

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

OCTOBER 11, 2005

+ + + + +

The Board convened in the Board of Elections and Ethics Hearing Room, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 11:50 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 MEMBERS PRESENT:

JOHN PARSONS	Commissioner (NPS)
KEVIN HILDEBRAND	Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

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TRAVIS PARKER
KAREN THOMAS
STEVE MORDFIN

This transcript constitutes the minutes
from the Public Hearing held on October 11, 2005.

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

11:50 a.m.

CHAIRPERSON GRIFFIS: And let's call to order the October 11, 2005 morning public hearing of the Board of Zoning Adjustment of the District of Columbia.

I'm going to go very quickly because if you're not familiar with who we are by now, you'll get there soon enough. But the important aspect, of course, is we're here to hear special exceptions and variances.

The order of procedure for those will be as follows: We will hear from the applicant, their presentation, any witnesses or any evidence that they're going to provide for the Board. We will then go to any government reports attending to the application; Office of Planning, Department of Transportation, etcetera. We then hear from the Advisory Neighborhood Commission within which the property is located. Then we will go to persons or parties in support of applications and then we will move on to persons or parties in opposition to the application.

Lastly, we give the applicant an opportunity to bring rebuttal witnesses or just to

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1 provide conclusion and summaries for the Board.

2 I'm going to go through this very quickly
3 because everyone has been patient getting through our
4 FMBZA matters this morning. So, let me just say that,
5 of course, the record will be closed at the conclusion
6 of the hearing today. That's important to understand
7 only because what you need to do is make sure that
8 you're providing all the information that you want the
9 Board to deliberate on today. If the Board feels that
10 we don't have all the information that we require, we
11 will be very specific as to what information should be
12 put into the record and when that should be put into
13 the record.

14 Of course, the Sunshine Act does require
15 us to do all our proceedings in the open and before
16 the public. We do utilize an Executive Session for
17 purposes of reviewing a record and also deliberating
18 on a case. But even with that in the executive
19 session it is only and solely on the record that is
20 created before us today. And all of that is in
21 accordance with our rules and regulations and also the
22 Sunshine Act.

23 Let me ask if there are any preliminary
24 matters that anyone has today regarding the cases
25 before us this morning. Preliminary matters are those

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1 which relate to whether a case will or should proceed
2 today, requests for postponements, withdrawals,
3 whether proper and adequate notice was provided; these
4 are elements of primarily matters.

5 If you have a preliminary matter for the
6 Board's attention, I'd ask that you come forward and
7 have a seat at the table at this point.

8 Also, and it's excellent to be reminded of
9 visually, witness cards should be filled out prior to
10 coming forward to speak to the Board. Two witness
11 cards. You put your name and address on them. Then
12 they go to the recorder. And you can have a seat at
13 the table then and provide testimony.

14 Of course, this is not our normal hearing
15 room. It is under renovation. We expect it will be
16 absolutely spectacular for the public's use shortly.
17 Who knows when. However, with that we're going to
18 make due and be very mindful of the short time that we
19 have today to proceed with the rest of the cases.

20 If there are no preliminary matters for
21 today's cases, then I would ask that everyone that is
22 going to provide testimony or is thinking about
23 providing testimony if you would please stand and give
24 your attention to Ms. Bailey with the Office of
25 Zoning. She's going to swear you in. Any and all

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1 cases, we'll get everyone sworn in right now.

2 (Whereupon, Witnesses were sworn.)

3 CHAIRPERSON GRIFFIS: Thank you all very
4 much. And thank you, Ms. Bailey, and a very good
5 morning to you again, Ms. Bailey. And when you are
6 ready, why don't we call the first case for the
7 morning session?

8 MS. BAILEY: Mr. Chairman, the first case
9 is not listed on the agenda, but it is scheduled on
10 the docket for today. And that is application 17354
11 of Steven Hopkins. And it's pursuant to 11 DCMR
12 3103.2 for a variance from the use provisions under
13 subsection 330.5 or in the alternative a variance from
14 the minimum lot area requirements under subsection
15 401.3 and a variance from the open court with
16 requirements under section 406 to allow a third floor
17 addition to a conversion of an existing road dwelling
18 into a three unit apartment house. The property is
19 located at 1201 Harvard Street, N.W. The square is
20 2853 and the lot is 139 that the property is zoned out
21 for.

22 CHAIRPERSON GRIFFIS: Excellent. Ready to
23 move ahead?

24 MR. CUMMINGS: I believe so. Yes, sir.

25 CHAIRPERSON GRIFFIS: Good.

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1 This, of course, is a continuation of a
2 case and we set this for today. There's some
3 clarification. Mr. Hopkins, you can introduce
4 yourself for the record and I will note this for
5 everybody, that when you come forward you just need to
6 do this once, but you will need to state your name and
7 address for the record.

8 And we do have Exhibit 30 that was
9 submitted in, which is a changing of the application.
10 And I'll turn it over to you.

11 MR. CUMMINGS: Thank you, Mr. Griffis.

12 For the record, I'm James Cummings, C-U-M-
13 M-I-N-G-S. I practice architecture at 2103 O Street,
14 N.W., Washington, D.C. 20037. I am an architect.

15 And Mr. Hopkins was delayed arriving this
16 morning. But since the application has been amended,
17 it seems that it's fairly -- it at least seems to us
18 a fairly straightforward matter. And if the Board
19 agrees, then I am empowered to represent him in the
20 second matter.

21 So he has withdrawn his application for
22 the use variance and is now, it is my understanding,
23 requesting a special exception for the open court
24 requirement. And by presentation, it's fairly
25 straightforward. The building is in its original

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1 state. When it was built, it has been renovated a
2 couple of times since then, but at the moment it still
3 has the same boundary of its original construction.
4 There may have been a kitchen addition that was built
5 subsequent to its original construction, but it hasn't
6 been modified significantly on the exterior for quite
7 a long time.

8 We have a situation where the existing
9 building already does not comply with the open court
10 requirements. And Mr. Hopkins' application is that he
11 would be allowed to extend the third floor attic
12 through the back of the building using the same
13 footprint that exists on site currently. The very
14 large rear yard would remain unchanged, except that he
15 would, of course, need an egress method from the upper
16 floors since the current porch only reaches the first
17 floor of the house.

18 There was a porch on the back of the
19 building. It has been removed. There are even doors
20 on the back of the existing house. There should be
21 photographs in your submission that include
22 photographs of the back of the house where the real
23 purpose of this particular exception is to relieve the
24 pressure that modifications in the house might have on
25 the neighboring properties.

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1 The block of houses which, I believe is in
2 the number of eight, they're the standard alternating
3 left/right, left/right L additions to a main block so
4 that they don't -- the courtyards, in fact, share an
5 open space. The existing courtyard on his property
6 is, if I remember correctly, 4 feet -- well, that's
7 it's most limited dimension other than a chimney. And
8 in combination with his neighbor's house there is an
9 effective 8 foot courtyard. And that's just the nature
10 of the existing condition.

11 For him to occupy the building in a way
12 that is allowed to him by right and would be most
13 amenable to him, he would be allowed to make this
14 third floor addition on the party line. But in the
15 interest of preserving the daylight, ventilation and
16 convenience of his neighbor he would prefer not to do
17 that.

18 This also would apply to an area of the
19 building behind -- well, in this case the existing
20 dining room where this narrow open court, given the
21 current side yard setback requirements make it
22 impossible for him to use the third floor otherwise.
23 So he's kind of backed into this situation where he
24 either needs to build to the property line, which is
25 allowed in this zoning district or ask for this

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1 special exception so that he occupy the same footprint
2 and preserve as much of that open court as it
3 currently there. If he were required to use the
4 existing side yard setback, though, the third floor
5 wouldn't be able to be developed.

6 He asked us to submit the drawings that
7 are called Z-05 and Z-06 to show a way that he could
8 develop his property into a unit in which he would
9 live and then a unit that he would rent. He is a
10 federal employee and it is plan that he would reside
11 here until his retirement in several years. And this
12 is his home. He's not a developer, for example. He
13 works for the EPA. I don't think he got to mention
14 that last time, but I know that that's a sensitive
15 issue for everyone.

16 CHAIRPERSON GRIFFIS: About working for
17 the EPA?

18 MR. CUMMINGS: Yes, I think so. It's a
19 very dangerous to work.

20 The other question that did come up at
21 last month's hearing was whether or not the use of the
22 third floor as an occupiable space would require
23 increasing the height of the building on the street
24 face. And that is not the case. Not only is it not the
25 case, it wouldn't be our intention.

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1 I mean, we do quite a lot of historic
2 preservation work and we would have no interest in
3 violating that very clean line that exists on the
4 street face of those eight buildings on the block. And
5 it happens that the way the house is developed, and
6 this would actually show on the original submission
7 section drawing, there's a fairly steep flat roof over
8 that roof. And we would reduce the height of the slope
9 so that we could maintain the existing facade and then
10 provide an occupiable floor behind it.

11 It also turns that, frankly, Mr. Hopkins'
12 access to revenue is limited and he couldn't really
13 make this building to everything that would be
14 possible because he would have to conserve his funds.
15 So the idea of doing some over grand third floor with
16 flying ceilings and big skylights and so forth, that's
17 really just beyond his funding anyway.

18 CHAIRPERSON GRIFFIS: What kind of
19 exterior are you going use on the back is proposed?

20 MR. CUMMINGS: Well, I know that the
21 building code will require only a one hour fire
22 rating. It really isn't very sensible to do that
23 because of concern for sound as well as aesthetics.
24 And so we would hope to use masonry. But we really
25 aren't that far along.

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1 CHAIRPERSON GRIFFIS: Okay. Brick?

2 MR. CUMMINGS: The building is now brick.
3 That would be the best thing to do. And before we
4 would use concrete block, we would use stucco. I mean,
5 concrete block would be terrible. I don't happen to
6 have a lot of faith in the wallboard fire rating
7 system. They're too easy to be damaged, frankly.

8 CHAIRPERSON GRIFFIS: So you don't know
9 specifically what it's going to be?

10 MR. CUMMINGS: No. No. But I mean I can
11 only tell you in general. What our general approach
12 to these types of projects is to provide something
13 that you can't defeat the fire rating by installing an
14 electrical outlet. Because 50 years from now or two
15 years from now someone may know or not know that that
16 drywall they're cutting has a fire rated purpose. So
17 we'll avoid that.

18 CHAIRPERSON GRIFFIS: Right. Of course,
19 right kind of assurance do we have in terms of --
20 that's one of the criteria of the 223, of course, is
21 the design review, the materiality and also the
22 lighting. And that's one of the objects that we take
23 into consideration. You've just testified to the fact
24 that there's limited resources or a budget to do this.
25 And yet you've said that it will be masonry because

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1 that's a better maintenance of a fire rating. What
2 kind of assurances do we have to deliberate on this in
3 terms of what the materiality will be or the finish
4 will be?

5 MR. CUMMINGS: Well, one of the advantages
6 we have in building over the existing footprint is
7 that it will allow us to use masonry, where if we had
8 to build it from the party wall, we would be kind of
9 starting to scratch. It would be a lot easier to use
10 steel and work there. We really don't want to do that.
11 So if it's in your purview to limit the material
12 choices, then you should. I mean, that's really your
13 call, I think. It sounds like it's your call.

14 CHAIRPERSON GRIFFIS: Okay. Anything
15 else?

16 VICE CHAIRPERSON MILLER: In general I
17 thought there were two types of variances we were
18 looking at before. One was a use variance and one was
19 an area variance. And the application was amended to
20 remove the use variance. And in your words you made
21 reference to special exception. But I don't know if
22 that inadvertent. But the application is for an area
23 of variances. And I'm wondering if you can address
24 the three prong test that we need to consider to grant
25 the variance.

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1 CHAIRPERSON GRIFFIS: Actually, I thought
2 he was actually amending the application to come under
3 223.

4 VICE CHAIRPERSON MILLER: Oh, is that
5 right?

6 CHAIRPERSON GRIFFIS: Which means he's
7 certifying the fact that that the lot occupies the two
8 area variance of a nonconforming court and a
9 nonconforming lot width. Lot width of course is
10 covered under G23 as long as we have our lot
11 occupancy, which is appropriate. Is that --

12 MR. CUMMINGS: Yes, that's my
13 understanding

14 VICE CHAIRPERSON MILLER: Okay.

15 MR. CUMMINGS: That we needed the area
16 variance because we were asking for three units in a
17 lot that has less than 900 square feet per unit.

18 CHAIRPERSON GRIFFIS: And Ms. Miller is
19 exactly right to bring up the question and
20 clarification. What is the existing lot occupancy on
21 the site?

22 MR. CUMMINGS: The certificate of
23 occupancy currently allows for a group home.

24 CHAIRPERSON GRIFFIS: -- lot occupancy.

25 MR. CUMMINGS: Oh, it's well below the

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1 allowable.

2 CHAIRPERSON GRIFFIS: Right. I seem to
3 remember that.

4 MR. CUMMINGS: I think it's 41 percent and
5 this lot is 60. Yes, 41 percent existing, 60 percent
6 is permitted.

7 CHAIRPERSON GRIFFIS: And the proposed
8 addition, as you have announced it several times
9 today, does not change the percentage of lot
10 occupancy?

11 MR. CUMMINGS: That's correct.

12 CHAIRPERSON GRIFFIS: Because they're omni
13 existing structure?

14 MR. CUMMINGS: Yes.

15 CHAIRPERSON GRIFFIS: However, it does
16 impact the court area that's created?

17 MR. CUMMINGS: Absolutely.

18 CHAIRPERSON GRIFFIS: Okay.

19 MR. CUMMINGS: There should be letters in
20 the records also from the two adjacent numbers,
21 particularly the one who would be affected most by
22 this, and they both are in support of exception for
23 the court width. The width on the court is listed as
24 a recommendation by the Zoning staff because there is
25 this little chimney on the back of the building that

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1 reduces it below even four feet. And they wanted to
2 make sure that we wouldn't back ourselves into a
3 situation where the chimney would have to be removed
4 just because we got an exception for four feet.

5 CHAIRPERSON GRIFFIS: Well, okay. It
6 seems to me the regulations allow chimneys to be
7 projections in open areas.

8 MR. CUMMINGS: We didn't discuss that with
9 your staff. We just accepted the recommendation.

10 CHAIRPERSON GRIFFIS: Okay. Follow ups,
11 questions?

12 VICE CHAIRPERSON MILLER: Okay. Then
13 again then I'm not clear that the special exception
14 test has been addressed. Do you believe that it has?
15 I just looked at your letter or the letter that was
16 submitted in the record and it's just a one paragraph
17 letter. It doesn't really address the standards.

18 MR. CUMMINGS: Well, I actually wasn't
19 prepared to present today. As I mentioned, Mr.
20 Hopkins is delayed arriving. And if you could review
21 for me what that might be, it might be that I can
22 answer it because I'm familiar --

23 CHAIRPERSON GRIFFIS: Is he coming?

24 MR. CUMMINGS: He is on his way as far as
25 I know..

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1 CHAIRPERSON GRIFFIS: He is? Okay. I
2 should have clarified that from the beginning. Why
3 don't we give you a couple of moments to wait for him.
4 And as he shows up, we can put you back on the
5 schedule. In the meantime, we can move ahead with the
6 other cases that are here and ready to roll

7 MR. CUMMINGS: Okay. It might be possible
8 I could answer that.

9 CHAIRPERSON GRIFFIS: Well, I'll tell you
10 what, we're going to get through the cases that are
11 here. And if he isn't here, we're going to lay it out
12 for you.

13 MR. CUMMINGS: Okay. Great.

14 CHAIRPERSON GRIFFIS: And we'll take our
15 time to get through it.

16 MR. CUMMINGS: Appreciate your patience.

17 CHAIRPERSON GRIFFIS: That being said,
18 we'll just temporarily put this -- Ms. Bailey. And if
19 you wouldn't mind, let's call the next case.

20 MS. BAILEY: The next case is application
21 17364 application of CIH/VMS Restorations LLC, and
22 it's pursuant to 11 DCMR § 3104.1 for a special
23 exception to allow the construction of five single-
24 family row dwellings and two single-family semi-
25 detached dwellings under section 353, and pursuant to

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1 11 DCMR § 3103.2 for a variance to allow one parking
2 space in the front yard of each dwelling under
3 subsection 2116.2. The property is located in the R-
4 5-A District at the premises of 2300 block of Skyland
5 Terrace, S.E. (Square 574, Lot 852).

6 CHAIRPERSON GRIFFIS: Mr. Parsons is going
7 to be joining us a moment, but we're going to move
8 ahead and we will catch him up.

9 So who is going to begin?

10 MS. BALDWIN: Good afternoon. It is
11 afternoon. My name is Stephanie Baldwin. I'm from
12 Greenstein, Delorme and Luchs. With me today is Pat
13 Brown from Greenstein. And representing the applicant
14 is Mr. Kevin O'Malley with CIH/VMS Restorations.

15 We're here today to seek approval for the
16 development of 7 townhomes within an R-5-A zoned
17 district. A variance is required for each of the
18 townhomes to locate a parking space in the front of
19 each home.

20 The property is currently owned by the
21 District. It's being developed under the Home Again
22 Initiative, the program to build homes on vacant or
23 abandoned property.

24 The applicant has met with the Office of
25 Planning and the ANC. There's no disagreement or

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1 opposition to the application. The applicant has also
2 met with the Department of Health regarding storm
3 water management issues.

4 We can begin with a description of the
5 project, which Mr. O'Malley could take you through if
6 that's how you'd like to proceed.

7 CHAIRPERSON GRIFFIS: I think that would
8 be fine. Actually, it's fairly brief. I think it's
9 fairly clear what we're looking at. However, I would
10 like to ask the highlight of the dimensions of the
11 side yards on the end units if you can provide those.
12 Also, you did bring up the fact of the storm water
13 management and, of course, it's also Office of
14 Planning. There is detail of how that's going to be
15 dealt with that, but we could touch on that also in
16 terms of discussion.

17 And then lastly if you wouldn't mind,
18 you'll just say in your testimony as it is in the
19 record if that is correct that you are subdividing
20 each of these. And so we're looking at each of these
21 as individual lots. Of course, if we weren't, then we
22 would go to a whole different section of the
23 regulations. Other than that, I don't think we need
24 to do much else.

25 Go ahead.

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1 MR. O'MALLEY: My name is Kevin O'Malley.
2 I'm Executive Vice President of CIH/VMS Restorations
3 LLC. Our business address is 9316 Piney Branch Road,
4 number 106, Silver Spring, Maryland 20903.

