

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

JANUARY 11, 2005

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th 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:

KEVIN HILDEBRAND	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Deputy Secretary
BEVERLY BAILEY	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE, ESQ.

This transcript constitutes the minutes from the public hearing held on January 11, 2005.

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

9:54 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen, let me call to order the 11th of January 2005 morning Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair Ms. Miller and also Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann. We will not have a Zoning Commissioner with us this morning due to scheduling difficulties.

Copies of today's hearing are available for you. They are located at the wall where you entered into the hearing room. You can pick one up and see what our chronology will be for our session this morning. Several very important things I'm going to run through in my opening remarks. First of all, all proceedings before the Board of Zoning Adjustment are recorded. They are recorded in two fashions. One, the Court Reporter sitting on the floor to my right and also we are broadcast live on the Office of Zoning's website.

Attendant to both of those we ask several things. First, we require that people fill out witness cards prior to coming forward to speak to the

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1 Board. The witness cards are located at the table
2 where you entered into. They are also located at the
3 table in front where you will provide testimony.
4 Those two cards are to be filled out and given to the
5 Court Reporter sitting on the floor to my right, as
6 I've indicated. That will, of course, insure that
7 anything you say is given credit to you and your name
8 is properly spelled in the official transcript for all
9 to see throughout history. Right?

10 VICE CHAIR MILLER: Right.

11 CHAIRPERSON GRIFFIS: Indeed. Very well.

12 We also ask that people present today not make any
13 disruptive noises or actions, so we don't interrupt
14 the testimony in this proceeding. And to that I would
15 ask that people turn off cell phones and beepers, so
16 we also don't have that difficulty and interruptions
17 of our transmission and also in the testimony that's
18 being provided.

19 The order of procedure for special
20 exceptions and variances is as follows: We will first
21 hear from the applicant in the presentation of their
22 case and application. Secondly, we will hear all
23 Government reports attendant to the application, such
24 as Office of Planning or Department of Transportation.
25 Third, we will hear from the Advisory Neighborhood

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1 Commission within which the property is located.

2 Fourth, we will hear from persons or
3 parties in support of the application. Fifth would be
4 persons or parties in opposition to the application
5 and sixth, finally, we will hear again from the
6 applicant and the rebuttal witnesses that they have or
7 any closing or summation remarks. Cross examination
8 of witnesses is permitted by the applicant and parties
9 in the case.

10 The ANC within which the property is
11 located is automatically a party in the case and,
12 therefore, will be able to conduct cross examination
13 and will be a full participant in our proceedings.
14 Nothing prohibits the Board from placing reasonable
15 restrictions on cross examination, but we will get
16 into more detail of that, if needed, as we proceed
17 with specific cases.

18 The record will be closed at the
19 conclusion of each hearing, so we ask that everything
20 that you want the Board to deliberate on be put into
21 the record prior to leaving today. Anything, of
22 course, that the Board would require outside of what
23 has been presented will be specifically indicated and
24 when it should be submitted into the Office of Zoning
25 will also be provided and specified. After that is

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1 received, of course, the record is finally closed and
2 no other information is accepted into the record.

3 A very important point to understand, this
4 Board will accumulate an official record on each of
5 these applications, that is the extent of which our
6 deliberation will take place on. Meaning, all the
7 information that is in the record that is presented to
8 us today in the public will be what we base our
9 decisions on.

10 The Sunshine Act requires, in the same
11 frame, that this Board conduct all its proceedings in
12 the open and before the public. This Board may enter
13 into Executive Session both during or after hearings
14 on each case, which would be in accordance with the
15 Sunshine Act and our own rules of procedure and
16 regulations and it would be utilized for the purposes
17 of reviewing records and/or deliberating on a case.

18 Let me say a very good morning to Ms.
19 Bailey, who is sitting to my far right, with the
20 Office of Zoning, also the Office of Attorney General
21 is represented today with Ms. Monroe and Mr. Moy with
22 the Office of Zoning is also with us this morning.
23 Let me ask, at this time, that anyone that will be
24 presenting testimony before the Board or anticipating
25 speaking before the Board, if you would, please, stand

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1 and give your attention to Ms. Bailey, she is going to
2 administer the oath.

3 MS. BAILEY: Please, raise your right
4 hand.

5 (Whereupon, the witnesses were sworn.)

6 MS. BAILEY: Okay.

7 CHAIRPERSON GRIFFIS: Good. Thank you.

8 The Board will now consider any preliminary matters.
9 Preliminary matters are those which relate to whether
10 a case will or should be heard today, requests for
11 postponements or withdraws are preliminary matters or
12 whether proper and adequate notice has been provided
13 for the applications. If you are not prepared to go
14 forward with a case this morning or you believe the
15 Board should not proceed with a case this morning, I
16 would ask that you come forward and have a seat at the
17 table in front of us as an indication of having a
18 preliminary matter.

19 Let me say a very good morning to Ms.
20 Bailey and ask if she is aware of any preliminary
21 matters for the Board's attention, at this time.

22 MS. BAILEY: Mr. Chairman, good morning
23 and to everyone, good morning as well. No, Mr.
24 Chairman, Staff does not have any preliminary matters.

25 CHAIRPERSON GRIFFIS: Very well. Not

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1 seeing any indication from those present today as
2 having preliminary matters, why don't we call the
3 first case of the morning?

4 MS. BAILEY: Application No. 17263 of
5 Cynthia Ferranto, pursuant to 11 DCMR 3104.1, for a
6 special exception to construct a two-story rear
7 addition to an existing single-family detached
8 dwelling under section 223. The project does not meet
9 the side yard requirements of section 405. It is
10 located in the R-2 District at premises 3027 Rodman
11 Street, N.W., Square 2060, Lot 33.

12 CHAIRPERSON GRIFFIS: Good morning, Mr.
13 Gell. If you wouldn't mind introducing yourself for
14 the record and those folks that are with you?

15 MR. GELL: Yes, good morning, Mr.
16 Chairman. I'm Steve Gell. I'm an attorney
17 representing Cynthia Ferranto. With me is Ms.
18 Ferranto and the architect, Mr. Philip Eagleburger.
19 I believe that I included in the package that I sent
20 as part of the pre-hearing Mr. Eagleburger's resume
21 and I would ask the Board, at this time, to qualify
22 him as an expert witness in design, architectural
23 design.

24 CHAIRPERSON GRIFFIS: Excellent. Quick
25 question, Mr. Eagleburger. You've indicated in your

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1 resume that you have done small to very large
2 projects. Have you done, in that definition,
3 additions to residential buildings in the District?

4 MR. EAGLEBURGER: Yes, I have.

5 CHAIRPERSON GRIFFIS: Excellent. If you
6 wouldn't mind, I just need you to turn your microphone
7 on. Very well. And if you wouldn't mind, just state
8 your name and address for the record.

9 MR. EAGLEBURGER: My name is Philip
10 Eagleburger. My home address is 2737 Macomb Street,
11 N.W. in the District.

12 CHAIRPERSON GRIFFIS: Good. And your
13 answer to that question was yes, you have?

14 MR. EAGLEBURGER: Yes.

15 CHAIRPERSON GRIFFIS: Okay. Any other
16 questions of the Board at this time?

17 BOARD MEMBER ETHERLY: No.

18 CHAIRPERSON GRIFFIS: Clarifications? Is
19 the ANC represented today? ANC-3C? ANC-3C is not
20 present. I have no difficulty in establishing Mr.
21 Eagleburger, and not hearing any opposition from the
22 Board members in that direction, I think we can
23 proceed with Mr. Eagleburger as an expert witness in
24 architectural design.

25 MR. GELL: Thank you, Mr. Chairman. This

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1 house, it's a single-family house. It's a pre-1958
2 structure with side yards of 5 feet on the west and
3 3.6 feet on the east. We're not asking for a
4 variance, but we are asking for a special exception
5 under 223.1. My reading is that section 2001.1 would
6 not -- we wouldn't need a variance or exception from
7 that, because we're not increasing the nonconformity.
8 We're simply extending the rear. If your reading is
9 different, then, of course, that would be included as
10 well.

11 The property is on the north side of
12 Rodman Street. To the north and west is Melvin Hayson
13 Park, half a block to the east is Connecticut Avenue,
14 which has mostly R-5-D uses. This area, however, is
15 zoned R-2 and the property is subject to the
16 regulations applicable to R-2 Zoning District. I'm
17 going to ask --

18 CHAIRPERSON GRIFFIS: Regarding that, it's
19 actually a split zone. The back of the property is
20 the R-1-B, if I'm not mistaken.

21 MR. GELL: That's correct.

22 CHAIRPERSON GRIFFIS: Are there any
23 additional aspects that we should be aware of
24 regarding the split zoning of the property?

25 MR. GELL: I'm not aware of any.

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1 CHAIRPERSON GRIFFIS: Okay. And the
2 entire addition of what's being proposed is in the
3 single R-2 District?

4 MR. GELL: That's correct.

5 CHAIRPERSON GRIFFIS: Very well.

6 MR. EAGLEBURGER: That is not correct.

7 MR. GELL: Oh.

8 MR. EAGLEBURGER: I think R-2 is in the
9 front.

10 CHAIRPERSON GRIFFIS: Yes.

11 MR. EAGLEBURGER: The R-1-B is to the rear
12 and that's where the addition is going.

13 CHAIRPERSON GRIFFIS: It goes into the R-
14 1-B?

15 MR. EAGLEBURGER: Let me double check
16 that.

17 MR. GELL: I was under the impression that
18 was all rear yard, but perhaps you're right.

19 MR. EAGLEBURGER: It's where the easement
20 line is, correct? The seated National Park Service
21 was the R-1-B property.

22 MR. GELL: Right.

23 CHAIRPERSON GRIFFIS: Do you have any Site
24 Plan that shows where the actual easement line is or
25 where the zoning line is?

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1 MR. EAGLEBURGER: I don't have a plan in
2 your possession that has that. I do have a Floor Plan
3 that shows the easement relative to the addition on
4 the --

5 CHAIRPERSON GRIFFIS: And you say that the
6 easement actually is the same line as the zoning? Is
7 that correct?

8 MR. EAGLEBURGER: I believe that is
9 correct. I would like to be able to check that to be
10 sure, but that would seem logical to me, because that
11 property was seated to the owners and that would
12 explain why there are two different zoning for the
13 same property.

14 CHAIRPERSON GRIFFIS: Somewhat.

15 MR. GELL: I noticed that, excuse me, Mr.
16 Chairman, the Office of Planning's attachment does
17 show the site in R-1-B, as I look at it.

18 CHAIRPERSON GRIFFIS: Right. Yes, and the
19 two attachments, 1 and 2, of the Office of Planning's
20 report is an excellent one. It's actually the only
21 thing I found in here that shows that. But my
22 question was whether the addition went into the R-1-B.
23 You indicated a plan that shows the easement line. Do
24 you have that with you today?

25 MS. FERRANTO: Yes.

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1 MR. GELL: Yes.

2 MR. EAGLEBURGER: That might clarify it.
3 This sheet 2 and this line is not on your --

4 CHAIRPERSON GRIFFIS: You can sit.

5 MR. EAGLEBURGER: Okay. We're locating
6 the easement line or locating the addition, the rear
7 corner of the ground floor of the addition at the
8 easement line and there is a porch that extends beyond
9 at that level. We're doing this. There are other
10 properties up and down this block that do extend
11 beyond. Some newer additions that extend beyond that
12 easement line.

13 CHAIRPERSON GRIFFIS: Right. That's not
14 my concern.

15 MR. EAGLEBURGER: Okay.

16 CHAIRPERSON GRIFFIS: Mr. Gell, I'm not
17 even sure that it will have any impact.

18 MR. GELL: I don't think it makes a
19 difference.

20 CHAIRPERSON GRIFFIS: That was just more
21 of a clarification of whether we were in it or not.

22 MR. GELL: Sure.

23 CHAIRPERSON GRIFFIS: I mean the R-1-B.

24 MR. GELL: R-1-B.

25 CHAIRPERSON GRIFFIS: Well, we're going

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1 forth, but although with the lot occupancy, is there
2 a difference in what we're looking at in terms of the
3 R-1 as opposed to the R-2? Let's have Office of
4 Planning jump in here, because we're using their
5 documentation. Mr. Lawson, a very good morning to
6 you.

7 MR. LAWSON: Good morning, Mr. Chairman,
8 Members of the Board. I'll just briefly note that
9 just scaling off the drawings, it did appear that the
10 addition extends into R-1-B for the purposes of this
11 application. There are no differences between R-2 and
12 R-1-B.

13 CHAIRPERSON GRIFFIS: Exactly. Okay. So
14 let's move ahead and just note, in fact, what we will
15 do is we'll change the application just to reflect the
16 fact that it actually has the R-1-B also and there is
17 no substantive change in terms of relief or analysis
18 that's required on this. Okay. Let's go to the
19 2001.3, Mr. Gell, the question of enlargements or
20 additions may be made to a structure provided, of
21 course, that the structure shall conform to a
22 percentage of lot occupancy. In addition, the
23 enlargement itself would conform to the use and
24 structure requirements.

25 But 2001 indicates that nonconforming

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1 structures are devoted to conforming uses. Is this a
2 conforming structure?

3 MR. GELL: No, it's not a conforming
4 structure.

5 CHAIRPERSON GRIFFIS: Right. Based on the
6 side yard.

7 MR. GELL: Right.

8 CHAIRPERSON GRIFFIS: Okay. So I think it
9 would be my --

10 MR. GELL: But it is a conforming use.

11 CHAIRPERSON GRIFFIS: Yes, that's no
12 question at all, which is what puts it under 2001.
13 I'll hear from other Board Members, but I think
14 typically it seems to almost follow having to come in
15 under 223 that 2001 would also be implemented.

16 MR. GELL: As I said, I read it
17 differently, but --

18 CHAIRPERSON GRIFFIS: You read it the fact
19 that it wasn't enlarged.

20 MR. GELL: You are permitted to enlarge a
21 nonconforming structure, so long as you don't increase
22 the nonconformity. And the Zoning Administrator has
23 always read that as meaning that you are not making a
24 3.6 side yard into a 3 foot side yard or something
25 along those lines.

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1 CHAIRPERSON GRIFFIS: I see.

2 MR. GELL: But you are just extending it
3 back.

4 CHAIRPERSON GRIFFIS: Right. Ms. Monroe?

5 MS. MONROE: I was just going to agree
6 with Mr. Gell.

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. MONROE: That's the usual
9 interpretation. Also, I want to point that in 223.1
10 it specifically says "2001.3 is included there under
11 223."

12 CHAIRPERSON GRIFFIS: Right.

13 MS. MONROE: So it's assumed under that,
14 223.

15 CHAIRPERSON GRIFFIS: That's my point.

16 MS. MONROE: It's included.

17 CHAIRPERSON GRIFFIS: They are all tied.

18 MS. MONROE: Right.

19 CHAIRPERSON GRIFFIS: Right. Whether we
20 advertised or not.

21 MS. MONROE: I mean, it all goes under
22 223.

23 CHAIRPERSON GRIFFIS: Okay. It's nice to
24 start off with very simple issues in the morning,
25 right? Well, that's all the time you have Mr. Gell.

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1 Thank you very much. All right. Let's move on.

2 MR. GELL: That's enough. Ms. Ferranto
3 has a statement.

4 CHAIRPERSON GRIFFIS: Excellent.

5 MS. FERRANTO: Good morning, Mr. Chairman
6 and Members of the Board. My name is Cynthia Ferranto
7 and I live at 3027 Rodman Street, just half a block
8 from Connecticut Avenue. I have lived in the District
9 for over 10 years and bought the house about five
10 years ago. The neighborhood is residential with a
11 number of single-family and multi-family houses. My
12 house is a small one-story, one-bedroom house. We are
13 now adopting my nephew and require additional room.

14 When I went to build an addition, I found
15 that the side yard on the east is only 3.6 feet. In
16 order to proceed, I need a special exception. I don't
17 think this will have an effect on any of our neighbors
18 and we have obtained signed petitions from all of the
19 immediate surrounding neighbors stating that they
20 approve our request. Neighbors on either side are
21 three and four stories high and have substantial rear
22 additions. Moreover, our homes have very long lots,
23 so our rear yards are longer than usual.

24 We are very pleased that the ANC and the
25 Architecture Review Committee of the Cleveland Park

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1 Historic Society has voted to support our application
2 and the HPRB has also approved our conceptual plans.
3 I am here today to request that you grant me this
4 special exception and I'll be happy to answer any
5 questions. And Mr. Eagleburger will be happy to
6 answer any design questions.

7 CHAIRPERSON GRIFFIS: Excellent. Thank
8 you very much. Let's just run through this very
9 quickly. 223 is an excellent part of our regulations
10 and it's set up exactly for this type of situation.
11 You do have the petition in. You've gone through or
12 are in the process of HPRB, I'll get to, and also the
13 National Park Service, which we're not going to get
14 into. But it is indicated in the record that the
15 review is there and that the 60 day time may well have
16 passed and I didn't have comment. So we're okay with
17 that.

18 Was there any sort of evidence from anyone
19 surrounding, even in discussions with the petition,
20 that this may have some impact on the light and air of
21 the surrounding properties or adjacent properties?

22 MS. FERRANTO: From our neighbors?

23 CHAIRPERSON GRIFFIS: Or from anyone.

24 MS. FERRANTO: You know, they have been
25 very supportive.

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1 CHAIRPERSON GRIFFIS: Okay.

2 MS. FERRANTO: Our neighbors have been
3 very, very supportive, yes.

4 CHAIRPERSON GRIFFIS: And were there any
5 comments or any sort of evidence that you found in
6 discussing this in showing the plans to people that
7 this would unduly affect the privacy of the adjacent
8 properties?

9 MS. FERRANTO: No.

10 CHAIRPERSON GRIFFIS: Okay. And going
11 through the Historic Preservation, well, gosh, one of
12 the other tests and I think it's an important one of
13 223, of course, is the addition together with the
14 original building will fit the character of the
15 surrounding area. We'll get to this. Well, we
16 definitely will in going through the Office of
17 Planning's report. But it is fascinating to see this
18 little kind of single-story bungalow that's surrounded
19 by much larger structures.

20 So, you know, not stealing the thunder of
21 Office of Planning, but on page 3, indicate that this
22 addition will actually make it more in character,
23 rather than, in fact, less or even equal. I tend to
24 agree and I certainly hope that the Preservation Board
25 looks at it in the same. I think the elevations are

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1 quite good in terms of what it is going to look like
2 from the street, but also from the rear, I think it
3 really puts some similar scale to the buildings that
4 are on either side. Not to mention it creates an
5 awful lot of nice views across that park land.

6 All right. So not digressing further, I
7 don't have any other quick questions on this
8 application, unless other Board Members have anything
9 for the applicant, at this time. Ms. Miller?

10 VICE CHAIR MILLER: Good morning. I'm
11 just curious how the dating of the easements came
12 about from the National Park Service?

13 MS. FERRANTO: It was before we bought the
14 property and it happened probably around 1998, 1997
15 and I don't know what inspired everyone to get
16 together, all the neighbors to get together, but there
17 is -- it clearly makes sense. There is a strip of
18 land that all of our neighbors share that they have
19 been using as their yards, and I think the National
20 Park Service wanted to give up that land, so they
21 didn't have to maintain it for whatever reasons. I
22 don't know.

23 But they went through this whole process
24 that we weren't a part of. We didn't own the property
25 at the time. So then each individual neighbor got a

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1 little piece of land in their rear and since then
2 several of them have taken advantage of that and
3 built, extended their houses.

4 CHAIRPERSON GRIFFIS: Good. Anything
5 else? No other questions?

6 MR. GELL: Mr. Chairman?

7 CHAIRPERSON GRIFFIS: Yes, Mr. Gell?

8 MR. GELL: If it would be all right, I
9 would like to get on the record Mr. Eagleburger's
10 response to the same questions about 223.1 with regard
11 to any effect on light or air of the neighbors. Did
12 you say that it would not have an effect?

13 MR. EAGLEBURGER: I would say it
14 definitely would not. Just to sort of quickly address
15 it, I think the model I've got leveled, this is the
16 addition. This is the existing condition. And that's
17 the addition. And you can see the relative size and
18 scale of the surrounding properties. It's just that
19 it got level, I think.

20 CHAIRPERSON GRIFFIS: So and just for
21 clarification, of course, the site is oriented north/
22 south? The front of the building is on the south
23 side. Is that correct?

24 MR. EAGLEBURGER: That is correct.

25 CHAIRPERSON GRIFFIS: Okay. And so the

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1 building that is set back, the model actually shows an
2 excellent representation. The building that is set,
3 see, now you have spun it around, on our left side is
4 actually the east side?

5 MR. EAGLEBURGER: That is correct.

6 CHAIRPERSON GRIFFIS: So in the evening
7 sun, even though the addition is going on the north,
8 you would look for impact more towards as it went
9 later in the day and the building adjacent to it is
10 set back far enough that it would not start to -- the
11 addition couldn't conceivably have impact or a
12 substantial impact on the sunlight for that area.

13 MR. EAGLEBURGER: I would agree.

14 CHAIRPERSON GRIFFIS: Okay. And the Park
15 Service comments in their review, they weren't
16 concerned about any sort of shadow that would be cast
17 into their area that they don't want to maintain? Oh,
18 wait actually.

19 MR. EAGLEBURGER: They actually implied to
20 the owners, I think, in their letter that instead of
21 coming out further that they might look at going out.

22 CHAIRPERSON GRIFFIS: Going out.

23 MR. EAGLEBURGER: To the height limit.

24 CHAIRPERSON GRIFFIS: I see. I see. And
25 it's in the record and am I clear in understanding

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1 that they actually made comments that did, in fact,
2 effect the design changes?

3 MR. EAGLEBURGER: Absolutely.

4 CHAIRPERSON GRIFFIS: So we're seeing the
5 design that comes out of the conversations with their
6 concerns?

7 MR. EAGLEBURGER: That is correct.

8 CHAIRPERSON GRIFFIS: All right.

9 MR. GELL: Could I also ask, Mr.
10 Eagleburger, specifically with respect to privacy, do
11 you think this will have any effect on privacy of the
12 related houses or the adjacent houses?

13 MR. EAGLEBURGER: Well, for the reason
14 that the Chairman stated that light would not effect
15 the east side, I think that the windows on the east
16 side are not facing directly this property. On the
17 west side, the floor levels are actually offset a full
18 half story. So the windows will never line up. And,
19 in fact, we're a half story lower, so the only
20 possible windows are two windows we have on the second
21 floor, and as I say, they are offset vertically and
22 they do not align horizontally with any windows.

23 CHAIRPERSON GRIFFIS: And the property to
24 the west, that small, it looks like, single-level.

25 MR. EAGLEBURGER: This is the neighbor has

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1 a deck with lattice.

2 MR. GELL: Oh, right, right.

3 MR. EAGLEBURGER: Along the property line
4 there.

5 CHAIRPERSON GRIFFIS: I see.

6 MR. EAGLEBURGER: It's not very --

7 CHAIRPERSON GRIFFIS: And they note that
8 there is fenestration that is going to run adjacent to
9 that. Is that correct?

10 MR. EAGLEBURGER: They, in fact, I believe
11 have signed.

12 MS. FERRANTO: They have seen the plans.

13 CHAIRPERSON GRIFFIS: Right.

14 CHAIRPERSON GRIFFIS: Yes.

15 BOARD MEMBER ETHERLY: And they have
16 expressed no concern about the fact that you have
17 windows on that side?

18 MS. FERRANTO: No, they haven't. And that
19 is their -- on the first floor that's their basement.

20 BOARD MEMBER ETHERLY: Okay.

21 MS. FERRANTO: Yes.

22 BOARD MEMBER ETHERLY: Okay.

23 CHAIRPERSON GRIFFIS: I see.

24 BOARD MEMBER ETHERLY: Does the
25 fenestration on that side, does it overlook that deck

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1 that's indicated on the property to the west?

2 MS. FERRANTO: Do our windows?

3 BOARD MEMBER ETHERLY: The one that's --

4 MR. EAGLEBURGER: This view is in your
5 packet. It's looking west and I can give you the
6 approximate location. One window on the second floor
7 is approximately there.

8 BOARD MEMBER ETHERLY: Okay.

9 MR. EAGLEBURGER: And then the second
10 window is approximately here.

11 BOARD MEMBER ETHERLY: Okay.

12 MR. EAGLEBURGER: As it faces them.

13 BOARD MEMBER ETHERLY: And once again,
14 they reviewed the plans and have expressed no
15 concerns?

16 MS. FERRANTO: Yes, yes.

17 BOARD MEMBER ETHERLY: Thank you.

18 CHAIRPERSON GRIFFIS: If you look at
19 actually 4, sheet 4 of the submission, it shows the
20 relations to the floor lines, which I think is a good
21 one in terms of how, obviously, the windows are not
22 going to be aligning. What's interesting on sheet 2
23 it looks like their deck comes across the property
24 line.

25 MS. FERRANTO: Yes.

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1 MR. EAGLEBURGER: It does.

2 CHAIRPERSON GRIFFIS: Okay. We're not
3 getting involved in that. Okay.

4 MR. GELL: Finally, Mr. Eagleburger, could
5 you say that when viewed from the street that this
6 addition will not substantially visually intrude upon
7 the character, scale and pattern of houses along the
8 street frontage?

9 MR. EAGLEBURGER: I would say that it does
10 not. I have an illustration here which might help.
11 It is not part of your packet. This is a photo
12 montage of a view from the street.

13 CHAIRPERSON GRIFFIS: Oh, interesting.

14 MR. EAGLEBURGER: And you can just barely
15 see. This is set so far back that it has very modest
16 impact.

17 CHAIRPERSON GRIFFIS: Good.

18 MR. GELL: I have no further questions or
19 submissions.

20 CHAIRPERSON GRIFFIS: Excellent. That was
21 very helpful. Ms. Miller?

22 VICE CHAIR MILLER: I'm sure we'll get to
23 this with Office of Planning, but they make reference
24 in their report at page 3 that HPRB requested that you
25 look into investigating stepping the roof down, and

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1 I'm wondering what the status of that is. I mean, the
2 model that we're looking at, has the roof been stepped
3 down or is it the way it was and where are you on
4 that?

5 MR. EAGLEBURGER: This is the way it was
6 when we presented to HPRB. They asked us to
7 investigate the possibility of lowering this roof. We
8 have not shown that in these drawings, but we have
9 investigated and found that, in fact, we could lower
10 the roof about a foot without impacting the Floor
11 Plans and without staggering or creating a split level
12 situation. We made, I think, a fairly elaborate case
13 at HPRB against going to a split level layout, baby-
14 boomers coming of age and access and aesthetic reasons
15 as well.

16 And so we're resistant to the notion of
17 actually staggering the floor levels in such a small
18 house, but we can certainly lower the roof and I
19 suspect we will by the time we're done with HPRB. But
20 that was not one of their big concerns, it didn't
21 seem. It was -- they approved it basically. My
22 understanding was it was reduced to this half level,
23 although maybe that situation has changed. But it's
24 maybe the anti has been upped, because we are perhaps
25 coming before the BZA, which, at the time, we didn't--

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1 we weren't aware that we were going to have to go to
2 BZA on this.

3 CHAIRPERSON GRIFFIS: Okay. Any other
4 questions? I'm sure they have great understanding of
5 why they would push you to do that. I don't see it at
6 all actually. I mean, in terms of the original pitch
7 of the roof, it seems like you are actually starting
8 to emulate that and at least work off the same angles.
9 If you look at the adjacent properties, that you're
10 talking about bringing into character, you're looking
11 at buildings that actually have huge dormers and it's
12 a whole different character.

13 One could make the argument, I guess, that
14 why not have your addition come all the way out to the
15 front? Put the whole floor across and make it a two-
16 level which would be much more in character and it
17 wouldn't necessarily diminish the scale of the
18 architectural integrity of that building. But that's
19 why they didn't appoint me to the Historic
20 Preservation Board. All right. I'm going to get in
21 trouble today. It must be my fever. Okay.

22 MR. GELL: Next stop.

23 CHAIRPERSON GRIFFIS: Anything else? So
24 I would think, I mean, we ought to be definitive in
25 terms of this Board. We're not looking at -- the

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1 question was for clarification of the process that was
2 happening with the Historic Preservation. One, the
3 height is not of issue for us, so we're not getting
4 involved in that. And certainly under 223, we have
5 total design review and control of this. And I
6 haven't heard, unless anyone wants to speak
7 definitively, that that's an aspect that we would hold
8 strongly to that it ought to be reduced.

9 So I don't see that as an issue before
10 this Board or a concern, I should say. Okay.
11 Anything else then? Any other questions,
12 clarifications? Going through that, Mr. Gell,
13 anything else before we move on to Office of Planning?

14 MR. GELL: That's all.

15 CHAIRPERSON GRIFFIS: Very well. Let's do
16 that then. Mr. Lawson, again, a very good morning to
17 you.

18 MR. LAWSON: Good morning, Mr. Chairman
19 and Members of the Board, and best wishes for the new
20 year. I haven't been here yet. My name is Joel
21 Lawson. I'm with the D.C. Office of Planning. The
22 applicant has requested a special exception relief
23 pursuant to section 223 to facilitate construction of
24 a rear addition to an existing one-story house at 3027
25 Rodman Street, N.W. Other privately owned lands

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1 fronting on Rodman Street are mainly developed with
2 two to three story semi-detached dwellings with some
3 detached dwellings.

4 The front of the property where the
5 existing house is located is zoned R-2, whereas the
6 rear of the property, including where a portion of the
7 addition would be, is zoned R-1-B. Once again, for
8 the purposes of this application, there is no material
9 difference in Zoning Regulation requirements. Section
10 405.8 states that "For a house that has a side yard of
11 less than 8 feet and was constructed prior to 1958 an
12 addition is permitted provided the side yard is not
13 further reduced in width and that the side yard width
14 be at least 5 feet."

15 The applicant is proposing to construct
16 the rear addition to continued side walls to the
17 existing house, so the addition would provide a
18 conforming side yard of 5 feet on the west and 3.6
19 feet on the east, for which this relief is required.
20 OP believes that the proposal adequately meets these
21 special exception tests.

22 The neighbors on both sides have indicated
23 support as have other area residents. The ANC-3 and
24 Cleveland Park Historical Society's Architectural
25 Review Committee have also indicated support or no

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1 opposition to the application and no other District
2 Agency has indicated concerns with this proposal.

3 The National Park Service, holder of
4 easements, has noted previously over the rear portion
5 of the lot which required a National Park Service
6 review of any proposed development. The subject
7 property is also in the Cleveland Park Historic
8 District. The proposed addition received conceptual
9 approval from the HPRB, but with some direction to
10 investigate minor changes to lower the front portion
11 of the addition roof and to make cleaner the juncture
12 between the existing and the proposed construction.

13 However, such changes would again not
14 materially effect the requested relief. A final
15 approval from HPRB has not yet been given. At least
16 that's our understanding.

17 In summary, the Office of Planning
18 recommends that the BZA approve the special exception
19 request and this concludes my presentation and I am,
20 of course, available for questions. Thank you.

21 CHAIRPERSON GRIFFIS: Excellent. Thank
22 you and we do appreciate the excellent and full
23 analysis that you submitted in your report.
24 Obviously, we've touched on quite a bit of it already.
25 Board Members, any questions of the Office of

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1 Planning? Well, let's move ahead. Mr. Gell, any
2 cross examination of the Office of Planning?

3 MR. GELL: No, none.

4 CHAIRPERSON GRIFFIS: Mr. Gell, how would
5 you calculate the lot area required for a split zone?
6 Like does R-2, the back portion, have to conform with
7 the width dimension?

8 MR. GELL: I've had various answers to
9 that kind of a question. I've dealt with that with
10 the C-2-A.

11 CHAIRPERSON GRIFFIS: Right.

12 MR. GELL: And the C-1-A and C-2
13 situation. And sometimes I get the answer that you
14 can take an average and sometimes I get an answer that
15 you have to conform within each of the two. So I
16 didn't make the calculation here and I can't.

17 CHAIRPERSON GRIFFIS: Right. No, and we
18 don't need to take up a lot of time to get it, but,
19 obviously, whether it is R-2 or R-1 that's part of the
20 nonconformity of this application or this property,
21 but it's fairly substantial when you look at the
22 difference between the two in terms of 40 foot width
23 or a 50 foot or 4,000 or 5,000 square feet. Okay.
24 Probably will lead to a special exception to move that
25 boundary line, the 25 feet, I think it is, in the

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1 regulations. Okay. But that's not required here.

2 If there is nothing further for the Office
3 of Planning, let's move ahead then to any other
4 Government reports. I don't have any other Government
5 reports attendant to this application. We will make
6 note of the Cleveland Park Historic District and also
7 HPRB, but also the National Park Service that have
8 reviewed and have indicated the, right, indeed,
9 support, but also the process of which this is going
10 under review.

11 Let's move on to the ANC. The ANC report
12 has been filed, Exhibit 21, dated November 18, 2004.
13 Again, I would ask if there is a representative from
14 3C here? Not seeing any indication of presence for
15 the ANC member, Board Members, any comments on the
16 report?

17 VICE CHAIR MILLER: I would say that it
18 basically meets the requirements for great weight.
19 Just for the future, and we have a notice requirement
20 that they indicate that it has been properly noticed,
21 and they do indicate it was advertised, but it would
22 be better if any of the ANC is listening that they say
23 how it was advertised, so we don't have to just assume
24 it was properly advertised. But in general, they
25 support it and it was voted on at the public meeting,

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1 at which a quorum was present. So we'll note that.

2 CHAIRPERSON GRIFFIS: Excellent. Thank
3 you, Ms. Miller. Moving ahead then, that's all the
4 submissions I have attendant to this application. Mr.
5 Gell, unless you are aware of any others that I
6 haven't made note of?

7 MR. GELL: No.

8 CHAIRPERSON GRIFFIS: Very well. Let's
9 move ahead. Is there anyone here present for
10 Application 17263 to provide testimony in support or
11 in opposition? Application 17263. Not seeing any
12 indication of having any persons present to provide
13 testimony, Mr. Gell, we'll turn it over to you for any
14 closing remarks you might have.

15 MR. GELL: No, I would simply submit that
16 we've made the case for a special exception under
17 223.1 and request a Bench decision and a summary
18 order.

19 CHAIRPERSON GRIFFIS: Excellent.

20 MR. GELL: Thank you very much.

21 CHAIRPERSON GRIFFIS: Thank you very much,
22 Mr. Gell. Any follow-up questions of the Board? Any
23 clarifications? Mr. Eagleburger, I'm going to ask
24 you, do you have a photograph of the model?

25 MR. EAGLEBURGER: In your packet actually

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1 are several photographs.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. EAGLEBURGER: At the back of the
4 pictures of the surrounding properties.

5 CHAIRPERSON GRIFFIS: Do you have that?

6 BOARD MEMBER ETHERLY: No, I'm not sure.

7 VICE CHAIR MILLER: We do not.

8 BOARD MEMBER ETHERLY: I don't think we
9 do.

10 CHAIRPERSON GRIFFIS: No, I don't have
11 that.

12 MR. EAGLEBURGER: Oh, I'm sorry. I
13 thought we had. I can certainly make those available.

14 CHAIRPERSON GRIFFIS: Yes. We're going to
15 need a photograph of the model just whatever angle it
16 is, but probably from the rear showing the addition.
17 You might want to have one with the addition and one
18 without. The point is here I need to fill out all the
19 evidence that's now been presented, so it needs to be
20 physically in the file.

21 MR. EAGLEBURGER: I have an extra copy.

22 CHAIRPERSON GRIFFIS: Of all that?

23 MR. EAGLEBURGER: Of all that.

24 CHAIRPERSON GRIFFIS: Excellent. Okay.

25 You're going to present that to the Staff in a moment.

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1 MR. EAGLEBURGER: Okay.

2 CHAIRPERSON GRIFFIS: So that's going to
3 be a photograph of the model. Is there a photo
4 montage also included in that?

5 MR. EAGLEBURGER: It can be made that.

6 CHAIRPERSON GRIFFIS: Excellent.

7 MR. EAGLEBURGER: All right.

8 CHAIRPERSON GRIFFIS: We're going to put
9 that in there. And also we're going to need a Site
10 Plan that shows the easement line that you showed on
11 sheet 2.

12 MR. EAGLEBURGER: I --

13 CHAIRPERSON GRIFFIS: Is that an 11 X 17
14 on that board?

15 MR. EAGLEBURGER: Yes.

16 CHAIRPERSON GRIFFIS: Okay. You can make
17 copies today.

18 MR. EAGLEBURGER: Yes.

19 CHAIRPERSON GRIFFIS: All that's coming
20 into the record.

21 MR. EAGLEBURGER: Okay.

22 CHAIRPERSON GRIFFIS: Okay. So we have it
23 all and then just to be clear, we're going to have a
24 photograph of the model, we're going to have the
25 easement drawn on one of the sheets and also the photo

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1 montage is going to be presented. Anything else?
2 Anything else that we went through? Ms. Bailey, were
3 you aware of anything else?

4 MS. BAILEY: No, Mr. Chairman.

5 CHAIRPERSON GRIFFIS: Excellent. Thank
6 you. Okay. If there's nothing further from the Board
7 or questions of the applicant, I think we can move
8 ahead. The record is full on this side. I would move
9 approval of 17263 for a special exception which would
10 allow for the construction of the two-story rear
11 addition to the existing single-family under 223 at
12 3027 Rodman Street, N.W. I ask for a second?

13 VICE CHAIR MILLER: Second.

14 CHAIRPERSON GRIFFIS: Thank you, Ms.
15 Miller. I think it has been fairly clear. I think
16 we've got a great reliance on the Office of Planning's
17 report is what has persuaded me and also the
18 applicant's filing. The visual presentation today
19 really assisted, actually that model was tremendous to
20 look at the massing differences, not that there was a
21 huge amount of question, but it really made it all
22 very clear. And in terms of requirements of the
23 special exception also at 223, it has been evidenced
24 and testified to today without any disagreement in
25 testimony. It all complies and, therefore, I will,

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1 obviously, support the motion and open it up for any
2 other deliberation or comments from the Board.

3 Very well. Then we have a motion before
4 us that has been seconded. I ask for all those in
5 favor to signify by saying aye.

6 ALL: Aye.

7 CHAIRPERSON GRIFFIS: And opposed?
8 Abstaining? Very well. Why don't we record the vote?

9 MS. BAILEY: Mr. Chairman?

10 CHAIRPERSON GRIFFIS: Yes.

11 MS. BAILEY: The vote is 4-0-1. Mr.
12 Griffis made the motion, Mrs. Miller seconded, Mr.
13 Mann, Mr. Etherly are in agreement and we don't have
14 a Zoning Commission Member present with us today.

15 CHAIRPERSON GRIFFIS: Excellent. Thank
16 you very much, Ms. Bailey. And I think if there's no
17 opposition from the Board, we can waive our rules and
18 regulations and issue a summary order on this.

