Threw you off there,  
16 middle name usage. Okay. Anything else then? Board  
17 Members, questions, clarifications? I'll turn it over  
18 to you for any closing remarks you might have then.

19 MR. CRONHEIM: I Just would like to speak  
20 to the timing issue again just briefly. The school  
21 certainly has an interest in the maximum period for  
22 the special exception and variance possible. Really,  
23 the sole reason that we didn't pursue it was that of  
24 deference to the concerns of our neighbors, that they  
25 have some kind of accountability check on the school,

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1 but we would just like to note that the only reason  
2 they have that concern is because of the possibility  
3 of a future administration or ownership change.

4 They have been extremely pleased with  
5 their relationship with Ron and the rest of the  
6 administration and with the school and they don't have  
7 any concern. I believe we could say they wouldn't  
8 have any concerns with a 10 year exception if the  
9 current administration were in place for that term. I  
10 think Ron would agree with this. They have full  
11 confidence and support of the current Parkmont  
12 administration.

13 VICE CHAIR MILLER: I just want to follow  
14 that up a little bit because, you know, we do put in  
15 our orders conditions to mitigate any adverse impacts  
16 that are expected, and I'm just trying to figure out  
17 what is it that they are worried about if somebody  
18 else steps into this order, if another school comes  
19 in, that the kids will be wild or something like that,  
20 I mean, which is not something we can necessarily have  
21 any impact on or is it just kind of an intangible  
22 concern?

23 MR. MCCLAIN: They read the papers about  
24 private schools visiting BZA. I mean, you know, they  
25 are very cognizant of the issues that we're facing

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1 around the city around school expansion. You know, I  
2 assume that that's what drives them and drives anybody  
3 who is next to an independent school at this point.  
4 So there is nothing specific, I think, in our  
5 relationship at all that seems -- but at the same  
6 time, there is no way to predict what the future is in  
7 any operation.

8 MR. CRONHEIM: And I think that the  
9 current neighbors feel comfortable that if any problem  
10 did arise, that they could address that with Ron and,  
11 like he said before, be resolved very quickly. It's  
12 just if Ron were to retire or if the school were to be  
13 taken over by a new set of administrators that maybe  
14 they would not have the benefit of that relationship  
15 and those quick responses.

16 CHAIRPERSON GRIFFIS: Good. Anything  
17 else, clarifications? Okay. I think we have an ample  
18 record on this to establish the test for the special  
19 exception and also the variance. We have ample time  
20 it seems, again, this afternoon. So I see no reason  
21 to keep the record open for additional submissions  
22 unless Board Members feel otherwise. I think we're  
23 ready to proceed with this today.

24 I think it's best to deliberate under a  
25 motion, so I would move approval of Application 17209

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1 of the Parkmont School. That would be for the  
2 variance from the off-street parking requirements,  
3 2101.1, and also for the special exception to operate  
4 a private secondary school of 65 students and, as  
5 there will be evidence in the condition, 12 faculty in  
6 the R-1-B District at 4842 16<sup>th</sup> Street, N.W.

7 And I would have the motion include the  
8 following conditions. One, approval would be for 10  
9 years, that the total number of students would not  
10 exceed 65 and the number of faculty would not exceed  
11 12, that there shall be no non-school related  
12 activities on the subject premises. Landscaping on  
13 the premises would be maintained as evidenced today in  
14 a healthy and growing condition, the three parking  
15 spaces would be provided on the premises and that no  
16 enlargement of the existing paved area on the site  
17 would be conducted.

18 COMMISSIONER MITTEN: Second.

19 CHAIRPERSON GRIFFIS: Thank you, Ms.  
20 Mitten. Let's go first to the timing and I think we  
21 have exhausted what the applicant provided us in terms  
22 of the concern of the community, and I think we really  
23 need to focus on what we know of applications and  
24 concerns that have always been raised by the  
25 neighborhood. Clearly, if there is an administrative

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1 change or a change in the school, that is the concern.

2 If there is a five year window of which this has to  
3 keep coming back, then there is that valve of input  
4 from the surrounding neighborhoods.

5 However, as one of the conditions was  
6 actually proffered, which the operation of the school  
7 would be limited to the Parkmont School, of course, I  
8 think the Board would be in agreement that that would  
9 not be within our authority to condition as we would  
10 look at a special exception.