5 I'll address, if I can recall your
6 questions specifically, side yards as to each of the
7 end units are set at 8 feet, the minimum side yard
8 requirement.

9 As to the -- if you're repeat, Mr.
10 Griffis, your other concerns?

11 CHAIRPERSON GRIFFIS: There was a question
12 that arose about the storm water management and how
13 that was going to be dealt with?

14 MR. O'MALLEY: Regarding storm water
15 management, the storm water management that is
16 effected by the development of the site is basically
17 the impervious surfaces; the roofs and the driveways.
18 The homes face Skyland Terrace and the roof slopes to
19 the front and the rear from the midpoint of the home.
20 Storm water that is captured on the roofs, transferred
21 into gutters and downspouts and then they're fed into
22 dry wells on each of the lots in the rear. So it'll be
23 captured within that particular lot.

24 With regarding the front of the homes,
25 water that first falls to the roof into the gutters,

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1 downspouts will be transferred into dry wells that are
2 set in front of the homes as well. So we're setting
3 a drywell in the front and in the rear of each home.
4 I think the Office of Planning's concern was more to
5 the rear and the development to the rear because the
6 slopes do fall dramatically away to the rear of the
7 home.

8 Our engineers have had conversations in
9 the design process with the Department of Health, and
10 while of course we haven't submitted a building permit
11 application for their specific approval, they have
12 indicated that this is a system that they would
13 approve of when our building permit application goes
14 through the process.

15 CHAIRPERSON GRIFFIS: Just for
16 clarification on that point, when you put in for a
17 permit this will be reviewed by the appropriate agency
18 of DCRA for storm water management on each of these
19 sites?

20 MR. O'MALLEY: That's correct.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. O'MALLEY: And then regarding, these
23 will be fee simple lots so there will be seven newly
24 created lots plus a parcel which represents the area
25 that is part of this current lot that kind of wraps

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1 around behind existing homes towards the part, which
2 is intended to remain unincumbered by the development
3 which will remain in its natural vegetative state. It
4 will be owned by the homeowners association with
5 requirements to maintain it. But in fact I think
6 those requirements will be such that it's to be left
7 alone unless of course there is some requirement, some
8 external requirement that requires some form of
9 maintenance.

10 CHAIRPERSON GRIFFIS: And that's the very
11 large portion that abuts the U.S. Reservation 518?

12 MR. O'MALLEY: Correct.

13 CHAIRPERSON GRIFFIS: Okay. Good.
14 Excellent. Anything else?

15 MR. O'MALLEY: Unless you have further
16 questions in the interest of moving things along.

17 CHAIRPERSON GRIFFIS: Any questions?

18 COMMISSIONER PARSONS: I noticed in the
19 list provided in the record at Exhibit 7 where you
20 indicate where you've mailed notice of this
21 undertaking, and no notice was made to the National
22 Park Service. That may not be your fault, but did you
23 have any discussions with the National Park Service
24 about this?

25 MR. O'MALLEY: We have had no discussions

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1 with the National Park Service, no.

2 COMMISSIONER PARSONS: Were these dry
3 wells your own initiative or did the District suggest
4 this?

5 MR. O'MALLEY: When we undertake a
6 development effort we ask our engineers to vet their
7 concepts with the appropriate agencies in the District
8 so that we know as we go down the pike we have a
9 reasonable chance of having the District of Columbia
10 approve our designs. And this was discussions between
11 the District of Columbia's office, Ms. -- I'm sorry
12 the name. Between the District of Columbia
13 government, Mr. Abi Moussey at the Department of
14 Health and our engineers. And this is the design that
15 they recommend. In fact, there were various options
16 including routing all of the water to the rear and to
17 drywells in the rear or alternatively to larger
18 drywells in the front. But we had a concern with
19 respect to in the front of the homes, the utilities
20 that are coming through to the front that it would
21 restrict the size of the drywells. So we opted to do
22 drywells in both the rear and the front.

23 COMMISSIONER PARSONS: Now, the out parcel
24 or I don't know -- what do you call this larger parcel
25 that goes down to the park?

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1 MS. BALDWIN: Out parcel.

2 COMMISSIONER PARSONS: Very good.

3 MS. BALDWIN: So we all know what we're
4 talking about.

5 COMMISSIONER PARSONS: Now you say this is
6 going to be managed by the homeowners association. Is
7 that association made up of just these 7 homes?

8 MR. O'MALLEY: It will be made up of just
9 the 7 homes. It has not yet been created.

10 COMMISSIONER PARSONS: That seems a little
11 burdensome on people of this income and means, don't
12 you think?

13 MR. O'MALLEY: Well, we're in hopes that
14 it will be maintained in its natural vegetative state
15 so that maintenance will not be required. The only
16 alternative is to deed it to the District -- well,
17 it's already owned by the District of Columbia
18 government in the process to allow Parks and Rec or
19 somebody like that to retain title in the District of
20 Columbia government. But that has not been proffered
21 by the District of Columbia government. The District
22 of Columbia government currently owns this entire
23 parcel.

24 COMMISSIONER PARSONS: You're a contract
25 purchaser, is that how this works?

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1 MR. O'MALLEY: Yes.

2 COMMISSIONER PARSONS: And for whatever
3 reason they've decided to burden you as part of this
4 purchase price. And I'm trying to find a way that we
5 could take that burden off of these houses. I just
6 don't think it's the right thing to do. It's just not
7 fair. Whatever liability insurance, kids playing in
8 the woods; it just doesn't make sense to me.

9 How this Board could effectuate that or
10 help that, I would recommend it be transferred to the
11 National Park Service who is the abutter. But, Mr.
12 Chairman, I'm straying off the reservation here, as it
13 were. But I just don't think it's right to have seven
14 homeowners -- how many acres is this? This remanent
15 parcel?

16 MR. O'MALLEY: It's a little over an acre.
17 I don't recall the --

18 COMMISSIONER PARSONS: It's not even an
19 acre. It looks bigger than that.

20 CHAIRPERSON GRIFFIS: It does.

21 COMMISSIONER PARSONS: Anyway -- well, I
22 don't know what to do. I just think it's the wrong
23 thing to do to burden --

24 CHAIRPERSON GRIFFIS: Well, it's a good
25 point and perhaps we prematurely let all the federal

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1 agencies leave this morning and we could kept them
2 here for the negotiation and how we do land transfer.
3 However, I don't where we would begin to create an
4 alternative of ownership or maintenance outside of
5 what the applicant can bring forward, unless others
6 have an opinion. We certainly can keep it under
7 advisement, unless you have additional comments.

8 MR. O'MALLEY: No. I'd be more pleased to
9 pursue the National Park Service to see if they would
10 like to take ownership to it, as well as the District
11 of Columbia and continue to engage them as to whether
12 or not there is an alternative to the homeowners
13 association actually taking title to that property.

14 I mean, I share your concern. I didn't
15 feel that we had options when you establish
16 communities that have homeowners associations and have
17 common areas, it's not uncommon that there are areas
18 that are owned within the homeowners association that
19 are not developed and that the homeowners association
20 is required to maintain liability insurance for it.
21 And that's part of the budget for the homeowners
22 association and part of their fees.

23 I couldn't quote you an insurance cost in
24 today's climate, but it's typically not significant
25 given the unlikelihood that there would be activity in

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1 this particular area. Because it will become
2 sandwiched immediately behind these homes as well as
3 behind the apartment homes that were built and then to
4 the park. And I'm just not sure that there's that
5 much pedestrian traffic, if any, that goes through
6 that area.

7 And the slopes are so steep. As you can
8 see, it goes from 210 feet at elevation to 140 feet at
9 elevation in one corner. It's a significant drop. So
10 in pursuing whether or not there were development
11 opportunities to the rear, you really couldn't even
12 walk down those slopes without a mule.

13 CHAIRPERSON GRIFFIS: Well, the other
14 adjacent existing townhouses, are they an association,
15 a homeowners association or they just a fee simple
16 configuration?

17 MR. O'MALLEY: I do not know. Those homes
18 were built several years ago, maybe 10 by now, by
19 Habitat for Humanity. So I'm not familiar with
20 whether or not there is a homeowners association with
21 respect to them.

22 In looking at the site plans in developing
23 our plan it appears that they have no common area.
24 That they're fee simple with respect to everything
25 between the rights of way and the property line. So it

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1 might not be required in their case.

2 COMMISSIONER PARSONS: I wanted to talk a
3 little bit about Lots 1 and 2 and how much disturbance
4 of the existing grade is going to occur in the rear of
5 those lots. Not for the buildings themselves, but is
6 there any need to be grading back against the property
7 line?

8 MR. O'MALLEY: Not down to the property
9 line. We will be building a retaining wall off the
10 rear of the home, but not as far down -- not nearly
11 far down to the property line. I don't know if I have
12 that.

13 I don't have that depicted on our site
14 plan that I brought with me here today. But it is
15 matter of as opposed to rear yards of approximately 40
16 feet. The retaining wall will probably be about 15
17 feet off the rear of the homes. And it's more designed
18 to stabilize the rear for construction purposes as
19 well as to give a modest flat area to the homeowners
20 themselves.

21 COMMISSIONER PARSONS: And the dry level
22 well is within that retaining --

23 MR. O'MALLEY: Yes, it will.

24 COMMISSIONER PARSONS: All right. Thank
25 you.

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1 VICE CHAIRPERSON MILLER: I just want to
2 make a comment and kind of a question. With respect
3 to the point that Mr. Parsons made regarding the
4 maintenance costs of the out parcel, I'm just
5 wondering if we could keep the record open for the
6 applicant to explore other possibility, including DPR,
7 National Park Service or a conservation group. I know
8 DPR is coming this afternoon.

9 CHAIRPERSON GRIFFIS: It seems to me --
10 admittedly I'm not an expert on this, but we've seen
11 several applications where actually the adjoining
12 neighbors take over control of Park Service or Parks
13 and Rec land. It seems to me this is moving in the
14 opposite direction of a trend. But I don't disagree.

15 I mean, I think exploring opportunities or
16 maybe just providing additional testimony. I mean, we
17 have some aerial photographs here of a projection of
18 what it will take to maintain.

19 VICE CHAIRPERSON MILLER: Right. The costs
20 also. That might be a simple question as to what the
21 liability insurance would be. It might not be that
22 much. Just kind of unknown. And it might be that
23 you're right, that maybe DPR would say it's not a good
24 idea. It usually works better the other way.

25 CHAIRPERSON GRIFFIS: I'm not sure how --

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1 Park Service seems to make sense because it abuts some
2 of their own land.

3 VICE CHAIRPERSON MILLER: Yes.

4 CHAIRPERSON GRIFFIS: Parks and Rec.
5 Frankly, you'd have to trespass to get on it. Okay.

6 Any other questions, clarifications? Very
7 well.

8 We don't want to stop you from telling us
9 anything, but is there anything else you'd like to
10 provide the Board?

11 MR. O'MALLEY: No, sir.

12 CHAIRPERSON GRIFFIS: Let's move ahead
13 then. Other witnesses?

14 MS. BALDWIN: No. No other witnesses.

15 CHAIRPERSON GRIFFIS: Okay. Oh, good.
16 Well, very well. Let me just make sure, of course,
17 the Board is focusing also on the parking, which is
18 the variance which is out in front. And I think it's
19 fairly self-explanatory, which is why you haven't had
20 any questions from the Board at this point. But we
21 will obviously pick that up.

22 Okay. If there's nothing else for the
23 presentations, then let's move ahead to government
24 reports and hear from the Office of Planning, who is
25 present here today regarding the application.

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1 MR. PARKER: Good morning, Mr. Chairman,
2 members of the Board. I'm Travis Parker with the
3 Office of Planning.

4 As stated in the report, we feel that the
5 applicants have met the test for the special exception
6 and the variance. Unless there's a request for my
7 testimony, I'll stand on the record as submitted.

8 CHAIRPERSON GRIFFIS: Excellent. Thank
9 you very much, Mr. Parker.

10 Is there a cross examination of the
11 applicant? Any questions of Office of Planning?

12 MS. BALDWIN: No.

13 CHAIRPERSON GRIFFIS: Does the Board have
14 any questions of the Office of Planning?

15 Very well. I note that the graphics are
16 very helpful, as always. And the analysis is
17 excellent in terms of the variance. It's
18 straightforward in terms of Office of Planning's
19 analysis as well as the applicant's. And that is in
20 my own words, but there's a fabric that's already been
21 created. There's clearly no ability to access parking
22 from the rear as many traditional Washington lots are
23 carved out providing alley access. I don't see any --
24 the particular uniqueness is a given as this has been
25 subdivided and the practical difficulty I think is

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1 also clear in terms of alternative and access.

2 I don't see any other aspects to bring to
3 the immediate attention of the Board from the Office
4 of Planning unless others have something. Yes?

5 VICE CHAIRPERSON MILLER: I just wanted to
6 ask for clarification on page 4 of your report. You
7 say that maintenance and landscaping will need to be
8 addressed by the applicant and the issue of storm
9 water management. Is there more that you think should
10 be presented in this hearing?

11 MR. PARKER: I think the issue of storm
12 water management has been addressed satisfactorily.
13 And the issue of maintenance, as Mr. Parsons brings up
14 a good point, that was a concern of ours whether it's
15 left to the homeowners association or transferred to
16 the Park Service, we wouldn't have objection to either
17 option.

18 VICE CHAIRPERSON MILLER: And anything
19 else on the landscaping?

20 MR. PARKER: No. We're satisfied with the
21 landscaping plan that was submitted.

22 CHAIRPERSON GRIFFIS: Anything else?
23 Excellent. Thank you very much.

24 MR. PARKER: Thank you.

25 CHAIRPERSON GRIFFIS: Move ahead then to

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1 our government agency report. We do have a letter in
2 the record, Exhibit 26, from GACD. Is the
3 representative from GACD present today? Not noting
4 any, we'll take note of that. They were recommending
5 approval of that. It was timely filed.

6 It's not in our records showing in an
7 historic district.

8 Let's go then to the ANC report. ANC 8-b.
9 Is the ANC present? Not noting any presence of any
10 ANC members. And I actually don't have any record of
11 a submission from the ANC, unless the applicant is
12 aware of any submissions from the ANC. Are you aware
13 of any submissions.

14 MS. BOUBERT: The ANC were unable to vote
15 on it. So they were unable to submit anything.

16 CHAIRPERSON GRIFFIS: So we don't have
17 that in. Very well. Then that goes through our
18 government reports very quickly.

19 ANC recommendations -- and for persons
20 present to provide testimony on 17364. Are there
21 persons? Okay.

22 MS. BOUBERT: -- and this property was one
23 of our first 43 properties awarded to or sold to
24 prequalified developers. This one property was bundle
25 5, which was I think a total of ten properties. This

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1 was the only lot that required new construction.

2 We, you know, immediately we jumped to the
3 substantive matters early on. But we also support this
4 project, of course, and believe that the variances
5 that's requested today is within reasonable means and
6 is compatible with existing context and
7 characteristics of this neighborhood. Abutting
8 adjacent structures and neighboring properties do have
9 parking in front as well.

10 And in the matter regarding the out
11 parcels we have noted that and we'll work with the
12 developer to see what options we may have. Looking at
13 costs that would incur or what kind of costs would be
14 incurred by the association and alternate means as
15 well. So, again, I'm here to offer our support.

16 And thank you for your time.

17 CHAIRPERSON GRIFFIS: Thank you very much.
18 We appreciate you coming down to support the
19 application.

20 Are there questions from the Board?

21 VICE CHAIRPERSON MILLER: Is there a
22 landscaping record in the record?

23 MS. BALDWIN: There's a description of
24 what the landscaping is. There's not actually a plan.

25 VICE CHAIRPERSON MILLER: Do you know

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1 where it is.

2 MS. BALDWIN: Oh, it's in the supplemental
3 submission at the top of page 3.

4 CHAIRPERSON GRIFFIS: Anything else? Very
5 well.

6 It's been brought to my attention of
7 course I've skipped over quickly the Department of
8 Transportation's report that was filed, Exhibit 21 in
9 the record, which was stating no objection to the
10 application.

11 Okay. If there's nothing further from
12 government agency reports or the ANC, let's move ahead
13 to persons to provide testimony on 17364. Are there
14 any persons present to provide testimony either in
15 support or in opposition to the application? Not
16 noting any others here present, we'll turn it over to
17 the applicant for any concluding remarks for today.

18 MS. BALDWIN: I think that the record
19 through the testimony and what we've submitted pretty
20 much covers it.

21 I would like to point out that the issue
22 of the out parcel is not within the jurisdiction of
23 the BZA, but we will take into consideration the
24 suggestions you've made and we will do what's best,
25 whether it be maintained by the homeowners association

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1 or if we can be transferred to the National Park
2 Service or what have you, whatever works best will be
3 done. And it's been under consideration for a while as
4 to how that would be handled. But thank you for the
5 comment on that.

6 We would like to request a possible bench
7 decision and a summary order, if possible.

8 CHAIRPERSON GRIFFIS: I guess the quick
9 question is why would you believe that it wouldn't be
10 in our jurisdiction to review the disposition of the
11 parcel that is attendant to the property?

12 MR. BROWN: The Board has been very
13 sensitive more so recently in years about the
14 conditions they impose on orders. And I think that
15 goes beyond the Board's jurisdiction to, in essence,
16 make a condition that somebody give away or sell or
17 dispose of a part of their property.

18 Quite frankly, it may make sense to
19 transfer it to the Park Service, but making that a
20 condition of a project, particularly a project like
21 this which is affordable housing and it is inherently
22 restrictive. I think places a burden on the
23 applicant, the city and goes beyond the Board's
24 authority.

25 I mean, I've been here plenty of times and

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1 the Board has never suggested that any of my clients
2 give away or dispose of property as part of
3 conditions. How they use the property, perhaps, but
4 in this case to actually dispose of the property seems
5 inappropriate on its face.

6 CHAIRPERSON GRIFFIS: I don't disagree
7 with some of the comments. First, initially, I think
8 the Board does pay particular attention to its
9 jurisdiction and strictly adheres to it. However,
10 we're here for special exception review under 353,
11 which incorporates in some aspects 410, which does
12 seem to tend to give us the opportunity to review
13 entirely the disposition of the development here.

14 You know, 353 is an interesting section.
15 It kind of just says just refer to everybody and get
16 their comments from all the agencies back. So I guess
17 we could ask specifically of those agencies how they
18 feel.