19 MS. BAILEY: Thank you, sir.

20 CHAIRPERSON GRIFFIS: Good. Thank you all
21 very much.

22 MS. FERRANTO: Thank you.

23 MR. GELL: Thank you.

24 CHAIRPERSON GRIFFIS: And I appreciate the
25 excellent presentation today. Good luck and enjoy.

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1 Why don't we move ahead and call the next case of the
2 morning?

3 MS. BAILEY: Application No. 17268 of Jay
4 and Patricia Adelstein, pursuant to 11 DCMR section
5 3104.1 and 1202, Capitol Interest District, for a
6 special exception to permit a rear two-story addition
7 to an existing single-family row dwelling under
8 section 223, not meeting the lot occupancy
9 requirement, that's section 403, and open court
10 requirement, section 406. The property is located in
11 the CAP/R-4 District at premises 315 7th Street, N.E.,
12 Square 894, Lot 29.

13 CHAIRPERSON GRIFFIS: Thank you, Ms.
14 Bailey. Good morning.

15 MS. FOULER: Good morning. Hi. My name
16 is Jennifer Foulter. I am the architect working with
17 Jay and Patricia Adelstein on this project. They
18 unfortunately couldn't be here today.

19 CHAIRPERSON GRIFFIS: Right, it's in the
20 record.

21 MS. FOULER: She's having eye surgery.
22 They were really disappointed they couldn't make it.
23 So we are here requesting a special exception to
24 increase the lot coverage 3.9 percent over the
25 existing lot coverage. There is an existing, enclosed

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1 or covered porch that we're proposing to enclose, as
2 well as add on an additional 122.5 square foot
3 addition, two stories. And with the new addition, it
4 will be 9.9 percent over the allowed lot occupancy,
5 but below the 70 percent.

6 We are also proposing extending the
7 existing 5 foot open court out for the new addition as
8 well. We have already been approved by ANC-6C,
9 Stanton Park Neighborhood Association, HPRB, Capitol
10 Hill Restoration Society, L'Enfant Trust and the
11 Office of Planning has recommended approval as well.

12 We feel that the project does not unduly
13 affect any neighbors. I don't know if you want to
14 look at the Site Plan in Exhibit 7, C-4, you can see
15 the neighboring properties. There is a large condo
16 building directly to the south and the wall of the
17 condo building will extend an additional 11 feet
18 beyond the new addition here.

19 And the neighbors to the north have signed
20 a petition consenting to the project. They are in
21 agreement that it's okay and we're going to be
22 extending slightly past, about 2.5 feet past their
23 existing porch that they have enclosed. So I'm just
24 available for any questions that you might have, but
25 we feel that the record speaks for itself.

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1 CHAIRPERSON GRIFFIS: Excellent. Good.
2 Just for clarification in terms of the property line
3 side, which is -- okay, that's north.

4 MS. FOULER: That's on the south side.

5 CHAIRPERSON GRIFFIS: That's the south
6 side.

7 MS. FOULER: Correct.

8 CHAIRPERSON GRIFFIS: Okay. On the south
9 side, there is no fenestration on that elevation?

10 MS. FOULER: No, it's a one hour property,
11 face on line property wall.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. FOULER: With no windows.

14 CHAIRPERSON GRIFFIS: When you say one
15 hour, it means it was constructed for a fire rating?

16 MS. FOULER: Correct.

17 CHAIRPERSON GRIFFIS: I see.

18 MS. FOULER: Correct.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. FOULER: And we do have --

21 CHAIRPERSON GRIFFIS: And it actually
22 shows on A-6 what that would look like.

23 MS. FOULER: Correct. And we do have on
24 the north side, we're showing high clear story
25 windows.

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1 CHAIRPERSON GRIFFIS: Right, right.

2 MS. FOULER: So to offer privacy for the
3 neighbors.

4 CHAIRPERSON GRIFFIS: Okay. Meaning
5 you're not going to be standing there looking out or
6 others aren't necessarily looking in, but just light
7 coming into the room itself?

8 MS. FOULER: Correct, yes.

9 CHAIRPERSON GRIFFIS: Yes. Is it actual?
10 I'm sorry. Board Members are bringing to my attention
11 that I have jumped right into this very quickly. We
12 do have what appears to be a request for party status
13 in this case, although let me ask, first of all, is
14 Maria, oh gosh, how do you say this last name,
15 Pavlides, Pavlides, Pavlides? Is Ms. Maria Pavlides
16 present? She has indicated in her file that she would
17 not be, but, Board Members, let's take this up.

18 I take this just under a due caution in
19 that on the top of her handwritten submission of
20 Exhibit No. 23 -- and do you have this submission?

21 MS. FOULER: Yes.

22 CHAIRPERSON GRIFFIS: Okay.

23 MS. FOULER: Yes.

24 CHAIRPERSON GRIFFIS: So it indicates
25 party status and then she does go down and indicate

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1 her opposition to this on numerous reasons. I don't--

2 MR. BERGEN: May I come up there and ask
3 a question?

4 CHAIRPERSON GRIFFIS: Yes, a procedural
5 question. Why don't you come up and just state your
6 name and address for the record.

7 MR. BERGEN: Sure. Here?

8 CHAIRPERSON GRIFFIS: Yes.

9 MR. BERGEN: Okay.

10 CHAIRPERSON GRIFFIS: If you wouldn't
11 mind, just turn that on.

12 MR. BERGEN: My name is Charles Bergen.
13 I live at 311 7th Street, which is just to the south
14 of Jay and Patricia Adelstein.

15 CHAIRPERSON GRIFFIS: Right.

16 MR. BERGEN: I was just curious, the
17 person objecting, where do they live? What basis --

18 MS. FOULER: They live in Florida.

19 CHAIRPERSON GRIFFIS: Where do they live?
20 Well, their return mail address is Lutz, Florida, but
21 there is an indication that she is the property owner
22 of 315 7th Street and is indicating that she will be
23 moving back in.

24 BOARD MEMBER ETHERLY: 301.

25 CHAIRPERSON GRIFFIS: 301? Oh, close, I'm

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1 sorry, close to 301 7th Street.

2 MR. BERGEN: I had also sent a letter in.

3 CHAIRPERSON GRIFFIS: Yes.

4 MR. BERGEN: And I just want to make sure
5 that that has been received by you.

6 CHAIRPERSON GRIFFIS: Absolutely has, and
7 what I will do is I will be calling you. We didn't
8 have an application for party status from you, but we
9 will certainly be calling you up when we ask for
10 persons to present testimony.

11 MR. BERGEN: Thanks.

12 CHAIRPERSON GRIFFIS: Okay.

13 BOARD MEMBER ETHERLY: Mr. Chair?

14 CHAIRPERSON GRIFFIS: Yes?

15 BOARD MEMBER ETHERLY: I would probably be
16 inclined to recommend, while presence isn't
17 necessarily always dispositive of a party status
18 application, I would probably recommend just treating
19 the submission as testimony in opposition.

20 There are some points that are raised,
21 which perhaps are relevant to the test that is in
22 front of us with regard to 223, but I would just be
23 inclined to suggest that we treat it as testimony in
24 opposition, as opposed to -- well, I guess, for
25 technical purposes, if we treat it as a party request,

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1 I would move to deny the request due to the fact that
2 the individual is not here and, therefore, would not
3 be prepared to fully participate as a party would be
4 required to do so, and we could just treat it as
5 opposition testimony.

6 CHAIRPERSON GRIFFIS: Excellent point, Mr.
7 Etherly, thank you, and I would second that motion.
8 Other comments, deliberation on that from the Board?
9 I would also note the distance separation between 301
10 and 315, which moves me to not support party status as
11 it doesn't rise to the level nor does it address how
12 they would be uniquely or distinctly impacted outside
13 of those others in the surrounding area.

14 If there is no further deliberation on
15 that, then we have a motion before us and it is
16 seconded. I would ask for all those in favor signify
17 by saying aye.

18 ALL: Aye.

19 CHAIRPERSON GRIFFIS: And opposed? Very
20 well. Let's move ahead then and back into the
21 application. We will note for the record the vote on
22 that. What else did you want to walk us through in
23 terms of your plans?

24 BOARD MEMBER ETHERLY: Mr. Chair?

25 CHAIRPERSON GRIFFIS: Yes, Mr. Etherly?

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1 BOARD MEMBER ETHERLY: Just very quickly,
2 I wanted to come back to the question of -- today
3 seems to be my window and fenestration day, but just
4 out of curiosity, on what would be, I believe, if I
5 have my orientation correctly, the south side of the
6 property.

7 CHAIRPERSON GRIFFIS: This is south.

8 BOARD MEMBER ETHERLY: The north side
9 then, because the south side is where the multi -- is
10 the apartment building.

11 MS. FOULER: The south side is along the
12 property line.

13 BOARD MEMBER ETHERLY: Okay.

14 MS. FOULER: The north side is where the
15 open court is.

16 BOARD MEMBER ETHERLY: Okay. With
17 respect, I couldn't quite tell, are there windows on
18 the adjacent property facing back towards where the
19 addition will be? I'm taking a look at this
20 particular photograph here and I see you have windows
21 kind of back in that well.

22 MS. FOULER: Yes.

23 BOARD MEMBER ETHERLY: Are there windows
24 on that side wall as well?

25 MS. FOULER: Of the neighboring property?

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1 BOARD MEMBER ETHERLY: Yes, ma'am.

2 MS. FOULER: Correct, there are. They are
3 currently enclosing. They have a very similar porch,
4 open porch that they are enclosing, and they are
5 including clear story windows.

6 BOARD MEMBER ETHERLY: Okay.

7 MS. FOULER: On that wall.

8 BOARD MEMBER ETHERLY: Okay.

9 MS. FOULER: And I'm actually the
10 architect on that project as well.

11 BOARD MEMBER ETHERLY: Okay.

12 MS. FOULER: That's why I know.

13 CHAIRPERSON GRIFFIS: Are there
14 photographs?

15 MS. FOULER: Yes, they are going to have
16 high windows there as well.

17 BOARD MEMBER ETHERLY: Okay.

18 MS. FOULER: And they have signed off on
19 this, on this proposal as well.

20 BOARD MEMBER ETHERLY: Okay. Will the
21 windows for the two projects be, you know, somewhat
22 aligned or will there be kind of an offset between
23 them?

24 MS. FOULER: They are going to be somewhat
25 aligned.

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1 BOARD MEMBER ETHERLY: Okay.

2 MS. FOULER: They are about the same
3 height.

4 BOARD MEMBER ETHERLY: Okay. But once
5 again, they have signed off on it?

6 MS. FOULER: But they are over 5 feet. I
7 mean, you know, you can't see. When you're standing
8 inside the addition, you cannot --

9 BOARD MEMBER ETHERLY: Okay.

10 MS. FOULER: You cannot see.

11 CHAIRPERSON GRIFFIS: What is the base
12 sill of the window when you're standing in the room?

13 MS. FOULER: Let's see, we have --

14 CHAIRPERSON GRIFFIS: At about 5 feet?

15 MS. FOULER: Actually, we have 6 feet
16 below.

17 CHAIRPERSON GRIFFIS: 6 feet?

18 MS. FOULER: The top of the window is 8
19 feet.

20 CHAIRPERSON GRIFFIS: I see.

21 MS. FOULER: Aligning with the doors.

22 BOARD MEMBER ETHERLY: Okay.

23 MS. FOULER: And then 6 feet.

24 CHAIRPERSON GRIFFIS: So the windows on
25 those additions that you're both designing --

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1 MS. FOULER: Yes.

2 CHAIRPERSON GRIFFIS: -- start at 6 feet
3 in the room?

4 MS. FOULER: Yes, they are very high.
5 They are also --

6 CHAIRPERSON GRIFFIS: So their head is
7 probably up around the base of the window and then it
8 goes higher to 8 feet?

9 BOARD MEMBER ETHERLY: Okay.

10 MS. FOULER: Correct, and they have very
11 high ceilings.

12 CHAIRPERSON GRIFFIS: Does an NBA player
13 live in any of these houses?

14 MS. FOULER: I'm sorry?

15 CHAIRPERSON GRIFFIS: No, that wouldn't
16 be. Anyone taller than 6 feet? Okay.

17 MS. FOULER: They are average height
18 people.

19 CHAIRPERSON GRIFFIS: Good, good
20 clarification though. So also in terms of the
21 application, we have photographs of the addition.
22 There is rough framing of one of the additions.
23 That's the one we're talking about?

24 MS. FOULER: That's the one, yes.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. FOULER: Okay.

2 CHAIRPERSON GRIFFIS: And it didn't have
3 a direct address.

4 MS. FOULER: It's under construction.

5 CHAIRPERSON GRIFFIS: I see. Okay.

6 BOARD MEMBER MANN: Mr. Chairman?

7 CHAIRPERSON GRIFFIS: Right. Yes? Good.

8 BOARD MEMBER MANN: I just want to clarify
9 something that I think you just said. In Exhibit No.
10 4, the photograph with the building with the rough
11 framing, that's the building that's to the north of
12 this applicant?

13 MS. FOULER: To the north.

14 CHAIRPERSON GRIFFIS: North.

15 MS. FOULER: Correct.

16 BOARD MEMBER MANN: Okay. Thank you.

17 MS. FOULER: Yes, that's 317 7th Street.

18 CHAIRPERSON GRIFFIS: Got you. Okay. Any
19 other clarifications, questions? Very well. Let's
20 move ahead. Well, yes, let's move ahead to the Office
21 of Planning's report, and a very good morning.

22 MS. BROWN-ROBERTS: Good morning, Mr.
23 Chairman and Members of the --

24 CHAIRPERSON GRIFFIS: Board.

25 MS. BROWN-ROBERTS: -- Board, I'm sorry.

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1 I am Maxine Brown-Roberts from the Office of Planning.
2 And just to summarize the Office of Planning's report,
3 the addition will increase the lot occupancy and
4 extension of the open court.

5 However, because, as demonstrated on the
6 plans, the alignments of the proposed addition will
7 not extend significantly beyond the neighboring
8 property, and the condominium building already extends
9 significantly beyond the subject property. The
10 privacy of use and enjoyment of the neighboring
11 property will not be compromised, and the views into
12 the neighborhood properties will continue to be the
13 same as they are today.

14 The addition will not be viewed from 7th
15 Street, but can be viewed from the rear alley, and the
16 Historic Preservation Review states that the addition
17 is consistent with the rear additions in the Capitol
18 Hill Historic District, and in terms of overall form
19 and general materials.

20 And therefore, the Office of Planning
21 recommends approval of the special exception request.
22 Thank you, Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Thank you very much.
24 Did you do a site visit on this application?

25 MS. BROWN-ROBERTS: Yes, I did, yes.

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1 CHAIRPERSON GRIFFIS: And?

2 MS. BROWN-ROBERTS: I did a site visit,
3 but I didn't go into their -- on the property.

4 CHAIRPERSON GRIFFIS: Right, right.

5 MS. BROWN-ROBERTS: Yes.

6 CHAIRPERSON GRIFFIS: Indeed. So the
7 surrounding area, my question goes to the surrounding
8 area, and the adjacent multi-family structure, how
9 tall is it? Do you recall?

10 MS. BROWN-ROBERTS: It's one, two, three.

11 CHAIRPERSON GRIFFIS: Do we have the
12 photographs?

13 MS. BROWN-ROBERTS: I think it's about
14 three stories, three or four stories high.

15 MR. BERGEN: It's two and a half stories.

16 CHAIRPERSON GRIFFIS: Okay. I want to get
17 it from everybody, so that --

18 MR. BERGEN: There are some inaccuracies
19 in the report that I would like to respond to.

20 CHAIRPERSON GRIFFIS: We're going to let
21 you clarify that. Okay. In terms of other questions
22 for Office of Planning, does any other Board Member
23 have any other questions, clarifications for the
24 Office of Planning? Ms. Miller?

25 VICE CHAIR MILLER: Good morning. We have

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1 some letters of opposition in the record, and I'm
2 wondering if you had an opportunity to investigate any
3 of their concerns, particularly those of Mr. Bergen
4 and Ms. Pavlides and Mr. Kelley.

5 MS. BROWN-ROBERTS: Actually, I only saw
6 the letters this morning, so I haven't had time to go
7 out and review them. I just saw them this morning.

8 CHAIRPERSON GRIFFIS: Well, let's see the
9 specifics outside the letters themselves. Ms. Miller,
10 did you have a quick question or questions that you
11 want the Office of Planning to address?

12 VICE CHAIR MILLER: Well, in particular,
13 in Exhibit 19, Mr. Burger says that the view from --

14 MR. BERGEN: Bergen.

15 VICE CHAIR MILLER: I'm sorry, Bergen,
16 Bergen says that the view from the living room in
17 number 203 at, I think the address is, 311 7th Street,
18 N.E., would be completely blocked by the addition. Do
19 you have an opinion on that?

20 MS. BROWN-ROBERTS: No, because when I
21 went out, I didn't specifically look to make an
22 assessment on that, so no.

23 VICE CHAIR MILLER: Okay. Thank you.

24 CHAIRPERSON GRIFFIS: Very well. Any
25 other questions of the Office of Planning from the

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1 Board? Ms. Fouler, do you have any cross examination
2 of the Office of Planning, any questions of their
3 report?

4 MS. FOULER: No.

5 MR. BERGEN: May I interject?

6 CHAIRPERSON GRIFFIS: No.

7 MR. BERGEN: Okay.

8 CHAIRPERSON GRIFFIS: As part of cross
9 examination, we'll allow you to bring up questions in
10 your testimony.

11 MR. BERGEN: Okay.

12 CHAIRPERSON GRIFFIS: So believe me, we're
13 going to give you ample time. We're going to get
14 through everything that you have. That's okay. I
15 don't have any other Government reports attendant to
16 this. Let's move to the ANC report. Is there a
17 representative from 6C present today? The ANC is not
18 represented today. This is Exhibit No. 21. They are
19 in support. Is there additional remarks from the
20 Board regarding the ANC's report? Ms. Miller?

21 VICE CHAIR MILLER: Just to be consistent,
22 I would say, again, this was voted on unanimously at
23 a public meeting and it basically meets our great
24 weight requirements. I just would request in the
25 future that they also say how they advertised their

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1 meetings. They did say that they publicly advertised
2 it though.

3 CHAIRPERSON GRIFFIS: Okay. Good. Thank
4 you. Very well. Let's move ahead. We would note
5 that the letter from the Capitol Hill Restoration
6 Society or Historic -- what did we receive this
7 morning? We got a letter in this morning.

8 BOARD MEMBER MANN: Capitol Hill
9 Restoration Society.

10 CHAIRPERSON GRIFFIS: Right, indeed,
11 society, which is Exhibit No. 29, which was in support
12 of the application. It is dated the 7th, but well,
13 there it is. Okay. Anything else? Any other
14 submissions into the application that I have not
15 mentioned that you are aware of, Ms. Fouler?

16 MS. FOULER: No.

17 CHAIRPERSON GRIFFIS: Or Board Members?
18 Okay. Pardon me?

19 BOARD MEMBER ETHERLY: The petitioners.

20 CHAIRPERSON GRIFFIS: Oh, it's a good
21 point to bring up and I think we can move on to that
22 in terms of the persons we do have, the petition,
23 which is Exhibit No. 20, which Ms. Fouler actually
24 mentioned in her testimony. We have letters in
25 opposition, Exhibit No. 23, 19 and 28. Why don't we

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1 move ahead to testimony now?

2 Is there any persons present to provide
3 testimony in support of Application 17268? In
4 opposition then? Let's move ahead and go to any in
5 opposition. Is Ms. Tera Kelly present today? Okay.

6 MR. BERGEN: She isn't. She lives
7 downstairs.

8 CHAIRPERSON GRIFFIS: Do you mind turning
9 on your microphone?

10 MR. BERGEN: Tera is not here today.

11 CHAIRPERSON GRIFFIS: Okay.

12 MR. BERGEN: She lives downstairs from me.

13 CHAIRPERSON GRIFFIS: Good.

14 MR. BERGEN: And a lot of the blockage
15 issues from my apartment apply to hers as well.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. BERGEN: Because the plans are the
18 same.

19 CHAIRPERSON GRIFFIS: We'll turn it over
20 to you, Mr. Bergen. Why don't you tell us what you
21 know?

22 MR. BERGEN: Thank you. I just want to
23 respond to a couple of comments this morning.
24 Although the ANC meeting was publicly publicized in
25 the paper, I did not know about it until Jay called me

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1 up and told me he was submitting here.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. BERGEN: Nor did I know about any of
4 the other historical reviews.

5 CHAIRPERSON GRIFFIS: Good.

6 MR. BERGEN: I'm an architect here in
7 Washington and grew up here. I'm familiar with both
8 the approvals process and don't really feel like we
9 were notified in the building.

10 CHAIRPERSON GRIFFIS: Okay. We'll quickly
11 put this to rest in terms of our own jurisdiction.

12 MR. BERGEN: Okay.

13 CHAIRPERSON GRIFFIS: Of course, our
14 notification goes out.

15 MR. BERGEN: Sure.

16 CHAIRPERSON GRIFFIS: And that's in the
17 form of letter and also the posting of the property.

18 MR. BERGEN: And I got that.

19 CHAIRPERSON GRIFFIS: Excellent.

20 MR. BERGEN: Sure.

21 CHAIRPERSON GRIFFIS: So in terms of the
22 requirements before this Board, they have all been
23 met. What I would suggest you do is don't lose that
24 thought when you leave out of here. Talk to the ANC.

25 MR. BERGEN: Sure.

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1 CHAIRPERSON GRIFFIS: And indicate and
2 make sure that you are provided notice or figure out
3 how they provide. Ms. Miller brings this up every
4 report of the ANC that doesn't indicate how they
5 actually give notification. It's an important aspect,
6 one, for our understanding, but two, it also lets
7 everyone else know. I mean, this is a public forum.
8 We have hundreds of people that come through every
9 year. If they start to understand how each individual
10 ANC, their ANC, gives notice, then they will know
11 where to look or how to get it.

12 MR. BERGEN: Sure.

13 CHAIRPERSON GRIFFIS: So I would follow-up
14 with them for sure.

15 MR. BERGEN: Okay.

16 CHAIRPERSON GRIFFIS: Because that's a
17 great resource.

18 MR. BERGEN: Sure.

19 CHAIRPERSON GRIFFIS: To figure out what's
20 going forward.

21 MR. BERGEN: Okay.

22 CHAIRPERSON GRIFFIS: And processing.

23 MR. BERGEN: I want to respond to the
24 reports of the Office of Planning, and there are some
25 contradictions, vis-a-vis, in the report, as well as

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1 what was stated this morning. And basically, the
2 report says that the privacy and views of the
3 adjoining property will not be affected, but then when
4 you asked Ms. Maxine Brown-Roberts whether or not she
5 had looked at the condominium building to see if that
6 was true, she said she did not look to make an
7 assessment of that. So I think that should be noted.

8 I'm here this morning, because the
9 addition will block the view from the living room of
10 Apartment 203. And at the moment, I have a view out
11 into the back yards and to the backs of the houses
12 along 8th Street, and with the addition enclosing that
13 portion, the addition extending back, approximately,
14 5 feet, that will be -- my view will be blocked. And
15 that's also a view from the kitchen, because the
16 kitchen is open to the living room, so you can't view
17 out diagonally from the kitchen as well. So it's
18 really the views from two rooms.

19 I spoke with my tenant yesterday about it
20 and I said well, you know, look, if you were about to
21 rent an apartment and there was no view out from the
22 living room, would it be more less valuable than the
23 one you're renting now? And he said it would be less
24 valuable. So I want to point out that that will
25 decrease the value of the property and also the

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1 enjoyment. And I think one of the more important
2 things to note --

3 CHAIRPERSON GRIFFIS: He's not a
4 professional appraiser, is he?

5 MR. BERGEN: No.

6 CHAIRPERSON GRIFFIS: Right.

7 MR. BERGEN: But I could get, you know --

8 CHAIRPERSON GRIFFIS: No, there is no need
9 to rise to that level.

10 MR. BERGEN: I could get a real estate
11 agent. I guess the other issue is that it does
12 dramatically affect the privacy of the bedroom in the
13 unit, because the windows at the rear of the addition
14 will look directly into the bedroom, and also the
15 windows at the rear of the addition will look into the
16 bedroom below and also the bathroom.

17 CHAIRPERSON GRIFFIS: Which windows in the
18 addition will be facing?

19 MR. BERGEN: The ones at the rear of the
20 addition, not the side, not the fire wall, but the
21 rear of the addition, which is the east side of the
22 addition.

23 CHAIRPERSON GRIFFIS: But wouldn't it be,
24 in fact, decreased as it's moving back? I mean, isn't
25 the current situation that?

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1 MR. BERGEN: No.

2 CHAIRPERSON GRIFFIS: There aren't windows
3 in the rear of the property?

4 MR. BERGEN: Well, they are positioned in
5 such a way that they don't look into the bedroom.
6 This is pushing it back towards the bedroom.

7 CHAIRPERSON GRIFFIS: So you are saying
8 east facing windows.

9 MR. BERGEN: Yes.

10 CHAIRPERSON GRIFFIS: Would be able to
11 look into the south rooms?

12 MR. BERGEN: No, well, it's the north side
13 of the condo building, the rooms to the south.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. BERGEN: Yes.

16 CHAIRPERSON GRIFFIS: But so I'm looking
17 at a building that's facing east, towards the back of
18 the room, and you're saying that those windows
19 actually start looking into the building that's to my
20 right?

21 MR. BERGEN: Yes, because they are far
22 enough. It's a diagonal view. It's as if I were
23 looking at --

24 CHAIRPERSON GRIFFIS: How far back are
25 they if this is the line of the proposed addition?

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1 Where are the windows? How far away are they?

2 MR. BERGEN: They are probably 8 feet back
3 from the back of the addition.

4 CHAIRPERSON GRIFFIS: So just a straight,
5 linear dimension, 8 feet back?

6 MR. BERGEN: I would have to check. I
7 haven't measured.

8 CHAIRPERSON GRIFFIS: I'm just trying to
9 picture it, because we don't have documentation here.

10 MR. BERGEN: Yes.

11 CHAIRPERSON GRIFFIS: So let's say it's at
12 the column and then it's what, 11 feet over? No.

13 MR. BERGEN: No, it's 5 five.

14 CHAIRPERSON GRIFFIS: 6 feet.

15 MS. FOULER: It's the corner of the open
16 court.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. BERGEN: Yes.

19 CHAIRPERSON GRIFFIS: It's 11 feet back to
20 the edge of the building.

21 MR. BERGEN: It's very close. I mean, you
22 can hear. There is tremendous noise that you can
23 hear, not noise, but you can hear a lot that goes on
24 between the two units, between the two dwellings, you
25 know, between the condo building and the house.

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1 I guess, you know, I also invited -- I
2 think, you know, Jay, I have talked to Jay and
3 Patricia and they don't seem to understand how they
4 will be blocking my view, and I have asked them to
5 come over and come to the living room and they have
6 declined. So I just wanted to point that out and
7 that's, I think, really all that I have to say.

8 CHAIRPERSON GRIFFIS: Yes. Sorry, just a
9 last question. Your unit, does it extend to the
10 rear --

11 MR. BERGEN: Yes.

12 CHAIRPERSON GRIFFIS: -- of the apartment
13 building?

14 MR. BERGEN: Yes.

15 CHAIRPERSON GRIFFIS: And how deep is it?

16 MR. BERGEN: Well, it's approximately half
17 the depth of the overall building. The units are
18 about --

19 CHAIRPERSON GRIFFIS: It's about 25 feet
20 deep?

21 MR. BERGEN: That's about right, yes.

22 CHAIRPERSON GRIFFIS: I see.

23 MR. BERGEN: So basically, views from half
24 of the unit will be blocked.

25 CHAIRPERSON GRIFFIS: Are there two units

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1 at the rear of this building?

2 MR. BERGEN: There are four, because it's
3 a two-story and there's a unit on each corner.

4 CHAIRPERSON GRIFFIS: I mean, on each
5 floor.

6 MR. BERGEN: Yes.

7 CHAIRPERSON GRIFFIS: So there's two --

8 MR. BERGEN: Yes.

9 CHAIRPERSON GRIFFIS: -- that create the
10 rear portion of the building?

11 MR. BERGEN: Yes.

12 CHAIRPERSON GRIFFIS: So you have that
13 corner and the rear and then the courtyard there?

14 MR. BERGEN: Yes.

15 CHAIRPERSON GRIFFIS: Okay. Mr. Etherly?

16 BOARD MEMBER ETHERLY: Thank you, Mr.

17 Chair. At Exhibit No. 4, Mr. Bergen, correct?

18 MR. BERGEN: Yes.

19 BOARD MEMBER ETHERLY: At Exhibit No. 4,
20 which we have in our packet, there is a series of
21 photographs that illustrate the subject property.

22 MR. BERGEN: Sure.

23 BOARD MEMBER ETHERLY: I'm not sure if you
24 have a copy of this. There is the last photograph,
25 and I'm kind of giving this direction for my

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1 colleagues, there is kind of a picture of that back
2 wall.

3 MR. BERGEN: Yes.

4 BOARD MEMBER ETHERLY: Just above the
5 wooden fence, and it might be difficult for you to
6 see.

7 MR. BERGEN: Yes.

8 BOARD MEMBER ETHERLY: But I will just
9 hold it up.

10 MR. BERGEN: Sure.

11 BOARD MEMBER ETHERLY: Just above the
12 wooden fence there is a row of about -- what we can
13 see in the picture would appear to be one, two, three,
14 four, maybe even a fifth window.

15 MR. BERGEN: Yes.

16 BOARD MEMBER ETHERLY: That continues
17 back.

18 MR. BERGEN: Sure.

19 BOARD MEMBER ETHERLY: Between the two
20 properties. Based on what you can see as you're
21 looking at this picture, can you indicate where the
22 units that you are referencing are, in fact, located?

23 MR. BERGEN: They are those first three
24 windows.

25 BOARD MEMBER ETHERLY: Okay. On the first

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1 floor here?

2 MR. BERGEN: No, I'm on the second floor.

3 BOARD MEMBER ETHERLY: Okay.

4 MR. BERGEN: And Tera is on the first

5 floor.

6 BOARD MEMBER ETHERLY: Okay. So Ms.

7 Kelly, who submitted a letter in opposition, her

8 windows are these first three windows here?

9 MR. BERGEN: Yes.

10 BOARD MEMBER ETHERLY: Just above the

11 wooden fence.

12 MR. BERGEN: Yes.

13 BOARD MEMBER ETHERLY: As indicated in

14 Exhibit 4. And then the other unit that you're

15 referencing are the three windows above?

16 MR. BERGEN: Yes.

17 BOARD MEMBER ETHERLY: Okay.

18 MR. BERGEN: Exactly.

19 BOARD MEMBER ETHERLY: Okay.

20 MR. BERGEN: I --

21 BOARD MEMBER ETHERLY: Now, just --

22 MR. BERGEN: Sure.

23 BOARD MEMBER ETHERLY: I wanted to follow-

24 up very quickly with a question the Chairman asked.

25 MR. BERGEN: Yes.

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1 BOARD MEMBER ETHERLY: With regard to the
2 existing condition in the back, would you agree that
3 there is already some impact on privacy due to the
4 fact that, of course, an individual could be out on
5 that upstairs deck or on that back porch, conceivably,
6 before coming down the stairs and still have some type
7 of sight line, from a privacy standpoint, into either
8 one of those units?

9 MR. BERGEN: Yes.

10 BOARD MEMBER ETHERLY: Okay.

11 MR. BERGEN: They would impact.

12 BOARD MEMBER ETHERLY: But it's your
13 concern that that condition would be further
14 exacerbated?

15 MR. BERGEN: No, it would affect the
16 bedroom rather than the living room.

17 BOARD MEMBER ETHERLY: Okay. And the
18 bedroom is?

19 MR. BERGEN: The first window.

20 BOARD MEMBER ETHERLY: The very first
21 window.

22 MR. BERGEN: Yes.

23 BOARD MEMBER ETHERLY: Towards the edge of
24 the building?

25 MR. BERGEN: Sure, yes.

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1 BOARD MEMBER ETHERLY: Okay. Thank you.

2 MR. BERGEN: I have a photograph actually
3 of the views from the living room, which shows how it
4 will be blocked, which I would like to submit.

5 CHAIRPERSON GRIFFIS: Good.

6 BOARD MEMBER ETHERLY: Thank you, Mr.
7 Chair. That concludes my questions.

8 CHAIRPERSON GRIFFIS: Thank you. Ms.
9 Fouler, there is an existing screened-in porch that is
10 to be removed. Is that correct?

11 MS. FOULER: It's to be enclosed. It's to
12 be enclosed, excuse me.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. FOULER: We're keeping the existing
15 foundations and --

16 CHAIRPERSON GRIFFIS: Here's a direct
17 question. In terms of the 5 foot 1 and an 1/8 inch.

18 MS. FOULER: Yes.

19 CHAIRPERSON GRIFFIS: Pretty precise
20 construction. That is the existing screened-in porch?

21 MS. FOULER: It's an addition to the
22 existing screened porch, so we have --

23 CHAIRPERSON GRIFFIS: What I'm trying to
24 figure out is if you look at these photographs, the
25 one that Mr. Etherly is bringing up, in relation to

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1 the chimney. Now, obviously, this photograph is not
2 of scale elevation, but the perspective, how much
3 further is it from the screened-in porch? How much
4 further out is the proposed addition?

5 MS. FOULER: 5 foot 4 and 3/4.

6 CHAIRPERSON GRIFFIS: Okay. So it's 5
7 feet more, which, as you have indicated, would allow
8 11 feet.

9 MS. FOULER: Beyond.

10 CHAIRPERSON GRIFFIS: Beyond.

11 MS. FOULER: Yes.

12 CHAIRPERSON GRIFFIS: To the edge of the
13 adjacent property.

14 MS. FOULER: Approximately, yes.

15 CHAIRPERSON GRIFFIS: Or the adjacent
16 structure.

17 MS. FOULER: Yes. I have a photograph
18 here from the porch. I don't know if this would help.
19 This is the view from their second story, and then you
20 see Mr. Bergen's living room window here.

21 CHAIRPERSON GRIFFIS: I see.

22 MR. BERGEN: Can I see the picture?

23 MS. FOULER: Which has already been
24 overlapped by their --

25 CHAIRPERSON GRIFFIS: Right.

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1 MS. FOULER: They could enclose that porch
2 by right.

3 CHAIRPERSON GRIFFIS: Right.

4 MS. FOULER: And block that view by right.

5 MR. BERGEN: But you're taking the -- you
6 could, but then I would still have an open view and I
7 have a photograph of that that shows that. You would
8 completely block the view with your addition and I
9 don't think that's fair.

10 CHAIRPERSON GRIFFIS: Right. Okay. We
11 are going to need both of those in the record. That
12 one we can get now. Questions, follow-up? Yes?

13 VICE CHAIR MILLER: I just have a couple,
14 Mr. Bergen. You also get light and air from other
15 sides. Is that correct?

16 MR. BERGEN: No, I don't.

17 VICE CHAIR MILLER: No?

18 MR. BERGEN: There are only windows on
19 that one side, in the living room.

20 CHAIRPERSON GRIFFIS: There's no windows
21 in the rear?

22 MR. BERGEN: There is the living room and
23 then there is a wall to the bathroom and the bedroom
24 is a separate room. So those are the only windows.
25 Those two windows are the only windows out of the

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1 living room.

2 CHAIRPERSON GRIFFIS: But you don't have
3 any windows on the east elevation?

4 MR. BERGEN: In the bedroom I do, but not
5 in the living room. You know, it's not going to
6 improve the situation to block the view.

7 CHAIRPERSON GRIFFIS: Right.

8 VICE CHAIR MILLER: And my other question
9 is especially being an architect --

10 MR. BERGEN: Yes.

11 VICE CHAIR MILLER: I'm wondering other
12 than being opposed to this addition --

13 MR. BERGEN: Sure.

14 VICE CHAIR MILLER: -- if it were to go
15 forward, would you have any recommendations that would
16 appease some of your concerns, mitigating your --

17 MR. BERGEN: No, because if they built an
18 open structure that I could look through, it would
19 improve it, but they can't, because it has to be a
20 rated wall, unless they wanted to do a very expensive
21 sprinkler system, but I would have to approve any
22 elevations that get drawn, but I don't think you would
23 be able to get -- you would have to put in probably a
24 new line from the street, a pump and all that stuff to
25 get them to get OSHA Department to approve it.

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1 VICE CHAIR MILLER: Thank you.

2 CHAIRPERSON GRIFFIS: Okay. Mr. Bergen,
3 you put in the photograph that you wanted. Is that
4 correct?

5 MR. BERGEN: Yes.

6 CHAIRPERSON GRIFFIS: Which is this one?

7 MR. BERGEN: Yes, exactly.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. BERGEN: And that shows.

10 CHAIRPERSON GRIFFIS: So I'm going to pass
11 it down.

12 MR. BERGEN: Yes.

13 CHAIRPERSON GRIFFIS: This is the only one
14 we have right now, so we'll get copies and put it in
15 the record.

16 MR. BERGEN: I mean, basically, what you
17 can see there is that the existing porch extends out
18 5 feet and you extend it out another 5 feet and the
19 view is completely blocked.

20 BOARD MEMBER ETHERLY: And, Mr. Bergen,
21 that's the view from the bedroom?

22 MR. BERGEN: That's the view from the
23 living room.

24 BOARD MEMBER ETHERLY: Living room. Okay.

25 MR. BERGEN: And Tera's view downstairs

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1 would be, approximately, the same.

2 BOARD MEMBER ETHERLY: Okay.

3 MR. BERGEN: And I have been in that
4 apartment, because I know Tera.

5 BOARD MEMBER ETHERLY: And once again, I'm
6 perhaps getting it confused, those end windows are the
7 living rooms that run up?

8 MR. BERGEN: The side windows, that's the
9 side of the building. That's not the end.

10 BOARD MEMBER ETHERLY: So those are both
11 living room windows?

12 MR. BERGEN: The double ones are living
13 room windows.

14 BOARD MEMBER ETHERLY: Okay. And then the
15 smaller ones --

16 MR. BERGEN: The pairs.

17 BOARD MEMBER ETHERLY: Okay.

18 MR. BERGEN: The smaller one with the tall
19 sill is a shower window and the other one, the last
20 one, the single window is a living room window.

21 BOARD MEMBER ETHERLY: And then where is
22 the bedroom? Is there a bedroom window on that side?

23 MR. BERGEN: Yes, that's the single.

24 BOARD MEMBER ETHERLY: That's the single.

25 MR. BERGEN: Single window. From the

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1 back, it's bedroom, bathroom, living room, kitchen.

2 CHAIRPERSON GRIFFIS: Bedroom, bathroom,
3 living room, kitchen.

4 BOARD MEMBER ETHERLY: Okay. Okay.

5 CHAIRPERSON GRIFFIS: I guess.

6 BOARD MEMBER ETHERLY: Thank you.

7 VICE CHAIR MILLER: I just want to get
8 clear where your views are blocked and where you still
9 have views. It sounds like your living room view
10 would be blocked, correct?

