

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

NOVEMBER 20, 2007

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER, Chairperson  
MARC LOUD, Mayoral Appointee  
SHANE L. DETTMAN, NCPC

ZONING COMMISSION MEMBER PRESENT:

GREGORY N. JEFFRIES, Vice Chairman  
CURTIS L. ETHERLY, JR., Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
BEVERLEY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.  
JANICE SKIPPER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MATT JESICK

The transcript constitutes the minutes from the Public Hearing held on November 20, 2007.

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P R O C E E D I N G S

9:30 a.m.

CHAIRPERSON MILLER: Good morning, ladies and gentlemen. We have scheduled this morning both a meeting and a hearing, and as the schedule is presently, the Special Public Meeting was scheduled first and the hearing second.

However, due to some developments in cases that are scheduled on a hearing agenda, we think that the hearing agenda will go much more quickly than anticipated.

So what we're going to do is switch the order, and take the hearing cases first. So I'm going to be reading the procedures for the hearing.

First, let me introduce the members up here. This is Mr. Jeffries. To my far right is Mr. Curtis Etherly. Next to me, to my left is Mark Loud and Shane Dettman. That's the Board.

Then further down is Lori Monroe

1 from the Office of Attorney General; Janice  
2 Skipper, Office of Attorney General; and  
3 Beverley Bailey from the Office of Zoning.

4 Copies of today's hearing agenda  
5 are available to you and are located to my  
6 left on the wall near the door. Please be  
7 advised that this proceeding is being recorded  
8 by a court reporter and is also webcast live.

9 Accordingly, we must ask you to  
10 refrain from any disruptive noises or actions  
11 in the hearing room. When presenting  
12 information to the Board, please turn on and  
13 speak into the microphone, first stating your  
14 name and home address.

15 When you're finished speaking,  
16 please turn your microphone off so that your  
17 microphone is no longer picking up sound or  
18 background noise.

19 All persons planning to testify  
20 either in favor or in opposition are to fill  
21 out two witness cards. These cards are  
22 located to my left on the table near the door

1 and on the witness tables. Upon coming  
2 forward to speak to the Board, please give  
3 both cards to the reporter sitting to my  
4 right.

5 The order of procedure for special  
6 exceptions and variances is one, statement and  
7 witnesses of the Applicant; two, government  
8 reports, including Office of Planning,  
9 Department of Public Works, DDOT, etcetera;  
10 three, report of the Advisory Neighborhood  
11 Commission; four, parties or persons in  
12 support; five, parties or person in  
13 opposition; six, closing remarks by the  
14 Applicant.

15 Pursuant to Section 3117.4 and  
16 3117.5, the following time constraints will be  
17 maintained. The Applicant, persons and  
18 parties except an ANC in support, including  
19 witnesses, 60 minutes collectively.

20 Persons and parties, except an ANC  
21 in opposition, including witnesses, 60 minutes  
22 collectively. Individuals, three minutes.

1 These time restraints do not include cross-  
2 examination and/or questions from the Board.  
3 Cross-examination of witnesses is permitted by  
4 the Applicant or parties.

5 The ANC within which the property  
6 is located is automatically a party in a  
7 special exception or variance case. Nothing  
8 prohibits the Board from placing reasonable  
9 restrictions on cross-examination, including  
10 time limits and limitations on the scope of  
11 cross-examination.

12 The record will be closed at the  
13 conclusion of each case, except for any  
14 materials specifically requested by the Board.  
15 The Board and the staff will specify at the  
16 end of the hearing exactly what is expected,  
17 and the date when the persons must submit the  
18 evidence to the Office of Zoning.

19 After the record is closed, no  
20 other information will be accepted by the  
21 Board.

22 The Sunshine Act requires that the

1 public hearing on each case be held in the  
2 open before the public. The Board may,  
3 consistent with its rules of procedure and the  
4 Sunshine Act, enter executive session during  
5 or after the public hearing on a case, for  
6 purposes of reviewing the record or  
7 deliberating on the case.

8 The decision of the Board in these  
9 contested cases must be based exclusively on  
10 the public record. To avoid any appearance to  
11 the contrary, the Board requests that persons  
12 present not engage the members of the Board in  
13 conversation.

14 Please turn off all beepers and  
15 cell phones at this time, so as not to disrupt  
16 the proceedings. The Board will now consider  
17 any preliminary matters.

18 Preliminary matters are those  
19 which relate to whether a case really should  
20 be heard today, such as requests for  
21 postponement, continuance or withdrawal, or  
22 whether proper and adequate notice of the

1 hearing has been given.

2 If you're not prepared to go  
3 forward with the case today, or if you believe  
4 that the Board should not proceed, now is the  
5 time to raise such a matter. Does the staff  
6 have any preliminary matters?

7 MS. BAILEY: Madam Chair, members  
8 of the Board, to everyone good morning. Yes,  
9 we do, but staff is recommending that that be  
10 done when the cases are called.

11 CHAIRPERSON MILLER: Okay. Why  
12 don't you then swear in the witnesses? Would  
13 all individuals wishing to testify today  
14 please rise to take the oath?

15 MS. BAILEY: Would you please  
16 raise your right hand?

17 (WITNESSES SWORN.)

18 CHAIRPERSON MILLER: Ms. Bailey, I  
19 just think we should go out of order with  
20 respect to the cases that are scheduled for  
21 hearing this morning, and call 17594 first,  
22 please.

1       Application 17594

2                   MS. BAILEY: Minshall Stewart  
3 Properties, LLC. Did you want me to read the  
4 entire notice, or is that sufficient? There  
5 is a request for a postponement of this case,  
6 Madam Chair.

7                   CHAIRPERSON MILLER: Thank you.  
8 Would the parties introduce themselves for the  
9 record, please?

10                   MR. EPTING: I'm John EPTING with  
11 Pillsbury Winthrop Shaw Pittman and Dave  
12 Avitabile.

13                   MR. GELL: I'm Steve Gell. I'm  
14 representing Florence Harman and Tom Schultz.

15                   MR. HITCHCOCK: Con Hitchcock for  
16 the West Inn Place Condominium Association.

17                   CHAIRPERSON MILLER: Thank you.  
18 The Board was handed a letter this morning  
19 from Mr. Epting and Mr. Avitabile, is that  
20 correct? In any event, asking for a  
21 postponement of this case, and stating that  
22 the opposition parties concurred with that

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1 request.

2 So you're all here, so I'm to  
3 understand that you wanted the postponement.  
4 You suggested a date in mid-December, like  
5 December 18<sup>th</sup>.

6 That date's not available. But we  
7 did look at the calendar for the first  
8 available date, and we can slip you in January  
9 15<sup>th</sup> in the afternoon.

10 MR. EPTING: That's fine with us,  
11 Madam Chair.

12 MR. HITCHCOCK: Yes, fine with me  
13 also.

14 MR. GELL: That's fine.

15 CHAIRPERSON MILLER: Okay. So it  
16 will be rescheduled to January 15<sup>th</sup> in the  
17 afternoon. Mr. Moy, I'm not sure if we need  
18 to state, you know, where we'll be on the  
19 agenda in the afternoon at this point, unless  
20 you can assess that.

21 MR. MOY: Yes ma'am. I think that  
22 given the schedule we have for the 15<sup>th</sup>, I

1 think it would be appropriate that we could  
2 say that would be for the afternoon, either  
3 first in the afternoon or last in the  
4 afternoon, at one o'clock.

5 In other words, we have a case  
6 that's been withdrawn, that's first in the  
7 afternoon.

8 CHAIRPERSON MILLER: I think  
9 perhaps first in the afternoon actually,  
10 because we have an appeal with the Inn.

11 MR. MOY: It's doable.

12 CHAIRPERSON MILLER: Okay. So  
13 that's where the other case was, so we'll slip  
14 you right into their slot. That's why we have  
15 it, because the case withdrew.

16 So okay. You will be rescheduled  
17 then to January 15<sup>th</sup> at one o'clock, first in  
18 the afternoon. Anything else we need to know?

19 (No response.)

20 CHAIRPERSON MILLER: Okay. Thank  
21 you very much.

22 (Pause.)

1 CHAIRPERSON MILLER: We're ready  
2 for the next case when you are, Ms. Bailey.  
3 Application 17682

4 MS. BAILEY: The next case, Madam  
5 Chair, is No. 17682, and it's the application  
6 of Bill and Nicola Renison, pursuant to 11  
7 DCMR 3104.1, for a special exception to allow  
8 a rear addition to an existing single family  
9 dwelling under Section 223, not meeting the  
10 rear yard requirements of Section 404. The  
11 property is zoned R-1-B and it's located at  
12 3222 Stephenson Place, N.W., Square South,  
13 2017, Lot 801.

14 Members of the Board, there are  
15 two preliminary matters associated with this  
16 case, the first of which is the property was  
17 posted for four days. As you know, 15 days  
18 are required.

19 Secondly, we recently received a  
20 request for party status from Herbert and  
21 Michelle Morris. Thank you. Will the parties  
22 in this case please come forward? And are

1 Herbert and Michelle Morris here?

2 Okay. Good morning. Would you  
3 introduce yourself for the record please?

4 MR. RENISON: Yes. I'm William  
5 Renison. I leave at 3222 Stephenson Place.

6 CHAIRPERSON MILLER: Okay. I  
7 think that we can deal with the party status  
8 application first. I'm not sure. Did you see  
9 this, Mr. Renison, the party status  
10 application?

11 MR. RENISON: Yes.

12 CHAIRPERSON MILLER: Okay. In  
13 essence, since they're not here, they can't  
14 really participate as a party, and they didn't  
15 submit anything in the context of like a  
16 pleading or something to participate that way.

17 So I don't think also that they  
18 really intended to participate. It looks like  
19 they just wanted to get their letter in the  
20 record, which it is in the record. I would  
21 suggest that we deny party status, and  
22 recognize this letter as evidence in the

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1 record.

2 Their major concern, or the  
3 concerns that they address in this letter go  
4 to construction, and that's not a zoning issue  
5 per se in any event. So do I have the  
6 consensus of the Board to deny party status?  
7 Okay. The consensus is there.

8 Okay. Then we get to the second  
9 preliminary matter, which is posting. Do you  
10 want to just address that briefly?

11 MR. RENISON: Yes, I have to  
12 apologize. I overlooked that. We've had an  
13 immediate health crisis in my family and it  
14 just slipped my mind. I'm sorry about that.

15 I was aware that certainly when  
16 the letter came, you know, in September and I  
17 was ready to do it. The last three weeks have  
18 been a little chaotic. Not chaotic, but we've  
19 had some health crisis that I had to deal  
20 with.

21 CHAIRPERSON MILLER: Okay. Did I  
22 understand, Ms. Bailey, to say it was posted,

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1 just not for the 15 days?

2 MR. RENISON: Yes. It was posted.  
3 I was talking to Ms. Bailey actually last  
4 Friday, and she mentioned that -- I think she  
5 mentioned either I didn't pick the sign up or  
6 had I picked up the sign up? I said "Oh my  
7 goodness, I forgot."

8 So I raced down here and I got the  
9 sign and I went back home and I posted it  
10 within an hour after getting it, on my  
11 property. The pictures are somewhere. You  
12 have pictures of that, yes.

13 CHAIRPERSON MILLER: Just for the  
14 record, how long was it posted for?

15 MR. RENISON: From Friday at 2:30.

16 CHAIRPERSON MILLER: Okay. But we  
17 do have evidence in the record that the ANC  
18 had notice, because they voted on the  
19 application and approved it at a public  
20 meeting.

21 MR. RENISON: Right, that's  
22 correct. I went around and talked to almost

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1 all the neighbors for that process, and ANC  
2 asked me to have all the neighbors that were  
3 willing to sign, and some said they didn't  
4 feel it was their right or duty to sign some  
5 piece of paper.

6 But I went around and talked to  
7 all the neighbors in the summer, and there was  
8 no opposition.

9 CHAIRPERSON MILLER: Okay. The  
10 Board has authority to waive the posting, if  
11 they find that the public was notified in  
12 general, and there's no adverse impact to  
13 anybody, no prejudice. I don't think there is  
14 in this case. Do I have the consensus of the  
15 Board that we'll waive our rule for the  
16 posting requirement?

17 Okay. So that's that, and then we  
18 can get into the merits. If you just want to  
19 briefly summarize. It looks like the record  
20 is pretty full on your case. There's no  
21 opposition.

22 I'll just give -- did you want to

1 just take a minute or two to summarize that --

2 MR. JEFFRIES: Excuse me, Madam  
3 Chair. He could stand on the record.

4 CHAIRPERSON MILLER: You could  
5 just stand. I'll give you the option.

6 MR. JEFFRIES: Yes, and say  
7 nothing.

8 CHAIRPERSON MILLER: We have read  
9 the file, and so you're hearing from one Board  
10 member that they don't even need you to  
11 address it further unless you would like to.

12 MR. RENISON: Well, I'll defer to  
13 the Board members. I won't say anything, if  
14 what's presented is adequate.

15 CHAIRPERSON MILLER: That's fine  
16 too. We can go right to -- well, unless there  
17 are questions from Board members, which I  
18 don't think there are. Your application's  
19 very straightforward.

20 Okay. We'll turn to the Office of  
21 Planning briefly.

22 MR. JESICK: Thank you, Madam

1 Chair. Members of the Board, my name is Matt  
2 Jesick. The Office of Planning has no  
3 outstanding issues with this application.

4 The Applicant has met the criteria  
5 set out in Section 223. A right in air for  
6 neighboring properties will not be unduly  
7 affected. Privacy will not be compromised,  
8 and the character of the addition will be in  
9 conformance with the neighborhood.

10 So for the rest of my testimony, I  
11 will rest on the record. I'll be happy to  
12 answer any questions.

13 CHAIRPERSON MILLER: Mr. Jesick,  
14 did you introduce yourself on the record? I  
15 can't remember.

16 MR. JESICK: Yes.

17 CHAIRPERSON MILLER: I'm sorry.

18 MR. JESICK: That's all right. My  
19 name is Matt Jesick. You noted on page three  
20 of the Office of Planning report that there  
21 was some discrepancy in the plans. Is there  
22 a discrepancy with respect to windows?

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1                   MR. JESICK: Yes. The one sheet  
2 shows two windows in the family room, two  
3 center windows. The other plan shows one  
4 center window. So I just wanted to point that  
5 out to the applicant, so they're aware of  
6 this. They can correct that going forward.

7                   MR. RENISON: I could explain  
8 that, what happened.

9                   CHAIRPERSON MILLER: Yes.

10                  MR. RENISON: One of our  
11 neighbors, when I showed him the plans  
12 initially, felt that he would like to have  
13 actually more windows, the one most impacted.  
14 So initially we were not going to have any  
15 really large windows.

16                   So we just had one, and then we  
17 forgot to switch the document. So trying to  
18 fit his needs, we put in two windows on the  
19 first floor on the ends, that would face the  
20 abutting adjacent property.

21                   So we just forgot to update that  
22 one plan that only has one window. So in

1 fact, he wants more windows. So we're going  
2 to try and work with him, because he'd like to  
3 have more windows on our side property that  
4 abuts him.

5 So we're trying to work with the  
6 neighbors to fit this into what would be, you  
7 know, within what we want and what they want.  
8 So that's the reason it got switched around,  
9 because we switched windows and forgot to  
10 update that one sheet. More windows than less  
11 windows.

12 CHAIRPERSON MILLER: Okay. Let me  
13 ask you this then. You're going to be  
14 updating the plans to add more windows?

15 MR. RENISON: I need to talk with  
16 the next door neighbor one more time, if he  
17 wants to add -- if he would like to have us  
18 have more windows on the second floor, which  
19 would require a design change, because we have  
20 walk-in closets there.

21 So what you see in terms of the  
22 picture, with two big windows on the side, of

1 the side of the house, that abuts the adjacent  
2 property, is probably what we'll do on the  
3 first floor.

4 But he would like some windows on  
5 the second floor. So I need to go back to the  
6 architect and say "Well, how would we do this,  
7 because we have two walk-in closets there, of  
8 which there would be no space for windows."

9 CHAIRPERSON MILLER: Okay.

10 GR Real quickly. For the  
11 purposes today, we're going to be approving  
12 the plans that are in front of us, unless  
13 you're looking to resubmit something. Okay.

14 MR. RENISON: I mean --

15 CHAIRPERSON MILLER: Well, I think  
16 I do want to turn to the Office of the  
17 Attorney General in a minute.

18 But it basically sounds like  
19 either way, when we've looked at your record,  
20 and as you can probably hear, that the Board  
21 is going to be inclined to grant the  
22 application, when we grant an application we

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1 grant it based on the plans that are  
2 submitted.

3 Now it sounds as if those other  
4 plans will still not affect light and air.  
5 However, I'm going to ask the Attorney General  
6 some time -- what I think we can do is approve  
7 it, based on -- well, subject to maybe the new  
8 plans that you're going to submit, if they're  
9 in accordance with what we're hearing.

10 But we couldn't issue an order  
11 until we get your new plans. I can ask the  
12 Attorney General what her opinion is on this,  
13 though.

14 MS. MONROE: Basically when,  
15 because it's a 223 and it's a special  
16 exception, you can't do it as a matter of  
17 right. So that you have to come to the Board.  
18 Whatever plans are approved, you have to  
19 build.

20 Unless, as the Chair stated, we  
21 can put off the decision. You can do new  
22 plans and submit the new plans, and they can

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1 decide on the new plans. But whatever plans  
2 they decide on, you're stuck with, unless you  
3 want to, you know, start the whole process  
4 over.

5 CHAIRPERSON MILLER: Let me say  
6 this. I think we've done this before, in that  
7 we're having the hearing right now, okay. We  
8 can address all the issues that need to be  
9 addressed. There's an Office of Planning  
10 report.

11 But if you're going to change your  
12 plans, you're not going to be submitting them  
13 to DCRA until they're final that way anyway.  
14 I think you can submit them to us, and we can  
15 meet on it very quickly thereafter and approve  
16 those plans.

17 So you wouldn't get a decision  
18 today, but you would get a decision right  
19 after your final plans. Do you have a comment  
20 on that?

21 MR. JEFFRIES: You might want to  
22 talk with your neighbor afterwards.

1                   MR. RENISON: I would like to have  
2 a decision today, I think. I would like to  
3 have a decision today on the existing plans.

4                   CHAIRPERSON MILLER: All right.  
5 This is what you can do. We can decide on  
6 your application today, because as you can  
7 hear, it looks like it's certainly meeting the  
8 223.

9                   However, it looks like you may  
10 want to make some change to your plans. What  
11 I would suggest is we're not usually in the  
12 position where we're supposed to give out  
13 legal advice as to how to proceed.

14                   So you could have an opportunity  
15 to make your change, and I would suggest that  
16 you talk to the Office of Zoning afterwards,  
17 about what your options might be, if you  
18 wanted to add more windows.

19                   Because I don't think that, you  
20 know, the way the procedures are set up, they  
21 wouldn't stand in the way of your doing that.  
22 Okay. Anything else? Questions by the Board?

1 Okay. Any other comments that you want to  
2 make.

3 MR. RENISON: If I could just make  
4 one brief comment. I think the process here  
5 is very good. I think for all that's going  
6 on, particularly in our neighborhood, we're  
7 outside the Chevy Chase-D.C. proposed historic  
8 district.

9 I'm just a little apprehensive  
10 about this, but the whole process, I just want  
11 for the record, I think is a very good one, to  
12 talk to your neighbors, to show them your  
13 plans, to get reactions, to make changes on  
14 it.

15 I think it should be done for more  
16 building construction in our neighborhood or  
17 in the District maybe, than it is now. I just  
18 want to go on record. I think it's a very  
19 good process, and I wouldn't have said that  
20 six months ago.

21 The Board, the Zoning Board Office  
22 has been really very helpful, very helpful.

1 CHAIRPERSON MILLER: Well, that's  
2 good to hear. So I think the process does  
3 work best when the parties have all talked and  
4 worked through issues before they get to the  
5 Board. Then it goes very quickly here. Okay.  
6 Is there any --

7 MS. MONROE: Madam Chair, I just  
8 wanted to say, there is a process for like a  
9 minor modification that you can get, once you  
10 get your order. You should talk to the Office  
11 of Zoning about it, but it's not a big deal.  
12 You could probably do that.

13 CHAIRPERSON MILLER: Okay. Is  
14 there anybody here who wishes to testify in  
15 support or opposition on this case?

16 (No response.)

17 CHAIRPERSON MILLER: Okay. Any  
18 final remarks you want to make?

19 (No response.)

20 CHAIRPERSON MILLER: Okay. Then I  
21 think the Board is prepared to deliberate on  
22 this application, and I would move to grant

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1 application 17682 of Bill and Nicola Renison,  
2 for a special exception to allow a rear  
3 addition to an existing single family dwelling  
4 under Section 223, not meeting the rear yard  
5 requirements.

6 I would say that just briefly, I  
7 think everyone has stood on the record. It's  
8 been thoroughly addressed in the papers.  
9 We're just talking about a one foot deviation,  
10 and there's no adverse impact noted on any  
11 neighboring properties.

12 The ANC voted on this in a public  
13 hearing, 6 to 0 to support, and we have that  
14 in our records at Exhibit No. 19. Is there  
15 anything anyone else wishes to add on this  
16 case? Do I have a second?

17 MR. JEFFRIES: Second.

18 CHAIRPERSON MILLER: Okay.  
19 Anything else anyone has to comment on this  
20 case? Okay. This is very straightforward,  
21 and then I would suggest that we vote at this  
22 point then. All those in favor say aye?

1 (Chorus of ayes.)

2 CHAIRPERSON MILLER: All those  
3 opposed?

4 (No response.)

5 CHAIRPERSON MILLER: All those  
6 abstaining?

7 (No response.)

8 CHAIRPERSON MILLER: And would you  
9 call the vote please?

10 MS. BAILEY: Madam Chair, the vote  
11 is recorded as 4-0-1 to approve the  
12 application. Mrs. Miller made the motion.  
13 Mr. Jeffries seconded. Mr. Dettman and Mr.  
14 Loud supported the motion. A fourth BZM  
15 member is not present at this time, and we're  
16 doing a summary order, Madam Chair?

17 CHAIRPERSON MILLER: Yes. I think  
18 that's fair. A consensus of the Board summary  
19 order. So you'll get that very quickly.  
20 Okay. That's it. Thank you very much. Have  
21 a Happy Thanksgiving.

22 (Pause.)

1 CHAIRPERSON MILLER: We're ready  
2 for the next case when you are Ms. Bailey.  
3 Application 17683

4 MS. BAILEY: Application No. 17683  
5 of Heidi Elliott and Caroline Vollmer,  
6 pursuant to 11 DCMR 3104.1 for a special  
7 exception, to allow the construction of a rear  
8 deck to a flat under Section 223, not meeting  
9 the lot occupancy, Section 4-3, an open court,  
10 and Section 406 requirements. The property is  
11 zoned R-4. It's located at 109 - 15th Street,  
12 N.E., Square 1069, Lot 42.

13 CHAIRPERSON MILLER: Good morning.  
14 Would you identify yourselves for the record  
15 please?

16 MS. VOLLMER: I'm Caroline  
17 Vollmer.

18 MS. ELLIOTT: And Heidi Elliott,  
19 and we are both tenants in common at 109 -  
20 15<sup>th</sup> Street, N.E.

21 CHAIRPERSON MILLER: Okay. You  
22 saw how that case went. Your case also is

1 pretty full, pretty straightforward. I guess  
2 I just would like you to clarify briefly. Is  
3 the new addition basically in the same  
4 footprint as what was there previously, or how  
5 is it? Is it different a little bit?

6 MS. ELLIOTT: This is the last  
7 project in an extensive complete gut remodel  
8 of the house, and the deck was kind of after  
9 months of overtime, you know, and not being  
10 able to actually live in the house, we just  
11 decided the deck can wait until later.

12 So that's why over a year later is  
13 when we started on the construction of it.  
14 Basically, it was a need to type of a  
15 situation, because the deck was literally  
16 falling down.

17 We were starting to experience  
18 roof problems. The second story portion of  
19 the deck was actually just nailed to the brick  
20 wall. So there was serious separation of  
21 about six to eight inches in some places,  
22 where it was coming down.

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1                   When we actually ended up just  
2 taking it down, we found that the first story  
3 part of it was just resting on bricks, piles  
4 of bricks that weren't mortared together.  
5 They were just laying on the ground.

6                   So the fact that it stayed up for  
7 as long as it did, we just can't even fathom  
8 how.

9                   MS. VOLLMER: But if I could just  
10 say, the new deck that we put in is actually  
11 less obtrusive than the old deck. We decided,  
12 because our roof, we were experiencing  
13 problems with our roof, to take away the  
14 little addition that went over it.

15                   So the new deck that we're  
16 building right now is completely open. So it  
17 actually doesn't affect our next door  
18 neighbors. It actually affects them less.

19                   MS. ELLIOTT: The footprint,  
20 though, is a little different from what the  
21 original deck was. The original deck was four  
22 feet wide, extended four feet out from the

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1 house. The current deck would extend six feet  
2 out, and that's basically because the way our  
3 contractors put in the HVAC units, we lose two  
4 feet because of the copper coils and  
5 electrical stuff that's on the edge.

6 So we extended it two feet out  
7 because we were losing two feet in the overall  
8 length.

9 CHAIRPERSON MILLER: How about  
10 with this open court requirement? Are you  
11 familiar with that? Was there an open court  
12 before with the previous deck? Do you know?

13 MS. VOLLMER: Open court means?

14 CHAIRPERSON MILLER: Well, the  
15 application is for 223, not meeting the lot  
16 occupancy and open court requirements.

17 MS. ELLIOTT: Well, I mean, is  
18 that the construction to open space allowable  
19 allotment? I'm not quite sure what you mean.

20 MS. VOLLMER: Well, I mean the old  
21 deck took up, I guess what would now be  
22 considered more than what it was supposed to

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1 take up. But we didn't know that when we  
2 bought the house.

3 MS. ELLIOTT: When the house was  
4 -- when it was purchased, I guess the old deck  
5 was grandfathered in. It already exceeded our  
6 allowable lot occupancy. So I mean honestly,  
7 we were told by our contractor oh, if you're  
8 just replacing the existing, you know, you  
9 don't need to get a permit.

10 (Simultaneous discussion.)

11 CHAIRPERSON MILLER: If it was an  
12 exact replacement, you wouldn't have to come  
13 for a special exception. That's why I was  
14 asking about the footprint. But since you've  
15 gone two more feet, you're here appropriately.

16 Actually, it was Office of  
17 Planning that said that there was an open  
18 court requirement now that wasn't being met.  
19 So I guess that's fine. So that's what you're  
20 here for, OP addressed it very thoroughly in  
21 their report. Do you have a copy of their  
22 report?

1 MS. VOLLMER: Yes.

2 CHAIRPERSON MILLER: Okay. I  
3 understand that the representative who wrote  
4 the report isn't here right now. But we do  
5 have Mr. Jesick from the Office of Planning.  
6 Are you prepared to stand on the report? I  
7 actually switched over to you pretty quickly,  
8 but it's a very good report that covers all  
9 the issues.

10 MR. JESICK: Hi again, Madam  
11 Chair. My name is Matt Jesick. Yes, OP will  
12 be fine in standing on the record. The  
13 Applicant has met the criteria of Section 223.

14 CHAIRPERSON MILLER: Okay. Are  
15 there any questions of the Applicant or the  
16 Office of the Planning?

17 (No response.)

18 CHAIRPERSON MILLER: Okay. I kind  
19 of moved from you. I don't know if you want  
20 to say anything more at this point. Okay. Is  
21 there anybody here from the ANC or from -- oh  
22 hello. Come on up.