11 Going to my point with that is that this  
12 is a special exception for a private secondary school.

13 It also is defined by the number of students and the  
14 number of faculty, I think, and the way we look at  
15 special exceptions are the specific aspects that might  
16 create adverse effects in the neighborhood, but we  
17 also need to look generally as to this type of use.  
18 And so in the framework of a private secondary school,  
19 if the operation moves beyond that, then that is a  
20 whole new special exception request that would come  
21 in.

22 And so I think there is an awful lot of  
23 insurance for the surrounding community that the  
24 conditions won't dramatically or won't change at all  
25 even if the administration or the faculty was to

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1 change as another school coming in to deal with this  
2 site and the facility would be defined by exactly what  
3 Parkmont is defined by. And I don't find any other  
4 record in the evidence, quite frankly, that would lend  
5 me to even project out what kind of conditions would  
6 be created.

7 I mean, the conditions are classic for us  
8 when we look at these. It's going to be traffic.  
9 It's going to be, you know, from the facility, from  
10 the faculty or from the students coming and going.  
11 It's going to be the amount of population of students.

12 Is it overwhelming a residential area, because, you  
13 know, well, 65 kids doesn't seem to really overwhelm  
14 this especially with, as is in the record, other  
15 functionings happening in the neighborhood, a church  
16 at Carter Barron, which sounds like a huge place, I  
17 don't need to be indirect, which is a big place that  
18 has activities and a lot of, you know, weekend  
19 activities, things like that. So I don't see any  
20 reason why we wouldn't move this off a little bit.

21 And lastly on that, actually, I think it  
22 is very burdensome for the applicant. That's not my  
23 major concern, but it is balanced within all of this.

24 It's also burdensome to the Board. You know, it's  
25 interesting we have a free afternoon after this, but

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1 most times we don't, you know, it's 7:00 or 8:00 and  
2 fitting people and applications in. But, I think, we  
3 also need to really balance what is efficient and  
4 effective for the operation of the system of zoning  
5 relief. And so to that, I would obviously have  
6 offered the 10 year condition.

7 Let me open it up to others about the  
8 other conditions, subtracting or adding into. Ms.  
9 Miller?

10 VICE CHAIR MILLER: Okay. First of all, I  
11 want to make a comment on the term. I think that five  
12 years is a pretty short period of time compared to  
13 what most private schools that I have seen have. So I  
14 think that would be appropriate if this were a school  
15 that was having problems, maybe not first starting out  
16 to see how it works out the first five years, but it  
17 has been 20 years now. It has a track record, doesn't  
18 have problems. So for that reason, I think that the  
19 10 years is appropriate at this point.

20 I have focused on number 4. I don't think  
21 we should impose that condition that there be no non-  
22 school related activities on the subject premises.  
23 From the evidence that I heard, there is no reason  
24 that we need to impose it on the school. The way the  
25 school operates naturally is that it doesn't have time

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1 or space to accommodate non-school related activities  
2 for the most part, and so without the condition they  
3 might be able to accommodate the exceptional time when  
4 maybe it would be appropriate. I don't see any  
5 adverse impacts that have been brought to our  
6 attention that necessitate it and I think that should  
7 be the reason for that kind of condition.

8 CHAIRPERSON GRIFFIS: Okay. Others? Yes,  
9 Ms. Mitten?

10 COMMISSIONER MITTEN: I guess I just want  
11 to go back to a point that I think, Ms. Miller, you  
12 were the one who actually said it in describing a  
13 point earlier, which is there aren't any adverse  
14 impacts associated with this school and perhaps it's  
15 because they have been operating under this order.

16 And given that we don't have the authority  
17 to restrict the use of this school to a particular  
18 school, so that there would be a review that would be  
19 triggered in the event of a new school, another school  
20 operating with maybe a different kind of population, I  
21 think it's appropriate and I don't think that -- and I  
22 don't know what the legal parameters are, but to  
23 suggest that we have to create an entirely new record  
24 that stands on its own for this when the direction of  
25 the prior order was so that we have an independent

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1 record for each of the items or the conditions,  
2 because the prior order specifically directed that the  
3 focus of the Board's review at the five year point  
4 would be related to parking.

5 CHAIRPERSON GRIFFIS: Right.

6 COMMISSIONER MITTEN: And one can  
7 certainly extrapolate that if there were, not that  
8 Parkmont intends to do this, but if some other school  
9 who might buy the property who wouldn't expand the  
10 school population, wouldn't expand the number of  
11 teachers, but would use the school in a different way,  
12 if they had non-school activities, given the fact that  
13 there is a very active church in the neighborhood that  
14 uses a lot of the on-street parking, you know, I don't  
15 think it's an inconceivable idea that there could be  
16 adverse impacts.