11 MR. BERGEN: Would be completely blocked,
12 yes.

13 VICE CHAIR MILLER: But you would still
14 have views from your bedroom?

15 MR. BERGEN: Yes, but you --

16 VICE CHAIR MILLER: Kitchen?

17 MR. BERGEN: No, the kitchen would be
18 blocked.

19 VICE CHAIR MILLER: Kitchen blocked by
20 this addition?

21 MR. BERGEN: Yes.

22 MS. FOULER: It's already blocked.

23 MR. BERGEN: No, there is actually a
24 diagonal view out through the windows and I offered to
25 Jay and Patricia to come over and look at it and they

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1 refused.

2 VICE CHAIR MILLER: Okay. Bathroom view
3 would be blocked?

4 MR. BERGEN: No, it wouldn't.

5 VICE CHAIR MILLER: It would not be
6 blocked?

7 MR. BERGEN: Well, actually, it would be
8 partially blocked.

9 VICE CHAIR MILLER: Okay.

10 MR. BERGEN: And I have a photograph
11 illustrating that if you want to see that.

12 VICE CHAIR MILLER: Sure. Did we cover
13 the rooms? So basically, some rooms are blocked and
14 some are not?

15 MR. BERGEN: Yes. That shows how close
16 the addition is.

17 VICE CHAIR MILLER: Okay.

18 CHAIRPERSON GRIFFIS: The front unit on
19 this building, are you familiar with it, not your
20 unit?

21 MR. BERGEN: The two bedroom units in the
22 front?

23 CHAIRPERSON GRIFFIS: Are they two bedroom
24 units?

25 MR. BERGEN: Yes.

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1 CHAIRPERSON GRIFFIS: And yours is a one
2 bedroom?

3 MR. BERGEN: Yes.

4 CHAIRPERSON GRIFFIS: Okay. And is it
5 rented?

6 MR. BERGEN: No, they are both owner
7 occupied.

8 CHAIRPERSON GRIFFIS: Okay.

9 MR. BERGEN: And I live in the building as
10 well.

11 CHAIRPERSON GRIFFIS: I see. Okay. Do we
12 have another photograph?

13 MR. BERGEN: Yes.

14 CHAIRPERSON GRIFFIS: And that's from the
15 what?

16 MR. BERGEN: That's from the bathroom and
17 that shows where, if you can imagine, the addition
18 would come out sort of in the middle of that window.

19 CHAIRPERSON GRIFFIS: What's this? I know
20 what it is. I'm going to label this photograph that
21 you just put in as the bathroom adjacent view.

22 MR. BERGEN: Sure.

23 CHAIRPERSON GRIFFIS: Just so we don't get
24 mixed up on what this is, not that it isn't absolutely
25 clear, but if we went through 12 more of these today,

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1 we'll probably forget. Okay. All right. Did you
2 guys all see this? Did you see this?

3 BOARD MEMBER ETHERLY: Yes.

4 CHAIRPERSON GRIFFIS: You saw that? Okay.
5 Any other questions?

6 MR. BERGEN: No.

7 CHAIRPERSON GRIFFIS: Keep going?

8 Anything else?

9 MR. BERGEN: I'm done, but I would wonder
10 about the Office of Planning's report that as the
11 views weren't looked at, how the report could state
12 that it wouldn't affect the privacy of the adjoining
13 property.

14 CHAIRPERSON GRIFFIS: I see.

15 MR. BERGEN: I would question the validity
16 of that report.

17 CHAIRPERSON GRIFFIS: Okay. Good. And
18 I'm not sure if the Office of Planning needs to
19 respond to that definitively unless the Board wants
20 them to, but here is my understanding, Mr. Bergen.
21 First of all, the Office of Planning, all their zoning
22 staff that does analysis of this are very experienced,
23 and so what they do for their site visits, and what is
24 fascinating is the fact that we're not allowed to do
25 site visits on the Board.

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1 MR. BERGEN: Sure.

2 CHAIRPERSON GRIFFIS: We look at what is
3 presented in front of us. Our eyes, essentially, are
4 the Office of Planning.

5 MR. BERGEN: Yes.

6 CHAIRPERSON GRIFFIS: And the Office of
7 Planning does not often, if ever, I'm not really aware
8 of any time that they have gone on property. They are
9 to look at it from the perspective of the street and
10 the surrounding area. But more importantly, what they
11 do in their analysis is look at the regulations, also
12 the Comprehensive Plan. They have the great mapping
13 and the aerial photographs.

14 So my point being Ms. Maxine Roberts'
15 analysis comes from two things. One, her experience
16 of looking at these and understanding adjacencies of
17 properties and, two, her ability to find information
18 as is needed. So I think the assessment, as I look at
19 it as the assessment, is I think she could take out of
20 her own experience and the professional experience of
21 the office looking at a property line wall and
22 adjacency to a 6 feet, 8 inch courtyard and indicate
23 and bring an assessment that it would not unduly
24 impact light, air or the privacy.

25 MR. BERGEN: But then I would wonder, and

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1 you can check the record, why she said that she did
2 not look at the windows to evaluate that issue. And
3 if you go back through the record, you will see that,
4 I think.

5 CHAIRPERSON GRIFFIS: She didn't. Well,
6 I don't need to speak for you. You indicated that you
7 didn't go into the building. Is that correct?

8 MS. BROWN-ROBERTS: Yes. He asked me
9 about the specific -- I was asked about the specific
10 window.

11 CHAIRPERSON GRIFFIS: Right.

12 MS. BROWN-ROBERTS: And I said I didn't
13 evaluate that window.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. BERGEN: Okay. So how can you tell me
16 that the -- how can you know that the privacy won't be
17 affected if you haven't evaluated that window? I just
18 want to know.

19 CHAIRPERSON GRIFFIS: Well, I think, my
20 understanding of her answer was you were indicating
21 did she get into that unit.

22 MR. BERGEN: No, no, that's not.

23 CHAIRPERSON GRIFFIS: And did she look out
24 that window.

25 MR. BERGEN: That's not, and I didn't ask

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1 that question. She was asked that question by someone
2 else here.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. BERGEN: Not by me.

5 CHAIRPERSON GRIFFIS: Let's just bring
6 clarification. Ms. Maxine Roberts, you knew there was
7 fenestration on that side of the building?

8 MS. BROWN-ROBERTS: Yes.

9 CHAIRPERSON GRIFFIS: Correct?

10 MS. BROWN-ROBERTS: Yes.

11 CHAIRPERSON GRIFFIS: You looked at the
12 overall elevation or fenestration pattern of that
13 building?

14 MS. BROWN-ROBERTS: That's correct.

15 CHAIRPERSON GRIFFIS: And that's the basis
16 of an assessment on impact?

17 MS. BROWN-ROBERTS: That's correct, right,
18 yes. And I looked at, you know, the existing
19 situation and that the building would continue to have
20 the open court and made an assessment based on that.

21 CHAIRPERSON GRIFFIS: I see. Okay. Good.
22 I mean, whether we agree or not.

23 MR. BERGEN: Sure.

24 CHAIRPERSON GRIFFIS: That's my
25 understanding of --

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1 MR. BERGEN: Yes.

2 CHAIRPERSON GRIFFIS: -- exactly how her
3 analysis went.

4 MR. BERGEN: Yes.

5 CHAIRPERSON GRIFFIS: Okay. Any follow-up
6 questions, Board Members? Okay. Hold on, hold on,
7 hold on. Okay. Ms. Fouler, do you have any cross
8 examination of Mr. Bergen?

9 MS. FOULER: Yes, I have a few things.
10 The first thing, the Adelsteins did share the plans
11 with Mr. Bergen.

12 CHAIRPERSON GRIFFIS: Okay. Hold on. Let
13 me just clarify.

14 MS. FOULER: Okay.

15 CHAIRPERSON GRIFFIS: Cross examination is
16 your opportunity to ask questions of Mr. Bergen.

17 MS. FOULER: Okay.

18 CHAIRPERSON GRIFFIS: And it would be for
19 the purposes of pulling out information that would be
20 important to balance the Board's understanding of what
21 Mr. Bergen says. In your case, bottom line, poking
22 holes in his testimony.

23 MS. FOULER: Okay.

24 CHAIRPERSON GRIFFIS: Showing how it's --
25 anyway, supporting your case, questions is what it's

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1 all going to be.

2 MS. FOULER: No, I don't have any
3 questions for Mr. Bergen.

4 CHAIRPERSON GRIFFIS: Oh, okay.

5 MS. FOULER: Thank you.

6 CHAIRPERSON GRIFFIS: Good. All right
7 then. If there is nothing further, Mr. Bergen, thank
8 you very much. We appreciate you taking the time to
9 be here today.

10 MR. BERGEN: Thank you.

11 CHAIRPERSON GRIFFIS: What we are going to
12 do now is turn it over to Ms. Fouler. She is going to
13 do any sort of rebuttal and then closing remarks on
14 this, and then the Board will figure out what we're
15 doing with this at that time.

16 MS. FOULER: Okay. The Adelsteins did
17 share their plans with Mr. Bergen in November of 2004.
18 They approached many of the neighbors who did sign
19 petitions. They were not told by Mr. Bergen about any
20 objections at that time. He didn't make himself
21 available to sign the petition in favor, but he didn't
22 oppose it in their view.

23 CHAIRPERSON GRIFFIS: Okay. But clearly,
24 you're of the understanding he opposes it now?

25 MS. FOULER: Yes.

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1 CHAIRPERSON GRIFFIS: Okay. That's okay.
2 We're not going to get into this issue of when who
3 talked to what and what I saw.

4 MS. FOULER: Okay.

5 CHAIRPERSON GRIFFIS: Okay.

6 MS. FOULER: The objection wasn't filed
7 until after several of the meetings that Mr. Bergen
8 didn't attend.

9 MR. BERGEN: I wasn't notified.

10 CHAIRPERSON GRIFFIS: Okay.

11 MS. FOULER: The neighbor, which Jay
12 Adelstein believes was below Mr. Bergen's, Apartment
13 103, has signed in favor of the project and I'm not
14 clear which apartment that is. I was under the
15 understanding that it was on that side facing the
16 Adelstein's property, but I just wanted to point that
17 out. I believe they are one of the first floor units
18 facing the Adelstein's property and they have signed
19 an approval of the project.

20 CHAIRPERSON GRIFFIS: So where is Ms.
21 Kelly's apartment, 103?

22 MR. BERGEN: Ms. Kelly's apartment is 103.

23 MS. FOULER: Well, see, we have somebody
24 here, Andrea Warren, No. 103 that signed --

25 MR. BERGEN: She's a renter.

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1 MS. FOULER: -- the petition for approval.

2 CHAIRPERSON GRIFFIS: Mr. Bergen, hold on.
3 Just for total clarification, first of all, I can't
4 have you speak when you're sitting over there.

5 MR. BERGEN: I would like to be able to
6 respond.

7 CHAIRPERSON GRIFFIS: I understand that
8 and, believe me, I am so aware having run through
9 numerous ones of these. I'm going to ask Ms. Fouler
10 all these questions. If I need further, I'm going to
11 ask you these questions and this is just
12 straightforward, very quick stuff. But the other most
13 important thing, anything you say out in this room is
14 for only your benefit, because you're not on the
15 record.

16 MR. BERGEN: Okay.

17 CHAIRPERSON GRIFFIS: Which means you're
18 really not speaking, except to yourself.

19 MR. BERGEN: Okay.

20 CHAIRPERSON GRIFFIS: So just to be
21 absolutely clear, do you know where in the location of
22 the adjacent building 103 is?

23 MS. FOULER: I believe it's directly under
24 Mr. Bergen's apartment.

25 CHAIRPERSON GRIFFIS: Okay. Mr. Bergen,

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1 why don't you come up, so that we don't have you
2 jumping up and down and all that stuff?

3 BOARD MEMBER MANN: Mr. Chairman, in the
4 interim, I might add that Ms. Kelly's address is not
5 on that street. It's on Morris Place. It's 661
6 Morris Place, No. 5.

7 MR. BERGEN: Yes, she --

8 MS. FOULER: She rents the apartment, the
9 condo.

10 VICE CHAIR MILLER: It says she's the
11 owner though.

12 CHAIRPERSON GRIFFIS: Okay. All right.
13 Wow.

14 MS. FOULER: Okay.

15 CHAIRPERSON GRIFFIS: All I'm trying to do
16 is figure out what number is the one right below
17 yours, Mr. Bergen.

18 MR. BERGEN: 103.

19 CHAIRPERSON GRIFFIS: It is 103. Okay.
20 So the owner of 103 is in opposition to this?

21 MS. FOULER: Right, so this is the tenant
22 that has signed it.

23 CHAIRPERSON GRIFFIS: But the renter is
24 okay.

25 MS. FOULER: The renter is okay.

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1 CHAIRPERSON GRIFFIS: All right. So now,
2 we got all the players lined up.

3 MS. FOULER: Okay. Okay. Another point
4 on the property value. In my opinion, you know, this
5 existing porch --

6 CHAIRPERSON GRIFFIS: Good. None of us
7 has official opinions about property value, right?

8 MS. FOULER: But it's a pretty poorly
9 constructed existing porch. It definitely needs to be
10 upgraded. I think that anything that's done to this
11 property is going to be an improvement to the rear
12 views.

13 CHAIRPERSON GRIFFIS: I see.

14 MS. FOULER: And for the adjacent
15 properties.

16 CHAIRPERSON GRIFFIS: I see. So your
17 point is that there may be property value increase to
18 the surrounding areas, because you're upgrading that
19 addition, that portion?

20 MS. FOULER: I wouldn't say that it's
21 going to increase the neighbors' property values, but
22 I don't anticipate that it would decrease them.
23 That's just my opinion.

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. FOULER: It's a pretty poorly

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1 constructed addition, their enclosed porch, at this
2 point, open porch, excuse me. And then on the issue
3 of privacy, I honestly don't believe that the
4 Adelsteins will be able to see into the windows of the
5 adjacent building with their rear facing windows.

6 And there are no windows on that side and
7 even on the other side where we do have side windows,
8 they are up high and the neighbors on the north side
9 don't have any objections to that. So in my opinion,
10 I don't think they are going to be able to see any
11 more into the neighbors' apartment than now and, in
12 fact, less, because they are extending further back.
13 Let's see.

14 CHAIRPERSON GRIFFIS: Less, because it's
15 enclosed and not an open porch?

16 MS. FOULER: Yes, it's enclosed, exactly.

17 CHAIRPERSON GRIFFIS: I see.

18 MS. FOULER: And we feel that the light
19 and air are not going to be unduly affected by the
20 proposed addition. There is a 6 foot, 4 inch wide
21 open court. The addition, it's on the north side of
22 the building, so we're not going to be blocking any
23 east/west sun exposure or southern sun exposure. And
24 that's all that I have right now. Thank you.

25 CHAIRPERSON GRIFFIS: Okay. I would also

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1 note that, Ms. Fouler, you submitted Exhibit No. 27,
2 which was a response to Mr. Bergen's letter. Is that
3 correct?

4 MS. FOULER: Yes, Mr. Adelstein.

5 CHAIRPERSON GRIFFIS: Mr. Bergen, have you
6 seen this letter?

7 MR. BERGEN: No, I haven't.

8 CHAIRPERSON GRIFFIS: Okay. Let me, for
9 expeditious sake, just run through this in terms of
10 the response that the Adelsteins' proposed structure
11 extension is for 5 feet, 4 and 3/4 inches. Well,
12 there is a copy of this in the record you should
13 probably pick up. Okay. Anything else on this? Any
14 other questions, follow-up from the Board? Very well.
15 Ms. Fouler, anything else you want to say in
16 conclusion?

17 MS. FOULER: No. Thank you for your
18 deliberation.

19 CHAIRPERSON GRIFFIS: Okay. Good.

20 BOARD MEMBER MANN: Mr. Chairman?

21 CHAIRPERSON GRIFFIS: Mr. Mann?

22 BOARD MEMBER MANN: I would move approval
23 of Application No. 17268 of Jay and Patricia Adelstein
24 for a special exception to permit the rear two-story
25 addition, not meeting the lot occupancy and open court

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1 requirements at 315 7th Street, N.E.

2 CHAIRPERSON GRIFFIS: Excellent. Is there
3 a second to the motion? I'll second the motion. Mr.
4 Mann, speak to the motion.

5 BOARD MEMBER MANN: One of the things I
6 would like to note is that the 223 test is fairly
7 specific in the things that it talks about, including
8 unduly affecting light and air, privacy of use and
9 enjoyment of neighboring properties, specifically, and
10 amongst other things. But one of the things that it
11 doesn't mention is views.

12 We approve a lot of applications that
13 affect views, sometimes for better, sometimes for
14 worse. I don't think that we necessarily are in a
15 position to evaluate whether or not a view is improved
16 or not. But it seems that an awful lot of testimony
17 that we have heard today really goes towards the view
18 and not towards whether or not light and air was
19 unduly affected.

20 And in fact, in Exhibit No. 19, the letter
21 of opposition from Mr. Bergen, although he does talk
22 about the fact that he believes that light and air
23 will be blocked, it's in bold letters that he objects
24 to the change in the view, and I don't believe that
25 that actually meets or goes towards the 223 test.

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1 CHAIRPERSON GRIFFIS: Good. Thank you
2 very much, Mr. Mann, and I appreciate that. It is
3 interesting in terms of view, you bring up the aspect
4 of view, and where I see the view actually fitting
5 into the 223 is actually whether it would unduly
6 impact the use or enjoyment of the neighboring
7 properties, and we are more often than not talking
8 about the view from the proposed addition into the
9 adjacent rear yards or adjacent properties.

10 And what is fascinating is that, in this
11 case, we're actually being asked to look at the impact
12 of one's view into the applicant's rear yard or across
13 their property in that sense. And I think the Board
14 is fairly aware and has seen quite a few of these
15 aspects of, essentially, the mixed use, that being
16 single-family and multi-family units that are set up
17 in more of a row dwelling topology, meaning that they
18 are property line to property line.

19 I think in addition to your comments, Mr.
20 Mann, I would also go to the Office of Planning's
21 report, which indicates and goes through the whole
22 analysis of the 223 and the special exception, because
23 incorporated in the 223 special exception is whether
24 there would be really any other aspects. It's fairly
25 open, although 223 specifically defines elements to

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1 look at.

2 The special exception can open up the
3 other elements, but I am also not that persuaded in
4 terms of unduly impacting. Certainly, any addition is
5 going to impact. It's something that's not there and
6 it will be there, at some point, if approved. But
7 unduly impact is really what we're going to, the
8 level, the threshold of which is measured.

9 And when we look at privacy, I am
10 persuaded significantly by the applicant's
11 representative today in terms of enclosing that open
12 area, those porches, the sleep porch and the open
13 porch above, and creating, first of all, no
14 fenestration on that side and closed story
15 fenestration on the other sides. I think it's much
16 more difficult to look into adjacent properties from
17 an enclosed area. You're going to have to hang your
18 head out the window or get an angle window, rather
19 than if you were standing there on an open porch.

20 In terms of the light and air, there will
21 be some effect, but I don't see it as rising to the
22 level of being undue. If you look at the orientation
23 of the building itself, the applicant's building, and
24 then if you look, limit it to the sun pattern of what
25 would happen, what we end up having is a north facing

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1 adjacent wall. The impact of the morning sun, which
2 would be in the east, I don't see any impact on that
3 in terms of the direction. The proposed structure is
4 on the north, is continuing north on this.

5 And in terms of the separation of the
6 courtyard on the adjacent property, it seems to ensure
7 that there is going to be adequate light and air in
8 there, and I don't see how the placement of the
9 proposed addition, if it was there or if it wasn't
10 there, would actually impact either, especially the
11 light.

12 Going to the other aspects of 223, we
13 didn't get into it in terms of the testimony today,
14 but, of course, one of the tests of this is that the
15 addition together with the original building as viewed
16 would not be out of character. There is sufficient
17 evidence in the record that I will rely on, and also
18 the Office of Planning's report, and I specifically go
19 to the A-5 of the applicant's submission.

20 And you know, I should clarify that,
21 because there was testimony by Ms. Fouler this morning
22 regarding the fact that this, the current condition,
23 is in pretty poor shape and that the addition itself
24 would be of more substantial character.

25 But going to the test of the 223, it's

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1 more important actually to look at, essentially, the
2 design, the architectural character and the massing
3 and such, and it's pretty clear in terms of the
4 materials that have been proposed that this would not
5 in any way move away from the character, and I think
6 we would tend to agree that it would increase this,
7 supporting the character that is now there.

8 That being said, I will open it up for
9 others. Ms. Miller?

10 VICE CHAIR MILLER: I basically want to
11 concur with what you and Mr. Mann said. I'm certainly
12 sympathetic to Mr. Bergen's concerns that his views
13 are going to change and won't be as nice with the
14 addition. However, we have to look at the test before
15 us, which is set forth at 223.2, and I think that the
16 key words are whether light and air are going to be
17 unduly affected, and the same with privacy of use and
18 enjoyment.

19 And I think he presented testimony with
20 respect to, you know, one apartment in an apartment
21 building, and I think that the Office of Planning
22 certainly evaluated the properties as a whole and
23 can't be expected to go into individual apartment
24 buildings. But even given that, given the testimony
25 that we heard, I think that it just doesn't rise to

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1 the level of defeating the special exception.

2 CHAIRPERSON GRIFFIS: Thank you, Ms.
3 Miller, very well said.

4 BOARD MEMBER ETHERLY: Mr. Chair?

5 CHAIRPERSON GRIFFIS: Yes, Mr. Etherly?

6 BOARD MEMBER ETHERLY: If I may, I'm going
7 to speak in opposition to the motion. It's, in my
8 opinion, a very close call. I think the presentation
9 that was provided by the applicant's representative
10 was excellent with both the photographic
11 representations and the architectural plans that
12 demonstrated exactly what the applicants have in mind.
13 I also think that the presentation by the gentleman
14 with the neighboring property, I think, was also very
15 helpful and instructive in terms of kind of
16 illustrating the impact here.

17 Finally, I will say that I think the
18 Office of Planning report was very excellent in terms
19 of laying out their assessment of the particular
20 situation here, and I think the objective of all of
21 this, of course, is to help the Board pull together a
22 very excellent and strong picture of what exactly is
23 going on at the site.

24 I say all of that as a preface to it. I
25 think everybody did their job here. I just fall on

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1 the other side of the fence from my colleagues with
2 regard to what I do believe is an undue impact more so
3 on the light. The air I'm not necessary assuaged
4 about, but from my standpoint, 223.2(a) is the issue
5 that is a little bit of a concern for me.

6 In my tenure on the Board, we have had
7 perhaps maybe one other case where we had a subject
8 property that was in close proximity to a multi-unit
9 building, but otherwise it's not something that I
10 think has really come up very frequently where we have
11 had to kind of grapple with it, because, essentially,
12 what I'm kind of struggling with is you have a
13 wonderful row of properties with some, you know, very
14 strong views at the rear and it's tough to perhaps
15 land where I'm landing and end up with a situation
16 where the applicants just drew the short straw in this
17 particular community, because they happen to be
18 abutting a multi-family building with multiple units
19 on that side.

20 But clearly, as the applicant's
21 representative noted, there is already some impact
22 with the existing porch. I understand that and I
23 believe that the testimony that has been offered in
24 opposition understands that.

25 My concern, however, is that with the

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1 addition of the addition, which in terms of the other
2 parts of 223, I think, are entirely compliant, the
3 impact on the light that would be available to those
4 two units that we have discussed on that what would
5 be, I seem to struggle with my geographic orientations
6 today, but on what would be the south side of the
7 addition, I think, would be suffering some impacts
8 that would rise to the level of being undue within the
9 terms of 223.2(a).

10 I clearly understand where my colleagues
11 are coming from, and I think it's just a matter of
12 just landing on, no pun intended, a different side of
13 the fence here. So I will not be in support of the
14 motion, but I just can't emphasize enough that it's a
15 very, very close call for me and I appreciate the
16 presentation that has been made by the applicant.
17 Thank you.

18 CHAIRPERSON GRIFFIS: Thank you, Mr.
19 Etherly. We appreciate that and well said. Anything
20 further, deliberation? Very well. We have a motion
21 that's before us. It has been seconded. I would ask
22 for all those in favor of the motion to signify by
23 saying aye.

24 ALL: Aye.

25 CHAIRPERSON GRIFFIS: And opposed?

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1 BOARD MEMBER ETHERLY: Opposed.

2 CHAIRPERSON GRIFFIS: And abstaining?

3 Very well.

4 MS. BAILEY: Mr. --

5 CHAIRPERSON GRIFFIS: Yes?

6 MS. BAILEY: Mr. Chairman, I'm sorry. I
7 did not hear who seconded the motion.

8 CHAIRPERSON GRIFFIS: I seconded the
9 motion.

10 MS. BAILEY: Okay. Thank you, sir. The
11 Board has voted 3-1-1 to approve the application. Mr.
12 Mann made the motion, Mr. Etherly second, Ms. Miller
13 is in agreement. Mr. Etherly is opposed to the motion
14 and we don't have a Zoning Commission member with us
15 today.

16 CHAIRPERSON GRIFFIS: Good. Thank you
17 very much.

18 BOARD MEMBER ETHERLY: Mr. --

19 CHAIRPERSON GRIFFIS: Yes?

20 BOARD MEMBER ETHERLY: Just to correct Ms.
21 Bailey's final report of that outcome. I think she
22 noted that I seconded the motion, and that would not
23 be correct. I believe the motion was seconded by --

24 CHAIRPERSON GRIFFIS: I did.

25 BOARD MEMBER ETHERLY: -- the Chair, Mr.

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1 Griffis.

2 MS. BAILEY: Thank you.

3 BOARD MEMBER ETHERLY: Thank you, Ms.
4 Bailey.

5 CHAIRPERSON GRIFFIS: Good. Ms. Fouler,
6 thank you very much. Appreciate you being down here
7 and presenting and, Mr. Bergen, thank you very much
8 also.

9 MR. BERGEN: Is there any recourse
10 protection?

11 CHAIRPERSON GRIFFIS: That's an excellent
12 question of procedure you might want to bring up with
13 the Office of Zoning staff in the office right next
14 door.

15 MR. BERGEN: Okay.

16 CHAIRPERSON GRIFFIS: If you could go up
17 after this. Good.

18 MS. FOULER: Thank you so much.

19 CHAIRPERSON GRIFFIS: Thank you very much.

20 MS. BAILEY: Mr. Chairman, is this a
21 summary order? I didn't hear the last comment.

22 CHAIRPERSON GRIFFIS: Right. I didn't
23 address it, and I believe it absolutely should be. We
24 can waive our regulations and requirements and issue
25 a summary order on this.

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1 MS. BAILEY: Thank you, sir.

2 CHAIRPERSON GRIFFIS: Thank you. Let's
3 move ahead then to the last case of the morning.

4 MS. BAILEY: Application No. 17267 of Jack
5 Merwin, pursuant to 11 DCMR 3103.2, for a variance
6 from the off-street parking requirements under
7 subsection 2101.1, to permit the construction of a
8 single-family dwelling in the R-1-B District at
9 premises 1220 Evarts Street, N.E., Square 3936, Lot 9.

10 CHAIRPERSON GRIFFIS: Thank you. Mr.
11 Gell?

12 MR. GELL: Thank you, Mr. Chairman,
13 Members of the Board.

14 CHAIRPERSON GRIFFIS: Did you get like a
15 year rail pass kind of, you know, you just show up all
16 day.

17 MR. GELL: I got the all day pass today at
18 BZA. No, I can advertise my parking for your cases.

19 CHAIRPERSON GRIFFIS: That's right. Good.
20 Okay. Let's move ahead.

21 MR. GELL: My name is Stephen Gell. I'm
22 an attorney representing Mr. Jack Merwin, who bought
23 this property on Evarts Street, which had been a
24 vacant lot for perhaps forever. I don't know if there
25 ever was a building on that property. It's a very

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1 difficult property to build on, because it's on top of
2 a hill with a 30 foot height sloping down about what
3 45 to 60 degrees straight down to the sidewalk.

4 And obviously, over the years people have
5 looked at it and decided that it wasn't worth trying
6 to build on it, partially because under the Zoning
7 Regulations you need to have a parking space on your
8 property and there is no way to get a car up there.
9 There is no alley in the back and it's very difficult.
10 You couldn't build a driveway. About the most you
11 could do is put some sort of a garage into the hill at
12 the first level, which is a very expensive
13 proposition.

14 We have submitted --

15 CHAIRPERSON GRIFFIS: You're saying when
16 you make that, you couldn't put a driveway. You're
17 saying because of the requiring slope?

18 MR. GELL: The driveway would be a very,
19 very steep angle.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. GELL: To get up to the top.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. GELL: I suppose it could be done, but
24 I'm not sure.

25 CHAIRPERSON GRIFFIS: So in the required

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1 slope for the regulations and possibly the Building
2 Code, but for the Zoning Regulations, you would end up
3 with maybe even at the rear of the property?

4 MR. MERWIN: It would be farther than
5 that.

6 CHAIRPERSON GRIFFIS: If you would turn on
7 your mike and if you could just introduce yourself for
8 the record?

9 MR. GELL: This is Jack Merwin and he will
10 have a statement as well, but after answering these
11 questions.

12 CHAIRPERSON GRIFFIS: Okay. Good.

13 MR. MERWIN: Well, I just was going to say
14 that I calculated the distance required to meet the
15 12.5 degree slope and the driveway would have to go
16 from the front of the property, the street all the way
17 to the back and then approximately 50 feet around.

18 CHAIRPERSON GRIFFIS: So it would have to
19 wrap around. So basically the run that's 12.5 sloped
20 to go up 30 feet is about 200 feet?

21 MR. MERWIN: I think so.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. MERWIN: That's what I calculated.

24 CHAIRPERSON GRIFFIS: Interesting.

25 MR. GELL: The other option, as I said, is

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1 to build some sort of a cave at the lower level.

2 CHAIRPERSON GRIFFIS: Right.

3 MR. GELL: So that it would be level with
4 the street and then you would climb from there up to
5 the house. And, in fact, there is one of those on the
6 street.

7 CHAIRPERSON GRIFFIS: Yes.

8 MR. GELL: Further down.

9 CHAIRPERSON GRIFFIS: It is actually
10 depicted in the application, I believe.

11 MR. MERWIN: There is no curb cut for
12 that, however. I talked to the neighbor and she has
13 not been able to get approval for that, so it's
14 useless.

15 CHAIRPERSON GRIFFIS: Right. Or at least
16 not a straightforward option. That's interesting. Do
17 you know the history of this property? I mean, it
18 looks like that masonry wall that surrounds it could
19 have been all on one property. Was this one big
20 glorious estate?

21 MR. MERWIN: I've visited, have climbed up
22 there, it would be nice. I have visited the
23 surveyor's office and have looked at old survey maps.
24 I have not been able to find any evidence of any prior
25 construction on the lot.

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1 CHAIRPERSON GRIFFIS: Yes, yes,
2 interesting.

3 MR. GELL: We have supplied the Board this
4 morning with some information, which I think Ms.
5 Bailey may have already given you.

6 CHAIRPERSON GRIFFIS: What was that?

7 MR. GELL: There were three documents
8 there. One was the results of the search of house
9 prices.

10 CHAIRPERSON GRIFFIS: Oh, right.

11 MR. GELL: Sales in the area.

12 CHAIRPERSON GRIFFIS: Okay.

13 MR. GELL: That's the first two pages.
14 Mr. Merwin can speak further to that. He said that
15 when he printed it out that the numbers didn't come
16 out, the prices didn't come out. He had to write them
17 in. The second is the total cost of the house and the
18 land, \$400,000. Of course, the construction costs
19 being an estimate. And then the last two pages are a
20 detailed estimate of the cost of doing a driveway or
21 otherwise providing parking on the site, which comes
22 to about \$53,336.

23 And we addressed the issue of uniqueness
24 in our written materials. We will through testimony
25 and through these submissions show practical

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1 difficulty. And I would like now to -- and, of
2 course, adverse effects. We have not heard from any
3 of the neighbors negatively on this. In fact, what we
4 have heard is that nobody has an objection to it.
5 Some people are happy to see the site finally
6 developed.

7 I know the ANC has not taken it up, but
8 the Single Member did, in fact, go around and get a
9 petition, which she supplied to the Board, it should
10 be in your packets, indicating that people were in
11 agreement with this variance. I don't know if she is
12 here to testify today. Perhaps not. But in any
13 event, we don't think it is going to effect any of the
14 neighbors and it's going to, in fact, fit in very well
15 with the neighborhood and correct, you know, a big
16 hole on that side of the street that will make it look
17 better.

18 I would like Mr. Merwin to make a
19 statement, at this time.

20 CHAIRPERSON GRIFFIS: Good. And I think
21 we can move fairly quickly through this.

22 MR. GELL: Sure.

23 MR. MERWIN: Good morning, Mr. Chairman
24 and Members of the Board. My name is Jack Merwin. I
25 am a mortgage broker and housing developer. I

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1 purchased the property at 1220 Evarts Street, N.E., to
2 develop it with a single-family house. The property
3 has never been developed in part because the Zoning
4 Regulations do not permit single-family houses without
5 parking.

6 Unfortunately, this property is on a hill
7 some 30 feet above the sidewalk. The front of the
8 property is a very steep 45 to 60 degree slope which
9 would not permit a driveway without undue expense and
10 difficulty of construction. Several other houses on
11 the street also do not have parking for that reason.
12 However, they were all built before the parking
13 requirement was imposed. Moreover, there is no alley
14 to give access to the rear of the structure.

15 The only way to provide off-street parking
16 is to create an unsightly cave next to the sidewalk.
17 The cost would be upwards of \$50,000. I have a letter
18 from a construction company attesting to that cost in
19 your packets. Even if I wanted to create the cave, it
20 is unlikely that I would recoup the cost in the
21 selling price. I propose to build a four bedroom
22 house similar to the houses that already exist on the
23 hill. Houses in that neighborhood sell for \$350,000
24 to \$450,000 and the construction cost is anticipated
25 to be \$400,000 on the property that I am proposing to

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1 develop.

2 MR. GELL: Including the land.

3 MR. MERWIN: Including the land.

4 Construction costs \$230,000, land cost \$170,000,
5 totaling \$400,000. I have included a list of property
6 sales in Brookland, sub-neighborhood D, which is where
7 my property sits. All sales in that sub-neighborhood
8 D for the last six months are listed. We may not lose
9 money, but you can readily see that those numbers
10 provide no development incentive. The discussions I
11 have had with neighbors indicate that they want to see
12 the property developed with a house and have no
13 problem with my relying on street parking.

14 I also plan to remove a car that's at the
15 top of the hill that I think may be of some annoyance
16 to some neighbors.

17 CHAIRPERSON GRIFFIS: Is that on your
18 property, you mean?

19 MR. MERWIN: It was on the property when
20 I bought the property.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. MERWIN: Yes.

23 CHAIRPERSON GRIFFIS: How did it get
24 there? It's parked.

25 MR. MERWIN: College prank. No, I think

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1 years ago there were no fences along the back of the
2 property.

3 CHAIRPERSON GRIFFIS: Right.

4 MR. MERWIN: And so there was some access.
5 It no longer exists.

6 CHAIRPERSON GRIFFIS: So they didn't drive
7 up the masonry wall or up the front from the street,
8 right?

9 MR. MERWIN: I don't think so.

10 MR. GELL: I might say that the properties
11 that back up to this are level.

12 CHAIRPERSON GRIFFIS: Right.

13 MR. GELL: With this. They don't have the
14 same hill that we do.

15 CHAIRPERSON GRIFFIS: Right. So you could
16 drive off of that adjacent street through that
17 property?

18 MR. GELL: It may very well have happened.

19 CHAIRPERSON GRIFFIS: And then keep going
20 on that level area?

21 MR. GELL: That's right.

22 MR. MERWIN: From Franklin Street you used
23 to be able to do that.

24 CHAIRPERSON GRIFFIS: Right.

25 MR. MERWIN: Now, everyone has put up a

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1 fence and is not agreeable to --

2 CHAIRPERSON GRIFFIS: To keep people from
3 driving cars on your property.

4 MR. MERWIN: Right.

5 CHAIRPERSON GRIFFIS: Okay. Anything
6 else?

7 MR. MERWIN: Thank you. I'll be happy to
8 answer any questions.

9 CHAIRPERSON GRIFFIS: Good. Yes, Ms.
10 Miller?

11 VICE CHAIR MILLER: In your application
12 under the variance test, with respect to uniqueness,
13 you say that this property has a history of failed
14 development, but you don't really elaborate what that
15 history is. Can you elaborate that a little bit?

16 MR. GELL: No, that's simply a speculation
17 on my part that people, obviously, have looked at the
18 site over the years and decided that it was just not
19 feasible to build on it. I don't have any specific
20 history evidence of that.

21 CHAIRPERSON GRIFFIS: Except the fact that
22 there's nothing built on it.

23 MR. GELL: If I implied that, I'm sorry.
24 I'm sorry?

25 CHAIRPERSON GRIFFIS: Except for the fact

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1 that nothing is built on it.

2 MR. GELL: It's not built on and it's a
3 separate lot.

4 CHAIRPERSON GRIFFIS: And it's a
5 conforming lot in the fact that it exceeds the minimum
6 square footage.

7 MR. GELL: That's right.

8 CHAIRPERSON GRIFFIS: So it's not as if it
9 was not conforming in that aspect. So your assertion
10 in which is presented today, if I understand you
11 correctly, is, in fact, just what the applicant has
12 stated was that this has been looked at and not
13 developed, because single-families require one
14 parking, but you can't get up onto the site to park
15 there.

16 MR. GELL: That's the only conclusion I
17 can come to.

18 CHAIRPERSON GRIFFIS: Okay. Anything
19 else?

20 VICE CHAIR MILLER: What's the
21 availability of parking on the street? Since the car
22 would not have a garage, a parking spot or drive way,
23 they would have to park on the street and what's that
24 like?

25 MR. MERWIN: I've visited the site many

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1 times and there are always -- there is always an
2 excess of parking along, I mean, plenty of spaces open
3 always.

4 CHAIRPERSON GRIFFIS: And on Evarts
5 Street, that's all single-family homes? Is that
6 correct?

7 MR. MERWIN: There is one multi-family
8 home at the end of the street closest to the 12th
9 Street, N.E.

10 CHAIRPERSON GRIFFIS: Well, which is in
11 the C-1 District.

12 MR. MERWIN: Primarily all single-family
13 homes.

14 CHAIRPERSON GRIFFIS: Yes, right. Okay.
15 And they are all, I'm looking at actually the Office
16 of Planning's figure 1, well, the majority of them are
17 50 feet wide lots.

18 MR. MERWIN: That sounds right.

19 CHAIRPERSON GRIFFIS: Okay. So they are
20 similar in dimension of the lot that you are looking
21 at?

22 MR. MERWIN: Yes.

23 CHAIRPERSON GRIFFIS: Which would tend to
24 speak to if you had 50 feet dimensions on a single-
25 family on the street frontage, you would have

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1 essentially, you know, that, what could you say, wide
2 of a lot, obviously, diminishes the demand for
3 parking, because you are not packing in 16 foot wide
4 row dwellings of two units each.

5 MR. MERWIN: Right.

6 CHAIRPERSON GRIFFIS: So you have 50 feet
7 of single-family, so if you push off the street per
8 lot and you had 50 feet, you could park five cars in
9 front of it.