19 But anyway, I guess the point being very
20 direct, I'm not so persuaded that we don't have the
21 jurisdiction, whether we have the capability or the
22 expertise or decide to take that jurisdiction to hear
23 a remedy, I'm not clear on. Do we actually have the
24 jurisdiction to condition the disposition of one
25 agency or entity taking over possession of that? I

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1 agree with you there. I don't believe that I've seen
2 yet that we could in fact mandate or condition that
3 the Park Service would take this.

4 But, Mr. Parsons, you were going to
5 include?

6 COMMISSIONER PARSONS: Well, I was going
7 to agree with Mr. Brown. But I also say that we do
8 have the jurisdiction to say that this site will not
9 be clear-cut or the timber sold off. I mean, it will
10 remain as is. And we can put that in that order. You
11 wouldn't disagree with that?

12 MR. BROWN: Absolutely not. And those are
13 the typical conditions that you see a BZA order
14 whether a special exception or variance. It does raise
15 -- and that kind of condition is acceptable and I
16 think in line with what the applicant is thinking
17 about to leave in its natural state.

18 The whole question of disposing of the
19 property raises a question that, you know, goes beyond
20 this applicant's ability to comply. What happens if
21 everybody got in the room and the Park Service, for
22 whatever reason, didn't want the property and the city
23 didn't want their property? You're almost setting up
24 a potentially impossible condition.

25 COMMISSIONER PARSONS: Right.

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1 MR. BROWN: Even though it's well taken
2 advice.

3 CHAIRPERSON GRIFFIS: I don't disagree.
4 But it's interesting and actually having the Home
5 Again representative here, I'm wondering as part of
6 the requirements of affordability and the disposition
7 of this, was this not a factor or does this become a
8 factor in terms of your review and calculations of how
9 you maintain the affordability with the burden of
10 maintaining such a large piece of land?

11 MS. BOUBERT: That's why we have to look
12 at what the cost, what kind of cost are we talking
13 about this association incurring on a monthly or a
14 quarterly basis. I don't think that's been factored
15 into the sales price or the homeowners association
16 fees yet. And so looking at what that, what the final
17 cost would be, we want to of course probably look into
18 other options at that point after first finding out
19 what those fees would be. And if Parks would like,
20 you know, we would want to propose that they acquire
21 the property through whatever means or whatever
22 options may be available at that time we may opt to
23 take that step or not. But there's still some
24 unknowns here and until we know for certain, first of
25 all, the square footage. I'm not sure exactly how much

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1 square footing of the out parcel would be needing
2 maintenance.

3 And so I think there are still variables
4 here that need to be considered prior to determining
5 which direction to take.

6 In disposition of this property, of
7 course, 48,000 square feet lot and we knew up front
8 that there was a portion that was unbuildable. But
9 typically as part of our disposition process
10 developers take full responsibility of development of
11 the lots and work with the associations to establish
12 maintenance. So this would be a new case for us to
13 find some remedy for. But we are open to options.
14 and if your Board has any suggestions, we could
15 definitely take a look at those as well and are open
16 to them.

17 CHAIRPERSON GRIFFIS: How big is the
18 trust?

19 MS. BOUBERT: Excuse me?

20 CHAIRPERSON GRIFFIS: How big a trust do
21 you have to pay for the maintenance of the land?

22 MS. BOUBERT: Yes. That's a good
23 question, you know.

24 CHAIRPERSON GRIFFIS: Yes. Well, one
25 thing I think we can somewhat move on with this, but

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1 I think it's an important aspect. But I would hate to
2 see this actually tipping into the point where it
3 isn't actually a viable project to develop because of
4 the burden on the developer but having also to
5 underwrite the sale of the property. So I guess what
6 I'm looking at is where is the balance. And I think
7 Mr. Parsons brought up an excellent point of can it go
8 to somewhere else for maintenance. But, you know, I
9 would look to you not to hear suggestions from us, but
10 rather to actually to bring some suggestions in the
11 negotiations with the developer.

12 But let me let others have a --

13 VICE CHAIRPERSON MILLER: Well, I just
14 wanted to respond to Mr. Brown and say that I don't
15 think the Board is anywhere near the point of making
16 a condition that that property be sold. My concern
17 basically arose out of a statement in your pre-hearing
18 statement. Page 3 it just says "The HOA will be
19 funded with adequate reserves for the maintenance of
20 such features." And so, you know, my question was
21 well how's it going to be funded? I mean, what does
22 that mean. And the fact that you raised the issue of
23 maintenance of the common areas seemed to signal that
24 it was somewhat relevant to your application and
25 therefore within our jurisdiction to understand that

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1 and be satisfied that that would be the case.

2 I don't know if you have a response to
3 that, but that's all, really.

4 MR. BROWN: I understand. And I'm not
5 going to disagree.

6 I think it would be in the interest of
7 certainly the developer and the program, which is
8 larger than just the applicant that -- and there may
9 be conditions the Board does want to impose. A bench
10 decision summary order would be appropriate to allow
11 this project to move forward. Particularly in these
12 times, time is money that a tight program like this
13 can ill afford. So I think that there's enough
14 understanding as to the issue that Mr. Parsons had
15 raised and the concerns to allow the project to go
16 forward with people working on the solution to the
17 land issue would be, I think, appropriate in this
18 circumstance. That would be my request on behalf of
19 Ms. Baldwin.

20 CHAIRPERSON GRIFFIS: All right. Very
21 well. I think we ought to utilize the time that we do
22 have here today. And unless there's any other further
23 questions or any closing remarks by the applicant, I
24 think we should proceed today. I think the record is
25 full. I have not gleaned that we can -- even if

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1 keeping the record open get additional information
2 that may be appropriate for us to continue our
3 deliberation. So, that being said, let's move ahead.

4 Ms. Miller?

5 VICE CHAIRPERSON MILLER: Mr. Brown, I
6 just want to ask you one more question before we go
7 into deliberation. You know that sentence, the HOA
8 that will be funded with adequate reserves for the
9 maintenance of such features, did you have an entity
10 in mind or an idea as to how that would be funded?

11 MR. O'MALLEY: The establishment of
12 homeowners associations is very common. And they are
13 funded by means of homeowners association dues that
14 are collected from the homeowners themselves and
15 maintained in accounts held by the homeowners
16 association used for purposes of the homeowners
17 association as provided for in the bylaws. That
18 entity is yet to be created, of course. But that is
19 how the necessary funds would be provided for.

20 MR. BROWN: And the homeowners association
21 is set up as a not for profit corporation for which
22 all the owners are automatically members and they pay
23 dues and they certain benefits and responsibilities.

24 To put it in context, I mean, I don't want
25 to go any further. While the concern is legitimate

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1 and this is not an insubstantial size piece of land,
2 the plan is not -- the maintenance is to basically let
3 it be as is. So other than in perhaps some incidental
4 costs, we're not anticipating large costs. As Mr.
5 O'Malley said if the trees fall, they're going to fall
6 downhill towards somebody else's property. But it's
7 a natural state so that again, putting it in that
8 context. There's no lawn to be mowed, there are no
9 bushes to be cut, to paths to be manicured.

10 CHAIRPERSON GRIFFIS: Very well. Anything
11 further? Okay.

12 Actually this is do our deliberation our
13 motions should we move this forward. And I would
14 move approval of application 17364, that is for the
15 special exception to allow the construction of the 5
16 single-family row dwellings and 2 of the single-family
17 semi-detached dwellings under section 353. This
18 application also involves the area variance, the
19 variance from one parking space in the front yard
20 under 2116.2, and this is at the premises of 2300
21 block of Skyland Terrace, S.E.

22 BOARD MEMBER ETHERLY: Second, Mr. Chair.

23 CHAIRPERSON GRIFFIS: Thank you, Mr.
24 Etherly.

25 I'm going to just talk to the motion and

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1 then open it up for comments and conditions if there
2 are any. But let me take on, first of all, the
3 variance. We talked limited about that. I have to
4 say for the record that I don't find this type of
5 development very appealing in terms of an urban design
6 aspect, but I find it less appealing of unfinished
7 design. And so I see this as actually being a good
8 situation in terms of completing the rest of the
9 development on the square.

10 That being said, of course, the uniqueness
11 to this somewhat landlocked lot, the site grading
12 which is much higher at the rear than from the front,
13 obviously does not allow as it's subdivided by also as
14 the grade would not allow for rear entrance or access.
15 That uniqueness, not to mention it's longer history,
16 which is in the record lends itself to the practical
17 difficulty of providing a parking space. One could
18 say just don't provide a parking space and then we'd
19 be looking at a different type of relief or this is
20 the location of that parking under 2116.2. It makes
21 some sense and it's very sensible in this in terms of
22 replicating what else is on the block in the provision
23 of the parking in the front. Clearly it's difficult to
24 do it otherwise.

25 And whether it would impair the intent and

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1 integrity of the zone plan or map, I think what we're
2 looking at is really a question of context. And this
3 is fitting contextually within the rest of the
4 development and in the area. Therefore, I would not
5 feel that it would dramatically impair the intent of
6 the zone plan in this specific area.

7 Going to the special exception, I'm going
8 to open it up. Of course, 353 is very specific of
9 where this application is to be referred. And we have
10 all the referring agencies providing their
11 recommendations, all very supportive. We've pulled up
12 one specific issue. So let me open it up to the Board
13 for comments. Mr. Parsons, did you want to begin?

14 COMMISSIONER PARSONS: Yes, I did. I have
15 a condition drafted here that I would like to share,
16 and I'll read it twice because it's not short.

17 So as to protect the abutting park land
18 from potential adverse impacts, the out parcel is to
19 remain in its natural state which shall preclude the
20 sale of timber, cutting of trees, altering of the
21 topography or construction of any kind.

22 So as to protect the abutting park land
23 from potential adverse impacts, the out parcel is to
24 remain in its natural state which shall preclude the
25 sale of timber, cutting of trees, altering of the

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1 topography or construction of any kind.

2 CHAIRPERSON GRIFFIS: Comments? Is it
3 redundant to say cutting of trees and selling of
4 timber? I mean if there was a tree that needed to be
5 cut down for whatever reason there might be, would it
6 be precluded?

7 COMMISSIONER PARSONS: I have another
8 sentence to cover that. But the cutting of trees
9 should be limited to dead or diseased. In some cases
10 we say dead, diseased or downed. In other words, a
11 storm comes through and --

12 CHAIRPERSON GRIFFIS: So the intent of the
13 condition, of course, is that you're obviously not
14 going to clear it for profit or reuse of any sort, but
15 rather anything that was done on it would be just for
16 the maintenance and safety of the surrounding area and
17 of the site itself?

18 COMMISSIONER PARSONS: Correct.

19 CHAIRPERSON GRIFFIS: Okay. Questions?

20 VICE CHAIRPERSON MILLER: Would you just
21 read it one more time? I don't think I have a problem
22 with it.

23 COMMISSIONER PARSONS: I'm just feeding --
24 So as to protect the abutting park land from potential
25 adverse impacts, the out parcel is to remain in its

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1 natural state which shall preclude the sale of timber,
2 cutting of trees other than dead, diseased or downed
3 -- no. Cutting of -- yes, yes. We'll worry about
4 grammar later. Altering of the topography or
5 construction of any kind. And the construction of
6 any kind what I'm going to is playground equipment
7 that, you know, tree houses, things of that nature
8 that may be volunteered by seven people to the
9 detriment of others.

10 VICE CHAIRPERSON MILLER: Do we have any
11 evidence in the record that goes to that?

12 COMMISSIONER PARSONS: How people encroach
13 on property like this?

14 VICE CHAIRPERSON MILLER: No, protecting
15 the abutting national park land?

16 COMMISSIONER PARSONS: Has this Board?

17 VICE CHAIRPERSON MILLER: In this case.
18 You're saying the purpose of this is to protect
19 abutting park land, right?

20 COMMISSIONER PARSONS: That's the way I
21 would express it, yes.

22 VICE CHAIRPERSON MILLER: Right. I'm just
23 asking you did that come up in any of the documents in
24 our case?

25 COMMISSIONER PARSONS: In this case? No,

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1 they didn't talk about the out parcel at all other
2 than it would be -- didn't notify the Park Service,
3 didn't engage the Park Service.

4 VICE CHAIRPERSON MILLER: So this
5 basically stemming from your expertise or common
6 knowledge that that would be a good idea in this case?

7 COMMISSIONER PARSONS: Well, I think this
8 Board has to look to the impact on adjacent
9 properties.

10 VICE CHAIRPERSON MILLER: Right.

11 COMMISSIONER PARSONS: And that's why I
12 preface it with the park. I mean if that's troubling
13 you, we can take it out.

14 VICE CHAIRPERSON MILLER: No. I just
15 wanted to know where we were getting it from. And I
16 think that that's a good point and we then have --
17 they weren't notified, so they didn't have an
18 opportunity to participate?

19 COMMISSIONER PARSONS: Right.

20 VICE CHAIRPERSON MILLER: Okay.

21 CHAIRPERSON GRIFFIS: Did you want to add
22 in that statement also to minimize the cost of the
23 homeowners association, is that what you also --

24 VICE CHAIRPERSON MILLER: I think that's
25 a good idea as well.

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1 CHAIRPERSON GRIFFIS: I'm not sure we
2 would actually put that in the condition, but it's
3 certainly part of the intent of the condition,
4 correct?

5 VICE CHAIRPERSON MILLER: Correct. And we
6 did hear a lot of testimony on that. Yes.

7 CHAIRPERSON GRIFFIS: Okay. I don't think
8 we need to actually state it within the condition. I
9 think the condition will go directly to what the
10 condition is. But I think it's important to put that
11 on the record. Of course, it's two balancing pieces
12 here, but I think they're both appropriately stated.

13 Okay. We have a motion before us. It has
14 been conditioned and seconded. And let me other have
15 opportunity to question the condition. I think what
16 we're taking is the quick writing. We will obviously
17 get the exact writing done, but the intent make sure
18 the Board is aware of the intent of the condition. If
19 there's any questions, Mr. Parsons is here to answer
20 that. Nothing. Very well, anything else on the
21 motion at this time?

22 BOARD MEMBER ETHERLY: I have no objection
23 to the condition as it's been offered. And I think
24 with respect to the other aspects of this trust
25 exception, I think the record has been adequately

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1 filled out and I'm just very hopeful that we will
2 continue to see the Home Again Initiative coming
3 before us with further opportunities like this.

4 Thank you, Mr. Chair.

5 CHAIRPERSON GRIFFIS: We're moving ahead
6 with matter of right development.

7 BOARD MEMBER ETHERLY: Absolutely.

8 CHAIRPERSON GRIFFIS: Either way.

9 MS. BOUBERT: That is what we encourage.

10 CHAIRPERSON GRIFFIS: Yes. Indeed. Very
11 well. Okay. Any other questions, comments,
12 clarifications?

13 Very well. If there is nothing else, we
14 have a motion before us. Signify you're in favor by
15 saying aye.

16 BOARD MEMBERS: Aye.

17 CHAIRPERSON GRIFFIS: And opposed?
18 Abstaining. Very well. Let's record the vote. And,
19 Ms. Bailey, I don't see any reason why we wouldn't
20 issue a summary order on the this unless any Board
21 member has any objection to doing that, we can issue
22 a summary order with a condition.

23 MS. BAILEY: Thank you, sir.

24 The vote is recorded as five zero zero to
25 approve the application. Mr. Etherly made the motion,

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1 Mr. Griffis seconded it. Mr. Griffis made the motion,
2 Mr. Etherly second. Mr. Mann, Ms. Miller and Mr.
3 Parsons are in agreement. And it's approved with a
4 summary order and the condition, Mr. Chairman.

5 CHAIRPERSON GRIFFIS: Thank you very much.

6 Thank you all very much. Yes?

7 MR. BROWN: If I could impose upon the
8 Chair, I have the opportunity to come back this
9 afternoon for another case. And --

10 CHAIRPERSON GRIFFIS: Me, too.

11 MR. BROWN: And get some sense of how you
12 are approaching the scheduling.

13 CHAIRPERSON GRIFFIS: Yes. We have one
14 more case, we have two more cases for this morning and
15 then we'll take a break. I don't anticipate the next
16 two will take much more than 30 minutes, which would
17 put as 1:30 and we resume the afternoon at 2:30.

18 Good. With that then, let's move ahead to
19 17372. Ms. Bailey?

20 MS. BAILEY: And that is the application
21 of Leatrice C. Lane, and it's pursuant to 11 DCMR §
22 3104.1 for a special exception to allow a two story
23 rear addition to an existing single-family detached
24 dwelling under section 223, not meeting the side yard
25 requirements (section 405), the property is located in

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1 the R-4 District at 708 Shepherd Road, N.W. (Square
2 3154, Lot 817).

3 CHAIRPERSON GRIFFIS: Hi. How are you this
4 afternoon? Thank you for your patience with us.

5 If you wouldn't mind just stating your
6 name and address for the record? I'm moving ahead
7 very quickly here.

8 MR. NUNLEY: Good afternoon, Mr. Chairman,
9 members of the Board, staff of the Office of Zoning.

10 We're here today to seek the special
11 exception under section 223 for the two story addition
12 onto the rear of this house at 708 Shepherd Place,
13 N.W.

14 Now to put it straight forward we've
15 submitted our statement to the Board. We have the
16 visited the ANC. Even though they haven't responded,
17 they did give us a vote of approval on March 24, 2005
18 before we had submitted the application. We went back
19 to them to get a letter based on the minutes of that
20 meeting. They did not respond. So we have no letter.

21 We've gotten a positive response from the
22 Office of Planning.

23 The project is supported financially and
24 otherwise by the Department of Housing and Community
25 Development.

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1 It's been a long morning. I don't want to
2 take a whole lot of time. I don't think we need to. So
3 I'm going to ask if the Board has any questions of us.

4 CHAIRPERSON GRIFFIS: Excellent. I think
5 that that's appropriate just to enter the record with
6 that summation. I think the record is absolutely
7 full.

8 Let's take Board questions. Are there any
9 questions from the Board? And this application is, of
10 course, a 223 application on Shepherd Road.

11 Not hearing any questions from the Board,
12 Mr. Nunley, I think we're going to move ahead.

13 Let's go to the Office of Planning's
14 report and while they're getting ready at the table,
15 I will note that their oblique photos really helped in
16 terms of the analysis of what was actually submitted
17 in writing, and that is one might say the eclectic
18 nature of the development around it, but also the acid
19 test, of course, to attest to the 223 is the impact of
20 the neighbors. And this shows very clearly with the
21 written submission that the adjacent two story
22 apartment building which has no fenestration and its
23 relationship to that.

24 That was enough waste of time to get you
25 ready, and we'll hear from you now.

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1 MR. MOORE: Good afternoon, Mr. Chair and
2 members of the Board. I'm John Moore, Office of
3 Planning and I will stand on the record.