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1                   Yes, I know. Capitol Hill  
2 Restoration Society. Did you submit  
3 something? No, I didn't think so. Okay.  
4 Would you introduce yourself for the record?

5                   MR. PETERSON: I'm Gary Peterson.  
6 I'm chair of the Capitol Hill Restoration  
7 Society Zoning Committee, and we support the  
8 application.

9                   So I'll be very brief. Our Zoning  
10 Committee found that the porch will not affect  
11 the light and air, nor privacy of use and  
12 enjoyment of neighboring properties.

13                   The committee also found that this  
14 additional does not substantially visually  
15 intrude upon the character, scale and pattern  
16 of houses along the street frontage.

17                   We think that the Applicant has  
18 done a very good job of replacing what was a  
19 very dangerous porch, and we strongly support  
20 this application, and would hope you would do  
21 a summary order.

22                   CHAIRPERSON MILLER: Thank you

1 very much. Did the Applicants appear before  
2 your committee?

3 MR. PETERSON: Yes, the Applicants  
4 did appear before our committee, and the vote  
5 of the committee was unanimous.

6 CHAIRPERSON MILLER: Thank you,  
7 and do we have an ANC report in this case? I  
8 don't see one in my file. Would you like to  
9 address? Did you go to the ANC?

10 MS. ELLIOTT: We did, and they  
11 voted --

12 MS. VOLLMER: Unanimously.

13 MS. ELLIOTT: Yes, unanimously.

14 CHAIRPERSON MILLER: They voted  
15 unanimously to support? Did you ever see a  
16 written report from them?

17 MS. ELLIOTT: We did not.

18 MS. VOLLMER: No. But they told  
19 us they submitted it.

20 MS. ELLIOTT: It was back in  
21 October that we went, and it was Drew  
22 Rosenberg, is that right, that we dealt with.

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1 CHAIRPERSON MILLER: Okay. I  
2 think that Mr. Jesick was bringing to our  
3 attention that in the Office of Planning  
4 report at page two, it says that on October  
5 11<sup>th</sup>, Advisory Neighborhood Commission 6A  
6 voted unanimously to support this application,  
7 and the submission includes a support letter  
8 signed by owners of the neighboring  
9 properties, at 107 and 111 - 15<sup>th</sup> Street, N.E.

10 Okay. I'm not sure those  
11 documents made their way into our record, but  
12 we believe the Office of Planning and we  
13 believe you, that that happened. It's in the  
14 main file? Okay.

15 All right. In any event, I  
16 haven't heard any concerns about any adverse  
17 impacts on neighboring properties or privacy  
18 issues. Anything? You want to make any  
19 closing remarks?

20 MS. VOLLMER: We can say again how  
21 great dealing with you guys actually has been.  
22 It actually has been relatively easy. Time-

1 consuming, but easy.

2 MS. ELLIOTT: I mean I have to say  
3 BZA has been wonderful. I think we've had so  
4 many issues with DCRA. I can't say the same  
5 thing about them, but you guys have been so  
6 helpful, and we're actually getting the  
7 correct information the first time, instead of  
8 constantly going back, speaking to a different  
9 person and finding a different story.

10 I can't even begin to tell you,  
11 after all that we've been through with DCRA.  
12 What a breath of fresh air it's really been.  
13 So thank you.

14 CHAIRPERSON MILLER: Well, thank  
15 you very much. You might want to tell that to  
16 the Council at the oversight hearings. Okay.  
17 Anybody else have anything to add on this  
18 case?

19 (No response.)

20 CHAIRPERSON MILLER: Okay. Then I  
21 think we're ready to move on this. I would  
22 move approval of Application No. 17683, of

1 Heidi Elliott and Caroline Vollmer, for a  
2 special exception to allow the construction of  
3 a rear deck to a flat, under Section 223, not  
4 meeting the lot occupancy and open court  
5 requirements of premises 109 - 15<sup>th</sup> Street,  
6 N.E. Do I have a second?

7 MR. LOUD: Second, Madam Chair.

8 CHAIRPERSON MILLER: Again, I  
9 think I'm going to go through this fairly  
10 quickly like the last one. There's no  
11 opposition in this case. The ANC supports it.  
12 Neighboring properties support it.

13 Capitol Hill Restoration Society  
14 supports it. Office of Planning supports it.  
15 There's no evidence that there would be an  
16 adverse impact to light and air of neighboring  
17 properties or privacy.

18 In fact, the evidence shows that  
19 it would be an improvement, that it would be  
20 less obtrusive than what was there before.  
21 Any other comments?

22 (No response.)

1 CHAIRPERSON MILLER: Okay. All  
2 those in favor say aye?

3 (Chorus of ayes.)

4 CHAIRPERSON MILLER: All those  
5 opposed?

6 (No response.)

7 CHAIRPERSON MILLER: All those  
8 abstaining?

9 (No response.)

10 CHAIRPERSON MILLER: And would you  
11 call the vote please?

12 MS. BAILEY: Madam Chair, the vote  
13 is recorded as 4-0-1, to grant the  
14 application. Mrs. Miller made the motion; Mr.  
15 Loud seconded. Mr. Dettman and Mr. Jeffries  
16 support the motion. There's no fourth BZM  
17 member present at this time.

18 CHAIRPERSON MILLER: Thank you,  
19 and is it the consensus of the Board that  
20 we'll issue a summary order in this case?  
21 Yes, it is. Okay. So that means you'll get  
22 your order very quickly.

1                   If you have any questions, you can  
2 ask the Office of Zoning, and we wish you a  
3 Happy Thanksgiving as well.

4                   MS. ELLIOTT: Thank you very much.

5                   CHAIRPERSON MILLER: Okay.

6                   (Pause.)

7                   CHAIRPERSON MILLER: Ms. Bailey,  
8 do we have anything else on the agenda for our  
9 public hearing this morning?

10                  MS. BAILEY: That ends the public  
11 hearing.

12                  CHAIRPERSON MILLER: Okay. Then  
13 I'm going to adjourn our public hearing, and  
14 I will be calling our special public meeting  
15 momentarily.

16                  (Whereupon, at 10:45 a.m., the  
17 public hearing was recessed.)

18

19

20

21

22



1                   When presenting information to the  
2 Board, please turn on and speak into the  
3 microphone, first stating your name and home  
4 address. When you are finished speaking,  
5 please turn your microphone off so that your  
6 microphone is no longer picking up sound or  
7 background noise.

8                   All persons planning to testify,  
9 either in favor or in opposition, are to fill  
10 out two witness cards. These cards are  
11 located to my left on the table near the door  
12 and on the witness table.

13                  Upon coming forward to speak to  
14 the Board, please give both cards to the  
15 reporter sitting to my right. The order of  
16 procedures for special exceptions and  
17 variances is one, statement and witnesses of  
18 the applicant; two, government reports,  
19 including Office of Planning, Department of  
20 Public Works, DDOT, etcetera; three, report of  
21 the Advisory Neighborhood Commission; four,  
22 parties or persons in support; five, parties

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1 or person in opposition; six, closing remarks  
2 by the Applicant.

3 I don't believe we have any  
4 appeals for today, so I'm just going to skip  
5 the part on appeals and continue with respect  
6 to special exceptions and variances.

7 Pursuant to Section 3117.4 and  
8 3117.5, the following time constraints will be  
9 maintained. The Applicant, persons and  
10 parties except an ANC in support, including  
11 witnesses, 60 minutes collectively.

12 Persons and parties, except an ANC  
13 in opposition, including witnesses, 60 minutes  
14 collectively. Individuals, three minutes.  
15 These time restraints do not include cross-  
16 examination and/or questions from the Board.  
17 Cross-examination of witnesses is permitted by  
18 the Applicant or parties.

19 The ANC within which the property  
20 is located is automatically a party in a  
21 special exception or variance case. Nothing  
22 prohibits the Board from placing reasonable

1 restrictions on cross-examination, including  
2 time limits and limitations on the scope of  
3 cross-examination.

4 The record will be closed at the  
5 conclusion of each case, except for any  
6 materials specifically requested by the Board.  
7 The Board and the staff will specify at the  
8 end of the hearing exactly what is expected,  
9 and the date when the persons must submit the  
10 evidence to the Office of Zoning.

11 After the record is closed, no  
12 other information will be accepted by the  
13 Board.

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

22 The decision of the Board in these

1       contested cases must be based exclusively on  
2       the public record. To avoid any appearance to  
3       the contrary, the Board requests that persons  
4       present not engage the members of the Board in  
5       conversation.

6               Please turn off all beepers and  
7       cell phones at this time, so as not to disrupt  
8       these proceedings. The Board will make every  
9       effort to conclude the public hearing as near  
10      as possible to six o'clock p.m.

11              If the afternoon cases are not  
12      completed at six o'clock, the Board will  
13      assess whether it can complete the pending  
14      case or cases remaining on the agenda.

15              At this time, the Board will  
16      consider any preliminary matters. Preliminary  
17      matters are those which relate to whether a  
18      case really should be heard today, such as  
19      requests for postponement, continuance or  
20      withdrawal, or whether proper and adequate  
21      notice of the hearing has been given.

22              If you're not prepared to go

1 forward with the case today, or if you believe  
2 that the Board should not proceed, now is the  
3 time to raise such a matter. Does the staff  
4 have any preliminary matters?

5 MS. BAILEY: Madam Chair, members  
6 of the Board, to everyone, good afternoon.  
7 Staff does not at this time, Mrs. Miller.

8 CHAIRPERSON MILLER: Okay. Then  
9 would all individuals who wish to testify  
10 today please rise to take the oath, and Ms.  
11 Bailey will administer it?

12 MS. BAILEY: Would you please  
13 raise your right hand?

14 (WITNESSES SWORN.)

15 MS. BAILEY: Thank you.

16 CHAIRPERSON MILLER: Thank you.  
17 Ms. Bailey, it's my understanding that we have  
18 rearranged the schedule a little bit for this  
19 afternoon, based on schedule constraints of  
20 Board members, and that you will be calling  
21 17446-A first?

22 Application 17446-A

1 MS. BAILEY: I will do that, Madam  
2 Chair.

3 CHAIRPERSON MILLER: Thank you.

4 Application 17446-A

5 MS. BAILEY: That is a limited  
6 public hearing, and it's the Application of  
7 Pauline S. Ney, and it's Application No.  
8 17446-A, pursuant to 11 DCMR 3104.1, for  
9 variances from the lot occupancy requirements  
10 under Section 403, and non-conforming  
11 structure provisions under Subsections 2001.3  
12 and 2002.4, to construct four residential  
13 units above existing one-story retail  
14 structure at premises 2160 through 2162  
15 California Street, N.W. Again Madam Chair, as  
16 you know, this is a limited public hearing.

17 CHAIRPERSON MILLER: Thank you.

18 MR. ETHERLY: Madam Chair, if I  
19 may just very briefly as we prepare to move  
20 into Ney, just two very quick preliminary  
21 comments.

22 As you indicated Madam Chair, I

1 would be the member that has a scheduling  
2 constraint related to our proceedings today.  
3 I will need to leave at 3:30, but I will be  
4 sitting to participate in the Ney case, having  
5 some intimate and long-standing familiarity  
6 with the proceedings in that particular case.

7 We have talked a little bit about  
8 it, Madam Chair, and I think perhaps just for  
9 clarity's sake, it might be useful just to  
10 mention it.

11 Though I now sit on the Zoning  
12 Commission, it is my understanding that I can  
13 continue my participation on the Ney case, in  
14 a holdover capacity with my BZA hat on, if you  
15 would, as a holdover appointment for up to, I  
16 believe it was 180 days, or at least until the  
17 new member has been seated and sworn in.

18 As that has not taken place yet  
19 and will not take place, I am wearing  
20 essentially my BZA hat and continuing my  
21 participation on the Ney case. Thank you,  
22 Madam Chair.

1                   CHAIRPERSON MILLER: Thank you,  
2 Mr. Etherly. Not to make things too  
3 complicated, but I think different from this  
4 morning's deliberation, where we had another  
5 Zoning commissioner participate, I would think  
6 you could participate, continue to participate  
7 on this case in either capacity, if there's  
8 not another Zoning commissioner on the case.  
9 So you're doubly qualified. Okay.

10                   Before we get into the substance  
11 of this hearing today, I think there are two  
12 preliminary issues. Would the parties come  
13 forward in this case, and we can address them?

14                   (Pause.)

15                   CHAIRPERSON MILLER: Mr. Glasgow,  
16 do you have something to say on this case, or  
17 do you have a question on another case?

18                   MR. GLASGOW: We're trying to  
19 contact my partner who's handling this case.  
20 I guess with the agenda being turned, she's  
21 not here.

22                   MS. MONROE: Mr. Moy just went to

1 call her, because he didn't realize it was  
2 going to get switched until now, and I didn't  
3 realize it --

4 MR. GLASGOW: And we're trying to  
5 get in touch with her too.

6 (Pause.)

7 MR. GLASGOW: No, but the first  
8 case on the agenda at two o'clock was a  
9 different case.

10 MS. BEGGS: For the record,  
11 weren't we scheduled to be here at one  
12 o'clock? Certainly our side has been.

13 CHAIRPERSON MILLER: Yes. Well,  
14 there are three cases scheduled in the  
15 afternoon hearing, and this case was scheduled  
16 third. We rearranged it, and I know some  
17 people were in the audience and were contacted  
18 by Mr. Moy right away, to say that we were  
19 going to switch.

20 I don't know what happened with  
21 counsel for the Applicant. So yes, I mean in  
22 general, you're supposed to be here at one

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1 o'clock anyway, but I don't think we want to  
2 go forward without the Applicant's counsel.

3 MS. BEGGS: Madam Chair.

4 CHAIRPERSON MILLER: Unless Mr.  
5 Glasgow wants to do that, but --

6 MS. BEGGS: I don't think we want  
7 to lose Mr. Etherly at this point in these  
8 proceedings. So I'm wondering whether we  
9 should just put this over to a different date,  
10 you know, like next week or something like  
11 that, rather than if he's only got an hour to  
12 be here.

13 CHAIRPERSON MILLER: Well, Mr.  
14 Etherly's going to read the record in any  
15 event. Well, if you have anything else to  
16 say, and then we'll consider what to do. I  
17 think we're going to wait for a minute, to see  
18 whether the attorney is en route or --

19 MR. GLASGOW: Let me check and see  
20 whether we've been able to contact her.

21 CHAIRPERSON MILLER: Okay, thank  
22 you.

1 MS. BEGGS: May I make one other  
2 point, is that I spoke to -- we put on our  
3 witness list Mr. Ney, who's the person with  
4 the most intimate knowledge.

5 CHAIRPERSON MILLER: We're not  
6 going to consider anything without the other  
7 side being represented. So you need to hold  
8 that.

9 MS. BEGGS: okay.

10 (Pause.)

11 MR. GLASGOW: We don't have any  
12 further information right now.

13 (Pause.)

14 CHAIRPERSON MILLER: We're just  
15 going to take a few minutes to reassess back  
16 there and look at our calendar.

17 MR. GLASGOW: If we get any  
18 information, should we contact Lori or  
19 Beverley?

20 CHAIRPERSON MILLER: Yes.

21 MR. GLASGOW: Okay.

22 CHAIRPERSON MILLER: I assume

1 you're not ready to pinch-hit for Ms. Brown,  
2 are you?

3 MR. GLASGOW: You assume  
4 correctly.

5 CHAIRPERSON MILLER: Okay.

6 MR. GLASGOW: Thank you.

7 (Whereupon, a short recess was  
8 taken.)

9 CHAIRPERSON MILLER: Okay. We're  
10 back on the record. Would the parties  
11 introduce themselves for the record please?

12 MS. BEGGS: I'm Kathleen Beggs on  
13 behalf of the California House Condominium  
14 Association and the California Court  
15 Condominium Association.

16 MS. STARR: Helen Starr, a  
17 resident of the Woodrow, which is an  
18 interested party.

19 MS. DRISSEL: Marie Drissel,  
20 secretary of Sheridan Kalorama Neighborhood  
21 Council.

22 MS. FRENCH: Kindy French,

1 president of the Sheridan Kalorama Historical  
2 Association.

3 MS. BROWN: Good afternoon, Madam  
4 Chair. Carolyn Brown on behalf of Pauline  
5 Ney, the Applicant, and I apologize for my  
6 delay and I appreciate your indulgence. I  
7 understand your strict time constraints, so I  
8 do apologize for not being here.

9 CHAIRPERSON MILLER: Thank you,  
10 thank you. I'm sorry if you perhaps weren't  
11 informed when we made the switch in the cases.  
12 Is anyone here from the ANC?

13 (No response.)

14 CHAIRPERSON MILLER: Okay. Let's  
15 just address what I notice as two preliminary  
16 matters. One is a request from Ms. Drissel to  
17 submit an additional witness one day late.  
18 Does the Applicant have an objection to that  
19 submittal?

20 MS. DRISSEL: We withdraw that.

21 CHAIRPERSON MILLER: Oh, you're  
22 not presenting that witness?

1 MS. DRISSEL: No, we're not.

2 CHAIRPERSON MILLER: Okay. That  
3 one's withdrawn. The other item I saw here  
4 was a motion to dismiss from the ANC. But  
5 they're not here to move this motion. Is  
6 anybody aware of this motion or have any  
7 comments before we at least, if anything, hold  
8 it in abeyance?

9 MS. BEGGS: Madam Chair, we  
10 understood from our ANC chairperson was that  
11 she thought that her submission spoke for  
12 itself, and her presence wouldn't be required.

13 CHAIRPERSON MILLER: Did she  
14 authorize you to represent to the Board that  
15 we could consider it without her participation  
16 here? Ms. French?

17 MS. FRENCH: Yes. She authorized  
18 me to make sure -- yes. I brought copies with  
19 me to make sure that Carolyn Brown got them,  
20 because the ANC commissioner sent them late.  
21 But Sandy Perlmutter assured me that Clifford  
22 Moy did get them, and confirmed with her that

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1 he had gotten them for the record.

2 She told me I could read it into  
3 the record. I don't know what else might be  
4 required.

5 CHAIRPERSON MILLER: No, don't  
6 read it into the record, because we all have  
7 copies of the motion, and we are anxious to  
8 get into the hearing for the most part. So --

9 MS. BROWN: Mrs. Miller, if I  
10 could speak?

11 CHAIRPERSON MILLER: Yes. Do you  
12 want to address it, Ms. Brown? Yes.

13 MS. BROWN: I do want to note an  
14 objection to the ANC letter. There's no  
15 indication that there was a duly noticed  
16 meeting; that there was a quorum present; that  
17 all the standard information that is typical  
18 of an ANC letter is not there.

19 So given that it's not in proper  
20 form, I would move to strike.

21 MS. FRENCH: May I?

22 CHAIRPERSON MILLER: Yes, briefly.

1 Since you're speaking on behalf of the ANC or  
2 on behalf of your party?

3 MS. FRENCH: I'm speaking on  
4 behalf of the ANC. I brought the e-mails that  
5 has the agenda for the meeting, and I brought  
6 the e-mail where Sandy Perlmutter directly  
7 invited Carolyn Brown specifically to attend  
8 the meeting, and that the meeting was held,  
9 and I brought 20 copies.

10 MS. BROWN: I'm not sure that that  
11 cures any defect or even authorizes Mrs.  
12 French to speak on behalf of the ANC.

13 CHAIRPERSON MILLER: Okay. I  
14 don't think we need to see the e-mails either,  
15 unless my Board -- okay. No. I think what  
16 Ms. Brown is getting to is that this does not  
17 look like a document, first of all, that we'd  
18 give great weight to, because it doesn't  
19 reflect a vote, a public meeting, a quorum in  
20 attendance, anything of that sort.

21 Then when we get to the substance,  
22 it just seems to be way outside of the

1 procedures that this Board has instituted, to  
2 address the opposition's concerns. We set up  
3 a whole procedure where we opened up the case  
4 to reconsider, based on the concerns about the  
5 use of the basement.

6 We went further and scheduled  
7 another hearing, so that the parties could put  
8 on witnesses addressing that issue. So I  
9 don't see even on the merits any grounds to  
10 dismiss, and require the Applicant to take  
11 some other action. Any other comments?

12 Okay. Then I think we ought to  
13 dispose of this motion now. I would move to  
14 deny the motion. All those in favor, say aye?

15 (Chorus of ayes.)

16 CHAIRPERSON MILLER: All those  
17 opposed?

18 (No response.)

19 CHAIRPERSON MILLER: All those  
20 abstaining?

21 (No response.)

22 MR. ETHERLY: And I'll second that

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1 motion, Madam Chair.

2 CHAIRPERSON MILLER: I'm sorry,  
3 thank you. I'm just trotting along. Okay.  
4 The motion's been made, seconded. All those  
5 in favor say aye?

6 (Chorus of ayes.)

7 CHAIRPERSON MILLER: All those  
8 opposed?

9 (No response.)

10 CHAIRPERSON MILLER: All those  
11 abstaining?

12 (No response.)

13 CHAIRPERSON MILLER: Would you  
14 call the vote please?

15 MS. BAILEY: Madam Chair, the vote  
16 is recorded as 3-0-2, to dismiss the motion  
17 from the ANC. Mrs. Miller made the motion;  
18 Mr. Etherly seconded; Mr. Dettman supported  
19 the motion.

20 CHAIRPERSON MILLER: Okay. Now I  
21 think that we are ready to proceed with the  
22 hearing today, which is on the use of the

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1 basement. It's my understanding, and parties  
2 feel free to correct me if I'm wrong, that the  
3 Applicant would be going first, as this is the  
4 Applicant's burden of proof as to how the  
5 basement is being used.

6 MS. BROWN: That's fine, Madam  
7 Chair. My understanding is that since the  
8 opponents said they had an eye witness, that  
9 they would be going first. But I'm happy to  
10 proceed.

11 CHAIRPERSON MILLER: Do the other  
12 parties have any comments on that?

13 MS. BEGGS: At your pleasure.

14 CHAIRPERSON MILLER: Okay. Why  
15 don't we go then in the normal procedure,  
16 which is the Applicant goes first?

17 MS. BROWN: Thank you, Madam  
18 Chair.

19 CHAIRPERSON MILLER: Okay. I just  
20 want to let the parties know that we're going  
21 to try putting on the clock today, in  
22 accordance with the rules that I read about 60

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1 minutes collectively for each side, and we'll  
2 see how it goes.

3 But we wanted to try to do that,  
4 especially since we are under some time  
5 constraints, though Mr. Etherly will read the  
6 record, for whatever part he may miss.

7 MS. BROWN: Okay. Thank you,  
8 Madam Chair. Again for the record, Carolyn  
9 Brown of Holland and Knight on behalf of  
10 Pauline Ney, the Applicant in the case. Here  
11 with me today is Jon Hensley, the project  
12 architect, and he will be a witness today.

13 Joseph Ney is not available. He  
14 is traveling for the Thanksgiving holiday.  
15 But I do have an affidavit from him that I  
16 would like to submit to the record right now,  
17 if you give me a moment.

18 CHAIRPERSON MILLER: Have you  
19 served it on the other parties?

20 MS. BROWN: I have it today to  
21 serve on them.

22 CHAIRPERSON MILLER: Okay.

1 MS. BEGGS: I'm just going to  
2 note, for our side, our objection to this.  
3 Mr. Ney has known for six weeks that this  
4 hearing was scheduled, and certainly he had  
5 plenty of time, even if he had travel plans  
6 that long ago, to have made the statement  
7 available to us before this minute.

8 Again, one of our primary  
9 complaints at the last two proceedings before  
10 this Board have been that we feel that we have  
11 a fundamental right to cross-examine their  
12 witnesses.

13 So to have him testify by way of  
14 an affidavit I think is inappropriate, and I  
15 think that the affidavit should not be  
16 accepted.

17 MS. DRISSEL: And also Madam  
18 Chair, Mr. Ney swore this on the 16<sup>th</sup>, and  
19 they're just dropping this on us right now,  
20 and we really strongly object, if you look at  
21 the document.

22 CHAIRPERSON MILLER: Ms. Brown, do

1 you have any response to --

2 MS. BROWN: Yes. It's pretty  
3 typical to accept affidavits if the witness is  
4 not available. You accepted the affidavit of  
5 Kindy French. Now of course she's here to  
6 back it up.

7 But the beauty of this affidavit  
8 and Mrs. French's is that it's completely  
9 consistent in the facts that they present. So  
10 I don't think that there are any surprises.  
11 It's just verification.

12 Of course, Jon Hensley is here as  
13 a witness, and he can testify to the facts  
14 presented in the affidavit and other  
15 representations made by Mr. Ney to the project  
16 architect.

17 MS. BEGGS: I continue my  
18 objection. I mean the very first assertion  
19 that he makes in paragraph two, a factual  
20 assertion, is false, and he is not here to be  
21 able to testify about it.

22 CHAIRPERSON MILLER: I understand

1 that. I understand that a problem may come up  
2 with an affidavit and he's not here to cross.  
3 So I think what we're going to do though is  
4 we'll take it into the record, and then we'll  
5 take a look at it and see if the other parties  
6 are prejudiced in any way by the end of the  
7 hearing, and if we need to leave the record  
8 open for anything from the other parties.

9 MS. BROWN: Mrs. Miller, I'd also  
10 suggest that you can give it the weight you  
11 feel that it deserves.

12 CHAIRPERSON MILLER: Okay.

13 MS. BEGGS: May we have time to  
14 just read this, because I have to retract what  
15 I just said, because it was a reference to  
16 2160 and not 2162, which is the subject of  
17 today's hearing. So could we just have a  
18 moment to read it?

19 CHAIRPERSON MILLER: Yes, I'm  
20 going to -- yes. Take a moment to read it,  
21 but you're not required, certainly at this  
22 point, to respond to it right now. If you

1 want to read it, in the event that it may be  
2 useful to you with respect to the rest of the  
3 proceeding, and their witnesses.

4 What I was saying is that, you  
5 know, after the hearing, after you go through  
6 the hearing, we can take another look at this  
7 and you can tell us then if you think there's  
8 something you need to respond to, either at  
9 this hearing or after the hearing.

10 But if you want to take -- we can  
11 take a moment and look at it right now.

12 (Pause.)

13 CHAIRPERSON MILLER: Ms. Brown,  
14 let me just ask you this also. The point was  
15 raised, why couldn't this have been served on  
16 them earlier, before this hearing?

17 MS. BROWN: It probably could have  
18 been served yesterday. It was a matter of  
19 getting the signatures in and my availability  
20 in the office. I had Mr. Ney come to my  
21 office and had my secretary notarize his  
22 statement.

1                   But I was not at the office at the  
2 time. So it was just a matter of logistics.

3                   CHAIRPERSON MILLER: This is sworn  
4 the 16<sup>th</sup>, and today is the 20<sup>th</sup>?

5                   MS. BROWN: Yes. That was Friday,  
6 and then I said that I probably could have  
7 gotten it to them yesterday. I did not.

8                   CHAIRPERSON MILLER: Oh, okay.

9                   (Pause.)

10                  CHAIRPERSON MILLER: Ms. Beck, are  
11 you almost ready for us to proceed, and we'll  
12 get back to this later or -- she's going to be  
13 calling a different witness?

14                  MS. BEGGS: Beg your pardon?

15                  CHAIRPERSON MILLER: She's going  
16 to be calling a different witness at this  
17 point. So I don't see a prejudice if you look  
18 at this a little bit later, and you know, more  
19 concentration or do you?

20                  MS. BEGGS: Well, the prejudice to  
21 us is that the Board made very clear at the  
22 last proceeding that this was the end of

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1 evidence in this case. Now we're coming up  
2 with some of this stuff, and some of this not  
3 accurate, to my personal knowledge.