10 MR. MERWIN: Right.

11 CHAIRPERSON GRIFFIS: That's the new math.
12 But, of course, you are adjacent to the C-1, which is
13 Commercial on each side, 13th and 12th Streets. Is
14 there a substantial amount of retail or commercial use
15 there?

16 MR. MERWIN: None that I am aware of.

17 CHAIRPERSON GRIFFIS: It is residential or
18 just multi-family?

19 MR. MERWIN: There are a couple of what I
20 would describe as vacant, I think they are vacant,
21 office spaces right at 12th Street that I don't
22 believe anybody uses for anything right now.

23 CHAIRPERSON GRIFFIS: I see. Is it
24 Residential Zoned parking on that, on Evarts?

25 MR. MERWIN: Is it what? I'm sorry.

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1 CHAIRPERSON GRIFFIS: Residential Zoned?

2 I mean, is it a zoned parking?

3 MR. MERWIN: My property is R-1-B, I
4 believe.

5 CHAIRPERSON GRIFFIS: Yes, outside of the
6 zoning.

7 MR. MERWIN: Oh, no, I've never seen a
8 sign like that.

9 CHAIRPERSON GRIFFIS: Right. Okay. I
10 can't imagine anything precluding that from happening
11 if the demand came about, but all right, there it is.
12 Any other questions, clarifications? Nothing at this
13 time? Let's move ahead then to the Office of
14 Planning's report.

15 MS. THOMAS: Good morning, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Good morning.

17 MS. THOMAS: Members of the Board, I'm
18 Karen Thomas with the Office of Planning. The Office
19 of Planning has no objection to this variance. We
20 believe the topography of the property presented a
21 practical difficulty for the property owner to include
22 a garage, and so we have no issues with the District
23 request. Thank you.

24 CHAIRPERSON GRIFFIS: Good. Thank you
25 very much. And a good and consistent report. Any

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1 questions from the Board? You know, one of the things
2 that the Office of Planning did bring up, which we
3 haven't really got into, which I found very helpful,
4 is citing section 2116.6, which gives the parameters
5 of how the Board would look at determining whether it
6 was practical to locate under spaces. But basically,
7 walking down some of the aspects which really follow
8 the variance case which we are into now. But there
9 are four distinct elements of it.

10 You know, the unusual topography, grades
11 and size and dimensions, the lack of alley
12 inappropriate, that's obviously a part of the variance
13 case that was set up before us today. Okay. If there
14 is nothing further from the Board, Mr. Gell, do you
15 have any cross examination of the Office of Planning?

16 MR. GELL: No, I don't.

17 CHAIRPERSON GRIFFIS: Okay. Good. Let's
18 move ahead. Since it is not indicated that it's
19 located in a historic site, is the ANC-5B represented
20 today? ANC-5B? Not noting any representative from
21 the ANC, Mr. Gell, you have indicated and we also have
22 indicated in the record, of course, that the full ANC
23 didn't take action on this, but we do have the Single
24 Member Commissioner of 5A-04, I believe it is, that
25 indicated the support of the application.

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1 I don't have any other Government reports
2 attendant to this or any other filings in that frame.
3 We don't have any other letters. Are there persons
4 present today to give testimony either in support or
5 in opposition to Application No. 17267, you can come
6 forward now? Not noting anyone here present to give
7 testimony this morning, questions from the Board?

8 VICE CHAIR MILLER: Mr. Chairman, we do
9 have in the record a fax from the Commissioner of ANC-
10 5B-04 that Mr. Gell made reference to earlier stating
11 that she went around and got signatures on a card.
12 And Mr. Gell seemed to indicate that he thought that
13 those cards were in the record, but I don't believe
14 seeing those cards. I think all I've seen in the
15 record is the fax.

16 CHAIRPERSON GRIFFIS: Oh, good
17 clarification. Right. No, we don't have any of that
18 information.

19 MR. GELL: Well, she had mentioned to me
20 that she had put cards in, but I didn't see them
21 either.

22 CHAIRPERSON GRIFFIS: Okay.

23 VICE CHAIR MILLER: Okay.

24 CHAIRPERSON GRIFFIS: You want to have the
25 record stay open to receive those?

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1 MR. GELL: I don't think that's necessary.

2 CHAIRPERSON GRIFFIS: Okay. Ms. Miller,
3 do you think that's necessary?

4 VICE CHAIR MILLER: No, I don't think it
5 is necessary either.

6 CHAIRPERSON GRIFFIS: We'll close that
7 circle. Okay. Anything else? Mr. Mann, did you have
8 something? Nothing? Okay. Very well. Mr. Gell,
9 we'll turn it over to you for any closing remarks you
10 might have.

11 MR. GELL: No, I think we'll stand on the
12 record and ask the Board if they would do a Bench
13 decision and a summary order. Thank you very much.

14 CHAIRPERSON GRIFFIS: Good. Thank you
15 very much. I would move approval of Application No.
16 17267 of Jack Merwin for a variance of the off-street
17 parking requirements under 2101.1 to permit the
18 construction of a single-family dwelling at premises
19 1220 Evarts Street, N.E. This would be actually for
20 a variance of one space and ask for a second.

21 VICE CHAIR MILLER: Second.

22 CHAIRPERSON GRIFFIS: Thank you, Ms.
23 Miller. I think this is actually a very
24 straightforward case. I don't think we really need to
25 go much further into additional testimony, but because

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1 the fact of the matter is it's with a substantial 30
2 foot grade increase, which happens over, you know, it
3 looks like it may well be 20 feet or so, it is fairly
4 clear of the practical difficulty of putting a
5 driveway in. Substantiating it even further, if you
6 put a conforming driveway in, you basically wrap the
7 entire property with driveway in order to get up to a
8 small pad. I think that would have more detrimental
9 impact than anything else.

10 In addition, the uniqueness of this, I
11 think, is as said the topography of the slope, the
12 practical difficulty is how you accommodate getting
13 something through that. You know, it's interesting
14 also if you put in the alternative of this kind of
15 case, as has been described in the record today, if
16 you carved out that slope and built the huge masonry
17 wall, you also have to figure out on two aspects, as
18 has been indicated today, is the curb cut. Could you
19 actually get a curb cut and would you want a curb cut?

20 Which, you know, we have had this before
21 so many times, but you do a curb cut and you take away
22 at least one space from the street and then you
23 provide it on private property. So what are you
24 actually gaining in that? But more and further, you
25 know, I was thinking about it if you actually carved

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1 that into, how would you then access that up to the
2 residence? Unless you wanted to do like three levels
3 below grade, which might be kind of cool, and could
4 probably be green and environmentally friendly in
5 terms of it's insulation.

6 But not going too far into that aspect,
7 again you're bringing someone back out and around, not
8 that it would be an impact, but just the kind of
9 viability of estates of that sort in terms of parking.
10 I don't think that follows within the intent of the
11 regulations and the requirement of the parking. And
12 further and lastly, is the fact that it has been
13 looked at and figure 1 was very helpful with the
14 Office of Planning's report.

15 Two things it showed me, one, is the
16 gradation of the topography. How close that line is.
17 You read those red lines, that's 3 meters or rather 1
18 meter, 3 feet intervals. You can see that the slope
19 is pretty substantial and then levels off fairly well.
20 But it also shows the fact of the dimensions of the
21 lots and really it goes to the density on that street.
22 And I believe it is their photograph, yes, indeed,
23 figure 2, which shows the actual street and the
24 parking.

25 If you just think about each house having

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1 two cars, they could pretty clearly park almost
2 directly out in front or certainly fit in front of
3 their house without actually filling up all the
4 parking on the block itself. And so that being said,
5 I'll open it up to others for comment. Yes?

6 VICE CHAIR MILLER: I concur with what you
7 said and I just want to also add that granting the
8 variance would be in accordance with the Comprehensive
9 Plan and would support the District's policy of
10 encouraging residential development.

11 CHAIRPERSON GRIFFIS: Great. Which Office
12 of Planning was also of the same supportive nature in
13 terms of that aspect and also in terms of the support
14 of the application. I think it's very important and
15 reliance on that is specifically part of my own
16 deliberation. Okay. Anything else? Anything
17 further? Very well. We have a motion before us. It
18 has been seconded. I ask for all those in favor
19 signify by saying aye.

20 ALL: Aye.

21 CHAIRPERSON GRIFFIS: And opposed?
22 Abstaining? Ms. Bailey?

23 MS. BAILEY: The vote is recorded as 4-0-
24 1. Mr. Griffith made the motion, Mrs. Miller
25 seconded, Mr. Etherly and Mr. Mann are in agreement.

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1 We don't have a Zoning Commission Member present
2 today. And we would want a summary order, Mr.
3 Chairman?

4 CHAIRPERSON GRIFFIS: Yes, the same reason
5 as before and we can waive our regulations and
6 requirements and issue a summary order.

7 MS. BAILEY: Thank you, sir.

8 CHAIRPERSON GRIFFIS: Thank you very much.
9 Thank you. Thank you both very much. Good luck with
10 that. And is there any other business for the Board
11 in the morning session?

12 MS. BAILEY: Not for the morning session,
13 Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Very well. If
15 there's nothing further then, let's adjourn the
16 morning session of the 11th of January.

17 (Whereupon, the Public Hearing was
18 recessed at 11:53 a.m. to reconvene at 1:25 p.m. this
19 same day.)

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

1:25 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the afternoon session of 11 January 2005. This is the Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair Ms. Miller and also our important Member, Mr. Etherly. Representing the National Capital Planning Commission for this afternoon is Mr. Mann.

And we are anticipating a Zoning Commissioner with us this afternoon in our proceedings, but we are not going to delay any of you any further. We'll go right into our session and we'll hopefully be joined. There are some very important aspects of my opening statement that I'm going to run through. I'm going to try and make up the 20 minutes that we've delayed you, so I'm going to talk very quickly and I'll answer any questions, if there are further questions, on all the important things I'm about to say.

But first of all, all proceedings before the Board of Zoning Adjustment are recorded. They are recorded in two fashions. First, and most

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1 importantly, we are recorded by the Court Reporter
2 sitting to my right on the floor. He is creating the
3 official transcript, which is part of the official
4 record. We are also being broadcast live on the
5 Office of Zoning's website.

6 So attendant to both of those we ask
7 several things. First of all, we ask that people turn
8 off all their cell phones and beepers, at this time,
9 so we don't disrupt any of the proceedings as we go
10 through and not disrupt any of the transmission.
11 Secondly, when coming forward to speak to the Board,
12 we would ask that you prior to coming forward fill out
13 two witness cards. Witness cards are located at the
14 table where you entered into the hearing room. They
15 are also at the table in front of us where you will
16 provide testimony. Those two cards go to the
17 recorder, who sits to my right. That way we will be
18 able to give you credit with your name spelled
19 correctly on the official transcript.

20 Also, when coming forward, I would ask
21 that you make yourself comfortable. You will need to
22 state your name and your address for the record before
23 speaking. You only need to do that once, obviously,
24 so that we can tie the names to those who are speaking
25 on the record.

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1 The order of procedure for special
2 exceptions and variances is as follows: First, we
3 hear from the applicant and presentation of their case
4 and any of their witnesses. Second, we're going to
5 hear any Government reports attendant to the
6 application, such as the Office of Planning, the
7 Department of Transportation, etcetera. Third, we
8 will hear from the Advisory Neighborhood Commission.
9 Fourth would be persons or parties in support of the
10 application. Fifth would be persons or parties in
11 opposition to the application. Sixth, finally, we
12 would have any rebuttal witnesses by the applicant and
13 closing remarks.

14 Cross examination happens all the way
15 through that and I'm going to get to what cross
16 examination is specifically right now. Cross
17 examination of witnesses is permitted by the applicant
18 or parties in the case. The ANC within which the
19 property is located is automatically a party in the
20 case and, therefore, is a full participant and will
21 be, of course, afforded the ability to cross examine
22 any witnesses.

23 Nothing prohibits this Board from placing
24 reasonable restrictions on the time, the extent and
25 the direction of cross examination, but I will be very

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1 specific if we need to give direction on that as we
2 get into specific cases this afternoon.

3 The record will be closed at the
4 conclusion of the hearing on each case, except for any
5 material that the Board deems necessary to fill out
6 the record. We will be very specific on what is
7 requested and when it is to be submitted into the
8 Office of Zoning. After that material is received, of
9 course, the record would then be finally closed. The
10 importance of that is that nothing else can come into
11 the record that the Board would be able to look at and
12 deliberate on in deciding its case.

13 The Sunshine Act requires that this Board
14 conduct its proceedings in the open and before the
15 public. This Board may consistent with the Sunshine
16 Act and its own rules and regulations enter into
17 Executive Sessions. Executive Sessions are utilized
18 by the Board for review of the record and also to
19 deliberate on a case. Of course, this is an important
20 aspect that the Board sometimes utilizes and is in
21 accordance with the Sunshine Act.

22 We will make every effort to conclude our
23 hearings this afternoon before 6:00. If we get close
24 to that 6:00 hour, I will update people on schedule.
25 But let's get quickly into it for this afternoon and

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1 we can move ahead. Let me ask all those present today
2 that are going to testify before the Board or thinking
3 of testifying if you would, please, stand and give
4 your attention to Ms. Bailey, who is sitting at the
5 far right. She is going to administer the oath.

6 MS. BAILEY: Please, raise your right
7 hand.

8 (Whereupon, the witnesses were sworn.)

9 MS. BAILEY: Thank you.

10 CHAIRPERSON GRIFFIS: Thank you very much.
11 And a very good afternoon to you, Ms. Bailey. At this
12 time, the Board will consider any preliminary matters.
13 Preliminary matters are those which relate to whether
14 a case will or should be heard today, such as requests
15 for postponement, withdraw or whether proper and
16 adequate notice has been provided. If you are not
17 prepared to go forward with a case today or you
18 believe the Board should not proceed with one of the
19 cases that have been advertised on its afternoon
20 schedule, I ask that you come forward and have a seat
21 at the table as an indication of having a preliminary
22 matter.

23 Ms. Bailey, again a very good afternoon to
24 you. Are you aware of any preliminary matters for the
25 Board's attention for this afternoon?

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1 MS. BAILEY: Mr. Chairman, and to everyone
2 good afternoon. No, sir, I'm not aware of any
3 preliminary matters, at this time.

4 CHAIRPERSON GRIFFIS: Very well. Then why
5 don't we call the first case in the afternoon?

6 MS. BAILEY: Application No. 17269 of
7 Evangelical Arabic Baptist Church, pursuant to 11 DCMR
8 3104.1, for a special exception to establish a child
9 development center, that's for 25 children ages 2 and
10 1/2 to 5 years and 4 staff. The project is under
11 section 205 of the Zoning Regulations and it is zoned
12 R-1-B. It is located at 4605 Massachusetts Avenue,
13 N.W., Square 1556, Lot 62.

14 CHAIRPERSON GRIFFIS: Thank you, Ms.
15 Bailey. Is the applicant here ready to go?

16 MR. SAMPERTON: Yes.

17 CHAIRPERSON GRIFFIS: Excellent. Why
18 don't you come forward and make yourself comfortable?

19 MR. SAMPERTON: Okay.

20 CHAIRPERSON GRIFFIS: I think you picked
21 the most comfortable chair, so it was a good choice.

22 MR. SAMPERTON: Speak into here?

23 CHAIRPERSON GRIFFIS: If you would.
24 You're going to need to turn that on though. You can
25 just touch the button at the base of the microphone.

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1 The red light -- there it is.

2 MR. SAMPERTON: Keep my finger on it?

3 CHAIRPERSON GRIFFIS: Nope.

4 MR. SAMPERTON: Oh, it's on.

5 CHAIRPERSON GRIFFIS: Sit back and relax.

6 MR. SAMPERTON: Okay. Okay. Good.

7 CHAIRPERSON GRIFFIS: It's more difficult
8 from here.

9 MR. SAMPERTON: First, I want to wish you
10 all a happy new year.

11 CHAIRPERSON GRIFFIS: Happy new year.

12 MR. SAMPERTON: My name is John S.
13 Samperton. My address is 4833 Del Ray Avenue in
14 Bethesda, Maryland 20814 is the ZIP Code. I'm a
15 registered architect, licensed in the District of
16 Columbia. My license number is 689. I represent the
17 Evangelical Arabic Baptist Church pursuant to 11 DCMR
18 3104.1, for a special exception to establish a child
19 development center, 25 children ages 2 and 1/2 to 5
20 years and 4 staff members, under section 205 in the R-
21 1-B District at premises 4605 Massachusetts Avenue,
22 N.W., Square 1556, Lot 62.

23 The church would like for their license,
24 if approved, to last for 10 years before renewal. The
25 site of the application is located within the

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1 jurisdiction of the Advisory Neighborhood Commission
2 3E. I am very pleased to report that this ANC-3E
3 voted not to object to this application. The two
4 adjacent neighbors have been contacted and they have
5 no objection.

6 The school children will occupy the same
7 space as the church's Sunday school. The church is
8 solidly constructed and will be constructed and will
9 be capable of meeting all applicable code and
10 licensing requirements. There are several young
11 families living in the area, resulting in many
12 children. The need for this facility is considerable.
13 It is expected that one-half of the student population
14 will be walking and escorted by one of their parents
15 to school. The remaining students drop-off and/or
16 pick-up times will be staggered.

17 Approximately, one-half of the students
18 will arrive at 8:30 a.m. for early drop-off. The
19 other half will arrive at 9:00 a.m. Dismissal will
20 occur at 12:00 noon for, approximately, one-half of
21 the students and 1:30 p.m. for students choosing the
22 enrichment programs. All parents will be asked to
23 remain in their cars. The child will be removed,
24 placed in his car seat by the director. Three aids
25 will work in rotation as they escort the children to

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1 and from the school.

2 A teacher will be present in the classroom
3 at all times. Drop-off and dismissal will be
4 expedited using this system. The public alley in the
5 rear of the church in Massachusetts Avenue will be
6 used for the drop-off and dismissal system.

7 CHAIRPERSON GRIFFIS: Did you say the
8 director removes the children?

9 MR. SAMPERTON: The director will be
10 removed -- placed in the car seat by the director.

11 CHAIRPERSON GRIFFIS: So there is only one
12 person that puts kids in the car or takes them out?

13 MR. SAMPERTON: There will be aids who
14 will work in rotation to escort the children from the
15 time the director takes them out to the school.

16 CHAIRPERSON GRIFFIS: I see. Okay. I'm
17 not totally clear, but go ahead.

18 MR. SAMPERTON: Is that okay? Understand?

19 CHAIRPERSON GRIFFIS: No, but continue.

20 MR. SAMPERTON: Okay.

21 CHAIRPERSON GRIFFIS: We're going to get
22 to it. First of all, this is the most critical piece
23 and actually one of the big elements that we need to
24 talk about.

25 MR. SAMPERTON: Right.

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1 CHAIRPERSON GRIFFIS: Where the drop-offs
2 and pick-ups are going. None of this is in the record
3 yet, so you're going kind of quickly for the Board to
4 calculate all the hours.

5 MR. SAMPERTON: Oh, okay. I'm sorry.

6 CHAIRPERSON GRIFFIS: First of all, that
7 we need to establish, also what this whole program is.

8 MR. SAMPERTON: Okay.

9 CHAIRPERSON GRIFFIS: So I'm just trying
10 to slow you down a little bit.

11 MR. SAMPERTON: Okay. All right.

12 CHAIRPERSON GRIFFIS: So I drive up to the
13 facility and I drive up on Mass or I drive into the
14 alley?

15 MR. SAMPERTON: Yes, either way.

16 CHAIRPERSON GRIFFIS: Either way?

17 MR. SAMPERTON: Yes.

18 CHAIRPERSON GRIFFIS: Okay.

19 VICE CHAIR MILLER: Excuse me, but the
20 director can't be in both places. Where is the
21 director going to be?

22 CHAIRPERSON GRIFFIS: The next good
23 question.

24 MR. SAMPERTON: That's a good question.

25 CHAIRPERSON GRIFFIS: Yes.

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1 MR. SAMPERTON: I'll have the director
2 answer that.

3 VICE CHAIR MILLER: Okay.

4 CHAIRPERSON GRIFFIS: Good. That's one
5 amazing director taking care of these kids.

6 MR. SAMPERTON: Yes.

7 CHAIRPERSON GRIFFIS: Okay.

8 MR. SAMPERTON: Okay. Now, the public
9 alley is seldom used, because it does not continue
10 through to 46th Street, but ends in the large turn-
11 around at the end of the church's property line.

12 CHAIRPERSON GRIFFIS: For clarification,
13 of course, in the Site Plan, it indicates this, but
14 you can say it for the record. That turn-around that
15 you have now indicated is off of the 16 foot alley.
16 It's directly adjacent to the structure under question
17 here.

18 MR. SAMPERTON: Yes, it's public space.

19 CHAIRPERSON GRIFFIS: And it is a public
20 alley. It's part of the public alley?

21 MR. SAMPERTON: That's correct.

22 CHAIRPERSON GRIFFIS: And its most minimal
23 dimension is about 17 feet. Is that correct?

24 MR. SAMPERTON: Yes, 16 feet.

25 CHAIRPERSON GRIFFIS: Okay. Well, it's

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1 close to 17.

2 MR. SAMPERTON: All right.

3 CHAIRPERSON GRIFFIS: So what is the
4 surface? In one of the photographs in the record it
5 shows it's a gravel surface. Is that what the current
6 condition is?

7 MR. SAMPERTON: That's correct. The turn-
8 around is gravel.

9 CHAIRPERSON GRIFFIS: There's also an
10 indication in the application that one of the,
11 actually I think it's the, persons in opposition that
12 has indicated this alley was recently resurfaced and
13 upgraded and they sure don't want a lot of traffic, so
14 they have to do that again. That not being my
15 question.

16 MR. SAMPERTON: Yes.

17 CHAIRPERSON GRIFFIS: The question is it
18 was recently resurfaced to what?

19 MR. SAMPERTON: It's blacktop.

20 CHAIRPERSON GRIFFIS: Okay. So you come
21 down the 16 foot blacktop alley and then the turn-
22 around is actually just a gravel surface?

23 MR. SAMPERTON: That's correct.

24 CHAIRPERSON GRIFFIS: Okay. So now here
25 we are. We're either on Mass or we're on the alley.

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1 MR. SAMPERTON: Okay. Now, okay, there
2 are six parking spaces at the rear of the church's
3 property line.

4 CHAIRPERSON GRIFFIS: On the church's
5 property?

6 MR. SAMPERTON: What's that?

7 CHAIRPERSON GRIFFIS: On the church's
8 property?

9 MR. SAMPERTON: In the church property.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. SAMPERTON: There are six parking
12 spaces at the rear with access from the public alley.
13 Three of these will be reserved for use by the child
14 development center during school hours. Proper signs
15 will be erected to enforce this condition.

16 CHAIRPERSON GRIFFIS: Who uses the other
17 ones?

18 MR. SAMPERTON: I would imagine the
19 church.

20 CHAIRPERSON GRIFFIS: Is there any other
21 use that's being proposed? You indicated that there
22 was Sunday school use that would be proposed in this
23 building.

24 MR. SAMPERTON: Sunday school, they use it
25 on Sundays. This -- what we are --

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1 CHAIRPERSON GRIFFIS: Thus the name.

2 MR. SAMPERTON: -- using is from Monday
3 through Friday.

4 CHAIRPERSON GRIFFIS: I like that. Okay.
5 But so during weekly operations there is nothing but
6 essentially an overflow?

7 MR. SAMPERTON: Oh, I would imagine the
8 pastor of the Evangelical Church would probably use
9 one.

10 CHAIRPERSON GRIFFIS: Has an office there?

11 MR. SAMPERTON: Yes. Yes, he does. But
12 there is no activity at the church other than the
13 child development center from Monday through Friday.

14 CHAIRPERSON GRIFFIS: Was there any other
15 uses that is proposed or happening in this building
16 that would go towards the calculation of the parking
17 requirement?

18 MR. SAMPERTON: None that I know of.

19 CHAIRPERSON GRIFFIS: So we have a child
20 development center.

21 MR. SAMPERTON: The pastor is here, so you
22 can ask him.

23 CHAIRPERSON GRIFFIS: Okay. Good.

24 MR. SAMPERTON: Okay.

25 CHAIRPERSON GRIFFIS: Why don't we get all

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1 these important people up here?

2 VICE CHAIR MILLER: Right.

3 CHAIRPERSON GRIFFIS: For time expedition.

4 MS. LONERGAN: Okay.

5 MR. SAMPERTON: All right.

6 CHAIRPERSON GRIFFIS: Sorry if I'm

7 throwing you off your process here.

8 MR. SAMPERTON: This is the director.

9 CHAIRPERSON GRIFFIS: Very good.

10 MS. LONERGAN: My name is Christine
11 Lonergan, 4751 Berkeley Terrace, Washington, D.C.
12 20007. I would be the director of the preschool and
13 I think that the confusion of the drop-off and pick-up
14 is, obviously, I couldn't be in two places at one
15 time.

16 CHAIRPERSON GRIFFIS: Good. Got that on
17 the record.

18 MS. LONERGAN: But when we wrote this,
19 when we visited with the ANC, the ANC said it would be
20 kind of up to us to discuss whether you thought it
21 would be better to use the alley or Massachusetts
22 Avenue. And then another option would be to use both.
23 Therefore, I would have to have another staff member
24 to do the other.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MS. LONERGAN: But when we looked at it,
2 the numbers seemed to suggest that with half the
3 children walking, we probably just determined our
4 first choice would be the alley. And we determined to
5 use that as the drop-off and pick-up.

6 CHAIRPERSON GRIFFIS: Okay. Good. Let me
7 bring you up to speed here, because we have a lot of
8 that in the record. Obviously, we have the note from
9 the ANC and their resolution.

10 MS. LONERGAN: Yes.

11 CHAIRPERSON GRIFFIS: We also have the
12 letters in opposition or concern about pick-up and
13 drop-off and the Board has been through enough of
14 these and is fairly familiar on a large scale what
15 Massachusetts Avenue is in the city.

16 MS. LONERGAN: Right.

17 CHAIRPERSON GRIFFIS: And clearly under
18 205 you cannot and we could not approve this child
19 development center if it created an unsafe condition,
20 based on drop-off or pick-up or anything else.

21 MR. SAMPERTON: That's right.

22 CHAIRPERSON GRIFFIS: And so what we need
23 to do is quickly get to an assessment of how viable
24 really is dropping off or picking up on Massachusetts
25 Avenue? It seems to me there are several concerns of

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1 that. One, if I'm not mistaken, well, is there any
2 traffic light near the building on Mass?

3 MS. LONERGAN: Yes.

4 MR. SAMPERTON: Yes.

5 CHAIRPERSON GRIFFIS: Okay. So there is
6 an intersection then?

7 MR. SAMPERTON: On 46th Street.

8 CHAIRPERSON GRIFFIS: Excellent. And
9 that's --

10 MR. SAMPERTON: Half a block away.

11 CHAIRPERSON GRIFFIS: Wow, half a block
12 there is an intersection with a light. Okay.

13 MR. SAMPERTON: Yes.

14 CHAIRPERSON GRIFFIS: So you have an
15 intersection.

16 MR. SAMPERTON: Plus, we're on the north
17 side of Mass Avenue and in the morning people are
18 going towards American University. This will be
19 dropped off south of American University.

20 CHAIRPERSON GRIFFIS: Okay. But you have
21 a condition that perhaps not all those people driving
22 are driving north on Mass. What if they are coming
23 south on Mass? How do they turn around and get to the
24 right side? You've got to do a U-turn somehow.

25 MR. SAMPERTON: They have to use the

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1 streets of the District.

2 CHAIRPERSON GRIFFIS: Are they going to
3 Van Ness or they come up 46th and then turn around?

4 MR. SAMPERTON: That's what I would do.

5 CHAIRPERSON GRIFFIS: I see.

6 MR. SAMPERTON: That's how I would do it.

7 CHAIRPERSON GRIFFIS: Yes, me, too.

8 COMMISSIONER HILDEBRAND: Do we know what
9 the signage is on the street, on Massachusetts Avenue?

10 MS. LONERGAN: Yes.

11 COMMISSIONER HILDEBRAND: Does it allow
12 stopping and standing during rush hour?

13 MS. LONERGAN: The only time you can't --
14 the time it prohibits it is from 4:00 to 6:30.

15 COMMISSIONER HILDEBRAND: In the
16 afternoon?

17 MS. LONERGAN: Yes, yes.

18 COMMISSIONER HILDEBRAND: So in the
19 morning, you could do it and then in the afternoon --

20 CHAIRPERSON GRIFFIS: In the morning it's
21 parked up. Is that correct?

22 MS. LONERGAN: Yes.

23 MR. SAMPERTON: We're over by 1:30.

24 COMMISSIONER HILDEBRAND: Okay.

25 MR. SAMPERTON: From 8:30 to 1:30.

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1 COMMISSIONER HILDEBRAND: Right.

2 VICE CHAIR MILLER: Yes.

3 CHAIRPERSON GRIFFIS: Frankly, my opinion,
4 looking at, one, the great graphics that the Office of
5 Planning sent in and also our own Site Plan, looking
6 at it, it doesn't make a lot of sense to be looking at
7 Mass Ave. I mean, morning or not. One, you have a
8 parking lane unless you start removing the street
9 parking. You know, we don't have an application for
10 that or that process being proposed. So you could
11 conceivably have that whole parking lane filled with
12 cars, so that the drop-off actually is in the second
13 lane or you're looking for it. How do you designate
14 to be right in front? Mr. Hildebrand?

15 COMMISSIONER HILDEBRAND: Well, the only
16 thing I would like to add to that mix though is when
17 you have a one way in, one way out alley that's only
18 16 feet wide, that's too narrow for cars to bypass.
19 So you run into problems with traffic trying to come
20 in and out to drop-off students all at the same time.
21 Living on an alley or living adjacent to an alley
22 that's one way in, one way out, I can attest to the
23 amount of traffic there is.

24 CHAIRPERSON GRIFFIS: I actually agree
25 with you until you look at what's actually happening

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1 adjacent. And if you look at the plat that was
2 submitted, you've got the 16 foot alley that comes in
3 and then you've got part of the alley that's a turn-
4 around. 28 feet deep, 27 feet wide. It seems like
5 you couldn't have planned this better, in my
6 assessment of looking at this and knowing how these
7 things are going to be done. To bring cars in to have
8 them turn around and probably drop-off as they are
9 heading out, right, or however you want to do it.

10 COMMISSIONER HILDEBRAND: How are you
11 going to control the traffic queuing up on the street
12 to turn into the alley to make sure that you don't
13 have cars coming into the alley the same time a car is
14 coming out? Because there is not enough room for them
15 to bypass safely.

16 CHAIRPERSON GRIFFIS: In 16?

17 COMMISSIONER HILDEBRAND: Yes.

18 MR. SAMPERTON: May I say something?

19 CHAIRPERSON GRIFFIS: Absolutely.

20 COMMISSIONER HILDEBRAND: I have a 15 foot
21 alley beside my house and I know how difficult that
22 can be.

23 CHAIRPERSON GRIFFIS: But they all drive
24 small cars, right? Okay.

25 COMMISSIONER HILDEBRAND: Minis.

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1 MR. SAMPERTON: Well, the point is half of
2 the -- 25 is the max.

3 CHAIRPERSON GRIFFIS: Right. Right now,
4 your assessment is that half of them are walking.

5 MR. SAMPERTON: And then half of them will
6 walk. Then you might have 12 cars at the most, maybe
7 they will be carpooling. So half of them come at 8:30
8 of the seven, so you maybe have three cars or six cars
9 at 8:30, another six cars at 9:00. That's not that
10 much.

11 CHAIRPERSON GRIFFIS: Let's get that in
12 terms of you mentioned the whole staggering. What's
13 that?

14 MS. LONERGAN: I'll explain the
15 staggering. There will be an early drop-off at 8:30
16 in the morning. Those will probably be for parents
17 who need to get to work. And then the actual school
18 day starts or morning starts at 9:00.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. LONERGAN: So it is staggered and in
21 the afternoon, again, some of -- half the children
22 will leave at 12:00 and then there will be enrichment
23 programs for the children from 12:00 to 1:30. So,
24 therefore, you are breaking up the day into different
25 drop-offs. You know, you're dividing it in half just

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1 by the walkers and then you are dividing it again in
2 half by the choice, selection of 8:30, 9:00 a.m.

3 CHAIRPERSON GRIFFIS: Is it totally open
4 when you drop-off? I mean, you have the early drop-
5 off. Could anyone do that or do you have to have it
6 essentially signed up for it and there is only four
7 slots for it? How are you going to work with that?

8 MS. LONERGAN: Well, it will be open for
9 anyone who needs it. But just being part of -- I've
10 been a teacher for 17 years. I know that everyone
11 doesn't want to use the 8:30 drop-off.

12 CHAIRPERSON GRIFFIS: Right.

13 MS. LONERGAN: Because it costs money, you
14 know.

15 CHAIRPERSON GRIFFIS: Reality. Okay.

16 MS. LONERGAN: Yes.

17 CHAIRPERSON GRIFFIS: Good. Ms. Miller?

18 VICE CHAIR MILLER: How do you know that
19 half will walk? Are you admitting certain kids with
20 that criteria? Like taking half within walking
21 distance?

22 MS. LONERGAN: You know, I am. I'm
23 actually going to put it on priority of the
24 neighborhood children first. And I do that because
25 there are such a need in the neighborhood. I would

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1 like it to be a neighborhood school. Obviously, I'll
2 accept all applications, but I want it to be something
3 that will benefit the community and to do that I would
4 try and put the children in the neighborhood first.

5 I think in every neighborhood, I live in
6 the Palisades, people really appreciate the
7 opportunity to walk their child to school to and from,
8 and especially if you have other children, it's a nice
9 thing to do together as a family. And I see that
10 happening. I've met with lots of families in the
11 Spring Valley and AU area and just kind of took my own
12 sense or poll. Obviously, it's no official poll, but
13 I actually have four of my own children, so I'm
14 frequently at Turtle Park, you know, in that
15 neighborhood and I know that a lot of people are out
16 there looking for it, and I just don't see everyone
17 driving. I mean, people in that neighborhood and also
18 mine, they like the opportunity to walk. That's part
19 of the beauty of having a neighborhood school.

20 VICE CHAIR MILLER: Yes, I can appreciate
21 that. I was just wondering have you canvased the area
22 that you know there are a lot of children of that age
23 that might be going to the school?

24 MS. LONERGAN: Again, it would just be on
25 my own just observations and just looking at and

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1 visiting people at the park and in the neighborhood.

2 VICE CHAIR MILLER: And also, I think you
3 made a statement also about half will leave at 12:00.
4 I mean, how is that determined? Is that on desire
5 that, you know, you anticipate that half will want to
6 leave at 12:00?

7 MS. LONERGAN: I think it's an
8 anticipation, yes.

9 VICE CHAIR MILLER: You're not going to
10 have a limit of those who can stay later than 12:00.
11 Okay.

12 COMMISSIONER HILDEBRAND: Have you spent
13 much time in the church in the hours of drop-off in
14 the morning from 8:00 to 9:00?

15 MS. LONERGAN: Very much and actually
16 Brother Esper is here. He could probably tell you a
17 little bit about the traffic.

18 COMMISSIONER HILDEBRAND: Could you speak
19 a little bit about your understanding?

20 MS. LONERGAN: My personal?

21 COMMISSIONER HILDEBRAND: Your personal
22 viewing of the amount of traffic that you see?

23 MS. LONERGAN: Every time I've been in the
24 -- I've been working on this. I met with Brother
25 Esper last February. I've been going over there and

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1 visiting with him once a week at different times of
2 the day, morning, mid-morning, 12:00. I can honestly
3 say every time I've been there, I've not seen a car in
4 that alley. And when we went to the ANC meeting, Amy
5 McVay, who is the chairperson, said on the record that
6 she waited there for two hours and saw nothing, no
7 cars. Her exact words was "The alley was dead."

8 COMMISSIONER HILDEBRAND: And was that in
9 the morning during -- when people would be leaving to
10 go to work?

11 MS. LONERGAN: Well, that's not an exact
12 quote, but close to that. Pardon me?

13 COMMISSIONER HILDEBRAND: And that was in
14 the morning hours that would naturally --

15 MS. LONERGAN: I'm not sure what time Amy
16 went.

17 COMMISSIONER HILDEBRAND: -- drop-off?

18 MS. LONERGAN: But before I stood this, I
19 would stop by in the morning hours. One of the things
20 I wanted to see was just what the traffic was like.
21 That was the whole reason. No traffic in the alley.

22 CHAIRPERSON GRIFFIS: Good. Thank you.

23 MS. LONERGAN: But you can ask Brother
24 Esper who actually is, you know, there at all hours,
25 too.

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1 CHAIRPERSON GRIFFIS: Okay. Any other
2 interruptive questions at this time?

3 MR. SAMPERTON: Shall I continue?

4 CHAIRPERSON GRIFFIS: Absolutely.

5 MR. SAMPERTON: I have a little bit more.
6 The children will play at the outstanding French
7 Recreation Center known as Turtle Park. This center
8 is located about a block away from the church. Daily
9 play time will be from 9:30 a.m. to 10:00 a.m. There
10 will be no outside play area at the church.
11 Therefore, there will be no noise operations to
12 adversely impact the neighborhood. This child
13 development center is a small operation. A maximum of
14 only 25 students. It will be a welcome addition to
15 the area and it will also be a splendid neighbor.

16 I don't want to take too much of your
17 time, but I would like to tell you about the director,
18 Mrs. Lonergan. She received a bachelor of science in
19 psychology in 1985 from Denison University, a master
20 of arts in teaching elementary education in 1988 from
21 George Washington University. She went to the United
22 Montessori Association and got a teaching
23 certification program in 2003. Her teaching
24 experience is 1987 to 1991. She taught at Hyde
25 Elementary School in Georgetown.

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1 From 1991 to present she teaches at Key
2 Elementary School in the Palisades, honors and awards.
3 She won an award for innovative instructional programs
4 from D.C. Public Schools in 1989; teacher to teacher
5 award for developing exemplary classroom programs from
6 the D.C. Public Schools in 1993; excellence in
7 education award from the Washington JCs in 1994; a
8 public educator of excellence award, Masonic Scottish
9 Rites of Washington, D.C. in 2002; also, Who's Who
10 Among America Teacher's award recipient in 2004.

11 I'm honored to stand or sit here and tell
12 you that the applicant has satisfied the burden of
13 proving that elements which are necessary to establish
14 the case for approving this special exception pursuant
15 to 11 DCMR 205 and that the requested relief is in
16 harmony with the general purpose and intent of the
17 Zoning Regulations and map and that the requested
18 relief will not tend to affect adversely the use of
19 neighboring property in accordance with the Zoning
20 Regulations and map. And I thank you very much.

21 CHAIRPERSON GRIFFIS: Excellent. Thank
22 you very much. And we'll let you do conclusory
23 remarks after we get through this. Let me also say
24 that it's quite an impressive accomplishment and list
25 and Denison, that's in Indiana. Is that correct?