4 CHAIRPERSON GRIFFIS: Thank you. Thank you
5 very much, Mr. Moore.

6 So I'll pick up in your report in terms of
7 making the test, of course. And I would just finish
8 by saying I thought it was an excellent analysis, and
9 that is going through whether it would impair or
10 intrude on the design, the scale or the character of
11 course, it was an issue that it would not as this is
12 a rear addition. And, again, the character might even
13 be difficult to really pinpoint what it is. It's a
14 very interesting area.

15 Let me ask if the Board members have any
16 questions of the Office of Planning.

17 Does the applicant have any cross
18 examination of the Office of Planning?

19 MR. NUNLEY: No.

20 CHAIRPERSON GRIFFIS: Very well. Let's
21 move ahead then. This is not located in terms of our
22 record in an historic district.

23 You've already indicated, Mr. Nunley, that
24 the ANC reviewed this but did not submit a report into
25 the record. Obviously, we won't be able to grant it

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1 great weight.

2 Nothing that, I don't have any other
3 indication of agencies or associations that have
4 submitted into the record unless you're aware of any
5 other, Mr. Nunley?

6 MR. NUNLEY: None that I'm aware of.

7 CHAIRPERSON GRIFFIS: Very well. Then
8 we'll ask if anyone is here present, persons to
9 provide testimony in 17372 in support or in opposition
10 to the application could come forward now. Not noting
11 anyone present to provide additional testimony, Mr.
12 Nunley, let's turn it over to you for any closing
13 remarks that you might have.

14 MR. NUNLEY: Well, my only closing remark
15 is that I believe that we have met our burden of
16 proof. So I would ask for a bench decision and a
17 summary order.

18 CHAIRPERSON GRIFFIS: Thank you very much,
19 Mr. Nunley. We do appreciate it. And we do
20 appreciate the conciseness of the application. It had
21 all of the information that was needed to be provided
22 into it for our full understanding, which allows us to
23 move ahead fairly quickly ahead on this.

24 And I would move approval of application
25 17372 for the special exception to allow a two story

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1 addition at 708 Shepherd Road, N.W., and ask for a
2 second.

3 VICE CHAIRPERSON MILLER: Second.

4 BOARD MEMBER ETHERLY: Second. I defer to
5 Ms. Miller.

6 CHAIRPERSON GRIFFIS: Thank you very much,
7 Ms. Miller.

8 Again, I don't think I need to go into
9 great detail. I think the applicant's submission as
10 well as the OP's submission adequately lay out the
11 test of how it is not -- there are additional pieces
12 of information in the case that went well beyond the
13 special exception test, which the Board is aware of.
14 And I think it's appropriate to move ahead at this
15 time.

16 I'll open it up to others for any
17 additional comments. If there's no further comments,
18 then we do have a motion before us. I'd ask for all
19 those in favor to signify by saying aye.

20 BOARD MEMBERS: Aye.

21 CHAIRPERSON GRIFFIS: And opposed?
22 Abstaining? Very well.

23 Then, Ms. Bailey, if you wouldn't mind
24 recording the vote.

25 MS. BAILEY: Mr. Chairman, the vote is

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1 five zero zero to approve the application. Mr. Griffis
2 made the motion. Ms. Miller second. Mr. Mann, Mr.
3 Parsons and Mr. Etherly are in agreement.

4 CHAIRPERSON GRIFFIS: Very well. I don't
5 see any reason not to waive our rules granting a
6 summary order on this unless any Board members have
7 any objection to that. Not noting any objection, Ms.
8 Bailey, why don't we issue a summary order.

9 MS. BAILEY: Thank you, sir.

10 CHAIRPERSON GRIFFIS: Good. Thank you very
11 much.

12 Thank you all. Appreciate your patience
13 with us and getting through this morning. Good luck
14 with that.

15 Okay. Let's move ahead then to the last
16 case. Yes.

17 MS. BAILEY: 17371 of Nathan and Sharon
18 Bovellet, pursuant to 11 DCMR § 3104.1 for a special
19 exception to allow a two car garage addition -- oh I'm
20 sorry.

21 CHAIRPERSON GRIFFIS: 17354.

22 MS. BAILEY: I'm sorry. I'm in the
23 afternoon.

24 CHAIRPERSON GRIFFIS: You're absolutely
25 right. We should be calling that right now. However--

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1 MS. BAILEY: All right.

2 Mr. Chairman, the application Stephen
3 Hopkins had been discussed previously and this is a
4 continuation of that discussion.

5 CHAIRPERSON GRIFFIS: Excellent. Thank
6 you very much.

7 Mr. Hopkins, welcome this afternoon.
8 Where we had left off, your architect had indicated
9 that the application had changed to remove the higher
10 burden of the variances to ask the Board for a review
11 of the special exception under 223. What we were
12 beginning to embark on is just the test for 223 and
13 specific questions, and it was indicated that we might
14 wait for you. Now that you are here, did you want to
15 make an opening statement regarding how you meet the
16 test of the section 223?

17 MR. HOPKINS: Certainly. It is requested
18 that the requirement for a ten foot wide open court be
19 reduced to the size of the existing open court for a
20 third floor rear addition to preserve the existing
21 light, ventilation and egress of the property in the
22 adjacent house.

23 The existing lot size and the zoning
24 regulations permit significant area to be added to the
25 house. However, the existing lot width at 16 and 2/3rd

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1 feet will not result in a useful addition to be made
2 with an adjacent open court of ten feet. Whether the
3 property is developed as two apartments or three, and
4 we've withdrawn the application to develop it into
5 three, so if the property is developed into two units,
6 the third floor addition -- and this is extension of
7 an existing third floor. I have a third floor. The
8 third floor does not have adequate ceiling height.
9 And that will result in a useful space on the third
10 floor.

11 And I have spoke with my neighbor about
12 it. And we share this court. Both of have windows onto
13 this court. And four foot between us. And he in
14 support of the way I want to go about doing this where
15 I continue the existing lines of the house.

16 CHAIRPERSON GRIFFIS: Okay. If I
17 understand you correctly, you're indicating that a
18 matter of right in terms of the masking and other
19 aspects of the regulations and other aspects of the
20 regulations that allows you to do this addition. But
21 based on the existing condition, one that being the
22 minimum lot width dimension which you don't meet, and
23 then this existing court; with this addition that's
24 essentially matter of right if you take that away. You
25 are put here for relief only because of this court

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1 setback, but you could pull that addition all the way
2 over to the property line which would then just be
3 much more of a negative impact to your neighbor
4 because it would bring a wall closer to their --

5 MR. HOPKINS: And one of the things that
6 I had asked him specifically was that if he had any
7 plans for his house and if he was intending to do
8 something to his house, that it might be advantageous
9 for both of us to raise that common wall up and do his
10 change now. And he said he had no -- he was intending
11 -- he bought his house cheap and he was intending to
12 keep it that way.

13 CHAIRPERSON GRIFFIS: Okay. So in terms of
14 223.2 with the addition of any substantial adverse
15 effects in the use and enjoyment, air, privacy to the
16 adjacent neighbors, the letter's in the record from
17 the adjacent neighbor. And your testimony today is
18 that it would not, is that correct?

19 MR. HOPKINS: That's correct.

20 CHAIRPERSON GRIFFIS: Okay. And in terms
21 of the addition together with the original building as
22 you've termed street alley your architect started to
23 talk a little bit about that. Your testimony is what?
24 Does this stay within the visual character of the area
25 or does it --

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1 MR. HOPKINS: I think it absolutely stays
2 within the visual character of the area. The rowhouse
3 immediately adjacent to mine on the east side is about
4 4 foot lower than my house. So there would be a
5 greater roof distance, I would have more exposed wall
6 with that house than exists now. And on the other
7 side, there's a row of units that are similar to mine.
8 They're a little bit higher than mine, and then you go
9 down a couple of houses and the houses are built all
10 the way up and all the way back with three stories
11 now.

12 The houses, all of the houses on the other
13 side of the street that third story has been built up
14 and in a lot of cases built up partially back or all
15 the way back to the alley. Those houses on the other
16 side tend to occupy their entire lot. On my side, most
17 of us have parking.

18 CHAIRPERSON GRIFFIS: And in terms of the
19 material for the addition, what are you proposing at
20 this point?

21 MR. HOPKINS: Our original thinking was
22 that we would -- my preference would be to use brick
23 and maintain the facade, maintain -- you know, a
24 similar looking brick. And if it's economically
25 feasible to do that, I will continue -- and that's

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1 what I would do.

2 CHAIRPERSON GRIFFIS: Okay. You don't know
3 right now what that pricing might in?

4 MR. HOPKINS: Well, taking out the third
5 unit alters the economics significantly, too. I have
6 to go back. I have to go back and do a lot of
7 figuring. And if there's anyway possible, I will do
8 brick.

9 My architect is very familiar with the
10 look and feel issues and the aesthetic issues. And
11 it's my intent to live in the neighborhood a long
12 time. And I want the neighborhood look good. And doing
13 projects and doing them right makes the neighborhood
14 look good, and that increases everybody's property
15 value, and that helps everybody.

16 CHAIRPERSON GRIFFIS: Okay. Well,
17 anything else? Questions, clarifications?

18 MR. HOPKINS: I believe you have in the
19 file letters of support from the ANC and letters from
20 both of my neighbors on both sides. We have also for
21 the record held a neighborhood meeting to talk bout
22 this property and this house and what I'm doing with
23 it and two other houses in the neighborhood that are
24 both the same as mine but vacant.

25 VICE CHAIRPERSON MILLER: Could you

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1 clarify for me how what you're planning to do now
2 physically is different from what you put forward in
3 the previous application?

4 MR. HOPKINS: It isn't different at all.
5 The only difference between this and the previous
6 application is that we would be dividing it into two
7 units. A basement, first level and second, third
8 level.

9 VICE CHAIRPERSON MILLER: So physically
10 the same plan?

11 MR. HOPKINS: Physically it's the same
12 plan. Well, the room arrangements are totally
13 different because it's not -- I would have two 700
14 square foot units and one 1200 square foot unit. Now
15 I'll have two 1200 square foot units.

16 VICE CHAIRPERSON MILLER: Okay. My
17 confusion is -- maybe Office of Planning can also help
18 address this sort of with the Chairman.

19 But Office of Planning or Zoning said that
20 you need to the floor use variance and an area
21 variance. And I understand why you don't need the use
22 variance anymore. But I'm not sure why we're at a 223
23 instead of a variance if nothing's changed physically.

24 MR. HOPKINS: I don't know the areas of
25 the regulations. I can tell you this, that the plans

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1 that we submitted before to divide it into three
2 units, where we get hung up as I understand was on two
3 issues. One was that though I can park four cars in
4 the back of my house, it's 16.6 feet wide, I could not
5 possibly have two legal parking spaces.

6 The other was that the code requires 900
7 square feet of lot size per unit. And I have 2300 that
8 if you divide it by three, it comes about 80 square
9 feet short of sufficient for three units, but it's
10 perfectly adequate two.

11 Other units have been approved in my
12 neighborhood at 600 square feet per lot, so I had a
13 hard time swallowing that that little bit, that the 80
14 square feet of difference per unit is a significant
15 difference, but let it go at that.

16 There is no -- the floor plans, the
17 construction, everything is virtually identical with
18 the exception that we would have fewer kitchens and
19 fewer bathrooms.

20 VICE CHAIRPERSON MILLER: Well, maybe
21 Office of Planning can address it. Because in their
22 recommendation for the previous application, one was
23 denial of the use variance and the other was approval
24 of variance relief from lot area and court width
25 requirements. And also the memorandum from the Zoning

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1 Administrator refers it for a variance pursuant to
2 section 406.1 for required minimum open court width.

3 MR. HOPKINS: Well, the open court width
4 required in the code is ten feet. The existing open
5 court is four feet. So as I understand it, I can go
6 up with a common wall or I have to go back ten feet.

7 VICE CHAIRPERSON MILLER: Okay.

8 MR. HOPKINS: If I go back ten feet, I
9 don't have useable space left.

10 VICE CHAIRPERSON MILLER: So you already
11 had a nonconforming court, right?

12 MR. HOPKINS: Yes.

13 VICE CHAIRPERSON MILLER: Okay.

14 MR. HOPKINS: Yes, ma'am.

15 VICE CHAIRPERSON MILLER: So it's really
16 a continuation of that nonconforming?

17 MR. HOPKINS: Yes, ma'am. Or what I'm
18 trying to do is raise up the existing building
19 structure on the existing building lines and not
20 change it either way.

21 VICE CHAIRPERSON MILLER: Okay. Thank
22 you.

23 MR. HOPKINS: I'm sorry. I should have
24 been more clear with that.

25 CHAIRPERSON GRIFFIS: Anything else?

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1 Well, the issue before that you bring up why was it a
2 variance and now it's a special exception, I think it
3 was in fact just --

4 MR. HOPKINS: If we had just gone in with
5 the one, they may have gone in for the special
6 exception with the three units, and we're in the
7 territory anyway.

8 CHAIRPERSON GRIFFIS: I think it's a
9 difference of opinions. I think that it's correct
10 that it forced to 223. One of the tipping points of
11 the 233, of course, is the lot occupancy. We've
12 already been through the testimony. And I believe in
13 terms of the lot occupancy you had indicated that it
14 was well below 40 percent, is that correct?

15 MR. CUMMINGS: Forty-one percent. Yes,
16 sir.

17 CHAIRPERSON GRIFFIS: Forty-one percent,
18 which is well within the allowing under 223. Also
19 401, 44, 45, 46 and 2001.3 are covered under the 223
20 special exception. And this meets all the criteriums
21 in terms of review for the special exception.

22 Okay. Well, because this is going back--

23 MR. HOPKINS: Well, the Office of Planning
24 is here. Karen is here.

25 CHAIRPERSON GRIFFIS: I know. I know.

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1 The other aspect of the parking that was
2 brought up, of course, it's a matter of right. What
3 is required, of course, is in development is a single
4 parking space, and you are providing a single parking
5 space. Anything above that, of course, is how you
6 program the space is always one is required.
7 Therefore, no relief from parking as I look at this
8 would be required.

9 Anything else from the applicant at this
10 time? Anything else? Excellent.

11 We're going to go through very quickly
12 because we've had everyone already give their
13 presentations for the entire application. So really
14 what this is is just a re-review and availability for
15 comment on the new iteration of this application. So
16 we will ask Office of Planning if they have
17 additional, they come forward now to provide
18 additional information in terms of their analysis.

19 I think you'll find sitting right there,
20 gentlemen, you don't need to move. We can save some
21 time and move ahead with this.

22 MS. THOMAS: Good afternoon, Mr. Chairman,
23 members of the Board. I'm Karen Thomas with the Office
24 of Planning.

25 In light of the applicant's changes to

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1 requests relief under section 223 I would also state
2 for the record that we recognize that the applicant
3 could seek this relief under 223 since it would be an
4 addition to an existing residential structure. We
5 could have stated that simply in our report instead
6 going through the variance relief, which was the more
7 stricter test under 223.

8 We would stand on the record with respect
9 to our recommendation as stated in our report in
10 support of the applicant's renovation of his home to
11 accommodate a flat.

12 We believe it meets the test of relief
13 from the special exception requirements in that the
14 addition would maintain the light and air to adjacent
15 properties. Since the proposed addition does not
16 effect the width of the court. If the court is
17 eliminated altogether, light and air to the abutting
18 residence would be severely minimized.

19 And we also know that the neighbors are in
20 support of the addition as presented.

21 We know that a new addition does not
22 extend beyond the existing structure and two bay
23 windows and a smaller window are proposed, which make
24 the second floor windows. No other windows are
25 proposed beyond that and we do not believe the

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1 addition would cause privacy issues.

2 The addition will not be visible from the
3 street frontage, only from the alley system at the
4 rear, and it is not out of character with other rear
5 addition in the square.

6 Since the building's footprint is not
7 expanded, the lot occupancy does not increase which
8 would remain at 41 percent, which is well within the
9 zone requirements and within the limits required by
10 additions under section 223. That would be at 70
11 percent.

12 The existing court will be maintained and
13 this addition would provide adequate space between the
14 addition and neighboring property and the property
15 addition would not change the residential use of the
16 structure.

17 We believe it would be in harmony with the
18 intent and purpose of zone regulations and map an we
19 would support the applicant's request for addition
20 under 223 as recommended.

21 Thank you.

22 CHAIRPERSON GRIFFIS: Thank you very much.
23 Are there any questions from the Board.

24 In your review did you have concerns in
25 terms of lighting or screening or anything else that

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1 came up in the application?

2 MS. THOMAS: No. No.

3 CHAIRPERSON GRIFFIS: Very well. Is the
4 applicant have any cross examination of the Office of
5 Planning?

6 MR. HOPKINS: No.

7 CHAIRPERSON GRIFFIS: Any questions?
8 Okay. Very well. Thank you very much.

9 Let's move ahead then. Of course, this is
10 not located in -- I should probably read the right
11 piece of paper for the application. Not located in the
12 historic district.

13 We do have, as indicated previously, ANC
14 1A that has submitted a report to this.

15 We had, actually, a request for parties
16 which were denied, but were submitted in as written
17 testimony in support of the application of the
18 adjacent neighbors.

19 Let me ask at this time then is anyone
20 present to provide testimony with regards to 21734
21 today, persons present in support of the application
22 or in opposition to the application? There are no
23 persons present to provide additional testimony to
24 this application.

25 So let's turn it over to you, Mr. Hopkins,

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1 for any closing remarks that you might have?

2 MR. HOPKINS: I have no closing remarks.
3 I appreciate consideration.

4 CHAIRPERSON GRIFFIS: Very well. Board
5 members? I don't see any reason why we wouldn't take
6 the time at this point to deliberate and decide on
7 this. And I would move approval of application 17354
8 for the special exception to allow the addition to an
9 existing structure at the third floor level at
10 premises 1201 Harvard Street, N.W., and would ask for
11 a second.

12 BOARD MEMBER ETHERLY: Second, Mr. Chair.

13 CHAIRPERSON GRIFFIS: Thank you very much,
14 Mr. Etherly.

15 I think the test has been clearly --
16 although the application has taken on an awful of
17 iterations. I think we've come down to a very
18 decidedly appropriate point for this in looking at the
19 continuation of the addition on the third level, which
20 would not impact the front and it certainly wouldn't
21 visually impair the character. It wouldn't visually
22 impair the character or the massing of the existing
23 structure, allows for what 223 is put forth as
24 additions to nonconforming structures. And I'll leave
25 it at that and let it open to others for additional

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1 comments or deliberation.