4 CHAIRPERSON MILLER: Okay. But I  
5 mean with respect to proceeding with the next  
6 witness, and we'll get back to this later.

7 MS. BEGGS: Okay.

8 CHAIRPERSON MILLER: Okay.

9 MS. BROWN: Thank you, Madam  
10 Chair. With respect to the affidavit, it sets  
11 forth the facts that Mr. Ney is personally  
12 familiar with. If any the witnesses disagree  
13 with that or want to challenge it, they're  
14 free to do so.

15 But we will have Mr. Hensley  
16 testify as to other facts that have been  
17 presented in here. Again, the key issue that  
18 the Board raised at the October 2<sup>nd</sup> hearing is  
19 what uses are in the remainder of the  
20 basement.

21 We already conceded that the one  
22 portion had been -- the commercial use had

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1       been abandoned. It was a living area. So the  
2       question was what was going on in the rest of  
3       it, based on that the opponents' eyewitnesses  
4       have seen.

5                   I still don't know exactly what  
6       they have seen, but I do know what I have seen  
7       and what the photographs shows in the record  
8       that we submitted. I hope that you have  
9       copies of those that were submitted last  
10      Tuesday, the 13<sup>th</sup>. The affidavit verifies  
11      that those accurate reflections of what's in  
12      the building as of October 20<sup>th</sup>. The  
13      architect will also testify to that.

14                   So the real question is not so  
15      much what the things are in the basement. I  
16      think there's a pretty clear understanding  
17      that they're old picture frames, matting for  
18      frames, tools, work benches, water heater,  
19      utility equipment. I think the list is  
20      detailed in his affidavit and also the  
21      photographs speak for themselves.

22                   The question is what does that

1 mean the basement is used for. As the  
2 affidavit points out, there are some personal  
3 effects of Mr. Ney in the basement.

4 The real question for this Board  
5 is do a couple of boxes that have personal  
6 effects that have been stored on and off in  
7 that basement, are they so invasive that they  
8 convert the entire area to residential use?

9 You know, I would submit that no.  
10 It goes to a question of accessory uses. For  
11 example, if -- it's similar to a question of  
12 whether a copy machine, computer office files  
13 and the like in a home convert it to a  
14 commercial office.

15 Well, it really depends on how  
16 pervasive the use is, whether it's -- I think  
17 the standard is 20 percent under the  
18 *Association for the Preservation of N Street*  
19 *v. BZA*, that you can have up to 20 percent of  
20 use or area of a property before it becomes  
21 too much and becomes a principal use.

22 You know, it's similar to if a

1 restaurant closes, then the owner moves all  
2 the tables and chairs and cash register, wine,  
3 food to his basement, and does that convert it  
4 to a commercial use?

5 It doesn't. It depends on what  
6 else is there. Based on what the other  
7 materials in the basement; as we know, there  
8 is an art gallery use permitted under the C of  
9 O. It has not necessarily been in operation,  
10 but all those materials have been down there,  
11 associated with it for years.

12 So I think by looking at the  
13 pictures, it becomes self-evident that this is  
14 not a residential use. So again, we're going  
15 to leave that question up to you, as to how  
16 much is enough.

17 We think that the limited number  
18 of boxes that are there, that do contain  
19 personal effects, do not transform this into  
20 a residential space.

21 You also hear from the architect  
22 though, that perhaps we don't have to reach

1 that question, because we also have an  
2 alternative plan for the basement. So that,  
3 and if you're -- and I have copies here that  
4 I'll distribute in a moment.

5 That the commercial uses that are  
6 presently proposed for the 2162 can be  
7 switched to 2160, which has a clear commercial  
8 C of O listed for the basement. It's  
9 associated with the grocery store deli, so  
10 that it's not a preferred option.

11 But if we switch the commercial  
12 storage space to that side in the proposed  
13 plan, this issue goes away. I will go ahead  
14 and submit this to the record now, and then I  
15 call Jon Hensley, the architect, as a witness.

16 MS. BEGGS: Well once again, Madam  
17 Chair, I object to this. We were given no  
18 prior notice of this alternative plan at any  
19 time, and obviously it's been in the works for  
20 a long time.

21 MS. FRENCH: Excuse me. If they  
22 have an alternative plan, my assumption would

1 be that they are dismissing their request on  
2 this application, and they need to start over  
3 with a new Application.

4 CHAIRPERSON MILLER: No, I don't  
5 read it that way. But this isn't something  
6 that you would be cross-examining about. This  
7 sounds like a legal argument, and you would  
8 have an opportunity to address this after this  
9 hearing, okay.

10 I mean it is new. It's not  
11 exactly the subject of the hearing, but it's  
12 pertinent to the issue before us.

13 MS. BEGGS: Again, Madam Chair, I  
14 would agree with what you just said, and I  
15 would say we can cut this hearing very short,  
16 if they just want to say that this is our  
17 alternative plan, and then we'll just submit  
18 legal arguments and we won't have to do  
19 anything further.

20 CHAIRPERSON MILLER: I don't think  
21 that's what I heard them say. Do you want to  
22 address that, Ms. Brown?

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1 MS. BROWN: Yes. The preferred  
2 alternative is what is before the Board today,  
3 to keep the proposed commercial use under  
4 2162. However, we submit this plan in the  
5 alternative, and if it ends up being a way to  
6 not have to wrestle with a very difficult  
7 zoning question on your part, we are willing  
8 to accept that.

9 CHAIRPERSON MILLER: Okay. I have  
10 a question just about the factual material.  
11 Are you saying that this art materials that  
12 are stored there have been stored there, even  
13 though there's no art gallery there anymore?

14 MS. BROWN: I'll have Mr. Hensley  
15 testify how long it's been there.

16 CHAIRPERSON MILLER: Okay. He's  
17 going to testify to those materials?

18 MS. BROWN: And we cannot testify  
19 to the direct link between the art gallery use  
20 and the materials in the basement. You're  
21 right. We had previous testimony that said  
22 the art gallery use has not been active.

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1                   But yes, the materials are still  
2 stored there in the basement.

3                   CHAIRPERSON MILLER: Okay. I  
4 wasn't sure what he was going to be testifying  
5 to. So he's going to be testifying to what's  
6 in the basement, and then what conclusions we  
7 can draw from that?

8                   MS. BROWN: He will --

9                   CHAIRPERSON MILLER: Just what's  
10 in the basement or how long they've been in  
11 the basement?

12                   MS. BROWN: He will be verifying  
13 the information that is supplied in the record  
14 in the photographs, to say that he has seen  
15 that material and that those are accurate  
16 representations of what's in the basement now.  
17 He will be able to testify to information  
18 provided to him by Joseph Ney, on how long the  
19 materials have been there. Mr. Hensley.

20                   MS. DRISSEL: Madam Chair, could  
21 the witness be sworn in please?

22                   CHAIRPERSON MILLER: Have you been

1 sworn in?

2 MR. HENSLEY: No.

3 CHAIRPERSON MILLER: Oh yes.

4 Please be sworn in. Have we not sworn in  
5 witnesses, or were you just late?

6 MR. HENSLEY: I was late coming  
7 in.

8 CHAIRPERSON MILLER: Oh, okay.

9 Ms. Bailey will swear you in.

10 MS. BAILEY: Could you stand  
11 please? Raise your right hand.

12 Whereupon,

13 JON HENSLEY

14 was called as a witness and, having been first  
15 duly sworn, was examined and testified as  
16 follows:

17 DIRECT EXAMINATION

18 BY MS. BROWN:

19 Q Mr. Hensley, could you please  
20 identify yourself for the record, and proceed?

21 A Jon Hensley, representing Jon  
22 Hensley Architects. We're located at 927

1 South Walter Reed Drive in Arlington,  
2 Virginia.

3 Q And Mr. Hensley, could you please  
4 tell me whether or not you were present, when  
5 you have been present in the basement of 2162  
6 California Street, what you saw there and then  
7 in any evidence in the record that supports  
8 what you saw?

9 A I visited the basement on October  
10 20<sup>th</sup> of this year. The basement level on the  
11 2162 side, which is the left side of the  
12 basement, contains all the utilities serving  
13 the rest of the building.

14 It contains mostly art materials,  
15 framed objects stacked up like the photographs  
16 show. The materials, as I understand it from  
17 Joseph, has existed there since, you know, at  
18 least the 80's or the early 90's, and that the  
19 work bench has been there as long as anyone  
20 remembers.

21 Q Mr. Hensley, could you describe  
22 the proposed plan alterations that we have

1 distributed to the Board?

2 A Okay. The use of the basement in  
3 question that we're trying to place underneath  
4 the 2162 side, is to support the commercial  
5 side, the retail store that's located on the  
6 ground level, which we understand the  
7 community has asked for.

8 We placed that directly beneath  
9 this stair, below the retail, and connected it  
10 directly with the small stair that could be  
11 opened, be very functional for the future  
12 occupant of the retail space.

13 The alternate plan removes the  
14 stair from our space and simply allows us to  
15 use the central stair of the building, the  
16 exit stair.

17 We relocated the commercial use to  
18 the east side, the 2160 side, on the south  
19 side of that space, trading -- essentially  
20 sort of trading what was the space designated  
21 for the support of the apartment building, the  
22 entire building, and switching that with the

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1 proposed retail use on the cellar level.

2 Q Mr. Hensley, are there any  
3 commercial uses left under, in the basement of  
4 2162 California Street as a result of this  
5 alternate plan?

6 A There are none.

7 Q And have you been in the basement  
8 of 2160 California Street?

9 A Yes. It's mostly used where the  
10 store that's on the east side, the 2160 side,  
11 has a dry cleaning operation, and the clothing  
12 for that is sort of -- the track for that goes  
13 down into the basement level.

14 That's entirely and has always  
15 been, it's my understanding, always been a  
16 commercial use.

17 Q So by putting the commercial use  
18 in 2160 in the basement, is consistent with  
19 the present use?

20 A That's accurate.

21 Q Thank you, Mr. Hensley. One more  
22 question. When was the first time that you

1 were in the basement of 2162, the property in  
2 question?

3 A The first time I went there was on  
4 October 20<sup>th</sup>. I've only visited the basement  
5 once.

6 Q And who prepared the drawings  
7 previously that showed the configuration?

8 A Interns from my office came out,  
9 measured and photographed the site, and  
10 prepared the drawings of the existing  
11 conditions.

12 MS. BROWN: Thank you. Madam  
13 Chair, that concludes the testimony of this  
14 witness. So the basic facts before the Board  
15 right now are this. We have photographs that  
16 show the materials in the basement.

17 I'm sorry. Do you want to come  
18 back? They may ask questions. Why don't I go  
19 ahead and let you ask questions, and then I'll  
20 summarize?

21 CHAIRPERSON MILLER: Okay, and the  
22 opposition parties may have some questions as

1 well. I just have a question about this art  
2 materials. I understood that you were saying  
3 that you were told by Mr. Ney, who's not here  
4 to testify himself, that they've been there  
5 since perhaps the 80's or the 90's.

6 Did he give any other further  
7 explanation about that, why they were there so  
8 long in that area? That's my first question  
9 on that.

10 THE WITNESS: I don't think there  
11 is any question if you've visited the site,  
12 how long they've been there. They're wrapped  
13 in craft paper and there's just layers and  
14 layers of dust on them. There's no question  
15 about that.

16 It was my understanding that the  
17 art material had been owned by his family.

18 CHAIRPERSON MILLER: Okay, and was  
19 there -- could you refresh my memory? Was  
20 there a commercial use? I think there was.  
21 I think there was the Logan Company or  
22 something recently in the commercial space

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1 above this basement?

2 THE WITNESS: That's accurate.

3 CHAIRPERSON MILLER: Can you  
4 testify at all with respect to whether there  
5 were any other storage related to his business  
6 or any other business in the last 20-something  
7 years?

8 THE WITNESS: It's my  
9 understanding that he has not used that space.  
10 But the services, the utilities and the other  
11 services for the building are located there.

12 CHAIRPERSON MILLER: Okay, thank  
13 you. Other Board questions? Cross?

14 CROSS EXAMINATION

15 BY MS. BEGGS:

16 Q Actually that last point. Aren't  
17 those utilities, the hot water heater and  
18 things like that, primarily for the use of the  
19 residential apartment down there?

20 A No.

21 Q Does Brian Logan have a shower in  
22 his office?

1           A     I don't consider a shower a  
2 utility, ma'am.

3           Q     No, I'm asking why -- who would be  
4 the primary user of hot water from the  
5 basement hot water heater, which is --

6           A     Occupants of the building.

7           Q     And that would include whoever  
8 lived in the residential apartment, right?

9           A     Yes.

10          Q     Okay. Now when your interns went  
11 down and took pictures, or did the drawings  
12 for the 2162 basement, did they inform you  
13 that there was a residential apartment down  
14 there?

15          A     No. Our drawings represent what  
16 was there. When we submitted the drawings  
17 from HPRB, we accurately caught the extents of  
18 the walls. We didn't describe it that  
19 closely. We didn't show everything, because  
20 it wasn't our intention in the drawings to use  
21 any of that.

22                    It would all be demolished. It's

1 a building from the 1920's. There's nothing  
2 there that would be useful to our building  
3 going forward.

4 Q Well, on your most recent drawing  
5 that you submitted, when was this in October,  
6 in October of this year, you do depict the  
7 residential apartment as area of abandoned  
8 commercial use. Why did it become relevant  
9 then?

10 A I was asked by the client, in a  
11 submission for the September hearing, to  
12 prepare a drawing that represented that space  
13 as an apartment use.

14 Q Okay. Let me be clear. When did  
15 you first become aware that there was an  
16 apartment down there?

17 A When I was -- I think it was in  
18 August, when this issue came up, whenever --  
19 some time in this past year.

20 Q Do you know how many total square  
21 feet there are in the basement of 2162?

22 A Not without referring to my

1 drawings I do not.

2 Q Could you refer to your drawings?  
3 Because I can't figure it out from your  
4 drawings. I'm not an architect.

5 (Witness reviewing documents.)

6 THE WITNESS: The basement level  
7 is the same area as the first level. The  
8 first level has an area listed of 2,848 square  
9 feet.

10 BY MS. BEGGS:

11 Q Have you ever spoken with the  
12 Applicant, Mrs. Ney?

13 A No, I have not.

14 Q Okay, and you've told us you've  
15 only made one trip to the basement. How many  
16 trips have you made to the 2162 premises all  
17 together?

18 A Well, I used to live in that  
19 block, so in relationship to this case,  
20 probably four.

21 Q And how long did you live on that  
22 block?

1           A     I lived on that block for two  
2 years.

3           Q     During what period of time?

4           A     From 1988 to 1990.

5           Q     Okay, and the trips that you made  
6 to 2162, over what period of time did those  
7 take place?

8           A     I believe my office started this  
9 project about a year and a half ago. So does  
10 that answer your question?

11          Q     Well, I think it's been longer  
12 than that, but the exhibits and your drawings  
13 will reflect the date. So we can refer to the  
14 record on that.

15                    But during that time, did you ever  
16 see an art gallery being operated out of the  
17 Brian Logan Real Estate office? Either during  
18 the time that you lived there, or the time  
19 that you visited it in connection with this  
20 project.

21          A     While I've been there, since I've  
22 become aware of this project in the past 18

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1 months, I have seen art work hung and  
2 displayed in the windows.

3 From the very beginning, I did  
4 review the C of O, which lists a gallery as  
5 one of the uses at 2162, the west side of the  
6 structure.

7 Q Referring to the photographs that  
8 were attached to the November 13, 2007  
9 submission by Holland and Knight in this  
10 matter, do you know who took those pictures?

11 A Yes.

12 Q Who was that?

13 A Carolyn Brown.

14 Q Carolyn Brown took the  
15 photographs?

16 A Yes.

17 Q And you accompanied her on that  
18 trip?

19 A I was present.

20 Q At the time when you were in the  
21 basement, did you notice an old mattress  
22 stuffed in the corner?

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1           A     I did not.

2           Q     Did you see racks of personal  
3 books propped up against the wall?

4                   MS. BROWN: Madam Chair, maybe the  
5 question -- I don't know if he's going to be  
6 able to answer whether he knows they're  
7 personal books or not. He can probably answer  
8 whether or not he knows there were books  
9 there.

10                   THE WITNESS: And can you be  
11 specific in what area, because I believe the  
12 Applicant has already conceded that the  
13 portion of the basement that has the bathroom  
14 was used as a residence. I did not see any  
15 personal books located in the area of the  
16 basement that we're talking about, which is  
17 the cellar basement, with all the utilities  
18 and art works stored.

19                   BY MS. BEGGS:

20           Q     Did you see stacks of children's  
21 games, including a metal hockey game?

22           A     I don't recall seeing that, no.

1           Q     Did you inspect the contents of  
2 any of the boxes?

3           A     I did not.

4           Q     So you can't testify as to what  
5 those boxes contained?

6           A     I cannot.

7           Q     Do you have any reason to doubt  
8 that they contained the personal effects of  
9 the Ney family?

10          A     I have no reason to believe that  
11 they contained anything at all. I didn't  
12 look.

13          Q     On your October 20<sup>th</sup> trip to the  
14 basement, was Joseph Ney with you?

15          A     He was present.

16          Q     Did you ask him what was contained  
17 in the boxes?

18          A     No.

19          Q     Was there anybody else present  
20 besides you, Mr. Ney and Ms. Brown?

21          A     No.

22          Q     I think you testified a little

1 while ago that your interns took photographs  
2 of the basement when they were down, preparing  
3 the drawings that have been submitted in this  
4 matter and before the HPRB and before the ANC?

5 A Yes. They took photographs of the  
6 entire space.

7 Q Did you bring those photographs  
8 with you here today?

9 A No, I did not.

10 Q Can you tell us why?

11 A The Applicant has presented  
12 photographs here that accurately describe what  
13 I saw on October 20<sup>th</sup>.

14 Q But you testified also that you  
15 thought, based on what Mr. Ney told you, that  
16 some of the storage down there was for  
17 temporary storage. So over a period of time,  
18 the pictures might have looked different from  
19 the time your interns took them and the time  
20 of October 20<sup>th</sup>; correct?

21 A Could you restate that as a  
22 question please?

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1           Q       I think the correct was meant to  
2       be a question word. But let me see if I can  
3       be a little it more elegant. Part of your  
4       testimony is that some of the basement is used  
5       for quote "temporary storage," even though  
6       what you're telling us is everything's covered  
7       with dust, so it doesn't seem to be all that  
8       temporary.

9                   CHAIRPERSON MILLER: Wait. Let's  
10      deal with it one at a time, okay. So your  
11      first question is you're saying that he  
12      testified that some of it was temporary  
13      storage, and they're looking like you didn't  
14      testify to that. So why doesn't he respond to  
15      that.

16                  MS. BROWN: Right. We object,  
17      that he did not testify to that, and if you  
18      could confirm that.

19                  THE WITNESS: I did not testify  
20      that it was for temporary storage.

21                  BY MS. BEGGS:

22           Q       Oh, I'm sorry. Was that in his

1 affidavit that we were just served with? I  
2 stand corrected. It wasn't Joseph Ney. It  
3 was in Joseph Ney's affidavit. Did he tell  
4 you at the time you were down in the basement  
5 that it was used for temporary storage?

6 A No, he did not.

7 Q And would it have been your  
8 impression, based on what you saw down there,  
9 that most of the stuff had been stored there  
10 for a very long period of time?

11 A That's my impression, yes.

12 Q And did Mr. Ney tell you that  
13 Brian Logan has no right to store anything in  
14 the basement?

15 A I don't recall Mr. Ney describing  
16 what Mr. Logan's rights were to the space. I  
17 do understand through correspondence that Mr.  
18 Logan has access to the space, because his  
19 utilities are centrally located there. So if  
20 he were to need to go down there, he has a  
21 key.

22 Q But he doesn't have storage right;

1 correct, or you're just saying you don't know?

2 A Not that I'm aware of.

3 Q Did Mr. Ney tell you whether those  
4 art supplies have been used since the 1980's?

5 A He did not.

6 Q And did you see any art displayed  
7 in the basement premises or the cellar  
8 premises at 2162?

9 A I did not. I'm sorry. I thought  
10 you were asking 2160. Yes, there were.  
11 That's primarily what was stored and is  
12 stored, as far as I understand, in the 2162.

13 Q But your testimony was -- I'm  
14 sorry.

15 A The 2160 side, which is underneath  
16 the existing convenience store, did not  
17 contain any art gallery material that I'm  
18 aware of.

19 Q No. I again wasn't making myself  
20 clear. What I'm asking is whether art was  
21 displayed? Not whether it was stored and  
22 wrapped up in brown paper, which I think was

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1 your previous testimony, but whether it was  
2 displayed on the walls of the basement?

3 A It's not displayed on the wall.  
4 It looks like a framing shop though, with the  
5 materials, the work bench and the art.

6 Q And do you know where the art  
7 gallery that the Ney family operates is?

8 A No, I do not.

9 MS. BEGGS: Nothing further.

10 CHAIRPERSON MILLER: Are you all  
11 participating as one party or two parties or  
12 I forget here. Well, you have party status  
13 and I just don't remember.

14 MS. BEGGS: Yes. Let me just  
15 remind you, because it was many moons ago that  
16 this happened. There's four interested  
17 parties, other than the automatic interested  
18 party that the ANC is. My apartment house is  
19 an interested party; the Woodrow is an  
20 interested party; the Sheridan Kalorama  
21 Neighborhood Council is an interested party;  
22 and the Sheridan Kalorama Historical

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1 Association is an interested party.

2 CHAIRPERSON MILLER: Okay, but I  
3 mean, and I'd have to check our records, but  
4 did you all get individual party status? Is  
5 that what you mean by interested party? Okay.  
6 But okay.

7 When presenting the case, though,  
8 you'll be collective under the timing. You're  
9 working together, I can see anyway, on the  
10 cross-examination.

11 Okay. So are you all -- are you  
12 finished with your cross as a group?

13 (Pause.)

14 BY MS. FRENCH:

15 Q Do you know what's in the area  
16 where the paper wraps, the frames you're  
17 suggesting there is actually art work in? Do  
18 you know what's there and who owns it?

19 A It's my understanding that the Ney  
20 family owns the art work that's there.

21 Q And in what capacity are they  
22 collecting the art work? As individuals that

1 personally collect art work? I understand the  
2 mother is an artist. Is it work that she has  
3 done in the past that she's storing in the  
4 basement?

5 A I'm not aware of any of the  
6 artists' names. I don't know who performed  
7 the work.

8 Q Did you unwrap any of the art work  
9 that's in the pictures?

10 A I recall seeing one piece of art  
11 work that may have been unwrapped. I wouldn't  
12 have unwrapped any piece of art, and I asked  
13 a question about it, and was told that it was  
14 obtained from Mexico, I believe. That was the  
15 extent of my questions involving the art work.

16 Q In the picture on page four, it  
17 shows some art work. You can count at least  
18 50 there, which would take up a very small  
19 amount of the basement, and there isn't any  
20 other art work in the pictures. There's a lot  
21 of other boxes, which you said you did not  
22 open.

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1           A       Well, I did not open boxes.  
2           That's accurate. But I see in these  
3           photographs quite a bit more art work. If you  
4           look on page six, which is looking towards the  
5           southwest, there's racks of art work there.

6                     If you look on again page six, the  
7           lower right, there's more frames and art  
8           stacked in the northwest corner of the space.  
9           It's a relatively small space.

10                    BY MS. BEGGS:

11           Q       Can I just follow up on that?  
12           Aren't those frames all empty?

13           A       It's beyond my capability to read  
14           that photograph to determine whether all the  
15           frames are empty or not.

16           Q       Okay. Isn't it a fact when you  
17           were down there, that you noticed that there  
18           were piles of empty picture frames?

19           A       Yes, that's what you would expect  
20           to see on sort of that type of operation,  
21           where people were doing framing.

22           Q       Now did you ask Joseph Ney or did

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1 Joseph Ney tell you whether any of the frames  
2 or any of the art framing materials had been  
3 used in the last three years?

4 A I didn't ask and he didn't offer  
5 that information either.

6 Q Okay, again, nothing further.

7 CHAIRPERSON MILLER: Okay. Any  
8 Board questions?

9 (No response.)

10 MS. FRENCH: I'm sorry.

11 CHAIRPERSON MILLER: You have  
12 another question. Wait. You said you were  
13 finished but you're not finished? You're  
14 finished. Okay. Any Board questions?

15 (No response.)

16 CHAIRPERSON MILLER: Okay. Ms.  
17 Brown, anything further?

18 MS. BROWN: No. I just want to  
19 reserve an opportunity to make a closing  
20 statement and any rebuttal.

21 CHAIRPERSON MILLER: Okay.

22 MS. BROWN: Thank you.

1 CHAIRPERSON MILLER: Now it's the  
2 opposition parties' turn then to present their  
3 case.

4 MS. BEGGS: We'd like to begin  
5 with Kindy French, who's the president of the  
6 Sheridan Kalorama Historical Association.

7 DIRECT EXAMINATION

8 MS. FRENCH: I've already  
9 submitted my affidavit to all parties,  
10 including the Board. Should I read it in the  
11 record?

12 CHAIRPERSON MILLER: What's the  
13 date of that? I want to make sure that we  
14 have it in front of us.

15 MS. FRENCH: November 19<sup>th</sup>.

16 CHAIRPERSON MILLER: Okay. We  
17 have it. Do you have it, Ms. Brown?

18 MS. BROWN: I do have it, and I  
19 have no objection to it being in the record.

20 CHAIRPERSON MILLER: Okay, so is  
21 this right? Do we have this? Is this  
22 basically like a copy of what your testimony

1 would be?

2 MS. FRENCH: Correct.

3 CHAIRPERSON MILLER: Okay. Ms.  
4 Brown, let me ask Ms. Brown if she needs you  
5 to actually provide the testimony in order for  
6 you to do cross, or if you can just read it.

7 I'm just trying to save time. We  
8 all have it in front of us. I don't think we  
9 need to have you read through it, Ms. French,  
10 unless there's another reason to.

11 Okay. Is that your testimony for  
12 today's hearing?

13 MS. FRENCH: Yes.

14 CHAIRPERSON MILLER: Okay. Then  
15 why don't we take a moment to read through it?  
16 I can see if there are any Board questions  
17 first, and then we'll go to Ms. Brown if there  
18 aren't.

19 MS. DRISSEL: Well, we have more  
20 witnesses.

21 CHAIRPERSON MILLER: You have more  
22 witnesses, right. But are we dealing with Ms.

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1 French first?

2 MS. DRISSEL: Yes.

3 CHAIRPERSON MILLER: Okay. So  
4 let's just take a moment and read it.

5 MS. DRISSEL: Okay, okay.

6 (Pause.)

7 CHAIRPERSON MILLER: Okay. We  
8 don't have any questions at this time. Ms.  
9 Brown, do you have some questions?

10 MS. BROWN: Yes, I do, and they're  
11 pretty quick, and let me just get the right  
12 page here.

13 CROSS EXAMINATION

14 BY MS. BROWN:

15 Q Ms. French, did you have  
16 permission of the owner Pauline Ney or her son  
17 to enter the basement?

18 A No, I did not.

19 Q And did you ask anyone if you  
20 could enter the basement, or did you just  
21 follow the inspectors in?

22 A Kathleen Beggs asked the inspector

1 if we could come in, and she said yes.

2 Q And what is the name of the  
3 inspector?

4 A Elsie Burchette.

5 Q And who is she with?

6 A DCRA.

7 Q Is she a Zoning inspector, housing  
8 inspector?

9 A She's a housing inspector.

10 MS. BROWN: Thank you. No more  
11 questions.

12 CHAIRPERSON MILLER: Ms. Drissel,  
13 did you have questions? Okay. Any Board  
14 questions?

15 (No response.)