17 There are no school hours specified. If  
18 this became some kind of adult education program like  
19 Alliance Francais that we had, at one point, where  
20 they had adults coming in at night who would drive to  
21 the property, you know, there's all kinds of things  
22 that, you know, one could extrapolate that there might  
23 be adverse impacts. So I think it's appropriate to  
24 allow a longer period of time for the reason you said,  
25 five years is a fairly short amount of time, but I

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1 don't know that we have to build a new record for each  
2 and every one of the prior conditions.

3 VICE CHAIR MILLER: Well, just to respond,  
4 and I think this is a tough issue, because I think the  
5 neighbors are concerned about the "what if" if the  
6 administration changes, but to me it's very  
7 speculative to be worrying about, you know, if the  
8 administration changes and they use it in a different  
9 way. Well, what kind of adverse impacts are we  
10 worried about? We're not worried about parking,  
11 because we know that they can all park at Carter  
12 Barron. So you know, what adverse impacts? I think  
13 we should have an idea as to what adverse impacts we  
14 would be mitigating at least.

15 I mean, you know, my concern is what we  
16 have seen is the exception probably and this doesn't  
17 build in for it like when we had the sniper and we had  
18 cases where schools were not allowed to open up their  
19 gymnasiums to kids outside of their schools and that  
20 was unfortunate. What purpose did that serve? And so  
21 that's where I'm coming from. Maybe this is  
22 precluding something that would be good and we don't  
23 really know what we're trying to mitigate here.

24 CHAIRPERSON GRIFFIS: Mr. Mann?

25 BOARD MEMBER MANN: I would also be in

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1 favor of striking Condition 4 for a couple of reasons.

2 Number one, the school is going to be limited to the  
3 number of students and faculty that it's going to be  
4 able to accommodate, and I think that's probably the  
5 largest concern, school expansion. Number two, the  
6 school is still going to be or the property is still  
7 going to be restricted as to what they can do. It's  
8 not like all of a sudden a noxious use is going to be  
9 able to occur on the school property. And number  
10 three, for the reasons, the speculative reasons that  
11 Ms. Miller just talked about.

12 But aside from that, I also have a comment  
13 regarding Conditions 5 and 7, which to me seem -- I  
14 mean, they are fine, but I'm wondering if perhaps they  
15 can't be combined, because I think they are actually  
16 going to the same thing and it's regarding the  
17 enlargement to an existing paved area. Is that  
18 supposed to be or my impression is that it's related  
19 to maintaining the landscaping and the impermeable  
20 surface in the current condition, and not allowing an  
21 increase in impermeable surface? I think maybe 5 and  
22 7 are actually going to the same thing, so I would  
23 suggest that they somehow be combined.

24 CHAIRPERSON GRIFFIS: That's an excellent  
25 point. I do agree with you that 7 is directly going

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1 to the appearance and, for that matter, 5, 6 and 7 can  
2 be combined in a single condition. I think we can  
3 take that under advisement, I think, probably. I  
4 think we could easily do that and we'll write it out  
5 as we create the order and perhaps they word better in  
6 one condition than in three separate. Okay.

7 So we have the questions about 4. Any  
8 other comments on that? It seems to me, you know,  
9 Condition 4 is actually redundant and Mr. Mann has  
10 kind of touched upon it. Actually, we all are, but  
11 the special exception is allowed for the use of a  
12 secondary educational institution and anything outside  
13 of that isn't allowed. And then we're saying in  
14 Condition 4 non-school related activities won't be  
15 allowed. I mean, they are not allowed.

16 COMMISSIONER MITTEN: Can I just comment  
17 on that? You know, I don't want to go to the mat on  
18 this thing.

19 CHAIRPERSON GRIFFIS: Yes.

20 COMMISSIONER MITTEN: You know, I mean,  
21 whatever the general consensus is, I'm happy to go  
22 with it.

23 CHAIRPERSON GRIFFIS: That's the problem.

24 We now have 2-2. There is no general consensus.  
25 Okay.

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1                   COMMISSIONER MITTEN:   Okay.  I think the  
2 point is is that the non-school related activities are  
3 permitted.  If they depart from whatever the permitted  
4 use is, because they would be sort of adjunct,  
5 accessory type things, it's only when they overshadow  
6 the primary use that's permitted.  So it's not that  
7 you either operate a school as permitted by the order  
8 or there is nothing else, because we frequently have  
9 those kinds of other activities going on.