2 Mr. Etherly? Very well.

3 We have a motion before us. It's been
4 seconded and I'm going to ask for all those in favor
5 signify by saying aye.

6 BOARD MEMBERS: Aye.

7 CHAIRPERSON GRIFFIS: And opposed.
8 Abstaining? Very well, Ms. Bailey?

9 MS. BAILEY: Mr. Chairman, the Board has
10 approved the application to allow a flat at the
11 premises under section 223 of the regulations. The
12 vote is four zero one. Mr. Griffis made the motion.
13 Mr. Etherly second. Mr. Mann, Ms. Miller are in
14 agreement and Mr Hildebrand is not present who
15 originally sat on this case.

16 CHAIRPERSON GRIFFIS: Thank you very much.

17 I don't see any reason why we wouldn't
18 waive our rules and regulations and issue a summary
19 order on this unless there are those that object to it
20 on the Board. Not noting any objection, Ms. Bailey,
21 why don't we do that.

22 MS. BAILEY: Thank you, Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Excellent. Is there
24 any other business for the Board this morning?

25 MS. BAILEY: Not for the morning sessions,

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1 Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Indeed. An awful
3 lot accomplished this morning. It is, of course,
4 1:20. We will adjourn the morning session. And let
5 me just make a quick clarification of those that are
6 here present for our afternoon case. We're going to
7 take a lunch recess and we will return at 2:15 and
8 call and go directly into the afternoon.

9 (Whereupon, at 1:19 p.m. the public
10 hearing was adjourned, to reconvene this same day at
11 2:37 p.m.)

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

2:37 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the 11th of October, 2005 afternoon public hearing of the Board of Zoning Adjustment of the District of Columbia

My name is Geof Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller and also Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann. Representing the Zoning Commission is Mr. Parsons.

Copies of today's hearing agenda are probably around here somewhere. If you don't have one, certainly we can get you one to make sure you know where you are on the afternoon schedule.

We are recording all proceedings before the Board of Zoning Adjustment. Of course, the court reporter sitting to my left is making the official transcript. Accordingly, we would ask several things of you.

First of all, when coming forward to speak to the Board I'm going to have you just state your name and address for the record. Try and put a microphone close to you so that we can get your on the record and recorded.

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1 Also, I would ask that you fill out two
2 witness cards. Witness cards are available at the
3 table where you'll provide testimony. Those two cards
4 can go to the court reporter prior to coming forward.
5 That, obviously, will make sure that your name is
6 correctly spelled and put on the transcript for all
7 the important testimony you will provide us today.

8 This afternoon we're going to hear
9 special exceptions and variances. Special exceptions
10 and variances follow the following chronology. First,
11 we hear from the applicant the presentation of the
12 case, any specific facts and of course the test for
13 variance and/or special exception.

14 Second, we will hear from any of the
15 government agencies that have provided analysis in the
16 record. The Office of Planning is with us. We often
17 have Department of Transportation in applications.

18 Third, we will hear the report from the
19 Advisory Neighborhood Commission within which the
20 property is located.

21 Fourth, we will call for persons to
22 provide testimony that in support of the application.

23 Fifth would be persons in opposition to an
24 application. They will be provided three minutes to
25 provide testimony.

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1 And then last, we will return to the
2 applicant. You will be able to present rebuttal
3 testimony if required or you will give any sort of
4 closing remarks or summations as you will see fit.

5 Cross examination of witnesses is
6 permitted by the applicant and parties in a case. And
7 as I say, the ANC within which the property is located
8 is automatically a party in the case. And we will
9 establish any other parties that will be in a case.

10 The record will be closed at the
11 conclusion of the hearing today except for any
12 material that we specifically request. If we think
13 that there is additional material that we will need in
14 order to make a proper judicial decision, then we will
15 ask you for that. And we will give you a time and the
16 exact date to submit that into the record.

17 The Sunshine Act requires that this Board
18 conduct its hearings in the open and before the
19 public. We do enter into Executive Session, both
20 during or after a hearing on a case. And that is in
21 accordance with the Sunshine Act. It also in
22 accordance with our rules and regulations and
23 procedure. And it is used and utilized for reviewing
24 and deliberating on cases.

25 Let me ask everyone if they would, just

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1 turn off their cell phone and noise making devices at
2 this time so we don't have any disruption of those
3 giving testimony before us. Certainly wouldn't want
4 to knock anyone of their cadence as they get rolling
5 on these applications. We're going to pick up a lot
6 of great time.

7 We will look to get you all out of here by
8 6:00. If we get close to that point and I don't think
9 we're going to make that, I will obviously update you
10 and check schedules to make sure we can go over, if
11 that is needed.

12 However, at this time I would ask that
13 people that are going to testify or if you're thinking
14 about testifying, if you would stand. You're going to
15 give your attention to Ms. Bailey and she's going to
16 swear you in.

17 (Whereupon, the witnesses were sworn.)

18 CHAIRPERSON GRIFFIS: Thank you all very
19 much. And thank you, Ms. Bailey, and a very good
20 afternoon to you. Ms. Bailey is with the Office of
21 Zoning, as is Mr. Moy, who is sitting behind me. We
22 also have representatives from the Office of General
23 with us today.

24 Of course, many of you who are here, or
25 perhaps some of you do not realize that this is not

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1 our normal hearing room. We are under a major
2 renovation in order to serve the public better and
3 hopefully, we'll be in there sometime this year.
4 However, in the meantime we're going to make do with
5 the great opportunities that we have given us, and
6 move ahead.

7 To that, at this time we will consider any
8 preliminary matters attendant to our afternoon
9 schedule. Preliminary matters are those which relate
10 to whether a case will or should be heard today. If
11 you are not prepared to go forward with a case or if
12 you want to request a postponement or actually
13 withdraw a case or if you think that the proper and
14 adequate notice has not been provided, now is the time
15 to bring that to the attention of the Board. You can do
16 so by coming forward and having a seat at the table.

17 Not noting anyone storm the table, I'll
18 assume that there are no preliminary matters at this
19 time from the audience. And I'll Ms. Bailey if she's
20 aware of any preliminary matters for us.

21 MS. BAILEY: Mr. Chairman and members of
22 the Board, and to everyone, good afternoon. No, sir,
23 the staff does not have any.

24 CHAIRPERSON GRIFFIS: Very well. Then
25 let's move ahead and call the first case in the

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1 afternoon.

2 MS. BAILEY: Application 17371, pursuant
3 to 11 DCMR §3104.1 for a special exception to allow a
4 two car garage addition to an exiting single-family
5 detached dwelling under section 223, not meeting the
6 rear yard requirements (section 404). The property is
7 zoned R-1-B and it's located at 1470 Roxanna Road,
8 N.W. It's located in Square 2768 on Lot 11.

9 MR. NUNLEY: Good afternoon, Chairman,
10 members of the Board and staff. My name is Edgar T.
11 Nunley, just for the record.

12 I have a case here that I think is very
13 similar to one I had earlier today, in that we're
14 seeking special exception relief. We believe that we
15 have shown that we meet our burden of proof in our
16 statement of the application showing that this project
17 will not have a negative impact on the neighboring
18 house, there is only one.

19 Secondly, we've gotten an approval from
20 the Office of Planning, a favorable report from the
21 Office of Planning.

22 And to his credit Mr. Bovellet was somehow
23 able to get a letter from ANC-4. So we do have that
24 in the case file as well.

25 So at this point I'd like to stand on the

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1 record and just ask the Board if they have any
2 questions.

3 CHAIRPERSON GRIFFIS: Very well, Mr.
4 Nunley.

5 Does the Board have any questions?

6 Mr. Nunley, in your work with the
7 applicant and/or the applicant, are they aware of
8 talking to neighbors or anything else that's come up
9 that would give rise to the fact that you believe that
10 the use of privacy, light or air might be unduly
11 impacted by the adjoining neighbors?

12 MR. BOVELLE: Good afternoon, Mr.
13 Chairman, Board members. Nathan Bovellet, 1470 Roxanna
14 Road.

15 We haven't received any sort of opposition
16 or unfavorable comments from any of our neighbors.

17 CHAIRPERSON GRIFFIS: Very well. Let's
18 move ahead if there are no other questions.

19 Mr. Nunley will rest on the record and
20 we'll take up any other issues that come up. At this
21 point then let's move to the Office of Planning for
22 the presentation of their report.

23 MR. MORDFIN: Good afternoon, Chair and
24 members of the Board. I'm Stephen Mordfin with the
25 Office of Planning.

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1 And the subject application is in
2 conformance with the provisions of section 223 in that
3 a one family detached dwelling is permitted as a
4 matter of right within the R-1-B zone district. Light
5 and air will not be unduly affected as the reduced
6 rear yard faces a 16 foot wide public alley.

7 Use and enjoyment of neighboring
8 properties will not be unduly compromised the garage
9 will be screened from the rear by a combination of
10 mature evergreen trees and a drop in elevation.

11 Photos and architectural drawings were
12 submitted as part of the application, and a proposed
13 lot occupancy of 33 percent is less than the maximum
14 of 50 percent permitted by the section 223.3 for the
15 R-1-B zone district. Therefore, the Office of
16 Planning recommends approval of the application as
17 submitted by the applicant.

18 And that concludes the presentation by the
19 Office of Planning.

20 CHAIRPERSON GRIFFIS: Excellent. Thank
21 you very much. And appreciate your report and the
22 summation that you just provided.

23 Are there any other additional questions
24 of the Office of Planning from the Board? Does the
25 applicant have any cross examination of the Office of

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1 Planning?

2 MR. NUNLEY: No.

3 CHAIRPERSON GRIFFIS: Very well. Let's
4 move ahead then. As indicated for 4A has submitted a
5 letter of support. It is Exhibit 21. We'll take that
6 into account that 4A is represented today, or are they
7 not? No ANC representation for this application this
8 afternoon.

9 I don't have any other attendant
10 government reports or civic or neighborhood
11 associations submitting into the record, unless you're
12 aware of anything else, Mr. Nunley?

13 MR. NUNLEY: No. I'm not aware of any
14 opposition at all.

15 CHAIRPERSON GRIFFIS: Let's move ahead
16 then and ask persons present for application 17371 in
17 support or in opposition you can come forward to
18 provide testimony. Are there any persons present to
19 provide testimony today? Not noting anybody present
20 to provide additional testimony, Mr. Nunley, we'll
21 turn it over to you for any closing remarks you might
22 have.

23 MR. NUNLEY: I have no closing remarks,
24 other than I believe that we met the test and I would
25 ask for a bench decision and a summary order.

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1 CHAIRPERSON GRIFFIS: Very well. Thank
2 you.

3 I neglected to make one oral comment into
4 the record. Of course, Exhibit 20 is the letter of
5 support from Milton Lee. That's in the record on
6 that.

7 And I do appreciate you being patient with
8 us and putting together an excellent application. And
9 as far as the Office of Planning has said, and you
10 have indicated, that all the requirements for
11 submissions have been put into the record. They were
12 fully understandable and graphically representing
13 enough that the Board could easily comprehend what was
14 being proposed here. And I think it's appropriate to
15 move ahead today with a motion for approval of
16 application 17371, which is a special exception under
17 223 which would permit building an addition to a
18 single to a single family detached at 1470 Roxanna
19 Road, N.W., and I would ask for a second.

20 BOARD MEMBER ETHERLY: Second, Mr. Chair.

21 CHAIRPERSON GRIFFIS: Thank you very much,
22 Mr. Etherly.

23 I think it's very clear and Office of
24 Planning has announced, also the applicant's
25 submission and the fact that no rebuttal evidence has

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1 come forward that this would not tend to impair light
2 or air, use or enjoyment of the adjoining neighbor's.
3 It is wholly within character of the adjoining
4 architecture and neighborhood. And, of course, the
5 submissions have been put in in compliance with our
6 regulations, and therefore I will support the motion.

7 I'll open it up to any other further
8 discussion or deliberation on the motion. Very well,
9 if there's nothing further, I'd ask for all those in
10 favor signify by saying aye.

11 BOARD MEMBERS: Aye.

12 CHAIRPERSON GRIFFIS: And opposed?
13 Abstaining? Very well.

14 And I don't see any reason why wouldn't
15 waive our ruling and regulations to issue a summary
16 order on this case.

17 Thank you very much. Enjoy.

18 Ms. Bailey, if you wouldn't mind recording
19 the vote before they leave.

20 MS. BAILEY: Mr. Chairman, the vote is
21 recorded five zero zero to approve the application.
22 Mr. Griffis made the motion. Mr. Etherly second. Mr.
23 Mann, Ms. Miller and Mr. Parsons are in agreement.
24 Summary order, Mr. Chairman, as indicated.

25 CHAIRPERSON GRIFFIS: Thank you very much,

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1 Ms. Bailey.

2 Let's move ahead then to the next case in
3 the afternoon.

4 MS. BAILEY: Application 17386 of the D.C.
5 Department of Parks and Recreation, pursuant to 11
6 DCMR § 3104.1, for special exceptions to allow the
7 percentage of lot occupancy to exceed 20 percent,
8 that's § 43.3, and public recreation and community
9 center to exceed 40,000 square feet, §408.1 and
10 pursuant to 11 DCMR 3103.2 for area variances to allow
11 a height of building to exceed 45 feet, that's §
12 400.14 from the requirement that one parking space be
13 provided for each 2,000 square feet of gross floor
14 area of building, that's §2101.1, and from the
15 requirement that automobile parking spaces be a
16 minimum of 9 feet in width and 19 feet in length.
17 That's §2115.1. And, if necessary in the alternative
18 a use variance to allow office use by the D.C.
19 Department of Park and Recreation on the fourth floor
20 of a public recreation and community center. The
21 property is zoned D/R-5-B and R-5-B. It's located at
22 2809 15th Street, N.W. and 1480 Girard Street, N.W.
23 It is also located in Square 2667 on Lot 74.

24 CHAIRPERSON GRIFFIS: Very well. While
25 they're setting up, let me just take this opportunity

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1 to ask of those present persons that are thinking
2 about providing testimony, if I could see a show of
3 hands of how many people are going to be testifying
4 today. Okay. Good. That'll help us understand how
5 long we will need for this.

6 MR. BLANCHARD: Members of the Board, I beg
7 your indulgence and I apologize for our tardiness this
8 afternoon. We expected, of course, cross town traffic
9 being what it is and the agency Director apparently is
10 not here at the moment, but the Deputy Director is.
11 So I'd like to go forward with our presentation if we
12 could at this time.

13 CHAIRPERSON GRIFFIS: Good.

14 MR. BLANCHARD: Good afternoon. My name
15 is Lyle Blanchard of the firm of Greenstein, Delorme
16 and Luchs. We are here today with a, and "we" being
17 the D.C. Department of Parks and Recreation are here
18 with an application to build a community center at
19 15th and Girard Streets, N.W.

20 This is the site. The site is an existing
21 park, and as you see from our submissions in the
22 record, is a -- well, vacant former RLA property.
23 These lots were combined to form the current property.
24 And the Department is proposing to build a four story
25 community center on what was two apartment buildings

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1 located at the corner of 15th and Girard Streets.

2 This is an unusual site in that, as you
3 can see, it's almost a flag shaped site extending down
4 below Fuller Street and occupying the entire corner of
5 15th and Girard Streets. It was for many years the
6 site of violence in the neighborhood, drug dealing,
7 prostitution and gang activity.

8 With Council Member Jim Graham and others
9 in the community and the Department there were a
10 series of approximately 15 community meetings and
11 several charrettes over the period of several years to
12 come up with a plan for this site.

13 This project, unfortunately, got caught up
14 in the midst of and was designed prior to the Zoning
15 Commission's rulemaking for recreation centers and
16 community centers. The design has been modified as
17 best we can, but we are before you today with two
18 special exceptions, three area variances. And we hope
19 the Board will agree with us that a use variance is
20 not necessary, but we have included it in the
21 alternative to allow what we believe would come under
22 the definition of what can be the variety of uses in
23 a community and recreation center, in that the
24 Department wants to use a portion of the fourth floor
25 as an educational incubator. The definition for

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1 community center and recreational facility includes
2 educational uses. The Department will expound on what
3 those uses are, but essentially this is to be sort of
4 an incubator to serve the immediate Columbia Heights
5 community and try out some new programs that are
6 responsive to the needs of that particular community.
7 And train the trainers and work with the community, in
8 essence.

9 And we believe that that proposed use
10 comes within the ambit of the definition prescribed
11 the Zoning Commission in its rulemaking. So I wanted
12 to make you aware of that.

13 And the ANC has written in support. We had
14 hoped to get a letter of support from Council Member
15 Graham. I don't know if he sent one in or not. But we
16 have certainly talked with his staff about sending one
17 in.

18 We believe the community is in support of
19 this application. As I said, it was a four year
20 planning process.

21 The lot is unique. It has a use as a
22 former park. And we believe those uses should be
23 extended to the proposed center.

24 Demolition of the former apartment
25 buildings and budgetary constraints of the Department

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1 have precluded the Department from excavating below
2 grade to provide additional parking. There just isn't
3 the resources for doing that. If this was a private
4 development, probably they could. But this funded by
5 the District's budget so there are constraints.

6 The practical difficulties here are that
7 we need to maintain as much park land as possible
8 while responding to the indoor recreation needs of the
9 community. We have asked for a 3 percent variance in
10 the lot occupancy. The Department has designed the
11 part in such a way as to maximize the park land and
12 park outdoor recreational uses as much as possible.
13 But they need to occupy an addition three percent
14 beyond the 20 percent that's allowed by the Zoning
15 Commission.

16 There are programmatic requirements with
17 the Department and the architect, Mr. Walter Page will
18 speak to. But in order to have a multipurpose
19 gymnasium, we are asking for a variance for height,
20 some additional height. And those same programmatic
21 requests from the community had also driven the total
22 gross square footage of the building beyond the Zoning
23 Commission's standard of a maximum of 40,000 square
24 feet.

25 And then we have a request for parking.

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1 Normally if you were to use the guidelines prescribed
2 by the Commission, you would have one parking space
3 for every 2,000 square feet of gross floor area, which
4 would yield approximately 22 spaces here. The
5 Department is only able to provide 8, but the
6 Department will speak to the fact that this is a
7 neighborhood serving center and that most of the
8 people using this center including employees will
9 either walk or be able to park elsewhere. Most of the
10 citizens using this facility are youth. They will be
11 walking there. There are some elderly that will be
12 driven in vans by the Department. They are not driving
13 there.