16 CHAIRPERSON MILLER: All right, no  
17 Board questions. Next witness?

18 DIRECT EXAMINATION

19 MS. DRISSEL: Marie Drissel, and I  
20 will give you a copy of my statement.

21 CHAIRPERSON MILLER: Does Ms.  
22 Brown have a copy?

1 MS. BROWN: I just got it now.

2 CHAIRPERSON MILLER: Is that it?  
3 Okay.

4 MS. BEGGS: Maybe in the interest  
5 of speeding it up --

6 MS. DRISSEL: I'll read it fast.

7 CHAIRPERSON MILLER: Okay. You  
8 are entitled to testify. This is kind of  
9 unusual, where, you know, we get the  
10 statement.

11 MS. DRISSEL: It's what I would  
12 have said, okay.

13 CHAIRPERSON MILLER: Okay, that's  
14 fine.

15 MS. DRISSEL: My name is Marie  
16 Drissel. I'm secretary of the Sheridan  
17 Kalorama Neighborhood Council. I make this  
18 Statement in opposition to the application of  
19 Pauline S. Ney for zoning relief in the case  
20 before this Board, No. 17446-A.

21 I have lived in Sheridan Kalorama  
22 neighborhood for over 28 years. In June of

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1 2006, as has been detailed in the Board, I  
2 took pictures of an illegal apartment in the  
3 cellar of a premises of 2162 California  
4 Street, through a broken window.

5 We made our Councilmember and his  
6 staff aware of this fact. The Councilmember's  
7 staff requested that a DCRA inspector be sent  
8 to the cellar of 2162 California Street  
9 property, as far back as the summer of 2006.

10 Finally, the Applicant through her  
11 architect delineated the abandoned apartment  
12 in the cellar and the hearing related to these  
13 final drawings took place on the morning of  
14 September 25<sup>th</sup>, 2007.

15 In the afternoon of September 25<sup>th</sup>,  
16 2007, I went to the property in question with  
17 a final set of drawings. I was attempting to  
18 measure the apartment outside and at the  
19 ground level. It was difficult and  
20 impossible.

21 Someone saw me and I was admitted  
22 to the cellar. The cellar was so messy that

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1 there was not a straight aisle where I could  
2 take a tape measure and pull it even remotely  
3 in a straight line.

4 I saw nothing to indicate any  
5 commercial use or commercial storage, and it  
6 definitely was not an art gallery or art  
7 gallery workshop. I did see a table saw on a  
8 bench, some frames and some board games. I  
9 did not see anything or any boxes indicating  
10 a business use.

11 On several occasions, I've tried  
12 to describe my overall impressions of what I  
13 saw to Kindy French and Kate Beggs. Finally,  
14 because words failed me, I searched Google  
15 Images to find an appropriate picture  
16 describing what I saw.

17 I am attaching a Google photo,  
18 which provides an indication of the kind of  
19 disorder and personal items I saw on September  
20 25<sup>th</sup>, 2007.

21 The photos which were submitted by  
22 the Applicant's attorney on November 13<sup>th</sup>,

1 2007, did not in any way depict what I saw on  
2 September 25<sup>th</sup>, 2007. What I attached was an  
3 e-mail that I sent to Kindy, after I had  
4 searched the Google Images.

5 The picture I selected, in which I  
6 told her well, it doesn't look this messy.  
7 But this is what I saw when I went down there  
8 and was making measurements. That's my  
9 testimony.

10 CHAIRPERSON MILLER: Do you have a  
11 comment, Ms. Brown?

12 MS. BROWN: I have comments,  
13 questions, but I'll keep the comments to  
14 myself and just go straight to the questions.

15 CROSS EXAMINATION

16 BY MS. BROWN:

17 Q Ms. Drissel, you said that in  
18 paragraph five "someone saw me and I was  
19 admitted to the cellar." Who was that  
20 someone?

21 A I refuse to say.

22 Q Was it someone who had authority

1 to enter the building?

2 CHAIRPERSON MILLER: Ms. Brown, I  
3 can see why you might want this information,  
4 but is it relevant to the Board's  
5 determination?

6 MS. BROWN: Yes, and I think I'll  
7 explain it in my closing remarks. But it is  
8 relevant, in that we have unlawful entry into  
9 the building. We have violations of the  
10 Fourth Amendment protection against unlawful  
11 searches.

12 To the extent that the Board wants  
13 to countenance those types of entries,  
14 unlawful entries into a building or wants to  
15 send a message to opponents that they have  
16 crossed a line, that's how I see it relevant  
17 to this proceeding.

18 CHAIRPERSON MILLER: Okay.

19 BY MS. BROWN:

20 Q Mrs. Drissel, did you have  
21 authority from the owner to enter the  
22 premises?

1           A     No, I did not.

2           Q     Did the person who authorized you,  
3 allowed you access to the building have  
4 permission to enter the basement?

5           A     I do not know.

6           MS. BROWN: Thank you. Those are  
7 all my questions.

8           CHAIRPERSON MILLER: Ms. Drissel,  
9 in number two, you say that you took pictures.  
10 Are they in the record? You took pictures  
11 through a broken window.

12          THE WITNESS: Yes, a long time  
13 ago. They're the ones that reopened this,  
14 where it showed the apartment.

15          CHAIRPERSON MILLER: Okay, thank  
16 you.

17          THE WITNESS: The illegal  
18 apartment.

19          CHAIRPERSON MILLER: Any other  
20 questions?

21          MS. BROWN: And to the extent that  
22 we are throwing around words of illegal,

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1 there's been no determination by anyone in the  
2 government that that apartment is legal,  
3 illegal, or even if it is an apartment.

4 CHAIRPERSON MILLER: Okay. Next  
5 witness?

6 DIRECT EXAMINATION

7 MS. BEGGS: I'll just be brief,  
8 because I'm going to be redundant to what  
9 Kindy French said.

10 CHAIRPERSON MILLER: Don't be  
11 redundant. We can stop you from being  
12 redundant. We have people waiting for other  
13 cases.

14 MS. BEGGS: But I do have certain  
15 additions that haven't been made.

16 CHAIRPERSON MILLER: Okay.

17 MS. BEGGS: One is I have lived  
18 across the street from 2160 --

19 CHAIRPERSON MILLER: Are you  
20 testifying?

21 MS. BEGGS: Yes, I am.

22 CHAIRPERSON MILLER: Okay.

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1 MS. BEGGS: I'm not an attorney  
2 here. I'm just a resident. We didn't hire  
3 counsel in this case. But at any rate, I've  
4 lived across the street from the Brian Logan  
5 office, which I think has been there for 17  
6 years. I've been in my building for 20 years.

7 There has never been art gallery  
8 there. At no time has Brian Logan had any  
9 kind of an ongoing art gallery use of that  
10 building.

11 What he has had, and I can recall  
12 three occasions a very long time ago, well  
13 longer than three years ago, that he had some  
14 openings. It was like a wine and cheese  
15 opening, and artist friends of his showed some  
16 pictures. It was in the evening. I went to  
17 one of them. I looked around at the stuff and  
18 we were allowed to sell it.

19 Brian does not receive a  
20 commission from that. He does it as a  
21 marketing technique. He wants to bring in  
22 customers. But he has told us that at no time

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1 has he ever operated an art gallery, and that  
2 has been for the last 17 years.

3 Brian has also told us that he has  
4 no right to store anything in the basement of  
5 2162, and he has a key that has been provided  
6 to him for the convenience of the owner, so  
7 that he can allow people access who need  
8 access to the basement, such as meter readers,  
9 etcetera.

10 On November 2<sup>nd</sup>, the housing  
11 inspector showed up. we were expecting from  
12 DCRA, a zoning inspector, but it was a housing  
13 inspector instead.

14 She showed her badge to Brian and  
15 then Brian let her in. I personally asked her  
16 is it all right if we accompany you, and she  
17 either nodded or said yes. She indicated  
18 assent. So Kindy and I went down there.

19 Kindy's affidavit accurately  
20 depicts what we saw down there. It was  
21 extremely dusty, and there was -- it appeared  
22 to be all Ney personal effects. After we

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1 learned of the apartment, I also personally  
2 went across the street and asked Brian and his  
3 employee, whose name I don't know; it's Bill  
4 something, who owns all the materials in the  
5 basement of 2162, and they both confirmed that  
6 they were Ney family personal possessions.

7 He said that to his knowledge,  
8 there has not been any business conducted out  
9 of there in the last 17 years. It's just been  
10 storage.

11 Oh, and we're also completely  
12 unaware of whether the family has an art  
13 gallery on other premises other than 2162, but  
14 we know they don't operate one on 2162.

15 CHAIRPERSON MILLER: Ms. Brown, do  
16 you know whether the Ney family has an art  
17 gallery on other premises?

18 MS. BROWN: No, I do not.

19 CHAIRPERSON MILLER: Would that be  
20 relevant?

21 MS. BROWN: No. It's only  
22 relevant to the extent that we're talking

1 about this property.

2 CHAIRPERSON MILLER: Okay.

3 Anything else?

4 MS. BEGGS: No, I don't think so.

5 CHAIRPERSON MILLER: Okay, Ms.

6 Brown. Do you have any questions?

7 MS. BROWN: Just some very quick  
8 ones.

9 CROSS EXAMINATION

10 BY MS. BROWN:

11 Q Ms. Beggs, could you confirm for me  
12 whether or not you've been authorized by the  
13 owner to enter the premises?

14 A No. I accompanied a government  
15 official, who displayed a badge and asked for  
16 access to someone who the owner had provided  
17 with a key, that permitted him access to the  
18 basement. I can't speak for him -- let me  
19 finish my answer.

20 I can't speak for him, but if  
21 somebody had provided me a key, and a  
22 government official came up and asked for

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1 access, I would assume that that within the  
2 scope of my authority for the key. Whether he  
3 should have called you, I don't know.

4 Q My question concerns you. If the  
5 government inspector had authority, how does  
6 it extend to you?

7 A Because I asked the government  
8 inspector if I could accompany her, and she  
9 said yes.

10 Q All right. So you did not have  
11 permission of the owner --

12 A I had the permission of a government  
13 inspector.

14 Q I did not ask that question. My  
15 second question is were you specifically  
16 denied access by the owner?

17 A No.

18 Q Did you request permission of the  
19 owner through the attorney?

20 A I requested permission through the  
21 housing inspector, through the government  
22 official, who displayed a badge and asked to

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1 be admitted.

2 Q The next question I have, Ms. Beggs,  
3 is how could you possibly know what is  
4 personal and not personal to the Neys, or who  
5 actually owns what's in the basement?

6 A Because Brian Logan told me, and his  
7 employee told me. I asked both of them.

8 Q Okay. Then my next question is if  
9 you are testifying as to what Brian Logan  
10 said, do you see any difference with Joseph  
11 Ney's or Jon Hensley's substantiating what  
12 Joseph Ney has said today?

13 A Yes, I do. You could have called  
14 Brian Logan. We cannot call him. He's not in  
15 our control. He's your lessee, not mine. And  
16 to be honest with you, he's very frightened  
17 about this case.

18 MS. BROWN: Thank you. I have no  
19 more questions.

20 CHAIRPERSON MILLER: Okay, and I  
21 asked before, but I just want to double-check  
22 whether the ANC is here.

1 (No response.)

2 CHAIRPERSON MILLER: Okay. Then we  
3 have all the parties before us, and before we  
4 go to closing, the Applicant gets the last  
5 word in applications. So I just want to turn  
6 to you, Ms. Beggs, before we go to the  
7 Applicant again, if you have any other final  
8 statements?

9 MS. BEGGS: I understood from the  
10 transcript of the last hearing that we'll have  
11 a chance to put in one final pleading in this  
12 matter. I assume that you mean that to be in  
13 the form of findings of fact and conclusions  
14 of law? Obviously, at your pleasure, I can  
15 write a brief too.

16 CHAIRPERSON MILLER: Okay. Yeah, we  
17 can deal with that at the end. I think that  
18 the parties can have one more opportunity to  
19 put something in writing, and then we can  
20 define the parameters of it at the end of this  
21 hearing, I think, because this is a pretty  
22 finite issue. So yes. So you'll have one

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1 more opportunity. Then we talked about the  
2 fact that there was an affidavit, that you  
3 couldn't cross-examine a witness on. Okay.  
4 Ms. Brown?

5 MS. BEGGS: Well, I do have a couple  
6 of statements, if I'm supposed to go first?

7 CHAIRPERSON MILLER: Oh, you do.

8 MS. BEGGS: If I'm supposed to go  
9 first?

10 CHAIRPERSON MILLER: Just to wrap  
11 the case up.

12 MS. BEGGS: Just to wrap the case  
13 up, okay. I think that --

14 CHAIRPERSON MILLER: This is a  
15 pretty finite issue.

16 MS. BEGGS: Yes. There's a sharp  
17 distinction between what we think that the  
18 Applicant is depicting is in that basement and  
19 what we now have three eyewitnesses who have  
20 seen, and the Applicant has continuously,  
21 throughout these proceedings, attempting to  
22 mislead everybody about what's down there.

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1           What there is down there is a bunch  
2 of old family possessions, that look as though  
3 they haven't been touched in years. I  
4 guarantee I didn't touch anything down there,  
5 because it was nothing but dust-covered  
6 rubble.

7           As to the access, Brian Logan has  
8 access to that cellar, and as I understand  
9 from him, he has discretion on who to admit  
10 down there. Certainly, I can't see there  
11 being any fault lying with him, for letting in  
12 a government inspector who came and showed a  
13 badge and said she needed to inspect the  
14 premises.

15           If the government inspector has done  
16 something wrong by allowing me and Ms. French  
17 to go down with her, well then I think that  
18 somebody needs to take that up with her. But  
19 I don't think she thought she did anything  
20 wrong either.

21           If the Applicant didn't want anybody  
22 ever to have access to that basement, she

1 never should have given Brian Logan a key.

2 (Pause.)

3 MS. BEGGS: I think the remainder,  
4 we would like to put in another paper. I do  
5 better on paper than out loud.

6 CHAIRPERSON MILLER: Okay, that's  
7 fine. I just want to clarify. You said there  
8 were three eyewitnesses. To whom were you  
9 referring exactly? Yourself?

10 MS. BEGGS: Myself, Marie Drissel  
11 and Kindy French, and all three of us, you  
12 know, can provide identical testimony. I mean  
13 I will attest to everything that's in Kindy's  
14 affidavit.

15 There were board games, kids' books.  
16 There was a book on football game cards and  
17 there was a mattress. These were clearly  
18 belongings, and the fact that these utility  
19 panels have been so prominently displayed,  
20 that's the small part of what's in that  
21 basement.

22 It looks like a bunch of -- it looks

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1 like someone's dusty attic, is what it looks  
2 like.

3 CHAIRPERSON MILLER: I also, I just  
4 want to clarify. The three eyewitnesses, were  
5 they at different times or the same time?

6 MS. BEGGS: No. Kindy and I were at  
7 the same time with the housing inspector, and  
8 Marie, I don't know what date was Marie.

9 MS. DRISSEL: September 25<sup>th</sup>, before,  
10 way before these pictures that they have  
11 submitted were taken.

12 CHAIRPERSON MILLER: Right, and you  
13 took pictures?

14 MS. DRISSEL: I did not take  
15 pictures.

16 CHAIRPERSON MILLER: I thought you  
17 took a picture through a broken window?

18 MS. DRISSEL: Oh, that's June 3<sup>rd</sup> of  
19 2006. That's of the apartment. This is  
20 another area. This is another area.

21 CHAIRPERSON MILLER: Okay. Ms.  
22 Brown?

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1 MS. BROWN: Thank you, Madam Chair.  
2 I do want to address very briefly, and then go  
3 into the substance of the arguments. But I do  
4 want to get back to very briefly the access to  
5 the building.

6 Again, it's very clear under D.C.  
7 law that without the authorization of the  
8 owner, no one's allowed into anybody's  
9 premises. That's considered criminal trespass  
10 if it happens. I don't want to visit -- this  
11 is not germane, about whether or not someone  
12 did or did not commit a criminal act --

13 MS. BEGGS: I'm going to object to  
14 this line of argument, because I was given to  
15 understand that the sole purpose of this  
16 hearing was to determine and give the Board  
17 evidence of what is in that basement.

18 If she wants to have us arrested by  
19 the D.C. Police, she's free to make a  
20 referral.

21 CHAIRPERSON MILLER: Okay. Let's  
22 not belabor this, and Ms. Brown, is it part of

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1 your point goes to unclean hands doctrine  
2 which was raised?

3 MS. BROWN: Slightly, you know,  
4 fruit of the poisonous tree, whether or not  
5 even -- where does it stop, and do we set a  
6 standard for future applicants or owners, that  
7 it's acceptable to this Board for people to  
8 gain access to private property without  
9 authorization, and enlist the support of  
10 housing authorities to inspect properties  
11 without the authorization or even notification  
12 to the owner.

13 So I think that's the standard that  
14 I'm going to at this point. Again, it's not  
15 germane to your decision, but I think that a  
16 standard needs to be set for future cases and  
17 future applicants, about whether or not this  
18 is the standard that the Board will  
19 countenance.

20 Going to the substance of the  
21 matter, there's no question we all share the  
22 same information about what's in the basement.

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1 The photographs speak for themselves.

2 How this can be construed as a  
3 residential use, I'm at a loss. Yes, based on  
4 Joseph Ney's affidavit, there are personal  
5 effects in there that have come and gone over  
6 the years.

7 But there's also framing materials  
8 that really be considered a residential use.  
9 However, what we don't have to sit here and  
10 figure out which individual piece of material  
11 is going to turn it into residential use.

12 What we can do is look to guidance  
13 from the BZA Order that I cited last time,  
14 which is BZA Order 14212. On page four of  
15 that Order, it goes through a description of  
16 how a zoning administrator determines whether  
17 or not a certificate of occupancy should be  
18 issued to a particular piece of property,  
19 based on previous uses, whether it's  
20 conforming, non-conforming.

21 There, it states that the zoning  
22 administrator will first try to find a

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1 certificate of occupancy. If it doesn't  
2 exist, then the zoning administrator will  
3 check to see whether or not it was in  
4 continuous use. He'll check with other  
5 agencies to determine whether there are  
6 records such as license, tax records,  
7 affidavits from property owners or operators,  
8 any old leases available to verify the use of  
9 the premises over the years.

10 If the zoning administrator's staff  
11 is unable to determine whether a use has been  
12 continuous, the applicant for the certificate  
13 of occupancy is contacted, and requested to  
14 furnish any evidence which it has to prove  
15 that he has not been discontinued or reverted  
16 to a conforming use.

17 If the applicant is able to produce  
18 such evidence to the satisfaction of the  
19 zoning administrator, and no evidence to the  
20 contrary is presented, the certificate of  
21 occupancy remains valid for lack of grounds to  
22 deny or revoke approval of the C of O.

1           So here in the record today, we've  
2 produced evidence, substantiated by the  
3 eyewitnesses that you've heard today, that  
4 there are numerous boxes down there; that  
5 there are numerous related to paintings.

6           There's building equipment. There  
7 are utility lines. So that all that, and just  
8 by virtue of looking at the materials, it's  
9 not a residential use.

10           So the next question is if that is  
11 sufficient for your purposes, to say that this  
12 proposed plan to use a portion of the basement  
13 as residential and a portion for commercial  
14 uses by the grocery store that will be in 2162  
15 on the ground floor, or if you find that  
16 questionable, whether or not the alternative  
17 plan is sufficient where it would change all  
18 the basement uses to residential, and that  
19 only the portion of 2162 which is undisputedly  
20 commercial, that that would be the location of  
21 the support space for the grocery store.

22           So in our view, either way you look

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1 at it, we have grounds under the existing uses  
2 to put to commercial use, support use in 2162,  
3 and it's just as plausible to put it in the  
4 basement of 2160. It's just not our preferred  
5 plan.

6 So we would request that you approve  
7 the original plan as proposed, and in the  
8 alternative, approve the plan submitted today.  
9 That concludes our statement.

10 MS. BEGGS: May I make one brief  
11 point in reply, and it has nothing to do with  
12 entry down to the cellar?

13 I just wanted to say that the zoning  
14 provision that we're relying on, it says if a  
15 building is used for non-conforming purposes,  
16 and the non-conforming use has been abandoned  
17 for more than three years, it reverts to  
18 residential use by operation of law.

19 That's the provision that we're  
20 relying on. We're saying that it's  
21 automatically residential use, whether  
22 somebody's sleeping down there or not.

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1                   CHAIRPERSON MILLER: Okay. Ms.  
2 Brown, I have two questions. The first is do  
3 we have a certificate of occupancy in this  
4 case that relates to this basement? I just  
5 can't remember.

6                   MS. BROWN: No. It's the BZA case  
7 that allowed the use of the ground floor. I  
8 think it changed from a drug store to an  
9 office use. The certificates are in the  
10 record, but it does not mention the basement.

11                   The BZA order refers to the building  
12 as a one-story building and does not even  
13 mention the basement area.

14                   CHAIRPERSON MILLER: Okay, and my  
15 second question goes to procedure. I don't  
16 believe that we usually consider alternative  
17 plans. Have you had that experience before  
18 with this Board, that they considered  
19 alternative plans?

20                   MS. BROWN: I believe there's been a  
21 question from the Board about certain design  
22 revisions, and whether or not one is more

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1 acceptable over the other. But if it makes it  
2 easier, we're perfectly happy to rest on the  
3 drawing that we submitted today.

4 CHAIRPERSON MILLER: Okay. Well, I  
5 can confer with my colleagues. I would be  
6 inclined to just take that under advisement,  
7 and not make a decision today. But I was just  
8 wondering. I just wanted to get your input on  
9 that before we took it under advisement, and  
10 if there are any other comments by the other  
11 parties on that issue.

12 (Pause.)

13 MS. BEGGS: Okay. We've had a  
14 chance to confer, but they haven't.

15 (Pause.)

16 CHAIRPERSON MILLER: Did you all  
17 have a comment on the question of alternative  
18 plans?

19 MS. BEGGS: Yes. We had a chance to  
20 confer. Some of it, I think, we may have to  
21 submit papers on it, because this is all new  
22 to us, were mostly even new to these

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1 proceedings all together, and certainly we  
2 were only served with this today.

3 I don't know what the Board's rules  
4 provide. My instinct would be is that if  
5 they've got a new plan, they would have to  
6 start with a new application for it. I'd like  
7 to have a chance for us to study that  
8 question.

9 CHAIRPERSON MILLER: Exactly. I  
10 think we're going to study the question too.  
11 So we could study it with your input. So I  
12 think what we should do is set a date for  
13 final filings.

14 You know, for the proposed findings  
15 and conclusions of law, I would say if we call  
16 it that, it's very limited to the use of the  
17 area in the basement, other than what's  
18 already been conceded to be the apartment  
19 area.

20 That's it. Then you could address  
21 the issue of the alternative plan. So we need  
22 to set a date for that.

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1 MS. BEGGS: Do I correctly  
2 understand, Madam Chair, that the burden of  
3 proof is on the Applicant on this issue?

4 CHAIRPERSON MILLER: Yes.

5 (Pause.)

6 CHAIRPERSON MILLER: Okay. We're  
7 thinking of deciding this at a special public  
8 meeting on December 18<sup>th</sup>, so that we can  
9 finish it this year if possible. Then we can  
10 count backwards from that date, for proposed  
11 findings and conclusions of law, just on that  
12 finite issue.

13 Ms. Bailey, do you want to find the  
14 dates that that would be for the filings? I  
15 think they could come in simultaneously,  
16 unless the parties have any other thoughts on  
17 that.

18 MS. BEGGS: We'd always like to see  
19 the papers of the person with the burden  
20 first, in order to respond. But again, we're  
21 at the pleasure of the Board on that question.

22 CHAIRPERSON MILLER: Well, there's

1 not a rule on that, and Ms. Brown, do you have  
2 a comment?

3 MS. BROWN: Yes. I think it's been  
4 the general practice of this Board to have  
5 anybody submit the proposed findings at the  
6 same time.

7 CHAIRPERSON MILLER: Yes. I think  
8 that's appropriate in this case. Okay.

9 MS. BAILEY: December 10<sup>th</sup>, Madam  
10 Chair.

11 CHAIRPERSON MILLER: Okay. That's a  
12 Monday?

13 MS. BAILEY: That's a Monday.

14 CHAIRPERSON MILLER: Monday by three  
15 o'clock?

16 MS. BAILEY: Monday by three  
17 o'clock.

18 CHAIRPERSON MILLER: Can the parties  
19 do that?

20 MS. BROWN: Yes, Madam Chair.  
21 That's fine for the Applicant.

22 CHAIRPERSON MILLER: Okay.

1 MS. BEGGS: The only final matter  
2 that we have is what the status of the Joseph  
3 Ney affidavit is, which we have not had an  
4 opportunity to cross-examine. I certainly  
5 have a lot of questions on it.

6 I mean I'm wondering, could we  
7 submit questions to the Applicant and have him  
8 give sworn answers to it prior to the December  
9 10<sup>th</sup> date?

10 I suppose if I could get a couple of  
11 concessions, then it would do away with this  
12 issue all together. One, does the Applicant  
13 concede that none of the belongings in the  
14 basement belong to anybody other than the Ney  
15 family.

16 MR. ETHERLY: Madam Chair, if I may,  
17 I'd offer a comment on that. I would hazard  
18 a guess that that would be incredibly  
19 difficult, if not impossible, for the Board to  
20 do, from the standpoint. I mean perhaps this  
21 more of a conversation amongst the Board, as  
22 opposed to a back and forth with the parties.

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1           But I would hazard a guess that our  
2 authority is going to be fairly limited in  
3 this instance. I share perhaps the thinking  
4 behind the question, in terms of it would have  
5 indeed been more helpful to have the witness  
6 readily available in person.

7           But I think the Board would very  
8 hard-put to compel the presentation of  
9 evidence in a certain format through the  
10 actual presence of the witness, as good and as  
11 expedient as that would be.

12           So I think we'd be very limited in  
13 what we can do in that regard, Madam Chair.

14           CHAIRPERSON MILLER: I agree. What  
15 I'd like to suggest, and I think Ms. Brown  
16 stated this accurately before us, that you can  
17 address this affidavit and point out the  
18 weaknesses in it or why we shouldn't give it  
19 much weight, you know, because he's not here  
20 to answer certain questions or whatever.

21           That's, I think, where we go on the  
22 affidavit.

1 MS. BEGGS: Should we do that by way  
2 of a separate submission?

3 CHAIRPERSON MILLER: No.

4 MS. BEGGS: I mean I could address  
5 that on two pages. I haven't thought of  
6 whether it was a finding of fact or a  
7 conclusion of law. It's sort of a second  
8 issue that's hanging out here, as to whether  
9 --

10 In fact, one of the possibilities,  
11 of course, is to strike it, because he wasn't  
12 here to be examined on it. I mean he's been  
13 the representative of the Applicant for these  
14 entire proceedings. He showed up once, you  
15 know.

16 CHAIRPERSON MILLER: All right. You  
17 know and again, we can't subpoena any  
18 witnesses or whatever. They present their  
19 case, and they make it or don't make it. So  
20 I think you can.

21 I would suggest that you try to  
22 address it within the findings, that this is

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1 what you think the facts show, and you can  
2 discount some evidence that might be in that  
3 affidavit because, you know, of certain  
4 weaknesses in it, and because the witness  
5 wasn't there to be cross-examined on it,  
6 etcetera.