10                   So I don't subscribe to that fully, but  
11 just to the Chair's point, it's not a secondary school  
12 that's permitted.  We don't have that restriction.  So  
13 you have to think, you know, it's a school.  The  
14 conditions don't restrict it in any way to the school  
15 population, hours of operation or anything, so unlike  
16 some orders that we have.

17                   VICE CHAIR MILLER:  You know what, I think  
18 what -- excuse me for jumping in, but I think in other  
19 cases we limit use of the school for commercial  
20 reasons or something like that, not for other  
21 community reasons.  I mean, there are degrees of  
22 limiting it and this was just totally no other, you  
23 know, no non-school related, so maybe we can come up  
24 with a condition that addresses some concern like  
25 that.  It can't be rented out.  I don't know.  But

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1 again, we don't really have evidence that that's what  
2 they want to do, you know, but the fear is something  
3 that another administration will do.

4 CHAIRPERSON GRIFFIS: Wedding receptions  
5 on the lawn.

6 VICE CHAIR MILLER: Wedding receptions,  
7 right. You know, again though, I wonder if we get too  
8 speculative, I don't know if that's such a good idea.

9 COMMISSIONER MITTEN: Well, I mean, I  
10 guess it's up to the -- well, I don't sense either of  
11 you at the end of the table moving, and unless you're  
12 going to quickly craft an alternative condition, I  
13 guess what I would propose as an alternative is that  
14 just to get at what might potentially be the adverse  
15 impact, just to say there shall be no non-school  
16 related activities on the subject premises that result  
17 in adverse impacts to the immediate neighborhood. So  
18 then if something happens and someone says that had an  
19 adverse impact on me, that's not permitted, that's  
20 going to get some enforcement and anything else that  
21 wouldn't, wouldn't be included.

22 BOARD MEMBER MANN: I was just going to  
23 say that that's still -- a little while ago you gave  
24 an example that certain schools like Alliance  
25 Francais, it is a school and it has evening adult

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1 classes. So you're still going to run into that  
2 problem even with the condition the way that you just  
3 amended it.

4 COMMISSIONER MITTEN: Well, that's right,  
5 because the way this -- a school that operated for  
6 adults that operated as a school that was for adults  
7 and operated in the evening, they would probably have  
8 adverse impacts on the neighborhood, but even with  
9 non-school related activities they would be permitted  
10 to do that.

11 But you could imagine things that might go  
12 on like, I don't know, a lecture series or something  
13 that was not part of the normal school operation where  
14 there were a lot of people coming. I mean, like I  
15 said, I'm not going to the mat on this. I will  
16 propose that as an amendment and we'll see if that can  
17 be amended to the motion. And if not, then let's just  
18 vote it up or down.

19 CHAIRPERSON GRIFFIS: Right.

20 COMMISSIONER MITTEN: And it won't be a 2-  
21 2 tie.

22 CHAIRPERSON GRIFFIS: Very well. We do  
23 have a proposed amendment to Condition 4 that adds the  
24 terminology of creating adverse impact. Is everyone  
25 clear on that?

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1 VICE CHAIR MILLER: Well, just before we  
2 vote, I mean, I just don't think it's measurable. We  
3 talk about having conditions that are measurable and  
4 understandable and I just think it's too vague, so I  
5 would be voting against it.

6 CHAIRPERSON GRIFFIS: Against the  
7 amendment to the condition?

8 VICE CHAIR MILLER: Yes.

9 COMMISSIONER MITTEN: Well, given that my  
10 amendment doesn't even have a second, we probably  
11 shouldn't even be talking about it.

12 CHAIRPERSON GRIFFIS: Right. I figured we  
13 could probably do it consensus-like. Let's move  
14 ahead. We have condition 4, which has been now  
15 discussed quite a bit. It is a prior condition. The  
16 applicant hasn't shown that it is of any concern of  
17 theirs in compliance with it. I think it is as  
18 innocuous really as possible. I think when we talk  
19 about measurability and enforceability, I would hate  
20 to be the one that was measuring or enforcing what's  
21 school related or non-school related.