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1 MS. LONERGAN: Ohio.

2 CHAIRPERSON GRIFFIS: Ohio. Okay. Well,
3 that being said -- what's that?

4 VICE CHAIR MILLER: So much for that.

5 CHAIRPERSON GRIFFIS: Right. Okay. Let's
6 move on. Any questions from the Board, at this time,
7 clarifications? Yes, Mr. Etherly?

8 BOARD MEMBER ETHERLY: Just very briefly.
9 There was one comment regarding use of Turtle Park.
10 I love that little name. It sounds cute. What I'm
11 curious about is have you developed or I'm sure you
12 have or given some thought to what the schedule will
13 be for the movement of children from the facility to
14 the park? I believe one of our submissions, maybe the
15 Office of Planning report or one of your submissions,
16 might have noted that. It's approximately .1 mile
17 from the church site to the park, and I just wanted to
18 get a sense for what your route will be to take those
19 young people to the park.

20 MS. LONERGAN: There is a side entrance.
21 Well, the entrance to the preschool is on the lower
22 level. It's on the side entrance, so you walk out and
23 the teachers, for the children's safety and just to
24 keep cohesive, will all have on matching green aprons.
25 The children will have on the same smock, so that they

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1 will be able to locate the teacher at any time when
2 they are at the park.

3 We're going to leave for the park after
4 morning meeting time, 9:30. We would be walking out.
5 I would have my four aids, one teacher, three aids,
6 with me and we would be using, rather than holding
7 hands, we would have a rope attachment, so the
8 children can hold on to the ropes, because otherwise
9 you're going to have a long kind of line of children
10 holding this way. And what you do is you just walk
11 out and there's this nice large sidewalk in front of
12 Mass Avenue and we take a left and then you take a
13 left on 46th and then on 46th there is a crosswalk.
14 It's there just for children, just to keep for safety.
15 There is also a light there and you take a right there
16 and you just walk on a block and you don't cross any
17 more streets and there you are at Turtle Park.

18 BOARD MEMBER ETHERLY: Okay. So you're
19 primarily completely on paved walkway?

20 MS. LONERGAN: Yes.

21 BOARD MEMBER ETHERLY: You're crossing
22 only at a light controlled intersection?

23 MS. LONERGAN: Yes.

24 BOARD MEMBER ETHERLY: And that's once.

25 MS. LONERGAN: Yes.

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1 BOARD MEMBER ETHERLY: And is it just one
2 trip per day, round trip?

3 MS. LONERGAN: It's only one trip.

4 BOARD MEMBER ETHERLY: Round trip, so to
5 speak?

6 MS. LONERGAN: Yes, it's only one trip per
7 day.

8 BOARD MEMBER ETHERLY: Okay. Okay.

9 MS. LONERGAN: And it will be for 30
10 minutes. It's just to get out there and get some
11 exercise and get some fresh air and then it's actually
12 time to go back and go to work.

13 BOARD MEMBER ETHERLY: Okay. Thank you.

14 MS. LONERGAN: Yes.

15 BOARD MEMBER ETHERLY: Thank you, Mr.
16 Chair.

17 CHAIRPERSON GRIFFIS: Indeed. Ms. Miller?

18 VICE CHAIR MILLER: If there were to be a
19 backup in the alley, where would the cars be queuing?
20 Where would they be outside of the alley? Would they
21 be on some street? If so, what street is that? Just
22 so that I can get a picture.

23 MR. SAMPERTON: They would be on Van Ness.

24 MS. LONERGAN: On Van Ness Street.

25 VICE CHAIR MILLER: Okay.

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1 MS. LONERGAN: Yes.

2 BOARD MEMBER MANN: What's the total
3 number of people that will be employed at the center?

4 MS. LONERGAN: There will be, including
5 myself -- you probably don't -- I don't know if you
6 mean -- four people, yes.

7 BOARD MEMBER MANN: Four total employees?

8 MS. LONERGAN: Yes.

9 BOARD MEMBER MANN: And I don't know if
10 you know who they are yet, but do you know how they
11 are going to get to work?

12 MS. LONERGAN: My answer to that is one of
13 the people will be coming with me each day. She
14 actually works for me right now. And then the other
15 person, she lives on Tilden Street, which is in Spring
16 Valley, so she will probably walk there. And the
17 other two would be driving, so it would be I would be
18 driving and two other employees.

19 BOARD MEMBER MANN: And where would they
20 park when they get to work?

21 MS. LONERGAN: We've reserved three
22 parking places for our staff.

23 BOARD MEMBER MANN: On-site or off-site?

24 MS. LONERGAN: On-site.

25 CHAIRPERSON GRIFFIS: It's three of the

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1 six that are in the rear.

2 BOARD MEMBER MANN: Oh, it's three of the
3 six in the rear.

4 CHAIRPERSON GRIFFIS: Right.

5 BOARD MEMBER MANN: I see.

6 MS. LONERGAN: Yes.

7 CHAIRPERSON GRIFFIS: And so the other
8 three would be utilized by the church.

9 BOARD MEMBER MANN: Okay. Thank you.

10 CHAIRPERSON GRIFFIS: Is what you've
11 indicated, correct?

12 MR. SAMPERTON: Yes.

13 MS. LONERGAN: Yes.

14 CHAIRPERSON GRIFFIS: Okay.

15 VICE CHAIR MILLER: I just have a follow-
16 up question on that. Would the other three be
17 available for visitors as well?

18 MS. LONERGAN: If the parents were coming
19 to visit, no, I would actually be sending information
20 for them. I mean, I would -- if there was no parking
21 back there for them, I would be recommending that they
22 need to park on the street. One of the better places
23 to park is on 46th Street, because you can park there
24 on the side. You don't have to cross any streets with
25 your child or if you're coming to visit. Let's say

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1 you have early pick-up, you would just park there on
2 46th and follow the sidewalk around to the church.

3 VICE CHAIR MILLER: But those other three
4 spaces are definitely reserved for the church and not
5 for the school. Is that correct?

6 MS. LONERGAN: I don't know. Are the
7 other three spaces reserved only for the church and
8 not for the school? We're going to put up signs for
9 the school for those three parking spaces to designate
10 them as such. If the other ones were available --

11 MR. SAMPERTON: Yes.

12 MS. LONERGAN: I don't believe that the
13 church would have a problem with it, the Arabic
14 Baptist Church, having a problem with someone parking
15 there.

16 VICE CHAIR MILLER: Okay. Thank you.

17 CHAIRPERSON GRIFFIS: Anything else?
18 Anything else? Do we want to hear from the gentleman
19 representing the church?

20 MR. SAMPERTON: Brother Esper?

21 CHAIRPERSON GRIFFIS: You're going to make
22 him go on his own? Just get away, you let him have
23 the table to himself. How are you, sir?

24 BROTHER ESPER: Very good.

25 CHAIRPERSON GRIFFIS: Good.

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1 BROTHER ESPER: I don't think there would
2 be any problem in drop-off, because you could park
3 about 20 cars in front of the church on Massachusetts
4 Avenue until 4:00. So if people want to, you could
5 park there, so you could drop off there very easily.
6 So there wouldn't be any problem in drop-off even if
7 they don't want to use the alley at all.

8 CHAIRPERSON GRIFFIS: Because no one uses
9 that public parking on the street now, is that
10 correct, in the morning?

11 BROTHER ESPER: Nobody use it, but
12 sometimes I park there just because it's closer to the
13 front door.

14 CHAIRPERSON GRIFFIS: Indeed. Who is
15 going to use the three other spaces in the back of
16 this structure?

17 BROTHER ESPER: The only person who is
18 employed by the church is me.

19 CHAIRPERSON GRIFFIS: Indeed.

20 BROTHER ESPER: So there will be enough
21 parking.

22 CHAIRPERSON GRIFFIS: Do you often drive
23 three cars at a time?

24 BROTHER ESPER: Excuse me? No, I don't,
25 but sometimes we have a visitor or somebody coming

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1 for --

2 CHAIRPERSON GRIFFIS: Exactly.

3 BROTHER ESPER: -- counseling or
4 something.

5 CHAIRPERSON GRIFFIS: Okay. So is there
6 flexibility if there is a visitor to the church or a
7 visitor to the development center that might be able
8 to utilize that, one of the spaces behind the proposed
9 school?

10 BROTHER ESPER: I don't think we will ever
11 have a problem in parking.

12 CHAIRPERSON GRIFFIS: Okay. And you were
13 put on the spot to say that you could tell us about
14 the alley and its use, and its daily use in the
15 morning and the afternoon?

16 BROTHER ESPER: There is a dead-end, so
17 it's not that many people going in and out. It's a
18 dead-end alley.

19 CHAIRPERSON GRIFFIS: How many houses? Do
20 you know roughly how many?

21 BROTHER ESPER: It's about four houses or
22 five houses on one side and the other five houses on
23 the other side.

24 CHAIRPERSON GRIFFIS: Okay. So let's say
25 a dozen houses that actually utilize it.

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1 BROTHER ESPER: But there is a dead-end,
2 so the people do not go through.

3 CHAIRPERSON GRIFFIS: Right.

4 BROTHER ESPER: It's a dead-end alley.

5 CHAIRPERSON GRIFFIS: Okay. So it's your
6 testimony that this is a heavily utilized alley or not
7 heavily utilized alley?

8 BROTHER ESPER: Very seldom I see cars.

9 CHAIRPERSON GRIFFIS: Okay.

10 BROTHER ESPER: People go in the morning
11 to work and come back in the evening, so during that
12 time there won't be any -- not much.

13 COMMISSIONER HILDEBRAND: In your
14 experience, what time frames do most people use the
15 alley when they are leaving for work in the morning?

16 BROTHER ESPER: In the evening when they
17 come from work and in the morning when they leave to
18 work.

19 COMMISSIONER HILDEBRAND: And what time
20 frame is that roughly?

21 BROTHER ESPER: When I come to the church,
22 I come about 8:30, 9:00. I have never seen anybody
23 going or coming back, very seldom.

24 COMMISSIONER HILDEBRAND: Okay.

25 CHAIRPERSON GRIFFIS: Mr. Etherly?

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1 BOARD MEMBER ETHERLY: Thank you, Mr.
2 Chair. And just to clarify, your parking spaces
3 presently are lined parking spaces?

4 BROTHER ESPER: Yes, there is lines.

5 BOARD MEMBER ETHERLY: And how many spaces
6 are there presently?

7 BROTHER ESPER: Six.

8 BOARD MEMBER ETHERLY: There are six lined
9 spaces?

10 BROTHER ESPER: Yes.

11 BOARD MEMBER ETHERLY: Okay. Thank you.

12 BROTHER ESPER: You're welcome.

13 BOARD MEMBER ETHERLY: Thank you, Mr.
14 Chair.

15 CHAIRPERSON GRIFFIS: Good. Anything
16 else? Thank you very much.

17 BROTHER ESPER: Okay.

18 CHAIRPERSON GRIFFIS: Is the ANC
19 represented today? Is ANC-3E here? Very well. Okay.
20 If there is nothing further, let's move on then to the
21 Office of Planning. A very good afternoon, sir.

22 MR. MOORE: Good afternoon, Mr. Chair and
23 Members of the Board. I am John Moore of the Office
24 of Planning. The Office of Planning is in support of
25 the application and I fill focus -- I will say first

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1 that the application does meet 205. I will focus a
2 little attention on 205.3.

3 At the bottom on page 3 on to 205.3, the
4 last sentence says "OP will defer the matter to DDOT."
5 I have spoken to DDOT, the Ward 3 planners for DDOT.
6 They were supposed to submit a statement here. I
7 don't know if you have it in your packet or not.

8 CHAIRPERSON GRIFFIS: We have a statement.
9 Does the applicant have a statement from the
10 Department of Transportation, DDOT? Did you receive
11 that?

12 MR. SAMPERTON: No.

13 MR. MOORE: We have the two options being
14 Mass Avenue or the alley. I was surprised that DDOT
15 really preferred that they use the alley saying that
16 two cars could easily pass in the alley and there
17 wasn't much traffic on it at all.

18 CHAIRPERSON GRIFFIS: Well, it has clearly
19 called into question Mr. Hildebrand's driving ability
20 today and his testimony of the 15 foot alley.

21 COMMISSIONER HILDEBRAND: Well, I can say
22 my alley is actually 15 feet.

23 CHAIRPERSON GRIFFIS: Okay. So that's
24 clearly not comparable.

25 COMMISSIONER HILDEBRAND: But I can't

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1 imagine that one foot can make that much of a
2 difference.

3 CHAIRPERSON GRIFFIS: All right. Pardon
4 me.

5 MR. MOORE: So if you have the DDOT
6 statement, you already know that they support the
7 application.

8 CHAIRPERSON GRIFFIS: Yes. Although, I
9 must say if we want to bring up the DDOT, the
10 applicant doesn't have it, it's Exhibit No. 30. We
11 can get them a copy of it and Mr. Hildebrand probably
12 didn't have much time to review this, as we were also
13 given to this morning.

14 But you know, they make incredible
15 statements of -- well, there it is. It's their last
16 sentence, "In addition, this project will minimally
17 affect the existing level of service of the
18 surrounding street system. From a transportation
19 standpoint, the project will not have an adverse
20 impact on the area road network."

21 I certainly hope not with 10 drivers on
22 Massachusetts Avenue having an impact on the area road
23 network. It doesn't say much about the alley or the
24 actual impact on Mass. And I think the big issue was,
25 in fact, well, in my mind, and it's simple and we

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1 should get through this pretty quickly, is drop-off,
2 is should we utilize Mass Ave or not or should this
3 Board actually get involved in it? So do you have an
4 opinion on that?

5 MR. MOORE: Again, I really believe that
6 the alley can be used in this case. As support for
7 what I'm saying, if you look at the one graphic that
8 OP submitted this time, you see about nine vehicles on
9 Mass Avenue in a southbound direction. None in the
10 northbound side. That's a morning picture.

11 CHAIRPERSON GRIFFIS: Right. I don't
12 question that. So what you're saying is -- I thought
13 you indicated that the alley could be utilized.

14 MR. MOORE: Yes.

15 CHAIRPERSON GRIFFIS: Not Mass.

16 MR. MOORE: I don't prefer to use Mass
17 Avenue.

18 CHAIRPERSON GRIFFIS: Right.

19 MR. MOORE: With regards to how it looks.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. MOORE: The preference would be the
22 alley, and so I support DDOT's position in that
23 regard.

24 COMMISSIONER HILDEBRAND: Even though
25 there is no one parking on the northbound lane on

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1 Massachusetts Avenue in front of the church and there
2 is no one driving up the block?

3 MR. MOORE: Mass Avenue is still a major
4 arterial.

5 COMMISSIONER HILDEBRAND: Okay.

6 CHAIRPERSON GRIFFIS: Yes, I mean, I think
7 one of the important things the Board is well aware of
8 in terms of special exceptions is that we look at the
9 existing condition, but we also are projecting out the
10 impact or perhaps the potential for adverse impact if
11 something was to be proposed.

12 You know, I don't know if there's anything
13 major going to happen there, but perhaps traffic does
14 increase more or people start parking there. I mean,
15 we have to look at the fact that people are able to
16 park there at all times, except between 4:00 and 6:00,
17 as testified today.

18 So what we should do is anticipate that's
19 a parking lane. Unless we actually look at removing
20 that parking lane and having it as just a drop-off and
21 pick-up at a certain time, it just seems to me you
22 have an opportunity that seems to be certainly more
23 controlled, and I would say certainly more safe than
24 to be on a major avenue and thoroughfare.

25 MR. MOORE: Mr. Chair, also from a

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1 previous case that came before this Board about three
2 months ago, another child care facility, there is also
3 the issue of when the streets are being cleaned. So
4 if you allow parking on Mass Avenue, what happens when
5 that area is going to be cleaned? What happens to
6 those car stands?

7 CHAIRPERSON GRIFFIS: Oh, yes, I mean,
8 it's an interesting point as the street sweepers go
9 by. I mean, there's all sorts of functioning that we
10 would have to get into in terms of using Mass. Okay.
11 Yes, Ms. Miller?

12 VICE CHAIR MILLER: Mr. Moore, I was
13 wondering if you might be able to address the concerns
14 that were raised by the Elexas who oppose the use of
15 the alley? It's Exhibit 23 and they say that there
16 are bushes on the right side and cars parked on the
17 street on the left side making it very difficult to
18 get out of the alley due to parents and their children
19 walking. As it is now, it is difficult for residents
20 to get out due to blockage by bushes and parked cars.

21 MR. MOORE: I wouldn't question the writer
22 of that letter.

23 CHAIRPERSON GRIFFIS: Why?

24 MR. MOORE: From the few visits I have
25 made there recently, I haven't seen enough activity in

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1 the alley to cause any conflict with cars and people
2 and I have been there three times in the last two
3 weeks.

4 VICE CHAIR MILLER: And were you there at
5 around 8:30 in the morning?

6 MR. MOORE: I went at 8:30 and at 1:30, of
7 course, because those are the hours that they asked
8 for and one intermediate one at about 11:30.

9 COMMISSIONER HILDEBRAND: And how long
10 were you there when you were there for each visit?

11 MR. MOORE: 10 minutes the first time,
12 maybe 10 the second time.

13 COMMISSIONER HILDEBRAND: Okay.

14 MR. MOORE: And no more than five the
15 third time.

16 COMMISSIONER HILDEBRAND: Yes, more than
17 just a passing glance. You were there for --

18 MR. MOORE: Yes.

19 COMMISSIONER HILDEBRAND: -- a period of
20 time.

21 CHAIRPERSON GRIFFIS: Mr. Etherly?

22 BOARD MEMBER ETHERLY: Thank you very
23 much, Mr. Chair. With regard to one of the
24 submissions that we received at Exhibit No. 24 from
25 what I believe is the Rad Trust, there is also

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1 reference to the existence of two car garages that are
2 fronting the alley and a concern expressed about
3 entrance and exit or let's just say exit.

4 If you have a car that's leaving one of
5 those garages during the morning time, would you
6 suspect, and this might be more of a DOT question, but
7 just based on your observation of the area, would you
8 expect that there would be any difficulty encountered
9 if cars attempting to exit one of those garages and
10 you would have traffic coming into the alley heading
11 to the subject property?

12 MR. MOORE: No, I wouldn't. In
13 conversation with the applicant, I expressed a request
14 that they made good presentations to the neighbors on
15 both sides of the church. I think we can underscore
16 also that the applicant, this Board may remember, is
17 the personage that was going to purchase Barbara's
18 Montessori School. She is the same applicant, so she
19 is very experienced in child care operations. I think
20 with communication, that wouldn't be a problem.

21 BOARD MEMBER ETHERLY: Okay. And then one
22 final question, Mr. Chair, coming back to the issue of
23 the use of Turtle Park. The Office of Planning, in
24 its report, Mr. Moore, you noted that there would not
25 be any concerns regarding safety as the clients of the

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1 center are traveling from the location to the park and
2 back. I just wanted to also highlight it would be
3 your position that there also would not be any noise
4 concern that you think would be raised by the travel
5 of the young children from the subject property to
6 Turtle Park and back?

7 MR. MOORE: The answer to your question is
8 no, I don't.

9 BOARD MEMBER ETHERLY: Okay.

10 MR. MOORE: But more succinctly, this
11 Board, I'm sure, remembers that I took a very hot
12 stand on children moving to play areas based on a
13 recent application we had here. So when I went to
14 actually look at the cars in the alley, my real reason
15 for being there was to see what the distance was and
16 what the effect would be walking to and from the park,
17 and I'm pretty comfortable with it.

18 BOARD MEMBER ETHERLY: Okay. Thank you.
19 Thank you, Mr. Chair.

20 CHAIRPERSON GRIFFIS: Last thing on the
21 alley. In your observation, the garages are set back
22 from the 16 foot dimension of the alley or are they
23 right on the line?

24 MR. MOORE: I think they are right on the
25 line.

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1 CHAIRPERSON GRIFFIS: Okay. Let me --

2 MR. MOORE: That's why I'm suggesting that
3 there be a good communication between the applicant
4 and --

5 CHAIRPERSON GRIFFIS: I say let's look at
6 your Attachment 3 then, because the area looks like
7 the garages, the ones that are actually the closest to
8 the alley, are set back at least 2 feet if not --

9 MR. MOORE: It could be set back a couple
10 of feet.

11 CHAIRPERSON GRIFFIS: Okay. And if you
12 look at actually more of the graphic, the building
13 footprint, well, I don't know if I can reference that.

14 MR. MOORE: We must also note that there
15 is a pretty fair distance between the alley and the
16 church, I mean, a warning system I'm talking about.

17 CHAIRPERSON GRIFFIS: Right.

18 MR. MOORE: So you can see cars that are
19 coming out versus the children walking past.

20 CHAIRPERSON GRIFFIS: Indeed. Okay. Any
21 other questions for the Office of Planning from the
22 Board? Good. Thank you very much. It's an excellent
23 report. It has brought an awful lot to light and
24 specificity for the Board. Does the applicant have
25 any cross examination for the Office of Planning? Any

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1 questions of the Office of Planning? No?

2 MS. LONERGAN: No.

3 CHAIRPERSON GRIFFIS: No? Okay. Very
4 well then. Let's move ahead to other Government
5 reports. Is there a representative from DDOT here
6 today? No. I will note that we did have the Exhibit
7 No. 26, which is the Department of Health, which is
8 one of the requirements under 205. We also have the
9 DDOT report that's in and the Office of Planning. I
10 don't have any other Government agencies that reported
11 in my records unless the Office of Planning is aware
12 of any that were submitted to them or the applicant.

13 Let's move ahead then. Is the ANC present
14 today, 3E, to present their report? If not, we do
15 have Exhibit No. 26, which is showing that ANC-3E has
16 agreed not to oppose the application. They did have
17 some specific aspects that I know the Board took under
18 consideration.

19 And actually, what's interesting to me is
20 on Item 2, that they indicated that the options for
21 drop-off and pick-up be left, essentially, open, a
22 little flexibility, which I think is an important
23 aspect to put forward. Okay. Anything the Board
24 wants to highlight on that? If not, does the
25 applicant have any comments on the ANC report? No?

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1 Very well.

2 Let's move ahead then to persons present
3 today to give testimony. Let's start, first of all,
4 is there anyone present today for Application 17269 in
5 support of the application, which would like to
6 present testimony before the Board? If you wouldn't
7 mind coming forward.

8 MS. KIEFER: I have a question. I'm not--

9 CHAIRPERSON GRIFFIS: Okay. Before you
10 talk --

11 MS. KIEFER: I don't know whether I'm in
12 support or an opponent, so I don't know which category
13 to put myself into. Generally, we have a problem with
14 the parking.

15 CHAIRPERSON GRIFFIS: Why don't you come
16 up and speak into the microphone and we'll answer that
17 question for you. No, we won't answer that, but you
18 can let us understand.

19 MS. KIEFER: Hi.

20 CHAIRPERSON GRIFFIS: If you wouldn't
21 mind, just turn your microphone on. There it is.

22 MS. KIEFER: It's on.

23 CHAIRPERSON GRIFFIS: Then just state your
24 name and address for the record.

25 MS. KIEFER: I'm Francine Kiefer. I'm a

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1 member of the Board of Trustees of the Sixth Church of
2 Christ Scientist, which is the neighbor of the Baptist
3 Church and the turn-around parking lot, we pay the
4 lease on the turn-around parking lot and our church
5 officials, repair people and so on go through that
6 alley to get access to our church.

7 CHAIRPERSON GRIFFIS: You're talking about
8 the turn-around that's just directly adjacent that we
9 have been talking about as 28?

10 MS. KIEFER: Yes, yes.

11 CHAIRPERSON GRIFFIS: You pay rent on
12 that?

13 MS. KIEFER: We pay the lease on that
14 turn-around for parking.

15 CHAIRPERSON GRIFFIS: Who do you pay it
16 to?

17 MS. KIEFER: We pay it to the Government.
18 I'm sorry, I don't know whether it's D.C. property or
19 U.S. property, but it's a lease and we pay for the use
20 of that parking lot.

21 CHAIRPERSON GRIFFIS: The District
22 Government is leasing a public alley?

23 MS. KIEFER: It's not the alley. We pay
24 the lease for the parking lot only.

25 CHAIRPERSON GRIFFIS: Well, it is part of

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1 the public alley according to this plat.

2 MS. KIEFER: I mean, we don't pay a lease
3 for the alley. We pay a lease for the parking lot.
4 That's the point I wanted to make.

5 CHAIRPERSON GRIFFIS: Where is the parking
6 lot?

7 MS. KIEFER: The parking lot is adjacent
8 to our church and leads directly into the garage for
9 our church.

10 CHAIRPERSON GRIFFIS: And that's the
11 graveled area that we have been talking about?

12 MS. KIEFER: Yes, yes.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. KIEFER: So my point was that
15 generally, we support the school.

16 CHAIRPERSON GRIFFIS: Let me be clear on
17 what I'm saying.

18 MS. KIEFER: But we have a problem with
19 the parking.

20 CHAIRPERSON GRIFFIS: According to the
21 plat that has been submitted, that's a public alley.

22 MS. KIEFER: Well, we pay the lease. I
23 mean, I could probably get you some check stubs or
24 something.

25 CHAIRPERSON GRIFFIS: I'm not questioning

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1 that you do it.

2 MS. KIEFER: Yes.

3 CHAIRPERSON GRIFFIS: I just want part of
4 that action, start leasing out some public alleys.
5 All right. There it is. So you actually utilize
6 that.

7 MS. KIEFER: Right.

8 CHAIRPERSON GRIFFIS: And what you're
9 saying is it's actually your drive access to your
10 parking?

11 MS. KIEFER: That's right.

12 CHAIRPERSON GRIFFIS: Okay. So good. So
13 that's interesting. Let's continue on in that light.

14 MS. KIEFER: So I just wanted to say we
15 really don't have an objection to the school. We
16 think it's great. It would be a great neighbor and
17 we're in support of it, but we would like to just air
18 some of our parking and access issues.

19 The nice thing is that the school is not
20 operating during our church services, so there is no
21 direct conflict there. But we try and cooperate and
22 work with the Baptist Church next door, but we do have
23 parking overflow issues that, as I said, since we pay
24 the lease on our parking, sometimes it conflicts with
25 us and we try to just keep reminding them not to park

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1 in the turn-around parking lot, which is basically the
2 lot that we use, and we're worried that the school
3 will compound the problem of access and parking. As
4 I said, it doesn't directly conflict with our
5 services, so that is a good thing.

6 CHAIRPERSON GRIFFIS: How much parking do
7 you do during the week?

8 MS. KIEFER: Well, the people who would
9 use it during the week would be our clerk who comes
10 every day.

11 CHAIRPERSON GRIFFIS: How many spaces do
12 you think, four, six? Do you have 150 people coming
13 in?

14 MS. KIEFER: No, it's about six to eight
15 spaces I would say.

16 CHAIRPERSON GRIFFIS: Okay. So six to
17 eight people need to park back there. And you
18 indicated that that turn-around gives access to your
19 parking or that is your parking?

20 MS. KIEFER: That is our parking.

21 CHAIRPERSON GRIFFIS: So there is no
22 other?

23 MS. KIEFER: And we use street parking.

24 CHAIRPERSON GRIFFIS: Wait a minute. I
25 know. In the rear of the property though, that's the

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1 only hard surface where you park?

2 MS. KIEFER: Right.

3 CHAIRPERSON GRIFFIS: Wow. Okay.

4 BOARD MEMBER ETHERLY: Is that area
5 striped or lined in any way?

6 MS. KIEFER: No, that's the gravel area.

7 BOARD MEMBER ETHERLY: Okay. Well, now,
8 was that part also recently blacktopped as heard
9 reference to earlier?

10 MS. KIEFER: No, it wasn't.

11 BOARD MEMBER ETHERLY: It's still gravel?

12 MS. KIEFER: The church next door had a
13 construction project, which kind of tore up the lot,
14 so then after that project was over, then it was
15 regraveled.

16 BOARD MEMBER ETHERLY: Okay.

17 MS. KIEFER: To bring it back to its
18 original state.

19 BOARD MEMBER ETHERLY: And pursuant to the
20 Chair's earlier question, in terms of your parking
21 experience during the week, do you presently have
22 conflicts that arise? You mentioned that your clerk
23 parks there?

24 MS. KIEFER: Our clerk comes every day.
25 To be honest, I don't know what time she comes in the

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1 morning. We have repair people who come.

2 BOARD MEMBER ETHERLY: Yes.

3 MS. KIEFER: You know, lawn care people
4 and so on.

5 BOARD MEMBER ETHERLY: And have you had
6 instances where there have been conflicts, so to
7 speak?

8 MS. KIEFER: Yes, but there have been
9 occasional instances.

10 BOARD MEMBER ETHERLY: Okay.

11 MS. KIEFER: It's not a big, huge, heavy
12 conflict.

13 BOARD MEMBER ETHERLY: Okay. I
14 understand.

15 MS. KIEFER: But there is occasional
16 conflicts.

17 BOARD MEMBER ETHERLY: Okay. So it's your
18 testimony that while you're not necessarily, you know,
19 bringing down the hammer saying no, we oppose the
20 project --

21 MS. KIEFER: Right.

22 BOARD MEMBER ETHERLY: -- you just want to
23 highlight that you have had some occasional instances.

24 MS. KIEFER: Exactly.

25 BOARD MEMBER ETHERLY: Where there have

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1 been problems.

2 MS. KIEFER: Right. And there isn't room
3 for two cars to pass there at the same time.

4 BOARD MEMBER ETHERLY: Right.

5 MS. KIEFER: It's pretty narrow, so we're
6 concerned about that.

7 BOARD MEMBER ETHERLY: Okay.

8 COMMISSIONER HILDEBRAND: The other thing
9 I want to note from the aerial photograph, too, the
10 area that is currently gravel is substantially larger
11 than the area of the alley that's public alley.

12 CHAIRPERSON GRIFFIS: Right.

13 COMMISSIONER HILDEBRAND: I mean, you can
14 see that the denoted public alley stops, basically, in
15 line with the back of the church and your graveled lot
16 extends into the depth of the building significantly.

17 MS. KIEFER: Right.

18 COMMISSIONER HILDEBRAND: So there is a
19 blurred line there about what is public alley and
20 what's your parking.

21 MS. KIEFER: I haven't, I mean, I actually
22 don't know legally what the line is. I just always
23 assumed that because we pay the lease on the graveled
24 turn-around lot that, you know, we're the ones who
25 kind of determine its use.

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1 CHAIRPERSON GRIFFIS: That's cool.

2 BOARD MEMBER ETHERLY: If you have
3 vehicles parked in the gravel turn-around area, does
4 that compromise or make more difficult or complicated,
5 I should say, the access to the applicant's back
6 parking area in your opinion? Let's say you have four
7 or five vehicles in your turn-around area.

8 MS. KIEFER: Right.

9 BOARD MEMBER ETHERLY: Another vehicle
10 could still come through the alley and access the rear
11 of the subject property that we're talking about,
12 correct?

13 MS. KIEFER: Yes, probably.

14 BOARD MEMBER ETHERLY: Okay. But if you
15 had, let's say, a situation where you have one vehicle
16 that's leaving the rear of the subject property and
17 one coming and you have parking in the turn-around
18 area, that might be a circumstance where it gets a
19 little complicated?

20 MS. KIEFER: Yes, the problem would be the
21 passing in the alley itself.

22 BOARD MEMBER ETHERLY: Okay.

23 MS. KIEFER: And how much was left over in
24 the turn-around area.

25 BOARD MEMBER ETHERLY: Okay.

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1 MS. KIEFER: I really don't think it would
2 be that big of a problem through our own church
3 officials and people who come in to practice the
4 service or the soloist or the organist or things like
5 that, because I think it would be at the most maybe
6 three cars or something that would be there in the
7 morning and that would provide room for turn-around.

8 What I really got concerned about is when
9 the lawn people come. You know, they bring a big
10 thing. They bring all their machines and stuff and
11 their mowers and that's different. And also, snow
12 removal is very iffy back there. We pay for snow
13 removal, but because the gravel is a real pain in the
14 neck to do snow removal on, sometimes we'll forego
15 that or I'm not an expert on our church's snow
16 removal, I just know that it's a problem.

17 BOARD MEMBER ETHERLY: Okay. And what
18 happens with respect to refuse removal, garbage? How
19 is that handled?

20 MS. KIEFER: The garbage bins are in the
21 back.

22 BOARD MEMBER ETHERLY: Okay.

23 MS. KIEFER: Of our garage area and the
24 gravel thing goes right into the garage area.

25 BOARD MEMBER ETHERLY: Okay.

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1 MS. KIEFER: It's an open garage.

2 BOARD MEMBER ETHERLY: Is collection
3 handled from the rear?

4 MS. KIEFER: I assume it's handled from
5 the rear.

6 BOARD MEMBER ETHERLY: Okay.

7 MS. KIEFER: I don't know for a fact.

8 BOARD MEMBER ETHERLY: I neglected to ask
9 the applicant what their experience was in terms of
10 how that is handled, as well, but okay.

11 MS. KIEFER: Yes.

12 BOARD MEMBER ETHERLY: Thank you. Thank
13 you, Mr. Chair.

14 VICE CHAIR MILLER: I just want to make
15 sure that we understand your concerns, so that they
16 can be addressed. Number one, it sounds like when
17 you're talking about the repair people coming or the
18 lawn people coming --

19 MS. KIEFER: Right.

20 VICE CHAIR MILLER: -- you want to make
21 sure that there's room for them to maneuver in that
22 alley and that it doesn't interfere with pick-up,
23 well, or parking. That's another one. But if it were
24 just pick-up and drop-off, then you could schedule
25 that around the specific drop-off times.

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1 MS. KIEFER: Yes, I suppose we could
2 schedule that.

3 VICE CHAIR MILLER: Then the other
4 question is are you concerned about school people
5 parking in your lot?

6 MS. KIEFER: Yes.

7 VICE CHAIR MILLER: Is that a concern?

8 MS. KIEFER: Yes.

9 VICE CHAIR MILLER: Okay. Well, that can
10 be addressed also.

11 MS. KIEFER: Yes.

12 VICE CHAIR MILLER: So you're not
13 specifically concerned about the drop-off in the
14 morning, turning around in your area?

15 MS. KIEFER: I am.

16 VICE CHAIR MILLER: Okay.

17 MS. KIEFER: For when, you know, people
18 come and go from our church. The church officials
19 will come and go or someone might want to pick up
20 something on the way, you know, to work in the
21 morning. I don't know all the schedules of all the
22 people who would use it. I don't anticipate it to be
23 heavy. I'm just alerting you that that parking lot is
24 used and our church officials and our repair people
25 use that.

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1 VICE CHAIR MILLER: Okay.

2 COMMISSIONER HILDEBRAND: Do you happen to
3 know if the public alley ever extended on through by
4 the church property?

5 MS. KIEFER: It couldn't, at least not
6 since the 1960s, because that church has been around
7 for at least through the '60s and it always kind of
8 went around the corner, so it must have been a dead
9 end back there that whole time.

10 CHAIRPERSON GRIFFIS: Good. Anything
11 else?

12 MS. KIEFER: That's it.

13 CHAIRPERSON GRIFFIS: Excellent. Thank
14 you very much. Hold on. Don't go anywhere. Does the
15 applicant have any cross examination of the witness,
16 any questions of the witness? None? Okay. Thank
17 you. Is there anyone else here attendant to this,
18 Application 17269, to give testimony either in support
19 or in opposition or perhaps trying to decide which one
20 or neutral?

21 MS. LONERGAN: I just want to say one
22 thing actually.

23 CHAIRPERSON GRIFFIS: Now would be your
24 time. If there is no one else to give testimony,
25 let's turn it over to you for any closing remarks or

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1 any other aspects you want to do. Mr. Etherly has a
2 quick question first though. He is going to run
3 through some of the letters that were submitted.

4 BOARD MEMBER ETHERLY: Right. I just want
5 to note for the record that we did have, by my count,
6 three letters that were submitted into the record
7 expressing concern or opposition. One was at Exhibit
8 No. 23 from Joan Elexa and Joseph Elexa. I had
9 Exhibit No. 24 from the Rad Trust, which I had
10 referenced earlier and then Exhibit No. 25, which was
11 a letter in support. So I just wanted to note those
12 for the record, Mr. Chair.

13 CHAIRPERSON GRIFFIS: Excellent.

14 BOARD MEMBER ETHERLY: While we have the
15 applicant back up, let me just ask that quick
16 question. On the refuse collection, what is your
17 experience with that? How is it handled? Is that
18 taken care of by truck traffic in the rear?

19 MS. LONERGAN: We'll have to ask Brother
20 Esper.

21 BOARD MEMBER ETHERLY: Okay.

22 CHAIRPERSON GRIFFIS: Actually, the turn-
23 around in the alley is a landfill. They dump it in
24 there and then they cover it with gravel once in
25 awhile.

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1 BROTHER ESPER: I did not get your
2 question.

3 BOARD MEMBER ETHERLY: Thank you very
4 much, sir. The question was how is garbage removal
5 handled for the church? Based on your familiarity, is
6 there a city owned or private service that comes
7 through the alley?

8 BROTHER ESPER: We are a small church. We
9 have only just about a bag of trash every week.

10 BOARD MEMBER ETHERLY: Okay.

11 BROTHER ESPER: It's not --

12 BOARD MEMBER ETHERLY: And how do you
13 dispose of that?

14 BROTHER ESPER: We have someone to come
15 and pick it up, but just pickup, small pickup.

16 BOARD MEMBER ETHERLY: Okay. So it's not
17 a large dump truck or a garbage truck that comes?

18 BROTHER ESPER: No, no, no.

19 BOARD MEMBER ETHERLY: Just a small
20 pickup. Okay. Thank you.

21 COMMISSIONER HILDEBRAND: Are you familiar
22 with the residential trash pick-up in that block? Do
23 they use the alley for trash removal?

24 BROTHER ESPER: Yes.

25 COMMISSIONER HILDEBRAND: They do?

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1 BROTHER ESPER: Yes.

2 COMMISSIONER HILDEBRAND: And a standard
3 District dumpster comes through and picks up the
4 trash?

5 BROTHER ESPER: It goes around and --

6 COMMISSIONER HILDEBRAND: Turns in the
7 turn-around and leaves? Thank you.

8 CHAIRPERSON GRIFFIS: Go ahead.

9 MS. LONERGAN: I just wanted to say that
10 I visited with the Christian Science Church, not with
11 the board members, a week ago Monday, January 3rd, and
12 I explained to them that I would do what I could to
13 work cooperatively with them and certainly make sure
14 that the mothers would be respectful. I would happily
15 work with them, for instance, avoiding the parking
16 there.

17 I do also want to say that Page Hogan who
18 is the clerk at their church, I have talked with her
19 three times and each time she has said to me I welcome
20 having that school there. I am at the church by
21 myself all the time. It's very lonely and I would
22 like to see some activity back in that turnaround.
23 And I just thought it might be important to hear that
24 someone feels kind of lonely there. Although I'm sure
25 there's people who do visit, that was what she has

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1 told me.