7 So I think you can fit it in there.  
8 I think that would make the most sense.

9 MS. BEGGS: Very well. I really  
10 would like to proceed on this. I don't need  
11 to have two pieces of paper.

12 CHAIRPERSON MILLER: Right, exactly.  
13 Okay, okay. Anything else?

14 MS. BROWN: To the extent it makes  
15 the Board's -- if any of this is -- the need  
16 for any of this is obviated, we will stand on  
17 the revised plan as our proposal for the  
18 building, proposed modification, which is  
19 consistent with other hearings, where we have  
20 submitted revised drawings the day of a  
21 hearing.

22 CHAIRPERSON MILLER: Okay. Well, I

1 was saying what we haven't done, as far as I  
2 can recollect, is consider two different plans  
3 in the alternative. If we don't go with one,  
4 we'll go with the other one.

5 MS. BROWN: So I'm suggesting that  
6 we can go with Plan B.

7 CHAIRPERSON MILLER: Plan B?

8 MS. BROWN: The one that was  
9 submitted today.

10 CHAIRPERSON MILLER: If we go with  
11 Plan B, is it your argument that the rest of  
12 this isn't even relevant then, what's in the  
13 basement?

14 MS. BROWN: Correct.

15 CHAIRPERSON MILLER: Okay. So let  
16 me get it --

17 MS. BEGGS: I would just remind the  
18 Board that I suggested that at the beginning  
19 of this hearing. We could have saved a lot of  
20 time, if that was plainly what their plan was  
21 all along.

22 CHAIRPERSON MILLER: All right.

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1 Well, let's just know what we're dealing with  
2 before we leave this room, and you know what  
3 your proposed findings and conclusions of law  
4 are going to go to now.

5 (Simultaneous discussion.)

6 CHAIRPERSON MILLER: What?

7 MS. BEGGS: That's what I was  
8 asking. Are they necessary at all, if she's  
9 going to Plan B, the alternative plan?

10 MS. FRENCH: It would seem to me  
11 that it's a different application. She hasn't  
12 --

13 CHAIRPERSON MILLER: What Ms. Brown  
14 is saying is at this point, it may not be a  
15 different application, because parties often  
16 revise their plans during the proceedings, and  
17 that's where we are right now. Is that what  
18 you're doing? Okay. So I guess the Board  
19 could decline to accept a revision.

20 MS. BROWN: That's correct. That's  
21 the only reason why it was still in the  
22 alternative, if it's declined by the Board.

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1                   CHAIRPERSON MILLER: But at this  
2 point, you're asking the Board now if we will  
3 accept the revision, as the plans that are  
4 going to be considered in this application, is  
5 that right?

6                   MS. BEGGS: Yes.

7                   CHAIRPERSON MILLER: Just the  
8 alternative, just the revision?

9                   MS. BROWN: Just the one that was  
10 submitted today.

11                   CHAIRPERSON MILLER: Okay.

12                   (Pause.)

13                   CHAIRPERSON MILLER: Okay, all  
14 right. So the Board will accept the revision  
15 as the plans that are being put before the  
16 Board in this case to rule on.

17                   I think that I will leave the record  
18 open then. You all can tell me what you  
19 think, but with respect to the new plans then,  
20 whether there's any issue left.

21                   It doesn't sound like there is, but  
22 this is something that has, you know, been

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1 presented just today. You haven't had time to  
2 reflect on it. So I would be open to leaving  
3 the record still open for that.

4 MS. FRENCH: I'm sorry --

5 CHAIRPERSON MILLER: Unless you all  
6 give me reason why the record should not be  
7 open any more, and this is not an issue.

8 MS. FRENCH: I don't understand what  
9 relief is being requested then, with the new  
10 plans.

11 CHAIRPERSON MILLER: Okay, first of  
12 all, they've asked that the new plans be  
13 accepted as a revision to the old plans, and  
14 that they be the ones that go with the Board's  
15 order now. The Board's order will have to  
16 change, to reflect the new plans.

17 Okay. There was a motion for  
18 reconsideration of the old order. The old  
19 order will still have to change, because we  
20 have now a revised plan. So there will be a  
21 change.

22 Is the Applicant requesting any

1 relief with respect to the revised plans? Is  
2 that what your question is?

3 MS. FRENCH: I'm asking is it the  
4 same relief, why we're here to begin with? I  
5 mean you have to go before the BZA only if you  
6 need relief.

7 CHAIRPERSON MILLER: Okay.

8 MS. FRENCH: So I don't understand  
9 why --

10 CHAIRPERSON MILLER: Well, there was  
11 a motion for reconsideration of the previous  
12 order. The previous order still has to be  
13 reconsidered. But now maybe for a different  
14 reason, because we have different plans. Ms.  
15 Brown, do you want to address this?

16 MS. BROWN: Yes. As you'll recall,  
17 there was only one area of relief that we  
18 needed or actually two, an addition to an  
19 existing non-conforming building, and to allow  
20 63 percent lot occupancy at the second floor  
21 only, whereas only 60 percent is permitted.

22 At no time did the basement uses

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1 ever create any need for additional relief.  
2 The only issue there is whether or not it had  
3 been converted to residential use, such that  
4 no commercial use could be located in 2162  
5 California Street.

6 If by submitting this new plan there  
7 is no commercial use proposed for 2162, it's  
8 in 2160, where it's known to be commercial and  
9 it's undisputed to be commercial space, then  
10 it has no impact whatsoever on the 60 percent,  
11 63 percent lot occupancy relief granted for  
12 the second floor.

13 CHAIRPERSON MILLER: Okay. Do the  
14 parties then feel any need to submit any  
15 further filings on this?

16 MS. BEGGS: We don't know. I guess  
17 we would say maybe not, but we'd like to keep  
18 it open. As I say, this was sprung on us in  
19 the last minute.

20 CHAIRPERSON MILLER: Okay. Any  
21 comments on that?

22 MS. BROWN: No, I'm fine with that,

1 if we want to continue to have December 10<sup>th</sup>  
2 as the date, based on this revised plan.  
3 That's fine.

4 CHAIRPERSON MILLER: Okay. Let's  
5 just be clear that we're not going to be  
6 opening the door to a host of any other  
7 issues.

8 MS. BEGGS: No, I don't think so.  
9 It's just I note for the record that on the  
10 new plan, it notes that it was prepared on  
11 September 28<sup>th</sup>, 2007.

12 The new plan has been, as I say it's  
13 perfectly evident it's been in the works for  
14 a really long time. I feel as though we're  
15 getting railroaded.

16 CHAIRPERSON MILLER: Okay. Let's  
17 not go there. What I would suggest though, is  
18 if the parties would like, especially if the  
19 Applicant would like, it probably would be  
20 useful to the Board in any event if you did  
21 proposed findings and conclusions of law as to  
22 the revised plans and what they show, and then

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1 conclusions of law based on the revised plans.

2 MS. BROWN: We'd be happy to do so.

3 CHAIRPERSON MILLER: Okay.

4 MS. DRISSEL: So Madam Chair, just  
5 because this is a little bit fast moving, but  
6 I think maybe we won't then have to do a lot  
7 of work to do the answer. But it would be  
8 really wonderful if you could change it and  
9 allow us not to have simultaneous submissions.

10 Then if we know what's in front of  
11 us, then we really can decide.

12 CHAIRPERSON MILLER: I think this is  
13 a different issue, because before we were  
14 talking about proposed findings and  
15 conclusions of law, based on this hearing that  
16 everybody participated in basically equally.

17 So now we have a new proposal by the  
18 Applicant that you'd like to understand better  
19 and then just know what you're responding to.  
20 So I don't have a problem with that. Do you,  
21 Ms. Brown?

22 MS. BROWN: No, Madam Chair.

1                   CHAIRPERSON MILLER: Okay. Ms.  
2 Bailey, so we would need to just set two dates  
3 now.

4                   (Pause.)

5                   MS. BAILEY: Madam Chair, I'm going  
6 to suggest for the Applicant to file their --  
7 Carolyn Brown to file her response by December  
8 the 3<sup>rd</sup>.

9                   That's on a Monday again, and the  
10 ANC could respond to the concerns regarding  
11 the switch, also by the 10<sup>th</sup>. Would that be  
12 possible, to file it by the 10<sup>th</sup> at the same  
13 time you're filing --

14                   CHAIRPERSON MILLER: It's not the  
15 ANC, though.

16                   MS. BAILEY: I'm sorry, the  
17 opposition. Would that be appropriate to file  
18 at the same time you're filing your response?

19                   MS. BEGGS: Yes, that would be  
20 adequate time, thank you.

21                   MS. BAILEY: Right. So the only new  
22 date is then for Ms. Brown to file on the 3<sup>rd</sup>.

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1 (Pause.)

2 CHAIRPERSON MILLER: Okay. Let me  
3 just recap for a minute. It's very clear to  
4 me that Ms. Brown is going to be filing on  
5 December 3<sup>rd</sup>, proposed findings and  
6 conclusions of law based on the revised plan.

7 The opposition parties are going to  
8 take a look at that and then just file any  
9 comments in response, or file any proposed  
10 findings? You can decide what format, I  
11 think, at that point. I don't want to be too  
12 rigid on that.

13 MS. DRISSEL: Okay.

14 MS. BEGGS: Okay, and once we've  
15 looked at it, it may be that our filing will  
16 just be we have nothing more to say.

17 CHAIRPERSON MILLER: Yes exactly,  
18 okay. Okay. Anything else?

19 MS. BROWN: No.

20 CHAIRPERSON MILLER: Okay. Have a  
21 Happy Thanksgiving.

22 MS. DRISSEL: Yes, thank you.

1 MS. BEGGS: Thank you. You too.

2 CHAIRPERSON MILLER: We're just  
3 going to take a five minute break. The next  
4 case, and Ms. Bailey, I guess you can tell us  
5 what the next case is going to be.

6 They could come up and get organized  
7 if they want, while we just take a quick  
8 break. Which case would that be?

9 MS. BAILEY: The next case listed on  
10 the agenda is MidAtlantic Realty, if we're  
11 going in the order that's on the public  
12 hearing notice. Unless Mr. Glasgow wants to  
13 switch.

14 (Pause.)

15 CHAIRPERSON MILLER: I think it's  
16 probably going to be ten minutes. Thank you.

17 (Whereupon, a short recess was  
18 taken.)

19 Application 17684

20 CHAIRPERSON MILLER: Okay. We're  
21 back on the record. I just want to say that  
22 Mr. Etherly has left us for the day after the

1 conclusion of the previous case, and Mr. Loud  
2 is with us now for the remainder of the  
3 afternoon, the other two cases.

4 So Ms. Bailey now, would you call  
5 the next case please?

6 Application 17684

7 MS. BAILEY: Madam Chair, that's  
8 Application No. 17684 of MidAtlantic Realty  
9 Partners, LLC, pursuant to 11 DCMR 3104.1 and  
10 3102.2, for variances from the rear yard  
11 requirements under Section 774, the limitation  
12 and compact parking space requirements under  
13 Subsection 2115.2, and the off street loading  
14 facility requirements under Section 2201, and  
15 a special exception from the required number  
16 of off street parking spaces under Section  
17 2108, to permit the development of an office  
18 building with retail space on the ground  
19 floor.

20 The property is in the DD/C-2-C  
21 district on the southeast corner of the  
22 intersection of 6<sup>th</sup> and K Streets, N.W. The

1 property is also known as Square 4844 -- I'm  
2 sorry. Square 484, Lots 23, 811 through 813  
3 and 826.

4 I placed before each of the Board  
5 members resumes of the Applicant's, I'm  
6 assuming, expert witnesses.

7 CHAIRPERSON MILLER: Thank you. We  
8 just have one person at the table?

9 MR. GLASGOW: Yes.

10 CHAIRPERSON MILLER: It's lonely out  
11 there. Okay. Would you introduce yourself  
12 for the record please?

13 MR. GLASGOW: Sure, thank you. For  
14 the record, my name is Norman M. Glasgow, Jr.,  
15 of the law firm of Holland and Knight,  
16 representing the Applicant in this case.

17 CHAIRPERSON MILLER: And there's no  
18 representative of the ANC here, is there? And  
19 there are no parties in opposition, I gather?

20 MR. GLASGOW: That is correct.

21 CHAIRPERSON MILLER: Okay. Then you  
22 may proceed with your case.

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1 MR. GLASGOW: All right, thank you.  
2 I wanted to indicate to the Board that we are  
3 amenable to resting our case on the record and  
4 the pleadings that we have filed.

5 We do note a letter that's come in  
6 from the Department of Transportation, from  
7 DDOT, and we have no problem with any of the  
8 conditions that they have.

9 For instance, in the third  
10 paragraph, where they talk about that "DDOT  
11 recommends there be no loading restrictions  
12 during rush hours, 7 to 10 and 4 to 7."  
13 That's fine. "Further operation personnel or  
14 flaggers must be present to guide the loading  
15 maneuvers." That's fine.

16 Then we have designed our curb cuts  
17 and driveway to comply with the loading  
18 facility and driveway entrance, where they  
19 talk about the curb cut widths and the 6 foot  
20 pedestrian refuge. That is on Sheet A-1.3.

21 CHAIRPERSON MILLER: Could you  
22 repeat what we should be looking at on page A-

1 1.3?

2 MR. GLASGOW: Yes. On the right-  
3 hand side of the diagram, there's an area  
4 between the loading and the ramp down for the  
5 parking, that shows the 6 foot pedestrian  
6 refuge.

7 If you look on the right-hand side  
8 of the drawing, the lower -- in this area. It  
9 shows where the loading berth is and it shows  
10 where the ramp down is for the parking. Then  
11 there is the 6 foot wide pedestrian refuge  
12 between the curb cuts, precisely as DDOT had  
13 asked for.

14 CHAIRPERSON MILLER: Was that in  
15 response to DDOT's concerns?

16 MR. GLASGOW: We had had meetings  
17 with them. So it was, I guess the report has  
18 it having a condition, as if it was an issue  
19 to address. I guess we were maybe mildly  
20 surprised at that, because we had already told  
21 them we were doing that.

22 But if they wanted to make sure to

1 have it as a condition in the Board's order,  
2 that's fine.

3 CHAIRPERSON MILLER: But it's in the  
4 plans, so we really don't need it as a  
5 condition, right?

6 MR. GLASGOW: We're amenable. We're  
7 amenable either way. I mean --

8 CHAIRPERSON MILLER: Okay. They  
9 didn't know it was in the plans basically.  
10 Did they see these plans with it in it?

11 MR. GLASGOW: Yes.

12 CHAIRPERSON MILLER: Oh, okay. Is  
13 there anything else you want to bring to our  
14 attention in particular, before we decide how  
15 to proceed?

16 MR. GLASGOW: Yes. With respect to  
17 the report of the Office of Planning, we've  
18 gone over with Mr. Cochran the plans.

19 It talks on page four, in the  
20 sentence right before "The relief can be  
21 granted without substantial detriment,"  
22 there's a sentence that says "The Applicant

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1 will need to provide additional diagrams  
2 demonstrating this difficulty, prior to or at  
3 the hearing."

4 We used the same diagram. We went  
5 over with Mr. Cochran, and I guess this is  
6 part of the issue with having, you know,  
7 reduced drawings on an 11 by 17. It was a  
8 little bit harder to read.

9 But also on the same sheet that we  
10 were just looking at, the same drawing, the  
11 column that's at the rear, we have 30 foot  
12 column grid in that area. The 12 by 30 foot  
13 loading berth has a column to the east of it,  
14 just east to -- it's essentially it would be  
15 in the middle of the berth, if the berth were  
16 extended, that 12 by 30 foot berth.

17 That's setting the location of the  
18 core. When you do the math on the sheet to  
19 the -- to the drawing on the left of the same  
20 sheet, when you start taking the 20 foot aisle  
21 widths, the 19 foot normal-sized parking  
22 spaces and the compact spaces on the --

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1           The compact spaces are on the east  
2 side of the elevator core, the full-sized  
3 spaces, which are also partially located in  
4 the vault, are on the west side. You don't  
5 have enough room to provide both compact and  
6 full-sized spaces on the level.

7           There's just not enough room. The  
8 reason why the full-sized spaces ended up  
9 where the vault was, and that's what throws  
10 the percentage off, is because that's how,  
11 given this size lot, this 88-foot lot, where  
12 you can fit those ramps in and have the  
13 exterior of the area loaded for parking.

14           If you tried to move the whole core  
15 three feet to the west, you then wouldn't have  
16 a complying loading berth, because it would  
17 impact that column. Everything would have to  
18 shift three feet. Then you don't have a 12 by  
19 30 foot column.

20           We've got the spaces. It's just t  
21 hat they happen to be, those 15 spaces on the  
22 west wall happen to all be full-size spaces,

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1 and are partially located in the vault.

2 So that's what we went over with Mr.  
3 Cochran. I think he can concur that that's  
4 what the issue was there. So we are ready to  
5 stand on the record with that explanation, or  
6 we're ready to proceed with the witnesses.

7 CHAIRPERSON MILLER: Okay. I have a  
8 couple of questions. First, could you just  
9 remind me? I believe you have more spaces  
10 than are required, if you count the spaces in  
11 the vault?

12 MR. GLASGOW: That is correct. We  
13 have 46 spaces required, and we provide 61.

14 CHAIRPERSON MILLER: How about with  
15 respect to -- does it matter whether they're  
16 compact or full with respect to meeting the  
17 requirements of the parking spaces?

18 MR. GLASGOW: I'm sorry. 54 spaces  
19 are required, right. I'm sorry, right. We  
20 provide 61 spaces. We have 54 spaces  
21 required.

22 CHAIRPERSON MILLER: My question was

1 I know there's a distinction in your plans  
2 between compact spaces and full-size spaces.  
3 Is there a distinction in the regs? Do they  
4 go to full-size spaces, as to the number that  
5 are required?

6 MR. GLASGOW: You can have up to 40  
7 percent of your spaces compact as a matter of  
8 right. Because we have 15 full-size spaces in  
9 the vault, all right, we've shifted that  
10 percentages.

11 So we have more compacts that are on  
12 our own site as a percentage than are  
13 permitted under the regulations.

14 CHAIRPERSON MILLER: Okay. Also I  
15 want to ask you about the ANC report. We have  
16 a letter from the ANC supporting the  
17 application, and I think that they -- yes,  
18 here it is.

19 They say something like they support  
20 it, with the understanding that they have a  
21 request to close the alley with a gate be  
22 included in the plan.

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1           So I was wondering if you could  
2 address that. Is that before? I mean we  
3 don't do alley closings obviously.

4           MR. GLASGOW: Right.

5           CHAIRPERSON MILLER: And so but the  
6 plan that's being referenced, is that the plan  
7 that's before us, or how does that relate to  
8 what we're doing?

9           MR. GLASGOW: Right. No, that's not  
10 part of the plans before the Board. We  
11 submitted, there was a question or a comment  
12 raised to us by the ANC, saying we don't have  
13 any problem with your BZA case.

14           That's all in the first paragraph,  
15 and they pretty much summarily go through that  
16 and say they support all of that.

17           There's a ten foot alley that runs  
18 north-south in the square, and evidently it's  
19 been a source of some problem there. When  
20 they say "Alley closing," when you read  
21 through all of that, it's on the right  
22 framework of what's going on.

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1           It says "Submit a request to close  
2 the alley to DCRA Office of Public Space."  
3 What they're asking is if we will request a  
4 gate from Public Space to close off the alley,  
5 from the Public Space Committee, because we  
6 told them we didn't want to get involved in  
7 the alley closing process, which can be six  
8 months, a year could be the time frame.

9           But that what we would do, with  
10 their assistance, is petition Public Space to  
11 allow us to put a gate across the public  
12 alley. It's a dead end stub alley, and I  
13 think that's part of the problem. We said we  
14 were happy to do that.

15           CHAIRPERSON MILLER: Just so I guess  
16 this is not before us, so I don't have to  
17 dwell on it too much. But just to understand  
18 the context, the alley is public space. Is  
19 this different from a regular alley, where you  
20 have to go to the Council for an alley  
21 closing?

22           MR. GLASGOW: That's correct. But

1 we have no desire to own or build on the  
2 alley.

3 CHAIRPERSON MILLER: Okay.

4 MR. GLASGOW: And that's why --  
5 because I know many times if somebody says  
6 well here. Please close the alley. Take half  
7 of it, build on it, do whatever. That was not  
8 where we're at.

9 CHAIRPERSON MILLER: Okay. So it's  
10 not -- you're not going to be requesting that  
11 the alley be closed. So you're going to --  
12 are you going to request Public Space for a  
13 gate to be put up?

14 MR. GLASGOW: Correct.

15 CHAIRPERSON MILLER: That would  
16 separate the alley from what?

17 MR. GLASGOW: It would be from the  
18 street right-of-way on K Street. So where the  
19 buildings are face on line with K Street, both  
20 our building and the building that's on the  
21 other side of the alley.

22 There's already a building there, a

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1 historic building on the east side of the  
2 alley. We would just say we want to put a  
3 gate across that ten foot alley.

4 CHAIRPERSON MILLER: Okay, and that  
5 doesn't affect this case in any way --

6 MR. GLASGOW: No, it does not.

7 CHAIRPERSON MILLER: Does it show up  
8 in the plans that we would be approving?

9 MR. GLASGOW: It does not show up in  
10 these plans. We had a drawing of a gate to  
11 the ANC, and it was sort of a gate that we  
12 could put across there. We'll make the  
13 application. We don't have any problem with  
14 that.

15 CHAIRPERSON MILLER: Okay. So  
16 that's a separate proceeding?

17 MR. GLASGOW: That's correct.

18 CHAIRPERSON MILLER: Okay.

19 (Pause.)

20 CHAIRPERSON MILLER: Okay. We were  
21 just conferring as to how we want to proceed.  
22 I think the case is pretty well laid out and

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1 fairly well laid out in your application.  
2 However, to refresh our memories and focus  
3 better on the case, we would love to hear from  
4 Mr. Sher.

5 MR. GLASGOW: Sure. Are you  
6 surprised by this request?

7 CHAIRPERSON MILLER: We always love  
8 to hear from him, you know. You can focus on  
9 the relief that's been sought and how you meet  
10 it.

11 (Pause.)

12 MR. SHER: Good afternoon Madam  
13 Chair and members of the Board. For the  
14 record, my name is Steven E. Sher, the  
15 Director of Zoning and Land Use Services with  
16 the law firm of Holland and Knight.

17 Unaccustomed as I am to public  
18 speaking, I'll have to think about this for a  
19 while. But let me try and see if I can do  
20 this in five minutes, and make it quick.

21 The property is located at the  
22 southeast corner of the intersection of K

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1 Street, which is at the top of the drawing,  
2 and 6<sup>th</sup> Street, which runs north-south. This  
3 is Sheet A-1.3, which is the same drawing you  
4 were looking at before.

5 It's a lot that has approximately 88  
6 feet of frontage on K Street and 98 feet of  
7 frontage on 6<sup>th</sup> Street. So it has an area of  
8 about 8,700 square feet, almost 8,800 square  
9 feet, and it abuts the ten foot alley on that  
10 east side that you were just talking about.

11 The property is zoned DD/C-2-C. It  
12 is in housing priority area A and it is also  
13 in the Mount Vernon Triangle overlay, and that  
14 may be the first time you've had a chance to  
15 come across that.

16 Mr. Cochran knows more about the  
17 Mount Vernon Triangle than anybody else in  
18 humanity, so I'll leave it to him to get into  
19 it in more detail if he wants to, but I don't  
20 know that we need to.

21 The only issue of the Mount Vernon  
22 Triangle, as it relates to this property, is

1 that there is a requirement that 50 percent of  
2 the gross floor area of the ground floor be  
3 devoted to specified retail and service uses.

4 There are a whole lot of other very  
5 specific requirements, primarily centered  
6 around the intersection of 5<sup>th</sup> and K. We are  
7 at 6<sup>th</sup> and K, so you don't have to get into  
8 the 36 by 36 or is it 32? Whatever.

9 You don't need to get into any of  
10 that. 50 percent of the gross floor area of  
11 the ground floor. We're meeting that  
12 requirement, so no area of relief there.

13 What we're talking about here is an  
14 11-story office building with ground floor  
15 retail. We have a requirement for 54 parking  
16 spaces. We're providing 61. Of those 61, 46  
17 are completely on the property; 15 are partly  
18 on the property and partly in a vault which  
19 extends into 6<sup>th</sup> street.

20 You can see that on this sheet, A-  
21 1.3 on the left-hand diagram, which is one of  
22 the basement floor plans. These five spaces

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1 on the west side of the property partly extend  
2 into the vault. Maybe you can just turn that  
3 a little bit more this way. Yes. That's  
4 good.

5 So we can't count those spaces  
6 towards meeting the requirement, because  
7 they're not entirely on the private property.  
8 Of the 61 spaces, 34 are full size spaces; 27  
9 are compact spaces, and that number becomes  
10 important later.

11 The relief requested here is in four  
12 parts. One, we need a special exception to  
13 reduce the number of required parking spaces,  
14 and then we need three variances, two, the  
15 rear yard, three, the loading requirements,  
16 and four, the percentage of compact spaces.

17 Special exception for parking  
18 reduction. As I've said before, we are  
19 required to have 54. We have 61, but only 46  
20 of those are on the private property. So  
21 we're seeking technically a reduction from the  
22 54 to 46. That's a 14.8 percent reduction.

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1 The regulations allow the Board to authorize  
2 up to 25 percent. We're not going that far.

3 We actually have in the basement, in  
4 the garage, if you went out there and counted  
5 them, there would be more than the 54 spaces,  
6 but we can't count the 15 because they're in  
7 the vault.

8 As a practical matter, the vault  
9 spaces have never been reclaimed by the  
10 District, except for Metro construction, and  
11 I don't think we're doing any more of that.  
12 So those spaces are going to be there.

13 CHAIRPERSON MILLER: Just to  
14 interrupt you for a second. You said that the  
15 Board can reduce by 25 percent?

16 MR. SHER: Yes.

17 CHAIRPERSON MILLER: Is that based  
18 on proximity to Metro or what? What is it?

19 MR. SHER: No. It's based on the  
20 criteria of the special exception, and one of  
21 the criteria of the special exception is the  
22 proximity to and availability of public

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1 transportation.

2 This is not the 800 feet of the  
3 Metro station thing. That's a matter of  
4 right. You don't have to come to the Board  
5 for that. This is --

6 CHAIRPERSON MILLER: What reg are  
7 you referring to?

8 MR. SHER: I'm referring -- this is  
9 Section 2108. That's the special exception,  
10 and so the Board may grant up to 25 percent.  
11 We're at 14.8 percent, but in fact we have  
12 more than 100 percent of the number of  
13 required parking spaces.

14 The quantity of existing public,  
15 commercial or private parking, we have more  
16 than the number of spaces we're required to  
17 provide.

18 Proximity to and availability of  
19 public transportation, we're within a couple  
20 of blocks of both Metro Center to the  
21 southwest, and Mount Vernon Square Convention  
22 Center station to the northwest. That's at

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1 7<sup>th</sup> and M and the other is down at 7<sup>th</sup> and H.

2 There's bus service in both  
3 directions on the various streets, both  
4 north/south and east/west. So we've got  
5 public transportation. But again, remember,  
6 we have more than the required number of  
7 parking spaces we need to have.

8 And we've had Wells look at that,  
9 and they are of the opinion that we have more  
10 than enough spaces on site to service the  
11 actual site demand.

12 The three variances. The Board  
13 knows well the test for variances, exceptional  
14 or extraordinary situation or condition,  
15 practical difficulty on the owner, without  
16 substantial detriment to the public good or  
17 the zone plan.

18 The issue here is basically the size  
19 and configuration of the size. We've had  
20 sites that are smaller than this, and the  
21 difficulty is more obvious. This one is 88  
22 feet in east-west direction and, as Mr.