14 And then finally, we're asking for a small
15 variance on the size of the parking spaces. Normally
16 parking spaces are 9 by 19 feet, as you all know. In
17 order to fit as many spaces within the envelop
18 available without compromising programmatic spaces in
19 the building, they have reduced the spaces slightly to
20 18 by 8½ feet

21 And that summarizes my introduction. I'd
22 like to turn to a representative of the Department
23 since the Director is still not here and have her
24 present the Department's testimony.

25 MS. JOHNSON: Good afternoon. Thank you

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1 for the opportunity to testify before you today at the
2 Board of Zoning Adjustment. Mr. Chairman and
3 distinguished members of the Committee, I'm Roslyn
4 Johnson, and I am the Deputy Director for the D.C.
5 Department of Parks and Recreation. I'm here to
6 discuss the D.C. Department of Parks and Recreation's
7 Columbia Heights community center at 15th and Girard
8 Streets, N.W. I will talk about the importance of the
9 center and the good it will serve for our neighbors.

10 The center is on par with the development
11 of the 14th Street corridor. There are homes, stores,
12 a new high school and renovated middle school being
13 developed. The presence of these build a strong
14 community and the D.C. Department of Parks and
15 Recreation is proud to play a role. We are prepared to
16 meet the needs of the growing community by ensuring
17 that the center is properly staffed throughout the
18 day, and we will provide programs that will improve
19 the quality of life for neighborhood residents by
20 providing access to a state of the art facility within
21 walking distance of their homes.

22 We will include a myriad of programs
23 specific to the needs of the Community Heights
24 community. Many of those programs will take place in
25 our gymnasium. A gymnasium at a DPR property is not

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1 your regular or ordinary gymnasium. It serves as a
2 runway for fashion shows, a track for our senior
3 walking program, a stage for drama programs, and a
4 showcase for many other cultural arts and learning
5 programs. It is the ballroom for special community
6 events, the welcoming center for children's holiday
7 parties, and the indoor playground in case of rain.

8 We will offer many activities in our
9 spacious gymnasium, including a full complement of
10 basketball and volleyball for all ages. Basketball is
11 often the draw to get teenagers into our many
12 facility, but we will have many offerings for them.
13 We will have educational offerings, arts and craft,
14 ceramics, health and wellness classes, nutrition, as
15 well as conflict resolution skills and peer
16 counseling. There will be a Head Start child care for
17 ages 2 through 5 and a food program as well. We will
18 have programs for seniors, and we plan to expand our
19 multi-generational program that joins seniors and
20 young people for exciting experiences.

21 The center will be a haven for the more
22 than 800 Bell Multi-cultural High School students and
23 the 400 Lincoln Middle School students that will
24 attend school in the area.

25 It has been proven that community centers

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1 that promote programs for all ages have a direct
2 correlation in the reduction of crime. We will be
3 creating a pilot program that will test the success of
4 innovative programming for disconnected youth through
5 the use of the sound studio that will be included in
6 the center and the full kitchen that will support our
7 culinary arts program. The use of this site as an
8 "educational incubator" is ground breaking.

9 The Columbia Heights community center will
10 be the most culturally diverse center in the District
11 of Columbia. We see this center as a beacon for this
12 area and will bring together the cultural diversity
13 reflected in the neighborhood.

14 The building is also going to be silver
15 certified by LEED - Leadership in Energy and
16 Environmental Design. This status is granted by
17 reducing the pavement in the area and creating more
18 green space to provide an environmentally friendly
19 environment. The D.C. Department of Parks and
20 Recreation is excited about this and as such, the
21 testimony focuses on the strength and programming, and
22 the good that this center will serve, however, the
23 reason we are here is to request some relief from this
24 Board.

25 I will yield to our capable architectural

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1 team to cover the extensive code requirements. I am
2 sure that after their testimony, this Board will be
3 prepared to render a decision that will please the
4 community.

5 Thank you.

6 MR. BLANCHARD: And I'd like to Page to
7 make a presentation.

8 MR. PAGE: Mr. Chairman, my name is Walter
9 Page. I'm here representing Leo A. Daly, Architects.
10 We are the project Architects for this project.

11 I'm going to try not to be redundant. The
12 first presentation covered some of the things that I
13 had on my list, but I will go through as quickly as
14 possible and again, please pardon me if there is some
15 redundancy.

16 First, I'd like to speak regarding the
17 site description. The site for the completed Columbia
18 Heights community center project consists of two
19 contiguous DPR owned properties. One containing a
20 traditional park functions designed by our office and
21 constructed by DRP in 2004. And the other to contain
22 the new community center.

23 The community center building site is a
24 very restricted urban site that originally contained
25 two derelict apartment buildings. One of these

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1 buildings was two stories high and the other was four
2 stories high. These buildings have been boarded up
3 for approximately five years prior to their demolition
4 early in 2005 to provide a suitable site for the new
5 community center building.

6 The developed park facility also situated
7 on a very restricted site contains a basketball court,
8 a very popular thing in the neighborhood. Concrete
9 paver defined walking surfaces. Concrete art walls.
10 Portable bleachers, ornamental steel fences. Safety
11 surface. Grass and loose filled playgrounds with age
12 appropriate playground equipment. A small storage and
13 restroom building, etcetera.

14 The park amenities are highly sought after
15 and utilized by the residents of the neighborhood,
16 especially the paved basketball court.

17 Also, I've been on site several times
18 since the construction has basically started. And
19 there was a tremendous amount of use during the day by
20 local school children while they're on break.

21 Some of the elements of the community
22 center building program include a multipurpose space,
23 a computer lab, an arcade, a lounge, a gymnasium with
24 stage and bleachers, prop and costume storage rooms
25 adjacent to the dressing rooms and stage, music room,

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1 dance and aerobics room, individual offices,
2 administrative offices, weights and an exercise room,
3 a culinary arts room, an arts and crafts classroom, a
4 library and just general classrooms.

5 Open office area for the special program
6 development is on the top floor of the building.

7 All these building programmed elements
8 have been approved for inclusion in this project by
9 the ANC Commissions, the Friends of Girard Street
10 Park, the members of the Columbia Heights Youth Club
11 and the Asian American League.

12 Some of the community building
13 architectural design elements and motifs include the
14 following:

15 The building exterior consists primarily
16 of colored brick masonry construction that has been
17 selected to be aesthetically appropriate for the
18 neighborhood. The primary brick and the building is
19 basically similar to quite a number of the other
20 buildings that are directly adjacent to this site.

21 The brick masonry construction is banded
22 with contrasting brick colors separating the bands to
23 assist in minimizing the mass of the building exterior
24 and adding visual interest to the facade.

25 Additional building exterior features

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1 include a four story partial glass facade that
2 surrounds an interior monumental stair and other
3 programmed areas overlooking the park. That's on the
4 far left hand side of the front elevation, that north
5 elevation. This overlooks the park and it's a very
6 pleasant way, and I think it relieve -- again, it
7 serves to relieve the mass of the building.

8 Building fenestration generally consists
9 of punched window opening on both street elevations.
10 Again, to minimize the mass of the building exterior
11 and to create an appearance reminiscent of the scale
12 of the adjacent neighborhood apartments, townhouses
13 and the embassy building across the street.

14 At the request of the Ward I Council
15 member the 15th N.W. facade of the original four story
16 apartment building, subsequently demolished, was
17 removed, cleaned and stored. Portions of this
18 salvaged material will be reinstalled as part of a new
19 building facade. By honoring this request, the mass
20 of the building facade was additional minimized and it
21 allowed a reflection of the demolished apartment to be
22 captured for the older residents of the neighborhood.

23 A roof terrace adjacent to the open office
24 area for special program development on the fourth
25 floor also overlooks the park. That appears on the

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1 east elevation. Yes.

2 Okay. All large roof top mechanical
3 equipment elements have been surrounded by
4 architectural metal screen.

5 The clear story windows on the roof have
6 been provided to natural light to be introduced into
7 the open office area for special program development.
8 Those are those little sawtooth elements up there.

9 This building is designed to receive a
10 LEED certification for sustainable design and
11 construction. Every attempt is being made to achieve
12 the highest certification rating possible for the
13 building.

14 I'll be happy to answer questions if there
15 are some.

16 CHAIRPERSON GRIFFIS: Thank you very much.
17 Any questions from the Board?

18 BOARD MEMBER ETHERLY: If I could, Mr.
19 Chair, and this question may be directed back to the
20 representative of the agency. I just wanted to follow
21 up, there were a couple of items that I wanted to flag
22 from the Office of Planning's report that we can
23 either address now or perhaps at a later point. Not
24 so much architecturally, although it will get to the
25 issue of parking.

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1 There was a little bit of discussion in
2 the Office of Planning report and also in the opening
3 submittal of the applicant regarding the number of
4 employees that you're anticipating in the center.
5 Could you speak to what you are anticipating? It
6 appeared from the submittal that you could be looking
7 at traditionally maybe five employees. But it could
8 perhaps be as many as 20. And I noticed that we're
9 joined by the Director, so I'll wait.

10 DIRECTOR FLOWERS: Hi. I apologize for my
11 tardiness.

12 BOARD MEMBER ETHERLY: Good morning, Ms.
13 Flowers.

14 DIRECTOR FLOWERS: My name is Kimberley
15 Flowers. I'm the Director of D.C. Department of Parks
16 and Recreation.

17 And the staffing compliment that we're
18 expecting could be approximately up to about 20
19 people. However, all 20 staffers will not be on site
20 at the same time.

21 Our programming varies throughout
22 different parts of the day. We have senior programming
23 in the morning, after school programming for our
24 youngsters after school in the afternoons and then
25 family programming from about 6:00 p.m. to 10:00 p.m.

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1 It would also vary during the summer, also
2 as we strive to stay open later during summer hours up
3 until about midnight.

4 BOARD MEMBER ETHERLY: That answers my
5 question.

6 And now also I note that the ANC
7 representative is here. I'll just flag that question
8 for any comment that they may have once their time to
9 testify comes forward.

10 Thank you, Mr. Chair.

11 Thank you, Madam Director.

12 CHAIRPERSON GRIFFIS: Any other questions,
13 clarifications required at this point?

14 You made one interesting statement in
15 terms of the east elevation, there are walkout
16 balconies that overlook the open area, the playground
17 area.

18 MR. PAGE: That's correct.

19 CHAIRPERSON GRIFFIS: And I'm not really
20 sure I'm not seeing those plans. Maybe it's just my
21 tired eyes this afternoon.

22 MR. PAGE: Do you have a fourth floor
23 plan?

24 CHAIRPERSON GRIFFIS: A104?

25 MR. PAGE: Yes.

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1 CHAIRPERSON GRIFFIS: Oh, I see. It's
2 going to be -- oh, actually, I can't have you up here.

3 MR. PAGE: Oh, I'm sorry.

4 CHAIRPERSON GRIFFIS: You have to sit back
5 on the record.

6 I see where it was. I was looking at the
7 wrong -- so it's the project or sheet setup, it'd be
8 on the south side.

9 MR. PAGE: There is it is right there.
10 Yes.

11 CHAIRPERSON GRIFFIS: Gotcha.

12 MR. PAGE: That is overlooking the park.

13 CHAIRPERSON GRIFFIS: Indeed.

14 MR. PAGE: Basically the basketball court.

15 CHAIRPERSON GRIFFIS: Okay. Excellent.
16 Excellent.

17 And this is going to be a silver LEED.

18 MR. PAGE: We are making every effort to
19 achieve a silver.

20 CHAIRPERSON GRIFFIS: Are there any other
21 silvers in the District of Columbia that you're aware
22 of?

23 MR. PAGE: I'm not sure whether there are.
24 But this is certainly going to be one of the first
25 ones if we're able to achieve it for the D.C.

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1 Department of Recreation. And this is a mandate from
2 the Department of Recreation. They're trying to
3 achieve as much as they can in the way of sustainable
4 design in all of their facilities.

5 CHAIRPERSON GRIFFIS: Excellent.

6 There's been a lot of, some in your
7 testimony, but mostly in the written submission about
8 the difficulties of the program itself in terms of
9 complying with the strict regulations of the zoning,
10 that being the lot occupancy, but also the height.
11 The height, obviously, is not something that this
12 Board sees see everyday. We're very sensitive about
13 height in this city for some particular reason. In
14 fact, an adjacent property had a height variance
15 recently before this Board, if I'm not mistaken, in
16 the same square.

17 Can you just talk about -- I'm more
18 concerned with lot occupancy because I understand
19 fitting in the entire program and certainly with a
20 first level gymnasium you obviously can't play
21 basketball with a standard eight foot high ceiling.
22 But what else is going into making it practically
23 difficult to comply with the regulations?

24 MR. PAGE: I think basically the largest
25 contributor to the overall height of the building is

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1 in fact the gymnasium, because the recommendations of
2 the high school association that certifies basketball
3 court sizes, they recommend a minimum of 20 feet and
4 a maximum of 25. They would prefer 25. And where we
5 are right now in someplace in the middle.

6 CHAIRPERSON GRIFFIS: That's at your first
7 floor. And there's no question about that. But then
8 why do you need the fourth floor?

9 MR. PAGE: That, again, was the program
10 area requirement because the pilot project that the
11 Department of Recreation is planning had to have a
12 place to go. And there was physically no other space
13 in the building to accommodate that use.

14 CHAIRPERSON GRIFFIS: So it's your
15 testimony the design of this building, that the
16 creation of the demand from the community that has
17 created the demand for the program, good timing in
18 terms of the committee wanting this and DPR creating
19 these things, that's the confluence of issues that
20 have come together that have created a practically
21 difficult -- mass this building within the regulations
22 themselves.

23 MR. PAGE: That's correct.

24 CHAIRPERSON GRIFFIS: So a community
25 demand or a community want might lend itself and rise

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1 to the level of a uniqueness and practical difficulty?

2 MR. PAGE: Yes, I believe that's true.

3 CHAIRPERSON GRIFFIS: Legal standing on
4 this, Mr. Blanchard? Do you believe that that would
5 go into the test?

6 MR. BLANCHARD: I would make the analogy,
7 Chairman Griffis, that under the Monaco case where you
8 have a nonprofit with certain programmatic functions
9 that drive its need and create actually a practical
10 difficulty of trying to achieve that need on a given
11 site that you could have an analogous situation with
12 a District government agency responding to needs
13 voiced by the community when you have an underlying
14 use of that property as a part or recreation area. So
15 they're trying to fulfill that and continue that
16 underlying use as a part and recreation area at the
17 same time they are constrained or they face practical
18 difficulties of providing programs on that site. And
19 based on the drivers of the community, their programs
20 are supposed to respond to what the community wants.
21 And so they're caught between a rock and a hard place
22 or a lot occupancy and a underserved community to do
23 what they need to do on this site. So that would be
24 my legal argument.

25 CHAIRPERSON GRIFFIS: Fascinating. I don't

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1 disagree.

2 Could you exchange just for hypothetical
3 reasons in your argument that for retail as opposed to
4 residential or a recreation center, would it still
5 hold if you had a nonprofit even developing and there
6 was a demand for a type of retail that would fit only
7 within a space or a volume, or would better fit in
8 that space?

9 MR. BLANCHARD: Retail.

10 CHAIRPERSON GRIFFIS: That's a point to
11 ponder. We won't put you on the spot with that. Okay.

12 MR. BLANCHARD: Nonprofit retail, yes,
13 that's hard to -- I'll have to think about that.

14 CHAIRPERSON GRIFFIS: You don't have to
15 think too hard?

16 MR. BLANCHARD: No.

17 CHAIRPERSON GRIFFIS: Okay. Let's move
18 ahead then on the other aspects to this.

19 You indicated that you have a penthouse
20 enclosure which has -- it looks like it terms of the
21 rented elevations, very articulated. Could we talk a
22 little bit about that? Is that reality, what you were
23 talking about metal panel enclosure on that?

24 MR. PAGE: There are metal screens that
25 will actually cover up the rooftop mechanical

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1 equipment.

2 CHAIRPERSON GRIFFIS: And what's creating
3 that banding on it?

4 MR. PAGE: That's part of the screening
5 system.

6 CHAIRPERSON GRIFFIS: Okay. So that's a
7 manufactured system --

8 MR. PAGE: Yes, it is.

9 CHAIRPERSON GRIFFIS: -- that's actually
10 enclosing it?

11 MR. PAGE: Yes.

12 CHAIRPERSON GRIFFIS: Okay. Excellent.
13 And the punch windows, let me also just in terms of
14 the west elevation, you indicated that I think that
15 the Council member of the Ward that this is in had you
16 tear down the existing building but save some of the
17 facade?

18 MR. PAGE: Yes. The portion of it that
19 was saved, and this was basically a brick facade.
20 Pardon my back. But this is the element that we're
21 talking about right here. And we saved all of the
22 limestone surrounds and all of the articulation that
23 was on that building that we could when it was
24 demolished. That whole front skin was peeled and the
25 bricks were taken off and cleaned so they could be

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1 reinstalled. And elements of the limestone were
2 cleaned, and they will be reinstalled.

3 CHAIRPERSON GRIFFIS: That entire facade
4 at that area is going to be from the existing --

5 MR. PAGE: As much of it as we can. And
6 my only reluctance in this is that we really needed
7 nine pallets of brick to do this entire facade. And
8 when the brick was culled and cleaned there were
9 really only five pallets that survived. You have to
10 remember that this building I think was probably 50
11 plus years old.

12 CHAIRPERSON GRIFFIS: Yes.

13 MR. PAGE: Yes, that was the facade that
14 came off.

15 So it is our plan to reinstall as much of
16 this material as we can.

17 CHAIRPERSON GRIFFIS: Interesting. Okay.

18 And lastly, I understand and in testimony
19 and in the submission of course it was said here by
20 your legal counsel if you had all the money in the
21 world you could park below grade. And that's
22 perfectly understandable, and that wasn't his words
23 but mine. But nonetheless, I wanted just quick
24 clarification because there's something in the written
25 submission that talked about the existing of the slab

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1 of the original building and the fact that when the
2 demolished parts of the building, they dropped it into
3 the site.

4 MR. PAGE: Right. They used it as a
5 controlled fill.

6 CHAIRPERSON GRIFFIS: Okay. So explain
7 what is, control fill? Why is that a problem or a
8 difficulty or what does that actually mean?

9 MR. PAGE: Well, first of all, when you
10 have a slab from an original building that you have
11 demolished, you can't leave it as a total horizontal
12 plane. You have to destroy it because you need to
13 have drainage on the site. So the slab was broken up
14 in small enough pieces so that it could be covered up
15 with a controlled fill and still drain properly.

16 And the biggest constraint that we would
17 have faced is we would have had to underpin three
18 sides, actually all four sides of that building to be
19 able to do it. And there's a tremendous amount of cost
20 involved in that, and especially next to that five
21 story apartment building that's next door.