22 But the intent, and this is where I am on  
23 it, is that we have already heard enough for the fact  
24 of the neighbors that participated prior that they  
25 want some sort of insurance, and I think if nothing, I

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1 think a comment from the applicant was it was maybe  
2 more psychological than anything if nothing more than  
3 really, this condition does go to providing some idea  
4 of insurance, that the conditions, that the  
5 parameters, that the whole aspect of which is adjacent  
6 to their properties will not change.

7 If it does change, then it would, in fact,  
8 bring a review or some type of new relief. And so I  
9 think it's worth holding in there and not spending  
10 much more time on it.

11 VICE CHAIR MILLER: Yes, I just want to  
12 say this and maybe it will get carried in the  
13 transcript or something, but it doesn't bother me that  
14 much provided that if the school decides to do  
15 something, such as I was talking, you know, have some  
16 kind of program for people outside of the school,  
17 that's fine, you know, again as long as the school is  
18 somewhat involved in the activity. I mean, it's very  
19 undefined. I think your point is it's so undefined  
20 that it's not going to limit them from the type of  
21 activities that I was concerned about.

22 CHAIRPERSON GRIFFIS: Right. And if we  
23 want to go to the fact of the matter, and hopefully  
24 this is the last thing we talk about on this, the  
25 applicant has indicated that there is a church nearby

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1 that has made requests of utilizing their building for  
2 church activities, and I think it would fall under  
3 this condition that that wouldn't be allowed, because  
4 it's not directly -- actually, the school is allowing  
5 it for another use, an adjacent use, and that maybe is  
6 part of the concern of the neighborhood of how many  
7 more, you know, areas are taken up on certain days for  
8 other or differing activities of which they don't feel  
9 that there is any sort of control or review or, for  
10 that matter, any way to remedy a situation that might  
11 become difficult for them.

12 So I think the aspect of the wording of  
13 this with non-school related activities is large  
14 enough to encompass any school related activities that  
15 would be needed for the use of the facility and the  
16 grounds.

17 COMMISSIONER MITTEN: Well done. Well  
18 done, Mr. Chairman.

19 CHAIRPERSON GRIFFIS: Indeed.

20 COMMISSIONER MITTEN: And just as a point  
21 of order, if the folks at the other end of the dias  
22 wanted to amend your motion, which includes Condition  
23 4, they would have to put forward an amendment.

24 CHAIRPERSON GRIFFIS: That's true. Sorry.

25 MR. MCCLAIN: Can we comment at all?

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1 CHAIRPERSON GRIFFIS: No, that's the --

2 COMMISSIONER MITTEN: You just get to  
3 watch.

4 CHAIRPERSON GRIFFIS: Yes, you just get to  
5 look at us fumble along. You guys ready? Ready?

6 VICE CHAIR MILLER: Okay. Yes, I just  
7 want to make this comment, because I'm ready to go  
8 along with my Board Members, but I want the order to  
9 reflect our intent that we do not intend to preclude,  
10 you know, uses such as what we were talking about, you  
11 know, with --

12 CHAIRPERSON GRIFFIS: School related uses?

13 VICE CHAIR MILLER: Well, school, you  
14 know, community related, sponsored by the school or  
15 whatever, supported by the school.

16 CHAIRPERSON GRIFFIS: I think --

17 VICE CHAIR MILLER: If they want to bring  
18 in other kids to use their facility, that's fine as  
19 long as it's, you know, school related, because it's  
20 sponsored by the school.

21 CHAIRPERSON GRIFFIS: Right.

22 VICE CHAIR MILLER: Then I can go along  
23 with it.

24 CHAIRPERSON GRIFFIS: And quite frankly,  
25 well, there it is. Good enough. We have a motion

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1 before us, conditioned, and has been seconded. I ask  
2 for all those in favor of the motion to signify by  
3 saying aye.

4 ALL: Aye.

5 CHAIRPERSON GRIFFIS: And opposed?  
6 Abstaining? Ms. Bailey?

7 MS. BAILEY: Mr. Chairman, we have a proxy  
8 vote from Mr. Etherly to approve with conditions as  
9 determined by the Board, so the vote is 5-0-0 to  
10 approve the application. Mr. Griffis made the motion,  
11 Mrs. Mitten second, and it's with the conditions as  
12 stipulated.