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1 Glasgow was indicating before, the problem  
2 basically is here trying to get the core two  
3 rows of conforming parking spaces and the  
4 drive aisles required to meet that within the  
5 88 feet, and it just doesn't fit.

6 Part of that comes about because of  
7 the column grid spacing. Part of it comes  
8 about because of where the core wants to be in  
9 the building.

10 But when you look at the ground  
11 floor here with the 30-foot loading berth and  
12 the parking ramp, and then the parking ramp  
13 gets you down into the below-grade space, this  
14 dimension, the 20-foot drive aisle, the 20-  
15 foot drive aisle to the west of the core, the  
16 elevator core and the lobby space in front of  
17 it, the stairwells that are required to get  
18 egress out of the garage, which in this case  
19 are here and also here tucked very nicely into  
20 a little corner of the property, you just  
21 can't get 19 feet, 20 feet, core 20 feet, 19  
22 feet, and fit within that 88 foot dimension.

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1           So what you'd have to do is you'd  
2           have to go further down in the ground, and  
3           it's just not efficient, given the cost to go  
4           down one or more additional levels for the  
5           number of parking spaces you get by going down  
6           there, as compared to putting five spaces on  
7           each of the three levels that we have in the  
8           vault.

9           So the variance comes about because  
10          we cannot get the right number of spaces in  
11          the right configuration on the site, even  
12          though it looks like it ought to be a big  
13          enough site. It's just a little bit short,  
14          and that's why we can't make it.

15          It is a land-locked lot. It's  
16          surrounded by streets, alleys and a developed  
17          property to the south. There's no way we can  
18          make the lot any bigger or defeat that  
19          condition.

20          So the last issue that affects this  
21          is if you had to put a 15-foot rear yard on  
22          this property, on this building, you actually

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1 have two choices. You can call K Street the  
2 front and put the 15-foot rear yard at the  
3 south of the property, or you could call 6<sup>th</sup>  
4 Street the front and put the 15-foot rear yard  
5 on the east side of the property, adjacent to  
6 the alley.

7 What that does is it whacks  
8 significantly more than 15 percent of the  
9 total site area out of the volume of the  
10 building, because that rear yard carries all  
11 the way up from the ground to the top of the  
12 building.

13 Given again the configuration of  
14 this site, and what 15 percent does, if you  
15 look at the first floor, you're taking out the  
16 space that is the parking ramp and whatever,  
17 as you go down to the -- as you're going,  
18 entering from or 6<sup>th</sup> Street going down to the  
19 east.

20 Then as you get down here, you can  
21 imagine and we could put the upper floor plans  
22 up. But again, what you do is you take a

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1 substantial amount of floor space out of each  
2 one of those floors as you go up.

3           Given the size of this site and the  
4 dimensions, that 15-foot rear yard whacks a  
5 big chunk of space out of what could otherwise  
6 be built on this site.

7           Unlike in some other zones, you  
8 can't measure to the center line of the alley,  
9 you can't use a court in lieu of a rear yard.  
10 It's a C-2-C district. It's a straight 15-  
11 foot rear yard. So you've either got to put  
12 it on the east side or the south side, and  
13 either way, it creates a significant  
14 difficulty for the design of the building.

15           Again, the practical difficulty  
16 becomes the narrowness of the property, the  
17 size of the configuration of the parking  
18 ramps, the core, the stairs and so forth.  
19 That is also compounded by the requirement to  
20 make 50 percent of the gross floor area of the  
21 ground floor devoted to retail.

22           So you wind up with one of those I

1 can either do this or I can do that, but I  
2 can't do both. The Board has had cases like  
3 that before.

4 The one that comes to mind was the  
5 Ellington Apartment House up on U Street,  
6 where we had some requirements under the CR  
7 and the Arts Overlay District, where you were  
8 just -- it was just sort of a push-pull. You  
9 could do this or that, but you couldn't do  
10 both. That's kind of what you've got here.

11 We can meet the retail requirement,  
12 which seems to be the more desirable option  
13 from a planning and land use point of view, or  
14 we can meet the loading requirement, but we  
15 can't do both. Because just looking at the  
16 first floor, if we had to double that amount  
17 of space and then put a service delivery  
18 loading space in it, you're unable to meet the  
19 retail requirement of what has to happen on  
20 that ground floor.

21 So looking at all of the objectives  
22 and looking at what we thought made the most

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1 sense, we are asking for relief on the loading  
2 berth, so we've got one loading berth instead  
3 of two and no service delivery space.

4 CHAIRPERSON MILLER: Can I just get  
5 clarified there?

6 MR. SHER: Sure.

7 CHAIRPERSON MILLER: You need to  
8 have 50 percent retail on the ground floor to  
9 meet the overlay?

10 MR. SHER: Mount Vernon Overlay,  
11 yes.

12 CHAIRPERSON MILLER: Okay, and if  
13 you added another loading berth there, you  
14 wouldn't be able to meet the 50 percent? You  
15 would cut into that 50 percent or what?

16 MR. SHER: Yes. In short answer,  
17 yes. But it also, if you notice, we have an  
18 exit stair that comes to the ground at this  
19 point, and you'd have to relocate the stair.  
20 If you wound up putting another loading berth  
21 in there because one or the other has to go.

22 Then we still need a 20-foot service

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1 space. So you can't really stack it into the  
2 building, because it's obvious from the floor  
3 plan why you can't do that. So you'll wind up  
4 having to do it this way, and it just chops up  
5 that 6<sup>th</sup> Street frontage and the retail space  
6 that's provided on that side of the building.

7 Okay. In terms of without detriment  
8 to the public good or the zone plan, as we've  
9 said before, we're asking for relief on  
10 parking, but we have more than the number of  
11 parking spaces that are required, except some  
12 are in the vault.

13 The percentage of compact spaces  
14 derives from the fact that 15 of the 61  
15 parking spaces are in the vault, and when you  
16 apply the percentage to the 46 that are on the  
17 private property, we wind up at 59 percent.  
18 Instead of 40 percent, we would be at 44  
19 percent, if we counted all the parking spaces.

20 The building has three sides open to  
21 the street, to light and air for the  
22 occupants. You've got 6<sup>th</sup> Street, you've got

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1 K Street, you've got the alley.

2 The west, I'm sorry, the north wall  
3 of the adjoining hotel building is a  
4 completely blank wall. There are no windows  
5 in that wall. There would be no detriment to  
6 that building if this building butts up against  
7 that wall.

8 There are photographs, I believe, in  
9 the file with the original application, not  
10 with the pre-hearing statement, but with the  
11 original application, that shows that  
12 completely blank wall to the south of this  
13 building, which is -- it is a Hampton Inn  
14 Hotel.

15 So putting this building up against  
16 that wall is -- I suspect they were almost  
17 expecting it, because there are no windows in  
18 that wall. So I think I have covered, and  
19 I've spent more than my five minutes, but I  
20 think I'll stop.

21 CHAIRPERSON MILLER: Any questions?

22 MR. DETTMAN: Just one question. I

1 think this sort of reminds me of a project  
2 that, I believe it was Holland and Knight  
3 recently. It was Gallery Square, and I think  
4 you were actually looking for similar relief  
5 from loading as well as parking.

6 I think that the site, as well as  
7 the building program itself, are pretty  
8 similar. In that project, the Applicant  
9 decided to sort of investigate parking  
10 elevators. I was just wondering if there was  
11 a reason why it wasn't investigated here? I  
12 think that was just sort of a general  
13 wondering on my part.

14 MR. GLASGOW: I think that lot was  
15 about 50 to 60 feet in width. So we just --

16 MR. DETTMAN: It was definitely  
17 narrower.

18 MR. GLASGOW: Yes, it was narrower.  
19 We're about as narrow as you can possibly be.

20 MR. SHER: In this one, you can make  
21 the ramps work if you get the parking spaces  
22 into the vault. In that one, to begin with,

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1 the vault would have been at the front,  
2 because the site was not a corner lot. It was  
3 an interior lot in the middle of the block.

4 So you couldn't extend the parking  
5 spaces into the vault to make the ramps work  
6 in the middle. So I think that's really the  
7 difference.

8 The cost of providing an elevator is  
9 such that if you can ramp, you ramp, okay. In  
10 this case you can ramp if we can get the  
11 spaces in the vault.

12 CHAIRPERSON MILLER: But like some  
13 of the other cases, it's not cost effective to  
14 ramp any further down, is that right?

15 MR. SHER: Not for the number of  
16 spaces you get if you -- say you can't go in  
17 the vault. You can't count those 15 spaces.  
18 You've got to go down at least one -- I think  
19 it may be only one more level.

20 But that one more level, to pick up  
21 what amounts to just a few spaces, is just  
22 excessive. Under the standards that the Board

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1 has applied and the Court of Appeals has set  
2 out for area variances, that clearly  
3 constitutes practical difficulty.

4 CHAIRPERSON MILLER: And that's been  
5 no problem with use of vault space --

6 MR. SHER: As I said, it is a  
7 revocable situation. The District -- anything  
8 you do in public space with the District is  
9 revocable. They won't give it to you forever.  
10 They'll make you pay for it forever, but they  
11 won't give it to you forever.

12 But the only time that we're aware  
13 of, that vaults were ever revoked by the  
14 District, was for construction of Metro. That  
15 ceased years ago. So we know of no plans that  
16 would in any way impact vault space on this  
17 site if we got it.

18 CHAIRPERSON MILLER: Let me just ask  
19 you on that note. If it were revoked  
20 somewhere down the road and our order was  
21 premised on that, would that then, in your  
22 opinion, require you to come back before the

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1 Board for a modification?

2 MR. SHER: I would expect so. We  
3 conceive of that as being such an unlikely  
4 situation that I'm not going to lose any sleep  
5 over it. Maybe my grandson will have to worry  
6 about it, but I don't think I will.

7 CHAIRPERSON MILLER: Okay. Any  
8 other questions?

9 (No response.)

10 CHAIRPERSON MILLER: Okay. We don't  
11 have a need to hear from your other witnesses  
12 at this point. Thank you, Mr. Sher. So why  
13 don't we turn to the Office of Planning. Good  
14 afternoon, Mr. Cochran.

15 MR. COCHRAN: Good evening, Madam  
16 Chair. For the record, my name is Steve  
17 Cochran from the Office of Planning. I think  
18 that the Applicant has whacked out a  
19 demonstration of why it meets all three of the  
20 tests for the variances, and how it meets the  
21 conditions for the special exception.

22 Mr. Glasgow has also indicated that

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1 OP has had a chance to review the turning  
2 radii and other structural constraints on the  
3 provision of some of the parking and loading.  
4 OP is pleased to rest on its report, and would  
5 be happy to answer any questions.

6 CHAIRPERSON MILLER: I thought you  
7 might have had some concern about the compact  
8 parking spaces. Am I wrong?

9 MR. COCHRAN: We did mention it. We  
10 thought that the Applicant had been overly-  
11 generous in calculating its parking  
12 requirement. I think we have a difference of  
13 about three, but they're actually three higher  
14 than we had indicated; maybe four higher.

15 I think that might have happened  
16 because they didn't take out the first 3,000  
17 square feet for retail, where they're not  
18 required to provide certain things.

19 But it's either way you look at it,  
20 they're going to have to ask for the relief.  
21 It's just that under our numbers, the relief,  
22 on a minor percentage basis would be slightly

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1 less.

2 CHAIRPERSON MILLER: Okay. I'm not  
3 exactly sure if I follow you, though. Why  
4 would they have a different number of parking  
5 spaces than you?

6 MR. COCHRAN: It's either because --  
7 it could be because I misread the regulation  
8 --

9 CHAIRPERSON MILLER: You mean number  
10 that are required?

11 MR. COCHRAN: Yes, exactly. That's  
12 all I'm saying.

13 CHAIRPERSON MILLER: Or the number  
14 of compact spaces that are required?

15 MR. COCHRAN: No, just the overall  
16 number of spaces.

17 CHAIRPERSON MILLER: Oh, you have a  
18 different number?

19 MR. COCHRAN: No, no. We have no  
20 disagreement about the compact spaces.  
21 Clearly, they're providing more -- they're  
22 satisfying their parking requirement with more

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1 than the 40 percent that are permitted under  
2 the zoning regulations.

3 But I believe that we just had a  
4 disagreement on how we interpreted the overall  
5 number of spaces that were required. But  
6 again, that doesn't affect the relief that  
7 they're asking for.

8 CHAIRPERSON MILLER: It doesn't?  
9 They're under it.

10 (Simultaneous discussion.)

11 MR. COCHRAN: Nor OP's opinion of  
12 that relief.

13 CHAIRPERSON MILLER: Because they're  
14 under it? Because you said it comes to 11  
15 percent instead of 25 percent, which the  
16 special exception allows? Is that why it  
17 doesn't affect it?

18 MR. COCHRAN: No.

19 CHAIRPERSON MILLER: Why? What do  
20 you say?

21 MR. COCHRAN: On page three of our  
22 report, we're saying that the Applicant

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1 derived it retail parking requirement of three  
2 rather than one -- so we obviously have a  
3 difference only of two -- by not excluding the  
4 first 3,000 square feet of gross floor area  
5 from its parking requirements.

6 Judging by Mr. Glasgow's expression,  
7 I think I must have done something wrong.

8 CHAIRPERSON MILLER: Mr. Glasgow, do  
9 you want to address this?

10 MR. GLASGOW: Just very briefly,  
11 Because when they regulations were revised, I  
12 think it was '85 or '86, with the parking  
13 regs, what they did is we used to take, at  
14 that point in time, a 2,000 square foot credit  
15 for each retail use.

16 So if you had 20,000 square feet of  
17 retail and you had ten 2,000 square foot  
18 users, you provided -- you had no parking  
19 requirement. The Zoning Commission at that  
20 point in time said we're not doing this.

21 What we're going to do is while you  
22 have a 2,000 square foot parking credit for

1 office and a 3,000 square foot parking credit  
2 for retail, we're going to have you pro-rate  
3 that through the building.

4 So by pro-rating it in a building  
5 that's 90 percent plus office, you end up with  
6 a retail credit of like 300 square feet of  
7 118. Right.

8 It's very small, and almost all of  
9 the 2,000 square foot credit is going to the  
10 office. So that ends up having a slight  
11 variation in the numbers of parking spaces.

12 But since their required number was  
13 less than what we had and they were saying we  
14 needed less relief than what we were asking  
15 for, you know, there was no issue there with  
16 respect to meeting the burden of proof or  
17 getting the relief that we wanted.

18 But the regulations are not as  
19 clearly drafted there as they may be. When  
20 you look at the interpretation section on  
21 that, it's almost one of those things where  
22 you had to be there, and be through the debate

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1 and know what it is that they did.

2 Then you can follow what it is that  
3 they're saying. Well, you know, that's right.  
4 You probably drafted those. Yes.

5 CHAIRPERSON MILLER: Okay. So if I  
6 look at their chart on page three and I  
7 consider your numbers, at least for the number  
8 of spaces required, you determined that would  
9 be 54 and they determined it would be 51. Is  
10 that what you're talking about?

11 MR. GLASGOW: That's correct, yes.  
12 That's because if you do the calculation, the  
13 credit calculations a different way, you end  
14 with a three spaces difference.

15 MR. COCHRAN: I regret that we  
16 didn't know the oral tradition.

17 CHAIRPERSON MILLER: Is that the  
18 only difference, or does it roll over into the  
19 compact spaces?

20 MR. GLASGOW: No.

21 CHAIRPERSON MILLER: Okay. That's  
22 it, right, and it really isn't a meaningful

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1 difference?

2 MR. GLASGOW: No.

3 CHAIRPERSON MILLER: Okay. Any  
4 other questions?

5 MR. LOUD: Just a question for Mr.  
6 Cochran. Good afternoon. You had a very,  
7 very, I thought, interesting statement in your  
8 report, a little bit different from Mr.  
9 Sher's, in that in your report, you said part  
10 of what made the site have an exceptional  
11 condition was that the area was underserved by  
12 retail, as I recall.

13 MR. COCHRAN: That's correct.

14 MR. LOUD: That's on page two or  
15 three of the report. Of course, I find that  
16 fascinating, being in community development.  
17 Mr. Sher said that what made the site have an  
18 exceptional condition as relates to the retail  
19 was that there was a 50 percent driver, that  
20 50 percent of the ground floor had to have the  
21 retail.

22 So I just want you to think about

1 the way you phrased it, versus what Mr. Sher  
2 said. If you want to elaborate further on how  
3 you put it, to sort of help edify me on that.

4 I think there are a number of  
5 communities around the city where retail --  
6 that are underserved by retail, and developers  
7 moving forward offering retail might find it  
8 quite interesting that the fact that project  
9 offers retail in an underserved area means  
10 that the site has an exceptional condition.

11 MR. COCHRAN: Thank you for pointing  
12 that out. The Office of Planning felt that  
13 this site already had exceptional enough  
14 conditions to warrant the relief that the  
15 Applicant requested, without having to refer  
16 to the Mount Vernon Triangle zoning  
17 regulations, as if they posed either special  
18 circumstances or practical difficulties.

19 We feel that the Applicant is  
20 furthering the goals of the comprehensive plan  
21 and the Mount Vernon Triangle action agenda,  
22 in providing the retail space. We do believe

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1 that that statement in the comprehensive plan,  
2 of providing the additional retail space in  
3 this area, justifies -- helps to justify  
4 seeking this relief.

5 But we don't want to encourage  
6 future applicants to come in and say well, the  
7 zoning regulations that were passed recently  
8 constitute a practical difficulty, excuse me,  
9 an exceptional condition, especially in this  
10 area, where we will be seeing many buildings  
11 coming in and requiring retail.

12 But I think you're absolutely  
13 correct, that perhaps in striving to reframe  
14 what the applicant was saying, so that it  
15 referred more to the comprehensive plan and to  
16 general policies for that area.

17 Perhaps I stretched too much in  
18 saying that the area being underserved by  
19 retail constituted an exceptional condition.  
20 As you've pointed out, there are certainly  
21 many exceptional conditions like that in the  
22 city, and even in this part of town. But we

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1 do think that the Applicant has demonstrated,  
2 when it talked about the rear yard relief,  
3 when it talked about the loading relief,  
4 etcetera.

5 All of Mr. Sher's presentation was  
6 based on the exceptional, excuse me again, the  
7 exceptional condition being the size of the  
8 site, the width of the site, the fact that  
9 you're three feet shy of being able to fit the  
10 parking in, etcetera.

11 MR. LOUD: Thanks a lot for the  
12 clarification. I think it's a brilliant  
13 stretch, and it's not before us today, but  
14 gives food for thought.

15 CHAIRPERSON MILLER: Any other  
16 questions? Mr. Glasgow, I assume you have a  
17 copy of the Office of Planning report?

18 MR. GLASGOW: Yes, I do.

19 CHAIRPERSON MILLER: And do you have  
20 any questions for the Office of Planning?

21 MR. GLASGOW: No, I don't.

22 CHAIRPERSON MILLER: Okay. I just

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1 want to ask again is anybody here from the  
2 ANC? Is there anybody here who wishes to  
3 testify, either in support or opposition to  
4 this application?

5 (No response.)

6 CHAIRPERSON MILLER: Okay. Not  
7 hearing from anybody, Mr. Glasgow, do you have  
8 some closing remarks?

9 MR. GLASGOW: Just very briefly. We  
10 believe that we have met our burden of proof  
11 in this application. If we could, we'd like  
12 to get a bench decision today and summary  
13 order.

14 (Pause.)

15 CHAIRPERSON MILLER: Okay. The  
16 Board's prepared to deliberate on this  
17 application. I think that we should  
18 deliberate under motion. So I'm going to move  
19 for approval of Application No. 17684,  
20 MidAtlantic Realty Partners, LLC, for  
21 variances from the rear yard requirements  
22 under Section 774, the limitation on compact

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1 space requirements under Subsection 2115.2,  
2 and the off street loading facility  
3 requirements under Section 2201, and a special  
4 exception from the required number of off-  
5 street parking spaces under Section 2108, to  
6 permit the development of an office building  
7 with retail space on the ground floor at the  
8 southeast corner of the intersection of 6<sup>th</sup>  
9 and K Streets, N.W. Do I have a second?

10 MR. DETTMAN: Second.

11 CHAIRPERSON MILLER: Okay. I think  
12 that we can address this fairly briefly.  
13 There's no opposition in this case, and both  
14 the Applicant and the Office of Planning, I  
15 think, addressed the issues very thoroughly.

16 With respect to the variance, we  
17 need to find an exceptional situation on the  
18 property that gives rise to a practical  
19 difficulty in complying with the regulations.

20 We have heard and seen in the record  
21 that there are constraints on the site. It's  
22 a very narrow site, and it's occupied by 100

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1 percent lot occupancy, which limits the  
2 possibilities to comply with the Mount Vernon  
3 overlay retail requirements, and some of these  
4 other requirements such as loading and rear  
5 yard.

6 Specifically, with the rear yard, I  
7 believe that they showed very well that  
8 there's a 15-foot requirement, and in order to  
9 comply with that, they'd basically have to,  
10 the way I understand it, chop off 15 feet on  
11 one side or another, which would reduce the  
12 retail that they could offer.

13 I would think the viability of the  
14 building, which would be a great practical  
15 difficulty to have to go without that part all  
16 the way up. The rear yard extends all the way  
17 up from the ground up.

18 Feel free to pop in any time or add  
19 later. With respect to the compact parking  
20 space requirements, I think similarly, they  
21 showed that the narrowness of the property  
22 limited the space where they could put full

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1 size parking spaces, and they do have the  
2 option of going into the vault space, which  
3 does take care of the parking needs, which is  
4 not counted.

5 So to go further underground is a  
6 great cost that there's no really good reason  
7 for them to go through that, when there is a  
8 vault space. Also DDOT has weighed in on this  
9 in support, with some conditions. Those go to  
10 loading, though. We can address that next.

11 I think with respect to loading,  
12 it's the same kind of constraints of the site,  
13 which limit the space available for retail.  
14 If they had the loading docks there, they  
15 wouldn't have enough space for the retail  
16 that's required.

17 DDOT has supported the variance with  
18 conditions that I would suggest that we  
19 include in our order, and which the Applicant  
20 has agreed to, those being that there be no  
21 loading restrictions during rush hour, 7 to 10  
22 a.m. and 4 to 7 p.m., and that there be

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1 operations personnel or flaggers present to  
2 guide the loading maneuvers to and from 6<sup>th</sup>  
3 Street at all times, to mitigate conflicts  
4 with pedestrian and vehicular traffic.

5 Then the case was made that there  
6 certainly is no adverse impact from providing  
7 the relief in this case, in that they are  
8 providing more spaces than are required by  
9 using the vault space.

10 There's no detriment to the building  
11 to the south. This building would come right  
12 next to it, because there are no windows on  
13 the wall of that building.

14 So I think that covers the  
15 variances. If anyone wants to comment on the  
16 variances, then we can go to the special  
17 exception.

18 Special exception, as the Applicant  
19 pointed out in this case, arises from 2108,  
20 which allows the Board to reduce the parking  
21 by no more than 25 percent.

22 2108.2 says "The amount of required

1 parking spaces shall not be reduced by more  
2 than 25 percent, provided that for a use that  
3 is in the category of all other uses in the  
4 table in 2101.1, the amount of required  
5 parking spaces shall not be reduced by more  
6 than 50 percent."

7 Okay. We're in the 25 percent  
8 category here I believe, and Applicant in both  
9 -- and Office of Planning analyzed this and  
10 said that it comes to 11 percent. We look at  
11 the factors under 2108.3.

12 I don't know if we have to go  
13 through all of them at this point, but they  
14 are near public parking, which is E -- I mean  
15 public transportation.

16 There is evidence that there's a lot  
17 of commercial parking lots in the area as  
18 well, to absorb any extra parking needs. It  
19 wasn't found to be that there'd be a problem  
20 with traffic and congestion.

21 DDOT has analyzed this. Also, there  
22 was reference to Mr. Wells, their parking

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1 expert. And in any event, they are actually  
2 providing more spaces than is required. The  
3 vault doesn't count for the compliance with  
4 the regulations.

5 So I think that covers it. I don't  
6 know if anyone has anything else to add.

7 MR. DETTMAN: Just simply that I  
8 actually, in reviewing the project, I think  
9 it's a very well-designed project.

10 With respect to the rear yard, I  
11 think that the Applicant's statement about how  
12 including a rear yard on the 6<sup>th</sup> Street side  
13 would actually detract from the public realm  
14 and the pedestrian environment, and that it  
15 would sort of create a pedestrian dead zone.

16 With respect to the reduction of  
17 parking spaces, again, just to reiterate your  
18 comment about its proximity to multiple Metro  
19 stations and bus lines, and commercial parking  
20 garages.

21 With respect to the closing of the  
22 alley issue, I look at that and sort of it's

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1 a dead end alley, and eventually I think it's  
2 going to be closed. It's just sort of too bad  
3 that that alley can't be put more to a better  
4 use, like the entrance to a parking garage or  
5 something like that.

6 But those are the only comments that  
7 I have on this project, Madam Chair.

8 CHAIRPERSON MILLER: Thank you, and  
9 the gate alley issue isn't really before us in  
10 any event. So whatever happens down the road  
11 with that would be with Public Space. So but  
12 that's an interesting comment, you know.  
13 Okay. So any other comments?

14 (No response.)

15 CHAIRPERSON MILLER: Okay. Then I  
16 would just note that the ANC has also  
17 supported this, with that reference to the  
18 alley and the issue, but that's not within our  
19 jurisdiction.

20 So I think we're ready to vote on  
21 this, if there are no further comments. All  
22 those in favor say aye?

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1 (Chorus of ayes.)

2 CHAIRPERSON MILLER: All those  
3 opposed?

4 (No response.)

5 CHAIRPERSON MILLER: All those  
6 abstaining?

7 (No response.)

8 CHAIRPERSON MILLER: Would you call  
9 the vote please?

10 MS. BAILEY: The vote is recorded as  
11 3-0-2, to grant the application. Mrs. Miller  
12 made the motion. Mr. Dettman seconded. Mr.  
13 Loud supported the motion. A Zoning  
14 Commission member or the fourth BZM member are  
15 not present at this time.

16 CHAIRPERSON MILLER: Thank you, and  
17 I believe it would be the consensus of this  
18 Board to issue a summary order in this case,  
19 as there's no opposition?

20 MR. GLASGOW: Thank you.

21 CHAIRPERSON MILLER: Yes, that's the  
22 consensus? Okay. Thank you very much. Have

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1 a Happy Thanksgiving.

2 (Pause.)

3 CHAIRPERSON MILLER: You know, we  
4 don't want to delay things, but I think we'll  
5 just take a quick five minute break while you  
6 all set up.

7 (Whereupon, a short recess was  
8 taken.)

9 Application 17685

10 CHAIRPERSON MILLER: Back on the  
11 record for the final case of the afternoon.  
12 You've been very patient. Good afternoon or  
13 good evening or whatever. Could you introduce  
14 yourself for the record please?

15 MR. BUSSE: Yes. My name is Jeremy  
16 Busse. I am the architect and representative  
17 for the Applicant and developer for this  
18 project, excuse me, 5000 block of Drake Place,  
19 S.E.

20 CHAIRPERSON MILLER: Okay. You're  
21 here pursuant to Section 353; is that correct,  
22 for a special exception?

1                   MR. BUSSE: I believe, and perhaps  
2 John Moore can correct me if I'm wrong, but  
3 it's the 3104.1. That was what I had  
4 referenced, but it's actually 353.

5                   CHAIRPERSON MILLER: It's really,  
6 it's kind of both. 3104.1 is general special  
7 exception relief, and then 353 actually goes  
8 to multi-family development, which is what I  
9 think is before us.