22 CHAIRPERSON GRIFFIS: Okay. So whoever
23 demolished the existing building has decided not to
24 make the expenditure to truck it off site, but to drop
25 the building into the site?

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1 MR. PAGE: No. That was the decision that
2 was made as part of the programming for the building.
3 Because we knew that there were going to be tremendous
4 costs involved with hauling it from the site.

5 CHAIRPERSON GRIFFIS: I see. I see.
6 Okay. Good enough.

7 What else? Anything else?

8 VICE CHAIRPERSON MILLER: I have a
9 question just with respect to the costs, what you're
10 talking about, the tremendous cost to excavate, which
11 I understand. What's the cost with respect to
12 obtaining the silver LEED status and gets --

13 MR. PAGE: You mean in terms of
14 percentage?

15 VICE CHAIRPERSON MILLER: Well, how does
16 that compare to -- it sounds like you know you're
17 saying you have to seek a variance in part for
18 budgetary reasons because it's a D.C. agency. And
19 you've explained how this excavation would be very
20 costly. And then I also heard, though, you're doing
21 something that sounds like a very nice amenity and I'm
22 trying to get a feel for an optional thing, how costly
23 is that? Does that relate at all to the cost of
24 excavation or it's nowhere in the ballpark?

25 MR. PAGE: I think generally the cost to

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1 achieve any kind of certification on the building
2 probably would not exceed the costs of excavating and
3 trying to put in below grade parking.

4 One of the problems with this site is that
5 the footprint is so small that the efficiency that you
6 get out of trying to put in below grade parking is
7 very, very low.

8 CHAIRPERSON GRIFFIS: What are the
9 elements that would be that you're going after?

10 MR. PAGE: We're going after everything
11 that we can, very frankly.

12 CHAIRPERSON GRIFFIS: But I mean but what
13 are you putting in the building, what sort of aspects?
14 Are you doing like intelligent lighting --

15 MR. PAGE: Oh, intelligent lighting for
16 sure. Controls of the all the mechanical, electrical
17 systems.

18 CHAIRPERSON GRIFFIS: Daylighting?

19 MR. PAGE: Daylighting as much as
20 possible. That's one of the reasons the clear stories
21 are on the fourth story office element. Because the
22 only windows that would be on that particular
23 elevation would be the ones overlooking the patio,
24 overlooking the park.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MR. PAGE: So all of the interior offices
2 depending on how it's broken up would not have any
3 natural light.

4 CHAIRPERSON GRIFFIS: Okay. Green roof?
5 No green roof?

6 MR. PAGE: No green roof.

7 CHAIRPERSON GRIFFIS: Right. Okay. So it
8 sounds to me like all those indirect discussion of Ms.
9 Miller's question, you know you're making this -- we
10 only have a certain amount of budget but she hears a
11 very expensive silver LEED. These elements seem to me
12 to be almost a life cycle costing, too. Is that going
13 to save you money in the long run.

14 MR. PAGE: Well, over the life of the
15 building for sure.

16 CHAIRPERSON GRIFFIS: Okay.

17 MR. PAGE: And that's one of the reasons
18 that the Department of Recreation is trying to achieve
19 this for the city because of the savings of
20 operational costs over the life of the building.

21 CHAIRPERSON GRIFFIS: And is there savings
22 if you do below grade parking?

23 MR. PAGE: Not really.

24 CHAIRPERSON GRIFFIS: That's rhetorical.
25 Okay. Very well. Excellent.

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1 Any other questions? Mr. Parsons, you had
2 something, yes?

3 COMMISSIONER PARSONS: Well, Mr. Page, I
4 was going to ask about the green roof and was
5 disappointed to learn there isn't one. What's the
6 reason for that?

7 MR. PAGE: Well, there was a small one.
8 But part of the problem with the green roof is that
9 we're taking up enough the roof space with the clear
10 story elements that there's not a whole lot of
11 footprint left for the green roof. So even though
12 there will be some benefit from what we have designed,
13 the reality of it is that it probably will not be all
14 that great. But it's an opportunity for us to
15 indicate that we have attempted to achieve as much as
16 we can in the way of a green roof.

17 But that whole element down there in the
18 lower right hand corner, all three of those are all
19 the clear stories. And you can see how much of the
20 percentage of the roof that takes. And then the rest
21 of the roof pretty much is covered with mechanical
22 equipment that's screened. So there's really not a
23 whole lot of room to make that happen.

24 COMMISSIONER PARSONS: So what is it
25 that's in the upper left of this drawing?

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1 MR. PAGE: That's the mechanical
2 equipment. That's a roof top HVAC unit.

3 COMMISSIONER PARSONS: So that is where
4 this special --

5 MR. PAGE: That's where the screening is.

6 COMMISSIONER PARSONS: Special --

7 MR. PAGE: Architectural screening.

8 COMMISSIONER PARSONS: Thank you.

9 MR. PAGE: Yes.

10 COMMISSIONER PARSONS: Is going. What is
11 the, I'll call it boardwalk looking device?

12 MR. PAGE: Those are basically walking
13 surfaces so that when you're walking around doing
14 maintenance up on the roof you don't damage the
15 membrane. It's a way of protecting the longevity of
16 the membrane for the roofing system.

17 COMMISSIONER PARSONS: So the roof is
18 simply a built up roof with gravel, is that it?

19 MR. PAGE: It's a sheet membrane, yes.

20 COMMISSIONER PARSONS: I see. Now how
21 about all these -- I'm told they're skylights. I
22 don't know what else to call them.

23 MR. PAGE: They're clear stories,
24 actually. It's just a horizontal plane that's got
25 metal on top of it. But this whole vertical face is

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1 glass. So that allows the light to filter into the
2 top floor office area.

3 COMMISSIONER PARSONS: I guess I just
4 don't understand the delineation here. It just doesn't
5 make sense to me.

6 Thank you. I've got a pointer.

7 What are these?

8 MR. PAGE: That is the roof.

9 COMMISSIONER PARSONS: Those don't look
10 like what you showed us.

11 MR. PAGE: That's the roof with the clear
12 stories.

13 COMMISSIONER PARSONS: The roofs are
14 these. Shouldn't it be individual boxes or just --

15 MR. PAGE: They are.

16 COMMISSIONER PARSONS: I mean, here
17 they're shown with spacing between them on the
18 elevation, right.

19 MR. PAGE: Well, there's spacing between
20 them on the elevation also. Here, let me come around.

21 COMMISSIONER PARSONS: So that's the space
22 that we're seeing there, I guess? It just looks more
23 generous in the elevation.

24 MR. PAGE: What you're looking at right
25 here is actually looking down on top of that roof. And

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1 this is where the glass is on this side. The light
2 comes in from this side, which is the north side. So
3 it's all north light. No glare.

4 COMMISSIONER PARSONS: Okay. It just
5 looked to me like the spacing on this elevation was
6 much more generous than that.

7 MR. PAGE: It is a little bit.

8 COMMISSIONER PARSONS: It's the detail.

9 MR. PAGE: Yes, it's the detail.

10 COMMISSIONER PARSONS: And then what are
11 the -- let me see it again here. What are these?

12 MR. PAGE: Those are planters. That's
13 part of the green roof.

14 MR. BLANCHARD: That's the roof top
15 gardens?

16 MR. PAGE: Yes.

17 COMMISSIONER PARSONS: Ah-ah. Okay.
18 Thank you.

19 BOARD MEMBER ETHERLY: So that's garden,
20 that's garden there and that's garden there.

21 CHAIRPERSON GRIFFIS: Anything else?

22 MR. BLANCHARD: Thank you very much,
23 Chairman Griffis.

24 As you've heard, I'll just sum up briefly
25 and then we can move on to the rest of the speakers.

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1 We believe that through our submissions
2 and the record, the original filing, and the pre-
3 hearing statement as well as the testimony you've
4 heard from us this afternoon that we have, in fact,
5 met the legal tests.

6 I didn't expound on the hardship test, but
7 our argument would be if you decide that the use is a
8 variance, the hardship we would say would be that the
9 educational training and incubator function is within
10 the definition. But if you determine that there is an
11 office use, then the former use of the park and the
12 lack of service to the community are the unique
13 circumstances which require this use and the strict
14 application of the zoning regulations would result in
15 an undue hardship and unfair result for the applicant
16 and the community it serves.

17 Again, we believe we've met the legal
18 tests for the variances and the special exceptions.
19 And we'll be glad to be come back at the end to answer
20 any questions you may have.

21 CHAIRPERSON GRIFFIS: We'll give you time
22 to do any rebuttal testimony at the conclusion after
23 we get through all the other pieces. But it's an
24 excellent point that you've brought up in terms of us
25 addressing this use variance of which you have put it

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1 and have advertised. Obviously, the use variance is
2 one of the highest, it is the highest threshold for
3 test for a variance. And often times I think it's put
4 that you have to prove that this could not be used for
5 any other matter of right use; that's what your
6 hardship is. And so it raises to a level of great
7 seriousness and the Board is always a little bit --
8 well, it takes great time and effort in reviewing all
9 cases, but specifically use variances and why and what
10 they're in front of us for.

11 Looking at this I think we do need to
12 deliberate very quickly on whether this is properly
13 before us as a use variance or not. I think there are
14 two aspects that are in the written submission that
15 we're looking at. And I think, one, it would be good
16 if we could be determinative, but we certainly can ask
17 other agencies that are there if they wanted to
18 indicated their analysis of it.

19 And this is an interesting situation to be
20 in because this is a new application essentially in
21 the text amendments of our own regulations in
22 requiring certain District agencies or all District
23 agencies to come into compliance with regulations as
24 before they would not have been. And so we probably
25 do have a couple of little rough areas to iron out.

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1 This is my opinion that we look at two
2 different directions. One this could be a straight use
3 variance because it doesn't fit in the definition or,
4 two, that it is within the definition because it is as
5 proposed accessory to an allowable use.

6 Looking at 199 the definition of public
7 recreation and community center we have an awful lot
8 of specific items and elements that are addressed But
9 it is not a complete list. And by reading the
10 definition itself it indicates that it is not be
11 limited to the following and listing them all out, of
12 which we do have educational uses from multipurposes
13 rooms to recreation, obviously the more traditional
14 pieces. So I guess the brief discussion is whether
15 anyone on the Board feels that this falls outside of
16 those listed activities or falls outside of those
17 elements that are similar to those listed. And if so,
18 then we need to have the discussion of whether this is
19 proffered for us as a use variance.

20 Comments

21 VICE CHAIRPERSON MILLER: Well, like I
22 said, I think that the definition is pretty broad. I
23 mean, it says the center may include but not be
24 limited to and then lists a variety of things that I
25 think the type of use that's been described here falls

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1 within the intent, as I see that list. So I don't
2 believe a use variance is necessary.

3 CHAIRPERSON GRIFFIS: Okay. Mr. Etherly?

4 BOARD MEMBER ETHERLY: I would agree, Mr.
5 Chair. I think you said the key words in terms of
6 viewing these uses as accessory to the functions that
7 we see with recreation centers of this type. I just
8 don't think a strict reading here would do us any good
9 and would probably frustrate the spirit of that
10 definition, as Ms. Miller has pointed out.

11 CHAIRPERSON GRIFFIS: Thank you.

12 Ms. Flowers, since you're here I was
13 wondering if you could talk to a little bit about
14 more about what this educational incubator program
15 involves?

16 DIRECTOR FLOWERS: Sure. Well, as you may
17 or may not know, we do have an accredited office of
18 educational services and we provide Heart Start and
19 before and after school programming as well as full
20 day programming for youngsters ages 2 to 5 at ten
21 sites throughout the city. This would be one of those
22 sites.

23 And we would also be using this as a test
24 site for innovative programming to appeal and to
25 accommodate to adolescents in the District,

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1 specifically the adolescents in that neighborhood.

2 Historically we've done a really good job
3 at servicing youngsters ages 5 to 12, but done a poor
4 job with reaching out to teenagers. And often those
5 teenagers that are deemed disconnected or at risk. So
6 this would be a site as we see it to be kind of a
7 testing ground for developing innovative programs to
8 appeal and attract to these young people. To be an
9 attractive resource to those youngsters that need it
10 the most.

11 CHAIRPERSON GRIFFIS: Would it mean
12 bringing the teenagers to this site or --

13 DIRECTOR FLOWERS: Yes.

14 CHAIRPERSON GRIFFIS: Oh, it is. Okay. So
15 it seems to me, understanding that perhaps it's not a
16 city wide program that you're doing, but you're
17 actually creating little programs within here, that's
18 what the testing aspect is?

19 DIRECTOR FLOWERS: Right. To be
20 implemented city wide if they successful.

21 CHAIRPERSON GRIFFIS: If it works? Right.
22 Okay.

23 Well, I don't see how that's necessarily
24 stepping out of any of the reasons that I see in terms
25 of that which is part and parcel of the recreation and

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1 community center and the definition, unless others
2 feel differently.

3 Very well. If there's no opposition, then
4 I think we would not go forward with the use variance,
5 but just continue with the area variances and special
6 exceptions, unless I'm missing anything and any other
7 opinions from the Board.

8 Okay. Very well. Indeed, don't go too
9 far. But let me ask, first of all, the ANC as Mr.
10 Etherly has ably said is here. Do you have any cross
11 examination of the testimony you've heard?

12 COMMISSIONER SPALDING: No.

13 CHAIRPERSON GRIFFIS: No cross.

14 Then let's move ahead to the Office of
15 Planning at this time.

16 MS. THOMAS: Good afternoon, Mr. Chairman,
17 members of the Board. I am Karen Thomas with the
18 Office of Planning.

19 The D.C. Department of Parks and
20 Recreation has proposed a development of its lot with
21 a public recreation and community center and the
22 Office of Planning is in support of their request for
23 variance and special exception relief from the zoning
24 requirements as stated in the application.

25 They submitted plans, OP believes that the

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1 property is unique due to its history of subdivision
2 acquiring and developing two lots at different times
3 which did allow for a comprehensive development of the
4 resulting lot in compliance with the current zone
5 regulations.

6 As such, the applicant would experience a
7 practical difficulty in a number of areas, including
8 the height and parking requirements and trying to meet
9 the program requirements of the proposed center.

10 OP believes that relief from the height,
11 number of parking spaces and size of spaces would not
12 substantially impair the intent of the zone
13 regulations since we believe that mass and
14 fenestration of the proposed structure is consistent
15 with the site's previous structure as well with the
16 abutting property.

17 With respect to parking, we recently
18 received DDOT's comments that the proposed project
19 would have a minimum impact on traffic circulation and
20 will not create unsafe traffic conditions in the area.
21 This neighborhood is served by a number of MetroBus
22 routes. It is intended as an urban facility that will
23 not be designed to serve a Metro wide area of
24 residents. The facility is designed to consolidate
25 existing neighborhood programs currently scattered in

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1 unsuitable building.

2 The regulation sized gymnasium and indoor
3 court area was significant in the determination of the
4 building's footprint, thereby effecting the lot
5 occupancy and subsequently the gross floor area as the
6 height of the structure and the additional floor had
7 to be designed to accommodate lots of space on the
8 third floor.

9 The center is unanimously supported by the
10 community and the additional gross floor area would
11 support their requested programs.

12 We believe that the rec center meets the
13 zoning regulations and will not adversely affect the
14 use of neighborhood properties as outlined in our
15 analysis under the special exception criteria.
16 Therefore, for those reasons, we recommend variance
17 relief from the height, parking provision and special
18 exception relief from the percentage lot occupancy
19 requirements and the gross floor area requirements for
20 public recreation facilities.

21 In addition, we did not believe that a use
22 variance for the offices were required since we
23 believed that the definition allows for those uses.

24 Thank you.

25 CHAIRPERSON GRIFFIS: Thank you very much.

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1 I appreciate your analysis and also the graphics that
2 assist in our full understanding of your analysis.

3 Let me ask you a quick question. There's
4 been some testimony in the written submission about
5 the design process for this which put together all the
6 programs. Was the Office of Planning involved in
7 that?

8 MS. THOMAS: No.

9 CHAIRPERSON GRIFFIS: Not in those early
10 stages?

11 MS. THOMAS: Not in the early stages, no.

12 CHAIRPERSON GRIFFIS: Okay. All right. Any
13 other questions? Questions of the Office of Planning?

14 BOARD MEMBER ETHERLY: Just very, very
15 quickly, Mr. Chair. It's noted on page 7 of the
16 Office of Planning's report in your discussion
17 regarding size of parking spaces. The question, if
18 you will, about the use of an attendant to assist with
19 parking. I noted that you didn't include any comment
20 in your opening statement. Has that issue fallen off
21 the table for you?

22 MS. THOMAS: Yes. With respect to DDOT's
23 report. We asked them if that was something that was
24 absolutely necessary. And we received no comment from
25 them on that, so --

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1 BOARD MEMBER ETHERLY: Okay. Thank you.

2 Thank you, Mr. Chair.

3 CHAIRPERSON GRIFFIS: Thank you.

4 Any other questions? Very well. Thank
5 you very much.

6 I'm sorry. Does applicant have any cross
7 examination of the Office of Planning?

8 MR. BLANCHARD: No.

9 CHAIRPERSON GRIFFIS: Any cross? ANC, any
10 cross?

11 COMMISSIONER SPALDING: No.

12 CHAIRPERSON GRIFFIS: Taking it easy on
13 your this afternoon, they are.

14 Mr. Spalding, a very good afternoon to
15 you.

16 COMMISSIONER SPALDING: Good afternoon,
17 Mr. Griffis. Phil Spalding. I represent ANC-1B.

18 And you have our letter. The community
19 back in July reviewed this project in the ANC setting.
20 And we voted unanimously to support the application
21 nine to nothing. And as testified earlier, this has
22 been before the community for a number of years. The
23 community has had a lot of input into what the
24 programs, the community wants to be included in this
25 recreation facility. And it has put a strain on the

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1 architects and on the zoning envelop.

2 As far as the staffing, I wasn't sure
3 quite how that question was directed.

4 Mr. Etherly, so if you want to reframe
5 that for me, I'd be --

6 BOARD MEMBER ETHERLY: Just from the
7 standpoint of would there be any concerns regarding
8 parking impacts, was there any discussion --

9 COMMISSIONER SPALDING: There was at the
10 ANC. And parking is a very sensitive issue both in
11 Columbia Heights and the entire ANC.

12 We do recognize that the design of this
13 facility was cramped by the community's requirements
14 that it fulfill a lot of needs.