2 And I just thought it would be important
3 also to say that Amy McVey, who is the Commissioner of
4 the ANC, called me and said how much they embrace the
5 idea and just are hoping that it will be successful.
6 So that's it.

7 CHAIRPERSON GRIFFIS: A little added bonus
8 there, curing some loneliness. What exhibit is that?
9 I'm sorry. Give me a second. Do you have another
10 question? Good. Yes? This is our opportunity to ask
11 our last questions, so if you wouldn't mind just
12 coming up and having a seat, we'll get it through very
13 quickly. Ms. Miller?

14 VICE CHAIR MILLER: At the beginning of
15 this hearing, I think we heard pretty quickly and
16 briefly what your pick-up and drop-off plan would be,
17 and now we know I think your plan is just to be in the
18 alley and not be in the alley and on Massachusetts
19 Avenue and having some aids assist you.

20 And during the hearing, we heard some
21 concerns about, some, I don't know how real they are
22 or not, it was hard to tell, but, you know, problems
23 in the alley or perhaps certain neighbors being able
24 to get out while the kids are coming in.

25 And I'm wondering, is there anybody in

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1 your plan going to be in the alley that might help
2 direct traffic a little bit, for instance, if a
3 neighbor is having trouble getting out of their garage
4 or something like that?

5 MS. LONERGAN: When I'm out greeting the
6 children, there would be another teacher or two and,
7 you know, if there was a problem, we would definitely
8 assist with that, i.e., directing traffic. I don't
9 see it's going to be a problem, but I am a good
10 problem solver and I would find the answer to this
11 problem.

12 For instance, let's say it was a problem
13 and the neighbors are concerned. I could have someone
14 at the end of the alley with a walkie-talkie and I
15 could be communicating with that person. So you could
16 get it arranged. Not that I would do that
17 immediately, because I don't see it to be a problem.
18 I see it maybe being six cars and I see them turning
19 around and I see them being considerate. And we would
20 communicate there, you know, get them around and go
21 out, and I think it would be a smooth transition.

22 However, I do have the manpower or people
23 there to help with it, and if the neighbors do find it
24 to be a problem, I will definitely be there to
25 cooperatively solve the problem. I think we're going

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1 to be sharing this alley and I want to be a good
2 neighbor, and I think I am a good neighbor and I would
3 like to make this work for both churches and for my
4 preschool.

5 VICE CHAIR MILLER: Thank you.

6 CHAIRPERSON GRIFFIS: Mr. Hildebrand?

7 COMMISSIONER HILDEBRAND: So even in the
8 worst case, if for some odd occurrence everyone chose
9 to drive one day, you're still talking about 20 cars
10 entering and exiting the alley over a half an hour
11 period or 45 minute period of time, so it's less than
12 a car a minute, you know.

13 MS. LONERGAN: Right. Usually, people,
14 they are not all going to be just descending at the
15 same time. Mothers, you know, you have that open up,
16 that window of like, you know, opening of -- okay.
17 First of all, you've got 8:30. Let's say everyone
18 sleeps in that day and they get there. Probably,
19 generally, it's at 9:00 to 9:15 you're escorting them
20 in. Everyone usually doesn't get there, I mean, at
21 least in my experience everyone doesn't usually get
22 there at the same time.

23 And I just don't believe, I mean, I can't
24 say that it will never happen, the 20 cars, but I do
25 believe that the mothers will be experienced enough to

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1 drop-off and be considerate enough with that turn-
2 around and do it at a slow pace, careful pace, that
3 there shouldn't be any problem. You're aware of it
4 when you go through an alley. That's the first thing
5 you tend to do is to crawl, you know, through.

6 CHAIRPERSON GRIFFIS: Especially if you're
7 2 years-old going to day care.

8 MS. LONERGAN: Well, you have your babies.

9 CHAIRPERSON GRIFFIS: Oh, no, wait a
10 minute.

11 MS. LONERGAN: You have your babies with
12 you.

13 CHAIRPERSON GRIFFIS: Okay.

14 MS. LONERGAN: And anyway, that is my job
15 as the director to remind these mothers of how you
16 bring your children to school.

17 CHAIRPERSON GRIFFIS: Indeed.

18 MS. LONERGAN: Yes.

19 CHAIRPERSON GRIFFIS: Well, on that
20 specific question, people are going to be walking to
21 the school, and so let's get away from this driving in
22 the alley and all that stuff. Are they going to be
23 able to come through the front door if you're doing
24 drop-offs at the back door?

25 MS. LONERGAN: If the parents should --

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1 you know, let's say the parent arrives late, you know.

2 CHAIRPERSON GRIFFIS: No, I'm not talking
3 late. I'm talking everyone's coming at normal times.

4 MS. LONERGAN: No, the directions will be
5 to drop-off in the alley.

6 CHAIRPERSON GRIFFIS: But the people
7 walking from the neighborhood.

8 MS. LONERGAN: Oh. Well, you know what,
9 it's a side door everyone uses.

10 CHAIRPERSON GRIFFIS: Oh, so it's all
11 using the same side door?

12 MS. LONERGAN: Yes.

13 CHAIRPERSON GRIFFIS: But you can access
14 it from the Massachusetts Avenue walking?

15 MS. LONERGAN: Either way, yes.

16 CHAIRPERSON GRIFFIS: Right. Okay. This
17 huge herd, I can just see the crowds and the
18 management that's needed. Okay. Let's move ahead,
19 shall we? Any other further questions for the
20 applicant at this time? Any other clarifications?
21 Okay. Before you go, let's get this all
22 straightforward and organized. And what are your
23 hours that are being proposed, hours of operation?

24 If you want to get this specific, because
25 conceivably the Board is going to do a motion and

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1 either approve or deny this and that's what's going to
2 be in here. So you might want to get that together.
3 Also, I think quickly we stated that you were
4 requesting 10 years, a special exception for 10 years.
5 Is that correct? Have you had any conversations with
6 people or the ANC? Was that presented to the ANC, the
7 10 year period?

8 MS. LONERGAN: No.

9 CHAIRPERSON GRIFFIS: Do you know? It
10 wasn't. Okay. Have you had any discussions with
11 anybody in the area or anything about time?

12 MS. LONERGAN: Of 10 years?

13 CHAIRPERSON GRIFFIS: Yes, or 5 or 20.

14 MS. LONERGAN: No, no one said a time
15 frame. No one said we only want you, no, no one said
16 it.

17 CHAIRPERSON GRIFFIS: Okay.

18 MS. LONERGAN: It was actually all very
19 positive. So I just thought that it was.

20 CHAIRPERSON GRIFFIS: So we're looking at
21 10 years, hours you're going to give us, two and a
22 half to five years, four staff. Any other specifics
23 or items that the Board was looking at or needs
24 clarification on?

25 MS. LONERGAN: I know I wanted the hours

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1 to be 8:00 to 2:00, so I could get in there and get
2 things organized and then closing up the school, the
3 children leave at 1:30, 2:00.

4 CHAIRPERSON GRIFFIS: Right.

5 MS. LONERGAN: I talked to the ANC about
6 those hours and they said would you mind saying that
7 for the record and I said no, I don't have a problem
8 with that.

9 CHAIRPERSON GRIFFIS: 8:00 and 2:00?

10 MS. LONERGAN: Yes.

11 CHAIRPERSON GRIFFIS: Is that what you are
12 proposing?

13 MS. LONERGAN: Yes.

14 CHAIRPERSON GRIFFIS: So what time is the
15 early drop-off?

16 MS. LONERGAN: 8:30.

17 CHAIRPERSON GRIFFIS: Oh, I see. So that
18 gives you a half hour operation.

19 MS. LONERGAN: I have to get organized.

20 CHAIRPERSON GRIFFIS: Right. On either
21 side.

22 BOARD MEMBER ETHERLY: And you are also
23 proposing three of the existing six parking spaces in
24 the back would be for use by the facility?

25 MS. LONERGAN: Yes.

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1 BOARD MEMBER ETHERLY: Okay. Thank you.

2 MS. LONERGAN: Yes.

3 CHAIRPERSON GRIFFIS: Anything else?

4 VICE CHAIR MILLER: Okay. Just some
5 clarification. Drop-off is at 8:30. Is it also at
6 9:00?

7 MS. LONERGAN: Yes, there's early. I
8 mean, you have your choice.

9 VICE CHAIR MILLER: Right.

10 MS. LONERGAN: You know, early arrival,
11 early birds, then 9:00 is the official time that
12 school starts.

13 VICE CHAIR MILLER: And then pick-up is at
14 12:00 and 1:30?

15 MS. LONERGAN: Yes.

16 VICE CHAIR MILLER: Okay. And then also
17 the three spaces issue, I understand three spaces are
18 exclusively for the school, but then you may also have
19 use of three other spaces, possibly, right?

20 MS. LONERGAN: Yes, yes. Yes, he said we
21 could.

22 VICE CHAIR MILLER: Okay. Depending on
23 the church's use of them?

24 MS. LONERGAN: Yes.

25 VICE CHAIR MILLER: Okay.

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1 CHAIRPERSON GRIFFIS: Okay. Anything
2 else, clarification from the Board Members? Any other
3 specific items? Okay. So we've averaged about 10
4 minutes for each child that's being proposed for the
5 development center. I think that's about it. Let's
6 move ahead then. If there's nothing further,
7 questions or clarification, I think it's proper and
8 the Board is prepared, the record is full on this and
9 we should continue this hearing under a motion and
10 deliberation.

11 And I would move approval of Application
12 17269 of Evangelical Arabic Baptist Church. This is
13 for a special exception for the child development
14 center for 25 children, ages 2.5 to 5 years-old, with
15 four staff under 205 at premises 4605 Mass Avenue.

16 BOARD MEMBER ETHERLY: Second it.

17 CHAIRPERSON GRIFFIS: Thank you, Mr.
18 Etherly. I do believe that we should condition this
19 and I'm open to the Board, but this is what I would
20 like to do to start the discussion, a brief discussion
21 with these. One, it would be for a term period of 10
22 years, hours of operations would be from 8:00 to 2:00
23 and that's, wow, we may need some clarification. My
24 understanding is that's Monday through Friday. And
25 those are the conditions that I would start with.

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1 What I think we ought to begin, first of
2 all, going through the 205, I think the Office of
3 Planning put it very succinctly in the testimony and
4 the written submissions from the applicant show that
5 this does meet the requirements of 205 for the zoned
6 district. The one that is always of great concern to
7 the Board is 205.3, of course, and that is no
8 objectionable traffic conditions or unsafe conditions.
9 I mean, clearly, no one wants to create these things,
10 so to the best of our ability we look at it and see if
11 we can assess.

12 You know, my look on this, at this point,
13 is that the alley seems to be the best circumstance.
14 However, I don't feel strongly enough that
15 Massachusetts would be absolutely detrimental or
16 incredibly hazardous, and I think the ANC is actually
17 quite wise in their recommendation that we allow some
18 flexibility. So I think we could, obviously, look at
19 conditioning or a required one or prohibition of the
20 other, but, you know, for this size and, frankly, with
21 the expertise of the folks that are running this
22 thing, I think it probably is well best for the
23 purposes of safety to allow flexibility on how it is
24 done.

25 My personal opinion in looking at this is

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1 the alley seems to work the best, at this point. But
2 let me open it up to everybody else in that sense.
3 Any of these conditions, of course, are the basis of
4 approval and is open for discussion.

5 COMMISSIONER HILDEBRAND: Mr. Chairman,
6 I'm just concerned about the 10 year time period for
7 the special exception. I think that that's far too
8 long to not have a control in place to gauge whether
9 or not there is objectionable impact. I would suggest
10 that we do it in a maximum three year and give this a
11 chance to shake out and really see how it works alley
12 vs. Massachusetts Avenue. If there is a conflict for
13 the immediate neighbors, I would much prefer that to
14 a longer time period.

15 CHAIRPERSON GRIFFIS: Okay. You propose
16 three years? That's just your comments on time
17 period. Three years seems to be pretty fast, in my
18 mind, in terms of, you know, let's say it starts up
19 next year full in September, we're already eight
20 months into it or whatever that is, nine months. And
21 then a year of operation. Do you really start seeing
22 impact of things in a year or you start getting the
23 kinks out and then the next year you're in for the
24 application. It could conceivably be brand new. I
25 would suggest that, you know, maybe in the frame of

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1 five to seven years to see real impact. Others
2 though?

3 BOARD MEMBER ETHERLY: I would be inclined
4 to agree with you, Mr. Chair, with regards to perhaps
5 reaching a compromise point between your position and
6 that of my esteemed colleague. I agree with you
7 though. I think to get a satisfactory read, we
8 probably would need a little longer than three years.
9 So for what it's worth, I, as a seconder of the
10 motion, would be comfortable with, you know, something
11 between five or seven and would refer to my
12 colleagues. I look favorably upon that comfort level.

13 COMMISSIONER HILDEBRAND: I could see
14 going to five. I couldn't see going to seven. But I
15 think the impact if it's going to evidence itself is
16 going to be fairly immediate. I think you would know
17 in the first year. And, of course, as the applicant
18 has stated that they would take action to solve any
19 problems that do come up, but that would give them a
20 time period to do that. I certainly have no problem
21 with three years, but in the same vein if my other
22 colleagues feel that that's too short a time frame, I
23 certainly wouldn't object to five years.

24 CHAIRPERSON GRIFFIS: Good. Thanks. Ms.
25 Miller?

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1 VICE CHAIR MILLER: I think five years
2 would be a good time period.

3 CHAIRPERSON GRIFFIS: Excellent.

4 VICE CHAIR MILLER: Time enough to work
5 everything out and then when they come back in five
6 years, then they could get the longer time period.
7 With respect to the location, I think almost all the
8 testimony we've heard has gone to the alley, so I'm
9 inclined to, I don't know if we can phrase it in such
10 a way, but I would be inclined to say that drop-off
11 and pick-ups should be in the alley, but leave some
12 kind of a window if there are certain problems that
13 ensue, that they could go to Massachusetts Avenue.
14 But that's the preferable site.

15 CHAIRPERSON GRIFFIS: I think we could put
16 a condition in that we require drop-off and pick-up in
17 the alley unless we're incorrect, in which case do
18 something different. I think the important piece was
19 actually the hearing, the process of our deliberation.
20 But the fact that I think if I call the vote on one or
21 the other of them, we would split fairly easily or at
22 least be undecided, shows the fact that I'm not sure
23 we're clear enough to make such a strong distinction.
24 And I think that actually the operation is going to
25 evidence itself on which is going to work better.

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1 It may well, in fact, work better based on
2 the direction of people coming that half are on Mass
3 and half are in the alley, and so you have four cars
4 in the alley and three cars out front and it causes
5 one more staff person to be there to utilize it, but
6 that's the way it works. I mean, that seems to be
7 tremendous.

8 BOARD MEMBER ETHERLY: Yes, I would agree,
9 Mr. Chair. I think what he have heard has been
10 excellent testimony that kind of rounds out the
11 picture in terms of the subject property and I think,
12 if anything, we have heard clearly some concerns that
13 there could be circumstances whereby the alley could
14 get congested. It might be occasional or it might be
15 somewhat infrequent, but it is possible that that can
16 happen. And similarly, I think, while DDOT and OP
17 were very, very clear about not being overly concerned
18 about Mass Avenue, I think a compromise position is
19 looking, you know, leaving the flexibility for the
20 applicant to make the determination as to where at a
21 given time it is going to be best to conduct those
22 operations.

23 So I would be comfortable perhaps leaving
24 that open, rather than trying to perhaps work out the
25 tough task of coming up with some good language. I

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1 appreciate Mrs. Miller's suggestion, but I would be
2 inclined just to leave that open.

3 CHAIRPERSON GRIFFIS: Good.

4 VICE CHAIR MILLER: And I can go along
5 with that, especially since we really haven't heard
6 much testimony that Massachusetts Avenue would be
7 unsafe. So I could go along with that. I also want
8 to throw out though the issue of whether we want to
9 specify the drop-off times and the pick-up times. And
10 the reason that I think it might be a good idea to
11 specify it in part is related to the testimony we
12 heard by the neighboring church that they might need
13 to schedule their repair trucks or whatever around
14 those drop-off times.

15 BOARD MEMBER MANN: I would actually
16 disagree with that. Well, for this reason, because if
17 we say the drop-off time is 8:30, but we know that the
18 operating time is 8:00, well, then does that mean that
19 we have to define what happens between 8:00 and 8:30
20 or do we allow a little leeway on either side? That
21 if somebody drops off somebody or their child at 8:20
22 or 8:40? I mean, otherwise then what's the point of
23 saying that the operating hours are from 8:00 to 2:00?
24 I don't know. It just seems like we're asking -- like
25 we would be starting to ask for a level of specificity

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1 that's really --

2 CHAIRPERSON GRIFFIS: Right. Because
3 we're trying to condition on a very temporary and
4 unpredictable condition that has been evidenced today
5 as a lawn truck coming. I mean, that seems to be more
6 flexible.

7 VICE CHAIR MILLER: Okay.

8 CHAIRPERSON GRIFFIS: Than trying to
9 actually condition the exact operation. If anything,
10 we have learned in our short history on this Board
11 one, a child development center seemed to be the most
12 controversial thing ever invented, but secondly, that
13 our conditions should be, in fact, very specific and
14 very understandable and clear, because they are going
15 to be taken seriously and, in fact, impact strongly
16 the operations and the adjacent operations.

17 VICE CHAIR MILLER: Okay. Well, I just
18 wanted to raise it for the airing effect. I find my
19 colleagues comments persuasive and I think we've also
20 heard good testimony about the good neighborliness of
21 all the parties involved. So I think that they
22 hopefully will coordinate themselves.

23 CHAIRPERSON GRIFFIS: Good. And to that
24 in terms of the neighborliness and the communication,
25 I think that some clarification on the public alley

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1 and how much is actually there. We were handed up
2 here actually one of the old base maps which was
3 probably, you know, whenever, prior to 1950 for sure,
4 but it shows when the alley was actually open and it
5 went straight through. Clearly, there was an alley
6 closing and there was a turn-around that was created
7 as part of that alley. I shouldn't say clearly.

8 BOARD MEMBER ETHERLY: Potentially.

9 CHAIRPERSON GRIFFIS: My assumption was
10 when the alley was closed the turn-around was created.
11 Just for clarification of, you know, the lines and the
12 use and then the coordination of any of the public
13 aspects of it, it would be, obviously, greatly
14 utilized by everyone involved. Mr. Hildebrand?

15 COMMISSIONER HILDEBRAND: The one thing I
16 wanted to say on the record, too, is part of my
17 concern about the alley as the sole drop-off is that
18 it looks from the map that I have here of the length
19 of the alley that it's about 300 to 350 feet long and
20 that length of alley, I think, is of concern if there
21 are no pull-off places or turn-around places from the
22 entrance to the turn-around, the designated turn-
23 around spot. So I think it will just be good to see
24 how that actually works, rather than saying you must
25 use that to give the flexibility to use Massachusetts

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1 or the alley is preferable.

2 CHAIRPERSON GRIFFIS: Okay. Was that the
3 last word? Well, we can't let the Commissioner have
4 the last word. So if there's nothing further, any
5 other questions, what we have is a motion before us.
6 It has been seconded. Mr. Etherly, you're in support
7 of the five year condition and also the hours of
8 operation between 8:00 and 2:00. Is that correct?

9 BOARD MEMBER ETHERLY: That's correct, Mr.
10 Chair.

11 CHAIRPERSON GRIFFIS: And then we don't
12 have any other conditions that were adopted into the
13 motion. Very well.

14 MS. MONROE: Oh, Mr. Chairman, can I just
15 interject? Can you deal with or do you want to deal
16 with enrollment or on-site versus not on-site total?

17 CHAIRPERSON GRIFFIS: Oh, that's a
18 fascinating aspect.

19 MS. MONROE: Please?

20 CHAIRPERSON GRIFFIS: Yes, indeed.

21 MS. MONROE: Thank you.

22 CHAIRPERSON GRIFFIS: Good. Okay. Well,
23 you see how concerned we are of these things. I'm
24 going to do something that is not appropriate to our
25 rules of procedure as we're in a motion, but I have to

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1 have a question of clarification from the applicant.
2 So if you wouldn't mind just coming forward? I just
3 want to make sure that your application reflects that
4 this is a child development center for 25 children,
5 and that's an enrollment figure. Is that correct?

6 MS. LONERGAN: It's for the capacity of 25
7 children a day.

8 CHAIRPERSON GRIFFIS: Yes, right. How
9 many children do you think that you would enroll?

10 MS. LONERGAN: Well, maybe you can help me
11 do the math, because I didn't do the math on exactly
12 the number of children. In other words, I could have
13 children there just two mornings a week and somebody
14 else might be signed up for three mornings a week.

15 CHAIRPERSON GRIFFIS: That's right.

16 MS. LONERGAN: The options are two
17 mornings, three mornings or five mornings. I don't
18 know what the exact enrollment will be. I don't know
19 if I'm going to have 10 children signing up for three
20 mornings a week and another -- I mean, it could all --
21 do you see what I'm saying by that?

22 CHAIRPERSON GRIFFIS: Oh, no, believe me
23 I fully understand what you are saying. Okay. All
24 right. So your maximum capacity is 25 in one day?

25 MS. LONERGAN: Yes, that's what the

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1 facility holds.

2 CHAIRPERSON GRIFFIS: Even if you had --
3 okay.

4 MS. LONERGAN: Yes, every day it's going
5 to be -- the max would be 25 children.

6 CHAIRPERSON GRIFFIS: And so you're not
7 going to have exceptions.

8 MS. LONERGAN: You know, Johnny, Bobby and
9 Billy might be there on Monday and they're not going
10 to be there on Tuesday. There's going to be 25 other
11 children.

12 CHAIRPERSON GRIFFIS: Right. Someone
13 would fill that spot.

14 MS. LONERGAN: Yes.

15 MS. MONROE: Mr. Chairman, can I just
16 explain?

17 MS. LONERGAN: I do understand. Go ahead
18 though.

19 MS. MONROE: Just because, you know, in
20 some preschools you have afternoon, morning. I
21 realize you don't, okay?

22 MS. LONERGAN: Yes.

23 MS. MONROE: But the difference between
24 the total enrollment at the school and the total
25 enrollment there at any one time.

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1 MS. LONERGAN: Yes.

2 MS. MONROE: We just want to be sure,
3 because the traffic issues are vastly different. And
4 what we're trying to get at is, I think --

5 CHAIRPERSON GRIFFIS: Right.

6 MS. MONROE: With all due deference, is
7 your 25 number the maximum that will be there at any
8 one time as well as the maximum total enrollment?

9 CHAIRPERSON GRIFFIS: No.

10 MS. LONERGAN: No.

11 MS. MONROE: Of the preschool or not?

12 CHAIRPERSON GRIFFIS: They are going to be
13 two different numbers.

14 MS. LONERGAN: Two different numbers,
15 which I can't predict.

16 MS. MONROE: Two different numbers. Okay.
17 But the number at any one time would therefore be less
18 than 25 at any one time?

19 CHAIRPERSON GRIFFIS: No.

20 MS. LONERGAN: No, I am anticipating 25.

21 MS. MONROE: Or 25 or less.

22 MS. LONERGAN: Monday through Friday, but
23 I don't know what children those will be each day.

24 CHAIRPERSON GRIFFIS: Right. The
25 enrollment is going to be above that as opposed to

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1 having two sessions where you may have an enrollment
2 of much large. Okay. I can understand. We're only
3 looking at 25. But it is not a set number.

4 MS. LONERGAN: You just can't predict, you
5 know, what days they are coming.

6 CHAIRPERSON GRIFFIS: There's not an
7 enrollment number.

8 MS. MONROE: Right.

9 MS. LONERGAN: Yes.

10 CHAIRPERSON GRIFFIS: Okay.

11 MS. LONERGAN: So I can't do the math.

12 CHAIRPERSON GRIFFIS: And just to be
13 clear, so that we don't look totally absurd, although
14 we're not afraid of looking totally absurd, but the
15 issue is that the Board has actually moved more
16 towards looking at a total enrollment figure than
17 looking at total occupants in the building. And
18 sometimes that works well and sometimes it doesn't, in
19 terms of this specific application, as it fits in. In
20 this circumstance, it doesn't really add to any of the
21 additional information that the Board would need to
22 look at an enrollment figure, but rather to look at an
23 on-site figure, and that is the occupants, your 25,
24 and that's exactly what's been advertised for.

25 So clarification, let me hear from all

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1 Board Members of any objection to looking at this and
2 actually the order would read "For 25 children on-
3 site."

4 COMMISSIONER HILDEBRAND: Are you going to
5 put the --

6 VICE CHAIR MILLER: At one time?

7 COMMISSIONER HILDEBRAND: Will you bound
8 the ages from 2.5 to 5 year-old as listed in the
9 application?

10 CHAIRPERSON GRIFFIS: Oh, yes. No, we're
11 not being asked to do anything different.

12 BOARD MEMBER MANN: The 25 is allowable
13 on-site. However, would it allow for the swap out of
14 one -- from one time period to another? So it would
15 have to be --

16 CHAIRPERSON GRIFFIS: But there is only
17 one time period, that's the point.

18 BOARD MEMBER MANN: At the moment.

19 CHAIRPERSON GRIFFIS: Right.

20 BOARD MEMBER MANN: We're not conditioning
21 how many sessions there could be a day. But if we say
22 that 25 will be admitted on a daily basis, then that
23 would take care of any of that leave early. Then
24 nobody can backfill their space.

25 CHAIRPERSON GRIFFIS: You're concerned

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1 about splitting morning sessions?

2 BOARD MEMBER MANN: Yes.

3 CHAIRPERSON GRIFFIS: 8:00 to 10:00, 10:00
4 to 12:00? Okay.

5 BOARD MEMBER MANN: We just said they can
6 operate until 2:00. We just said they have a six hour
7 operating window.

8 CHAIRPERSON GRIFFIS: Right.

9 VICE CHAIR MILLER: What I heard is 25
10 children on-site at any one time. Is that correct?

11 CHAIRPERSON GRIFFIS: Right.

12 VICE CHAIR MILLER: Did we say that?

13 CHAIRPERSON GRIFFIS: Right. But if you
14 start doing two sessions, then you start looking at
15 doubling trips and that's the whole impact of what 205
16 is looking at.

17 VICE CHAIR MILLER: I don't see why there
18 is any doubling up of trips. I thought that she was
19 saying that on other days there may be 25 different
20 composition of children.

21 CHAIRPERSON GRIFFIS: There isn't now.
22 Mr. Mann has just brought up the fact that isn't there
23 the potential of having segmented sessions and
24 therefore you would. Yes, don't worry about it.

25 VICE CHAIR MILLER: Okay.

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1 CHAIRPERSON GRIFFIS: I think, you know,
2 it's a good point to bring up, but I think the
3 potential of that is pretty minimal, and if so, it
4 might well be just one or two children. I couldn't
5 imagine what child care, child development center
6 would operate on two hour sessions, even if you're
7 looking at six hour total, or three hour. I certainly
8 wouldn't see a total shifting out of 25 students in
9 three hours.

10 BOARD MEMBER MANN: I'm not opposing the
11 motion as it was made. I'm just simply saying that
12 would be one way of addressing this potential problem.

13 CHAIRPERSON GRIFFIS: Good. Okay. And I
14 absolutely agree. However, to clarify then, we have
15 the motion before us. It has been seconded. It's for
16 a five year period. It's for hours of operation of
17 8:00 to 2:00 and it is for 25 children on-site at one
18 time in the ages of 2.5 to 5 years. Is that
19 everyone's understanding?

20 VICE CHAIR MILLER: And four staff
21 members.

22 COMMISSIONER HILDEBRAND: And these four
23 staff members. That's what I was --

24 CHAIRPERSON GRIFFIS: Let me be clear, I'm
25 not going to subtract anything off the advertised

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1 application. But good point. Okay. Anything else?
2 Any other?

3 MS. BAILEY: Mr. Chairman, excuse me.

4 CHAIRPERSON GRIFFIS: Boy, this is tough.
5 Yes?

6 MS. BAILEY: Sorry. Do we need a
7 condition to say the children shall be escorted to and
8 from the off-site play area?

9 CHAIRPERSON GRIFFIS: Oh, boy.

10 BOARD MEMBER ETHERLY: You know, I had a
11 little bit of a backside conversation on that
12 particular issue. The only reason why I don't
13 particularly think it's necessary is clearly it's part
14 of our 205.7 analysis. It is required that the off-
15 site play area shall be located so as not to result in
16 the endangerment to the children regarding travel
17 between the play area and the center itself.

18 CHAIRPERSON GRIFFIS: Yes.

19 BOARD MEMBER ETHERLY: And that's 205.7.

20 CHAIRPERSON GRIFFIS: Let me say if it's
21 got 2.5 year-olds and 5 year-olds walking on their own
22 to that park, they have got more than zoning problems
23 to deal with.

24 BOARD MEMBER ETHERLY: So I think it's an
25 excellent point to raise, but I would not think it's

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1 necessary.

2 CHAIRPERSON GRIFFIS: Yes. I think it's
3 an excellent point to bring up, but I think
4 overburdening the conditions on this in terms of the
5 zoning, I would agree with you, it's part of the
6 review and actually the approval.

7 BOARD MEMBER ETHERLY: What I would
8 inquire about, Mr. Chair, is with respect to is there
9 need to include the explicit language regarding the
10 three parking spaces as a condition? I'm not overly
11 impressed about that one. I just wanted to ask.

12 CHAIRPERSON GRIFFIS: No, absolutely.

13 BOARD MEMBER ETHERLY: Okay.

14 CHAIRPERSON GRIFFIS: Absolutely. I think
15 that's an important point to bring up. I don't think
16 that's a bad condition to add on to it, since it has
17 already been provided by the applicant as satisfying
18 their parking requirements that the three on-site
19 would be dedicated to the child development center.
20 Okay. So that would be the third condition. That's
21 excellent to bring up. Okay. Anything else? Any
22 other aspects? Okay.

23 We have that. We have the motion before
24 us. It has been seconded. It also has been
25 conditioned. I ask for all those in favor to signify

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1 by saying aye.

2 ALL: Aye.

3 CHAIRPERSON GRIFFIS: And opposed?

4 Abstaining? Excellent. Let's record the vote.

5 MS. BAILEY: The Board has voted 5-0-0 to
6 approve the application. Mr. Griffis made the motion,
7 Mr. Etherly seconded, Mrs. Miller, Mr. Mann and Mr.
8 Hildebrand are in agreement with the conditions as
9 stipulated. Do you need for me to go over those, sir?

10 CHAIRPERSON GRIFFIS: Pardon me?

11 MS. BAILEY: With the conditions as
12 stipulated. Did you need for me to go over those?

13 CHAIRPERSON GRIFFIS: No, I think we will
14 review it before it goes out, but I think they are
15 fairly straightforward. Excellent. Thank you very
16 much, Ms. Bailey. Thank you all very much. Why don't
17 we call the next case in the afternoon?

18 MS. BAILEY: Application No. 17265 of The
19 Cafritz Company, pursuant to 11 DCMR section 3103.2,
20 for a variance from the floor area ratio requirements
21 under section 771, and a variance from the
22 nonconforming structure provisions under subsection
23 2001.3, to allow an addition to an existing elevated
24 pedestrian bridge connecting two office buildings in
25 the C-3-C District at premises 1825 Connecticut

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1 Avenue, N.W., Square 2535, Lot 831.

2 CHAIRPERSON GRIFFIS: Thank you, Ms.
3 Bailey. As this is an application that is brought
4 from work out of the firm that I am employed, I will
5 not be hearing this case. I will turn it over to Ms.
6 Miller and I will be back at 3:10.

7 VICE CHAIR MILLER: Good afternoon. Would
8 you, please, identify yourself for the record?

9 MS. HORNE: Good afternoon. My name is
10 Ashleigh Horne of Shaw Pittman and I also have Allison
11 Prince of our firm with me today, and we are here on
12 behalf of the applicant, The Cafritz Company. The
13 applicant seeks an area variance relief in order to
14 permit the construction of an additional level to the
15 existing pedestrian bridge connecting Universal South
16 and Universal North. Together the two buildings are
17 called Universal Center.

18 Universal South, the property that is the
19 subject of the application, is located at 1825
20 Connecticut Avenue at the intersection of Florida
21 Avenue. Its sister building, Universal North, abuts
22 the Universal South property to the north and it is
23 located at 1875 Connecticut Avenue. The project
24 requires area variance relief, because it was
25 constructed in 1957, before the Zoning Regulations

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1 went into effect, and its current FAR exceeds that
2 permitted in the C-3-C Zone.

3 At this time, I would like to point out
4 that there is a discrepancy in the application
5 materials. When we filed the application, we
6 indicated that the lot area of the subject property is
7 56,483 square feet. That is actually the lot area of
8 Universal North, not Universal South.

9 VICE CHAIR MILLER: Okay.

10 MS. HORNE: So the initial calculations
11 were that the existing FAR was 6.59. The lot area of
12 Universal South is actually a little bit less. It's
13 53,590 square feet, so the existing FAR of Universal
14 South is actually 6.946, and we are requesting an
15 increase of 264 square feet to 6.951.

16 We have informed the Office of Planning
17 and Alan Roth, the SMD for ANC-1C-01 of this
18 discrepancy. Mr. Roth did not have any concerns with
19 the change and Office of Planning is here to address
20 that.

21 VICE CHAIR MILLER: Thank you. That
22 actually was going to be my first question to you.
23 That doesn't affect the relief you're seeking though,
24 does it?

25 MS. HORNE: No, it's the same project and

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1 the same -- we still require an area variance for the
2 FAR, but it's just the starting number is different.

3 VICE CHAIR MILLER: Right. Okay.

4 MS. HORNE: The applicant has submitted a
5 corrected statement and a corrected self-certification
6 form for your convenience.

7 As discussed in detail in the statement,
8 the applicant fully satisfies the standards for
9 granting variance relief. The requested increase in
10 FAR is minor and it will not increase the intensity of
11 the use. The project has received the support of the
12 Office of Planning and has received unanimous support
13 from ANC-1C.

14 We have two witnesses this afternoon who
15 will provide brief statements and who will also be
16 available for questions. Our first witness is Kathy
17 Guy to my right. She is the general manager of
18 Universal Center. And our second witness would be
19 John Murray of Hickock Warner Cole Architects.

20 At this time, I would like to request that
21 Mr. Murray be recognized as an expert in architecture.

22 VICE CHAIR MILLER: Do we have his resume?

23 MS. HORNE: I have his resume.

24 VICE CHAIR MILLER: Okay. Do you want to
25 give it to Ms. Bailey?

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1 COMMISSIONER HILDEBRAND: Madam Vice
2 Chair, let me just say for the record that I am
3 familiar with John Murray professionally. We have
4 worked together in the past at Arthur Cotton Moore
5 over 15 years ago and I have been a friend of him
6 professionally for those many years.

7 VICE CHAIR MILLER: And you are not
8 recusing yourself from this case though?

9 COMMISSIONER HILDEBRAND: No, it will not
10 impact my opinion on this case.

11 MS. HORNE: Also, I would like to point
12 out that his education information is in the first
13 paragraph.

14 VICE CHAIR MILLER: I don't see any
15 problem qualifying him as an expert witness. Does
16 anybody else on the Board? Okay. Then I think by
17 consensus, you're qualified as an expert in this
18 proceeding. Okay. You can continue.

19 MS. HORNE: Thank you. Now, we will
20 proceed with the testimony of Kathy Guy.

21 MS. GUY: Hi. My name is Kathy Guy,
22 address, 1875 Connecticut Avenue, N.W., Washington,
23 D.C. 20009. Members of the Board, I am the general
24 manager, as Ashleigh stated, for Universal Center,
25 which encompasses the Universal North Building and the

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1 Universal South Building. It's located at Connecticut
2 and Florida Avenues, N.W., just north of Dupont
3 Circle.

4 It's one full city block, the two
5 buildings combined. The south building is a 10 story
6 office building with office and retail uses. We have
7 restaurants, two restaurants, Buca Di Beppo, which is
8 an Italian restaurant, and Universal Gourmet, which is
9 a breakfast/lunch bar type restaurant, and Rite Aid
10 Pharmacy.

11 The Universal North Building is north of
12 the south building and it's a 12 story office
13 building, also office and retail, and includes Riggs
14 Bank, United States Post Office, Washington Sports
15 Club, Universal Donuts and the former Visions Theater.

16 There is currently a two story pedestrian
17 walkway as seen here. One of our tenants in the south
18 building, the Academy for Educational Development,
19 needed additional space, lease space, from us in the
20 north building on the 10th floor and is asking, in
21 order for convenience for their employees, to be able
22 to have this third link of the bridge, which will
23 access from the south building into the north building
24 immediately above the existing pedestrian walkway.

25 So it's convenience. It will be efficient

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1 for, you know, their employees and will allow them
2 just, you know, more convenience. I would be happy to
3 answer any specific questions that you have.

4 VICE CHAIR MILLER: Did you say the former
5 Visions Theater?

6 MS. GUY: Yes, Visions is no longer our
7 tenant.

8 VICE CHAIR MILLER: Oh.

9 BOARD MEMBER ETHERLY: What?

10 VICE CHAIR MILLER: Oh, no. So what's in
11 that space?

12 MS. GUY: It is a fairly recent
13 development. Visions Theater, unfortunately, struck
14 a deal with us to leave the space. They left owing
15 the ownership a fair amount of money and it's, as I
16 said, very recent. So we are in the process of
17 determining what ultimately would be the highest and
18 best use for that space at this time.

19 BOARD MEMBER ETHERLY: But Buca Di Beppo
20 is still safe?

21 MS. GUY: Yes.

22 BOARD MEMBER ETHERLY: Thank you, Madam
23 Chair.

24 MS. GUY: Come eat, mange, mange.

25 VICE CHAIR MILLER: And this concept of

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1 the pedestrian walkway, is just first of all because
2 of the specific tenants that wanted access to both
3 buildings?

4 MS. GUY: Exactly. It's just a
5 convenience, you know, for them rather than having
6 them, you know, get onto the elevators, come down, go
7 outside the building, walk up and around the corner
8 into the north building or vice versa. It's a
9 convenience for the employees.

10 VICE CHAIR MILLER: Okay.

11 COMMISSIONER HILDEBRAND: So the other two
12 levels of the bridge aren't open to public use from
13 public corridors? They are from tenant suites?

14 MS. GUY: They are from tenant space into
15 tenant space.

16 COMMISSIONER HILDEBRAND: So it's not a
17 convenience to circulate between buildings for
18 occupants of each?

19 MS. GUY: No, it is not, just for that
20 specific tenant that has those floors.

21 VICE CHAIR MILLER: Okay. I think we can
22 go on to the next witness.

23 MR. MURRAY: Good afternoon, Members of
24 the Board. My name is John Murray. I am an architect
25 with Hickock Warner Cole Architects at 1023 31st

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1 Street, N.W. in the District. I am here today on
2 behalf of The Cafritz Company in connection with their
3 request for an area variance relief to permit the
4 construction of a third level on an existing two level
5 bridge connecting the two buildings at the Universal
6 Center. If you would like, I can point out where they
7 are on the plans.