10                  MR. BUSSE: Yes, that's correct.

11                  CHAIRPERSON MILLER: Do you want to  
12 summarize, perhaps, how you meet the  
13 requirements?

14                  MR. BUSSE: Well, I can give a  
15 summary of the project itself. What we are  
16 proposing here is a multiple family dwelling,  
17 which per the code that we had just mentioned,  
18 requires that we come before you to receive a  
19 special exception.

20                  What we are proposing is a multiple  
21 family dwelling, and we believe that our plan  
22 actually does meet the zoning requirements.

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1 So we're not asking for anything beyond simply  
2 the special exception for the multiple family  
3 dwelling.

4 In brief summary, we have a 17 unit,  
5 three-story, plus partial basement, multiple  
6 family dwelling. We are also providing  
7 parking spaces as per the code, and that's  
8 basically a summary of what we have before  
9 you.

10 CHAIRPERSON MILLER: Okay. Are you  
11 -- is there anybody else? There aren't too  
12 many people here. Are you with the Applicant?

13 MS. OVERTON: No, I'm not with the  
14 Applicant. I'm actually here to object. I'm  
15 supporting the Pellegrino Condominium  
16 Association.

17 CHAIRPERSON MILLER: Okay, right. I  
18 see that we have in the record a letter from  
19 the Pellegrino Condominium Association.

20 MS. OVERTON: Yes.

21 MS. MONROE: Put your microphone on  
22 so she can pick you up.

1 CHAIRPERSON MILLER: Okay. The  
2 order of procedure is we're going to -- we  
3 hear from the Applicant, then we hear from the  
4 Office of Planning, and then we hear from the  
5 ANC, who doesn't appear to be here, unless  
6 you're -- you're not with the ANC?

7 MS. OVERTON: No.

8 CHAIRPERSON MILLER: So then we  
9 would hear from you.

10 MS. OVERTON: Okay.

11 CHAIRPERSON MILLER: Okay. So since  
12 this is a special exception, what we also look  
13 at is if there would be any adverse impact on  
14 abutting properties, and whether it's in  
15 harmony with our zone plan.

16 So do you have anything in general  
17 to say? Do you want to address that in  
18 general, or have you seen -- we're going to  
19 give. I'm sorry. What is your name?

20 MS. OVERTON: Shelly Overton.

21 CHAIRPERSON MILLER: We're going to  
22 give Ms. Overton an opportunity to speak. But

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1 she did submit a letter outlining some  
2 concerns with respect to landscaping, and I'll  
3 let her address it more in detail.

4 But also lighting and views with  
5 respect to the apartment building. I'm  
6 wondering, did you see this letter?

7 MR. BUSSE: I was actually given a  
8 copy earlier today, and I have read through  
9 it, yes.

10 CHAIRPERSON MILLER: Okay, okay, and  
11 do you have any comments up front about your  
12 landscaping, or anything else with respect to  
13 impacts on abutting properties?

14 MR. BUSSE: Well, I can certainly  
15 address these comments. I guess we're sort of  
16 doing it a little in reverse, but I want to  
17 start by saying again that we are meeting the  
18 requirements that are set forth in the zoning  
19 code for this particular type of project.

20 In particular, a response to the  
21 comments on this letter, we do believe that we  
22 have provided the five percent of the

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1 landscaping on this lot, which does abut the  
2 parking area and I believe effectively screen  
3 it from the adjacent properties.

4 Additionally, in Comment No. 2,  
5 which speaks to a brick or stone wall 12  
6 inches thick, 42 inches high, again that's I  
7 believe intended to screen the parking from  
8 the adjacent properties.

9 We are providing that, and although  
10 it may not be 100 percent clear in the plan,  
11 there is a dark line which sort of comes off  
12 the front face of the building and goes around  
13 both sides in the back.

14 That is actually intended to  
15 delineate that construction of that brick  
16 wall, which would be 42 inches. Then topped  
17 also by, I think, a deck or two of ornamental  
18 wrought iron in addition to that.

19 CHAIRPERSON MILLER: So you're doing  
20 a brick wall, not a stone wall?

21 MR. BUSSE: It would be a brick  
22 wall. That's correct, that's correct. But we

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1 are certainly open to, you know, input on that  
2 issue.

3 Finally, addressing the concern  
4 about lighting, I think there are two things  
5 that are being stated here in three, but  
6 correct me if I'm wrong.

7 One is "will obstruct lighting from  
8 the street," and I think maybe that might  
9 refer to street lights on utility poles,  
10 illuminating the parking. I'm not exactly  
11 sure. I guess the other is views from the  
12 street.

13 I'm not sure how we can sort of  
14 address views from the street, and that we are  
15 within our property. I'm not sure that  
16 there's an entitlement to a view to the street  
17 and were actually on there.

18 As far as any other issues of  
19 lighting, I mean it is certainly our intention  
20 to keep our lighting directed within our own  
21 property, and meet requirements that specify  
22 in the code as far as that is concerned.

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1           I think we're also amenable to  
2 working with the adjacent owners, if they have  
3 specific concerns. I think that we can  
4 address those.

5           But our, you know, in particular,  
6 the Pellegrino, which I believe is the project  
7 due north, which is, if you'll look in the  
8 photo on that board there, I believe it's the  
9 building that you're actually seeing.

10           The distance from our particular  
11 project, in other words, the back wall of our  
12 building, which is where our lighting would  
13 sort of originate from, to the back wall of  
14 their building, and I'm making an estimation  
15 here, but I would guess that we're looking at  
16 least 100 feet.

17           So it would be pretty unlikely, I  
18 think, that we would be creating a lot of  
19 light pollution. At the same time, you know,  
20 we did intentionally put our parking and their  
21 parking sort of adjacent to one another.

22           I think that was the best sort of

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1 solution, in terms of like uses within the  
2 site, sort of bordering one another, to sort  
3 of minimize any impact on quality of life and  
4 those types of issues.

5 CHAIRPERSON MILLER: I have a note  
6 in the file. I'm looking for the ANC report.  
7 Did you appear before the ANC?

8 MR. BUSSE: No, we did not.

9 CHAIRPERSON MILLER: Okay. So they  
10 just -- they considered your application, but  
11 you didn't give a presentation. Okay, and I  
12 believe that they didn't take a position on  
13 the application. Do you have a copy of their  
14 report?

15 MR. BUSSE: I have seen that as a  
16 comment or information in the report from the  
17 Office of Planning.

18 CHAIRPERSON MILLER: Okay. Why  
19 don't we go to the Office of Planning at this  
20 point, because I think they had some concerns  
21 too, and I think it does probably make sense  
22 for them to articulate it first, and we'll get

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1 back to Ms. Overton and she can explain more  
2 about her concerns. Okay good afternoon,  
3 evening, Mr. Moore?

4 MR. MOORE: Late afternoon, and  
5 members of the Board. I'm John Moore of the  
6 Office of Planning. I want to make a couple  
7 of corrections on the OP report.

8 The condition on page one, Condition  
9 2 should end with the word "homes." As you  
10 can tell, the rest of that go to Condition 3.  
11 So if you'll just scratch the second part  
12 where it says "provide."

13 CHAIRPERSON MILLER: I'm sorry, Mr.  
14 Moore. Could everybody else shut their  
15 microphone off? That will make his louder.  
16 Okay. Where are you referring to?

17 MR. MOORE: Yes. Three conditions  
18 on page one of the OP report. If you focus on  
19 the second one, you can see that it carries  
20 over to what actually should be the third  
21 condition, after the word "homes."

22 "In addition to the main entrance to

1 the front of the building, have private  
2 entrance doors and walkways to three units,"  
3 that sentence. The word "homes" should end  
4 that sentence.

5 "Provide a small on-site recreation  
6 space is actually Condition 3." So it's  
7 redundant, in terms of being -- okay.

8 CHAIRPERSON MILLER: Okay.

9 MR. MOORE: With that, OP will stand  
10 in support of the application, as meeting the  
11 requirements of 3104 and 353, which is a  
12 referral section.

13 OP did do an analysis of its portion  
14 of the referral, and we even did an analysis  
15 we normally would do, in terms of the schools  
16 and various capacity to accommodate citizens  
17 who come out of this.

18 In this case, it is yes. We didn't  
19 get a copy of the DDOT report, and the  
20 Applicant didn't mention it. But we actually  
21 had a meeting with DDOT and went over the  
22 application.

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1           So the standards that DDOT set for  
2           landscaping and parking light, lights and  
3           illumination on the surface itself, DDOT was  
4           supposed to send a report. I don't know if it  
5           got here yet. But there is a report from DDOT  
6           addressing those issues.

7           When we met with the Applicant, the  
8           conditions that are in the front of the  
9           document, I want to commend the Applicant for  
10          actually adjusting the project to accommodate  
11          these.

12          First, the project would have come  
13          all the way up to the end of the private space  
14          and the public space. We asked that there be  
15          a setback of at least five feet, given the  
16          character of the block, as well as the major  
17          developments taking place across the block  
18          from it.

19          That's Eastgate. We wanted it to be  
20          compatible, to be in character with that  
21          project, and the Applicant agreed to do so.

22          The second one we thought was a

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1 major adjustment in the Applicant's  
2 application, because he is now not only going  
3 to provide a main entrance into the building  
4 on the front, but each of the units on the  
5 front of the building will have a separate  
6 entrance, and the door would be definitely  
7 townhouse in nature, as opposed to apartment  
8 dweller. So we thought that was a major  
9 improvement that the Applicant agreed to.

10 The third one sort of addresses one  
11 of the concerns in the Pellegrino Condominiums  
12 Apartment. The Applicant is going to use one  
13 side of the property, I think it's the east  
14 side, as the drive aisle to get to the parking  
15 spaces. It's 14 feet, so it's okay.

16 He's got 12 feet to be on the other  
17 side. In the 12 feet of side yard, he's gong  
18 to put in recreation space. As you know, one  
19 of the biggest issues from the ANC in that  
20 community is lack of recreation space, and  
21 that everything is blacktopped.

22 So he's going to provide recreation

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1 space for children, and a viewing area,  
2 benches, for adults to watch. By the way,  
3 that area alone constituted more than five  
4 percent of the site, in terms of recreational  
5 requirement.

6 But he also is going to provide  
7 greenery at the front of the property, and I  
8 think along one of the walls. It also, on the  
9 OP report on page four, it states clearly that  
10 the Applicant is going to build the brick wall  
11 12 inches thick and 42 inches high.

12 I think that somewhat addresses the  
13 concerns of the community, of the Pellegrino  
14 community. I can understand them having a  
15 view shed right now, because there's no  
16 building in front of them, although there's  
17 stuff down from them.

18 In the future, having a building  
19 there, which of course change that view shed  
20 all together. However, the Applicant is  
21 permitted under zoning law to build on the  
22 site, and I guess with that OP will just stand

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1 on the record in terms of supporting the  
2 application. I'll answer any questions you  
3 have.

4 CHAIRPERSON MILLER: Thank you. I  
5 just have a question about the DDOT report.  
6 I don't think we have it in the record, and it  
7 sounds like the DDOT report was going to be  
8 addressing landscaping?

9 MR. MOORE: The DDOT report is going  
10 to address the parking, in terms of their  
11 support for the parking. Keep in mind that  
12 only 16 of the spaces can fit on the rear of  
13 the property. That's why one is being put in  
14 at the side yard, on the west side.

15 By the way, yes, there will be the  
16 separation between the parking space and the  
17 recreation space. I talked to DDOT as late as  
18 Friday about their report, and I know that it  
19 has been prepared, and I don't know why it  
20 didn't reach you yet. But I'll make sure that  
21 the report gets here.

22 But it will address the parking. It

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1 will address landscaping, including lighting.

2 CHAIRPERSON MILLER: I just want to  
3 ask the staff, to make sure that we didn't --  
4 the staff didn't receive that DDOT report.  
5 Did you?

6 MS. BAILEY: Madam Chair, I have not  
7 seen a copy of that report.

8 MR. MOORE: By the way, I often get  
9 DDOT reports a day after the hearing take  
10 place. So I'm not surprised that it's not  
11 here yet.

12 CHAIRPERSON MILLER: Have you seen  
13 the report or you just know it's coming?

14 MR. MOORE: No, I haven't seen it  
15 yet.

16 CHAIRPERSON MILLER: You've talked  
17 to them though?

18 MR. MOORE: Yes. I talked to them  
19 on Friday about it.

20 CHAIRPERSON MILLER: Okay. What did  
21 you say? What's the separation between the  
22 parking and the recreation space?

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1 MR. MOORE: There will be a buffer  
2 property, a green buffer to separate the  
3 parking space from the recreation space.

4 CHAIRPERSON MILLER: And do you know  
5 off hand whether the Applicant will be meeting  
6 more than the five percent requirement for --

7 MR. MOORE: Yes. The Applicant will  
8 be exceeding the requirement, as indicated in  
9 the OP report.

10 CHAIRPERSON MILLER: Okay. Any  
11 other questions?

12 MR. LOUD: Just a quick question.  
13 You alluded to it in your -- I guess both your  
14 report and your testimony this afternoon.

15 Can you just sort of walk me through  
16 the buffer between the west side yard tot  
17 area, tot lot, and where the vehicles will be  
18 parked on the west side, because you mentioned  
19 that there's -- you're going to separate the  
20 two.

21 I know as a parent, particularly  
22 children that are of the age to play in a tot

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1 lot, there would be some concern about having  
2 the two located on the same side. You had  
3 earlier relocated that parking space from the  
4 rear of the property to the west side yard.

5 So I just want to -- it's not  
6 obviously in the plans, I guess, because you  
7 made the recommendation after the plans were  
8 submitted or before they were able to revise  
9 the plans. I didn't see it if it was.

10 So I'm just trying to visualize how  
11 the two are going to fit together.

12 MR. MOORE: Mr. Loud, I believe in  
13 the original plan, the Applicant is showing 16  
14 parking spaces, including one handicapped  
15 space at the rear of the property, and one  
16 parking space that was away from the rear, but  
17 with enough turn radius to get in and out of  
18 the site. That's actually on the west side of  
19 the lot.

20 Obviously, that area has to be  
21 paved. At the end though, where that pavement  
22 would be, there would be a green buffer,

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1 probably low hedges or something like that,  
2 that will definitely separate the paved  
3 parking space from the green top line, and the  
4 Applicant can address it more clearly if he  
5 wants to.

6 MR. LOUD: It's probably just as you  
7 describe it. But what I'm looking at, just it  
8 shows -- I don't know. This is the Exhibit  
9 23, and it's the final page of the exhibit.  
10 It shows the parking space, P-1, and then it  
11 shows a bench and a sand box.

12 So is the bench the buffer between  
13 the parking the sand boxes?

14 MR. MOORE: No. Can I yield to the  
15 Applicant to point that out on the drawing,  
16 where that box is?

17 MR. BUSSE: Effectively, we did not  
18 get as specific as I think what you're looking  
19 for, in terms of the green space. But Mr.  
20 Moore is correct. You're getting to that  
21 understanding.

22 Effectively what we intend to do is

1 to buffer that one space. The reason that  
2 space is there, is if you'll look at the width  
3 of the site, when you add it, similar to your  
4 previous case, when you add up the dimensions  
5 of the widths of all the parking, you're left  
6 with not being able to fit all of them along  
7 the back of the width of the lot, which is why  
8 that one space is sort of faced forward on the  
9 side of the building.

10 The intention is that this is an  
11 asphalt-paved area with a raise curb. So you  
12 have a curb there. Then you will have a green  
13 space buffer, which would be shrubs or an  
14 ornamental tree or something that would again,  
15 you know, provide a little bit of both a  
16 safety barrier and sort of a visual and noise  
17 barrier.

18 Then, you know, the intention would  
19 be then to build or install a bench, a park-  
20 type bench, so that the adults could sit. Of  
21 course, there could be adult supervision, and  
22 then followed by the actual play area for the

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1 children.

2 So it's sort of a sequence of things  
3 between that parking space and the play area  
4 that Mr. Moore is referring to.

5 MR. LOUD: Okay.

6 MR. BUSSE: Sort of collectively as  
7 a green buffer.

8 MR. LOUD: Okay, thank you. Can you  
9 again, just looking at the blown-up version of  
10 your plans, walk me through the five percent  
11 or the landscaping, which according to Mr.  
12 Moore's report, exceeds five percent, and just  
13 sort of identify what you've got going there.

14 MR. BUSSE: Well, what we have is  
15 sort of three defined areas of landscape. One  
16 would be that sort of -- that child area, that  
17 play area, the top lot recreation space.

18 In addition to that, we have sort of  
19 a green garden-like installation in the front  
20 of the building, and that sort of came about  
21 with the pushback of the building, the five-  
22 foot distance from the front property line.

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1           If you'll look at the way that the  
2 front of the building sort of undulates in,  
3 you know, there are sections of the building  
4 which are 10, 11 feet back. So we have that  
5 second area, which is again all of the  
6 landscaped or green area.

7           Then we have sort of, I guess the  
8 best way to describe it, is pockets of small  
9 garden installations, sort of in the same  
10 undulations in the rear side of the building,  
11 which would function, both providing shade and  
12 then also screening the building from the  
13 parking area and the neighbors to the rear.

14           So when you sort of take  
15 collectively the areas, and as Mr. Moore said,  
16 I mean the tot lot area is, you know, this  
17 will exceed the sort of five percent  
18 requirement that we're looking at.

19           MR. LOUD: And I think you're to be  
20 commended on your investment in the  
21 landscaping above and beyond the five percent.

22           Are there reasons and factors why

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1 you did not consider landscaping the parking  
2 area in the rear of the property?

3 MR. BUSSE: Well again, it sort of  
4 goes to the point of meeting the requirements  
5 for the number of parking spaces and their  
6 dimensions, and the drive aisles.

7 So when you sort of take that area  
8 together, and what we are sort of addressing  
9 there is, you know, we're sort of precluded  
10 from landscaping sort of in between the  
11 spaces.

12 The idea here was to actually pull  
13 this building back from the front, and sort of  
14 give priority to the landscaping on that. So  
15 effectively what that meant was that we sort  
16 of pushed the parking at the building.

17 It all sort of squeezed towards the  
18 back, and then we're looking at using that  
19 sort of decorative brick fence to sort of  
20 create the visual interest in the aesthetic  
21 screening on that portion of the lot.

22 MR. LOUD: With the five foot

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1 setback that OP recommended in the front of  
2 the property, did you lose your ability to  
3 landscape along the perimeter wall  
4 effectively?

5 MR. BUSSE: Yes.

6 MR. LOUD: Yes. All right, thank  
7 you.

8 MR. MOORE: Mr. Loud, there will be  
9 the 42 inch wall between the two properties.

10 MR. LOUD: I understood that. I was  
11 just wanting to know the connection between  
12 the five foot setback and perhaps, I guess --  
13 not perhaps but the loss of five feet in the  
14 rear of the property, and the impact that may  
15 have had on landscaping against that 42 inch  
16 wall in the rear.

17 MR. DETTMAN: I have a couple of  
18 questions. The first one -- well, the first  
19 one, which I think is the easiest one, along  
20 the rear of the property, you have what  
21 appears to be a space that's sort of hatched,  
22 and the hatching is actually running to the

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1 building. It's the sixth space from the left.

2 MR. BUSSE: Oh, okay, yes. That  
3 actually refers to the handicapped aisle. So  
4 for a handicapped spot, you're required to  
5 have, you know, a non-parking space for the  
6 unloading of van space.

7 MR. DETTMAN: And the parking  
8 requirement is one to one for the unit. So  
9 you're required to provide 17 parking spaces,  
10 one of which needs to be handicapped?

11 MR. BUSSE: That's correct.

12 MR. DETTMAN: But there's 18 spaces  
13 on this plan. There's 17 across the rear, and  
14 then there's the one.

15 MR. BUSSE: This is actually space  
16 number two, space number one.

17 MR. DETTMAN: Right. So they're all  
18 numbered 1 through 17, but there's no number  
19 on the handicapped spot.

20 MR. BUSSE: No, no, no. In other  
21 words, this area actually cannot have a  
22 parking space.

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1                   CHAIRPERSON MILLER: Wait, wait.  
2                   For the court reporter to get you, you need to  
3                   be on a mike. You need to say that again, Mr.  
4                   Busse.

5                   MR. BUSSE: The hatched area  
6                   actually represents the space which must  
7                   remain clear adjacent to the actual space. If  
8                   you look at the ADA guidelines, and don't  
9                   quote me on this, but I believe it's 16 feet  
10                  of total width is considered the parking  
11                  space.

12                  So when you sometimes see a  
13                  handicapped space, you'll see a hatched aisle  
14                  next to it in most parking lots, which  
15                  represents sort of a no parking area.

16                  MR. DETTMAN: Okay. When you were  
17                  going through sort of what constitutes your  
18                  five percent landscaping requirement, you were  
19                  talking about the landscaping on the front of  
20                  the building and a couple of other places, the  
21                  tot lot.

22                  My reading of 2117.11 says that "The

1 landscaping shall cover a minimum of five  
2 percent of the total area devoted to parking,  
3 including aisles and driveways. The  
4 landscaping shall be maintained in a healthy  
5 growing condition."

6 I'm not seeing that five percent  
7 coverage of the area that's dedicated to just  
8 parking.

9 MR. BUSSE: Can you read that again?

10 CHAIRPERSON MILLER: Yes. Identify  
11 the reg also again.

12 MR. DETTMAN: It's Section 2117.11.  
13 2117 is entitled "Access, Maintenance and  
14 Operation." Chapter 21 is off street parking.  
15 So 2117.11, and I'll read it in its entirety,  
16 "Landscaping with trees and shrubs shall be  
17 provided for all open parking spaces provided  
18 on a lot, where there are more than ten open  
19 parking spaces provided collectively as  
20 accessory to any building or structure.

21 "The landscaping shall cover a  
22 minimum of five percent of the total area

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1 devoted to parking, including aisles and  
2 driveways. The landscaping shall be  
3 maintained in a healthy, growing condition."

4 Looking at your site plan, the area  
5 that's dedicated to parking, I'm not seeing  
6 the five percent landscaping, which may  
7 address the landscaping comment that's been  
8 submitted by the Pellegrino Condominium  
9 Association.

10 MR. BUSSE: Okay, I understand. I  
11 think what we are putting forth to you is that  
12 the -- I guess is the definition of what you  
13 would consider as part of that parking area,  
14 because you know, clearly again, because of  
15 space constraints, we have not put it to the  
16 rear or to the sides of those actual spaces.

17 But we submit that both the tot lot  
18 area and the landscaping that's to the rear of  
19 the building, although separated by a  
20 sidewalk, is still adjacent and therefore  
21 complying or meeting the requirements for that  
22 five percent.

1           As far as I know, other than saying  
2           that it's part of the parking area, I don't  
3           believe that it dictates any more, in terms of  
4           specific locations or types, as far as I know.

5           MR. MOORE: Let me take a crack at  
6           this. Where Applicant is providing the 42-  
7           inch high brick wall, the regulations actually  
8           say it can be a brick wall or green buffer.  
9           So if it's the desire of this Board he can not  
10          put the brick wall in the rear, and put  
11          landscaping.

12          CHAIRPERSON MILLER: Could you  
13          identify where that brick wall is again?

14          MR. MOORE: Would you repeat that?

15          CHAIRPERSON MILLER: Where the brick  
16          wall is on the plans?

17          (Simultaneous discussion.)

18          CHAIRPERSON MILLER: Where is that  
19          brick wall that we've been referring to?

20          (Pause.)

21          MR. BUSSE: Effectively what we are  
22          presenting in this particular drawing, if

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1 you'll look at this heavy dark line, which  
2 begins here at the sort of lower left front  
3 corner of the building, comes across in front  
4 of the tot lot and continues along the side  
5 property line, and then again across the back  
6 of the property and continues then to sort of  
7 the other corner, front corner of the  
8 building.

9 So it's basically incorporating  
10 three sides of this property, and of course  
11 there's the access, the vehicle access gate,  
12 which is sort of that diagonal line at the  
13 sort of the apron of the driveway.

14 That is what we're proposing is the  
15 location of this 42-inch, 12-inch thick brick  
16 wall.

17 CHAIRPERSON MILLER: Thank you.

18 MR. MOORE: Before that big  
19 greenery, or green in the back and brick on  
20 the sides?

21 CHAIRPERSON MILLER: I don't know if  
22 the Board's ready to give an answer on that.

1       Because I think we're dealing with two  
2       different regulations. So I think that was a  
3       good point that Mr. Dettman is making.

4               It's not just 353, which addresses  
5       landscaping in general when we're looking at  
6       multi-family development, but also this  
7       specific regulation that goes to off-street  
8       parking.

9               I think we just -- we need to  
10       understand the whole picture before we would  
11       say oh, substitute a wall for a green buffer.  
12       Could you explain to me what is in this area,  
13       that's labeled "asphalt pavement parking  
14       area." It looks like it's between the parking  
15       spaces and the buildings.

16              MR. BUSSE: Okay. Well, you're  
17       referring, I believe, to the --

18              CHAIRPERSON MILLER: Is that the  
19       drive aisle?

20              MR. BUSSE: The drive aisle.

21              CHAIRPERSON MILLER: That's the  
22       drive aisle, and that need to be the width

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1 that it is; is that right?

2 MR. BUSSE: Yes. Twenty feet is  
3 what's required by the zoning code.

4 CHAIRPERSON MILLER: Okay. So it's  
5 not like you can put some trees in there,  
6 because that's the drive aisle.

7 MR. BUSSE: No. That's correct.

8 CHAIRPERSON MILLER: So when we're  
9 looking at where your options are for putting  
10 five percent in the parking area, if we were  
11 going to look at specifically the parking  
12 area, as separate from the building area, are  
13 there options?

14 Like for instance, let me ask you  
15 this. I was thinking about parking space  
16 number one. We've seen this sometimes where  
17 a parking space, it's right outside, it looks  
18 like a bedroom window. I don't know how close  
19 it is to that.

20 But is there a possibility for any  
21 landscaping there next to that residence? Do  
22 you see where I'm talking about?

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1           MR. BUSSE: Yes. That certainly  
2 will be a landscaped area. The width of that  
3 sort of between the curb of the parking space  
4 and the building itself is fairly narrow.

5           So I wouldn't say that there's an  
6 opportunity for a tree, but it certainly is  
7 intended. Whatever is not asphalt, whatever  
8 is not building is certainly intended to be  
9 green, of some variation on this lot.

10          CHAIRPERSON MILLER: I'm just trying  
11 to explore. If there are areas that could be  
12 added to, that border the parking area?

13          MR. BUSSE: Well, I think that, and  
14 I'll just sort of restate, I guess, what Mr.  
15 Moore has been saying, is that you know  
16 effectively, it was my feeling personally that  
17 this brick wall would be a better option for  
18 both the tenants and the neighborhood, than  
19 the other option, which is essentially to do  
20 a green bush, you know, a buffer of bushes.

21          We would certainly be amenable to  
22 doing that instead, although we think that

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1       although it may solve the issue of the green  
2       space, it would be not as nice of a solution,  
3       both to the tenants and the neighborhood just  
4       in general.

5               The reason was security of  
6       occupants, security of children, and those  
7       types of issues, that we felt that this would  
8       be a more appropriate solution. But again, we  
9       are -- if the Board thinks that the green  
10      space would be more appropriate, we would  
11      certainly be willing to substitute that for  
12      the fence.

13             CHAIRPERSON MILLER: Okay. But  
14      before you go there, I just wanted to ask you.  
15      I'm looking at the plan as it is now. Are  
16      there places where you could add landscaping  
17      that border the parking area, that would add  
18      up to five percent, so you wouldn't have to  
19      worry about that?

20             MR. BUSSE: The only way that I  
21      would conceive of being able to do that would  
22      be again, to pull the building forward towards

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1 the front of the property, in order to  
2 generate any kind of area.