13 CHAIRPERSON GRIFFIS: Excellent. Thank  
14 you very much. And of course, we will make quick  
15 revisions or a review of our official decision, which  
16 is the written order which may, in fact, collapse some  
17 of those conditions into a single condition and the  
18 wording may not be exactly as was stated out here just  
19 for clarification. Good.

20 Any other questions I can answer for you  
21 procedurally?

22 MR. CRONHEIM: Would it be possible to  
23 request a Bench Decision?

24 CHAIRPERSON GRIFFIS: You just got that.

25 MR. CRONHEIM: Perfect.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MR. CRONHEIM: I believe that's all we  
3 have.

4 CHAIRPERSON GRIFFIS: Indeed. Then Ms.  
5 Miller has requested the Board Members, for us to --  
6 requested that we actually add in some additional  
7 findings and deliberative comments in the order, which  
8 would speak to me as a full order. Are we looking for  
9 a full order on this or are we looking for trying to  
10 establish a limited summary order in this fashion?  
11 You can answer that, Ms. Miller.

12 VICE CHAIR MILLER: I think it's like one  
13 of our hybrid orders, but I expect that it can be  
14 fairly succinct and our intent can be expressed in,  
15 you know, one or two sentences.

16 CHAIRPERSON GRIFFIS: Very well. I think  
17 we can do that. We'll just somehow -- this is not  
18 going to be a summary order. It will be, obviously, a  
19 shortened or abridged full order on this, which would  
20 be findings and conclusions. In which case, are you  
21 wanting the opportunity to submit a proposed order,  
22 proposed findings of facts, conclusions of law?

23 MR. CRONHEIM: We would be happy to do so  
24 if it would be helpful.

25 CHAIRPERSON GRIFFIS: Okay. What we're

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1 going to do is we'll leave the record open. It's not  
2 a requirement, but the Board is making certain you  
3 have the opportunity to do that. Let me ask you in  
4 terms of time how much time you would need. Can you  
5 get it by the end of the day or do you need a week or  
6 in all seriousness, how much time would you need to  
7 submit it?

8 What we're trying to do is we're trying to  
9 expedite issuing the order, which means then it's, you  
10 know, ready to go and we don't need to be spending a  
11 lot of time tracking it down and making it. So would  
12 you need a week or two weeks to keep --

13 MR. CRONHEIM: One week will be more than  
14 enough.

15 CHAIRPERSON GRIFFIS: Okay. Why don't we  
16 keep the record open for a week? We can have that in.

17 If, in fact, you don't submit one in within a week,  
18 we will obviously be generating the record and putting  
19 an order together and we would submit it soon after  
20 that.

21 MR. CRONHEIM: Okay.

22 CHAIRPERSON GRIFFIS: Okay. So a week  
23 would be, Ms. Bailey, we would have it on the  
24 following Tuesday, which would be the 5<sup>th</sup> of October?

25 MS. BAILEY: October, yes, sir.

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1 CHAIRPERSON GRIFFIS: By 3:00, 3:00 on the  
2 5<sup>th</sup> or do you need next week? I mean, I'm --

3 MR. CRONHEIM: No, that will work.

4 CHAIRPERSON GRIFFIS: It's totally up to  
5 you.

6 MR. CRONHEIM: That works fine.

7 CHAIRPERSON GRIFFIS: Okay. Excellent.  
8 Ms. Bailey, anything else then?

9 MS. BAILEY: On this case, Mr. Chairman,  
10 no, that's it on this case.

11 CHAIRPERSON GRIFFIS: Excellent. Anything  
12 else for us this afternoon?

13 MS. BAILEY: That's it for the afternoon  
14 as well.

15 CHAIRPERSON GRIFFIS: How about that?  
16 Unbelievable. We're breaking records here. Any  
17 questions I can answer, any procedural questions? You  
18 guys all set?

19 MR. MCCLAIN: No. Thank you very much for  
20 your time.

21 CHAIRPERSON GRIFFIS: Excellent. Thank  
22 you very much. We appreciate you being down here this  
23 afternoon and, actually, I think you ought to be  
24 commended for an excellent job, obviously, in running  
25 a school, but also running a school within a

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1 residential community, which you have shown through  
2 the evidence today that it has been very successful.

3 So with that, if there is nothing else,  
4 and no other further business for the Board, we would  
5 adjourn the afternoon session of the 28<sup>th</sup> of September  
6 2004.

7 (Whereupon, the Public Hearing was  
8 concluded at 2:28 p.m.)  
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