8 VICE CHAIR MILLER: Sure.

9 MR. MURRAY: Should I use this?

10 VICE CHAIR MILLER: Sure.

11 MR. MURRAY: Okay. This is the Universal
12 South Building, existing building, with interior
13 parking levels. I don't know if you're familiar with
14 the building, but the parking runs up sort of in the
15 hole of the donut, so that originally the tenants in
16 the building could park on their floors and just walk
17 to their offices.

18 This is the Universal North Building, T
19 Street, Connecticut Avenue and Florida Avenue. This
20 is the location of the existing two level bridge
21 connecting the north and south buildings. What we
22 would like to do is add an enclosed connection that
23 would connect the ninth floor of the south building
24 with the 10th floor of the north building.

25 I have a photograph here. I don't know.

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1 I think there are photographs in your handout. This
2 is taken from this angle and it really gives you the
3 closeness to the existing bridge.

4 VICE CHAIR MILLER: I think we have this.

5 MR. MURRAY: I believe it's in your --

6 VICE CHAIR MILLER: Right.

7 MR. MURRAY: -- your book. The proposed
8 enclosure would be just a continuation of the existing
9 materials, the same size, roughly 284 square feet.
10 The gap between the two buildings is actually on the
11 property of Universal South, so the bridge doesn't
12 overhang any public property.

13 VICE CHAIR MILLER: And which property is
14 it over? Is it Universal South?

15 MR. MURRAY: Universal South, the entire
16 bridge is over Universal South property.

17 VICE CHAIR MILLER: Okay.

18 MR. MURRAY: As Mrs. Guy testified
19 earlier, the additional level will give the Academy
20 for Educational Development more direct connection
21 between the two floors that they lease, one in the
22 south building and one in the north building.

23 The project requires minor area variance
24 relief in two areas. The first, the project requires
25 -- excuse me, did you go through the -- okay, I didn't

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1 want to repeat something, requires variance relief
2 from the FAR requirement of section 771.2. The C-3-C
3 Zone District permits a maximum FAR of 6.5. Because
4 there was no FAR limitation in effect when the
5 building was built, the FAR was not calculated for the
6 building at that time.

7 The survey of the property conducted in
8 1989 concluded that the gross floor area of Universal
9 South was 386,711 square feet. The FAR calculated
10 using the gross floor area from the 1989 survey was
11 7.2.

12 In the process of building the existing
13 bridge or the submittal for building the bridge in
14 1989, the two level bridge added 528 square feet, but
15 at the same time a conference center was constructed
16 in the upper levels of the parking structure, and that
17 reduced the square footage by, approximately, 14,988
18 square feet. So the 1989 construction created a net
19 reduction of 14,460 square feet.

20 VICE CHAIR MILLER: Can we back up on
21 that?

22 MR. MURRAY: Okay. So I --

23 VICE CHAIR MILLER: No, but I found that
24 confusing in the written materials as well.

25 MR. MURRAY: Okay.

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1 VICE CHAIR MILLER: It's on page 4 of the
2 application. Basically, you said that starting on
3 page 3, you talk about although you added 528 square
4 feet of gross floor area to the building, the other
5 renovation work that was performed, at the time,
6 resulted in a net reduction of, approximately, 14,988
7 square feet. And then you go on to say accordingly,
8 since the 1989 survey, the gross floor area of
9 Universal South was reduced by, approximately, 14,460
10 square feet. And I personally was confused --

11 MR. MURRAY: Okay.

12 VICE CHAIR MILLER: -- between how much
13 was it reduced by, the first figure or the second
14 figure? How are they related?

15 MR. MURRAY: It's really the final figure.
16 At the time the bridge was constructed and the
17 conference center was constructed, the conference
18 center created a two story space at the top of the
19 garage, which they took out some of the floor area to
20 do that.

21 So the floor area was reduced by the
22 conference center, but we added a little bit back to
23 create the two story bridge. So the net result at the
24 end of that construction was a reduction of 14,460
25 square feet less than what we calculated was

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1 originally built.

2 VICE CHAIR MILLER: Okay.

3 MR. MURRAY: I know it's confusing to get
4 a handle on the square footage. This proposal to add
5 the third level of the bridge adds 294 square feet
6 to --

7 MS. GUY: 264.

8 MR. MURRAY: I'm sorry, 264. Okay. I
9 didn't have my reading glasses on. The existing FAR,
10 by our calculation, is 6.951. I'm sorry, it's 6.946.
11 With the additional square feet resulting from the
12 third level of the bridge, that would increase the FAR
13 to 6.951, which is a change of .005.

14 In 1989 when the first two levels of the
15 bridge were constructed, we didn't ask for a variance,
16 at that time, because there was actually a net
17 reduction in the square footage. That was the point
18 of that.

19 VICE CHAIR MILLER: Just to get our
20 numbers.

21 MR. MURRAY: Yes.

22 VICE CHAIR MILLER: Okay. The change in
23 FAR would be .005, but how much above the allowed FAR
24 would it be?

25 MR. MURRAY: It would be .451.

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1 VICE CHAIR MILLER: Okay.

2 MR. MURRAY: The allowed FAR is 6.5. The
3 new FAR would be 6.951.

4 VICE CHAIR MILLER: Okay. Thank you.

5 MR. MURRAY: Because Universal South is
6 already nonconforming as to FAR, it requires
7 additional relief from section 2001.3, which prohibits
8 an addition to a building that will increase the
9 existing nonconformity. So those are the two.

10 I believe that the project meets the
11 standards for area variance relief because of the sort
12 of exceptional and extraordinary conditions of the
13 existing building, that it was constructed prior to
14 the FAR regulations in the zoning. And it's unique,
15 because the subsequent renovations reduced the gross
16 floor area of the building by 14,460 square feet and
17 while it brought the building closer to the FAR of
18 6.5, it did not reduce it to that point. Because the
19 building is still nonconforming, any additional FAR
20 requires a variance and that's why we're here.

21 The building is also architecturally
22 unique in that the center of the building of the south
23 tower is a parking garage that allows users to drive
24 directly up to their floors.

25 VICE CHAIR MILLER: Does that parking

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1 garage still exist?

2 MR. MURRAY: Yes, it does.

3 VICE CHAIR MILLER: So people still drive
4 up to their floor?

5 MR. MURRAY: Yes.

6 VICE CHAIR MILLER: Oh, okay.

7 MR. MURRAY: The only area that was
8 modified for the conference center was the top floor
9 of the parking garage.

10 VICE CHAIR MILLER: And how is that
11 related to your variance?

12 MR. MURRAY: Well, it's part of that
13 reduction previously. The reduction of the 14,460
14 square feet was created out of the top two levels of
15 the existing parking structure.

16 VICE CHAIR MILLER: Okay.

17 COMMISSIONER HILDEBRAND: So actually, the
18 amount of usable office space has been significantly
19 diminished by the parking garage having to be part of
20 your FAR calculation because of its height above
21 ground?

22 MR. MURRAY: That's correct.

23 COMMISSIONER HILDEBRAND: Normally, the
24 garage would be below ground and it wouldn't be
25 considered FAR.

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1 MR. MURRAY: That's correct.

2 COMMISSIONER HILDEBRAND: So the actual
3 net usable office space has been significantly
4 impacted by the original design.

5 MR. MURRAY: Yes. And unfortunately, I
6 don't have the square footage of the parking, what
7 that contributes to the FAR.

8 BOARD MEMBER ETHERLY: And just to follow-
9 up on my colleague's question. From the standpoint of
10 getting into the garage space to achieve some of the
11 additional office space that you would use, why would
12 that not be a feasible solution here?

13 MR. MURRAY: It's part of the leasing
14 issue.

15 BOARD MEMBER ETHERLY: Yes.

16 MR. MURRAY: Ms. Guy, can you?

17 MS. GUY: Yes.

18 MR. MURRAY: Excuse me, I'm sorry. It
19 would reduce the number of parking spaces on the site.

20 BOARD MEMBER ETHERLY: Okay.

21 MR. MURRAY: That would be the greatest
22 impact.

23 BOARD MEMBER ETHERLY: Okay. Okay.

24 MS. GUY: And we already have active
25 leases that require us to have, as you know, a certain

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1 number of parking per square foot and we're 100
2 percent leased, I'm happy to say.

3 BOARD MEMBER ETHERLY: So to put it
4 succinctly, it would be very impracticable to do that.

5 MS. GUY: Exactly, yes.

6 MR. MURRAY: Yes.

7 BOARD MEMBER ETHERLY: Okay. Okay.

8 COMMISSIONER HILDEBRAND: Would this
9 change affect your parking calculation at all and,
10 basically, you exceed the number of minimum spaces you
11 have to have for the office space you provide?

12 MS. GUY: Yes.

13 COMMISSIONER HILDEBRAND: Okay.

14 VICE CHAIR MILLER: I need to ask a
15 follow-up question on this parking garage.

16 MR. MURRAY: Sure.

17 VICE CHAIR MILLER: I just may not be
18 getting it. And the reason I asked before was, and
19 I'm looking at the most recent statement of the
20 applicant that was just submitted to us that has the
21 correct figures and everything, and it says on page 6
22 where it's talking about your internal parking
23 facility, it says "Universal South originally featured
24 an internal parking facility that allowed tenants to
25 drive to the floor on which their office was located.

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1 This unusual condition was removed in connection with
2 the 1998 renovation."

3 I thought I had asked you did that still
4 exist and you said yes.

5 MR. MURRAY: Yes, it was removed only on
6 one or possibly two floors where the --

7 BOARD MEMBER ETHERLY: Conference.

8 MR. MURRAY: On the top two floors, the
9 conference center was created.

10 VICE CHAIR MILLER: Oh, it was removed for
11 the conference center. But on the other floors, it
12 remains?

13 MR. MURRAY: But all the lower floors,
14 it's still in use.

15 VICE CHAIR MILLER: Okay. Thank you.

16 MR. MURRAY: You're welcome.

17 BOARD MEMBER ETHERLY: And it's the lower
18 floors, it's not on the conference center floors, it's
19 the lower floor where the tenant who has the desire to
20 have that access is located?

21 MS. GUY: It's actually above the
22 conference center.

23 BOARD MEMBER ETHERLY: Okay.

24 MS. GUY: It's the 10th floor of the north
25 building to the ninth floor of the south building.

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1 BOARD MEMBER ETHERLY: Of the south, okay.

2 MS. GUY: So the conference center floor
3 is the eighth floor of the south building.

4 BOARD MEMBER ETHERLY: Okay.

5 BOARD MEMBER MANN: Are north and south
6 also connected to each other at ground level?

7 MS. GUY: They are connected through -- no
8 is the answer. There are sort of back corridors
9 within the building that are not public access that
10 gets you very close to one another, but you cannot
11 physically traverse from the north building into the
12 south building without using currently the two story
13 pedestrian walkway.

14 BOARD MEMBER MANN: I see, but they are
15 adjacent to each other at, I guess I should say,
16 street level not ground level?

17 MS. GUY: They are adjacent to one another
18 and --

19 BOARD MEMBER MANN: They share a party
20 wall?

21 MS. GUY: They share party walls
22 periodically. The Washington Sports Club is an
23 example of that. Where you come into Washington
24 Sports Club, you physically are inside the south
25 building. When you walk through the sports club, they

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1 have, internal to their space, where you physically
2 access down into the north building. So they have
3 leases with us in both north and south. So there are
4 some instances where that condition exists.

5 BOARD MEMBER MANN: And when the extensive
6 renovations were accomplished that changed the FAR,
7 when it lowered the FAR of the building, were there
8 changes to the envelope of the building or were those
9 all -- the changes to FAR, were those results of only
10 internal changes that were made?

11 MS. GUY: They were internal changes and
12 there were cosmetic changes to the envelope of the
13 building.

14 BOARD MEMBER MANN: Right.

15 MS. GUY: But that was it.

16 BOARD MEMBER ETHERLY: Madam Chair, one
17 final question and then I'm comfortable here, but I
18 just wanted to -- continuing from the page in the new
19 submission that Mrs. Miller was referencing, further
20 down there is a little bit of a discussion about the
21 interplay between the two buildings, Universal North
22 and Universal South.

23 As we look at the uniqueness or, I should
24 say, the exceptional situation or condition with
25 respect to Universal South, you make reference to the

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1 fact, of course, that the condition here is wholly
2 unique to the south building as opposed to the north
3 building. It's more of a legal question than
4 anything.

5 But just out of curiosity, is there a
6 concern that under the, I don't want to say case law,
7 but is there a concern that you can't necessarily rely
8 on the relationship between Universal South and
9 Universal North to establish your exceptional
10 situation or condition here, because to me it strikes
11 me as very much a part of the analysis here.

12 It's not really something that's, you
13 know, germane or pressing to me from the variance test
14 standpoint, but just out of curiosity, because part of
15 your problem is you have two buildings that are
16 intimately related to one another and because of that
17 relationship, there are some difficulties that you are
18 trying to address here and I think that makes entirely
19 perfect sense to me, but I was just curious.

20 MS. HORNE: Board Member Etherly, I think
21 I would be appropriate to answer that question. First
22 of all, this is a unique complex. It's unique because
23 of its unique, modern design. This was part of, you
24 know, we're going to have a new type of design where
25 people are going to be able to drive to their offices

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1 and this is going to be the greatest new thing. That
2 was things that people were exploring back in 1957
3 when this complex was created.

4 However, Universal South was built first
5 and you can see in Exhibit E, the second page, you can
6 see the Universal South property is outlined in red
7 and you can see how Universal South is set back from
8 the property line. That is not something that is
9 required. There is no requirement for setback and it
10 could have filled up the entire property if they had
11 so chosen at that time. However, they did not.
12 Universal North, however, does go all the way to the
13 property line.

14 BOARD MEMBER ETHERLY: Yes.

15 MS. HORNE: So that setback does not
16 affect Universal North at all. So Universal South is
17 very unique in the fact that it has that odd setback.
18 If we did not have that setback, then we would not
19 require the pedestrian bridge, because we could just
20 link the buildings internally without adding any
21 additional FAR, so that also is a unique circumstance.

22 BOARD MEMBER ETHERLY: Okay. Okay. Thank
23 you. Thank you, Madam Chair.

24 VICE CHAIR MILLER: Just while you're on
25 the issue of uniqueness, we often hear argued before

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1 us that if a building is on a triangular lot, that
2 that's unique or exceptional and I don't believe you
3 made that argument and I'm wondering if you think that
4 that's a component here.

5 MS. HORNE: Certainly, that does also
6 contribute to the uniqueness. The entire
7 configuration of the building on the property and the
8 configuration of the property itself would also
9 contribute to the uniqueness. There really are a
10 confluence of factors here that would contribute to
11 the uniqueness of this site.

12 VICE CHAIR MILLER: Okay. Do you have any
13 other witnesses right now?

14 MS. HORNE: No. I would just like to sum
15 up by saying that, as I had discussed, we feel this
16 property is unique for many reasons. First of all,
17 it's nonconforming and was constructed prior to the
18 Zoning Regulations and features a unique, modern
19 architectural design. It's set back from the northern
20 property line, which is also unique.

21 And another unique circumstance is that
22 the FAR was already decreased in connection with the
23 construction of the conference center. And we also
24 think there is a practical difficulty here. Even the
25 most minor addition or renovation that would add any

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1 additional gross square footage to this building would
2 require a variance.

3 In addition, another aspect of the
4 practical difficulty is that the tenants are going to
5 have trouble getting between the buildings without the
6 addition of this additional level of the pedestrian
7 bridge. Also, I would like to add that under Gill
8 Martin, it's entirely appropriate for the extent of
9 any variance to be considered when measuring where the
10 burden of proof is here, and we're really only adding
11 264 square feet.

12 And although the building is already
13 nonconforming, this additional 264 square feet is not
14 going to increase the intensity of the use. It's not
15 going to be seen from the street. It's very difficult
16 to even see the pedestrian bridge, so we think that
17 there is a practical difficulty here and that under
18 Gill Martin, it would be appropriate to measure the
19 burden of proof commiserate with the amount of
20 variance that is being requested.

21 And with that, we would like to conclude
22 our presentation. Thank you.

23 VICE CHAIR MILLER: Thank you. Do we have
24 any other questions?

25 BOARD MEMBER ETHERLY: Madam Chair, if I

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1 could.

2 VICE CHAIR MILLER: Yes.

3 BOARD MEMBER ETHERLY: Just back on the
4 practical difficulty piece for a quick moment, because
5 I just wanted to fill in something, and I would like
6 to direct this question to Mrs. Guy.

7 With respect to the inconvenience to
8 applicant's component that Mrs. Horne just referenced,
9 I just wanted to kind of get on the record as a, I
10 don't want to say developer, but as a manager or
11 property manager, it would be your position that for
12 tenants in our market having the ability to have a
13 direct connection within a suite of offices is very,
14 very important. Meaning it's very rare that you would
15 find a tenant of a significant size in, let's say,
16 Class A office space that would be comfortable with
17 having two or more floors, but not necessarily having
18 a means of egress between those floors?

19 MS. GUY: Absolutely.

20 BOARD MEMBER ETHERLY: Okay.

21 MS. GUY: And in particular, you know, for
22 just a kind of scale, you know, where is the copier?
23 If the nearest copier, you have to physically exit
24 your space and go to another building, you know, the
25 receptionist, if you're picking up guests, you know,

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1 there are so many practical reasons that, you know, in
2 an office you want a smooth flow of traffic. You
3 want, you know, really it to work the best that it
4 can, so when you're having two buildings side by side
5 and the space that's available is in a neighboring
6 building, it's very difficult.

7 BOARD MEMBER ETHERLY: Okay. Thank you.
8 Thank you, Madam Chair.

9 VICE CHAIR MILLER: I was wondering if you
10 could just clarify for me. You might have touched
11 upon this earlier, but the building was built in the
12 '50s. I'm not sure when north was built, but it has
13 existed this way for, you know, almost 50 years and
14 why is it now all of a sudden that there are tenants
15 in both buildings, you know, on the same floor or
16 whatever that need to be connected?

17 MS. GUY: The north building was built in
18 1963. That was when we began construction there. The
19 north building was renovated in 1990. That brought to
20 us, you know, a new plethora of tenants, a new demand.
21 I will say that we are outside of the Central Business
22 District, these two buildings.

23 So in terms of attraction to tenants, we
24 are a Class B location is what I will say,
25 unfortunately, but they are two phenomenal buildings.

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1 You know, they are Class A in terms of, you know, the
2 management, in terms of the tenants that we have
3 there, the camaraderie. There are so many pluses to
4 be there, but nonetheless our location is, you know,
5 almost three blocks walk to the Metro.

6 So there are some negatives with how we
7 need to market these two buildings side by side. It
8 is one entire city block so, you know, it's joined.
9 If you're looking at both buildings, it's about
10 650,000 square feet of office space, so it's a fair
11 amount of space. So to attract and to retain tenants,
12 we want to make that as convenient as possible and we
13 want to be able to sell the best that we can the
14 services that we have.

15 VICE CHAIR MILLER: Thank you very much.
16 Okay. So you all are finished with your presentation.
17 This is located in Advisory Neighborhood Commission
18 1C. I don't believe anybody is here from 1C, but I
19 just want to check. And is anybody else here in
20 support or in opposition? No? Okay. Then we can go
21 to the Office of Planning.

22 MR. MORDFIN: Good afternoon. I am Steven
23 Mordfin with the Office of Planning and the Office of
24 Planning has recommended approval of this application,
25 and with the additional information from the

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1 applicant, which does not change the size of the
2 actual addition proposed, but only alters the FAR
3 request, which in our opinion is minimal. Therefore,
4 the Office of Planning continues to recommend approval
5 of the application as submitted by the applicant.

6 VICE CHAIR MILLER: Thank you. Do Board
7 Members have any questions? I don't have any
8 questions.

9 COMMISSIONER HILDEBRAND: Yes. Would the
10 amount of variance relief required for this
11 application, instead of being 264 square feet, would
12 it be the .154 FAR that is beyond the 6.5 that is
13 allowable?

14 MR. MORDFIN: The variance is from the FAR
15 not from the total square footage that is permitted.

16 COMMISSIONER HILDEBRAND: Okay. Thank
17 you.

18 VICE CHAIR MILLER: Any other questions?
19 Does the applicant have any questions of the Office of
20 Planning?

21 MS. HORNE: No.

22 VICE CHAIR MILLER: Okay. I think then
23 we're ready for your closing arguments.

24 MS. HORNE: I think I gave mine at the
25 wrong time. So if you could just, you know, think

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1 about what I said earlier today.

2 VICE CHAIR MILLER: You think we can
3 remember that long? Do you want to make a motion?

4 BOARD MEMBER ETHERLY: Madam Chair, I am
5 comfortable with the record being full and would be
6 more than happy to continue our discussion under a
7 motion.

8 It would be my motion to approve
9 Application No. 17265 of The Cafritz Company, pursuant
10 to 11 DCMR 3103.2, for a variance from the floor area
11 ratio requirements under section 771, and a variance
12 from the nonconforming structure provisions under
13 subsection 2001.3, to allow an addition to an existing
14 elevated pedestrian bridge connecting two office
15 buildings at premises 1825 Connecticut Avenue, N.W.,
16 and I would invite a second.

17 VICE CHAIR MILLER: Second.

18 BOARD MEMBER ETHERLY: Thank you very
19 much, Madam Chair. I think the record, once again, is
20 very full in this matter as with the testimony and the
21 written submissions. Running through first the
22 variance test as it relates to the exceptional
23 situation and/or condition of the property, clearly
24 there is uniqueness in terms of, as we talked about,
25 the shape of the subject property, but clearly also

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1 the fact that the building was constructed before the
2 Zoning Regulations, as well, and I think also I will
3 reference to an extent the interplay between Universal
4 South and Universal North, as well as the design of
5 the interior of the building as it relates to the
6 existing garage that we had some discussion about.

7 I think all of these pieces combine to
8 create a very exceptional situation with respect to
9 the Universal South Building in particular that
10 limits, if not completely, eliminates many options or
11 alternatives for this particular applicant to achieve
12 the objective that they are looking for here.

13 Additionally, with respect to the issue of
14 practical difficulty, as was referenced with respect
15 to the Gill Martin precedents, I think it has been
16 adequately stated and spoken to that an increased
17 expense and inconvenience to the applicant here would,
18 indeed, be experienced if there were other efforts
19 undertaken to make this space, shall we say, more
20 consistent with what might be defined as more typical
21 Class A office space.

22 As was referenced, the building might not
23 necessarily find itself in a Class A location, but
24 given the type of clientele and tenants that present
25 themselves to the building and the effort to maintain

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1 the building's, shall we say, competitiveness in the
2 current market, I think clearly Gill Martin offers
3 some instructive language with respect to the
4 practical difficulty that would be experienced by the
5 applicant here if strict compliance with the Zoning
6 Regulations were required.

7 So I believe the variance with respect to
8 the FAR, as well as the nonconforming structure
9 provisions, I think, clearly are very applicable here
10 and I do not think, with respect to the final
11 component of the various tests, that we would have a
12 situation where there would be a substantial detriment
13 to the public good or an impairment of the intent,
14 purpose and integrity of the Zone Plan.

15 So I believe a variance would be very much
16 in order here and I feel that the record is, indeed,
17 complete and a case has been made for that variance.
18 Thank you, Madam Chair.

19 VICE CHAIR MILLER: Thank you, Mr.
20 Etherly. I think I just would like to add to it,
21 because I think there is a lot in this record that
22 supports a variance and I want to get it down. We are
23 talking about a very minor change. I think it was
24 stated that it was a .005 change in the FAR.

25 And with respect to uniqueness, I think

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1 one of the situations that's unique is the fact that
2 in 1998 they reduced the gross floor area by so much
3 more than they are increasing it in this instance. I
4 believe that right figure was 14,460 square feet that
5 it was reduced in 1998, and in this instance the
6 variance would only allow an increase of 264 square
7 feet.

8 The fact that it has a sister building, I
9 think, is an unusual situation where tenants need to
10 have access to both buildings, and the fact that it
11 had this unusual parking garage that took up a lot of
12 the FAR that was allowed.

13 Practical difficulty. I think you
14 probably already stated it, but no addition to the FAR
15 would be allowed in this case without their requiring
16 a variance. And I don't see any substantial
17 detriment, nor did the Office of Planning. The
18 variance is minor. It's located in a space that is
19 not easily visible from the main roads. It has little
20 aesthetic impact. It builds on what is already there.

21 And also, in the Office of Planning's
22 report they stated that it's certainly consistent with
23 the Comprehensive Plan's goal, which is to implement
24 economic development for the Florida and Connecticut
25 Avenues by doing the following: 8) Enhancing existing

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1 commercial and retail structures. And they cited
2 section 123.1.

3 I also want to note that ANC-1C supports
4 the application, and that their report fully meets the
5 great weight requirements and there has been no
6 opposition. Any other comments?

7 BOARD MEMBER ETHERLY: And I will just
8 note for the record, Madam Chair, that clearly, of
9 course, the loss of the Visions Theater has no bearing
10 whatsoever on our decision regarding this particular
11 application, however regrettable that may be. Thank
12 you.

13 VICE CHAIR MILLER: Thank you. Okay.
14 Then I will call for the vote then. Mr. Hildebrand,
15 do you have any other comments?

16 COMMISSIONER HILDEBRAND: I was quickly
17 looking at the ANC report. I didn't note that they
18 had said a vote had been taken or recorded a quantity
19 of votes. Does that rise to the level of great
20 weight?

21 VICE CHAIR MILLER: A vote had been taken.
22 I'm just looking at it. Where do you see this?

23 BOARD MEMBER ETHERLY: I think it was just
24 noted for the purposes --

25 COMMISSIONER HILDEBRAND: Just for the

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1 record, I'm looking at Exhibit No. 22.

2 VICE CHAIR MILLER: 22.

3 COMMISSIONER HILDEBRAND: And I don't see
4 where they have recorded the vote. I think there was
5 a quorum present and the ANC expressed no concern with
6 the application, but I don't see where they actually
7 voted on this at all.

8 VICE CHAIR MILLER: Wait a minute. Oh,
9 maybe they didn't tell us what the vote was.

10 COMMISSIONER HILDEBRAND: It is important
11 though to note that they were supportive, but I
12 don't --

13 VICE CHAIR MILLER: That's right. That's
14 right.

15 COMMISSIONER HILDEBRAND: Whether it rises
16 to great weight, I'm not sure.

17 VICE CHAIR MILLER: That's right. Okay.
18 They don't say what the vote was. Were you at the
19 vote? Were you at the ANC meeting?

20 MS. HORNE: Yes, we were. If you can see
21 on their second page, they do say that it was approved
22 by a voice vote.

23 VICE CHAIR MILLER: We're missing the
24 second page.

25 MS. HORNE: Oh.

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1 VICE CHAIR MILLER: Thank you.

2 MS. HORNE: Okay.

3 VICE CHAIR MILLER: They are usually
4 extremely thorough.

5 COMMISSIONER HILDEBRAND: Okay. So we're
6 missing the second page. That's what it is.

7 MS. HORNE: I will read it right at this
8 moment.

9 COMMISSIONER HILDEBRAND: Sure.

10 MS. HORNE: And then we can submit that
11 into the record.

12 VICE CHAIR MILLER: Okay. Thank you.

13 COMMISSIONER HILDEBRAND: Thank you.

14 MS. HORNE: The next item says 3115.1(g),
15 a motion to support the application was made by
16 Commissioner Miscuk, seconded by Commissioner Moretti
17 and approved by voice vote, a quorum being present.
18 They do not record the actual number. However, it was
19 unanimous.

20 COMMISSIONER HILDEBRAND: Okay.

21 VICE CHAIR MILLER: Okay. And would you
22 give that to Ms. Bailey?

23 MS. HORNE: Yes, I would be happy to.

24 VICE CHAIR MILLER: Or Mr. Moy. Yes.

25 MS. BAILEY: It's probably in the file.

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1 You probably just don't have your copy.

2 VICE CHAIR MILLER: Okay. Okay.

3 COMMISSIONER HILDEBRAND: Thank you.

4 VICE CHAIR MILLER: Thank you very much.

5 COMMISSIONER HILDEBRAND: That certainly
6 clarifies it. Thank you very much.

7 VICE CHAIR MILLER: Any other final
8 remarks? Okay. Are we ready to vote then? All those
9 in favor of the motion, say aye.

10 ALL: Aye.

11 VICE CHAIR MILLER: All those opposed?
12 All those abstaining? Okay.

13 MS. BAILEY: The vote is recorded as 4-0-1
14 to approve the application. Mr. Etherly made the
15 motion, Mrs. Miller seconded, Mr. Mann and Mr.
16 Hildebrand is in agreement, and Mr. Griffis did not
17 hear this case. Summary order, Madam Chair?

18 VICE CHAIR MILLER: I think that would be
19 appropriate for us to waive the rules and issue a
20 summary order unless my colleagues have any
21 objections.

22 BOARD MEMBER ETHERLY: No objection.

23 VICE CHAIR MILLER: Okay. No objections.
24 Thank you.

25 MS. BAILEY: Thank you.

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1 CHAIRPERSON GRIFFIS: Ms. Bailey, in a
2 moment, you can call the next case in the afternoon.
3 Let me just take this opportunity, first of all,
4 because I neglected to make an announcement this
5 morning or at the opening of the afternoon session.
6 And I think we're all aware on the Board and those in
7 the community of Sheri Pruitt's passing away last
8 week. I know we were all very touched by knowing
9 Sheri and also with the news of her passing away.

10 Of course, Ms. Pruitt was a member of NCPC
11 and also sat on the BZA for some time. She then did
12 come to work for the Office of Zoning as a secretary
13 to the Board and for a short period of time was the
14 acting director of the Office of Zoning, and I know
15 she is in our thoughts.

16 But most importantly, I just wanted to
17 mention that services for Ms. Pruitt are going to be
18 on this Friday and they will be at St. Augustine's
19 Church. My understanding is that the wake will be
20 from 9:00 to 11:00 and that the mass will be at 11:00.
21 I certainly think if anyone needs further information,
22 they could call the Office of Zoning and perhaps talk
23 to Mr. Moy for further information and specifics, but
24 I thought it important just to make note of that.

25 With that, Ms. Bailey, I think we're ready

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1 to proceed.

2 MS. BAILEY: Sorry, Mr. Chairman, I
3 thought we were going to take a brief break, but
4 that's okay.

5 CHAIRPERSON GRIFFIS: Oh, is that what
6 we're doing?

7 VICE CHAIR MILLER: You took your break.

8 CHAIRPERSON GRIFFIS: I sure did. I'm
9 ready to roll. Let's go. Yes, all right. That's
10 fine with me, five minutes. Is the applicant okay
11 taking five minutes? Then the Board will resume.

12 (Whereupon, at 3:39 p.m. a recess until
13 3:53 p.m.)

14 CHAIRPERSON GRIFFIS: Very well. Let's
15 resume.

16 MS. BAILEY: Thanks, Mr. Chairman.
17 Application No. 17266 of 400 Massachusetts Avenue LLC,
18 and Jemal's Mass 12933 LLC, pursuant to 11 DCMR
19 section 3103.2, for a variance from the off-street
20 parking requirements under subsection 2101.1, and for
21 an under construction mixed-use, residential/retail/
22 service, development in the DD/C-2-C District at
23 premises 400 Massachusetts Avenue, N.W. The property
24 is also known as Square 517, Condominium Lot 2463, and
25 lot of record, 51.

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1 CHAIRPERSON GRIFFIS: Good. Let's go.

2 MR. GLASGOW: All right. Thank you, Mr.
3 Chairman. Good afternoon, Members of the Board. For
4 the record, my name is Norman M. Glasgow, Jr. of the
5 Law Firm of Holland and Knight representing the
6 applicant in the above-referenced case. Here with me
7 today are Mr. Don Deutsch, representing the applicant,
8 and Mr. Steven Sher, land planner, and Mr. Cullen
9 Elias who is a traffic consultant in this matter.

10 We have one preliminary matter and, as a
11 result of discussions with the Office of Planning and
12 upon review of the Office of Planning report, the
13 applicant, with the permission of the Board, will be
14 proceeding to present its case as a special exception
15 consistent with the suggestion at pages 7 and 8 of the
16 Office of Planning report to reduce the required off-
17 street parking by five spaces from 19 to 14 required
18 spaces for the commercial use.

19 So applicant would be proceeding pursuant
20 to section 2108 of the Zoning Regulations and is
21 prepared for its witnesses to address the criteria set
22 forth in that section.

23 CHAIRPERSON GRIFFIS: I think that is
24 acceptable to the Board unless there's any comments or
25 questions. I think we could do that. Obviously, we

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1 don't need to re-advertise this. This is a lesser
2 burden and it has been advertised for the variance
3 going forward. Mr. Glasgow, you indicated that it's
4 attendant to the Office of Planning's analysis, so
5 you're looking at how many parking spaces then to be
6 provided?

7 MR. GLASGOW: We would provide 14 parking
8 spaces.

9 CHAIRPERSON GRIFFIS: And then the total
10 reduction that was being looked at is what?

11 MR. GLASGOW: The total reduction that was
12 being looked at was a 25 percent reduction pursuant to
13 section 2108, and that would have resulted from 19
14 spaces to 14.25 spaces, which, according to section
15 2118.6, rounds to 14 spaces.

16 CHAIRPERSON GRIFFIS: And, of course,
17 we're looking at a 25 percent reduction of that
18 required for the retail square footage?

19 MR. GLASGOW: Yes, retail only.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. GLASGOW: Yes, we're well in excess.

22 CHAIRPERSON GRIFFIS: And so just to make
23 sure we're all of the firm understanding of this great
24 complicated aspect, we're looking at five spaces. Is
25 that right?

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1 MR. GLASGOW: Yes, sir.

2 CHAIRPERSON GRIFFIS: Okay. Very well.

3 And I'm sorry, you're representing the 400 Mass LLC,
4 correct?

5 MR. DEUTSCH: Yes. My name is Don Deutsch
6 and I'm representing 400 Mass LLC.

7 CHAIRPERSON GRIFFIS: Indeed. And weren't
8 you part of the application prior in the application
9 dealing with this property?

10 MR. DEUTSCH: Yes.

11 CHAIRPERSON GRIFFIS: Indeed.

12 MR. DEUTSCH: We are the developer of the
13 project.

14 CHAIRPERSON GRIFFIS: Right, exactly. I
15 mean, you personally were here.

16 MR. DEUTSCH: Yes, yes.

17 CHAIRPERSON GRIFFIS: Okay. I don't know
18 if that has any bearing on this case. We'll see, huh?
19 Okay.

20 MR. DEUTSCH: It depends if you like the
21 project.

22 CHAIRPERSON GRIFFIS: So we don't have any
23 -- not that it's needed, but we obviously don't have
24 a representative from the Jemal Mass LLC?

25 MR. GLASGOW: No.

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1 CHAIRPERSON GRIFFIS: Okay. Good. Let's
2 move ahead then.

3 MR. GLASGOW: All right. If there are no
4 preliminary questions, I would like to proceed with
5 the testimony of the first witness, and we had been to
6 the ANC Planning and Zoning Committee meeting, let's
7 see, Charley Docter's ANC. I have forgotten the ANC
8 number.

9 UNIDENTIFIED SPEAKER: 6C.

10 MR. GLASGOW: 6C. And they have asked
11 that we leave the record open for the full ANC report.
12 The full ANC meets tomorrow night on January 12th. We
13 do have the unanimous support of the ANC Planning and
14 Zoning Committee.

15 CHAIRPERSON GRIFFIS: Okay. Well, that
16 would obviously set off any decision. Not projecting
17 out what would happen today, but we would set this for
18 February.

19 MR. GLASGOW: No, that presents some
20 issues for us. What we would like to suggest is
21 assuming that the ANC supports the application, we
22 would like to have the decision of the Board be
23 subject to the support of the ANC being received
24 within the record within the next week. If they don't
25 support the application, then we'll have a decision in

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1 February.

2 CHAIRPERSON GRIFFIS: Well, it would set
3 our decision off, but you're saying make a decision
4 today?

5 MR. GLASGOW: Yes, I would like to have a
6 decision today if we could, and make it subject to the
7 receipt of a positive ANC report.

8 CHAIRPERSON GRIFFIS: I can't imagine
9 giving the ANC that amount of control over our
10 decision.

11 MR. GLASGOW: Well, but what I am saying
12 is that we would like to have --

13 CHAIRPERSON GRIFFIS: I understand what
14 you're saying.

15 MR. GLASGOW: Yes. And if they don't
16 support, then you decide it in February, do what
17 you're going to do.

18 CHAIRPERSON GRIFFIS: Okay. But
19 obviously, we wouldn't know it. All right. Well,
20 let's proceed with this and we'll see where we get to.

21 MR. GLASGOW: All right. Thank you.

22 CHAIRPERSON GRIFFIS: Good.

23 MR. GLASGOW: I would like to call the
24 first witness, Mr. Donald Deutsch. Please, identify
25 yourself for the record and proceed with your

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1 testimony.

2 MR. DEUTSCH: I'm Don Deutsch for 400 Mass
3 LLC. The development company is Faison Development.
4 We're at 709 G Street. As we completed the project or
5 as we are completing the project at 400 Mass, it
6 became clear to us as we were leasing the retail
7 space, it's retail tenants that we're attracting here,
8 more pedestrian type retail.

9 We have, approximately, 17,000 square feet
10 of retail. 13,000 is being taken by CVS. They do not
11 need any parking spaces. The remaining retail of,
12 roughly, 3,000 to 4,000 square feet is likely to be
13 dry cleaners, more local type retail, pedestrian type
14 retail.

15 We have such a demand for the residential
16 parking far in excess of what we can actually provide,
17 because we did not -- although we're in excess of
18 requirement, our parking requirement for residential,
19 the demand for parking is greater than what we are
20 providing. So rather than have as many spaces as we
21 would have with the 19 sit vacant, we requested, I
22 think, initially nine spaces.

23 MR. GLASGOW: 19.

24 MR. DEUTSCH: I'm sorry.

25 MR. GLASGOW: I think it was 19, but then

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1 we said we'll provide 10.

2 MR. DEUTSCH: Right, I'm sorry, but nine,
3 we were asking for a relief for nine spaces. Office
4 of Planning suggested five that they could support.
5 Our feeling was that would be sufficient, better than
6 have all 19 sit vacant. So we're requesting the five
7 spaces be converted from a retail requirement to be
8 offered to our residential tenants, and that is pretty
9 much the reason for this request, that we believe that
10 the retail tenants just do not need these spaces as
11 evidenced by CVS.

12 CHAIRPERSON GRIFFIS: But you're also
13 increasing the amount of retail space that you want to
14 provide. Isn't that correct? The application, didn't
15 it? Am I mistaken in looking at the application that
16 there were certain units on the first floor that were
17 going to retail?

18 MR. GLASGOW: That's correct. There were
19 six units on the first floor that were converted from
20 residential to retail.

21 CHAIRPERSON GRIFFIS: Right.

22 MR. GLASGOW: That's correct.

23 CHAIRPERSON GRIFFIS: And they were on
24 the --

25 MR. DEUTSCH: Mass Ave side.

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1 CHAIRPERSON GRIFFIS: -- the west Mass Ave
2 side?