3 Because as we had stated, the  
4 parking spaces and the driveway, that's  
5 absolutely the minimum that they can be to  
6 sort of meet the requirements. So the space  
7 would have to come from somewhere, and really  
8 the only option, I guess, is to sort of  
9 substitute one green space for another.

10 So we could pull from the front and  
11 put to the back, essentially just slide this  
12 project forward.

13 CHAIRPERSON MILLER: Let me ask you  
14 this, because I'm not an architect. You know,  
15 let's see. I'm looking at the side of the  
16 parking lot where the buildings are, like for  
17 instance where you have like in the middle  
18 eight percent slope, accessible ramp.

19 There is a space in between the  
20 lines there and then the lines to the drive  
21 aisle. You know what I'm saying or not? Hold  
22 it. I mean in here, along here. What's this

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1 space for?

2 MR. BUSSE: Well, if you'll notice  
3 the sort of jagged circles are representative  
4 of landscape. Those are bushes and trees.  
5 The sort of maze-type thing is actually an  
6 accessible ramp. It's a handicapped ramp.

7 CHAIRPERSON MILLER: Is this a ramp  
8 along here?

9 MR. BUSSE: That is actually a  
10 sidewalk.

11 CHAIRPERSON MILLER: A sidewalk?

12 MR. BUSSE: Yes.

13 CHAIRPERSON MILLER: Okay. So  
14 that's why there's no landscaping here,  
15 because that's a sidewalk?

16 MR. BUSSE: That's correct. It  
17 represents -- the two lines represent the curb  
18 and the space between the accessible ramp, and  
19 the curb is a sidewalk, yes.

20 (Pause.)

21 MR. BUSSE: I guess that's what I  
22 was saying was, you know, if we -- I'm not

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1       sure. I understand the intent here of getting  
2       landscaping within the bounds of the parking  
3       area.

4               But I guess what we're submitting is  
5       that the landscape that's sort of between the  
6       building and the parking, between the sidewalk  
7       and the building itself and also the tot lot,  
8       does sort of --

9               I mean it is adjacent to the parking  
10       area. Now whether or not that actually fits  
11       the interpretation, I can't say. But we're --  
12       that's sort of the way that we're proposing  
13       that we meet that requirement.

14              CHAIRPERSON MILLER: Okay. I mean  
15       we have a regulation there, and that's why  
16       we're trying to figure out whether you might  
17       meet it or can meet it, and I know it somewhat  
18       depends on how broadly maybe we interpret it,  
19       with respect to how far away from the actual  
20       parking we're getting.

21              But certainly that P-1 space abuts  
22       some green space, and you said you might be

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1 able to add some shrubbery along the side  
2 that's not indicated right here; correct?

3 MR. BUSSE: Yes, that's correct.

4 CHAIRPERSON MILLER: Okay. So I  
5 guess I just want to know, in making the  
6 calculations, we're looking at the parking  
7 area now. We're not looking at the whole  
8 property. So it's five percent of the parking  
9 area.

10 If we -- do you think you can  
11 possibly meet five percent of the parking area  
12 with the landscaping that abuts at least the  
13 borders to the parking area?

14 MR. BUSSE: Well, we do believe that  
15 again, the tot lot, if that's considered  
16 abutting, and also the areas of the landscape  
17 that's between the building and the sidewalk.  
18 We believe that that sidewalk also constitutes  
19 part of that parking area.

20 So we submit that if you  
21 mathematically if you add those areas, you do  
22 exceed five percent of what's sort of asphalt-

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1 paved with those areas. So again, I don't  
2 think it's a question of the number here.  
3 It's a question of does that fit the criteria  
4 of being part of the parking area, and we  
5 believe it does.

6 MR. LOUD: Your premise would be  
7 that the drive aisle is part of the parking  
8 area? Because the sidewalk abuts the drive  
9 aisle.

10 MR. BUSSE: Yes, yes. I mean that's  
11 what we're saying, is the parking area would  
12 include both the space of the parking spaces  
13 and the aisle itself, in addition to the  
14 sidewalk.

15 MR. LOUD: Let me switch gears for a  
16 quick second and ask about lighting in the  
17 parking area. Will there be lighting in the  
18 parking area, and if so, where is it indicated  
19 on the plans?

20 MR. BUSSE: We have not actually  
21 indicated the particular lighting. But the  
22 intent is actually to place the lighting on

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1 the building itself, which would illuminate  
2 and would be sort of a down lighting, which  
3 would illuminate the parking and the drive  
4 aisle.

5 So no, we have not shown a  
6 particular lighting plan. But we believe that  
7 we can effectively light that space and not  
8 have that light sort of spread into the  
9 neighboring areas, particularly the  
10 Pellegrino, which again is an estimation.

11 I believe that's at least 100 feet  
12 back from where these light sources would be.  
13 So we're looking at down lighting that's  
14 approximately 30 feet off the ground. If you  
15 sort of focus those, the light itself, the  
16 intent is that that would not go any further  
17 than the border of the property, the 42 inch  
18 fence or the green shrub fence, if that's so  
19 indicated.

20 CHAIRPERSON MILLER: I just want to  
21 note that the regulation that Mr. Dettman was  
22 referring to with respect to the requirements

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1 for landscaping around the parking lots does  
2 include the drive aisles specifically.

3 MR. DETTMAN: I just have one other  
4 observation, and I guess I'm going to change  
5 gears a little bit too, and look at DCOP's  
6 Recommendation No. 1, to shift the proposed  
7 building at least five feet from the front  
8 property line. Is that indicated in your site  
9 plan?

10 MR. BUSSE: Yes. What you're  
11 actually viewing here, and I believe what you  
12 have a copy of, is the revised plan,  
13 subsequent to the meeting that I attended with  
14 Mr. Moore and Mr. Booker of the Department of  
15 Transportation.

16 So this does indicate a five foot  
17 separation from the front property line. It  
18 does also indicate the additional doors that  
19 he requested.

20 MR. DETTMAN: Okay. I was concerned  
21 that had it not been indicated, the impact to  
22 the 20-foot drive aisle. But now that that's

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1 taken care of, okay. Thank you.

2 CHAIRPERSON MILLER: I think we were  
3 dealing with Mr. Moore still. Mr. Moore, did  
4 you see the letter from the Pellegrino  
5 Condominium Association?

6 MR. MOORE: Yes, Madam Chair. I got  
7 a copy of it this afternoon.

8 CHAIRPERSON MILLER: Okay. I think  
9 that we have addressed or you have addressed  
10 the first two concerns, and I'm wondering if  
11 you have a comment on the third one, which  
12 talks about obstructing lighting and views  
13 from the street?

14 MR. MOORE: If the Pellegrino  
15 Condominium is referring to the lights that  
16 the Applicant will put on the property, I  
17 think he's just addressed that.

18 By the way, we did discuss that with  
19 DDOT, that his lighting would be illuminating  
20 the parking surface and the parking spaces,  
21 with no negative impact in another building,  
22 from having to look at light glaring at them.

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1 I think that his plan is going to address  
2 that.

3 By the way, the lighting also was a  
4 part of what the DDOT report was supposed to  
5 provide to you.

6 CHAIRPERSON MILLER: Okay. I was  
7 going to say, I think in other cases, we did  
8 have a little more information about what type  
9 of lighting was going to be on the lot.

10 MR. MOORE: Which is why in the OP  
11 report, we say, we refer them to DDOT for that  
12 purpose, or that we had already discussed that  
13 with DDOT.

14 CHAIRPERSON MILLER: Okay. All the  
15 more reason we're going to need to get DDOT's  
16 report into the record.

17 MR. MOORE: Probably in the morning.

18 CHAIRPERSON MILLER: There's also a  
19 letter from the Russell family that we got.  
20 Have you seen that?

21 MR. MOORE: No, I haven't.

22 CHAIRPERSON MILLER: Okay. I just

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1 want to get your views on it, since you're  
2 commenting now. Let's see. Anyway, in  
3 essence they're saying parking will also be an  
4 issue. Do you think that parking will be an  
5 issue with respect to this development?

6 MR. MOORE: Yes, I think parking's  
7 going to be an issue with any development in  
8 the Marshall Heights community. Given that  
9 the Applicant is meeting the required number  
10 of parking spaces that the regulation said he  
11 must provide, when you look at the impact of  
12 all the development that's taking place in the  
13 community, including the Eastgate Lodge  
14 project, which is right across the block from  
15 this one, we wouldn't be using common sense if  
16 we didn't think that at some point, this site  
17 and Eastgate is going to max out in terms of  
18 parking, and people are begin to park on the  
19 public space. That's a residue of  
20 development.

21 Now we've been asking for  
22 development in that area. We're finally

1 getting it, and as long as an Applicant can  
2 meet the minimum requirement in terms of what  
3 the regulations say, I don't think they can be  
4 held accountable any further with respect to  
5 parking. He is meeting the minimum parking  
6 requirement on the site.

7 Yes, there's going to be visitors  
8 who won't be able to park on his lot, just as  
9 there are visitors to the condominium that  
10 can't park on its lot.

11 By the way, I think this Board, well  
12 most of you know that I'm not normally a  
13 proponent of multi-family development in the  
14 Marshall Heights community. As a matter of  
15 fact, we just filed a set down report last  
16 night about changing some of the zoning there,  
17 and this is one of the areas that also will be  
18 included in that.

19 CHAIRPERSON MILLER: But this one is  
20 different, because --

21 MR. MOORE: This is vested already.

22 CHAIRPERSON MILLER: What?

1           MR. MOORE: This project is already  
2 in the pipeline, so it wouldn't be affected by  
3 whatever the Zoning Commission does with  
4 respect to changing zoning.

5           CHAIRPERSON MILLER: Also, I mean,  
6 we've done a few of these, and this one  
7 appears to be more in accordance with the  
8 character of the neighborhood, in large part  
9 based on, I believe, the Applicant's response  
10 to your concerns.

11          MR. MOORE: Which is exactly why we  
12 are supporting it. The character of the area  
13 on the west side of 50<sup>th</sup> all the way over to  
14 Benning Road and East Capitol, is all  
15 apartment buildings. So this is perfectly  
16 within the character of what's already there.

17          CHAIRPERSON MILLER: One other point  
18 in this letter, and then we can move on. They  
19 say that the neighborhood is already crowded  
20 with apartment buildings, and therefore it  
21 shouldn't be here. It should be a single  
22 family dwelling.

1 MR. MOORE: We agree. There's  
2 nothing we can do about it. The regulations  
3 right now says you can build an apartment  
4 building in the R-5-A.

5 CHAIRPERSON MILLER: Okay. Any  
6 other questions? Do you have a copy of the  
7 Office of Planning report?

8 MR. BUSSE: I do. I don't actually  
9 have it with me, but I did get a copy of the  
10 report.

11 CHAIRPERSON MILLER: Okay, and do  
12 you have any questions for Mr. Moore?

13 MR. BUSSE: No, I don't.

14 CHAIRPERSON MILLER: Okay. Any  
15 other questions for Mr. Moore?

16 MR. LOUD: Not for Mr. Moore, but  
17 for the Applicant. Just in terms of how soon  
18 you'd be able to pull together your lighting  
19 plan for the parking lot.

20 MR. BUSSE: Probably within -- I  
21 mean given the holidays, we're of course  
22 shutting down for the remainder of the week.

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1 But it's a priority, so I mean I'm sure that  
2 I could pull something together by the end of  
3 the following week.

4 MR. LOUD: Okay.

5 CHAIRPERSON MILLER: I would  
6 anticipate also that you would wait to see  
7 DDOT's comments on the lighting, and perhaps  
8 work with the Office of Planning on that.

9 MR. BUSSE: Of course I'm interested  
10 in the report. We do feel that based on the  
11 meeting that we did have prior to the report,  
12 that he was in favor of the project.

13 Given our -- the outcome of that  
14 meeting, we do believe that his report will  
15 reflect his -- sorry, I'm at a loss for words.

16 CHAIRPERSON MILLER: That's okay.  
17 So you're saying you had a meeting with DDOT,  
18 and that you already know basically what their  
19 comments are going to be?

20 MR. BUSSE: Well, I mean I can't say  
21 verbatim, but I do believe that the comments  
22 will be favorable, and that it would be in

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1 support of this project.

2 CHAIRPERSON MILLER: Okay. They  
3 just may have some right, specific suggestions  
4 for lighting or landscaping or things like  
5 that?

6 MR. BUSSE: Yes, and of course we're  
7 amenable to suggestions. I mean we want to  
8 accommodate the neighbors and the community as  
9 best we can.

10 CHAIRPERSON MILLER: Okay. Any  
11 other questions? I don't see the ANC here,  
12 because all I see waiting now is Ms. Overton.

13 MR. MOORE: Madam Chair, if I may  
14 interrupt?

15 CHAIRPERSON MILLER: Yes, Mr. Moore.  
16 Sorry.

17 MR. MOORE: I did brief the ANC  
18 chair and vice chair. I don't see -- I  
19 haven't seen anything that says they've taken  
20 an official position. But they know exactly  
21 -- also, I sent them a copy of the OP report.  
22 They are aware of the project.

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1                   CHAIRPERSON MILLER: We have in our  
2 records, marked as Exhibit No. 22, a letter  
3 from ANC 7E, saying that they considered this  
4 at their October 9<sup>th</sup>, 2007 regular monthly  
5 meeting, and that a quorum was present, and  
6 they don't have any issues of concern about  
7 the application related to the zoning  
8 regulation.

9                   They didn't make a recommendation as  
10 to the application, and the vote on the motion  
11 to adopt the report to the Board was 3 yes, 3  
12 no.

13                   So basically, we interpret this as  
14 or I would interpret this as that the ANC  
15 considered this, took no position, and have no  
16 issues for us to address. Giving great weight  
17 to the ANC means that we address their issues,  
18 but they don't have any. So okay.

19                   Now I think we could turn to Ms.  
20 Overton, unless the Applicant has something to  
21 say about the ANC. Did you attend the  
22 meeting?

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1 MR. BUSSE: No, I did not, and I  
2 have no comments. Thank you.

3 CHAIRPERSON MILLER: Okay. Ms.  
4 Overton, now is your time.

5 MS. OVERTON: I just wanted to  
6 know. These are apartments? These aren't for  
7 sale, these aren't condominiums for sale.  
8 This is an apartment?

9 MR. BUSSE: Well, the way that D.C.  
10 structures their code, it's multiple family  
11 dwellings, and to be honest with you, I don't  
12 have the information. That's up to the  
13 developer, whether or not they are  
14 condominiums or apartments.

15 I will say that I do believe the  
16 tendency are he is leaning towards  
17 condominiums, as opposed to an apartment  
18 building. But I obviously cannot speak for  
19 him, in terms of his final decision.

20 CHAIRPERSON MILLER: And Ms.  
21 Overton, I just want to advise you that the  
22 Board can't consider in its deliberations on

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1 this whether or not it's going to be  
2 apartments or condominiums. It's not a factor  
3 in our considerations. It may be a factor in  
4 how the neighborhood feels.

5 MS. OVERTON: Right, right. Would  
6 it be how this developer, that has had its  
7 architect, would the fact of how they  
8 maintained previous properties that they had  
9 developed, redeveloped or developed, be a  
10 factor, like how they maintained, the  
11 maintenance, you know?

12 CHAIRPERSON MILLER: I don't know.  
13 It depends how closely you tie that.  
14 Basically, we consider whether or not there  
15 would be any adverse impacts from the  
16 development on abutting properties.

17 So you know, it's possible if you  
18 said that this company had a history of  
19 horrible maintenance, they had horrible  
20 problems all the time, that maybe you could  
21 say it's relevant to that.

22 MS. OVERTON: Right, and like how

1 now that they're saying to get it passed, to  
2 get it through, that they're going to do one  
3 thing. Not the architect himself, but the  
4 developer. He's supporting the developer,  
5 where he hasn't been good on his word with  
6 the property that he has, which we purchased  
7 the units from. Do you see what I'm saying?  
8 Like --

9 MR. BUSSE: If I can just sort of  
10 interject? I apologize. I know it's not my  
11 turn. But I'm not sure. This particular  
12 developer just purchased this property. So  
13 I'm not sure if the previous owner had owned  
14 the Pellegrino or not, but it's not the same  
15 --

16 MS. OVERTON: Konsam is another, is  
17 the same developer under the same person that  
18 redeveloped our community. Konsam is Mekki  
19 LLC, and another name that the president has  
20 researched already. They're the same person.  
21 It's the same people.

22 I don't have all of the supporting

1 documents here, where the president has  
2 already researched all that. This is the same  
3 developer that has redeveloped the  
4 condominiums that we live in now. When we  
5 moved here, this property was told that this  
6 was supposed to be a play area.

7 They told us one thing. Like now  
8 they're saying this is going to be tot lot and  
9 everything is following regulations. But now,  
10 we're hearing that a building is coming here.

11 I don't have anything against the  
12 view obstruction or anything like that. But  
13 it's the fact that how when we moved in, they  
14 said, they told us the same things. But then  
15 everything changed once you purchase.

16 CHAIRPERSON MILLER: Okay. Let me  
17 just interject here, because I don't want to  
18 get too far off course. What happens here is  
19 if we give approval, it's based on the plans  
20 that we approve.

21 For instance, if these plans show a  
22 tot lot and things like that, and they don't

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1 actually do that, then they're in violation  
2 and DCRA will conduct an enforcement action  
3 against them.

4 Do you have any other testimony or  
5 anything you want to present with respect to  
6 these plans?

7 MS. OVERTON: Yes. I just had the  
8 maintenance problem, but I don't know how  
9 relevant it is to this situation, as you know,  
10 as far as them maintaining, whether it's an  
11 apartment or a condominium, you know, as far  
12 as them maintaining the property and paying  
13 bills that come along with the property, like  
14 water and threats of gas getting cut off, and  
15 so on and so forth. So I don't -- that's the  
16 only point that I'm trying to make.

17 CHAIRPERSON MILLER: Okay. Some  
18 things we do put in our order when they're  
19 tied to our regulations. For instance, the  
20 parking lot regulation that Mr. Dettman was  
21 referring to does require them to keep, for  
22 instance, the landscaping in a healthy and

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1 growing condition.

2 Okay. So for instance, that would  
3 be in our order. So that means that it's  
4 enforceable. Now there are other areas of  
5 jurisdiction, you know, under DCRA. You know,  
6 if someone is violating other codes, sanitary  
7 codes or whatever, then it's just a different  
8 agency that you would have to seek relief  
9 from.

10 MS. OVERTON: Oh, okay.

11 CHAIRPERSON MILLER: Anything else?

12 MS. OVERTON: No.

13 CHAIRPERSON MILLER: Okay. Thank  
14 you for coming down here.

15 MS. OVERTON: Thank you.

16 MS. BAILEY: Madam Chair, may I ask  
17 a question please? Is that okay?

18 CHAIRPERSON MILLER: Okay.

19 MS. BAILEY: Thank you. Mr. Jeremy  
20 Busse, are you the architect of the project,  
21 sir?

22 MR. BUSSE: Yes, I am.

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1 MS. BAILEY: And the property owner  
2 is Konsam, Inc., c/or Zach Kurasko?

3 MR. BUSSE: Kurasko, or there are  
4 several pronunciations of his last name. He  
5 is Moroccan.

6 MS. BAILEY: Our file is not showing  
7 that you have a letter of authorization from  
8 him. Do you?

9 MR. BUSSE: A letter of  
10 authorization?

11 MS. BAILEY: To present the project  
12 to the Board.

13 MR. BUSSE: I don't think I do.

14 MS. BAILEY: He is -- someone else  
15 is the property owner, I guess is the point  
16 I'm trying to make.

17 MR. BUSSE: Yes, that's correct.

18 MS. BAILEY: Okay. Madam Chair, I  
19 guess you understand the question. We don't  
20 have a letter of authorization from the  
21 Applicant for the architect to present the  
22 project.

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1                   CHAIRPERSON MILLER: Correct, and  
2 maybe you can find that regulation. I was  
3 actually going to raise the same question.  
4 But yes. The owner has a right to present the  
5 application, and then to authorize somebody  
6 else to present for him or her.

7                   So you're not the owner, and we  
8 don't have this in the record. It can be  
9 cured. I think we're going to be leaving the  
10 record open for a few items.

11                   So one of the items would be a  
12 letter from the owner, saying that you were  
13 authorized and are authorized to represent the  
14 owner in this application. Ms. Monroe, do you  
15 have the regulation?

16                   MS. MONROE: Yes, 3106.1. It just  
17 says "Any person or party may be represented  
18 by any other person duly authorized in writing  
19 to do so," and then it says "The authorization  
20 shall state specifically that the  
21 authorization includes the power of the agent  
22 or representative to bind the person in a case

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1 before the Board."

2 The only reason that's there is  
3 because the only person who can bring a case  
4 to the Board is an owner. So obviously you  
5 would be the agent of the owner. We just need  
6 it in writing, that's all.

7 MR. BUSSE: One quick question.  
8 Would a contract that I have with that person  
9 suffice?

10 MS. MONROE: No. It would have to  
11 say that you were authorized to represent them  
12 and bind them before the Board.

13 MR. BUSSE: Okay.

14 CHAIRPERSON MILLER: For the  
15 particular application.

16 MS. MONROE: Right, this particular  
17 proceeding, you know, not just --

18 MR. LOUD: And you can read the  
19 language of the regulation and just literally  
20 lift it and put it into your letter.

21 MS. MONROE: It's again, 3106.1.

22 CHAIRPERSON MILLER: Okay. Now this

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1 brings us to, do you have any final comments,  
2 and after that we can then talk about what  
3 we're going to leave the record open for?

4 MR. BUSSE: I believe that we have,  
5 I think, addressed all of the major issues.  
6 So we are satisfied.

7 CHAIRPERSON MILLER: Okay. I think  
8 what I want to review is a few items that we  
9 said we'd leave the record open for, and then  
10 others can join in. If you have a response to  
11 any of these, that they seem problematic or  
12 you disagree, just let us know.

13 First off is the letter we just  
14 referenced, authorizing you to represent and  
15 bind the owner in this case, okay. Second is  
16 the DDOT report. And then Ms. Bailey, you can  
17 add after I'm finished too. She often does  
18 this as well.

19 Okay. I would suggest a request, to  
20 see if the landscaping plan could be added to,  
21 in the way, at least that we were talking  
22 about, adding some shrubbery on the side of

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1 parking spot number one. I don't know how  
2 much of a problem that is to add that in or  
3 what, logistically.

4 MR. BUSSE: No. I mean we're just  
5 talking graphics here. Again, it is intended  
6 to be green, and I would certainly -- it would  
7 not be a problem to simply add the graphics  
8 that would portray that.

9 CHAIRPERSON MILLER: Okay, because I  
10 think it would be good to have a buffer there,  
11 and that that area certainly could go to your  
12 five percent calculation easily, because it's  
13 bordering that parking space number one.

14 Then I would be interested in  
15 knowing if you could show how you meet the  
16 five percent, you describe it, that the  
17 parking lot area, including the drive aisles  
18 is, you know, a certain amount of square feet  
19 or whatever.

20 Then the amount of feet that you  
21 have landscaping on comes to five percent or  
22 whatever it is, so we know whether you're

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1 actually meeting that for sure.

2 Third, I would think would be the  
3 lighting plan that was referenced. I don't  
4 recall anything else. Do others recall  
5 anything else that we talked about leaving the  
6 record open for?

7 MR. BUSSE: I guess I'm a little  
8 unfamiliar with the procedures and protocols.  
9 By leaving open, what exactly does that mean?

10 CHAIRPERSON MILLER: Okay. We think  
11 that we need this information to make our  
12 decision, and that's it. Like everything else  
13 that we've considered, we've sufficiently  
14 heard and we don't need to look at anything  
15 else. We don't need further documentation or  
16 anything else.

17 We would give you as much time as  
18 you need. This is your application or your  
19 owner's application, to get that in the  
20 record, and then we would decide the case. We  
21 just feel that those things are important for  
22 us to make a decision based on the regulations

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1 that apply.

2 MR. BUSSE: So is there a particular  
3 -- is this a next hearing type of a thing, or  
4 do I just bring it directly to you?

5 CHAIRPERSON MILLER: Okay. I don't  
6 believe that we would need another hearing.  
7 I think that you should see the DDOT report  
8 and have an opportunity to respond to it if,  
9 you know. I think you should respond to it,  
10 to actually consider their views.

11 What you would do is you would  
12 submit the information to the Office of  
13 Zoning, and to the ANC, because they're  
14 automatically a party to the case, even though  
15 they're not really participating.

16 You served them with the  
17 application, right? Okay. Then we would  
18 -- we're going to set two dates, one for when  
19 your documents come in, and then we'll set a  
20 date to decide it.

21 So we'll have all the information,  
22 and then we will decide it at a meeting, that

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1 we don't take any public testimony at that  
2 point. We just, you know, if we had all the  
3 information today, we would be deciding it.  
4 But we just don't have all the information.

5 So you could come to that meeting or  
6 you could listen to it on the website, or you  
7 could read the transcript later or whatever.  
8 But we would be, you know, just considering  
9 your application by the standards of the regs  
10 that we talked about today, 353, 3104 and then  
11 the parking regulation, 2117.11. Okay.

12 So you can really give us a date for  
13 how much time you want to supply that  
14 information. It would just be good to set a  
15 date, because then we'd have these specific  
16 dates and you know it would be done.

17 You know, dates for their getting it  
18 in and dates for the meeting.

19 MR. BUSSE: I guess that not the  
20 following Monday, but perhaps the Monday after  
21 that would give me adequate time to give you  
22 the documentation that you need.

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1 CHAIRPERSON MILLER: Okay. What's  
2 the date of that? So it would be two weeks  
3 from today? No, two weeks from yesterday?

4 (Pause.)

5 CHAIRPERSON MILLER: Ms. Bailey,  
6 would that be December 3<sup>rd</sup>?

7 MS. BAILEY: December 3<sup>rd</sup> is two  
8 weeks from yesterday.

9 CHAIRPERSON MILLER: Okay, and then  
10 we need to pick a date to decide the case.

11 MS. BAILEY: Madam Chair, that's  
12 assuming that the DDOT report is going to be  
13 made available, so he'll have a chance to  
14 respond to it and so forth; correct? I'm  
15 assuming that there is a DDOT report  
16 somewhere. We just don't have it. Okay.

17 CHAIRPERSON MILLER: Mr. Moore, you  
18 thought it was going to be readily available  
19 soon or what?

20 MR. MOORE: I thought it would be  
21 here by now. I will definitely check on it  
22 tomorrow morning.

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1                   CHAIRPERSON MILLER: Okay. Well, do  
2 you think December 11<sup>th</sup> -- no, what did we  
3 say? December 3<sup>rd</sup> is a good, a safe date for  
4 the Applicant to have time to read the DDOT  
5 report and respond to it?

6                   MR. MOORE: I would think so.

7                   CHAIRPERSON MILLER: Okay. I think  
8 that we would like to set then December 18<sup>th</sup>  
9 as the first special public meeting, just to  
10 decide this case. So we can decide it this  
11 year.

12                   Did anyone else have any other items  
13 that I might have forgotten about, that we  
14 want to leave the record open for?

15                   (No response.)

16                   CHAIRPERSON MILLER: No. Okay. Any  
17 other questions? All right. If you do have  
18 any other questions later on, you can ask the  
19 Office of Zoning and they will help you, such  
20 as Mr. Moy over here. Okay. Then if there  
21 are no other questions, then we're finished  
22 with this case. Have a Happy Thanksgiving,

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1 and this hearing is adjourned.

2 (Whereupon, at 6:40 p.m., the public  
3 hearing was adjourned.)

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