15 We recognize that the facility is designed
16 for immediate use. In other words, it's only designed
17 for a quarter mile radius, really. It's really
18 pointing directly at the immediate community. And
19 most of those community members can either walk or
20 take public transport to the site.

21 As far as the very limited parking for
22 staff, which was part of your comment as well I think,
23 the Department itself has parking that's not very far
24 distant from this particular site. And that may aid
25 in alleviating the problems that the parking is going

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1 to bring.

2 BOARD MEMBER ETHERLY: Thank you.

3 COMMISSIONER SPALDING: Yes.

4 CHAIRPERSON GRIFFIS: Excellent. Any
5 other questions?

6 VICE CHAIRPERSON MILLER: From your
7 perspective could the facility have been built without
8 a need for a variance if it didn't respond to
9 community needs?

10 COMMISSIONER SPALDING: Yes. If the
11 Department had not gone out to the community and asked
12 what does the community want and we took advantage of
13 that and gave them a long laundry list of things that
14 we wanted included in this site, the Department could
15 have built a facility that did not include the wide
16 variety of programming that the community really
17 expects of this site at this time.

18 I think at one time in the development of
19 community centers they were more limited in design.
20 They were more strict interpretations of what parks,
21 rec, community center was. The ideas of the use of
22 these facilities has grown enormously. Some of it is
23 concerns that aren't be satisfied in other settings
24 that we might expect them to be. But because D.C.
25 Department of Parks and Recreation came to the

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1 community asked what is that the community needs to
2 see coming out of this building as a functioning unit,
3 we did indeed gave them a laundry list. And they did
4 indeed try to satisfy as much of that as they could.
5 That put a strain on the architecture, that put a
6 strain on the finances. And I think they've done a
7 remarkable job in trying to satisfy both the demands
8 of the community and the demands of the zoning.

9 VICE CHAIRPERSON MILLER: I think the
10 applicant did address this in part, but I'm just
11 curious from your perspective.

12 COMMISSIONER SPALDING: Yes.

13 VICE CHAIRPERSON MILLER: So for instance
14 specifically could there have been a gym without a
15 variance, do you know?

16 COMMISSIONER SPALDING: There could have
17 been a gym without a variance, perhaps. But then you
18 strip out almost all of the rest of the use of this
19 building. And just building a gym, although it's a
20 multipurpose kind of facility, really wouldn't have
21 satisfied the community I think.

22 When the Department came out and asked, we
23 really did give them a list. And they've tried to
24 incorporate as much of that as they can. And, yes, we
25 could have a stripped down facility, but I don't think

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1 that that's really what's required in this case. I
2 think it's a community that needs multiplicity of
3 services.

4 I think the requests of zoning are
5 reasonable to accommodate a lot more service from a
6 multifunctional community center than, you know, a
7 basketball court would be.

8 VICE CHAIRPERSON MILLER: And in your view
9 are there any adverse impact as a result of the
10 variances?

11 COMMISSIONER SPALDING: There have been
12 none voiced to the ANC and the Commission has not
13 really heard any. The community is really pleased
14 that they have developed as many uses as they have out
15 of this building.

16 CHAIRPERSON GRIFFIS: Anything else?

17 VICE CHAIRPERSON MILLER: No. Thank you.

18 CHAIRPERSON GRIFFIS: Any other questions?

19 The applicant have any cross?

20 MR. BLANCHARD: No cross.

21 CHAIRPERSON GRIFFIS: Thank you.

22 Thank you very much. We appreciate you
23 taking the time to come down and present that, and
24 excellent follow up to the questions asked.

25 Let's move ahead then. I don't have any

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1 other -- or there any other government agencies
2 present that would like to present to the Board? I
3 don't have any other indicated as submitting into the
4 record.

5 Therefore, we can move ahead and ask for
6 those persons present that would like to provide
7 testimony in regards to this application 17386. If
8 you want to come forward at this time, persons in
9 support of the application, and make yourselves
10 comfortable. Is there anyone else that's going to
11 provide testimony in support, opposition?

12 MS. OLIVER: Good afternoon, Chairman
13 Griffis and Board members.

14 I'm Gail Oliver, Executive Director of the
15 Columbia Heights Youth Club.

16 To give you a small history of the Youth
17 Club, on December 1, 1954 the Columbia Heights Boys
18 Club was established. The Youth Club was located in
19 the basement of All Souls Church, Unitarian. The
20 Youth Club was established due to the call from
21 members of the church to provide an ongoing service to
22 then a growing "Negro" population, which was rejected
23 by the existing Boys and Girls Club, who refused to
24 serve "Negroes." The Girls and Boys Club decided to
25 move and the church established its own avenues to

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1 serve the growing population.

2 In 1970 the Club opened its doors to
3 ladies and changed its name to the Columbia Heights
4 Youth Club. Since its inception, the Columbia Heights
5 Youth Club has remained committed to enhancing the
6 quality of life for children and youth in the
7 Washington metropolitan communities. We have provided
8 educational, recreational and personal growth
9 activities for approximately 250 plus youth annually.
10 Columbia Heights Youth Club serves as an alternative
11 place for entertainment, activities and moral and
12 social growth development.

13 Over the years, we have made several very
14 valuable partnerships in the community. The
15 Department of Recreation has been a major resource for
16 the Columbia Heights Youth Club through its summer
17 meals program, providing breakfast and lunch daily.
18 The Department of Recreation supported the design and
19 development of the Girard Street Playground and
20 remains an active member of FROGSPLAY, Friends of the
21 Girard Street Playground.

22 We use the playground daily during the
23 summer and almost daily during the school year. This
24 park is located directly adjacent to the new building.
25 Further, the Department of Recreation provides

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1 security to the park. Ironically the staff person
2 hired to maintain the integrity of the facility and
3 the safety of our young people is none other than a
4 parent volunteer from the Columbia Heights Youth Club.
5 He has a long history with the Columbia Heights Youth
6 Club and five children that are active participants.

7 The gymnasium is a requirement for
8 organized and drop in sports and other related
9 activities. There is only one regulation style
10 gymnasium located in our community outside of our
11 community high school at Carodzo. The Columbia
12 Heights Youth Club has a gym. It was constructed in
13 1954 and is merely not adequate for the use today.
14 However, it is the only one available to an older
15 population in the community. While our gym is
16 obviously inadequate, it is widely used by many
17 community members, young people and a host of learner
18 communities. We currently provide space for other
19 community based organizations, grassroots groups, and
20 charter schools and of course the children and youth
21 that we serve.

22 With the construction of this new gym we
23 will be better equipped to serve the children and
24 youth in this community. We will increase the numbers
25 and variety of sports events and increase the

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1 participation in community around team spirit, a
2 number of athletes coming from our community -- and
3 provide a number of athletes coming from our community
4 and provide another resource for children , youth and
5 adults to promote community and a healthy lifestyle.

6 We're anxious to have this building come
7 to fruition. It is heartbreaking to continue to serve
8 children in a youth facility that has been constructed
9 in the early '50s. We need a better place to provide
10 services to our population. Windows are the first
11 item requested by those that frequent our facilities.
12 Adequate bathrooms, classrooms and all that will
13 support a positive environment for the participants.

14 We are grateful to All Souls Church, and
15 they are aware of the needs of the basement that we
16 occupy. However, the building will provide a gleam of
17 hope that we have been so desperately looking for.

18 There is still a large number of African
19 Americans residing in Columbia Heights. There is also
20 a need to address issue that plague our community.
21 The Columbia Heights Youth Club remains involved in
22 the prevention and intervention of violence through
23 our partnership with the D.C. Department of
24 Recreation, the D.C. Children Youth Investment Trust
25 Corporation and other investors. It will allow us to

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1 continue to provide after school and out of school
2 time programs, and our summer enrichment programs that
3 are limited because of space. With the construction
4 of the new building we will increase the number of
5 children and youth, increase the number of programs,
6 increase the visibility of the city's efforts to
7 better serve its children and youth, and restore the
8 equality of empowerment.

9 In closing, I have an old African proverb
10 that will sum up the need for this facility and new
11 home for the Columbia Heights Youth Club. And that
12 is, "It's easier to build a child than to repair an
13 adult."

14 CHAIRPERSON GRIFFIS: Thank you very much.

15 Questions? Any cross? Indeed.

16 Thank you very much. It was very
17 informative.

18 Let me just ask quickly, the Columbia
19 Heights Youth Club have a contract or a relationship
20 with the Department of Recreation to utilize the new
21 facility?

22 MS. OLIVER: We're going to work on an
23 MOU. Also the church is getting ready to go under
24 construction. We've been there for 50 years. It's
25 really decayed. We've done well and we have nicknamed

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1 ourselves "For Better Intent The Little Rascals." We
2 operate properly. We can maintain competitively, but
3 we're not in a very savvy facility. So we would like
4 to be able to come out, go into a facility such as the
5 one that's being built for the Department of
6 Recreation. And, hopefully, we will be able to call
7 that home.

8 CHAIRPERSON GRIFFIS: Excellent. Thank
9 you very much. Very well.

10 Are there others that would like to
11 provide testimony today in support or in opposition?
12 No one else? Then let's move ahead to any closing
13 remarks, summations that you might have.

14 MR. BLANCHARD: Thank you, Mr. Griffis and
15 members of the Board. Again, I believe we have
16 provided testimony and you've also heard from District
17 agencies, the Office of Planning and the ANC and the
18 very experienced member of our community about the
19 needs for this center. And, again, I think it's the
20 programmatic needs that really drive the need to the
21 variances and the special exceptions. We are burdened
22 with this unusually shaped and the history of this lot
23 which provides the unique circumstances. And as
24 you've heard, the benefits that will accrue from this
25 new facility are numerous.

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1 And so with that, if the Board is willing,
2 we would ask their indulgence to provide us with a
3 bench decision if possible and summary order if there
4 are no extraneous conditions that might be imposed.

5 That concludes our presentation.

6 CHAIRPERSON GRIFFIS: Excellent. Thank you
7 very much.

8 Any requirements for clarifications, final
9 questions?

10 We ready to roll? Indeed.

11 BOARD MEMBER ETHERLY: Mr. Chair, if there
12 isn't any further discussion, I would feel comfortable
13 and that the record is full, then I would approval of
14 application 17386 of the D.C. Department of Parks and
15 Recreation pursuant to 11 DCMR § 3104.1 for the
16 special exceptions as advertised herein and for the
17 area variance relief in three forms, as also
18 advertised herein, and I would invite a second.

19 COMMISSIONER PARSONS: Second.

20 BOARD MEMBER MANN: Second.

21 COMMISSIONER PARSONS: No, go ahead.

22 BOARD MEMBER ETHERLY: Thank you very
23 much. I'll defer to Ms. Bailey to break that tie.

24 I think the record is very amply full and
25 complete as it relates to both the special exceptions

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1 and the variances. I'll speak to the special
2 exception first, and I think clearly there's a harmony
3 here with the zone and area plan. And clearly there
4 do not appear to be any adverse impacts that would
5 arise from the project as proposed. As was indicated
6 by some of my questions, I wanted to probe the issue
7 of parking because I felt that that might be the only
8 area where there might be some issues. But I think
9 the Department has taken significant steps to ensure
10 that there would not be any adverse impacts that arise
11 out of use of the parking spaces as they have been
12 delineated at the subject property.

13 With respect to the variances, I'll speak
14 very quickly just to the issue of some of the
15 challenges that are presented by the shape and
16 topography of the subjected location and then in
17 particular, as was indicated by Mr. Blanchard in his
18 presentation, the Monaco case is very instructive in
19 bringing to mind or calling to mind, of course, the
20 overall objectives and missions of the D.C. Department
21 of Parks and Recreation. And clearly that objective,
22 those missions were brought into play here as the
23 Department worked with the community as we've heard
24 from the ANC to pull together a building that is
25 really more than just an multipurpose building. It

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1 really it attempting to satisfy a wide range of needs
2 in the community. And I think the Department has
3 taken excellent steps to do that. And as we've heard,
4 to do that in a way that will make it a very leading
5 and cutting edge facility, to pun indicated on the
6 word "lead" in terms of its effort to get the highest
7 certification possible.

8 I just think in short, Mr. Chair, that the
9 application is very full and has really captured all
10 of the key elements of the test here. And I'm very
11 happy to offer the motion.

12 CHAIRPERSON GRIFFIS: Excellent. Thank you
13 very much.

14 Mr. Parsons, any further comments,
15 deliberation? Good.

16 Mr. Etherly, you've done an excellent job
17 in terms of summation. The tests it's made.

18 I wanted to hit upon the unique site.
19 It's been said a couple of times in the testimony
20 today and also in the written submission about how
21 this is a uniquely site and one might look at this and
22 see we have a rectangular building. But in context of
23 what this building actually is and what it feeds, I
24 think I finally caught upon it in the hearing today is
25 the unique shape of the site is that it is not a

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1 massive piece of grass of which one small structure
2 goes in the middle and it's surrounded by play fields
3 as one might picture this Parks and Rec. building, but
4 rather this is a difficult site to accommodate all
5 those outside requirements and then the programs on
6 the inside, which leads again to the issue of a
7 required relief from the lot occupancy and also the
8 gross floor area allowed in the building and putting
9 in the programs. Of course, those are the special
10 exceptions And looking at the variances you've laid
11 out, I would also agree in terms of your analysis and
12 also the applicant's, as well as the Office of
13 Planning's analysis.

14 The one that gave me some pause was that
15 of the height. And I think it was well discussed
16 today in terms of what is pushing the building up in
17 terms of the height. And I think it's very
18 persuasive.

19 I think the citing of Monaco case is an
20 excellent one in this predicament in terms of the
21 confluence of elements and how one balances that of
22 compliance with the regulations with the reasoning for
23 the existence of the building or programs. And really
24 that to me, not being an attorney, is the elements of
25 intent or persuasiveness that I have gleaned from

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1 Monaco.

2 We have had past cases that have dealt
3 with that that perhaps other members or commissions
4 didn't agree with our interpretation. But here,
5 again, I think it is correctly put that Monaco is an
6 excellent insight into how we look at the threshold of
7 making the variance test or not.

8 In terms of the parking, I think it's
9 also a very delicate issue. And obviously in this
10 community, and in every community quite frankly, that
11 we hear parking is a problem. And certainly when we
12 start looking at the utilization of a more public
13 entity, I think of all of those that I've seen, though
14 specifically with this case, it's fairly clear that
15 there should be nothing and certainly the evidence
16 shows that there is nothing that is encouraging an
17 increased demand. And it may be, in fact, over parked
18 if we started putting in 22 spaces, and that's just
19 taking from the utilization of the area for other
20 programs and needs. And, again, it is subsequentially
21 a balance. I think that balance has been well struck
22 and planned in terms of the parking by also granting
23 variance in the size of the parking spaces that are
24 required.

25 Going back to the design, I am incredibly

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1 pleased. It goes somewhat beyond our review
2 jurisdiction, but I tell you it's very encouraging to
3 see something as creative a design that's happening on
4 a building such as this. We might think in this city
5 that we just give the lowest kind of easiest, most
6 cost efficient thing to a neighborhood that isn't, you
7 know, it's the height of the city and it isn't on the
8 main avenue through the neighborhood and so where we
9 can kind of get away with doing as little as possible.
10 And this just seems to be a great beacon, and who
11 knows what the correct analogy is. But it really
12 struck me as like a bright light on a corner, as the
13 record shows, has been one that has not been of great
14 utilization of mixed uses, let's say, or quality of
15 life elements.

16 So, I think again really shows the support
17 of this is not something that's just hey we're kind of
18 pulling it together and, boy, we really can't make the
19 regulations fit for us. But rather this is trying to
20 fit everything as correctly as possible and maximize
21 the utilization of the site itself to the benefit of
22 those in the surrounding area. And I think it will be
23 a benefit to the city itself.

24 That's enough for me. I'll let it open
25 for others if there's any other comments.

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1 VICE CHAIRPERSON MILLER: I mean you all
2 said a lot already, so I don't want to be redundant.
3 But I do want to commend the Parks Departments for
4 working with the community so beautifully, it sounds
5 like. And I think that this is the type of case,
6 variance case that has these confluence of factors
7 where there is uniqueness and restrictions with
8 respect to the property itself. But there's also this
9 issue of the design being driven to a certain extent
10 to meet programmatic needs. And also by the fact that
11 it's not the situation where Department of Parks will
12 say okay, well I'll go somewhere else and put this
13 facility. It really has to be here because it's
14 rooted in the community. It's serving this community.

15 So I think that's a clear practical
16 difficulty that had to be met. And I heard no adverse
17 impacts. It's all positive. So I think it's a very
18 strong case here. And it's beautiful to see the
19 community and the District working so well together.

20 BOARD MEMBER ETHERLY: I think finally,
21 Mr. Chair, it's very good to note that the Office of
22 Planning and my colleagues and I we're all on the same
23 page with regard to the question surrounding the issue
24 of use variance. I'll characterize this as dicta
25 here, not instrumental for the actual decision, but I

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1 think it is important to give the Department as much
2 flexibility and as much breadth, if you will, in terms
3 of the creativity around what types of uses, what
4 types of programs are made available in our
5 recreational facilities, and to give them by space.
6 By way of a supportive reading of our zoning
7 regulations I think will be a very helpful tool as the
8 Department continues to move forward with other
9 opportunities like this in other parts of the city.

10 Thank you, Mr. Chair.

11 CHAIRPERSON GRIFFIS: Excellent. Thank
12 you all very much.

13 Is there any further deliberation?
14 Comments?

15 Now we do have a motion before us, it has
16 been seconded. I would then ask for all those in
17 favor signify by saying aye.

18 BOARD MEMBERS: Aye.

19 CHAIRPERSON GRIFFIS: And opposed?
20 Abstaining?

21 Very well, why don't we record the vote.

22 MS. BAILEY: Mr. Chairman, the vote is
23 recorded as five zero zero. Mr. Etherly made the
24 motion. Mr. Parsons was closest to me, and that's the
25 second that I heard. Other members voting, Mr.

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1 Griffis, Mr. Mann, Ms. Miller all in support.

2 Summary order, Mr. Chairman?

3 CHAIRPERSON GRIFFIS: Yes. I see no reason
4 why we wouldn't waive our rules and regulations and
5 issue a summary order in this case.

6 That being said, thank you all very much.
7 Well done, and have a pleasant afternoon.

8 Ms. Bailey, is there any further business
9 for the Board this afternoon?

10 MS. BAILEY: No, Mr. Chairman. That's it.

11 CHAIRPERSON GRIFFIS: Let's adjourn.

12 (Whereupon, the public hearing was
13 adjourned at 4:05 p.m.)

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