3 MR. GLASGOW: That is correct.

4 CHAIRPERSON GRIFFIS: Right. Okay. Well,
5 two things. Well, so there it is. The parking that
6 now we're looking at, whether it be the reduction of
7 the five or the 19 has to be provided if we deny you,
8 that's anticipated that that's for, conceivably, just
9 customers going into the retail. So you're going to
10 drive to the store. You're going to go below grade
11 and you're going to park in the designated area or
12 perhaps a manager of the store parks there?

13 MR. GLASGOW: That's correct.

14 CHAIRPERSON GRIFFIS: Right.

15 MR. GLASGOW: I think from the discussions
16 -- I'll proffer that from the discussions that we had
17 with CVS, they normally provide, in this type of
18 location, two parking spaces, one for the manager and
19 one for the pharmacist and that's it.

20 CHAIRPERSON GRIFFIS: Right. It makes
21 sense. Now, do you know who the other retailers are?
22 I know in the last application, if I can say, that
23 that corner was being talked about as some sort of,
24 and it's actually indicated here, restaurant or cafe,
25 something that could spill out on the sidewalks.

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1 MR. DEUTSCH: Right. That would be
2 something we would like to see, but right now we have
3 no tenants interested right now.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. DEUTSCH: So given that the space
6 that's remaining is fairly limited now, we think that
7 it's probably more likely to be a smaller retail,
8 maybe association space on that space next to the
9 firehouse. And then on the H Street side, probably a
10 dry cleaner or something like that.

11 CHAIRPERSON GRIFFIS: Oh, I see.

12 MR. GLASGOW: Mr. Deutsch, are you saying
13 that that corner that the Chairman is discussing isn't
14 available?

15 MR. DEUTSCH: Oh, oh, I'm sorry.

16 MR. GLASGOW: That's part of the CVS
17 space.

18 MR. DEUTSCH: Yes, the corner is part of
19 the CVS space.

20 CHAIRPERSON GRIFFIS: Oh, okay. So they
21 take the corner all the way into the first primary
22 core. Is that right?

23 MR. DEUTSCH: That's correct. If you
24 think of it as a pie.

25 CHAIRPERSON GRIFFIS: Yes.

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1 MR. DEUTSCH: They take all the way out to
2 here, so they are both on the Mass Ave side and the H
3 Street side.

4 CHAIRPERSON GRIFFIS: Right. What is the
5 square footage that they are taking roughly?

6 MR. DEUTSCH: Roughly 13,000 square feet.

7 CHAIRPERSON GRIFFIS: 13,000, so that
8 would probably fall in that round. So you have,
9 conceivably, one more space on the west side of the
10 firehouse?

11 MR. GLASGOW: Correct.

12 CHAIRPERSON GRIFFIS: Because it's pretty
13 narrow and it goes all the way through.

14 MR. DEUTSCH: It goes through to H Street.

15 CHAIRPERSON GRIFFIS: Right, right.

16 MR. DEUTSCH: So it would be unlikely that
17 that's going to be a restaurant.

18 CHAIRPERSON GRIFFIS: It could be a grand
19 art gallery or something.

20 MR. DEUTSCH: It would be a great one,
21 yes.

22 CHAIRPERSON GRIFFIS: Then you'll make a
23 lot of money. Okay. All right. Well, that's pretty
24 clear. It seems to me from the submission also that
25 just, based on this location and based on the size of

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1 the retail, I'm asking you to confirm or disagree with
2 the statement that it lays out much more for kind of
3 neighborhood oriented, but walking type of retail,
4 right?

5 MR. DEUTSCH: That's correct.

6 CHAIRPERSON GRIFFIS: I mean, at 13,000
7 square feet, you're not getting a big draw type of
8 retailer in that?

9 MR. DEUTSCH: No.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. DEUTSCH: No, this is a neighborhood
12 CVS.

13 CHAIRPERSON GRIFFIS: Okay. Yes, Ms.
14 Miller?

15 VICE CHAIR MILLER: But even if it weren't
16 to be a CVS, you know, in the future, is the fact that
17 how much space there is or the way it's laid out
18 conducive more towards neighborhood pedestrian access,
19 as opposed to destination retail that would need
20 driving to?

21 MR. DEUTSCH: That's correct.

22 VICE CHAIR MILLER: Okay. My other
23 question is the demand for the parking for the
24 residential part of the building, what evidence are
25 you relying on that there is this great demand for

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1 that parking?

2 MR. DEUTSCH: We only had -- if you
3 recall, this was initially a project that was a rental
4 project, so we parked at, roughly, about a .8 ratio
5 right now, so we could not offer one to one for the
6 residential. So those units, and the way we divided
7 those was by size, so a certain square footage and
8 below, so I can't remember the cutoff, but call it 830
9 square feet.

10 If a unit was 830 square feet or below,
11 they did not have a parking space, but we did allow
12 them to be put on kind of a waiting list, if you will,
13 that if some spaces were available, they would be
14 willing to purchase a space and virtually all of them
15 that did not have a space would prefer a space or
16 would like to have a space.

17 CHAIRPERSON GRIFFIS: So your statement on
18 demand is actual demand in this building, that people
19 that are -- this is not a rental anymore. It's a
20 condo.

21 MR. DEUTSCH: That's correct, it's for
22 sale.

23 CHAIRPERSON GRIFFIS: So based on the
24 people that are looking to buy units are actually also
25 trying to buy parking?

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1 MR. DEUTSCH: That's correct, yes.

2 VICE CHAIR MILLER: You actually have a
3 waiting list for parking spaces?

4 MR. DEUTSCH: Yes.

5 VICE CHAIR MILLER: Okay.

6 MR. DEUTSCH: And this five would not
7 necessarily satisfy that, but at least that would be
8 five less that were vacant.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. DEUTSCH: And we could satisfy five.

11 CHAIRPERSON GRIFFIS: You know, it's an
12 interesting piece to look at in terms of the balance.
13 I mean, we're looking at a special exception here and
14 you look at the criteria under 2018 and it fits right
15 in there, but this being a mixed-use, we have to
16 really look at the balance between what would have the
17 more impact, having residents that were there day and
18 night, all the time, trying to find parking or
19 retailers that, conceivably, so someone drives by and
20 sees a CVS and wants to stop or anything else. It
21 wouldn't be a major draw. It's not a big lumber store
22 or something that is going in here. You know what I
23 mean? Where is the priority for the parking?

24 MR. DEUTSCH: Right.

25 CHAIRPERSON GRIFFIS: And where should it

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1 actually be put in terms of being available?

2 COMMISSIONER HILDEBRAND: I guess one of
3 the questions that goes hand-in-hand with that is how
4 is the garage access available for the required retail
5 spaces?

6 CHAIRPERSON GRIFFIS: Right, that's a good
7 point.

8 COMMISSIONER HILDEBRAND: I'm sure
9 security is a concern, but the retail spaces aren't
10 just for employees. I know you said that CVS --

11 MR. DEUTSCH: That's correct, that's
12 correct.

13 COMMISSIONER HILDEBRAND: -- space is two
14 or four, the manager and one or two, one for the
15 manager and one for the pharmacist for a total of two.

16 MR. DEUTSCH: That's right.

17 COMMISSIONER HILDEBRAND: But it's based
18 on a square footage calculation, so that there is a
19 public accommodation for people who do drive to reach
20 the destination being the retail store. How would a
21 person get to the parking space in your development?

22 MR. DEUTSCH: That's actually a good
23 question that I can't necessarily answer right now.
24 I know that we have the area that's defined. The
25 retail area, if you go down the ramp, there is a

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1 separate area with, approximately, 15 spaces off to
2 the right that's a segregated area that we can kind of
3 segregate to retail.

4 But right now, we haven't figured out
5 exactly how we would handle access for the general
6 public, because the parking garage, if you're going
7 by, the door is handled by a remote access. So if
8 you're just coming, just a random prospective customer
9 coming off the street, how to get down into that
10 garage, we do not have an answer for right now other
11 than the retailer could come out and give the access
12 card to a customer, but that would be --

13 CHAIRPERSON GRIFFIS: Yes.

14 MR. DEUTSCH: Somebody would have to call
15 in, yes.

16 COMMISSIONER HILDEBRAND: It just doesn't
17 seem like you have thought out. It seems like, in
18 some ways, you have created a hardship for yourself,
19 because you haven't addressed how the public is going
20 to get down there.

21 MR. DEUTSCH: Would access it. You know,
22 that's true. It didn't come up, because the retailers
23 don't want the spaces.

24 COMMISSIONER HILDEBRAND: But the Code
25 requires you to have the spaces.

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1 MR. DEUTSCH: Well, that's true. Yes,
2 that's true. I don't have an answer for you as to how
3 we we'll do that.

4 CHAIRPERSON GRIFFIS: Well, it's a
5 programming issue.

6 MR. DEUTSCH: I mean, we'll have to do it.

7 CHAIRPERSON GRIFFIS: I think there's a
8 lot of ways you could do it. I don't think it's that
9 problematic actually. You come down the ramp, as you
10 indicated. You have, what is it, 12 spaces, if you
11 come down the ramp right to the right.

12 MR. DEUTSCH: Yes.

13 CHAIRPERSON GRIFFIS: And then you could
14 continually have a control as you turned left.

15 MR. DEUTSCH: And we have a control point
16 at that point.

17 CHAIRPERSON GRIFFIS: And then two of
18 those spaces -- yes, and two of those spaces could be
19 for the employees i you're using it every day.

20 MR. DEUTSCH: Yes, right.

21 CHAIRPERSON GRIFFIS: You know who it is
22 and you know who's parking. I think that's easily
23 figured out in ways. And then there might be a
24 control up top, but, okay. Yes, you know, as I
25 remember this, I mean, you can look, Board Members,

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1 just at the shape of this building and the amount of
2 structure.

3 I think, if I recall correctly, the
4 applicant actually talked about it when we came in for
5 lot occupancy. You have the historic building and all
6 that. There were a heck of a lot of cumbersomeness
7 and difficulties in putting this together and just
8 making it function. When I think of these drive
9 aisles trying to get these parking spaces into a
10 triangle, I love this.

11 MR. DEUTSCH: It wasn't the world's most
12 efficient act.

13 CHAIRPERSON GRIFFIS: Yes, exactly,
14 exactly. I mean, you keep going down and down and
15 you're not really adding much space, right?

16 MR. DEUTSCH: Right, right.

17 CHAIRPERSON GRIFFIS: All right. Well,
18 let's move on. What else?

19 MR. GLASGOW: We have Mr. Elias here and
20 we have Mr. Sher and oh, unless the Board is -- well,
21 no, we have got to put on the witnesses, because we
22 don't have it in our statement under 2108.

23 CHAIRPERSON GRIFFIS: Yes, we might want
24 to just do that.

25 MR. GLASGOW: Yes.

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1 CHAIRPERSON GRIFFIS: And get focused on--

2 MR. GLASGOW: Right.

3 CHAIRPERSON GRIFFIS: I mean, we do have
4 Mr. Sher's entire report in, which is going to the
5 variance.

6 MR. GLASGOW: Right.

7 CHAIRPERSON GRIFFIS: Anything else they
8 want to speak to the special exception, I think --

9 MR. DEUTSCH: Can I say one thing to Mr.
10 Hildebrand's question?

11 CHAIRPERSON GRIFFIS: Absolutely.

12 MR. DEUTSCH: One of the thoughts though
13 when we were designing this was we did think, you
14 know, honestly, that that corner space was going to be
15 a restaurant and then it would have been easier for
16 us, because then we would have done valet parking, and
17 then we could have taken them down in a controlled
18 way.

19 Once this became more pedestrian type
20 retail with the CVS taking the bulk, you know, 80
21 percent of the retail, that is when this public access
22 issue came up, because it was really designed for a
23 restaurant.

24 COMMISSIONER HILDEBRAND: But there is a
25 chance that, at some point in the future, that a

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1 restaurant could go in that space?

2 MR. DEUTSCH: Absolutely.

3 COMMISSIONER HILDEBRAND: And would need
4 the spaces to be available?

5 MR. DEUTSCH: Yes, that's correct.

6 COMMISSIONER HILDEBRAND: And not pre-sold
7 to a residential unit.

8 MR. DEUTSCH: That's correct. And then to
9 Mr. Griffis' point, what we would end up doing there,
10 if it were a restaurant though, we would do valet.
11 But even without that, we would put the control point
12 further down the ramp and then the retail space would
13 be off in that area to the right.

14 COMMISSIONER HILDEBRAND: Okay.

15 MR. GLASGOW: Mr. Elias, would you,
16 please, identify yourself for the record and proceed
17 with your testimony?

18 MR. ELIAS: Yes, sir. I am Cullen E.
19 Elias, the Vice President of O.R. George and
20 Associates. We are located at 10210 Greenbelt Road,
21 Lanham, Maryland. The ZIP code is 20706. I am here
22 this afternoon to provide testimony in support of the
23 special exception application before you.
24 Specifically, I would like to address the three
25 criteria under section 2108.3 of the District of

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1 Columbia Municipal Regulations, and specifically I am
2 referring to Items C through E of that section.

3 The first criterion, Item C, relates to
4 traffic congestion existing or which the building or
5 structure can reasonably create in the neighborhood,
6 and my response to that is, based on our field
7 observations, the adjacent roadway network currently
8 operates acceptably within the city's planning
9 standards. However, Massachusetts Avenue is a major
10 thoroughfare and arterial, principal arterial, under
11 the city's roadway classification scheme. The two
12 intersections adjacent may be approaching Level of
13 Service D.

14 With that in mind, it may be better. You
15 can look at that in two ways. One, in a sense that
16 having more parking spaces can induce more traffic
17 into the area, thus worsening conditions. At the same
18 time, not reaching capacity means that if you were to
19 lessen the parking spaces, any circulation that
20 results from looking for parking spaces will not
21 affect the peak period of traffic conditions within
22 the area. The structure, the development itself,
23 including the proposed retail, will not have an
24 adverse, appreciably adverse, impact on the
25 neighborhood or the adjacent roadway, the adjacent

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1 roadways.

2 The second criterion, Criterion D, relates
3 to the quantity of existing public, commercial or
4 private parking other than curb parking on the
5 property or in the neighborhood, which can reasonably
6 be expected to be available when the building or
7 structure is in use. And my response to that is the
8 applicant has proposed to provide 14 parking spaces,
9 which represents 25 percent reduction of the 19 spaces
10 required for the proposed retail component of the
11 development.

12 In addition to that, there are a number of
13 commercial off-street surface parking lots in
14 proximity to the site. These lots were found to have
15 occupancy rates varying from 40 to 60 percent during
16 the weekday peak period.

17 Criterion E refers to the proximity of the
18 site to public transportation, particularly Metrorail
19 stations. The proposed retail use would be roughly
20 two blocks away from the Judiciary Square Metrorail
21 Station, WMATA Red Line, and the Gallery
22 Place/Chinatown Metrorail Station, WMATA's Yellow and
23 Green Lines.

24 In addition, there are a number of
25 Metrobus routes that traverse the study area along 5th

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1 Street, along 8th Street, to the south side and
2 further on. Based on this, what I just said, which
3 satisfies the three criteria, Items C through E of
4 2108.3, it's my opinion that the special exception
5 requested, a reduction of 25 percent, will be
6 acceptable and should not have any adverse impacts on
7 the adjacent roadway network and should be able to
8 meet the demands for the proposed retail use.

9 And I just want to add here in regards to
10 what the retail use should be as a CVS store or any
11 other service entity. This is a small development
12 that we're talking about, retail development. And in
13 the traffic engineering jargon, there is a term called
14 pass-by trips, which refers to the fact that the
15 smaller the use, particularly one like this that we're
16 looking at, adjacent to existing and planned
17 residential and commercial uses, you have two types of
18 trips that are dominant.

19 One, you have a significant proportion of
20 walk, transit, bike and other alternative modal trips.
21 Two, you have of the remainder, and I should say that
22 in my estimation, the number of non-motorized trips
23 should be in the vicinity of 90 to 95 percent. Of the
24 remainder, most of those will be what is called pass-
25 by trips, trips that are already on the study area

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1 roadway, trips that do not see the CVS store or any
2 other unit as a destination place, trips that are
3 going towards work, going towards home, but they stop
4 at the CVS or any other store there to get the
5 services.

6 So with that, because of the size, because
7 of its location in relation to, as I said before,
8 existing and planned residential and commercial uses,
9 the need for a large number of parking spaces in
10 accordance with the Zoning Ordinance is not required.
11 It is my view that even the 14 spaces that the
12 applicant will provide will be more than adequate.
13 And as a matter of fact, for the most part, most of
14 those spaces will be vacant, will not be used.

15 In prior testimony, Mr. Deutsch indicated
16 that for the CVS stores in the area, they provide only
17 two parking spaces, one for the pharmacist and one for
18 the manager. It's my view that 14 spaces would be
19 more than enough, yet, I support it in accordance with
20 the applicant's special exception application. Thank
21 you.

22 CHAIRPERSON GRIFFIS: Thank you very much.
23 That's very helpful. You made a couple of statements
24 I want to clarify. You said that there were existing
25 parking structures, I thought, or parking lots

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1 surrounding the area?

2 MR. ELIAS: Yes, commercial.

3 CHAIRPERSON GRIFFIS: Commercial lots.

4 MR. ELIAS: Commercial lots.

5 CHAIRPERSON GRIFFIS: And what are some of
6 those that you were looking at? Are those surface
7 lots?

8 MR. ELIAS: They are surface lots that are
9 located on the north side of Massachusetts Avenue.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. ELIAS: And I think there are a few on
12 the north side of I Street. Yes.

13 CHAIRPERSON GRIFFIS: Okay.

14 MR. ELIAS: Okay.

15 CHAIRPERSON GRIFFIS: And are you aware of
16 any other retail that's going in on Massachusetts
17 Avenue?

18 MR. ELIAS: No, I'm not.

19 CHAIRPERSON GRIFFIS: In that area?

20 MR. ELIAS: No, I'm not aware.

21 CHAIRPERSON GRIFFIS: Are you aware of
22 any?

23 MR. DEUTSCH: No, I don't know of any,
24 maybe as part of the Millennium Project. I don't
25 know.

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1 CHAIRPERSON GRIFFIS: Can you turn on your
2 mike?

3 MR. DEUTSCH: I'm sorry. I'm not aware,
4 although as part of maybe the Millennium Project
5 further to the north there.

6 CHAIRPERSON GRIFFIS: Okay.

7 MR. DEUTSCH: They are doing some retail.

8 CHAIRPERSON GRIFFIS: My investigation in
9 that question is, you know, if you think about it, I
10 mean, Ms. Miller was bringing up the point well, even
11 if it's not a CVS, if it's something else, it's an
12 interesting point to start projecting out, but you got
13 to think about it. Like is a big draw clothing store
14 going to go there without nothing else around it, you
15 know?

16 I mean, I just think, logically, what we
17 know about city and the way cities operate and,
18 especially, retailers, this is always probably going
19 to attract somebody that is going to service those
20 residential developments that are happening all around
21 that area.

22 MR. ELIAS: Yes, right, correct.

23 CHAIRPERSON GRIFFIS: Which means, you
24 know, help those that get in their car and come out
25 and drive a block and then want to park.

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1 MR. ELIAS: That's right.

2 CHAIRPERSON GRIFFIS: At the CVS.

3 MR. ELIAS: That's right.

4 CHAIRPERSON GRIFFIS: There might be a
5 few, but I think predominant is, it is pretty
6 persuasive, that this will be pedestrian traffic, if
7 not just the building. For goodness sake, there's a
8 lot of folks living there.

9 COMMISSIONER HILDEBRAND: Well, if I know
10 that CVS has parking, I will probably drive from
11 Capitol Hill and shop there and, trust me, I'll do it.

12 CHAIRPERSON GRIFFIS: Well, you know, to
13 be forthcoming, I was thinking about all the other
14 CVSes, which is not my favorite retailer actually.
15 No, but the point is, I mean, I can't think of any
16 that actually have parking.

17 VICE CHAIR MILLER: I can.

18 CHAIRPERSON GRIFFIS: Well, in your
19 neighborhood.

20 VICE CHAIR MILLER: In my neighborhood.

21 CHAIRPERSON GRIFFIS: You're in a hoity-
22 toity neighborhood. But anyway, okay. Let's move
23 ahead.

24 VICE CHAIR MILLER: I do have a question
25 on that.

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1 CHAIRPERSON GRIFFIS: Good.

2 VICE CHAIR MILLER: I think you made a
3 comparison to another CVS that only had two parking
4 spaces, one for the pharmacist, one for the manager or
5 something. What is the situation with that one? What
6 type of location is it in? Is it near residence? You
7 know, why is it a good comparison here?

8 MR. ELIAS: Well, there is one at 7th and-
9 -

10 MR. DEUTSCH: H.

11 MR. ELIAS: H.

12 MR. DEUTSCH: Two blocks away.

13 MR. ELIAS: One at E and 8th.

14 MR. DEUTSCH: 8th.

15 MR. ELIAS: Just off this street here.

16 They are located --

17 CHAIRPERSON GRIFFIS: That's the Landberg,
18 isn't it?

19 MR. DEUTSCH: Yes.

20 MR. ELIAS: Yes.

21 CHAIRPERSON GRIFFIS: That building on the
22 corner.

23 MR. ELIAS: They are located --

24 CHAIRPERSON GRIFFIS: They have two spaces
25 in that?

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1 MR. ELIAS: Two spaces.

2 CHAIRPERSON GRIFFIS: Okay.

3 MR. DEUTSCH: Yes.

4 MR. ELIAS: They are located in comparable
5 areas in terms of adjacency to residences and
6 commercial uses.

7 VICE CHAIR MILLER: Okay.

8 MR. GLASGOW: Ms. Miller, I think they
9 have about four in, I will call it, the Central
10 Business District of which this, I guess, would be
11 about a fifth one.

12 MR. ELIAS: Yes.

13 MR. GLASGOW: And all of those have two
14 parking spaces. The ones out in the residential
15 communities, they have parking spaces.

16 VICE CHAIR MILLER: Right. Okay. Thank
17 you.

18 COMMISSIONER HILDEBRAND: Can I just say
19 and, for the record, too, my concern about it is not
20 just for the CVS that is currently planned there, but
21 for the future use of the building and not to land-
22 lock you into a situation where you couldn't provide
23 parking for a tenant that may require it. That's my
24 big concern.

25 CHAIRPERSON GRIFFIS: Right.

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1 BOARD MEMBER MANN: Well, of course, I
2 mean, this runs with the land though, right? So I
3 mean, if we approve this, then no matter who moves in
4 there, the parking is what the parking is.

5 CHAIRPERSON GRIFFIS: That's correct,
6 unless the retail use somehow had a different parking
7 calculation in which case there may be some relief
8 that would be required.

9 BOARD MEMBER MANN: Right.

10 COMMISSIONER HILDEBRAND: I guess one of
11 the things you had in your testimony was that the
12 adjacency of good public transportation, which the
13 District has in this area, and the close proximity of
14 Metro would have an impact on the need for parking for
15 the retail. Wouldn't it have a comparable reduction
16 in the need for parking for the residential units as
17 well?

18 MR. ELIAS: Well, yes, I see your point,
19 but because of the proximity of transit services, you
20 have less need for parking spaces, because you can
21 either use transit, bus transit to work or you can use
22 Metrorail and then walk to work. You can have a
23 combination of rail and walk or bus and walk to the
24 site, so there would be less of a need for parking
25 spaces.

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1 MR. GLASGOW: Mr. Hildebrand, I think that
2 with all the condominium projects that I have been
3 working on, which over the past few years has been
4 numerous, what we have found is the public
5 transportation means that we're not having a.m. and
6 p.m. peak hour trips.

7 The people have the cars. They want to
8 have their cars. Their cars are sleeping during the
9 week in the garage and they are using them on the
10 weekends. So we have got a demand on the residential
11 end for the space itself, but the utilization of that
12 car is way, way down than what it would be otherwise.

13 CHAIRPERSON GRIFFIS: But ownership isn't.
14 That's your point.

15 MR. GLASGOW: That's correct.

16 CHAIRPERSON GRIFFIS: Right.

17 COMMISSIONER HILDEBRAND: They have well
18 rested cars, but still cars nonetheless.

19 CHAIRPERSON GRIFFIS: Still, we have come
20 a long way, just leaving their cars behind.

21 COMMISSIONER HILDEBRAND: So instead of
22 having a dog's life, I would want to have a car's
23 life.

24 MR. ELIAS: Yes, that's right. I think if
25 I can just add a point here.

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1 CHAIRPERSON GRIFFIS: Yes.

2 MR. ELIAS: You had raised a discrepancy
3 or some sort of what is the balance between providing
4 the spaces for residential uses versus retail uses.
5 I think the answer is straightforward. For the
6 residential use, the demand is long-term, whereas for
7 the retail it will be short-term. There is a high
8 turnover rate for the retail uses and it's better to
9 provide for the residential, instead of having them
10 park on the adjacent roadways for a pretty long time
11 compared to the residential users.

12 CHAIRPERSON GRIFFIS: I think that's an
13 excellent point and it actually supports public
14 transportation. If you think about it, if your car
15 was parked on the street and you, conceivably, had to
16 move it during a time, you would probably get it in
17 and drive to work, as opposed to having a parking
18 space that you own or is dedicated to you.

19 There is no reason for you to get in the
20 car, and it's a heck of a lot easier to get on public
21 transportation and go to work. We're solving the
22 world's problems here. Okay. Let's move on. Any
23 other questions for the transportation engineer?
24 Good.

25 MR. GLASGOW: I would like to call Mr.

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1 Steven Sher.

2 MR. SHER: Good afternoon, Mr. Chairman
3 and Members of the Board. For the record, my name is
4 Steven Sher, the Director of Zoning and Land Use
5 Services with the Law Firm of Holland and Knight.
6 Sometimes being last in the afternoon makes my job
7 very easy, because you have already, basically,
8 covered all the things I wanted to say, so I will say
9 very little.

10 But the key point that I wanted to make
11 was, notwithstanding CVS, the nature and location of
12 this building and the type of retail that would likely
13 go in it is going to be neighborhood serving. As the
14 Chair pointed out, this is not Gallery Place. This is
15 not Metro Center. This is not Pennsylvania Avenue
16 where you have got a lot of tourists looking for
17 things to buy. This is going to be neighborhood
18 oriented retail that will serve the residents in the
19 apartment houses and the employees in the office
20 building. You have GAO right across the street.

21 If you look at this square in particular,
22 Square 517, bounded by Massachusetts Avenue, by H
23 Street and by 5th Street, there is virtually no retail
24 of any sort in this block other than the limited
25 amount in this particular building. If you look at

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1 the south side of H Street, again, you have GAO
2 occupying the majority of that side. You have got the
3 building that the District Government uses for the
4 Child and Family Services Agency at 450 H Street, and
5 then down at the corner you have got St. Mary's Church
6 and its properties. So you have no retail on the
7 south side of the street.

8 If you go further to the east and go
9 across 3rd Street, you have got the Massachusetts
10 Court Apartment Building, which has, I believe, a
11 limited amount of retail, but you do not have a retail
12 nucleus here. This is not going to be another ESPN
13 Zone. It's not going to be an attraction like that
14 where you're going to get a use that would generate
15 the need for parking to serve it. This is going to be
16 a place where people are going to walk to, because
17 they are either in the neighborhood, because they live
18 there or work there. And that's all I have to add.

19 CHAIRPERSON GRIFFIS: Excellent. Thank
20 you. And just for a note, Board Members, we did
21 receive the revised January 11th report, which is
22 attendant to the application in terms of the special
23 exception, as opposed to the variance. Okay. Any
24 questions, clarifications? Ms. Miller?

25 VICE CHAIR MILLER: I hesitate to ask

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1 this, but I'm going to ask it, because you just
2 briefly skirted over this. You originally filed for
3 a variance in this case and now, you're asking only
4 for a special exception, and I'm wondering if you want
5 to address why you have revised your application?

6 MR. GLASGOW: It was on the basis of
7 discussions with the Office of Planning and reading
8 their report, and in discussions with the applicant
9 saying do you want to have, in effect, a case with no
10 opposition and a reduction in five parking spaces, and
11 the applicant said yes. So there was no reason to
12 proceed further with something where there were some
13 question if we can live with a five space reduction.

14 VICE CHAIR MILLER: Thank you.

15 CHAIRPERSON GRIFFIS: Anything else?

16 MR. DEUTSCH: We'd be happy. If they give
17 us a variance, we would be happy to take it.

18 CHAIRPERSON GRIFFIS: Okay. Anything
19 else, Mr. Glasgow?

20 MR. GLASGOW: That concludes the direct
21 presentation of the applicant.

22 CHAIRPERSON GRIFFIS: Excellent. Then
23 let's move on to the Office of Planning. Good
24 afternoon.

25 MR. COCHRAN: Good afternoon. For the

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1 record, my name is Steven Cochran with the District of
2 Columbia Office of Planning. As you know, the Office
3 of Planning had not been able to recommend its
4 approval of a variance for this case.

5 We had suggested that it might be more
6 appropriate to look at it as a special exception. Of
7 the many concerns that we had, probably the most
8 important concern was that we felt that the request
9 for a variance really would have had a negative impact
10 on the intent and integrity of the Zoning Regulations.

11 However, now that the applicant is asking
12 for a reduction in parking in exactly the way that the
13 Zoning Regulations outline a method for asking for
14 that reduction, that is a special exception, we feel
15 very comfortable recommending in favor of the revised
16 request, and recommend that you approve a special
17 exception for this parking relief.

18 CHAIRPERSON GRIFFIS: Good. Thank you,
19 Mr. Cochran. Do you want us to leave the record open
20 for a revised report from you assessing the special
21 exception or shall we take this as your report today?

22 MR. COCHRAN: I would like you to take
23 this as the Office of Planning report.

24 CHAIRPERSON GRIFFIS: I don't see any
25 problems with that unless the applicant sees problems

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1 with that.

2 MR. GLASGOW: No problem.

3 CHAIRPERSON GRIFFIS: Excellent. Any
4 Board Members? Good. Let's move ahead then. Are
5 there any questions from the Board regarding that
6 report from the Office of Planning? Does the
7 applicant have any cross examination of the Office of
8 Planning?

9 MR. GLASGOW: No, sir.

10 CHAIRPERSON GRIFFIS: Let's move ahead to
11 other Government reports of which I have none other
12 attendant to this application. The ANC has indicated
13 it was not available, a full ANC. There isn't a
14 representative from the ANC here today. Is that
15 correct? No representative being seen for 2C.

16 MR. GLASGOW: 6C, I believe.

17 CHAIRPERSON GRIFFIS: What am I looking
18 at?

19 MR. GLASGOW: There was an original notice
20 that said 2C, but due to the redistricting --

21 CHAIRPERSON GRIFFIS: Oh, yes.

22 MR. GLASGOW: -- it was 6C.

23 CHAIRPERSON GRIFFIS: Yes, yes, exactly.
24 Yes, I do have a wrong notation, which is my error.
25 Okay. And you had indicated 6, which it was going to,

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1 and so it has obviously gone to the right place.
2 Let's move ahead then and take any testimony for
3 Application 17266, at this time, either in support or
4 in opposition, testimony of persons to give testimony,
5 if you will come forward and have a seat at the table.

6 Not seeing any indication of those present
7 today to give testimony, I think we can move on, Mr.
8 Glasgow, to any closing remarks that you have.

9 MR. GLASGOW: I think with respect to
10 closing remarks, I think particularly in light of it
11 being a special exception where the criteria are set
12 forth clearly in the regulations, we have met that
13 burden of proof. I would renew the request that we
14 had been asked to -- that the record be left open for
15 the ANC report, for them to make their decision.

16 We would like to get a decision today, but
17 we're amenable that it be subject to a favorable
18 report from the ANC. And if a favorable report is not
19 forthcoming, then we request a decision in February.

20 VICE CHAIR MILLER: Could I ask a
21 question? Did you represent earlier that their
22 Planning and Zoning had voted on this application?

23 MR. GLASGOW: Yes, yes, I had.

24 VICE CHAIR MILLER: Did they vote on the
25 special exception request or the variance?

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1 MR. GLASGOW: They voted on -- yes, they
2 knew it was a special exception, as I recall. I was
3 not at the hearing. There was an associate from the
4 firm at the hearing.

5 VICE CHAIR MILLER: And did you represent
6 that they voted to support the application?

7 MR. GLASGOW: Yes, they voted to support
8 the application.

9 MR. SHER: As a special exception. We
10 knew, at that point, that it was going to be a special
11 exception, yes. We knew at that point having seen the
12 Office of Planning report that we were going to
13 convert this to a special exception. And when we went
14 to the ANC, they knew that the original request had
15 been for 19 spaces to be reduced, that we had
16 subsequently dropped that to 10, and that it went
17 lower than that. So they were aware of that.

18 VICE CHAIR MILLER: Do you know how many
19 individuals are on their Planning and Zoning Committee
20 and if there was like a real vote?

21 MR. GLASGOW: Yes, they had a vote. That
22 part I can answer.

23 VICE CHAIR MILLER: Okay.

24 MR. GLASGOW: There were three members of
25 the ANC that were on the committee that night, Charlie

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1 Docter, Riveras, who is new, I don't know him, and
2 then the other guy. There were three members of the
3 Commission and I know all -- well, I know two of the
4 three, and I can't remember the one now. But Charlie
5 was there, Riveras, a new Commissioner, and one other
6 person who has been on the ANC for a period of time.
7 So you had three Commission Members that were there.

8 VICE CHAIR MILLER: And is that a public
9 meeting or not public meeting?

10 MR. GLASGOW: Yes, it's a public meeting
11 that they have. It's a monthly Planning and Zoning
12 Committee meeting that they have.

13 VICE CHAIR MILLER: Okay.

14 MR. GLASGOW: And then what they do is
15 they make -- they have their minutes and then they
16 make a recommendation to the full ANC.

17 CHAIRPERSON GRIFFIS: Any other questions?
18 Good. Mr. Glasgow, you have asked us to do something
19 that I don't think the Board is prepared to do, is
20 make a decision and then keep the record open for
21 another decision which may impact our decision. I
22 mean, I think we need to run either today or set this
23 for decision. In my mind, in terms of the expedition
24 of our schedule and the processing of this, I think if
25 no Board Member is in objection to it, I think the

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1 record is fairly full on this.

2 If this was a controversial or complicated
3 case waiting for the ANC to further inform the Board,
4 would be absolutely appropriate and, in fact, probably
5 demanded by numerous Board Members. In this sense, I
6 don't know that they could bring to light anything
7 that the Board could not see ourselves in terms of
8 looking at our tests for the special exception. So
9 noting the fact that the Planning and Zoning Sub-
10 Committee of the ANC had reviewed this and had been
11 given time to look at the actual application,
12 specifically under the special exception, which is
13 here before us today, and had acted in support of it,
14 their recommendation to the full ANC, of course, would
15 be similar in terms of supporting the application.

16 I think it's appropriate that the Board
17 move forward today. And to that, I would move
18 approval of Application 17266 of 400 Massachusetts
19 Avenue, et al, for the special exception to allow for
20 a 25 percent reduction of the parking attendant to the
21 retail tenant's part of the mixed-use development at
22 400 Mass Avenue, N.W. And I would ask for a second.

23 BOARD MEMBER MANN: Second.

24 CHAIRPERSON GRIFFIS: Thank you very much,
25 Mr. Mann. I think that 2108 lays it out as Mr.

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1 Glasgow has indicated in terms of the specific
2 requirements for the special exception and the general
3 special exception itself, but running through that, I
4 think we have taken, under all those aspects, looking
5 at the nature and location of the structure and
6 looking at the demand, essentially, is really part of
7 2108.3(b), the amount of traffic congestion attendant
8 to the area, but also that the entire use of the
9 building would actually create.

10 I think in terms of the special exception
11 and not necessarily so heavily in this case, but I
12 think the Board also looks beyond that. What else is
13 happening around the area and what's going to be the
14 condition that this relief would be enacted in and
15 quality of public and private parking in the area. It
16 was given testimony by the traffic engineer that there
17 is commercial lots around the area, those being
18 surface lots, you must kind of question how many will
19 be there forever, especially in light of how many
20 applications we have seen in this area.

21 But be that as it may, I don't think this
22 rises to the level of having to find available parking
23 outside of the area and proximity to the public
24 transportation which I think was also talked about
25 quite substantially, that being the bus and certainly

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1 the Metroline around it. So all that being said, I
2 think I'm obviously supportive of the special
3 exception that would allow for the reduction of 25
4 percent, which would mean the availability of 14
5 parking spaces to the retail.

6 And as indicated and I think the record
7 shows fairly persuasively or very persuasively the
8 fact that this is going to be locally oriented and
9 locally drawn retail, just based on its size, not
10 necessarily its actual tenant. And as I indicated
11 before, I haven't been persuaded otherwise that the
12 real detrimental impact would be dumping more of the
13 residential parkers or the residents onto the street
14 looking for parking and creating additional trips.

15 So that being said, I open it up to others
16 for any other comments. Ms. Miller?

17 VICE CHAIR MILLER: I would concur.
18 Especially in this particular case, we heard there is
19 a specific demand for residential parking in this
20 building. There is actually a wait list and so we
21 know that the demand is real and that it's there.
22 Whereas, with respect to the parking for retail,
23 that's unknown. But based on the size and location of
24 the retail, it seems like that it would be more likely
25 to be neighborhood retail and even the 14 spaces may

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1 not be required for that.

2 And also, I just want to make a comment
3 about the request to keep the record open for the ANC.
4 The input from the ANC is quite valuable to the Board
5 and, you know, we always welcome it. But I think that
6 the ANC or other parties can't expect the Board to
7 just delay its schedule based on that kind of request.
8 I think if the issue is really controversial or really
9 important to the community, then the ANC has the
10 capacity to, number one, schedule a special meeting
11 before the Board's hearing. They have notice of when
12 we're going to be meeting.

13 And I'm just saying this for whoever may
14 be listening, and also to send in a request to the
15 Board that they need to weigh in on this issue for a
16 real and important point, and that that's why we
17 should wait. So I just wanted to address that as
18 well.

19 CHAIRPERSON GRIFFIS: Very well. Anything
20 else? Comments, deliberation, Board Members? Very
21 well. We have a motion before us. It has been
22 seconded. I ask for all those in favor to signify by
23 saying aye.

24 ALL: Aye.

25 CHAIRPERSON GRIFFIS: Opposed?

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1 MS. BAILEY: The Board has voted 5-0-0 to
2 approve the application. Mr. Griffis made the motion,
3 Mr. Mann seconded, Mrs. Miller, Mr. Etherly and Mr.
4 Hildebrand are in agreement.

5 CHAIRPERSON GRIFFIS: Good. Thank you,
6 Ms. Bailey. Thank you all very much. Ms. Bailey, is
7 there any other business for the Board in this
8 afternoon's session?

9 MS. BAILEY: No, Mr. Chairman.

10 CHAIRPERSON GRIFFIS: Not having any other
11 business, then why don't we adjourn the 11th of
12 January 2005 afternoon session?

13 (Whereupon, the Public Hearing was
14 concluded at 4:41 p.m.)

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